THE NCPERS MONITOR
The Latest in Legislative News
August 2024

NCPERS Executive Director's Corner

Mid-year Member Update from NCPERS: New Resources for Public Pension Professionals

By Hank Kim, Executive Director and Counsel, NCPERS

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Reflecting back on the first half of this busy year, I am extremely proud of how much NCPERS has accomplished so far and excited about how much we have grown in 2024. We have added several new hires to our headquarters staff, increasing our bandwidth for member programs. This mid-year point offers the chance to highlight important activities to date and our big plans for the remainder of 2024. Please make sure your organization is taking advantage of these resources and services we're providing the community.

2024 ACE Hits New Highs

Thank you for making our Annual Conference & Exhibition (ACE) in Seattle such a resounding success! This year's conference saw the highest participation by pension plan staff and trustees in the last five years. The program featured more than 70 plan leaders and industry experts sharing their valuable perspectives on top-of-mind issues. View our upcoming conferences to find your next opportunity to learn from and connect with members of the public pension community.

Interested in speaking at an upcoming event? Be sure to submit a speaker proposal for our upcoming Public Safety Conference by Monday, August 5th!

New Roundtable for Member Services Leads

We launched another new Pension Professional Roundtable, this one for directors of Member Services at pension plans. Over 60 pension plans attended these Roundtable calls in April and July, sharing their day-to-day challenges and solutions with their peers. Sign up here to participate in our pension fund roundtables for CEOs, CIOs, Communications, HR, and Member Services staff. Also, if there is a class of fund professionals who would benefit from having their own Roundtable, please email me. We're always open to exploring ways to support our members!

NCPERS Research Delivering Fresh Insights

Our research shines a light on the current state of public pensions, and several new studies were released in the first half of the year. Our *2024 Public Retirement System Study*, released in January, explores pension funds' fiscal condition and their fiscal and operational integrity. Access the member-only dashboard to see how your plan stacks up.

Our newest study *The Hidden Costs of Pension Reforms: Rising Income Inequality, Lagging Economic Growth*, finds that policies that reduce pension benefits or promote transitions to defined contribution plans, which are usually implemented to save money, may end up costing more due to the dynamic interrelationship between pension reforms, income inequality, the economy, and market returns. Learn more about the key findings at our 11th annual Public Pension Funding Forum, held August 18-20 in Boston.

We are currently analyzing data from the more than 150 funds that participated in the 2024 Public Pension Compensation Survey and expect to release our most comprehensive dataset yet on public pension professional salaries and benefits in September. Participating funds will receive free access to the in-depth survey data to help them make informed decisions about compensation, benefits, and hiring strategies. Pension funds that did not participate will still be able to purchase the report for $2,500.

Educational Webinar Series

The popularity of our Center for Online Learning has encouraged us to expand our webinar series this year with more frequent events and a broader range of topics. In the just the last few months we have provided webinars to our members on key proxy votes to watch, how DEI policies can impact recruitment and retention, and new research exploring how rising income inequality impacts pension reform and GDP growth. You can find all of our past webinar recordings at the NCPERS Center for Online Learning.

With education at the core of our mission and Hunter Bryant, our new Education Manager, expanding our capacities, you will find a continued emphasis on virtual learning opportunities in the coming months.

NCPERS Resource: Best Governance Practices for Public Retirement Systems

Earlier this year, NCPERS released a newly revised version of Best Governance Practices for Public Retirement Systems. This popular resource can provide plan leaders with a better understanding of governance documents, policies, strategic planning, and many other areas of responsibility.

Developed in collaboration with Segal Marco Advisors, contributing author Julian Regan talked with NCPERS about the purpose of this guide, common governance-related challenges, and best practices for public retirement systems to consider.

Legislative Recap

Most state legislatures are winding down or finished passing legislation for this session. In November, the election and pre-filing will kick off the next round of activity, of course, both nationally and at the state level.

This current pause is a good time for members to assess what's happened to date in the legislative arena. See our 2024 Legislative Summary for the enacted legislation from calendar year 2024 that relates to pension plans and retirement systems. On this national map, states with darker blue had more pension-related activity this year. Simply click a state and then scroll down the page to see a list of enacted legislation from the 2024 session relevant to pension issues, bill titles, and links to the language.

As always, NCPERS will keep its members updated on any legislative activity impacting pension plans over the rest of 2024.

What's Next?

There's plenty more on the horizon! Later this month, we're heading to Boston for the Public Pension Funding Forum, where pension executives, industry leaders, and academics will highlight the latest research and case studies on emerging funding solutions.

In late September, we're looking forward to bringing together HR professionals in Denver for three days of networking, peer-to-peer learning, and hands-on training with industry experts during the Public Pension HR Summit. This one-of-a-kind event will equip you with the knowledge and resources needed to navigate the complexities of public sector HR. Be sure to register by September 2nd to secure the discounted early-bird rates!

We're also gearing up for the Public Safety Conference, held October 27-30 in Palm Springs, and the pre-conference NCPERS University events—the Program for Advanced Trustee Studies (PATS) and NCPERS Accredited Fiduciary (NAF) program.

Outside of our educational events, you can always find the latest research, updates on legislative and legal issues, insights into investment trends, and much more in our publications or on our blog.

Stay tuned for updates in the coming months highlighting additional opportunities to take advantage of the many resources from NCPERS. I encourage you to reach out to our membership team at membership@ncpers.org with any questions. ◆

Court Rules LACERA Can Oversee Its Own Personnel Decisions to Fulfill Fiduciary Duties

The decision from the California 2nd District Court of Appeals may be useful to other systems in supporting their independent fiduciary authority and responsibility over personnel as a key element of system administration.

By: Lizzy Lees, Director of Communications, NCPERS

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Nearly 60 percent of public pensions are struggling to attract and retain top talent, according to NCPERS 2023 Public Pension Compensation Survey. Compensation can certainly play a role, as plans are often unable to compete with private sector salaries, but some funds are struggling with the added challenge of not having oversight of their staff's employment classifications and salaries.

Los Angeles County Employees Retirement Association (LACERA) was recently facing these limitations until a June 2024 ruling from the California 2nd District Court of Appeals provided the fund with the authority to manage its personnel decisions in order to effectively fulfill its fiduciary duties.

NCPERS spoke with LACERA CEO Santos Kreimann about what led up the recent court ruling and what it means for the nearly $80 billion AUM fund going forward.

Historically, what kinds of challenges has LACERA had with recruitment and retention?

The LACERA Boards and the fund's executive leadership regularly assess staffing needs to meet the changing benefits and investment environment in which LACERA performs its fiduciary duty to our 190,000 members. LACERA's challenge, as with all public pension systems, is to build and evolve the right team with the right skills to fulfill the fund's fiduciary duty. The organizational chart that worked in the past may not be the best personnel structure for the future. The job market in which we recruit for the best talent also changes and has become more fluid and competitive. When position changes are required – such as new job classifications, a change in salary ranges for existing staff, or a change in the number of existing positions – and the Boards in their prudent judgment approve them as necessary for the required work of the association, LACERA must be able to move forward promptly to obtain final approval from the County of Los Angeles and begin recruiting.

LACERA values its relationship with the County as plan sponsor; however, LACERA's Boards must have the ability to make fiduciary decisions as to the personnel needs of the organization. Delay impacts LACERA's ability to serve members.

What led up to the 2021 lawsuit, *Los Angeles County Employees Retirement Association v. County of Los Angeles*, where LACERA sought to regain its right to manage the salaries and employment classifications of its staff?

In 2016 and 2017, LACERA conducted comprehensive personnel reviews, identifying the need for several new positions and salary adjustments to meet its strategic priorities and uphold its fiduciary duties to its members and beneficiaries. In 2018 and 2021, the County Board of Supervisors (BOS) ignored many years of its own precedent of implementing such changes without hesitation, and instead refused to adopt the necessary changes to the salary ordinance effectively blocking LACERA from implementing its personnel decisions. The County cited a decades-old case from a different Appellate District, claiming it provided them the authority to block the new classifications and salaries adopted by LACERA's independent fiduciary boards.

LACERA attempted to negotiate with the County to resolve the dispute, but these efforts were ultimately unsuccessful. After the County's 2021 action, LACERA filed a petition for writ of mandate, directing the BOS to comply with the law and adopt the LACERA approved salary ordinance. The trial court was bound to follow the decades-old case and ruled in favor of the County, but LACERA appealed the decision, which has resulted in the recent favorable ruling by the 2nd District. The opinion may be found here.

What does this ruling mean for your organization going forward?

The recent decision recognizes that, under the California Constitution and other governing law and trust principles, LACERA's independent fiduciary Boards have the authority to make final decisions as to necessary classifications and salaries, free of political influence by nonfiduciaries. The decision means that, going forward, LACERA's Boards will be able to make personnel decisions when needed and implement them promptly for the benefit of members without delay or change by the Board of Supervisors or County personnel.

What could this decision potentially mean for other public pensions across the country?

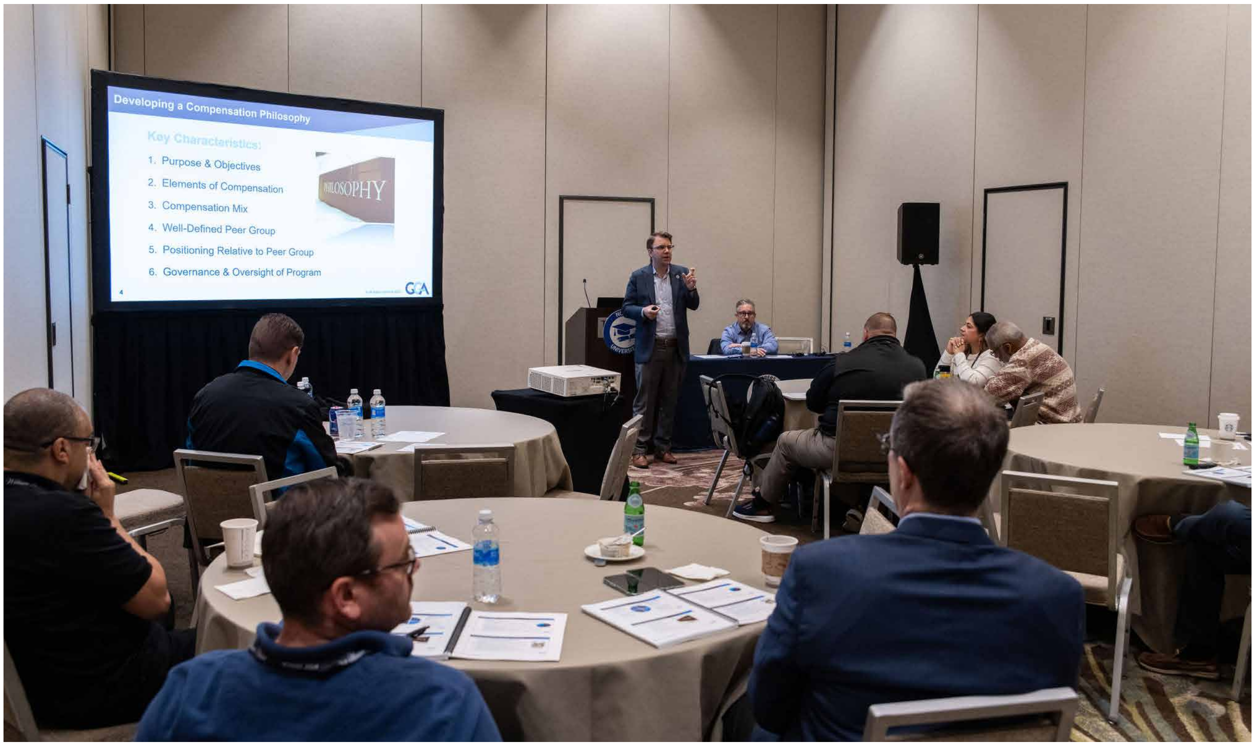
Fiduciary and trust law are similar across the country. The decision may be useful to other systems in supporting their independent fiduciary authority and responsibility over personnel as a key element of system administration. How can interested candidates apply for open roles at LACERA?

LACERA is an award-winning workplace with career opportunities for professionals in areas ranging from investments to human resources. Open LACERA positions may always be found at www.lacera.com/who-we-are/careers. ◆

Recognizing the July 2024 Class of NCPERS Accredited Fiduciaries

NCPERS would like to recognize the 13 public pension trustees and staff who most recently earned their Accredited Fiduciary designation, demonstrating their commitment to and knowledge of plan governance best practices.

By: Lizzy Lees, Director of Communications, NCPERS



The NCPERS Accredited Fiduciary (NAF) Program is an accreditation program specifically designed and tailored for individuals involved in public pension governance. Divided into two parts, NAF 1&2: Governance & Finance and NAF 3&4: Risk Management & Human Capital, trustees and staff who complete the program have the opportunity to earn their Accredited Fiduciary (AF) designation, signaling their expertise in these critical areas.

NAF is held twice per year (in the spring and the fall) allowing for small class sizes where participants can freely discuss challenges and opportunities while diving into best practices for plan governance, oversight, and administration. The fall 2024 program will be held October 26-27 in Palm Springs, immediately before the Public Safety Conference.

NAF participants who complete the program—covering governance and the board's role; investment and finance; legal, risk management, and communication; and human capital—are eligible to earn their Accredited Fiduciary designation. In order to do so, they must first demonstrate mastery of the content through an exam.

NCPERS would like to recognize the 13 public pension trustees and staff who most recently passed the exam to earn their AF designation, demonstrating their commitment to and knowledge of plan governance best practices:

- Edward Bean, Somerville Retirement Board
- Angela Budde, City of Key West General Pension Plan
- Louis Fiorino, San Bernardino County Employees' Retirement Association (SBCERA)
- Danny Gregg, District of Columbia Retirement Board
- Donald Kendig, Fresno County Employees Retirement Association
- Chad King, Louisiana Municipal Police Employees' Retirement System
- Everett Robbins, Anchorage Police & Fire Retirement System
- Anthony Ross, City of Austin Employees' Retirement System (COAERS)
- Diana Thomas, Austin Police Retirement System
- James Thompson, Denver Employees Retirement Plan (DERP)
- Grant Walker, Prince George's County Fire Pension Fund
- Belinda Weaver, Austin Fire Fighters Relief & Retirement Fund
- Lina Zapata, City of Sunrise General Employees Retirement Plan

NAF is part of NCPERS University, a suite of recurring educational programs tailored to the needs of trustees at each level of their journey. NAF is intended for trustees and public pension administrators with at least two years of experience. Learn more about the NAF Program and enroll in the fall 2024 class to start earning your Accredited Fiduciary designation. ◆

Defined Benefit Plan Court Rulings: NYC Pension Fossil Fuel Divestment Case Dismissed

By: Tony Roda & Kimber Y. Brewer, Williams & Jensen

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On June 1, 2020, the U.S. Supreme Court dismissed *Thole v. U.S. Bank* in a 5-4 opinion, holding that defined benefit (DB) plan participants do not have proper authority under the law to bring a breach of fiduciary duty claim where the participants do not have a "concrete" financial stake in the lawsuit.

Thole involved an ERISA plan, not a public pension plan governed by the federal Internal Revenue Code and applicable state and local law. However, on July 3, 2024, the New York State Supreme Court dismissed *Wong v. New York City Employees' Retirement System* for lack of standing, thereby providing a valuable example of how *Thole* may find practical application to public pension plans in state courts.

To establish standing, a plaintiff generally must show that the defendant's actions have caused the plaintiff to suffer a specific loss or harm to an extent requiring judicial intervention. In *Thole*, the plaintiffs brought a class action lawsuit under ERISA against several parties, including U.S. Bank, for allegedly mismanaging the DB plan in which they are participants. In this case, the plaintiffs needed to show that they suffered a concrete injury as a result of the defendants' purportedly inappropriate investment decisions, presently or in the future.

A crucial factor impacting the Court's decision was that the plan in question was not a defined contribution plan (DC) or a trust, but instead was a DB plan. The overall value of the payments distributed to participants by a DC plan or private trust typically fluctuate in direct relation to investment decisions made by the fiduciaries. Conversely, in general, participants in a DB plan receive a fixed distribution for life that does not change despite successful or ineffective investment choices.

Applied to the circumstances in *Thole*, the pension plan participants were not at risk of any current or future financial loss as a result of any alleged mismanagement on the plan fiduciary's part because they would receive the same monthly pension payments regardless of the litigation's outcome. In short, the plaintiffs were unable to show an adequate financial stake beyond their ERISA statutory right to bring a claim.

In *Wong*, the pension plans at issue were also DB plans and the plaintiffs made several standing arguments analogous to those in *Thole*. In this era of full-throated attacks on any decisions using environmental, social, or governance (ESG) factors in investment decisions, the underlying claims made by the plaintiffs were that the fiduciaries who made the investment decisions for the three New York City pension funds – the New York City Employees Retirement System, the Teachers' Retirement System of the City of New York, and the Board of Education Retirement System of New York – breached their fiduciary duties of loyalty and prudence to plan participants by divesting from oil and gas industry equities.

Primarily relying on *Thole*, the New York State Supreme Court opinion held that the *Wong* plaintiffs were not at risk of current or future monetary loss due to alleged mismanagement because they are similarly entitled to a fixed monthly DB distribution. As such, the plaintiffs in *Wong* also were unable to establish the requisite concrete loss or injury.

The *Wong* plaintiffs presented arguments to distinguish their circumstances from *Thole* in order to establish standing, but these arguments failed. Although state courts are not required to comply with federal standing requirements, New York state law has an equivalent requirement, and *Wong* did not meet that standard. Also, the New York State Supreme Court did not apply trust law to *Wong* for the same reasons as *Thole*, i.e., DB pension distributions are less like disbursements to trust beneficiaries and more like a contract. It dismissed the remaining arguments for being speculative, including that defendants would be able to avoid judicial review if the plaintiffs were not granted standing by this specific court in this lawsuit. Finally, a DB plan's theoretical inability to fulfill its payment obligations was found equally insufficient to establish a legal injury.

As I've mentioned in prior articles, ESG will continue to play out in the courts, in the halls of Congress, and in the Executive Branch agencies for years to come. The New York lawsuit at its core was motivated by anti-ESG thinking, but fiduciary breach suits are nothing new to the judicial system. I expect to see more cases in this vein brought in the state court system in the next few years, despite the strong rulings on lack of standing in the DB context thus far. ◆

Tony Roda *is a partner at the Washington, D.C. law and lobbying firm* ***Williams & Jensen****, where he specializes in legislative, regulatory, and fiduciary matters affecting state and local pension plans. He represents the National Conference on Public Employee Retirement Systems and state-wide, county, and municipal pension plans in California, Colorado, Georgia, Kentucky, Ohio, Tennessee, and Texas. Tony has an undergraduate degree in government and politics from the University of Maryland, J.D. from the Catholic University of America, and LL.M (tax law) from the Georgetown University Law Center.*

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Worthwhile Canadian Initiative?

By: Neil Hrab

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"Worthwhile Canadian Initiative" was once, with tongue firmly in cheek, selected by the *New Republic* magazine in an informal contest as the most boring headline imaginable. The recent news that Canada's federal government has officially set itself a goal of "Encouraging Pension Funds to Invest in Canada" might be similarly greeted by deep yawns south of the border.

However, the broader issues raised by this decision will be of more than slight interest to American defined benefit (DB) plans and their stakeholders.

This effort will be brought to life through an official working group headed by a highly-respected former Bank of Canada governor, Stephen Poloz (equivalent to a US Federal Reserve chief) and aided by the federal Canadian Ministry of Finance. In typical understated Canadian style, it will likely rely more on private meetings and written submissions to gather input than large-scale public hearings.

The working group's goal is, as summarized by the government, to "explore how to catalyze greater domestic investment opportunities for Canadian pension funds. This working group will identify priority investment opportunities that will grow Canadians' pension savings – that meet Canadian pension plans' fiduciary and actuarial responsibility, spur innovation, and drive economic growth."

To put this into the American political vernacular, it sounds as if the Canadian government believes it can separate "winners and losers" when it comes to domestic investment opportunities, and wants to try to steer the pensions accordingly.

This development may come as a surprise to informed American ears. Haven't many of the large Canadian pensions for years been attributing a good degree of their consistent success in generating steady returns to the fact that they are run at arms-length from pressures coming from elected officials, or other self-interested parties?

Hasn't that long been part of the Canadian pensions' "secret sauce" – that their leaders and managers answer for the success or failure of their strategies to independent boards of directors, allowing the plans to orient themselves to making optimal asset allocations based on their projected liabilities?

What happens to that successful formula if the large Canadian pensions become answerable in some way for their investment mix to distant bureaucrats working in Ottawa, Canada's capital?

With a timely paper, the reigning academic authority on Canada's pensions, Keith Ambachtsheer has, with help from two colleagues, answered this question in precise terms.

To sum up, Ambachtsheer's paper makes the case that if the arms'-length character of the Canadian pension plans' operations and decision-making is undermined through government-directed investments, this would "compromise existing governance functions" and "expose pension plan members to potential financial losses."

The paper goes on to argue that the government would be wiser to try to foster more pension investment in the domestic market by helping these pools of capital to become more active investors in cash-generative parts of Canada's infrastructure that are currently out of the pensions' reach for a variety of reasons. This would include the country's major airports, for example.

Ambachtsheer's paper subtly makes another crucial point that Canada's government may want to consider while it awaits the working group's findings. As his paper notes in passing, the large Canadian pensions collectively serve the interests of "millions" of individuals by investing their retirement savings.

The implied warning to elected officials in the Ambachtsheer paper could be taken to mean something like: *Tread carefully here, because there are far more people watching than you may think. Especially if they stand to lose money because of government trying to "fix" something that isn't broken*.

Interestingly, shortly after the paper's appearance, Stephen Poloz, the government-announced working group's head, emphasized publicly that he is more focused on achievable and "actionable ideas" rather than proposing major changes to how the pensions currently invest at home.

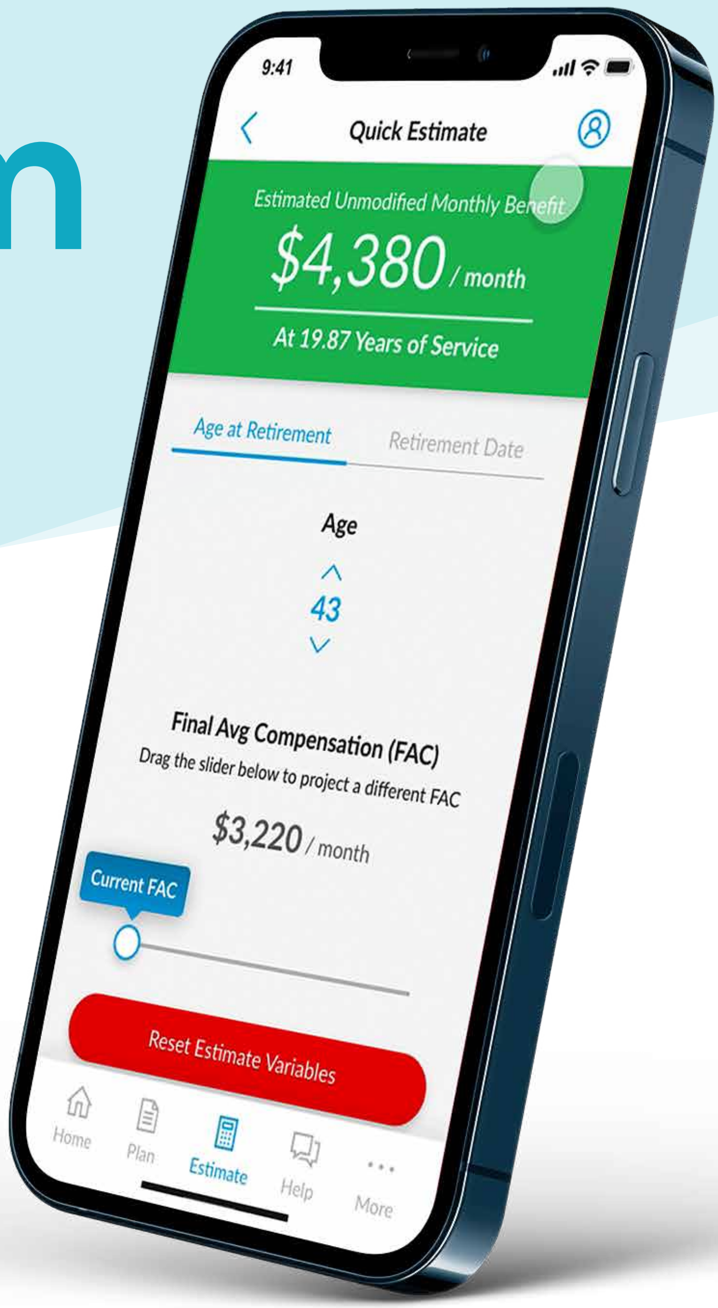
This could be taken to mean Poloz is more likely to focus in his final report on what government can do to make domestic investing more attractive and profitable for the pensions, rather than how the pensions can be muscled into following government investment diktats that could prove costly to their respective memberships.

One expression that Canadian and US politics share is that of "the third rail," in reference to policy proposals which are so controversial as to be absolutely untouchable – like the dangerous electrified third rail in a railway line.

As the government reviews Keith Ambachtsheer's paper, it may come to realize it owes him a debt of thanks. In careful and nuanced language, he's reminded elected officials to be careful and not get singed — or worse — by carelessly playing on the pension third rail. ◆

Neil Hrab worked for more than 12 years in the Canadian pension sector. This piece is written in a purely personal capacity.

NCPERS PensionX Digital Platform



NCPERS has partnered with Digital Deployment to offer its members a **10% DISCOUNT** on PensionX, the premier digital platform that securely enables pensions to engage with active and retired participants via a mobile self-service app and portal.

NCPERS 1941 | pensionX

Learn more about this new NCPERS member benefit at ncpers.org/pensionx

Oklahoma Judge Permanently Blocks Enforcement of Controversial Anti-ESG Law

Oklahoma District Court Judge Sheila Stinson issued a permanent injunction against enforcement of a controversial anti-ESG law banning public pension funds from doing business with financial firms said to be hostile to the oil and gas industry.

READ MORE *Source: Pensions & Investments*

NYC Pension Adopts 'First in Nation' Guidelines for Private Real Estate Investments

The standards were developed by the Office of the New York City Comptroller, which manages the investments of New York City pension funds, as well as For the Long Term, a nonprofit organization which advises treasurers, comptrollers, controllers and auditors at pension funds across the country.

READ MORE *Source: Chief Investment Officer*

Omaha, Nebraska Teacher Pension Fund Facing $1 Billion Shortfall; State Takeover Looms

Omaha Public Schools, the largest school district in Nebraska, is less than 50 days from handing over management of its pension fund to the state. But a new state audit widened the scope of problems Nebraska could inherit from the Omaha School Employees Retirement System, leaders of the state retirement system were told.

READ MORE *Source: Nebraska Examiner*

Should All Colorado Substitute Teachers Be Members of PERA? The Question is Headed to Court.

A group of five Colorado school districts has turned to the courts to fight a new policy that would allow substitute teachers they hire through outside staffing agencies to benefit from the state's retirement system. The policy, school districts say, could cost them millions of dollars worth of retirement contributions for substitutes and make the already difficult task of finding enough subs to cover classrooms even harder.

READ MORE *Source: The Colorado Sun*

Don't Lump Us In' — Ohio Police Reject GOP's Pension System Overhaul Due to Teachers' Controversy

Ohio police officers are urging lawmakers not to punish them and the rest of the retirees for the controversy going on inside the teachers' retirement pension fund. Statehouse Republicans proposed combining all five public systems to cut costs and stop alleged corruption.

READ MORE *Source: News 5 Cleveland*

Led by Texas Teachers, Pension Funds Press Hedge Funds to Use Cash Hurdles with Fees

Institutional investors, including some of the largest pension funds, are calling on hedge funds to adopt cash hurdles in their incentive fee arrangements as a best practice standard for the industry, arguing that hedge funds are collecting "significant incentive fees based solely on skill-less returns generated from short rebate, securities lending, unencumbered cash."

READ MORE *Source: Pensions & Investments*

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UPCOMING EVENTS

August

Public Pension Funding Forum

August 18-20
Boston, MA

September

Public Pension HR Summit

September 24-26
Denver, CO

October

NCPERS Accredited Fiduciary (NAF) Program

October 26–27
Palm Springs, CA

Program for Advanced Trustee Studies (PATS)

October 26–27
Palm Springs, CA

Public Safety Conference

October 27-30
Palm Springs, CA

View all upcoming NCPERS conferences at www.ncpers.org/future-conferences.

The Voice for Public Pensions

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