

NDPERS BOARD MEETING

Agenda

Updated September 23, 2015

ND Association of Counties
1661 Capitol Way
Bismarck, ND

September 24, 2015

Time: 8:30 AM

I. MINUTES

- A. August 27, 2015

II. PRESENTATION

- A. Fiduciary Responsibilities – Jan Murtha (Information)

III. GROUP INSURANCE

- A. Member Rebate Accounts – Kathy (Board Action)
- B. Medical Trend Report – Segal (Information)
- C. Performance Guarantee – Sparb (Information)
- D. Medicare Part D Program – Sparb (Board Action)
*Executive Session
- E. Wellness & Benefits Fair – Rebecca (Information)
- F. PPO Update – Sanford Health Plan

IV. RETIREMENT

- A. Defined Contribution to Defined Benefit Transfers – MaryJo (Board Action)
- B. Roth/PEP – MaryJo (Board Action)

V. FLEX COMP

- A. Other Employer-Sponsored Voluntary Insurance Products – Kathy (Board Action)

VI. PLAN DOCUMENTS – Kathy

- A. Companion Plan (Board Action)
- B. 457 Plan (Board Action)

VII. MISCELLANEOUS

- A. Administrative Rules – Sparb (Board Action)
- B. Board Committee Assignments – Sparb (Board Action)
- C. Upcoming Events – Kathy (Information)

*Executive Session pursuant to NDCC §44-04-19.1 (1) and (9) and §44-04-19.2 for attorney consultation and to discuss negotiating strategy relating to the Part D program options. (Motion is necessary)

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: September 17, 2015
SUBJECT: Fiduciary Responsibilities Presentation

Jan will be at the next board meeting to review the fiduciary responsibilities of PERS Board members. A copy of the presentation will be forwarded to you early next week.

North Dakota Public Employees
Retirement System Board
Member Responsibilities &
Liability

What is Your Role?

(NDCC § 54-52-03 & 54-52-04)

- “A state agency is hereby created to constitute the governing authority of the system to consist of a board of nine individuals known as the retirement board.”
- “The board shall adopt rules necessary to implement this chapter, and to manage the system, subject to the limitations of this chapter.”

What is a Trustee?

- Trustee: One who, having legal title to property, holds it in trust for the benefit of another and owes a fiduciary duty to that beneficiary.
- Fiduciary Duty: A duty of utmost good faith, trust, confidence, and candor owed by a fiduciary to the beneficiary.

Black's Law Dictionary 7th ed. 1999.

But See Also NDCC Title 59 which governs Trusts, Uses, and Powers

What guides your actions as a trustee?

- Statute: North Dakota Century Code
 - Note: NDCC § 59-09-02(2)
- Rule: Administrative Rules
- Policy: As adopted by the Board
- Case-law/Legal Treatises
- (Ex: Restatement 3rd of Trusts)
- Your Conscience
(Miller's Mirror Test)

Fiduciary Duties

- Duty of Loyalty
- Duty of Impartiality
- Duty of Prudence
- Duty of Administration
- Duty of Skill
- Duty of Delegation
- Prudent Investor Rule

Duty of Loyalty

- A Trustee must administer a trust solely in the interests of the beneficiaries.
 - Exclusive Benefit Rule
 - Avoid conflicts
 - Practice fair dealing and candor with beneficiary.

NDCC §§ 21-10-07, 54-52-14.3, 59-16-02;

Restatement 3rd of Trusts § 78

Duty of Impartiality (& Intergenerational Equity)

- If a trust has two or more beneficiaries, the trustee shall act impartially in investing, managing, and distributing the trust property, giving due regard to the beneficiaries' respective interests.
- Includes responsibility for Income Productivity. The trustee's duty of impartiality includes a duty to so invest and administer the trust, or to so account for principal and income, that the trust estate will produce income that is reasonably appropriate to the purposes of the trust and to the diverse present and future interests of its beneficiaries.

NDCC § 59-16-03; Restatement 3rd of Trusts § 79

Duty of Prudence

- A trustee shall administer the trust as a prudent person would by considering the purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.
- May include Duty of Skill.

NDCC § 59-16-04; Restatement 3rd of Trusts § 77

Duty of Administration

- In administering a trust, the trustee may incur only costs that are reasonable in relation to the trust property, the purposes of the trust, and the skills of the trustee.

NDCC §§ 59-16-05, 21-10-06.2;

Restatement 3rd of Trusts §§ 76 & 88

Duty of Skill

- A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, shall use those special skills or expertise.
- May also be considered part of the Duty of Prudence.

NDCC § 59-16-06; Restatement 3rd of Trusts § 77

Duty of Delegation

- Ok to delegate if appropriate under the circumstances.
- Be prudent in selecting agent.
- Must establish scope of delegation.
- Monitor.
- A trustee compliant with the duty of delegation is not liable to the beneficiaries or trust for an action of the agent to whom the function was delegated.

NDCC §§ 59-16-07, 21-10-02; Restatement 3rd of Trusts § 80

Prudent Investor Rule

- Exercise all Fiduciary Duties in relation to making investment decisions.
 - Exclusive Benefit Rule
 - Ex: Social Investing

NDCC §§ 59-17-01, 59-17-02, 21-10-07;
Restatement 3rd of Trusts § 90

Specific Application of Fiduciary Duties

Administration of the Plan

NDCC § 54-52-04

Monitoring and Suggesting Improvements to the Plan.

NDCC § 54-52-23

Public Records & Meetings Law

Confidentiality of Records: NDCC § 54-52-26

- See NDCC § 12.1-13-01: Class C Felony for a public servant to knowingly release confidential information.
- Chapter 44-04 and the Unique Make-up of the Board:
- NDCC §§ 44-04-18, 44-04-18.6, 44-04-19, 44-04-19.3

Conflicts of Interest

- Obvious: Direct, Substantial, Personal, Pecuniary.
- Less Obvious: Favors, Gifts, Special Treatment.
- The appearance of impropriety.
- Refer to Code of Ethical Responsibility for Questions

Code of Ethical Responsibility: Board Policy 7. d. Prohibited Transactions

- Prohibited transactions for fiduciaries generally fall into two areas: those involving self-dealing and those involving a party-in-interest. Self-dealing refers to the fiduciary's use of plan assets for personal gain, engaging transactions on behalf of parties whose interests are adverse to the plan, or receiving personal consideration in connection with any planned transaction. A party-in-interest includes a fiduciary, counsel, or employee of the plan, anyone providing services to the plan, any employer or employee, organizations whose employees or members are covered by the plan and any of the number of other persons or entities that have a stated interest or relationship with a party-in-interest. Prohibited transactions between the plan and a party-in-interest include the sale, loan, exchange, or transfer of any plan assets.

Code of Ethical Responsibility:

Board Policy 6

- Employees and Board members shall not accept any cash or gifts, special accommodations, favors, or the use of property or facilities of more than \$50 from anyone with whom such person is doing, negotiating, or being solicited for business on behalf of NDPERS. However, employees or Board members may accept: occasional meals or beverages from a citizen or business representative in connection with official duties; meals or refreshments offered in connection with a conference or seminar; reimbursement for costs related to attending a conference or seminar; and promotional items of nominal value. Travel and lodging costs may be accepted only upon prior approval of the Board.

Code of Ethical Responsibility: Board Policy 3

- Conflicts of interest and the appearance of impropriety shall be avoided by NDPERS employees and Board members. Employees and Board members should not allow their family, social, or other relationships to influence their judgment in discharging their responsibilities. Employees and Board members should refrain from financial and business dealings that tend to reflect adversely on their impartiality or interfere with the proper performance of their duties. If a conflict of interest unavoidably arises, the employee or Board member shall immediately disclose the conflict to the NDPERS Board.

Breach

- Potential ramifications for a breach of fiduciary duties and code of conduct.
 - Board reprimand
 - Loss of Position
 - Civil Liability
 - Criminal Liability
 - See NDCC § 12.1-11-06: Class A misdemeanor for public servant to refuse to perform any duty imposed by law.

Breach of Duty of Loyalty:

Stapleton v. PERA, 2013 WL 3943272 (Colo.App.)

- State Treasurer, as member of PERA Board, brought action against co-trustees for breach of fiduciary duty by denying Treasurer unfettered access to PERA records.
- Remaining trustees counterclaimed alleging Treasurer was not entitled to requested records because there was no nexus between request and Treasurer's fiduciary duties to PERA.
- Held: State Treasurer was not entitled to unfettered access to PERA records.

Breach of Duty of Prudence :

Tibble v. Edison Intern., 135 S. Ct. 1823 (2015)

- Beneficiaries of DC plan brought action to recover damages for alleged losses against plan.
- Respondents had offered 6 higher priced retail class mutual funds when materially identical lower priced institutional class mutual funds were available.
- 9th Circuit held Plaintiffs breach of fiduciary claims barred by 6 year Statute of Limitations under ERISA.
- S. Crt. Vacated & Remanded, noting ERISA's fiduciary duty derived from common law of trusts, duty to prudently invest includes duty to monitor investments.

Mistake Avoidance

- Ask questions
- Education
- Ask more questions
- Education

Board Member Liability

- **Common Question: Am I personally liable for decisions I make as a board member?**



Definitions: N.D.C.C. Ch. 32-12.2

- "State employee" means every present or former officer or employee of the state or **any person acting on behalf of the state in an official capacity, temporarily or permanently, with or without compensation.** The term does not include an independent contractor.
- "**State**" includes an agency, authority, **board**, body, branch, bureau, commission, committee, council, department, division, industry, institution, instrumentality, and office of the state.
- "Scope of employment" means the state employee was **acting on behalf of the state in the performance of duties or tasks of the employee's office** or employment lawfully assigned to the employee by competent authority or law.

Operate within scope of your employment

- NDCC § 32-12.2-03(1), (2), (3)

Actions against state employees operating within the scope of the employee's employment must be brought against the state.

“A state employee may not be held liable in the employee's personal capacity for acts or omissions of the employee occurring within the scope of employee's employment.”

- NDCC § 32-12.2-03(5)

“A judgment in a claim against the state is a complete bar to any claim by the claimant, resulting from the same injury, against the employee whose act or omission gave rise to the claim.

Who represents me?

- NDCC § 32-12.2-03(6)

“The state shall defend any state employee in connection with any **civil claim or demand**, whether groundless or otherwise, arising out of an alleged act or omission **occurring within the scope of the employee's employment** if the employee provides **complete disclosure and cooperation** in the defense of the claim or demand and if the employee **requests** such defense in writing **within ten days after being served** with a summons, complaint, or other legal pleading asserting a cause of action against the state employee arising out of a civil claim or demand.”

Can I choose Who represents me?

- NDCC § 32-12.2-03(7)

“For any claim brought under this chapter, a state employee may choose to hire the employee's own separate defense counsel to represent the state employee in the litigation. **If the state employee chooses to hire separate defense counsel**, subsections 4 and 6 do not apply to the state employee in that litigation and **the state will not indemnify, save harmless, or defend the state employee nor pay for the state employee's defense or any judgment against the state employee.**”

Who pays if they win?

- NDCC § 32-12.2-03(4)

“**Except for claims or judgments for punitive damages**, the state shall indemnify and save harmless a state employee for any claim, whether groundless or not, and final judgment for any act or omission occurring within the scope of employment of the employee if the employee provides complete disclosure and cooperation in the defense of the claim or demand and if the employee has given written notice of the claim or demand to the head of the state entity that employs the state employee and to the attorney general within ten days after being served with a summons, complaint, or other legal pleading asserting that claim or demand against the state employee.”

ANY QUESTIONS???



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Memorandum

TO: NDPERS Board

FROM: Kathy

DATE: September 17, 2015

SUBJECT: Member Rebate Accounts

At the August meeting, the Board was provided information regarding the status of re-establishing the Member Rebate Program with Sanford Health Plan. A copy of that memo is included for your information. In lieu of taking action regarding the options set forth in the memo, the Board requested additional information regarding the responsibilities and payment obligations of BCBS under the program. Specifically, the Board questioned whether BCBS had the authority to unilaterally terminate this program and whether any additional amount beyond the \$321,116.00 offered is due. Following is Jan's response to those questions:

Both the 2013-2015 Administrative Services Agreement between BCBS and PERS and the corresponding Certificate of Insurance contain provisions regarding the Member Rebate Accounts. The following language regarding Member Rebate Accounts is relevant to the Board's inquires:

The Plan Administrator acknowledges and agrees that, in some cases but not all, drug manufacturers may offer retrospective discounts to BCBSND on prescription medications and drugs purchased under the terms of the Plan. If a drug manufacturer makes a retrospective discount payment available, the Plan Administrator acknowledges and agrees that a portion of any such rebate may be retained by an entity that performs manufacturer discount program services on behalf of BCBSND under the terms of this Agreement. The Plan Administrator further acknowledges and agrees that, when made available by the drug manufacturer, another portion of the retrospective discount payment is retained by BCBSND. In its sole discretion, BCBSND may periodically refund to the Plan all or part of any rebate payments received. The calculation of any refund rests in the sole discretion of BCBSND.

In its sole discretion, and only in the case where a Member is required to pay Coinsurance as part of the Cost Sharing Amounts for each Prescription Medication and Drug provided under the terms of this Benefit Plan, BCBSND may periodically refund to Members a proportional amount of any retrospective discount payments received. The calculation and payment of any such proportional refund rests in the sole discretion of BCBSND. The manner in which such retrospective discount program payment refund, if any, is distributed to a Member rests in the sole discretion of BCBSND.

The Member waives any right, title, or interest in and to such proportional retrospective discount payment once the Member is no longer eligible for benefits under the terms of this Benefit Plan, and BCBSND may use its discretion and disburse any such retrospective discount payments as it deems appropriate and necessary in its administration of this Benefit Plan.¹

Further, the Administrative Services Agreement provided that PERS would receive the following additional indemnification from BCBS relative to Member Rebate Accounts:

NDPERS agrees that all Retrospective Discount Payments will be made to Members of the Plan. BCBSND agrees to indemnify NDPERS for any judgments against NDPERS solely arising out of NDPERS' decision to participate in the Retrospective Discount Payment program.

With respect to the Board's initial inquiry regarding whether BCBS had the authority to unilaterally terminate the Member Rebate Account program, I did not find a specific provision that would permit such a termination. Whether a member was entitled to receive a refund under the program, however, was entirely within the discretion of BCBS. Likewise, the refund amount of \$321,116.00 which has been offered to PERS appears also to be within the discretion of BCBS. Further, under the indemnification provision, BCBS is responsible for indemnifying PERS for any judgments in the event a member contests and prevails in an action to recover a rebate due under the program.

Finally, the language referenced above does offer additional guidance to the Board regarding the feasibility of the options presented by PERS staff regarding the continuation of these accounts. Specifically, option #3 suggests not setting up inactive accounts which are accounts for those participants that have dropped coverage. Both the Administrative Services Agreement and Certificate of Insurance indicate that a Member no longer eligible for benefits under the plan "waives any right, title, or interest in and to such proportional retrospective discount payment." Therefore, the Board may decline to set up inactive accounts.

Board Action Requested

Based on the above and referring to the options and staff observations set forth in the attached memo, the Board must determine what approach to use in implementing the Member Rebate Program.

¹ The quoted language is from the Administrative Services Agreement, however the Certificate of Insurance contains language which is substantially similar.



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Memorandum

TO: NDPERS Board

FROM: Kathy

DATE: August 17, 2015

SUBJECT: Member Rebate Accounts

At the April meeting, it was acknowledged that BCBS had discontinued the Member Rebate Program as of January 2015. As we did not have prior knowledge of this action, we included this program in our RFP. It was the Board's determination to retain this program and reinstate it effective July 1, 2015.

Since that time, we have worked with BCBS to make arrangements for the transfer of the rebate funds so we can continue the program. BCBS has provided us with a file that shows the participants and their associated account balances. The worksheet total is \$321,116. BCBS will provide us a check for the lump sum value of the accounts and it is our intent to have the members' accounts re-established at Sanford. However, it was noted that the grand total is a net value as it also includes accounts with negative balances. Negative balances occur due to the timing of when a rebate is allocated and the months beyond that date in which adjustments are made to the account. Excluding the negative balances, the sum of the positive balances is \$692,641 which is a \$371,525 funding shortfall. In addition, the file also included inactive members. These items have presented an administrative issue as to how to allocate the lump sum payment to re-establish member accounts with Sanford Health Plan. Options for consideration include the following:

1. Transfer all accounts, whether positive or negative and set up accordingly.
 - a. This will require funding from another source to offset the \$371,525 difference between the net sum value that will be refunded by BCBS and the total sum value required to re-establish all accounts with a positive balance.
 - b. This assumes that accounts with negative balances will correct over time.
2. Do not set up accounts for negative balances.
 - a. This will negate any opportunity to allow these accounts to correct over time as rebates are accrued.
 - b. This will require funding from another source to offset the \$371,525 difference between the net sum value that will be refunded by BCBS and the total sum value required to re-establish all accounts with a positive balance.

3. Do not set up accounts for inactive accounts (participants that have dropped coverage).
 - a. If accounts have a positive balance, this may provide an additional funding source to offset the difference between the net funds available and the total of accounts with positive balances.
 - b. May increase the net sum by eliminating negative balances.
4. Calculate account balances based on participants' percent of \$321,116 net balance.
 - a. Positive account balances will be adversely affected as a result of the negative balances.
 - b. Future adjustments to a lower positive balance may result in an account going to a negative balance sooner; therefore, the participant will not realize the full value of their rebate.
5. Forfeit the \$321,116 to the plan and restart the program accumulators for members' accounts on July 1, 2015.
 - a. Participants rebate balances will be forfeited.
 - b. No funding from another source will be required.

Staff Observations:

1. If the Board would like to maintain the consistency of the program, option 1 would be the best but it will have an associated cost to re-establish the full value of all accounts with a positive balance.
2. Since BCBS dropped the program in January, if the Board would like to re-establish the program, option 5 would be the best and would have no additional cost. However, participants with a positive balance would lose their accumulated rebate amount.
3. Inactive accounts should not be set up which will result in the positive balances being forfeited to the plan.

Board Action Requested:

Determine what approach to use in implementing the member rebate program.



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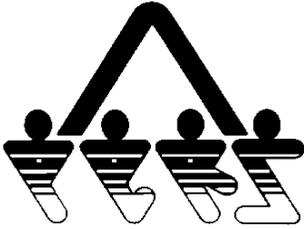
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Memorandum

TO: PERS Board
FROM: Sparb
DATE: September 17, 2015
SUBJECT: Medical Trend Report

Attached for your review is a copy of the 2016 Segal Health Plan Cost Trend Survey.



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Memorandum

TO: PERS Board
FROM: Sparb
DATE: September 17, 2015
SUBJECT: Performance Guarantee

Attached for your information is the final report on the performance guarantee's with BCBS.

The settlement is:

- *Health Club Credit - \$7,500.00
- *Breast Cancer Screening Rates - \$15,000.00
- *Cervical Cancer Screening Rates - \$15,000.00

Total = \$37,500.00



Measure	Goal	Completion 12/31/2014
Cost Management <i>(goal completion of 12/31/14)</i>		
HRA Completions	17%	22%
HRA Score	5% point increase in the 2013 NDPERS group aggregate HRA wellness score Goal = 55	60
HealthyBlue – incentives paid	10% increase over 2013 incentives paid Goal = \$581,798	\$722,906
Health Club Credit – members receiving credit	10% increase over 2013 members receiving credit Goal = 2,177	1950 (missed)
		Q2 2015 Biennium Final
Health Outcomes:		
Members enrolled in a Medical Home	80%	92%
Breast Cancer Screening Rates*	80%	74%
Cervical Cancer Screening Rates*	85%	65%
Colorectal Cancer Screening Rates*	60%	61%
Operational Performance:		
Claims Financial Accuracy	99%	100%
Payment Incident Accuracy	97%	98%
Claim Timeliness	99%	100%
Average Speed of Answer (in seconds)	30 seconds or less	23
Call Abandonment Rate	5% or less	2%
Provider Network Management:		
NDPERS PPO network	92% (or more) participation	99%
Provider Discount (non-Medicare contracts)	30% or more	52%

Green – met goal

Red – below goal

*Cancer screening rate calculation changed to use data from Health Intelligence tool



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Memorandum

TO: PERS Board
FROM: Sparb
DATE: September 22, 2015
SUBJECT: Medicare Part D

At this meeting staff is seeking your direction on how to proceed with the PERS Part D program for 2016. This program provides Rx coverage to our Medicare retirees. At the last meeting we reviewed the program (see attached memo from the September 11 special Board meeting). This item was carried over to this meeting to allow ESI to update their offer to provide the Rx service based upon more current information. We also mentioned in the attached memo and at the last meeting that we received an offer from BCBS to continue to provide this service. The following is a summary of the ESI offer, the BCBS offer and a disruption analysis from Deloitte.

ESI Offer

Attachment #1 to this memo is the offer from ESI to provide for Rx service for 2016. This offer updates the one referenced in the Sept 11 memo. Their offer is summarized as follows:

Enrollment on 6/30/2015	<u>2015</u>		<u>2016</u>		Change
	Monthly Premium	Annual Income	Annual Premium	Rate Income	
8728	\$77.90	\$8,158,934	\$82.00	\$8,588,352	5.3%

Annual retiree single premium: \$984 for an annual increase of \$49.20

Annual married premium: \$1968 for an annual increase of \$98.40

The above premium is the same if the product is bundled or unbundled with the medical plan.

BCBS Offer

BCBS provides two offers (Attachment #2). The first is if the plan remains bundled with the medical:

Enrollment on 6/30/2015	<u>2015</u>		<u>2016</u>		Change
	Monthly Premium	Annual Income	Annual Premium	Rate Income	
8728	\$77.90	\$8,158,934	\$80.10	\$8,389,354	2.8%

Annual retiree single premium: \$961.2 for an annual increase of \$26.40
Annual married premium: \$1922.40 for an annual increase of \$52.80

The second offer is if the plan is unbundled:

Enrollment on 6/30/2015	<u>2015</u>		<u>2016</u>		Change
	Monthly Premium	Annual Income	Annual Premium	Rate Income	
8728	\$77.90	\$8,158,934	\$84.10	\$8,808,298	8.0%

Annual retiree single premium: \$1,009.20 for an annual increase of \$74.40
Annual married premium: \$2,018.4 for an annual increase of \$148.80

Summary

If the plan is to be unbundled, the ESI offer is lower cost and the BCBS offer is more (\$82 vs \$84.10 per member per month - PMPM). If the plan is to remain bundled for the next year the BCBS offer is less and the ESI offer is more (\$80.10 vs \$82.00 PMPM).

Retiree Subcommittee Recommendation

The following is the recommendation of the Retiree Subcommittee. Please note the Retiree Subcommittee did not have the updated offer from ESI, however, they did discuss the issue of bundling vs unbundling this year.

1. If possible accept the 2.8% increase and remain bundled
2. If the above is not acceptable and if the ESI premium is reduced to less than \$100 or less than a 15% increase then remain bundled
3. If #1 or #2 cannot be done and the ESI increase is higher, then unbundle but continue to offer the PERS PDP with ESI

Deloitte Information

Attachment #3 is a disruption analysis from Deloitte concerning pharmacy access and the formulary. They will be at the meeting to review this information with you.

The following is an explanation of the formulary disruption categories:

Formulary tiers are as follows: Generic, preferred brand, non-preferred brand, specialty

Copay Tier Match: The drug is on the same formulary tier under BCBS or Express Scripts (ESI)

Express Scripts Copay < BCBS: The drug is on a lower tier under ESI than it is under BCBS's formulary. For example, a drug could be non-preferred brand under BCBS (tier 3) but preferred brand (tier 2) under ESI so the member would pay a lower copay/coinsurance under ESI.

Express Scripts Copay > BCBS: The drug is on a higher tier under ESI than it is under BCBS's formulary. For example, a drug could be preferred brand under BCBS (tier 2) but non-preferred brand (tier 3) under ESI so the member would pay a higher copay/coinsurance under ESI.

Not found on BCBS formulary: There are many reasons a drug may be excluded from a formulary. Some drugs are excluded in favor of another drug in the same therapeutic class, a drug may be excluded because it's available over-the-counter, etc.

Other Information

Jan will be at the meeting to review you her assessment of the above two offers from a legal perspective. At this point the Board may want to go into executive session.

Attachment #4 is an email from Jeff Sandene from Sanford sharing his perspective on the Part D process.

Board Action Requested

1. Determine if the plan should remain bundled for the next year or unbundle it this year (staff agrees with the Retiree Subcommittee)
2. Determine if the plan should remain with BCBS or move to ESI based upon the decision in #1 (as an unbundled or bundled plan)

If the decision is to move forward with ESI we need your direction on the following:

- 1) **Low Income Subsidy (LIS):** ESI provides a service that has not been available to us previously regarding LIS recipients. We have the option to continue billing LIS recipients as we have done previously or having ESI reimburse these recipients

directly for the LIS amount. To give a little background, CMS determines if an individual is eligible for a LIS and notifies the vendor of the amount of credits they are to receive. These credits equate to a dollar amount, varying from \$7.90 to \$31.50 per LIS eligible recipient. If there is more than one eligible recipient on a contract, each can receive a credit with variance in amounts. We currently have approximately 150 contracts with LIS credits being applied. The following details our current process and the additional option available to us through ESI:

Current process: Our current process is that upon notification from the vendor, NDPERS enters the individual's LIS credit into our business system. The system then reduces their gross premium by the amount of the credit. Therefore, we bill the member the net premium amount.

One of the difficulties with administering LIS relates to retroactive adjustments received from CMS that impact the amount of LIS that a member is eligible to receive.

At times, CMS notifies the vendor, who notifies the client that a member is no longer eligible to receive the LIS and the change is retroactive. When this occurs, NDPERS has to collect the underpayment in premium. The opposite can also happen when we are notified that someone is eligible for the LIS retroactive and, therefore, an overpayment of premium occurs. In this case, the overpayment of premium is refunded to the member.

ESI administered option: ESI offers a service where NDPERS would not need to reduce the premium billed to the retiree by the LIS credit amount. Rather, NDPERS would bill the full premium amount and ESI would reimburse the member directly for their LIS credit. This reimbursement would occur by the end of the 1st week of each month. The reimbursement is paid to the member by check as direct deposit is not an option.

In the cases where an LIS is modified retroactively, under this option, ESI would attempt to recover the overpayment of LIS credit or would issue the reimbursement for an underpayment of the credit. However, if it is an overpayment and ESI is unable to recoup the funds from the member, ESI will bill the outstanding balance to NDPERS.

If we move forward with ESI, staff does not have a recommendation either way, but is seeking the board's input as to how they would like us to move forward with low income subsidies and the reimbursement process for the credits.

- 2) **LEP Creditable Coverage Attestation:** NDPERS must sign either a Global LEP Attestation or an Initial LEP Attestation regarding creditable coverage and late enrollment penalties (LEP). NDPERS is aware of approximately 45 individuals that are subject to a LEP that NDPERS is currently paying based on previous board action.

Global Attestation eliminates the possibility of any new LEP being assessed for all NDPERS members as part of enrollment in the ESI PDP. Any previously assessed

LEPs will remain, so this does not eliminate the existence of any LEPs already in place. Once LEP penalties are in place, they follow members from plan to plan, unless the member is or becomes eligible for LIS. By completing a global attestation, NDPERS would be indicating that they have verified that all new enrollees onto the plan had creditable coverage within the 63 days prior to enrollment in the PDP. NDPERS does request creditable coverage verification if the member is not on the NDPERS medical coverage. However, there are times that the creditable coverage cannot be obtained or verified.

Initial Attestation reduces the number of new penalties that could occur and will eliminate the possibility of any new LEPs for members that are already enrolled in the PDP up through 1/1/16. Any previously assessed LEPs will remain, so this does not eliminate the existence of any LEPs already in place. For new enrollees after 1/1/16, individuals who CMS determines may have a gap of more than 63 days in their creditable coverage will appear on a monthly report. NDPERS will have the option to review a monthly list of individuals that are being questioned by CMS and attest for them if NDPERS can verify that they had creditable coverage. For those that NDPERS does not attest for, the member's will receive a letter requesting proof of creditable coverage and if not provided, may be subject to the additional LEP as determined by CMS. Upon notification that the LEP should be applied, NDPERS will add this penalty into the monthly premium billing to the member.

If we move forward with ESI, staff recommendation is to sign Initial Attestation since there are circumstances where NDPERS cannot verify or obtain proof of previous creditable coverage.



**MEDICARE PART D
FULLY- INSURED
EMPLOYER GROUP WAIVER PLAN
PRICING PROPOSAL
FOR**

North Dakota Public Employees Retirement System

Proposal Date:
09/21/2015

Plan Effective Date:
January 1st, 2016

Plan Expiration Date:
December 31st, 2016

All of the materials in this proposal and any materials subsequently disclosed in any media form that relate to this proposal ("Proposal Materials") are confidential and the sole and exclusive proprietary property of Express Scripts Holding Company, and all rights, titles and interests are vested in Express Scripts. The Proposal Materials are provided to North Dakota Public Employees Retirement System for your exclusive use, and for the sole purpose, to evaluate Express Scripts prescription-drug program. The Proposal Materials may not be distributed, copied or made available for review or use to any other party. If you use any consultant or other party to review the Proposal Materials, you may divulge the Proposal Materials to them on the condition that each recipient agrees to be bound by the restrictions Express Scripts has placed on the use and disclosure of the Proposal Materials. This disclaimer is applicable to any recipient assisting or participating in the evaluation of these Proposal Materials on behalf of North Dakota Public Employees Retirement System.

Express Scripts Insurance Company, Medco Containment Life Insurance Company, and Medco Containment Insurance Company of New York (hereinafter referred to as "Express Scripts Medicare") is pleased to provide the following financial package and to act as the Exclusive Medicare Part D PDP Sponsor for **North Dakota Public Employees Retirement System** Employer Group Waiver Plan with an effective date of **January 1st, 2016** through **December 31st, 2016**. We feel the package is both comprehensive and highly competitive and will provide a wide range of fundamental and enhanced services.

Plan Premium Pricing Calculation

Express Scripts Medicare approaches its clients through the strongest relationship with its pharmacy partners available. We are able to leverage our relationship with pharmacies to create a network with the greatest available access, flexibility, and options. For the purposes of this package, we are pleased to offer the following Retail Network and Home Delivery programs.

Plan Design Option: Current NDPERS Plan Design

	Retail Pharmacy Network	Retail Maintenance Drug Program (MDP) Pharmacy	Express Scripts Home Delivery
Day Supply	Up to 31 day	Up to 90 day	Up to 90 day
Member Co-Pay	\$5 copay plus 15% coinsurance Generic \$15 copay plus 25% coinsurance Preferred Brand \$25 copay plus 50% coinsurance Non-Preferred Brand \$15 copay plus 25% coinsurance Specialty	One (1) retail co-pay per 31 day supply	Member Co-Pay \$5 copay plus 15% coinsurance \$15 copay plus 25% coinsurance \$25 copay plus 50% coinsurance \$15 copay plus 25% coinsurance
Deductible	No Deductible		
Coverage Gap¹	No Coverage Gap; Member Co-pays above apply.		
Catastrophic Coverage	Member cost share post TrOOP (\$4,700) is the greater of 5% or \$2.65 per generic or preferred multi-source drugs and the greater of 5% or \$6.60 per all other brands		
Formulary	Medicare National Preferred		
Non Part D Drugs²	Not Covered		
Part B Drugs²	Not Covered		
Generics Policy	Voluntary		
Utilization Management Program	All Approved Standard Part D		

¹ Coverage Gap begins at the Initial Coverage Limit which is \$2,960 for CY 2015.

² Some states require coverage for certain Non Part D and Part B drugs. Express Scripts will comply with all state requirements on your behalf.

³ The illustrated premium is subject to change in the event of CMS guidance and rate changes. Income Related Monthly Adjustment Amounts apply for high income beneficiaries. See page 2 for details.

Federal Poverty Limits

Standard Federal Poverty Limit (FPL) guidelines apply

Attachment 1, page 3

	Effective Date	Expiration Date
	January 1st, 2016	December 31st, 2016
EGWP Plan Premium (PMPM)		\$69.26
Enhanced Insurance Premium³ (PMPM)		\$12.74
Total Premium⁴ (PMPM)		\$82.00

Please note that most specialty medications can only dispensed up to a 31 day supply to Medicare members

Income Related Monthly Adjustment Amount (IRMAA)

Effective January 1, 2011, individuals whose modified gross income (MAGI) exceeds certain thresholds will be required to pay an extra amount, referred to as an income related monthly adjustment amount, for their Medicare Part D coverage. In 2010, these amounts were \$85,000 for a beneficiary filing an individual income tax return or married and filing a separate return, and \$170,000 for a beneficiary filing a joint tax return. In accordance with the Affordable Care Act, these income threshold amounts will remain at the 2010 levels for calendar years 2011-2019. The Social Security Administration, not Express Scripts, will determine which members are required to pay a Part D-IRMAA and will send the beneficiary a letter telling him or her what that extra amount will be and what information was used to make the determination. In general, the Part D-IRMAA will be paid through premium withholding from monthly Social Security benefit payments. For more information about Part D premiums based on income, visit medicare.gov on the web or call 1-800-MEDICARE (1-800-633-4227). The Social Security Administration may also be contacted at 1-800-772-1213.

Included Additional Services

Claims Processing	
Electronic Claims Processing	No Additional Fee
Member Submitted Paper Claims Processing	No Additional Fee
Medicaid Subrogation Claims	No Additional Fee
Electronic Prescribing	No Additional Fee
Eligibility Administration	
Eligibility submission	No Additional Fee
Electronic/on-line submission (changes only)	No Additional Fee
Manual/hardcopy submission	No Additional Fee
Participating Pharmacies	
Pharmacy Audit	No Additional Fee
Pharmacy Help Desk	No Additional Fee
Pharmacy Network Management	No Additional Fee
Pharmacy Reimbursement	No Additional Fee
Network Development Upon Request	No Additional Fee
Mail Services	
My Rx Choices Medicare	No Additional Fee
Benefit Education (Includes Mail Promotion Program)	No Additional Fee
Prescription Delivery – standard	No Additional Fee
Standard PBM Reporting Services	
Ad-Hoc Desktop Parametric Reports	No Additional Fee
Billing Reports	No Additional Fee
Custom Ad-Hoc Reporting (up to 10 hours of programming time)	Included; additional programming may be billed at \$150 per hour
Load 12 Months Claims History for Clinical Programs and Reporting	No Additional Fee
Medicare Reporting Services	
Preparation of All Data Necessary to meet Medicare Part D Reporting Requirements	No Additional Fee
Provide Data to CMS in Required Format	No Additional Fee
TrOOP Facilitation	
CMS Designated Third Party Manages TrOOP ensuring Secondary Payments	No Additional Fee
Web Site	

Digital Certificates – Up to 5 certificates	No Additional Fee	Attachment 1, page 4
Express-Scripts.com for Clients – access to Contact Directory, Sales and Benefit and Enrollment Support Marketing Information, and Benefit and Enrollment Support	No Additional Fee	
Express-Scripts.com for Members – access to benefit, drug, health and wellness information; prescription ordering capability; and customer service	No Additional Fee	

Optional Service (if elected by Client)

Billing Services	Administrative Services Fee
Includes: <ul style="list-style-type: none"> Invoicing of EGWP Enrollees Sending delinquency Disenrollment for non-payment of premium Processing of premium refunds 	\$0.80 Per EGWP Enrollee Per Month

Account and Member Service	
Call Center service for members	No Additional Fee
Fraud and Abuse Program – Pharmacy, Physician and Member Audit Program to Prevent Fraud, Waste and Abuse	No Additional Fee
Pharmacy Audit Only	No Additional Fee
Online member service application	No Additional Fee (up to 10 users)
Assigned account team, Training for online tools	No Additional Fee
Communication with physicians and/or members (Transition Letters, notifications, etc.)	No Additional Fee (Client Requested EOBs Extra)
Annual pharmacy benefit strategic planning with quarterly review	No Additional Fee
Postage (e.g., physician or member mailings)	No Additional Fee
CMS required Member Materials and New Enrollee Packets, which contain the following: 1 standard ID card and Enrollment Letter carrier, HIPAA Notice of Privacy, Abridged Formulary, Evidence of Coverage (Non-ERISA clients only), Quick Reference Guide and Checklist, and Home Delivery Form	No Additional Fee
Non-Standard Member Materials	Non Standard member materials priced upon request
Appeals and Grievances	
Appeals	No Additional Fee
Grievances	No Additional Fee
Prior Authorization services	
Prior Authorization Services-Administrative Manage plan benefits and drug costs by ensuring appropriate prescribing and use by members Non-clinical PA Lost/stolen overrides Vacation supplies	No Additional Fee
Prior Authorization Services-Clinical Prior Authorization, Step Therapy, Drug Quantity Level Limits Part B versus Part D coverage determinations Formulary exceptions Benefit level exceptions	No Additional Fee

Non Part D drugs or category exclusions can be covered under an enhanced benefit; client can choose to cover medications that are not eligible Part D drugs as defined by CMS. When offering an enhanced benefit, the client may add non-Part D eligible products to the benefit; however, beneficiary and client contributions toward these drugs will not count toward Medicare Part D TrOOP or Total Drug Spend (TDS). Per CMS, clients are not allowed to cover any drug where the manufacturer has not signed an agreement with CMS in regards to the Coverage Gap Discount Program. Below is a list of excluded product categories. As CMS releases additional information and exclusions, the formulary will be updated accordingly.

Excluded Products (some can be covered under an enhanced benefit):

- Drugs excluded from or restricted for coverage by Medicaid (i.e. DESI Drugs)
- Prescription vitamins and minerals – except prenatal vitamins and fluoride
- Drugs when used for the symptomatic relief of cough and colds
- Drugs when used for cosmetic purposes or hair growth
- Drugs when used to promote fertility
- Drugs when used for anorexia, weight loss or weight gain
- Drugs when used for the treatment of sexual or erectile dysfunction. ED drugs will meet the definition of a Part D drug when prescribed for other medically-accepted indications approved by the FDA (e.g.-pulmonary hypertension)
- Covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests for monitoring services be purchased exclusively from the manufacturer or its designee
- Nonprescription drugs, except related to injection of insulin (in certain situations these may be provided at no cost to enrollees and included as part of a step therapy)
- Drugs that are available for payment under Medicare Part A or Part B
- Non-Matched NDCs – drugs not properly registered with the FDA
- Products not otherwise meeting the definition of a Part D drug
- Drugs where the manufacturer has not signed an agreement with CMS in regards to the Coverage Gap Discount Program
- Bulk powders do not meet the definition of a Part D drug; therefore they are excluded from coverage. However, compounds may be covered if they are compounded with a Part D eligible product, for example, a capsule or tablet that is Part D eligible that is used in the manufacturing of the compound would be covered under Part D.

Medicare Part B drugs are those that are not usually self-administered or that are administered incident to a physician's professional service. Client can choose to cover Part B drugs under an enhanced benefit. Below is a list of drugs for which coverage has specifically been authorized by Medicare.

- Diabetic supplies, including insulin when administered by a DME pump
- Durable Medical Equipment (DME) Supply Drugs (e.g. nebulizer solutions) for use in the patient's home
- Immunosuppressants for a beneficiary who has received a Medicare covered organ transplant
- Hemophilia clotting factors
- Oral chemotherapy drugs that have the same active ingredient and indication as if they were not self-administered
- Oral anti-emetics used in lieu of IV anti-emetics within 48 hours of chemotherapy
- Vaccines: pneumococcal, influenza, and hepatitis B (for intermediate to high risk individuals)
- Antigens
- EPO for the treatment of anemia in dialysis patients
- IV Immune Globulin administered in the home
- Drugs covered as supplies integral to procedure

However, there are drugs that can be covered under Part B or Part D based on how the drug is used. These drugs are listed below.

- IV immune globulin
- Nebulizer Solutions
- Immunosuppressants
- Oral anti-emetics
- Oral anti-cancers
- Certain medications provided to members with End Stage Renal Disease

CMS requires plans to gather the necessary information needed to make a determination on whether to cover one of these drugs under Part B or Part D. Express Scripts uses a Prior Authorization to stop these drugs from processing under Part D until it can be determined that Part D coverage is appropriate. Express Scripts primarily relies on CMS' Part B vs. Part D guidance to determine which classes should require a prior authorization. Additionally, Express Scripts examines the cost of the drug, utilization for Part B, and patient access concerns to determine whether a prior authorization requirement is recommended. Express Scripts has determined that it is not necessary to place prior authorization requirements on certain products that are available generically, are low cost, and have a low utilization for Part B.

My Rx Choices Medicare is a program specifically designed to engage the Medicare population to help them make the most of their Medicare Part D Benefit. The program provides educational outreach to members regarding the choices available to them to get the most value out of their plan by realizing savings or convenience. The program notifies members when they are approaching the coverage gap to help them continue to get the best use of the benefit as they matriculate through the Medicare stages. Members are also notified when there may be an opportunity to save on out of pocket costs by using their home delivery pharmacy. This program is offered at no charge to help members make choices that are clinically sound and cost-effective.

Express Scripts Medicare offers clinical programs focused on Safety Management and Care Management. Safety Management Programs are designed to provide an additional source of pharmaceutical information (a “safety net”) for the most important drug and member specific pharmaceutical care issues. Care Management Programs offer disease-based programs focused on improving the health and well-being of the patient, optimization of medication therapy, and compliance with prescribed therapy.

Safety and Care Management		
Program Name	Description	Fee
Concurrent DUR	Drug Utilization Review is a series of checks to insure that the drug being dispensed is appropriate; edits include dose checks, checks for drug interactions, duplicate Rx, step therapy, etc.	No Additional Fee
Medication Therapy Management Program (MTM)	This CMS required clinical program is designed to improve the therapeutic outcomes associated with the use of medication for selected Medicare members.	No Additional Fee
Emerging Therapeutic Interventions Program	This CMS required notification is designed to alert members and healthcare professionals regarding significant safety-related drug recalls (FDA Removals) or market withdrawals (Manufacturer Removals) in a timely and efficient manner.	No Additional Fee
Fraud, Waste and Abuse Program	Express Scripts is strongly committed to the detection and prevention of Fraud, Waste and Abuse (FWA). This program includes the identification of potential problem pharmacies as well as prescribers and members with unusual or excessive utilization patterns. This program consists of two parts: the Network Pharmacy Audit Program and the Member and Physician Fraud Detection Program.	No Additional Fee
Appeals	Any of the procedures that deal with the review of adverse coverage determinations made by the Part D Plan Sponsor on the benefits a member believes he/she is entitled to receive, including the delay in providing or approving the drug coverage (when a delay would adversely affect the health of the member), or any amounts the member must pay for the drug coverage. These procedures include redeterminations by the Part D Plan Sponsor, reconsiderations by the independent review entity (IRE), ALJ hearings, MAC reviews, and judicial reviews. Express Scripts contracts with an independent review agency to handle Re-determination appeals for the Express Scripts PDP. This vendor will perform redeterminations in compliance with CMS regulations for standard and expedited appeals.	No Additional Fee
Grievance	A 'grievance' is defined as a patient's expressed dissatisfaction with a specific event related to their Medicare Part D benefit that occurred within the last 60 calendar days or a complaint regarding the Part D sponsor's refusal to expedite a Coverage Determination or redetermination.	No Additional Fee

The following describes the CMS approved Express Scripts Medicare Generics Policy.

Generics Policy	
Voluntary	No matter who requests Brand name, Physician or Member, no ancillary charge applies.

The following describes the Express Scripts Medicare Standard Utilization Management Programs. These programs apply if the Design Option sections states “Standard Part D”.

Standard Utilization Management Programs		
Program	Description	Fee
Step Therapy	CMS approved program that manages drug costs within specific therapy classes by ensuring that patients try a front-line or step one drug (usually generics) before a higher cost back-up or step two brand-name drug is covered. Within specific therapy classes, multiple drugs are available to treat the same condition. Step Therapy points a new patient to a front-line or step one, lower cost, clinically effective drug in each therapy group. Evidence-based clinical protocols are used to select front-line or step one drug. Members who fill a step therapy medication within the first 90 days of enrollment will be allowed to remain on that medication. Medicare Part D Step Therapy Drugs List stated below.	No Additional Fee
Prior Authorization (PA)	CMS approved program that manages plan benefits by ensuring appropriate prescribing and member usage. For Express Scripts Medicare Standard list of drugs, client agrees to all updates/revisions as approved by CMS. B vs D require Prior Authorization, if determined to be a Part B drug, then the copay will process at the Part B co-pay (if covered); if determined to be a Part D drug then the co-pay will process at the applicable Part D co-pay. Members will be allowed one transition fill for a retail supply (up to 31 day supply) within the first 90 days of enrollment.	No Additional Fee

Quantity Level Limit (QLL)	CMS approved program that manages prescription costs by ensuring that the quantity of units supplied for each copayment are consistent with clinical dosing guidelines. The program is designed to support safe, effective, and economic use of drugs while giving patients access to quality care. Express Scripts Medicare clinicians maintain a list of quantity limit drugs, which is based upon manufacturer-recommended guidelines and medical literature. Online edits help make sure optimal quantities of medication are dispensed per copayment and per days' supply.	No Additional Fee
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Attachment 1, page 7

Premium Pricing Assumptions

- This price quotation is subject to an acceptable credit review and is contingent on execution of a definitive contract.
- These premiums are based on group enrollment with member option to opt out and a minimum enrollment of **3,000** in the selected plan by 1/1/2016. If minimum enrollment thresholds are not met, Express Scripts Medicare reserves the right to adjust the premium accordingly.
- Quoted premiums are valid for 90 days from the date of the proposal; such fees are thereafter guaranteed for the term **January 1st, 2016** through **December 31st, 2016**.
- Member selection among multiple plan designs is not permitted.
- Members must be approved by CMS as eligible for the Prescription Drug Plan. Any member rejected by CMS will not be eligible under the plan. In the event that Express Scripts Medicare has incurred claims for a member who was not approved by CMS during the plan year, **North Dakota Public Employees Retirement System** will bear ultimate responsibility for the premium and / or claims incurred by those members.
- The premium stated above is the maximum premium **North Dakota Public Employees Retirement System** can charge its members in accordance with CMS regulations.
- Billing terms are monthly within **2** business days from the date of receipt of the Express Scripts Medicare invoice.
- Express Scripts Medicare pricing structure defined in this document supports the administrative service levels outlined in this proposal. Services which will require additional fees are any additional customized requests which require client specific set-up.
- Accepted quotes must be communicated to Express Scripts Medicare at least **90** days prior to the requested implementation date.

Rebate Sharing

- Express Scripts will retain 100% of rebates.

Financial Disclosure to Express Scripts Clients

This disclosure provides an overview of the principal revenue sources of Express Scripts, Inc. and Medco Health Solutions, Inc. (individually and collectively referred to herein as “ESI”), as well as ESI’s affiliates. In addition to administrative and dispensing fees paid to ESI by our clients for pharmaceutical benefit management (“PBM”) services, ESI and its affiliates derive revenue from other sources, including arrangements with pharmaceutical manufacturers, wholesale distributors, and retail pharmacies. Some of this revenue relates to utilization of prescription drugs by members of the clients receiving PBM services. ESI may pass through certain manufacturer payments to its clients or may retain those payments for itself, depending on the contract terms between ESI and the client.

Network Pharmacies – ESI contracts for its own account with retail pharmacies to dispense prescription drugs to client members. Rates paid by ESI to these pharmacies may differ among networks (e.g., Medicare, Worker’s Comp, open and limited), and among pharmacies within a network, and by client arrangements. PBM agreements generally provide that a client pays ESI an ingredient cost, plus dispensing fee, for drug claims. If the rate paid by a client exceeds the rate contracted with a particular pharmacy, ESI will realize a positive margin on the applicable claim. The reverse also may be true, resulting in negative margin for ESI. ESI also enters into pass-through arrangements where the client pays ESI the actual ingredient cost and dispensing fee amount paid by ESI for the particular claim when the claim is adjudicated to the pharmacy. In addition, when ESI receives payment from a client before payment to a pharmacy, ESI retains the benefit of the use of the funds between these payments. ESI may maintain non-client specific aggregate guarantees with pharmacies and may realize positive margin. ESI may charge pharmacies standard transaction fees to access ESI’s pharmacy claims systems and for other related administrative purposes.

Brand/Generic Classifications – Prescription drugs may be classified as either a “brand” or “generic;” however, the reference to a drug by its chemical name does not necessarily mean that the product is recognized as a generic for adjudication, pricing or copay purposes. Associated with pharmacy reimbursement, ESI distinguishes brands and generics through a proprietary algorithm (“BGA”) that uses certain published elements provided by First DataBank (FDB) including price indicators, Generic Indicator, Generic Manufacturer Indicator, Generic Name Drug Indicator, Innovator, Drug Class and ANDA. The BGA uses these data elements in a hierarchical process to categorize the products as brand or generic. The BGA also has processes to resolve discrepancies and prevent “flipping” between brand and generic status due to price fluctuations and marketplace availability changes. The elements listed above and sources are subject to change based on the availability of the specific fields. Updated summaries of the BGA are available upon request. Brand or generic classification for client reimbursement purposes is either based on the BGA or specific code indicators from Medi-Span or a combination of the two as reflected in the client’s specific contract terms.

Application of an alternative methodology based on specific client contract terms does not affect ESI's application of its BGA for ESI's other contracts.

Maximum Allowable Cost ("MAC")/Maximum Reimbursement Amount ("MRA") – As part of the administration of the PBM services, ESI maintains a MAC List of drug products identified as requiring pricing management due to the number of manufacturers, utilization and/or pricing volatility. The criteria for inclusion on the MAC List are based on whether the drug has readily available generic product(s), is generally equivalent to a brand drug, is cleared of any negative clinical implications, and has a cost basis that will allow for pricing below brand rates. ESI also maintains MRA price lists for drug products on the MAC List based on current price reference data provided by MediSpan or other nationally recognized pricing source, market pricing and availability information from generic manufacturers and on-line research of national wholesale drug company files, and client arrangements. Similar to the BGA, the elements listed above and sources are subject to change based on the availability of the specific fields. Updated summaries of the MAC methodology are available upon request.

Manufacturer Formulary Rebates, Associated Administrative Fees, and PBM Service Fees – ESI contracts for its own account to obtain formulary rebates attributable to the utilization of certain brand drugs and supplies (and possibly certain authorized generics marketed under a brand manufacturer's new drug application). Formulary rebate amounts received vary based on client specific utilization, the volume of utilization as well as formulary position applicable to the drug or supplies, and adherence to various formulary management controls, benefit design requirements, claims volume, and other similar factors, and in certain instances also may vary based on the product's market-share. ESI often pays an amount equal to all or a portion of the formulary rebates it receives to a client based on the client's PBM agreement terms. ESI retains the financial benefit of the use of any funds held until payment of formulary rebate amounts is made to the client. ESI or its affiliates may maintain non-client specific aggregate guarantees and may realize positive margin. In addition, ESI provides administrative services to contracted manufacturers, which include, for example, maintenance and operation of systems and other infrastructure necessary for invoicing and processing rebates, pharmacy discount programs, access to drug utilization data, as allowed by law, for purposes of verifying and evaluating applicable payments, and for other purposes related to the manufacturer's products. ESI receives administrative fees from the participating manufacturers for these services. These administrative fees are calculated based on the price of the drug or supplies along with the volume of utilization and do not exceed the greater of (i) 4.58% of the average wholesale price, or (ii) 5.5% of the wholesale acquisition cost of the products. In its capacity as a PBM company, ESI also may receive other compensation from manufacturers for the performance of various services, including, for example, formulary compliance initiatives, clinical services, therapy management services, education services, medical benefit management services, and the sale of non-patient identifiable claim information. This compensation is not part of the formulary rebates or associated administrative fees.

Copies of ESI's standard formularies may be reviewed at www.express-scripts.com/wps/portal/. In addition to formulary considerations, other plan design elements are described in ESI's Plan Design Review Guide, which may be reviewed at www.express-scripts.com/wps/portal/

ESI Subsidiary Pharmacies – ESI has several licensed pharmacy subsidiaries, including our specialty pharmacies. These entities may maintain product purchase discount arrangements and/or fee-for-service arrangements with pharmaceutical manufacturers and wholesale distributors. These subsidiary pharmacies contract for these arrangements on their own account in support of their various pharmacy operations. Many of these subsidiary arrangements relate to services provided outside of PBM arrangements, and may be entered into irrespective of whether the particular drug is on one of ESI's national formularies. Discounts and fee-for-service payments received by ESI's subsidiary pharmacies are not part of the PBM formulary rebates or associated administrative fees paid to ESI in connection with ESI's PBM formulary rebate programs. However, certain purchase discounts received by ESI's subsidiary pharmacies, whether directly or through ESI, may be considered for formulary purposes if the value of such purchase discounts is used by ESI to supplement the discount on the ingredient cost of the drug to the client based on the client's PBM agreement terms. From time to time, ESI and its affiliates also may pursue and maintain for its own account other supply chain sourcing relationships not described below as beneficial to maximize ESI's drug purchasing capabilities and efficiencies, and ESI or affiliates may realize an overall positive margin with regard to these initiatives.

The following provides additional information regarding examples of ESI subsidiary discount arrangements and fee-for-service arrangements with pharmaceutical manufacturers, and wholesale distributors:

ESI Subsidiary Pharmacy Discount Arrangements – ESI subsidiary pharmacies purchase prescription drug inventories, either from manufacturers or wholesalers, for dispensing to patients. Often, purchase discounts off the acquisition cost of these products are made available by manufacturers and wholesalers in the form of either up-front discounts or retrospective discounts. These purchase discounts, obtained through separate purchase contracts, are not formulary rebates paid in connection with our PBM formulary rebate programs. Drug purchase discounts are based on a pharmacy's inventory needs and, at times, the performance of related patient care services and other performance requirements. When a subsidiary pharmacy dispenses a product from its inventory, the purchase price paid for the dispensed product, including applicable dispensing fees, may be greater or less than that pharmacy's acquisition cost for the product net of purchase discounts. In general, our pharmacies realize an overall positive margin between the net acquisition cost and the amounts paid for the dispensed drugs.

ESI Subsidiary Fee-For-Service Arrangements – One or more of ESI's subsidiaries, including, but not limited to, its subsidiary pharmacies also may receive fee-for-service payments from manufacturers or wholesalers in conjunction with various programs or services, including, for example, patient assistance programs for indigent patients, dispensing prescription medications to patients

enrolled in clinical trials, various therapy adherence and fertility programs, administering FDA compliance requirements related to the drug, product reimbursement support services, and various other clinical or pharmacy programs or services. As a condition to having access to certain products, and sometimes related to certain therapy adherence criteria or FDA requirements, a pharmaceutical manufacturer may require a pharmacy to report selected information to the manufacturer regarding the pharmacy's service levels and other dispensing-related data with respect to patients who receive that manufacturer's product. A portion of the discounts or other fee-for-service payments made available to our pharmacies may represent compensation for such reporting.

Other Manufacturer Arrangements – ESI also maintains other lines of business that may involve discount and service fee relationships with pharmaceutical manufacturers and wholesale distributors. Examples of these businesses include a wholesale distribution business, group purchasing organizations (and related group purchasing organization fees), a medical benefit management company, and United BioSource Corporation (“UBC”). Compensation derived through these business arrangements is not considered for PBM formulary placement, and is in addition to other amounts described herein. Of particular note, UBC partners with life sciences and pharmaceutical companies to develop, commercialize, and support safe, effective use and access to pharmaceutical products. UBC maintains a team of research scientists, biomedical experts, research operations professionals, technologists and clinicians who work with clients to conduct and support clinical trials, create, and validate and administer pre and post product safety and risk management programs. UBC also works on behalf of pharmaceutical manufacturers to provide product and disease state education programs, reimbursement assistance, and other support services to the public at large. These service fees are not part of the formulary rebates or associated administrative fees.

Third Party Data Sales – Consistent with any client contract limitations, ESI or its affiliates may sell HIPAA compliant information maintained in their capacity as a PBM, pharmacy, or otherwise to data aggregators, manufacturers, or other third parties on a fee-for-service basis or as a condition of discount eligibility. All such activities are conducted in compliance with applicable patient and pharmacy privacy laws and client contract restrictions.

December 1, 2014

THIS EXHIBIT REPRESENTS ESI'S FINANCIAL POLICIES. ESI MAY PERIODICALLY UPDATE THIS EXHIBIT AND THE FINANCIAL DISCLOSURES CONTAINED HEREIN TO REFLECT CHANGES IN ITS BUSINESS PROCESSES; THE CURRENT FINANCIAL DISCLOSURE IS AVAILABLE UPON REQUEST AND ACCESSIBLE ON EXPRESS-SCRIPTS.COM AT WWW. EXPRESS-SCRIPTS.COM/WPS/PORTAL/.

Accepted and agreed to by:

North Dakota Public Employees Retirement System

Date: _____

Printed Name: _____

Title: _____

Signature: _____

North Dakota Public Employees Retirement System
2016 Renewal for Group Prescription Drug Plan

Enrollment on 6/30/2015	2015		2016		Rate Change
	Monthly Premium	Annual Income	Monthly Premium	Annual Income	
8,728	\$77.90	\$8,158,934	\$80.10	\$8,389,354	2.8%

Notes for 2016 Renewal:

- The Centers for Medicare and Medicaid Services (CMS) reported on July 29, 2015 the national average monthly bid amount for standard Part D individual coverage of \$64.66 and the Part D base beneficiary premium for 2016 (average individual premium) of \$34.10.

Further information on this topic can be found at the CMS website:

<https://www.cms.gov/Medicare/Health-Plans/MedicareAdvtgSpecRateStats/Downloads/PartDandMABenchmarks2016.pdf>

- The NDPERS Group Prescription Drug Plan (GPDP) has been rated for 2016 based on prior claim experience from 2014.
- Effective January 1, 2013, the manufacturer discount program will apply to employer group Part D plans. This reduction in premium is included in the 2016 renewal calculation.
- The BCBSND quote for 2016 Group Part D assumes that retirees continue to be required to purchase both NDPERS MedSupp and Part D. This quote is not valid if this requirement changes. If this requirement no longer exists, a significant selection factor would need to be applied to the rates. At this time BCBSND is not willing to provide a quote for an unbundled approach.

North Dakota Public Employees Retirement System
2016 Renewal for Group Prescription Drug Plan

Enrollment on 6/30/2015	2015		2016		Rate Change
	Monthly Premium	Annual Income	Monthly Premium	Annual Income	
8,728	\$77.90	\$8,158,934	\$84.10	\$8,808,298	8.0%

Notes for 2016 Renewal:

- The Centers for Medicare and Medicaid Services (CMS) reported on July 29, 2015 the national average monthly bid amount for standard Part D individual coverage of \$64.66 and the Part D base beneficiary premium for 2016 (average individual premium) of \$34.10.

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- Effective January 1, 2013, the manufacturer discount program will apply to employer group Part D plans. This reduction in premium is included in the 2016 renewal calculation.
- This BCBSND quote for 2016 Group Part D does not require a bundled approach of MedSupp and Part D. Retirees may purchase just the Group Part D.



PERS Formulary Disruption

<u>Formulary Status</u>	<u>Total Prescriptions</u>	<u>% Of Total</u>
Copay Tier Match	221,312	91%
Express Scripts Copay < BCBS	8,511	3%
Express Scripts Copay > BCBS	3,082	1%
<u>Not Found on BCBS Formulary</u>	<u>10,565</u>	<u>4%</u>
Total Included in Analysis	243,470	100%
<i>Total Scripts</i>	<i>244,753</i>	<i>99.5%</i>

Methodology & Notes

1. BCBS provided a list of prescription drugs used by PERS members participating in the EGWP between July 1, 2013 and June 30, 2014
2. Express Scripts indicated the copay tier of each drug using the unique drug National Drug Cost (NDC) number
3. BCBS did not indicate the copay tier of each drug and instead provided a full drug list with the corresponding copay tiers
4. Deloitte used the Express Scripts copay tier indicators and the BCBS formulary to compare the formularies. Deloitte included 99.5% of prescriptions in the analysis, drugs with less than 0.0% of total scripts were excluded from the analysis
5. The table shows the number of prescriptions (and not individual drugs)
6. Deloitte recommends updating the analysis using experience data from the past 12 months of data

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From: Collins, J. Sparb
Sent: Tuesday, September 22, 2015 3:39 PM
To: Stockert, Cheryl L.
Subject: FW: PBM Part D Memo

From: Sandene, Jeff D [<mailto:Jeff.Sandene@SanfordHealth.org>]
Sent: Tuesday, September 22, 2015 3:16 PM
To: Collins, J. Sparb
Cc: Klepatz, Michael; Sandene, Jeff D
Subject: FW: PBM Part D Memo

Sparb,
Wanted to give you an update on the Part D renewal process for January 1st 2016. If you wish please share this memo with the NDPERS Board.

Yesterday ESI submitted their refreshed bid for Part D services. I want to thank you and your team for facilitating the data process to assure ESI had clean data to perform their actuarial analysis. The updated rate is a very competitive market rate. As we talked on the phone yesterday ESI's bid is a standalone bid, and NDPERS can use the bid as a bundled bid or unbundled bid as you define with your members. I believe handling as a bundle bid (due to the timing for the renewal) is the least disruptive solution for the members.

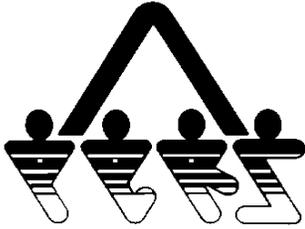
As Deloitte finishes their review of pharmacy network adequacy and formulary disruption should confirm ESI has a very comprehensive network and formulary.

As the board considers the renewal of Part D services I wanted you to know Sanford's position as it relates to PBM services. Our belief is that Sanford was awarded the NDPERS contract including all PBM services. We don't believe other PBM's should have the ability to bid for a service already awarded to Sanford. Having another PBM we believe put us in a conflict with our award and potentially our exclusive contract with ESI for PBM services.

If you have any questions please give me a call.

Thanks
Jeff Sandene

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**North Dakota
Public Employees Retirement System**
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Sparb Collins
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Memorandum

TO: PERS Board

FROM: Rebecca

DATE: September 17, 2015

SUBJECT: **SERW WELLNESS & BENEFITS FAIR**

State Employee Recognition Week (SERW) was held for state employees September 14-18, 2014. Activities were sponsored by the Council of State Employees (COSE) throughout the week to recognize state employees for their efforts. As in previous years, NDPERS sponsored a Wellness & Benefits Fair at the State Capitol for employees to attend. The fair this year was on September 15, 2015. Attached is the flyer that provides details on vendor attendance, services and screenings provided, as well as presentations conducted.

This is informational only and does not require action by the Board. I will be present at the Board meeting to answer any questions that you may have.



WELLNESS & BENEFITS FAIR



Tuesday, September 15th, 2015
 Capitol Building: Ground Floor, West End

9:00 a.m. to 3:00 p.m.*

*Cholesterol, blood sugar and PSA screening will begin at **8:15 a.m.** Fasting for at least 10 hours prior to screening will provide more accurate results.*

All other screenings, services and vendor tables will be available at 9:00 a.m. Providers/Services are subject to change.

Presentations

Who	What	When	Where
Sanford Health Plan	"Earning Your \$250 in Wellness Benefits" (20-25 minutes) Sanford Health Plan will discuss the variety of ways you can earn up to \$250 in wellness benefits.	9:00 am 1:30 pm	Peace Garden Room
Sanford Health Plan	"Intro to Yoga" (20-25 minutes) Join Sanford Health Plan for a fun, quick and casual introduction to yoga.	10:30 am 2:30 pm	Peace Garden Room
American Heart Association	"Healthy Eating – the Easy Choice" (20-25 minutes) Simple, creative and low cost ways to promote healthy eating as the norm in your workplace.	9:30 am 2:00 pm	Ft. Union Room
ADP	"Your ADP FlexComp Plan" (20-25 minutes) Learn more about your ADP FlexComp Plan & options for reimbursement.	10:00 am 1:00 pm	Roosevelt Park Room
ND State Library	"Zinio: Free Electronic Magazines" (20-25 minutes) Learn how to download free digital magazines to your tablet or device. Please bring your device & library card. A card can also be provided at the session.	11:00 am 1:00 pm	Ft. Union Room

Screenings & Services

Who	What	When	Cost	Where
WorkLife Inc	Cholesterol & Blood Sugar	8:15-3:00	\$5.00	Brynild-Haugland
WorkLife Inc	Prostate Specific Antigen (PSA)	8:15-3:00	\$48.00	Brynild-Haugland
St. Alexius Health - Education	Blood Pressure & Stroke Screening	9:00-3:00	Free	Brynild-Haugland
St. Alexius Health – Education	Hands Only CPR & AED Demonstrations (free AHA kits until supplies run out)	9:00-3:00	Free	Brynild-Haugland
Capital Chiropractic	Digital Posture Screening	9:00-12:00	Free	Brynild-Haugland

Information Booths – Ground Floor Hallway – West End

- The Eye Clinic of North Dakota
- Sanford Health Plan
- Serve YES
- ADP
- TLC Laser Eye Centers
- UND Library of the Health Sciences
- Sanford Sleep Center
- Village Business Institute EAP
- Delta Dental
- Great Plains Rehabilitation Services
- Life In Balance
- St. Alexius EAP
- Bismarck Cancer Center
- St Alexius Health & Living Grand Program
- Dakota Pharmacy & Natural Health Center
- Superior Vision Services
- ND State Library
- Missouri Valley Family YMCA
- West Central Human Service Center

❖ **Employee participation is subject to agency approval**



**North Dakota
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Bismarck, North Dakota 58502-1657

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

Memorandum

TO: NDPERS Board
FROM: MaryJo
DATE: September 14, 2015
SUBJECT: DC to DB Implementation

Senate Bill 2015 provides actively participating members in the NDPERS Defined Contribution (DC) Plan as of July 1, 2015 a one-time three (3) month special election opportunity to transfer their account balances back into the NDPERS Defined Benefit (DB) Hybrid Plan beginning no later than February 1, 2016.

Provisions of SB 2015:

54-52.6-03.1. Changes to election.

1. In this section the term "participating member" is limited in application to a participating member who elected to participate in the defined contribution retirement plan established under this chapter as an active employee of a participating employer, is an actively participating member of the defined contribution plan as of July 1, 2015, and is an active employee with a participating employer on the date an election is made under this section. The term does not include a participant who is not actively employed with a participating employer on the date of transfer of the funds under this section, has taken a distribution from the defined contribution plan, is retired, is no longer actively employed with a participating employer, or who is a member who has a qualified domestic relations order or other court order on the member's account.

In reviewing a few unique member situations with Jan regarding eligibility under provisions of SB 2015 she concurred with the following:

Member # 1:

Member is currently working within the North Dakota University System and contributing to the NDUS TIAA-CREF defined contribution plan. This is a retirement program specifically administered by the NDUS and not by NDPERS. Members actively contributing to the NDUS TIAA-CREF defined contribution plan that have elected the NDPERS defined contribution plan under previous employment will not be eligible for transfer back into the NDPERS defined benefit plan.

Member # 2:

Member has previously retired within the defined contribution retirement plan and has returned to work. Since this member has already received benefits from the defined contribution plan, the member has a reduced account balance. Member is not eligible due to taking a distribution from the defined contribution plan previously according to provisions in SB 2015.

Member # 3:

Member previously eligible for the National Guard retirement plan chose the defined contribution plan. Currently this member has transferred to a new employer and is eligible for the NDPERS main retirement plan rather than the National Guard retirement plan. If member would choose to elect the defined benefit plan, the member would transfer back into the plan which they are currently eligible.

NDPERS also reviewed data requirements TIAA-CREF would need to provide assistance to NDPERS Defined Contribution Plan members with future retirement goal projections. Throughout the election period, TIAA-CREF financial consultants will be available to address member questions, review account information, and assist with transfer paperwork completion. In addition, TIAA-CREF has a number of resources available online, such as a Retirement Income Planner, to assist members with retirement projections in this decision-making process.

NDPERS notified DC eligible participants of SB 2015 provisions by mailing a letter on June 15, 2015. A second member mailing is scheduled for October 1, 2015 providing more details on SB 2015, along with the announcement of the three (3) month election period. If the last day of the election window falls on a weekend, NDPERS will notify eligible participants that election forms must be date stamped in the NDPERS office or postmarked no later than the last date of the designated election period. A draft letter, along with a plan comparison sheet, is included as Attachment 1.

In considering the timing of this election period, NDPERS has reviewed other staff projects already in progress or with deadlines to be completed prior to the end of the 2015 calendar year which are included on Attachment 2. DC to DB election timelines for consideration are as follows:

Description of Task	Timeline beginning February 1, 2016	Timeline beginning November 1, 2015
Mail participants notification letter regarding SB 2015 provisions	15-Jun	15-Jun
Review Provisions of SB 2015 with Jan	15-Aug	15-Aug
Determine data requirements / TIAA-CREF Consultation	20-Aug	20-Aug
Clarify legal requirements – eligibility of specific DC members with Jan	28-Aug	28-Aug
Draft Introductory Letter	2-Sep	2-Sep
Testing for system generated estimates for DC members	Sep	Sep
Revise Plan Highlights DB/DC Comparison Documents	9-Sep	9-Sep
TIAA-CREF paperwork required for transfer of funds	9-Sep	9-Sep
Finalize Introductory Letter	15-Sep	15-Sep
Board Action: Proposed Timeline & specific DC member eligibility	24-Sep	24-Sep
Mail Introductory letter outlining timeline and election window	1-Oct	N/A
Train staff on benefit estimates / SB 2015 provisions	15-Oct	1-Oct
Finalize Benefit Specific Letter and Election Form for DC to DB transfer	1-Nov	1-Oct
Schedule On-site visits with TIAA-CREF	15-Nov	1-Oct

Confirm joint process with TIAA-CREF	15-Nov	24-Sep
Update PERSLink	Nov - Jan	Oct-Nov
Update PeopleSoft	Dec - Jan	Oct-Nov
Mail Member Specific Calculated Benefit letter outlining transfer process, plan comparisons	1-Dec	9-Oct
Respond to requests for Benefit Estimates	Dec - April	Oct - Jan
Establish Administrative Process	Dec - Jan	Oct
Start On-site visits with TIAA-CREF	Jan – April	Nov - Jan
Authorized Agent Training / Newsletter Article	1-Jan	Oct-Nov
Confirm mail room/date stamp procedures	1-Jan	Oct
Finalize reminder letter	15-Jan	15-Dec
Mail Reminder Letter	1-Feb	15-Dec
Proposed 3-Month Enrollment Window	Feb 2016 – April 2016	Nov 2015 – Jan 2016
Deadline for DC to DB Election Window	April 30 (Saturday)	January 31 (Sunday)
Process final account transfers for April contributions	31-May	29-Feb

As you will note from the above, staff is offering two different start dates one being February 1, 2016 and the other November 1, 2015. We have had requests for the earlier date since some eligible members may like to retiree or consider other jobs. We believe that this can be considered depending on the decision relating to Part D. Specifically, if the Part D decision does not involve a major change or increase in rates, we believe the level of effort required will be normal and this project could be considered for an earlier start date. If the decision relating to Part D requires program changes and a high rate increase, the level of effort for staff would be substantial making it difficult to start this project early.

Board Action:

Confirm acceptable timeline for DC to DB election period as approved in SB 2015.

ATTACHMENT 1 – Letter to member and FAQ sheet

October 1, 2015

Member ID: XXXXX

Name
Address
City, State Zip

RE: Defined Contribution Member Special Election Period

As an actively participating member within the NDPERS Defined Contribution Plan as of July 1, 2015, legislation passed in the 2015 session provides you a one-time three (3) month special election opportunity to transfer your current account balance with TIAA-CREF to the NDPERS Defined Benefit Hybrid Plan. This option is not available to retirees, members who have a Qualified Domestic Relations Order on their account, or to members not actively employed. Eligibility for this election option also requires that you are actively employed on the date of transfer of funds.

This letter is to notify you that the NDPERS Board has established this three (3) month election period to start February 1, 2016 and continue through April 30, 2016. Your completed and signed election form must be date stamped in the NDPERS office or postmarked between the indicated election period dates to make a valid election. Any date stamped or postmarked election forms received on or after May 1, 2015 will be considered void. Also to have a valid election you must be an active member of the plan on July 1 2015 and on the date of transfer. You will be notified of the date of transfer when it occurs, which will be in the month following the date NDPERS receives your valid election form.

We understand that you may have many questions relating to your election decision and your decision regarding your retirement plan is a very important one. In December 2015, NDPERS will be sending you additional information regarding the following:

- Your individual member benefits within the NDPERS Defined Benefit Hybrid Plan
- Scheduled informational meetings for January and February 2016
- How to access worksite one-on-one counseling sessions with NDPERS staff and TIAA-CREF financial advisors to address specific questions related to your account

For additional information regarding the Defined Contribution Member Special Election Period, please refer to the NDPERS website at <http://www.nd.gov/ndpers/>. Information will be posted online as scheduled meeting dates and onsite counseling visits become available.

If you have questions, please contact the NDPERS office at 701-328-3900 or 800-803-7377.

Sincerely,

NDPERS Benefits Division

Making an Informed Decision - Which plan is right for you? Special Election Period between {dates}

You will need to make your decision based on your individual circumstances and preferences to determine which plan is right for you. As you review the key features of both plans, we hope you will choose the plan that fits most comfortably with your retirement objectives.

If you elect to keep funds in the Defined Contribution Plan...

- A specific **"defined" monthly contribution** amount will be paid by you and your employer during your working years to fund your retirement
- You are responsible for making investment decisions and managing investment market risk and volatility on your own individual account
- Your retirement benefit amount available is unknown and depends on the performance of your investment choices. You choose the stream of retirement income.
- Your **member contributions continue at the current rate**
- You waive any future right to become enrolled in the NDPERS Defined Benefit Hybrid Retirement Plan
- You may have a Qualified Domestic Relations Order on your account and ineligible for transfer
- You may be a deferred or retired member in the plan and ineligible for transfer
- Your decision is irrevocable

If you elect to transfer funds to the Defined Benefit Hybrid Plan...

- A specific **"defined" monthly benefit** amount will be calculated at retirement by a pre-established formula based on your final average salary, years of eligible service credit, benefit multiplier, and age at time of retirement
- Your investment decisions are made by the State Investment Board to provide lifetime retirement benefits for all eligible members
- Your retirement benefit amount is determined by North Dakota state law, not investment results and is a steady monthly income
- Your **member contributions will be increased prospectively by 2% of your gross monthly salary**
- Your participation is effective upon date of transfer of funds
- Your member-directed accumulated **plan balance will be allocated based upon current employee and employer account balances** upon date of the transfer of funds
- Your **vested employer funds in the DC plan will be excluded from your DB plan member account balance and minimum guarantee** upon date of transfer of funds
- Your termination of employment prior to the transfer of funds voids the transfer
- Your decision is irrevocable

The plan that best meets your needs depends entirely on your specific situation. Keep in mind that the right decision for you may not be the right decision for someone else.

Frequently Asked Questions

1. **How will transfer of funds be allocated in the Defined Benefit Hybrid plan?** Funds will be recorded as employee and employer contributions in the same manner as how the defined contribution provider has each of these funds recorded.
2. **How do the employee and employer accounts differ if I transferred back to the defined benefit plan?** The Defined Benefit Hybrid plan has funds that are partially portable based upon employee contributions and up to 4% vested employer contributions in the PEP program. You also receive 7.5% interest on your account balance compounded monthly. In the Defined Contribution plan you vest in the employer funds over a 4 year period and can fully vest in all of the contributions so your entire account balance may be portable for refund or rollover, if desired.
3. **Why will the employee contributions increase 2% for those transferring back to the Defined Benefit Hybrid plan?** In the main plan, 16.12% is the actuarially neutral contribution rate that was recommended for all employees to bring the plan back to 100% funded status.
4. **Will future contributions always be 2% higher, if I choose to transfer back to the Defined Benefit Hybrid plan?** Yes, you will continue to pay the higher contribution rate of 2 percent.
5. **If I elect back into the Defined Benefit Hybrid plan, will I receive all service credit for my previous years worked?** Yes, unless you have taken a refund of any DC or DB plan retirement previously. Your full years of service credit will be restored to calculate your Defined Benefit Hybrid plan benefit according to the pre-determined benefit formula for retirement. DB Benefit Formula: Final Average Salary X Years of Service X Benefit Multiplier of 2% = Single Life Benefit
6. **How is my final average salary calculated in the Defined Benefit Hybrid plan?** An average of your highest 36 months over the last 180 months (15 years) worked.
7. **When is the final day my election form can be received by NDPERS?** Your election form must be either date stamped in the NDPERS office or envelope post marked by 5pm on the last day of the election window.
8. **What happens to the additional 2% of my gross earnings that I contribute, if I elect back into the Defined Benefit Hybrid plan?** The 2% additional contributions will go directly into your member account balance.
9. **What time is eligible for service purchase under the Defined Benefit Hybrid Plan?** You can purchase previous public employment (in-state or out-of-state), past NDPERS service, federal service, active military service, legislative service, leave of absences, and generic service (max of 60 months) while actively employed. You can also purchase unused sick leave upon separation from employment.
10. **How does buying service increase my Defined Benefit Hybrid plan retirement?** You will increase your monthly lifetime benefit for each additional month of service you purchase.
11. **Is the Portability Enhancement Provision (PEP) for vesting in employer funds allowed in the Defined Contribution plan and will I receive credit for previous contributions?** No, PEP is not a part of the Defined Contribution plan as this plan has its own vesting schedule for employer funds. PEP is only a provision in the Defined Benefit Hybrid plan to allow you to vest in up to 4% of the employer funds. You will not receive credit for any previous contributions made to your 457 Deferred Compensation Plan prior to the date of transfer of funds back into the Defined Benefit Hybrid plan. NDPERS cannot re-create the history of each member account.

12. **What happens if I become deceased before I retire?** In the Defined Benefit Hybrid plan your estate value is your employee contributions, vested PEP funds, and interest. In the Defined Contribution plan the estate value is all employee contributions and all vested employer contributions plus earnings.
13. **How can I estimate on my own what is employee funds and employer funds?** Your TIAA-CREF account statement will show employee contributions and vested employer contributions in the Defined Contribution plan. Only employee contributions will be transferred back into your account balance in the Defined Benefit Hybrid plan, if you elect back into this plan.
14. **What paperwork will be required to transfer back into the Defined Benefit Hybrid plan?** A NDPERS election form and TIAA-CREF Direct Transfer form will be required.
15. **How does the Retiree Health Insurance Credit (RHIC) get calculated?** You receive RHIC in the Defined Benefit Hybrid plan or the Defined Contribution plan as a retiree, as long as you do not take a refund or rollover of your account with NDPERS. Your benefit for RHIC is calculated based upon \$5.00 times your years of service.
16. **How will I know if I meet the rule of 85?** You will receive a benefit estimate from NDPERS specific to your benefit amount in the Defined Benefit Hybrid plan based upon estimated years of service when you reach “Rule of 85” and age 65. This can also be viewed online by logging into your Member Self Service (MSS) account online to calculate your Retiree Health Insurance Credit (RHIC).
17. **If I have a 457 Deferred Compensation plan with TIAA- CREF, will these funds be affected?** No, your account balance in the 457 Deferred Compensation plan is a separate individual account that you manage and these funds will not be transferred back into the Defined Benefit Hybrid plan.
18. **Can I contact TIAA-CREF directly to process the transfer and submit paperwork?** No, all transfer paperwork must be sent directly to NDPERS for processing and approval prior to the transfer of funds. NDPERS will verify all contributions have been posted and forward the required paperwork to TIAA-CREF for processing. If proper documentation is not received and sent through the NDPERS office, as requested, transfer delays may occur.
19. **When will my funds transfer back into the Defined Benefit Hybrid plan?** Your enrollment in the Defined Benefit Hybrid plan will occur the first of the month following your election. However, NDPERS must verify that the contributions for the month in which you made your election are received and posted to your account prior to initiating the transfer. Depending on your employer payroll reporting, your employer may take up to the 20th of the following month to post contributions. After NDPERS confirms your last contribution in the Defined Contribution Plan has posted, the transfer will occur.

ATTACHMENT 2 – NDPERS Staff Efforts prior to January 1, 2016

Annual Enrollment (includes special enrollment for ACA eligible temps)

Development Effort: August - September
Administrative Effort: October, November, & December

Medicare Part D split from Health

Development Effort: September – December
Administrative Effort: September – February

Job Service COLA increase

Development Effort: October – November
Administrative Effort: October – November

Rate Change Letters (Medicare Part D)

Development Effort: October – November
Administrative Effort: October – December

1099Rs

Development Effort: November – December
Administrative Effort: November – January

January 1, 2016 Legislative Changes

Development Effort: September – November
Administrative Effort: October – December

2016 Federal & State Tax Withholding Update

Development Effort: November – December
Administrative Effort: December (January if tax tables release late)

ACA Employer Tax Reporting

Development Effort: Unknown
Administrative Effort: October – December

DC to DB Transfer

Development Effort: 2 months
Administrative Effort: Unknown

January 1 New Retirees

Development Effort: None
Administrative Effort: December - January

1st RHIC Quarterly Statement from ASIFlex

Development Effort: None
Administrative Effort: October - November

Educational Efforts (PREP / Mid-Career Workshops)

Development Effort: None
Administrative Effort: September - November

457 Deferred Compensation Providers Training

Development Effort: None
Administrative Effort: September - December



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Memorandum

TO: NDPERS Board

FROM: MaryJo

DATE: September 17, 2015

SUBJECT: Employer Sponsored Roth Plans / PEP

The Portability Enhancement Provision (PEP) was initiated in January of 2000 to allow members to vest in a portion of the employer contributions paid into the Defined Benefit Hybrid Plan. The goal of this program was to encourage members to setup supplemental savings and adequately plan for retirement needs, since benefits within the NDPERS Defined Benefit Plan and Social Security are fixed income at retirement.

Since the implementation of PEP, designated Roth (after-tax) contributions have become more commonly incorporated into supplemental savings plans. Roth options became included in 403(b) plans in 2006 and 457(b) plans in 2007. Due to this change, NDPERS-affiliated political subdivisions that offer Roth options to employees have been inconsistent in reporting these contributions to NDPERS for PEP purposes, as eligibility of these contributions for PEP had not been questioned previously.

In review with Segal, Melanie's response is as follows:

"After reviewing the PEP Administrative Agreement and PEP statutory provisions, it is unclear whether Roth contributions qualify for PEP allocation. For IRS purposes, the term "employee after-tax contributions" that is used in the PEP Administrative Agreement is a different concept than Roth contributions. Technically, Roth contributions would be considered part of "voluntary salary reduction contributions" or "elective deferrals" as used in the Agreement. However, I do not know PERS' intent with respect to including or excluding Roth contributions for PEP allocation.

I recommend that PERS make a determination as to whether or not Roth contributions (to non-PERS employer plans) qualify for PEP allocations and revise the PEP Administrative Agreement to specifically include or exclude Roth contributions for this purpose. The Agreement language could clarify the meaning of the current PEP statutory provisions which describe PEP allocation for "member contributions".

If PERS decides to include Roth contributions towards PEP allocation, this can be done for only prospective Roth contributions or such contributions could count towards PEP allocation on a retroactive basis. Also, it is important that PERS communicate to participants about whether or not Roth contributions qualify for PEP allocation.”

Staff Recommendation:

Allow designated Roth (after-tax) contributions offered through non-NDPERS employer sponsored 403(b) and 457(b) plans as eligible contributions for PEP purposes. These contributions would be allowed on a prospective basis but previously reported Roth contributions by employers would not be removed, since the purpose of PEP is to encourage supplemental savings for retirement.

Board Action:

Confirm designated Roth (after-tax) contributions offered through non-NDPERS employer sponsored 403(b) or 457(b) plans as eligible contributions for PEP purposes. PEP administrative agreement language would be updated and contributions allowed on a prospective basis but previously reported Roth contributions by employers would not be removed.



**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: NDPERS Board

FROM: Kathy

DATE: September 17, 2015

SUBJECT: FlexComp Vendors – Voluntary Products

We have conducted our annual review of our vendors for the voluntary insurance products approved for pretax premiums under our Section 125 FlexComp Plan. We sent all current vendors a request to confirm the products they wished to offer, provide a brief product description, and verify whether it is eligible to be a pretax product. Following is a list of the respondents:

Total Dental Administrators (TDA)	Colonial Life
Central United	Conseco
AFLAC	USABLE

Included for your information is a grid for each vendor that outlines the products available for payroll deduction, a summary description, and certification by the vendor that it is or is not eligible to be pretaxed. No new products are being proposed by any of the participating companies.

Staff recommends that the vendors and their eligible products be approved for inclusion as pretax benefits under the FlexComp program for the 2016 plan year.

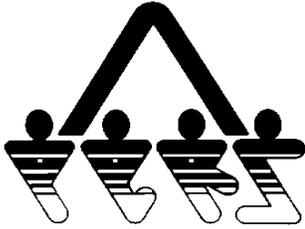
Board Action Requested

Approve the inclusion of the products eligible to be pre-taxed for the FlexComp 2016 plan year.

AFLAC Product Name	Company Representative – Carrie Palczewski 4207 Boulder Ridge Road, Ste. 140 Bismarck ND 58503 701-258-6040 E-Mail: carrie_palczewski@us.aflac.com Product Description	Pretax Eligibility
Cancer	Cancer indemnity policies providing benefits for diagnosis of skin cancer, internal cancer as well as annual screening benefits.	Yes
Hospital Confinement	Indemnity benefits whether hospitalized days or weeks.	Yes
Hospital Intensive Care	Provides coverage in the event of a sickness or injury and is admitted to the ICU unit.	Yes
Accident	Accident indemnity policies providing benefits for accident/injury.	Yes
Lump Sum Critical Illness	Pays a lump sum benefit for code red major critical illness event. (Heart attack, stroke, coma, paralysis, major organ transplant, end stage renal failure. Riders available for cancer, sudden cardiac death.)	Yes
Personal Sickness Indemnity	Indemnity policy for sickness related hospital confinement, major diagnostic exams, in & out-patient surgeries.	No
Specified Health Event	Critical care, recovery indemnity policies for major critical illness.	Yes
Disability	All disability policies that are specific replacement of income benefits.	No
Dental	Voluntary dental. No networks, no deductibles, no pre-certifications.	No
Vision Now	Vision indemnity policy providing vision insurance, vision correction benefits.	No
Life	All life policies.	No
Central United Product Name	Company Representative – James M Kasper C/O Asset Management Group Inc. PO Box 9016 Fargo ND 58103--9016 701-232-6250 E-Mail: jmkasper@amg-nd.com	Pretax Eligibility

	Product Description	
Cancer Insurance	Provides cash benefits to covered persons for treatment of cancer.	Yes
Colonial Life & Accident	Company Representative – David Ryden 2950 Bent Tree Hills Dr. New Brighton, MN 55112 651-633-7500 E-Mail: david.ryden@coloniallife.com	Pretax Eligibility
Product Name	Product Description	
Accident	Composite rated, guaranteed renewable accident product with choice of plan levels and optional riders. It provides indemnity benefits for on and off the job accidents.	Yes
Cancer	Composite rated, guaranteed renewable specified disease product with choice of plan levels and optional riders. Provides benefits for expenses related to cancer.	Yes
Disability	Age banded, guaranteed renewable short-term disability income product. (Disability insurance premium paid with pre-tax dollars – Please note: A benefit paid to an employee that becomes disabled will be subject to income taxes.)	Yes
Medical Bridge	Age banded, guaranteed renewable hospital confinement indemnity product. Choice of plans, levels. Includes confinement, rehab unit, surgical and diagnostic procedures.	Yes
Critical Illness	Specified disease product with a lump sum benefit upon diagnosis of a covered specified disease with a choice of plan options for reoccurrence, cancer, face amounts, and optional riders.	No
Life	All life insurance policies.	No

Conseco	Company Representative –Odell Braaten	
Product Name	<p>PO Box 591 West Fargo ND 58078-0591 701-367-3604</p> <p>E-Mail: ombraaten@gmail.com</p> <p>Product Description</p>	Pretax Eligibility
Cancer Insurance	Cancer Benefits/ICU	Yes
Total Dental Administrators	Company Representative – Logan Stucki	
Product Name	<p>2111 E Highland Ave Ste 250 Phoenix AZ 85016 801-268-9740 Ext 306</p> <p>E-Mail: lstucki@TDAdental.com</p> <p>Product Description</p>	Pretax Eligibility
Elite Choice	Fully insured dental program.	Yes
USABLE	Company Representative – Peg Dickelman	
Product Name	<p>Noridian Insurance Services Inc. 4510 13 Ave S Fargo ND 58121 701-277-2319</p> <p>E-Mail: peggy.dickelman@noridian.com</p> <p>Product Description</p>	Pretax Eligibility
Accident Elite	Employees can get help prevent financial hardship due to medical/travel expenses caused from an accident. Payments direct to employee.	Yes
Cancer Care Elite	Payments direct to employee for new and experimental treatment, travel, lodging, out of pocket medical costs, deductibles, co-pay amounts.	Yes
Hospital Confinement Plan	Payment direct to employee for costs related to intensive care, hospitalization, birth of a child, accidents.	Yes



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Memorandum

TO: NDPERS Board

FROM: Kathy

DATE: September 17, 2015

SUBJECT: Deferred Compensation Plan Documents

The restated Companion Plan and 457 Plan documents were provided at the July meeting for your review and feedback with the objective to provide them at a future meeting for your approval.

Included are both plan documents which incorporate changes recommended by Segal and PERS staff. The plan documents are being reviewed by our legal counsel and any additional observations will be provided at the meeting. In consideration of any further changes from legal counsel or the Board, staff recommends approval of the Companion Plan and 457 Deferred Compensation plan documents.

Board Action Requested

Approve staff recommendation.

NORTH DAKOTA STATE DEFERRED COMPENSATION PROGRAM

SECTION 457 COMPANION PLAN AND TRUST

Amended and Restated effective July 1, 2015

Adoption Resolution

Resolved, that effective July 1, 2015, the State of North Dakota has adopted the attached amended and restated Section 457 Companion Plan. The Plan is intended to satisfy the requirements of Section 457(b) of the Internal Revenue Code of 1986, as amended, and its associated regulations.

Signature

Date

Title

NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM

SECTION 457 COMPANION PLAN

ARTICLE 1

PURPOSE

The North Dakota Public Employees Retirement System Board (“Board”) hereby amends, reestablishes and reaffirms the Section 457 Companion Plan and Trust (“the Plan”). The Plan consists of the provisions set forth in this document. The primary purpose of this Plan is to retain present employees and attract new employees for participating employers by providing increased retirement income and other deferred benefits to employees and their beneficiaries in accordance with the provisions of section 457 of the Internal Revenue Code and amendments thereto and by providing additional investment opportunities that are not otherwise available under the North Dakota Section 457 Deferred Compensation Plan. This Plan shall be an agreement solely between the employer and participating employees. The Plan is intended to satisfy the requirements of an eligible deferred compensation plan under Internal Revenue Code section 457(b) and shall be interpreted as such.

Nothing contained in this Plan shall be deemed to constitute an employment contract or agreement for services between participating employees and their employer nor shall it be deemed to give a participating employee any right to be retained in the employ of, or under contract to, an employer. Nothing herein shall be construed to modify the terms of any employment contract or agreement for services between participating employees and their employer as this Plan is intended to be a supplement thereto.

ARTICLE 2

DEFINITIONS

- 2.1 **Account Balance.** The bookkeeping account maintained with respect to each Participant which reflects the value of the deferred Compensation credited to the Participant, including the Participant’s Deferrals, the earnings or losses of the Trust Fund (net of Trust Fund expenses) allocable to the Participant, and any distribution made to the Participant or the Participant’s Beneficiary. The Account Balance also includes any account established under Article 7 for rollover contributions and plan-to-plan transfers made for a Participant, the account established for a Beneficiary after the Participant’s death, and any account established for an alternate payee (as defined in Code section 414(p)(8)).
- 2.2 **Administrator.** The North Dakota Public Employees Retirement System Board shall serve as the Plan’s Administrator; however, the Administrator may designate an entity, person or persons as an administrative services provider to carry out certain nondiscretionary, administrative functions under the Plan, as described in Article 8.

- 2.3 Beneficiary.** The person or persons designated by the Participant who is entitled to receive benefits under the Plan after the death of a Participant. If no person is designated by the Participant or if the designated Beneficiary predeceases the Participant, the Participant's estate shall be the Beneficiary.
- 2.4 Board.** The North Dakota Public Employees Retirement System Board.
- 2.5 Code.** The Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to sections of the Code are to such sections as they may from time to time be amended or renumbered.
- 2.6 Compensation.** All cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses and overtime pay, that is includible in the Employee's gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under section 125, 132(f), 401(k), 403(b) or 457(b) of the Code. Compensation also includes amounts paid to a Participant who has had a Severance from Employment, other than retirement or severance incentive payments, to the extent such amounts are paid by the later of 2½ months after the Participant's Severance from Employment or the end of the calendar year in which the Severance from Employment occurred, in accordance with Treas. Reg. section 1.457-(4)(d)(1). Effective for years beginning after December 31, 2008, Compensation shall include military differential wage payments, as defined in Code section 3401(h).
- 2.7 Deferral.** The amount of Compensation deferred in any calendar year, including unused annual leave, sick leave and back pay, but excluding amounts payable under any bona fide vacation leave, sick leave, compensation time, severance pay, disability pay or death benefit plans of the Employer.
- 2.8 Employee.** Each person, whether appointed or elected, employed by the Employer as a common law employee who performs services for the Employer for which Compensation is paid, and who has been determined by the Employer to be eligible to participate in the Plan in accordance with Section 3.1. Employee does not include an independent contractor.
- 2.9 Employer.** The State of North Dakota, which includes any of the State's departments, divisions, agencies or institutions, as well as any city, county, or other political subdivision, agency or instrumentality of the State, within the meaning of section 414(d) of the Code and section 3(32) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") that enters into an agreement with the Board to participate in the Plan.
- 2.10 Includible Compensation.** An Employee's actual wages in box 1 of Form W-2 for a year for services to the Employer, but subject to a maximum of \$200,000 (or such higher maximum as may apply under Code section 401(a)(17)), and increased (up to the dollar maximum) by any compensation reduction election under section 125, 132(f), 401(k), 403(b) or 457(b) of the Code. Effective for years beginning after December 31, 2008, Compensation shall include military differential wage payments, as defined in Code

section 3401(h). Includible Compensation is determined without regard to any community property laws.

- 2.11 **Investment Provider.** Any organization that has been approved by the Board to provide investment products under the Plan.
- 2.12 **Normal Retirement Age.** Age 70 ½, or if later, the date the employee incurs a Severance from Employment. For purposes of the special section 457 catch-up limitation under Section 4.3, a Participant may designate, in writing, a Normal Retirement age that is earlier than age 70 ½ but not earlier than the earliest age at which the Participant has a right to retire and receive, under the applicable defined benefit pension plan of the Employer, immediate retirement benefits without actuarial or other reduction because of retirement before some later specified age. If the Participant is not eligible to receive benefits under a defined benefit pension plan maintained by the Employer, the Participant's designated Normal Retirement Age may not be earlier than age 55.
- 2.13 **Participant.** An individual who is currently deferring Compensation, or who has previously deferred Compensation under the Plan by salary reduction and who has not received a distribution of his or her entire benefit under the Plan.
- 2.14 **Plan.** The North Dakota Section 457 Companion Plan and Trust, as amended or restated from time to time.
- 2.15 **Plan Year.** The calendar year.
- 2.16 **Severance from Employment.** The date 31 days after the Employee dies, retires or otherwise has a severance from employment with the Employer, as determined by the Administrator (and taking into account guidance issued under the Code).
- 2.17 **Trust Fund.** The trust fund created under and subject to the provisions in Article 9.
- 2.18 **Trustee.** The Board, or such other trustee duly appointed and currently serving in accordance with the provisions of Article 9.
- 2.19 **Valuation Date.** Each business day or such other valuation date as specified by the Investment Provider for a particular investment product, or as otherwise designated by the Board.

ARTICLE 3

PARTICIPATION AND CONTRIBUTIONS

- 3.1 **Eligibility.** Each Employee who works a minimum of 20 hours per week for 20 or more weeks per year, who is at least age 18 and who fills a permanent position that is regularly funded and not of limited duration shall be eligible to participate in the Plan and may defer Compensation hereunder immediately upon satisfying the eligibility requirements under this Section 3.1.

- 3.2 Election Required for Participation.** An Employee may elect to become a Participant by executing an election to defer a portion of his or her Compensation (and have that amount contributed as Deferrals on his or her behalf) and submitting it to the Administrator. This participation election shall be made pursuant to a deferral agreement under which the Employee agrees to be bound by all the terms and conditions of the Plan. The Administrator may establish a minimum deferral amount, and may change such minimums from time to time. Subject to the limits of Article 4, a Participant must currently defer a minimum of \$25 per month. The participation election shall include selection of an Investment Provider. Any such election shall remain in effect until a new election is submitted.
- 3.3 Commencement of Participation.** An Employee shall become a Participant as soon as administratively practicable following the date the Employee files a participation election pursuant to Section 3.2. Such election shall become effective no earlier than the calendar month following the month in which the election is made, or such other date as may be permitted under the Code.
- 3.4 Information Provided by the Participant.** Each Employee enrolling in the Plan should provide to the Administrator at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the Administrator to administer the Plan, including, without limitation, whether the Employee is a participant in any other eligible plan under Code section 457(b).
- 3.5 Contributions Made Promptly.** Deferrals by the Participant under the Plan shall be transferred to the Trust Fund within a period that is not longer than is reasonable for the proper administration of the Participant's Account Balance.
- 3.6 Amendment of Deferral Election.** Subject to other provisions of the Plan, a Participant may at any time revise his or her participation election, including a change of the amount of his or her Deferrals, as well as his or her investment direction and his or her designated Beneficiary through the Investment Provider(s). However, the Board retains the authority to limit the frequency of changes to the amount of Deferrals, applied uniformly to all Employees, as it deems appropriate. Unless the election specifies a later effective date, a change in the amount of Deferrals shall take effect as of the first day of the next following month or as soon as administratively practicable if later. A change in the investment direction shall take effect as of the date provided by the Administrator on a uniform basis for all Employees. A change in the Beneficiary designation shall take effect when the election is accepted by the Investment Provider.
- 3.7 Leave of Absence.** Unless an election is otherwise revised, if a Participant is absent from work by leave of absence, Deferrals under the Plan shall continue to the extent that Compensation continues. If a Severance from Employment is determined to have occurred, the Participant may elect to receive a distribution of benefits as provided for in Article 5.
- 3.8 Disability.** A disabled Participant may elect to make Deferrals during any portion of the period of his or her disability to the extent that he or she has actual Compensation (not imputed compensation and not disability benefits) from which to make contributions to the Plan and has not had a Severance from Employment.

ARTICLE 4

LIMITATIONS ON AMOUNTS DEFERRED

- 4.1 Basic Annual Limitation.** The maximum annual amount of Deferrals under the Plan for any calendar year shall not exceed the lesser of (1) the Applicable Dollar Amount or (2) the Participant's Includible Compensation for the calendar year. The Applicable Dollar Amount is the amount set forth under Code section 457(e)(15), as indexed in accordance with Code section 415(d).
- 4.2 Age 50 Catch-up Contributions.** A Participant who will attain age 50 or more by the end of the calendar year is permitted to make an additional annual amount of Deferrals, up to the maximum age 50 catch-up Deferrals for the year. The maximum annual dollar amount of the age 50 catch-up Deferrals for a year is the amount set forth under Code section 414(v)(2), as indexed in accordance with Code section 414(v)(2)(C) and Code section 415(d).
- 4.3 Special Section 457 Catch-up Limitation.** If the applicable year is one of the Participant's last three consecutive calendar years ending before the year in which the Participant attains Normal Retirement Age and the amount determined under this Section 4.3 exceeds the amount computed under Section 4.1 and 4.2, then the annual limit on Deferrals under this Article 4 shall be the lesser of:
- (a) An amount equal to two times the Applicable Dollar Amount under Section 4.1 for such year; or
 - (b) The sum of:
 - (1) An amount equal to the aggregate limit under Section 4.1 for the current year plus each prior calendar year beginning after December 31, 2001 during which the Participant was an Employee under the Plan, minus the aggregate amount of Compensation that the Participant deferred under the Plan during such years, plus
 - (2) An amount equal to the aggregate limit under Code section 457(b)(2) for each prior calendar year beginning after December 31, 1978 and before January 1, 2002 during which the Participant was an Employee (determined without regard to Sections 4.2 and 4.3), minus the aggregate contributions to Pre-2002 Coordination Plans (as defined in Section 4.4(c)) for such years.

However, in no event can the deferred amount be more than the Participant's Compensation for the year.

- 4.4 Special Rules.** For purposes of this Article 4, the following rules shall apply:

- (a) If the Participant is or has been a participant in one or more other eligible plans within the meaning of Code section 457(b), then the Plan and all such other plans shall be considered one plan for the purposes of applying the limitation in this Article 4. For this purpose, the Administrator shall take into account any other such eligible plan maintained by the Employer and shall also take into account

any other such eligible plan for which the Administrator receives from the Participant sufficient information concerning his or her participation in such other plan.

- (b) In applying Section 4.3, a year shall be taken into account only if the Participant was eligible to participate in the Plan during all or a portion of the year and Compensation deferred, if any, under the Plan was subject to the maximum amount described in Section 4.1 or any other plan limit required by Code section 457(b).
- (c) For purposes of Section 4.3(b)(2), the term “contributions to Pre-2002 Coordination Plans” means any employer contribution, salary reduction or elective contribution under any other eligible Code section 457(b) plan, or a salary reduction or elective contribution under any other eligible Code section 401(k) qualified cash or deferred arrangement, Code section 402(h)(1)(B) simplified employee pension (SARSEP), Code section 403(b) annuity contract and Code section 408(p) simple retirement account, or under any plan for which a deduction is allowed because of a contribution to an organization described in Code section 501(c)(18), including plans, arrangements or accounts maintained by the Employer or any employer for whom the Participant performed services. However, the contributions for any calendar year are only taken into account for purposes of Section 4.3(b)(2) to the extent that the total of such contributions does not exceed the aggregate limit referred to in Code section 457(b)(2) for that year.
- (d) For purposes of Sections 4.1, 4.2 and 4.3, an individual is treated as not having deferred compensation under a plan for a prior taxable year to the extent Excess Deferrals (as defined in Section 4.5) under the plan are distributed. To the extent that the combined deferrals for pre-2002 years exceeded the maximum deferral limitations, the amount is treated as an Excess Deferral for those prior years.

4.5 Correction of Excess Deferrals. If the annual amount of Deferrals on behalf of a Participant for any calendar year exceeds the limitations described in this Article 4, or the annual amount of Deferrals on behalf of a Participant for any calendar year exceeds the limitations described in this Article 4 when combined with other amounts deferred by the Participant under another eligible deferred compensation plan under Code section 457(b) for which the Participant provides information that is accepted by the Administrator, then the annual amount of Deferrals, to the extent in excess of the applicable limitation (“Excess Deferral”), and adjusted for any income or loss in value, if any, allocable thereto, shall be distributed to the Participant.

4.6 Protection of Persons Who Serve in a Uniformed Service. An Employee whose employment is interrupted by qualified military service under Code section 414(u) or who is on a leave of absence for qualified military service under Code section 414(u) may elect to make additional Deferrals upon resumption of employment with the Employer equal to the maximum annual Deferrals that the Employee could have elected during that period if the Employee’s employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the Deferrals, if any, actually made for the Employee during the period of the interruption or

leave. This right applies for five years following the resumption of employment, or if sooner, for a period equal to three times the period of the interruption or leave.

In addition, effective for deaths occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code section 414(u)(5)), this Plan shall provide all applicable benefits required in accordance with Code section 401(a)(37), but the provisions of Code section 414(u)(9) shall not apply to this Plan.

ARTICLE 5

DISTRIBUTION OF BENEFITS

5.1 Benefit Distributions. A Participant's Account Balance may not be paid to the Participant (or, if applicable, the Participant's Beneficiary), until one of the following events has occurred:

- (a) the Participant's Severance from Employment;
- (b) the Participant's death;
- (c) an unforeseeable emergency, within the meaning of and subject to Section 5.4;
- (d) the Participant elects a small Account Balance distribution in accordance with Section 5.5.

If a Participant has a separate account attributable to rollover contributions to the Plan pursuant to Section 7.1, the Participant may at any time elect to receive a distribution of all or any portion of the amount held in the rollover account.

5.2 Benefit Distribution Election.

- (a) A Participant may elect to commence distribution of his or her Account Balance any time after Severance of Employment by filing an application for a distribution with the Administrator. However, in no event may distribution of benefits to the Participant commence later than April 1st of the year following the later of the year in which the Participant attains age 70 ½ or the year in which the Participant severs employment with the Employer. The amount of such required minimum distribution shall be determined in accordance with Code section 401(a)(9) and the regulations thereunder, as applicable to a governmental plan as defined in Code section 414(d).
- (b) A Participant (or, if applicable, the Participant's Beneficiary) may elect a distribution in the form of a lump sum or systematic distribution option as permitted under the terms of the investment product(s), or may elect a direct rollover to an eligible retirement plan as described in Section 5.6. In addition, the Participant's entire interest in the Plan must be distributed over the life of the Participant or the lives of the Participant and designated Beneficiary over a period not extending beyond the life expectancy of the Participant or the life expectancy

of the Participant and designated Beneficiary. Notwithstanding any other provision of the Plan, the elected form of distribution shall comply with required distribution rules under Code section 401(a)(9) and the regulations thereunder, as applicable to a governmental plan as defined in Code section 414(d), including any minimum distribution incidental benefit requirements.

- (c) Effective in 2009, notwithstanding subsections (a) and (b) above, a Participant (or, if applicable, the Participant's Beneficiary) who would have been required to receive required minimum distributions for 2009 but for the enactment of Code section 401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated Beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will receive those distributions for 2009 unless the Participant or Beneficiary chooses not to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to stop receiving the distributions described in the preceding sentence. In addition, notwithstanding Section 5.6(a)(3) of the Plan, and solely for the purpose of applying the direct rollover provisions of the Plan, the Board shall only offer direct rollover of 2009 RMDs and Extended 2009 RMDs that are received by a Participant or Beneficiary to the extent such distributions that would be Eligible Rollover Distributions without regard to Code section 401(a)(9)(H).

5.3 Death Benefit Distributions. Upon the death of the Participant, the Participant's Beneficiary may elect to receive the Participant's Account Balance in any form permitted under Section 5.2. However, if the Beneficiary of the Participant is the Participant's estate, the benefit will be payable only in a single lump sum. Such Beneficiary may also designate his or her own beneficiary, or if none is designated, the Beneficiary's estate will receive any benefits payable upon the Beneficiary's death. Notwithstanding any other provision in the Plan to the contrary, distributions upon the death of a Participant shall be made in accordance with the following requirements and shall otherwise comply with Code section 401(a)(9) and the regulations thereunder, as applicable to a governmental plan as defined in Code section 414(d), including any minimum distribution incidental benefit requirements.

- (a) If the designated Beneficiary is not the Participant's surviving spouse, distributions after the Participant's death must either (1) begin to be distributed no later than December 31st of the calendar year immediately following the year of the Participant's death, payable over a period not to exceed the Beneficiary's life expectancy; or (2) be distributed no later than December 31st of the calendar year containing the fifth anniversary of the Participant's death.
- (b) If the designated Beneficiary is the Participant's surviving spouse, distributions after the Participant's death must begin to be distributed by the later of December 31st of the calendar year immediately following the year of the Participant's death or December 31st of the calendar year in which the Participant would have

attained age 70 ½. Payments to a surviving spouse must be made over a period not to exceed the surviving spouse's life expectancy. Alternatively, the surviving spouse may elect to receive a total distribution of the Participant's Account Balance by no later than December 31st of the calendar year containing the fifth anniversary of the Participant's death.

- (c) If required minimum distributions under Code section 401(a)(9) have begun prior to the death of the Participant, the remaining portion of the Participant's Account Balance shall be distributed to the Beneficiary at least as rapidly as under the method of distribution in effect prior to the Participant's death.

5.4 Unforeseeable Emergency Distributions. If the Participant has an unforeseeable emergency before Severance from Employment, the Participant may elect to receive a lump sum distribution equal to an amount not to exceed the amount reasonably necessary to satisfy the emergency need, which may include amounts necessary to pay federal, state or local income taxes or penalties reasonably anticipated to result from the distribution, as determined by the Administrator.

For this purpose, an unforeseeable emergency is defined as a severe financial hardship of the Participant resulting from an illness or accident of the Participant, the Participant's spouse or dependents (as defined in Code section 152(a) without regard to Code section 152(b)(1), (b)(2) and (d)(1)(B)); loss of the Participant's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of natural disaster); the need to pay for the funeral expenses of the Participant's spouse or dependent (as defined in Code section 152(a) without regard to Code section 152(b)(1), (b)(2) and (d)(1)(B)); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. For example, the imminent foreclosure of or eviction from the Participant's primary residence may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses, including nonrefundable deductibles, as well as for the cost of prescription drug medication, may constitute an unforeseeable emergency. Except as otherwise specifically provided in this Section 5.4, neither the purchase of a home nor the payment of college tuition is an unforeseeable emergency.

A distribution on account of unforeseeable emergency may not be made to the extent that such emergency is or may be relieved through reimbursement of compensation from insurance or otherwise, by liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship, or by cessation of deferrals under the Plan.

5.5 Distribution of Small Account Balances. Upon proper written request to the Administrator, a Participant may elect to receive a distribution of his or her total Account Balance in a lump sum if the Account Balance does not exceed \$5,000 (or the dollar limit under Code section 411(a)(11), if greater) without regard to amounts attributable to rollover contributions under Section 7.1, no Deferrals have been made for the Participant during the two-year period immediately prior to the date of distribution, and the Participant has not previously received a distribution of his or her Account Balance under this Section 5.5.

5.6 Direct Rollovers. Notwithstanding any provision of the Plan to the contrary, a Distributee shall be permitted to elect to have an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan in a direct rollover, at the time and in the manner prescribed by the Administrator.

- (a) An “Eligible Rollover Distribution” means any distribution of all or a portion of a Participant’s Account Balance, except that an Eligible Rollover Distribution does not include:
 - (1) any distribution that is one of series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and a designated Beneficiary, or for a specified period of 10 years or more;
 - (2) any distribution made under Section 5.4 as a result of an unforeseeable emergency; or
 - (3) any distribution to the extent such distribution is a required minimum distribution under Code section 401(a)(9).
- (b) An “Eligible Retirement Plan” means an individual retirement account described in Code section 408(a), an individual retirement annuity described in Code section 408(b), an annuity plan described in Code section 403(a), a qualified trust described in Code section 401(a), an eligible deferred compensation plan described in Code section 457(b) that is maintained by a governmental entity described in Code section 457(e)(1)(A), an annuity contract described in Code section 403(b), or a Roth IRA described in Code section 408A, that accepts the Distributee’s Eligible Rollover Distribution. However, for an Eligible Rollover Distribution to a designated Beneficiary other than the surviving spouse, an Eligible Retirement Plan is only an individual retirement account described in Code section 408(a) or an individual retirement annuity described in Code section 408(b) that is treated as an inherited IRA in accordance with Code section 402(c)(11).
- (c) A “Distributee” includes a Participant or former Participant or the Participant’s or former Participant’s designated Beneficiary. In addition, the Participant’s or former Participant’s spouse or former spouse are Distributees with regard to the interest of the spouse or former spouse.

5.7 Amount of Account Balance. For all purposes under the Plan, the amount of any payment under this Article 5 shall be based on the amount of the Account Balance on the preceding Valuation Date, plus Deferrals made to the Plan from the Valuation Date to the date of distribution.

ARTICLE 6

LOANS

This Plan does not permit loans from the Account Balances of Participants.

ARTICLE 7

ROLLOVERS AND TRANSFERS

- 7.1 Rollover Contributions to the Plan.** A Participant who is an Employee and who is entitled to receive an Eligible Rollover Distribution (as defined in Section 5.6(a) but excluding any after-tax employee contributions) from another eligible retirement plan (as defined in Code section 402(c)(8)) may request to have all or a portion of such Eligible Rollover Distribution paid to the Plan. The Administrator may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Code section 402 and to confirm that such plan is an eligible retirement plan within the meaning of Code section 402(c)(8).

The Plan shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan from any eligible retirement plan that is not an eligible governmental plan under Code section 457(b). In addition, the Plan shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan from any eligible retirement plan that is an eligible governmental plan under Code section 457(b).

- 7.2 Plan-to-Plan Transfers to the Plan.** Participants who are participants in another eligible governmental plan under Code section 457(b) may transfer assets to this Plan as provided in this Section 7.2, but only if the other plan provides for the direct transfer of each Participant's interest therein to the Plan. The Administrator may require such documentation from the other plan as it deems necessary to effectuate the transfer in accordance with Code section 457(e)(10) and Treas. Reg. section 1.457-10(b) and to confirm that the other plan is an eligible governmental plan as defined in Treas. Reg. section 1.457-2(f). The amount so transferred shall be credited to the Participant's Account Balance and shall be held, accounted for, administered and otherwise treated in the same manner as Deferrals by the Participant under the Plan, except that transferred amounts shall not be considered a Deferral under the Plan in determining the maximum deferral under Article 4.

- 7.3 Plan-to-Plan Transfers from the Plan.** Participants and Beneficiaries may elect to have all or any portion of their Account Balance transferred to another eligible governmental plan within the meaning of Code section 457(b) and Treas. Reg. section 1.457-2(f). A transfer is permitted for a Participant under this Section 7.3 only if the Participant has had a Severance from Employment with the Employer and is an employee of the entity that maintains the other eligible governmental plan. Further, a transfer is permitted only if the other eligible governmental plan provides for the acceptance of plan-to-plan transfers with respect to Participants and Beneficiaries and for each Participant or Beneficiary to have an amount deferred under the other plan immediately after the transfer at least equal to the amount transferred.

Upon the transfer of assets under this Section 7.3, the Plan's liability to pay benefits to the Participant or Beneficiary under this Plan shall be discharged to the extent of the amount so transferred. The Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section 7.3 (e.g., to confirm that the receiving plan is an eligible governmental plan and to assure that the

transfer is permitted under the receiving plan) or to effectuate the transfer pursuant to Treas. Reg. section 1.457-10(b).

- 7.4 Permissive Service Credit Transfers.** A Participant may elect to have any portion of his or her Account Balance transferred to a tax-qualified, governmental defined benefit plan (as defined in Code section 414(d)) that provides for the acceptance of plan-to-plan transfers for the purchase of permissive service credit (as defined in Code section 415(n)(3)(A) under the receiving governmental defined benefit plan or a repayment to which Code section 415 does not apply by reason of Code section 415(k)(3). A transfer for such purpose may be made before the Participant has had a Severance from Employment.

ARTICLE 8

ADMINISTRATION

This Plan shall be administered by the Administrator, as directed by the Board, in accordance with Code section 457 and applicable regulations thereunder. The Board shall have the authority to make all discretionary decisions affecting the rights or benefits of the Participants which may be required in administration of this Plan. The Board's decisions shall be afforded the maximum deference permitted by applicable law. The Board shall exercise all rights, powers and duties granted to it by law and as necessary to administer the Plan. The Board shall approve or disapprove Investment Providers and may contract with Investment Providers to offer investment products under the Plan and provide services to the Plan as the Board deems appropriate.

The Board may delegate specific duties and responsibilities under the Plan, including by contracting with an administrative service provider to perform specific, nondiscretionary administrative functions under the Plan, including the maintenance of Participants' Account Balances, the provision of periodic reports on the status of each Account Balance, the disbursement of benefits on behalf of the Board in accordance with the terms of this Plan, and the maintenance of Beneficiary designations. The Board shall supervise the operation of the Plan, maintain records and supply information to the Participants or other parties.

ARTICLE 9

TRUST FUND

- 9.1 Establishment of Trust.** The assets of the Plan, including all Employee deferred Compensation contributions, property, rights purchased with deferred Compensation, and all income attributable to such assets, are held in trust by the Board for the exclusive benefit of participating Employees and their Beneficiaries. The terms of the Trust Fund under this Section 9.1 must make it impossible, prior to the satisfaction of all liabilities with respect to the Accounts of Participants and Beneficiaries, for any part of the assets or income of the contracts to be used for, or diverted to, any purpose other than for the exclusive benefit of the Participants and Beneficiaries of the Plan and Trust. The Trust Fund shall be established pursuant to a written agreement that constitutes a valid trust under the laws of the State of North Dakota. The trust is intended to be exempt from taxation under Code sections 457(g) and 501(a).
- 9.2 Trustee.** The Board shall be the Trustee for the Plan, unless the Board duly appoints another individual or entity to serve as trustee and such individual or entity agrees to act in that capacity hereunder. The Trustee shall ensure that all investments, amounts, property and rights held under the Trust Fund are held for the exclusive benefit of Participants and their Beneficiaries. The Trust Fund shall be liable to pay benefits under this Plan only to the extent of amounts that are available under the investment products selected by Participants and Beneficiaries, and neither the Board nor Employers shall be responsible for the investment or performance results of such investment products.
- 9.3 Specific Powers and Duties.** The Board shall:
- (a) Exercise exclusive authority to invest and manage assets of the Plan. However, the Board may permit Participants to direct and control the investment of their contributions, together with accumulated earnings, among the investment options established by the Board.
 - (b) Establish and adopt a statement of investment objectives and policies setting forth the manner and parameters of the investment of the assets of the Plan. The statement of investment objectives and policies shall be established in a manner consistent with the purposes of the Plan. The Board shall monitor the performance of the investments of the Plan to ensure such remain consistent with the investment policy established by the Board.
 - (c) Establish an administrative budget sufficient to perform the duties under the Plan and to draw upon authorized sources to fund the budget.
 - (d) Pay Plan benefits and related taxes from the assets of the Plan.
 - (e) Obtain by employment or contract all the services necessary or appropriate to administer the Plan, including actuarial, auditing, custodial, investment, legal and recordkeeping services.

- (f) Procure and dispose of the goods and property of the Plan necessary for its proper administration.
- (g) Represent the Employers in all matters concerning the administration of the Plan.
- (h) Have full power and authority to adopt rules and regulations for the administration of the Plan and to interpret, alter, amend, or revoke any rules and rules and regulations so adopted.

9.4 **Accounting.** For accounting purposes, the Board will maintain a summary of the individual Account Balances of all Participants of the Plan whose benefits have not been annuitized. The accounting summary shall be identified as the general account of the North Dakota Section 457 Companion Plan and Trust and will reflect from time to time the total deferred liability of the Plan as well as the individual balances for all Participants of the Plan.

ARTICLE 10

MISCELLANEOUS

- 10.1** **Nonassignability.** Except as provided in Sections 10.2 and 10.3, the interests of each Participant or Beneficiary under this Plan are not subject to the claims of creditors. Participants and Beneficiaries shall not have any right to sell, assign, transfer or otherwise convey the right to receive any payments hereunder or any interest under the Plan, which payments and interest are expressly declared to be nonassignable and nontransferable. Nor shall any unpaid benefits be subject to attachment, garnishment or execution for the payment of any debts or judgments or be transferable by operation of law in the event of bankruptcy or insolvency of the Participant or any other person.
- 10.2** **Domestic Relations Orders.** A Participant's benefit may be subject to division under a domestic relations orders between the Participant and the alternate payee (as defined in Code section 414(p)(8)) if the order is determined to be a qualified domestic relations order (as defined in Code section 414(p)(1) and modified by Code section 414(p)(11)). The Administrator shall establish reasonable procedures for determining the qualified status of a domestic relations order and for effectuating distribution pursuant to a qualified domestic relations order. Distribution shall be made to an alternate payee in a single lump sum pursuant to a domestic relations order within 21 days after the later of the date the order is deemed to be qualified pursuant to the Plan policies and procedures or the date the order is entered by the court, without regard to whether the Participant is eligible for a distribution of benefits under the Plan.
- 10.3** **IRS Levy.** Notwithstanding Section 10.1, the Administrator may pay from a Participant's or Beneficiary's Account Balance the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.

- 10.4 Mistaken Contributions.** If any contribution is made to the Plan by a good faith mistake of fact, then within one year after payment of the contribution, and upon receipt in good order of a proper request approved by the Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the Participant or, to the extent required or permitted by the Administrator, to the Employer.
- 10.5 Payments to Minors and Incompetents.** If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Investment Provider, benefits will be paid to such person as the Investment Provider may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.
- 10.6 Distributee Cannot be Located.** The Investment Provider shall make all reasonable attempts to determine the identity and address of a Participant or Participant's Beneficiary entitled to benefits under the Plan. If the Investment Provider is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the Trust Fund shall continue to hold the benefits due such person.
- 10.7 Applicable Law.** This Plan and Trust shall be construed under the laws of the State of North Dakota with the intent that it meets the requirements of an eligible deferred compensation plan under Code section 457(b), as amended. The provisions of this Plan and Trust shall be interpreted whenever possible in conformity with the requirements of that Code section.
- 10.8 Gender and Number.** The masculine pronoun, whenever used herein, shall include the feminine pronoun, and the singular shall include the plural, except where context requires otherwise.

ARTICLE 11

AMENDMENT OR TERMINATION

- 11.1 Amendment or Termination of the Plan.** The Board may terminate (with 60 days notice to the Employer and the Participants and Beneficiaries) or amend the provisions of this Plan at any time; provided, however, no termination or amendment shall affect the rights of a Participant or a Beneficiary to the receipt of benefits with respect to any Compensation deferred before termination or amendment, as adjusted for the investment experience of the Participant's or Beneficiary's Account Balance prior to or subsequent to the termination or amendment of the Plan. An Employer who has entered into agreement with the Board to participate in this Plan may, with 60 days notice to the Board and their Participants and Beneficiaries, terminate their participation agreement in a manner consistent with and in the same manner as described in the preceding sentence.

11.2 Distribution Upon Termination. Upon termination of the Plan, the Board shall direct distribution of the assets of the Plan and Trust Fund to Participants and Beneficiaries in a manner that is consistent with and satisfies the provisions of Section 5.2 as soon as administratively practicable after a resolution to terminate the Plan is adopted.

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NORTH DAKOTA STATE DEFERRED COMPENSATION PROGRAM

SECTION 457 DEFERRED COMPENSATION PLAN AND TRUST

Amended and Restated effective July 1, 2015

Adoption Resolution

Resolved, that effective July 1, 2015, the State of North Dakota has adopted the attached amended and restated Section 457 Plan. The Plan is intended to satisfy the requirements of Section 457(b) of the Internal Revenue Code of 1986, as amended, and its associated regulations.

Signature

Date

Title

NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM

SECTION 457 DEFERRED COMPENSATION PLAN

ARTICLE 1

PURPOSE

The North Dakota Public Employees Retirement System Board (“Board”) hereby amends, reestablishes and reaffirms the Deferred Compensation Plan and Trust (“the Plan”). The Plan consists of the provisions set forth in this document. The primary purpose of this Plan is to retain present employees and attract new employees for participating employers by providing increased retirement income and other deferred benefits to employees and their beneficiaries in accordance with the provisions of section 457 of the Internal Revenue Code and amendments thereto. This Plan shall be an agreement solely between the employer and participating employees. The Plan is intended to satisfy the requirements of an eligible deferred compensation plan under Internal Revenue Code section 457(b) and shall be interpreted as such.

Nothing contained in this Plan shall be deemed to constitute an employment contract or agreement for services between participating employees and their employer nor shall it be deemed to give a participating employee any right to be retained in the employ of, or under contract to, an employer. Nothing herein shall be construed to modify the terms of any employment contract or agreement for services between participating employees and their employer as this Plan is intended to be a supplement thereto.

ARTICLE 2

DEFINITIONS

- 2.1 **Account Balance.** The bookkeeping account maintained with respect to each Participant which reflects the value of the deferred Compensation credited to the Participant, including the Participant’s Deferrals, the earnings or losses of the Trust Fund (net of Trust Fund expenses) allocable to the Participant, and any distribution made to the Participant or the Participant’s Beneficiary. The Account Balance also includes any account established under Article 7 for rollover contributions and plan-to-plan transfers made for a Participant, the account established for a Beneficiary after the Participant’s death, and any account established for an alternate payee (as defined in Code section 414(p)(8)).
- 2.2 **Administrator.** The North Dakota Public Employees Retirement System Board shall serve as the Plan’s Administrator; however, the Administrator may designate an entity, person or persons as an administrative services provider to carry out certain nondiscretionary, administrative functions under the Plan, as described in Article 8.

- 2.3 **Beneficiary.** The person or persons designated by the Participant who is entitled to receive benefits under the Plan after the death of a Participant. If no person is designated by the Participant or if the designated Beneficiary predeceases the Participant, the Participant's estate shall be the Beneficiary.
- 2.4 **Board.** The North Dakota Public Employees Retirement System Board.
- 2.5 **Code.** The Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to sections of the Code are to such sections as they may from time to time be amended or renumbered.
- 2.6 **Compensation.** All cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses and overtime pay, that is includible in the Employee's gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under section 125, 132(f), 401(k), 403(b) or 457(b) of the Code. Compensation also includes amounts paid to a Participant who has had a Severance from Employment, other than retirement or severance incentive payments, to the extent such amounts are paid by the later of 2½ months after the Participant's Severance from Employment or the end of the calendar year in which the Severance from Employment occurred, in accordance with Treas. Reg. section 1.457-(4)(d)(1). Effective for years beginning after December 31, 2008, Compensation shall include military differential wage payments, as defined in Code section 3401(h).
- 2.7 **Deferral(s).** The amount of Compensation deferred in any calendar year, including unused annual leave, sick leave and back pay, but excluding amounts payable under any bona fide vacation leave, sick leave, compensation time, severance pay, disability pay or death benefit plans of the Employer.
- 2.8 **Employee.** Each person, whether appointed or elected, employed by the Employer as a common law employee who performs services for the Employer for which Compensation is paid, and who has been determined by the Employer to be eligible to participate in the Plan in accordance with Section 3.1. Employee does not include an independent contractor.
- 2.9 **Employer.** The State of North Dakota, which includes any of the State's departments, divisions, agencies or institutions, as well as any city, county, or other political subdivision, agency or instrumentality of the State, within the meaning of section 414(d) of the Code and section 3(32) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") that enters into an agreement with the Board to participate in the Plan.
- 2.10 **Includible Compensation.** An Employee's actual wages in box 1 of Form W-2 for a year for services to the Employer, but subject to a maximum of \$200,000 (or such higher maximum as may apply under Code section 401(a)(17)), and increased (up to the dollar maximum) by any compensation reduction election under section 125, 132(f), 401(k), 403(b) or 457(b) of the Code. Effective for years beginning after December 31, 2008, Compensation shall include military differential wage payments, as defined in Code

section 3401(h). Includible Compensation is determined without regard to any community property laws.

- 2.11 **Investment Provider.** Any organization that has been approved by the Board to provide investment products under the Plan.
- 2.12 **Normal Retirement Age.** Age 70 ½, or if later, the date the employee incurs a Severance from Employment. For purposes of the special section 457 catch-up limitation under Section 4.3, a Participant may designate, in writing, a Normal Retirement age that is earlier than age 70 ½ but not earlier than the earliest age at which the Participant has a right to retire and receive, under the applicable defined benefit pension plan of the Employer, immediate retirement benefits without actuarial or other reduction because of retirement before some later specified age. If the Participant is not eligible to receive benefits under a defined benefit pension plan maintained by the Employer, the Participant's designated Normal Retirement Age may not be earlier than age 55.
- 2.13 **Participant.** An individual who is currently deferring Compensation, or who has previously deferred Compensation under the Plan by salary reduction and who has not received a distribution of his or her entire benefit under the Plan.
- 2.14 **Plan.** The North Dakota Section 457(b) Deferred Compensation Plan and Trust, as amended or restated from time to time.
- 2.15 **Plan Year.** The calendar year.
- 2.16 **Severance from Employment.** The date 31 days after the Employee dies, retires or otherwise has a severance from employment with the Employer, as determined by the Administrator (and taking into account guidance issued under the Code).
- 2.17 **Trust Fund.** The trust fund created under and subject to the provisions in Article 9.
- 2.18 **Trustee.** The Board, or such other trustee duly appointed and currently serving in accordance with the provisions of Article 9.
- 2.19 **Valuation Date.** Each business day or such other valuation date as specified by the Investment Provider for a particular investment product, or as otherwise designated by the Board.

ARTICLE 3

PARTICIPATION AND CONTRIBUTIONS

- 3.1 **Eligibility.** Each Employee who works a minimum of 20 hours per week for 20 or more weeks per year, who is at least age 18 and who fills a permanent position that is regularly funded and not of limited duration shall be eligible to participate in the Plan and may defer Compensation hereunder immediately upon satisfying the eligibility requirements under this Section 3.1.

- 3.2 Election Required for Participation.** An Employee may elect to become a Participant by executing an election to defer a portion of his or her Compensation (and have that amount contributed as Deferrals on his or her behalf) and submitting it to the Administrator. This participation election shall be made pursuant to a deferral agreement under which the Employee agrees to be bound by all the terms and conditions of the Plan. The Administrator may establish a minimum deferral amount, and may change such minimums from time to time. Subject to the limits of Article 4, a Participant must currently defer a minimum of \$25 per month. The participation election shall include selection of an Investment Provider. Any such election shall remain in effect until a new election is submitted.
- 3.3 Commencement of Participation.** An Employee shall become a Participant as soon as administratively practicable following the date the Employee files a participation election pursuant to Section 3.2. Such election shall become effective no earlier than the calendar month following the month in which the election is made, or such other date as may be permitted under the Code.
- 3.4 Information Provided by the Participant.** Each Employee enrolling in the Plan should provide to the Administrator at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the Administrator to administer the Plan, including, without limitation, whether the Employee is a participant in any other eligible plan under Code section 457(b).
- 3.5 Contributions Made Promptly.** Deferrals by the Participant under the Plan shall be transferred to the Trust Fund within a period that is not longer than is reasonable for the proper administration of the Participant's Account Balance.
- 3.6 Amendment of Deferral Election.** Subject to other provisions of the Plan, a Participant may at any time revise his or her participation election, including a change of the amount of his or her Deferrals, as well as his or her investment direction and his or her designated Beneficiary through the Investment Provider(s). However, the Board retains the authority to limit the frequency of changes to the amount of Deferrals, applied uniformly to all Employees, as it deems appropriate. Unless the election specifies a later effective date, a change in the amount of Deferrals shall take effect as of the first day of the next following month or as soon as administratively practicable if later. A change in the investment direction shall take effect as of the date provided by the Administrator on a uniform basis for all Employees. A change in the Beneficiary designation shall take effect when the election is accepted by the Investment Provider.
- 3.7 Leave of Absence.** Unless an election is otherwise revised, if a Participant is absent from work by leave of absence, Deferrals under the Plan shall continue to the extent that Compensation continues. If a Severance from Employment is determined to have occurred, the Participant may elect to receive a distribution of benefits as provided for in Article 5.
- 3.8 Disability.** A disabled Participant may elect to make Deferrals during any portion of the period of his or her disability to the extent that he or she has actual Compensation (not imputed compensation and not disability benefits) from which to make contributions to the Plan and has not had a Severance from Employment.

ARTICLE 4

LIMITATIONS ON AMOUNTS DEFERRED

- 4.1 Basic Annual Limitation.** The maximum annual amount of Deferrals under the Plan for any calendar year shall not exceed the lesser of (1) the Applicable Dollar Amount or (2) the Participant's Includible Compensation for the calendar year. The Applicable Dollar Amount is the amount set forth under Code section 457(e)(15), as indexed in accordance with Code section 415(d).
- 4.2 Age 50 Catch-up Contributions.** A Participant who will attain age 50 or more by the end of the calendar year is permitted to make an additional annual amount of Deferrals, up to the maximum age 50 catch-up Deferrals for the year. The maximum annual dollar amount of the age 50 catch-up Deferrals for a year is the amount set forth under Code section 414(v)(2), as indexed in accordance with Code section 414(v)(2)(C) and Code section 415(d).
- 4.3 Special Section 457 Catch-up Limitation.** If the applicable year is one of the Participant's last three consecutive calendar years ending before the year in which the Participant attains Normal Retirement Age and the amount determined under this Section 4.3 exceeds the amount computed under Section 4.1 and 4.2, then the annual limit on Deferrals under this Article 4 shall be the lesser of:
- (a) An amount equal to two times the Applicable Dollar Amount under Section 4.1 for such year; or
 - (b) The sum of:
 - (1) An amount equal to the aggregate limit under Section 4.1 for the current year plus each prior calendar year beginning after December 31, 2001 during which the Participant was an Employee under the Plan, minus the aggregate amount of Compensation that the Participant deferred under the Plan during such years, plus
 - (2) An amount equal to the aggregate limit under Code section 457(b)(2) for each prior calendar year beginning after December 31, 1978 and before January 1, 2002 during which the Participant was an Employee (determined without regard to Sections 4.2 and 4.3), minus the aggregate contributions to Pre-2002 Coordination Plans (as defined in Section 4.4(c)) for such years.

However, in no event can the deferred amount be more than the Participant's Compensation for the year.

- 4.4 Special Rules.** For purposes of this Article 4, the following rules shall apply:

- (a) If the Participant is or has been a participant in one or more other eligible plans within the meaning of Code section 457(b), then the Plan and all such other plans shall be considered one plan for the purposes of applying the limitation in this Article 4. For this purpose, the Administrator shall take into account any other such eligible plan maintained by the Employer and shall also take into account

any other such eligible plan for which the Administrator receives from the Participant sufficient information concerning his or her participation in such other plan.

- (b) In applying Section 4.3, a year shall be taken into account only if the Participant was eligible to participate in the Plan during all or a portion of the year and Compensation deferred, if any, under the Plan was subject to the maximum amount described in Section 4.1 or any other plan limit required by Code section 457(b).
- (c) For purposes of Section 4.3(b)(2), the term “contributions to Pre-2002 Coordination Plans” means any employer contribution, salary reduction or elective contribution under any other eligible Code section 457(b) plan, or a salary reduction or elective contribution under any other eligible Code section 401(k) qualified cash or deferred arrangement, Code section 402(h)(1)(B) simplified employee pension (SARSEP), Code section 403(b) annuity contract and Code section 408(p) simple retirement account, or under any plan for which a deduction is allowed because of a contribution to an organization described in Code section 501(c)(18), including plans, arrangements or accounts maintained by the Employer or any employer for whom the Participant performed services. However, the contributions for any calendar year are only taken into account for purposes of Section 4.3(b)(2) to the extent that the total of such contributions does not exceed the aggregate limit referred to in Code section 457(b)(2) for that year.
- (d) For purposes of Sections 4.1, 4.2 and 4.3, an individual is treated as not having deferred compensation under a plan for a prior taxable year to the extent Excess Deferrals (as defined in Section 4.5) under the plan are distributed. To the extent that the combined deferrals for pre-2002 years exceeded the maximum deferral limitations, the amount is treated as an Excess Deferral for those prior years.

4.5 Correction of Excess Deferrals. If the annual amount of Deferrals on behalf of a Participant for any calendar year exceeds the limitations described in this Article 4, or the annual amount of Deferrals on behalf of a Participant for any calendar year exceeds the limitations described in this Article 4 when combined with other amounts deferred by the Participant under another eligible deferred compensation plan under Code section 457(b) for which the Participant provides information that is accepted by the Administrator, then the annual amount of Deferrals, to the extent in excess of the applicable limitation (“Excess Deferral”), and adjusted for any income or loss in value, if any, allocable thereto, shall be distributed to the Participant.

4.6 Protection of Persons Who Serve in a Uniformed Service. An Employee whose employment is interrupted by qualified military service under Code section 414(u) or who is on a leave of absence for qualified military service under Code section 414(u) may elect to make additional Deferrals upon resumption of employment with the Employer equal to the maximum amount of annual Deferrals that the Employee could have elected during that period if the Employee’s employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the Deferrals, if any, actually made for the Employee during the period of the interruption or leave. This right applies for five years following the resumption of

employment, or if sooner, for a period equal to three times the period of the interruption or leave.

In addition, effective for deaths occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code section 414(u)(5)), this Plan shall provide all applicable benefits required in accordance with Code section 401(a)(37), but the provisions of Code section 414(u)(9) shall not apply to this Plan.

ARTICLE 5

DISTRIBUTION OF BENEFITS

5.1 Benefit Distributions. A Participant's Account Balance may not be paid to the Participant (or, if applicable, the Participant's Beneficiary), until one of the following events has occurred:

- (a) the Participant's Severance from Employment;
- (b) the Participant's death;
- (c) an unforeseeable emergency, within the meaning of and subject to Section 5.4;
- (d) the Participant elects a small Account Balance distribution in accordance with Section 5.5.

If a Participant has a separate account attributable to rollover contributions to the Plan pursuant to Section 7.1, the Participant may at any time elect to receive a distribution of all or any portion of the amount held in the rollover account.

5.2 Benefit Distribution Election.

- (a) A Participant may elect to commence distribution of his or her Account Balance any time after Severance of Employment by filing an application for a distribution with the Administrator. However, in no event may distribution of benefits to the Participant commence later than April 1st of the year following the later of the year in which the Participant attains age 70 ½ or the year in which the Participant severs employment with the Employer. The amount of such required minimum distribution shall be determined in accordance with Code section 401(a)(9) and the regulations thereunder, as applicable to a governmental plan as defined in Code section 414(d).
- (b) A Participant (or, if applicable, the Participant's Beneficiary) may elect a distribution in the form of a lump sum or systematic distribution option as permitted under the terms of the investment product(s), or may elect a direct rollover to an eligible retirement plan as described in Section 5.6. In addition, the Participant's entire interest in the Plan must be distributed over the life of the Participant or the lives of the Participant and designated Beneficiary over a period not extending beyond the life expectancy of the Participant or the life expectancy

of the Participant and designated Beneficiary. Notwithstanding any other provision of the Plan, the elected form of distribution shall comply with required distribution rules under Code section 401(a)(9) and the regulations thereunder, as applicable to a governmental plan as defined in Code section 414(d), including any minimum distribution incidental benefit requirements.

- (c) Effective in 2009, notwithstanding subsections (a) and (b) above, a Participant (or, if applicable, the Participant's Beneficiary) who would have been required to receive required minimum distributions for 2009 but for the enactment of Code section 401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated Beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will receive those distributions for 2009 unless the Participant or Beneficiary chooses not to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to stop receiving the distributions described in the preceding sentence. In addition, notwithstanding Section 5.6(a)(3) of the Plan, and solely for the purpose of applying the direct rollover provisions of the Plan, the Board shall only offer direct rollover of 2009 RMDs and Extended 2009 RMDs that are received by a Participant or Beneficiary to the extent such distributions that would be Eligible Rollover Distributions without regard to Code section 401(a)(9)(H).

5.3 Death Benefit Distributions. Upon the death of the Participant, the Participant's Beneficiary may elect to receive the Participant's Account Balance in any form permitted under Section 5.2. However, if the Beneficiary of the Participant is the Participant's estate, the benefit will be payable only in a single lump sum. Such Beneficiary may also designate his or her own beneficiary, or if none is designated, the Beneficiary's estate will receive any benefits payable upon the Beneficiary's death. Notwithstanding any other provision in the Plan to the contrary, distributions upon the death of a Participant shall be made in accordance with the following requirements and shall otherwise comply with Code section 401(a)(9) and the regulations thereunder, as applicable to a governmental plan as defined in Code section 414(d), including any minimum distribution incidental benefit requirements.

- (a) If the designated Beneficiary is not the Participant's surviving spouse, distributions after the Participant's death must either (1) begin to be distributed no later than December 31st of the calendar year immediately following the year of the Participant's death, payable over a period not to exceed the Beneficiary's life expectancy; or (2) be distributed no later than December 31st of the calendar year containing the fifth anniversary of the Participant's death.
- (b) If the designated Beneficiary is the Participant's surviving spouse, distributions after the Participant's death must begin to be distributed by the later of December 31st of the calendar year immediately following the year of the Participant's death or December 31st of the calendar year in which the Participant would have

attained age 70 ½. Payments to a surviving spouse must be made over a period not to exceed the surviving spouse's life expectancy. Alternatively, the surviving spouse may elect to receive a total distribution of the Participant's Account Balance by no later than December 31st of the calendar year containing the fifth anniversary of the Participant's death.

- (c) If required minimum distributions under Code section 401(a)(9) have begun prior to the death of the Participant, the remaining portion of the Participant's Account Balance shall be distributed to the Beneficiary at least as rapidly as under the method of distribution in effect prior to the Participant's death.

5.4 Unforeseeable Emergency Distributions. If the Participant has an unforeseeable emergency before Severance from Employment, the Participant may elect to receive a lump sum distribution equal to an amount not to exceed the amount reasonably necessary to satisfy the emergency need, which may include amounts necessary to pay federal, state or local income taxes or penalties reasonably anticipated to result from the distribution, as determined by the Administrator.

For this purpose, an unforeseeable emergency is defined as a severe financial hardship of the Participant resulting from an illness or accident of the Participant, the Participant's spouse or dependents (as defined in Code section 152(a) without regard to Code section 152(b)(1), (b)(2) and (d)(1)(B)); loss of the Participant's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of natural disaster); the need to pay for the funeral expenses of the Participant's spouse or dependent (as defined in Code section 152(a) without regard to Code section 152(b)(1), (b)(2) and (d)(1)(B)); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. For example, the imminent foreclosure of or eviction from the Participant's primary residence may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses, including nonrefundable deductibles, as well as for the cost of prescription drug medication, may constitute an unforeseeable emergency. Except as otherwise specifically provided in this Section 5.4, neither the purchase of a home nor the payment of college tuition is an unforeseeable emergency.

A distribution on account of unforeseeable emergency may not be made to the extent that such emergency is or may be relieved through reimbursement of compensation from insurance or otherwise, by liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship, or by cessation of deferrals under the Plan.

5.5 Distribution of Small Account Balances. Upon proper written request to the Administrator, a Participant may elect to receive a distribution of his or her total Account Balance in a lump sum if the Account Balance does not exceed \$5,000 (or the dollar limit under Code section 411(a)(11), if greater) without regard to amounts attributable to rollover contributions under Section 7.1, no Deferrals have been made for the Participant during the two-year period immediately prior to the date of distribution, and the Participant has not previously received a distribution of his or her Account Balance under this Section 5.5.

5.6 Direct Rollovers. Notwithstanding any provision of the Plan to the contrary, a Distributee shall be permitted to elect to have an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan in a direct rollover, at the time and in the manner prescribed by the Administrator.

- (a) An “Eligible Rollover Distribution” means any distribution of all or a portion of a Participant’s Account Balance, except that an Eligible Rollover Distribution does not include:
 - (1) any distribution that is one of series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and a designated Beneficiary, or for a specified period of 10 years or more;
 - (2) any distribution made under Section 5.4 as a result of an unforeseeable emergency; or
 - (3) any distribution to the extent such distribution is a required minimum distribution under Code section 401(a)(9).
- (b) An “Eligible Retirement Plan” means an individual retirement account described in Code section 408(a), an individual retirement annuity described in Code section 408(b), an annuity plan described in Code section 403(a), a qualified trust described in Code section 401(a), an eligible deferred compensation plan described in Code section 457(b) that is maintained by a governmental entity described in Code section 457(e)(1)(A), an annuity contract described in Code section 403(b), or a Roth IRA described in Code section 408A, that accepts the Distributee’s Eligible Rollover Distribution. However, for an Eligible Rollover Distribution to a designated Beneficiary other than the surviving spouse, an Eligible Retirement Plan is only an individual retirement account described in Code section 408(a) or an individual retirement annuity described in Code section 408(b) that is treated as an inherited IRA in accordance with Code section 402(c)(11).
- (c) A “Distributee” includes a Participant or former Participant or the Participant’s or former Participant’s designated Beneficiary. In addition, the Participant’s or former Participant’s spouse or former spouse are Distributees with regard to the interest of the spouse or former spouse.

5.7 Amount of Account Balance. For all purposes under the Plan, the amount of any payment under this Article 5 shall be based on the amount of the Account Balance on the preceding Valuation Date, plus Deferrals made to the Plan from the Valuation Date to the date of distribution.

ARTICLE 6

LOANS

This Plan does not permit loans from the Account Balances of Participants.

ARTICLE 7

ROLLOVERS AND TRANSFERS

- 7.1 Rollover Contributions to the Plan.** A Participant who is an Employee and who is entitled to receive an Eligible Rollover Distribution (as defined in Section 5.6(a) but excluding any after-tax employee contributions) from another eligible retirement plan (as defined in Code section 402(c)(8)) may request to have all or a portion of such Eligible Rollover Distribution paid to the Plan. The Administrator may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Code section 402 and to confirm that such plan is an eligible retirement plan within the meaning of Code section 402(c)(8).

The Plan shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan from any eligible retirement plan that is not an eligible governmental plan under Code section 457(b). In addition, the Plan shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan from any eligible retirement plan that is an eligible governmental plan under Code section 457(b).

- 7.2 Plan-to-Plan Transfers to the Plan.** Participants who are participants in another eligible governmental plan under Code section 457(b) may transfer assets to this Plan as provided in this Section 7.2, but only if the other plan provides for the direct transfer of each Participant's interest therein to the Plan. The Administrator may require such documentation from the other plan as it deems necessary to effectuate the transfer in accordance with Code section 457(e)(10) and Treas. Reg. section 1.457-10(b) and to confirm that the other plan is an eligible governmental plan as defined in Treas. Reg. section 1.457-2(f). The amount so transferred shall be credited to the Participant's Account Balance and shall be held, accounted for, administered and otherwise treated in the same manner as Deferrals by the Participant under the Plan, except that transferred amounts shall not be considered a Deferral under the Plan in determining the maximum deferral under Article 4.

- 7.3 Plan-to-Plan Transfers from the Plan.** Participants and Beneficiaries may elect to have all or any portion of their Account Balance transferred to another eligible governmental plan within the meaning of Code section 457(b) and Treas. Reg. section 1.457-2(f). A transfer is permitted for a Participant under this Section 7.3 only if the Participant has had a Severance from Employment with the Employer and is an employee of the entity that maintains the other eligible governmental plan. Further, a transfer is permitted only if the other eligible governmental plan provides for the acceptance of plan-to-plan transfers with respect to Participants and Beneficiaries and for each Participant or Beneficiary to have an amount deferred under the other plan immediately after the transfer at least equal to the amount transferred.

Upon the transfer of assets under this Section 7.3, the Plan's liability to pay benefits to the Participant or Beneficiary under this Plan shall be discharged to the extent of the amount so transferred. The Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section 7.3 (e.g., to confirm that the receiving plan is an eligible governmental plan and to assure that the

transfer is permitted under the receiving plan) or to effectuate the transfer pursuant to Treas. Reg. section 1.457-10(b).

- 7.4 Permissive Service Credit Transfers.** A Participant may elect to have any portion of his or her Account Balance transferred to a tax-qualified, governmental defined benefit plan (as defined in Code section 414(d)) that provides for the acceptance of plan-to-plan transfers for the purchase of permissive service credit (as defined in Code section 415(n)(3)(A) under the receiving governmental defined benefit plan or a repayment to which Code section 415 does not apply by reason of Code section 415(k)(3). A transfer for such purpose may be made before the Participant has had a Severance from Employment.

ARTICLE 8

ADMINISTRATION

This Plan shall be administered by the Administrator, as directed by the Board, in accordance with Code section 457 and applicable regulations thereunder. The Board shall have the authority to make all discretionary decisions affecting the rights or benefits of the Participants which may be required in administration of this Plan. The Board's decisions shall be afforded the maximum deference permitted by applicable law. The Board shall exercise all rights, powers and duties granted to it by law and as necessary to administer the Plan. The Board shall approve or disapprove Investment Providers and may contract with Investment Providers to offer investment products under the Plan and provide services to the Plan as the Board deems appropriate.

The Board may delegate specific duties and responsibilities under the Plan, including by contracting with an administrative service provider or providers to perform specific, nondiscretionary administrative functions under the Plan, including the maintenance of Participants' Account Balances, the provision of periodic reports on the status of each Account Balance, the disbursement of benefits on behalf of the Board in accordance with the terms of this Plan, the maintenance of Beneficiary designations and the selection of investment products offered to Participants. The Board shall supervise the operation of the Plan, maintain records and supply information to the Participants or other parties.

ARTICLE 9

TRUST FUND

9.1 Establishment of Trust. The assets of the Plan, including all Employee deferred Compensation contributions, property, rights purchased with deferred Compensation, and all income attributable to such assets, are held in insurance annuity contracts or custodial account contracts that have been entered into with one or more Investment Providers by the Board that meet the exclusive benefit and other requirements of Code sections 457(g) and 401(f). Under the terms of the insurance annuity and custodial account contracts under this Section 9.1 it shall be impossible, prior to the satisfaction of all liabilities with respect to the Accounts of Participants and Beneficiaries, for any part of the assets or income of the contracts to be used for, or diverted to, any purpose other than for the exclusive benefit of the Participants and Beneficiaries of the Plan and Trust. For purposes of this Article 9, custodial accounts and annuity contracts shall be treated as held in trust so long as such custodial accounts and annuity contracts satisfy the requirements set forth in Treas. Reg. section 1.457-8(a)(3).

Assets of the Plan held in insurance annuity or custodial account contracts that do not meet the exclusive benefit requirements of the preceding paragraph shall be held in trust by the Board for the exclusive benefit of participating Employees and their Beneficiaries. The terms of the Trust Fund under this Section 9.1 must make it impossible, prior to the satisfaction of all liabilities with respect to the Accounts of Participants and Beneficiaries, for any part of the assets or income of the contracts to be used for, or diverted to, any purpose other than for the exclusive benefit of the Participants and Beneficiaries of the Plan and Trust. The Trust Fund shall be established pursuant to a written agreement that constitutes a valid trust under the laws of the State of North Dakota. The trust is intended to be exempt from taxation under Code sections 457(g) and 501(a).

9.2 Trustee. The Board shall be the Trustee for the Plan, unless the Board duly appoints another individual or entity to serve as trustee and such individual or entity agrees to act in that capacity hereunder. The Trustee shall ensure that all investments, amounts, property and rights held under the Trust Fund are held for the exclusive benefit of Participants and their Beneficiaries. The Trust Fund shall be liable to pay benefits under this Plan only to the extent of amounts that are available under the investment products selected by Participants and Beneficiaries, and neither the Board nor Employers shall be responsible for the investment or performance results of such investment products.

9.3 Specific Powers and Duties. The Board shall:

- (a) Select Investment Providers(s) who offer investment products from which Participants may choose to invest their Account Balances. The Board permits Participants to direct and control the investment of their contributions, together with accumulated earnings, among the investment options offered by the Investment Provider(s).
- (b) Establish an administrative budget sufficient to perform the duties under the Plan and to draw upon authorized sources to fund the budget.

- (c) Direct Investment Providers to pay Plan benefits and related taxes from the assets of the Plan.
- (d) Obtain by employment or contract all the services necessary or appropriate to administer the Plan, including actuarial, auditing, custodial, investment, legal and recordkeeping services.
- (e) Represent the Employers in all matters concerning the administration of the Plan.
- (f) Have full power and authority to adopt rules and regulations for the administration of the Plan and to interpret, alter, amend, or revoke any rules and rules and regulations so adopted.

9.4 Accounting. For accounting purposes, the Board will maintain a summary of the individual Account Balances of all Participants of the Plan whose benefits have not been annuitized. The accounting summary shall be identified as the general account of the North Dakota Section 457 Deferred Compensation Plan and Trust and will reflect from time to time the total deferred liability of the Plan as well as the individual balances for all Participants of the Plan.

ARTICLE 10

MISCELLANEOUS

10.1 Nonassignability. Except as provided in Sections 10.2 and 10.3, the interests of each Participant or Beneficiary under this Plan are not subject to the claims of creditors. Participants and Beneficiaries shall not have any right to sell, assign, transfer or otherwise convey the right to receive any payments hereunder or any interest under the Plan, which payments and interest are expressly declared to be nonassignable and nontransferable. Nor shall any unpaid benefits be subject to attachment, garnishment or execution for the payment of any debts or judgments or be transferable by operation of law in the event of bankruptcy or insolvency of the Participant or any other person.

10.2 Domestic Relations Orders. A Participant's benefit may be subject to division under a domestic relations orders between the Participant and the alternate payee (as defined in Code section 414(p)(8)) if the order is determined to be a qualified domestic relations order (as defined in Code section 414(p)(1) and modified by Code section 414(p)(11)). The Administrator shall establish reasonable procedures for determining the qualified status of a domestic relations order and for effectuating distribution pursuant to a qualified domestic relations order. Distribution shall be made to an alternate payee in a single lump sum pursuant to a domestic relations order within 21 days after the later of the date the order is deemed to be qualified pursuant to the Plan policies and procedures or the date the order is entered by the court, without regard to whether the Participant is eligible for a distribution of benefits under the Plan.

- 10.3 IRS Levy.** Notwithstanding Section 10.1, the Administrator may pay from a Participant's or Beneficiary's Account Balance the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.
- 10.4 Mistaken Contributions.** If any contribution is made to the Plan by a good faith mistake of fact, then within one year after payment of the contribution, and upon receipt in good order of a proper request approved by the Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the Participant or, to the extent required or permitted by the Administrator, to the Employer.
- 10.5 Payments to Minors and Incompetents.** If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Investment Provider, benefits will be paid to such person as the Investment Provider may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.
- 10.6 Distributee Cannot be Located.** The Investment Provider shall make all reasonable attempts to determine the identity and address of a Participant or Participant's Beneficiary entitled to benefits under the Plan. If the Investment Provider is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the Trust Fund shall continue to hold the benefits due such person.
- 10.7 Applicable Law.** This Plan and Trust shall be construed under the laws of the State of North Dakota with the intent that it meets the requirements of an eligible deferred compensation plan under Code section 457(b), as amended. The provisions of this Plan and Trust shall be interpreted whenever possible in conformity with the requirements of that Code section.
- 10.8 Gender and Number.** The masculine pronoun, whenever used herein, shall include the feminine pronoun, and the singular shall include the plural, except where context requires otherwise.

ARTICLE 11

AMENDMENT OR TERMINATION

- 11.1 Amendment or Termination of the Plan.** The Board may terminate (with 60 days notice to the Employer and the Participants and Beneficiaries) or amend the provisions of this Plan at any time; provided, however, no termination or amendment shall affect the rights of a Participant or a Beneficiary to the receipt of benefits with respect to any Compensation deferred before termination or amendment, as adjusted for the investment experience of the Participant's or Beneficiary's Account Balance prior to or subsequent

to the termination or amendment of the Plan. An Employer who has entered into agreement with the Board to participate in this Plan may, with 60 days notice to the Board and their Participants and Beneficiaries, terminate their participation agreement in a manner consistent with and in the same manner as described in the preceding sentence.

11.2 Distribution Upon Termination. Upon termination of the Plan, the Board shall direct distribution of the assets of the Plan and Trust Fund to Participants and Beneficiaries in a manner that is consistent with and satisfies the provisions of Section 5.2 as soon as administratively practicable after a resolution to terminate the Plan is adopted.

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Memorandum

TO: PERS Board

FROM: Sparb

DATE: September 17, 2015

SUBJECT: Administrative Rules

At the last meeting we reviewed areas of proposed rule making. Attached are the wording changes to implement those changes. Please note that there are still some updates needed to the Law Implemented Sections of the Rules (found at the bottom of each rule). An updated version will be provided prior to the meeting, but the proposed language for the rules has been completed.

Please also note that section 71-08-07-03 was added, this is a duplicate of section 71-02-06-12 and it provides a provision for repayment of contributions to the DC plan.

Concerning the need to do a regulatory analysis, takings assessment, or small entity economic impact statement please see the attached email from Jan.

Section 71-01-01-01 is amended as follows:

71-01-01-01. Organization of public employees retirement board.

1. **History.** The 1965 legislative assembly created the public employees retirement system by legislation codified as North Dakota Century Code chapter 54-52. The starting date of the program was July 1, 1966. The board acts as the administrating body to manage the public employees retirement system, the judges retirement system, the highway patrol retirement system, the national guard security officers and firefighters system, the uniform group insurance program, the deferred compensation plan, the prefunded retiree health program, and a pretax benefit program for public employees.
2. **Board membership.** The board consists of ~~seven~~nine members. ~~One~~Two are members of the legislative assembly appointed by the chairman of legislative management; one member, the chairman, is appointed by the governor; one member is appointed by the attorney general from the attorney general's staff; one member is the state health officer or state health officer's designee; three members are elected by the active membership of the system; and one member is elected by the retired public employees.
3. **Executive director.** The executive director is appointed by the board and is responsible for the administration of the day-to-day activities of the retirement systems, the prefunded retiree health program, the uniform group insurance program, the deferred compensation program, and the pretax benefit program for public employees.
4. **Inquiries.** Inquiries regarding the board may be addressed to:

Executive Director
Box 1657
Bismarck, North Dakota 58502

History: Amended effective November 1, 1981; November 1, 1985; April 1, 1988; September 1, 1989; January 1, 1992; May 1, 2004, _____.

General Authority: NDCC 28-32-02.1; 54-52-04

Law Implemented: NDCC 28-32-02.1; 54-52-03

Section 71-01-03-04 is amended as follows:

71-01-03-04. Treatment, payment, or operations. The board of the public employees retirement system has determined that:

1. Information related to enrollment, participation, benefits, or contributions may be shared with participating employers or public employees retirement system contractors for purposes of maintaining a member's participation and benefits in the public employees retirement system programs. Such sharing of information is limited to that information that is necessary to assure that a member's participation and benefits are properly handled. All such information remains confidential whether in the possession of the public employees retirement system, its participating employers, or its contractors.
2. Information relating to eligibility for retirement benefits may be shared with the social security administration and such other organizations to ensure that the member is still alive and continues to be eligible.
3. Information necessary for the administration and operation of the program may be shared with the public employees retirement system attorney and consultants. To the extent such information is shared it remains confidential.
4. Information relating to the death benefits and beneficiary designations of a deceased member may be shared with an ex-spouse if listed as a beneficiary on a designation of beneficiary form, or any other person listed as a beneficiary on a designation of beneficiary form, subsequent to the death of the member, but in advance of a final determination regarding the applicable designated beneficiaries, only to the extent necessary to accurately identify the appropriate designated beneficiaries.

All other requests for information under this section must first be submitted to the executive director and then reviewed by the public employees retirement system board.

History: Effective May 1, 2004, amended effective _____.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-26

Section 71-02-01-01 is amended as follows:

71-02-01-01. Definitions. As used in North Dakota Century Code chapter 54-52 and this article:

1. "Accumulated contributions" means the total of all of the following:
 - a. The employee account fund balance accumulated under the prior plan as of June 30, 1977.
 - b. The vested portion of the employee's "vesting fund" accumulated under the prior plan as of June 30, 1977.
 - c. The member's mandatory contributions made after July 1, 1977.
 - d. The member's vested employer contributions made after January 1, 2000, pursuant to North Dakota Century Code section 54-52-11.1.
 - e. The interest on the sums determined under subdivisions a, b, c, and d, compounded annually at the rate of five percent from July 1, 1977, to June 30, 1981, six percent from July 1, 1981, through June 30, 1986, and one-half of one percent less than the actuarial interest assumption from July 1, 1986, to the member's termination of employment or retirement.
 - f. The sum of any employee purchase or repurchase payments.
2. "Actuarial equivalent" means a benefit calculated to be of equal value to the benefit otherwise payable when computed on the basis of assumptions and methods adopted for this purpose by the board in a way which precludes employer discretion pursuant to Internal Revenue Code section 401(a)(25). Such assumptions and methods adopted by the board, and any table of adjustment factors established in accordance with the assumptions and methods, shall be incorporated herein by reference.
3. "Alternative retirement system" means the teachers' fund for retirement, the highway patrolmen's retirement system, and the teachers' insurance and annuity association of America.
4. "Beneficiary" means any person in receipt of a benefit provided by this plan or any person designated by a participating member to receive benefits.
5. "Bonus" means cash compensation for services performed in addition to base salary excluding commission and shift differentials. Bonus does not include lump sum payments of sick leave provided under North Dakota Century Code section 54-06-14 or lump sum payments of annual leave or vacation pay.
6. "Claim" means the right to receive a monthly retirement allowance, the receiving of a retirement allowance, or the receiving of a disability benefit.

7. "Continuously employed" means any period of employment uninterrupted by voluntary or involuntary termination or discharge. A member who has taken a leave of absence approved by the member's employer, not to exceed a year unless approved by the executive director, and returns to employment shall be regarded as continuously employed for the period.
8. "Contribution" means the payment into the fund as a percentage of the salary of a member.
9. "Correctional officer" means a person who has completed a correctional officer course approved or certified by the North Dakota department of corrections and rehabilitation and is employed by a correctional facility as defined in North Dakota Century Code chapter 12-44.1.
10. "County judge" means a judge who was elected pursuant to North Dakota Century Code section 27-07.1-01 or an individual holding the position of county judge, county justice, or judge of county court prior to the general election in 1982, who meets all the eligibility requirements established under North Dakota Century Code chapter 54-52.
11. "Interruption of employment" is when an individual is inducted (enlists or is ordered or called to active duty into the armed forces of the United States) and leaves an employment position with a state agency or political subdivision, other than a temporary position. The individual must have left employment to enter active duty and must make application in accordance with the Uniformed Services Employment and Reemployment Rights Act.
12. "Leave of absence" means the period of time up to one year for which an individual may be absent from covered employment without being terminated. At the executive director's discretion, the leave of absence may be extended not to exceed two years, or indefinitely if the leave of absence is due to interruption of employment.
13. "Medical consultant" means a person or committee appointed by the board of the North Dakota public employees retirement system to evaluate medical information submitted in relation to disability applications, recertifications, and rehabilitation programs or other such duties as assigned by the board.
14. "Normal retirement age", except for members of the national guard and law enforcement, means age sixty-five unless otherwise provided. For members of the national guard and law enforcement, normal retirement age means age fifty-five, unless otherwise provided.

15. "Office" means the administrative office of the public employees retirement system.
16. "Participating employer" means an employer who contributes to the North Dakota public employees retirement system. For confidentiality purposes, "participating employer" means the person or group of persons with the ultimate authority over personnel decisions within the agency or political subdivision with which the member is employed or the person's or group's official designee.
17. "Pay status" means a member is receiving a retirement allowance from the fund.
18. "Permanent and total disability" for members of the main retirement system and the national guard/law enforcement retirement plan means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than twelve months. For members of the judge's retirement plan, "permanent and total disability" is determined pursuant to subdivision e of subsection 3 of section 54-52-17 of the North Dakota Century Code.
19. "Plan administrator" means the executive director of the North Dakota public employees retirement system or such other person or committee as may be appointed by the board of the North Dakota public employees retirement system from time to time.
20. "Plan year" means the twelve consecutive months commencing July first of the calendar year and ending June thirtieth of the subsequent calendar year.
21. "Prior plan" means the state employees' retirement system which existed from July 1, 1966, to June 30, 1977.
22. "Received" means for the purposes of any document received by the Office, the date on which the document is date-stamped by the Office.
23. "Regularly funded" means a legislatively authorized full-time equivalent (FTE) position for state agencies. For all governmental units other than state agencies, regularly funded means a similar designation by the unit's governing board which is created through the regular budgeting process and receives traditional employee benefits such as sick leave and annual leave.

~~23-24.~~ "Retiree" means an individual receiving a monthly retirement allowance pursuant to chapter 54-52.

~~24-25.~~ "Retirement allowance" means a reoccurring, periodic benefit from an eligible employer-sponsored retirement plan as approved by the board.

~~25-26.~~ "Service credit" means increments of time to be used in the calculation of retirement benefits. Service credit may be earned as stated in section 71-02-03-01 or may be purchased or repurchased according to section 71-02-03-02.1.

~~26-27.~~ "Substantial gainful activity" is to be based upon the totality of the circumstances including consideration of an individual's training, education, and experience; an individual's potential for earning at least seventy percent of the individual's predisability earnings; and other items deemed significant on a case-by-case basis. Eligibility is based on an individual's employability and not actual employment status.

~~27-28.~~ "Termination of employment" for the purposes of determination for eligibility for benefit payments means a severance of employment by not being on the payroll of a covered employer for a minimum of one month. Approved leave of absence or if reemployed by any covered employer prior to receiving a lump sum distribution of the member's account balance does not constitute termination of employment.

~~28-29.~~ "Termination of participation" means termination of eligibility to participate in the retirement plan.

History: Amended effective September 1, 1982; November 1, 1990; September 1, 1991; January 1, 1992; September 1, 1992; June 1, 1993; July 1, 1994; June 1, 1996; July 1, 2000; April 1, 2002; May 1, 2004; July 1, 2006; July 1, 2010; April 1, 2014,

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52

Section 71-02-02-01 is amended as follows:

71-02-02-01. Membership - General rule. ~~Each~~When an eligible employee shall ~~become~~becomes a member of the public employees retirement system ~~upon filing a membership form with the office, and the beginning of contributions to the fund.~~ ~~In addition,~~ the following requirements apply:

1. A temporary employee must submit a completed participation agreement within six months of the date of hire as a temporary employee or within six months of a change in status from a permanent to temporary position. If

no application is made and filed with the office, an irrevocable waiver of participation will occur for as long as the employee is in temporary status.

2. Contributions for temporary employees must be submitted no later than the sixth working day of the month for the previous month's salary.
3. Delinquent payments of over thirty days, for reasons other than leave of absence or seasonal employment, will result in termination of eligibility to participate as a temporary member.
4. Upon taking a refund, future participation as a temporary member is waived.
5. A member may not participate as both a permanent and a temporary member. Permanent employment has precedence.
6. Elected officials of participating counties and elected state officials, at their individual option, must enroll or waive participation in writing within six months of taking office or beginning a new term. If no application is made and filed with the office, an irrevocable waiver of participation will occur until the official makes application within six months from the start of a new term.

History: Amended effective September 1, 1982; November 1, 1990; September 1, 1992; June 1, 1996; July 1, 1998; May 1, 2004; July 1, 2006, _____.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-01(3), 54-52-02.9, 54-52-05

Section 71-02-04-07 is amended as follows:

71-02-04-07. Amount of early retirement benefit.

1. Except for ~~members of the~~ a national guard security officer or firefighter or a peace officer or correctional officer employed by the bureau of criminal investigation or by a political subdivision, the early retirement benefit for members first enrolled prior to December 31, 2015, shall be an amount actuarially reduced from the single life retirement benefit by one-half of one percent for each month (six percent per year) that the member is younger than the age at which the member would be at the member's normal retirement date on the date of the member's early retirement benefit effective date.
2. For ~~members of the~~ a national guard security officer or firefighter or a peace officer or correctional officer employed by the bureau of criminal investigation or by a political subdivision, the early retirement benefit must

be an amount actuarially reduced from the single life retirement benefit by one-half of one percent for each month (six percent per year) that the member is younger than age fifty-five on the date of the member's early retirement benefit effective date.

History: Amended effective September 1, 1982; June 1, 1996; April 1, 2002; May 1, 2004; July 1, 2006; July 1, 2010, _____.

General Authority: NDCC 54-52-04, 54-52-17

Law Implemented: NDCC 54-52-17

Section 71-02-04-09.1 is amended as follows:

71-02-04-09.1. Dual membership limitations. The following limitations apply when a member elects an option under subsection 1 of section 71-02-04-09.

1. Eligible service credit may be used for vesting purposes and determining when the dual member may begin drawing normal retirement benefits. A member may begin drawing retirement benefits from one fund and use the same years, and any additional years, for reaching retirement from the alternate fund if the service credit is earned at different times.
2. If a dual member elects to receive retirement benefits as provided in subsection 1 of section 71-02-04-09, the final average salary, service credit, and member's age used to calculate the benefit that is applicable at the time retirement benefits begin may not be adjusted after the benefit effective date.
3. The salary used in calculating the retirement benefit must be ~~certified~~provided in writing by the alternate retirement system. Months not employed are excluded for the purpose of computing the final average salary. If a dual member works less than thirty-six months at retirement, the final average salary is the average salary for total months of employment.

History: Effective June 1, 1996; amended effective May 1, 2004; April 1, 2012, _____.

General Authority: NDCC 54-52-04, 54-52-17, 54-52-17.2

Law Implemented: NDCC 54-52-17, 54-52-17.2

Section 71-02-05-06 is amended as follows:

71-02-05-06. Determination of disability - Procedures.

1. Application.

- a. If the member is unable or unwilling to file a public employees retirement system application for disability retirement, the member's legal representative may file the member's disability application.
- b. For the main system and the national guard and law enforcement system, the application must explain the cause of the disability, the limitations caused by the disability, the treatment being followed, and the effect of the disability on the individual's ability to be engaged in any gainful occupation for which the person is, or could become, reasonably fitted by education, training, or experience. For the judges' retirement plan, the application must explain the cause of the disability, the limitations caused by the disability, the treatment being followed, and the effect of the disability on the individual's ability to mentally or physically fulfill the duties and responsibilities of being a judge. A judge who is determined to be disabled pursuant to subdivision a of subsection 3 of North Dakota Century Code section 27-23-03 shall file an application documenting this determination and the effective date of the disability.
- c. The application must be filed with the public employees retirement system and may not be filed earlier than one hundred twenty days before the expected termination date.

2. Medical consultant.

- a. The board may retain a medical consultant to evaluate and make recommendations on disability retirement applications.
- b. The medical consultant shall review all medical information provided by the applicant.
- c. The medical consultant is responsible to determine eligibility for disability benefits for applicants not approved for social security disability benefits or for judges not approved pursuant to subsection 3 of North Dakota Century Code section 27-23-03 and shall advise the executive director of the decision in writing. Applicants who become eligible for disability benefits under the Social Security Act and who meet the requirements of subdivision e_h of subsection 3 of North Dakota Century Code section 54-52-17 are eligible for

benefits under subdivision e of subsection 4 of North Dakota Century Code section 54-52-17 without submitting further medical information to the medical adviser, but are subject to recertification requirements specified in this chapter. The social security disability award must provide proof that the member's disability was determined during the member's period of eligible employment. In determining eligibility for judges not approved pursuant to the above, the medical director shall work with a review committee composed of one supreme court judge and a district court judge to review the proposed application. In order for the application to be approved, it must have the concurrence of the medical director and at least one judge. The executive director shall appoint two judges to serve on the review committee.

3. Medical examination.

- a. The applicant for disability retirement shall provide the medical examination reports as requested by the medical consultant.
- b. The member is liable for any costs incurred by the member in undergoing medical examinations and completing and submitting the necessary medical examination reports, medical reports, and hospital reports necessary for initial determination of eligibility for benefits.
- c. If determined to be eligible for disability benefits, the member must be reimbursed ~~up to four hundred dollars~~ for the cost of medical examinations specifically requested by the medical adviser and the executive director.

4. Appeal.

- a. If the applicant has terminated employment, the public employees retirement system shall notify the applicant in writing of the decision. If the applicant is determined not to be eligible for disability benefits, the public employees retirement system shall advise the applicant of the appeal procedure. If the applicant is determined eligible for disability benefits, benefits must be paid pursuant to subsection 5.
- b. If the applicant has not terminated employment, the applicant must be provided with a preliminary notification of the decision in writing. The preliminary notification remains in effect for a period not to exceed two hundred seventy days. If an applicant does not terminate employment within two hundred seventy days of the date of termination provided on the disability application, the application

must be considered to be vacated but the applicant may reapply as provided in subsection 1.

- c. The applicant may appeal an adverse determination to the board by providing a written notice of appeal within thirty days of the date that the public employees retirement system mailed the decision.
 - d. The board shall consider all appeals at regularly scheduled board meetings. The applicant must be notified of the time and date of the meeting and may attend and be represented by legal counsel. The executive director shall provide to the board for its consideration a case history brief that includes membership history, medical examination summary, and the plan administrator's conclusions and recommendations. The board shall make the determination for eligibility at the meeting unless additional evidence or information is needed. The discussion concerning disability applications must be confidential and closed to the general public.
 - e. If the initial board decision is adverse to the applicant after exhausting the administrative procedure under subdivisions a and b, the applicant may file a request for a formal hearing to be conducted under North Dakota Century Code chapter 28-32. The request for a formal hearing must be filed within thirty days after notice of the initial decision has been mailed or delivered. If an appeal is not filed within the thirty-day period, the initial decision of the board is final. If a request for a formal hearing is timely filed, notice of the hearing must be served at least thirty days prior to the date set for the hearing. The board shall request appointment of an administrative law judge from the office of administrative hearings to conduct the hearing and make recommended findings of fact, conclusions of law, and order. The board shall either accept the administrative law judge's recommended findings of fact, conclusions of law, and order or adopt its own findings of fact, conclusions of law, and order. The applicant may under North Dakota Century Code section 28-32-15 appeal the final decision resulting from this procedure to the district court.
5. **Payment of annuity.** If awarded, the disability annuity is payable on, or retroactive to, the first day of the month following the member's termination from covered employment minus any early retirement benefits that have been paid.
6. **Redetermination and recertification.**
- a. A disabled annuitant's eligibility must be recertified eighteen months after the date the first check is issued and thereafter as

specified by the medical consultant. The executive director may waive the necessity for a recertification, based on the recommendation of the medical consultant.

- b. The public employees retirement system will send a recertification form and request for a statement of annual earnings by certified mail with return receipt to the disabled annuitant to be completed and sent back to the office. If completed recertification has not been received by the recertification date set in the recertification request, benefits will be suspended effective the first of the month following that date. Benefits will be reinstated the first of the month following recertification by the medical consultant. The regular accrued disability benefits will commence with a lump sum equal to the amount of missed payments, without interest, retroactive to the first day of the month benefits were suspended, unless otherwise approved by the North Dakota public employees retirement system board.
- c. The medical consultant may require the disabled annuitant to be reexamined by a doctor. The submission of medical reports by the annuitant, and the review of those reports by the board's medical consultant, may satisfy the reexamination requirement. Upon recertification, the disabled annuitant must be reimbursed up to four hundred dollars for the cost of the required reexamination if deemed necessary by the medical consultant and the executive director.
- d. The medical consultant will make the recertification decision. The executive director may require additional recertifications, if the facts warrant this action. The decision may be appealed to the board within ninety days of receiving the written recertification decision.
- e. Benefit payments must be suspended immediately upon notice received from the medical consultant that the annuitant does not meet recertification requirements. The executive director shall notify the annuitant of the suspension of benefits by certified mail and shall reinstate benefits back to date of suspension if the annuitant is subsequently found to meet recertification requirements.
- f. If it is determined that the disability annuitant was not eligible for benefits during any time period when benefits were provided, the executive director may do all things necessary to recover the erroneously paid benefits.

History: Effective January 1, 1992; amended effective July 1, 1994; June 1, 1996; April 1, 2002; May 1, 2004; July 1, 2006, _____.

General Authority: NDCC 54-52-17

Law Implemented: NDCC 54-52-17, 54-52-26

Section 71-02-05-07 is amended as follows:

71-02-05-07. Optional benefits. For the main system and national guard-~~or~~/ law enforcement retirement plans, an individual deemed eligible for a disability benefit may elect, as provided in this section, to receive one of the following optional benefits in lieu of the regular disability benefit.

1. **One hundred percent joint and survivor benefit.** A member shall receive an actuarially reduced disability retirement benefit as long as the member remains eligible for benefits under subdivision e of subsection 3 of North Dakota Century Code section 54-52-17 and after the member's death the same amount will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Payments of benefits to a member's surviving spouse must be made on the first day of each month commencing on the first day of the month following the member's death, provided the beneficiary is still living and has supplied a marriage certificate and the member's death certificate. Benefits terminate in the month in which the death of the beneficiary occurs. In the event the designated beneficiary predeceases the member or, in the event of divorce, the option must be canceled and the member's benefit must be returned to the single life amount. Payment of the single life amount must commence on the first day of the month following the spouse's death providing written notification of death and a death certificate has been submitted or, in the event of divorce, a photocopy of the divorce decree.
2. **Fifty percent joint and survivor benefit.** A member shall receive an actuarially reduced disability retirement benefit as long as the member remains eligible for benefits under subdivision e of subsection 3 of North Dakota Century Code section 54-52-17 and after the member's death one-half the rate of the reduced benefit will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Payments of benefits to a member's surviving spouse must be made on the first day of each month commencing on the first day of the month following the member's death, providing the beneficiary has supplied a marriage certificate and death certificate and is still living. Benefits terminate in the month in which the death of the beneficiary occurs. In the event the designated beneficiary predeceases the member or, in the event of divorce, the option must be canceled and the member's benefit must be returned to the single life amount. Payment of the single life amount must commence on the first day of the month following the spouse's death providing written notification

of death and a death certificate has been submitted or, in the event of divorce, a photocopy of the divorce decree.

3. **Twenty-year or ten-year certain option.** A member may elect an option which is the actuarial equivalent of the member's normal, early, or deferred vested retirement pension payable for life with a twenty-year or ten-year certain feature, as designated by the member.

History: Effective January 1, 1992; amended effective July 1, 1994; May 1, 2004; July 1, 2006; April 1, 2008; April 1, 2012, _____.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-17

Section 71-02-06-07 is amended as follows:

71-02-06-07. Employer contribution - National guard/law enforcement.

As part of its annual actuarial evaluation, the board shall determine the amount required to support the level of benefits for national guard/law enforcement specified in North Dakota Century Code section 54-52-17. The board shall set the employer's contribution rate on a biennial basis, but may adjust that rate if it is actuarially necessary to maintain appropriate funding levels.

History: Effective July 1, 1994; amended effective May 1, 2004, _____.

General Authority: NDCC 54-52-04

Law Implemented: NDCC ~~54-52-06.2~~54-52-06.4

Section 71-02-06-12 is created as follows:

71-02-06-12. Employee paid contributions- Repayment Options. If the Office determines that any required employee paid contributions have not been made, the cost of any required employee paid contributions may be paid in a lump sum or in installments in a manner consistent with installment payments permitted under section 71-02-03-02.2.

History: Effective _____.

General Authority: NDCC 54-52-04

Law Implemented: NDCC ~~39-03.1-09, 54-52-02.9, 54-52-05, 54-52-06.1, 54-52-06.3,~~
54-52-06.4

Section 71-03-03-01 is amended as follows:

71-03-03-01. Enrollment. An eligible employee is entitled to coverage the first of the month following the month of employment, or the month following meeting eligibility

criteria, if the employee submits an application for coverage within the first thirty-one days of employment or eligibility for one of the following special enrollment periods:

1. Loss of coverage under any other health, dental, vision, or prescription drug insurance plan.
2. Marriage. An employee who previously waived coverage must enroll for coverage at the time the employee's spouse is enrolled.
3. Addition of a dependent as a result of birth, adoption, placement for adoption, receiving legal guardianship, or receiving a court order to provide health coverage. An employee who previously waived coverage must enroll for coverage at the same time that the employee's eligible dependent is enrolled.

History: Effective October 1, 1986; amended effective July 1, 1994; June 1, 1996; July 1, 1998; July 1, 2010; April 1, 2012, _____.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-02, 54-52.1-03

Section 71-03-03-02 is amended as follows:

71-03-03-02. Late enrollment. An eligible employee failing to submit an application for coverage within the first thirty-one days of employment or eligibility for a special enrollment period may enroll during the annual open enrollment ~~and may be subject to a six-month waiting period for preexisting conditions.~~ Upon a showing of good cause, the executive director may waive the thirty-one day application requirement.

History: Effective October 1, 1986; amended effective June 1, 1996; July 1, 1998; May 1, 2004, _____.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-03

Section 71-03-03-05 is amended as follows:

71-03-03-05. Special enrollment for certain qualifying events. An eligible employee, retiree, or surviving spouse who elects to take a periodic distribution from the defined contribution retirement plan or a monthly retirement benefit from the North Dakota public employees retirement system, North Dakota highway patrolmen's retirement system, the retirement system established by job service North Dakota, the teachers' fund for retirement, or teachers' insurance and annuity association of America - college retirement equities fund, or retirees who have accepted a retirement allowance from a participating political subdivision's retirement plan and provide

verification of distribution are eligible for coverage with the health, dental, vision, or prescription drug insurance program.

1. The employee, retiree, or surviving spouse must submit application for coverage within thirty-one days from one of the following qualifying events:
 - a. The month in which the eligible employee or retiree turns age sixty-five or becomes eligible for medicare.
 - b. The month in which the eligible employee's or retiree's spouse turns age sixty-five or becomes eligible for medicare.
 - c. The month in which the eligible employee terminates employment.
 - d. The month in which the eligible retiree or surviving spouse receives the first monthly retirement benefit from one of the eligible retirement systems outlined above.
 - e. The month in which an eligible employee or retiree who is covered through a spouse's plan becomes ineligible for the spouse's plan due to divorce, death, loss of employment, reduction in hours or other events which may cause loss of coverage as determined by the board.
 - f. The month in which the eligible employee or retiree is no longer eligible for employer-sponsored insurance, including coverage provided under the Consolidated Omnibus Budget Reconciliation Act.
2. Coverage will become effective on the first day of the month following the month in which the qualifying event occurred. If an application is not submitted within thirty-one days of a qualifying event, the eligible individual must be considered to have waived coverage and may not be enrolled unless the individual meets the criteria of another qualifying event. Upon a showing of good cause, the executive director may waive the thirty-one day application requirement.
3. Other individuals eligible for the health, dental, vision, or prescription drug insurance plan include a surviving spouse who is not receiving a qualified monthly retirement benefit from one of the eligible retirement systems outlined above, but who was a covered dependent on the eligible retiree's health, dental, vision, or prescription drug insurance plan at the time of the eligible retiree's death, if there is no lapse in coverage.
4. Individuals not eligible for the health, dental, vision, or prescription drug insurance plan include:

- a. A former employee who received a refund of the employee's retirement account, including individuals in the defined contribution plan who take a cash withdrawal of the employee's account, roll their account into another qualified plan, or use the moneys in their account to purchase an annuity.
- b. A nonspouse beneficiary (eligible for Consolidated Omnibus Budget Reconciliation Act).
- c. A deferred retiree or surviving spouse between the time in which the retiree or surviving spouse's eligibility for the Consolidated Omnibus Budget Reconciliation Act (if eligible) ends and the month in which the eligible retiree or surviving spouse receives the first monthly retirement benefit from one of the eligible retirement systems.
- d. A formerly deferred retiree who received a refund of the retiree's retirement account.
- e. A surviving spouse of a nonvested employee eligible for the Consolidated Omnibus Budget Reconciliation Act.
- f. A surviving spouse of a former employee who received a refund of the employee's retirement account.
- g. A former participating member of the defined contribution retirement program who would not qualify for one of the retirement dates set forth in subsection 3 of North Dakota Century Code section 54-52-17 if that employee was a member of the defined benefit retirement plan, unless eligible under the Consolidated Omnibus Budget Reconciliation Act, and then only for the required duration of eligibility under the Act.
- h. For the purposes of the medical and prescription drug plan, employees who first retire after July 1, 2015, and are not eligible for medicare upon their retirement and completion of any period of eligibility under the Consolidated Omnibus Budget Reconciliation Act, until such time as they or their spouse become eligible for medicare.

History: Effective October 1, 1986; amended effective November 1, 1990; July 1, 1994; June 1, 1996; July 1, 1998; July 1, 2000; May 1, 2004; April 1, 2012,

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-02, 54-52.1-03, 54-52.1-03.1; Pub. L. 99-272; 100 Stat. 222; 26 USC 162 et seq.

Section 71-03-05-07 is amended as follows:

71-03-05-07. Erroneous payment of premiums - Overpayments.

1. An "overpayment" means a payment of money to the public employees retirement system for group insurance premiums that exceeds the premiums due for the level of coverage that should have been in effect.
2. If an overpayment occurs, the amount of the overpayment must be paid to the insured in a lump sum within thirty days of the discovery of the error. The payment may be made to any person insured under the policy.

History: Effective April 1, 2002, amended effective _____.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-08

Section 71-03-05-08 is amended as follows:

71-03-05-08. Erroneous payment of premiums - Underpayments.

1. An "underpayment" means a payment of money to the public employees retirement system for group insurance premiums that is less than the premiums due for the level of coverage that should have been in effect. Underpayment of premium is solely an error in the amount of premium billed to the individual.
2. An individual who underpays premiums is liable to pay those premiums upon receiving a request for repayment and an explanation of the amount due from the executive director. All underpayments must be collected using the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like gains. If the cost of recovering the underpayment is estimated to exceed the amount of the underpayment, the underpayment is considered to be unrecoverable.
3. If an underpayment is discovered in the first month it occurs, the individual must pay the amount due in a lump sum within thirty days of the discovery of the error.

4. If an underpayment is not discovered within the first month it occurs, the following will apply:
 - a. If not the result of any wrongdoing, negligence, misrepresentation, or omission by the individual, then the individual must make arrangements within sixty days of receiving written notification to either pay by lump sum or installments. The installment payment schedule is subject to approval by the executive director with the minimum repayment amount no less than fifty dollars a month. If repayment arrangements are not in place within sixty days of the date of the written request for repayment, the executive director shall authorize payment to be made in three equal installments, using the same payment method the individual has authorized for paying current monthly premiums.
 - b. If underpayment is the result, in whole or in part, of the wrongdoing, negligence, misrepresentation, or omission of the individual, underpayments must be made in full within sixty days of written notification.
5. If an underpayment occurs and the individual no longer participates in the group insurance, any premium amounts due are immediately payable.
6. If the individual dies prior to paying in full, then the public employees retirement system must make application to the estate of the deceased to recover the remaining balance.
7. If the individual refuses to repay the underpayment, or the underpayment is not paid in full, coverage ~~will~~may be canceled retroactive to the first day of the month following the month for which full premium payment was received upon the written request of the individual. ~~The public employees retirement system will provide written notice advising the individual that payment in full must be received within thirty days of the written notification to reinstate coverage retroactively to the date that coverage was canceled.~~

History: Effective April 1, 2002; amended effective April 1, 2008; July 1, 2010,

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-08

Section 71-04-01-01 is amended as follows:

71-04-01-01. Definitions. The terms used throughout this title have the same meaning as in North Dakota Century Code section 54-52.2-04, except:

1. "Beneficiary" means an individual designated by the participant to receive benefits under the plan in the event the participant dies.
2. "Compensation" means the total annual remuneration for employment or contracted services received by the participant from the employer.
3. "Deferred compensation" means the amount of compensation not yet earned which the participant and the employer shall mutually agree shall be deferred from current monthly salary in accordance with the provisions of the plan.
4. "Eligible state deferred compensation plan" means a plan established and maintained by this state that complies with the Internal Revenue Code (IRC) 457(b).
5. "Employer" means the state of North Dakota or any of its political subdivisions, institutions, departments, or agencies.
6. "Participant" is any employee of a participating employer who executes a participant agreement.
7. "Participant agreement" means ~~a written~~ an agreement between the employer and a participant setting forth certain provisions and elections relative to the plan, incorporating the terms of the plan and establishing the participant's deferral and participation in the plan.
8. "Provider" means any insurance company, federally insured financial institutions, Bank of North Dakota, or registered dealer under North Dakota Century Code chapter 10-04 authorized by the retirement board to provide investment vehicles to employees.
9. "Retirement" means separation from service with the employer on a date coincidental with the normal, postponed, early, or disability retirement dates as described in North Dakota Century Code chapter 54-52-17.3.
10. "Retirement board" or "board" means the seven persons described in North Dakota Century Code chapter 54-52-03.
11. "Separation from service" means that term as defined under Internal Revenue Code section 402(d)(4)(A)(3i) and includes termination of employment with the employer by reason of death, disability, retirement, resignation, or discharge.
12. "State" means the state of North Dakota, or any department, institution, or separate agency thereof acting as an employer of the participant.

13. "Unforeseeable emergency" means a severe financial hardship to the participant resulting from a sudden and unexpected illness or accident of the participant, the participant's spouse or dependent of the participant, loss of the participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant.

History: Effective April 1, 1989; amended effective July 1, 1994; April 1, 2002; May 1, 2004; July 1, 2010, _____.

General Authority: NDCC 28-32-02, 54-52.2-03.2

Law Implemented: NDCC 54-52.2-03, 54-52.2-03.2, 54-52.2-04

Section 71-04-03-01 is amended as follows:

71-04-03-01. Enrollment. Public employees may enroll in the deferred compensation plan by completing and submitting a participant agreement ~~and submitting the agreement~~ to the ~~retirement board~~Office.

History: Effective April 1, 1989; amended effective April 1, 2014, _____.

General Authority: NDCC 28-32-02, 54-52.2-03.2

Law Implemented: NDCC 54-52.2-03

Section 71-04-03-03 is amended as follows:

71-04-03-03. Change in monthly deferral. A participant may change the amount of deferral at any time, as long as a participant agreement is completed and ~~filed with~~submitted to the retirement boardOffice as set forth in section ~~71-04-03-02~~71-04-03-01.

History: Effective April 1, 1989, amended effective _____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 54-52.2-03; IRC 457(b)(4)

Section 71-04-03-07 is amended as follows:

71-04-03-07. Distribution of assets. Distribution of assets may be made only upon separation from service as defined in section 71-04-01-01, or in accordance with section 71-04-03-05 or 71-04-08-01, or as a direct trustee-to-trustee plan transfer to a tax-qualified governmental defined benefit plan (as defined in Internal Revenue Code section 414(d)) for the purchase of permissive service credit (as defined in Internal Revenue Code section 415(n)(3)(A)) or a repayment to which Internal Revenue Code section 415 does not apply by reason of section 415(k)(3), regardless of whether or not the participant has had a severance from employment, at a time and in a manner

prescribed by the board, as set forth in the 457 deferred compensation plan document, and in a manner consistent with section 457(e)(17) of the Internal Revenue Code.

History: Effective May 1, 2004, amended effective _____.

General Authority: NDCC 28-32-02, 54-52-03.2

Law Implemented: NDCC 54-52.2-03, 54-52.2-03.2

Section 71-04-04-05 is amended as follows:

71-04-04-05. Payroll deduction authorization. The board office shall ~~deliver~~make available to the payroll division of each employer ~~a copy of~~direction to begin, modify or discontinue deductions pursuant to the signed~~completed~~ participant agreement as the payroll division's authorization to begin deductions.

History: Effective April 1, 1989; amended effective July 1, 2010, _____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 54-52.2-02

Section 71-04-04-07 is amended as follows:

71-04-04-07. Separation from service. The board ~~shall~~may notify the participant, provider company, and provider representative of the employee's separation from service and eligibility for payment of benefits.

History: Effective April 1, 1989; amended effective July 1, 1994; May 1, 2004; July 1, 2010, _____.

General Authority: NDCC 28-32-02, 54-52.2-03.2

Law Implemented: NDCC 54-52.2-03, 54-52.2-03.2

Section 71-04-04-08 is amended as follows:

71-04-04-08. Authorization. The executive director or the executive director's designee is authorized to sign all provider agreements, employer agreements, ~~payroll deduction authorizations,~~ or benefit applications that meet the requirements under article 71-04 and under North Dakota Century Code chapter 54-52.2.

History: Effective July 1, 1994; amended effective May 1, 2004, _____.

General Authority: NDCC 54-52.2-03.2

Law Implemented: NDCC 54-52.2-01, 54-52.2-02, 54-52.2-03.2

Section 71-04-05-02 is amended as follows:

71-04-05-02. Payroll deductions. The employer shall authorize employee payroll deductions only after receiving notification from the ~~public employees retirement system~~Office. The participant agreement must indicate the date the payroll deduction is to start, the provider, and the contribution amount. Payroll deductions must be remitted to the ~~retirement board~~Office within ten days after each payroll period. Along with each payment, the employer must provide the ~~retirement board~~Office with a listing of deferred compensation deductions for all employees participating in the deferred compensation plan using the deferred compensation transmittal of deduction form or the approved electronic format.

History: Effective April 1, 1989; amended effective July 1, 2006; April 1, 2014,

General Authority: NDCC 28-32-02, 54-52-03.2

Law Implemented: NDCC 54-52.2-02

Section 71-04-05-06 is amended as follows:

71-04-05-06. Separation from service notice. The employer shall notify the ~~retirement board~~Office within thirty days of an employee's separation from service. The ~~retirement board shall~~Office may then notify the former employee's provider of the employee separation from service and eligibility for payment options under the plan.

History: Effective April 1, 1989; amended effective July 1, 1994; May 1, 2004,

General Authority: NDCC 28-32-02, 54-52.2-03.2

Law Implemented: NDCC 54-52.2-03, 54-52.2-03.2

Section 71-05-01-01 is amended as follows:

71-05-01-01. Definitions. As used in North Dakota Century Code chapter 39-03.1:

1. "Actuarial equivalent" means a benefit calculated to be of equal value to the benefit otherwise payable when computed on the basis of assumptions and methods adopted for this purpose by the board in a way which precludes employer discretion pursuant to Internal Revenue Code section 401(a)(25). Such assumptions and methods adopted by the board, and any table of adjustment factors established in accordance with the assumptions and methods, shall be incorporated herein by reference.
2. "Covered employment" means employment with the North Dakota highway patrol.

- ~~2.3.~~ "Medical examination" means an examination conducted by a doctor licensed to practice in North Dakota that includes a diagnosis of the disability, the treatment being provided for the disability, the prognosis and classification of the disability, and a statement indicating how the disability prevents the individual from performing the duties of a highway patrolman.
- ~~3.4.~~ "Normal retirement age" means age fifty-five except as otherwise provided.
- ~~4.5.~~ "Office" means the administrative office of the public employees retirement system.
- ~~5.6.~~ "Permanent and total disability" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than twelve months.
- ~~6.7.~~ "Plan administrator" means the executive director of the North Dakota public employees retirement system.
- ~~7.8.~~ "Substantial gainful activity" is to be based upon the totality of the circumstances, including consideration of an individual's training, education, and experience; an individual's potential for earning at least seventy percent of the individual's predisability earnings; and other items deemed significant on a case-by-case basis. Eligibility is based on an individual's employability and not actual employment status.

History: Effective November 1, 1990; amended effective October 1, 1991; June 1, 1992; July 1, 2006, _____.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-07

Section 71-06-01-02 is amended as follows:

71-06-01-02. Calculation of retiree health insurance credit. Retiree health insurance credit will be calculated on actual years and months of service, identical to retirement benefits under North Dakota Century Code chapter 54-52.

1. Retiree health insurance credit will be subject to reduction factors in the event of early retirement. For annuitants of the public employees retirement system defined benefit plan and North Dakota public employees retirement system judges, and for members of the defined contribution retirement plan, excluding national guard/law enforcement and highway patrol retirees, who take a periodic distribution:

Age at Retirement	Reduction Factor	Age at Retirement	Reduction Factor
64 to 65	3%	59 to 60	33%
63 to 64	9%	58 to 59	39%
62 to 63	15%	57 to 58	45%
61 to 62	21%	56 to 57	51%
60 to 61	27%	55 to 56	57%

For annuitants of the job service retirement program: This includes those who retired under a discontinued service annuity but does not include those who retired at a normal or optional date.

Age at Retirement	Reduction Factor	Age at Retirement	Reduction Factor	Age at Retirement	Reduction Factor
64 to 65	3%	59 to 60	33%	54 to 55	63%
63 to 64	9%	58 to 59	39%	53 to 54	69%
62 to 63	15%	57 to 58	45%	52 to 53	75%
61 to 62	21%	56 to 57	51%	51 to 52	81%
60 to 61	27%	55 to 56	57%	50 to 51	87%

For annuitants of the highway patrol fund and national guard ~~security police and firefighters~~/law enforcement retirees and national guard ~~security police and firefighters~~/law enforcement retirees who transferred to the defined contribution retirement plan:

Age at Retirement	Reduction Factor
54 to 55	3%
53 to 54	9%
52 to 53	15%
51 to 52	21%
50 to 51	27%

2. Disabled annuitants receiving benefits under subdivision g of subsection 3 of North Dakota Century Code section 54-52-17, subdivision d of subsection 3 of North Dakota Century Code section 39-03.1-11, North Dakota Century Code section 52-11-01, or section 71-02-05-05 will be eligible for full retiree health insurance credit benefits. No age reduction factor will be applied.
3. A surviving spouse eligible to receive benefits under paragraph 2 of subdivision a and paragraphs 2 and 3 of subdivision b of subsection 6 of North Dakota Century Code section 54-52-17, subdivisions b and c of subsection 6 of North Dakota Century Code section 39-03.1-11, or North Dakota Century Code section 52-11-01 will receive retiree health insurance credit based on the deceased member's years of service without any age reduction applied.

4. A surviving spouse receiving benefits under the provisions of subdivision b or d of subsection 9 of North Dakota Century Code section 54-52-17; subdivisions a, b, and c of subsection 5 of North Dakota Century Code section 27-17-01; subsection 9 of North Dakota Century Code section 39-03.1-11; or North Dakota Century Code section 52-11-01 will receive retiree health insurance credit for the duration benefits are paid, based upon the original annuitant's retirement age.

History: Effective April 1, 1992; amended effective June 1, 1996; July 1, 2000; July 1, 2010, _____.

General Authority: NDCC 54-52.1-03.2(b)

Law Implemented: NDCC 54-52.1-03.3

Section 71-06-01-03 is amended as follows:

71-06-01-03. For retirees receiving more than one benefit entitled to retiree health insurance credit.

1. If a retiree is receiving more than one benefit from the public employees retirement system, or other participating system; one as a surviving spouse, and the other based upon the retiree's own service credit, the retiree health insurance credit for each benefit will be combined with an effective date based on eligibility in accordance with North Dakota Century Code section 54-52.1-03.3.
2. ~~If a retiree is receiving a public employees retirement system retirement benefit as a surviving spouse and is also an active contributor to either the public employees retirement system, the highway patrol retirement system, the judges retirement system, or the job service retirement program, the individual will not be eligible for retiree health insurance credit until one of the following events occurs:~~
 - a. ~~The active contributor terminates employment, at which time the active contributor may receive the retiree health insurance credit as any other surviving spouse.~~
 - b. ~~The active contributor retires and begins receiving a benefit through an eligible retirement system.~~
3. If the retiree was employed by a political subdivision which does not participate in the public employees retirement system health plan, and is drawing a retirement benefit or a surviving spouse benefit, the individual may receive the retiree health insurance credit as any other retiree based upon a retiree premium.

43. If a husband and wife are both receiving a benefit from a retirement system that provides the retiree health insurance credit, the retiree health insurance credit will be applied as follows:
- a. ~~If each retiree takes a single health insurance plan under the uniform group health insurance program, each~~ Each will have their respective retiree health insurance credit ~~applied to~~ reimbursed for their respective premiums.
 - b. If only one retiree takes a family health plan under the uniform group health insurance program, they may make application with the public employees retirement system to combine retiree health insurance credits.

Retirees are responsible for making application with the public employees retirement system to combine and discontinue combining retiree health insurance credits.

5. Retirees with service credit in more than one of the participating retirement systems will have their respective retiree health insurance credit for each benefit combined with an effective date based on eligibility in accordance with North Dakota Century Code section 54-52.1-03.1. Surviving spouses receiving multiple benefits from retirement systems that provide the retiree health insurance credit will have their respective retiree health insurance credit for each benefit combined with an effective date based on eligibility in accordance with North Dakota Century Code section 54-52.1-03.3.

History: Effective April 1, 1992; amended effective June 1, 1996; July 1, 1998; April 1, 2008; April 1, 2012, _____.

General Authority: NDCC 54-52.1-03.2(b)

Law Implemented: NDCC 54-52.1-03.3

Section 71-06-01-07 is amended as follows:

71-06-01-07. Optional benefits. A married member may elect to receive one of the following optional retiree health credit benefits in lieu of the retiree health insurance credit option provided in ~~section 71-06-01-04~~ this chapter:

1. **Fifty percent joint and survivor benefit.** A member shall receive an actuarially reduced retiree health insurance credit during the member's lifetime and after the member's death one-half the rate of the reduced benefit will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Benefits shall terminate in the month in which the death of the

beneficiary occurs. If the member's spouse predeceases the member or, in the event of divorce, the member's benefit must be returned to the standard option amount. The standard option amount must commence on the first day of the month following the spouse's death if a death certificate has been submitted or, in the event of divorce, a photocopy of the divorce decree.

2. **One hundred percent joint and survivor benefit.** A member shall receive an actuarially reduced retiree health insurance credit during the member's lifetime and after the member's death the same amount will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Benefits shall terminate in the month in which the death of the beneficiary occurs. If the member's spouse predeceases the member or, in the event of divorce, the member's benefit must be returned to the standard option amount. The standard option amount shall commence on the first day of the month following the spouse's death providing written notification of the death and a death certificate has been submitted or, in the event of divorce, a photocopy of the divorce decree.

History: Effective July 1, 1998; amended effective April 1, 2008, _____.

General Authority: NDCC 54-52.1-03.2(b)

Law Implemented: NDCC 54-52.1-03.3

Section 71-08-07-03 is created as follows:

71-08-07-03. Employee paid contributions- Repayment Options. If the Office determines that any required employee paid contributions have not been made, the cost of any required employee paid contributions may be paid in a lump sum or in installments in a manner consistent with installment payments permitted under section 71-02-03-02.2.

History: Effective _____.

General Authority: NDCC 54-52-04, 54-52.6-04

Law Implemented: NDCC 54-52.6-09



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Memorandum

TO: PERS Board

FROM: Sparb

DATE: September 17, 2015

SUBJECT: Board Member Committee Assignments

We need to consider which Board subcommittees everyone will be appointed to (Investment, Benefits, Audit & Election). Current assignments are:

- Investment Committee: Mr. Sandal, Mr. Trenbeath, Ms. Y. Smith and Ms. Wassim (alternate)
- Audit Committee: Chairman Strinden and Ms. A. Smith
- Benefits Committee: Ms. A. Smith, Ms. Goodhouse, and Ms. Wassim
- Election Committee: Ms. A. Smith, Mr. Sandal



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Memorandum

TO: NDPERS Board
FROM: Kathy
DATE: September 17, 2015
SUBJECT: Upcoming Events

The following summarizes the upcoming events NDPERS is sponsoring or coordinating for our members for the remainder of the year:

PREP in Killdeer	October 8 th
PREP Grand Forks	October 14 th
Flu Shot Clinic – UND Center for Family Medicine	October 1 st , 6 th , 15 th , 20 th , & 29 th
Annual Open Enrollment	October 19 th - November 6 th
Mid Career Workshop	November 3 rd
ACA Special Enrollment	November 23 rd - December 11 th