



*Creating a*

# RETIREE MEDICAL TRUST



How Employers & Employees  
Can Use Pre-Tax Dollars to  
Fund Their Retiree Medical Costs



*The Voice for Public Pensions*

*Creating a*  
**RETIREE  
MEDICAL TRUST**

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from a small single union firefighters' retiree medical trust to billion-dollar multiemployer pension plans.

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Finally, our thanks to the NCPERS officers, executive board, advisors, and staff for their work and support.

**NCPERS Task Force on Health Care Benefits 2006**

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# *Legal Disclaimer*

**T**he information contained in this publication is provided as a service to NCPERS members and the public pension community, and does not constitute legal advice. We offer quality, accurate information, but make no claims, guarantees, promises, or warranties about the timeliness, completeness, or adequacy of the information contained in this publication. Because legal advice must be tailored to the specific circumstances of each case, and laws are constantly changing, nothing provided herein should be used as a substitute for the advice of competent counsel.

# Introduction

This report was prepared exclusively for public sector employers, pension plans and their administrators and trustees, and union officials who care about the rising costs of health care and the impact it is having on retirees. It offers one cost-effective solution to the issue of the rising cost of retiree medical benefits that is attractive to employers and provides meaningful help to retirees.

In 2002, the National Conference on Public Employee Retirement Systems (NCPERS) established the NCPERS Task Force on Health Care Benefits to provide context, scope, and possible solutions for public sector employers and pension systems to the daunting health care crisis facing our nation. Although NCPERS' main goal is focused on preserving and protecting the pensions of public sector employees, retiree health care benefits are a part of many pension plans. We would be remiss in our responsibilities if we ignored the fact that rising health care costs are undermining the pension benefits of current retirees and threatening the benefits of future retirees.

In addition to the national health care crisis, the public sector faces the further challenge of the Governmental Accounting Standards Board's (GASB) recent guidelines on accounting for retiree health care. Currently, most governments pay for retiree health care on a *pay-as-you-go* approach, i.e., paying an amount each year equal to the benefits distributed or claimed in that year. Beginning in fiscal year 2006 and 2007 GASB Statements 43 and 45 will oblige pensions and governments to follow an *actuarial* approach, which entails paying an amount that is expected to be sufficient, if invested now, to finance the benefits of employees after they are no

longer working for the government.

If the spiraling costs of health care and the GASB obligations are left unaddressed, future retirees could lose their entire pension benefit to the cost of health insurance premiums. Worse, they could be forced to forego health care treatment and protections and join the 45 million Americans without health care insurance. Although some retired public employees have yet to face this problem, a significant and growing number do. Those who are facing this problem now need help. Others will very likely face the health care cost problem sometime in the near future.

In 2003, the NCPERS Task Force released "First Report: NCPERS Task Force on Health Care Benefits of Public Employees and Retirees." It defines the problem from the public sector perspective and makes 25 specific recommendations. In 2004, the Task Force published "Second Report: NCPERS Task Force on Health Care Benefits of Public Employees and Retirees," which lists the findings of a health benefits survey of NCPERS members.

In this, our third report—Second Edition, we discuss the Retiree Medical Trust (RMT)—one remedial step the Task Force recommends public employers take to curb the burden of health care costs on future retirees. NCPERS encourages plan sponsors to investigate every responsible strategy to manage health care costs. The RMT must be part of this investigation and can be an important component of a comprehensive health benefit program that sponsors and funds use. Currently, public employers and unions are working closely on these trusts, as they address a problem that affects all employers and employees.

# Background

All states and many localities currently make health care benefits available to their pre-65 and post-65 retirees. Post-employment health benefits in many cases extend to retirees' spouses and dependents. Unfortunately, state and local governments are facing a seemingly insurmountable task of balancing their commitment to provide comprehensive health care benefits to employees and retirees, while also controlling expenditures within increasingly strained budgets.

The budget issue is further complicated for public employers and pensions that provide retiree health benefits by GASB *Statement No. 45: Accounting and Financial Reporting by Employers for Post-Employment Benefits Other than Pension*, and *Statement No. 43: Financial Reporting for Post-Employment Benefit Plans Other Than Pensions Plans*. Other Post-Employment Benefits (OPEB) is essentially health care.

Currently, most governments pay for retiree health care on a *pay-as-you-go* approach, i.e., paying an amount each year equal to the benefits distributed or claimed in that year. Beginning in fiscal year 2006 and 2007 GASB Statements 43 and 45 will oblige pensions and governments to follow an *actuarial* approach, which entails paying an amount that is expected to be sufficient, if invested now, to finance the benefits of employees after they are no longer working for the government.

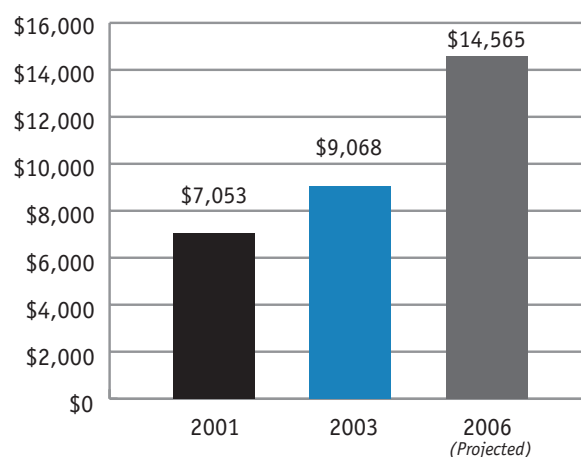
The concern about this accounting switch is that while it does not require a change in retiree health care spending, when lawmakers and elected offi-

cial see large funding liabilities they will use it as an excuse to cut or eliminate retiree health benefits.

For the nation as a whole, the non-partisan National Coalition on Health Care (NCHC), reports that health insurance premiums are rising at accelerating rates. The rate of increase in premiums has jumped every year since 1998. The increase in 2003—13.9%—was nearly four times the increase in 1998. For many employers in the public sector, health care costs already account for more than 15% of wages.

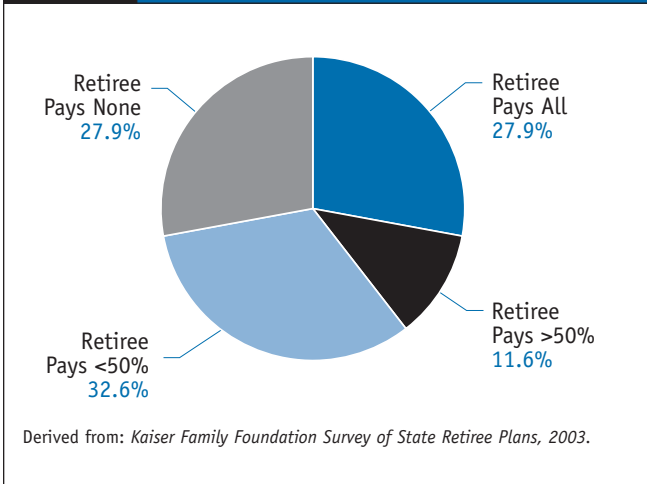
What makes recent premium increases especially striking is that the nation has been in a period of low inflation. Looking ahead, a variety of independent studies and surveys anticipate that premiums will continue to increase at double-digit rates over the next several years. NCHC projects that the aver-

**Figure 1:** Average Annual Premiums for Employer-Sponsored Family Health Coverage



Source: Adapted from Henry E. Simmons and Mark A. Goldberg, *Charting the Cost of Inaction*, National Coalition on Health Care, 2003. p.4.

**Figure 2: Distribution of Retirees' Contributions to Premiums**



premiums are affecting states' and localities' ability to afford retiree health benefits. Several recent surveys report disturbing trends in public employer-provided health care coverage. In particular, the data show the portion of retirees' and employees' coinsurance is increasingly burdensome.

The Henry J. Kaiser Family Foundation's study, *How States Are Responding to the Challenges of Financing Health Care for Retirees*, reports substantial variation across the nation in retiree health premiums. This variation includes the share of the premium retirees pay. Of the respondents in the Kaiser study, 72.1% said their retirees had mandatory cost-shifting for health insurance premiums, including 27.9% who said their retirees paid the full premium amount (see figure 2). In 2002, the Kaiser Foundation reported that consumer out-of-pocket spending jumped 35%, an increase in per capita spending from \$561 to \$756 (Source: Kaiser Family Foundation 2003).

age annual premium for employer-sponsored family health coverage will surge to \$14,545 by 2006 (see figure 1). If current cost trends continue for public sector employers, by 2008 those costs are expected to consume 20% of the dollars spent on wages.

These rapid and dramatic increases in health care

**Figure 3: Importance of Aspects of Total Compensation**

Aspect of Total Compensation	Ranked 1	Ranked 2	Ranked 3	Ranked 4	Ranked 5	Ranked 6
Wages and Salary	88%	13%	-	-	-	-
Health Benefits	13%	66%	16%	6%	-	-
Retirement benefits/Pension	-	19%	63%	19%	-	-
Paid Time off	-	3%	22%	72%	3%	-
Life Insurance	-	-	-	3%	50%	47%
Disability Benefits	-	-	-	-	47%	53%

Note: The percentages in each column do not necessarily equal 100% due to rounding.  
Source: Segal State Health Benefits Survey 2003.

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The *2003 Segal State Health Benefits Survey* reports that, although survey participants labeled health coverage the most important benefit after wages and salary (see figure 3), more than 30% of participating states failed to contribute any money toward single retiree premium rates for retirees younger than 65. Approximately 38% of participating states failed to contribute toward retiree premium rates for single retirees age 65 and older.

NCPERS' own research shows results consistent with both the Kaiser and Segal surveys. In March 2003, NCPERS completed the first health care survey of our fund members to gauge the effect of health care costs on pension funds and their beneficiaries. Like the Kaiser survey, respondents to the NCPERS survey reported many variations of mandatory cost-shifting; however, most retirees' contribution levels were a function of years of service. In our survey, 78% of respondents said that employees and retirees helped finance the employer-provided health insurance premium. More troubling is the fact that 19% of respondents identified retirees as the sole financier of their health care.

The burden of paying for the cost of dependent health care coverage is even greater. NCPERS

members reported that 83% of their retirees had to pay for spousal/dependent coverage, with nearly a quarter of these respondents reporting that their retirees were responsible for the full cost of spousal/dependent coverage.

Although these surveys are only snapshots of retiree health benefits, several conclusions may be drawn from the data. Retirees and employees are bearing a significant amount of the cost associated with their health care—and in many cases the full cost. As a result, public sector retirees and employees are exposed directly and indirectly to the rising cost of health care. As the American health care system is battered by the crisis of rapidly escalating costs, this trend of shifting more of the cost onto retirees will only worsen.

Public employers, unions, and pension funds need to take proactive measures now to assist future retirees to plan for their health needs in their later years. One vehicle to help retirees and employees save for future medical needs is an RMT.

In the following sections, we describe the concept of an RMT, how it works, and its advantages as a method of saving for retiree health needs.

# Retiree Medical Trust: Features and Benefits

**T**he NCPERS Health Care Task Force believes that an effective approach to mitigating the escalating health care costs faced by government employers, public sector unions, and/or their pension systems is establishing a Retiree Medical Trust. An RMT is a health plan that has features similar to both defined benefit and defined contribution plans. In an RMT, employers and/or employees make fixed, defined contribution-style contributions to an RMT during the active employment of participating employees. Both employer and employee contributions are equally permissible on a pre-tax basis, so long as they are mandated for the entire bargaining unit or classification (as compared to individual option plans, such as cafeteria plans<sup>1</sup>).

These RMT contributions are then pooled and are held in a trust, which is a legally separate entity from the employees and the employer. The trust is controlled and administered by a board of trustees, composed of employees and/or employer representatives. The board's responsibilities include designing the RMT plan, selecting a professional investment manager and investment vehicles, and deciding on distribution options.

RMTs may be regulated by federal or state law, depending on sponsorship, administration, and funding. Under federal or state law, the RMT board of trustees is charged with the fiduciary responsibility to administer the RMT for "the exclusive benefit" of the participating employees. If the trustees fail to do so, they are subject to civil and criminal

penalties.

Once participating employees retire, RMTs would ensure regular benefit payments to retirees for health care expenses in a manner similar to defined benefit pension plans except that the benefit payments are not vested and are not taxable income to the retiree (as are pension plan benefits).

## FEATURES

An RMT can be established to help current employees and/or employers start funding for retirement medical needs. RMTs have many attractive features.

### ***Covers Medical Premiums and Expenses***

RMTs can give future retirees a lifetime of benefit payments for medical costs and insurance premiums, similar to a defined benefit pension. Insurance includes medical, hospital, vision, dental, and long-term care policies. The benefit payment can be used on individual or group medical policies (for example, the spouse's group coverage). Permissible expenses also include any medically necessary costs incurred for the diagnosis or mitigation of disease, meaning any item deductible as a medical expense under Internal Revenue Code Section 213.

### ***Avoids GASB Defined Benefit Liability***

An RMT that covers public sector employees does

<sup>1</sup> Cafeteria plan is a generic term for an employee benefit plan that allows employees to individually select, on a pre-tax basis, among cash and various benefits including: group life, medical, disability, and dental expenses. These plans have restrictions, such as a "use it or lose it" rule, which does not apply to an RMT.

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not necessarily create defined benefit plan liabilities for Governmental Accounting Standards Board (GASB) reporting. When established through consultation with the plan's accountants and attorneys, and carefully defining the contribution to the plan, employers may avoid reporting defined benefit liability for the benefits under the GASB *Statement No. 45: Accounting and Financial Reporting by Employers for Post-Employment Benefits Other than Pension*, the new accounting guidance for post-employment retiree health benefits. Instead, the defined benefit liability may be transferred to the trust, leaving to the employer the obligation only to report one year's contributions to the trust. See GASB 43.

### ***Unaffected by IRC 415 Limits***

RMTs are health plans, and so are not limited by Section 415 pension plan rules under the Internal Revenue Code on the amount of permissible annual contributions to such a trust. In general, RMTs avoid the myriad of rules applicable to pension plans such as funding, anti-cutback, and distribution requirements because of their health plan classification.

### ***Includes Survivor Benefits***

RMTs can be designed to continue benefit payments to surviving spouses and dependents, all on a tax-free basis.

### ***Lifetime Stream of Payments***

An RMT can be set up with individual accounts for each employee or a pool that provides a lifetime stream of payments. However, NCPERS recommends the pooled plan design that offers a monthly payment for life, rather than an individual account—which could run out of money when it is most needed, at an older age, when there generally are more medical expenses. Actuarial studies have consistently shown that more people benefit in an aggregate sense from a “pooled plan,” by which retirees receive a lifetime stream of payments, than from an individual account plan.

## **TAX ADVANTAGES**

An RMT can offer several tax advantages, depending on how the plan and contribution obligation are structured.

### ***Employer Advantage***

Employers are not required to pay payroll taxes on the RMT contributions, provided that the entire bargaining unit or group participates. Contributions are made with pre-tax dollars under current law if they are mandatory.<sup>2</sup>

### ***Employee Advantage***

The employee also avoids taxation on the contributions if they are mandatory.<sup>3</sup> Further, earnings on contributions are tax-exempt if the plan is set up as

<sup>2</sup> Cf. IRS Rev. Rul. 75-539, PLRs 9323006, 200007021, and 200120024; and TAM 200305006.

<sup>3</sup> See footnote 2.

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an integral part trust under Internal Revenue Code Section 115, or as a Voluntary Employee Beneficiary Association (VEBA) under IRS Section 501(c)(9). An employee benefit trust that gains IRS tax exempt status can realize significant earnings, none of which are taxed.

### ***Retiree Advantage***

Because the benefit payments are used to reimburse medical costs, they are tax free under Internal Revenue Code Section 105 to the retiree, compared to pension benefits that are taxable. This tax exclusion results from the requirement that benefits may be spent only on medical costs. Tax-free earnings and compound interest allow significant appreciation on contributions. Actuarial projections indicate that plans can provide benefit levels at \$400-\$500 for every \$100 contributed.

### **EXAMPLES**

RMTs have been established by employers, employee organizations, or both, and they are already helping active employees save for future medical costs in a number of jurisdictions.

For example, the Washington State Council of Fire Fighters, a federation of local unions, has established an RMT whereby participating employers or employees make \$75 monthly contributions on active employees. The Washington plan is projected to disburse \$425 a month for life after retirement at age 53 for career employees (those with at least 25 years of service in the plan).

An actuarial projection for a police RMT in California indicates that a typical employee with a 26-year career would receive approximately \$125,000 in non-taxable benefits. The actuarial projection was based on the assumption that an employee joins the force at age 27 and retires at age 53, and a monthly pre-tax contribution of \$75 is made into the RMT. On the basis of these assumptions, for the \$23,400 investment (\$75 x 12 months x 26 years), the employee can expect a monthly non-taxable benefit in retirement of \$415. And these monthly payments would be made until the beneficiary's death.

A coalition of unions at a city in southern California has worked with the city to establish an RMT. The trustees, composed of members from all the participating bargaining units, operate the plan and trust. They have set a distinct benefit level for each bargaining unit (general employees, administrative, and public safety), since the amount of contributions to the trust, set at three percent, varies depending upon the salary range of that unit. So there are three monthly benefit levels: \$175, \$395, and \$490, payable after five years of contributions for long-term employees. The trustees intend to implement an annual increase in the benefit level, which will generally apply each year to the new cadre of retirees of that year—so those who contribute longer will receive a higher monthly benefit.

A junior college in northern California has established a plan, funded by 1% mandatory employee contributions and a 1% employer match. Management and labor worked closely to implement the plan, and there is a board of trustees with

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representatives from both sides. The trustees will set the Standard Benefit Amount (SBA), with actuarial advice, and an employee with 20 years of employment with the college (and at least 5 years of contributory service) will receive a monthly payment of 100% of the SBA. There is a gradual reduction from 100% of the SBA for fewer years of service.

These examples illustrate one of the most attractive features of an RMT: the flexibility in structure and benefit levels. Like public sector defined benefit pension plans, where studies have shown that 75% of pension benefits paid comes from investment returns, RMTs have the potential to substantially increase the value of modest contributions to provide retirees with lifetime benefits for health care.

## FINANCING

RMTs offer a valuable benefit for groups willing to commit small amounts, all on a pre-tax basis, during active employment to save for post-retirement medical expenses. Contribution levels of established RMTs range from 1% to 11% of compensation. The value of accumulated sick and vacation leave may also be transferred to the employee's

credit in the RMT on a pre-tax basis if it is negotiated in the labor agreement for the entire bargaining unit.

## COMPARISON WITH INDIVIDUAL ACCOUNT PLANS

There are some insurance companies marketing individual account reimbursement plans in which each employee has an account from which to draw payments for medical expenses after retirement. There are significant drawbacks to the individual account model, chief among them being that the account balance often hits zero before the retiree's death. These individual accounts are similar to traditional defined contribution plans in that funds can be depleted during the life of the retiree. Also, the plan design and its investments are controlled by the commercial insurance company, rather than a municipality or an employee group. Furthermore, although advertised at minimal to zero administrative costs, there may be costs buried in the investment structure. Finally, the legal authority is unclear on the tax advantages in relation to individual participation elections, which some insurers offer.<sup>4</sup>

<sup>4</sup> See IRS Rev. Rul. 2005-24.

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## *Implementation*

**T**here is a great deal of flexibility in plan sponsorship and administration of RMTs. These plans may be implemented by public sector unions acting on their own, in partnership with their employer, or by the employer alone. They can cover all the employees of a public employer, be limited to certain classifications or bargaining units, or include participation

by several employers. The RMT can be sponsored by one jurisdiction alone or an association of jurisdictions, or federation of unions or employees.

The sponsoring parties select individuals to serve on a board of trustees, which makes decisions regarding plan design, investments, benefit distribution rules, and all other matters.

# Conclusion

**T**he nation has witnessed a period of steady increases in the cost of medical coverage, with an accompanying increase in the number of Americans without health insurance. The nation's demographics are making it more difficult to subsidize health coverage for the growing number of retirees. City and state budgets are under pressure from a variety of sources. As a result, public sector employees and retirees can no longer assume that state, county, or local government will continue offering benefits once taken for granted.

Although employers may use cutbacks in post-retirement health coverage to balance their budgets and avoid a significant GASB liability, NCPERS

believes RMTs are the better way to balance fiscal realities with the needs of both current employees and retirees.

Rather than turning our backs on retirees and rewarding their hard work and years of service with little or no health insurance cost support, responsible public sector employers should help employees save for future medical needs through an RMT that benefits both employees and employers.

This report offers an introduction to the purpose, operation, and benefits of an RMT. To learn more about this topic and the creation of an RMT, contact the individuals and organizations listed in the Additional Resources section on page 13.

# Frequently Asked Questions

**Q:** Who should read this report?

**A:** Public sector employers, pension plans and their administrators and trustees, and union officials who care about the rising costs of health care and the effect it is having on retirees.

**Q:** What benefits are available under an RMT?

**A:** There are a number of options from which an RMT administrator can choose. However, in general, an RMT would reimburse participants toward the cost of post-retirement health care expenses. Health care expenses are broadly defined and could include such benefits as these:

- out-of-pocket health care-related costs,
- health insurance premiums (including long-term care insurance),
- dental or vision care, hearing aid, and
- prescription drug expenses.

**Q:** Who gets RMTs benefits?

**A:** RMT benefits are paid to retired employees who participated in the RMT program during active employment. Also RMTs can be set up to provide survivor benefits.

**Q:** How much are RMT benefits?

**A:** RMT benefit amounts vary depending on a number of factors, including the following:

- the amount of contributions,
- the length of time contributions were made,
- investment income, and
- administrative expenses.

Once the trustees define these factors they can assign benefit levels.

**Q:** When do RMT benefits begin?

**A:** RMT benefits begin after participants have retired and have met the specific eligibility rules outlined in the RMT plan document.

**Q:** How long do RMT benefits last?

**A:** There are several options from which RMT trustees can choose. However, the distinguishing and most valuable aspect of RMTs is that they can be designed so that the benefits last for the life of the participant and any survivors who may be covered.

**Q:** Can individuals elect whether or not to participate in an RMT, like a cafeteria or 401(k) plan?

**A:** No. An entire eligible employee group or bargaining unit must elect to participate in an RMT to take advantage of all the tax benefits. However, if an employee accumulates sick leave, the bargaining unit may negotiate a distribution of all or part of that sick leave on retirement to an RMT. Then the sick leave cash-out would go to the RMT for the employee's benefit only.

**Q:** What are the tax advantages of RMTs?

**A:** There are three distinct tax advantages:

- Employee contributions are made with pre-tax money.
- The RMT itself accrues earnings on a non-taxable basis.
- The RMT benefits are tax free to the employee (unlike pension benefits, which are taxable).

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**Q:** What is the legal structure of an RMT?

**A:** RMT assets are held in a trust, legally separate from the employees and the employer. The trust is controlled and administered by a board of trustees, composed of employee and/or employer representatives. The board designs the RMT plan, selects a professional investment manager and investment vehicles, and decides on distribution options.

**Q:** Are RMTs regulated by federal law?

**A:** Yes, RMTs are regulated by federal law and may also come under state law, depending on the structure. In either case, the RMT trustees are charged with the fiduciary responsibility to administer the RMT for “the exclusive benefit” of the participating employees. If the trustees fail to do so, they are subject to civil and criminal penalties.

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# *Additional Resources*

**For more information about Retiree Medical Trusts contact:**

National Conference on Public Employee  
Retirement Systems  
444 North Capitol Street, NW, Suite 221  
Washington, DC 20001  
877-202-5706  
info@NCPERS.org  
www.NCPERS.org

Ms. B. Shana Saichek, Esq.  
Carney Badley Spellman, PS  
701 Fifth Avenue, Suite 3600  
Seattle, WA 98104  
800-551-4174  
saichek@carneylaw.com  
www.carneylaw.com  
(Currently based in Washington, DC, at 301-765-  
3346)

Mr. Edward H. Friend, F.S.A., F.C.A., E. A.  
EFI Actuaries  
1001 Connecticut Avenue, NW, Suite 315  
Washington, DC 20036  
202-785-4985  
edfriend@efi-actuaries.com  
www.efi-actuaries.com

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**National Conference on Public Employee Retirement Systems**

444 North Capitol St., NW  
Suite 221  
Washington, D.C. 20001  
[www.NCPERS.org](http://www.NCPERS.org)