Tribal Government Pensions - Parity

Summary:
- Tribal governments currently must provide both government and private ERISA pension plans to their employees. This is both costly and cumbersome.
- Support H.R. 3138, which puts tribal governments on par with other governments and provides the same distribution rules for public safety employees, fixing domestic relations orders, and fixing deferred compensation.

Background Information:
There are separate federal pension requirements for government and private sector employers under the Internal Revenue Code (Code) and the Employee Retirement Income Security Act (ERISA). The decision to treat governments differently was not an oversight. There were concerns that the ERISA private sector rules would infringe on sovereignty if applied to government employers. It was recognized that governments could raise revenues to secure benefit promises and Congress understood that government employers were accountable to the public through elections and political processes that do not apply to private sector employers.

Unfortunately, the original “government” definition under Section 3(32) of ERISA and Section 414(d) of the Code was silent on its treatment of tribes. Since the passage of the Pension Protection Act (PPA) in 2006, the strict “essential government function” and commercial activity tests have forced tribes to adopt separate pension plans for enterprise activities, doubling the cost of compliance and creating smaller plans with less bargaining power. State and local government employees are sometimes engaged in activities that could be characterized as “commercial,” such as running state lotteries. These activities are recognized by the federal government as necessary in the raising of revenues and plans covering these employees retain their governmental status and are not subject to ERISA requirements. Tribal plans, on the other hand, lose their governmental plan status if a participating employee is engaged in a “commercial” activity.

The current state of the law under the PPA adds layers of inconsistent regulations to tribal plans that no other employment group must contend with, with no corresponding incentives for tribes to offer such programs.

Recommendation:
Support H.R. 3138, which ensures that tribal governments are subject to one set of rules like all other employers and fix several specific technical problems that have been realized since PPA was passed, including; providing the same distribution rules for public safety employees, fixing domestic relations orders, and fixing deferred compensation.