

The National Conference on
Public Employee Retirement Systems

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Legislative Issues Book

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National Conference on Public Employee Retirement Systems.
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The National Conference on Public Employee Retirement Systems (NCPERS)

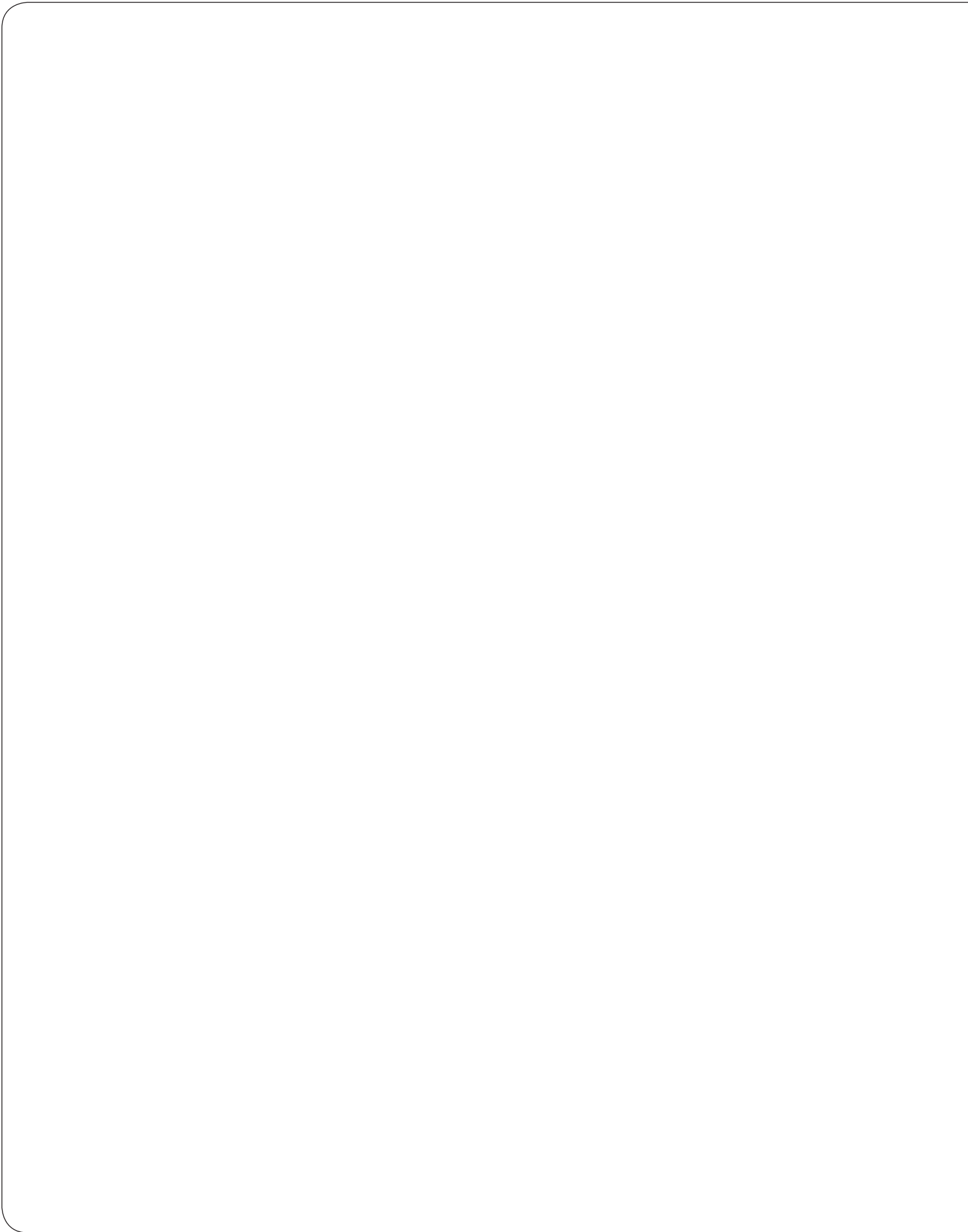
Who we ARE. The National Conference on Public Employee Retirement Systems (NCPERS) is the largest trade association for public sector pension funds, representing more than 500 funds throughout the United States. We are a unique network of public trustees, administrators, public officials and investment professionals who collectively manage \$2.6 trillion in pension assets. Our core missions are federal **Advocacy**, conducting **Research** vital to the public pension community, and **Educating** pension trustees and officials—it's who we **ARE**.

Who do we benefit? The \$2.6 trillion in public pension assets in the United States is managed on behalf of 7.3 million public retirees and 14.5 million active public servants who provide vital services such as law enforcement, fire and rescue, education, health care, and more to our communities. Currently, NCPERS member pension funds provide a modest retirement benefit—an average of \$20,800 per year—that helps to afford a secure retirement for our public servants and heroes.

Public pensions are financially sound and good for the economy. The nation's public pension plans on average are funded at 86 percent. Most public plans require member contributions, and almost all public plans invest their assets in growth vehicles that earn additional income. According to the U.S. Census Bureau, state

and local pension plans accumulated \$2.3 trillion in investment earnings from 1982 through 2005, compared with total employer (taxpayer) contributions of \$885 billion and employee contributions of \$435 billion. Consequently, taxpayers paid 24 percent of the total amount paid into public plans during this period, with the remaining 76 percent coming from investment earnings and employee contributions. Every dollar taxpayers paid into public plans generated an additional three dollars, to be returned to the economy through retirement income.

Public pensions are regulated by state and federal laws. All public plans are governed by federal and state laws that regulate how they are established and the level of benefits they can provide. Public plans also are governed by comprehensive financial reporting standards established by the Governmental Accounting Standards Board (GASB). These standards provide the framework for the annual financial audits most governments contract to independent accounting firms. Since credit rating agencies pay close attention to the auditor's report in assessing a government's credit quality, there is significant incentive to adhere to the GASB's standards. While public plans are not subject to many of the provisions of the federal Employee Retirement Income Security Act of 1974 (ERISA), state fiduciary laws governing public plans often reflect ERISA's language.



Health Care Reform

Background

All Americans—whether a Democrat, Republican, or an Independent—agree that our health care system is broken and that it needs to be reformed. The skyrocketing costs, inefficiencies, uneven quality of care, and administrative nightmares are threatening to undermine a system that was once the envy of the world. While the U.S. still is a leader for medical research and innovation, and people from all over the world flock to our country for advanced medical treatment, for everyday Americans with normal medical needs, health care is becoming unaffordable, inaccessible, or inadequate. States and localities likewise are hard pressed by the ever increasing cost of health care. In particular, since 2004 when the Governmental Accounting Standards Board (GASB) issued Statement 45 regarding other post-employment benefits (OPEB), which is largely retiree health care, state and local governments have been burdened with new financial reporting and accounting standards that add further fiscal pressures.

The Obama Administration has made passage of health care reform its number one domestic legislative priority. For most of 2009, health care reform has been debated in the halls of Congress as well as in town halls.

Legislative History

- H.R. 3962:** The Affordable Health Care for America Act passed the House of Representatives on November 7, 2009 by a vote of 220 to 215.
- H.R. 3560:** The Patient Protection and Affordable Care Act passed the Senate on December 24, 2009 by a vote of 60 to 39.

NCPERS Position

NCPERS supports efforts to comprehensively reform the U.S. health care system. While there are many important areas that need to be addressed in a health care reform legislation, NCPERS position is that at a minimum the following two issues must be included in the final version.

- **Health Care Reform Must Address the Needs of Pre-Medicare Eligible Retirees.** According to the U.S. Census Bureau more than 55 million boomers are now in their 50s or early 60s. By 2015, this number expected to grow to 63 million, or 19 percent of the population. Of these older Americans, at least 7 million are uninsured. Of those who are insured, many are insured through individual policies that cost many times more than group plans. In the state and local setting, many public servants

have mandatory retirement ages that are much earlier than Medicare eligibility age. Any health care reform legislation must address the health insurance needs of these pre-Medicare retired public servants and millions of other older Americans similarly situated who don't have health insurance or are paying too much for health insurance.

- **Financing of Health Care Reform Must be Equitable.** It is anticipated that reforming the health care system—while saving money in the long term—may cost money in the short term. With that in mind, NCPERS is not opposed to raising revenue to fund reform. However, we are strongly op-

posed to taxing employer based health insurance and taxing of OPEB trust disbursements. Taxing employer based health insurance would undermine this system and unfairly penalize those vulnerable individuals who have high health care needs. Taxing disbursements from OPEB trusts—like voluntary employee benefit associations (VEBAs) and Sec. 115 integral part governmental trusts—unfairly penalizes those responsible state and local governments and their employees who planned ahead and began to pre-fund for retiree health care needs. NCPERS is eager to work with the Administration and Congress to identify other revenue sources that are more equitable and progressive.

Healthcare Enhancement for Local Public Servants (HELPS II)

Background

For the 111th Congress, NCPERS' number one legislative priority is to expand the \$3,000 tax benefit for health and/or long-term care premiums to all public retirees. In 2006, NCPERS successfully lobbied Congress to pass the Healthcare Enhancement for Local Public Safety (HELPS) Retirees Act. The HELPS Retirees act allows a yearly disbursement of up to \$3,000 pre-tax from a governmental defined benefit pension, 403(b) or 457 plan to retired public safety officers for use toward health care insurance and/or long-term care premiums. The HELPS Retirees Act was signed into law on August 17, 2006 and took effect on January 1, 2007.

Prior to the HELPS Retirees Act, retirees paid for their health or long-term care premium with after-tax dollars. Eligible public safety retirees are able to use pre-tax dollars from their qualified pension plans to pay for health premiums. For retirees who are in the 25 percent federal marginal tax rate bracket, this could be a tax savings of up to \$750 per year!

For the 111th Congress, NCPERS' number one legislative priority was to expand this tax benefit to all public employees. The Healthcare Enhancement for Local Public Servants (HELPS II) legislation would expand this benefit to allow eligible retirees to use up to \$3,000 pre-tax for use toward health care and/or long-term care premiums.

Additionally, HELPS II would make significant improvements to the original HELPS law by:

1. Removing the requirement that the \$3,000 tax benefit be administered by pension plans.
2. Indexing the \$3,000 benefit to inflation.
3. Adding survivor benefit.

Legislative History

H.R. 1413: On March 10, 2009, Rep. Joe Crowley (D-NY) introduced the Healthcare Enhancement for Local Public Servants Act (HELPS II).

NCPERS Position

NCPERS supports Healthcare Enhancement for Local Public Servants (HELPS II). Our provision would permit eligible retirees to use up to \$3,000 annually for health care insurance and long-term care premiums on a pre-tax basis.

DB Plan Fixes for Public Safety Employees

Background

Internal Revenue Code Section 72(t)(10) allows retired public safety employees beginning at age 50 to take distributions from their defined benefit pension plans without paying the 10 percent early distribution tax. Sec. 72(t)(10) recognized that—due to the nature of the profession and in many cases mandatory retirement ages—public safety employees typically retire earlier than the general population.

Unfortunately, since implementation of Sec. 72(t)(10) in August 2006, two issues have arisen that need to be fixed. First, public safety employees between the ages of 50 and 55 who chose to rollover their distributions into a 457 plan and then take distributions from the 457 plan are subjected to the 10 percent early distribution tax until age 59 1/2. Second, public safety employees who retired before age 55 and before enactment of 72(t)(10) and opted to annuitize their benefit to avoid the 10 percent early distribution tax; and who after the enactment decide to take a modified distribution from their plans are subjected to a 10 percent recapture tax on the previous annuitized distributions.

Legislative History

H.R. 4239: On December 8, 2009 Reps. Kendrick Meek (D-FL) and Kevin Brady (R-TX) introduced the legislation to fix 72(t)(10).

S. 1657: On September 9, 2009 Sens. Bill Nelson (D-FL) and John Cornyn (R-TX) introduced the legislation to fix 72(t)(10).

NCPERS Position

NCPERS supports fixing 72(t)(10). Both bills would:

1. Exempt qualified retired public safety employees between the ages of 50 and 55 from the 10 percent early distribution tax on 457 distributions that have been rolled over from defined benefit pension plans.
2. Exempt from the 10 percent recapture tax qualified retired public safety employees who opted for annuitized benefits prior to enactment of Sec. 828, but now want to modify their distribution.

Currently, only in H.R. 4239 would provide same benefit to federal public safety employees. However, we are working to amend the Senate bill to reflect this desired change.

Financial Regulatory Reform

Background

In October 2008, the near-collapse of Wall Street plunged the U.S. and world economy into crisis and began the “Great Recession”. The financial crisis had many causes, however, many point to the basic failures in financial supervision and regulation as the main catalyst. The nation’s financial regulation framework is riddled with gaps, weaknesses and jurisdictional overlaps, and suffers from an outdated conception of financial risk. In recent years, the pace of innovation in the financial sector has outstripped the pace of regulatory modernization, leaving entire markets and market participants largely unregulated.

Since early 2009, the President and policy-makers in Congress have strived to reform a financial system that failed to perform its function as a reducer and distributor of risk. In June 2009, the Administration unveiled its proposals on financial regulatory reform. The House passed its version of reform in December 2009. The Senate is expected to take up this issue in 2010.

Legislative History

H.R. 4173: Passed the House of Representatives on December 11, 2009 by a vote of 223 to 202.

Senate: The Senate Banking Committee has a bipartisan draft financial reform bill that is expected to be debated in early 2010.

NCPERS Positions

NCPERS supports comprehensive reform of the financial regulatory system. Public pension funds have a significant stake in financial markets and regulation of those markets. First and foremost, tens of millions of American workers and their families rely or will rely on retirement benefits paid by pension fund plans as either their primary source of income in retirement.

- Regulate the derivatives market: Specifically, explore the feasibility of trading all derivatives through clearinghouses and perhaps even on exchanges.
- Better regulate the credit rating agencies: There are strong suggestions that credit rating agencies (CRAs) contributed to the financial crisis. While CRAs are private companies, a core group has special status as SEC-designated National Recognized Statistical Ratings Organizations (NRSROs) and plays a critical role in determining what investments are permissible for certain investors. As such, reforms spurring greater transparency, disclosure, competition among NRSROs, new ratings for financially engineered products, and reducing conflict of interest are needed.
- Enhanced role for the Securities and Exchange Commission: Provide the SEC with oversight authority over hedge funds and other private pools of capital and their investment advisers

- Better corporate governance: Failures of corporate governance have been the subject of debate for some time. There is a need for change regarding senior executive's compensation and their link to risk management; greater board effectiveness and accountability; and an enhanced role for shareholders to express their views.
- Establish a federal body that identifies systemic risk: Many federal and state

agencies focus on the behavior of particular categories of financial companies, the services and products they offer, and the markets in which they operate. But there is no governmental body that looks at the interplay of those companies, products, markets, and other factors to identify when systemic risks might exist and take action to prevent systemic threats.

Mandatory Social Security Coverage

Background

The Social Security system provides coverage for all private sector employees. However, when the system was established in 1935, state and local government employees were excluded. Over the years, public sector employees were given the choice of joining Social Security, but many public employees chose not to be included. Instead, they rely on their own retirement and benefit programs tailored to their occupational needs. In many instances, these retirement programs predate the Social Security system. These state and local government retirement systems are prefunded and require a contribution by both the employer and employee, in most cases.

Whereas the public pension systems enjoy solvency and stability, the Social Security system is projected to run out of money in approximately 50 years. One proposal to extend the solvency date of Social Security is to cover all public sector employees under Social Security. Although mandatory Social Security coverage would extend the solvency date by two years, all agree that in the long-term it would burden the Social Security system even more, and ruin public sector pension plans that have succeeded in providing comfortable retirements to countless public employees.

Legislative History

If Social Security becomes an issue in the 111th Congress, we anticipate additional legislation and more discussions about mandatory coverage of public sector employees.

NCPERS Positions

- **NCPERS opposes expanding Social Security coverage to non-covered state and local government employees.** Public sector employers were required to create separate pension plans for their employees when they were excluded from Social Security. Requiring Social Security coverage would undermine these plans and place unnecessary financial burdens on state and local government employers and employees.
- **Making Social Security mandatory would have little impact on the projected funding shortfalls of Social Security.** However, such a move would greatly affect public employees. Public employees not covered would be required to pay an additional 6.2% in payroll taxes in addition to what they are now required to contribute to their public pension plan. The same would be true for the employer.
- **Mandatory Social Security coverage would be costly to states and localities.** States and local employers would

also be required to pay an additional 6.2% in payroll taxes on top of what they already contribute to the pension fund. This additional burden would increase California's annual expenditures by more than \$2.3 billion. Ohio would be forced to pay an additional \$1 billion annually, and Texas, Illinois, Colorado, Massachusetts and Louisiana all would pay hundreds of millions of dollars more each year.

- **It would be disruptive to existing retirement programs.** Many public employers would be unable to absorb the higher costs. They would be required to continue funding their respective retirement plans, in addition to the Social Security tax. Many of these plans are established constitutionally and to make such a change would require legislative action and/or constitutional amendments.



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