

## January 2009

The following news summaries were developed by Gabriel, Roeder, Smith & Company to inform clients and other benefit professionals of news in the benefits industry. Our thanks to Mary Ann Vitale for her diligent work on this issue. To receive this publication electronically, send an email to [web.admin@gabrielroeder.com](mailto:web.admin@gabrielroeder.com) with "SUBSCRIBE NEWS SCAN" in the subject line. To stop receiving this publication electronically, send "UNSUBSCRIBE NEWS SCAN" in the same manner. Copies of this and other benefit-related publications are available on the GRS web site at [www.gabrielroeder.com](http://www.gabrielroeder.com).

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### **U.S. Census Bureau Releases Survey of State and Local Retirement Systems**

On December 29, 2008, the U.S. Census Bureau released the State and Local Government Employee-Retirement Systems survey data for fiscal year 2007. The annual survey covers approximately 2,500 public employee retirement systems and reports data on the systems' revenues, expenditures, financial assets, and membership aggregated at the national and state levels. Data for individual retirement systems may also be downloaded from the Census Bureau's web site. Key findings for 2007 include:

- Total system revenues increased 48%, from \$393 billion in 2006 to \$580 billion in 2007. Revenues included \$473 billion from investment earnings (up 60% from \$296 billion in 2006), \$73 billion from employer contributions, and \$34 billion from employee contributions.
- Employer contributions increased 14%, from \$64 billion in 2006 to \$73 billion in 2007.
- Employee contributions increased 3%, from \$33 billion in 2006 to \$34 billion in 2007.
- Total system payments increased 10%, from \$166 billion in 2006 to \$183 billion in 2007. Payments included \$163 billion in benefits (up 7% from \$152 billion in 2006), \$5 billion in refund distributions, and \$15 billion in other payments.
- The total number of annuitants receiving regular benefit payments increased about 3%, from 7.3 million in 2006 to 7.5 million in 2007. The total number of active participants decreased slightly from 14.5 million in 2006 to 14.4 million in 2007.
- Average annual benefit payments increased 4.5%, from \$20,867 in 2006 to \$21,801 in 2007.

The Census Bureau cautions that because the survey's data definitions are different from those used for accounting purposes, the survey statistics cannot be directly equated with the systems' standard accounting statements. In addition, the individual system data should not be used to draw inferences about the financial condition of specific public retirement systems or their sponsoring governments.

The 2007 census data can be accessed at: <http://www.census.gov/govs/www/retire07.html>

## **GASB Issues Guidance on Determining the ARC Adjustment for Postemployment Benefits**

On December 15, 2008, the Governmental Accounting Standards Board (GASB) issued Technical Bulletin No. 2008-1, *Determining the Annual Required Contribution Adjustment for Postemployment Benefits*. The guidance clarifies the requirements of GASB Statements No. 27 and No. 45 for calculating the annual required contribution (ARC) adjustment. For governmental pension and other postemployment benefit (OPEB) plans, the bulletin encourages use of the actual (rather than estimated) amounts for the amortization of past employer contribution deficiencies (or excess contributions) in the ARC adjustment, if known.

For pensions, the provisions are effective for financial statements ending after December 15, 2008. For OPEBs, the provisions are effective for financial statements ending after December 15, 2008, or simultaneously with the initial implementation of GASB Statement No. 45, if later.

The technical bulletin is available for purchase from the GASB site at: <http://www.gasb.org>

## **National Survey Finds Most Americans Are Concerned about Retirement Security**

On January 14, 2008, the National Institute on Retirement Security (NIRS) released its report: *Pensions and Retirement Security: A Roadmap for Policy Makers*. The report is based on a national survey of 800 Americans age 20 and older conducted by Mathew Greenwald & Associates, Inc. The survey was done to benchmark public views regarding retirement security and to provide guidelines for policymakers to use when addressing retirement issues. The survey reveals widespread retirement insecurity among Americans. Key findings include:

- 83% of Americans are concerned about their retirement due to current economic conditions; and
- 71% consider it more difficult to retire today compared with previous generations.

The survey also shows that most Americans believe retirement is a shared responsibility between individuals, government, and employers. Moreover, the majority supports government actions that would strengthen Social Security; make it easier for employers to offer pensions; and offer tax incentives for savings.

- 87% believe all workers should have a pension plan so they can be self-reliant in retirement;
- 84% believe policymakers should make it easier for employers to offer pension plans; and
- Of those with 401(k) plans, only 50% believe they will have enough money to retire.

During the NIRS teleconference announcing the report, U.S. Rep. Earl Pomeroy explained that he is looking for legislative opportunities to address defined benefit plan funding problems. He also criticized the “mark-to-market” provisions of the Pension Protection Act (PPA) which require private-sector plan sponsors to more rapidly reflect investment gains and losses and changes in plan obligations. Since these provisions increase plan funding volatility, he noted that the “current market collapse is the worst-case scenario” for this type of requirement.

He also pointed out that certain technical corrections to the PPA enacted in the Worker, Retiree, and Employer Recovery Act of 2008 allow asset smoothing for private-sector pension plans, giving the plans “breathing room” to get full funding in place. These provisions average investment gains and losses in a way that makes defined benefit plan funding more predictable in a fluctuating market.

The NIRS study is accessible at:

[http://www.nirsonline.org/index.php?option=com\\_content&task=view&id=172&Itemid=61](http://www.nirsonline.org/index.php?option=com_content&task=view&id=172&Itemid=61)

## **Report Finds Public Plan Fiduciaries Have Acted Prudently During Market Fluctuations**

On November 24, 2008, the National Institute on Retirement Security (NIRS) released its report: *In it for the Long Haul: The Investment Behavior of Public Pensions*. Based on an analysis of U.S. Census Bureau and Federal Reserve data from more than 1,000 public plans over the period from 1993 to 2005, the NIRS researchers conclude that public plan investors have acted prudently during various market fluctuations by:

- Regularly rebalancing their portfolios to maintain stable asset allocations;
- Adopting best investment practices of industry leaders to take advantage of investment innovations; and
- Continuing to invest in a prudent, professional manner, even in the wake of financial market downturns.

While the global financial crisis brings a renewed focus on retirement security, the report's findings support the efficient management of state and local government pension plan assets. In commenting on the report for BNA's *Pension & Benefits Reporter*, Keith Brainard, Research Director for the National Association of State Retirement Administrators (NASRA), said the report "confirmed that public pension funds are managed by disciplined, long-term investors that stick to a prudent strategy of diversification."

The report is available at:

<http://www.nirsonline.org/storage/nirs/documents/In%20it%20for%20the%20Long%20Haul.pdf>

## **CMS Reports U.S. Health Care Spending Slowed in 2007**

The January/February 2009 issue of *Health Affairs* reports on a study showing that U.S. health care spending increased 6.1% in 2007, its lowest rate since 1998. The study was conducted by the Centers for Medicare and Medicaid Services (CMS) National Health Statistics Group. The lower rate was largely due to the slower growth rate of prescription drug spending in 2007 of 4.9%, down from 8.6% in 2006, and the lowest rate since 1963. CMS analysts attribute the drop in prescription drug spending to:

- Increases in the use of lower-priced generic drugs;
- Slower overall growth in prescription drug prices; and
- Increased concerns over the safety of certain prescription drugs due to Food and Drug Administration warnings.

Overall, total U.S. health care spending grew to \$2.2 trillion in 2007, or \$7,421 per person, and reached 16.2% of gross domestic product (GDP), up from 16.0% in 2006. While prescription drug spending slowed to 4.9%, spending on other health care components grew at faster rates. Spending on hospital care increased 7.3% to \$696 billion in 2007, up from 6.9% in 2006. Spending on physicians' services increased 5.9% to \$394 billion, down from 6.4% in 2006. Out-of-pocket spending increased 5.3% in 2007 to \$269 billion, up from 3.3% in 2006. Some of the decline in health care spending for physicians' services is attributed to legislated reductions in payments to physicians for imaging.

The article is available for purchase at: <http://content.healthaffairs.org/cgi/content/abstract/28/1/246>

## **EBRI Analyzes Trends in Employer-Provided Retirement Income**

On November 26, 2008, the Employee Benefit Research Institute (EBRI) published an article titled: "Retirement Annuity and Employment-Based Pension Income Among Individuals Age 50 and Over: 2007." The article is based on the U.S. Census Bureau's Current Population survey data related to

annuity and pension income for persons age 50 and older. The analysis confirms earlier EBRI findings that age, education, gender, marital status, and other demographic factors have a significant effect on the likelihood of workers receiving employment-based pension income or retirement annuities. Major findings for 2007 include:

- 43% of men age 65 and over received annuity and/or pension income. Their average (mean) annual income was \$18,293 and median annual income was \$12,000.
- 28% of women age 65 and over received annuity and/or pension income. Their average annual income was \$11,895 and median annual income was \$7,920.

The article notes that this gender difference is historically due to women spending less time in the workforce than men, generally as a result of taking leave to care for their families. However, a growing proportion of women are spending more time in the workforce. Consequently, as more women become covered by retirement plans, the portion of women receiving pensions and annuities will likely increase, along with the annual amounts received.

The EBRI article is available at: [http://www.ebri.org/pdf/notespdf/EBRI\\_Notes\\_11-2008.pdf](http://www.ebri.org/pdf/notespdf/EBRI_Notes_11-2008.pdf)

### **State Administrators Continue to Value the Importance of Retiree Health Care Benefits**

On December 2, 2008, the Center for State and Local Government Excellence released their survey report, *Retiree Health Care in the American States*. The survey is based on the responses from 121 state officials with knowledge about retiree health care issues, including human resource directors, budget officers, retirement system administrators, treasurers, auditors, and comptrollers. The survey was conducted between December 2007 and March 2008. Responses were received from all 50 states.

While there has been a decline in the number of private-sector and local government employers offering retiree health care, the survey reports that 46 of the 50 states continue to offer retiree health care coverage. The continuation of coverage is due to a broad belief that retiree health care benefits help attract and retain qualified employees, and help to manage the timing of retirement. As a result, states have been making incremental changes in response to increasing costs for retiree health care and other postemployment benefits (OPEBs). Key survey findings include:

- The vast majority of states have established disease management programs, precertification procedures for inpatient hospitalizations, and conduct regular claims audits.
- 30 states plan to continue pay-as-you-go financing for retiree health care programs. Five states have already established OPEB trusts and 15 states indicate they are likely to establish such trusts in the near future.
- 17 states plan to limit the health care subsidies for future retirees, while only 3 states will likely cease subsidies for current retirees.
- 16 states will likely increase the vesting service requirements for retiree health care benefits.

The report is available on the SLGE website at: <http://www.slge.org>

### **Justice Department Clarifies Public Safety Officers' Benefit Program Provisions**

On December 17, 2008, the Department of Justice's Office of Justice Programs issued a final rule relating to the Public Safety Officers' Benefits (PSOB) Program. Enacted in 1976, the Public Safety Officers' Benefits Act established the PSOB program which is administered by the Bureau of Justice Assistance. The federal PSOB program provides the following benefits to public safety officers and their survivors:

- A one-time death benefit for eligible survivors of public safety officers whose deaths are the direct and proximate result of a traumatic injury sustained in the line of duty. For eligible deaths occurring after October 1, 2008, the PSOB benefit is \$315,746. In 2003, the Hometown Heroes Survivor Benefits Act amended the law to include certain line-of-duty deaths due to heart attacks and strokes.
- A one-time disability benefit for public safety officers who have been permanently and totally disabled by a catastrophic injury sustained in the line of duty, if the injury prevents the officer from performing any gainful work. The disability benefit is the same amount as the one-time death benefit.
- Financial assistance for higher education is also available for eligible spouses and children of federal, state, and local public safety officers who have been permanently disabled or have died in the line of duty. Educational assistance is available after the PSOB death or disability claim has been approved and awarded. As of October 1, 2006, the maximum award for a full-time student was \$860 per month.

For the purpose of this program, “public safety officer” is defined in Public Law 90-351 (§ 1217) as an individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, firefighter, or member of a rescue squad or ambulance crew. In 2000, Public Law 106-390 (§ 305) included Federal Emergency Management Agency (FEMA) employees performing official, hazardous duties related to a declared major disaster or emergency. Also, those working with FEMA who are state, local, tribal emergency management or civil defense agency employees or chaplains (as of September 11, 2001) are included in PSOB Act definition of a public safety officer.

The final rule clarifies issues related to commuting and other travel, injury during training, medical history, and medical records. The final rule is effective as of January 16, 2009.

Text of the final rule is accessible at: <http://edocket.access.gpo.gov/2008/pdf/E8-29703.pdf>

### **U.S. District Court Finds Fort Lauderdale’s Early Retirement Plan Does Not Violate ADEA**

On December 23, 2008, the U.S. District Court for the Southern District of Florida ruled that an early retirement program offered by the City of Fort Lauderdale to its police officers does not violate the Age Discrimination in Employment Act (ADEA) (*Lerman v. City of Fort Lauderdale*, S.D. Fla., No. 02-60967-CIV-ZLOCH). The lawsuit was filed by 14 current and former officers alleging that the city’s deferred retirement option program (DROP) violated the ADEA.

Under collective bargaining agreements negotiated in 1996, officers became eligible to participate in the DROP after attaining age 47 with at least 20 years of service. Under the agreement, upon becoming eligible for the DROP, the officers remained eligible for 36 months thereafter. If they elected to participate in the DROP, they signed an irrevocable letter to resign at the end of the 36 month period. In addition, they signed an Older Workers’ Benefit Protection Act (OWBPA) waiver, releasing the city from any related claims under the ADEA. By electing to participate, the officer voluntarily agreed to continue working during the 36 month period without accruing additional service credit for retirement benefits. However, while the officer continued to work, the officer’s normal monthly pension payments were paid into a separate interest bearing account. At the end of the DROP period, the officer ceased employment and either received the DROP account balance as a lump sum payment or rolled it over into another tax-qualified retirement plan.

The DROP provisions were later amended through a collective bargaining agreement effective October 1, 2000. Under the amended agreement, the minimum age for participating in the DROP was lowered from age 47 to 45 and the participation period was extended from 36 to 60 months. In 2001, the plaintiffs sued the city and the retirement plan on the grounds that the changes were age discriminatory

under the ADEA. The plaintiffs argued that the changes allowed younger officers to earn the retirement plan's maximum pension accrual rate (81% of pensionable salary) and then enter the DROP for the full 60 months, allowing them to accrue the full benefit attainable under the DROP. The plaintiffs also argued that older officers had to either enter the DROP for the full 60 months with a reduced pension accrual rate, or work longer to attain the maximum 81% accrual rate and then enroll in the DROP for a shortened period of DROP eligibility.

The district court granted the city's motion for summary judgment. Judge William Zloch found that 13 of the officers had signed valid OWBPA waivers, releasing the city from their ADEA claims. For the remaining officer who had not signed a waiver, the court determined that the DROP was not age discriminatory. According to the court, the DROP was created as a voluntary incentive for officers to participate in a program for early retirement. The court also found that there was no direct evidence of a discriminatory intent by the city to pay lower benefits to older workers through the DROP, and that in some cases older workers were treated more favorably than younger workers. Additionally, the court agreed with the city that the DROP adhered to the ADEA's safe harbor provisions for early retirement incentive programs.

Source: *BNA Pension & Benefits Reporter*, 1/6/09.

### **House Bill Proposes Federal Guarantees for Public Plan Investments in Preferred Bank Stock**

On January 27, 2009, U.S. Rep. Gary L. Ackerman (D-NY) introduced the "Public Retiree's Investment Act of 2009" (H.R. 710). The purpose of the bill is to increase the capitalization of U.S. banks by authorizing the Secretary of the Treasury to guarantee investments made by public pension funds in certain bank preferred stocks. The hope is that this guarantee will encourage public plans to invest in the preferred stock of troubled banks, strengthen the banks' balance sheets, and increase bank lending without using additional federal funds.

As provided in the bill, the investments would be made through "public pension bank capital infusion funds," defined as "any investment vehicle mutually owned by public pension plans for the sole purpose of investing in preferred stocks of U.S. banking institutions, subject to certain guarantees provided by the Secretary of the Treasury or other appropriate Federal Government officer or agency ...." The guarantee would apply to investments of up to \$50 billion per capital infusion fund.

To be eligible for the guarantee, the capital infusion fund would have to invest in certain preferred stock issued by qualified financial institutions under the Troubled Asset Relief Program's Capital Purchase Program. The preferred stock would pay dividends at an initial rate of 8.5%, and then be adjusted annually based on prevailing 10-year Treasury note yields plus the difference between 8.5% and the 10-year Treasury note yield on the date of enactment. For example, if the 10-year Treasury note yield is 2.5% on the date of enactment and rises to 3.5% one year later, a capital infusion fund that bought preferred stock on the date of enactment would see dividends rising to 9.5% in the second year (i.e., 3.5% + (8.5% - 2.5%)). If the 10-year Treasury note yield declines over the period, dividends would also decline. Generally, the investments would be held for 3 years. The guarantee would apply to both the principal and dividend income.

The bill is currently before the House Committee on Financial Services and the House Ways and Means Committee.

The text and current status of the bill are available on the Thomas website at: <http://thomas.loc.gov/>