National Conference of State Legislatures (NCSL)
National Association of Counties (NACo)
International City/County Management Association (ICMA)
National Association of State Treasurers (NAST)
Government Finance Officers Association (GFOA)
National Association of State Auditors, Comptrollers and Treasurers (NASACT)
International Association of Fire Fighters (IAFF)
National Association of Police Organizations (NAPO)
National Public Pension Coalition (NPPC)
National Council on Teacher Retirement (NCTR)
National Conference of Public Employee Retirement Systems (NCPERS)
National Association of Government Defined Contribution Administrators (NAGDCA)
National Association of State Retirement Administrators (NASRA)

November 6, 2023

By Electronic Mail

Carol Weiser
Benefits Tax Counsel, Office of Tax Policy
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Re: Notice 2023-62 and Further Guidance on SECURE 2.0 for Governmental Plans

Dear Ms. Weiser:

On behalf of the national organizations listed above, representing state and local governments and their elected officials, finance officers, retirement plans and employees, we are writing regarding guidance surrounding the "SECURE 2.0" retirement security provisions enacted in P.L. 117-328. Most notably, we are grateful for the recent announcement in Notice 2023-62 of a two-year implementation delay of Section 603 of SECURE 2.0 pertaining to the new Roth requirements for catch-up contributions. We appreciate the assistance that Treasury and IRS have historically provided governmental plans with regard to implementing federal retirement-related legislation and regulations. In particular, there has been long-standing recognition of the state and local statutory and regulatory governance structures in place for public retirement plans, which are not preempted by or subject to the Employee Retirement Income Security Act (ERISA) like those in other sectors. We strongly urge Treasury and IRS to again acknowledge and respect these unique legal constructs when issuing further guidance surrounding SECURE 2.0 for governmental plans.

First, the implementation delay of Section 603 of SECURE 2.0 will be extremely helpful for the many governmental plans that may need significant lead time in order to enact statutory changes surrounding the new law's requirements. Among other things this could include: i) meeting legislative bodies' pertinent filing deadlines; ii) securing passage by the legislative bodies with the authority to amend the plan; iii) acquiring final approval by the applicable executive; and iv) finalizing implementation by the affected plans. Further, some state legislatures meet only biennially; others require plan amendments, once passed, to receive a fiscal impact report and then obtain approval in a subsequent legislative session; and many local governmental plan provisions are subject to collective bargaining agreements that may also take time to be modified, where necessary.

Consequently, Treasury and IRS have long acknowledged that, unlike other plans, governmental plan provisions that may require modifications in order to be in compliance with new Federal requirements are often embodied in state and/or local statutes and may therefore require additional time to be adopted. In addition, Treasury-IRS have recognized the unique challenges posed by changes to governmental retirement plans given the constitutional protections provided to benefits under both state and federal law. Therefore, we respectfully request that, as is typically the case for governmental plans, the two-year delay for such plans follow the next regular legislative session of the legislative body with the authority to amend the plan.

Second, we also urge Treasury and IRS, when promulgating further regulations for governmental plans, to keep in mind their exemption from ERISA and many sections of the Internal Revenue Code, as well as their coverage under state and local statutes. Guidance should not run contrary to these exclusions or fail to acknowledge the governing statutes and definitions in place at the state and local levels of government. For example, with regard to the new catch-up contributions, we ask that Treasury and IRS honor reasonable, good faith compliance with the definition of compensation that is used under the terms of the plan and/or applicable state and local statutes and regulations. Similarly, Treasury and IRS have and should continue to recognize that eligibility rules for participation in governmental plans are enshrined in state and local statutes and Congress specifically excluded state and local government retirement plans from the participation requirements of IRC Code Section 410.

Thank you for your time and consideration. We would greatly appreciate the opportunity to meet with you to discuss these matters further. Please feel free to contact our organizations' representatives below:

Molly Ramsdell, NCSL, molly.ramsdell@ncsl.org, 202-413-1379
Brian Wanko, NCSL, brian.wanko@ncsl.org, 202-624-8197
Paige Mellerio, NACo, pmellerio@naco.org, 202-942-4272
Amber Snowden, ICMA, asnowden@icma.org, 202-460-2280
Shaun Snyder, NAST, shaun@statetreasurers.org, 202-744-6663
Michael Belarmino, GFOA, mbelarmino@gfoa.org, 202-393-8024
Cornelia Chebinou, NASACT, cchebinou@nasact.org, 202-989-6801
Andrea Edmiston, NAPO, aedmiston@napo.org, 703-549-0775
Kendal Killian, NPPC, kkillian@truthaboutpensions.org,
Leigh Snell, NCTR, leigh@nctr.org, 540-333-1015
Hank Kim, NCPERS, hank@ncpers.org, 202-601-2443
Matt Petersen, NAGDCA, mpetersen@nagdca.org, 859-469-5789
Jeannine Markoe Raymond, NASRA, jeannine@nasra.org, 202-624-1417

Cc: Rachel Levy, Associate Chief Counsel
Helen Morrison, Deputy Benefits Tax Counsel
William Evans, Attorney-Advisor