NDPERS BOARD MEETING
Agenda

Bismarck Location:
ND Association of Counties
1661 Capitol Way
Fargo Location:
BCBS, 4510 13th Ave SW

July 28, 2011 **Time: 8:30 AM**

I. MINUTES
- A. June 29, 2011

II. DEFERRED COMPENSATION/DEFINED CONTRIBUTION PLAN
- A. Companion Plan/DC Plan – Sparb (Board Action)

III. FLEX PROGRAM
- A. Eligible Products – Kathy (Board Action)

IV. RETIREMENT
- A. Excess Contribution Limits – Deb (Board Action)
- B. Retirement Contributions – Deb (Information)
- C. Law Enforcement Plan Employer Contribution Rate – Sparb (Board Action)
- D. Political Subdivision Participation – Sparb (Board Action)

V. GROUP INSURANCE
- A. Dental Renewal – Kathy (Board Action)
- B. Life Insurance Agreements – Kathy (Board Action)
- C. HDHP Plan – Sparb (Board Action)
- D. Rx Extension – Sparb (Board Action)
- E. Online Wellness Program – Sparb (Information)

VI. MISCELLANEOUS
- A. PERS Update – Sparb (Information)
- B. Executive Director Review – (Board Action)
- C. SIB Agenda
- D. Deferred Compensation – Kathy (Board Action)
  1. Financial Hardship Case #35
  2. Financial Hardship Case #40

Any individual requiring an auxiliary aid or service must contact the NDPERS ADA Coordinator at 328-3900, at least 5 business days before the scheduled meeting.

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Memorandum

TO: PERS Board

FROM: Sparb

DATE: July 20, 2011

SUBJECT: 401(a) and 457 Transitions

Staff and TIAA/CREF are proceeding with the planning for the upcoming transition from Fidelity. At this point I would like to give you an update and seek your direction on several items. Representatives from TIAA/CREF will also be at the meeting to answer questions. In this memo I have noted for each of the following items if they are information or if we need Board action:

1. Implementation Timeline (information)
2. Transfer Process (Board Action)
3. Managed Income Portfolio (information)
4. Plan Options (Board Action)
5. Fund Line Up (Board Action)
6. Agreements

Please note that a representative from TIAA/CREF will be at the Board meeting to answer questions.

Implementation Timeline (Information)

Attachment #1 is the most recent implementation timeline for the transition from Fidelity. Also included is the TIAA/CREF project team. As you review the attached, you will note that activities really kick into high gear in September and October.

Transfer Process (Board Action)

One of the steps required in our transition from Fidelity to TIAA/CREF is to transfer the assets. Two options have been presented to us for your consideration. Previously when we transferred from Valic to Fidelity the only option available was #2 and that was the process used. The two options are:

Option 1 - Participant Directed Allocation and Asset Transfer Instructions

- Assets from Fidelity will be mapped based on each participants age based fund unless they have provided asset allocation instructions on the TIAA/CREF participant's record during the 30 day period before transfer.
- Under this option we will enroll all participants 30 days prior to the asset transfer date
- Upon enrollment, a "Welcome Kit" from TIAA-CREF will be sent to each participant with their contribution and asset allocation set to the appropriate age-based fund. The Welcome Kit will contain a contract number so that they can go online and establish a password to go into their account and change their contribution allocation information as they wish among the various investment options available under the NDPERS 401(a) and 457(b) plans (NOTE: they can also contact our call center to do this as well)
- On 11/1/2011, the NDPERS assets will transfer over from Fidelity. Any NDPERS participants that requested an asset allocation change between 10/1/11 – 10/31/11, will see their assets applied to their accounts according to the changes they requested through our call center or through their accounts online. For NDPERS participants that make no changes from 10/1/11 – 10/31/11 their assets will be defaulted into the appropriate age-based fund.

Option 2 - NDPERS Directed Allocation and Asset Transfer Instructions

- Assets from Fidelity will be transferred based on fund-to-fund mapping instructions provided by NDPERS
- Under this option we will enroll participants approximately 1 week prior to the asset transfer date of 11/1/2011
- On 11/1/11 we transfer the NDPERS assets over from Fidelity according to the fund to fund mapping instructions provided by NDPERS to TIAA-CREF. Any NDPERS participant that made an allocation instruction change during the 7days prior to the asset transfer to TIAA-CREF will still see the assets transferred over from Fidelity allocated according to the fund to fund mapping instructions we received from NDPERS. Their updated allocation instruction will apply to the first contribution received following the date the allocation change instruction was received.

TIAA/CREF noted in a recent memo:

> *Our view is that Option 1 provides the NDPERS participants the opportunity to make individual decisions on how they want their funds mapped to the new plans at TIAA-CREF. It is also beneficial in that for those who don't make a selection, their assets will map to the appropriate age-based fund. This will provide them with more time to make their decisions. Lastly, although NDPERS (as a public employer) does not need to be covered by the QDIA requirement, this option meets these guidelines - which may provide an extra level of comfort to NDPERS from a fiduciary perspective on how the assets will be transferred*

In addition to the above transition for all our members in our existing plan fund options we also have our members who utilize the investment window. The options for them are:

> Option 1 - TIAA-CREF maps all Fidelity MF Window assets and allocation instructions to the NDPERS Core line-up based on the methodology NDPERS elects (e.g. appropriate age based mutual fund or other core menu option(s)). Under this option TIAA-CREF will meet with each of the 50 participants in the Fidelity MF Window and walk them through establishing a TIAA-CREF brokerage account if they desire (after assets have been transferred to their TIAA-CREF core account) then assist them with transferring their initial assets into their new brokerage account.
>
> Option 2
>
> - Assist NDPERS participants with Fidelity MF Window assets with arrangements to transfer eligible assets "in-kind" to TIAA-CREF brokerage account during October.
> - NDPERS issues instructions to map remaining Fidelity MF Window assets to Core line-up based on the methodology NDPERS elects (e.g. appropriate age-based mutual fund or other NDPERS core menu option(s)) on 11/1/11. NOTE: These are assets where the same share class or fund family is not available in the TIAA-CREF brokerage account.

To support the above transition TIAA/CREF has outlined a plan of action for deploying their individual consultants to assist our members. See Attachment #2.

Staff recommendation is to continue to review the above options and will bring our recommendation to the Board meeting.

Board Action Requested:

Determine which option to use for those members in our core funds and for those in our mutual fund window.

Managed Income Portfolio - MIP(Information)

Pursuant to our agreement with Fidelity, money in the managed income portfolio can take up to 12 months to transfer after the plan has given its notice. However, please note that the member can move the funds at any time. Attachment #3 is a copy of the letter I sent to Fidelity providing this notice. As some of you may recall, we had a similar provision with Valic except the transfer period was much longer. In fact the last transfer is occurring now.

Plan Options (Board Action)

Our recent RFP requested options for our consideration to increase participation in the 457 plan. TIAA/CREF offered us three ideas which were: 1) Communication and Education, 2) Registered Investment Advisors, and 3) Transfer Incentives or assistance. The communication and education was accepted as part of our award. The latter two will require additional consideration. The following is the narrative from the RFP:

REGISTERED INVESTMENT ADVISORS

Another aspect of our proposal that can significantly encourage increased participation in North Dakota PERS' plans is the Registered Investment Advisor option. As described earlier, we know that participants often have ongoing relationships with local investment advisors, and may prefer to maintain those partnerships. The RIA option can provide employees with an additional level of comfort by giving them the choice to work with local advisors who are thoroughly familiar with their employer's program and community members who share a special interest in its success.

We are offering North Dakota PERS three possible scenarios involving the use of RIAs, providing employees with real options.

RIA SCANARIO A: PARTICIPANT CHOICE

Participant may choose:

- TIAA-CREF for participant advisory services for no additional fee; or
- A Registered Investment Advisor (RIA). An eligible RIA must be SEC- or state-registered and meet certain requirements. Advisory fees are paid directly from participant account accumulations with pretax dollars for services provided. Only participants who choose to use the services of an RIA pay for them.

RIA SCENARIO B: PREFERRED ADVISOR

Participant may choose:

- TIAA-CREF for participant advisory services for no additional fee; or
- To work with a North Dakota PERS Preferred Advisor.

RIA SCENARIO C: EXCLUSIVE ADVISOR

Participant may choose:

- TIAA-CREF for participant advisory services for no additional fee; or
- To work with one North Dakota PERS Exclusive Advisor for a fee.

TRANSFER ASSISTANCE FOR PARTICIPANTS WITH NON-COMPANION PLAN PROVIDERS

TIAA-CREF is able to work with North Dakota PERS to identify and implement a financial incentive designed to encourage participants with other non-Companion Plan 457(b) providers to transfer their participation and assets to the Companion Plan. If successful, this could increase average account balances in the Companion Plan, total assets and cost structure.

The financial incentive can take a number of forms, including so-called "gross-up" and "make-whole" approaches that help offset the cost of existing contingent deferred sale charges and market value

adjustments that may apply to investments held by non-Companion Plan participants. These types of incentives would help remove these financial "handcuffs" from these employees that prevent them from moving to the Companion Plan.

A third and alternative approach would be to provide a fixed financial incentive that applies to all assets of participants with the non-Companion Plan providers regardless of whether such are subject to surrender fees or market value adjustments. This approach has the advantage of being simpler to administer and to communicate, and has a greater chance of encouraging a participant to move all their assets to the Companion Plan, not just those subject to surrender or other negative adjustments.

Both these options have merit. However, for the remainder of this year PERS staff and our members will be busy with the transfer and so I am suggesting that we give consideration to these early next year, and if approved, roll them into the plan next summer or fall. However, as a first step ***staff is seeking your approval to discuss these options at our provider meetings and ask them to share any thoughts with us for your consideration.*** Each year we have meetings with the 457 provider agents. This forum will provide us an opportunity to roll out the above ideas to determine interest as well as other reactions to the idea before committing PERS to a specific action.

Board Action Requested

To approve allowing staff to share the above two options with other 457 provider agents at the upcoming provider meetings and to solicit their thoughts for your consideration.

Fund Line Up

In June I received the following email from TIAA/CREF:

> *At our meeting on 5/25 we asked if the Board would consider allowing a few TIAA CREF options. Please know that our proposal is acceptable as submitted; we feel the following are strong performers and would appreciate the consideration.*
>
> *- TIAA-CREF Growth & Income Retire*
> *- TIAA-CREF High Yield*
> *- Cref Stock*
> *- and the TIAA-CREF Lifecycle funds.*

I referred this to Bob Liberto at Segal and asked him to review the suggestions to see if there was any merit in making a change from the fund line up offered by TIAA/CREF in their proposal. Attachment #4 is his response. As you will note Segal did not find a significant reason for us to change the fund line from that originally proposed except for the lifestyle

funds. ***Based upon Segal's review, it would be staff's recommendation to not make any changes in the fund line at this time except for consideration of the change in lifestyle funds. Staff would recommend that this be referred to the PERS Investment Subcommittee for consideration and request they report their conclusion to the August Board meeting.***

Board Action Requested

Determine actions relating to fund line up.

Agreements

To implement the Board's decision to change to our plan from Fidelity to TIAA/CREF, we will need to sign two agreements. The first is Attachment #5 and that is with Fidelity. As part of our decision to change, we decided to extend our agreement with Fidelity for several more months to provide more time for transition, this attachment implements this decision. This extension has been reviewed by staff and Jan. ***Staff recommendation is to approve Attachment #5.***

Board Action Requested

Approve Attachment #5

The second agreement is with TIAA/CREFF and is Attachment #6. This agreement needs to be executed in August for us to stay on schedule. The attached is the draft copy with redline suggestions by Jan. This has been forwarded back to TIAA/CREF. Consequently, staff is still working on a final draft for your final consideration August however we wanted to provide this copy to you at this time for your review. If there are any issues you wish us to follow-up on before the August meeting please let us know.

TIAA CREF

Financial Services

North Dakota Public Employees Retirement System (NDPERS)

2011 Retirement Plan Transition

- High Level Timeline

As of June 22, 2011

TIAA-CREF Transition Team Organization

Work Stream	Work Stream Lead	Responsibilities
Project Management and Oversight	**Julio Rivera**	Overall responsibility for managing the project
New Recordkeeping Plan Setup	**Shameron Washburn**	Coordinate all tasks necessary to facilitate new plan setup
Asset and Data Takeover and Participant Enrollment	**Julio Rivera**	Responsible for setting up and coordinating the asset and data transfer of NDPERS records and assets from Fidelity to TIAA-CREF. Also for enrolling Fidelity participants in the plans.
Communication, Education & Advice	**Jeanne Chase**	Develop and implement the transition Communication, Education & Advice Plan
Remittance File Update Testing	**Russell Dockett**	Coordinate testing of remittance file updates to reflect plan number changes

High Level Timeline

Due Date	Milestone	Who	Action
5/25/11	**Initial Conversion Meeting**	TIAA-CREF & NDPERS	▪ Review project timeline ▪ Discuss prerequisite activities
6/22/11	**Client Conversion Kick-Off Meeting**	TIAA-CREF & NDPERS	▪ Introduce TIAA-CREF Conversion Team ▪ Review Project Timeline ▪ Discuss communication strategy ▪ Discuss Prerequisite Activities ▪ Review draft Statement of Work
7/21/11	**Prerequisite Activities**	NDPERS	▪ Execute SOW ▪ Letter of Intent is sent to Fidelity ▪ Execute all contracts and agreements
8/1/11	**Communications Planning**	TIAA-CREF	▪ Deliver final communication strategy
8/8/11	**Communications Planning**	NDPERS	▪ Communication strategy endorsed

High Level Timeline

Due Date	Milestone	Who	Action
9/1/11	**Files from Fidelity**	Fidelity	Send test conversion file to TIAA-CREF
9/1/11	**System Validation**	TIAA-CREF	Internal review conducted to ensure new plan is set up properly within TIAA-CREF Applications.
9/1/11	**Training National Contact Center**	TIAA-CREF	Update/train National Call Center operators with NDPERS implementation details and employee messaging.
9/1/11	**Employee Announcement Letter**	TIAA-CREF	Inform employees of upcoming changes to the retirement plan. Letter includes why changes are being made, what employees can expect during the transition and a schedule of upcoming communication events.
9/1/11	**Newsletter / Web Content**	TIAA-CREF	Utilize employee newsletters or web pages to communicate the changes to the retirement plan. The article will provide a quick summary of the changes.
9/55/11	**Administrator / Web Access** **(Payroll Committee Meeting)**	NDPERS & TIAA-CREF	Review plan change with administrators, employee communication timeline and administrator website Customer numbers issued for selected administrators

High Level Timeline

Due Date	Milestone	Who	Action
9/7/11	**Understand Fidelity Recordkeeping Parameters**	TIAA-CREF	Obtain an understanding of the Fidelity recordkeeping parameters based on responses to standard questions posed to them and on a preliminary review of the test data file
9/12/11	**Plans are live**	TIAA-CREF	401(a) and 457(b) plans are live and operational within TIAA-CREF Applications
9/12/11	**Custom Retirement Website Launched**	TIAA-CREF	A custom retirement website where employees can review plan details, access their account, set-up an individual session, etc.
9/12/11	**Transition Guide Mailing / With Blackout Notice**	TIAA-CREF	Provides a letter reiterating the changes previously communicated in the Announcement letter and provides a brochure detailing the transition.
9/14/11	**Finalize Business Requirements**	TIAA-CREF	Finalize the project business requirements based on information received from NDPERS and Fidelity
9/21/11	**Finalize Technical Requirements**	TIAA-CREF	Finalize project technical requirements that will allow the creation of scripts to map the Fidelity data

High Level Timeline

Due Date	Milestone	Who	Action
9/26/11	**Information Session Reminder Self Mailer**	NDPERS	Postcard/Self-mailer to current employees reminding them of the seminar schedule (both on-site and online) to encourage attendance
9/26/11 to 11/1/11	**Group Informational Meetings (On-site, Webinars and Pre-recorded)**	TIAA-CREF	TIAA will conduct Group Informational Seminars review plan changes, cover transition requirements, provide basic investor education, and enable participants to ask questions and receive immediate feedback.
9/28/11	**Complete Scripting and Initial Testing**	TIAA-CREF	Complete scripting and initial testing
10/1/11	**Enrollments**	TIAA-CREF	▪ Receive Enrollment Data File from Fidelity ▪ Enroll all participants ▪ Send welcome kits to each participant
Starting 10/3/11	**Individual Advice Sessions**	TIAA-CREF	TIAA-CREF will begin offering one-on-one advice sessions to participants. During the transition TIAA will expand the number of advice sessions and Individual Consultants to accommodate additional demand.
10/4/11	**Complete 2nd Level of Testing**	TIAA-CREF	Complete second series of end-to-end testing

High Level Timeline

Due Date	Milestone	Who	Action
10/11/11	**Complete Testing of Fidelity Conversion**	TIAA-CREF	▪ Completes the trial conversion testing ▪ Provide a final go decision to move forward with conversion
10/12/11	**Informational Session Reminder Direct Mail**	TIAA-CREF	Postcard/Self-mailer to current employees reminding them of the seminar schedule (both on-site and online) to encourage attendance.
10/17/11	**Final Remittance to Fidelity**	NDPERS	NDPERS sends final remittance to Fidelity before blackout period begins (estimated date)
10/24/11	**Blackout Begins**	Fidelity	Initiate blackout period (actual date determined by Fidelity)
10/31/11	**Plan Asset Valuation**	Fidelity	Valuate the plan assets at close of business
11/1/11	**Asset Transfer**	Fidelity	Wire plan assets to TIAA-CREF

High Level Timeline

Due Date	Milestone	Who	Action
11/1/11	**Asset Transfer Conversion Initiated**	TIAA-CREF	Reconcile data and assets at the plan level
11/8/11	**Final Conversion File**	Fidelity	Sends final conversion file to TIAA-CREF that includes the participant level data (estimated date)
11/11/11	**Conversion Complete**	TIAA-CREF	▪ Begins managing assets and record-keeping services ▪ Provides Conversion Plan Summary Report to NDPERS ▪ Sends a Conversion Confirmation Statement to each impacted participant
11/11/11	**Blackout ends**	Participants	Can begin transacting against their assets (may be earlier or later based on when the final data file is received in good order from Fidelity)

High Level Timeline

Due Date	Milestone	Who	Action
11/14/11	**Reminder Email**	NDPERS	TIAA-CREF will send a reminder mailing to employees that encourages them to schedule a one on one individual advice session and update their beneficiary information.
12/1/11	**Employee Reminder Mailing**	TIAA-CREF	Reminds transitioning participants of changes, encourage setting up a one-on-one session and consolidating assets.
1/1/12	**Quarterly Statement**	TIAA-CREF	Messaging on quarterly statement reminding participants of changes.

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TIAA-CREF Individual Consultant Deployment Plan:

October Activity:

- TIAA-CREF begins conducting a series of weekly webinar presentations.
  - Monday October 3rd (since October 1st is a Saturday).
  - Wednesday October 12th.
  - Tuesday, October 18th.
  - Thursday, October 27th.

  All webinars will be conducted at 12 noon and recorded for those not able to attend and available for 2 weeks from the date of the presentation.
- As a compliment to the webinars TIAA-CREF will also conduct a series of live seminars at various locations based on the availability of room locations – focused on the 10 largest employee based locations.

Rank	Participating Employer:	Covered Employees
1	Department Of Human Services	1,779
2	University Of North Dakota	1,746
3	North Dakota State University	1,203
4	Department Of Transportation	1,192
5	North Dakota State Hospital	569
6	Developmental Center	549
7	Cass County (Fargo)	476
8	ND Department Of Health	459
9	ND Supreme Court	428
10	Job Service North Dakota	322
	Total (1 - 10)	8,723

- TIAA-CREF begins 1-on-1 counseling sessions focused on assisting participants with logging into their account and provide individual investment allocation guidance to NDPERS participants. Objective third party advice will also be offered using TIAA-CREF's Advice service. These sessions will be focused where the largest employees groups are based and may coincide with a group seminar. Of key importance for these meetings will be room locations where consistent internet access can be obtained. Depending on the number of locations and the volume of interest TIAA-CREF also has access to additional Individual Consultant resources from other parts of the Midwest Region.

November Activity:

- During November we anticipate the need for 2 additional Webinars:
  - Tuesday, November 1st
  - Wednesday, November 16th

  Live seminars will continue at any of the key locations not scheduled in October plus other locations where there is an established need.

- 1-on-1 counseling sessions will also continue at additional locations as well as expanding the focus of the meetings to enrollment of previously non-participating employees or those

participating through other providers who now wish to transfer their 457 assets to the Companion Plan.

The next largest group of employers would include the following:

Rank	Participating Employer:	Covered Employees
11	Information Technology Dept	319
12	Grand Forks County	311
13	Ward County (Minot)	298
14	Burleigh County (Bismarck)	296
15	City Of Minot	274
16	Adjutant General ND National Guard	266
17	State Penitentiary	240
18	Minot State University	235
19	Attorney General's Office	232
20	Bank Of North Dakota	228
21	ND St College Of Science	219
22	Highway Patrol	217
23	James River Correctional Ctr	206
24	Game & Fish Department	188
25	Williams County (Williston)	178
	Total (11 – 25)	3,707
	Total for Top 25	12,430
	Total of All Eligible Employees	20,372

December Activity – and months following:

- Beginning in December TIAA-CREF will move away from the transition process to a variety of targeted approaches based on the situations existing at each location. For example:
  - Low participation – target employees for new enrollments with an educational seminar, 1-on-1 counseling and group enrollment meetings.
  - High participation in the Companion plan – target existing participants for service meetings and allocation discussions and rollovers into the Companion Plan.
  - High participation with other carriers – focus on advantages and benefits of the Companion Plan through educational seminar and 1-on-1 counseling sessions to promote rollovers to the Companion Plan.

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July 8, 2011

Shawn Crosgrove
Managing Director
Fidelity Investments
49 North 400 West
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MIP LIQUIDATION

Please be advised that effective October 31, 2011 the North Dakota Defined Contribution Retirement Plan (57637) and North Dakota State Deferred Compensation Program (64579) will be transferred from Fidelity Investments. The North Dakota PERS Board of Trustees will continue trustee responsibilities for each plan and TIAA-CREF will assume recordkeeping responsibilities on that date.

This letter is to serve as a request to liquidate the assets in the Fidelity Managed Income Portfolio. We are aware that it may take up to 12 months to pay out the proceeds from the Managed Income Portfolio. Please provide us with a final liquidation date at your earliest convenience so that we may plan accordingly.

Sparb Collins
Executive Director

SEGAL ADVISORS

NEW YORK

Robert A. Liberto
Senior Vice President
rliberto@segaladivsors.com

MEMORANDUM

To: Sparb Collins

From: Robert Liberto

Date: July 14, 2011

Re: Fund Recommendations from TIAA-CREF

Per your request, Segal Advisors has analyzed several proprietary investment options recommended by TIAA-CREF, as potential replacements for the 457 Companion Plan's original investment line-up submitted by them. Those options are: high yield fixed income, large cap blend domestic equity, and target date funds.

TIAA-CREF's original recommendation and the proprietary options are highlighted below.

High Yield Fixed Income

TIAA-CREF originally recommended the Prudential High Yield Z Fund (PHYZX), but has recommended replacing it with the TIAA-CREF High Yield R Fund (TIHRX).

Prudential High Yield Z Fund (PHYZX)

- Expense Ratio: 0.65%
- Revenue Sharing: 0.25%
- Allocation: 27% BB, 44% B, 21% below B

TIAA-CREF High Yield R Fund (TIHRX)

- Expense Ratio: 0.65%
- Revenue Sharing: 0.25%
- Allocation: 43% BB, 49% B, 5% below B

Based on the last 5 years, the Prudential High Yield Z Fund (PHYZX) displayed stronger performance during rising markets while the TIAA-CREF High Yield R Fund (TIHRX) has provided better downside protection. Prudential has a higher allocation to lower quality below B bonds. Consequently, it has a higher standard deviation. Over the 3 and 5-year periods, the Prudential option has a stronger batting average, which is a measure of the manager's ability to beat or match the market over time. On a calendar year basis, Prudential has outperformed TIAA-CREF in 2009 and 2010. TIAA-CREF has outperformed Prudential in 2007 and 2008. Since the expense ratios and revenue sharing are the same, either fund is a good option for the Plan. However, we see no significant reason to make a change at this time.

Large Cap Blend

TIAA-CREF originally recommended the Nuveen Tradewinds Value Opportunities I Fund (NVORX) but has recommended replacing it with the TIAA-CREF Growth & Income Retire Fund (TRGIX).

Nuveen Tradewinds Value Opportunities I Fund (NVORX)

- Expense Ratio: 1.18%
- Revenue Sharing: 0.15%
- Allocation: 16% cash, 45% US stocks, 35% non-US stock

TIAA-CREF Growth & Income Retire Fund (TRGIX)

- Expense Ratio: 0.77%
- Revenue Sharing: 0.25%
- Allocation: 1% cash, 93% US stocks, 5% non-US stock

Both funds performed in the top quartile of large cap core equity managers over longer-term periods. Over the past 5-years, both funds have captured approximately 107% of the up-market. Yet, over this period, the Nuveen fund has achieved a better down-side market capture relative to TIAA-CREF. On a calendar year basis, Nuveen has outperformed TIAA-CREF five of the past six years. Over the 5-year period, Nuveen displays stronger risk/return characteristics. While both funds had strong batting averages over the 3-and 5-year periods, Nuveen ranked in the first percentile of its peer universe. Nuveen also has a lower standard deviation than TIAA-CREF. However, Nuveen has a much higher allocation to non-US stocks. Nuveen is the stronger option based on performance and risk/return characteristics, yet, the TIAA-CREF option has a lower cost, which may be taken into consideration.

Lifecycle/Target Date

TIAA-CREF originally recommended the Wells Fargo Advantage Dow Jones Target Date funds but has recommended replacing them with the TIAA-CREF Lifecycle Retirement funds.

Wells Fargo Advantage Dow Jones Target Date Funds

- Expense Ratios: 0.80%-0.87%
- Revenue Sharing: 0.35%

TIAA-CREF Lifecycle Retirement Funds

- Expense Ratios: 0.65%-0.72%
- Revenue Sharing: 0.25%

Based on historical performance, the TIAA-CREF funds performed better than Wells Fargo during strong up-markets yet have significant underperformance in down markets. The TIAA-CREF funds are more aggressively allocated by having a higher allocation to equities relative to Wells Fargo. The more conservative allocation of the Wells Fargo funds helps explain the relative outperformance of TIAA-CREF funds during up-markets. In addition, the expense ratio is lower for the TIAA-CREF funds. The lower expense ratio makes the TIAA-CREF funds appealing. However, a decision on changing this option should also take into consideration the higher volatility of the TIAA-CREF funds.

We look forward to discussing this with you. Please let me know if you have any questions.

QUICK GUIDE TO LEGAL AGREEMENTS

TIAA CREF

FINANCIAL SERVICES FOR THE GREATER GOOD®

TIAA-CREF QUICK GUIDE TO LEGAL AGREEMENTS

Welcome to TIAA-CREF's suite of enhanced retirement plan products and services. This reference guide offers you a brief overview of the legal agreements required to enable your institution's retirement plan(s) to migrate to the new recordkeeping platform. The type(s) of agreement(s) required from your institution will depend on the kind of retirement plan(s), products and services your institution intends to offer participants via the platform.

RECORDKEEPING AGREEMENT

The purpose of the Recordkeeping Services Agreement is to set forth:

- The administrative services TIAA will provide (Schedule A).
- The plan funding options selected by your institution (Schedule B).
- Any additional fees and revenue sharing applicable to nonproprietary mutual funds (Schedule B).

No Recordkeeping Agreement is required if your institution chooses not to offer mutual funds in its retirement plan.

The parties to the Recordkeeping Services Agreement are TIAA and the institution. Only one Recordkeeping Services Agreement is required even if the institution sponsors more than one plan. You will need to sign two originals (one for your files and one for TIAA's files).

CUSTODIAL AGREEMENT

Plan assets generally must be segregated from assets owned by an institution. Traditionally, TIAA-CREF assets have been held in annuity contracts in order to satisfy this requirement. Like other plan assets, mutual fund assets under plans generally must be segregated from institutional assets, and this can be done by issuing a custodial agreement to the institution or, if applicable, to the plan's trustees. For 403(b) plans, Internal Revenue Code ("IRC") section 403(b)(7) requires that mutual funds must be offered through a custodial account. Governmental 401(a) plans, 457(b) plans (both private and governmental) and 457(f) plans may use custodial accounts to hold mutual fund assets. Private 401(a) plans must use a trust to hold mutual fund assets.

TIAA has arranged for JPMorgan Chase Bank N.A. ("JPMorgan Chase") to offer custodial and trustee services to our institutions. TIAA cannot be the custodian because it is an insurance company and does not have custodial powers. It has a broker/dealer subsidiary that can serve this function, but that subsidiary is not capable of handling the volume of business expected under the program.

JPMorgan Chase was chosen by TIAA because it is a commercially respected leader in the field that is already set up to handle the volume of business under the program. As custodian, JPMorgan Chase's role is a limited one: to hold the assets of a plan that are invested in mutual funds. In doing so, JPMorgan Chase will follow the instructions from plans and plan participants, as communicated to TIAA as the plans' recordkeeper.

No TIAA-CREF institution will deal directly with JPMorgan Chase, and there is no additional charge to a plan because it has appointed JPMorgan Chase as its custodian. Article 9.1 of the custodial agreement on fees is a disclosure that JPMorgan Chase is being paid its fees through the underlying mutual fund fees, but does not impose any additional fees on the plans. Article 9.2 gives TIAA the ability, as recordkeeper, to collect its platform fee applicable to nonproprietary mutual funds (the fees that are disclosed in Schedule B of the Recordkeeping Services Agreement).

The parties to the Custodial Account Agreement are:

- JPMorgan Chase;
- Institution (employer) and trustee (if the custodial agreement is issued to a trusteed plan); and
- TIAA (as plan recordkeeper).

Each employer plan requires its own custodial agreement. All of these agreements read basically the same except for certain provisions reflecting different IRC and Employee Retirement Income Security Act of 1974 ("ERISA") provisions applicable to each of the different plans (e.g., 403(b), 401(a), 457(b) and 457(f) plans).

You will need to sign three copies of each custodial agreement (one for your files, one for TIAA's files and one for JPMorgan Chase's files).

If the plan is funded only with annuity contracts, no custodial account agreement is required.

TRUSTEE AGREEMENT

Private qualified 401(a) plans that offer mutual funds must have a trust in place. If a trust is already in place, the institution should complete the custodial agreement for trusteed 401(a) plans. Private qualified plans that intend to offer mutual funds for the first time might not have a trust in place. They will have to establish a trust in order to offer mutual funds. JPMorgan Chase has agreed to act as a passive directed trustee for these plans. In order to do so, JPMorgan Chase requires that the plan state in the plan document that it is an ERISA section 404(c) plan. In addition, the plan must specify that it can be funded by a trust, and JPMorgan Chase must be appointed as a trustee of the plan by the fiduciary designated in the plan document as having the authority to do so. TIAA must also be given a copy of the current plan document.

As with the custodial agreements, there is no additional charge to a plan for which JPMorgan Chase acts as directed trustee. In addition to the private qualified 401(a) plans, JPMorgan Chase is available to act as a directed trustee for governmental 401(a) and 457(b) plans, again at no additional charge. The employer and trustee(s) and JPMorgan Chase are the parties to the Trust Agreement. You will need to have signed two originals (one for the employer's and trustee(s)' files and one for JPMorgan Chase's files).

Can an institution negotiate the terms of the Recordkeeping Services Agreement?

No. These agreements, including the Recordkeeping Services Agreement, are standard form agreements and most of their terms are not negotiable. However in certain circumstances, TIAA's legal counsel may agree to talk with representatives and counsel from theinstitution to discuss and make minor modifications.If the institution refuses to indemnify TIAA, TIAA will still enter into the agreement but will, in most instances, refuse to indemnify the institution. In that case, a new Section 10 will be substituted for the current Section 10, and it will be renamed "Legal Actions." It provides that each party to the agreement can control any litigation brought against it.

Can an institution negotiate the terms of the Custodial Agreement or the JPMorgan Chase Trust Agreement with JPMorgan Chase?

No. JPMorgan Chase will not deal with an institution directly. Any modifications requested by an institution must be discussed and approved by TIAA's legal counsel. If legal counsel thinks JPMorgan Chase will approve them, it will forward them to JPMorgan Chase for approval. Only very limited modifications will be approved.

As discussed above, JPMorgan Chase's role is a limited one — to hold the mutual fund assets and rely on instructions received from, and recordkeeping services provided by, TIAA. In taking on this limited responsibility, it will not accept the liability of indemnifying institutions. In addition, JPMorgan Chase will not enter into an agreement with a private institution that refuses to indemnify it. If the institution insists in its refusal, it will not be able to offer mutual funds under the plan. Governmental institutions that cannot indemnify JPMorgan Chase due to state law will be accommodated. They must, however, provide TIAA with proof of the state law restrictions. This also applies to a refusal to waive sovereign immunity and choice of law provisions.

TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA

CUSTODIAL ACCOUNT AGREEMENT FOR A NON-TRUSTEED GOVERNMENTAL 401(a) PLAN WITH A TIAA-CREF BROKERAGE ACCOUNT

SAMPLE

This Custodial Account Agreement ("Agreement") between JPMorgan Chase Bank, N.A. ("Custodian") and **North Dakota Public Employees Retirement System** ("Employer") as Sponsor of the **North Dakota Defined Contribution Retirement Plan** ("Plan"), a plan designed to meet the requirements of Section 401(a) of the Internal Revenue Code of 1986, as amended ("Code").

WHEREAS, in accordance with Code Section 401(f), the Plan will be funded in part with annuity contracts issued by Teachers Insurance and Annuity Association of America and College Retirement Equities Fund ("TIAA-CREF"); and

WHEREAS, in accordance with Code Section 401(f), the Plan will be funded in part with a custodial account designed to meet the requirements of Code section 401(f)(2) and the assets in such custodial account shall be invested solely in Mutual Fund Shares, as defined in Article II below and in participant directed Brokerage Accounts as described in Section 5.1(b) below; and

WHEREAS, the Plan provides that the Plan's participants (and beneficiaries of deceased participants) have the right to direct the Employer as to the investment of amounts credited to their individual accounts under the Plan by selecting from among the Mutual Fund Shares and a TIAA-CREF Brokerage Account made available to them under the Plan by the Employer; and

WHEREAS, the Employer has appointed Teachers Insurance and Annuity Association of America as record keeper for the Plan ("Record Keeper") pursuant to which Record Keeper serves as Employer's agent for purposes of keeping Plan records; and

WHEREAS, the Employer has requested that the Custodian provide certain custodial services for the portion of the Plan's assets invested in Mutual Fund Shares and TIAA-CREF Brokerage Accounts described in Appendix A of this Agreement, which custodial services are required to satisfy the requirements of Code section 401(f) and the Custodian has agreed to provide such services as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, it is hereby agreed as follows:

ARTICLE I. EFFECTIVE DATE

1.1. The effective date of this Agreement will be **October 1, 2011,** or such later date as the Parties shall agree to by Notice. This agreement will remain in effect until terminated pursuant to Article X.

ARTICLE II. DEFINITIONS

2.1 **"APPLICABLE LAW"** means any statute, whether national, state or local, applicable in the United States or any other country, any other law, rule, regulation or interpretation of any governmental entity, any applicable common law, and any decree, injunction, judgment, order, ruling, or writ of any governmental entity.

2.2 **"BENEFICIARY"** means the beneficiary(ies) of a deceased participant and an alternate payee of a participant pursuant to a qualified domestic relations order (as defined in section 414(p) of the Code) ("Qualified Domestic Relations Order").

2.3 **"CUSTODIAN INDEMNITEES"** means the Custodian, and its nominees, directors, officers, employees and agents.

2.4 **"INSTRUCTIONS"** means instructions which: (i) contain all necessary information required by the Custodian to enable the Custodian to carry out the Instructions; (ii) are received by the Custodian in writing or via the Custodian's electronic instruction system, SWIFT, telephone, facsimile or such other methods as are for the time being agreed by the Record Keeper and the Custodian; and (iii) the Custodian believes in good faith have been given by the Record Keeper or are transmitted by the Record Keeper with proper testing or authentication pursuant to terms and conditions which the Custodian may specify.

2.5 **"MUTUAL FUND"** means an open-end investment company registered under the Investment Company Act of 1940, as amended.

2.6 **"MUTUAL FUND SHARES"** means securities issued by a Mutual Fund.

ARTICLE III. SERVICES TO BE PROVIDED BY CUSTODIAN

3.1 The Custodian shall receive such sums of money or Mutual Fund Shares acceptable to the Custodian as shall from time to time be paid or delivered to the Custodian under this Agreement. The Custodian shall hold in Plan participant accounts all such assets, together with all the property purchased therewith and the proceeds thereof and the earnings and income thereon. The Custodian shall not be responsible for, or have any duty to enforce, the collection of any contributions or assets to be paid or transferred to it under the Plan or for verifying whether contributions or transfers to it are permissible under the Plan. The Custodian shall not be responsible for investment choices directed by the Employer or by Plan participants or Beneficiaries under the Plan.

3.2 The Custodian shall disburse Plan loan proceeds, hardship and other distributions as directed by the Record Keeper. The Custodian shall distribute Plan account balances in accordance with any Qualified Domestic Relations Order in accordance with the Instructions of the Record Keeper. No amounts may be paid or made available to any distributee before the time provided in the Plan. The Record Keeper

SAMPLE

shall be responsible for determining that (a) each distribution satisfies the requirements of the Plan and Applicable Law; (b) the disbursement of loan proceeds has been authorized in accordance with the Plan and Applicable Law; and (c) distributions pursuant to a domestic relations order have been authorized in accordance with the Plan and Applicable Law.

3.3 To the extent permitted under Applicable Law, the Custodian shall be the payer (within the meaning of applicable United States Treasury Department regulations) of benefits in the custodial account under the Plan held pursuant to this Agreement. As payer, it shall perform any required withholding of federal and state income tax from distributions and withdrawals and deposit the same with the appropriate tax authorities as and when directed by the Record Keeper. The Record Keeper shall be responsible for preparing and filing all reports of withheld taxes with the participant or Beneficiary and all applicable federal and state tax authorities.

3.4 The Custodian agrees that all records maintained by it for the Plan shall be open to inspection and audit at reasonable times by agents or representatives of the Employer and that such records will be preserved and maintained in accordance with Applicable Law. The Custodian may charge, and the Employer shall agree to pay, the reasonable cost of any services and materials used by the Custodian in supplying assistance in connection with any such inspection.

3.5 The services to be performed by the Custodian under this Agreement may be performed on the Custodian's behalf wholly or in part through subsidiaries or affiliates of the Custodian or through vendors designated by the Custodian. The Custodian will continue to be liable for the performance of its duties hereunder.

ARTICLE IV. INSTRUCTIONS

4.1 (a) The Employer authorizes the Custodian to accept and act upon any Instructions received by the Custodian from Record Keeper without inquiry. The Record Keeper shall receive instructions from participants and Beneficiaries with respect to the investment of their Plan accounts. It shall aggregate such instructions and will provide Instructions to the Custodian to place net purchase and redemption orders with respect to each Mutual Fund investment option selected for the Plan as follows:

(b) Except as provided in Appendix A with respect to TIAA-CREF Brokerage Accounts, each participant and Beneficiary shall submit investment directions and changes in investment directions with respect to his or her Plan account to the Record Keeper, which shall aggregate such directions placed each day with respect to the various investment alternatives in accordance with its agreement with the Employer. The Custodian shall invest the assets of the Plan accounts only when, if and in the manner, directed by the Record Keeper and shall not be under any obligation to invest or otherwise manage any of such assets. It shall be the duty of the Custodian to act strictly in accordance with the Record Keeper's directions. In the event that the Custodian fails to receive a proper Instruction, the assets shall be invested in a money market Mutual Fund or in such other Mutual Fund investment option selected by the Employer or left uninvested, in any case as selected by the Employer, until the Custodian receives a proper Instruction from the Record Keeper. The Custodian shall, as directed by the Record Keeper, liquidate investments

SAMPLE

when necessary to: (i) comply with participants' and Beneficiaries' instructions or to change investments; (ii) make plan benefit payment distributions; (iii) disburse loan proceeds; (iv) reallocate forfeitures under the Plan; or (v) pay expenses, fees, or taxes. The Record Keeper shall be responsible for determining that such liquidation is permitted under the prospectuses for the Mutual Funds in the participant's or Beneficiary's Plan account.

(c) Unless otherwise expressly provided, all Instructions will continue in full force and effect until canceled or superseded.

(d) The Custodian may (in its sole discretion and without affecting any part of this Section 4.1) seek clarification or confirmation of an Instruction from the Record Keeper and may decline to act upon an Instruction if it does not receive clarification or confirmation satisfactory to it. The Record Keeper may (in its sole discretion and without affecting any part of this Section 4.1) seek clarification or confirmation of an Instruction from the Employer and may decline to act on an Instruction if it does not receive clarification or confirmation satisfactory to it. ~~The Custodian will not be liable for any loss arising from any delay while either it or the Record Keeper seeks such clarification or confirmation~~.

(e) In executing or paying a payment order the Custodian may rely upon the identifying number (e.g., Fedwire routing number or account) of any party as instructed in the payment order. The Record Keeper assumes full responsibility for any inconsistency between the name and identifying number of any party in payment orders issued to the Custodian in Employer's name.

4.2 Any Instructions delivered to the Custodian by telephone will promptly thereafter be confirmed in writing by the Record Keeper. Each confirmation is to be clearly marked "Confirmation". The Custodian will not be liable for having followed such Instructions notwithstanding the failure of the Record Keeper to send such confirmation in writing or the failure of such confirmation to conform to the telephone Instructions received. Either party may record any of their telephonic communications. The Record Keeper will comply with any security procedures reasonably required by the Custodian from time to time with respect to verification of Instructions. The Record Keeper will be responsible for safeguarding any test keys, identification codes or other security devices that the Custodian will make available to the Record Keeper.

4.3 The Custodian need not act upon Instructions which it reasonably believes to be contrary to law, regulation or market practice and the Custodian will be under no duty to investigate whether any Instructions comply with Applicable Law or market practice.

4.4 The Custodian has established cut-off times for receipt of Instructions, which will be made available to the Employer and the Record Keeper. If the Custodian receives an Instruction after its established cut-off time, the Custodian will attempt to act upon the Instruction on the day requested if the Custodian deems it practicable to do so or otherwise as soon as practicable on the next business day.

ARTICLE V. DUTIES OF THE EMPLOYER

5.1 The Employer shall be solely responsible for the following:

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(a) The tax and legal aspects of the Plan.

(b) To select and monitor the funding options for the Plan, it being understood that the Custodian has no authority or responsibility for choosing such funding options. The funding options shall consist of Mutual Funds and a TIAA-CREF Brokerage Account as described in Appendix A. The funding options chosen for the Plan are set forth in Appendix A to this Agreement. Such funding options may be changed from time to time by the parties attaching a new Appendix A hereto.

(c) To evaluate the suitability of the Plan documents and maintain the Plan's conformance with applicable provisions of the Code and the regulations thereunder, including, if applicable, any filings required under Applicable Law.

(d) To represent and defend the Plan in an Internal Revenue Service audit or examination and any appeals or litigation relating thereto and any other examinations, audits or legal proceedings relating to the Plan.

(e) To provide the Custodian, in a timely manner, accurate data, as requested and in the form requested by Custodian, in order to establish and maintain the records necessary for the fulfillment of the Custodian's duties hereunder. ~~The Custodian shall not be responsible in the event that such information is inaccurate.~~ If the Custodian is required to repeat or reprocess any task as a result of incomplete or inaccurate information provided by the Employer, the Custodian may charge the Employer a reasonable reprocessing fee. In addition, if amounts are sent to the Custodian with incorrect Instructions, or in amounts that do not reconcile with the Instructions given, the Custodian may: (1) apply the amounts for which accurate Instructions are given and refund any excess amounts to the Employer; or (2) if amounts are less than the Instructions call for, refund the entire amount to the Employer.

5.2 The Employer shall review all reports and shall immediately notify the Record Keeper in writing of any claimed error with respect to any data or report. The Custodian assumes no responsibility for verification and any report not challenged in writing to the Record Keeper within sixty (60) days of receipt thereof shall be conclusively presumed accurate and complete. The Record Keeper shall promptly notify the Custodian of any claimed error by the Employer.

ARTICLE VI. THE POWERS OF CUSTODIAN AS CUSTODIAN

6.1 The Custodian, in its capacity as custodian, shall have the following powers, which shall not apply to assets held in any TIAA-CREF Brokerage Account:

(a) To vote in person, or in proxy, or to refrain from voting in respect to any Mutual Fund shares held in a participant's or Beneficiary's Plan account, in accordance with Section 11.2 of this Agreement, and to enter into any voting trust or similar agreement in respect thereto;

(b) To exercise conversion and subscription rights pertaining to any property held in a Plan account;

SAMPLE

(c) With respect to any investment, to consent or object to any action or non-action of any corporation, or of the directors, officers or stockholders of any corporation;

(d) To register securities in its name or in the name of any nominee with or without indication of the capacity in which the securities shall be held, or to hold securities in bearer form and to deposit any securities or other property in a depository or clearing corporation;

(e) To employ as many agents and counsel as are reasonably necessary for the purpose of properly performing its duties under this Agreement, and, as part of its expenses under this Agreement, to pay their reasonable expenses and compensation; and

(f) To make, execute and deliver, as custodian, any and all conveyances, waivers, releases or other instruments in writing necessary or desirable for the accomplishment of any of the powers listed in this Agreement.

6.2 The Custodian shall have no duties or responsibilities as custodian other than those specified in this Agreement or under Applicable Law and no implied covenant or obligation shall be read into this Agreement against the Custodian. Notwithstanding any reference herein to the Plan, or to the provisions thereof, it is expressly agreed that the Custodian is not a party to the Plan and shall have no responsibility to apply or administer the terms of the Plan.

6.3 The Custodian shall have no duty to advise any person of the investment, tax or other consequences resulting from that person's actions or inactions, or of its own actions in following the directions of such person, or its failing to act in the absence of such directions.

ARTICLE VII. STANDARD OF CARE; PROTECTION OF CUSTODIAN

7.1 The Custodian shall use due care in providing the services hereunder. Responsibility for due care is limited solely to correcting processing errors resulting from malfunction of the Custodian's equipment, error by its staff, or error by its programs. The Custodian shall make a good faith effort to correct any error caused by its performance subject to the limitations herein set forth; provided that the Employer notifies the Record Keeper in writing of such error and furnishes all data necessary to make such correction within sixty (60) days following the date in which the Employer is furnished with a report in which the claimed error is contained. The Record Keeper shall promptly notify the Custodian of such claimed error. ~~The Custodian Indemnitees shall in no event be liable, regardless of the form of the action, for loss of profit, goodwill, or other special or consequential damages suffered by the Employer, Plan representatives, the Record Keeper or Plan participants or Beneficiaries as a result of the services provided under this Agreement. The Custodian Indemnitees shall not be liable for any error or omission resulting, directly or indirectly, from failure of the Employer, or its agents, including, but not limited to, the Record Keeper (other than the Custodian and/or its affiliates or hired vendors), to properly perform any of its responsibilities under this Agreement or the Plan. The Employer shall indemnify the Custodian Indemnitees against, and hold them harmless from, any loss, claim or expense (including reasonable attorneys' fees) that may be imposed on, incurred by or asserted against the Custodian Indemnitees in connection with or arising out of the Custodian's performance under this Agreement, provided the Custodian has not acted with negligence or engaged in fraud or willful~~

SAMPLE

~~misconduct in connection with the liabilities in question. Additionally, the Employer shall indemnify and save harmless the Custodian for and from any loss, claim or expense (including reasonable attorneys' fees) arising by reason of any breach of any statutory or other duty owed to the Plan by the Employer or the Record Keeper, whether or not the Custodian may also be considered liable for the Employer's or Record Keeper' breach under the provision of Applicable Law.~~

7.2 The Custodian will maintain and update from time to time business continuation and disaster recovery procedures with respect to its custody business that it determines from time to time meet reasonable commercial standards. ~~The Custodian will have no liability, however, for any damage, loss, expense or liability of any nature that the Employer, Record Keeper, participants or Beneficiaries may suffer or incur, caused by an act of God, fire, flood, civil or labor disturbance, war, act of any governmental authority or other act or threat of any authority (de jure or de facto), legal constraint, fraud or forgery, malfunction of equipment or software (except where such malfunction is attributable to the Custodian's negligence in maintaining the equipment or software), failure of or the effect of rules or operations of any external funds transfer system, inability to obtain or interruption of external communications facilities, or any cause beyond the reasonable control of the Custodian (including without limitation, the non-availability of appropriate foreign exchange).~~

ARTICLE VIII. RESIGNATION AND REMOVAL OF CUSTODIAN

8.1 The Custodian may resign as custodian at any time upon sixty (60) days prior written notice to the Employer.

8.2 The Custodian may be removed as custodian at any time upon sixty (60) days prior written notice from the Employer.

8.3 Upon the resignation or removal of the Custodian, the Employer shall promptly appoint a successor, provided that in the event of resignation of the Custodian, the Custodian may appoint a successor in its notice of resignation. Any successor custodian appointed herein shall be a bank or other person eligible to serve as a custodian in accordance with Code Section 401(f)(2). Upon receipt by the Custodian of a written acceptance of such appointment by the successor, the Custodian shall promptly transfer and pay over to such successor the assets of the custodial account. The Custodian is authorized, however, to reserve from the assets to be transferred such sum of money or other property, as it may deem advisable, for the payment of all of its fees, compensation, costs and expenses under this Agreement as Custodian. ~~The Custodian shall not be liable for the acts or omissions of the successor whether or not it appoints the successor.~~

ARTICLE IX. FEES

9.1 The Employer understands and agrees that the Custodian may be compensated for its services under this Agreement by payments made by providers of Mutual Funds, or their affiliates, used under the Plan. This shall include sharing, on a periodic basis, in the revenue derived by such Mutual Fund providers.

SAMPLE

The Employer acknowledges that the Record Keeper has provided information relating to such fees and may obtain further information upon request by the Employer to the Record Keeper.

9.2 The Employer directs the Custodian, on instructions from and on behalf of the Record Keeper, to collect the administrative fees set forth in the Record Keeping Agreement between the Record Keeper and Employer, as sponsor of the Plan, as such agreement may be amended from time to time. Such fees shall be paid from Plan assets and are subject to change upon advance written notice from the Record Keeper to the Employer as set forth in the Record Keeping Agreement.

ARTICLE X. AMENDMENT AND TERMINATION

10.1 The parties shall have the right at any time to amend ~~or terminate~~ this Agreement by an instrument in writing and no change in the scope of the services hereunder shall be permitted or undertaken unless agreed to by the parties in such a written amendment.

10.2 No amendment shall authorize any part of a Plan participant or Beneficiary's account to be used for, or diverted to, purposes other than for the exclusive benefit of the participant or his or her beneficiaries except to the extent such amendment is permitted under the Code.

10.3 Termination of a participant's Plan account shall be effected by a distribution of all assets in the account as directed by the Record Keeper.

10.4 The Custodian's rights, protections, and remedies under this Agreement shall survive the termination of this Agreement.

~~10.4~~

10.5 (a) Termination without cause. This contract may be terminated by mutual consent of both parties.

(b) Termination for lack of funding or authority. STATE by written notice of default to CUSTODIAN, may terminate the whole or any part of this contract, under any of the following conditions:

(1) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term.

(2) If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding proposed for payments authorized by this contract.

(3) If any license, permit, or certificate required by law or rule, or by the terms of this contract, is for any reason denied, revoked, suspended, or not renewed.

Termination of this contract under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination.

(c) Termination for cause. STATE may terminate this contract effective upon delivery of written notice to CUSTODIAN, or any later date stated in the notice:

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(1) If CUSTODIAN fails to provide services required by this contract within the time specified or any extension agreed to by STATE; or

(2) If CUSTODIAN fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms.

The rights and remedies of STATE provided in this subsection are not exclusive and are in addition to any other rights and remedies provided by law or under this contract.

ARTICLE XI. MISCELLANEOUS PROVISIONS

11.1 (a) The Employer represents and warrants that (i) it has full authority and power, and has obtained all necessary authorizations and consents, to use the Custodian as its custodian in accordance with the terms of this Agreement; (ii) assuming execution and delivery of this Agreement by the Custodian, this Agreement is the Employer's legal, valid and binding obligation, enforceable in accordance with its terms and it has full power and authority to enter into and has taken all necessary corporate action to authorize the execution of this Agreement; (iii) it has not relied on any oral or written representation made by the Custodian or any person on its behalf, and acknowledges that this Agreement sets out to the fullest extent the duties of the Custodian; and (iv) it is a resident of the United States and shall notify the Custodian of any changes in residency.

(b) The Custodian represents and warrants that (i) assuming execution and delivery of this Agreement by the Employer, this Agreement is the Custodian's legal, valid and binding obligation, enforceable in accordance with its terms; (ii) Custodian is a bank eligible to serve as custodian in accordance with Code section 401(f)(2); and (iii) it has full power and authority to enter into and has taken all necessary corporate action to authorize the execution of this Agreement.

The Custodian and Employer may rely upon the representations made in this Section 11.1. ~~The Employer shall indemnify the Custodian and the Custodian shall indemnify the Employer, against all losses, liability, claims, or demands arising directly or indirectly from any such representations.~~ As a result of a breach or threatened breach of this Agreement, each party is entitled to any remedies available at law or equity.

11.2 At the time of mailing of notice of each annual or special stockholders' meeting of any Mutual Fund, the Record Keeper shall send a copy of the notice and all proxy solicitation materials to each participant or Beneficiary who has shares of such Mutual Funds credited to his or her individual account excluding Mutual Funds held in any TIAA-CREF Brokerage Account together with a voting direction form for return to the Custodian or its designee. These materials shall clearly explain to the participants and Beneficiaries that the Custodian will not vote shares for which it receives no voting directions. Each participant and Beneficiary shall have the right to send instructions to the Record Keeper directing the Custodian as to the manner in which the Custodian is to vote the shares credited to his or her accounts (both vested and unvested) excluding Mutual Funds held in any TIAA-CREF Brokerage Account. The Custodian shall vote

SAMPLE

the shares as directed by the Record Keeper. The Custodian shall not vote shares for which it has received no directions. With respect to all rights other than the right to vote, the Custodian shall follow the directions of the Record Keeper. The Custodian shall have no duty to solicit direction from participants and Beneficiaries.

11.3 The Plan accounts shall be held for the exclusive benefit of all persons who shall be entitled to receive payments under the Plan. It shall be prohibited at any time for any part of the accounts (other than such amounts as are required or permitted to be used to pay Plan expenses) to be used for, or diverted to, purposes other than the exclusive benefit of Plan participants and their beneficiaries except as otherwise permitted under the Code.

11.4 The participant's or Beneficiary's benefits under the Plan held pursuant to this Custodial Agreement shall be provided solely from his or her Plan account, and neither the Employer nor the Custodian shall have any other liability therefore.

11.5 No right or interest of a Plan participant or Beneficiary in a Plan account under this Agreement shall be (a) assignable or transferable in any manner, (b) subject to any lien, or (c) liable for, or subject to any obligation or liability of any person except as otherwise permitted under the Code. The preceding sentence shall not apply to an assignment, transfer, or attachment pursuant to a Qualified Domestic Relations Order or to a lien or levy on behalf of the Internal Revenue Service or as otherwise permitted with respect to garnishments orders issued pursuant to the Federal Debt Collection Procedures Act of 1990.

11.6 Notices required to be given by the parties hereunder shall be sufficiently given if made in writing to such address as each party shall from time to time specify in writing to the other party. Such notices shall be effective when received.

11.7 This Agreement is intended to comply with Section 401(a) of the Code and its terms shall be interpreted accordingly. ~~Otherwise, the laws of the State of New York shall control the interpretation and performance of the terms of this Agreement.~~ However, neither the Custodian, any of its subsidiaries or affiliates nor any mutual fund provider assumes any responsibility as to the efficacy or legal sufficiency of this Agreement under federal, state or local law. The United States District Court will have the sole and exclusive jurisdiction over any lawsuit or other judicial proceeding relating to or arising from this Agreement. ~~The parties further hereby knowingly, voluntarily and intentionally waive, to the fullest extent permitted by Applicable Law, any right to a trial by jury with respect to any such lawsuit or judicial proceeding arising or relating to this Agreement or the transactions contemplated hereby. To the extent that in any jurisdiction the Employer may now or hereafter be entitled to claim, for itself or its assets, immunity from suit, execution, attachment (before or after judgment) or other legal process, the Employer shall not claim, and it hereby irrevocably waives, such immunity.~~

11.8 If any provision of this Agreement shall be held or made invalid by a court decision, statute, rule or otherwise, the remainder of this Agreement shall not be affected thereby.

11.9 This Agreement may be executed simultaneously in two or more counterparts, each of which taken together shall constitute one and the same instrument.

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IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date specified in Article I.

FOR THE Employer

By: _____ Print Name: _____

Title: _____ Date: _____

JPMORGAN CHASE BANK, N. A.

By: _____ Print Name: _____

Title: _____ Date: _____

The undersigned shall be bound by the terms of the foregoing Agreement with respect to the duties of the Record Keeper. The undersigned shall notify the Custodian of any material change in its duties as Record Keeper under its agreement with the Employer.

TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA

By: _____ Print Name: _____

Title: _____ Date: _____

SAMPLE

APPENDIX A

Plan Funding Options

Non-Proprietary Mutual Funds

Aston/Optimum Mid Cap Fund - Class I	ABMIX
Brown Capital Management Small Company Institutional	BCSIX
Cohen & Steers Realty Shares	CSRSX
Columbia Mid Cap Index Fund Class A	NTIAX
Franklin Growth Fund - Advisor Class Shares	FCGAX
Franklin Mutual Global Discovery Z	MDISX
Hartford Dividend & Growth R5	HDGTX
Invesco US Small Cap Value Y	MPSCX
Nuveen Tradewinds Value Opps Inst	NVORX
Oppenheimer Developing Markets Fund - Class Y	ODVYX
Parnassus Small Cap Fund	PARSX
PIMCO Real Return Admin	PARRX
PIMCO Total Return Fund Admin Class	PTRAX
Prudential High-Yield Z	PHYZX
Prudential Jennison Mid-Cap Growth Fund Z	PEGZX
RidgeWorth Mid Cap Value Equity I	SMVTX
T. Rowe Price Capital Appreciation Fund Adv	PACLX
T. Rowe Price Equity Income Fund	PRFDX
Templeton Global Bond Fund Advisor Class Shares	TGBAX
Vanguard 500 Index Fund Signal Shares	VIFSX
Vanguard Total International Stock Index Fund	VGTSX
Wells Fargo Advantage DJ Target 2005 Adm	WFLOX
Wells Fargo Advantage DJ Target 2010 Adm	WFLGX
Wells Fargo Advantage DJ Target 2020 Adm	WFLPX
Wells Fargo Advantage DJ Target 2030 Adm	WFLIX
Wells Fargo Advantage DJ Target 2040 Adm	WFLWX
Wells Fargo Advantage DJ Target 2050 Adm	WFQDX
Wells Fargo Advantage Growth Adm	SGRKX

SAMPLE

TIAA-CREF Brokerage Account

Notwithstanding any other provision of the Agreement to which this Appendix is attached to the contrary, the following provisions shall apply to the TIAA-CREF Brokerage Account. If so directed by the Employer and subject to the Record Keeper's acceptance of a properly executed TIAA-CREF Retirement Plan Self-Directed Brokerage Application of a Plan participant or Beneficiary, the Custodian shall segregate all or a portion of the assets of the Plan accounts into individual TIAA-CREF Brokerage Accounts established for the benefit of Plan participants and Beneficiaries. Each participant or Beneficiary shall have the power to direct the investment and reinvestment of assets in the TIAA-CREF Brokerage Account established for his or her benefit, subject to such administrative rules and procedures as the Record Keeper and the Custodian may establish. Participants and Beneficiaries shall provide instructions regarding the investment of the TIAA-CREF Brokerage Account directly to the broker appointed for purposes of executing transactions under the account. That broker shall hold custody of property held in the TIAA-CREF Brokerage Account and the Custodian shall have no responsibility for the TIAA-CREF Brokerage Account whatsoever, including, but not limited to, the acts or omissions of any such broker or the broker's failure to follow any other investment restrictions imposed by the Employer under the terms of the Plan.

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TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA

CUSTODIAL ACCOUNT AGREEMENT FOR A NON-TRUSTEED GOVERNMENTAL 457(b) PLAN WITH A TIAA-CREF BROKERAGE ACCOUNT

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This Custodial Account Agreement ("Agreement") between JPMorgan Chase Bank, N.A. ("Custodian") and **North Dakota Public Employees Retirement System** ("Employer") as Sponsor of the **North Dakota State Deferred Compensation Plan** ("Plan"), a plan designed to meet the requirements of Section 457(b) of the Internal Revenue Code of 1986, as amended ("Code") as applicable to governmental sponsors (as defined in Code Section 457(g)(1)).

WHEREAS, in accordance with Code Section 457(g)(3), the Plan will be funded in part with annuity contracts issued by Teachers Insurance and Annuity Association of America and College Retirement Equities Fund ("TIAA-CREF"); and

WHEREAS, in accordance with Code Section 457(g)(3), the Plan will be funded in part with a custodial account designed to meet the requirements of Code sections 401(f)(2) and the assets in such custodial account shall be invested solely in Mutual Fund Shares, as defined in Article II below and in a participant directed Brokerage Account as described in Section 5.1(b) below; and

WHEREAS, the Plan provides that the Plan's participants (and beneficiaries of deceased participants) have the right to direct the Employer as to the investment of amounts credited to their individual accounts under the Plan by selecting from among the Mutual Fund Shares and TIAA-CREF Brokerage Account made available to them under the Plan by the Employer;

WHEREAS, the Employer has appointed Teachers Insurance and Annuity Association of America as record keeper for the Plan ("Record Keeper") pursuant to which Record Keeper serves as Employer's agent for purposes of keeping Plan records; and

WHEREAS, the Employer has requested that the Custodian provide certain custodial services for the portion of the Plan's assets invested in Mutual Fund Shares and TIAA-CREF Brokerage Accounts described in Appendix A of this Agreement, which custodial services are required to satisfy the requirements of Code sections 401(f)(2) and 457(b) and the Custodian has agreed to provide such services as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, it is hereby agreed as follows:

ARTICLE I. EFFECTIVE DATE

1.1 The effective date of this Agreement will be **October 1, 2011**, or such later date as the Parties shall agree to by Notice. This agreement will remain in effect until terminated pursuant to Article X.

ARTICLE II. DEFINITIONS

2.1 **"APPLICABLE LAW"** means any statute, whether national, state or local, applicable in the United States or any other country, any other law, rule, regulation or interpretation of any governmental entity, any applicable common law, and any decree, injunction, judgment, order, ruling, or writ of any governmental entity.

2.2 **"BENEFICIARY"** means the beneficiary(ies) of a deceased participant and an alternate payee of a participant pursuant to a qualified domestic relations order (as defined in section 414(p) of the Code) ("Qualified Domestic Relations Order").

2.3 **"CUSTODIAN INDEMNITEES"** means the Custodian, and its nominees, directors, officers, employees and agents.

2.4 **"INSTRUCTIONS"** means instructions which: (i) contain all necessary information required by the Custodian to enable the Custodian to carry out the Instructions; (ii) are received by the Custodian in writing or via the Custodian's electronic instruction system, SWIFT, telephone, facsimile or such other methods as are for the time being agreed by the Record Keeper and the Custodian; and (iii) the Custodian believes in good faith have been given by the Record Keeper or are transmitted by the Record Keeper with proper testing or authentication pursuant to terms and conditions which the Custodian may specify.

2.5 **"MUTUAL FUND"** means an open-end investment company registered under the Investment Company Act of 1940, as amended.

2.6 **"MUTUAL FUND SHARES"** means securities issued by a Mutual Fund.

ARTICLE III. SERVICES TO BE PROVIDED BY CUSTODIAN

3.1 The Custodian shall receive such sums of money or Mutual Fund Shares acceptable to the Custodian as shall from time to time be paid or delivered to the Custodian under this Agreement. The Custodian shall hold in Plan participant accounts all such assets, together with all the property purchased therewith and the proceeds thereof and the earnings and income thereon. The Custodian shall not be responsible for, or have any duty to enforce, the collection of any contributions or assets to be paid or transferred to it under the Plan or for verifying whether contributions or transfers to it are permissible under the Plan. The Custodian shall not be responsible for investment choices directed by the Employer or by Plan participants or Beneficiaries under the Plan.

3.2 The Custodian shall disburse Plan loan proceeds, distributions on account of unforeseeable emergency and other distributions as directed by the Record Keeper. The Custodian shall distribute Plan account balances in accordance with any Qualified Domestic Relations Order in accordance with the Instructions of the Record Keeper. No amounts may be paid or made available to any distributee before the time provided in Code section 457(d). The Record Keeper shall be responsible for determining that

SAMPLE

(a) each distribution satisfies the requirements of the Plan and Applicable Law, including Code section 457(d); (b) the disbursement of loan proceeds has been authorized in accordance with the Plan and Applicable Law; and (c) distributions pursuant to a domestic relations order have been authorized in accordance with the Plan and Applicable Law.

3.3 To the extent permitted under Applicable Law, the Custodian shall be the payer (within the meaning of applicable United States Treasury Department regulations) of benefits in the custodial account under the Plan held pursuant to this Agreement. As payer, it shall perform any required withholding of federal and state income tax from distributions and withdrawals and deposit the same with the appropriate tax authorities as and when directed by the Record Keeper. The Record Keeper shall be responsible for preparing and filing all reports of withheld taxes with the participant or Beneficiary and all applicable federal and state tax authorities.

3.4 The Custodian agrees that all records maintained by it for the Plan shall be open to inspection and audit at reasonable times by agents or representatives of the Employer and that such records will be preserved and maintained in accordance with Applicable Law. The Custodian may charge, and the Employer shall agree to pay, the reasonable cost of any services and materials used by the Custodian in supplying assistance in connection with any such inspection.

3.5 The services to be performed by the Custodian under this Agreement may be performed on the Custodian's behalf wholly or in part through subsidiaries or affiliates of the Custodian or through vendors designated by the Custodian. The Custodian will continue to be liable for the performance of its duties hereunder.

ARTICLE IV. INSTRUCTIONS

4.1 (a) The Employer authorizes the Custodian to accept and act upon any Instructions received by the Custodian from the Record Keeper without inquiry. The Record Keeper shall receive instructions from participants and Beneficiaries with respect to the investment of their Plan accounts. It shall aggregate such instructions and will provide Instructions to the Custodian to place net purchase and redemption orders with respect to each Mutual Fund investment option selected for the Plan as follows:

(b) Except as provided in Appendix A with respect to TIAA-CREF Brokerage Accounts, each participant and Beneficiary shall submit investment directions and changes in investment directions with respect to his or her Plan account to the Record Keeper, which shall aggregate such directions placed each day with respect to the various investment alternatives in accordance with its agreement with the Employer. The Custodian shall invest the assets of the Plan accounts only when, if and in the manner directed by the Record Keeper and shall not be under any obligation to invest or otherwise manage any of such assets. It shall be the duty of the Custodian to act strictly in accordance with the Record Keeper's directions. In the event that the Custodian fails to receive a proper Instruction, the assets shall be invested in a money market Mutual Fund or in such other Mutual Fund investment option selected by the Employer or left uninvested, in any case as selected

SAMPLE

by the Employer, until the Custodian receives a proper Instruction from the Record Keeper. The Custodian shall, as directed by the Record Keeper, liquidate investments when necessary to: (i) comply with participants' and Beneficiaries' instructions or to change investments; (ii) make plan benefit payment distributions; (iii) disburse loan proceeds; (iv) make distributions on account of unforeseeable emergencies; (v) reallocate forfeitures under the Plan; or (vi) pay expenses, fees, or taxes. The Record Keeper shall be responsible for determining that such liquidation is permitted under the prospectuses for the Mutual Funds in the participant's or Beneficiary's Plan account.

(c) Unless otherwise expressly provided, all Instructions will continue in full force and effect until canceled or superseded.

(d) The Custodian may (in its sole discretion and without affecting any part of this Section 4.1) seek clarification or confirmation of an Instruction from the Record Keeper and may decline to act upon an Instruction if it does not receive clarification or confirmation satisfactory to it. The Record Keeper may (in its sole discretion and without affecting any part of this Section 4.1) seek clarification or confirmation of an Instruction from the Employer and may decline to act on an Instruction if it does not receive clarification or confirmation satisfactory to it. ~~The Custodian will not be liable for any loss arising from any delay while either it or the Record Keeper seeks such clarification or confirmation.~~

(e) In executing or paying a payment order the Custodian may rely upon the identifying number (e.g., Fedwire routing number or account) of any party as instructed in the payment order. The Record Keeper assumes full responsibility for any inconsistency between the name and identifying number of any party in payment orders issued to the Custodian in Employer's name.

4.2 Any Instructions delivered to the Custodian by telephone will promptly thereafter be confirmed in writing by the Record Keeper. Each confirmation is to be clearly marked "Confirmation". The Custodian will not be liable for having followed such Instructions notwithstanding the failure of the Record Keeper to send such confirmation in writing or the failure of such confirmation to conform to the telephone Instructions received. Either party may record any of their telephonic communications. The Record Keeper will comply with any security procedures reasonably required by the Custodian from time to time with respect to verification of Instructions. The Record Keeper will be responsible for safeguarding any test keys, identification codes or other security devices that the Custodian will make available to the Record Keeper.

4.3 The Custodian need not act upon Instructions which it reasonably believes to be contrary to law, regulation or market practice and the Custodian will be under no duty to investigate whether any Instructions comply with Applicable Law or market practice.

4.4 The Custodian has established cut-off times for receipt of Instructions, which will be made available to the Employer and the Record Keeper. If the Custodian receives an Instruction after its established cut-off time, the Custodian will attempt to act upon the Instruction on the day requested if the Custodian deems it practicable to do so or otherwise as soon as practicable on the next business day.

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ARTICLE V. DUTIES OF THE EMPLOYER

5.1 The Employer shall be solely responsible for the following:

(a) The tax and legal aspects of the Plan.

(b) To select and monitor the funding options for the Plan, it being understood that the Custodian has no authority or responsibility for choosing such funding options. The funding options shall consist of Mutual Funds and a TIAA-CREF Brokerage Account as described in Appendix A. The funding options chosen for the Plan are set forth in Appendix A to this Agreement. Such funding options may be changed from time to time by the parties attaching a new Appendix A hereto.

(c) To evaluate the suitability of the Plan documents and maintain the Plan's conformance with applicable provisions of the Code and the regulations thereunder, including, if applicable, any filings required under Applicable Law.

(d) To represent and defend the Plan in an Internal Revenue Service audit or examination and any appeals or litigation relating thereto and any other examinations, audits or legal proceedings relating to the Plan.

(e) To provide the Custodian, in a timely manner, accurate data, as requested and in the form requested by Custodian, in order to establish and maintain the records necessary for the fulfillment of the Custodian's duties hereunder. ~~The Custodian shall not be responsible in the event that such information is inaccurate.~~ If the Custodian is required to repeat or reprocess any task as a result of incomplete or inaccurate information provided by the Employer, the Custodian may charge the Employer a reasonable reprocessing fee. In addition, if amounts are sent to the Custodian with incorrect Instructions, or in amounts that do not reconcile with the Instructions given, the Custodian may: (1) apply the amounts for which accurate Instructions are given and refund any excess amounts to the Employer; or (2) if amounts are less than the Instructions call for, refund the entire amount to the Employer.

5.2 The Employer shall review all reports and shall immediately notify the Record Keeper in writing of any claimed error with respect to any data or report. The Custodian assumes no responsibility for verification and any report not challenged in writing to the Record Keeper within sixty (60) days of receipt thereof shall be conclusively presumed accurate and complete. The Record Keeper shall promptly notify the Custodian of any claimed error by the Employer.

ARTICLE VI. THE POWERS OF CUSTODIAN AS CUSTODIAN

6.1 The Custodian, in its capacity as custodian, shall have the following powers, which shall not apply to assets held in any TIAA-CREF Brokerage Account:

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(a) To vote in person, or in proxy, or to refrain from voting in respect to any Mutual Fund shares held in a participant's or Beneficiary's Plan account, in accordance with Section 11.2 of this Agreement, and to enter into any voting trust or similar agreement in respect thereto;

(b) To exercise conversion and subscription rights pertaining to any property held in a Plan account;

(c) With respect to any investment, to consent or object to any action or non-action of any corporation, or of the directors, officers or stockholders of any corporation;

(d) To register securities in its name or in the name of any nominee with or without indication of the capacity in which the securities shall be held, or to hold securities in bearer form and to deposit any securities or other property in a depository or clearing corporation;

(e) To employ as many agents and counsel as are reasonably necessary for the purpose of properly performing its duties under this Agreement, and, as part of its expenses under this Agreement, to pay their reasonable expenses and compensation; and

(f) To make, execute and deliver, as custodian, any and all conveyances, waivers, releases or other instruments in writing necessary or desirable for the accomplishment of any of the powers listed in this Agreement.

6.2 The Custodian shall have no duties or responsibilities as custodian other than those specified in this Agreement or under Applicable Law and no implied covenant or obligation shall be read into this Agreement against the Custodian. Notwithstanding any reference herein to the Plan, or to the provisions thereof, it is expressly agreed that the Custodian is not a party to the Plan and shall have no responsibility to apply or administer the terms of the Plan.

6.3 The Custodian shall have no duty to advise any person of the investment, tax or other consequences resulting from that person's actions or inactions, or of its own actions in following the directions of such person, or its failing to act in the absence of such directions.

ARTICLE VII. STANDARD OF CARE; PROTECTION OF CUSTODIAN

7.1 The Custodian shall use due care in providing the services hereunder. Responsibility for due care is limited solely to correcting processing errors resulting from malfunction of the Custodian's equipment, error by its staff, or error by its programs. The Custodian shall make a good faith effort to correct any error caused by its performance subject to the limitations herein set forth; provided that the Employer notifies the Record Keeper in writing of such error and furnishes all data necessary to make such correction within sixty (60) days following the date in which the Employer is furnished with a report in which the claimed error is contained. The Record Keeper shall promptly notify the Custodian of such claimed error. ~~The Custodian Indemnitees shall in no event be liable, regardless of the form of the action, for loss of profit, goodwill, or other special or consequential damages suffered by the Employer, Plan representatives, the Record Keeper or Plan participants or Beneficiaries as a result of the services~~

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~~provided under this Agreement. The Custodian Indemnitees shall not be liable for any error or omission resulting, directly or indirectly, from failure of the Employer, or its agents, including, but not limited to, the Record Keeper (other than the Custodian and/or its affiliates or hired vendors), to properly perform any of its responsibilities under this Agreement or the Plan. The Employer shall indemnify the Custodian Indemnitees against, and hold them harmless from, any loss, claim or expense (including reasonable attorneys' fees) that may be imposed on, incurred by or asserted against the Custodian Indemnitees in connection with or arising out of the Custodian's performance under this Agreement, provided the Custodian has not acted with negligence or engaged in fraud or willful misconduct in connection with the liabilities in question. Additionally, the Employer shall indemnify and save harmless the Custodian for and from any loss, claim or expense (including reasonable attorneys' fees) arising by reason of any breach of any statutory or other duty owed to the Plan by the Employer or the Record Keeper, whether or not the Custodian may also be considered liable for the Employer's or Record Keeper' breach under the provision of Applicable Law.~~

7.2 The Custodian will maintain and update from time to time business continuation and disaster recovery procedures with respect to its custody business that it determines from time to time meet reasonable commercial standards. ~~The Custodian will have no liability, however, for any damage, loss, expense or liability of any nature that the Employer, Record Keeper, participants or Beneficiaries may suffer or incur, caused by an act of God, fire, flood, civil or labor disturbance, war, act of any governmental authority or other act or threat of any authority (de jure or de facto), legal constraint, fraud or forgery, malfunction of equipment or software (except where such malfunction is attributable to the Custodian's negligence in maintaining the equipment or software), failure of or the effect of rules or operations of any external funds transfer system, inability to obtain or interruption of external communications facilities, or any cause beyond the reasonable control of the Custodian (including without limitation, the non-availability of appropriate foreign exchange).~~

ARTICLE VIII. RESIGNATION AND REMOVAL OF CUSTODIAN

8.1 The Custodian may resign as custodian at any time upon sixty (60) days prior written notice to the Employer.

8.2 The Custodian may be removed as custodian at any time upon sixty (60) days prior written notice from the Employer.

8.3 Upon the resignation or removal of the Custodian, the Employer shall promptly appoint a successor, provided that in the event of resignation of the Custodian, the Custodian may appoint a successor in its notice of resignation. Any successor custodian appointed herein shall be a bank or other person eligible to serve as a custodian in accordance with Code Section 401(f)(2). Upon receipt by the Custodian of a written acceptance of such appointment by the successor, the Custodian shall promptly transfer and pay over to such successor the assets of the custodial account. The Custodian is authorized, however, to reserve from the assets to be transferred such sum of money or other property, as it may deem advisable, for the payment of all of its fees, compensation, costs and expenses under this Agreement as Custodian. ~~The Custodian shall not be liable for the acts or omissions of the successor whether or not it appoints the successor.~~

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ARTICLE IX. FEES

9.1 The Employer understands and agrees that the Custodian may be compensated for its services under this Agreement by payments made by providers of Mutual Funds, or their affiliates, used under the Plan. This shall include sharing, on a periodic basis, in the revenue derived by such Mutual Fund providers. The Employer acknowledges that the Record Keeper has provided information relating to such fees and may obtain further information upon request by the Employer to the Record Keeper.

9.2 The Employer directs the Custodian, on instructions from and on behalf of the Record Keeper, to collect the administrative fees set forth in the Record Keeping Agreement between the Record Keeper and Employer, as sponsor of the Plan, as such agreement may be amended from time to time. Such fees shall be paid from Plan assets and are subject to change upon advance written notice from the Record Keeper to the Employer as set forth in the Record Keeping Agreement.

ARTICLE X. AMENDMENT AND TERMINATION

10.1 The parties shall have the right at any time to amend ~~or terminate~~ this Agreement by an instrument in writing and no change in the scope of the services hereunder shall be permitted or undertaken unless agreed to by the parties in such a written amendment.

10.2 No amendment shall authorize any part of a Plan participant or Beneficiary's account to be used for, or diverted to, purposes other than for the exclusive benefit of the participant or his or her beneficiaries except to the extent such amendment is permitted under the Code.

10.3 Termination of a participant's Plan account shall be effected by a distribution of all assets in the account as directed by the Record Keeper.

10.4 The Custodian's rights, protections, and remedies under this Agreement shall survive the termination of this Agreement.

10.5 (a) Termination without cause. This contract may be terminated by mutual consent of both parties.

(b) Termination for lack of funding or authority. STATE by written notice of default to CUSTODIAN, may terminate the whole or any part of this contract, under any of the following conditions:

(1) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term.

(2) If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding proposed for payments authorized by this contract.

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(3) If any license, permit, or certificate required by law or rule, or by the terms of this contract, is for any reason denied, revoked, suspended, or not renewed.

Termination of this contract under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination.

(c) Termination for cause. STATE may terminate this contract effective upon delivery of written notice to CUSTODIAN, or any later date stated in the notice:

(1) If CUSTODIAN fails to provide services required by this contract within the time specified or any extension agreed to by STATE; or

(2) If CUSTODIAN fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms.

The rights and remedies of STATE provided in this subsection are not exclusive and are in addition to any other rights and remedies provided by law or under this contract.

~~10.4~~

ARTICLE XI. MISCELLANEOUS PROVISIONS

11.1 (a) The Employer represents and warrants that (i) it has full authority and power, and has obtained all necessary authorizations and consents, to use the Custodian as its custodian in accordance with the terms of this Agreement; (ii) assuming execution and delivery of this Agreement by the Custodian, this Agreement is the Employer's legal, valid and binding obligation, enforceable in accordance with its terms and it has full power and authority to enter into and has taken all necessary corporate action to authorize the execution of this Agreement; (iii) it has not relied on any oral or written representation made by the Custodian or any person on its behalf, and acknowledges that this Agreement sets out to the fullest extent the duties of the Custodian; and (iv) it is a resident of the United States and shall notify the Custodian of any changes in residency.

(b) The Custodian represents and warrants that (i) assuming execution and delivery of this Agreement by the Employer, this Agreement is the Custodian's legal, valid and binding obligation, enforceable in accordance with its terms; (ii) Custodian is a bank eligible to serve as custodian in accordance with Code section 401(f)(2); and (iii) it has full power and authority to enter into and has taken all necessary corporate action to authorize the execution of this Agreement.

The Custodian and Employer may rely upon the representations made in this Section 11.1. ~~The Employer shall indemnify the Custodian and the Custodian shall indemnify the Employer, against all losses, liability, claims, or demands arising directly or indirectly from any such representations.~~ As a result of a breach or threatened breach of this Agreement, each party is entitled to any remedies available at law or equity.

11.2 At the time of mailing of notice of each annual or special stockholders' meeting of any Mutual Fund, the Record Keeper shall send a copy of the notice and all proxy solicitation materials to each participant or Beneficiary who has shares of such Mutual Funds credited to his or her individual account excluding

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Mutual Funds held in any TIAA-CREF Brokerage Account together with a voting direction form for return to the Custodian or its designee. These materials shall clearly explain to the participants and Beneficiaries that the Custodian will not vote shares for which it receives no voting directions. Each participant and Beneficiary shall have the right to send instructions to the Record Keeper directing the Custodian as to the manner in which the Custodian is to vote the shares credited to his or her accounts (both vested and unvested) excluding Mutual Funds held in any TIAA-CREF Brokerage Account. The Custodian shall vote the shares as directed by the Record Keeper. The Custodian shall not vote shares for which it has received no directions. With respect to all rights other than the right to vote, the Custodian shall follow the directions of the Record Keeper. The Custodian shall have no duty to solicit direction from participants and Beneficiaries.

11.3 The Plan accounts shall be held for the exclusive benefit of all persons who shall be entitled to receive payments under the Plan. It shall be prohibited at any time for any part of the accounts (other than such amounts as are required or permitted to be used to pay Plan expenses) to be used for, or diverted to, purposes other than the exclusive benefit of Plan participants and their beneficiaries except as otherwise permitted under the Code.

11.4 The participant's or Beneficiary's benefits under the Plan held pursuant to this Custodial Agreement shall be provided solely from his or her Plan account, and neither the Employer nor the Custodian shall have any other liability therefore.

11.5 No right or interest of a Plan participant or Beneficiary in a Plan account under this Agreement shall be (a) assignable or transferable in any manner, (b) subject to any lien, or (c) liable for, or subject to any obligation or liability of any person except as otherwise permitted under the Code. The preceding sentence shall not apply to an assignment, transfer, or attachment pursuant to a Qualified Domestic Relations Order or to a lien or levy on behalf of the Internal Revenue Service or as otherwise permitted with respect to garnishment orders issued pursuant to the Federal Debt Collection Procedures Act of 1990.

11.6 Notices required to be given by the parties hereunder shall be sufficiently given if made in writing to such address as each party shall from time to time specify in writing to the other party. Such notices shall be effective when received.

11.7 This Agreement is intended to comply with Section 457(b) of the Code and its terms shall be interpreted accordingly. ~~Otherwise, the laws of the State of New York shall control the interpretation and performance of the terms of this Agreement.~~ However, neither the Custodian, any of its subsidiaries or affiliates nor any mutual fund provider assumes any responsibility as to the efficacy or legal sufficiency of this Agreement under federal, state or local law. The United States District Court will have the sole and exclusive jurisdiction over any lawsuit or other judicial proceeding relating to or arising from this Agreement. ~~The parties further hereby knowingly, voluntarily and intentionally waive, to the fullest extent permitted by Applicable Law, any right to a trial by jury with respect to any such lawsuit or judicial proceeding arising or relating to this Agreement or the transactions contemplated hereby. To the extent that in any jurisdiction the Employer may now or hereafter be entitled to claim, for itself or its assets, immunity from suit, execution, attachment (before or after judgment) or other legal process, the Employer shall not claim, and it hereby irrevocably waives, such immunity.~~

SAMPLE

11.8 If any provision of this Agreement shall be held or made invalid by a court decision, statute, rule or otherwise, the remainder of this Agreement shall not be affected thereby.

11.9 This Agreement may be executed simultaneously in two or more counterparts, each of which taken together shall constitute one and the same instrument.

SAMPLE

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date specified in Article I.

FOR THE Employer

By: _____ Print Name:_____

Title: _____ Date: _____

JPMORGAN CHASE BANK, N. A.

By:_____ Print Name:_____

Title:_____ Date: _____

The undersigned shall be bound by the terms of the foregoing Agreement with respect to the duties of the Record Keeper. The undersigned shall notify the Custodian of any material change in its duties as Record Keeper under its agreement with the Employer.

TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA

By:_____ Print Name:_____

Title:_____ Date: _____

SAMPLE

APPENDIX A

Plan Funding Options

Non-Proprietary Mutual Funds

Aston/Optimum Mid Cap Fund - Class I	ABMIX
Brown Capital Management Small Company Institutional	BCSIX
Cohen & Steers Realty Shares	CSRSX
Columbia Mid Cap Index Fund Class A	NTIAX
Franklin Growth Fund - Advisor Class Shares	FCGAX
Franklin Mutual Global Discovery Z	MDISX
Hartford Dividend & Growth R5	HDGTX
Invesco US Small Cap Value Y	MPSCX
Nuveen Tradewinds Value Opps Inst	NVORX
Oppenheimer Developing Markets Fund - Class Y	ODVYX
Parnassus Small Cap Fund	PARSX
PIMCO Real Return Admin	PARRX
PIMCO Total Return Fund Admin Class	PTRAX
Prudential High-Yield Z	PHYZX
Prudential Jennison Mid-Cap Growth Fund Z	PEGZX
RidgeWorth Mid Cap Value Equity I	SMVTX
T. Rowe Price Capital Appreciation Fund Adv	PACLX
T. Rowe Price Equity Income Fund	PRFDX
Templeton Global Bond Fund Advisor Class Shares	TGBAX
Vanguard 500 Index Fund Signal Shares	VIFSX
Vanguard Total International Stock Index Fund	VGTSX
Wells Fargo Advantage DJ Target 2005 Adm	WFLOX
Wells Fargo Advantage DJ Target 2010 Adm	WFLGX
Wells Fargo Advantage DJ Target 2020 Adm	WFLPX
Wells Fargo Advantage DJ Target 2030 Adm	WFLIX
Wells Fargo Advantage DJ Target 2040 Adm	WFLWX
Wells Fargo Advantage DJ Target 2050 Adm	WFQDX
Wells Fargo Advantage Growth Adm	SGRKX

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TIAA-CREF Brokerage Account

Notwithstanding any other provision of the Agreement to which this Appendix is attached to the contrary, the following provisions shall apply to the TIAA-CREF Brokerage Account. If so directed by the Employer and subject to the Record Keeper's acceptance of a properly executed TIAA-CREF Retirement Plan Self-Directed Brokerage Application of a Plan participant or Beneficiary, the Custodian shall segregate all or a portion of the assets of the Plan accounts into individual TIAA-CREF Brokerage Accounts established for the benefit of Plan participants and Beneficiaries. Each participant or Beneficiary shall have the power to direct the investment and reinvestment of assets in the TIAA-CREF Brokerage Account established for his or her benefit, subject to such administrative rules and procedures as the Record Keeper and the Custodian may establish. Participants and Beneficiaries shall provide instructions regarding the investment of the TIAA-CREF Brokerage Account directly to the broker appointed for purposes of executing transactions under the account. That broker shall hold custody of property held in the TIAA-CREF Brokerage Account and the Custodian shall have no responsibility for the TIAA-CREF Brokerage Account whatsoever, including, but not limited to, the acts or omissions of any such broker or the broker's failure to follow any other investment restrictions imposed by the Employer under the terms of the Plan.

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TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA

RECORDKEEPING SERVICES AGREEMENT WITH A TIAA-CREF BROKERAGE ACCOUNT

THIS AGREEMENT ("Agreement") is entered into as of **this 1st day of October, 2011**, or such later date as the Parties shall agree to by Notice, by and between Teachers Insurance and Annuity Association of America ("TIAA"), a corporation organized and existing under the laws of the State of New York, and **North Dakota Public Employees Retirement System** ("Employer"). TIAA and Employer are each a "Party" to this Agreement. There are no third party beneficiaries under this Agreement.

WITNESSETH:

WHEREAS, Employer sponsors and maintains the **North Dakota Defined Contribution Retirement Plan** and the **North Dakota State Deferred Compensation Plan** (the "Plans"), for the benefit of eligible employees and their beneficiaries ("Participants"); and

WHEREAS, assets of such Plans are allocated to and invested in certain mutual funds, TIAA-CREF Brokerage Account and Teachers Insurance and Annuity Association of America-College Retirement Equities Fund ("TIAA-CREF") annuity contracts selected by Employer and made available by Employer under the terms of the Plans for the benefit of Participants; and

WHEREAS, Employer and the administrators of the Plans appointed by Employer (the "Plan Administrators") seek the provision of certain record keeping services in connection with the operation and administration of the Plans; and

WHEREAS, TIAA desires to provide such services to Employer and the Plan Administrators in connection with the operation and administration of the Plans as set forth in more particularity in this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual covenants, representations and warranties set forth herein, TIAA and Employer agree, as follows:

1. APPOINTMENT; ACCEPTANCE; AUTHORITY TO DIRECT OTHERS

1.1 Employer hereby appoints TIAA as a record keeper for the Plans to provide the services listed in Schedule A of this Agreement. TIAA shall provide such services in accordance with the provisions of the Plans, but TIAA shall have no discretionary control over the Plans.

SAMPLE

1.2 TIAA hereby accepts the appointment as a record keeper for the Plans and agrees to provide the services listed in Schedule A. TIAA shall act in good faith and exercise reasonable care in performing the services under this Agreement. Responsibility for reasonable care is limited solely to correcting processing errors resulting from malfunction of TIAA equipment, error by its staff, or error by its programs. TIAA shall make a good faith effort to correct any error caused by its performance subject to the limitations herein set forth; provided that the Employer notifies TIAA in writing of such error and furnishes all data necessary to make such correction within sixty (60) days following the date in which the Employer is furnished with a report in which the claimed error is contained. Correcting an error includes restoring any losses caused by such error to the participant's or beneficiary's account. The foregoing notwithstanding, TIAA will, at the Plan Administrator's request, make a good faith effort to correct any error brought to its attention after such time period has expired. ~~TIAA shall in no event be liable, regardless of the form of the action, for loss of profit, goodwill, or other special consequential damages suffered by the Employer or its Plans as a result of the services provided under this Agreement.~~ The services to be performed by TIAA under this Agreement may be performed on TIAA's behalf wholly or in part through subsidiaries or affiliates of TIAA or through vendors designated by TIAA. TIAA shall continue to be solely liable for the performance of any service performed by such subsidiary, affiliate, or vendor and shall be solely responsible for paying the fees such subsidiary, affiliate or vendor charges for such service. To the extent that services under this Agreement are to be performed by a broker-dealer as determined solely by TIAA, Employer agrees that such services may be performed by TIAA-CREF Individual & Institutional Services, LLC, a wholly owned subsidiary of TIAA, and/or SunGard Institutional Brokerage, Inc. ("SunGard"). Other than as stated specifically herein, TIAA may not assign or otherwise transfer or delegate any right or duty without Employe's express written consent. However, TIAA may enter into subcontracts provided that any subcontract acknowledges the binding nature of this contract and incorporates this contract, including any attachments. TIAA does not have authority to contract for or incur obligations on behalf of Employer.

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2. NON- FIDUCIARY STATUS

Except with respect to its offering a Plan level service that delivers investment and savings advice to Plan participants as described in section 13 of Schedule A, herein, it is intended that the duties to be performed by TIAA under this Agreement be ministerial in nature and that nothing in this Agreement should be construed as granting any discretionary authority or discretionary responsibility to TIAA with respect to the Plans, the participants, or the investments under the Plans.

3. CHANGES TO ADMINISTRATIVE PROCEDURES

TIAA reserves the right to make changes to any administrative procedures in order to assure quality service; provided, that TIAA agrees to provide Employer with (i) reasonable advance notice of any changes, and (ii) the opportunity to have input into the manner in which any such changes are made and implemented.

4. DATA REQUIREMENTS; TRANSMITTAL OF DATA

SAMPLE

TIAA and Employer shall work together to develop guidelines for data processing. Employer shall be responsible for the timely transmittal to TIAA of participant data that is materially correct and complete.

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5. PERSONNEL AND RESOURCES

TIAA shall provide sufficient personnel and resources as may be necessary to perform the services contemplated under this Agreement in a thorough and professional manner. The personnel designated by TIAA to perform the services contemplated under this Agreement shall have the training and background necessary to perform such services.

6. ERRORS, OMISSIONS OR DELAYS

6.1 Each Party to this Agreement will be responsible to the other Party for their own respective errors, omissions or delays in the performance of services contemplated under this Agreement. Each Party shall notify the other Party (i) of any errors, omissions or interruptions in, or delay or unavailability of the services contemplated under this Agreement, or (ii) if it is unable to perform any of its obligations under this Agreement. Such notice shall be provided as promptly as possible but in no event later than the next business day following the occurrence of any events covered by (i) or (ii) of this paragraph. Notification under this provision shall be in such form as is required by Section 13 of this Agreement. Such notice shall not relieve the notifying Party of its obligations under this Agreement.

6.2 The Employer acknowledges that in performing the services contemplated under this Agreement, TIAA must rely exclusively on the data and information provided to TIAA by the Employer and participants, and that TIAA is not obligated to inquire into and is not responsible for the authenticity or accuracy of such data or information. If TIAA is required to repeat or reprocess any task as a result of incomplete or inaccurate information provided by a Plan, TIAA may charge a reasonable reprocessing fee. In addition, if amounts are sent with incorrect instructions, or in amounts that do not reconcile with the instructions given, TIAA may (1) apply the amounts for which accurate instructions are given and refund any excess amounts to the Employer; or (2) if amounts are less than the instructions call for, refund the entire amounts to the Employer.

6.3 A Plan Administrator of a Plan shall review all record keeping reports and shall immediately notify TIAA of any claimed error with respect to any data or report. TIAA assumes no responsibility for verification and any report not challenged in writing by a Plan Administrator within sixty (60) days of receipt thereof shall be conclusively presumed accurate and complete. The foregoing notwithstanding, TIAA will, at the Plan Administrator's request, make a good faith effort to correct any error brought to its attention after such time period has expired.

7. REPRESENTATIONS, WARRANTIES AND COVENANTS

7.1 Each Party represents that it is free to enter into this Agreement and that by doing so it will not breach or otherwise impair any other agreement or understanding with any other person, corporation or entity. TIAA further represents, warrants and covenants that:

SAMPLE

a. It has full power and authority under applicable law, and has taken all action necessary, to enter into and perform this Agreement, and that the person executing this Agreement on its behalf is duly authorized and empowered to execute and deliver this Agreement;

b. This Agreement, when executed and delivered, shall constitute the valid, legal and binding obligation of TIAA, enforceable in accordance with its terms;

c. TIAA is a stock life insurance company duly organized, existing and in good standing under the laws of the State of New York; and

The Employer further represents, warrants and covenants that:

d. It has full power and authority under applicable law, and has taken all action necessary, to enter into and perform this Agreement, and that the person executing this Agreement on its behalf is duly authorized and empowered to execute and deliver this Agreement; and

e. This Agreement, when executed and delivered, shall constitute the valid, legal and binding obligation of the Employer, enforceable in accordance with its terms.

8. FEES

8.1 The Employer understands and accepts that TIAA may be compensated for its services under this Agreement by payments made by providers of mutual funds, or their affiliates, used as allocation options under the Plans and from fees under the TIAA-CREF annuity contracts. This shall include sharing, on a periodic basis, in the revenue derived by such mutual fund providers and TIAA-CREF.

8.2 The Employer understands and accepts that in addition to charges imposed by the funds themselves, TIAA may charge administrative fees in connection with certain non-proprietary mutual funds as set forth in Schedule B of this Agreement. TIAA shall be entitled to be paid all such fees from assets held in such mutual funds under this Agreement. The Employer authorizes TIAA, on its behalf, to instruct JPMorgan Chase Bank to debit the applicable participant's account under the Plan in the appropriate amount. In addition, the Employer understands that certain of these non-proprietary mutual funds may pay cost-sharing payments. The Employer agrees that the amount of such cost-sharing payments shall either be collected by TIAA to pay the costs of administering such non-proprietary fund on its platform or shall be used to offset the administrative fee to be charged in connection with the non-proprietary mutual fund that pays the cost-sharing payment. The current schedule of administrative fees and cost-sharing payments is listed in Schedule B. Such fees and payments are subject to change upon advance written notice from TIAA. In addition, the Employer understands and accepts that certain fees and commissions will apply to the TIAA-CREF Brokerage Accounts. Such fees and commissions shall be listed in the TIAA-CREF Self-Directed Brokerage Account Customer Agreement and, pursuant to the Agreement, such fees and commissions will be subject to change without prior notice. Certain minimum balance and minimum investment amounts may also be required pursuant to the terms of that Agreement. If such fees cannot be paid from the Self Directed Brokerage Account itself, they may be

SAMPLE

paid from the participant's or beneficiary's other Plan accounts pursuant to the terms of the Customer Agreement.

9. MAINTENANCE OF RECORDS

TIAA agrees that the books, records, accounts, ledgers, documents, and other compilations of data (whether written, electronic, computer related or otherwise) collected and maintained by TIAA for Employer and/or the Plans under any provision or requirement of this Agreement (the "Records") are the property of Employer. During the term of this Agreement, TIAA will at all times cooperate with and grant Employer or its designee reasonable access to the Records~~ during TIAA's normal business hours~~. If any litigation, claim, negotiation, audit, or other action involving the Records is commenced prior to the expiration of the applicable retention period, both TIAA and Employer shall retain all Records until completion of the action and resolution of all issues resulting therefrom, or until the end of the applicable retention period, whichever is later. Upon the expiration or termination of this Agreement, TIAA shall provide Records to Employer upon such schedule and in such form or format as Employer and TIAA agree is reasonable.

10. INDEMNIFICATION; INSURANCE

10.1 TIAA agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from and against claims based on the vicarious liability of the State or its agents, but not against claims based on the State's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. This obligation to defend, indemnify, and hold harmless does not extend to professional liability claims arising from professional errors and omissions. The legal defense provided by TIAA to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. TIAA also agrees to defend, indemnify, and hold the State harmless for all costs, expenses and attorneys' fees incurred if the State prevails in an action against TIAA in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.~~TIAA agrees to indemnify and hold harmless the Employer and its respective employees, officers, directors, agents, affiliates and subcontractors or other related persons or organizations (the "Employer Parties") from all loss, damage, costs, charges, liability, or expense, including without limitation, reasonable attorneys' fees, and accountants' fees and disbursements (hereinafter referred to as "Losses") that may be incurred by, imposed upon, or asserted against the Employer Parties, on account of any claim or action at law or in equity against the Employer Parties to the proportionate extent that it results from the negligence, errors, omissions or wrongdoing of TIAA, or its employees, officers, directors, agents, affiliates and subcontractors or other related persons or organizations (the "TIAA Parties") in the performance of their duties and obligations hereunder. Notwithstanding the foregoing, TIAA shall not hold harmless or indemnify the Employer Parties against Losses stemming from the Employer Parties' bad faith, negligence, or willful misconduct.~~

SAMPLE

10.2 ~~The Employer agrees to indemnify and hold harmless the TIAA Parties against Losses that may be incurred by, imposed upon, or asserted against the TIAA Parties, on account of any claim or action at law or in equity against the TIAA Parties to the proportionate extent that it results from the negligence, errors, omissions or wrongdoing of the Employer's Parties in the performance of their duties and obligations hereunder. Notwithstanding the foregoing, the Employer shall not hold harmless or indemnify the TIAA Parties against Losses stemming from the TIAA Parties' bad faith, negligence, or willful misconduct.~~

10.2~~3~~ If any third party threatens to commence or commences any action for which one Party (the "Indemnifying Party") may be required to indemnify the other Party hereunder (the "Indemnified Party"), the Indemnified Party shall promptly give notice thereof to the Indemnifying Party. ~~The Indemnifying Party shall be entitled, at its own expense and without limiting its obligations to indemnify the Indemnified Party, to assume control of the defense of such action with counsel selected by the Indemnifying Party, which counsel shall be reasonably satisfactory to the Indemnified Party. If the Indemnifying Party assumes the control of the defense, the Indemnified Party may participate in the defense of such claim at its own expense.~~ Without the prior written consent of the Indemnified Party, which consent shall not be withheld unreasonably, the Indemnifying Party may not settle or compromise the liability of the Indemnified Party in such action, or consent to or permit the entry of any judgment in respect thereof, unless in connection with such settlement, compromise or consent the Indemnified Party receives from such claimant an unconditional release from all liability in respect of such claim.

10.3~~4~~ The indemnities granted by the Parties in this Section shall survive the termination of this Agreement.

10.4 TIAA shall secure and keep in force during the term of this agreement and TIAA shall require all subcontractors, prior to commencement of an agreement between TIAA and the subcontractor, to secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of $250,000 per person and $1,000,000 per occurrence.

2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of $250,000 per person and $1,000,000 per occurrence.

3) Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.

4) Employer's liability or "stop gap" insurance of not less than $1,000,000 as an endorsement on the workers compensation or commercial general liability insurance.

5) Professional errors and omissions, including a three year "tail coverage endorsement," with minimum liability limits of $1,000,000 per occurrence and in the aggregate.

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The insurance coverages listed above must meet the following additional requirements:

1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the TIAA

2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State. The policies shall be in form and terms approved by the State.

3) The duty to defend, indemnify, and hold harmless the State under this agreement shall not be limited by the insurance required in this agreement.

4) The state of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. The State shall have all the benefits, rights and coverages of an additional insured under these policies.

5) The insurance required in this agreement, through a policy or endorsement, shall include:

   a) "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State;

   b) a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned State representative;

   c) a provision that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08;

   d) a provision that TIAA's insurance coverage shall be primary (i.e. pay first) as respects any insurance, self-insurance or self-retention maintained by the State and that any insurance, self-insurance or self-retention maintained by the State shall be in excess of TIAA's insurance and shall not contribute with it;

   e) cross liability/severability of interest for all policies and endorsements;

   f) The legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary;

   g) The insolvency or bankruptcy of the insured Contractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Contractor from meeting the retention limit under the policy.

6) TIAA shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.

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7) Failure to provide insurance as required in this agreement is a material breach of contract entitling the State to terminate this agreement immediately.

11. Confidentiality; Employer Name; COMPLIANCE WITH PUBLIC RECORDS LAW

11.1 TIAA shall not use or disclose any information it receives from Employer under this contract that Employer has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this contract or as authorized in advance by Employer. Employer shall not disclose any information it receives from TIAA that TIAA has previously identified as confidential and that Employer determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law. The duty of Employer and TIAA to maintain confidentiality of information under this section continues beyond the term of this contract.

~~TIAA and the Employer recognize and acknowledge that, by entering into this Agreement, each Party may have access to certain information of the other Party that is confidential and constitutes valuable, special and unique property of that other Party. The Parties agree that they will not at any time, either during or subsequent to the term of this Agreement, disclose confidential information to others, or use, copy or permit the transmittal of confidential information to others, or use, copy or permit confidential information to be copied, without the other Party's express prior written consent. Except for disclosure by their Parties to their legal counsel, accountant or financial advisors (none of whom will be associated or affiliated in any way with the other Party or any of its affiliates), the Parties will not disclose the terms of this Agreement to any other person, unless disclosure is required by law or otherwise authorized by this Agreement or with the consent of the non-disclosing Party. Unauthorized disclosure of the terms of this Agreement will be a material breach of this Agreement and will provide the non-breaching Party the option of pursuing remedies for breach or immediate termination of this Agreement.~~

11.2 All payroll, employee, and Participant information received by TIAA under this Agreement shall be treated as confidential information and shall be handled in accordance with all state and federal laws relating to such information, the terms of the Plan, and in accordance with the requirements of this Agreement.

11.3 Subject to the express written consent of the Employer, TIAA shall have the non-exclusive and non-transferable right to use the name of the Employer solely in connection with rendering services pursuant to this Agreement. Any material, including electronic, print, or other media, in which the Employer's name may be used shall be submitted to the Employer in hard copy for review and approval prior to use by TIAA. Upon termination of the Agreement, TIAA agrees to immediately discontinue use of the Employer name.

11.4 TIAA understands that, except for disclosures prohibited in this contract, STATE must disclose to the public upon request any records it receives from TIAA. TIAA further understands that any records that are obtained or generated by TIAA under this contract, except for records that are confidential under this contract, may, under certain circumstances, be open to the public upon request under the North Dakota open records law. TIAA agrees to contact STATE immediately upon receiving a request for

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information under the open records law and to comply with STATE'S instructions on how to respond to the request.

12. WAIVER

The failure of either TIAA or the Employer at any time to require performance of any provisions hereof will in no manner affect its right at a later time to enforce such provision and will not act as a waiver thereof.

13. NOTICE

Any notices that may be required under this Agreement shall be given in writing and delivered personally or mailed by certified mail or courier service to the other Party at the following address or such other address as each Party may give notice to the other.

If to TIAA, to:
Client Agreement Team
TIAA-CREF
PO Box 1299
Charlotte, NC 28262
Attention: Product Program Director

With copies to:
Paul Hovelsrud
Managing Consultant, Institutional Services
TIAA-CREF
Normandale Lake Office Park
8000 Norman Center Drive
Suite 1100
Bloomington, MN 55437

Antoinette Block
Director, Institutional Services
TIAA-CREF
200 North LaSalle
Suite 1600
Chicago, IL 60601

If to the Employer, to:
Mr. Sparb J. Collins
Executive Director
North Dakota Public Employees Retirement System

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With copies to:

14. EFFECTIVENESS; TERMINATION

This Agreement shall become effective as of the date set forth above. ~~Employer may remove TIAA as record keeper upon ninety (90) days prior written notice to TIAA. TIAA may resign as record keeper upon ninety (90) days prior written notice to Employer.~~

a. Termination without cause. This contract may be terminated by mutual consent of both parties.

b. Termination for lack of funding or authority. Employer by written notice of default to TIAA, may terminate the whole or any part of this contract, under any of the following conditions:

(1) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term.

(2) If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding proposed for payments authorized by this contract.

(3) If any license, permit, or certificate required by law or rule, or by the terms of this contract, is for any reason denied, revoked, suspended, or not renewed.

Termination of this contract under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination.

c. Termination for cause. Employer may terminate this contract effective upon delivery of written notice to TIAA, or any later date stated in the notice:

(1) If TIAA fails to provide services required by this contract within the time specified or any extension agreed to by Employer; or

(2) If TIAA fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms.

The rights and remedies of Employer provided in this subsection are not exclusive and are in addition to any other rights and remedies provided by law or under this contract.

~~15. APPLICABLE LAW~~

~~This Agreement shall be construed, and the provisions hereof interpreted under, in accordance with the laws of the State of New York.~~

SAMPLE

16. COMPLETE AGREEMENT; MODIFICATIONS

This Agreement embodies the entire agreement between the Parties and supercedes all prior agreements relating to the subject matter of this Agreement. All amendments to this Agreement must be in writing and signed by both Parties.

17. COUNTERPARTS

This Agreement may be executed simultaneously in two or more counterparts, each of which taken together shall constitute one and the same Agreement.

18. SEVERABILITY

If any provision of this Agreement shall be held or made invalid by a court decision, statute, rule or otherwise, the remainder of the Agreement shall not be affected thereby.

19. SUCCESSORS AND ASSIGNS

This Agreement will be binding upon, insure to the benefit of, and be enforceable by the respective successors of the Parties. This Agreement will not be assignable by any Party hereto without the written consent of the other Party.

20. NON-EXCLUSIVITY

Each of the Parties acknowledges and agrees that this Agreement and the arrangements described herein are intended to be non-exclusive and that each of the Parties is free to enter into similar agreements and arrangements with other entities.

21. INDEPENDENT ENTITY

TIAA is an independent entity under this contract and is not a STATE employee for any purpose, including the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law and the North Dakota Workforce Safety and Insurance Act. TIAA retains sole and absolute discretion in the manner and means of carrying out TIAA'S activities and responsibilities under this contract, except to the extent specified in this contract.

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IN WITNESS WHEREOF, the Parties hereto have executed and delivered this Agreement as of the date first above written.

Teachers Insurance and Annuity Association of America

By: _____ Date: _____

Print Name:

Title:

_____ Employer

By: _____ Date: _____

Print Name:

Title:

SAMPLE

SCHEDULE A
LIST OF SERVICES

1. TIAA will prepare Plan enrollment kits and shall otherwise aid in the enrollment of employees eligible to participate in a Plan.

2. TIAA shall maintain records of each Plan participant's and beneficiary's account balances including those amounts paid as premiums to and balances in TIAA-CREF annuity contracts. The records of each such account balance shall reflect amounts attributable to employer contributions, participant elective-deferral contributions, rollover contributions (when permitted by the applicable Plan) and transfers, and any after-tax contributions (when permitted by the applicable Plan). If a 403(b) or 401(k) plan accepts after-tax Roth Elective Deferral Contributions as permitted under Code section 402(A), TIAA shall keep records that separately account for such contributions. TIAA shall also maintain records of rollover Roth contributions, as permitted by the Employer's plan, which shall also be accounted for separately. The records maintained pursuant to this paragraph 2 shall be based solely on information provided to TIAA by the Plan.

3. TIAA shall arrange for contributions to and investments in a participant's account to be allocated to the mutual funds under a Plan, in TIAA-CREF annuity contracts available under a Plan, or in a TIAA-CREF Brokerage Account as described in Schedule B, as directed by the participant or the participant's beneficiary in the event of the participant's death. The mutual funds, TIAA-CREF annuity contracts, and TIAA-CREF Brokerage Account chosen for the Plans are as set forth in Schedule B. All contributions shall be allocated among such options in accordance with the most recent valid instructions. Transfers among plan funding options shall be made pursuant to the instructions of the participant or beneficiary in accordance with the terms of the Plans but subject to any restrictions in the applicable mutual fund, brokerage agreement, or TIAA-CREF annuity contract. TIAA shall provide to the participant or beneficiary all of the forms necessary to enable him or her to allocate contributions or transfer amounts among the Plan funding options. In the event that Schedule B is amended to eliminate a mutual fund or a TIAA-CREF Brokerage Account as a plan funding option under the Plans, TIAA shall follow the instructions of the Plan Administrators in transferring accumulations from the eliminated mutual fund or TIAA-CREF Brokerage Account to the plan funding option chosen by the Employer as replacement(s) and no future allocations will be made to the eliminated plan funding option. TIAA will work with the Plan Administrators to develop a plan for such transfers and in communicating with the Plans' participants and beneficiaries concerning the change in the Plans' funding options.

4. TIAA shall send periodic record keeping reports and communications to the Plan Administrators and each Plan participant and beneficiary, including but not limited to information regarding returns and investment performance under the mutual funds and TIAA-CREF annuity contracts used to fund the participant's account under a Plan.

5. TIAA shall send any communication that it is required to provide by mail to a participant or beneficiary to the address provided to TIAA by the Plan or by the participant or beneficiary.

SAMPLE

6. TIAA shall, as authorized under a Plan by a Plan Administrator and subject to applicable law, administer and account for plan loans available under the terms of a Plan and shall, as authorized under a Plan by a Plan administrator and subject to applicable law, administer and account for hardship distributions.

7. TIAA shall, as authorized under a Plan by a Plan Administrator and subject to applicable law, provide for the liquidation of amounts in and make plan benefit payment distributions permitted under, the TIAA-CREF annuity contracts in a participant's Plan account. In addition, TIAA shall, as authorized under a Plan by a Plan Administrator and subject to applicable law, provide instructions to JPMorgan Chase Bank for the liquidation of investments in and to make plan benefit payment distributions permitted under the mutual funds in a participant's Plan account. TIAA shall, as authorized by the Plan Administrator and subject to applicable law, administer the spousal consent requirements when applicable to a Plan and have distributed Plan account balances in accordance with any Qualified Domestic Relations Order (as defined in section 414(p) of the Code) received by it or forwarded to it by a Plan and in accordance with the instructions of the Plan Administrator.

8. TIAA shall maintain records of each participant's designated beneficiaries based on information provided by the participants or the Plan.

9. To the extent permitted under applicable law, TIAA shall see to the performance of any required withholding of income tax from distributions and withdrawals. The foregoing notwithstanding, TIAA shall not provide for the performance of withholding of income tax from distributions and withdrawals from any private tax-exempt Code section 457(b), any Code section 415(m) plan or any Code section 457(f) Plan covered under this Agreement unless appropriate arrangements are made in writing with TIAA. Prior to the distribution of each participant's benefits, TIAA shall provide the appropriate notice as required under section 402(f) of the Code, when applicable.

10. If the Plan is subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), TIAA shall provide the information necessary for filing the annual report (5500 Series) for the Plan with the Department of Labor ("DOL") and shall assist the Plan Administrator in completing the filing.

11. On each day the New York Stock Exchange (the "Exchange") is open for business (each a "Business Day"), TIAA may receive instructions from a Plan and/or Plan participant on behalf of JPMorgan Chase Bank for the purchase or redemption of shares of the mutual funds offered under the terms of the Plan ("Instructions"). Instructions which are received in "good order" (defined below) prior to the close of regular trading of the Exchange (generally 4:00 pm Eastern Time) (the "Close of Trading") on any given Business Day, will be executed by JPMorgan Chase Bank at the net asset value determined as of the Close of Trading on such Business Day. Instructions which are received in "good order" (defined below) on such day but after the Close of Trading, will be executed by JPMorgan Chase Bank at the net asset value determined as the Close of Trading on the next Business Day following the date of receipt of the Instruction. Instructions shall be considered received in "good order" when all necessary information and monies in connection with such Instructions balance and conform to all other operating procedures, including any restrictions or limits set forth in the applicable fund prospectus or as otherwise set forth by TIAA on behalf of JPMorgan Chase Bank. The date the Instructions are executed shall be referred to as the "Participation Date". Notwithstanding the foregoing, in the event that the Securities and Exchange Commission promulgates or amends rules under which the foregoing

SAMPLE

procedures would be impermissible, this paragraph 11 shall be amended to provide a procedure that conforms to such rules.

12. TIAA shall deliver, or cause to be delivered to the Plan Administrator or at the direction of the Plan Administrator, directly to Plan participants and beneficiaries, all notices, prospectuses, financial statements, proxies and proxy soliciting materials received by TIAA relating to the TIAA-CREF annuity contracts or the mutual fund shares held in a participant's Plan accounts. Proxies shall be voted by, or in accordance with, the instructions of the participants or beneficiaries. If no instructions for voting proxies applicable to mutual fund shares are received, TIAA shall not exercise the voting rights for such shares and shall not be responsible for the failure to vote, or instruct the vote on such shares.

13. TIAA shall, as authorized by a Plan Administrator, offer a Plan level service that delivers investment and savings advice to Plan participants from an independent third party advice provider. The program follows the guidelines set forth in Department of Labor ("DOL") Advisory Opinion 2001-09A (known as the Sun America Opinion). Ibbotson Associates, Inc. is the independent financial expert under this participant advice program. The advice service will be delivered to participants over the phone, through the web, and by TIAA-CREF consultants in the field. TIAA accepts fiduciary responsibility for the provision of advice under this program.

14. TIAA shall, at such times as the Plan Administrators and TIAA shall agree, provide reports to the Plan Administrators concerning employee elective deferrals in order to aid in their compliance with the applicable limits on employee elective deferrals in sections 402(g), 457(e) and 414(v) of the Code, as applicable.

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SCHEDULE B

Plan Funding Options

Wells Fargo Stable Return Fund J

Non-Proprietary Mutual Funds, Administrative Fees and Cost Sharing Payments

Aston/Optimum Mid Cap Fund - Class I ABMIX
The annual 12b-1 and revenue sharing TIAA shall receive for services rendered is 10 basis points.

Brown Capital Management Small Company Institutional BCSIX
The annual 12b-1 and revenue sharing TIAA shall receive for services rendered is 10 basis points.

Cohen & Steers Realty Shares CSRSX
The annual 12b-1 and revenue sharing TIAA shall receive for services rendered is 25 basis points.

Columbia Mid Cap Index Fund Class A NTIAX
The annual 12b-1 and revenue sharing TIAA shall receive for services rendered is 30 basis points.

Franklin Growth Fund - Advisor Class Shares FCGAX
The annual 12b-1 and revenue sharing TIAA shall receive for services rendered is 20 basis points.

Franklin Mutual Global Discovery Z MDISX
The annual 12b-1 and revenue sharing TIAA shall receive for services rendered is 20 basis points.

Hartford Dividend & Growth R5 HDGTX
The annual 12b-1 and revenue sharing TIAA shall receive for services rendered is 20 basis points.

Invesco US Small Cap Value Y MPSCX
The annual 12b-1 and revenue sharing TIAA shall receive for services rendered is 25 basis points.

Nuveen Tradewinds Value Opps Inst NVORX
The annual 12b-1 and revenue sharing TIAA shall receive for services rendered is 25 basis points.

Oppenheimer Developing Markets Fund - Class Y ODVYX
The annual 12b-1 and revenue sharing TIAA shall receive for services rendered is 15 basis points.

Parnassus Small Cap Fund PARSX
The annual 12b-1 and revenue sharing TIAA shall receive for services rendered is 35 basis points.

PIMCO Real Return Admin PARRX
The annual 12b-1 and revenue sharing TIAA shall receive for services rendered is 25 basis points.

PIMCO Total Return Fund Admin Class PTRAX
The annual 12b-1 and revenue sharing TIAA shall receive for services rendered is 25 basis points.

SAMPLE

Prudential High-Yield Z PHYZX
The annual 12b-1 and revenue sharing TIAA shall receive for services rendered is 25 basis points.

Prudential Jennison Mid-Cap Growth Fund Z PEGZX
The annual 12b-1 and revenue sharing TIAA shall receive for services rendered is 25 basis points.

RidgeWorth Mid Cap Value Equity I SMVTX
The annual 12b-1 and revenue sharing TIAA shall receive for services rendered is 35 basis points.

T. Rowe Price Capital Appreciation Fund Adv PACLX
The annual 12b-1 and revenue sharing TIAA shall receive for services rendered is 40 basis points.

T. Rowe Price Equity Income Fund PRFDX
The annual 12b-1 and revenue sharing TIAA shall receive for services rendered is 15 basis points.

Templeton Global Bond Fund Advisor Class Shares TGBAX
The annual 12b-1 and revenue sharing TIAA shall receive for services rendered is 20 basis points.

Vanguard 500 Index Fund Signal Shares VIFSX
The annual 12b-1 and revenue sharing TIAA shall receive for services rendered is 0 basis points.

Vanguard Total International Stock Index Fund VGTSX
The annual 12b-1 and revenue sharing TIAA shall receive for services rendered is 0 basis points.

Wells Fargo Advantage DJ Target 2005 Adm WFLOX
The annual 12b-1 and revenue sharing TIAA shall receive for services rendered is 35 basis points.

Wells Fargo Advantage DJ Target 2010 Adm WFLGX
The annual 12b-1 and revenue sharing TIAA shall receive for services rendered is 35 basis points.

Wells Fargo Advantage DJ Target 2020 Adm WFLPX
The annual 12b-1 and revenue sharing TIAA shall receive for services rendered is 35 basis points.

Wells Fargo Advantage DJ Target 2030 Adm WFLIX
The annual 12b-1 and revenue sharing TIAA shall receive for services rendered is 35 basis points.

Wells Fargo Advantage DJ Target 2040 Adm WFLWX
The annual 12b-1 and revenue sharing TIAA shall receive for services rendered is 35 basis points.

Wells Fargo Advantage DJ Target 2050 Adm WFQDX
The annual 12b-1 and revenue sharing TIAA shall receive for services rendered is 35 basis points.

Wells Fargo Advantage Growth Adm SGRKX
The annual 12b-1 and revenue sharing TIAA shall receive for services rendered is 35 basis points.

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TIAA-CREF Brokerage Account

Notwithstanding any other provision of the Agreement to which this Schedule is attached to the contrary, the following provisions shall apply to the TIAA-CREF Brokerage Account. If so directed by the Employer and subject to TIAA's acceptance of a properly executed TIAA-CREF Retirement Plan Self-Directed Brokerage Account Application of a Plan participant or Beneficiary, all or a portion of the assets of the accounts of a Plan shall be segregated into individual TIAA-CREF Brokerage Accounts established for the benefit of Plan participants and Beneficiaries. Pursuant to the terms of the applicable Plan, each participant or Beneficiary shall have the power to direct the investment and reinvestment of assets in the TIAA-CREF Brokerage Account established for his or her benefit, subject to such administrative rules and procedures as TIAA may establish. Pursuant to the terms of the applicable Plan, participants and Beneficiaries shall provide instructions regarding the investment of the TIAA-CREF Brokerage Account directly to the broker appointed for purposes of executing transactions under the account. For 403(b) Plans, investments in the TIAA-CREF Brokerage Account shall be limited to mutual funds in accordance with Internal Revenue Code Section 403(b)(7).

SAMPLE

North Dakota
Public Employees Retirement System
400 East Broadway, Suite 505 ● Box 1657
Bismarck, North Dakota 58502-1657

Sparb Collins
Executive Director
(701) 328-3900
1-800-803-7377

FAX: (701) 328-3920 ● EMAIL: NDPERS-info@nd.gov ● www.nd.gov/ndpers

Memorandum

TO: PERS Board

FROM: Sparb and Kathy

DATE: July 21, 2011

SUBJECT: FlexComp Program – Voluntary Products

Several months ago we received the attached (Attachment #1) request from Noridan requesting its product be included as a pretax benefit in the NDPERS flexcomp plan. This request provided us the opportunity to review our existing list of vendors and voluntary insurance products approved for pretax premiums and the administrative requirements to insure we are in compliance with Code section 125 regulations. To assist us in this review, we sent a request to Segal which is included as Attachment #2. Attachment #3 is their response which concludes:

1. Our existing process is acceptable, but we should periodically review the products to insure their continued eligibility as a pretax benefit under the flexcomp plan.
2. We should update our plan document to include insurance products currently offered but not specifically listed and add language that indicates the plan complies with the requirements for qualified benefits under Code section 125(f).
3. That the Noridian product is eligible to be included as a pretax benefit under our plan.

In addition to the products currently set up for pretax premiums under PERS, Job Service and Custer District Health Unit each have a voluntary insurance product that is being treated as a pretax benefit under the plan. These products were grandfathered in on the effective date of participation for these employers and should also be included in our review.

Based upon the attached response by Segal, staff would recommend the following plan of action:

1. That we have Segal update our plan document.

2. That we re-enroll all our voluntary insurance products as follows:

    a. Send all the existing vendors a request asking them to identify which products they would like to continue to offer in our flexcomp plan and that for each they provide a brief narrative describing the product and confirm that it is eligible for treatment as a pretax benefit. We will also include Noridian in this request.

    b. Mail to the above in early August with a deadline for a response in early September.

    c. Provide the responses to the Board at the September meeting with a recommendation to approve those products for which we received a response that fully complies with our request.

3. That we contact Job Service and Custer District Health to ask if they wish to continue their voluntary plans as a pretax benefit.

Board Action Requested

To approve or modify the above plan of action for the flexcomp program voluntary products.

4510 13th Avenue South
Fargo, North Dakota 58121

RECEIVED
OCT 04 2010
ND PERS

1-800-575-9643
(701) 277-2049
FAX (701) 277-2454
www.MyNISI.com

September 27, 2010

Dear Sparb Collins and NDPERS board members:

Noridian Insurance Services Inc. (NISI) is requesting inclusion in the NDPERS flex benefit plan for the upcoming 2011 plan year. NISI has attained Office of Management and Budget (OMB) payroll deduction slots for its USAble Life Cancer and Accident products.

By granting NISI inclusion in the NDPERS employee benefit offering, employees who participate in the plan would have the option to use pre-tax dollars to purchase voluntary supplemental coverage through payroll deduction. The state would not contribute to this coverage through the NDPERS program. NISI would continue to work directly with OMB on the administration of the payroll deduction requirements.

I thank you in advance for your consideration of our request.

Sincerely,

Peg Dickelman
Agency Manager
Noridian Insurance Services, Inc.

Melanie,

NDPERS administered flexcomp plan presently allows certain insurance products to be payroll deducted pre-tax. This policy was established when the program was set up in 1989. We have not reviewed our existing process since its establishment and would like Segal to provide us with an update of IRS requirements and review the NDPERS Flexcomp Plan Document. Background

The following voluntary insurance products were deemed to be eligible for pretaxing when the program was set up and are currently eligible for pre-tax treatment under the plan:

AFLAC – Cancer, Hospital Indemnity, Intensive Care

(AFLAC also officer a disability insurance product and a dental plan that are eligible for pre-tax treatment.)

COLONIAL – Cancer, Intensive Care, Disability

CENTRAL UNITED – Cancer

CONSECO – Cancer

TDA – Dental

USAble – Cancer

NDPERS directly administers the following plans and these plans are selected by the PERS Board as result of a general bid process. These plans are also eligible for pre-tax treatment:

CIGNA – Dental

SUPERIOR – Vision

PRUDENTIAL LIFE INSURANCE – Up to the first $50,000 of employee supplemental coverage.

Please note that all of the above products are set up on the payroll system and the premiums are deducted each month from the employee's salary. Also note that when the program was set up the advice the board received was that offering these additional products as employer sponsored was consistent with federal requirements.

In addition to the above, one state agency has about 80 employees that pre-tax a Met Life basic and employee supplemental life insurance premium that is an employer sponsored plan for that employer.

Finally one other provision of our plan allows District Health Units to participate. The employer participation agreement between NDPERS and our District Health Units has a section that reads: The Employer shall provide PERS with a list of any employer provided group insurance plans for which premiums are paid through payroll deduction and may be eligible for pretax treatment under the Plan.

There is one District Health Unit that has employees pre-taxing premiums for Blue Cross Blue Shield Dental and Vision plans.

In addition to those products that are presently eligible as discussed above Sections 2.16 of our Plan Document provides the following:

Pre-tax Premium(s). "Pre-tax Premium(s)" means the cost of life, disability, medical, dental, vision and cancer insurance under the Benefit Plan which a Participant is required, as a condition for coverage, to defray. The amount of the Pre-tax Premium(s) under the Benefit Plan shall be determined by the Board in accordance with the Board's policies that are applied to all Employees in a consistent manner.

Questions:

As noted above PERS would like to review our present process for offering products to our employees on a pretax basis. This review is prompted by a request we have from another carrier to offer products to our employees (see attached). Consequently we are requesting your review of the existing IRS requirements and a summarization of them for our review. We are also requesting your review of our present arrangements and your assessment of our compliance with the requirements. We also note Section 2.16 of the Plan Document does not appear to cover all the different options that are provided to employees under the Premium Conversion feature of the plan. Also, the amount of the pre-tax premiums are not determined by the Board as stated, or are we misinterpreting this statement? Do we need to update the Plan Document?

North Dakota
Public Employees Retirement System
400 East Broadway, Suite 505 ● Box 1657
Bismarck, North Dakota 58502-1657

Sparb Collins
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(701) 328-3900
1-800-803-7377

FAX: (701) 328-3920 ● EMAIL: NDPERS-info@nd.gov ● www.nd.gov/ndpers

Memorandum

TO: PERS Board

FROM: Deb

DATE: July 20, 2011

SUBJECT: Federal Defined Benefit Plan Excess Contribution Limits

IRC 401(a)(17) restricts the amount of compensation taken into account for benefits under the retirement plan to specified dollar limits. This amount is established annually and was $245,000 for both 2010 and 2011.

To get a perspective of how this affects our business process it is important to contrast our normal retirement process and the process for IRS 401(a)17 compliance. Our normal process is that when we receive retirement contributions, our computer system records the salary on which contributions were calculated and grants the member a month of service credit which is used for both the pension and retiree health insurance credit (RHIC) calculations. The system also expects that when contributions are received, it will be for both the pension and RHIC plans. For members who reach the IRC 401(a)(17) pension contribution limits, it is necessary for staff to use a feature in PERSLink that will allow us to manually update the following:

- Add a month of service credit for any month in which no pension contributions are received as a result of the federal limit
- Add RHIC contributions to the member's account without recording the related pension contributions and salary.

PeopleSoft has also been programmed to not pay any retirement contributions in excess of the limits.

It was reported to us this year that this limitation was met for one of our members. Before implanting the above process we decided to ask Segal to review our approach since this was the first time it was to be used (see attached memo). One issue has arisen concerning the contributions. As noted we suspend them pursuant to our process. However, I have asked Jan to review this to verify our authority under state law and discuss this with you at the next Board meeting. Based upon that review, we may need to consider modifications to our process. However, if Jan concludes that our process is legally sufficient we will move forward in the future based upon the process outlined above. Since this is the first time this has arisen we wanted to review it with the Board. Once this review is complete we will be informing the member.

THE SEGAL COMPANY
5670 Greenwood Plaza Boulevard Suite 425 Greenwood Village, CO 80111-2499
T 303.714.9900 F 303.714.9990 www.segalco.com

MEMORANDUM

To: Sparb Collins
Deb Knudsen

From: Melanie Walker, JD

Date: July 14, 2011

Re: North Dakota PERS- Code section 401(a)(17) compensation limitation

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At your request, we are providing a summary of the rules related to the compensation limitation for qualified plans under Internal Revenue Code ("Code") section 401(a)(17). Code section 401(a)(17) requires that qualified plans restrict the amount of compensation taken into account for benefits provided under the plan to a specified dollar limit. The annual dollar limit for 2011 is $245,000, which is indexed in accordance with Code provisions.

For a defined contribution plan, Code section 401(a)(17) prohibits the plan from making any contributions (including employee and employer contributions) on compensation that exceeds the annual dollar limit. For a defined benefit plan, Code section 401(a)(17) prohibits the plan from paying pension benefits based on compensation that exceeds the dollar limit. For example, if a defined benefit plan's formula provides for a benefit equal to 2% of average compensation multiplied by service credited under the plan, compensation in excess of the dollar limit under Code section 401(a)(17) cannot be utilized in the formula.

In order to maintain its qualified status, the PERS defined benefit plans must restrict the compensation used to determine benefits in accordance with the limitation set forth in Code section 401(a)(17). Statutory provisions of the plans also require compliance with Code section 401(a)(17) compensation limitations (e.g., see NDCC §54-52-28). Thus, PERS must track the total annual compensation of its members to ensure that compensation in excess of the dollar limit is not utilized in paying benefits from the defined benefit plans. Although a defined benefit plan is generally not required to cease contributions on compensation once it exceeds the Code limitation, most plans do cease contributions once compensation reaches this limitation for purposes of equitable treatment of employees and/or employers. In addition, since the PERS defined benefit plans separately account for employee contributions, which are payable as a minimum benefit under the plan provisions, it appears that PERS may be required to cease

employee contributions once compensation reaches the limit, in order to comply with Code section 401(a)(17).

Furthermore, in order for a defined benefit plan to meet a qualification requirement that the plan's benefits be "definitely determinable", as described in Treasury Regulations section 1.401-1(b)(1)(i), the plan must credit employees for service with a participating employer whether or not the employer makes the required contributions under the plan (see Rev. Rul. 85-130). This is important because it means that a defined benefit plan which ceases contributions on compensation once it reaches the limit under Code section 401(a)(17) must continue to credit service under the plan, even for periods when no contributions are made.

If PERS ceases contributions on compensation once it reaches the Code limitation for the year, it must determine how this will affect the affected member's compensation and payroll reporting functions. To the extent that the required employee contributions are not paid via salary reduction (e.g., paid by the employer in lieu of a salary increase), ceasing required employee contributions should not increase the member's pay. Instead, the employer would cease making the required employee contributions (as well as required employer contributions, if applicable), and no additional income taxes would be payable on contributions to the plan that are not actually made for the remainder of the year.

We hope this discussion is helpful. As always, the information contained in this memorandum is provided within our role as benefits consultant and is not intended to provide legal advice. We recommend that you address the issues addressed herein with your legal counsel. Please let me know if you have any questions.

cc: Sharon Schiermeister
Brad Ramirez, FSA, MAAA, FCA, EA

5144077v1/01640.044

North Dakota
Public Employees Retirement System
400 East Broadway, Suite 505 ● Box 1657
Bismarck, North Dakota 58502-1657

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Executive Director
(701) 328-3900
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FAX: (701) 328-3920 ● EMAIL: NDPERS-info@nd.gov ● www.nd.gov/ndpers

Memorandum

TO: PERS Board

FROM: Deb

DATE: July 20, 2011

SUBJECT: Retirement Contributions

Pursuant to the passage of SB2108, both the employer and employee contribution will be increasing by 1% each effective January 2012 and again effective January 2013.

Staff has been working on the implementation of this bill along with the Segal Company and plan to use the attached materials. An article was published in the *PERSonnel Updates* newsletter that went out to all payroll and human resource personnel in the middle of July as a general notification. This article also refers employers to the examples provided on the NDPERS website.

In addition, staff intends to send a memo to each authorized agent for all non-state agencies to ensure that they are aware of the increase and to obtain an indication of what each employer is electing to do. As you can see by the attached form, we are asking them to make an election on the increased employee contributions only, leaving current elections in place. In the event an employer does not respond, staff will contact them individually to ensure that they are aware of the upcoming increase and are ready to implement it. Ultimately, if NDPERS does not receive an election form from an employer, it will result in the increased employee contribution being recorded as after tax contributions.

Also, attached for your information, in addition to the election form is the draft letter to employers and the newsletter article that went out in July. If you have questions, please feel free to contact me before the Board meeting, or I will also be available at the meeting.

Taken from *PERSonnel Updates* Employee Newsletter

Pursuant to the passage of SB2108, both the employer and the employee contribution will be increasing by 1% each for the Public Employees Retirement System, Judges Retirement Program, Highway Patrol Retirement Program and the Defined Contribution Retirement Program effective January 2012 and again in January 2013. For the PERS system and the Defined Contribution program, non-state employers will need to make an election to inform the NDPERS office how the employee contribution will be paid, pre-tax or after tax. State agencies will not need to make an election.

If you are considering a pre-tax contribution, the primary difference between the two methodologies from a tax standpoint is that for the "salary reduction" arrangement FICA taxes must still be paid whereas for the "salary supplement" method FICA taxes are not paid. In the "salary supplement" arrangement the employer must pay the employee contribution in a manner that does not reduce current salary or offset future salary increases. Therefore in considering these methods an employer must determine whether they can pay for the increased employee contributions from their own funds as a salary supplement or would reduce employees' current or future salary as a salary reduction. If the former, then FICA taxes would not apply, if the latter then FICA taxes would have to be paid.

Below is an example:

If you have an employee who makes $3,000/month, the 1% employee contribution that will be payable beginning in January 2012 is going to be $30. The employer can choose to pay it after tax, or pre-tax. Assuming the employer chooses to pre-tax the contributions, there are two possible scenarios.

1) If the employer pays the 1% increase out of their own funds so that it is a "salary supplement", then the employer does not pay FICA tax on the increased amount (nor does the employee owe FICA tax), as well no income tax due. The salary for FAS purposes remains $3,000 because the $30 increase is not wages. This is similar to Model 2, example 2 in the employer guide on line.
2) If the employer either deducts the 1% increase from the employee's pay or offsets a future salary increase by the 1%, then the employer must pay employer and employee portion of FICA tax on the increased amount, but no income tax is due. The salary for FAS purposes remains $3,000 because the $30 increase comes from employee wages. However, as with the State of North Dakota, if the employer implements a pay increase before the deduction of the 1%, the $3,000 amount will change (e.g., 3% pay increase to $3,090, then $30 deducted for employee contributions, then salary for FAS purposes is $3,090 but employee only receives $3,000 as taxable wages). This is how it would work based on current plan rules, which is similar to Model 1, example 2 in the employer guide.

It is possible for an employer who is planning a pay increase (i.e. 3%), but has not yet approved or implemented said increase to instead approve a 1% pay increase and then pay the employee contribution increase as a salary supplement. If the contributions are a supplement, no FICA tax would be due. However, the employer must be extremely careful how the pay increase is described and presented, because if it appears to be in lieu of a future salary increase, scenario #1 above would apply.

You will receive more detailed information in August regarding the information NDPERS will need to receive from you. This topic will be covered at the Payroll Conference we expect to present in September as well. If you have additional questions, please contact Deb Knudsen at the NDPERS office.

[PERS letterhead]

TO: Participating Employers

FROM: Public Employees Retirement System

DATE: _____

RE: Increase in Employee Contributions

Recently, the State of North Dakota legislature approved a change to the retirement plans administered by the Public Employees Retirement System (NDPERS) which increases the rate of future member contributions required to be made to the System. Employee contributions will increase by one percent (1%) of the member's monthly salary beginning with the monthly reporting period of January 2012, with an additional one percent (1%) increase beginning with the reporting period of January 2013.

Employer contributions are also increasing in 2012 and 2013, which may require action on your part. However, this letter and election form apply only to increased employee contributions.

As you know, NDPERS requires that participating employers provide a written election if they wish to make employee contributions on a tax-deferred basis. Otherwise, employee contributions are considered to be after-tax monies. Currently, participating employers make an election for employee contributions to be pre-tax according to the terms of the Employer Handbook by completing the Employer Payment Plan **SFN 52799**. However, both State law and the IRS require that an employer's election to make employee contributions on a pre-tax basis be specific about how much of the employee contributions will be pre-tax and when the pre-tax election is effective. Therefore, if participating employers wish to make the increased employee contribution amounts on a pre-tax basis, effective in 2012 and in 2013, they must do so by written election.

In order for participating employers to make this written election, effective for the increases effective in 2012 and 2013, they **must complete the attached election form and return it to NDPERS** no later than _September 30, 2011. This specific election will apply only to the one percent (1%) increase effective January 2012, and the one percent (1%) increase effective January 2013. If the participating employer wishes to change an election to increase or decrease the existing percentage of contributions being tax deferred, they must do so separately by completing a new **SFN 59973**. If no election is made regarding the increased employee contributions by the date specified, the increased amount will be treated as after-tax contributions by NDPERS.

It is important to note that the IRS rules have been modified with respect to Social Security taxes where the employer pays employee contributions. Under the IRS rules, if the employer reduces an employee's current or future salary, *including offsetting future salary increases*, to pay employee contributions, then the member contributions, although income tax-deferred, are subject to Social Security taxes. The employer must pay employee contributions in addition to

the employee's salary in order to avoid Social Security taxes. However, an employer may be able to re-characterize a planned salary increase to employees in order to pay employee contributions in a manner that avoids Social Security taxes.

If you have questions about the election form, contact Deb Knudsen at the NDPERS office at 701-328-3900 or toll free at 1-800-803-7377.

5139116v2/01640.044

EMPLOYER PAYMENT PLAN ON INCREASED RETIREMENT CONTRIBUTIONS

NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM

SFN 59973 (Rev. 07-2011)

NDPERS • PO Box 1657 • Bismarck • North Dakota 58502-1657
(701) 328- 3900 • 1-800-803-7377 • Fax 701-328-3920

This form is used by a participating employer in the NDPERS retirement plan to advise NDPERS who is paying the 1%***** additional employee contribution effective January 2012 and an additional 1%***** effective January 2013 and how it is being taxed. (*****.5% for Law Enforcement Retirement System) This payment plan does not refer to the employer contribution, which is always paid by the employer. Refer to the NDPERS Employer Guide for information and examples of the models available to the employer.

Organization Name	NDPERS Organization ID
Effective Date of Election	

PAYMENT PLAN

Please answer the following questions to determine your payment plan.

1. Are the **additional** retirement contributions being deducted from the employee's paycheck?
   - ☐ Yes
   - ☐ No **If no, go to question #3**

2. Is federal withholding computed on the employee's salary before retirement contributions are deducted?
   - ☐ Yes **If yes**, then Basic Model applies. The employee contributions are being paid on an after-tax basis. Sign and date bottom of form.
   - ☐ No **If no**, then Model 1 applies. Employee contributions are tax deferred. Sign and date bottom of form.

3. Is the employer paying the **additional** retirement contributions for the employee?

   Note: For this purpose, the employer is only paying the additional retirement contributions for the employee if the employer is making this payment from their own funds. If the employer instead makes this payment by offsetting salary increases, then Model 1 still applies, according to a recent change to IRS rules.

   - ☐ Yes **If yes**, then Model 2 applies. Employee contributions are tax deferred. Sign and date bottom of form.
   - ☐ No **If no**, **go to question #4**

4. If questions 1 or 3 were answered no, then Model 3 applies. Please complete the following information:

   A. What **portion** of the additional retirement contribution is the employer paying for the employee?
   _____% Employee contributions for this portion are tax deferred.

   B. What **portion** of the additional retirement contribution is being deducted from the employee's paycheck?
   _____%

   Note: The sum of the percentages in 4A and 4B can not exceed 2% total for the NDPERS retirement systems or 1% for the Law Enforcement System.

   C. Is federal withholding computed on the employee's salary before the portion of retirement contributions in question 4B are deducted?
   - ☐ Yes Employee contributions for this portion are after tax.
   - ☐ No Employee contributions for this portion are tax deferred.

I understand the terms and conditions of the Model selected above under which the employer will report employee and employer contributions. I understand that this Employer Payment Plan will remain in effect until a written notice of cancellation or a new plan is filed. I also understand that any penalties levied by the Internal Revenue Service or Social Security Administration for improper reporting are the liability of the employer, not NDPERS. If no election is made regarding the increased member contributions by September 30th 2011, the increased amount will be treated as after-tax contributions by NDPERS.

_____ _____

Authorized Signature for Employer Date of Signature

North Dakota
Public Employees Retirement System
400 East Broadway, Suite 505 ● Box 1657
Bismarck, North Dakota 58502-1657

Sparb Collins
Executive Director
(701) 328-3900
1-800-803-7377

FAX: (701) 328-3920 ● EMAIL: NDPERS-info@nd.gov ● www.nd.gov/ndpers

Memorandum

TO: PERS Board

FROM: Sparb

DATE: July 19, 2011

SUBJECT: Law Enforcement Plans

The PERS Board is responsible for the administration of two Law Enforcement Plans. One plan is for employers with past service and the other is for employers without past service. Unlike our other retirement plans, the PERS Board is given the authority in statute to set the employer contribution rate for these plans. Section 54-52-06.3 and 54-52-06.4 state (underlined portion is the part of statute authorizing the board to set the employer rate):

54-52-06.3. Contribution by peace officers and correctional officers employed by political subdivisions - Employer contribution.

Each peace officer or correctional officer employed by a political subdivision that enters into an agreement with the retirement board on behalf of its peace officers and correctional officers separately from its other employees and who is a member of the public employees retirement system is assessed and shall pay monthly four percent of the employee's monthly salary. *Peace officer or correctional officer contributions increase by one-half of one percent of the member's monthly salary beginning with the monthly reporting period of January 2012, and with an additional increase of one-half of one percent, beginning with the reporting period of January 2013.* The assessment must be deducted and retained out of the employee's salary in equal monthly installments. <u>The peace officer's or correctional officer's employer shall contribute an amount determined by the board to be actuarially required to support the level of benefits specified in section 54-52-17.</u> If the peace officer's or correctional officer's assessment is paid by the employer under subsection 3 of section 54-52-05, the employer shall contribute, in addition, an amount equal to the required peace officer's or correctional officer's assessment.

54-52-06.4. Contribution by peace officers employed by the bureau of criminal investigation - Employer contribution.

Each peace officer employed by the bureau of criminal investigation who is a member of the public employees retirement system is assessed and shall pay monthly four percent of the

employee's monthly salary. *Peace officer contributions increase by one percent of the member's monthly salary beginning with the monthly reporting period of January 2012, and with an additional increase of one percent, beginning with the reporting period of January 2013.* The assessment must be deducted and retained out of the employee's salary in equal monthly installments. The peace officer's employer shall contribute an amount determined by the board to be actuarially required to support the level of benefits specified in section 54-52-17. The employer's contribution must be paid from funds appropriated for salary or from any other funds available for such purposes. If the peace officer's assessment is paid by the employer under subsection 3 of section 54-52-05, the employer shall contribute, in addition, an amount equal to the required peace officer's assessment.

Presently that rate is:

	Present Rate	Actuarial Rate
Law Enforcement Plan with Prior Service	8.31%	10.80%
Law Enforcement Plan without Prior Service	6.43%	7.53%

Last year, as part of our efforts to enhance the funded status of our retirement plans, we decided to seek an increase in the employee contribution rate for these plans (the part in italics) and this was approved by the legislature. As you will note, the increase is 1/2% (.5%) for political subdivisions and 1% for the state. As a result of the rate for state employees being higher, I am suggesting that we have a separate actuarial report done for state members in the Law Enforcement Plan so we can more accurately monitor the contribution requirements for state and political subdivision law enforcement plans with prior service. In my testimony I indicated to the legislature that the Board was going to increase the employer rates for the law enforcement plans in an amount similar to the employee rate. This would mean that the rate increase would be:

	Jan 2012 Increase	Jan 2013 Increase
Law Enforcement Plan with Prior Service	.5%	.5%
Law Enforcement Plan without Prior Service (Poli Sub)	.5%	.5%
Law Enforcement Plan without Prior Service (state)	1%	1%

Board Action Requested:

1. Approve the above rate increases for employers.
2. Approve doing a separate actuarial valuation for state members of the Law Enforcement Plan.

North Dakota
Public Employees Retirement System
400 East Broadway, Suite 505 ● Box 1657
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Sparb Collins
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FAX: (701) 328-3920 ● EMAIL: NDPERS-info@nd.gov ● www.nd.gov/ndpers

Memorandum

TO: PERS Board

FROM: Sparb

DATE: July 20, 2011

SUBJECT: Political Subdivision Participation

Last December we reviewed the following concerning participation of political subdivisions in the retirement plan:

At the last several meeting we have talked about the contribution rate for political subdivisions for the main system and the law enforcement plan. As a result, I went back and closely reviewed our statute and have asked Aaron to review it as well. I discovered one issue relating to NDCC 54-52-02.1 (3) which states:

3. Notwithstanding any other provision of this chapter, a political subdivision of this state not currently participating in the public employees retirement system may not become a participant in the retirement system until an actuarial study is performed under the direction of the board to calculate the required employer contribution. The required employer contribution must be an amount determined sufficient to fund the normal cost and amortize any past service liability over a period not to exceed thirty years as determined by the board. Any fees incurred in performing the actuarial study must be paid for by the political subdivision in a manner determined by the board.

This subsection of the statute was changed when the law enforcement system was created in 2003. Unlike other bills this bill was developed during the session and did not go through the same level of analysis. That is it did not go through the interim committee before the session. Also this bill centered on creating the law enforcement plan and the actuarial work required to do that. In reviewing the legislative history, neither Aaron nor I can see that any consideration or note was made concerning the change in this subsection. What changed was the addition of the normal cost provision to this subsection. In the past it was only concerned with past service liability and since no one joined the system with a past service liability, it was never applied. Also at the time, as near as I can recall, it was felt that since other sections of the bill specifically set the rate, this would not apply anyway. Consequently this was not noted or considered in any of the reviews, assessments or testimony. When I asked Aaron to review this he indicated that is not the case that is this section prevails over other sections of the statute. So what does all this mean to us?

1. This section says we should be doing an actuarial analysis to determine the normal cost and past service liability cost for any political subdivision joining the plan. We do not do that.
2. If we did, it would raise numerous administrative problems since we would have a unique rate for each subdivision, we would likely need to do a specific actuarial valuation for each unit each year and vary the rate for each. The administrative cost for this would be high and the additional actuarial fees would be high.

Since we are now aware of this I would recommend that we add an amendment to our administrative bill to correct this provision. If you agree I will discuss this with the Chair of the Legislative Employee Benefits Committee to see if it can be added at this time.

Staff Recommendation: Seek a change is statute

This last session we did seek an amendment in our administrative bill to deal with this situation and it was accepted, so our statutory process has been restored to our historical method of participation. That is, political subdivisions prospectively join the plan at the statutory rate.

However, when we became aware of the meaning of the statutory change discussed above, Morton County was in midst of joining our plan. Consequently, we had to commission an actuarial study to see what their rate should be. The result of the study was:

	Statutory Employer Rate	Actuarial Employer Rate
Main System	4.12%	6.68%

The county elected to join the plan at the actuarial rate. They also understood that new legislation was moving through to increase the statutory rate from 4.12%. With the passage of SB 2108, our statutory rate will now be rising to 5.12% in January of 2012 and 6.12% in January of 2013.

Given the above, the question we need to address for Morton County is:

1. Given the change in our statute, should we consider reducing their employer contribution rate from 6.68% to 4.12% and then their rate would increase along with all others as the statutory rate increases?
2. If we leave their contribution rate at 6.68%, should the 1% increases in January of 2012 and 2013 apply to them?

I have asked Jan to review this to determine the Board's authority and she will be at the next meeting to review her findings.

Staff Recommendation

Subject to legal review, staff would recommend option #1. That is, we reduce their employer contribution to 4.12% prospectively. This would put Morton County's participation on the same basis as all other political subdivisions and they would not be the only one being treated differently. In addition, this would mean that their contribution rate would increase in the future at the same rate as all other employers. Also, from an administrative standpoint we would not have one political subdivision with a separate rate requiring a separate process. Administrative distinctions for unique reasons cause on-going difficulties since they increase the possibility for errors.

Board Action Requested

Determine what action if any should be taken concerning Morton County's rate.

North Dakota
Public Employees Retirement System
400 East Broadway, Suite 505 ● Box 1657
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Memorandum

TO: NDPERS Board

FROM: Kathy

DATE: July 15, 2011

SUBJECT: Dental Plan Renewal

At the June meeting, the Board was presented with the CIGNA dental renewal proposal. CIGNA proposed an across the board increase in rates of 4.32%. Our consultant, Deloitte, indicated there may be opportunity to negotiate further on the proposed rate increase. Based on this, the Board directed staff to proceed with negotiations. CIGNA has provided us with a revised proposal that reduces the premium increase by 1% from 4.32 % to 3.32%. The rates effective January 1, 2012 will be as follows:

Single - $41.14
One + Spouse - $79.42
One + child(ren) - $92.18
Family - $131.26

Staff recommends we accept the revised CIGNA proposal.

Board Action Requested

Accept staff recommendation to accept CIGNA's renewal proposal for a 3.32% rate increase.

Scott A. Shultz, RHU
Senior Client Manager
CIGNA Sales

July 13, 2011

Kathy Allen
Benefit Programs Manager
NDPER System
400 E. BDWY, Suite 505
Box 1657
Bismarck, ND 58502

3900 E. Mexico Ave.
Suite 1250
Denver, CO 80210

Re: North Dakota Public Employees Retirement System (NDPERS)
- 2012 CIGNA Dental Renewal - REVISED

Dear Kathy:

Thank you for allowing CIGNA Dental to be of service to the retirees of NDPERS. We appreciate having you as a client.

I am writing to provide revised renewal rates for 2012. With no coverage changes the revised renewal increase has been lowered from 4.32% to 3.32% effective January 1, 2012.

The revised rates are:

Description	Rate	Projected Enroll
Retiree/Employee only	$41.14	3038
Retiree/Employee + spouse	$79.42	1551
Retiree/Employee + child(ren)	$92.18	430
Retiree/Employee + family	$131.26	1409

If you have any questions or need additional information, please feel free to give me a call.

Cordially,

Scott A. Shultz
Senior Client Manager

North Dakota
Public Employees Retirement System
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Bismarck, North Dakota 58502-1657

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Memorandum

TO: NDPERS Board

FROM: Kathy

DATE: July 18, 2011

SUBJECT: Life Insurance Agreements

The ING Group Application, Electronic Facilitation Agreement and NDPERS Personal Service Agreement were reviewed and approved by our legal counsel. The documents are included for your information. Also included is a press release provided by ING that details its commitment to aiding flood victims in the Minot area.

Board Action Requested

Approve the Group Application, Electronic Facilitation Agreement and NDPERS Personal Service Agreement for signature by the Board Chairman.

APPLICATION FOR
GROUP INSURANCE

ReliaStar Life Insurance Company
Home Office ● Minneapolis, Minnesota 55440

Application is made to ReliaStar Life Insurance Company (we, us, our) for Group Insurance.

1. Name of Group Applicant North Dakota Public Employees Retirement System
(use exact legal name of organization)

2. Address 400 E Broadway Ave Suite 505
(number & street)

Bismarck ND 58501
(city, state, zip code)

3. Types of insurance desired: **Does the Group Applicant pay 100% of the premium?**

☒ Basic Life Insurance	Yes
☒ Supplemental Life Insurance	No
☐ Basic Dependent Life Insurance	n/a
☒ Supplemental Dependent Life Insurance	No
☐ Paid Up Life Insurance	n/a
☒ Basic Accidental Death & Dismemberment Insurance (AD&D)	Yes
☒ Supplemental Accidental Death & Dismemberment Insurance (AD&D)	No
☐ Basic Dependent Accidental Death & Dismemberment Insurance (AD&D)	n/a
☐ Supplemental Dependent Accidental Death & Dismemberment Insurance (AD&D)	n/a
☐ Survivor Income Benefit (Life Insurance)	n/a
☐ Weekly Disability Income Insurance	n/a
☐ Monthly Disability Income Insurance	n/a
☐ Employee Dental Insurance	n/a
☐ Dependent Dental Insurance	n/a
☐ Other Personal Accident Insurance-Employee	n/a
☐ Other Personal Accident Insurance-Dependent	n/a

4. This insurance is to become effective on *(date)* July 1, 2011 at the Group Applicant's place of business, only if the first month's premium is paid in full, and we accept this application.

5. The writing agent on the insurance applied for is: *(The agent must be duly licensed as required by law)*

Group Applicant North Dakota Public Employees Retirement System

By

Title

Date

See reverse side for Fraud Warnings

Fraud Warnings

Standard: Any person who knowingly and with intent to defraud, submits an application or files a claim containing any materially false or misleading information, commits a fraudulent act, which is a crime.

Colorado: It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete or misleading facts to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado Division of Insurance within the Department of Regulatory Agencies.

District of Columbia: It is a crime to provide false or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment and/or fines. In addition, an insurer may deny insurance benefits if false information materially related to a claim was provided by the applicant.

Louisiana: Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

Maryland: Any person who knowingly and willfully presents a false or fraudulent claim for payment of a loss or benefit or who knowingly and willfully presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

New Jersey: Any person who includes any false or misleading information on an application for an insurance policy is subject to criminal and civil penalties.

Oregon: Any person who knowingly and with intent to defraud submits an application or files a statement of claim containing any materially false or misleading information, may be guilty of insurance fraud.

Pennsylvania: Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or a statement of claim containing any false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.

Tennessee: It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purposes of defrauding the company. Penalties include imprisonment, fines and denial of coverage.

Important Information About Your Employee Benefits Insurance

Thank you for considering ReliaStar Life Insurance Company (the "Company") for your employee benefits insurance needs. We offer various Employee Benefits insurance products that have different features, benefits and costs. We are confident that, working with your professional insurance agent, broker, or consultant you will find that one of our products is right for you. Your agent, broker, or consultant may work with many employee benefits insurance companies, and we are pleased that they are presenting one of our products to you. If you decide to purchase, or offer to your employees or members, a policy from us we would like you to understand how we will pay the selling agent, broker, or consultant.

There are generally three types of payments that may be made to agents, brokers and consultants:

1. Commissions: Agents, brokers, or consultants may earn a commission for each Company policy sold. The commission is generally a percentage of the policy premiums paid. The percentage may be higher for agents, brokers, or consultants that sell a larger number of Company policies. The actual percentage and amount of commission paid will vary based on the specific circumstances of the product(s) purchased.

2. Bonuses: Agents, brokers, or consultants may receive additional compensation based on a percentage of policy premiums paid for each year a policy remains in force and as rewards for things like achieving certain sales volume levels, sales contest objectives, or other measures. We also may pay for agent, broker, or consultant education, training or attendance at conventions, and may pay bonuses, provide advance commissions and/or loans with an expectation that the advancement and/or loans be repaid as new policies are issued, reimburse expenses or provide other payments or benefits.

3. Administrative/Service Fees: Agents, brokers, or consultants may provide administrative services and marketing support for a flat fee, a percentage of policy premiums paid, or, a fee based on the amount of commissions earned from the initial sale. The agents, brokers or consultants may be associated with other brokers or consultants that may provide administrative services and marketing support for similar fees.

This is a general discussion of the compensation we pay for the sale of our policies. We pay commissions and other sales expenses from our general assets and revenues, including amounts we earn from fees and charges under our policies. The price of an insurance policy is set by the Company, and reflects the compensation we pay for the sale of our policies. It also covers other costs to design, manufacture and service our policies, fees associated with the cost of any applicable guarantees, the investment management needed to build cash values and pay benefits, and our profits.

We are committed to providing top-quality insurance products to our customers and are pleased that your professional insurance agent, broker, or consultant trusts us to deliver on your long term insurance needs.

Product Name(s)	Basic Life/AD&D, Supplemental Life/AD&D and Supplemental Dependent Life
Account Name	North Dakota Public Employees Retirement System
Group Applicant/Sponsoring Organization Signature	
Group Applicant/Sponsoring Organization Printed Name	
Title	

Revised: 06/07

Date _____

PRESS RELEASE

Minot, N.D., June 29, 2011

ING adds $50,000 contribution to its Minot flood relief efforts

The ING Foundation will make a $50,000 contribution to the Minot Area Community Foundation as part of ING's overall efforts to help with flood relief in Minot. The company, which has 900 employees at an operations center in the city, has also mobilized ING employee support from around the U.S. in order to help their Minot colleagues and the community at large.

"ING has called Minot home for over 10 years. We're heartbroken by the destruction caused by the flooding," said Rhonda Mims, president of ING Foundation and senor vice president of Corporate Responsibility for ING. "At the same time, we're overwhelmed with the support of our employees and distribution partners from around the country who want to help ING employees and the larger community. Our contribution to the Minot Area Community Foundation is just one way to demonstrate our support for the people of Minot."

In addition to the contribution, the ING Foundation will match employee donations to the Minot Area Community Foundation, the Mid-Dakota Chapter of the American Red Cross, and the disaster-relief organization Americares. Minot-area ING employees have also been delivering food and beverages to workers and volunteers in public works and safety departments, the Flood Assistance Center, National Guard and evacuation centers.

ING has also taken steps to help employees at the Minot center. These steps include extra paid time off for all Minot staff, access to an employee-assistance program, flexible work arrangements and on-site shelter options. Affected employees may also tap into an employee disaster fund as well as a pool of additional paid vacation days donated by ING employees throughout the U.S.

Press inquiries:
Philip Margolis
ING
(860) 580-2676
phil.margolis@us.ing.com

About ING

ING is a global financial institution of Dutch origin offering banking, investments, life insurance and retirement services to over 85 million private, corporate and institutional clients in more than 40 countries. With a diverse workforce of about 105,000 people, ING is dedicated to setting the standard in helping our clients manage their financial future.

In the U.S., the ING (NYSE: ING) family of companies offer a comprehensive array of financial services to retail and institutional clients, which includes life insurance, retirement plans, mutual funds, managed accounts, alternative investments, institutional investment management, annuities, employee benefits and financial planning. ING holds top-tier rankings in key U.S. markets and serves about 20 million customers across the nation.

ING's diversity management philosophy and commitment to workforce diversity, diversity marketing, corporate citizenship and supplier diversity fosters an inclusive environment for employees that supports a distinctive product and service experience for the financial services consumer. For more information, visit ing.us.

About the ING Foundation

The ING Foundation's mission is to improve the quality of life in communities where ING operates and its employees and customers live. Through charitable giving and employee volunteerism, the foundation focuses on programs in the areas of financial literacy, children's education, diversity and environmental sustainability.

For more information, visit www.ing-usafoundation.com, connect with us on Facebook at www.facebook.com/act2impact or follow us on Twitter @INGact2impact.

North Dakota
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FAX: (701) 328-3920 ● EMAIL: NDPERS-info@nd.gov ● www.nd.gov/ndpers

Memorandum

TO: PERS Board

FROM: Sparb

DATE: July 20, 2011

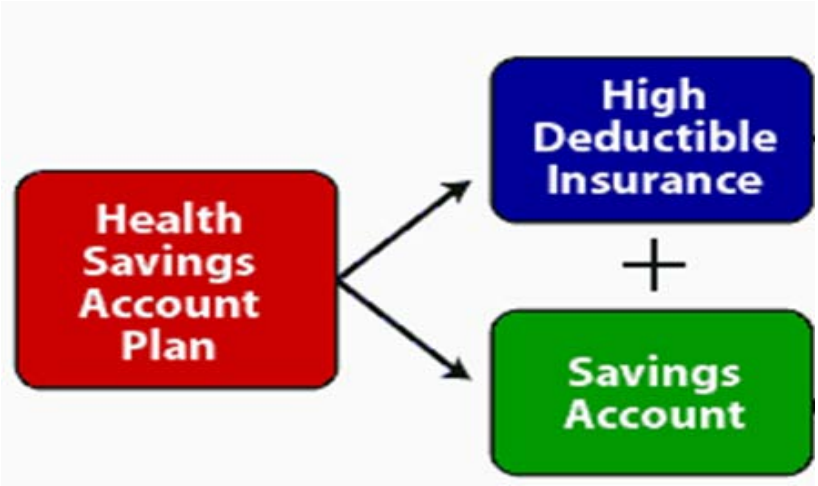
SUBJECT: HDHP/HSA

As we have discussed this last session, HB 1364 passed which requires PERS to offer a High Deductible Health Plan (HDHP) with a Health Savings Account (HSA) to state employees by January of 2012 (Attachment #1 is a copy of the bill). This means this product will need to be a part of our open enrollment process that starts in October. Therefore, we have to make a few decisions on the following to get the development process started:

1. Plan Design
2. HSA
3. Plan Organization
4. Member Contributions
5. Limited Use FSA

Background

This bill provides for the implementation and administration of a consumer-directed health savings account option as well as High Deductible Health Plan option that would be available to state employees.



The goal in adding this health plan design option is to help maintain lower health plan trends in the future so we do not return to double digit premium increases in the high teens or low twenty percent range. This plan design is built around the concept of members having more of a financial stake in their health care decisions which is intended to reduce utilization and overall premium increases in the future.

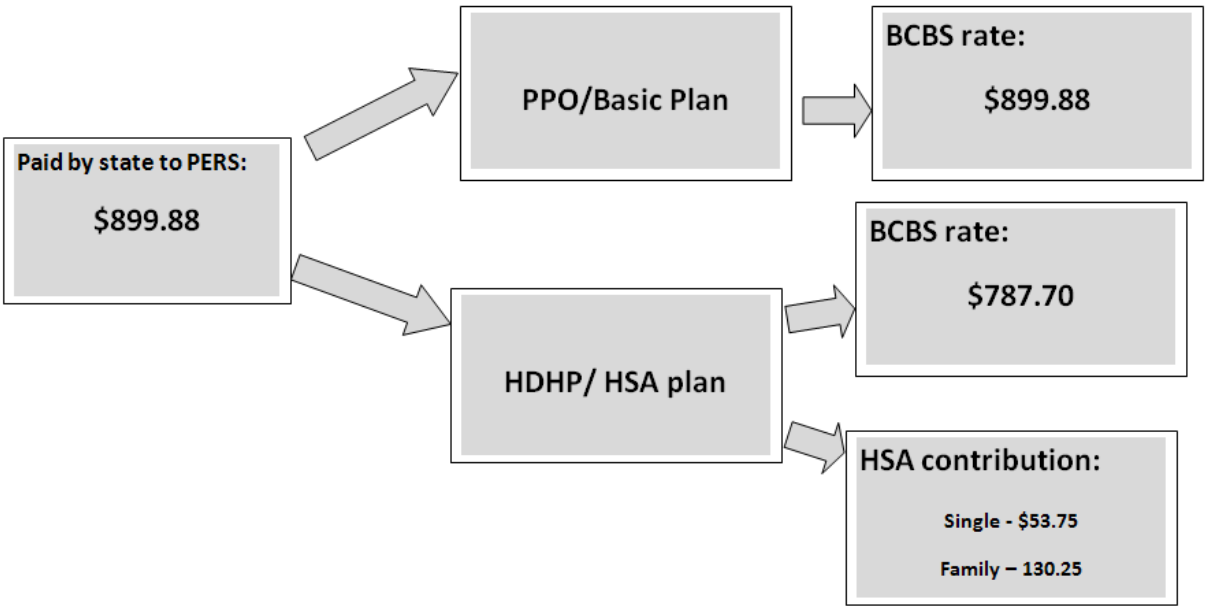
The basic structure of this program is established in federal law which authorizes the establishment of High Deductible Health Plans (HDHP) and Health Savings Accounts (HSA) into which employers can make federal tax-exempt contributions that can be used by an individual member for the payment of certain qualified medical expenses. Please note members can also contribute to these accounts. Annual contribution limits are established under federal law and are based on the individual's status (single/family). Federal law also requires that as a condition of establishing an HSA, an individual must be covered under an HDHP. The specific requirements of high-deductible health plans generally require the payment of a certain minimum deductible and the expenditure of certain out-of-pocket expenses before an individual's medical services are covered under the plan. For 2011 the federal law states that in order to be eligible to establish a health savings account the qualified high deductible health plan must have deductible limits of at least $1,200 single and $2,400 family and the maximum out-of-pocket expenses must be no more than $5,950 single and $11,900 family. HSA contribution limits are $3,050 for an individual and $6,150 for a family.

The following table shows the existing plan and the HDHP option (based upon the federal minimums):

Plan Design	NDPERS PPO/Basic	High Deductible Health Plan
Single Deductible	$400	At least $1,200
Family Deductible	$1,200	At least $2,400
Single Out-of-pocket maximum	$1,150/$1,650	No more than $5,950
Family Out-of-pocket maximum	$2,700/$3,700	No more than $11,900
Copayments (office visits, therapy)	$25/30	Subject to Deductible and Out-of-pocket maximum
Prescription Drugs (generic, brand, non-formulary)	$5/20/25	Subject to Deductible and Out-of-pocket maximum

This bill also provides that the difference in premium (based upon the equivalent single/family premium) would be paid into the member's HSA account.

The following is an example of how the premium contributions for the two plans will work. For those who stay in the PPO/Basic plan the billed premium to the state will be $899.88 which will go to pay the premium for that plan (plan design is above). For those who select the HDHP the agency will be billed the full premium and PERS will send a part of that premium to BCBS for the HDHP coverage and will deposit the difference (based upon the equivalent single/family rate) in the HSA established for the member.



The above example assumes the HDHP premium to be $787.70 and the equivilant difference for the single and family premium would be $53.75 for the single contract and $130.25 for the family contract. This example also assumes the premium for the regular plan is $899.88

Attachment #2 is a memo from our consultant that compares the enrollment experience of two states - Indiana and Minnesota. You will note that after several years Indiana had about 70% of their employees enroll in the HDHP. However, the experience in Minnesota was that 60 enrolled out of 4,000 eligibles. Therefore it is difficult to predict our result. But one of the lessons we have learned from others' experience is that the HSA contribution amount is the key to getting employees interested/involved.

HDHP Plan Design (High Deductible Health Plan)

Attachment #3 is a memo from BCBS with 4 potential plan designs for the HDHP. For each option you see the plan design (Deductible amount, co-insurance amount and maximum out of pocket amount). The column titled "Cost Neutral Annual Contribution" is the amount that would be able to go into the HSA. As mentioned above, one lesson learned from others' experience is that the amount deposited to the HSA needs to be high enough to attract interest. Conversely, we know the benefit level cannot be too low since it will also discourage participation. We also know that the legislation sets the HSA contribution amount to be the difference in premium between the PPO/Basic and the HDHP.

Consequently, the higher the benefit level in the HDHP the lower the contribution amount to the HSA and vice versa.

Based upon the information from BCBS, staff feels that the best plan design is option 1. This option provides an HSA contribution level that would attract consideration and an adequate benefit level.

Board Action Requested

Approve plan design Option 1 for the HDHP.

Health Savings Account (HSA)

Attachment #4 is the information from Discovery Benefits relating to the HSA services that they would provide to our plan if we decided to bundle this with our health services through BCBS. At the June meeting we discussed the bundled option with the health plan which means BCBS would offer us this service through their vendor, Discovery Benefit Services. The attached is the services Discovery provides and the cost. Also note the statute states the plan will pay all health savings account fees and not the member. Since this may be a bundled product, if you so select this will come out of our account at BCBS. The extent of these fees paid by the plan will need to be discussed with the Attorney General's office to determine which costs are account fees. It seems to me that the fee of $1.50 per month is clearly an account fee. Whereas, the custodian fee may not.

Due to time constraints, staff would recommend we bundle the HSA with the health plan contract for this biennium (Jan 2012 through June 2013) and contract with BCBS for this service which will be provided by their vendor (Discovery Benefits). This next spring when we develop the next bid we can discuss the merits of unbundling it for the next biennium.

Board Action Requested

Approve having the HSA bundled with BCBS for this biennium.

Plan Organization

Setting up an HSA can be done through a cafeteria plan or under the general rules for HSA's. According to Deloitte the following is the advantage of setting it up through the 125:

> *There are at least 2 significant advantages to running employer and employee HSA contributions through the 125 plan. The first is that employer contributions to employees' HSAs will not be subject to the "comparable contribution" rules if they are made through a 125 plan. Instead they will be subject to the more flexible IRC § 125 nondiscrimination rules. The second is that employees will have the option of contributing to their HSAs on pre-tax basis through the payroll system. This generally is easier for employees and allows them to get immediate tax benefits from their contributions as opposed to waiting until they file their tax return for the year.*

Given the above information and the advantages of setting the HSA up through our cafeteria plan staff is recommending that we establish the HSA through the 125 plan.

Board Action Requested

Approve having the HSA set up through the cafeteria plan.

Member Contributions

As noted above, members can contribute additional dollars to their HSA through the employer's payroll system if the plan is established through the 125 plan. This would allow the member to contribute monthly to the plan on a pretax basis up to the limits identified earlier in this memo less the employer contribution. Allowing this to occur requires the actions of two entities in state government:

1. The PERS Board is in charge of the cafeteria plan and we need to elect to run the contributions through the plan and amend our plan accordingly.
2. OMB needs to approve this offering on the payroll system

If your decision on the previous item was to run the contributions through the cafeteria plan, then ***staff would recommend that you also authorize the employee contributions subject to the concurrence of OMB.*** If you accept staff recommendation, I will set up a meeting with OMB to discuss.

Board Action Requested

Approve allowing employee contributions through the payroll system subject to the concurrence of OMB.

Limited Use FSA

Employees enrolled in an HSA are not eligible to participate in a traditional Flexible Spending Account which is the program we presently offer. However employers can offer a separate limited purpose FSA to employees in an HSA. The Limited Purpose FSA works the same way as a traditional FSA does: employees decide how much money to contribute and that amount is deducted tax free from their paycheck. Just like a traditional FSA, any money remaining in the account at the end of the plan year is forfeited. So what is the difference? The real difference between a traditional and Limited Purpose FSA is that general medical expenses are not eligible for reimbursement under a Limited Purpose FSA however eligible dental and vision care expenses can be paid for through both the HSA and a limited purpose FSA. So there is an overlap for dental/vision but it is not allowed for general medical.

To get a broader perspective of the types of expenses authorized by these two plans during the session, we asked Deloitte this question and received the following answer that was shared with the House GVA committee:

1. **What are the expenses that can be paid through the HSA; do they overlap with a limited use spending account? (dental, vision, etc)?**

Subject to certain exceptions and special rules, both HSAs and health flexible spending accounts (FSAs) generally may reimburse expenses incurred by the account holder, his or her spouse and dependents, for "medical care" as defined in IRC § 213(d). (See following tables for details.) These "medical care" expenses generally include out-of-pocket dental and vision care expenses. As a result, the expenses that can be paid on a tax-favored basis from an HSA can overlap with expenses that can be paid from a limited purpose health FSA. However, the same expense may not be paid from both the HSA and limited purpose health FSA.

	HSA	Health FSA
General	Subject to the special rules detailed below, HSAs can pay for "qualified medical expenses" incurred by the account holder, his spouse, and dependents, on a tax-favored basis. Qualified medical expenses generally include amounts paid for the diagnosis, cure, mitigation, treatment, or	Same as HSAs.

	HSA	Health FSA
	prevention of disease, or for the purpose of affecting any structure or function of the body, that are not compensated by insurance or otherwise.	
Health Insurance Premiums	HSAs generally may not pay other health insurance premiums on a tax-favored basis. Specific exceptions include certain premiums paid by – • COBRA beneficiaries; • individuals receiving federal or state unemployment benefits; and • Medicare-eligible individuals. (The exception for Medicare-eligible individuals does not apply to Medicare supplemental policy (Medigap) premiums.)	Health FSAs may not pay health insurance premiums.
Long-Term Care Insurance Premiums	HSAs may pay premiums on a qualified long-term care insurance contract on a tax-favored basis.	Health FSAs may not pay long-term care insurance premiums.
Long-Term Care Services	HSAs may pay for long-term care services on a tax-favored basis.	Health FSAs may not pay for long-term care services.
Over-the-Counter Medicines	HSAs may pay for over-the-counter drugs on a tax-favored basis only if obtained with a prescription.	Health FSAs may pay for over-the-counter drugs only if obtained with a prescription.

Note: Individuals covered by an HDHP are not eligible to fund an HSA if they are simultaneously covered by any non-HDHP, including a general purpose health flexible spending account (health FSA). This rule explains why some HSA account holders are also covered by limited purpose FSAs, which reimburse certain specific types of qualified medical expenses – e.g., dental and vision expenses.

The question is should PERS offer a limited use FSA. Given the above discussion, you can see that the HSA can reimburse all the expenses that the limited use HSA can so offering it does expand the types of services covered. Therefore, from a benefit coverage perspective there is no advantage. However, offering such an option does increase the amount a member can put away on a tax advantage basis since they can then go up to limits on both plans. For those that contribute the max to the HSA having a limited plan FSA allows them the opportunity to put more money away on a tax deferred basis to pay their dental/vision expenses from the FSA and thereby allowing them to leave more money in the HSA. Consequently, the benefit of the limited use FSA is really only for those capable of deferring a high amount of their salary. For PERS to make this change would result in a major modification to our claims payment program and our claims processing procedures. We do

not believe we could get this accomplished for this first year of the program unless we set up a manual system. If the board is interested we could look to doing this in a future year. However we believe that very few or no employees would be interested in having both.
Staff recommendation is to not offer a limited use FSA

Board Action Requested

To determine if PERS should offer a limited use FSA in 2013 and thereafter.

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January 27, 2011

Mr. Sparb Collins
Executive Director
NDPERS
400 East Broadway, Suite 505
Box 1214
Bismarck, ND 58502

Subject: High Deductible Health Plan with Health Savings Account

Dear Sparb:

As you know we have been assisting you in the review of Proposed Bill 10103.011, Implementing and Administering a Consumer-Directed Health Savings Account Option. Our analysis of that proposed bill was documented in our letter to Representative Grande (October 25, 2010). As a continuation of that analysis, you asked that we review the experience of a couple of states that are currently offering High Deductible Health Plan (HDHP) with Health Savings Account (HSA). This letter will provide a high level overview of our observations of the programs offered by the states of Minnesota and Indiana.

In summary, Indiana has seen significant steerage to the HDHP offerings due to large contribution differences. Minnesota has seen much smaller participation without the contribution differences.

Both Minnesota and Indiana offer a HDHP with an employer funded HSA contribution on a voluntary basis. The plans are offered to all employees in Indiana and to employees not subject to collective bargaining in Minnesota. Whereas North Dakota pays 100% of employee and family premium costs, Minnesota pays 100% of single and 85% of dependent premiums. For Minnesota, the total premium is the same for the Advantage Plan and the HDHP. Indiana's employer premiums and contributions vary significantly depending upon the plan selected, but in all cases require employee contributions for single and dependent coverage. Single premiums range from $3,713.32 to $7,828.08 with Indiana paying 62% to 97% of the single premium. Family premiums range from $11,665.28 to $21,668.40 with Indiana paying 64% to 98% of the family premium.

The remainder of this letter will look at each program separately.

Indiana

Three options are offered to employees and then premiums are also differentiated based upon whether the employee smokes. Essentially, the plan designs offered are a first dollar deductible then 80% coverage up to an out-of-pocket maximum (OOP) amount. Prescription drugs are

covered for a copayment after satisfaction of the deductible. For simplicity sake, we will describe the single non-tobacco coverage and costs.

	Traditional PPO	CDHP1	CDHP2
First $ Deductible	$750	$2,500	$1,500
Maximum OOP	$2,000	$4,000	$3,000
HSA Contribution	N/A	$1,251	$752
Annual Single Premium Cost	$2,698	$94	$704

It is easy to see that employees are being steered into the CDHP/HDHP options. The difference in premium cost to the employee is $2,600 more than the CDHP1 while the deductible difference is only $1,750 and the maximum OOP is $2,000. In addition, the single CDHP1 plan participant receives an annual HSA contribution of $1,251. Approximately 70% have migrated from the PPO to the CDHP options.

Minnesota

The Minnesota legislature mandated that a HDHP be offered on a voluntary basis to members of the Commissioner's Plan (non-bargaining unit employees). Since the State of Minnesota pays 100% of single coverage, offering a premium differential would not be of any value to the employee choosing the HDHP. As a result, it was determined to provide a contribution to the HSA for employees choosing to enroll in the plan.

Minnesota offers a tiered network program to its employees where member cost sharing is reduced if low-cost and efficient providers are selected for delivery of care. This program has proven to be very cost effective for the State and its employees for the past several years.

Essentially the plan has a first dollar deductible which varies based on network tier after which services are subject to copayments or coinsurance. The collective bargaining agreement guarantees statewide access to Cost Level Two providers. Again, for simplicity purposes we will describe the single employee coverage.

	Advantage Cost Level Two	HDHP
First $ Deductible	$140	$1,500
Maximum OOP	$1,900	$4,000
HSA Contribution	N/A	$800
Prescription drugs	Not subject to Deductible	Subject to Deductible
Annual Single Premium Cost	$0	$0

Minnesota offered the HDHP as a voluntary option without attempting to steer employees to the plan. The HSA contribution was expected to keep the entire programs cost neutral. 2011 was the second year of the HDHP offering. Approximately 4,000 employees were eligible and about 60 enrolled.

I hope that this summary provides the high level overview and analysis that you were requesting. If you have questions please do not hesitate to contact Pete or me.

Sincerely,

Patrick Pechacek, CEBS
Director

Peter Roverud
Senior Manager

NDPERS (Active State Contracts)
7-11/6-13 Biennium

		Single contract		Family contract	
		Maximum Out-of-Pocket	Cost Neutral Annual Contribution	Maximum Out-of-Pocket	Cost Neutral Annual Contribution
Option 1:	$1500 single deductible, then paid 80%	$3,000	$658	$6,000	$1,593
Option 2:	$1500 single deductible, then paid 100%	$1,500	$362	$3,000	$880
Option 3:	$1300 single deductible, then paid 100%	$1,300	$222	$2,600	$543
Option 4:	$1200 single deductible *, then paid 100%	$1,200	$155	$2,400	$380

* $1200 is the minimum deductible allowed for Single contracts in 2012

simplify.SM

Health Savings Account
Administrative Services Proposal for NDPERS

Discovery Benefits

3216 13th Avenue S • Fargo, ND 58103
866.451.3399 • DiscoveryBenefits.com

Our History
Discovery Benefits has a long history in employee benefit administrative services and is the seventh largest Third Party Administrator in the country. Discovery began by offering flexible benefits administration in 1987. In 1994, Discovery implemented COBRA administration as part of its product offering. Transportation Benefit Plans were added in 2003 and Health Reimbursement Arrangements and Health Savings Accounts were added in 2004.

Discovery Benefits' philosophy is to provide responsive and flexible administrative services creating value for our clients and their employees. We are a consumer-focused organization blending people and technology to provide high-quality customer service and administration.

Health Savings Accounts (HSAs)
Discovery provides administrative services to over 4,100 benefits clients nationwide. Discovery's knowledge and experience simplifies the complex world of interacting reimbursement account administration providing administration for over one million eligible employees nationwide. Our knowledgeable staff understands the complex rules and regulations surrounding HSAs as well as their interaction with FSAs and HRAs. Our experience goes deeper than simply processing a transaction. We provide solutions to help simplify employee benefits.

In an effort to better serve you in 2011, Discovery has expanded its administrative services:

- Extended service hours (7:00 a.m. to 7:00 p.m. CST Monday through Friday)
- Improved Spanish enrollment materials
- iPhone and Android applications for account inquiry
- Free additional debit cards
- Enhanced online participant portal:
    - Receipt upload
    - HSA "pay the provider" option
    - Online direct deposit enrollment/changes
    - Additional debit cards – free of charge

New Discovery Benefits website launching in 2011!

Our Core Values

Leadership
We value leadership shown through personal contribution
and team collaboration. We embrace change.

Open Communication
We are transparent with our customers and ourselves.

Continuous Learning
We promote continuous learning and the sharing of knowledge.
We value ongoing process improvement and innovative thinking.

Integrity
We do the right thing with integrity, honesty and respect.
We are accountable for our actions and measure our results.

Teamwork
We have fun and succeed to benefit each other.
We share victories and accomplishments as well as adversity and challenges.

Best Places to Work – Business Insurance
"The companies identified are to be celebrated as an elite group of employers that have created high-quality workplaces that encourage employees to thrive in a work environment they can love. To make the Best Places to Work in Insurance list, each company had to demonstrate a minimum standard of excellence, and the companies honored this year 'are indeed innovators and the ones other companies use as benchmarks,' said Peter B. Burke, president of Best Companies Group." - Business Insurance Press Release, August 2010

Innovative Service Provider – CDHC Solutions
Presented annually by CDHC Solutions, the leading innovative health and benefits magazine, and EmployersWeb.com, the web community and companion online magazine focused on health care, benefits and compensation solutions. Congratulations, and thanks for all that you do for the betterment of the health care, benefits, and compensation industries. Also, for sharing your contribution with the industry and peers. - Doug Field CEO/Publisher and Editor-in-Chief

COBRA Provider – Best in Class- Benefitfocus
"*Discovery Benefits wins Best COBRA TPA! They worked to ensure the provisions of the law were followed to the letter and required no additional steps from their customers. Discovery Benefits lives up to their company motto, "Simplify." – we think their work with Benefitfocus – is simply the best." - Benefitfocus, July 2010*

Health Saving Account (HSA) Advantages

Ease of Administration
Discovery's HSA works with any carrier's qualified HDHP freeing you and your clients to change insurance plans or carriers as needed without worrying about how it will affect the HSA. Because we already process FSA and HRA reimbursement requests, we are ready to assume that role for HSAs should legislation change requiring substantiation for HSA distributions.

Single Platform
Discovery's platform allows an employer to pair the HSA with a limited HRA or a limited FSA, with a multi-purse debit card. Expenses are automatically paid from the appropriate account with only one submission.

Multi-Purse Debit Card
In addition to requesting withdrawals online, each HSA account holder receives a debit card for making eligible medical expense purchases directly from the HSA. The debit card is multi-purse meaning the card can also be used for a limited FSA, limited HRA and dependent care FSA if the participant is also enrolled in one of those accounts.

Online Access and Control
Discovery's HSAs provide paperless enrollment and administration, compliant with the U.S. Patriot Act. No paper forms are required. Once enrolled, our seamless integration with HealthcareBank, our HSA custodian, provides employees easy one-stop online access to their HSA account and investments. Funds above the minimum threshold are automatically transferred to an interest- bearing account. From there, employees may allocate funds from the interest-bearing account to select mutual funds by accessing their account.

Through the web portal employees can request withdrawals, view mutual fund offerings, download prospectuses, view their personal investment performance, update their investment allocations, transfer funds among investments, update personal profile and dependent information. Employees may also elect to send payment directly to the provider from their HSA. If a limited FSA or HRA is offered alongside the HSA, employees can view those accounts as well through the same login.

iPhone , iPad and Android Application
This new feature gives our consumers the ability on the go to view their account balance, account details, as well as contact Participant Services from their mobile device.

Interactive Voice Response
IVR is available 24/7/365 for participants to call to check their account balance.

Multiple Investment Options
Investment options include both Style Specific and Asset Allocation funds. Asset Allocation funds offer your clients a blend of investments defined as conservative, moderate or global. Style Specific funds target different sectors of the market that include large, mid-cap and small-cap blends in addition to a global stock, an intermediate bond fund and a real estate option. Investment options are selected based on a number of criteria including competitive long term performance. All investment options are reviewed quarterly by an experienced team of investment managers to ensure the funds meet the investment policy objectives. Funds found not to meet the requirements of the investment management team are replaced with another mutual fund in a similar style.

Custodian
Discovery's custodian is HealthcareBank, a wholly-owned subsidiary of State Bank & Trust, Fargo, ND. State Bank is a privately held bank established in 1964 with a strong and stable regional reputation. Recently State Bank was nationally recognized for its "Pay It Forward" campaign (you may have seen State Bank profiled on television and in magazines for their charitable campaign).

Enrollment
HSA enrollment is done online once Discovery receives an employee's demographic information.

Employers send to Discovery a file containing new employee demographic information indicating which employees are HSA eligible. Discovery sets up the employees in the system. The employer provides the employee with standard online enrollment instructions including their user ID and a generic password which was given to the employer by Discovery when the HSAs were first implemented.

HSAs are effective the first of the calendar month following enrollment. Enrollment must be completed by December 1 in order for the account holder to contribute the maximum annual contribution allowed for the current calendar year.

HSAs and the U.S. Patriot Act
Federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens a Health Savings Account. What this means for your client and its employees: When an employee opens a Health Savings Account with Discovery Benefits, we will ask for their name, street address, date of birth, Social Security number and other information that will allow us to identify them as required by the U.S. Patriot Act. The process takes approximately two business days during which time the HSA will be blocked to the employee. Once the identification verification process is completed and their identity verified, access to the Health Savings Account will be unblocked and made available to the employee.

Transfers
Employees wishing to transfer an existing HSA to Discovery or transfer funds from an IRA to an HSA at Discovery must contact their HSA or IRA administrator directly to initiate the transfer request. In the majority of cases, these administrators will require the individual to complete their form in order to process the request.

On-line Inquiry
Through the web portal employees can request withdrawals, view mutual fund offerings, download prospectuses, view their personal investment performance, update their investment allocations, transfer funds among investments, update personal profile and dependent information. If a limited FSA or HRA is offered alongside the HSA, employees can view those accounts as well through the same login.

Benefits Debit Card
Discovery Benefits offers a benefits debit card for all of its HSA account holders. All account holders receive one card for themselves when they enroll. Additional cards for their spouse and dependents 18 years of age or older are available at no additional cost. HSA Account Holders can pay for IRS eligible medical expenses and services at the time of service directly from their HSA. The debit card is accepted at eligible merchants with health care related merchant codes and merchants with an Inventory Information Approval System (IIAS) in place. The debit card will not work at merchants with non-health care related merchant category codes. Visit www.discoverybenefits.com for information about IIAS.

Withdrawals
HSA account holders may request a withdrawal on-line as often as they wish. Withdrawals are processed daily with a two to five business day turnaround for funds invested in money market or mutual funds. Depending on when the withdrawal request is made, additional trade settling time may increase the turnaround time on disbursements when the funds are invested in mutual funds.

Direct deposit is free to participants. Direct deposit is fast, simple and the best option for the quickest turnaround on withdrawal requests.

HSA Eligibility When There Is A Grace Period for the FSA
When there is a grace period extension in place for an unlimited FSA, Participants in the unlimited FSA who wish to enroll in the HSA will need to bring their FSA account balance to zero before the last day of the plan year* or initiate a rollover of their FSA balance (or balance as of September 21, 2006, whichever is less that results in a zero FSA balance), to their HSA by the last day of the plan year to qualify for the HSA plan.

*IRS Notice 2007-22 states that an FSA will not be considered to have a zero balance if reimbursements are made the last day of the plan year.

Discovery will assist the employer in amending the plan to allow the rollover of FSA balances to the HSA as well as provide the administrative forms necessary to initiate the rollover request.

Funding
Employer and participant funded HSA contributions are pulled via ACH debit from the client's bank account on the scheduled employer contribution and payroll dates. Discovery will provide an HSA Funding Notification Report before each contribution and payroll date.

Account Reconciliation
Participant deductions are tracked each payroll cycle using one of the two following methods:

1. Electronic Payroll file– The client transmits an employee demographic and with a payroll deduction file to Discovery each payroll cycle to update amounts within the Discovery system. Discovery uploads the information into its system and reconciles to the file. File layouts are provided during implementation.

2. Automatically posted – Amounts are updated within the system automatically following the date scheduled for each payroll run. A report is emailed to the employer who reconciles the report to its payroll records.

Investment Options

Cash Account (default account)
The Cash Account is an FDIC insured account. A minimum threshold of $1,500 must be maintained in the Cash Account before funds can be transferred to the interest bearing account.

Interest Bearing Account
The interest bearing account is an FDIC insured account into which funds are automatically transferred beginning at $100 above the minimum threshold. Funds are automatically transferred between the Cash and Interest Bearing Account as Cash Account fund levels increase or decrease. Interest rates are variable. Please see the DBI HSA Investment Fund Sheet at www.discoverybenefits.com, HSA, for the current interest rate.

Mutual Funds
Discovery offers a variety of Mutual Fund options for the HSA. You may transfer funds from your Interest Bearing Account to the Mutual Funds at any time via the Employee Web Portal. Please see the DBI HSA Investment Fund Sheet and DBI HSA Fund Expense Information sheet for a list of the mutual funds and related fund expenses. This can be found at www.discoverybenefits.com, HSA. As with the Interest Bearing Account, Mutual Fund shares may be automatically sold to bring the Cash Account balance to the minimum threshold if necessary. You may initiate Mutual Fund purchases each business day by 1:30 p.m. CST. A three business day settlement applies.

Explanation of Mutual Fund Expenses:

- Expense Ratio: An investment company's cost of operating the mutual fund.

- 12b-1 Credit: An annual marketing fee to investors of the funds. This credit will be used to offset the HealthcareBank custodial management fee.

- STA (Sub Transfer Agency) Credit: An expense the fund would incur if they were responsible for the recordkeeping of investors. This credit will be used to offset the HealthcareBank custodial management fee.

- Short-Term Redemption Fee % and Days: The percent column indicates the fee charged to investors to redeem a fund if they have not held those dollars in the fund for the number of days indicated under the Short-Term Redemption Fee Days. This fee is to discourage investors from market timing.

- Load: A sales fee charged by mutual fund companies. As indicated in the column, these fees are waived on the funds selected.

Positive Pay - Stale Checks
Discovery uses a positive pay system to ensure only valid reimbursement checks are processed. A file is sent to Discovery's bank on a daily basis. Only checks that match the file are processed. Checks remain on the positive pay file for 180 days. An exceptions list is sent to Discovery daily showing checks presented for payment that do not match the file.

Participants with checks that remain outstanding after 180 days will be assessed a $25 dollar fee or the amount of the check, whichever is less. Discovery will waive the fee if the participant sets up direct deposit.

Fees
All fees are invoiced to the employer, with the exception of the fee for any additional debit cards requested by the HSA accountholder.

Summary of Features

Feature	Cash Account (1)	Interest Bearing Account (2)	Investment Account (3)
Minimum deposit to open HSA account	No Minimum	No Minimum	No Minimum
Minimum Threshold	$1,500 cash account minimum balance.	$1,500 cash account minimum balance.	$1,500 cash account minimum balance.
Automated Sweep	Amounts over minimum threshold automatically sweep into the interest bearing account starting at $100 above the threshold.	Amounts over minimum threshold automatically sweep into the interest bearing account starting at $100 above the threshold.	Funds will automatically sweep back to the cash account if the balance is insufficient in the interest bearing account to cover the minimum threshold or to cover requested withdrawals.
Interest Rate	0% on minimum threshold	Variable Money Market Rate	Based on Mutual Fund Selected
Interest Payable	None	Accrued Daily, Paid Monthly	Based on Mutual Fund Selected
Brokerage Fees	None	None	Yes
Transaction Fees	None	None	None
On-Line Enrollment	Yes	Yes	Yes
On-line Account Access	Yes	Yes	Yes
On-line Mutual Fund Purchases and Redemptions	Yes	Yes	Yes
Daily Mutual Fund Trade Processing	Not Applicable	Not Applicable	Yes
On-line Distribution Requests	Yes	Yes	Yes
Quarterly Emailed Account Summary	Yes	Yes	Yes
Daily Processing of Distribution Requests	Yes	Yes	Yes
Debit Card	Yes	No	No
HSA to HSA Transfer	Yes	Yes	Yes
HSA Fund Rollover	Yes	Yes	Yes
One Time IRA to HSA Transfer	Yes	Yes	Yes
One Time FSA/HRA to HSA Rollover	Yes	Yes	Yes
Mistaken/Excess Contribution or Distribution	Yes	Yes	Yes
Ad Hoc Contributions - outside employee payroll deductions	Yes	Yes	Yes
Employer Contributions (lump sum or per pay period)	Yes	Yes	Yes

HSA Fee Schedule

Monthly Administrative Fee (includes debit card)	$1.50 per HSA Accountholder
HSA Solution Monthly Administrative Fee (Includes Limited FSA and Dependent Care)	$3.00 per HSA Accountholder
Additional Debit Cards for Spouse/Dependents	No additional charge
Replacement of Lost/Stolen Debit Card	$10 per card deducted from FSA balance
Employee Enrollment Meetings	$350 per day plus travel expenses
Direct Deposit	Included
Online Distribution Request	Included
Emailed Quarterly Account Summary	Included
NSF/Cancelled Checks/Stop Payments/ACH Return	$25.00 per stop payment/cancelled check/ACH Return
Rate Guarantee	Three Year
Paper checks and statements	$1.50/ charged to the participants account
Closed Account Fee	$25.00 (waived for 4 months during transition period)
Postage and Handling	Charges Apply
Custodial Management Fee	25 basis points

The Custodial Management Fee is calculated quarterly and offset by the 12b1 and STA fund credits annually. If at the end of the year the 12b1 and STA fund credits exceed the participant fee the remaining credits will be allocated to the participant.

Discovery Benefits does not charge set up fees, renewal fees, or implementation fees.

Fees are quoted net of commission.

NDPERS Non-Medicare Retirees
7-11/6-13 Biennium

	State Employees		Non-Medicare Retirees		as % of current Non-Medicare Retiree rate
Current Rates					
PPO	single	$426.96	single	$640.44	
	family	1,029.00	family of 2	1,280.88	
			family of 3+	1,601.10	
HDHP $1500 deductible, then 80/20 up to $1500 coins. max.	single	$372.12			
	family	896.26			
Non-Medicare Retirees based on experience					
PPO			single	$768.53	120%
			family of 2	1,537.06	
			family of 3+	1,921.32	
HDHP $1500 deductible, then 80/20 up to $1500 coins. max.			single	$669.82	105%
			family of 2	1,339.63	
			family of 3+	1,674.54	
HDHP $2500 deductible, then 80/20 up to $2500 coins. max.			single	$585.11	91%
			family of 2	1,170.23	
			family of 3+	1,462.79	
HDHP $5000 deductible, then 100%			single	$523.03	82%
			family of 2	1,046.06	
			family of 3+	1,307.58	

North Dakota
Public Employees Retirement System
400 East Broadway, Suite 505 ● Box 1657
Bismarck, North Dakota 58502-1657

Sparb Collins
Executive Director
(701) 328-3900
1-800-803-7377

FAX: (701) 328-3920 ● EMAIL: NDPERS-info@nd.gov ● www.nd.gov/ndpers

Memorandum

TO: PERS Board

FROM: Sparb

DATE: July 19, 2011

SUBJECT: Rx Extension

Several meetings ago the Board approved extending the contract with North Dakota Pharmacy Services Corporation for our diabetes management program pursuant to 54-52.2-17 NDCC. Attachment 1 is the addendum to agreement. Attachment 2 is the original agreement. This has been reviewed by staff and Jan of the Attorney General's Office.

Board Action Requested

Approve the attached agreement addendum.

ADDENDUM TO AGREEMENT FOR SERVICES
BETWEEN
NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM
AND
NORTH DAKOTA PHARMACY SERVICES CORPORATION

This addendum shall make the following modifications to paragraphs 2 and 3 of the AGREEMENT FOR SERVICES, effective April1, 2008 (attached), between State of North Dakota, acting through the North Dakota Public Employees Retirement System ("NDPERS") and the North Dakota Pharmacy Services Corporation ("Provider"):

2) **TERM**: This agreement shall commence on July 1, 2011 and end on June 30, 2013.

3) **FEES and BILLING**: NDPERS shall only pay pursuant to the terms in the Cost Proposal for the 2009-2011 biennium (attached hereto as Exhibit 1). Included within the 2009-2011 Cost Proposal is a term providing for a flat annual administrative fee of $7,000.00. The parties agree to modify this term and fee as follows:

> The administrative fee shall include a check writing service for the member copay incentive. The annual administrative fee shall be $5000.00. Payment of the proposed administrative fee shall be made in accordance with the following: NDPERS shall pay $2,500.00 on July 1, 2011, January 1, 2012, July 1, 2012 and January 1, 2013. No other payments shall be made with regard to the proposed annual administrative fee of $5,000.00.

The remaining non-conflicting provisions of the AGREEMENT FOR SERVICES and Cost Proposal for the 2009-2011 biennium shall remain in full force and effect.

This contract addendum is not effective until fully executed by all parties.

PROVIDER

North Dakota Pharmacy Services Corporation

BY: _____

ITS: _____

DATE: _____

STATE OF NORTH DAKOTA

ND Public Employees Retirement System

BY: _____

ITS: _____

DATE: _____

AGREEMENT FOR SERVICES
Disease State Management of Diabetes Program

The parties to this contract are the State of North Dakota, acting through the North Dakota Public Employees Retirement System ("NDPERS") and the North Dakota Pharmacy Services Corporation ("Provider").

1) **SCOPE OF SERVICES**: Provider agrees to provide the accepted services as specified in the proposal (attached hereto as Exhibit A). Therefore, the terms of the proposal are hereby incorporated by reference as part of the contract.

2) **TERM**: This agreement shall commence on April 1, 2008 and end on June 30, 2009.

3) **FEES and BILLING**: NDPERS shall only pay pursuant to the terms in the Cost Proposal (attached hereto as Exhibit B).

4) **TERMINATION**:
   a. **Termination without cause**. This contract may be terminated by mutual consent of both parties, or by either party upon 30 days' written notice.

   b. **Termination for lack of authority:** NDPERS may terminate this contract effective upon delivery of written notice to the Provider, or on any later date stated in the notice, under the following condition(s):
      i. If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate under this contract or are no longer eligible for the funding proposed for payments authorized by this contract.

   Termination of this contract under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination.

   c. **Termination for cause**. NDPERS by written notice of default to the Provider may terminate the whole or any part of this contract:
      i. If the Provider fails to provide services required by this contract within the time specified or any extension agreed to by NDPERS; or
      ii. If the Provider fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms.

   The rights and remedies of NDPERS provided in the above clause related to defaults by the Provider are not exclusive and are in addition to any other rights and remedies provided by law or under this contract.

5) **ACCESS TO RECORDS**: NDPERS agrees that all participation by its members and their dependents in programs under this agreement is

confidential. The Provider may not disclose any individual employee or dependent information to the covered agency or its' representatives without the prior written authorization of the employee or family member. The provider agrees, with respect to any services provided under this agreement, to comply with all applicable requirements of the federal HIPAA privacy rule, 45 CFR pts. 160 and 164. The Provider will have exclusive control over the direction and guidance of the professionals rendering services under this agreement. The Provider agrees to keep confidential all PERS information obtained in the course of delivering services.

6) **COMPLIANCE WITH PUBLIC RECORDS LAW**: Provider understand that, except for information that is confidential or otherwise exempt from the North Dakota open records law, NDPERS must disclose to the public upon request any records it receives from Provider. Provider further understands that any records that are obtained or generated by Provider under this contract, except for records that are confidential or exempt may, under certain circumstances, be open to the public upon request under the North Dakota open records law. Provider agrees to contact NDPERS immediately upon receiving a request for information under the open records law and to comply with the NDPERS instructions on how to respond to the request.

7) **OWNERSHIP OF WORK PRODUCT**: All work products of the Provider, including but not limited to, data, documents, drawings, estimates and actuarial calculations which are provided to NDPERS under this agreement are the exclusive property of NDPERS. Any medical records and related individually identifiable health information created or obtained by the Provider in the course of providing services under this contract are the property of NDPERS, but disclosure of protected health information to NDPERS is subject to the applicable requirements of the HIPAA privacy rule and any other applicable State or Federal law.

8) **APPLICABLE LAW AND VENUE**: This agreement shall be governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this contract must be brought in the District Court of Burleigh County, North Dakota.

9) **MERGER AND MODIFICATION**: This contract and the proposal shall constitute the entire agreement between the parties. In the event of any inconsistency or conflict among the documents making up this agreement, the documents must control in this order of precedence: First – the terms of this Contract, as may be amended and Second – Provider's Proposal. No waiver, consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instances and for the specific purpose given. There are no understandings,

agreements, or representations, oral or written, not specified herein regarding this agreement.

10) **INDEMNITY**: Provider shall comply with all applicable federal, state, and local laws, rules, and ordinances at all times in the performance of this agreement, and conduct its activities so as not to endanger any person or property. Provider agrees to defend, indemnify, and hold harmless the State of North Dakota, its agencies, officers and employees (State), from and against claims based on the vicarious liability of the State or its agent, but not against claims based on State's contributory negligence, comparative and/or to defend, indemnify, and hold harmless does not extend to professional liability claims arising from professional errors or omissions. The legal defense provided by Provider to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Provider also agrees to defend, indemnify, and hold the State harmless for all costs, expenses and attorneys' fees incurred in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

11) **INSURANCE**: Provider shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, appropriate professional liability insurance with minimum liability limits of $500,000 per occurrence and $1,000,000. Provider shall also require all subcontractors to secure and keep in force during the term of the agreement, the same professional liability insurance coverage as provider. Any deductible or self insured retention amount or other similar obligation under the policies must be the sole responsibility of the provider. Provider shall furnish a certificate of insurance to NDPERS prior to the commencement of this agreement. Failure to provide insurance as required in this agreement is a material breach of contract entitling NDPERS to terminate this agreement immediately.

12) **SEVERABILITY CLAUSE**: If any term or provision of this Agreement is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties are to be construed and enforced as if the contract did not contain that term or provision.

13) **STATE AUDIT**: All records, regardless of physical form, and the accounting practices and procedures of Provider relevant to this contract are subject to examination by the North Dakota State Auditor or the Auditor's designee. Provider will maintain all of these records for at least three years following completion of this contract.

14) **COMPLIANCE WITH LAWS**: Provider agrees to comply with all applicable laws, rules, regulations and policies, including those relating to nondiscrimination, accessibility and civil rights. Provide shall attain all necessary reviews and approvals as required by law. Provider shall have and keep current at all times during the term of this contract all licenses and permits required by law.

15) **EFFECTIVENESS OF CONTRACT**:

This contract is not effective until fully executed by both parties.

IN WITNESS WHEREOF, Provider and NDPERS have executed this agreement as of the date first written above.

PROVIDER

North Dakota Pharmacy Services Corporation

BY: _____

ITS: _____

DATE: _____

STATE OF NORTH DAKOTA

ND Public Employees Retirement System

BY: _____

ITS: _____

DATE: _____

North Dakota
Public Employees Retirement System
400 East Broadway, Suite 505 ● Box 1657
Bismarck, North Dakota 58502-1657

Sparb Collins
Executive Director
(701) 328-3900
1-800-803-7377

FAX: (701) 328-3920 ● EMAIL: NDPERS-info@nd.gov ● www.nd.gov/ndpers

Memorandum

TO: PERS Board

FROM: Sparb

DATE: July 20, 2011

SUBJECT: BCBS – HEALTHWAYS Online Wellness Program

As many of you know the transition to the new HEALTHWAYS wellness tool has been difficult. It is my understanding that the program is now working correctly and in the next several weeks BCBS/ HEALTHWAYS are going to bring to us a proposal for a dramatic new program to engage our members. As I have discussed with them, it needs to be "dramatic" since the problems that have been encountered have been discouraging to many so it will take a lot to get them back.

Attached is a letter from the President of HEALTHWAYS who I had an opportunity to meet with in Fargo. We had a very direct conversation about the problems and the need for a plan to restart our members.

In addition and for your information, the following are some emails on this subject. In May I wrote the following to BCBS:

> I am writing concerning BCBS's change to the enhanced Healthway's website on April 6th to support our on-line wellness efforts. As you know PERS, with your help, has been promoting wellness to our membership using a variety of tools. I think we have accomplished a lot to date. One tool used to engage our members is the on-line wellness resources supplied by Healthway. This tool combined with other wellness tools help us to gain our members interest and hopefully get them to engage in a more positive lifestyle. Since switching to Healthway's enhanced website, we have received many calls from our members who are experiencing:
>
> 1. Difficulty signing on to the site
> 2. Mistakes with attribution of points
> 3. Slow response time

I once heard a speaker refer to building a successful wellness program to be like building a house of cards. That is each tool is like a card and when combined with other tools can create a strong final product. However if one card fails the whole house can quickly collapse. His point was that unlike some program efforts where each component is independent, wellness programs are interrelated and all components/tools must be effectively working to ensure continued engagement of members and the attraction of new participants. He pointed out that like that house of cards, wellness programs are extremely fragile and it does not take much to lose members interest or to provide an excuse to other members to not start. I am afraid that we feel that the current Healthway's online tool is the weak card in our program. We know that if action is not taken quickly to make the on-line efforts work as expected that it could endanger all our efforts. Consequently, it is our opinion it may be better to not have an on-line tool at all versus having one that is not working at 100%.
Therefore I am writing to you to let you know our expectation is that the Healthway's product should be fully operational at 100% before July 1 (when our new contract takes effect). If not it would be our intention to stop using them for our members immediately and have you seek a new vendor for us. We also expect that by that same time Healthway's will develop a plan for our approval to reengage our members on this system including incentives.
If you have any questions or if you would like to discuss this further please give me a call

In response I received the following:

Thank you for providing your comments and thoughts on the functionality of the new MyHealthCenter (MHC) platform. I want to personally send my gratitude to the NDPERS Wellness Coordinators. These NDPERS members have had to be on the front line of many of the inquiries coming in from the NDPERS group, and have been patient and provided a great channel of information to BCBSND for working on resolution. BCBSND will continue to encourage the feedback we have received from NDPERS members, as this allows for a more finely tuned product. Like you and your members, BCBSND has been more than disappointed in the performance of the revised product and have been working with Healthways since the migration to the new platform in April to make improvements. We have also had Healthways onsite for a detail exploration into the critical issues and potential solutions. There are dedicated meetings just to identify the issues that affect NDPERS members and how, why and when these issues can be resolved.

I will summarize the current status of the 4 main issues for which BCBSND requested immediate resolution
.

1. Consistent ability to login – **Status** – Member reported issues have significantly decreased and all eligibility files have been loaded by Healthways. There are now a standard set of audit checks that occur once files are in a production processing timeframe. This includes new member breakdown, total records processed, Group unit volume change, termination records review which are all statistically based on the size of the population. If any of these checks fail the audit, the job stops processing and an alert goes to the data intake team to review and if needed, an alert is given to the account manager.

2. Proper assignment of reward points – **Status** – There have been a multitude of issues related to the timing of point award, inconsistent point awards and unclear directions to members on how to earn points. The root causes of these issues are known and the resolution is being urgently worked on with initial corrections completed on 6/3/11 and others remaining to be resolved in July. Additionally, BCBSND has requested more points be made available for members when tracking their behaviors. The new "Tracker" points will be implemented in July. This will increase the point potential of our participating members.

3. Speed of the site – **Status** - The majority of the online performance issues have been isolated to the incentive tracking service. Authentication research reveals that initial login takes 2-3 seconds and further loading of that member's page/information is taking 15+ seconds. This includes up to 7 different calls for all of our data to load onto the site. Healthways has made system enhancements with some observed improvement in performance. They will continue to make additional enhancements to further increase the speed of the system in July.

4. Customer Service – **Status** - The Healthways customer service staff has received updated training about core functionality, the Embrace platform, FAQ's and technical support. As of last week, the number of first call resolutions increased. In addition, customer service has received demo accounts for the NDPERS experience to further assist their knowledge and guidance.

BCBSND regrets the member experience that occurred during the transition to the new portal and are prepared to assist with the development and execution of a re-engagement campaign. Our primary focus is to rapidly rectify the identified issues. When the identified issues are resolved to the satisfaction of BCBSND, focus would shift to drive new engagement or to entice members back to using the web tools.

Funds will be made available for a multi-faceted re-engagement campaign. It will be important to have a communications campaign focused on the message that MHC has been dramatically improved and welcoming the member back. Part of this campaign will include incentives that will be strategically provided to re-engage NDPERS members, bring in new NDPERS members and also additional incentives will be rewarded to the Wellness Coordinators for their work

As of 5-30-2011 there have been 2,338 Health Assessments completed by the NDPERS members on the new platform (4-6-11). This makes a total of 7,577 Health Assessments completed in 2011, which has already surpassed the total completed in 2010.

Healthways has been a strong partner for BCBSND since 2008, however if the outlined improvements are not met within the time parameters above, BCBSND will be seeking a new provider. We believe Healthways has made progress in resolving these issues and we would like to request the month of July to give Healthways additional time to fine tune their solutions to these problems. BCBSND is prepared to begin seeking alternative solutions for our online wellness provider in the event we are unable to successfully remedy these issues and will work collaboratively with NDPERS on that process should it be necessary.

Please let me know if you have additional questions or concerns that are not addressed in this correspondence. We will be following up next week with an update for you.

Thank you and please feel free to contact me at your convenience.

Mike

HEALTHWAYS

July 7, 2011

Mr. Sparb Collins
Executive Director
North Dakota Public Employees Retirement System
400 East Broadway, Suite 505
PO Box 1657
Bismarck, ND 58502-1657

Dear Sparb:

Thank you for taking time to meet with Joel Hasenwinkel and me recently in North Dakota. It was a pleasure meeting you and we greatly appreciated the opportunity to sit down to personally address the issues Blue Cross and Blue Shield of North Dakota experienced during the transition to the new web tools. We recognize the negative impact to your wellness programming that was so carefully and diligently created over the past several years and are committed to remediating the issues in a timely manner. To that end, we are engaged in the development and execution of a re-engagement "splash" campaign to dramatically improve the member's experience and to encourage widespread adoption and use of the MyHealthCenter (MHC) program.

As you know, North Dakota Public Employees Retirement System is a highly valued customer of Blue Cross and Blue Shield of North Dakota. We highly value our partnership and our team is committed to effectively and timely resolving these issues. We look forward to many more years of working together to ***create a healthier world one person at a time***. Please feel free to contact me if I can be of further assistance.

Be well,

Ben

Ben R. Leedle, Jr.
President and Chief Executive Officer

701 Cool Springs Blvd. | Franklin, TN 37067 | 800.327.3822 | healthways.com

North Dakota
Public Employees Retirement System
400 East Broadway, Suite 505 ● Box 1657
Bismarck, North Dakota 58502-1657

Sparb Collins
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(701) 328-3900
1-800-803-7377

FAX: (701) 328-3920 ● EMAIL: NDPERS-info@nd.gov ● www.nd.gov/ndpers

Memorandum

TO: PERS Board

FROM: Sparb

DATE: July 20, 2011

SUBJECT: PERS Update

Implementation Update

In the last month or so the PERS office has been implementing the decisions we made this last spring so I wanted to give you a brief update

EMPLOYEE ASSISTANCE PROGRAM

Every two years we have an open enrollment for agencies during which they can change EAP providers. This year was a little different than our past open enrollments for the employee assistance program since MedCenter One withdrew. Consequently, several agencies were required to select a new provider. The following is summary of the decisions for those agencies that elected to make change.

Agency	2009-11 Provider	2011-2013 Provider
Bismarck State College	MedCenter One	St Alexius EAP
Game & Fish	MedCenter One	St Alexius EAP
Legal Counsel of Indigents	MedCenter One	St Alexius EAP
Council on the Arts	MedCenter One	St Alexius EAP

ND University System Office	MedCenter One	St Alexius EAP
Wheat Commission	MedCenter One	St Alexius EAP
SW District Health	MedCenter One	St Alexius EAP
State Board of Examiners	MedCenter One	St Alexius EAP
Tobacco Prevention & Control	MedCenter One	St Alexius EAP
Towner County	MedCenter One	St Alexius EAP
Sargent County	MedCenter One	Village EAP
Veteran Affairs	MedCenter One	Village EAP
Walsh County Health District	MedCenter One	Village EAP
NDSU	Village EAP	Deer Oaks EAP

This open enrollment process is now completed.

LIFE INSURANCE PLAN

The change in life insurance providers was effective July 1, 2011. Our business processes have been revised accordingly (enrollment , death processing, etc), new rate tables were implemented on PeopleSoft ,and for our other employers, the basic plan coverage increase has been updated.

HEALTH INSURANCE PLAN

The new health insurance rates were effective July 1, 2011 for all our groups (actives, pre-medicare retirees and medicare retirees). Rate change information was sent to all direct bill members and employer groups. All rate tables were updated on PeopleSoft and PERSLink. New billings were implemented on July 1.

OASIS FUND

Several biennium's ago PERS was assigned the responsibility for the OASIS Fund. The last member passed away over a year ago. SB 2022 provided us the authority to transfer

the remaining funds to the general fund. That was done in June. This program is now closed out.

Upcoming Implementations

MEMBER ANNUAL STATEMENTS

In August we will be mailing out the annual statements. This will be the first time they will be generated from the PERSLink system. Several things will be different:

1. In the past, annual statements were only sent to non-retired members in the PERS Retirement plan. This means approximately 20,000 statements were sent out. Now we will be sending statements to members who are enrolled in our group insurance programs, deferred comp and other programs as well. This means the number of statements mailed will increase to about 34,000.
2. In the past, the retirement statement was one page printed on two sides. In PERSLink this process has been separated into two statements. The first is a one page summary statement which will be mailed. The second is the detailed statement that will be available on the website. For those in retirement the detailed statement is now about 6 pages.
3. Since we expect the call volume to increase dramatically as members will have questions on the information and about signing on to PERSLink to access the detailed statements, we will be mailing this information to members over a 4 week period. We anticipate the first mailing to go August 19th.

ERRP SUBSIDY

Last year (August of 2010) PERS was approved by HHS to participate in the Early Retiree Reinsurance Program that was enacted as part of the federal health care bill. Under this program, the federal government reimburses employers for a portion of health care claims incurred by retirees who are at least age 55 but not eligible for Medicare, as well as retirees' covered dependents, regardless of age. Plan sponsors whose applications are approved may receive reimbursement for claims incurred by eligible

early retirees within a specified dollar range. Specifically, the reimbursement amount is equal to 80 percent of the annual aggregate claims for each participant between $15,000 and $90,000. The program will run until 2013 or until the funds are all distributed. Since approval, we submitted our first claim for reimbursement in March of 2011 for the 2010 plan year and we received a little over $1.7 million. In September we plan to file for reimbursement for the 1st and 2nd quarters of this year.

Also as a condition of getting the ERRP funds, PERS must provide a notice to plan participants notifying them that, because the PERS is participating in the ERRP with respect to the plan, PERS may use the reimbursements to reduce plan participants' premium contributions, copayments, deductibles, co-insurance, or other out-of-pocket costs, and, therefore, plan participants may experience such changes in the terms and conditions of their plan participation. Pursuant to the board's decision we will advise members that PERS has elected to use these funds to reduce future premium increases. Attachment 1 is the form that needs to mailed. Kathy is organizing this and it will be mailed in July.

OFFICE SPACE

The PERS office has been on the 3rd and 5th floors of the Well Fargo Building. As a result of one of the tenants on the 5th floor leaving, we will be giving up our space on the 3rd floor and adding to our space on the 5th floor. We will be changing our public entry to our office with this change which will require a major realigning of assigned office space. Our office space is assigned based upon those staff who see members being located close to the public entrance and those not seeing members being located away from the public entrance. The purpose of this criteria is to limit the flow of people through our office since we handle much confidential information. These changes will occur in August/September.

SALARY INCREASES

Salary increases for PERS staff are to be implemented in July pursuant to direction in legislation and from Human Resource Management Services.

BOARD PER DIEM

SB 2022 changes the per diem rate for PERS Board members effective July 1, 2011. PERS staff will implement this change for all meetings after this date.

NEW GROUPS

In the last half or this year we anticipate two new large groups will be coming on the health plan which will require a special open enrollment, processing new applications and setting them up on our business system. Staff will also have to conduct on site meetings.

ANNUAL OPEN ENROLLMENT

The annual open enrollment period will be from the middle of October to the middle of November. We will continue to handle this as a paper process this year. Next year this will done through PERSLink.

ACTUARIAL DEMOGRAPHICS

This will be the first year that our actuarial demographic information will be coming from the new PERSLink system. We anticipate that as this goes to Segal their will be numerous questions and other items to coordinate.

NOTICE ABOUT THE
EARLY RETIREE REINSURANCE PROGRAM

TO: Member Name and family members participating in the North Dakota Public Employees Retirement System's (NDPERS) Dakota or Retiree Group Health Plan.

You are a plan participant in the NDPERS group health plan which is an employment-based health plan that is certified for participation in the Early Retiree Reinsurance Program (ERRP). The ERRP is a Federal program that was established under the Affordable Care Act. Under the Early Retiree Reinsurance Program, the Federal government reimburses an approved plan sponsor of an employment-based health plan for some of the costs of health care benefits paid on behalf of, or by, early retirees and certain family members of early retirees participating in the employment-based plan. NDPERS is an approved plan sponsor. By law, the program expires on January 1, 2014.

Under the ERRP, NDPERS may choose to use any reimbursements it receives from this program to reduce or offset increases in plan participants' premium contributions, co-payments, deductibles, co-insurance, or other out-of-pocket costs. If the plan sponsor chooses to use the Early Retiree Reinsurance Program reimbursements in this way, you, as a plan participant, may experience changes that may be advantageous to you, in your health plan coverage terms and conditions, for so long as the reimbursements under this program are available and the plan sponsor chooses to use the reimbursements for this purpose. A plan sponsor may also use the ERRP reimbursements to reduce or offset increases in its own costs for maintaining your health benefits coverage, which may increase the likelihood that it will continue to offer health benefits coverage to its retirees and employees and their families. NDPERS has decided to use these funds to offset future premium increases.

This notice is informational only and no action on your part is required.