

WESTERN PENSION & BENEFITS COUNCIL, PORTLAND CHAPTER
RETIREMENT SYMPOSIUM
LEGAL AND COMPLIANCE UPDATES

NOVEMBER 11, 2015

**OVERVIEW OF THE OREGON RETIREMENT SAVINGS PLAN
AND THE BIPARTISAN BUDGET ACT OF 2015**

By: Steven D. Nofziger¹
© 2015

I. HB 2960: Establishment of the Oregon Retirement Savings Plan

On June 25, 2015, HB 2960 was signed into law by Oregon Governor Kate Brown. HB 2960 establishes the Oregon Retirement Savings Board (“Board”), consisting of seven (7) members, including the Oregon Treasurer, four (4) members appointed by the Governor, and one (1) member each from the Oregon House and the Oregon Senate. The Board is directed to establish and manage the Oregon Retirement Savings Plan (“Plan”), which would be the third such state-based plan in the nation.

The goal of HB 2960 is to establish a state-run defined contribution plan for Oregon employees who do not otherwise have access to an employer-based retirement plan. HB 2960 provides that the Plan should have the following characteristics:

- Employers that do not otherwise offer an employer-based retirement plan (e.g., a qualified defined contribution or benefit plan, IRA, 403(b) or 457 plan) must offer employees the opportunity to contribute to the Plan;
- Contributions through payroll deduction;
- Employee auto-enrollment with opt-out;
- Default contribution and auto-escalation levels with participant control;
- No required employer contributions;
- Separate accounts with periodic reports to participants; disclosures to seek financial advice and that employer is not liable;
- Portability and confidentiality;

¹ Steven D. Nofziger is an attorney in the law firm of Garvey Schubert Barer, P.C., and works in the firm’s Portland, Oregon office. He practices in the areas of taxation and employee benefits. Mr. Nofziger received a B.S. (summa cum laude) from Linfield College and a J.D. (Order of the Coif) from the University of Oregon School of Law.

- Pooled assets with professional management;
- Self-sustaining and low fees;
- Plan’s investment administrator is trustee of assets; and
- ERISA must not impose any duties on employers (i.e., fiduciary duties).

The Board is tasked with an agenda to conduct a market analysis regarding the costs and feasibility of the Plan and to seek legal advice as to whether it will be subject to ERISA. The first report is due to the legislative assembly on December 31, 2016. The target date for individuals to begin contributing to the Plan is July 1, 2017.

ERISA is a significant potential road block. HB 2960 provides that the Board may not establish the Plan if the Board concludes the Plan would qualify as an employee benefit plan under ERISA. However, President Obama has directed the Department of Labor to issue rules (by year end) regarding the applicability (i.e., non-applicability) of ERISA to such plans—likely via a waiver if certain guidelines are met.

HB 2960 has been compiled as Chapter 557 of the 2015 Oregon Laws 2015. It is available at: https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2015orLaw0557.pdf.

To keep up with news about the Oregon Retirement Savings Plan and Board activities go to: <http://www.oregon.gov/treasury/ORSP/pages/default.aspx>.

II. Retirement-Related Changes in the Bipartisan Budget Act of 2015

The recently enacted Bipartisan Budget Act of 2015 (the “Act”) includes a number of retirement and retirement plan related changes.

A. File and Suspend Social Security Strategy Axed.

Section 831 of the Act, labeled “Closure of Unintended Loopholes,” effectively eliminated the popular “file and suspend” strategy. The file-and-suspend strategy would allow couples with one higher-earning spouse and one lower-earning spouse to boost their benefits. The higher-earning spouse would file for benefits at full retirement age and then immediately suspend benefits. By doing so, the lower-earning spouse would then be eligible to file for spousal benefits, which equal one-half of the benefit of the higher-earning spouse. In this manner, the higher-earning spouse could then file to start receiving benefits at a later date, up to age 70, thereby earning delayed retirement credits and increasing the total monthly benefit amount.

Under the Act, retirees who are already using file-and-suspend—or implement it within six months of the Act’s enactment—can continue to use it, as can spouses who have attained 62 by the end of 2015.

B. Other Pension and Employee Benefit Plan Changes.

Section 611 of the Act also repealed the Affordable Care Act requirement that employers with 200 or more full-time employees must automatically enroll full-time employees in one of the employer's health plans. Implementation of this provision had been on hold pending DOL regulations.

Section 501 of the Act increases PBGC premiums for single-employer plans as follows:

- All plans must pay a “fixed premium rate” which is increased to:
 - \$64 per participant in 2016;
 - \$68 per participant in 2017;
 - \$73 per participant in 2018;
 - \$78 per participant in 2019; and
 - Indexed for inflation after 2019.
- Plans with unfunded, vested benefits must also pay a “variable-rate premium” equal to:
 - \$30 per \$1,000 of underfunding in 2016;
 - \$32 per \$1,000 of underfunding in 2017
 - \$35 per \$1,000 of underfunding in 2018;
 - \$38 per \$1,000 of underfunding in 2019; and
 - Indexed for inflation after 2019.

Section 502 of the Act changed the due date for PBGC premiums. Starting with plan years beginning in 2025, the due date will be the 15th day of the 9th calendar month beginning on or after the first day of the premium payment year.

Sections 503 and 504 of the Act provide defined benefit plans with an extension of current funding stabilization percentages to 2018 and 2019 and clarify when defined benefit plans can use mortality tables that differ from the mortality tables prescribed by the IRS for purposes of calculating plan liabilities.

For more information about the Act, go to: <https://www.congress.gov/bill/114th-congress/house-bill/1314/text?overview=closed#toc-H42AB7F5BEC284309AB1FAE1A826CFB21>