

# NCPERS Legislative Conference January 28, 2019

Federal Legislative and Regulatory Update

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## The Stage

- ▶ President Trump
- ▶ Senate GOP Majority (53-47)
- ▶ House Democratic Majority (235-199)

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## Potential Area of Cooperation

- ▶ Infrastructure
  - Tax treatment of ownership of assets
  - National Infrastructure Development Bank

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## Infrastructure Investments

- ▶ H.R. 6276 (115<sup>th</sup>), Strengthening Pensions through Investment in Infrastructure Act
  - Board control (Rev. Rul. 57-128)
  - Arbitrage bonds
- ▶ Proposed Treasury-IRS regulations on arbitrage bonds

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## Infrastructure Investments

- ▶ Promote acquisition of public infrastructure
- ▶ Three approaches (at least):
  - Complete ownership
  - Complete ownership with intent to sell
  - LP or LLC (consortium-type structure)

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## Infrastructure Bank

- ▶ House Budget Chair John Yarmuth (D-KY)
- ▶ National Infrastructure Development Bank
- ▶ Some public pension plans through NCPERS have provided input to Yarmuth's staff

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## Infrastructure Bank

- ▶ Initial \$75 billion in Rebuild America Bonds
- ▶ 40-year maturity; must be held 10 years
- ▶ Interest of 200 basis points above 30-year Treasury bond
- ▶ Possibility of \$300 billion additional bonds

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## Messaging Bills

- ▶ Health Care
- ▶ Taxes

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## Health Care

- ▶ Medicare
  - For all at any age
  - For all at age 55
  - Optional buy-in at age 55
  - Optional buy-in at age 55 for first responders

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## Taxes

- ▶ State and local tax deduction (SALT)
- ▶ Corporate rates
- ▶ For first responders, enhancements to §402(l)
  - Increase and index \$3k
  - Include all public sector workers
  - Structural issues: direct payment; deduction rather than exclusion; surviving spouses

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## Social Security

- ▶ Mandatory Social Security for Newly-Hired Workers
- ▶ FICA Replacement Plans
- ▶ Government Pension Offset
- ▶ Windfall Elimination Provision (WEP)

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## WEP

- ▶ SS benefit is based on average monthly earnings and the following calculations:
  - ▶ 90% of first \$895 (WEP reduces 90% to 40%)
  - ▶ 32% of \$896 through \$5,397, plus
  - ▶ 15% of remainder
- ▶ Without WEP:  $\$895 \times 90\% \times 12 \text{ months} = \$9,666$
- ▶ With WEP :  $\$895 \times 40\% \times 12 \text{ months} = \$4,296$
- ▶ Difference of \$5,370 annually!

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## WEP/GPO Legislation

- ▶ S. 915 (Sen. Sherrod Brown, D-OH)
- ▶ H.R. 1205 (Rep. Rodney Davis, R-IL)
  - Repeal both WEP/GPO
  
- ▶ H.R. 6933 (Reps. Brady R-TX and Neal D-MA)
  - WEP only
  - Proportional formula (2025)
  - \$100 monthly rebate (2020)

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## Playing Defense

- ▶ Public Employee Pension Transparency Act (PEPTA)
  - Rep. Devin Nunes (R-CA)
  - Sen. Orrin Hatch (R-UT) retired
  
- ▶ Unrelated Business Income Tax (UBIT)
  
- ▶ Focus on the Senate

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## Employer Pick Up

- ▶ IRC Section 414(h)(2) allows governmental employers to pick up (i.e., pay for) their employees pension contribution with pre-tax dollars
- ▶ Widely used mechanism and key issue in collective bargaining agreements

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## Pick Up, cont.

### Background

- ▶ No regulations
- ▶ Rev. Rul. 2006-43
- ▶ No CODAs in pick up situation
- ▶ Cash or deferred arrangement = affects take home pay
- ▶ Requests to allow existing employees to elect between two benefit formulas with different employee contribution rates

### Tension

- ▶ Promoting retention of DB plans through flexibility
- ▶ Clear path to erode underlying DB benefits

### Legislation (115<sup>th</sup>)

- H.R. 2187
- H. Rept. 115-792
- H.R. 6757, §110

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## H. Rept. 115-792

The Committee recommends that Treasury-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..."

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## H.R. 6757, Family Savings Act

Amendment to IRC Section 414(h)(2):

...a 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 application of two alternative benefit formulas involving the same or different levels of employee contributions.

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## Regulatory Issues

- ▶ Normal Retirement Age
  - Proposed Rule, January 2016
- ▶ Definition of Government Plans
  - ANPRM, November 2011
- ▶ Pension Cost Allocation Rules

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## Normal Retirement Age Regulations

- ▶ Proposed rules released on 1/27/16
- ▶ Apply to plans that permit in-service distributions prior to age 62
- ▶ Additional safe harbors proposed for governmental plans
  - Age 60 and 5 years of service; Age 55 and 10 years of service; Rule of 80; 25+ years of service (with max. age)
  - For public safety: Age 50; Rule of 70 or more; 20+ years of service (with max. age)
- ▶ Final rules expected

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## Definition of Governmental Plan

- ANPRM released on 11/8/2011
- Facts and circumstances test
- Treasury Notice 2015-7 regarding inclusion of charter school employees in governmental plans
- Proposed rules expected

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## Pension Cost Allocation

- ▶ Potential for proposed rules from OMB
- ▶ States have cost allocation agreements with federal government for federally-salaried workers
- ▶ Issues have turned on employer pension contributions in excess of actuarially determined amount

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