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Academy Testifies on Implications of Lump-Sum Disclosures in Pension Plans

GOVERNMENT AGENCIES should keep lump-sum pension options clear and concise so plan participants can have the information they need to best decide whether to take lump-sum distributions or monthly income payments, Ellen Kleinstuber, vice chairperson of the Academy's Pension Committee, testified before a retirement advisory council.

There is no "one size fits all answer" on what plan participants should choose, Kleinstuber testified in late May before the Advisory Council on Employee Welfare and Pension Benefit Plans, known as the ERISA Advisory Council, a 15-person board that advises the secretary of labor.

Kleinstuber said it was important for the Department of Labor (DOL) to keep language efficient and clear, because many plan participants value an

objective, independent perspective that comes from a regulatory agency, versus one that comes from plan sponsors.

The Academy's recommendations to the ERISA panel include developing consumer information that can be made available via DOL or other government agency websites, considering additional mandatory disclosures that could be made by plan providers to assist with lump-sum options, and reviewing disclosure requirements to ensure they address participants' needs.

A January 2015 Government Accountability Office (GAO) report, "[Participants Need Better Information When Offered Lump Sums That Replace Their Lifetime Benefits](#)," noted that participants need to have sufficient information to make an informed choice.

The Academy generally agrees with key factors outlined by GAO, includ-

ing identifying the benefit options that are available and how lump-sum payments are calculated; the relative value of a lump sum versus a monthly annuity; the pluses, minuses, and tax implications of taking a lump sum; the role of the Pension Benefit Guaranty Corp. (PBGC), and the level of protection provided on benefit options; the instructions for accepting or rejecting lump sums; and the contact for more information or assistance.

As noted in the Academy's 2013 paper [Risky Business: Living Longer Without Income for Life](#), while employers are often well-situated to make retirement planning information and advice available to their employees, not all are willing or able to do so. When disclosures are required, it is helpful for plan fiduciaries to have access to model

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ASB Gathers Multitude of Viewpoints at Public Hearing on Pension Plans

THE ACTUARIAL STANDARDS BOARD (ASB) heard from a variety of stakeholders representing diverse views on public pension plan policy during its first public hearing in nine years. As the ASB considers whether or how to add to or adapt actuarial standards of practice (ASOPs) based on public input, more than a dozen people testified and were asked follow-up questions by ASB members at the July 9 hearing, which drew more than 75 people to the Ronald Reagan Building and International Trade Center in Washington.

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ASB Chairperson Tricia Matson makes a point at the July 9 public hearing.

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40th Annual Enrolled Actuaries Meeting

THE ACADEMY AND THE CONFERENCE OF CONSULTING ACTUARIES jointly hosted the 40th annual Enrolled Actuaries Meeting from April 12-15 in Washington.

The meeting offered a variety of panels and workshops, covering a wide range of topics and issues relevant to the more than 800 enrolled actuaries (EAs) and other pension professionals in attendance, as well as exhibits of products and services.

Spotlight on D.C.

Academy President Mary D. Miller kicked off the meeting with a “Washington Update,” one of three general sessions. She discussed the Academy’s public policy work in the area of retirement security, including the *Retirement for the AGES* initiative and a cross-practice initiative on aging.



At the same session, former Rep. Earl Pomeroy (D-N.D.) highlighted recent and forthcoming legislative activity affecting pension actuaries, specifically the reform of multiemployer plans, 4062(e) modifications, pension smoothing, and Pension Benefit Guaranty Corp. (PBGC) premium increases.

The reform of multiemployer plans and 4062(e) modifications was a rushed process, eventually landing in an omnibus spending plan that took just a few legislative days from its introduction to being enacted, leaving little time for debate. Pomeroy further described the complexities of society and employee benefits in a time of “ideological rationalization,” which he said makes agreements of any kind much more difficult to achieve.

One of the more interesting topics to emerge from the session was talk of a new plan being worked on by Rep. Paul Ryan (R-Wis.), chairman of the House Ways and Means Committee, which would be a hybrid between defined-benefit and defined-contribution plans.

The meeting offered several sessions on professionalism topics. At a pre-meeting seminar, “Professional Standards and Ethical Dilemmas,” Patrick McDonough, executive director of the Joint Board for the Enrollment of Actuaries, likened his job to that of the Maytag repairman: The EA field is so compliant with regulations, he doesn’t have any allegations of misconduct to investigate, adding, “Your clients are all satisfied.”

In a lively dialogue to close the seminar, attendees watched role-playing scenarios and discussed hypothetical ethical problems in play. Bob Rietz, former chairperson of the Actuarial Board for Counseling and Discipline, portrayed an actuary whose long tenure working with BigCo lands his firm a contract serving the actuarial needs of BigCity ... with all the attendant ethical dilemmas that come with such a contract. In all, attendees engaged in a spirited discussion about three such scenarios and the ethical implications thereof.

Pension Reform

At another session, panelists discussed changes that occurred as selected provisions of the Pension Protection Act of 2006 were scheduled to expire at the end of 2014. Speakers focused on the major legislation that was enacted before that deadline—the Multiemployer Pension Reform Act of 2014 (MPRA).

Josh Shapiro of Groom Law Group—formerly with the National Coordinating Committee for Multiemployer Plans—talked about the new benefit suspension provisions created through MPRA. He explained that in order to be eligible for benefit suspensions, plans must be certified in critical and declining status; such suspensions can be a temporary or permanent reduction of any “current or future payment obligation.”

Shapiro said plans can allow such suspensions to remain in effect until the plan’s benefits are improved, and the plan is not liable for any benefit payments not made as a result of a suspension.

James Donofrio of the PBGC talked about partitions and facilitated mergers. MPRA overhauled this “rarely used” authority for partitions, allowing the PBGC to transfer benefit liabilities from a troubled plan to a new plan so the existing plan becomes sustainable.

Audience members had many questions regarding this new law, including when plans are allowed to enter an earlier red-zone status, how flexible

“The funding of public pension plans is a matter of significant interest to the public,” ASB Chairperson Tricia Matson said in her opening address. “This input is critically important to us as we further deliberate on the need for new or revised standards of practice applicable to actuarial work in the public pension arena.”

The ASB decided to hold the hearing based on feedback it received through its recent pension-related projects, “in an effort to solicit the broadest possible input on any potential new or revised standards,” Matson said. It will use the information to consider any next steps for ASOPs applicable to public pension plans, she said, but added that the ASB has not and will not take any positions until it deliberates further.

Matson noted there are six specific ASOPs related to pension actuarial work and that over the past five years all of those standards have been evaluated and revised to reflect advances in actuarial practice. The hearing’s 10-person panel also included members of the ASB’s Pension Task Force.

As the standards-setting body for the U.S. actuarial profession, the ASB is actively looking at issues involving public pensions and is obtaining input from many points of view to help it further revise or develop new pension ASOPs. There was an obvious high level of engagement at the hearing. ASB and Pension Task Force members followed up with questions of all those who testified and will use that information in deciding any future action.

Frank Todisco, a member of both the ASB and the Pension Task Force, led the question-and-answer discussion, and Matson and Pension Task Force members Alan Milligan and Mita Drazilov posed a large number of questions to those who testified. (All comments that were submitted to the ASB can be [read here](#).)

Many who testified spoke about amortization and liability concerns within public plans, and offered suggestions on how to make ASOPs pertaining to public pension plans more effective. Bill Hallmark, chairperson of the Academy’s Public Plans Subcommittee, said the actual amounts contributed to pension plans can be determined in a variety of ways, including via legislative appropriations, statutes that dictate all or part of contribution procedures, or delegation to a retirement board. Hallmark said that the Academy subcommittee does not support specific limits on the length of amortization periods, as there is a balance to be struck between benefit security, contribution stability, and generational equity, and cited a 2013 Academy issue brief, *Measuring Pension Obligations—Discount Rates Serve Various Purposes*, which said that expected-return based measures are used to establish a pattern of contributions that accumulates to the amount needed to pay benefits when due if assets earn an expected return.

Paul Angelo, speaking on behalf of the Conference of Consulting Actuaries’ Public Plans Community Steering Committee, also addressed cost methods and amortization policy, and said that any changes that are made to funding issues should be incorporated in current ASOPs and apply to all plans. Similarly, Kim Nicholl, of Segal Consulting, said the ASB should require additional disclosures, which would be helpful for certain amor-

Register Now for the Academy’s 50th Anniversary Celebration

Make plans now to attend the Academy’s **golden anniversary Annual Meeting and Public Policy Forum**, Nov. 12-13 in Washington. Pension-specific sessions will cover public plan funding and risk disclosures, implications of the Multiemployer Pension Reform Act of 2014, and lifetime income. And don’t miss the gala dinner the night of the 12th. Please mark your calendars and **plan on attending**.

tization practices if certain cost methods were used.

Several commenters testified about the general state of funded status of public pensions. Bailey Childers, executive director of the National Public Pension Coalition, which represents teachers, nurses, firefighters, and others who rely on public pensions, said that while some public plans are in poor fiscal condition, that is almost always due to systemic budgetary problems or a lack of funding discipline, and not erroneous actuarial assumptions.

David Kausch, chief actuary for Gabriel Roeder Smith & Company, said that as a public plan actuary he was concerned about the reputation of the profession, with increasing scrutiny on public pension plan funding. “It is important to note that many of the cases of public pension plans that have received increased national attention for funding issues are cases where the plan sponsors, regulators, and/or boards of trustees have not followed the actuary’s recommendation,” he said.

Most commenters testified about whether existing ASOPs are adequate or can be strengthened. Robert North, a consulting actuary who was formerly chief actuary for New York City’s retirement systems, said he believes ASOPs could provide better support for actuaries who practice in the public pension plan area.

“The world has really changed in the last few years with respect to public plans,” North said. “We get a lot more press because they’re a lot bigger.” Unlike with the insurance industry, he said, the regulatory structure is somewhat lax for public sector pension plans because of varying state rules, though he noted he has seen improvements in ASOPs in the past few years regarding enhanced disclosure.

Robert Stein, chairperson of the Society of Actuaries’ (SOA) Blue Ribbon Panel on Public Pensions, recommended that pension standards be strengthened in three areas: the adoption of clear funding principles and priorities; the development of stronger guidelines for establishing actuarial methods and assumptions; and the adoption of risk-management and disclosure practices that are consistent with current standards. Bradley Belt, also a member of the blue-ribbon panel, testified with Stein. Belt—who was executive director and CEO of the Pension Benefit Guaranty Corp. under President George W. Bush—said he would welcome ASOPs that provide greater consistency, clarity, and comparability.

Addressing the Multiemployer Pension Reform Act of 2014

THE PENSION PRACTICE COUNCIL (PPC) and Multiemployer Pension Plans Subcommittee sent a [comment letter](#) to the IRS/Department of the Treasury regarding the implementation of benefit suspensions under the Multiemployer Pension Reform Act of 2014 (MPRA).

The letter focuses on “areas where guidance might have the greatest impact, and where there is an actuarial component to the issue raised.” In underlining the need for expediency, the PPC and subcommittee state, “It is important that critical and declining plans that need to implement benefit suspensions in order to remain solvent are able to take this action as soon as possible.”

Separately, the PPC and Multiemployer Pension Plans Subcommittee sent a [comment letter](#) to the Pension Benefit Guaranty Corp. (PBGC) regarding the implementation of partitions and facilitated mergers, as well as benefit suspensions, under the MPRA.

The PPC and subcommittee suggest that the PBGC should be transparent about the application process for mergers and partitions:

The most helpful guidance would describe all of the information that plan sponsors need to submit to the PBGC with the application for mergers and partitions in order for the application to be complete. It recommended the guidance include the details that will be required with respect to needed actuarial projections and reports, and said it would also be helpful if the PBGC is able to provide, as best it can, its evaluation criteria for determining whether to consider and approve an application for partition or facilitated merger. Trustees are reluctant to commit resources that could otherwise be used to pay benefits in preparing lengthy and complex applications that are unlikely to get serious consideration.

The letter concludes with an invitation to engage with the Academy as the PBGC deliberates about how best to implement the MPRA. ▲

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notice and sample language that can be used to fulfill disclosure requirements.

The Academy’s Pension Committee acknowledges that today’s workers face more individual responsibility—and risk—for managing their lifetime income needs than in previous generations. Because much of the information related to individuals’ decisions on whether to take a lump sum is beyond the expertise required of an ERISA plan fiduciary, it could be ill-advised to

require consideration and disclosure of such circumstances on a plan-by-plan basis, Kleinstuber testified.

Instead, regulatory agencies such as DOL, PBGC, and the Internal Revenue Service can support improved outcomes by providing easily accessible consumer information combined with safe-harbor notices and disclosure language that provide protection for plan fiduciaries while giving objective guidance to plan participants. ▲

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benefits cuts are when past the minimum funding level, and whether benefits can be restored to the partition plan and original plan.

There were also questions about governance problems within public plans, whether (and how) messages to states are being ignored, and a perception among public-plans actuaries that a couple of bad apples are coloring the perception of the rest of the public-plans community. There was also concern over the use of negative amortization in growth projections in the workforce in public plans.

In a discussion on ERISA uncertainty principles, one commonality among all issues was the near-constant back-and-forth between federal courts and regulations that conflict with defining

certain terms. Four decades after the enactment of ERISA, differences still continue.

Determining a normal retirement age was seen as the most difficult to define because of the problems in obtaining good information, and federal court rulings also have conflicted with each other.

In a discussion that included how to define a fiduciary, it was generally agreed that a fiduciary has the primary job of figuring out who has responsibility and liability for managing and administering plans. Actuaries are not fiduciaries under ERISA if they provide traditional professional assistance to plans, and would only be considered such if they act outside their “normal role” as an actuary. ▲

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Gordon Latter, chairperson of the Joint Academy/SOA Pension Finance Task Force, recommended the ASB require disclosure of solvency liability and normal cost based on discounting at a default-free discount curve and the unit credit actuarial cost method; projected cash flows forming the basis of the solvency liability, which he said was the most critical element of its recom-

mendation; and solvency liability deficit and funded percentage, both calculated to the market value of assets.

The board will take some time to consider the written and oral submissions as it continues its deliberations on these issues. Updates will be included in future issues of *Enrolled Actuaries Report* and in [ASB Boxscore](#). ▲