



## Federal Legislative & Regulatory Wrap-up

#### Jeannine Markoe Raymond, NASRA Leigh Snell, NCTR

Joint Legislative & Regulatory Conference
February 27, 2017
Liaison Capitol Hill Hotel
Washington, DC



### New Congress/ Administration





#### Leading Issues

- Tax Reform
- Dodd-Frank Repeal
- Regulatory Freeze
- "Two for One" Rule
- State-Run Plans for Private Employees



#### Tax Reform

- U.S. House Ways and Means Committee taking lead
- Working off Republican Blueprint, which pledges to:
  - continue the current tax incentives for savings
  - consolidate and reform the multiple different retirement savings provisions in the current tax code to provide effective and efficient incentives for savings and investment
- Working groups formed to reach consensus on technical aspects, and Retirement Security is one of them
  - Reps. Buchanan (FL), Reichert (WA), Tiberi (OH), Roskam (IL) and Kelly (PA)
- Pensions historically eyed as revenue raiser in tax reform



#### Dodd-Frank Repeal

- Executive Order to revisit
- U.S. House Financial Services Committee Chair Jeb Hensarling (R-TX) is lead sponsor of Financial Choice Act, which would repeal much of Dodd-Frank, including the current funding mechanism for GASB.
- Hensarling recently authored a WSJ opinion piece and suggested federal agencies should:
  - Penalize government bond issuers that fail to disclose unfunded pension liabilities
  - Put an end to government accounting and solvency standards



## Regulatory Freeze/ "Two for One" Rule

- A number of pending regulations:
  - Proposed Normal Retirement Age regulations for governmental plans
  - ANPRM (advanced notice of proposed rulemaking) for definition of governmental plan
  - Guidance regarding OMB pension cost principles for federal grants and awards



## State/Local Secure Choice Plans

- CRA resolution to repeal safe harbor for state/local secure choice plans
- Business groups support repeal, citing concerns with "mismanagement of state pension funds" and "politically motivated investment and divestment schemes"
- State elected officials sharply oppose "unwarranted preemption of state innovation"
- AARP issues "Facts and Fallacies," clarifying private sector will manage funds and will not be used to bailout public plans or for political investments





## Issues that May Carry Over from Last Congress





# Public Employee Pension Transparency Act (PEPTA)

To amend the Internal Revenue Code of 1986 to provide for reporting and disclosure by State and local public employer retirement pension plans.

IN THE HOUSE OF REPRESENTATIVES

MARCH 21, 2016

Mr. NINGE (for himself, Mr. SPINKART, Mr. DENGAN of South Carolina, Mr. BOON, Mr. BONTA, Mr. MANULTY, and Mr. BUNGAN of South Carolina, Mr. Billowing bill, which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to provide for reporting and disclosure by State and local public employee retirement pension plans.

1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

3 NECTION I. SHORT TILE.

4 This Act may be cited as the "Public Employee Pension Transparency Act".

5 SEC. 2. FINDINGS.

7 The Congress finds the following:

(1) Pursuant to clauses 1 and 3 of section 8 of 9 article 1 of the Constitution of the United States.

- Would require costly/conflicting federal reporting requirements
- Plan sponsors that fail to follow correctly lose tax-exempt bond authority



#### Secure Annuities for Employee Retirement (SAFE) Act

- IST CONGENS

  S. 1270

  To second the horsest Revenue Code of 1800 to provide for refers of public and private pression plans, and the other preprints.

  IN THE SENATE OF THE UNITED STATES

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  A BILL

  To amend the Internal Revenue Code of 1986 to provide for referem of public and private perssion plans, and for other propose.

  1 Bis it enacted by the Senate and House of Representa2 time of the United States of America in Compress assembled,
  3 SECTION I. SHORT THILE AMENIMENT OF 1886 CODE

  TARK OF CONTENTS.

  5 (a) SHORT THILE—This Act may be cited as the
  6 "Secure Amenicas for Employee Retirement Act of 2013"
  7 or the "SAFE Retirement Act of 2013"

  8 (b) ALMENDENT OF 1986 CODE—Except as other
  9 wise expressly provided, whenever in this Act an amend10 ment or repeal is expressed in terms of an amendment.
- Introduced by Senate Finance

  Committee Chairman Hatch (R-UT)
- Annuity accumulation "DB alternative" plan for state and local governments
  - Does not address existing unfunded liabilities
  - Does not include survivor/disability
  - Does not address workforce management issues



# Persistent calls to tie public pension mandates to other legislation

"The fact that public pension debt helped spur the Puerto Rican debt crisis should serve as a warning of the devastating effects that can result from underfunded pension systems" – Rep. Nunes

"It would be beyond irresponsible to offer aid to Puerto Rico without taking at least some action to improve public pension reporting and transparency." — Sen. Hatch

"Any Puerto Rico rescue legislation passed by Congress must include provisions for better disclosures of pension liabilities by state and local governments." – Andrew Biggs, AEI



## SFC Chairman Hatch's Opening Statement Hearing on Multiemployer Pension Plans

Today we will hear testimony about how the design and funding of multiemployer plans led us to this point. Not surprisingly, I suspect we'll hear that it is easier to promise pensions than to fund them. We will hear that because of <a href="Iax rules">Iax rules</a> in the current system, there is a great temptation for plan managers to make <a href="unrealistic actuarial assumptions">unrealistic actuarial assumptions</a> and take on <a href="excessive investment risk">excessive investment risk</a>. And we will learn about <a href="disturbing parallels">disturbing parallels</a> between multiemployer pensions and the <a href="defined benefit">defined benefit</a> pension plans run by many state and local governments.



### Multiemployer Plan Legislation

- Continued conflation of state/local plans and multiemployer plans (particularly Central States pension Fund)
- First cuts approved under Multiemployer Pension Reform Act (MPRA)
- MPRA modifies ERISA and is not applicable to state/local plans

### Opposition to Federal Intervention

National Governors Association National Conference of State Legislatures The Council of State Governments National Association of Counties National League of Cities

International Ct National Association of National National Associat

June 16, 2014 Daniel M. Gallagher Commissioner
U.S. Securities and Exchange Commissie 100 F Street, NW Washington, DC 20549

Dear Commissioner Gallagher; VIA FACSIMILE On behalf of the national association on merion or one rottemen associations, and appointed officials and public retiyour recent remarks before the Muse Regulator Summit and to share salen meguator summer and to mark same financial reporting. In addition, we are arrianness representative and local governe as were as tree assess area recent governmental retire We understand the SEC's interest in obligations. However, your comme systemic, rather than individualized professionally managed and invests

payout of these funds, assuming ne Attached for your review is an ana 2014 facts regarding state and mu which better discloses the commit which because discusses the curring the decisions made by the Govern rejected alternative standards as You may not be aware of the maj retirement plans. Nearly every s their pension reserves and to en Recession. These changes have increased risk sharing and other lower cost of living adjustment employees, retirees, or both. reforms and has determined th of the financial crisis on the sp state-local budgets will eventu payment of the full annual red

National Association of Counties (NAC International Association of Fire Fighters U.S. Conference of Mayors (USCM National Education Association (N) National League of Cities (NLC National Association of Police Organizati International City/County Management Ass American Federation of State, County and Municip National Association of State Auditors Comptrollers Government Finance Officers Assoc International Public Management Association for National Public Employer Labor Relation National Council on Teacher Re National Conference of State Social Securi National Association of Government Defined Con National Conference on Public Employee National Association of State Retirem

April 15, 2015

The Honorable Mike Crapo Co-Chair, Committee on Finance Tax Reform Working Group on Savings & Investment United States Senate Washington, DC 20510

VIA ELECTRONIC MAIL: Savings@fir

Dear Co-Chairs Crapo and Brown:

On behalf of the national organization elected and appointed officials, publ in response to the request for public the important policy work before Saving & Investment, Our organi Working Group to ensure that ar investment continue to support invest, finance, and manage their public es

National Conference of State International Association of United States Conference Fraternal Order of National Association of National Education A National League of International City/County Many National Association of Police National Association of State Auditors Co American Federation of State, County International Public Management Associ Government Finance Offi National Conference of State Social National Conference on Public Empl National Council on Tea National Association of State Ref

December 11, 2015

VIA FACSIMILE: (202) 224-2499

The Honorable Mitch McConnell Majority Leader United States Senate Washington, DC 20510

Dear Majoriy Leader McConneil:

On behalf of the national organizations is elected officials, employees and retirement opposition to public pension requirement (S. 2381). These provisions are not limited mandate on all state and local governmen States and localities, and are conflicting,

The provisions are not germane to the u costs or improve retirement system fund Congress as stand-alone bills nor receiv many hearings pertaining to Puerto Ric

National Conference of State Legislatures (NCSL) National Course ence of State Legislatures (NUSL)
International Association of Fire Fighters (IAFF) National Association of Counties (NACo) National Association of Police Organizations (NAPO) United States Conference of Mayors (USCM) National Education Association (NEA)

National League of Cities (NLC)

American reneration of Leacuers (ALL)

International City/County Management Association (ICMA) International City/County Management Association (ICMA)

National Association of State Auditors Comptrollers and Treasurers (NASACT)

American Federation of County Management Association (ICMA) National Association of State Auditors Comptrollers and Treasurers (NASACT)

American Federation of State, County and Municipal Employees (NASACT)

Covernment Finance Officers Association (CFOA) Service Employees International Union (SEIU)

National Public Management Association for Human Resources (IPMA-HR)

Administratore (NICCCCA)

Ernational Public Management Association for Human Resources (IPMA-National Conference of State Social Security Administrators (NCSSSA) National Conference of State Social Security Administrators (NCSSSA)

National Conference on Public Employee Retirement Systems (NCSSSA)

National Connection Tanchar Rationamic (NCTR) National Association of State Retirement Administrators (NASRA)

March 14, 2016

The Honorable Paul Ryan Speaker of the House
U.S. House of Representatives Washington, D.C., 20515

Dear Mr. Speaker:

On behalf of the national organizations hand above, representing state and local governments, elected officials, public finance professionals, public employees and retirement systems. We are On behalf of the national organizations have above, representing state and local government, educated officials, public finance professionals, public employees and retirement systems, must be express our strong opposition to the Public Employee Pantion Transparency of the Public Employee Pantion Transparency Act and the Public Employee Pantion Transparency Act and the Public Pantion Pant saring to suppose our strong opposition to the Public Employee Parsion Transparacy Act (EEPTA, not yet raintroduced). This legislation creates a dangerous procedent with regard to federal and regulation of time and local softenments and we strongly urge you to omnote these (PEPTA, not yet reintroduced). This legislation creates a dangarous procedent with regard to find the introduced and regulation of state and local governments and we strongly urge you to oppose these provisions, and become a compositor of the legislation, and ensure its exclusion from any legislation. traction and regulation of state and local governments and we strongly urge you to oppose these under consideration.

The legislation and ensure in exclusion from any legislation and ensure in exclusion from any legislation

The proposal does not protect benefits, save tempayer dollars or improve retirement system funding to the contrary, it imposes federal instanded mandates in areas that are the fiscal responsibility of confiction, administratively burdensome and Contry Further.

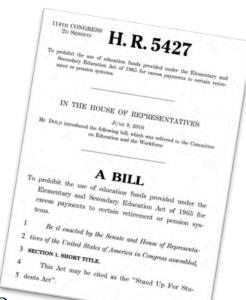
To the constrary, it imposes federal unfunded mandates in areas that are the fiscal responsibility of streamers to eliminate the har-exampt bonding authority of state and local governments.

The legislation not only violates the principles of federalism, but represents a fundamental lack of understanding regarding state and local government operations and financing, including The legislation not only violates the principles of federalism, but represent a fundamental understanding regarding state and local government operations and financing, including constraints already in place that require operations are stated to the require operations. understanding regarding state and local government operations and financing including governmental accounting rules and strict legal constraints already in place that require open financial reporting and processes. It also improve the fact that every state and counties locality governmental accounting rules and strict legal constraints already in place that require open financial reporting and processes. It also ignores the fact that every tithic and counties localities have recently made modifications to resulting financine. homeful attractions are back. For this latest financial reporting and processes. It also ignores the fact that every state and countless localities have recently made modifications to pension financing, benefits structures, or both. For the latest information on the financial condition of state and local governments and their retirement plans. have recently made modifications to pension financing, benefits structures, or both. For the latest plants use the following document: <u>Mate and Local Facts: 2016.</u>



## Stand Up for Students Act

- Stand-alone bill introduced by Rep. Dold (R-IL) to limit the use of Federal Title 1 funds for teacher pension costs
- Similar to provision almost passed as part of Every Student Succeeds Act (ESSA)
- Dold not reelected, but someone else could pick up where he left off





# Federal OMB regulations already restrict what can be charged to a federal grant or award

- Salaries and pension costs are specifically referenced
- Cannot charge federally-funded position more than and non-federal position
- Cost assigned to a given fiscal year must be funded in a timely manner
- Actuarial cost methods are allowable, but must be recognized by GAAP
- Proposed guidance expected from OMB, but likely subject to regulatory freeze



## Tax Treatment of Public Employee DB Contributions

- 414(h)(2) listed by JCT as a potential tax loophole that could raise revenue
- RR 2006-43 questions individual options/ elections that change employee contributions
- 8/7/15 PLR found individual member elections into differing benefit tiers with varying contribution levels an impermissible CODA (201532036)
- H.R. 205 (113th Congress)



### Infrastructure Investments



- Senate/House Offices
- U.S. Chamber of Commerce
- White House Infrastructure Initiative
- Infrastructure Investment Summit
- Bipartisan Policy Center Infrastructure Investment Council
- Coalition to Modernize American Infrastructure
- National Governors Association



# Mandatory Social Security

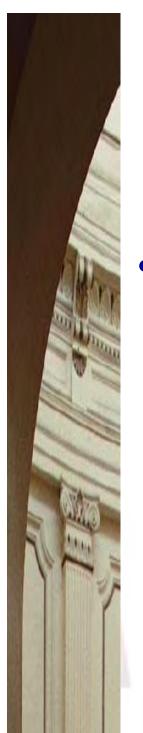
 Debt reduction commissions recommend for newly-hired employees after 2020

"Future bailout risk," simplification of benefit coordination cited

 Included in 2014 and 2016 CBO "Options" Report

 Included in BRT Roundtable proposal on SS and Medicare





### GPO/WEP

• Last year's sponsors: Brady (R-TX),

Neal (D-MA)

- Replace WEP with new formula
- Pulled from mark-up

114TH CONGRESS H.R. 711

#### IN THE HOUSE OF REPRESENTATIVES

Mr. Brady of Texas (for himself and Mr. NEal.) introduced the following bill: which was referred to the Committee on Ways and Means

#### A BILL

- To amend title II of the Social Security Act to repeal the windfall elimination provision and protect the retirement
- Be it enacted by the Senate and House of Representa-
- 2 tives of the United States of America in Congress assembled, 3 SECTION 1. SHORT TITLE.
- This Act may be cited as the "Equal Treatment of
- 5 Public Servants Act of 2015".



## Continued Interest by Market Regulators

- Securities and Exchange Commission
- Municipal Securities Rulemaking Board expanded jurisdiction under Dodd-Frank Act
- Financial Stability Oversight Council (FSOC) monitoring of markets and state/local economies
- Treasury Office of State and Local Finance
- U.S. Census Bureau







#### Normal Retirement Age Regulations

- Proposed rules released on 1/27/16
- Apply to plans that permit inservice distributions prior to age 62
- Additional safe harbors proposed for governmental plans





## Definition of Governmental Plan

- ANPRM released on 11/8/2011
- Town hall meetings, phone forums, public comment period and IRS hearing
- Notice on 2015-07 regarding inclusion of charter schools in governmental plans
- Proposed rules expected



### Educating Federal Officials

- Considerable public pension beneficiaries and benefit distributions in each congressional district
- Public plan issues are not systemic; differing fiscal and legal frameworks defy a one-size-fits-all solution
- Every state has recently adopted <u>tailored</u> modifications to pension financing and/or benefits
- GASB recently completed a multi-year process of reviewing and revising pension accounting standards appropriate for state and local governments
- Public pension disclosures are public; online database already exists
- Proposed Federal mandates do NOT lower costs, protect benefits or improve pension financing; strongly opposed by stakeholders



## **QUESTIONS?**