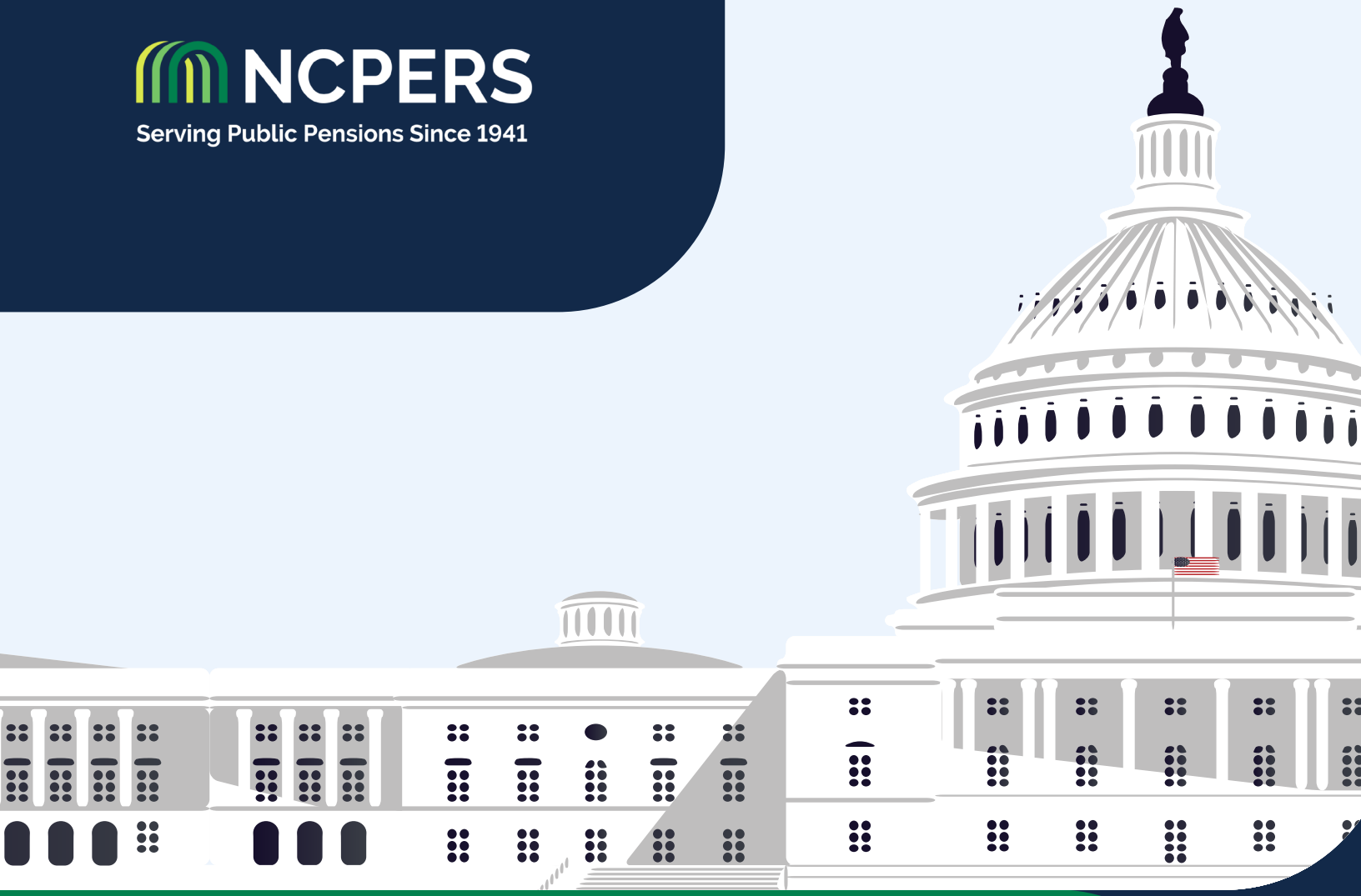
NCPERS

Serving Public Pensions Since 1941



2026 Legislative and Regulatory Issues Book

Pension Advocacy in Action

@NCPERS

NCPERS

Serving Public Pensions Since 1941

About NCPERS

Since 1941, NCPERS has been a trusted partner to pension leaders across local, county, and state retirement systems. Through practical education, timely insights, and a welcoming peer community, we help members strengthen their funds and secure the futures of more than 20 million teachers, police officers, firefighters, municipal workers, and other public servants.

Headquartered in Washington, D.C., NCPERS is a 501(c)(3) nonprofit organization proudly representing a diverse membership that includes more than 650 public sector retirement systems, plan sponsors, unions, and service providers who collectively manage approximately $6 trillion in retirement assets.

NCPERS is more than an association. We are the industry's hub for connection, catalyst for progress, and partner working to strengthen retirement systems for generations to come.

Education is a critical part of our mission, and we believe everyone benefits from learning more about how pensions work. To learn more, visit ***www.ncpers.org****.*

Quick Facts: What to Know About Public Pensions

From the largest statewide systems to the smallest local pension funds, NCPERS members work to safeguard the retirement security of more than 20 million teachers, police, firefighters, and other public servants who provide vital services to our communities.

In addition to helping attract and retain skilled workers, pensions provide a stable, predictable, and cost-effective retirement solution that benefits both sides of the employment relationship. Further, pensions are fiscally sound and good for the economy as a whole.

What Is a Pension?

Sometimes referred to as a defined benefit plan, a pension provides retirees guaranteed lifetime income in the form of a monthly check. Pension benefits are calculated using plan-specific formulas based on variables such as years of service and final average salary.

How Are Pensions Funded?

Pensions are funded through a combination of employee contributions, employer (or plan sponsor) contributions, and investment earnings. In fact, investment earnings account for the majority of pension funding — about 65% on average. In other words, for every dollar of pension benefit approximately 65 cents is attributable to investment returns. Additionally, employee contributions account for 9 cents, meaning that taxpayers are only paying 26 cents for every dollar of pension benefit paid.

This structure makes pensions highly cost-effective, as the shared funding and long-term investment strategy reduce the financial burden on both employees and employers while ensuring reliable retirement income. NCPERS **2025 Public Retirement Systems Study** found that average funded ratios reached a five-year high of 83.1% for plans with fiscal year-end dates in the first half of 2024.

What Is the Average Pension Benefit for Public-Sector Workers?

In 2022, the median monthly benefit check received by retired state and local government workers was approximately $2,082, according to the **Pension Rights Center**.

How Much Do Public Pensions Cost Taxpayers?

In 2023, taxpayers contributed $216.7 billion to state and local public pensions. However, these costs are heavily offset by the tax revenue generated from the investment of pension assets and spending of pension checks.

In fact, public pensions generated $661.9 billion in state and local tax revenues in 2023 — $445.2 billion more than the $216.7 billion contributed by taxpayers. For every dollar taxpayers contributed to public pensions in 2023, they generated $13.41 in economic activity. **Explore the state-by-state breakdown of tax revenue generated from public pensions**.

Are Public Pensions Governed by ERISA?

Unlike private-sector pensions and 401(k)s, public pensions are not governed by the Employee Retirement Income Security Act (ERISA). All public pension plans are governed by federal and state laws that regulate how the plans are established and the level of benefits they can provide. Public plans are also governed by comprehensive financial reporting standards established by the Governmental Accounting Standards Board (GASB). Those standards provide the framework for the annual financial audits that most governments contract to independent accounting firms. Because credit rating agencies pay close attention to the auditor's report in assessing a government's credit quality, there is a significant incentive to adhere to GASB's standards.

Although public plans are not subject to many of the provisions of ERISA, the federal tax code's qualification requirements for public plans contain an exclusive benefit rule to protect plan participants, and state fiduciary laws governing our plans often reflect ERISA's language.

NCPERS 2026 Legislative and Regulatory Issues

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Tax Policy

State and local governmental pension plans are qualified plans under Internal Revenue Code (IRC) section 401(a). As such, the plans and their participants receive certain tax advantages — pension plans are not subject to tax on assets or earnings generated by investments, and participants are not subject to income and employment taxes on contributions made by their employers or on earnings of the trust fund until pension distributions are made.

These are significant tax advantages. Due to their importance, the public pension community pays close attention to changes in federal tax law or regulation that could affect the qualified status of pension plans. In Congress, this means paying attention to the actions of the House Ways and Means Committee and the Senate Finance Committee, which have exclusive jurisdiction over the federal tax code. In the executive branch, this means monitoring the regulatory activities of the U.S. Department of the Treasury and the Internal Revenue Service (IRS).

The SECURE Act

In 2019, Congress approved, and President Trump signed, the SECURE (Setting Every Community Up for Retirement Enhancement) Act into law. The legislation increased the age for triggering required minimum distributions (RMDs) from 70 1/2 to 72. This provision affects IRC section 401(a) qualified retirement plans, 457(b) plans, 403(b) plans, 401(k) plans, and IRAs. The new law also allows participants to take a distribution of a lifetime income investment and roll it into another plan, without withdrawal restrictions, provided their plan no longer offers that investment option. Further, if the plan permits such withdrawals, taxpayers are allowed to withdraw up to $5,000 from their retirement accounts in the 12-month period beginning on the date a child of the individual is born or the legal adoption of an eligible adoptee is finalized, without incurring the 10% early withdrawal tax penalty. Finally, non-spousal, inherited retirement accounts now have to be distributed within 10 years of the death of the employee or account owner, subject to the specific rules contained in recently released tax regulations. For IRC section 414(d) governmental plans, this rule applies to distributions with respect to employees who die after December 31, 2021.

The American Miners Act, which technically was not part of the SECURE Act but was enacted in the same massive end-of-year legislation, reduced the age at which a qualified plan may provide in-service distributions. The previous age was 62; the American Miners Act reduced it to age 59 1/2, provided the plan sponsor allows in-service distributions to plan participants and adopts the lower age for such distributions.

The CARES Act

In March 2020, President Trump signed into law the CARES (Coronavirus Aid, Relief, and Economic Security) Act in response to the COVID-19 crisis. The CARES Act incorporated three major provisions of particular importance to public pension plans. First, it provided that plans were allowed to make COVID-19-related, penalty-free distributions to eligible participants from IRC section 401(a) plans, governmental 457(b) plans, 403(b) plans, 401(k) plans, and IRAs of up to $100,000 in 2020. This was a permissive provision that expired at the end of 2020. Distributions were subject to regular income tax over three years and could be repaid to the plan within three years of the distribution. Individuals were eligible to take distributions if they, their spouse, or dependents were diagnosed with COVID-19 by a test approved by the Centers for Disease Control and Prevention or if they suffered adverse financial consequences as a result of being quarantined, furloughed, laid off, or having work hours reduced due to the virus or were unable to work due to a lack of child care.

Second, the CARES Act made two changes to the rules on participant loans. First, eligible individuals (under the same definition as above) could receive loans from 401(a) plans, governmental 457(b) plans, or 403(b) plans up to a maximum loan amount of $100,000 in the 180 days beginning on the date of enactment of the CARES Act. The previous limit was $50,000. Further, loans were allowed up to the greater of $10,000 or 100% (previously 50%) of the present value of the participant's account. The increased loan caps were permissive. Plans do not have to allow loans at all and may impose limits that are lower than the statutory caps. In addition, eligible individuals affected by COVID-19 with plan loan repayments due between the date of enactment of the CARES Act and December 31, 2020, were given an additional 12 months to make the payment and the subsequent payment schedule was adjusted accordingly. This provision was mandatory.

The third and final provision of importance to public plans found in the CARES Act modified retirement plan RMD rules. As noted above, the SECURE Act raised the age trigger for receiving RMDs from 70 1/2 to 72. That change applied to individuals turning 70 1/2 on or after January 1, 2020. For individuals under the previous age trigger, the CARES Act waived RMDs for 2019 that would have been made by April 1, 2020, and any RMD required to be paid in 2020. It was a one-year delay and applied to defined contribution 401(a) plans, governmental 457(b) plans, 403(b) plans, and 401(k) plans, as well as IRAs. This was a mandatory provision.

The SECURE Act 2.0

Building on the SECURE Act of 2019, the SECURE Act 2.0, signed into law by President Biden on December 29, 2022, as part of the Consolidated Appropriations Act of 2023, contained portions of three separate bills: (1) the House's Securing a Strong Retirement Act, (2) the Senate's Enhancing American Retirement Now (EARN) Act, and (3) the Retirement Improvement and Savings Enhancement to Supplement Healthy Investments for the Nest Egg (RISE and SHINE) Act. The final package increased the age for RMDs from 72 to 73 effective January 1, 2023, and to 75 effective January 1, 2033. This provision affects IRC section 401(a) qualified retirement plans, 457(b) plans, 403(b) plans, 401(k) plans, and IRAs. SECURE 2.0 eliminates pre-death RMDs from in-plan Roth accounts in 401(k), 403(b), and governmental 457(b) plans. SECURE 2.0 allows 401(k), 403(b), and governmental 457(b) plans to treat a student loan payment as an elective employee contribution for purposes of triggering employer matching contributions. This provision is effective for contributions made for plan years beginning after December 31, 2023. SECURE 2.0 eliminates the previous first-day-of-the-month rule only for governmental 457(b) plans, effective for taxable years beginning after the date of enactment. Also effective upon enactment, the legislation expands the exemption from the early distribution tax penalty for distributions from a governmental plan to public safety employees with 25 years of service under the plan and expands the definition of public safety employees to include corrections officers and forensic security employees. Additional provisions of SECURE 2.0 are discussed in the following sections.

On December 20, 2023, the U.S. Treasury Department and the IRS released their initial miscellaneous, or "grab bag," guidance on the SECURE 2.0 Act. The more than 90 provisions in SECURE 2.0 collectively touch on almost all parts of U.S. tax law related to retirement and pension plans and their plan participants. This first round of grab bag guidance addressed provisions that either were currently effective or were scheduled to take effect soon. It is important to note that as explained on page 61 (also footnote 17) of Treasury Notice 2024-2, governmental plans now have an extended deadline of December 31, 2029, to make plan amendments. The Treasury Department's Notice can be found here: ***www.irs.gov/pub/irs-drop/n-24-02.pdf***.

Regulatory guidance on the RMD provisions of SECURE 2.0 also has been released and is detailed in Treasury Notices 2023-54 and 2024-35, as well as in the final regulations issued in July 2024.

In addition, Treasury Notice 2023-6 provided initial guidance on the new Roth catch-up contribution requirement that applies to employees who participate in 401(k), 403(b), or governmental 457(b) plans and whose prior-year Social Security wages exceeded $145,000. In a welcome development outlined in the notice, Treasury established a two-year administrative transition period to give retirement systems additional time to implement the new law, originally scheduled to take effect on January 1, 2024. In September 2025, Treasury-IRS released final regulations on the Roth catch-up requirement. The regulations do not extend the administrative transition period. Therefore, the Roth catch-up became effective on January 1, 2026. However, plans that are not completely ready to implement the new requirements may operate in 2026 using a reasonable, good-faith interpretation of the law. The final regulations are effective in 2027.

Important regulatory guidance related to the expansion of the IRS's Employee Plans Compliance Resolution System (EPCRS) and, specifically, to the issue of recoupment of overpayments is contained in Treasury Notices 2023-43 and 2024-77, respectively.

NCPERS will continue to closely monitor federal tax policy for any significant developments in either Congress or the executive branch agencies.

Employer Pickups

One provision that passed the House in recent years but was not approved by the Senate dealt with the pickup rule, which is widely used by state and local pension plans. Under IRC section 414(h)(2), governmental entities may pick up (i.e., pay for) their employees' pension contributions and, in effect, transform post-tax employee contributions into pre-tax employer contributions. Employee contributions that are picked up by the employer are not includible in the employee's gross income until distributed.

There are no regulations under section 414(h)(2). Revenue Ruling 2006-43 and related private letter rulings (PLRs) provide the primary guidance for a pickup. The rules do not permit participating employees to have a right to a cash or deferred arrangement (CODA) with respect to designated employee contributions as of the date of the pickup. Therefore, participating employees must not be allowed to opt out of the pickup treatment or receive the contributed amounts directly instead of having them paid by the employing unit to the plan.

In recent years, PLR requests sought approval for use of the pickup in situations where a new defined benefit tier was created, and the new tier would be available by election to existing employees. The employer would continue to pick up the contributions of existing employees, but the employee contribution rate in the new tier would be lower than the rate in the legacy tier. Existing employees who elect into the new plan would see their salaries increase by virtue of the lower contribution rate. The IRS reasoned that if they were allowed to choose between the legacy and new tiers, existing employees would have a right to a CODA. Therefore, the election between tiers would not be permitted.

Stand-alone federal legislation to make the pickup rule more flexible has been introduced in four recent Congresses, with the most recent version being H.R. 3213 from the 116th Congress.

In 2018, the Family Savings Act included a pickup provision as well. It stated: "[The] contribution shall not fail to be treated as picked up by an employing unit merely because the employee may make an irrevocable election between the applications of two alternative benefit formulas involving the same or different levels of employee contributions." This language is identical to that found in the previous legislation.

Also in 2018, the following report language accompanied the House-passed Financial Services Appropriations Bill: "The Committee recommends that the Secretary of the Treasury and the Commissioner of the IRS initiate a review of the existing regulatory guidance in Revenue Ruling 2006-43 and issue a revised revenue ruling that allows state and local pension plan sponsors to give existing plan participants the choice to make certain elections between pension plans or plan tiers without changing the tax treatment of employer contributions."

Revising the pickup rule to provide more flexibility for plan sponsors was a priority for the GOP-controlled House during the 115th Congress (2017–2018). More recent House Republican majorities have not taken the issue up.

NCPERS will closely monitor the pickup issue for any significant developments in either Congress or the executive branch agencies.

Unrelated Business Income Tax

During consideration of the Tax Cuts and Jobs Act of 2017, the House passed a provision that would have subjected certain investments of public pension plans to the unrelated business income tax (UBIT). Certain private equity, limited partnership, hedge fund, and debt-financed investments would have been most affected.

The UBIT proposal was first included in tax reform legislation introduced in 2014 by then-Ways and Means Committee Chairman Dave Camp (R-MI). The provision was described as a "clarification" of current law. In 2014, the Joint Committee on Taxation scored the UBIT provision as raising $100 million in new revenue over 10 years. In 2017, it was scored as raising $1.1 billion, which immediately made it a much more attractive provision for inclusion in a large tax bill.

The proponents of the provision defended it by saying that public pensions are qualified plans under IRC section 401(a), and section 401(a) is referenced in the UBIT section of the tax code (IRC section 511). Public plan proponents argued a different view. NCPERS strongly believes that state and local governmental pension plans are exempt from all taxes by virtue of IRC section 115, which excludes from gross income any income derived from the exercise of any essential governmental function and accruing to a state or political subdivision thereof. Furthermore, NCPERS argued that application of a federal tax to state and local pension plans would erode the immunity from taxation that states and the federal government each enjoy from the other.

In the end, the UBIT provision was not included in the final 2017 tax law. While the provision has not been seen since that time, it could be raised again in future tax legislation as a revenue offset.

NCPERS will continue to oppose the extension of UBIT to public pension plans.

Public Employee Pension Transparency Act

The Public Employee Pension Transparency Act (PEPTA) was first introduced in 2010 by Rep. Devin Nunes (R-CA), with its most recent iteration being H.R. 6290 from the 115th Congress. The bill has not been reintroduced since then and Rep. Nunes has now retired from Congress.

This legislation would, for the first time, impose a federal reporting requirement on the funding status of state and local pension plans. Fulfilling the reporting requirement would be the responsibility of the plan sponsor, that is, the state or municipal government. Reporting would be required using two distinct methods. First, funding status would be reported based on the economic assumptions and expected long-term rate of return that each plan currently uses. Second, all plans that do not calculate their funding status based on either fair market value of assets or the U.S. Treasury bond obligation yield curve (as defined in the legislation) must recalculate their funding status based on the yield curve.

The Treasury obligation yield curve method would result in funding status outcomes that would show a dramatically lower funded status for the vast majority of public plans — on paper. This would create negative headlines for public plans but would not add any new, useful economic information to aid in the analysis of these plans. Versions of PEPTA have also included a provision that would penalize any plan sponsor that did not comply with the reporting requirements by denying the sponsor the ability to issue bonds that are exempt from federal tax.

NCPERS opposes the Public Employee Pension Transparency Act.

Discount Rates

Of considerable interest to actuaries, economists, pensions, and policymakers is the discussion of what an appropriate assumed rate of investment return (i.e., discount rate) for pension plans should be.

During Senate consideration of President Biden's 2021 COVID-19 relief package, which included financial assistance for private-sector, multiemployer pension plans (Taft-Hartley plans), proposals were advanced that would have capped the discount rates for such plans in certain circumstances. While the 2021 legislation did not include restrictions on discounts rates for Taft-Hartley plans, future Congressional debates on pension legislation could reinvigorate this issue. For the public pension community, it is important to be aware that over recent years some Members of Congress have voiced concerns that the discount rates used by state and local governmental plans are too high. Consequently, there are concerns that future debates in Congress on discount rates could include proposals to cap rates used by state and local governmental pension plans.

NCPERS opposes a federal cap on the discount rate that state and local governmental pension plans may use.

Rothification and Miscellaneous Tax Provisions

During the lead-up to the release of the original version of the Tax Cuts and Jobs Act in 2017, House Republicans considered including a provision to make it a requirement that all new contributions to defined contribution (DC) plans (e.g., IRAs and 401(k), 457(b), and 403(b) plans) be made under the rules related to Roth accounts. Those rules require that contributions be made with after-tax dollars but stipulate that distributions are free from tax. This broad provision ultimately was not included in the final 2017 tax law.

However, in the SECURE Act 2.0, Congress approved a narrower Roth requirement. The Roth method is mandated for catch-up contributions made by participants who earned more than $145,000 in the previous calendar year from the employer sponsoring the retirement plan. Under the tax law, participants age 50 and older who have contributed the annual maximum to their DC plan (e.g., $24,500 in 2026) may make additional catch-up contributions to their DC plan (e.g., up to $8,000 in 2026). Given the complexities and practical transition issues related to the new Roth catch-up requirement, NCPERS and many public- and private-sector retirement plans requested a delay in the implementation deadline for the provision.

As noted above, in regulatory guidance (Treasury Notice 2023-62), the Treasury Department created a two-year administrative transition period to provide breathing room for retirement systems to implement the new law, which was originally set to take effect January 1, 2024. In September 2025, Treasury-IRS released final regulations on the Roth catch-up requirement. The regulations do not extend the administrative transition period. Therefore, the Roth catch-up became effective on January 1, 2026. However, plans that are not completely ready to implement the new requirements may operate in 2026 using a reasonable, good-faith interpretation of the law. The final regulations are effective in 2027.

Beginning in 2025, the SECURE 2.0 Act also increases the annual maximum catch-up contribution for those ages 60, 61, 62, and 63 to the greater of $10,000 or 150% of the regular 2024 catch-up amount ($7,500), adjusted annually for inflation. Using this calculation, the maximum catch-up contribution for 2026 is $11,250. This provision is mandatory if the plan offers catch-up contributions.

Also included in the original Senate bill in 2017 but dropped prior to Senate passage were two provisions aimed at normalizing contribution rules for 457(b) and 403(b) plans. The first provision would have prevented participants from maxing out contributions to both a 403(b) and a 457(b) plan; this provision also would have repealed all special rules related to post-employment contributions to 403(b) plans and catch-up contributions to 457(b) plans within three years of reaching normal retirement age. The second provision would have subjected 457(b) plan distributions to the early withdrawal penalty under IRC section 72(t), where applicable. These provisions were not included in the House bill or the final tax legislation but may resurface during consideration of future tax legislation.

NCPERS will continue to provide input to Congress on these specific tax proposals if they are raised in the 119th Congress.

Annuity Accumulation Retirement Plan

A proposal to create a new qualified plan in the federal tax code (the annuity accumulation plan) was last introduced in the 114th Congress (S. 2381, section 203). The annuity accumulation plan would allow state and local governmental plan sponsors to purchase private insurance annuity contracts for public employees. Most experts believe that, once a state or local government initiates an annuity accumulation plan, it will freeze existing defined benefit (DB) plans. The result would be that the annuity accumulation plan would become the primary retirement vehicle for state and local workers and would replace DB plans.

In this regard, NCPERS has several major concerns:

- Replacement income — The threshold question for our nation's firefighters, police officers, teachers, and other state and local governmental employees is whether distributions from the aggregation of fixed-rate annuity contracts would provide a level of replacement income during retirement comparable to that of a prefunded DB plan. In considering this question, it is important to note that, under the previous legislative proposal, the plan sponsor would be able to change its contribution rate each year, provided it does so for all employees. It is likely, then, that the employer contribution would change each year depending on the plan sponsor's financial and political circumstances.

- Disallowance of employee contributions — Another factor in the replacement income discussion is that DB plans for state and local governmental employees are contributory plans, which means that the plans are funded by contributions from both employers and employees. Moreover, the percentage of plans that are contributory continues to grow. In contrast, the annuity accumulation plan proposal would not allow employees to contribute to their own retirement plans. It is unlikely that annuities funded only by employers would be able to provide an adequate level of replacement income for retirees.

- Survivor and disability benefits — The plan would not include traditional survivor or disability benefits. These are essential benefits for those who provide firefighting services, police protection, or emergency medical services. If plan sponsors separately add survivor or disability benefit policies, premium costs for the annuities will rise significantly.

- Aggregation costs — Systematic aggregation of the annuity contracts will be necessary if plan participants are to receive their full retirement income. It is not reasonable to place the burden on retirees to track each of their annual annuity contracts. Private-sector aggregation services will charge fees, which are a hidden cost to the plan participants. If a governmental entity is created to aggregate the annuity contracts, then taxpayers will bear the cost.

- Transition costs — In the past, after careful review, many jurisdictions that were considering a change from DB to DC plans chose not to proceed because of the high transition costs that were involved. Costs associated with a transition to the annuity accumulation model are likely to be significant as well.

NCPERS opposes the annuity accumulation retirement plan.

Annual Contribution Limits

A tax expenditure that has been discussed over the years as a potential source of revenue is tax-preferred contributions to both defined benefit and defined contribution plans, which, combined, are estimated by the Joint Tax Committee to a revenue loss of approximately $2.22 trillion over the five-year period from fiscal year 2024-28.

The annual revenue loss is computed as the income taxes forgone on current tax-excluded pension contributions and earnings, less the income taxes paid on current pension distributions.

This expenditure could become difficult to ignore for purposes of revenue generation during consideration of future tax legislation. While eliminating the tax-preferred treatment of pension contributions is not politically attainable or sound long-term economics, reductions to the annual contribution limits could certainly be on the table.

NCPERS supports maintaining the current tax treatment of pension contributions and does not support reductions in annual contribution limits.

Federal Aid and Awards to States and Localities

The American Rescue Plan Act of 2021 (ARPA), Public Law 117-2, authorized $350 billion in new federal aid to state, local, tribal, and territorial governments. ARPA stipulated that no state or territory may use funds made available under ARPA for deposit into any pension fund. An identical restriction was contained in the aid provisions for localities.

Bipartisan legislation released at the end of 2020 but not enacted would have included a much more onerous restriction. This proposal would have created a general condition for receiving funds under ARPA, saying that a state or local government shall not make a change to its pension program that would result in total pension obligation payments in state fiscal years 2021 or 2022 exceeding total pension obligation payments for state fiscal year 2019, with some exceptions, including one for cost-of-living adjustments already provided for in the state or local law.

In addition, legislation approved by the House in 2015 would have barred any state that received funds under the Elementary and Secondary Education Act from requiring a local education agency to use those funds to make contributions to a teacher retirement system in excess of normal cost, which was defined to not include any accrued unfunded liabilities. This restriction was not included in the final law.

However, a similar restriction is now contained in regulations of the Office of Management and Budget. The restriction would affect the employer pension costs that the federal government would be allowed to pay. It states, "Payments for unfunded pension costs must be charged in accordance with the allocation principles of this subpart. Specifically, the recipient or subrecipient may not charge unfunded pension costs directly to a Federal award if those unfunded pension costs are not allocable to that award."

This new restriction will be subject to regulatory interpretation and questions remain about the impact it will have on public pension plans.

If attempts are made in future Congresses to include such restrictions on the funding of public pensions, proponents may fall back on one of the previous approaches discussed above. Such attempts could be instigated by the creative use of ARPA funds by states or localities, which were the subject of oversight hearings in Congress.

NCPERS will closely monitor all legislative and regulatory proposals related to federal funding and restrictions on public pensions.

Infrastructure

Facilitating increased investment in infrastructure by public pension plans is not a new idea. Since 2014, Congress has held periodic meetings on the subject. Given the lack of political support for an increase in the federal gas tax, a search for alternative means of financing has been under way for years. Public pension plan assets sometimes appear as a ready pool of investment dollars.

Some proponents of greater participation by public plans argue that it would be a benefit to plans to have full or partial ownership of the actual infrastructure asset and the revenue stream produced by that asset. They identify a barrier in federal tax law that they say creates an unlevel playing field among public plans today, specifically the question of whether the public pension plan designated to acquire the public infrastructure asset meets the criteria of "an instrumentality of one or more states or political subdivisions" as outlined in Revenue Ruling 57-128. The question is whether the plan's governing structure satisfies the fourth condition of the ruling's six-part test: "whether control and supervision of the organization is vested in public authority or authorities." In addition, a second question is whether, for purposes of the private business test under IRC section 141, the acquisition by a public plan would trigger the arbitrage rule under IRC section 148(b), which would result in the underlying bonds losing their tax-exempt status.

In the 115th Congress, Rep. Mike Bishop (R-MI) introduced H.R. 6276, the Strengthening Pensions through Investment in Infrastructure Act. The bill would have made two changes to the tax code. First, it would have amended IRC section 141(b) to state that use by a public pension fund of public infrastructure property shall not be treated as private business use. The bill defined the term "public pension fund" as "a pension fund established or maintained for employees or former employees of a state, political subdivision of a state, or an agency or instrumentality thereof." Second, the legislation would have amended IRC section 148(b) to state that the term "investment-type property" shall not include public infrastructure property. Without this clarification, proponents argue that the bonds used to finance the public infrastructure property would almost certainly be treated as arbitrage bonds and would lose their tax-exempt status.

This previous legislation has been included in a new proposal, which has not yet been introduced, called the Public Infrastructure Finance and Innovation Act. The new proposal would authorize federal dollars to be borrowed by a state or locality with a population of more than 1 million in the form of a 30-year loan. Then, the borrower would transfer the monies to the pension plan(s) that it sponsors. The plan must use 10% to 20% of the loan proceeds (depending on population density) for public infrastructure investments. In theory, providing the pension plan with the new money would mean that the plan's unfunded liability would be reduced, and, in turn, the borrower's actuarially determined contribution (ADC) would be reduced. Then, beginning in the fourth year, the borrower must use 50% of any budget relief it realizes due to the reduction in the ADC for public infrastructure projects. The first three years of budget relief would be used for expenses related to COVID-19.

In addition, over the years, then-Rep. John Yarmuth (D-KY) discussed a proposal to create a National Infrastructure Development Bank, which would be financed through the sale of $75 billion worth of Rebuild America Bonds on the credit of the United States. An additional $300 billion in bonds could be issued. The bonds would mature in 40 years and could not be resold until 10 years after issuance. They would bear an interest rate of 200 basis points above the 30-year Treasury bond and could be purchased only by pension plans – both ERISA (Employee Retirement Income Security Act) and governmental plans.

On November 15, 2021, President Biden signed into law the $1.2 trillion Infrastructure Investment and Jobs Act. The new law does not contain any of the proposals discussed above. However, the proposals may be discussed in future infrastructure legislation.

NCPERS will closely monitor all legislative and regulatory proposals related to infrastructure investments by public pension plans.

Affordable Care Act

A major focus of NCPERS since enactment of the Affordable Care Act (ACA) was to repeal the 40% excise tax on healthcare plans that exceed certain annual cost thresholds, formerly known as the Cadillac tax. The annual thresholds were set at $10,200 for individual and $27,500 for family coverage. The thresholds were set higher for certain high-risk professions, such as firefighters and police officers: $11,850 for individual and $30,950 for family coverage. The excise tax would have been imposed on issuers of insured plans and plan administrators (usually plan sponsors) of self-funded plans.

We are pleased to report that the Cadillac tax was fully repealed in 2019 and that, thus far, there have been no serious attempts to revive the policy.

NCPERS will closely monitor all legislative and regulatory work on the ACA.

Mandatory Social Security

The Social Security system provides coverage for all private-sector employees and federal employees hired after December 31, 1983. However, when the system was created in 1935, concerns grounded in federalism led to the exclusion of state and local governmental employees. Under federal law, state and local governments can opt to enroll their employees in the Social Security program or they can remain out of Social Security coverage if they provide a separate retirement plan that meets certain criteria, commonly known as a FICA (Federal Insurance Contributions Act) replacement plan. As many as 28% of state and local governmental employees are not covered by Social Security.

One option to extend the solvency of the Social Security Trust Fund is to expand Social Security coverage to include all newly hired state and local governmental employees – so-called mandatory Social Security. The Congressional Budget Office (CBO) included this option in a recent revenue options report; it would raise $148.8 billion over the next 10 years. If Social Security reform legislation gains traction in Congress, mandatory Social Security, in some form, could be a part of the debate. It should be noted that, during the Senate's consideration of the legislation to repeal the Windfall Elimination Provision (WEP) and Government Pension Offset (GPO) in December 2024, Sen. Chuck Grassley (R-IA) filed but did not formally offer an amendment that would have offset the cost of repeal by imposing a form of mandatory Social Security on state and local government workers.

Mandatory Social Security is being advanced by some as a panacea to ensure Social Security's solvency, but it is not a panacea at all. In fact, while the 10-year estimate mentioned above shows substantial additional revenues, CBO also points out that the estimate does not include any changes to outlays during the scoring period or in later years. In fact, CBO states that outlays, due to the increase in the number of eligible beneficiaries, would grow in the following decades and would partly offset the additional FICA tax revenues.

Mandatory Social Security would also increase payroll taxes for state and local governments. Governmental employers would have to pay 6.2% of payroll up to the wage cap ($184,500 in 2026) for all new employees. A new draft report by the consulting firm Segal estimates that the employer and employee cost of Social Security coverage for newly hired workers for the first five years of coverage would reach $45 billion and possibly be as high as $60 billion.

This increased cost in payroll taxes would be felt in every state.

NCPERS opposes expanding Social Security coverage to noncovered state and local governmental employees.

Windfall Elimination Provision/ Government Pension Offset

On January 5, 2025, President Joe Biden signed into law the Social Security Fairness Act, H.R. 82, which repeals the Windfall Elimination Provision (WEP) and the Government Pension Offset (GPO).

These Social Security penalties affect public-sector workers who earn a pension from employment that is not covered by Social Security and also earn a Social Security benefit. As many as 28% of state and local government employees, some 6.5 million workers, are not covered by Social Security. Public-sector unions and many public pension plans led a multi-decade effort to repeal the penalties.

The Social Security Fairness Act was approved in the Senate by a 76 to 20 margin. This followed House approval on November 12 by an equally strong vote of 327 to 75. During the House debate, Ways and Means Committee Chairman Jason Smith (R-MO) stated that repeal was far from a perfect solution. Repeal would cost the Social Security Trust Fund almost $200 billion over 10 years and accelerate by six months the insolvency of the trust fund. These same arguments were raised in the Senate debate, but House Members and then Senators turned them aside in their desire to right a past wrong for millions of affected workers — firefighters, police officers, teachers, and other public-sector workers.

Over the many years of this legislative battle, the WEP-GPO repeal bills attracted hundreds of cosponsors in the House and always had a strong showing in the Senate as well. But the cost of repeal was always a chief impediment. Many said that WEP-GPO could not be repealed unless it was part of a comprehensive restructuring of Social Security, in which the cost of repeal could be offset elsewhere in the Social Security program. However, that view was always countered by the belief that, if only the repeal bill could be brought to a vote, the many cosponsors would have to vote for the bills they had signed on to support. In the end, the latter view ruled the day.

Tired of inaction on the repeal legislation, the bill's chief House sponsors, then-Reps. Garret Graves (R-LA) and Abigail Spanberger (D-VA), led the charge to use the House rules to discharge the bill from the Ways and Means Committee and bring it to the full House for an

up or down vote. On September 19, 2024, the cosigners of the discharge petition reached the magic number of 218, a simple majority in the House, which discharged the Committee and ultimately paved the way for House passage in November.

Following House passage, attention turned to the Senate. A companion Senate bill, S. 597, had 62 cosponsors. Sixty votes are needed to break a threatened filibuster on legislation, so there was little room for error if the bill was brought to the Senate floor as stand-alone legislation. In early December, then-Senate Majority Leader Chuck Schumer (D-NY) gave his word that a vote would absolutely be taken on the House-passed bill, and all Senators would be forced to publicly take a position. Sen. Schumer's commitment would test the belief that, if a vote was taken, the popular measure would have enough votes to be approved.

Senate consideration of any legislation is fraught with procedural and substantive hurdles. In each instance, repeal advocates prevailed. Clearly, the appetite of Congress was for full repeal, and nothing short of that would suffice.

The Senate considered three amendments to H.R. 82. Each was defeated soundly. An amendment offered by Sen. Rand Paul (R-KY), which would have offset the costs of repeal by gradually raising the eligibility age for Social Security to 70, was defeated 93 to 3. Sen. Mike Crapo (R-ID) offered an amendment to delay the effective date of repeal until a cost offset could be put in place. The Crapo amendment was defeated 62-34. Finally, an amendment offered by Sen. Ted Cruz (R-TX) to substitute a WEP-only formula change for repeal was defeated by a vote of 64 to 32. The WEP-only formula approach also was defeated in the House by a vote of 225 to 175.

According to the website of the Social Security Administration (SSA), the agency has completed sending 3.1 million payments to Social Security beneficiaries totaling $17 million. SSA claims it is five months ahead of schedule on the implementation of the WEP-GPO repeal.

NCPERS will closely monitor the Social Security Administration's implementation of the WEP-GPO repeal legislation.

Healthcare Enhancement for Local Public Servants

In the Pension Protection Act of 2006, NCPERS successfully advocated for Congress to approve the Healthcare Enhancement for Local Public Safety (HELPS) Retirees Act. This act allows retired public safety officers to exclude from their gross income up to $3,000 per year from a governmental defined benefit, 403(b), or 457(b) plan if the monies are used to pay premiums for healthcare or long-term care insurance. Under the original HELPS Retirees Act provision, the premium payments had to be made directly by the governmental retirement system to the provider of the insurance. The HELPS Retirees Act took effect January 1, 2007. It is found in IRC section 402(l).

Prior to HELPS, retirees paid for their healthcare or long-term care premiums entirely with after-tax dollars. Since 2007, eligible public safety retirees essentially have been able to use pretax dollars from their qualified pension plans to pay for some of their healthcare and long-term care premiums. For retirees who are in the 25% federal marginal tax rate bracket, this could be a tax savings of up to $750 per year.

Over the years, however, NCPERS learned that the direct payment requirement was an administrative burden for many retirement systems and even caused some systems not to implement HELPS, thereby rendering their public safety retirees ineligible for the tax exclusion. In the 117th Congress, then-Reps. Steve Chabot (R-OH) and Abigail Spanberger (D-VA) introduced H.R. 7203 to repeal the direct payment requirement. Also, then-Senator Sherrod Brown (D-OH) and John Thune (R-SD) introduced S. 4312, which would have made the direct payment requirement optional instead of mandatory. We are pleased to report that the SECURE Act 2.0 included the Brown-Thune legislation. Retirees may now make the premium payments and remain eligible for the tax exclusion.

In addition, there is growing recognition that the $3,000 annual cap under the HELPS Retirees Act, which has not changed since its inception 20 years ago, needs to be increased to reflect the increase in premiums for healthcare and long-term care insurance over that period of time. In the 119th Congress, Rep. Don Bacon (R-NE) has introduced H.R. 3327, which would double the annual cap. There also is discussion of indexing the cap each year for inflation. However, legislation has not been introduced in the current Congress to do so.

Finally, in the 117th Congress, S. 4267 was introduced by Sen. Michael Bennet (D-CO), who serves on the Senate Finance Committee. This bill would index the annual cap under the HELPS Retirees Act for inflation as well as create a new and separate tax credit of up to $4,800 per year for retired public safety officers for their healthcare premiums. While the legislation has not been reintroduced in the current Congress, discussions are under way with Sen. Bennet on a revised version of the bill.

Building on our success on the HELPS Retirees Act direct payment requirement issue, NCPERS will advocate for these new proposals to enhance the HELPS Retirees Act and create a new tax credit.

NCPERS supports increasing the annual cap under the HELPS Retirees Act, indexing that cap for inflation, and enacting a new tax credit for retired public safety officers.

Healthcare Enhancement for the Educator Community

As discussed in the previous section, IRC section 402(l) allows eligible retired public safety officers to exclude from gross income up to $3,000 in annual distributions from a governmental retirement plan if the monies are used to pay qualified healthcare or long-term care insurance premiums.

Under changes made in the SECURE Act 2.0, either the retirement system or the retiree may pay the premiums.

NCPERS has initiated a dialogue in the educator community about creating a parallel tax benefit for the public-school educator community. The new provision would be structured similarly to the existing section 402(l) but would be a freestanding section of the federal tax code, not an amendment to section 402(l).

Discussions are ongoing with regard to the following key questions:

- Who would be eligible for the new tax benefit — for example, pre-K through 12, community colleges, higher education, educators only, educator support professionals?
- How would the tax benefit be structured — for example, as an exclusion, a deduction, or a credit?
- How much would the annual tax benefit amount to — for example, would it start at the current section 402(l) annual cap of $3,000 or a higher amount?
- Should the annual benefit be indexed for inflation?

We would like to be in a position to begin advocating for the new tax benefit in the 119th Congress.

NCPERS supports creating a new, parallel provision to the HELPS Retirees Act for the public educator community.

Early-Age Medicare

Our nation's first responders — police officers, firefighters, and emergency medical personnel — risk their lives in the service of their communities for modest pay. They look forward to the benefits their pension plans provide in their retirement years. Most public employees are eligible to retire after 20–25 years of service, and most in physically and mentally demanding occupations, such as law enforcement and firefighting, retire in their mid-50s.

Unfortunately, the rising costs associated with employer-sponsored healthcare are gradually eroding retirement income and the peace of mind that comes with it. For retirement systems designed to provide pensions only, offering retiree healthcare plans has become burdensome and is putting pension reserves at risk. Public plans are finding it increasingly difficult to fund retiree healthcare and are scaling back or eliminating plans.

One simple way we could immediately usher in an affordable option is through a universal benefit already accessible in every state — Medicare. If made available to retired first responders, Medicare would provide a soft landing for these heroes.

In the 116th Congress, then-Sen. Sherrod Brown (D-OH) and then-Rep. Tom Malinowski (D-NJ) introduced the first-ever legislation to allow retired first responders who have reached age 50 to buy into Medicare — S. 2552 and H.R. 4527, respectively. The bills would allow eligible first responders to buy into Medicare under the same terms as individuals who have reached the current eligibility age of 65. All facets of Medicare — Part A (hospital insurance), Part B (medical insurance), Part C (Medicare Advantage), and Part D (prescription drug coverage) — would be available to the eligible first responders.

Providing this early avenue into Medicare will help ensure that our first responders have the dignified retirement they've earned.

In the 118th Congress, then-Senator Brown and then-Rep. Dean Phillips (D-MN) reintroduced the legislation as S. 3113 and H.R. 6030, respectively.

Early-age Medicare legislation has not been introduced in the current Congress.

NCPERS supports legislation to allow retired first responders to buy into Medicare at age 50.

Expansion of Governmental Plans to Private-Sector Workers

H.R. 2382 would amend the federal tax code to permit for the first time in our history state and local governmental retirement plans to cover certain nongovernmental workers. Specifically, the legislation says that a state or local governmental plan as defined in section 414(d) of the federal tax code would not fail to be a governmental plan solely because it (1) allows participation by a public safety agency (described in section 501(c) and exempt from taxation under section 501(a)), (2) solely with respect to the employees of such agency who are emergency response providers as defined by the Homeland Security Act, (3) substantially all of whose services as emergency response providers are in the performance of firefighting services or out-of-hospital medical services for a political subdivision of a state, and (4) under a contract between such public safety agency and the political subdivision of a state.

We believe H.R. 2382 would set a dangerous precedent and would invite the addition of thousands of private-sector workers into governmental plans, thereby raising funding, governance, and federal tax issues not present today in these plans. Further, we expect that, if enacted, this legislation would open the floodgates to demands upon Congress to include additional categories of private-sector workers in state and local governmental plans.

NCPERS is opposed to H.R. 2382.

Alternative Investments in 401(k) Plans

On August 7, 2025, President Trump released an Executive Order (the "Order"), Democratizing Access to Alternative Assets for 401(k) Investors, which is designed to advance the policy that "every American preparing for retirement should have access to funds that include investments in alternative assets when the relevant plan fiduciary determines that such access provides an appropriate opportunity for plan participants and beneficiaries to enhance the net risk-adjusted returns on their retirement assets."

For purposes of the Order, the term "alternative assets" means: (i) private market investments, including direct and indirect interests in equity, debt, or other financial instruments that are not traded on public exchanges, including those where the managers of such investments, if applicable, seek to take an active role in the management of such companies; (ii) direct and indirect interests in real estate, including debt instruments secured by direct or indirect interests in real estate; (iii) holdings in actively managed investment vehicles that are investing in digital assets; (iv) direct and indirect investments in commodities; (v) direct and indirect interests in projects financing infrastructure development; and (vi) lifetime income investment strategies including longevity risk-pools.

While the Order does not cover public pension plans, President Trump made great use of our plans in his rationale for the policy changes. In fact, he made three mentions of public plans in the Order:

- Many wealthy Americans, and government workers who participate in **public pension plans**, can invest in, or are the beneficiaries of investment in, a number of alternative assets.
- A combination of regulatory overreach and encouragement of lawsuits filed by opportunistic trial lawyers has stifled investment innovation and largely relegated 401(k) and other defined contribution retirement plan participants to asset classes whose returns lack the very same long-term net benefits allowed for and achieved by **public pension plans** and other institutional investors.

- Burdensome lawsuits that seek to challenge reasonable decisions by loyal, regulated fiduciaries, and stifling Department of Labor (DOL) guidance issued since my first term, however, have denied millions of Americans opportunities to benefit from investment in alternative assets. Such assets are an increasingly large portion of the portfolios of **public pension** and defined benefit retirement plans and offer competitive returns along with diversification opportunities.

In promoting the goal of access to alternative investments, President Trump promised to "… relieve the regulatory burdens and litigation risk that impede American workers' retirement accounts from achieving the competitive returns and asset diversification necessary to secure a dignified, comfortable retirement." Specific to mitigating litigation risk, the Order requires the Department of Labor to clarify its position on alternative assets and the appropriate fiduciary process for offering funds containing alternative assets under Employee Retirement Income Security Act (ERISA).

The regulatory guidance will be put into place in 2026. At that point or sometime before as media attention grows, pressure may build to grant participants in public plan equivalents, such as 401(a) deferred compensation plans, 457(b) governmental plans, and 403(b) annuity plans, similar opportunities to invest in alternative investments.

NCPERS will closely monitor the regulatory guidance related to alternative investments in 401(k) plans.

Proxy Advisory Firms

Many pension plan administrators employ proxy advisory firms to provide unbiased and independent data and analytical research to help them formulate their corporate governance and proxy voting policies. In addition, in some instances, NCPERS members ask the proxy advisory firms to implement proxy voting instructions on their behalf, following their plans' guidelines. The use of proxy research reports prepared by proxy advisory firms is one important way that NCPERS members exercise their due diligence to make independent, well-informed decisions.

In the 119th Congress, multiple legislative proposals have been introduced that would directly impact pension plans' proxy voting responsibilities, their use of proxy advisory firms, and the broader proxy ecosystem. These measures reflect a renewed effort to impose substantive restrictions, heightened liability, and new disclosure obligations on proxy advisory firms, institutional investors, and pension plans.

Several bills introduced in the 119th Congress would regulate the conduct, registration, and liability of proxy advisory firms, including proposals to prohibit proxy advisory firms from issuing voting advice in the presence of specified conflicts of interest (H.R. 4098, the Stopping Proxy Advisor Racketeering Act); require proxy advisory firms to register with the Securities and Exchange Commission (SEC) and disclose their methodologies, conflicts of interest, and compliance practices (H.R. ___*, a bill to provide for the registration of proxy advisory firms); and establish heightened liability under the Securities Exchange Act of 1934 for failures to disclose material information or for material misstatements (H.R. ___*, a bill to provide for liability for certain failures to disclose material information or making of material misstatements). Certain proposals would go further by directing the SEC to prohibit proxy advisory firms from furnishing proxy voting recommendations to investors altogether (H.R. ___*, a bill to amend the Securities Exchange Act of 1934 with respect to prohibitions relating to the solicitation and influence of proxies). Collectively, these measures would significantly constrain the availability of independent proxy research relied upon by pension plans and increase compliance costs that would ultimately be borne by plan participants and beneficiaries.

Other 119th Congress proposals would impose new and expansive disclosure, certification, and analytical requirements on institutional investment managers, including public pension plans, that engage proxy advisory firms. These measures include proposals requiring institutional investment managers to file detailed annual reports on proxy voting behavior, alignment with proxy advisor recommendations, internal decision-making processes, and certifications that votes were cast solely in the best economic interests of shareholders (H.R. 3402, a bill to amend the Securities Exchange Act of 1934 to require certain disclosures by institutional investment managers in connection with proxy advisory firms). For the largest managers, additional mandates would require pre-vote economic analyses for shareholder proposals that diverge from board recommendations and public disclosure of those analyses (H.R. 3402).

In addition to congressional action, a significant Executive Order ("EO") Protecting American Investors from Foreign-Owned and Politically-Motivated Proxy Advisors was issued on December 11, 2025. The EO directs federal agencies, including the Securities and Exchange Commission, the Federal Trade Commission, and the Department of Labor, to increase oversight of proxy advisory firms and to reassess rules, guidance, and enforcement priorities relating to proxy advice and shareholder proposals in light of concerns about foreign influence and politically-motivated recommendations. The EO specifically instructs the Secretary of Labor to review and potentially revise fiduciary regulations and guidance under ERISA to clarify that proxy advisors who provide voting advice to pension plan fiduciaries may themselves be considered investment advice fiduciaries, and to strengthen transparency and fiduciary standards for pension plans' use of proxy advisory services. This could materially shift how ERISA plans engage proxy advisors and influence the content and use of proxy research, with heightened regulatory scrutiny on advice tied to environmental, social, governance (ESG), or diversity, equity, and inclusion (DEI) considerations, and on whether proxy advisors act solely in the financial interests of plan participants and beneficiaries.

The breadth and volume of these proposals indicate that efforts to reform the proxy process will continue throughout the current Trump Administration and the 119th Congress, with significant implications for pension plans and proxy advisory firms.

The regulatory activities of the U.S. Securities and Exchange Commission under the Trump Administration will continue to be the focal point on issues related to proxy advisors and proxy voting.

**Note: At the time of publication, the unnumbered bills had not been formally introduced by the House.*

NCPERS will closely monitor legislation and related regulatory activity affecting proxy advisors and will oppose any proposal that makes it more costly or less efficient for our members to utilize these services.

Shareholder Rights

In 2020 under the Trump Administration, the Securities and Exchange Commission (SEC) issued a new regulation that makes it substantially more challenging for shareholders to file resolutions asking companies to adopt certain policies, including the promotion of sustainable long-term financial growth.

On July 13, 2022, the SEC issued a proposal amending the 2020 Trump Administration policy (amendments to SEC Rule 14a-8). Specifically, the proposal would amend three substantive bases for excluding shareholder proposals:

1. Substantial implementation exclusion would require a shift in SEC staff focus on the specific elements of a shareholder proposal to assess whether the company's prior actions taken to implement the substance of the proposal are sufficiently responsive.
2. Duplication exclusion would amend the current standard so that proposals are considered duplicative only when they address the same subject matter and seek the same objective by the same means.
3. Resubmission exclusion would amend the standard for the resubmission exclusion from "substantially the same subject matter" to "substantially duplicates."

On November 14, 2024, a panel of the U.S. Court of Appeals for the Fifth Circuit affirmed the SEC's ability to intervene in shareholder proposals under Rule 14a-8 of the Securities Exchange Act of 1934. The commission has not yet finalized the shareholder proposal amending the 2020 Trump Administration policy. Further, the return of the Trump Administration will likely end up further delaying changes to the 2020 policy.

With the return of the Trump Administration in 2025, the regulatory outlook for shareholder proposals has shifted again. The current administration has signaled opposition to expanding shareholder proposal rights and support for policies limiting the use of proxy voting to advance environmental, social, or political objectives. As a result, the SEC has deprioritized finalizing the 2022 Rule 14a-8 proposal, leaving the 2020 Trump-era framework in place.

Similarly, the 119th Congress has introduced numerous legislative proposals that would further restrict shareholder proposals. These measures include bills that would authorize issuers to broadly exclude shareholder proposals, including those related to environmental, social, or political matters.

Legislation has been introduced to clarify the circumstances under which issuers may exclude shareholder proposals that address social policy matters under SEC Rule 14a-8 (H.R. __*, a bill to clarify issuer exclusion of social policy proposals under Rule 14a-8). Additional legislation introduced this Congress would affect long-standing principles of shareholder engagement and investor participation by clarifying that no legal obligation exists to vote on every item presented to shareholders (H.R. __*, the Protecting American's Savings Act) and, in certain cases, requiring pass-through or proportional voting by underlying investors in passively managed funds (H.R. __*, the Empowering Shareholders Act of 2025).

Certain legislative proposals would also expand congressional and regulatory oversight of corporate governance and securities regulation by requiring the SEC to conduct recurring examinations and studies related to shareholder proposals and investor engagement (H.R. __*, the Corporate Governance Examination Act); establishing a Public Company Advisory Committee within the SEC (H.R. __*, the Public Company Advisory Committee Act of 2025); and requiring the Commission to identify and justify disclosure mandates deemed non-material under the federal securities laws (H.R. __*, a bill to require the SEC to disclose and report on non-material disclosure mandates; H.R. __*, the Mandatory Materiality Requirement Act of 2025). Together, these measures reflect an ongoing congressional focus on shareholder engagement and securities disclosure that may influence how pension plans and other institutional investors carry out governance-related responsibilities.

In addition to legislative activity, the Trump Administration issued an Executive Order in December 2025 directing federal agencies, including the SEC and the Department of Labor, to reassess rules and guidance governing proxy voting, shareholder proposals, and the role of proxy advisory firms, particularly where such activities are perceived to be politically motivated or inconsistent with investors' economic interests. Together, these developments suggest that efforts to expand shareholder access through Rule 14a-8 are unlikely to advance in the near term, while restrictions on shareholder proposals and proxy voting are likely to remain a central focus of both congressional and administrative action.

**Note: At the time of publication, the unnumbered bills had not been formally introduced by the House.*

NCPERS will continue to monitor this regulation and actions by either the Trump Administration or Congress.

Federal Bankruptcy Law

In recent years, proposals have been discussed to amend the federal bankruptcy code to allow states to bypass state-based constitutional protections and other legal impediments in order to make changes to their pension funding and benefit structures.

In 2016, the Manhattan Institute released a proposal to create a new section 113 of the U.S. Bankruptcy Code — Proceeding to Protect Essential State Actions. Under the plan, which was released in both descriptive and draft legislative form, states would be allowed to publish a proposal to make changes to pension benefits that, in the state's view, are necessary and/or appropriate to ensure the undiminished and unimpaired performance of any essential state action by the state or any subdivision, agency, or municipality thereof. Public hearings would be required, and any proposal would have to be approved by the state legislature and signed by the governor in the same manner as general statutes of that state. Such legislation (the proposal to change benefits) would then be filed as a petition in a U.S. bankruptcy court.

It's critical to understand which state or local legal protections would be cast aside by this new bankruptcy provision. The proposal states that pension benefits may be modified to ensure the performance of essential state actions, notwithstanding any prohibition against or limitations on changes to pension benefits contained in any state constitution, statute, law, regulation, judicial decision, contract, or other local legal document, decision, or rule. In order to understand the broad sweep of this proposal, we focus on two key definitions:

- Essential state action — Any undertaking by the state in furtherance of (1) providing for the health, safety, or welfare of persons residing within the state; (2) addressing, remedying, or preventing fiscal emergencies of the state or any subdivision, agency, or municipality thereof; or (3) ensuring the ability of the state and its subdivisions, agencies, and municipalities to fund essential governmental services on reasonable terms.
- Pension benefits — Any accrued or prospective, vested or unvested pension, health, or other employee or retiree benefit that a state or any subdivision, agency, or municipality thereof funds or is required to fund.

The proposal's proponents argue that the authority for this change is found in the bankruptcy clause to the U.S. Constitution, which gives Congress the specific power to enact uniform laws on the subject of bankruptcies throughout the United States. In addition, the Manhattan Institute's white paper states that the U.S. Supreme Court has held that the U.S. Constitution "does not impair Congress' ability under the bankruptcy clause to define classes of debtors and structure relief accordingly."

The proposal includes the ability of an affected person to challenge a petition by demonstrating by clear and convincing evidence that the change it proposes is unnecessary. However, in evaluating challenges, the bankruptcy court must defer to the judgment of the state legislature and the governor regarding revenue and spending unless there is no rational basis underlying that judgment. That is a high hurdle for any challenge to clear.

Federal legislation has not yet been introduced on this or any other proposal to allow the restructuring of state or local pension benefits through the bankruptcy code. Be assured that NCPERS will closely monitor this matter.

NCPERS opposes efforts to amend federal bankruptcy law to provide a mechanism for reducing state and local pension benefits.

Normal Retirement Age

In 2007, the IRS promulgated regulations that would define the term "normal retirement age" for pension plans. Specifically, the regulations provided that pension plans must have an age-based criterion for normal retirement.

Since most pension plans for public employees provide eligibility for non-disability retirement based on years of service or a combination of years of service and age, not on attainment of a certain age, public plans protested the new regulations in formal comments to the IRS and direct meetings attended by NCPERS and other national groups.

In 2012, the IRS issued Notice 2012-29, which announced its intention to issue revisions to the 2007 regulations to clarify their application to state and local governmental plans. Then, in early 2016, the IRS issued proposed regulations. The proposed regulations are responsive to most of the concerns raised by NCPERS and the pension plan community.

For public safety, the proposed regulations modify the age 50 safe harbor provision for public safety employees to ensure its application in instances where public safety employees are only a subset of a larger plan that includes other public-sector employees. The proposed regulations would also add two additional safe harbors: (1) the "rule of 70," whereby the sum of the participant's age and years of credited service are added together, and (2) attainment of 20 years of credited service.

Regarding all other governmental plans, the proposed regulations clarify that if they do not provide in-service distributions before age 62, they do not need to have a definition of normal retirement age. Additional safe harbors are defined as follows: the later of age 60 or the age at which the participant has at least five years of credited service; the later of age 55 or the age at which the participant has at least 10 years of credited service; the "rule of 80"; and the earlier of the age at which the participant has reached 25 years of credited service or the normal retirement age under another safe harbor.

This rulemaking likely will be revised to comport with the change in federal tax law to allow qualified plans to provide participants with in-service distributions at age 59 1/2.

Issuance of final regulations on this matter continues to be listed on the IRS regulatory agenda.

NCPERS supports the direction of IRS Notice 2012-29 and the proposed regulations and will work with the Treasury and IRS on final regulations.

Definition of Governmental Plan

In November 2011, the IRS issued an advance notice of proposed rulemaking (ANPRM) announcing its intention to issue regulations defining the term "governmental plan" under IRC section 414(d). The ANPRM also included a draft notice of proposed rulemaking and invited public comment.

NCPERS joined with a number of other national groups in submitting joint comments. The comment letter called for the creation of safe harbors, grandfather treatment, and a greater focus on transition-related issues, and it raised certain practical administrative concerns.

The basic structure of the ANPRM, which is the initial step in creating the first set of federal regulations under section 414(d), is a facts and circumstances test. Of particular interest is the test that would determine whether an entity is an "agency or instrumentality of a state or political subdivision of a state." The ANPRM contains a test for this definition that is based on five major factors and eight other factors. The factors include most of the areas of inquiry that logically would be investigated in a determination of whether an entity is a governmental plan, such as state or political subdivision control of the entity, state responsibility for general debts and liabilities of the entity, delegation of sovereign powers, treatment as a governmental entity for federal tax purposes, and whether the entity is determined by state law to be an agency or instrumentality. However, there is no certainty that meeting four or five or even six factors would be sufficient for an entity to satisfy the new federal regulatory test outlined in the ANPRM. We continue to believe that more clarity is needed.

In January 2015, the IRS released Notice 2015-7, which provides a five-part test for the definition of a public charter school. The charter school community submitted some 2,000 comments in response to the ANPRM because of concerns related to whether charter schools would be able to meet the test of being established and maintained by a state or political subdivision of a state. The five-part test is expected to be included in the proposed regulations.

Issuance of proposed regulations on this matter had been included in the IRS's regulatory priority list since 2011. However, the current administration removed this initiative from the priority list released in 2025.

NCPERS will work with the Treasury and IRS as they develop proposed regulations on the definition of a governmental plan.

Sources of Death Data

Having accurate and timely information about participants and beneficiaries is critical to running an efficient retirement system and satisfying your fiduciary responsibilities. Following high-profile cybersecurity breaches in 2023, many public pension plans have shown interest in exploring alternative sources for research and access to death data to ensure that their distributions are accurate.

NCPERS has engaged policy and legal experts in Congress and the private sector to investigate this topic. Sources that have been identified are the Social Security Administration's (SSA's) Death Master File (full file), the Treasury Department's Do Not Pay service, and the National Association for Public Health Statistics and Information Systems (NAPHSIS).

Regarding the SSA's Death Master File (full file), NCPERS has been involved in discussions with senior staff of the House and Senate Subcommittees on Social Security. It has become clear from those discussions, which were remarkably consistent between the political parties and between the House and Senate, that state and local governmental pension plans are not currently eligible under the Social Security Act to purchase the Death Master File. Further, they counseled that an effort to amend the act to make our plans eligible is certain to be met with bipartisan opposition in Congress and concerns from the SSA. The opposition is based on the SSA's and Congress's belief that the SSA should not be the national clearinghouse for death data and that doing so detracts from its mission to administer the Social Security program.

Likewise, regarding the Treasury Department's Do Not Pay service, state and local pension plans are not eligible users under current statutory authority. Treasury's focus is on core federal benefit programs, and even a recent expansion to certain additional federal programs was controversial and took years of work in Congress to accomplish. Do Not Pay can be accessed for federally funded, state-administered programs. Similar to an effort to amend federal law to access the SSA's Death Master File (full file), such an effort to amend Treasury's statutory law would be met with resistance.

Our ongoing discussions with NAPHSIS have proved more productive. All 50 states, five territories, New York City, and Washington, D.C., participate in NAPHSIS. Our members' plans are included in NAPHSIS's State/Local Benefits user category, and some state and local plans are current customers of the service. Users in the State/Local Benefits category are given a discount on fees, which are based on volume and billed only when used. There are batch and ping (individual) search options available.

Be aware, however, that each jurisdiction that provides its vital records to NAPHSIS has a different set of conditions on the use of its data. Working off the jurisdictions' various conditions, each user category has a different group of jurisdictions available to it.

For our State/Local Benefits user category, data from 42 states, New York City, D.C., and Puerto Rico are available. Excluded are Texas, Hawaii, New York, New Jersey, New Hampshire, Virginia, North Carolina, Pennsylvania, and the remaining four territories. NAPHSIS believes that recent developments in Virginia and North Carolina make it likely that their data will soon become more readily available.

NCPERS will continue to gather intelligence on this topic to provide our members with the most up-to-date information.

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