# GOVERNOR CUOMO'S NEW YORK STATE PUBLIC SECTOR PENSION SYSTEM PENSION PROPOSALS AND THE NEW YORK STATE'S RETIREMENT INCOME SECURITY CRISES

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## INTRODUCTION: GOVERNOR CUOMO'S PENSION PROPOSAL AND THE MISUNDERSTOOD BATTLE OVER PUBLIC PENSIONS

Since the financial crises of 2008, public employee pensions all over the nation have become underfunded and come under attack. Concern about public employee pensions became center stage as state budgets faced higher pension costs just when the recession hammered state tax revenues. Pension liabilities increased unexpectedly as many more public employees were laid off and forced to retire at the same time the financial returns to the pension funds fell.[1]

Despite the increase in annual costs, public employee pension benefits are one of the best-funded functions of state and local government. Pension liabilities are pre-funded so that investment earnings pay a bulk of the benefits instead of tax revenue.[2] This form of advance funding contrasts starkly to how other predictable, long-term government liabilities—such as the judicial system and maintaining traffic lights—are funded.[3] The ironic result of the pre-funding method is that when the ratio of pension liabilities to pension fund assets falls below 100 percent, pension liabilities are deemed underfunded when other long-term liabilities of government have no assets at all to outweigh the liabilities.[4]

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[1] As of the third quarter 2011 (the most recently available data), state and local employee retirement funds remain 18.5 percent below their peak value of $3.3 trillion in the third quarter of 2007. BD. OF GOVERNORS OF THE FED. RESERVE SYS., FLOW OF FUNDS ACCOUNTS OF THE U.S.: FLOWS AND OUTSTANDINGS THIRD QUARTER 2011, at 79 tbl. L.119 (2011) [hereinafter FLOW OF FUNDS].

[2] *See* E. J. McMahon, *A $205 Billion Bomb: Another NY Liability Newly Visible*, N.Y. POST, Oct. 13, 2010, http://www.nypost.com/p/news/opinion/opedcolumnists/billion_bomb_L3ANNgFReIwt73QnxKucyI. Most people do not realize that because the New York State Common Retirement fund owns corporate equities, bonds, government securities, private equity, real estate, and other assets, the investment returns swamp tax revenue as the way taxpayers pay public employee pension benefits. Income flowing from investment returns is greater than income flows from tax revenue. THOMAS P. DINAPOLI, N.Y. STATE COMPTROLLER, STATE OF NEW YORK: COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR FISCAL YEAR ENDED MARCH 31, 2011, at 31 (2011) [hereinafter 2011 COMPREHENSIVE ANNUAL FINANCIAL REPORT].

[3] *See, e.g.*, *Judiciary*, N.Y. STATE DIV. OF BUDGET, http://publications.budget.ny.gov/eBudget1213/agencyPresentations/appropData/Judiciary.html (last visited Apr. 4, 2012) (noting the judiciary's request for $2.3 billion for the upcoming fiscal year).

[4] COMMERCIAL CLUB OF CHI., CHICAGO'S UNDERFUNDED PENSION PLANS: A REPORT TO THE COMMERCIAL CLUB OF CHICAGO 4 (Apr. 2010), http://civic

Therefore, when the media reported on The Pew Center on the States[5] a daunting estimate of the underfunded value of $660 billion for all state pension funds, which is exaggerated, because the liabilities are projected over an infinite time horizon, and over the next thirty years, the unfunded liabilities equal less than 2/10 of 1 percent of states' GDP,[6] the public wrongly pinpointed public employee pension benefits as the driver of state and local budget problems.[7] In addition to a reaction to budget problems, the attack on pension benefits for public employees has been fueled by the growing gap between public employee and taxpayer retirement security as insecure 401(k) plans replace private sector defined-benefit (DB) pensions.[8]

Governor Cuomo's proposal for public employee benefit cuts—new pension benefit formulas for new employees called Tier VI[9]—were among the milder proposals for public sector pension reform

committee.org/initiatives/StateFinance/Chicagos_Underfunded_Pension_Plans_FINAL.pdf. Though pension systems produce financial output—a flow of pension benefits—they are no different from other government functions (e.g., the judiciary) that require an outflow of costs that can be anticipated and partially or fully advanced-funded.

[5] *See* PEW CTR. ON THE STATES, THE WIDENING GAP: THE GREAT RECESSION'S IMPACT ON STATE PENSION AND RETIREE HEALTH CARE COSTS (Apr. 2011), http://www.pewcenteronthestates.org/uploadedFiles/Pew_pensions_retiree_benefits.pdf. *See also* PEW CTR. ON THE STATES, THE TRILLION DOLLAR GAP: UNDERFUNDED STATE RETIREMENT SYSTEMS AND THE ROADS TO REFORM 3 ex. 2 (Feb. 2010), http://www.pewcenteronthestates.org/uploadedFiles/Trillion_Dollar_Gap_web_FINAL.pdf [hereinafter TRILLION DOLLAR GAP].

[6] Dean Baker, *The Origins and Severity of the Public Pension Crisis*, CTR. FOR ECON. & POL'Y RES., Feb. 2011, at 10, 14–15, http://www.cepr.net/documents/publications/pensions-2011-02.pdf.

[7] *See* A. Gary Shilling, *How to Tackle Government Labor Costs*, WALL ST. J., Apr. 29, 2010, at A19 (noting that this is a particularly blatant misunderstanding).

> In the private sector, defined-benefit pensions have declined over the years in favor of defined-contribution plans such as the 401(k). In 2009, defined-benefit plans were available to only 21% of private-sector workers—but to 84% of municipal employees, according to the Cato Institute. And public-sector defined-benefit plans paid retirees about twice as much as those in the private sector. *Id.*

[8] Teresa Ghilarducci, *A Bad Deal for Taxpayers*, N.Y. TIMES: ROOM FOR DEBATE (Apr. 7, 2011, 11:58 AM), http://www.nytimes.com/roomfordebate/2011/02/27/why-not-401ks-for-public-employees.

[9] Press Release, Governor Andrew M. Cuomo, Governor Cuomo Introduces Pension Reform Legislation (June 8, 2011), *available at* http://www.governor.ny.gov/press/06082011PensionReformLegislation. *See* Rick Karlin, *Tier VI Explained, According to Governors Office*, TIMES UNION BLOG (Mar. 15, 2012, 11:01 AM), http://blog.timesunion.com/capitol/archives/120965/tier-vi-explained-according-to-governors-office.

in the nation. The relative temperance of the proposed cuts is caused partly by the well-funded status of the New York State Common Fund, composed of New York's Public Employee Retirement System (PERS) and Police and Fire Retirement System (PFRS).[10] At the end of fiscal year (FY) 2009, the New York State Common Pension Fund was the only state employee pension fund to have positive actuarial balances, with a combined funding ratio of 101 percent.[11] The funding ratio fell slightly through fiscal year 2010 (to approximately 95 percent) as the impact of the financial crisis and the decline in returns was averaged out over five years according to the plan's five-year average actuarial accounting method.[12] The New York State Common Fund, therefore, remains extremely well funded and should easily return to positive actuarial balances over the coming decade when returns increase (more below).

The New York State Common Fund's sound financial position is not the result of a miraculous investment strategy, though the performance results are impressive and sound. Rather, it is because the New York State government has consistently paid the annual required contribution.[13] The states with large pension funding gaps, such as Illinois and New Jersey, are the states in which the legislatures poorly managed the plans by, at various times, skipping annual contributions.[14] Poor management, not increases in pension benefits, is often the primary reason pension funds have fewer assets than liabilities.

This article argues that New York State's pension reform

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[10] *About Us*, OFF. OF THE ST. COMPTROLLER: N.Y. STATE AND LOCAL RETIREMENT SYS., http://www.osc.state.ny.us/retire/about_us/index.htm (last visited Apr. 3, 2012).

[11] KEITH BRAINARD, PUB. FUND SURVEY, PUBLIC FUND SURVEY SUMMARY OF FINDINGS FOR FY 2009, app. B (Nov. 2010), http://www.publicfundsurvey.org/publicfundsurvey/pdfs/Summary%20of%20Findings%20FY09.pdf. New York state public pensions are in uniquely superb positions. At the end of FY2009, N.Y. state and local ERS, N.Y. state teachers, and N.Y. state and local police funds had funding ratios of 107.3 percent, 106.6 percent, and 108.0 percent respectively. *Id.* New York City public employee pension funds have above average rations: N.Y.C. ERS at 79.7 percent funded and the N.Y.C. teachers fund only 66.9 percent funded. *Id.* *See* E.J. MCMAHON & JOSH BARRO, EMPIRE CTR. FOR N.Y. POLICY, NEW YORK'S EXPLODING PENSION COSTS 11 tbl. 2 (2010).

[12] FLOW OF FUNDS, *supra* note 1.

[13] TRILLION DOLLAR GAP, *supra* note 5, at 50.

[14] Kevin Hart, *State Legislatures Underfunded Pensions*, NEATODAY (Jan. 14, 2011), http://neatoday.org/2011/01/14/who%E2%80%99s-really-to-blame-for-underfunded-pensions; *The Pension Pickle*, CHIEFEXECUTIVE.NET (June 13, 2011), http://chiefexecutive.net/the-pension-pickle.

efforts should be about sound fiscal management and securing retirement income for all New Yorkers, both public and private sector employees. New York pensions are nearly fully funded, so budget reasons for cutting pension benefits are not compelling, and, more importantly, smaller pension benefits for state workers would contribute to an upcoming retirement crises in the state of New York. Cutting public employee pension benefits by implementing Governor Cuomo's Tier VI proposal in the context of failing pensions for state residents will produce more New York elderly with inadequate incomes. Cuomo's proposal may actually make future state budgets worse when increasing numbers of low income retirees need to rely on state and local government budgets for Medicaid access, subsidized housing, and other services for the elderly poor.

What New York State needs is a way to equalize the pension benefits for state workers and similarly situated private employees. We propose a solution the governor and state comptroller could spearhead that would have the state pension fund help private sector worker pensions.

## I. NEW YORK STATE BUDGET AND THE GOVERNOR'S PENSION PROPOSAL

Although New York State was running deficits for several years, the "Great Recession" deepened this imbalance as the squeeze on the budget came from both the spending and tax revenue sides because people lost jobs and property values fell. The state's tax base was significantly eroded as the enormous loss of jobs increased the state's expenditure on unemployment, medical and disability insurance, as well as its share of Temporary Assistance for Needy Families (TANF) programs.[15]

Entering the current fiscal year (2011–12), continuing demands for education, medical insurance, and other government-

[15] New York State's operating budget expenditure grew from $77.0 billion in FY08 to $84.4 billion in FY11. N.Y. STATE DIV. OF THE BUDGET, NEW YORK STATE ENACTED BUDGET FINANCIAL PLAN FOR FISCAL YEAR 2012 (2011) [hereinafter FINANCIAL PLAN 2012]; N.Y. STATE DIV. OF THE BUDGET, NEW YORK STATE 2010–11 ENACTED BUDGET FINANCIAL PLAN (2010); N.Y. STATE DIV. OF THE BUDGET, NEW YORK STATE 2009–10 ENACTED BUDGET FINANCIAL PLAN (2009); N.Y. STATE DIV. OF THE BUDGET, NEW YORK STATE 2008–09 ENACTED BUDGET FINANCIAL PLAN (2008); N.Y. STATE DIV. OF THE BUDGET, NEW YORK STATE 2007–08 ENACTED BUDGET FINANCIAL PLAN (2007); N.Y. STATE DIV. OF THE BUDGET, NEW YORK STATE 2006–07 ENACTED BUDGET FINANCIAL PLAN (2006).

supported operations while state revenues remained depressed, meant the budget gap would grow significantly. Through a series of cuts, mostly in the form of aid to counties and municipalities' education and medical operations ($8.5 billion reduced),[16] Governor Andrew Cuomo and the legislature managed to eliminate this year's projected budget deficit without cutting pensions.[17]

In addition to deep cuts in health and spending garnered from the legislature, Governor Cuomo also won major wage and health insurance benefit concessions from the two large public employee unions—Public Employees Federation (PEF) and the Civil Service Employees Association—as part of the governor's plan to renegotiate five-year contracts with all public unions to save a total of $450 million in fiscal year 2012, and a total of $1.6 billion over the contracts' five-year life span.[18]

There is not an obvious pressing budget reason to implement Tier VI, so it may be that in Governor Cuomo's efforts to find budget savings anywhere his administration deemed it would not be politically unpopular to cut public employee pensions given media criticism of public employees' pensions. Governor Cuomo's proposed Tier VI is a continuation of the state's practice. New tiers have been successively added to the New York State pension system because the New York State constitution prohibits any reduction in current or future benefits of current employees or retirees.[19] In 2009, the state enacted Tier V, under which new public employees contribute a greater share of their wages to the pension fund, wait twice as long for investment to begin (ten years rather than five years of service), face a higher penalty for early retirement, and have a lower cap on overtime earnings that

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[16] Elizabeth McNichol et al., *States Continue to Feel Recession's Impact*, CTR. ON BUDGET AND POL'Y PRIORITIES (Feb. 27, 2012), http://www.cbpp.org/cms/index.cfm?fa=view&id=711.

[17] *See generally* THOMAS P. DINAPOLI, N.Y. STATE COMPTROLLER, REPORT OF THE STATE FISCAL YEAR 2011–12 ENACTED BUDGET (2011). Projected budget deficits over the subsequent three years (FY2013 through FY2015) are expected to add $9.8 billion to the state's debt, rather than the previous projection of $63.3 billion. *Id.* at 1–2.

[18] Thomas Kaplan, *State Employees' Union Accepts Wage and Benefits Concessions*, N.Y. TIMES, Aug. 16, 2011, at A22. The first year's savings represent 4.5 percent of the closed budget gap (projected to have been $10 billion), or 1/3 of 1 percent (0.34) of the total enacted budget for 2011–12. FINANCIAL PLAN 2012, *supra* note 15, at 5.

[19] N.Y. CONST. art. V, § 7. *See* Amy B. Monahan, *Public Pension Plan Reform: The Legal Framework*, 5 EDUC. FIN. & POL'Y 617, 622 (2010).

can contribute to one's pension benefit calculation.[20]

Tier VI would significantly reduce benefits relative to other public employees, even in comparison to Tier V workers. The proposal calls for the retirement age to be raised from sixty-two to sixty-five, and for the elimination of the early retirement option.[21] Vesting is to begin after twelve years, rather than after ten years as is the case under Tier V.[22] The proposed tier would also double the required contribution rate employees make to their pensions from 3 percent to 6 percent.[23] The sound aspects of the proposal are eliminating unused sick days for additional service credit at retirement, including overtime payments in the employees' final average salary calculation, and lump-sum payouts for unused vacation leave.[24]

The governor's office estimates Tier VI would save $93 billion over thirty years, less than $3.1 billion per year, which is less than 2.3 percent of the budget over the next four fiscal years.[25] However, it is important to weigh the savings coming from Tier VI against their costs. There are two sources of Tier VI costs to New York taxpayers: the direct cost of impoverishing future public-employee retirees and the indirect costs of squandering an opportunity to reform New York State pensions in a comprehensive and meaningful way.

Perhaps an additional motive for Governor Cuomo proposing Tier VI, beyond scouring the budget to find proposed cuts with relatively little political costs, is that his peers in other states are proposing far more radical changes to the state public employee retirement systems.[26] If political norms are a motive we

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[20] *Irene & Berhard L. Schwartz Lecture: The Promise of Public Pensions*, SCEPA BLOG (Dec. 12, 2011), http://www.economicpolicyresearch.org/scepa-news/452-nys-comptroller-tom-p-dinapoli-the-promise-of-public-pensions-.html [hereinafter SCEPA, *Public Pensions*].

[21] Memorandum from Governor on N.Y. Pension Sys. 2 (2011), *available at* http://www.governor.ny.gov/assets/documents/GPB_10_tiervimemo.pdf [hereinafter Memorandum from Governor].

[22] *Id.*

[23] *Id. See* Press Release, *supra* note 9.

[24] Memorandum from Governor, *supra* note 21.

[25] Mona Rivera, *Cuomo Outlines Pension Reform Plan at Hofstra*, CBS N.Y. (May 16, 2011, 3:22 PM), http://newyork.cbslocal.com/2011/05/16/officials-gov-cuomo-plan-will-cut-state-pensions-for-future-employees; *see also* Editorial, *Governor Andrew Cuomo's Pension Reform Proposal*, ONEIDA DAILY DISPATCH, June 12, 2011, http://www.oneidadispatch.com/articles/2011/06/12/opinion/doc4df563402cb60515782167.txt?viewmode=fullstory.

[26] Steven Greenhouse, *States Want More in Pension Contributions*, N.Y. TIMES, June 16, 2011, at B1.

encourage the governor to pay attention to California's Governor Jerry Brown and State Treasurer Bill Lockyer's efforts to place the governor's proposed pension cuts in the context of the state's political leaders addressing California workers upcoming retirement crises.[27]

Governor Cuomo's proposal to cut benefits for New York's newly hired public employees' pension is far less dramatic than what has been proposed and enacted elsewhere. As mentioned above, the New York State pension funds are among the best funded in the nation, at 93.9 percent for the PERS and 96.7 percent for the PFRS at the end of FY2010, with combined net assets of $149.5 billion.[28] In FY2010 the net assets of the common fund increased by 11.4 percent year-on-year as financial markets recovered from their spring 2009 lows.[29] Yet, the long-term sustainability of the Common Pension Fund is the result of the state meeting its annual required contributions in full every year—again this is no miracle; it is the expected minimum action of good public management.

From 2009 to 2011, thirty-five state governments increased employees' mandatory contributions to pensions and/or reduced benefit payouts.[30] Most states cut benefits by reducing cost-of-living-adjustments (COLA) for beneficiaries, extending vesting

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[27] Waytt Buchanan, *State Pension Idea for Private Sector, Too?*, S.F. CHRON., Oct. 15, 2011, at C-1.

[28] 2011 COMPREHENSIVE ANNUAL FINANCIAL REPORT, *supra* note 2, at 85. It should also be noted that New York State's actuarial methodology is the rather conservative "aggregate method." *See* DINAPOLI, *supra* note 17.

[29] *See* SCEPA, *Public Pensions*, *supra* note 20.

[30] RONALD K. SNELL, NAT'L CONFERENCE OF STATE LEGISLATURES, STATE PENSION REFORM, 2009–2011, at 3 (Mar. 2012), www.ncsl.org/documents/employ/StatePensionReform2009-2011.pdf [hereinafter STATE PENSION REFORM, 2009–2011]. *See also* RONALD K. SNELL, NAT'L CONFERENCE OF STATE LEGISLATURES, PENSION AND RETIREMENT PLAN ENACTMENTS IN 2011 STATE LEGISLATURES 1–5, 9 (Sept. 30, 2011), http://www.ncsl.org/documents/employ/PensionEnactmentsSept30-2011.pdf [hereinafter ENACTMENTS IN 2011 STATE LEGISLATURES] (discussing different state reactions to the rising cost of pension plans during 2011); RONALD K. SNELL, NAT'L CONFERENCE OF STATE LEGISLATURES, PENSION AND RETIREMENT PLAN ENACTMENTS IN 2010 STATE LEGISLATURES 2–7 (Nov. 23, 2010), http://www.ncsl.org/issues-research/labor/2010-pension-and-retirement-enacted-legislation.aspx (discussing the different methods implemented by states in order to address the rising cost of pension plans during 2010); RONALD K. SNELL, NAT'L CONFERENCE OF STATE LEGISLATURES, PENSION AND RETIREMENT PLAN ENACTMENTS IN 2009 STATE LEGISLATURES (Aug. 17, 2009), http://www.ncsl.org/issues-research/labor/2009-enacted-pension-legislation.aspx (discussing reductions in new employee benefit packages and contribution and funding issues).

schedules, raising the normal retirement age, and increasing the years of service required for the computation of pension benefits.[31] These reductions often come in the form of new pension tier packages where less generous retirement plans were created (compared to the older plans for existing employees).[32] In the majority of states the reduced pension benefits affect only new employees.[33] As in New York, many state judiciaries interpret pension plans as contractual obligations of the state, and thus cannot be changed for existing employees.[34] It is also far more politically acceptable and legally sound to reduce benefits for new and future employees than for those already enrolled.

Half of the states have increased employees' required contribution rates to increase pension fund revenues—however, in most states employers' contributions did not increase.[35] In fact, Colorado, Florida, and Vermont decreased employer contributions at the same time they increased employee contribution rates.[36]

Reducing benefits and increasing contribution rates represent more restrained methods of the recent state of pension reform. Other states have implemented or tried drastic strategies, eliminating or reducing defined benefit options and adding or switching over to defined contribution (DC), 401(k)-type plans. For example, Michigan, in 1996, became the first state to replace its DB plan with a DC plan for new employees (employees hired before 1997 kept their original DB plans).[37] Alaska followed suit

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[31] *See* STATE PENSION REFORM, 2009–2011, *supra* note 30.

[32] *See generally* Press Release, Governor Andrew M. Cuomo, Governor Cuomo Announces Passage of Major Pension Reform (Mar. 15, 2012), *available at* www.governor.ny.gov/press/03 152012pensionagreement.

[33] For example, New York's tier system places different burdens on employees categorized by their start date and place harsher retirement and pension regulations on the newest hires. *See generally What Tier Are You in?*, OFFICE OF THE STATE COMPTROLLER: N.Y. STATE & LOC. RETIREMENT SYS., http://www.osc.state.ny.us/retire/members/find_your_tier.htm (last visited Apr. 3, 2012).

[34] Monahan, *supra* note 19, at 618.

[35] STATE PENSION REFORM, 2009–2011, *supra* note 30, at 4.

[36] 2004 Colo. Sess. Laws 1947 (codified at COLO. REV. STAT. § 24-51-1501 (2011)); 2011 Fla. Laws 1619 (codified at FLA. STAT. § 121.071 (2012)); 2011 Vt. Acts & Resolves 63 (codified at VT. STAT. ANN. tit. 3, § 473 (2011)). *See* ENACTMENTS IN 2011 STATE LEGISLATURES, *supra* note 30, at 4–5, 9.

[37] *See* 996 Mich. Pub. Acts 2201 (codified at MICH. COMP. LAWS § 38.1021a (2009)); STATE OF MICH., DESCRIPTION OF PENSION TRUST FUNDS, FISCAL YEAR ENDED SEPT. 30, 1999, http://michigan.gov/documents/Pension_trust_desc_24945_7.pdf. *See also* RONALD SNELL, NAT'L CONFERENCE OF STATE LEGISLATURES, STATE RETIREMENT SYSTEM DEFINED CONTRIBUTION PLANS 3 (Sept. 2009), http://www.ncsl.org/Portals/1/Documents/employ/StateGovtDCPlansSept

in 2004.[38] Other states offered their employees a choice between new DC alternatives and less generous incarnations of their DB plans.[39] Ohio started this wave in 1999, followed by North Dakota (1999), Florida (2000), Montana (2001), South Carolina (2001), and Colorado (2004).[40]

In sum, there is a lot of variety in how states have designed the pensions systems for their employees and how states have reacted to the economic and political pressures caused by recession-induced rise in state budget deficits. We conclude the overview of other state's reforms with a proposal for New York state pension reform.

We build on Boston College researchers' proposal for public employee pension reform—they advocate a stacked or hybrid system—one that a few states, such as Indiana, have had for years—and extend the idea to include all workers in the state.[41] Governor Cuomo in his State of the State address on January 5, 2012, called for a tightening up on pension credits and enforcement of pension rules, all of which we agree with.[42] Further research is needed to assess whether a hybrid plan is appropriate for new state workers.

This article moves on to the more significant area the governor could make in pension reform and propose that the real action in pension reform move towards solving the state's retirement crises while taking advantage of the excellent infrastructure of the New York State Common Fund.

In sum, despite the relative healthy condition of the state's

2009.pdf [hereinafter STATE RETIREMENT SYSTEM DEFINED CONTRIBUTION PLANS].

[38] 2004 Alaska Sess. Laws 1–3 (codified at ALASKA STAT. §14.25.110 (2010)); *see generally* STATE RETIREMENT SYSTEM DEFINED CONTRIBUTION PLANS, *supra* note 37.

[39] *See* STATE RETIREMENT SYSTEM DEFINED CONTRIBUTION PLAN, *supra* note 37, at 4–5 (discussing a sampling of states who have chosen to treat DC plans as optional).

[40] 1999 Ohio Laws 7074 (codified at OHIO REV. CODE ANN. § 145.80 (LexisNexis 2007)); 1999 N.D. Laws 1728 (codified at N.D. CENT. CODE § 54-52-05 (2008)); 2000 Fla. Laws 1619 (codified at FLA. STAT. § 121.071 (2012)); 2001 Mont. Laws 2364 (codified at MONT. CODE ANN. § 19-3-2102 (2011)); 2001 S.C. Acts 152 (codified at S.C. CODE ANN. § 9-20-50 (2011)); 2004 Colo. Sess. Laws 1947 (codified at COLO. REV. STAT. § 24-51-1501 (2011)).

[41] *See generally* NAT'L ASS'N OF STATE RET. ADM'RS, NASRA ISSUE BRIEF: STATE HYBRID RETIREMENT PLANS (Nov. 2011), http://www.nasra.org/resources/HybridBrief.pdf.

[42] Governor Andrew M. Cuomo, Building a New NY . . . With You, 2012 State of the State Address (Jan. 5, 2012), *available at* http://www.governor.ny.gov/assets/documents/Building-a-New-New-York-Book.pdf.

public employee pension funds, New York private sector workers face a retirement crisis, and cutting public sector pensions will merely put the state's employees along a similar path toward destitution. Fortunately, the state pension system can directly help all New York residents, in both public and private employment.

## II. NEW YORK'S COMING RETIREMENT CRISIS

Before turning to pension reform proposals we first review and explain what is meant by the coming retirement income crisis in New York. The following review of what retirement will look like if serious reform is not enacted should compel the legislature and Governor Cuomo to act without further delay.

The upcoming retirement crises is caused by many factors, the main one, identified in The New School's Schwartz Center for Economic Policy Analysis (SCEPA) and the New York City Comptroller's Office's 2012 report, shows that two-thirds of workers who live in metropolitan areas in New York State (about 80 percent of all workers in the state) or more than 2 million workers in 2009 did not participate in a employer-sponsored retirement plan.[43] The lack of participation means that over one-third (36 percent) of households in which the head is near retirement age (55–64 years old) will have to subsist almost entirely on Social Security income[44] or will not be able to retire at all due to negligible net worth.[45] We focus on New Yorkers living in metropolitan areas because the Survey of Income and Program Participation (SIPP) data does not have enough information on the entire state.

Using the SIPP and 2009 New York State Personal Income Tax Files we calculated the "retirement preparedness" of households

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[43] JOELLE SAAD-LESSLER ET AL., SCHWARTZ CTR. FOR ECON. POLICY ANALYSIS, ARE NEW YORKERS READY FOR RETIREMENT? 1 (Jan. 2012) [hereinafter ARE NEW YORKERS READY FOR RETIREMENT?].

[44] JOELLE SAAD-LESSLER ET AL., SCHWARTZ CTR. FOR ECON. POLICY ANALYSIS, NEW YORK'S RETIREES: FALLING INTO POVERTY 2 (Feb. 2012) [hereinafter FALLING INTO POVERTY]; ARE NEW YORKERS READY FOR RETIREMENT?, *supra* note 43, at 13–14 (Nov. 2011). Based on the average monthly benefit awarded in 2009 for a retiree 65 years of age, we can estimate that the average male would receive $18,720 in annual Social Security income, the average female $13,848 in annual Social Security income, and the average married couple, $32,568. *Id.* at 12 n.27.

[45] FALLING INTO POVERTY, *supra* note 44, at 5 fig.2; ARE NEW YORKERS READY FOR RETIREMENT?, *supra* note 43, at 14.

aged 55–64[46] whose head lives in the metropolitan areas of New York State.[47] The New York State Common Fund can help workers without a retirement plan and those who want to supplement their existing plans.[48]

Taking into account all possible sources of retirement income, "including the value of their bank accounts, bonds and securities, savings bonds, stocks and mutual funds, life insurance policies, IRA/KEOGH accounts, DC accounts, real estate holdings, home equity, and business equity"[49] and netting out their debt, we find that:

> [T]he average net worth of near-retirement households residing in metropolitan areas of New York state is $170,298 for single person households, $533,646 for married couple households, and $174,142 for other household types. The average numbers are quite high because the few households with very high net worth bring up the average. The more revealing number is the median asset value. It is also important to note that we have included home equity in the net worth calculations. In theory, all the financial assets of a household can be liquidated, including the home, and its entire net worth can be "annuitized" through the purchase of a guaranteed income annuity from a private financial institution.[50]

Because it is "unrealistic to assume that most retired homeowners will sell their homes and annuitize the value of their equity. Aside from the attachment most retirees have for their homes, in many cases it would be financially counterproductive to sell the home, because households would then have to pay rent";[51] we take into account just liquid assets of the near-retirement population in 2009, which represent financial assets that can be easily liquidated and converted to an annuitized income stream, without necessitating the sale of a home. The Schwartz Center for Economic Policy Analysis report found that nearly 36 percent of metropolitan New York households "at or near retirement age have less than $10,000 in liquid assets."[52] The next 19 percent,

[46] A household is defined as age 55–64 if the reference person is in this age range.

[47] FALLING INTO POVERTY, *supra* note 44.

[48] *See generally What Every Employer Should Know About the Retirement System: Overview*, OFFICE OF THE STATE COMPTROLLER: N.Y. STATE AND LOCAL RETIREMENT SYS., http://www.osc.state.ny.us/retire/employers/employer_partnership/about_nyslrs/index.php (last visited Apr. 3, 2012).

[49] FALLING INTO POVERTY, *supra* note 44, at 3.

[50] ARE NEW YORKERS READY FOR RETIREMENT?, *supra* note 43, at 13.

[51] *Id.*

[52] *Id.* at 14.

"those who have assets between $10,000 and $99,999, also have very little to annuitize (annuitizing $50,000 is less than $45 dollars per month)."[53]

The inequality of retirement assets is stark. "[A]bout 24 percent of the households have liquid assets in excess of $300,000," which means "[t]hese households will be able to realize an adequate cash income stream from retirement savings."[54]

> In 2009, near-retirement households with at least one member participating in a DC plan had the highest [mean] income, followed by households with DB plans, and . . . households with no retirement plan. In fact, median household income of households with a DB or DC retirement plan was approximately three times as large as the median household income of households with no retirement plan. Much larger differences are seen in the households' liquid assets available for annuitization. Households with DC plans have amassed [381 percent more] liquid assets [than] households with no retirement plan.[55]

Much of this is due to the federal and state government generously subsidizing workplace retirement plans for the highest income and wealthiest workers.[56]

Combining the annuitized value of median liquid assets with Social Security averages for a married couple, we estimate that "households with DC plans [will] have an average annual income . . . of . . . $43,884, and households with DB plans" will have an average a bit less, an annual income of $39,876 not including their DB income.[57] Households with no retirement plan will live on only $32,568 per year.[58]

Women accumulated 24 percent less net worth than men, while non-citizens accumulated 54 percent less net worth than citizens did.[59] Moreover, black non-Hispanic and Hispanic workers had

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[53] *Id.*
[54] *Id.*
[55] *Id.* at 15–16.
[56] *See* SOC. SEC. ADMIN., ANNUAL STATISTICAL SUPPLEMENT TO THE SOCIAL SECURITY BULLETIN, 2011, at 3 (Feb. 2011). *See generally* LEONARD E. BURMAN ET AL., DISTRIBUTIONAL EFFECTS OF DEFINED CONTRIBUTION PLANS AND INDIVIDUAL RETIREMENT ACCOUNTS 1 (2004), http://www.urban.org/UploadedPDF/311029_TPC_DP16.pdf.
[57] ARE NEW YORKERS READY FOR RETIREMENT?, *supra* note 43, at 16. The liquid assets tabulated in Table 4 are not broken down by household type because of sample size constraints. However, each household is assigned the Social Security income of a married couple, and is thus treated as a married couple household. *Id.* at 15.
[58] *Id.* at 16.
[59] Calculations for GOVERNOR CUOMO'S NEW YORK STATE PUBLIC SECTOR

65 percent and 59 percent less net worth than their White counterparts.[60] Unsurprisingly, older workers have 31 percent more accumulated net worth than younger workers.[61]

For the past thirty years private employers who have offered retirement plans have switched over from traditional pensions to DC plans to save money, but there has been an enormous social cost. The cost has been the elimination of a pension plan's very goal: the provision of a secure retirement income. Although we do not calculate the cost of lost retirement incomes here, we do present evidence of the coming retirement crisis. Cutting public employee's pensions does not address the real issue. New York needs a sustainable pension system for public and private employees that can provide real retirement income security.

How? The U.S. retirement income security system is based mainly on Social Security, Medicare, and tax breaks to employers and workers to incentivize them to participate in employer-based plans voluntarily.[62] The tax incentives come from the proper recognition that workplace retirement plans are highly effective because an employee's retirement contribution is automatically deducted from his or her paycheck,[63] removing the temptation for people to spend retirement savings for current every day needs. Retirees receiving income from a workplace retirement plan are more likely to retain middle-class lifestyles than retirees without income from an employer-sponsored plan.

Therefore, New York state policies and institutions that can help workers gain access to employment-based retirement savings vehicles can help reverse some of the erosion in future retirement income. In the final section we present such a policy recommendation.

## III. PENSIONS FOR ALL: PUTTING THE NEW YORK STATE PUBLIC EMPLOYEE PENSION PLANS TO WORK FOR ALL NEW YORKERS.

This section describes how an Empire State Personal Retirement Account (Empire State PRA) for private sector employees administered by the New York State Common Fund

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PENSION SYSTEM PENSION PROPOSALS AND THE NEW YORK STATE'S RETIREMENT INCOME SECURITY CRISES 2012 (on file with author) [hereinafter Calculations].

[60] *Id.*

[61] *Id.*

[62] *See* ILANA BOIVIE, NAT'L INST. ON RETIREMENT SEC., ISSUE BRIEF: WHO KILLED THE PRIVATE SECTOR DB PLAN? 10 (2011).

[63] *Id.*

would help private employees in New York save for retirement in a system that takes the best from DB plans (continuous participation, secured from early payouts and excessive fees, professionally managed, and payments in life-long annuities) and the best from the DC plan (by design are always fully and consistently funded). The Personal Retirement Account structure offers private-sector employees pensions at virtually no cost to the state or to private businesses.

Through the use of the successful and existing public pension infrastructure, all New Yorkers can have access to some of the best fund managers in the world—the managers that already manage the assets for the New York State Common Fund—to secure a dignified retirement. As retirement plan coverage declines nationwide and Congress fails to articulate a solution at the federal level, state legislators and governors could create Empire State PRAs for private sector workers by "opening a window" at a state or local pension fund like New York State Common's public sector plan. Imagine the pension fund is a bank with public employees standing in a queue in front of a teller's window. We propose opening up another teller's window and adding another line for private sector workers to deposit their retirement savings. All residents would benefit from their excellent, low-fee, money management.

The Empire State PRA proposal is based on the state-specific Guaranteed Retirement Accounts plan by Ghilarducci described in the University of California Berkeley Center for Labor Research and Education's publication, *Meeting California's Retirement Security Challenge* (October 2011),[64] and California State Senator Kevin de León's proposed bill that would create a "Golden State Retirement Savings Trust" program that would pool employee and employer contributions into a professionally-managed retirement fund administered by the California Public Employees' Retirement System (CalPERS).[65] Workers and/or employers would contribute at least 5 percent of pay into the Empire State PRA and one option is that the state could offer an option with a near guaranteed return, based on the average

[64] Teresa Ghilarducci, *High Performance Pensions for All Californians*, *in* MEETING CALIFORNIA'S RETIREMENT SECURITY CHALLENGE 94, 95 (Nari Rhee ed., 2011), *available at* http://laborenter.berkeley.edu/research/CAretirement_challenge_1011.pdf.

[65] *Id.*; S.B. 1234, 2011–2012 Reg. Sess. (Cal. 2012).

earnings in the New York State Common Fund.[66] At retirement, workers would have the option to convert all or most of their savings into an annuity, a guaranteed stream of income for life.[67]

"Opening a window" for private workers in high performing public pension funds provides a practical blueprint to stave off an impending retirement crisis. The Empire State PRA pension plans would combine the best features of DB and DC plans—it would provide a floor of pension income, provide a way employees could increase their pension savings, allow workers access to the best money managers so they can earn the highest returns with the least contributions, and stabilize pension costs for taxpayers. This proposal is based on the stunning fact that "states, through their employee pension plans . . . consistently receive the highest returns for the least cost—public pension plans outperformed 401(k) plans and IRA accounts by 20 to 40 percent over the last thirty years."[68] These funds are able to use their bargaining power to lower fees, and public pension fund traders have a longer term view, which stabilizes markets and protects individuals from swings in asset prices.[69]

All states could offer a similar structure overseen by an independent board of trustees and administered like TIAA-CREF—the pension plan for university professors—or the Thrift Savings Plan for federal employees.[70] Pension contributions would be pooled and invested professionally with an emphasis on prudent and low-risk, long-term gains. This would effectively shield workers from the high fees they face and making poor investment choices when left to fend for themselves in the retail market. "[P]ooling of individual accounts with tight rules on preretirement withdrawals that could, after 40 years of

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[66] *See, e.g.*, Ghilarducci, *supra* note 64, at 98–99.

[67] *See, e.g.*, *id.* at 99.

[68] Press Release, The New School, Private-Sector Workers Should Have Access to Gold-Standard State Pensions (Nov. 10, 2011), *available at* http://www.newschool.edu/pressroom/pressreleases/2011/SCEPAStatesPlan.htm.

[69] ALEKSANDER ANDONOV ET AL., CAN LARGE PENSION FUNDS BEAT THE MARKET? DECOMPOSING THE PERFORMANCE OF PENSION FUNDS INTO ASSET ALLOCATION, MARKET TIMING AND SECURITY SELECTION COMPONENTS 2 (May 2011), http://www.rotman.utoronto.ca/userfiles/departments/icpm/File/May%202011/Pre-Reading%20Material/Andonov,%20Bauer%20and%20Cremers%20_Can%20Large%20Pension%20Funds%20Beat%20the%20Market_%20May2011.pdf.

[70] *See Governance*, TIAA-CREF, https://www.tiaa-cref.org/public/about/governance/index.html (last visited Apr. 3, 2012); *Plan Participation*, THRIFT SAVINGS PLAN, https://www.tsp.gov/planparticipation/planParticipation.shtml (last visited Apr. 3, 2012); *Retirement Plans*, TIAA-CREF, https://www.tiaa-cref.org/public/products-services/retirement/index.html (last visited Apr. 3, 2012).

contributions and combined with Social Security, be worth a yearly sum that amounts to 56 percent of a worker's final earnings. That worker would retire at 65."[71]

We propose a pension plan for New York's private sector workers that do not have access to a retirement plan through their employer. This personal pension program would be a not-for-profit, low-cost, and universally portable retirement plan for the over 2 million New York state workers that do not have a workplace retirement plan.

Social Security is the foundation of retirement income for the vast majority of retirees in New York, but these payments alone, averaging under $1,200 per month, are not enough to sustain workers in retirement.[72] Although Social Security has reduced the poverty rate among retirees in general, women, and minorities are disproportionately represented among retirees living in poverty and among low-income retirees.[73] In New York, approximately two-thirds of the retirees living in poverty are women.[74]

While workers with both DB pensions and Social Security receive a relatively stable lifelong income stream, there is no similar guarantee when it comes to DC plans such as IRAs and 401(k) plans. According to a UC Berkeley study and the SCEPA study, participants in DB plans are more likely to be able to meet basic expenses than those who only have a DC plan—"[o]nly 7.4% of workers who have a DB plan are projected to have retirement incomes below 200% of the poverty threshold, compared to 28.7% of workers whose primary retirement plan is a DC plan."[75]

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[71] Buchanan, *supra* note 27.

[72] SOC. SEC. ADMIN., MONTHLY STATISTICAL SNAPSHOT, JANUARY 2012, (released Feb. 2012).

[73] NARI RHEE, UNIV. OF CAL., BERKELEY CTR. FOR LABOR RESEARCH AND EDUC., RESEARCH BRIEF: BLACK AND LATINO RETIREMENT (IN)SECURITY 1 (Feb. 2012), http://laborcenter.berkeley.edu/research/retirement_in_security2012.pdf; SUNHWA LEE & LOIS SHAW, FROM WORK TO RETIREMENT: TRACKING CHANGES IN WOMEN'S POVERTY STATUS (Feb. 2008), http://assets.aarp.org/rgcenter/econ/2008_03_poverty.pdf.

[74] *See* N.Y. STATE OFFICE FOR THE AGING, NEW YORK STATE PLAN ON AGING 2011–2015, at 4–6, http://www.aging.ny.gov/NYSOFA/PlanOnAging.pdf.

[75] Sylvia A. Allegretto et al., *California Workers' Retirement Prospects*, *in* MEETING CALIFORNIA'S RETIREMENT SECURITY CHALLENGE, *supra* note 64, at 21, 35. *See also* Joelle Saad-Lessler et al., Retirement Readiness in New York: Future Trends in Elderly Poverty for New York State Metropolitan Areas (on file with author) (explaining that "workers whose primary retirement plan is a defined contribution (DC) plan fare significantly worse than those whose primary plan is a defined benefit (DB) plan").

New York workers in the private sector need a lifelong retirement savings system that provides them with the opportunity to build their assets and achieve financial stability in retirement. A personal pension program would pool employee and employer contributions into a professionally-managed retirement fund that is able to leverage economies of scale and offer portable, efficient, low-cost DB retirement plans. If the over 2.9 million New York private sector workers who do not have access to a retirement plan at work earn on average $50,000, contribute just 5 percent of their earnings towards a retirement fund, the fund would generate $3 billion in the first year alone for professional money managers to manage and would yield enough retirement income in addition to Social Security to remain middle class retirees.

Here are some basic features of the proposal:

**Fund management**: The Empire Retirement Savings Trust, administered by the Empire State Retirement Savings Investment Board, under the State Treasurer's Office to administer a self-sustaining, Empire State PRA program that offers cash balance pension plans to provide New York workers with voluntary, low-cost, and portable retirement savings options. Authorize the New York State Common Fund to manage and administer funds in the program. Once the Board officially opens the Empire State PRA program for enrollment, it would permit employers to enroll eligible employees into the program and use their payroll system to directly deposit a portion of their earnings into the retirement savings plan. The accounts could also be managed by private financial service providers through a regulated exchange created by the State Treasurer's Office. Though funds are pooled, workers are able to track the dollar value of their accumulations.

**Structure**: Empire State PRAs are similar to cash balance plans in which professionals invest and manage the pooled savings.

**Participation**: Participation in the program is open to all private sector workers who do not currently participate in a comparable or better DB plan. Employers who do not offer such a plan would be required to enroll their employees in the Empire State PRA. The state may choose between mandatory enrollment for workers and automatic enrollment with a worker opt-out provision. The system would allow employees that do not want to contribute to retirement savings to opt-out at any time. Employers would retain the option at all times to set up an employer-sponsored retirement plan, such as a DB or a 401(k) plan, to use instead of the Empire State PRA program.

**Contributions**: A default contribution rate of 5 percent of pay will be automatically deducted from payroll and deposited into each worker's Empire State PRA. Workers may choose to reduce or opt-out of contributions. Employers may voluntarily contribute to help workers reach or exceed the 5 percent savings rate. If an employer fails to offer a retirement savings plan by the applicable deadline, require the franchise tax authorities to assess and collect a penalty of say $100 per employee. However, an employer would be allowed a ninety-day grace period to comply. The proposal requires the tax authority to permit eligible employees to opt-out of their requirement saving plan options. Employers participating in the Empire State PRA program would provide the protection of legal indemnity from fiduciary responsibility.

**Investment earnings**: The pooled funds would be conservatively invested in a balanced portfolio by professionals that manage the New York State Common Fund.[76] However, participants earn a rate of return that is guaranteed to fluctuate around the average returns of the New York State Common Fund. (The state, or a private insurer who would appropriately capitalize the risk.) The trustees would periodically adjust the rate of return. With widespread participation and regular contributions, this guarantee would pose very little risk for the insuring institution.

**Retirement age**: Participants begin collecting retirement benefits at the same time as Social Security, and therefore no earlier than the Social Security Early Retirement Age. Funds cannot be accessed before retirement for any reason other than death or disability.

**Retirement benefits**: Account balances are converted to inflation-indexed annuities upon retirement to ensure that workers do not outlive their savings. However, individuals can opt to take a partial lump sum equal to 10 percent of their

[76] Of course, a simple balanced portfolio is not the only option for investing New York State personal investments funds. Governor Cuomo has also offered that a small portion of the fund be directed to domestic infrastructure assets. Jacob Gershman, *Looking to Pension Funds to Pay for Projects*, WALL ST. J., Nov. 22, 2011, at A21.

account balance or $10,000 (whichever is higher), or to opt for survivor benefits in exchange for a lower monthly check. A full-time worker who works forty years and retires at age sixty-five can expect a benefit equal to roughly 20 percent of pre-retirement income, adjusted for inflation, assuming a 3 percent real rate of return.

**Death benefits**: Account balances of participants who die before retiring will be transferred to the Empire State PRA of designated beneficiaries; those who die after retiring can bequeath half their final account balance minus benefits received, payable as a lump sum or transfer to another Empire State PRA or retirement account.

Ultimately, workers using 401(k) plans or IRAs or other self-directed accounts are likely facing much higher risks and lower returns than professional investors.[77] The Personal Retirement Account plans would be attractive because their contributions would be well managed. Also, these institutions would provide a semi-guaranteed (guaranteeing a range of rates) vehicle that will help smooth out returns, making retirement income more secure. The level of feasible guarantee would depend on default versus opt-in participation and liquidity (see below).

One of the contributors to unequal and inadequate retirement income is the unintended consequences of a well-intentioned tax break for retirement savings. As other states do, New York adopts the federal rule for giving preference to retirement account contributions and retirement account earnings through a personal income tax deduction.[78] We propose that the New York state legislature and Governor Cuomo carefully scrutinize this important source of state revenue loss and change it to more effectively meet its public purpose to expand retirement benefits.

A transformation of the tax deduction to a refundable tax credit could be revenue neutral; the generosity of the credit would be based on the credit, not costing the state any more revenue loss. As the tax breaks are currently structured, they disproportionally benefit taxpayers in the highest income tax brackets—taxpayers

[77] Zoran Ivković & Scott Weisbenner, *Individual Investor Mutual Fund Flows*, 92 J. FIN. ECON. 223, 236 (2009). For a discussion of the underperformance of individual investors compared to institutional investors, see Brad M. Barber & Terrance Odean, *Trading is Hazardous to Your Wealth: The Common Stock Investment Performance of Individual Investors*, 55 J. FIN. 773 (2000).

[78] N.Y. TAX LAW § 612(c)(3-a) (West 2010 & Supp. 2012).

who have the least difficulty saving for retirement—because the subsidy comes in the form of a tax deduction rather than a tax credit.[79] A taxpayer in the top income bracket for New York State and New York City (at total rate of 12.846 percent) contributing $1,000 would get $128.46 tax break, a person earning within the first income tax bracket would receive only 6.907 percent, or $69.07 on a contribution of $1,000 (which would present an enormous percentage of one's gross income).[80]

Just focusing on New York City, residents in the top fifth of the income distribution receive 56 percent of total tax expenditures for individual retirement accounts, amounting to more than $224 million in revenue loss to the city.[81] It is likely that these taxpayers need the government subsidy the least while over half of the workforce has no pension coverage.

New York's $1.39 billion in tax expenditures for individual retirement accounts, or IRAs, Keoghs, and 401(k) plans—not DB plans—would cover 90.5 percent of the proposed funding cuts for school aid or 93 percent of the cuts being made to both Medicaid and Human Service departments in FY2011–12.[82]

Workers would receive $158 per year to invest in their personal retirement accounts if the current tax favoritism for individual retirement accounts were transformed from tax deductions to tax credits, which is merely $244 million divided by the number of

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[79] N.Y. STATE DEP'T OF TAXATION AND FIN., GENERAL INFORMATION FOR SENIOR CITIZENS AND RETIRED PERSONS 6, 9–10 (Jan. 2012).

[80] N.Y. STATE DEP'T OF TAXATION AND FIN., *2011 Tax Tables*, http://www.tax.ny.gov/pit/file/tax_tables.htm (follow links "NYC tax rate schedule" and "NYS tax rate schedule"). In 2011, the top marginal income tax rates for New York City and New York State are 3.876 percent and 8.97 percent, respectively (both for incomes over $500,000, regardless of family size or structure). *Id.* The lowest marginal tax rates for the city and state are 2.907 percent and 4 percent, respectively. *Id.* While these tax rates all start from a $0 floor, this bracket's ceilings are, for New York City, $21,600, $12,000, and $14,400 for married filing jointly, single filings, and head of household groups, respectively. *Id.* For New York states these are $16,000, $8,000, and $11,000, respectively. *Id.*

[81] Calculations, *supra* note 59.

[82] DIV. OF THE BUDGET, 2011–2012 EXECUTIVE BUDGET BRIEFING BOOK: EDUCATION AND ARTS 20, http://publications.budget.ny.gov/eBudget1112/fy1112littlebook/index.html (follow links "Education and Arts," "Health Care," and "Human Services"). Proposed changes to funding include a $1.535 billion reduction in funding for school aid, a $982 million reduction in total spending on Medicaid, and a $315 million reduction in spending on Human Services. *Id.*; DIV. OF THE BUDGET, 2011–2012 EXECUTIVE BUDGET BRIEFING BOOK: HEALTH CARE 34; DIV. OF THE BUDGET, 2011–2012 EXECUTIVE BUDGET BRIEFING BOOK: HUMAN SERVICES 45.

working taxpayers.[83] This switch, combined with a transformed federal credit of $600 (the amount received if the federal incentives were in the form of credits), would cover 100 percent of the annual savings a worker earning $20,000 needs in addition to Social Security to maintain their current standard of living in retirement.[84]

## CONCLUSION

This article shows that cutting benefits by implementing Governor Cuomo's Tier VI proposal in the context of failing pensions for state residents will increase the number of elderly with inadequate incomes. What New York State needs is a way to equalize the pension benefits for state workers and similarly situated private employees by bringing the income security of private sector workers up instead of aiming to cut benefits for state employees.

We propose that the Treasurer's Office set up a personal pension facility that will accept New York private sector workers and their private sector employers' retirement savings. We also propose that the state switch the tax deduction for DC retirement accounts to a credit to help defray the employee's contribution. This tax change will help solve the problem of the upcoming retirement crises and solve the problem of growing inequity in pension income in New York.

The governor and state comptroller could spearhead this positive solution that would use the excellent professional money manger services of the New York State Common Fund to help private sector workers save for retirement in a secure and efficient pension institution. The Governor has shown himself to be creative and popular with some attention to inequality and tax effectiveness. Controller Tom DiNapoli is a highly respected and competent steward of the state's assets and overseer of the state's budget situation. Both leaders could go forward with a bold plan especially in times of declining 401(k) balances and extreme retirement insecurity. Every New Yorker deserves to have a safe and convenient way to save for retirement.

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[83] Calculations, *supra* note 59.

[84] Saad-Lessler et al., *supra* note 75, at 1. For more information on a revenue-neutral tax credit for retirement saving, see generally TERESA GHILARDUCCI, WHEN I'M SIXTY-FOUR: THE PLOT AGAINST PENSIONS AND THE PLAN TO SAVE THEM (2008).

## APPENDIX: CALCULATING UPCOMING RETIREMENT CRISES

The forecasts on future retirement income comes from a 2011 SCEPA study for the New York City comptroller that uses data from the March Supplement of the 2000 and 2009 Current Population Survey (CPS) and waves 3 and 4 of the 2008 SIPP panel, specifically, we use data from the Retirement Expectations module in wave 3 of the 2008 SIPP panel, as well as data from the Assets and Liabilities, Real Estate, Stocks and Mutual Funds, Value of Business, Rental Properties, Interest Earning, and Other Financial Assets modules in wave 4 of the 2008 SIPP panel.

The working sample is limited to civilian residents of New York State Metropolitan areas, ages 25–64 who stated that they worked at some point in the reference period (the past four months) and who had positive earnings; it also excludes unpaid family workers. This sample was used to calculate sponsorship, participation rates, and the respondent's primary plan type (DB or DC). Further analysis to calculate current net worth, future net worth, and the forecast poverty rates use a more limited sample; for these calculations, we drop workers in the agriculture, forestry, and fishing sectors.

Sponsorship of a retirement plan was defined by the respondent's answer to the question about whether an employer (at their most important job/business) offers a retirement plan, or if later in the survey, the respondent said that an employer offers a 401(k) plan.

Participation in a retirement plan was ascertained once a respondent stated that his employer sponsors a retirement plan, if he said he participated in such a plan, or if he said he participated in a 401(k) plan through his employer.

### *Geographical Coverage of the Data*

All estimates from the CPS data are for New York City, or Kings, Queens, Bronx, Richmond, and New York City counties. The smallest geographical unit available in the SIPP data is metropolitan areas in New York. Thus, our analysis of retirement plan participation by plan type, as well as any estimates of the retirement deficit (which come from SIPP data), are representative of residents in metropolitan areas of New York State. Metropolitan areas in New York include the following counties: Suffolk, Nassau, Westchester, Rockland, Orange, Duchess, Putnam, Broome, Chautauqua, Erie, Niagara, Monroe, Genesee, Ontario, Cayuga, Onondaga, Rensselaer, Saratoga, Oswego, Albany, Madison, Schenectady, Oneida, Herkimer, Washington, Wayne, Orleans, Tioga, and Warren Counties. These are in addition to Bronx, Queens, Richmond, Kings, and New York City counties, which make up New York City. New York City residents dominate the data—they constitute 46 percent of the population in New York State state metropolitan areas. So even though it is not possible to isolate New York City in the SIPP data using a sample of residents of New York metropolitan areas produces a good approximation of the retirement assets and needs of New York City residents.