

NDPERS BOARD MEETING

Agenda

Bismarck Location:
ND Association of Counties
1661 Capitol Way
Fargo Location:
Sanford Health Plan
1749 38th Street South

Tuesday - January 9, 2018

Time: 8:30 AM

I. MINUTES

- A. December 12, 2017

II. PRESENTATIONS

- A. Independent Auditor's Report CliftonLarsonAllen

III. GROUP INSURANCE

- A. Dental RFP finalize – Bryan (Board Action)
- B. PreMedicare Group – Sharon (Information)
- C. Smoking Deterrent Payments – Sharon (Information)

IV. RETIREMENT

- A. Main System Funding Approach – Sharon (Board Action)
- B. Final Average Salary – Sharon (Board Action)
- C. DC Plan Employer Eligibility – Sharon & Bryan (Information)

V. FLEX COMP

- A. Flex Comp Draft RFP – Bryan (Information)

VI. MISCELLANEOUS

- A. Quarterly Consultant Fees – Derrick (Information)
- B. Procurement Guidelines – Sharon & Bryan (Information)
- C. Receiving Board Materials Electronically – Derrick (Information)
- D. 2017 CAFR – Derrick (Information)
- E. Board Meeting Dates in 2018 – Sharon (Information)
- F. Audit Committee August Meeting Minutes (Information)

VII. MEMBER Executive Session

- A. Retirement Appeal Case #472* – MaryJo (Board Action)
- B. Deferred Comp Hardship Case #471* – MaryJo (Board Action)
- C. Retirement Appeal Case #478* – MaryJo (Board Action)

*Executive Session pursuant to NDCC §44-04-19.2(1) and/or §54-52-26 to discuss confidential records or confidential member information.

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.



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

Sharon Schiermeister
Interim Executive Director
(701) 328-3900
1-800-803-7377

Fax: (701) 328-3920 Email ndpers-info@nd.gov Website <https://ndpers.nd.gov>

Memorandum

TO: NDPERS Board

FROM: Jamie

DATE: January 9, 2018

SUBJECT: FY 2017 Audit Report Presentation

Included is the FY 2017 audit report for the PERS agency. Jason Ostroski from CliftonLarsonAllen will be joining the Board meeting via teleconference to review the audit report with you and answer any questions you may have. A copy of their presentation is attached.



January 9, 2018

Audit Results Presentation to:

**North Dakota Public Employees Retirement System
– Board of Trustees**



CliftonLarsonAllen

www.cliftonlarsonallen.com

Agenda

- 2017 Audit Results
- Required Communications
- Financial Highlights
- GASB 68 and 75 Schedule Audit Update

2017 Audit Results

- Independent Auditors' Report - Unmodified "clean" opinion that the financial statements are presented fairly, in all material respects, in conformity with U.S. Generally Accepted Accounting Principles (GAAP).
- Limited procedures were performed, and no opinion rendered, on management's discussion and analysis, required supplemental information, supplemental schedules, and the Introductory, Investment, Actuarial, and Statistical sections.
- Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*
 - No material weaknesses were identified.
 - No significant deficiencies were identified.
- Letter to the Board providing required communications with those charged with governance

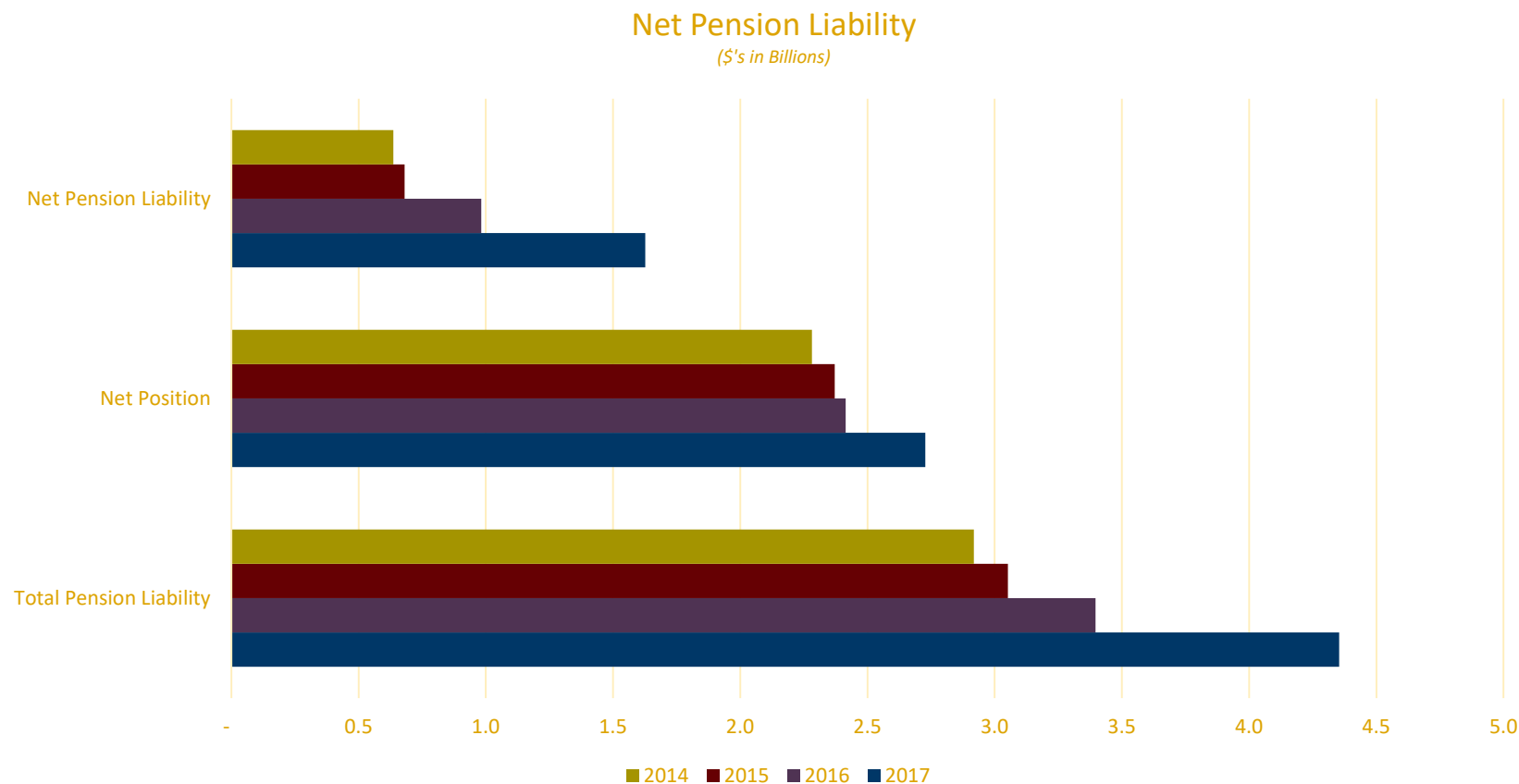
Required Governing Body Communications

- Auditor's responsibility under U.S. Generally Accepted Auditing Standards
- Significant accounting policies
 - GASB Standard No. 74, *Financial Reporting for Postemployment Benefit Plans other than Pension Plans*
- Financial statement disclosures
 - There were no particularly sensitive financial statement disclosures
- Management judgments and accounting estimates
 - Valuation of alternative investments
 - Actuarial assumptions and methods used

Required Governing Body Communications

- Management was very cooperative and professional during the audit process
- No disagreements with management
- Management did not consult with other accountants on the application of GAAP or GAAS
- No major issues were discussed with management prior to retention
- Management Representations

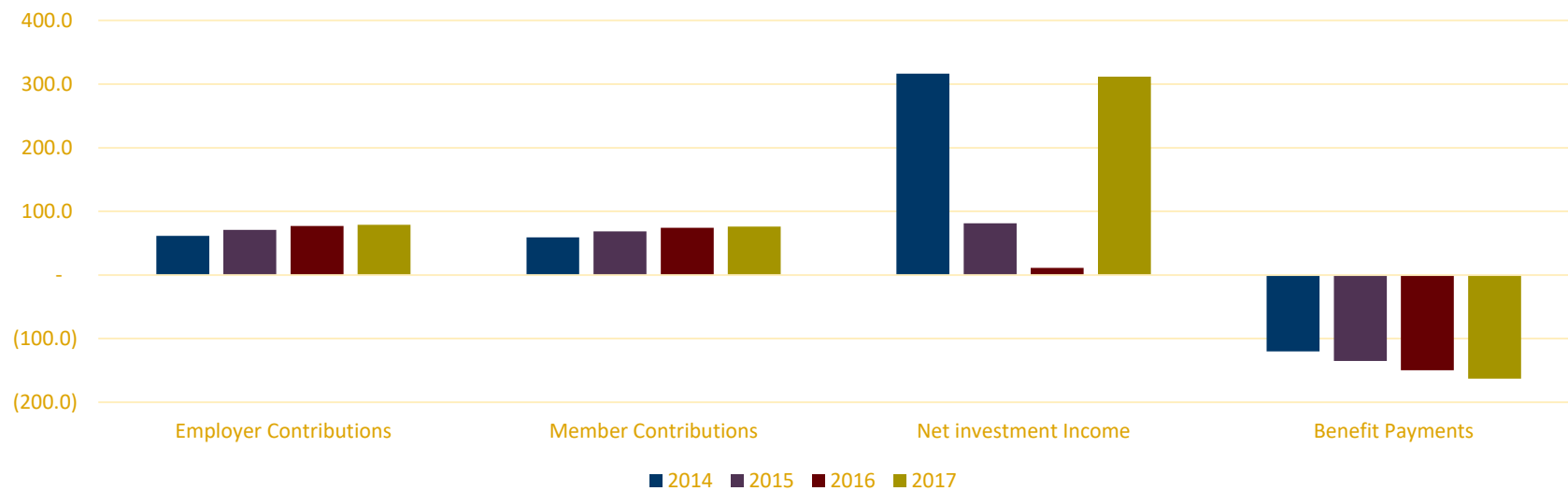
Financial Highlights – PERS



- Net Position as a % of Total Pension Liability decreased from 71.10% in 2016 to 62.65% in 2017

Financial Highlights – PERS

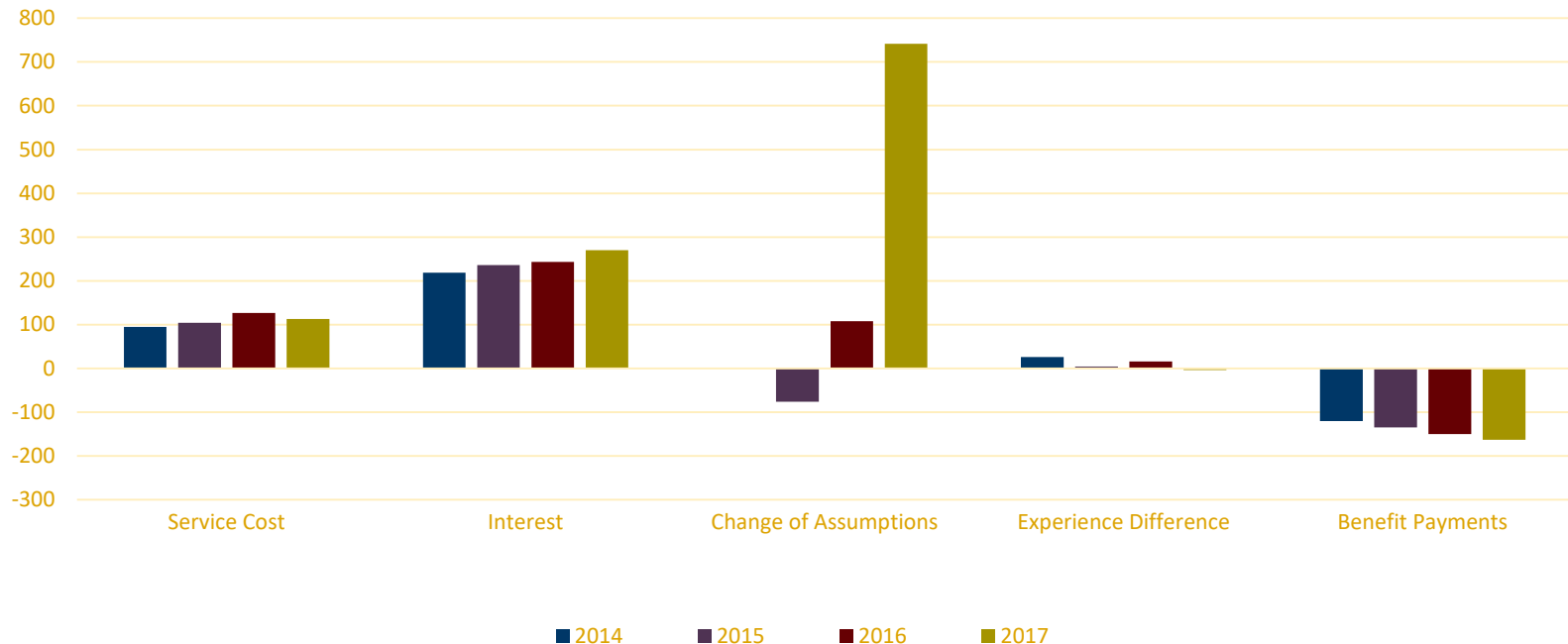
Changes in Fiduciary Net Position
(*\$'s in Millions*)



- Contributions
 - Active members increased from 16,018 in 2016 to 16,397 in 2017
 - No change in contribution rates from 2016 to 2017
- Investment Income
 - 13.01% money-weighted rate of return in 2017
- Benefit Payments
 - Retirees increased from 10,515 in 2016 to 11,103 in 2017

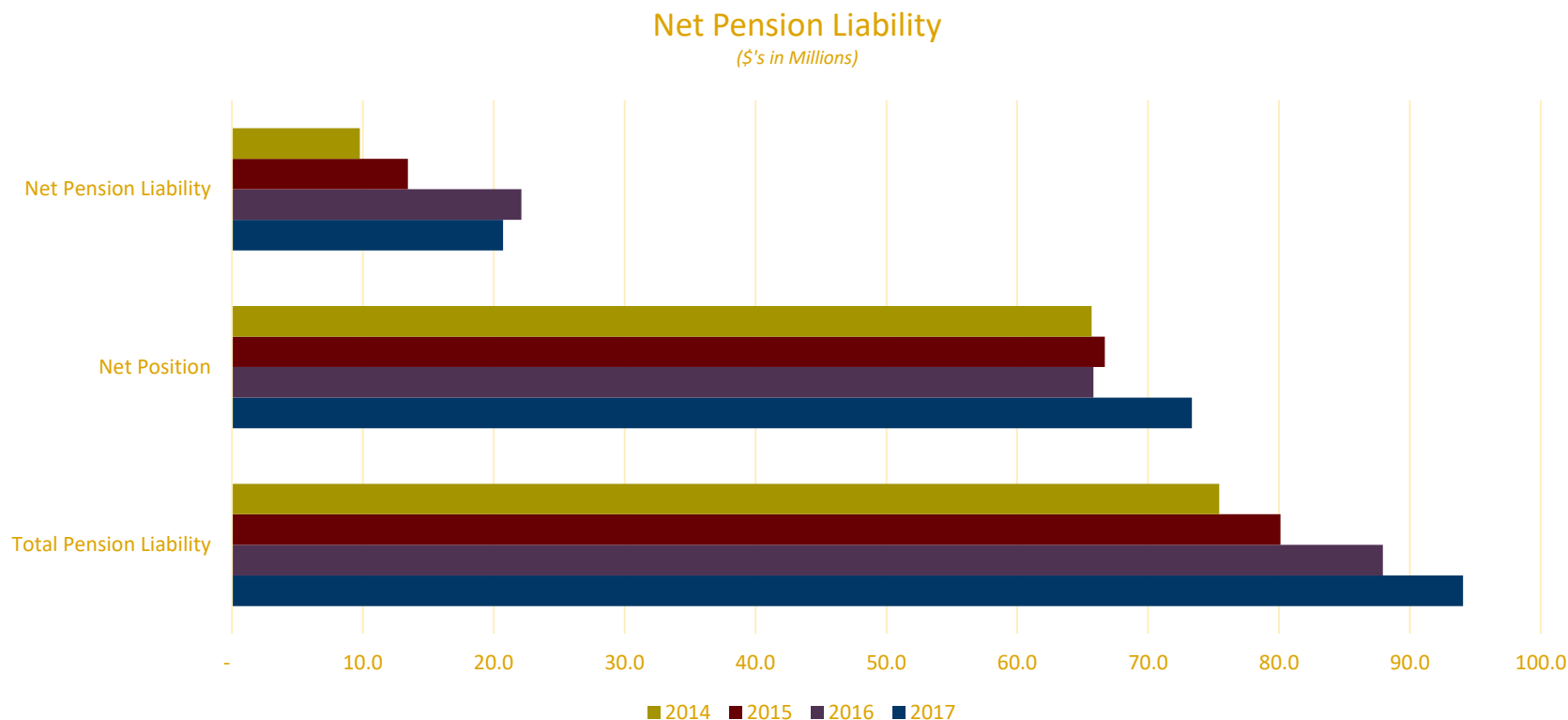
Financial Highlights – PERS

Changes in Total Pension Liability
((\$'s in Millions)



- The discount rate decreased from the 2016 Long Term Expected Rate of Return of 8.00% to a Single Discount Rate of 6.44% in 2017
- Price inflation assumption was lowered from 3.50% to 2.50%

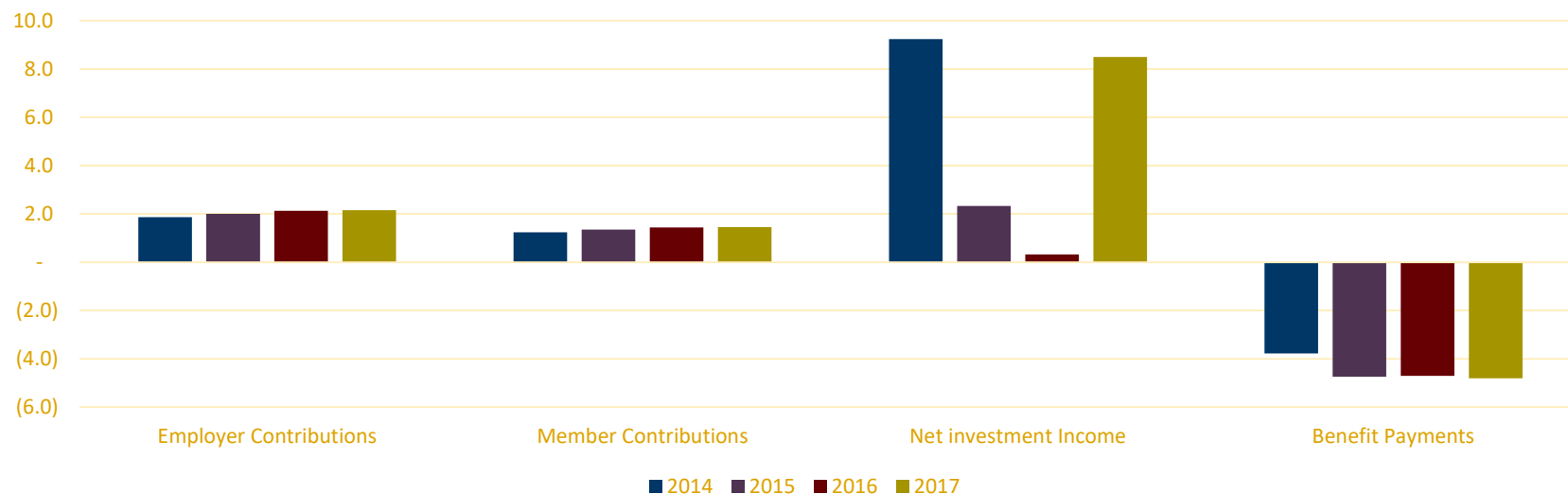
Financial Highlights – HPRS



- Net Position as a % of Total Pension Liability increased from 74.85% in 2016 to 77.98% in 2017

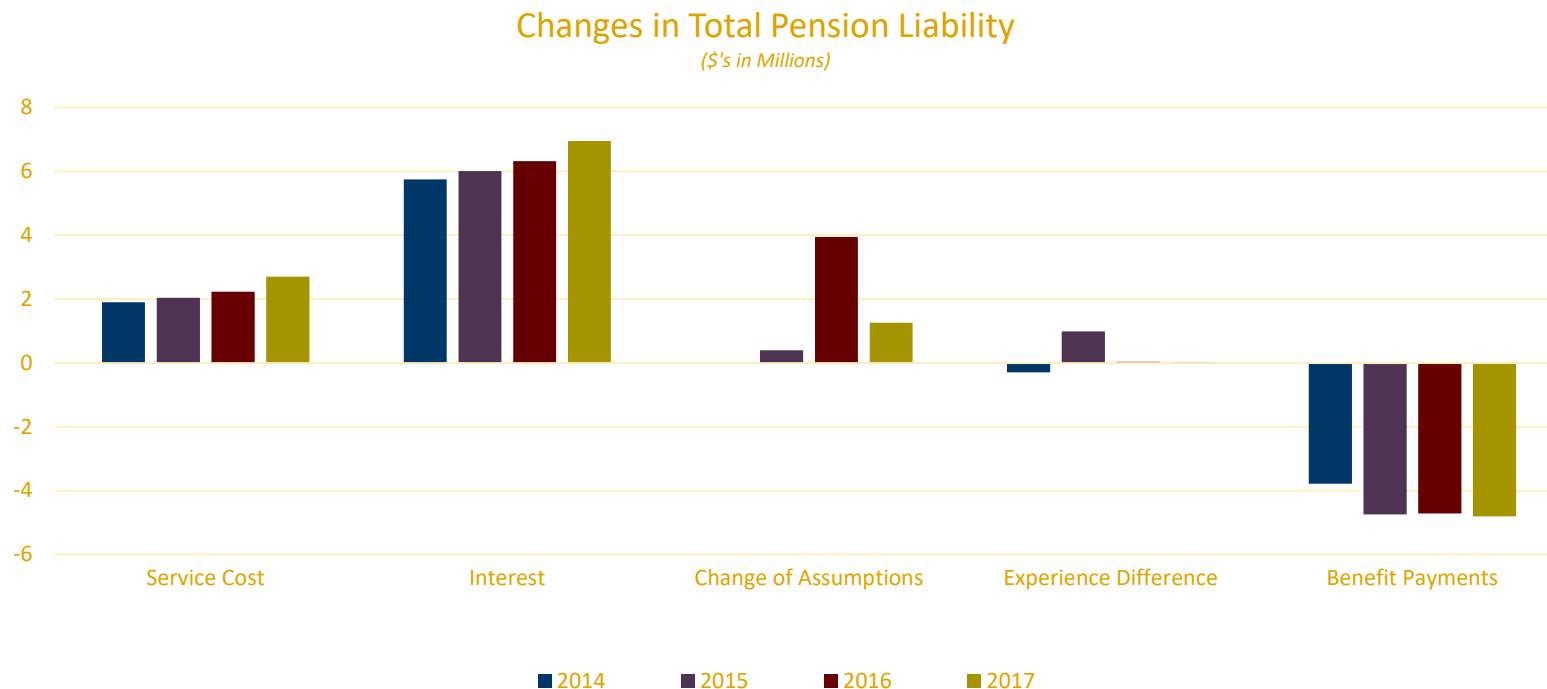
Financial Highlights – HPRS

Changes in Fiduciary Net Position
(\$'s in Millions)



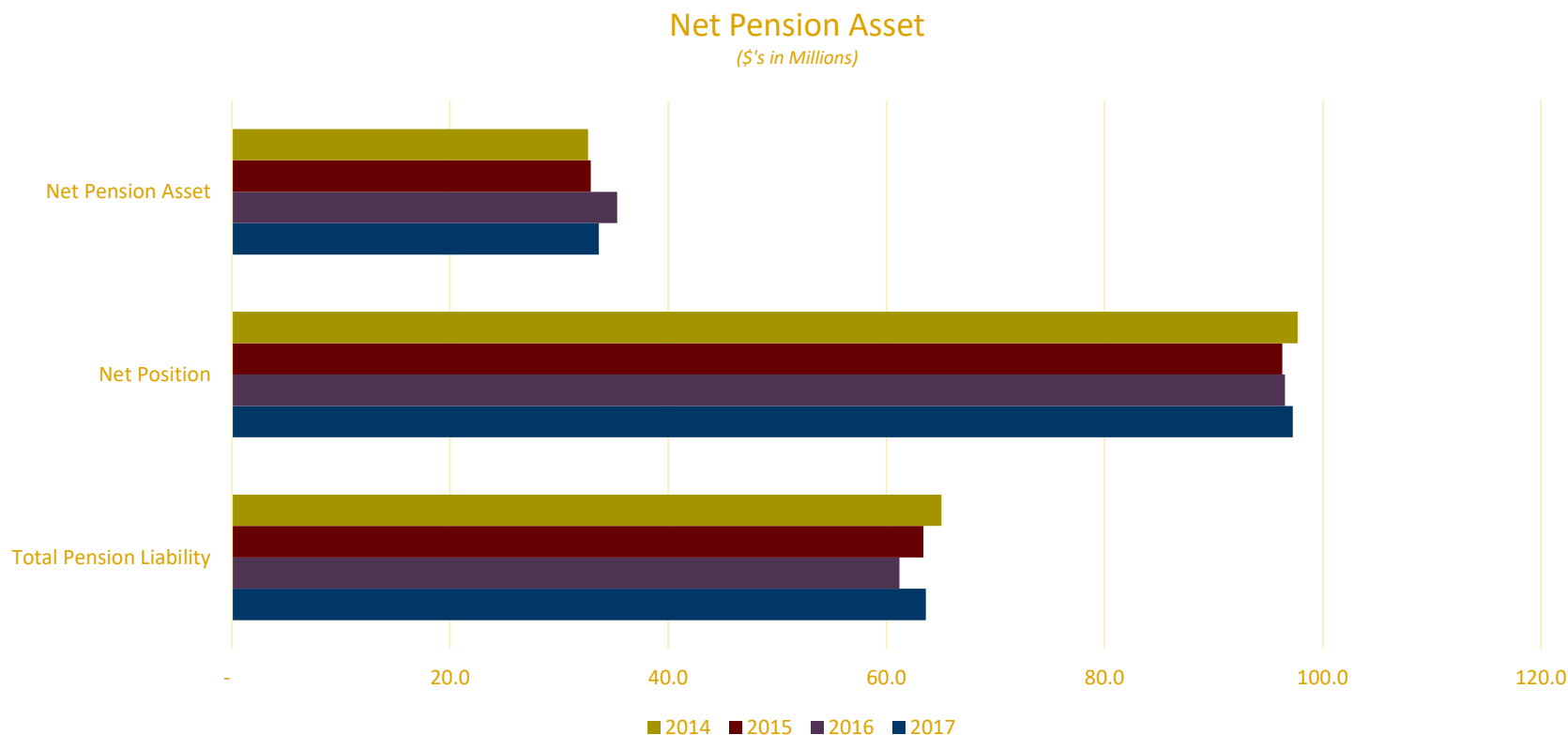
- Contributions
 - Active members increased from 67 in 2016 to 69 in 2017
 - No change in contribution rates from 2016 to 2017
- Investment Income
 - 12.93% money-weighted rate of return in 2017
- Benefit Payments
 - Retirees increased from 123 in 2016 to 127 in 2017

Financial Highlights – HPRS



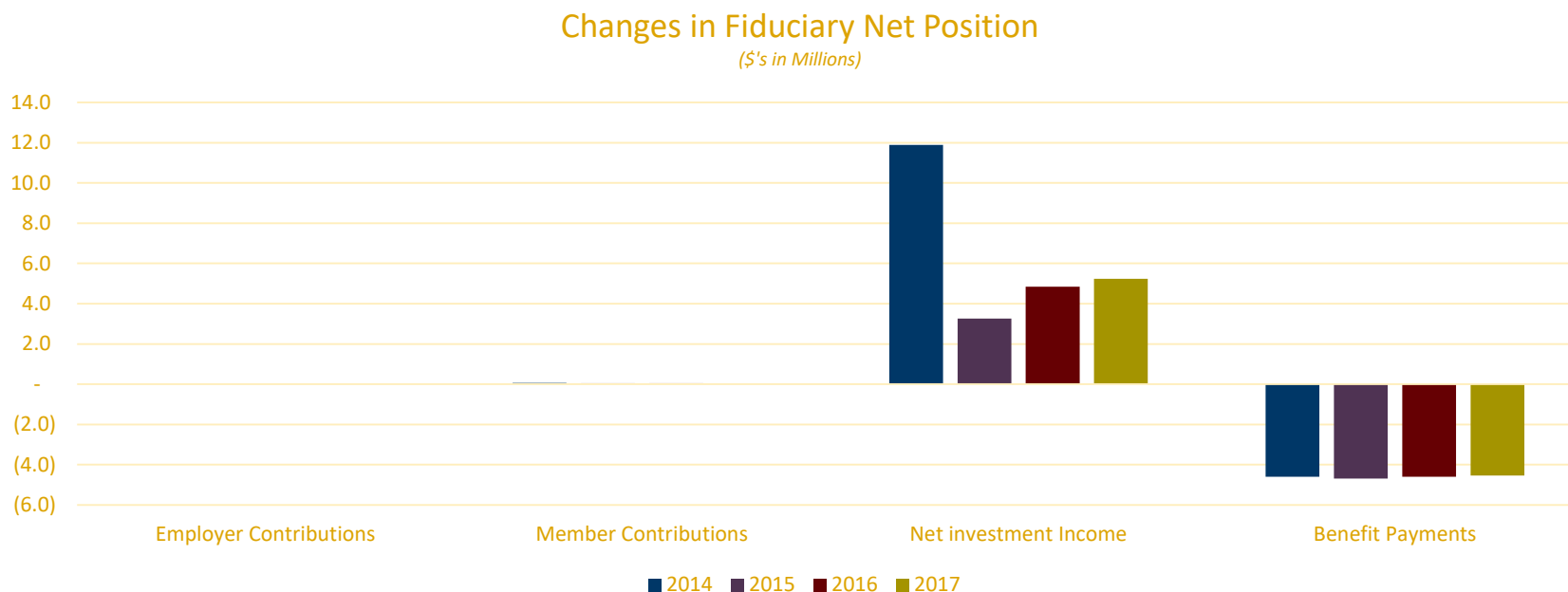
- The investment return assumption was decreased from 8.00% to 7.75%
- Price inflation assumption was lowered from 3.50% to 2.50%

Financial Highlights – JSND



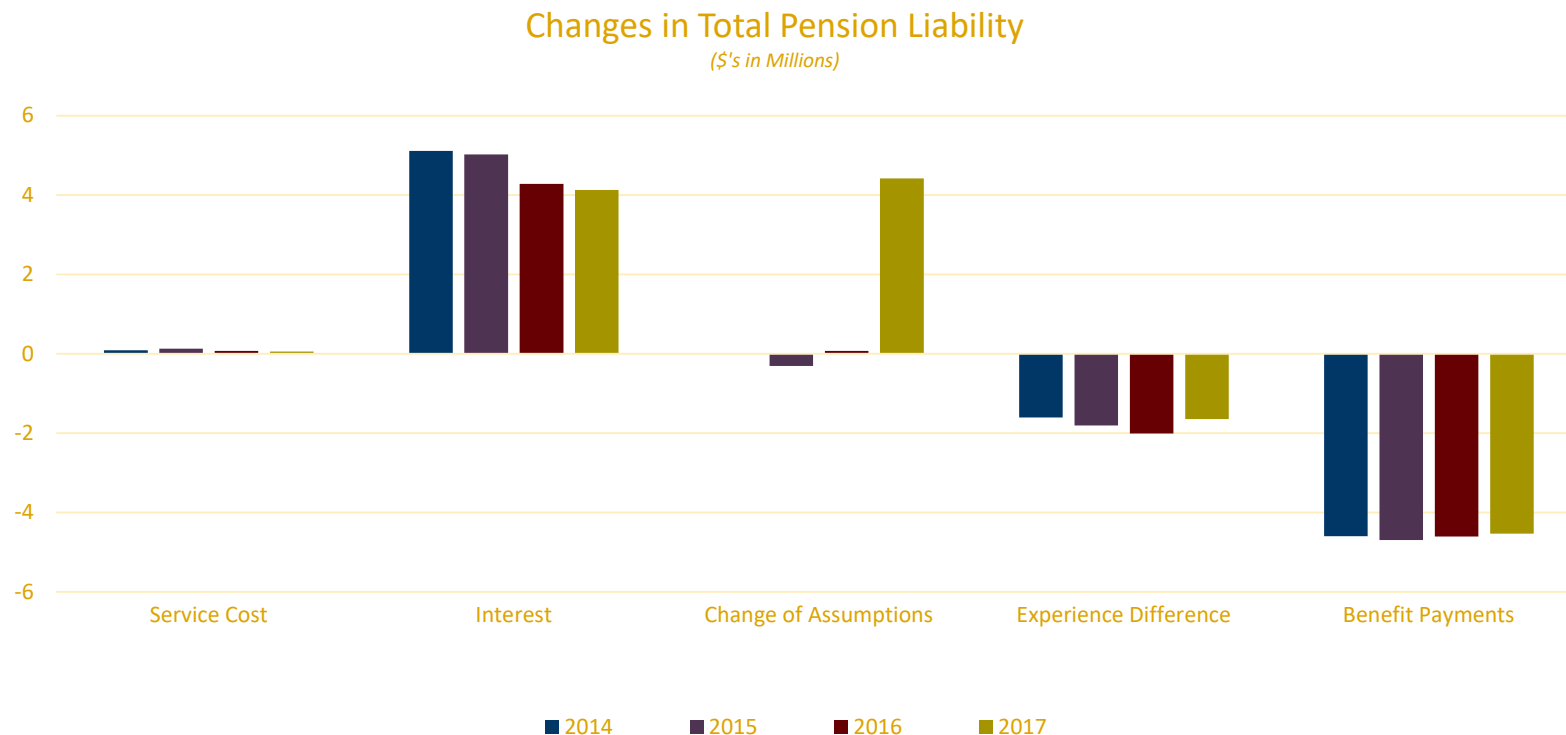
- JSND is a closed plan
- Net Position as a % of Total Pension Liability decreased from 157.72% in 2016 to 152.86% in 2017

Financial Highlights – JSND



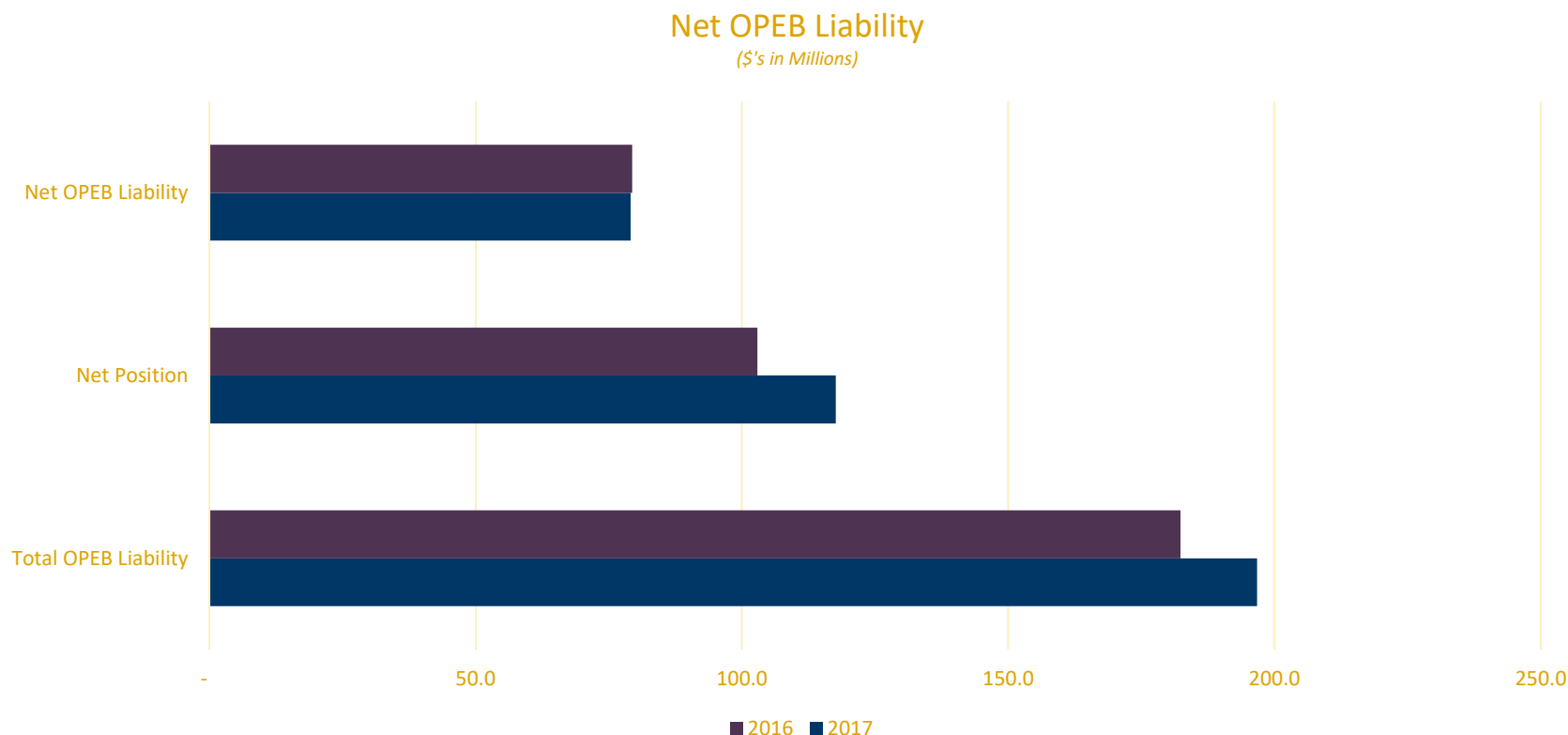
- Contributions
 - Active members decreased from 9 in 2016 to 8 in 2017
 - No employer contributions and minimal member contributions given the small population
- Investment Income
 - 5.85% money-weighted rate of return in 2017
- Benefit Payments
 - Retirees decreased from 206 in 2016 to 199 in 2017

Financial Highlights – JSND



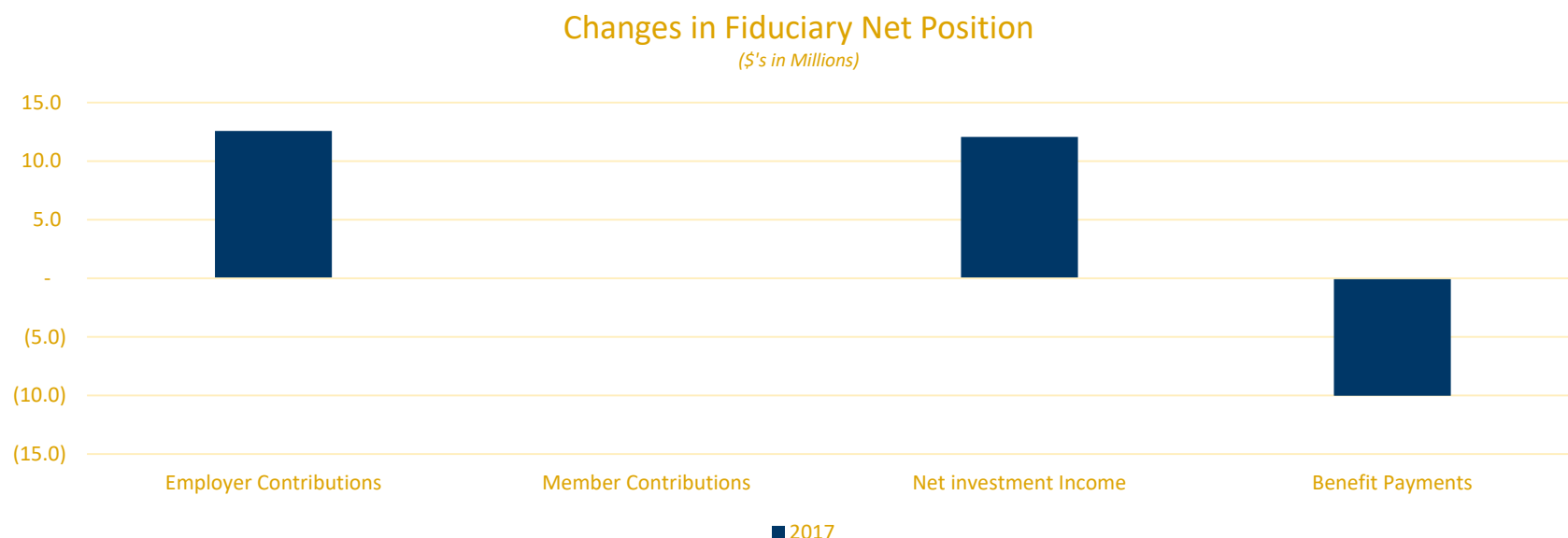
- The investment return assumption was decreased from 7.00% to 5.70%
- Price inflation assumption was lowered from 3.00% to 2.50%
- COLA assumption was lowered from 3.00% to 2.50%

Financial Highlights – RHIC



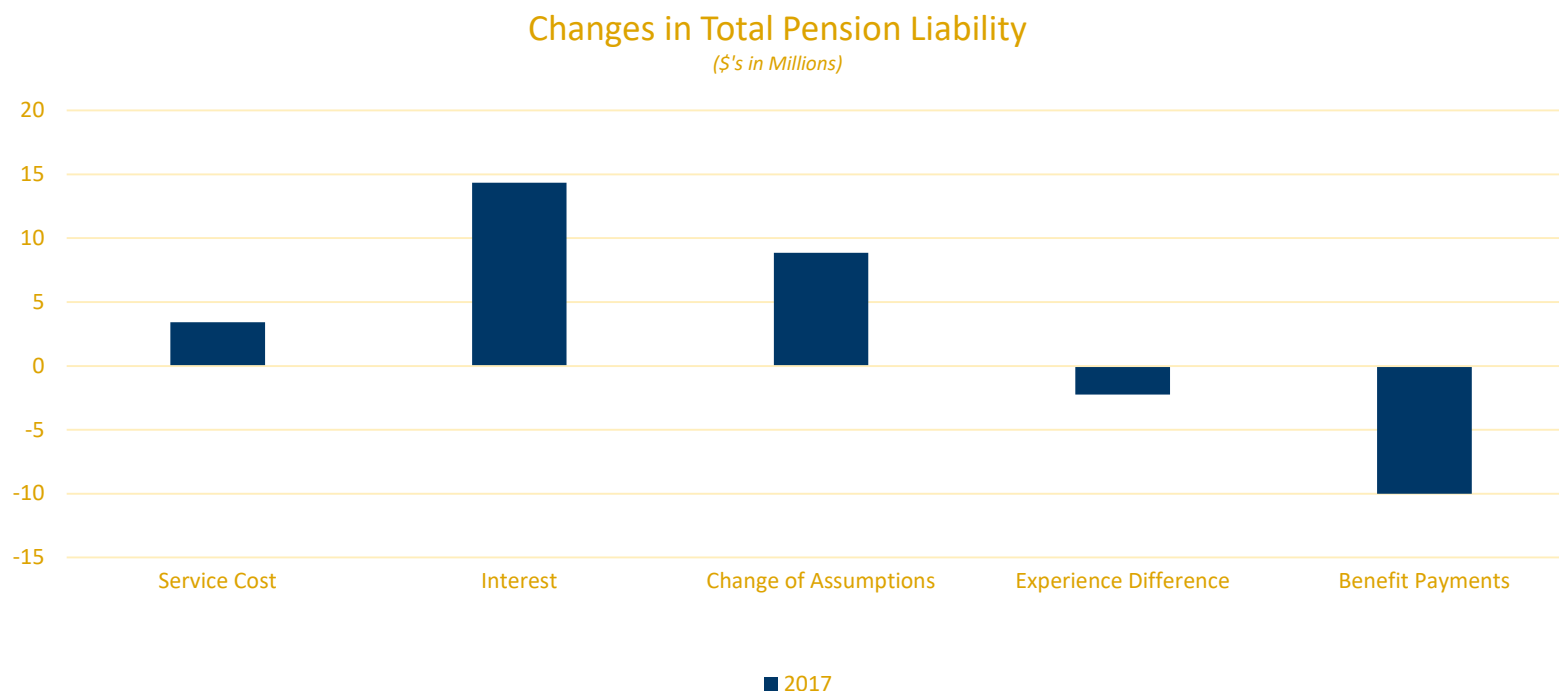
- Net Position as a % of Total OPEB Liability increased from 56.45% in 2016 to 59.78% in 2017

Financial Highlights – RHIC



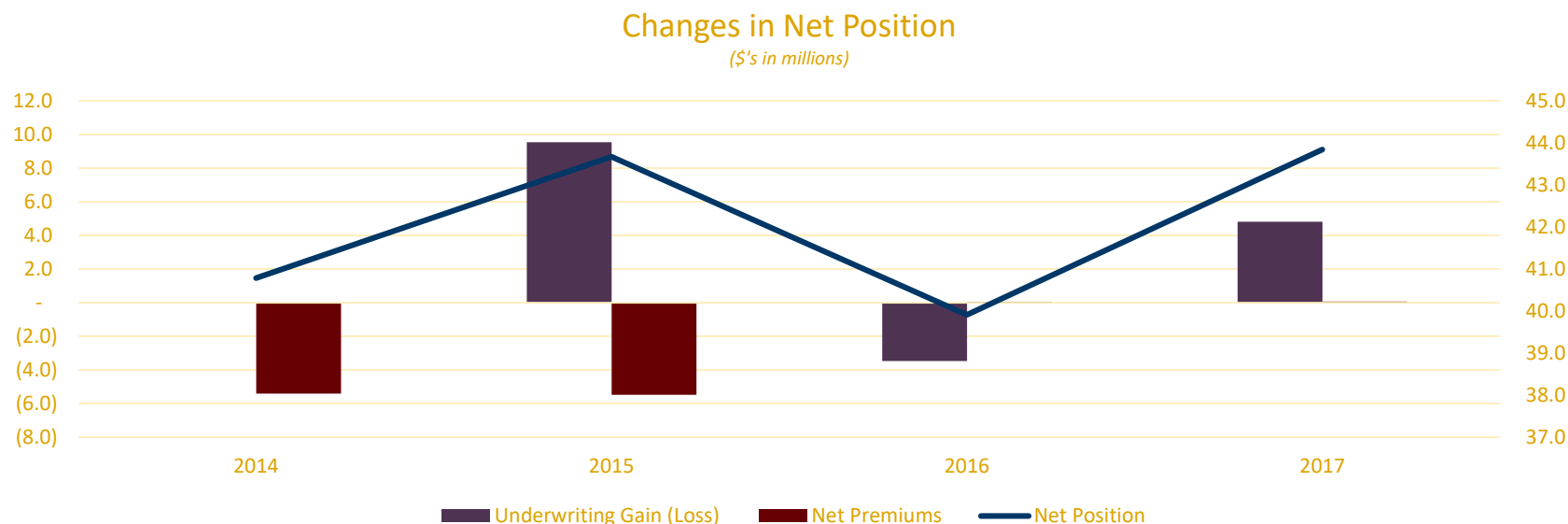
- Contributions
 - Active members decreased from 23,664 in 2016 to 23,497 in 2017
- Investment Income
 - 11.75% money-weighted rate of return in 2017
- Benefit Payments
 - Retirees increased from 10,320 in 2016 to 11,232 in 2017

Financial Highlights – RHIC



- The investment return assumption was decreased from 8.00% to 7.50%
- Price inflation assumption was lowered from 3.50% to 2.50%

Financial Highlights – Group Insurance



- Net premiums were negative in 2014 and 2015 due to premium buy downs.
- Underwriting gain of \$4.8 million in 2017 due to the suspension of the Health Insurer Tax
- Underwriting loss of \$3.6 million in 2016 due to higher than expected claim payments and the settlement of ACA fees with Blue Cross Blue Shield

GASB 68 and 75 Schedule Audit Update

- Employer Census Testing is Complete
 - Selected 26 Employers for testing
 - Completed testing on all 26 employers and noted no errors on those 26 employers.
- Expect to begin work on the GASB 68 and 75 Schedules in January 2018
- Expect to issue our final report on the schedules no later than March 2018



Jason Ostroski, CPA
Engagement Principal
jason.ostroski@cliftonlarsonallen.com
410-453-0900



**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 • <https://ndpers.nd.gov>

Memorandum

TO: NDPERS Board

FROM: Bryan

DATE: January 9, 2018

SUBJECT: Dental RFP

NDPERS staff and Conduent have the draft for the dental plan RFP ready for your approval. Jim Schaefer from Conduent will be on the phone to answer any questions you may have. We should be on track for the following timeline:

October, 2017	Begin work on dental RFP.
January, 2018	Submit dental RFP to PERS Board for approval. Consultant should be available either by teleconference or video conference to review and answer questions for the Board.
February, 2018	Issue dental RFP.
April, 2018	Receive and begin evaluation of dental RFP's.
May, 2018	Submit dental evaluation to NDPERS Board. The consultant should plan to attend this NDPERS meeting via conference call.
June, 2018	Interview and select dental vendor. The consultant should plan to attend this NDPERS meeting.

If you have any questions, suggestions, or changes we will be available at the NDPERS Board meeting.

Board Action: Approve the NDPERS Dental RFP



North Dakota Public Employees Retirement System

Request for Proposal

for

Group Voluntary Dental PPO Benefits

Including:

- Claims Administration
- Customer Service
- Provider Network Management Services
- Related Administrative Services

RFP Release Date: February 1, 2018

Effective Date of Plan: January 1, 2019

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I. INTRODUCTION

1. Objectives of the Request for Proposal

The objective of this Request for Proposal (RFP) is to solicit fully-insured proposals for services related to claim administration, customer service, and access to a provider network and associated administrative for the North Dakota Public Employees Retirement System (NDPERS) group Dental benefits plan. The account services to be provided under any resulting contract shall commence on January 1, 2019.

2. Definitions

For purposes of this RFP, the following terms are defined as indicated below:

- A. "Contractor" – the insurer/administrator selected pursuant to this RFP,
- B. "Offeror" – an entity responding to this RFP,
- C. "The Plan" – the dental benefits program pursuant to this RFP,
- D. "Dental Claims" – all dental services, equipment and supplies eligible under the Plan,
- E. "Participant(s)" – All Active or Retired employees and their eligible dependents.

3. Background

The North Dakota Public Employees Retirement System (NDPERS) desires to provide voluntary dental benefits to all eligible active and retired employees and their eligible dependents. NDPERS is soliciting proposals for coverage to be effective January 1, 2019.

4. Key Dates in the RFP Process

The following dates will apply during the RFP process. NDPERS reserves the right to waive or modify specific terms and conditions contained in this RFP, and to waive, modify or extend deadlines specified herein.

Date	Activity
February 1, 2018	RFP is issued.
February 24, 2018	Written questions regarding proposals must be received by NDPERS no later than 5:00 p.m. (CDT).
March 10, 2018	NDPERS posts responses to all questions received.
March 30, 2018	Proposals must be received by NDPERS no later than 5:00 p.m. (CDT).
May , 2018	NDPERS Board review of proposals.
June 2018	Finalist interviews and Best and Final Offers requested, if deemed necessary by the NDPERS Board.
August 2018	Selection and award of contract by

Date	Activity
	NDPERS.

5. ***Current Enrollment and Demographics***

NDPERS provides fully-insured, voluntary group Dental benefits for active employees, retirees and their respective eligible dependents (collectively “participants”) of NDPERS. In addition to eligible state and university employee and dependents, it is possible that participation may be extended to certain political subdivisions eligible to participate in NDPERS.

NDPERS currently offers one plan design of voluntary Dental benefits. Listed below are the number of eligible participants and the number of enrolled participants as of **December 31, 2017**.

Eligibility Category	Number of Eligible Employees/Retires	Number of Enrolled Participants
Actives	16,030	8,450
Retirees/COBRA	10,037	2,188

Annual enrollment for active state and university employees will be done each year from approximately mid-October through mid-November for coverage effective the following January 1. New hires must elect coverage within 31 days of their effective date. Coverage will then be effective the first day of the month following the date of permanent employment. If they do not elect coverage within 31 days, they must wait until the next annual enrollment period to apply. Retirees do not have annual enrollment but rather, must apply within 31 days of a qualifying event as provided under the Retiree Eligibility definition.

6. ***General Information on the Voluntary Dental Plan***

6.1. **Benefit Plans**

The Benefit Plan Year for NDPERS begins on January 1 of each year and concludes on December 31 of each year.

NDPERS has one plan of voluntary group Dental benefits, which is funded by the employee/retiree contributing 100% of the premiums. The current benefits are described in the SPD available at the following link:

<https://ndpers.nd.gov/active-members/insurance-plans/dental/>

Note: In all cases the “Dental Benefit Plan Summary” as issued by Delta Dental of Minnesota and made part of this RFP, will stand as the authority on questions related to plan design and plan provisions.

6.2. General

Offerors should keep in mind the following considerations as they prepare proposals in response to this RFP.

- The dental program is 100% voluntary. Premiums will be paid entirely by the employee.
- The dental program is fully insured.
- With respect to this contract and program, no commissions, bonuses or overrides will be paid to any party directly by NDPERS.
- No minimum participation requirements will be allowed by NDPERS.
- The Incumbent vendor will process all claims incurred prior to 1/1/2019.
- The Contractor will process all claims incurred while the contract between NDPERS and the Contractor is in effect. This includes run-out claims incurred during the period of the contract, but processed after the contract has been terminated.

II. ELIGIBILITY AND SELECTION CRITERIA

1. *Minimum Requirements*

To be eligible for consideration for this project, the Offeror must meet the following Minimum Requirements:

- A. The Offeror must have been in the business of providing group Dental benefits for at least five (5) years. Offerors should provide detailed information to establish that they have been in the business of providing group Dental insurance for at least five (5) years.
- B. The Offeror must be currently licensed by the North Dakota Department of Insurance to underwrite and administer group Dental insurance.
- C. The Offeror must have successfully underwritten, implemented and administered a group Dental benefits plan for at least one group with 15,000+ active employees.

2. *Selection Criteria*

In determining which bid, if any, will best serve the interests of eligible employees and the state, the board shall give adequate consideration to the following factors:

- A. The economy to be affected.
- B. The ease of administration.
- C. The adequacy of the coverages.
- D. The financial position of the carrier, with special emphasis as to its solvency.
- E. The reputation of the carrier and any other information that is available tending to show past experience with the carrier in matters of claim settlement, underwriting, and services.

The Board may reject any or all bids. In the event it does so, NDPERS shall again solicit bids as provided in this section.

III. GENERAL INFORMATION

1. *Non-Disclosure Agreement (NDA)*

In order to obtain Attachment C: Confidential Documents, which contains confidential data necessary to complete a proposal in response to this RFP, each Offeror must complete and return a signed Non-Disclosure Agreement. NDPERS requests that only those offerors qualified to respond to this RFP, as defined in Section II, submit the Non-Disclosure Agreement.

The Non-Disclosure Agreement must be the form provided in Appendix B of this RFP. The Non-Disclosure Agreement must be received before any confidential data will be released to an Offeror. Please scan and email a signed copy of the NDA to:

Jim Schaefer, Director
Conduent HR Services
james.schaefer@conduent.com
972-366-2012

The information that will be provided to the Offeror after submission of the Non-Disclosure Agreement includes the following:

1. Demographic data showing the coverage election, date of birth, gender, city, state, zip and county for the eligible employee and retiree populations, to be used in completing the Geo-Access reports required in Attachments A-6.
2. Confidential Vendor Response Documents, which includes data on the most utilized providers by total claims paid and by total number of devices and disruption reports for completion of Attachments A-8 and A-9.
3. Historical claims data on a paid basis covering the past six years.

Attachment C may be mailed via overnight mail or encrypted e-mail upon receipt of the Non-Disclosure Agreement. Attachment C will contain the necessary files in Microsoft Office.

Note: Failure to complete all fields on Appendix B may slow the processing of the request for Attachment C or may cause the request to be rejected. In such instances, Conduent HR Services will attempt to contact the offeror to resolve the deficiencies.

2. *Inquiries Regarding Specifications*

Offerors will have until 5:00 p.m. (CDT) on February 23, 2018 to submit questions in writing regarding this RFP. All questions shall cite the specific RFP section and paragraph number(s) to which the question refers. Any questions received by NDPERS prior to the date and time above will be answered in a question and answer document issued by NDPERS. Only answers provided in writing by NDPERS will be considered official.

All question submissions must include the identity of the sender, the sender's title, firm name, mailing address, telephone number, and e-mail address.

Questions shall be submitted via email to Jim Schaefer of Conduent HR Services at james.schaefer@conduent.com. Neither NDPERS nor Conduent HR Services are responsible for questions received after the submittal deadline.

Answers to the questions received timely will be made available on the NDPERS web site on March 9, 2018 by 5:00 p.m., CST at <https://ndpers.nd.gov/about/bid-opportunities/>. Only information in the materials constituting this RFP, including its attachments, exhibits, and forms, the question and answer document, and any RFP addendum shall be binding on NDPERS.

All inquiries regarding these specifications must be in writing and sent via email to:

Jim Schaefer, Director
Conduent HR Services
james.schaefer@conduent.com
972-366-2012

3. Rules and Regulations

Any Offeror submitting a proposal must be able to meet and comply with all applicable state and federal statutes and regulations.

4. Confidentiality of trade secret, proprietary, commercial, and financial information (NDCC Section 44-04-18.4(6))

All materials submitted in response to this RFP will become property of NDPERS and upon receipt BY NDPERS are subject to the North Dakota public records law. If the Responder submits information in response to this RFP that it believes to be confidential financial, commercial, propriety or trade secret materials the Responder must:

- a. Clearly mark each provision that respondent believes to be confidential in its response at the time the response is submitted,
- b. Include a statement with its response justifying the confidential designation for each provision.
- c. Attest whether the information sought to be protected has ever been previously publicly disclosed, if not whether disclosure would cause the Responder competitive injury, and if so, how.

Responder is put on notice that, except for information that is determined by NDPERS to be confidential or otherwise exempt from the North Dakota public records law, NDPERS must disclose to the public upon request any records it receives from Responder. If NDPERS receives a request for information that Responder has requested be kept confidential, NDPERS will review the above information submitted by Responder and may also contact Responder for additional input regarding the nature of those records, but NDPERS will be solely responsible for making the ultimate determination of whether the materials submitted are open or exempt. All information that has not been clearly identified by Responder as being confidential and which NDPERS has determined constitutes confidential or exempt information under the North Dakota public records law will be disclosed as an open record. NDPERS will not consider the prices submitted by the Responder to be confidential.

5. Addenda, Amendments, and Clarifications to the RFP

NDPERS may issue any addenda, amendments, and clarifications regarding this RFP that NDPERS determines are necessary. All such addenda, amendments, and clarifications issued by NDPERS become part of the RFP. All addenda, amendments, and clarifications to the RFP will be issued in writing and added to the RFP posting at:

<https://ndpers.nd.gov/about/bid-opportunities/>. NDPERS may also e-mail any addenda, amendments, or clarifications to all eligible Offerors that have submitted a Non-Disclosure Agreement that is recorded by NDPERS and that have provided NDPERS with an e-mail address. However, it shall be the responsibility of the Offeror to recheck the RFP posting at: <https://ndpers.nd.gov/about/bid-opportunities/> for any possible addenda prior to submitting a proposal. The Offeror must acknowledge all addenda, amendments, or clarifications by indicating receipt on the Signature Page (A-13 Signature Page) of Attachment A, Technical Proposal. Only written addenda, amendments, and clarifications signed or sent by authorized NDPERS personnel shall be binding. All oral and other interpretations or clarifications have no legal effect.

6. Order of Responses

Responses must be made in the same order as provided in the specifications. Unless a variation from the specifications of the RFP is specifically noted in a response, the Offeror is agreeing to meet all requirements, including the required contract provisions, stated in this RFP. No proposed variation is binding on NDPERS unless and until accepted by NDPERS.

7. Submission of Proposals

To be considered for award, one (1) unbound original and nine (9) additional bound copies of the Offeror's proposal must be received by NDPERS on or before 5:00 P.M. (CDT), March 30, 2018. The unbound copy shall bear original signatures and shall be marked as the "Master Copy". The unbound Master Copy shall contain no divider sheets or tabs, and shall be printed on one side only of 8-1/2 in. x 11 in. white paper to enable copying if needed. Colors must reproduce in a legible manner on a black-and-white copier. The unbound original and one (1) copy of the proposal in a digital format (in MS WORD and MS Excel formats as appropriate) shall be provided on a USB flash drive in a sealed envelope. Copies of the proposal shall be delivered to:

Bryan Reinhardt, Research and Planning Manager
NDPERS
400 East Broadway, Suite 505
P.O. Box 1657
Bismarck, ND 58505

One additional bound copy of the Offeror's proposal along with a copy of the proposal on a USB flash drive (in MS WORD and MS Excel formats as appropriate) shall also be sent to:

Jim Schaefer, Director
Conduent HR Services
9090 Skillman Street
Ste. 182-A / 371
Dallas, TX 75243

The base contract will be for a two year period of January 1, 2019 through December 31, 2020. All rates and fees must be firm, fixed and valid for the duration of the base period. Additionally, NDPERS is seeking two, additional two year option periods for a potential total contract period of six years.

Proposals and any other information submitted by organizations in response to this RFP shall become the property of NDPERS and will not be returned.

NDPERS will not provide compensation to Offerors for any expenses that they incur as part of the proposal process, including but not limited to expenses incurred for preparing proposals, making demonstrations, responding to inquiries, and attending meetings and negotiations. Offerors submit proposals at their own risk and expense.

The materials submitted must be enclosed in a sealed envelope, box, or container; the outside of the package must include "Proposal for Dental Plan Services" and show the submittal deadline, organization name, and the return address of the organization.

Late proposals may be returned to the organization unopened at the organization's expense. Late proposals will not be considered unless the NDPERS Board of Trustees determines otherwise.

Proposals sent via email or facsimile transmission will not be accepted.

Any award is contingent upon a contract acceptable to NDPERS being executed.

8. *Acceptance of Proposals*

NDPERS retains the right to reject all proposals submitted. NDPERS is not required to select the proposal with the lowest fees, but will take into consideration any factor it considers relevant. It is the intent of NDPERS at this time to enter into a contract effective upon execution with services beginning January 1, 2019 through December 31, 2020. The Board at its discretion may extend the contract for up to two additional two-year option periods. The premium and benefit structure of these extensions will be subject to negotiations prior to renewal. NDPERS has the right to discontinue the program if the legislature discontinues the program or for any other reason. The Offeror whose proposal is selected will be chosen with the goal of developing a long-term relationship.

9. *Non-Responsive Proposals*

NDPERS is not required to accept for consideration any proposal that does not comply with the criteria set forth herein.

10. *References*

Each Offeror must provide references from other clients as requested in this RFP. NDPERS or its designated representative may ask these clients to provide information regarding the Offeror's overall record of service in providing services for their participants. Providing references in its proposal constitutes the Offeror's permission for NDPERS to contact these clients.

11. Compliance with HIPAA

As a business associate of NDPERS, the Contractor must comply with the privacy, transactions and code set, and security requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as if it were a covered entity, as that term is defined by HIPAA, and the federal regulations implementing HIPAA. The Contractor will be required to execute a business associate agreement, which will be an attachment to the Agreement, and abide by the terms of the business associate agreement throughout any contract term. The Contractor will also be required to comply with the security requirements of HIPAA.

12. Certification

An authorized Officer of any Offeror submitting a proposal must certify that the organization complies with the RFP specifications by signing and including the signature pages as follows:

Attachment A: Technical Proposal:

- Tab A-2
- Tab A-4a
- Tab A-4b
- Tab A-5
- Tab A-10
- Tab A-11
- Tab A-12
- Tab A-13

Attachment B: Financial Proposal:

- Tab B-3
- Tab B-4a
- Tab B-4b
- Tab B-7

13. Waiver

By submitting a proposal, the Offeror submitting the proposal agrees to waive any claim it has or may have against NDPERS, NDPERS employees, NDPERS agents, and NDPERS attorneys, arising out of or in connection with (1) the administration, evaluation or recommendation of any proposal; (2) waiver of any requirement under this RFP; (3) acceptance or rejection of any proposal; and (4) award of the contract.

14. Additional Information from Responding Organizations

NDPERS reserves the right to request additional documentation from responding organizations, and such information may vary by Offeror.

15. Modification

No modifications to a proposal will be accepted after the stated deadline for submissions of proposals, unless language within the proposal is clarified at NDPERS's request.

16. Solicitation

The selected Offeror shall not use lists of covered employees and other data for any purpose except to provide services to participants. Neither the selected Offeror nor its employees may disclose such information to any other party unless specifically authorized in writing in advance by NDPERS.

17. News Release

Written approval by NDPERS will be required for any news releases or other communications regarding a contract awarded to an Offeror.

18. Change Required by Statute, Regulation, Court Orders, or Program Appropriations

NDPERS recognizes that there are factors that could cause a change of condition with regard to NDPERS benefits and administration that are beyond the control of NDPERS or the Offeror submitting a proposal. Those factors that may affect the program include, but are not limited to:

- Federal and state statutes, regulations, court decisions and administrative rulings
- Funding appropriated by the North Dakota Legislature
- Opinions of the Attorney General of the State of North Dakota

NDPERS expects a good faith effort on the part of the Offeror that is selected to comply with additional responsibilities imposed by federal or state law without requiring mid-year fee increases. NDPERS reserves the right to negotiate with the Offeror as needed to comply with any changes required by statute, regulation, court order, administrative order or official interpretation.

19. Historical Claim, Rate and Member Census Information

This information will be provided electronically as "Appendix C - Confidential Data" to those Offerors that return an executed non-disclosure agreement as described in this RFP.

IV.CONTRACT REQUIREMENTS

1. Introduction

The Agreement between NDPERS and the Contractor will include the RFP as finally amended and/or clarified, the Contractor's proposal as amended or clarified, if applicable, and any other information the Contractor may be required to provide (hereinafter Contract Documents).

The Contract Documents are intended as the complete and exclusive statement of the agreement between NDPERS and the Contractor and supersede all prior or contemporaneous agreements, negotiations, course of prior dealings, or oral representations relating to the Agreement subject matter.

The terms and conditions of any agreements, amendments, modifications, or other documents submitted by the Offeror that conflict with or in any way purport to amend or add to any of the terms and conditions of the Agreement are specifically objected to by NDPERS and are of no force or effect, unless specifically agreed to by NDPERS and incorporated into the Agreement for Services as an amendment signed by both parties.

The Agreement may be amended by mutual consent of the parties. No modification or amendment to the Agreement shall become valid unless in writing and signed by both parties. All correspondence regarding modifications or amendments to the Agreement must be forwarded to NDPERS for prior review and approval.

The contracting organization agrees that it shall not publicize the Contract Documents or disclose, confirm or deny any details thereof to third parties or use any photographs or video recordings of NDPERS' or participating entities' employees or use NDPERS' name in connection with any sales promotion or publicity event without the prior express written approval of NDPERS.

2. Term of the Contract

The contract term will begin on January 1, 2019 upon the execution of the Agreement by NDPERS. The initial contract term will end on December 31, 2020. The NDPERS Board, at its discretion may extend the contract for up to two additional two (2) year option periods. The timeline in the table below will apply for the duration of the contract.

Contract Period	
Base Contract	
Option Period 1	
Option Period 2	

NDPERS and the Contractor agree and acknowledge that the account services to be provided under this proposal will occur between January 1, 2019 and December 31, 2020. However, NDPERS and the Contractor also agree and acknowledge that there are duties and obligations specified by this proposal to be performed both prior to and after these dates. The parties each agree to perform all such duties and obligations, and all damage provisions included in the Agreement shall thereby be in effect.

3. *Failure to Comply*

Failure to comply with the procedures required by NDPERS or any other applicable guidelines shall be cause for the immediate imposition of liquidated damages and/or immediate cancellation of the Agreement, at NDPERS's option. Liquidated damages and/or cancellation shall remain in effect until NDPERS has been satisfied that circumstances resulting in liquidated damages and/or cancellation have been corrected.

4. *Compliance with ERISA*

As a governmental entity, NDPERS is not directly covered by the provisions of ERISA .

5. *Taxpayer I.D. Number*

The Contractor must obtain a Vendor Identification Number in order to receive payments issued through NDPERS. The Contractor will be required to complete a Payment Identification Form (W-9) and submit it to NDPERS in order to receive payment.

6. *Authorized Signatures*

An authorized officer of the Offeror must sign the Signature Page (Attachment A-13) and the Deviations page (Attachment A-12), which are part of this RFP. Offeror shall include a copy of a document granting the signing officer authority to bind the Offeror to the agreements and representations made in the Offeror's proposal. This document shall be labeled as Response Attachment A-14: Authorization Documentation.

7. *Prohibited Interest*

An officer, director or employee of NDPERS may not have a direct interest in the gains or profits from any Agreement executed by NDPERS pursuant to this RFP and may not receive any pay or emolument for any service performed for the Contractor.

8. *Required Contract Provisions*

The selected Offeror will enter into a written agreement between it and NDPERS. The contract shall be in a form satisfactory to NDPERS.

V. DESCRIPTION OF SERVICES CURRENTLY PROVIDED

It is NDPERS' intent that the Contractor provide a level of service that is at least comparable to that provided by the Incumbent. A description of benefits currently offered is available on-line at "NDPERS Group Plan Booklet" at <https://ndpers.nd.gov/active-members/insurance-plans/dental/>. To assist Offerors in assessing the opportunity, the following information is an overview of the services currently provided.

1. *Claim Adjudication and Member Services*

The majority of NDPERS claims are auto-adjudicated, which means the claims can be processed without human intervention. Paper claims are scanned into an imaging system, and verified for accuracy. Data Entry Specialists are responsible for confirmation of scanned claims with image anomalies as well as manually keying any claims that cannot be scanned. Once the scanned claim is verified, it and all other claims ready for processing are run through a batch process each evening. The claims that edit out of the auto adjudication process are routed to the examiners and senior examiners for review and release. Customer Service Specialists (CSS) can see claim history and claims in process. Through a workflow process they can send corrections or updates as needed based on calls received into the call center. CSSs do not process or correct claims.

Year-end 2017 call center and claim processing statistics for Delta Dental are shown below:

Based on Delta Dental Book of Business	
Service Center Call Abandonment rate	6%
Average time to answer calls (minutes)	1:06
% of calls answered within 30 seconds	58%
Percentage of auto-adjudicated claims	86%
Total # of claims processed	1,699,707
Average clean claim turnaround time (days)	20

Based on NDPERS Business	
Service Center Call Abandonment rate	N/A
Average time to answer calls (minutes)	N/A
% of calls answered within 30 seconds	N/A
Percentage of auto-adjudicated claims	73%
Total # of claims processed	17,366
Average clean claim turnaround time (days)	21

2. Network Management

Currently, the NDPERS voluntary dental plan is a network based, Preferred Provider Organization (PPO) plan. As such, there is a provider network in place that includes dental care providers who are currently under contract with, but not necessarily employed by Delta Dental of Minnesota. Non-network providers (and associated benefit levels) are also available and may be accessed at the discretion of the individual plan participant.

3. Eligibility / Participant Premium Billings Services

NDPERS will submit enrollment, billing and premium remittance via a centralized electronic system. NDPERS will collect enrollment/eligibility information which will be provided to the successful Contractor on a data file that follows the HIPAA 834 file specifications. Premium payment information will be provided on a data file that follows the HIPAA 820 file specifications. Files will be transmitted using a secure file transmission process. The successful Contractor must be able to receive this data in that format and media. Premiums will be eligible for salary reduction on a pre-tax basis, through IRC Section 125.

4. COBRA Administration

This function is currently performed internally by NDPERS.

5. Issuance of ID Cards

ID cards are provided by Contractor and mailed directly to the participants' homes. Participants also have the option of printing replacement ID cards from the carrier's web site.

6. Reporting

- Weekly Eligibility Discrepancy Reports
- Quarterly Reports:
 - Enrollment by coverage tier report
 - Eyeglass frame summary report
 - Top 35 provider report by claim count and claim cost

7. Plan Documents

An electronic copy is available at <https://ndpers.nd.gov/active-members/insurance-plans/dental/>

VI. FORMAT OF PROPOSAL

Offeror shall submit their proposal in accordance with the requirements of Section III.7, Submission of Proposals. Regarding the proposal, Offerors are hereby advised of the following:

- Each proposal shall be prepared simply and economically, providing a straightforward, concise description of the organization's ability to meet the requirements of this RFP as outlined in Sections V and VI. Emphasis should be on completeness, clarity of content, responsiveness to the requirements and an understanding of NDPERS's needs.
- Proposals that are qualified with conditional clauses, alterations, items not called for in the RFP documents, or irregularities of any kind are subject to disqualification by NDPERS, at its option.
- Representations made within the proposal will be binding on the responding organizations. NDPERS will not be bound to act by any previous communication or proposal submitted by the organization other than this RFP and any proposal submitted in response to this RFP.
- Any pages or information which the Offeror wishes to claim as confidential shall be clearly marked within the proposal. Additionally, the Offeror shall provide a brief summary page after the Table of Contents explaining the confidential nature of the marked pages.

The proposal shall include the following sections in the order in which they appear below. Each of the attachments described in this section must be completed in the MS Excel format in which it is provided.

1. Cover Letter

A transmittal letter shall be bound with the Offeror's proposal. The letter should bear the name and address of the Offeror and the name and number of this RFP. The purpose of this letter is to transmit the proposal(s) and acknowledge the receipt of any addenda. The transmittal letter should be brief and signed by an individual who is authorized to commit the Contractor to the services and requirements as stated in this RFP.

2. Table of Contents

The proposal shall include a Table of Contents that lists page number references. The Table of Contents should be in sufficient detail to facilitate easy reference to the sections of the proposal and separate attachments (which shall be included in the main Table of Contents). If supplemental materials are included with the proposal, each copy of the proposal must include such supplemental materials. Supplemental information and attachments included by the organization (i.e., not required) should be clearly identified in the Table of Contents and provided as a separate section.

Information which is claimed to be confidential is to be identified on a separate sheet(s) after the Table of Contents in the Offeror's proposal. Such indication shall include the section(s) and page number(s) and a brief explanation for each claim of confidentiality shall be included.

3. Attachment A: Technical Proposal

The following exhibits are located in the MS Excel documents labeled **Attachment A: Technical Proposal** and **Attachment C: Confidential Documents**.

Attachment C: Confidential Documents will be sent only to those Offerors who submit a Non-Disclosure Agreement to the Benefit Programs Manager as described in Section III.1 of this RFP.

The Offeror shall complete each of the tabs in Attachment A according to the instructions described below and any additional instructions included at the top of each worksheet.

Cells which have been highlighted in yellow require a response from the Offeror. Response types throughout the documents include selecting from a pre-set drop down menu, entering a numerical value and/or writing a brief narrative. If the cell includes a drop down menu, the Offeror shall not provide a response that is not provided in the drop down list.

Microsoft Excel will print 1,024 characters in each cell. Therefore, please limit the length of your response to 1,024 characters. Additional space has been provided in Attachments A-4b: Additional Answers to Questionnaire for the Offeror to continue a response from Attachment A-4a Questionnaire as appropriate.

3.1. Attachment A-1: Minimum Requirements

The Offeror shall complete Attachment A-1 as requested. The Offeror shall state how they specifically meet or exceed each requirement.

3.2. Attachment A-2: Offeror Information

The Offeror shall complete each section of Attachment A-2 as requested. References provided shall include at least one reference for which the proposed account manager currently provides service.

The Offeror's Legal Name entered in Attachment A-2 will automatically be used to populate the Attachment A-13: Signature Page and Attachment A-12: Explanations and Deviations, in addition to other areas of the MS Excel attachments.

3.3. Attachment A-3: Dental Plan Design

The Offeror shall review the current plan design and propose alternative plan designs in the space provided. Benefits for Alternative Plans benefits should be equal to or better than the current benefit plan and should be revenue neutral with respect to the current plan rating structure generated by the bidders underwriting guidelines. (Please note that the Offeror will provide a premium quote for all plan designs in Attachment B-4: Fully Insured Current and Alternative Premium Rates.)

3.4. Attachment A-4: Questionnaire

The Offeror shall answer each question in A-4a: Questionnaire completely/briefly in the space provided. If additional space is needed, the response can be continued in Attachment A-4b: Additional Answers to Questionnaire. Continued responses should be labeled clearly with both the Section number (A-4a) and the corresponding question number.

If a drop down list is available, the Offeror shall select a response from the list provided.

3.5. Attachment A-5: Subcontractor Questionnaire

The Offeror shall complete a Subcontractor Questionnaire for each subcontractor proposed to perform any of the administrative requirements of this contract.

3.6. Attachment A-6: Provider Access

NDPERS is interested in the availability of key Dental care providers to its eligible population. To assist the Offeror in completing the standard GeoAccess report for Dental care providers, NDPERS will provide the Offeror with a census file as part of Attachment C: Confidential Documents. The file will include the following fields: personal identifier, age, gender, city, state and ZIP Code. (Please exclude individuals for which the zip code is equal to "00000" from the analysis.) This file will be sent to only those Offerors who submit a Non-Disclosure Agreement to Jim Schaefer as described in Section III, 1 of this RFP.

The Offeror shall prepare a GeoAccess report for each network proposed, using the census data provided by NDPERS and the parameters shown below:

Access to Dental Care Providers (Non-Retail Chain Providers)	
By County	1 within 15 miles
By County	1 within 30 miles

The report should include the average distance to each provider, the number of providers in the ZIP Code, the number of members that meet the access requirements above and the number of members that do not meet the access requirements above.

In addition to the standard GeoAccess hard copy report, the data must be supplied in electronic format that has read/write capabilities. Do not send the data in a read-only file. Label the complete GeoAccess report as ***Response Attachment A-6: Provider Access***. The Offeror shall complete the exhibit in Part C of Attachment A-7, which summarizes the GeoAccess data for Dental care providers by county by zip codes. Please note that the Offeror needs only to populate the highlighted cells in the exhibit; all other cells will be calculated based on the values entered in the highlighted cells.

3.7. Attachment A-7: Dental Providers

The Offeror shall complete the exhibit in Attachment A-7, which summarizes the GeoAccess data for Dental care providers by county by zip codes. Please note that the Offeror needs only to populate the highlighted cells in the exhibit; all other cells will be calculated based on the values entered in the highlighted cells.

NDPERS is interested in the availability of Dental care providers to its eligible population. To assist the Offeror in completing the standard GeoAccess report for these providers, NDPERS will provide the Offeror with a census file as part of Attachment C: Confidential Documents. The file will include the following fields: person identifier, age, gender, city, state and ZIP Code. (Please exclude individuals for which the zip code is equal to "00000" from the analysis.) This file will be sent to only those Offerors who submit a Non-Disclosure Agreement to the Purchasing and Contracts Manager as described in Section III.1 of this RFP.

The Offeror shall prepare a GeoAccess report for each network proposed, using the census data provided by NDPERS and the parameters shown below:

The report should include the average distance to each provider, the number of providers in the ZIP Code, the number of members that meet the access requirements above and the number of members that do not meet the access requirements above.

In addition to the standard GeoAccess hard copy report, the data must be supplied in electronic format that has read/write capabilities. Do not send the data in a read-only file. Label the complete GeoAccess report as Response.

3.8. Attachment A-8: Provider Disruption by Claims

The required data for Attachment A-8 is included in the MS Excel document entitled **Attachment C: Confidential Documents**. This file will be sent to only those Offerors who submit a Non-Disclosure Agreement to the Purchasing and Contracts Manager as described in Section III.1 of this RFP.

The Offeror shall agree that all confidential, proprietary or trade secret information of the Incumbent shall be used only for the express purpose of formulating a proposal for NDPERS. Offeror shall further agree that following its use of such confidential, proprietary or trade secret information, it shall take immediate action to destroy and/or render unidentifiable such information.

The Offeror shall complete the exhibit by indicating where or not the named provider is a member of the network being proposed for NDPERS. Valid responses are either "Yes" or "No". All other responses will be treated as a "No" response.

3.9 Attachment A-9: Provider Disruption by Service

The required data for Attachment A-9 is included in the MS Excel document entitled **Attachment C: Confidential Documents**. This file will be sent to only those Offerors who submit a Non-Disclosure Agreement to the Purchasing and Contracts Manager as described in Section III.1 of this RFP.

The Offeror shall agree that all confidential, proprietary or trade secret information of the Incumbent shall be used only for the express purpose of formulating a proposal for NDPERS. Offeror shall further agree that following its use of such confidential, proprietary or trade secret information, it shall take immediate action to destroy and/or render unidentifiable such information.

The Offeror shall complete the exhibit by indicating where or not the named provider is a member of the network being proposed for NDPERS. Valid responses are either "Yes" or "No". All other responses will be treated as a "No" response.

3.10 Attachment A-10: Compliance

The Offeror shall complete the exhibit by selecting either "Yes" or "No" from the drop down list next to each compliance checklist. For each requirement for which the Offeror selects "No", an explanation must be provided in Attachment A-12: Explanations and Deviations.

3.11 Attachment A-11: Performance Guarantees

At a minimum, the criterion identified in Attachment A-12 serves as a benchmark for performance measurements. Actual performance metrics and penalties will be finalized during contract negotiations between NDPERS and the selected organizations.

The Offeror shall complete the exhibit by selecting either “Yes” or “No” from the drop down list next to each performance guarantee. For each requirement for which the Offeror selects “Disagree”, an explanation must be provided in Attachment A-12: Deviations.

3.12 Attachment A-12: Explanations and Deviations

The Offeror shall complete this attachment regardless of whether or not deviations from the administrative requirements or performance guarantees are proposed. The top right of the worksheet includes macros that the Offeror can use to indicate whether or not deviations are included in the table below the signature line.

Prior to printing the final proposal, the Offeror shall ensure that the print area of this document is set appropriately. If no deviations are claimed, then the print area shall end following the title of the individual signing the document. Otherwise, the print area shall end following the last deviation described in the table.

3.13 Attachment A-13: Signature Page

The Offeror shall complete this attachment and provide documentation granting authorization for the signing officer to bind the Offeror to the agreements and representations made in the Offeror’s proposal. Label the documentation as **Response Attachment A-13: Authorization Documentation.**

3.14 Completed Appendices

The following Appendices shall be completed and attached here. Each Appendix shall be filled out in its entirety and shall include the signature of the Offeror’s authorized agent. **Failure to complete, sign, and/or return all specified Appendices may result in disqualification of the Offeror’s Proposal.**

Appendix C: Conflict of Interest Declaration Form- This form shall be completed and provided on behalf of the Offeror firm and its principles.

3.15 Response Attachments

The following response attachments shall be included in the following order:

1. Response Attachment A-2: Management Reporting Package
2. Response Attachment A-2: Claims Appeals Protocols
3. Response Attachment A-4a: Certificates of Insurance
4. Response Attachment A-4a: Provider Satisfaction Survey
5. Response Attachment A-4a: Dental Director Resume
6. Response Attachment A-4a: DPPO Implementation Team Organizational Chart

7. Response Attachment A-4a: DPPO Implementation Plan
8. Response Attachment A-4a: DPPO Account Management Support
9. Response Attachment A-6: Provider Access
10. Response Attachment A-7: Dental Provider Count by County
11. Response Attachment A-8: Provider Disruption by Total Claims Paid
12. Response Attachment A-9: Provider Disruption by Number of Services
13. Response Attachment A-13: Authorization Documentation

4. Attachment B: Financial Proposal

The following exhibits are located in the MS Excel documents labeled **Attachment B: Financial Proposal** and **Attachment C: Confidential Documents**.

Attachment C: Confidential Documents will be sent only to those Offerors who submit a Non-Disclosure Agreement to the Benefit Programs Manager as described in Section III.1 of this RFP.

The Offeror shall complete each of the tabs in Attachment B according to the instructions described below and any additional instructions included at the top of each worksheet.

Cells which have been highlighted in yellow require a response from the Offeror. Response types throughout the documents include selecting from a pre-set drop down menu, entering a numerical value and/or writing a brief narrative. If the cell includes a drop down menu, the Offeror shall not provide a response that is not provided in the drop down list.

4.1 Attachment B-1: Financial Requirements

The Offeror shall complete Attachment B-1 as requested. The Offeror shall state how they specifically meet or exceed each requirement.

4.2 Attachment B-2: Financial Compliance Checklist

The Offeror shall answer each question in B-2: Financial Questionnaire completely/briefly in the space provided.

If a drop down list is available, the Offeror shall select a response from the list provided.

4.3 Attachment B-3: Financial Compliance Checklist Deviations

The Offeror shall complete this attachment regardless of whether or not there are deviations from the financial requirements are proposed. The top right of the worksheet includes macros that the Offeror can use to indicate whether or not explanations are included in the table below the signature line.

Prior to printing the final proposal, the Offeror shall ensure that the print area of this document is set appropriately. If no deviations are claimed, then the print area shall end following the title of the individual signing the document. Otherwise, the print area shall end following the last deviation described in the table.

4.4 Attachment B-4a, B-4b: Fully Insured Proposed Premium Rates

Complete the charts on this tab with the applicable benefits information and/or premium rates required that will be offered to NDPERS participants for the current DPPO and alternative DPPO plan design for January 2019 through December 31, 2024.

4.5 Attachment B-5: Offeror Premium Analysis

In the table provided, please enter the applicable dollar amount of the total premium attributable to the component of the premium listed. For any item for which the Offeror enters \$0, it will be assumed that the service is included in the premium; however, the Offeror is unable to provide a separate amount attributable to that item.

4.6 Attachment B-6: Provider Reimbursement History

Provide the Dental PPO reimbursement fees as of January 1, 2017. Some networks have different fee schedules for a given zip code. If there are multiple fee schedules used in any of the selected 5-digit zip codes, provide the set of fees that apply to the largest number of dentists in the zip code. This information will be weighted by expected utilization to develop an overall average cost that will be used to validate the Projected Fee-For-Service Paid Claims in Attachment B-5a. Also, provide the expected average increase in fees for each of the projection years 2020, 2021, 2022, 2023 and 2024.

4.7 Attachment B-7: Signature Page

The Offeror shall complete this attachment and provide documentation granting authorization for the signing officer to bind the Offeror to the agreements and representations made in the Offeror's proposal. Label the documentation as **Response Attachment B-7: Authorization Documentation**.

4.8 Response Attachments

The following response attachments shall be included in the following order:

- Response Attachment B-7: Authorization Documentation

Appendix A – Model State Contract

AGREEMENT FOR SERVICES BETWEEN (Name of Contractor) AND NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM

(Name of Contractor) (hereinafter CONTRACTOR) has offered to provide services to the State of North Dakota acting through its Public Employees Retirement System (hereinafter NDPERS). The terms of this Contract shall constitute the services agreement (“Agreement”).

CONTRACTOR and NDPERS agree to the following:

- 1) **SCOPE OF SERVICES:** CONTRACTOR agrees to provide the service(s) as specified in the 2018 RFP and proposal (attached hereto and incorporated by reference Exhibit A).
- 2) **TERM:** The term of this contract shall commence January 1, 2019.
- 3) **FEES:** NDPERS shall only pay pursuant to the terms in Exhibit A.
- 4) **BILLINGS:** NDPERS self- administers the plan which includes responsibility for determining eligibility, collecting and maintaining enrollment information, billing and premium collection. Each month, NDPERS pays the carrier the premiums for the current month on approximately the 20th.
- 5) **TERMINATION:** Either party may terminate this agreement with thirty (30) days written notice mailed to the other party, or as mutually agreed to by the parties. Upon any termination the CONTRACTOR shall be compensated as described in Exhibit A for services performed up to the date of termination.

In addition, PERS by written notice to CONTRACTOR may terminate the whole or any part of this Agreement under any of the following conditions:

- 1) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term.
- 2) If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this Agreement or are no longer eligible for the funding proposed for payments authorized by this Agreement.
- 3) If any license, permit, or certificate required by law or rule, or by the terms of this Agreement, is for any reason denied, revoked, suspended, or not renewed.

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

In addition, NDPERS may terminate this Agreement effective upon thirty (30) days prior written notice to CONTRACTOR, or any later date stated in the notice:

- 1) If CONTRACTOR fails to provide services required by this Agreement within the time specified or any extension agreed to by NDPERS; **or**

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

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

- 6) **ASSIGNMENT AND SUBCONTRACTS:** CONTRACTOR may not assign or otherwise transfer or delegate any right or duty without STATE'S express written consent. However, the State expressly consents to CONTRACTOR entering into (i) subcontracts with its affiliates located in the United States, and (ii) third-party subcontracts provided that any such third-party subcontract acknowledges the binding nature of this contract and incorporates this contract, including any attachments. CONTRACTOR is solely responsible for the performance of any subcontractor to the same extent as if such performance were done by CONTRACTOR. CONTRACTOR does not have authority to contract for or incur obligations on behalf of NDPERS.
- 7) **ACCESS TO RECORDS AND CONFIDENTIALITY:** The parties agree that all participation by NDPERS members and their dependents in programs administered by NDPERS is confidential under North Dakota law. CONTRACTOR may request and NDPERS shall provide directly to CONTRACTOR upon such request, confidential information necessary for CONTRACTOR to provide the services described in Exhibit A. CONTRACTOR shall keep confidential all NDPERS information obtained in the course of delivering services. Failure of CONTRACTOR to maintain the confidentiality of such information may be considered a material breach of the contract and may constitute the basis for additional civil and criminal penalties under North Dakota law. CONTRACTOR has exclusive control over the direction and guidance of the persons rendering services under this Agreement. Upon termination of this Agreement, for any reason, CONTRACTOR shall return or destroy all confidential information received from NDPERS, or created or received by CONTRACTOR on behalf of NDPERS. This provision applies to confidential information that may be in the possession of subcontractors or agents of CONTRACTOR. CONTRACTOR shall retain no copies of the confidential information. In the event that CONTRACTOR asserts that returning or destroying the confidential information is not feasible, CONTRACTOR shall provide to NDPERS notification of the conditions that make return or destruction infeasible. Upon explicit written agreement of PERS that return or destruction of confidential information is not feasible, CONTRACTOR shall extend the protections of this Agreement to that confidential information and limit further uses and disclosures of any such confidential information to those purposes that make the return or destruction infeasible, for so long as CONTRACTOR maintains the confidential information.

CONTRACTOR shall not use or disclose any information it receives from NDPERS under this Agreement that NDPERS has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Agreement or as authorized in advance by NDPERS. NDPERS shall not disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that NDPERS determines in its sole discretion is protected from

mandatory public disclosure under a specific exception to the North Dakota public records law, N.D.C.C. ch. 44-04. The duty of NDPERS and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this Agreement.

CONTRACTOR understands that, except for disclosures prohibited in this Agreement, NDPERS must disclose to the public upon request any records it receives from CONTRACTOR. CONTRACTOR further understands that any records that are obtained or generated by CONTRACTOR under this Agreement, except for records that are confidential under this Agreement, may, under certain circumstances, be open to the public upon request under the North Dakota public records law. CONTRACTOR agrees to contact NDPERS immediately upon receiving a request for information under the public records law and to comply with NDPERS's instructions on how to respond to the request.

- 8) **APPLICABLE LAW AND VENUE:** This agreement shall be governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this contract must be adjudicated exclusively in the State District Court of Burleigh County, North Dakota.
- 9) **MERGER AND MODIFICATION:** This Agreement shall constitute the entire agreement between the parties. In the event of any inconsistency or conflict among the documents making up this agreement, the documents must control in this order of precedence: First – the terms of this Agreement, as may be amended and Second - the state's Request for Proposal (attached in Exhibit A) and Third – CONTRACTOR's Proposal (attached in Exhibit A). No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.
- 10) **INDEMNITY:** CONTRACTOR agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from and against claims based on the vicarious liability of the State or its agents, but not against claims based on the State's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. This obligation to defend, indemnify, and hold harmless does not extend to professional liability claims arising from professional errors and omissions. The legal defense provided by CONTRACTOR to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Any attorney appointed to represent the State must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08. CONTRACTOR also agrees to defend, indemnify, and hold the State harmless for all costs, expenses and attorneys' fees incurred if the State prevails in an action against CONTRACTOR in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this Agreement.

11) **INSURANCE**

CONTRACTOR shall secure and keep in force during the term of this Agreement, from insurance companies, government self-insurance pools or government self-retention funds, the following insurance coverages:

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 2) Professional errors and omissions with minimum liability limits of \$1,000,000 per occurrence and in the aggregate. CONTRACTOR shall continuously maintain such coverage during the contract period and for three years thereafter. In the event of a change or cancellation of coverage, CONTRACTOR shall purchase an extended reporting period to meet the time periods required in this section.
- 3) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 4) Workers compensation coverage meeting all statutory requirements.

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

- 1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the CONTRACTOR.
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State.
- 3) The duty to defend, indemnify, and hold harmless the State under this Agreement shall not be limited by the insurance required in this Agreement.
- 4) The state of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. The State shall have all the benefits, rights, and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this Agreement or by the contractual indemnity obligations of CONTRACTOR.
- 5) The insurance required in this Agreement, through a policy or endorsement, shall include:
 - a) "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State;
 - b) a provision that CONTRACTOR's insurance coverage shall be primary (i.e. pay first) as respects any insurance, self-insurance or self-retention maintained by the State and that any insurance, self-insurance or self-retention maintained by the State shall be in excess of the CONTRACTOR's insurance and shall not contribute with it;

- c) cross liability/severability of interest for all policies and endorsements;
 - d) The legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary;
 - e) The insolvency or bankruptcy of the insured CONTRACTOR shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured CONTRACTOR from meeting the retention limit under the policy.
- 5) CONTRACTOR shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this Agreement.
- 6) Failure to provide insurance as required in this Agreement is a material breach of contract entitling State to terminate this Agreement immediately.
- 7) CONTRACTOR shall provide at least 30 day notice of any cancellation or material change to the policies or endorsements.
- 12) **SEVERABILITY:** If any term in this Agreement is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms must not be affected, and, if possible, the rights and obligations of the parties are to be construed and enforced as if the Agreement did not contain that term.
- 13) **INDEPENDENT ENTITY:** CONTRACTOR is an independent entity under this Agreement and is not a State employee for any purpose, including the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law and the North Dakota Workforce Safety and Insurance Act. CONTRACTOR retains sole and absolute discretion in the manner and means of carrying out CONTRACTOR'S activities and responsibilities under this Agreement, except to the extent specified in this Agreement.
- 14) **NDPERS RESPONSIBILITIES:** NDPERS shall cooperate with the CONTRACTOR hereunder, including, without limitation, providing the CONTRACTOR with reasonable and timely access to data, information and personnel of NDPERS. NDPERS shall be responsible for the performance of its personnel and agents and for the accuracy and completeness of data and information provided to the CONTRACTOR for purposes of the performance of the Services.
- 15) **FORCE MAJEURE:** Neither party shall be held responsible for delay or default caused by fire, riot, terrorism, acts of God or war if the event is beyond the party's reasonable control and the affected party gives notice to the other party immediately upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default.
- 16) **ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL:** NDPERS does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. NDPERS does not waive any right to a jury trial.

- 17) **NOTICE:** All notices or other communications required under this contract must be given by registered or certified mail and are complete on the date mailed when addressed to the parties at the following addresses:

NDPERS:

Sharon Schiermeister, Chief Operating Officer
ND Public Employees Retirement System
400 East Broadway, Suite 505
PO Box 1657
Bismarck, ND 58502-1657

CONTRACTOR:

Notice provided under this provision does not meet the notice requirements for monetary claims against the State found at N.D.C.C. § 32-12.2-04.

- 18) **NONDISCRIMINATION AND COMPLIANCE WITH LAWS:** CONTRACTOR agrees to comply with all laws, rules, and policies, including those relating to nondiscrimination, accessibility and civil rights, as are applicable to CONTRACTOR. CONTRACTOR agrees to timely file all legally required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including unemployment compensation and workers' compensation premiums. CONTRACTOR shall have and keep current at all times during the term of this contract all licenses and permits required by law.
- 19) **STATE AUDIT:** All records, regardless of physical form, and the accounting practices and procedures of CONTRACTOR relevant to this Agreement are subject to examination by the North Dakota State Auditor, the Auditor's designee, or Federal auditors. CONTRACTOR shall maintain all of these records for at least three (3) years following completion of this Agreement and be able to provide them at any reasonable time. State, State Auditor, or Auditor's designee shall provide reasonable notice.
- 20) **TAXPAYER ID:** CONTRACTOR'S federal employer ID number is:_____.
- 21) **PAYMENT OF TAXES BY STATE:** State is not responsible for and will not pay local, state, or federal taxes. State sales tax exemption number is E-2001, and certificates will be furnished upon request by the NDPERS.
- 22) **EFFECTIVENESS OF CONTRACT:** This Agreement is not effective until fully executed by both parties.

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

NORTH DAKOTA PUBLIC

EMPLOYEES RETIREMENT SYSTEM

Executive Director
ND Public Employees Retirement System

Date

CONTRACTOR

Signature

Printed Name

Title

Date

Appendix B – Non-Disclosure Agreement

This Non- Disclosure Agreement (the "Agreement") is made this ____ day of _____2018, by and between _____(hereinafter referred to as "the OFFEROR ") and the North Dakota Public Employees Retirement System (hereinafter referred to as "NDPERS").

OFFEROR warrants and represents that it intends to submit a Proposal in response to the NDPERS RFP, the Request for Proposals for the NDPERS Dental Plan. In order for the OFFEROR to submit a Proposal, it will be necessary for NDPERS to provide the OFFEROR with access to certain information that constitutes confidential information under North Dakota law, including, but not limited to, demographic and identifying information on NDPERS active and retiree population and plan utilization data. All such information provided by NDPERS shall be considered Confidential Information regardless of the form, format, or media upon which or in which such information is contained or provided, regardless of whether it is oral, written, electronic, or any other form, and regardless of whether the information is marked as "Confidential Information." As a condition for its receipt and access to the Confidential Information described in Section III of the RFP, OFFEROR agrees as follows:

1. OFFEROR will not copy, disclose, publish, release, transfer, disseminate or use for any purpose in any form any Confidential Information received under Section III, except in connection with the preparation of its Proposal.
2. The OFFEROR shall agree that all confidential, proprietary or trade secret information of the Incumbent shall be used only for the express purpose of formulating a proposal for NDPERS.
3. Each employee or agent of the OFFEROR who receives or has access to the Confidential Information shall execute a copy of this Agreement and the OFFEROR shall provide originals of such executed Agreements to NDPERS. Each employee or agent of the OFFEROR who signs this Agreement shall be subject to the same terms, conditions, requirements and liabilities set forth herein that are applicable to the OFFEROR and the OFFEROR shall be liable for any violations by any employees or agents who are provided or given access to Confidential Information.
4. OFFEROR shall destroy and confirm such destruction with notice to NDPERS, the Confidential Information, including any copies, remaining in its possession within five business days of NDPERS's notice of a recommended award in connection with this procurement. If the OFFEROR does not submit a Proposal, the OFFEROR shall return the Confidential Information, including any copies, to the NDPERS Purchasing and Contracts Manager identified in the RFP, Section III, on or before the due date for Proposals.
5. OFFEROR acknowledges that the disclosure of the Confidential Information may cause irreparable harm to NDPERS and agrees that NDPERS may obtain an injunction to prevent the disclosure, copying, or other impermissible use of the Confidential Information. NDPERS's rights and remedies hereunder are cumulative and NDPERS expressly reserves any and all rights, remedies, claims and actions that it may have now or in the future to protect the Confidential Information and/or to seek damages for the OFFEROR'S failure to comply with the requirements of this Agreement.

In the event NDPERS suffers any losses, damages, liabilities, expenses, or costs (including, by way of example only, attorneys' fees and disbursements) that are attributable, in whole or in part to any failure by the OFFEROR or any employee or agent of the OFFEROR to comply with the requirements of this Agreement, OFFEROR and such employees and agents of OFFEROR shall hold harmless and indemnify NDPERS and the State of North Dakota from and

against any such losses, damages, liabilities, expenses, and/or costs.

6. This Agreement shall be governed by the laws of the State of North Dakota. The OFFEROR consents to personal jurisdiction in North Dakota state courts, and exclusive venue shall be in Burleigh County, North Dakota.
7. The individual signing below warrants and represents that they are fully authorized to bind the OFFEROR to the terms and conditions specified in this Agreement. If signed below by an individual employee or agent of the OFFEROR under Section 3 of this Agreement, such individual acknowledges that a failure to comply with the requirements specified in this Agreement may also result in personal liability.

Offeror: _____

By: _____

Signature: _____

Print Name: _____

Title: _____

Address: _____

**OFFEROR'S EMPLOYEES AND AGENTS WHO WILL BE GIVEN ACCESS TO THE
CONFIDENTIAL INFORMATION**

Printed Name of Individual Agent or Employee	Employee (E) or Agent (A)	Signature	Date

***Please provide the name and delivery address for the individual who is to receive
Attachment E: Confidential Documents.***

Offeror: _____

Name: _____

Title: _____

Address: _____

Phone Number: _____ Email: _____

Business Associate Agreement

This Business Associate Agreement, which is an addendum to the underlying contract, is entered into by and between, the North Dakota Public Employees Retirement System ("NDPERS") and XXXXX XXXXX.

1. Definitions

- a. Terms used, but not otherwise defined, in this Agreement have the same meaning as those terms in the HIPAA Privacy Rule, 45 C.F.R. Part 160 and Part 164, Subparts A and E, and the HIPAA Security rule, 45 C.F.R., pt. 164, subpart C.
- b. Business Associate. "Business Associate" means XXXXX XXXXX.
- c. Covered Entity. "Covered Entity" means the **North Dakota Public Employees Retirement System Health Plans**.
- d. PHI and ePHI. "PHI" means Protected Health Information; "ePHI" means Electronic Protected Health Information.

2. Obligations of Business Associate.

2.1. The Business Associate agrees:

- a. To use or disclose PHI and ePHI only as permitted or required by this Agreement or as Required by Law.
- b. To use appropriate safeguards and security measures to prevent use or disclosure of the PHI and ePHI other than as provided for by this Agreement, and to comply with all security requirements of the HIPAA Security rule.
- c. To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of ePHI that it creates, receives, maintains or transmits on behalf of the Covered Entity as required by the HIPAA Security rule.
- d. To mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI or ePHI by Business Associate in violation of the requirements of this Agreement.
- e. To report to Covered Entity (1) any use or disclosure of the PHI not provided for by this Agreement, and (2) any "security incident" as defined in 45 C.F.R. § 164.304 involving ePHI, of which it becomes aware without unreasonable delay and in any case within thirty (30) days from the date after discovery and provide the Covered Entity with a written notification that complies with 45 C.F.R. § 164.410 which shall include the following information:
 - i. to the extent possible, the identification of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired or disclosed during the breach;
 - ii. a brief description of what happened;
 - iii. the date of discovery of the breach and date of the breach;
 - iv. the nature of the Protected Health Information that was involved;
 - v. identify of any person who received the non-permitted Protected Health Information;

- vi. any steps individuals should take to protect themselves from potential harm resulting from the breach;
 - vii. a brief description of what the Business Associate is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; and
 - viii. any other available information that the Covered Entity is required to include in notification to an individual under 45 C.F.R. § 164.404(c) at the time of the notification to the State required by this subsection or promptly thereafter as information becomes available.
- f. With respect to any use or disclosure of Unsecured Protected Health Information not permitted by the Privacy Rule that is caused by the Business Associate's failure to comply with one or more of its obligations under this Agreement, the Business Associate agrees to pay its reasonable share of cost-based fees associated with activities the Covered Entity must undertake to meet its notification obligations under the HIPAA Rules and any other security breach notification laws;
 - g. Ensure that any agent or subcontractor that creates, receives, maintains, or transmits electronic PHI on behalf of the Business Associate agree to comply with the same restrictions and conditions that apply through this Agreement to the Business Associate.
 - h. To make available to the Secretary of Health and Human Services the Business Associate's internal practices, books, and records, including policies and procedures relating to the use and disclosure of PHI and ePHI received from, or created or received by Business Associate on behalf of Covered Entity, for the purpose of determining the Covered Entity's compliance with the HIPAA Privacy Rule, subject to any applicable legal privileges.
 - i. To document the disclosure of PHI related to any disclosure of PHI as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
 - j. To provide to Covered Entity within 15 days of a written notice from Covered Entity, information necessary to permit the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
 - k. To provide, within 10 days of receiving a written request, information necessary for the Covered Entity to respond to an Individual's request for access to PHI about himself or herself, in the event that PHI in the Business Associate's possession constitutes a Designated Record Set.
 - l. Make amendments(s) to PHI in a designated record set as directed or agreed by the Covered Entity pursuant to 45 C.F.R. § 164.526 or take other measures as necessary to satisfy the covered entity's obligations under that section of law.

3. Permitted Uses and Disclosures by Business Associate

3.1. General Use and Disclosure Provisions

Except as otherwise limited in this Agreement, Business Associate may Use or Disclose PHI and ePHI to perform functions, activities, or services for, or on behalf of, Covered Entity, specifically, **Uniform Group Insurance Consulting Services** – provided that such use or disclosure would not violate the Privacy Rule or the Security Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

3.2. Specific Use and Disclosure Provisions

Except as otherwise limited in this Agreement, Business Associate may use PHI and ePHI:

- a. For the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- b. To provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B), but Business Associate may not disclose the PHI or ePHI of the Covered Entity to any other client of the Business Associate without the written authorization of the covered entity Covered Entity.
- c. To report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. §§ 164.304 and 164.502(j)(1).

4. Obligations of Covered Entity

4.1. Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions

Covered Entity shall notify Business Associate of:

- a. Any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 C.F.R. § 164.520, to the extent that any such limitation may affect Business Associate's use or disclosure of PHI.
- b. Any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that any such changes may affect Business Associate's use or disclosure of PHI.
- c. Any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that any such restriction may affect Business Associate's use or disclosure of PHI.

4.2. Additional Obligations of Covered Entity. Covered Entity agrees that it:

- a. Has included, and will include, in the Covered Entity's Notice of Privacy Practices required by the Privacy Rule that the Covered Entity may disclose PHI for Health Care Operations purposes.
- b. Has obtained, and will obtain, from Individuals any consents, authorizations and other permissions necessary or required by laws applicable to the Covered Entity for Business Associate and the Covered Entity to fulfill their obligations under the Underlying Agreement and this Agreement.
- c. Will promptly notify Business Associate in writing of any restrictions on the Use and Disclosure of PHI about Individuals that the Covered Entity has agreed to

that may affect Business Associate's ability to perform its obligations under the Underlying Agreement or this Agreement.

- d. Will promptly notify Business Associate in writing of any change in, or revocation of, permission by an Individual to Use or Disclose PHI, if the change or revocation may affect Business Associate's ability to perform its obligations under the Underlying Agreement or this Agreement.

4.2. Permissible Requests by Covered Entity

Covered Entity may not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule or the Security Rule if done by Covered Entity, except that the Business Associate may use or disclose PHI and ePHI for management and administrative activities of Business Associate.

5. Term and Termination

- a. Term. The Term of this Agreement shall be effective as of July 1, 2016, and shall terminate when all of the PHI and ePHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI and ePHI, protections are extended to any such information, in accordance with the termination provisions in this Section.
- b. Automatic Termination. This Agreement will automatically terminate upon the termination or expiration of the Underlying Agreement.
- c. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
 - 1. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement and the Underlying Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
 - 2. Immediately terminate this Agreement and the Underlying Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
 - 3. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
- d. Effect of Termination.
 - 1. Except as provided in paragraph (2) of this subsection, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI and ePHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI or ePHI.
 - 2. In the event that Business Associate determines that returning or destroying the PHI or ePHI is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon explicit written agreement of Covered Entity that return or destruction of PHI or ePHI is not feasible, Business Associate shall extend the protections of this Agreement to that PHI and ePHI and limit further uses and disclosures of any such PHI and ePHI to

those purposes that make the return or destruction infeasible, for so long as Business Associate maintains that PHI or ePHI.

6. Miscellaneous

- a. Regulatory References. A reference in this Agreement to a section in the HIPAA Privacy or Security Rule means the section as in effect or as amended.
- b. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule, the Security Rule, and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- c. Survival. The respective rights and obligations of Business Associate under Section 5.c, related to "Effect of Termination," of this Agreement shall survive the termination of this Agreement.
- d. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy and Security Rules.
- e. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything this Agreement confer, upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- f. Applicable Law and Venue. This Business Associate Agreement is governed by and construed in accordance with the laws of the State of North Dakota. Any action commenced to enforce this Contract must be brought in the District Court of Burleigh County, North Dakota.
- g. Business Associate agrees to comply with all the requirements imposed on a business associate under Title XIII of the American Recovery and Reinvestment Act of 2009, the Health Information Technology for Economic and Clinical Health (HI-TECH) Act, and, at the request of NDPERS, to agree to any reasonable modification of this agreement required to conform the agreement to any Model Business Associate Agreement published by the Department of Health and Human Services.

7. Entire Agreement

This Agreement contains all of the agreements and understandings between the parties with respect to the subject matter of this Agreement. No agreement or other understanding in any way modifying the terms of this Agreement will be binding unless made in writing as a modification or amendment to this Agreement and executed by both parties.

IN WITNESS OF THIS, **NDPERS** [CE] and **ENTER BUSINESS ASSOCIATE NAME** [BA] agree to and intend to be legally bound by all terms and conditions set forth above and hereby execute this Agreement as of the effective date set forth above.

For Covered Entity:

Executive Director
ND Public Employees Retirement System

Date

For Business Associate:

Signature

Printed Name

Title

Date

MEMORANDUM OF UNDERSTANDING BETWEEN THE
NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM
AND NAME OF PROVIDER
RELATING TO MAINTAINING CONFIDENTIAL INFORMATION

This Memorandum of Understanding is between the State of North Dakota acting through its North Dakota Public Employees Retirement System (NDPERS) and NAME OF PROVIDER relating to maintenance and destruction of NDPERS Confidential Information held by NAME OF PROVIDER and its subsidiaries.

WHEREAS, NDPERS has previously entered into contracts with NAME OF PROVIDER to provide services related to administration of the NDPERS PUT THE PROGRAM SPECIFICS HERE (Contracts).

WHEREAS, the services provided by NAME OF PROVIDER under these Contracts required the exchange of information between the parties that is confidential under North Dakota Century Code §§ CHANGE ACCORDING TO PROGRAM 54-52.1-11 and 54-52.1-12 (Confidential Information).

WHEREAS, the parties acknowledge that these Contracts, including the Business Associate Agreements between the parties, required NAME OF PROVIDER to return or destroy Confidential Information subsequent to the termination of the applicable Contract, or if return or destruction of this information was infeasible to maintain its confidentiality.

WHEREAS, these Contracts have terminated and NAME OF PROVIDER has asserted and NDPERS agrees that member service, applicable audit, record keeping, and other required functions make the return or destruction of all Confidential Information infeasible at this time.

WHEREAS, NAME OF PROVIDER has provided and NDPERS has reviewed the NAME OF PROVIDER records retention policy (Policy) applicable to the Confidential Information and NAME OF PROVIDER has affirmed that it will maintain the confidentiality of NDPERS information pursuant to this Policy until such time as the information is destroyed in a manner designated by this Policy.

NOW THEREFORE, in consideration of the foregoing premises and in furtherance of the aforementioned contractual obligations, the parties agree as follows:

1. **NAME OF PROVIDER** shall continue to maintain the confidentiality of Confidential Information which it still possesses, in accordance with its Policy in a manner that is at least as secure and diligent as was done during the term of the applicable Contract, until such time as the Confidential Information is destroyed or returned.
2. Upon the request of NDPERS, **NAME OF PROVIDER** shall confirm the destruction of Confidential Information under its Policy.
3. Upon the request of NDPERS, **NAME OF PROVIDER** shall provide NDPERS a copy of any change to the Policy provided NDPERS on **DATE HERE**.
4. NDPERS agrees these actions are consistent with **NAME OF PROVIDER** obligations under these Contracts.
5. This Memorandum of Understanding will terminate upon notice to NDPERS by **NAME OF PROVIDER** that all Confidential Information has either been returned to NDPERS or destroyed, or earlier, upon thirty (30) days' notice by NDPERS to **NAME OF PROVIDER** if NDPERS determines that the Policy has been modified in a manner that is inconsistent with state or federal law.
6. This Memorandum of Understanding shall be governed by, and construed in accordance with, the laws of the State of North Dakota.

NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM

BY: _____
Executive Director

Date: _____

NAME OF PROVIDER

BY: _____

Its: _____

Date: _____

Attach Vendor Records Retention Policy



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

Sharon Schiermeister
Interim Executive Director
(701) 328-3900
1-800-803-7377

Fax: (701) 328-3920 Email ndpers-info@nd.gov Website <https://ndpers.nd.gov>

Memorandum

TO: NDPERS Board

FROM: Sharon Schiermeister

DATE: January 3, 2018

SUBJECT: Pre-Medicare Group

At the December Board meeting, we discussed the options for offering health insurance for the pre-Medicare group. Current statute allows for a pre-Medicare group as long as it does not increase the implicit subsidy. Therefore, one option would be to offer pre-Medicare coverage with experience rated premiums. Sanford estimated that premiums would need to increase by approximately 67%-77% to cover the experience of this group. Another option would be to introduce legislation that would provide for PERS to offer pre-Medicare coverage at a subsidized premium level.

The Board asked for additional information on the number of people who retire prior to age 65. Below is a table showing the number of new pensions awarded during the past 5 years for individuals under age 65 and 65 and older.

NDPERS Main System Retirees - New Pensions										
Age	2013	%	2014	%	2015	%	2016	%	2017	%
<65	339	52%	420	53%	516	53%	349	46%	421	47%
65+	312	48%	373	47%	464	47%	411	54%	483	53%
Total	651		793		980		760		904	

The Board also asked what the cost would be to subsidize the pre-Medicare group. Based on the experience rated premiums provided by Sanford, we estimated the subsidy to be \$270,000 per month which is approximately \$12.60 per contract.

If the number of pre-Medicare contracts doubled to more historical enrollment numbers, the estimated subsidy would be \$540,000 per month, or approximately \$24.80 per contract.

If the Board would like to consider offering pre-Medicare insurance with subsidized premiums, staff could prepare a bill draft for final consideration at the March meeting. If not, no action is required at this time.



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

Sharon Schiermeister
Interim Executive Director
(701) 328-3900
1-800-803-7377

Fax: (701) 328-3920 Email ndpers-info@nd.gov Website <https://ndpers.nd.gov>

Memorandum

TO: NDPERS Board

FROM: Sharon Schiermeister

DATE: January 3, 2018

SUBJECT: Smoking Deterrent Payments

We received notification from Sanford Health Plan that a programming error was discovered through their internal audit process that allowed coverage of smoking deterrents, which are not a covered benefit. Sanford has corrected the programming error and will be giving members who have filled a smoking deterrent product in the last 6 months a 30 day notice of no future payments. Members will not be requested to refund the payments.

Attached is the information that was received from Sanford. Representatives from Sanford will be available at the Board meeting should you have additional questions.

Executive Summary:

Through an audit process it was discovered that Sanford Health Plans (SHP) allowed coverage of Smoking deterrents despite section 6 of the Certificate of Insurance indicating smoking deterrents are not a covered benefit. This programming discrepancy allowed 664 unique members fill a total of 1660 claims at a Plan cost of \$270,822.35 since 7.1.15. Programming has been corrected to prevent any new starts.

Go Forward Plan:

1. SHP assumes all Plan paid amounts paid in error. 7.1.15 - 6.31.17 overpayments will be included in the 15-17 settlement while 7.1.17- 2.28.18 overpayments in the 17-19 settlement.
2. SHP will NOT request refunds from members for the payment error
3. SHP will update the COI so that Smoking Deterrents are also listed as an exclusion in Section 5(e) Prescription drug and diabetes supplies benefits
4. Members will be given a 28 day notice of no future payments. SHP has identified 238 members that have filled a smoking deterrent product in the last 6 months. These members will be allowed to continue to fill until 2.28.18.

The aforementioned Go-Forward plan is predicated upon input and approval of NDPERS.



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Memorandum

TO: NDPERS Board

FROM: Sharon Schiermeister

DATE: January 2, 2018

SUBJECT: Proposed Legislation for Retirement Plan Recovery

Pursuant to the direction of the Legislative Employee Benefits Committee PERS must submit all its proposed legislation by the end of March 2018. In this memo, we will:

1. Review the Legislative Employee Benefits Committee process
2. Review our considerations to date on proposed retirement legislation
3. Identify proposed retirement bills
4. Review our discussion on retirement plan considerations from our strategic planning meeting and other meetings
5. Provide a staff recommendation
6. Seek the Board's direction on what bills to submit.

1. Review the Legislative Employee Benefits Committee (LEBC) Process

This spring the LEBC will have a meeting, review the bills submitted to them by the deadline, take jurisdiction of the bills and forward them on to the PERS actuary for a technical and actuarial review. In the summer of 2018 and into the fall the LEBC will hear information from the actuary on the bills and have hearings on the bills to solicit information from interested parties. At the completion of the process the LEBC will give the bill a favorable, unfavorable or no recommendation and return it to the sponsor by November 2018. At that

time, the sponsor, or PERS for its bills, can review the information gathered by the committee (the actuary report, the hearing information and the committee's recommendation) and then decide whether or not to submit the bill to the next session. The process is established in NDCC 54-35-02.4 & 02.5. Attachment #1 is a Legislative Council memo discussing the authority of the Legislative Employee Benefits Committee for your reference.

2. Review our considerations to date on proposed legislation

Board Review of Recovery Plan at July 2017 Strategic Planning Meeting.

This last summer at our planning meeting, the Board reviewed the challenge facing the retirement plan as a result of the tech market bubble burst, the dramatic downturn in the financial markets in 2008 and the inability to get our full recovery plan (as approved by the Board in 2011) adopted by the Legislature. We discussed that as a result of a planning process in 2010 involving our member organizations, employers and others, the Board developed a proposed recovery plan of contribution increases totaling 8%, split between the employer and employee over 4 years. As proposed, this recovery plan would have met the Board's goals of:

- Stopping the projected downward trend in the funding status of the plan
- Stabilizing the funded status of the plan
- Putting the plan on track to get back to 100% funded status

It was noted that we have been unable to get the full recovery plan passed despite the following:

1. Getting favorable recommendations on the recovery plan from the Legislative Employee Benefits Committee
2. Having the Governor's support concerning the proposed legislation in 2011, 2013 & 2015
3. Having the support of the employee and retiree organizations
4. The success of TFFR in getting the same basic recovery plan approved for its plan back in 2011

Attachment #2 is summary of the History, the proposed recovery plan and our challenge.

It was also noted at our planning meeting that PERS has been successful in getting 6% of its proposed 8% increase in contributions passed. The result of

the success thus far has resulted in us accomplishing two of our three goals which are:

- Stopping the projection downward trend in the funding status of the plan
- Stabilizing the funded status of the plan

However, we have not accomplished the last goal:

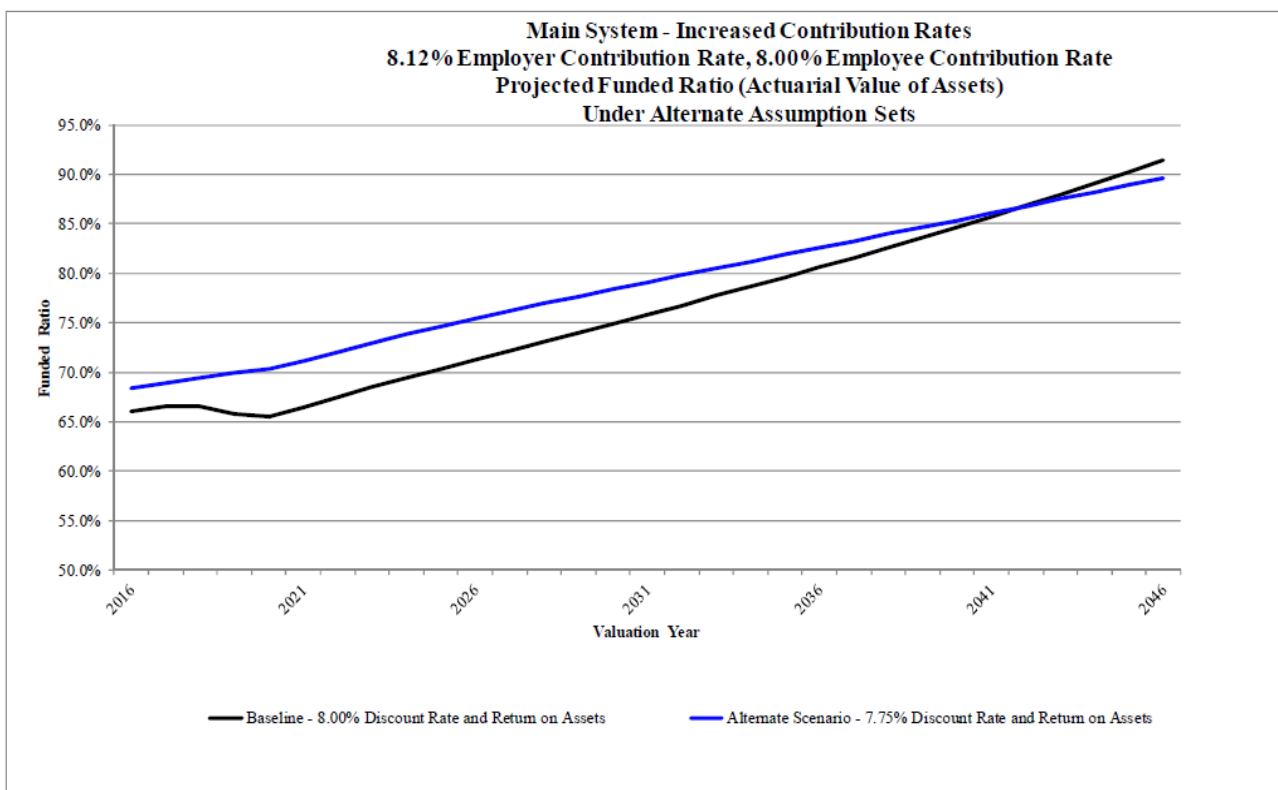
- Putting the plan on track to get back to 100% funded status

Options Considered by Board for the 2019 Session.

At the July planning meeting, the Board discussed options for the 2019 session which included the following:

Option A – Increase Contributions

Stay the course and submit the 4th year of the recovery (1% increase in contribution for employer and employee). The following shows this would accomplish the 3rd goal if passed:



This shows that at either the 8% or 7.75% return assumption, this option would accomplish the third goal and get the plan on track to 100% funded status.

However, it was noted the cost would be about \$10 million a year in additional contributions from our employers (state and political subdivisions) and about \$10 million a year in additional employee contributions.

It was noted that in the current fiscal environment it would be difficult for our employers and employees to pay this increased contribution and therefore the likelihood of it passing was remote.

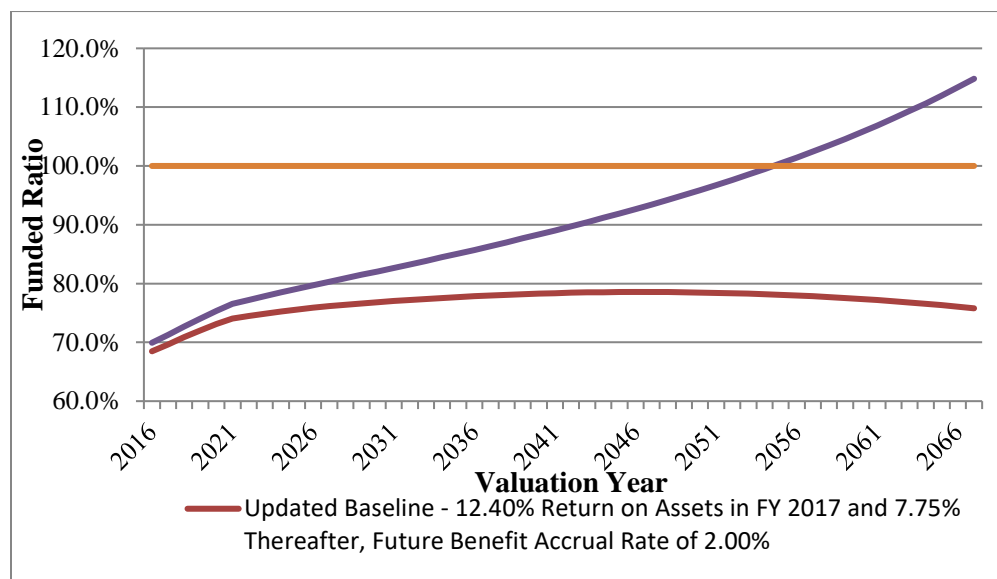
Option B – Reduce Benefits

It was noted that two options exist for changing benefits and they are:

- Change prospectively for only new employees
- Change prospectively for existing employees and new employees

When benefit reductions are applied to new employees only, this does not accomplish the third goal based upon a study done several years ago. That is, they do not put the plan on track back to 100%. However that same study indicated there would not be any legal issue associated with changing benefits for future employees.

Because of the above we reviewed the effect of changing benefits for both existing and new employees prospectively. The following shows the effect on the funding status of changing the multiplier going forward to 1.75%



As this chart shows, this would put the plan on track to 100%. However NDCC 54-52-14.3 states:

54-52-14.3. Public employee retirement funds - Use and investment.

Any provision of law relating to the use and investment of public employee retirement funds must be deemed a part of the employment contracts of the employees participating in any public employee retirement system.

This was previously reviewed by our attorney several years ago and it was noted that changing the benefit for existing employees may not be allowed due to this section which implies that it is part of the employment contract and such a change could violate the contract provision of the state constitution. It was also recognized that such a dramatic change in benefits could likely give rise to a court challenge.

In summary the only benefit changes that would accomplish the third goal would need to apply to both existing and future employees. However due to NDCC 54-52-14.3 that may not be legal and likely would result in a court challenge if passed

Option C – take more investment risk to try for greater investment return

At the July planning meeting, it was decided that this option was not consistent with the Board's fiduciary responsibilities and removed as an option for further consideration.

Option D – Discuss legal implications/actions of not funding the plan & identification of other options.

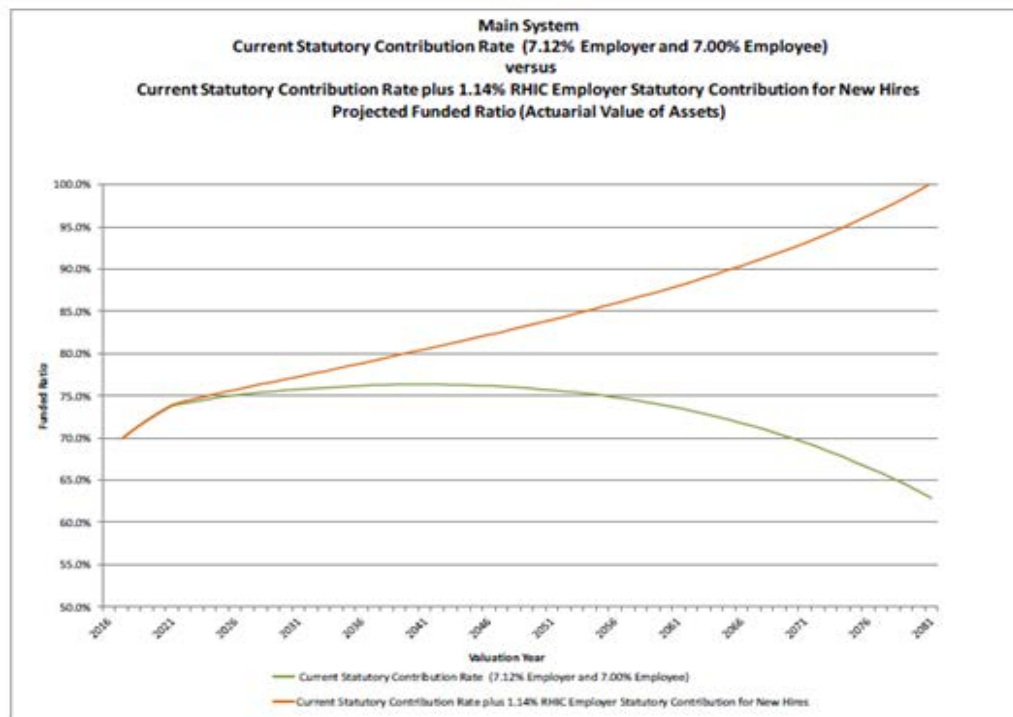
At the July planning meeting, we discussed what the fiduciary responsibilities are for the Board to fund the plan properly. Also it was questioned if the legislature is a fiduciary for the plan since it has reserved the funding decision authority to itself. In September, we heard from Jan Murtha on the above with her thoughts from a legal perspective. She noted:

- The board is the fiduciary for the plan and the legislature is not
- As fiduciaries, the Board's responsibilities include taking steps to provide for the funded status of the plan

- If one approach is not successful (such as an increase in contributions) the Board should consider other methods to achieve the desired result of getting the plan back to 100%

In response to the above discussion and suggestion to identify other options, staff initiated a process to determine if other options existed in addition to those already identified. After review, one additional option has been identified that was not previously considered. This option relates to the Retiree Health Insurance Credit (RHIC) program. The RHIC program is funded through an employer contribution of 1.14% of covered payroll. The option is to close the plan to new employees and have the 1.14% employer contribution for them added to the employer retirement contribution. Staff referred this to the actuary to determine if this would accomplish the third goal if approved. The following table shows the result of their analysis.

Graph I



The lower line is the projected funded status of the plan based upon our existing assumptions. The top line is the projected funded status of the plan if this concept would be enacted. You will note it accomplishes the following:

- Plan projected to be 100% funded in 2081
- Addresses the GASB issue that resulted when reducing our return assumption from 8% to 7.75%. This caused our funded status (the above

lower line) to drop over time instead of remaining steady. It also caused our reported liabilities for financial reporting to increase by over 20%. If this plan would be adopted not only would our funded status projection increase going forward but our liabilities for financial reporting would drop by over 20%.

- No additional employee or employer contributions are required
- Benefits remain the same for current employees
- New tier of benefit for new employees which would maintain full retirement benefits for existing and new employees. It would also maintain the retiree health credit for existing employees but would stop the program for new employees.
- RHIC fund would be sustainable with existing contributions and be on track to 100% funded status
- The retiree health credit funding came from reducing the retirement contribution in 1989. This proposal would return it prospectively to the retirement fund as originally enacted.

We have reviewed the above option with both our active and retiree benefit committees. Given the limitations of the other options (cost to employer/employee and legal considerations with reducing benefits) they felt this was the most viable option going forward to meet the goal of getting the plan on track to 100%.

3. Identify Proposed bills

Pursuant to the above discussion the following retirement legislation options have been identified which will get the plan back to 100% funded status and address the GASB issue:

Option	Consideration
Option A – Increase Contributions	Due to the cost to the employer and employee it is unlikely to pass or get funded in the executive budget
Option B – reduce the multiplier for all members prospectively	Since this may be in conflict with state contract law and the constitution it could be challenged in court and overturned even if approved by the legislature and Governor.
Option C	Increase investment risk. This option was eliminated by the board at the July planning meeting

Option D – Discontinue the RHIC program for new employees and direct the contributions for them to the retirement plan.	<ul style="list-style-type: none"> • No additional employee or employer contributions required • Benefits remain the same for current employees • New tier of benefit for new employees • RHIC fund sustainable with existing contributions • Would not be subject to the same legal concerns of the retirement plan • Would have no appropriation cost and therefore would not need to be approved by the appropriations committee
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All of the above options would fulfill the goals of the Board relating to the recovery plan.

4. Discussion of LEBC committee process and PERS

At the July planning meeting we also discussed the concern that if we submit only the contribution increase bill and the likelihood it could an unfavorable recommendation given the current fiscal environment. With such a recommendation the bill would never pass the legislature. We noted in 2011 we had a similar concern and at that time the board reviewed the following:

Observation	Risks	Possible Remedy
<p><i>Bill Introduction</i></p> <ul style="list-style-type: none"> • All concepts that may be considered by an upcoming legislative session must be submitted by April • Bill needs to get preferable a favorable or at least no recommendation • Bills with an unfavorable recommendation will not pass 	<p>If PERS submits a single bill and that approach is not acceptable to the Legislative Employee Benefits Committee and it receives an unfavorable recommendation it would be difficult to submit it to the legislature</p>	<p>More than one bill could be submitted to the legislative Employee Benefits covering a range of solutions. This would allow all ideas to get a full technical/actuarial review and go through a full hearing process. The LEBC would also get the opportunity to hear all the issue relating to the range of solutions and provide its recommendation. The PERS Board would then be able to view a full record on the ideas and benefit from the LEBC findings before deciding what bill to submit.</p>
<p><i>Executive Budget Process</i></p> <ul style="list-style-type: none"> • Bills having a fiscal effect have a much better chance of passage if they are included in the executive budget • For the health plan the board has always submitted a range of options for the Governors considerations along with a recommendation 	<p>If a single proposed approach is submitted to the Governor and is not acceptable the executive budget may not include any recommendation relating to retirement</p>	<p>Follow the methodology that has been used for the health plan since 1991 and provide to the Governor/legislature a range of options with a recommendation</p>

The decision at that time was to submit three bills to the LEBC. The issue then was should the contribution increase be paid 100% by the employer, 100% by the employee, or split. Bills were submitted relating to each concept, hearings were held, studies were done and at the end the LEBC gave unfavorable recommendations to having the employer or the employee pay 100% of the contribution. They gave the split approach a favorable recommendation. With that background the Board adopted the shared recovery plan concept and submitted that bill to the legislature.

5. Provide a staff recommendation

Staff would recommend submitting to the LEBC three bills for study to address the recovery of the PERS Plan:

- One bill would be Option A – Last year of contributions increase
- One bill would be Option B - reduce the multiplier
- One bill would be Option D – change the RHIC plan

All three concepts represent different approaches to achieving the third goal of our recovery plan which is getting the plan back to 100% funded status. Submitting three bills will allow the Board to get further actuarial & technical study of each approach. It will also allow for a full consideration of the challenge and solutions by all members through the hearing process. It will allow legislative input to the plan and the opportunity for the committee to fully review each approach to get a full understanding of the challenge facing the plan and the need for the legislature to adopt a plan. The Board would then have the benefit of all this information in deciding what approach to propose for the next session.

6. Board action

Staff is seeking the Board's direction on proposed legislation to get the plan back to 100% funded status. Should PERS:

1. Submit only one bill and if so which one?
2. Submit all three options? (staff recommendation)

EMPLOYEE BENEFITS PROGRAMS COMMITTEE - STATUTORY RESPONSIBILITIES AND ASSIGNED STUDIES - BACKGROUND MEMORANDUM

attachment #1 Main System

HISTORY

Funding Approach

The Legislative Management's Employee Benefits Programs Committee, formerly known as the Committee on Public Employees Retirement Programs or the Retirement Committee, resulted from a 1975-76 Legislative Council study undertaken by the interim Legislative Procedure and Arrangements Committee. The committee was established in response to difficulties experienced in past legislative sessions resulting from inadequate prior study of the actuarial impacts of proposed legislative changes on retirement programs for public employees.

In 1977 the Legislative Assembly approved Senate Bill No. 2061, which created the original committee. The provisions were codified as North Dakota Century Code Sections 54-35-02.3 and 54-35-02.4. Those sections were substantially amended in 1981 to expand the scope of the committee's jurisdiction over retirement legislation during legislative sessions and to authorize the committee to establish rules for its operation. Sections 54-35-02.3 and 54-35-02.4 were amended substantially in 1991 to expand the jurisdiction of the committee to include review of health and retiree health plans of state employees or employees of any political subdivision as well as retirement programs. Section 54-35-02.4 was amended in 1999 to require the committee take jurisdiction over any measure or proposal authorizing an automatic increase or other change in benefits beyond the ensuing biennium, which would not require legislative approval. The committee is required to include in the report of the committee a statement that the proposal would allow future changes without legislative involvement.

STATUTORY RESPONSIBILITIES

Section 54-35-02.3 requires that during each biennium the Legislative Management appoint an Employee Benefits Programs Committee in the same manner as the Legislative Management appoints other interim committees. The membership of the committee consists of seven members of the House of Representatives and six members of the Senate and is chaired by a legislator designated by the Legislative Management.

Section 54-35-02.4(1) requires the committee to "consider and report on those legislative measures and proposals over which it takes jurisdiction and which affect, actuarially or otherwise, the retirement programs of state employees or employees of any political subdivision, and health and retiree health plans of state employees or employees of any political subdivision." The committee is required to make a thorough review of any measure or proposal it takes under its jurisdiction, including an actuarial review, and is required to report its findings and recommendations, along with any necessary legislation, to the Legislative Management and to the Legislative Assembly.

In carrying out its responsibilities, the committee, or its designee, is authorized pursuant to Section 54-35-02.4(2) to:

1. Enter contracts, including retainer agreements, with an actuary or actuarial firm for expert assistance and consultation. However, each retirement, insurance, or retiree insurance program shall "pay, from its retirement, insurance, or retiree health benefits fund, as appropriate, and without the need for a prior appropriation, the cost of any actuarial report required by the committee which relates to that program."
2. Call on personnel from state agencies or political subdivisions to furnish such information and render such assistance as the committee may from time to time request.
3. Establish rules for the committee's operation, including the submission and review of proposals and the establishing of standards for actuarial review.

Section 54-35-02.4(3) authorizes the committee to solicit draft measures and proposals from interested persons during the interim between legislative sessions and to study measures and proposals referred to it by the Legislative Assembly or the Legislative Management. Subsection 4 requires a copy of the committee's report concerning any legislative measure, if that measure is introduced for consideration by the Legislative Assembly, be attached to the copy of that measure, which is referred to a standing committee. In previous interims, the committee reports identified the sponsor of a proposal, summarized the proposal, presented the actuarial analysis, and included the committee's recommendation. Subsections 5 and 6 prohibit the introduction or amendment of any legislative measure affecting a public employees retirement program, public employees health insurance program, or public employee retiree health insurance program unless it is accompanied by a report from the committee. A majority of the committee members, acting through the Chairman, has sole authority to determine whether any legislative measure affects a public employees program.

Section 54-35-02.4(7) provides any legislation enacted in contravention of that section is invalid and of no force and effect, and any benefits provided under the legislation must be "reduced to the level current prior to enactment" of the legislation.

Procedures for Solicitation and Review of Retirement Proposals

Under Section 54-35-02.4, the committee shall consider and report on those legislative measures and proposals over which it takes jurisdiction and which affect, actuarially or otherwise, the retirement programs, public employees health insurance programs, or public employee retiree health insurance programs of state employees or employees of any political subdivision. The committee shall make a thorough review of each measure or proposal, including an actuarial review. Under this law, the committee may solicit draft measures and proposals from interested persons during the interim.

The committee also has the authority to establish rules for its operation, including rules relating to the submission and review of proposals and the establishment of standards for actuarial review. During previous interims the committee has limited the persons permitted to submit to the committee legislative proposals affecting retirement programs to legislators, Legislative Management interim committees, and state agencies with bill introduction privilege and has required the proposals be in bill draft form and be submitted to the committee before April 1 of the even-numbered year of the interim to allow enough time for actuarial evaluation. The committee may waive its self-imposed deadline for proposals received after any deadline established by the committee.

Actuarial Services

The committee is empowered by Section 54-35-02.4 to retain actuarial assistance for the review of proposals submitted to the committee. The impacted program is required to pay for any actuarial reports required by the committee; therefore, much or all of the actuarial costs involved in the review of legislative measures and proposals are paid by the retirement, insurance, or retiree health insurance program affected by each proposal. In practice, if the committee take jurisdiction over a legislative proposal or measure, the affected program obtains an actuarial report for each proposal from that program's consulting actuary.

In the past, the Employee Benefits Programs Committee, after obtaining actuarial information on the retirement proposals and receiving relevant testimony, has developed a report with respect to each proposal submitted. The report has included the sponsor of the proposal, a summary of the proposal, the actuarial analysis of the effect the proposal may have on the retirement program, and a committee recommendation to the Legislative Management on the merits of the proposal. A copy of the committee's report must be attached to each proposal when it is introduced to the Legislative Assembly or in the case of a report prepared during a legislative session the report is attached to the covered bill.

ADDITIONAL COMMITTEE RESPONSIBILITIES

In addition to the committee's primary statutory responsibilities:

- Section 15-39.1-05.2 requires the Board of Trustees of the Teachers' Fund for Retirement (TFFR) to provide notice to the committee of necessary or desirable changes in statute relating to the administration of the TFFR fund.
- Section 15-39.1-10.11 requires the Board of Trustees of the TFFR to provide annual reports to the committee regarding an annual test of the actuarial adequacy of statutory contribution rate.
- Section 15-39.1-35 provides if the Public Employees Retirement System (PERS) Board adopts provisions for TFFR to modify the law relating to TFFR to comply with applicable federal statutes or rules, the committee shall consider whether to approve such modifications.
- Section 18-11-15(5) requires the committee to be notified by a Firefighters Relief Association if the association implements the alternate schedule of monthly service pension benefits to members of the association provided in that subsection.
- Sections 39-03.1-29, 54-52-23, and 54-52.1-08.2 provide if the PERS Board adopts provisions to comply with applicable federal statutes or rules, the committee shall consider whether to approve such modifications.
- Section 54-06-31(3) requires Human Resource Management Services to report periodically to a legislative committee designated by the Legislative Management on the implementation, progress, and bonuses provided under agency recruitment and retention bonus programs. The Legislative Management assigned this responsibility to this committee.

- Section 54-06-32 requires the Office of Management and Budget (OMB) to submit to the Legislative Management a report summarizing reports of state agencies providing service awards to employees in the classified service. The Legislative Management assigned this responsibility to this committee.
- Section 54-06-33 requires OMB to submit to the Legislative Management a report summarizing reports of state agencies providing employer-paid costs of training or educational courses to employees in the classified service. The Legislative Management assigned this responsibility to this committee.
- Section 54-06-34 requires OMB to submit to the Legislative Management a report summarizing reports of executive branch state agencies paying employee membership dues for professional organizations and membership and service club dues. The Legislative Management assigned this responsibility to this committee.

STUDY PLAN

To complete the statutory and assigned study charges, the Employee Benefits Programs Committee will need to hold periodic meetings during the interim and possibly beyond the interim, through completion of the 2019 legislative session.

Throughout Interim and Legislative Session

During the 2017-18 interim, the committee may consider whether to adopt rules for its operation, including rules relating to the submission and review of proposals and establishment of standards for actuarial review. Historically, the committee has limited the persons permitted to submit to the committee legislative proposals affecting retirement system programs to Legislative Management interim committees, legislators, and state agencies with bill introduction privileges. The committee required proposals be in bill draft form and submitted to the Legislative Council before April 1 of the even-numbered year. If the committee adopts this approach, there will be adequate time to conduct actuarial studies, to schedule time for the committee to receive the studies and make recommendations, and for the committee to consider any of the sponsor's amendments before introduction. It is common for Legislative Management interim committees to submit bill drafts after the committee's established deadline, but before the end of the interim.

If during the 2019 legislative session a bill affecting the retirement system is introduced or an amendment is made which affects the retirement system, the committee Chairman may schedule a meeting of the committee to determine whether to take jurisdiction over the bill or amendment, to have an actuarial report conducted and reviewed, and to make a committee recommendation.

Annual Reports

The committee is charged with receiving annual reports from TFFR regarding the annual test of actuarial adequacy of the statutory contribution rate. This report is typically available by October of the odd-numbered year and again by October of the next even-numbered year of the interim. It has become common practice that at the meetings the committee receives the annual TFFR reports, the committee also receive actuarial reports on the actuarial valuation of the PERS main system, judges' retirement fund, National Guard retirement fund, Highway Patrolmen's retirement fund, and the retiree health benefits fund.

Biennial Reports

The committee is charged with receiving from OMB three biennial reports, which OMB is directed to have prepared for presentation to the committee during the month of September of the odd-numbered year of the interim. The following three required reports are typically provided to the committee by Human Resource Management Services:

- A report summarizing reports of state agencies providing service awards to employees in the classified service;
- A report summarizing reports of state agencies providing employer-paid costs of training or educational courses to employees in the classified service; and
- A report summarizing reports of executive branch state agencies paying employee membership dues for professional organizations and membership and service club dues.

Periodic Reports

Human Resource Management Services is required to provide the committee with periodic reports on the implementation, progress, and bonuses provided under agency recruitment and retention bonus programs.

As Necessary

The following four committee charges are necessary only if the relevant events occur:

- The Teachers' Fund for Retirement shall provide notice to the committee if the TFFR Board of Trustees board determines there are necessary or desirable changes in statute relating to the administration of the TFFR fund.
- The committee shall meet to determine whether to approve TFFR terminology adopted by the PERS Board for TFFR provisions to modify the law relating to TFFR to comply with applicable federal statutes or rules.
- A Firefighters Relief Association shall notify the committee if the association implements the alternate schedule of monthly service pension benefits to members of the association.
- The committee shall meet to determine whether to approve modifications if the PERS Board adopts provisions to comply with applicable federal statutes or rules.

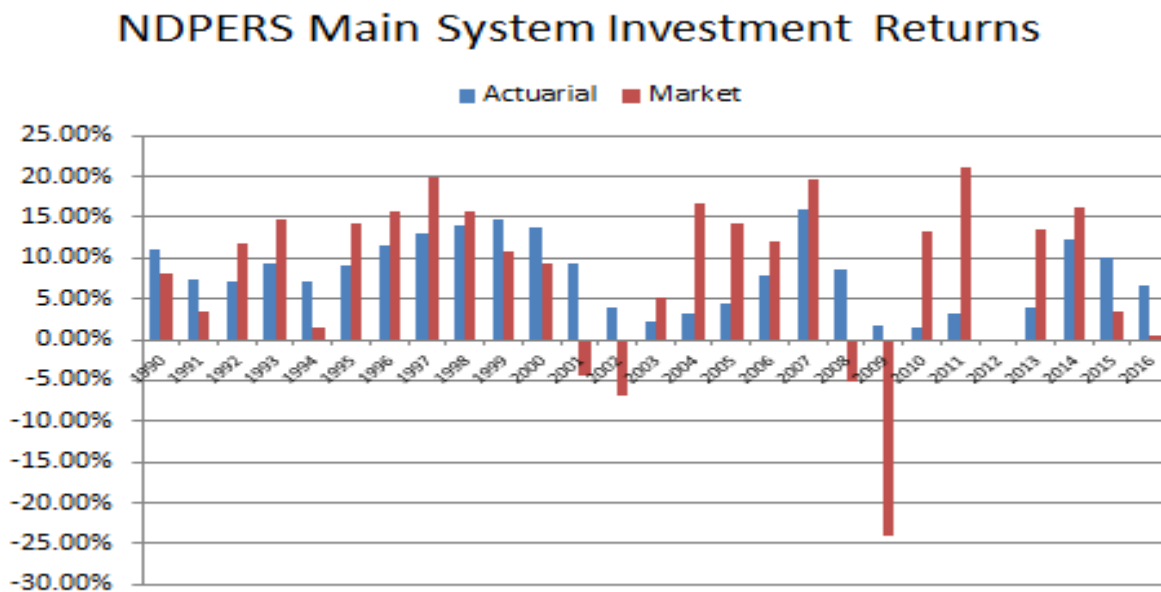
Activities of Other Interim Committees

The Legislative Management's interim Health Care Reform Review Committee is charged with studying the public employee health insurance plan, including the feasibility and desirability of transitioning to a self-insurance plan. The study must include a review of the current plan and consideration of the costs and benefits of the current plan compared to the costs and benefits of a self-insurance plan. There are multiple common committee members on these two committees. Through the course of the interim, the Employee Benefits Programs Committee may wish to receive periodic updates regarding the activities of the Health Care Reform Review Committee.

History

2011 Session

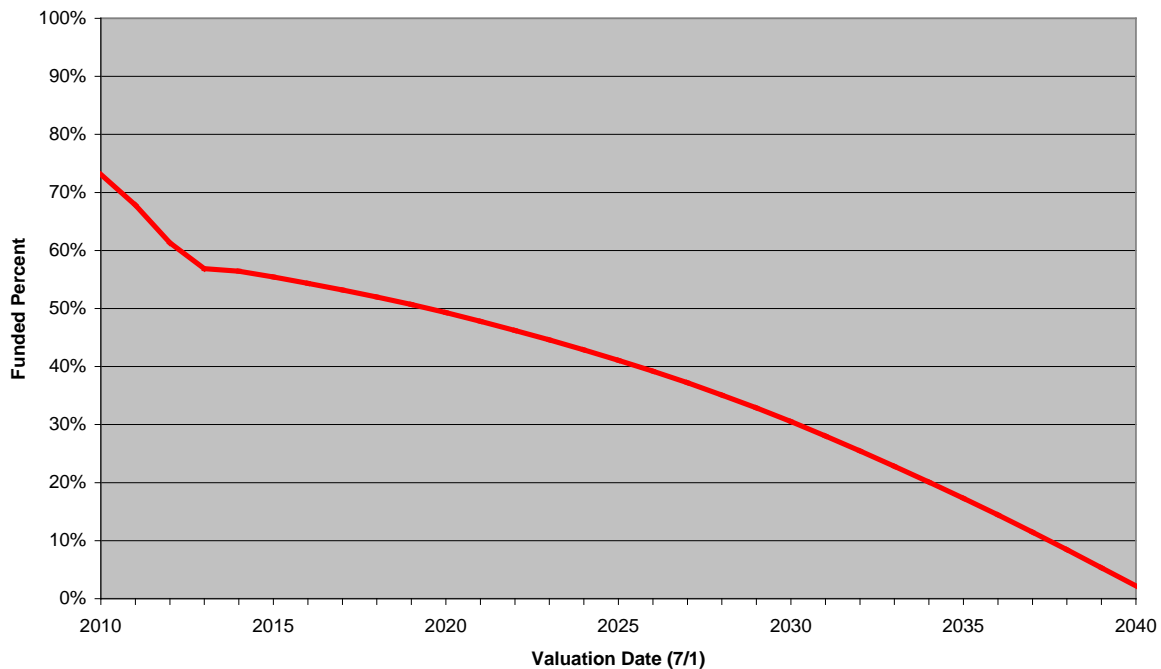
In the 2008/2009 fiscal year the financial market had a major correction that was preceded by the tech market collapse in 2001-2002. However, the most significant effect occurred in 2008/2009 when the PERS plan lost about 24.5%. The following table shows the history of returns and the returns in that year.



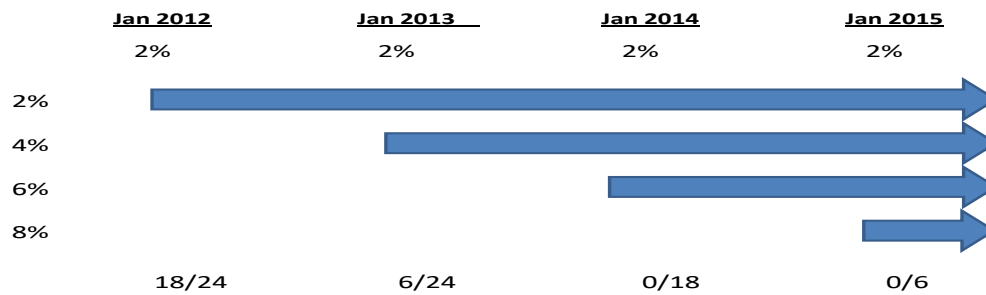
The financial consultant to the State Investment Board, which manages the PERS assets, reported that out of 224 years of US stock performance only 4 years were worse than the returns in 2008. What the plan experienced was truly a unique and significant event.

As a result of this dramatic downturn in the financial markets, the long term funded status of PERS was affected as shown on this graph.

PERS (Main System)
Projected Funded Ratio Under Current Plan
(Actuarial Value of Assets to Actuarial Accrued Liability)
Based on July 1, 2010 Data



The above projections of the future funded status of the Main plan showed the plan could become insolvent in approximately 2040. After a significant amount of study, a proposal was brought forward to increase the contributions by 8% over the period from January 2012 to January 2015 which was projected to close this funding deficit. It became known as the PERS 4-year recovery plan and was based upon the concept that the recovery should be shared between the employer and employee. The thought was that neither party should be responsible for the full cost of the recovery. It was proposed to be spread over 4 years to reduce the effect of the increase in any given year on either party. TFFR also had a similar recovery plan.



Months increase effective for 2011-2013/ Months effective for 2013-2015
2015 and beyond 100% effective

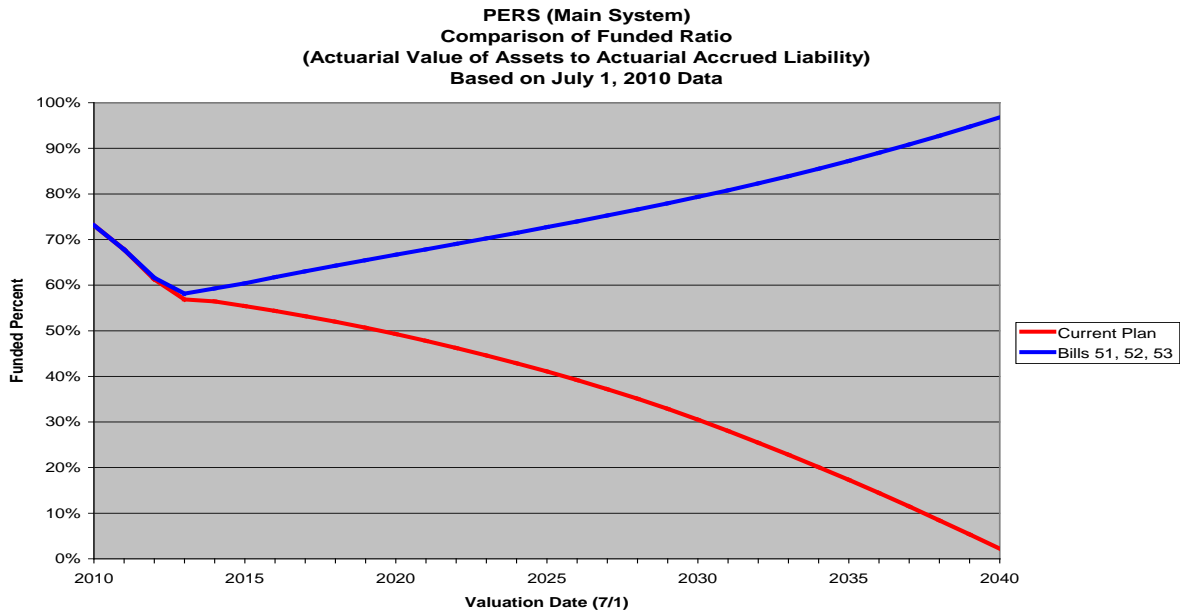
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This proposal came together in SB 2108 that was considered during the 2011 session. This proposal was intended to accomplish three objectives:

1. To stop the downward trend in the funded status of the plans
2. To stabilize the plans
3. To put the plans on a course back to 100% funded status

The following graphs were reviewed during that session showing the projected status of the funds without the increase and the projected status with the increases proposed in the recovery plan.

Graph 2



The proposed recovery plan outlined above for the retirement plan accomplished all three goals.

That session, the legislature approved the first two years of the recovery plan which included the 2012 and 2013 increases.

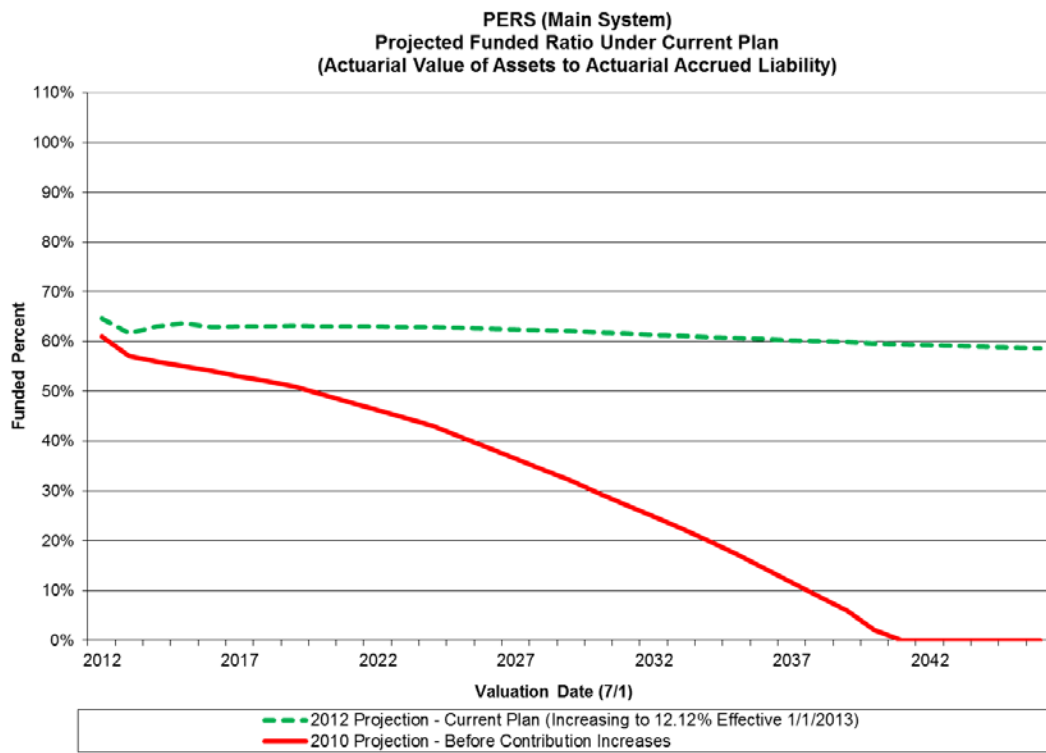
2013 Session

In 2013 PERS proposed the last two years of the recovery plan. It received:

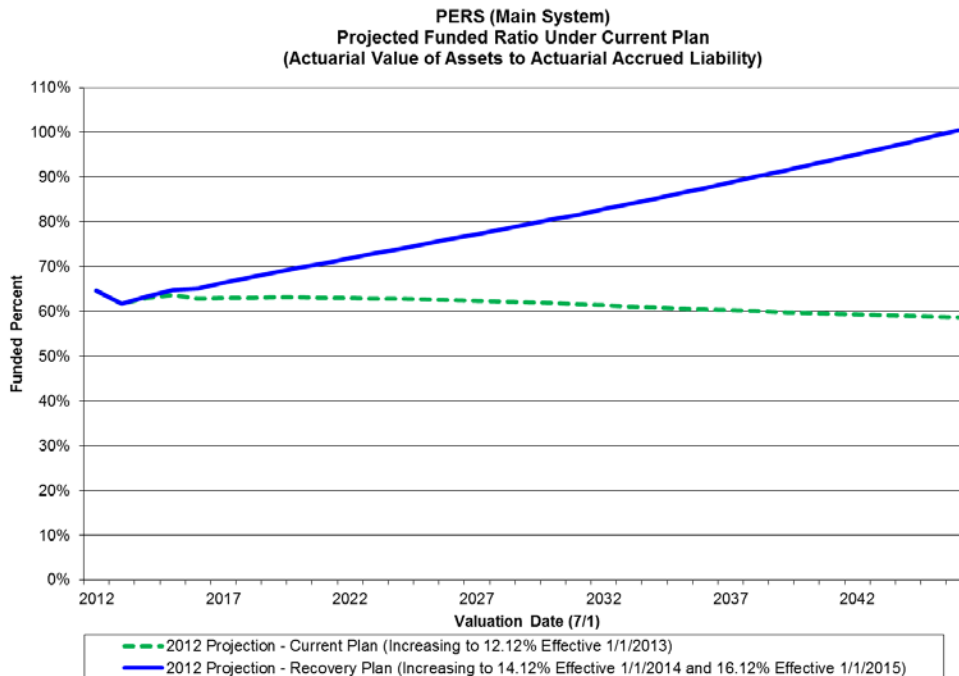
1. A favorable recommendation from the Legislative Employee Benefits committee
2. Was recommended and funded in the Governors Executive Recommendation.

It was noted in the testimony the challenge the plan faced prior to last session (the solid line below) and what was accomplished with the passage of the first two years of the recovery plan in the 2011 session. As the following chart shows the challenge the plan faced as a result of the downturn in the financial markets was a declining funded status over time (solid line). The adoption of the first two years of the recovery plan (SB 2108

from last session) stopped the decline and stabilized the funded status at around 60% (the dotted line) thereby meeting the first two goals.



The testimony discussed that SB 2059 would have enacted the last two years of the recovery plan and would put the plan on a course back to 100% funded status (solid line).



SB 2059:

1. Passed the Senate on a vote of 35 yeas and 12 nays
2. Was defeated in the House on a vote of 32 yeas and 59 nays

The third year of the recovery was added to HB 1452 in conference committee and passed both the House and Senate and was signed by the Governor.

2015 Session

In 2015 PERS proposed in HB 1080:

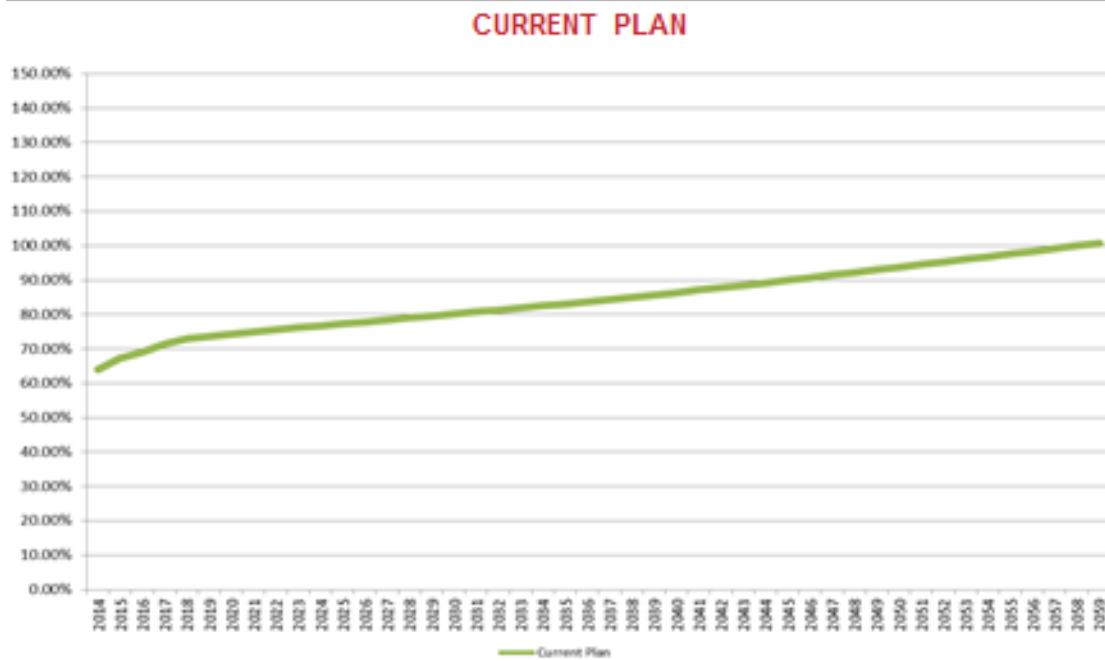
1. The last year of the recovery
2. Some benefit modifications including:
 - a. Final average salary for those enrolled after 12/31/15 is changed to the 5 highest consecutive 12 month periods employed instead of highest 36 months out of 120 months
 - b. Minimum age for unreduced benefits for those enrolled after 12/31/15 would be changed from the Rule of 85 to the Rule of 90 and at least 60 years of age.
 - c. Early retirement reduction would be increase to 8% per year instead of 6%.

The bill was:

1. Given “no recommendation” by the Legislative Employee Benefits Committee
2. Was included in the Governors recommendations and was funded in the executive budget

During the session projections were provided for the plan that showed what was accomplished by the action of adopting the first three years of the recovery plan and the effect of adopting the last year of the recovery plan proposed in this bill.

Projected Funded Ratios (AVA Basis) – Main System

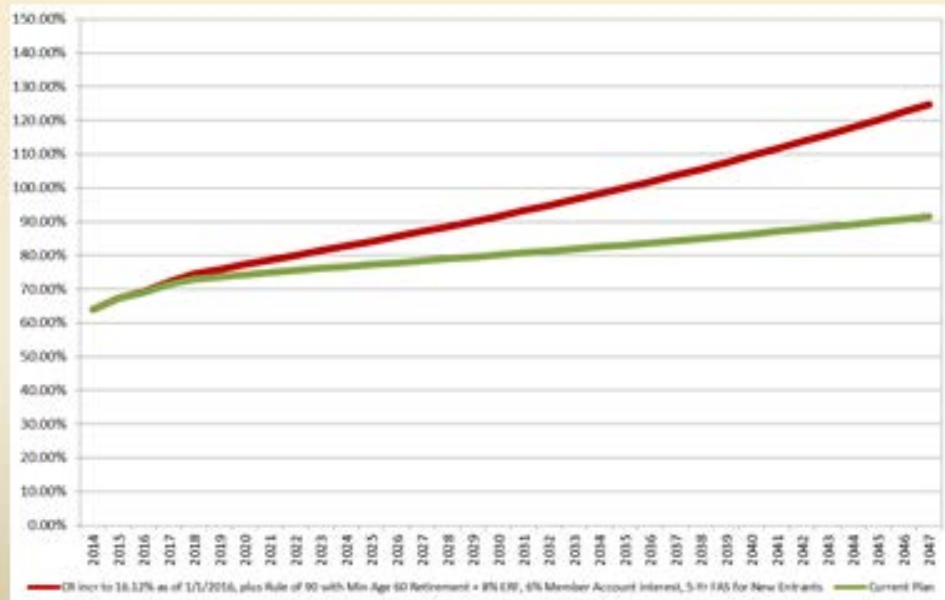


The current plan for Main System is expected to reach a 100% Funded Ratio in the year beginning July 1, 2059.

As the above showed, the PERS plan was on a course to 100% funded status by 2059. If the provisions of HB 1080 would have been passed, the following graph shows that the plan would have been on a course to 100% funded status by 2035, about 24 years earlier.

Projected Funded Ratios (AVA Basis) – Main System

RULE OF 90 WITH MINIMUM RETIREMENT AGE 60, 8% ERF, 5-YEAR FAS FOR NEW ENTRANTS AND 2% CONTRIB INCREASE ON JANUARY 1, 2016 (IN MILLIONS)



23

The bill did not pass the House. It was argued that since the plan was on track to 100% this should continue to be monitored instead of increasing contributions at that time.

In the conference committee on the OMB bill at the end of the session, the Rule of 90 and early retirement reduction changes were included and passed.

2017 Session

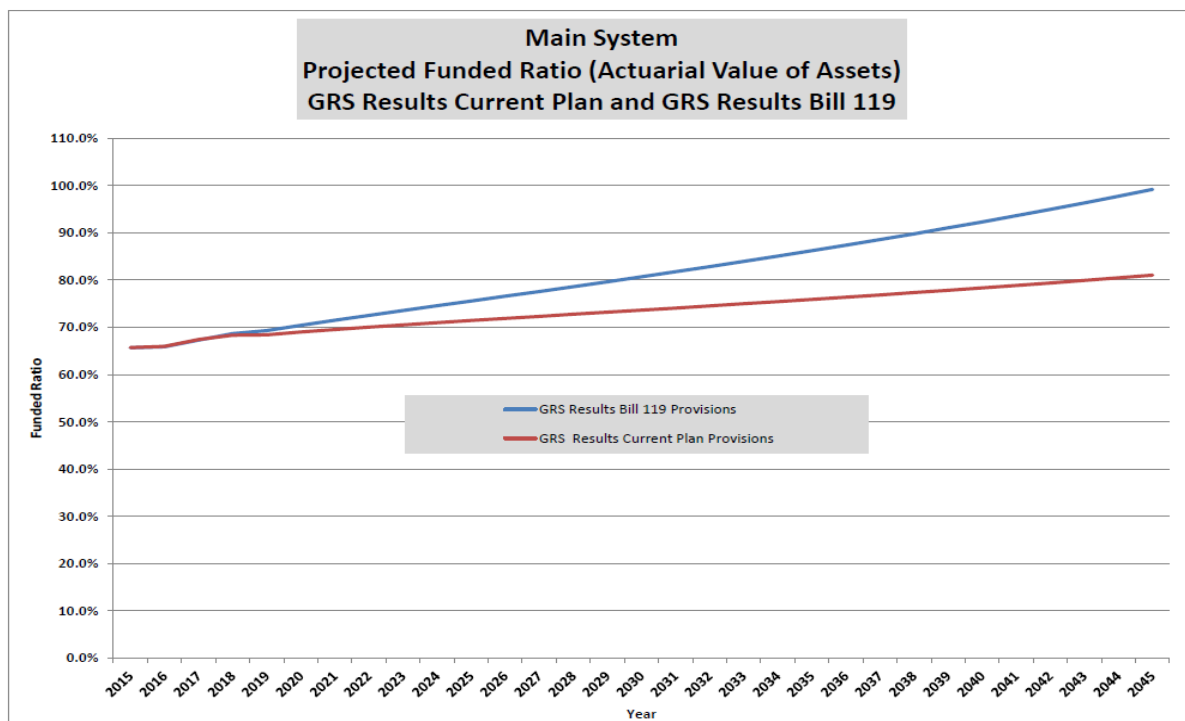
PERS submitted HB 1053 to the 2017 Session. The bill:

1. Received a favorable recommendation from the Legislative Employee Benefits Committee
2. Was not included in the Governors Executive Recommendation and was not funded in the Executive Budget due to the fiscal constraints facing the State

The bill failed to pass the House on a vote of 0 yeas and 90 nays. Primary reasons the bill did not pass were:

1. The fiscal constraint of the state
2. Employees were not getting any salary increase thereby making it difficult to require them to make a contribution since it would have reduced their take home pay.

During the session it was noted if the provisions of HB 1053 were passed the following graph shows that the plan will be on a course to 100% funded status by about 2045.



Change in Assumed Rate of Return

Since the 2017 session the Board has:

1. Updated the economic and demographic assumptions of the plan
2. Of significance is the change in the return assumption from 8% to 7.75%. This has resulted in the long term funding status of the plan decreasing over time.



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

Sharon Schiermeister
Interim Executive Director
(701) 328-3900
1-800-803-7377

Fax: (701) 328-3920 Email ndpers-info@nd.gov Website <https://ndpers.nd.gov>

Memorandum

TO: NDPERS Board

FROM: Sharon Schiermeister

DATE: January 9, 2018

SUBJECT: Final Average Salary

At its December meeting, the PERS Board Audit Committee reviewed information on the Final Average Salary methodology. The purpose of the review was to determine if changes should be made to mitigate risks related to fluctuations in salaries reported by employers.

Background

Final Average Salary (FAS) is based on the highest 36 salaries out of the last 180 months of service, and is a component of the defined benefit retirement calculation:

$$\text{FAS} \times \text{Multiplier} \times \text{Years of Service} = \text{Monthly Retirement Benefit}$$

Over the years, Internal Audit has found several employees with salary fluctuations which were the result of different payroll methods used by their employers. Employers report their retirement contributions to PERS monthly. Employees paid on a bi-weekly payroll cycle have 2 months per year with a 3rd payroll which results in approximately a 50% increase in salary compared to other months. Employees who are paid hourly based on weekly timesheets have 4 months per year with additional hours which results in approximately a 25% increase in salary compared to other months. When calculating FAS, the salaries from these higher months are selected. The result is that these employees end up with a higher FAS, and higher retirement benefit, than an employee who receives the same annual pay but on a monthly or semi-monthly pay cycle.

In 2014, we worked with our actuary, Segal, to identify alternative methods for calculating FAS. They demonstrated the effect of changing the FAS calculation to using the three highest periods of twelve consecutive months or the five highest periods of twelve consecutive months. At that time, the Board introduced the latter method as part of HB 1080 in the 2015 session, which also included the 4th year of the recovery plan, Rule of 90 with minimum age of 60, and increased the early retirement reduction for employees hired after December 31, 2015. This bill did not pass, however, the Rule of 90 and early reduction changes were added at the end of the session to the OMB bill.

At the December 2017 meeting, the PERS Board Audit Committee recommended that an approach for FAS using consecutive, rather than non consecutive salaries should be explored.

We reached out to our current actuary, GRS, to see if they had any recommended approaches for FAS calculation. Their general observation is that it is much more common to require that 12-month consecutive periods be used in calculating the FAS, however, we did not have the opportunity to explore this extensively with them. We have not done an actuarial impact specifically for the FAS change, however, we note that the impact on the valuation results when changes are done for new hires don't "kick in" for a number of years into the future.

Staff recommendation:

Propose changing the FAS calculation to a method that requires 12-month consecutive periods; however, delay submitting a bill until the 2021 session for the following reasons:

1. To provide the opportunity to fully explore options with our current actuary
2. To evaluate the impact of the economic assumption changes that were adopted last year
3. To allow time for the Board to fully understand the impact of this change before going forward

Board action requested:

Determine whether legislation should be submitted to change the FAS calculation.



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

Sharon Schiermeister
Interim Executive Director
(701) 328-3900
1-800-803-7377

Fax: (701) 328-3920 Email ndpers-info@nd.gov Website <https://ndpers.nd.gov>

Memorandum

TO: NDPERS Board

FROM: **Bryan & Sharon**

DATE: January 9, 2018

SUBJECT: DC Plan Employer Eligibility

At the July planning meeting, one of the items identified for further follow up was to look at opening our defined contribution plan to any employer in the state, as a means to facilitate supplemental retirement savings for more employees.

We asked the National Association of State Retirement Administrators (NASRA) if they were aware of any state defined contribution plans that allowed private sector companies to participate in their plans. They noted in the attached response that they are not aware of any and employers are generally prohibited by the Employee Retirement Income Security Act (ERISA) from providing benefits to outside employees.

A handful of states are moving forward with "Secure Choice" plans even after efforts at the federal level to block them. These are state-sponsored cash balance retirement plans for employees of organizations that do not offer a plan. Attached is an article from Pension & Investments on the Secure Choice plans. Note that the California plan is still under development.

If you have any questions, we will be available at the NDPERS Board meeting.

Reinhardt, Bryan T.

From: Reinhardt, Bryan T.
Sent: Monday, November 27, 2017 11:42 AM
To: Schiermeister, Sharon L.
Subject: FW: Public plans open to private sector

FYI
Bryan

From: Keith Brainard [mailto:keith@nasra.org]
Sent: Monday, November 27, 2017 11:26 AM
To: Reinhardt, Bryan T. <breinhar@nd.gov>; Alex Brown <alex@nasra.org>
Subject: RE: Public plans open to private sector

CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

Hello, Bryan.

Alex and I are unaware of state DC plans that are open to employees of private sector companies.

DC plans sponsored by states run a wide range, from serving as the primary retirement benefit for broad employee groups (state workers, teachers, public safety), to serving as a supplemental and voluntary plan for one or more groups of employees, e.g., state, teachers, etc.

Generally, employers are prohibited by ERISA from providing retirement benefits to employees outside the employer's scope or group. So, for example, IBM cannot allow ExxonMobil employees to participate in IBM's retirement plan. Likewise, the State of Idaho, for example, is not permitted to provide retirement benefits to employees of a private sector organization in that state.

So-called Secure Choice plans have been approved in a number of states. Broadly, these are state-sponsored cash balance retirement savings plans available to employees whose employers do not provide a retirement benefit. They are not available to public employees. The federal government has provided a waiver from the aforementioned ERISA restriction to states that would like to sponsor a Secure Choice plan.

You or your inquiring legislator are welcome to follow up with us if you have further questions.

Hope this helps.

Thanks.

Keith

From: Reinhardt, Bryan T. [mailto:breinhar@nd.gov]
Sent: Monday, November 27, 2017 10:59 AM
To: Alex Brown <alex@nasra.org>
Cc: Keith Brainard <keith@nasra.org>
Subject: Public plans open to private sector

Pensions&Investments

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States to persist with secure choice

By: [Hazel Bradford](#)

Published: May 15, 2017



Illinois Treasurer Michael Frerichs called the congressional resolutions 'hypocritical.'

Congressional resolutions that unraveled safe harbors for states and cities to create retirement programs for private-sector employees accomplished two things: They stiffened those states' resolve to push ahead, and they dramatized the urgency of finding a way to help what AARP estimates to be as many as 55 million workers who lack access to a retirement plan.

"It just seems very hypocritical," said Illinois Treasurer Michael Frerichs, whose state is working to launch its auto-enrollment, payroll-deducted retirement savings account program by the end of the year. "We intend to move forward."

A handful of states — California, Connecticut, Illinois, Maryland and Oregon — are developing retirement savings programs for private-sector employers that do not already offer such plans, and another 20 states passed legislation this year to study options or take the next steps, according to the Center for Retirement Initiatives at Georgetown University in Washington.

States eager to get ahead of what they see as a looming retirement crisis were cheered when the Department of Labor last August issued safe harbors for states and later, in December, for large political subdivisions. Worried about pre-emption by federal regulators, states were relieved that such "secure choice" programs would not be covered by the Employee Retirement Income Security Act, which would have made employers, especially the smaller ones targeted by the initiatives, more resistant.

Congress' message for states to stop those efforts came in the form of resolutions — narrowly approved along party lines by the Senate in May and the House in February — rescinding those safe harbors, and followed by a similar resolution for cities and other large political subdivisions already signed by President Donald Trump. Mr. Trump is expected to sign the state version soon.

Opponents of the safe harbors said they fear that giving states freedom to set up programs would impose conflicting and burdensome mandates on private-sector businesses of all sizes and eliminate long-standing federal retirement protections for workers provided under ERISA.

A knock on states' rights?

Proponents of private-sector retirement savings initiatives see other forces at work.

For starters, "it is anti-states' rights," said Mr. Frerichs, who noted that in the absence of any federal solutions, states will be on the front lines as an aging population starts retiring in record numbers soon and should be free to find solutions for their residents.

"Congress has failed to address the national retirement security crisis in any meaningful way. States embraced their historic roots of being laboratories for social and economic advancement," said California Treasurer John Chiang.

U.S. Sen. Chris Murphy, D-Conn., whose state is developing a program, chastised his colleagues about that before the Senate vote. "Think about the message you are sending to states. States are innovating to solve a problem that we are not solving. The consequences of what we are about to do are real."

The battle was also seen as a reminder of how much money influences policy decisions in Washington, as financial services firms and their industry trade groups did a full-court press on Capitol Hill before the respective votes. Even a White House statement after the city resolution signing referenced the groups' concerns, noting secure choice programs "would give a competitive advantage to these public plans."

Angela M. Antonelli, executive director of the Center for Retirement, sees something else. "The actions of Republicans to try and stop state initiatives that would create more competition, less Washington meddling, more retirement savings for private-sector workers and at no cost to the federal government are a reflection of Washington special interest politics at its worst."

Secure choice advocates say their target audiences of non-savers is not being served in the marketplace now, and that it would take years to build the economies of scale needed for cost-efficiency and enough assets to attract interest from service providers. "If it slightly rubs the big retirement companies the wrong way, you're going to step in and take that ability away?" chastised Mr. Murphy on the Senate floor.

Sen. Ron Wyden, D-Ore., whose state is launching a pilot phase of its OregonSaves program in July that is widely expected to be the first mover in operation, was equally blunt before the vote: "This legislation puts special interests before working people. It's that simple."

Cathie Eitelberg, senior vice president and national public-sector market director for Segal Consulting, thinks the financial industry should consider working with, not against, the innovative states. "For them to not see it as an opportunity but as a threat, it's mind-boggling," said Ms. Eitelberg, who noted that California alone projects as many as 6 million accounts will be created.

David Morse, a partner with K&L Gates law firm in New York who consults with several states on their secure choice initiatives, even sees the well-financed opposition as a good sign. "Folks against it are afraid it's going to work. It's just too huge a need," Mr. Morse said.

For other states in earlier planning or legislative stages, the recent congressional action could be more of a setback. "I think you might see a lull," Segal's Ms. Eitelberg said. "They will want to see some plan up and running first," likely to be Oregon's. "They want to see how the pioneers go," Mr. Morse agreed.

Voluntary approach

Invoking ERISA protection provides an opening for proponents of multiple-employer plans with voluntary employer participation, an approach favored by Vermont, and included in a package of retirement incentives sponsored by Senate Finance Committee Chairman Orrin Hatch, R-Utah, who led the Senate vote against the safe harbors.

State officials might also rethink whether to make their programs voluntary or mandatory for employers. The mandatory auto-enrollment IRA programs enacted in five states to date were designed to remove employers from any fiduciary-related decisions and potential liability, but mandates also draw stronger opposition from business and financial services groups.

The question of ERISA protection is widely expected to be raised by opponents in legal challenges.

And current plan sponsors will be on alert for new program rules that could impose burdens on them, including how to be exempted, said Will Hansen, senior vice president for retirement policy with the ERISA Industry Committee in Washington, who contends that Oregon violated ERISA pre-emption principles. "We can educate other states as they develop their programs how infringing on employers who provide a retirement plan only harms the overall retirement system," he said.

State officials who have already gone through legislative and legal scrutiny say they are ready.

"Oregon's program has been very carefully constructed and includes excellent saver protections," OregonSaves Executive Director Lisa Massena posted on LinkedIn after the Senate vote. "We are staying the course."

Officials in the other states at the forefront echo that resolve. "This changes very little," said Hank Kim, executive director and counsel of the National Conference on Public Employee Retirement Systems. "We lost one tool in our toolbox that we didn't have before. States started down this path before this, and it will continue."

And despite all the federal-vs.-states drama, there could be a silver lining, said Shai Akabas, director of fiscal policy for the Bipartisan Policy Center in Washington. "The fact they have now effectively opposed the state direction means that there is a hole for those who don't have access. I think that does put the onus on federal policymakers to offer a solution. There is a recognition that something needs to get done."

Original Story Link: <http://www.pionline.com/article/20170515/PRINT/305159977/states-to-persist-with-secure-choice>

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**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 • <https://ndpers.nd.gov>

Memorandum

TO: NDPERS Board

FROM: Bryan

DATE: January 9, 2018

SUBJECT: Flexcomp RFP

The NDPERS Flexcomp Plan administration under Wageworks is in the final year of it's contract. NDPERS staff is working on the draft for the Flexcomp plan RFP. We will bring the final version to you at the February meeting.

If you have any questions, suggestions, or changes we will be available at the NDPERS Board meeting.

REQUEST FOR PROPOSAL

FOR

**North Dakota
Public Employees Retirement System**

**Administrative and Recordkeeping Services
For Section 125 FlexComp Plan**

March 2018

**Request for Proposal
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REQUEST FOR PROPOSAL

SECTION I – INTRODUCTION

A. Scope of Work

This Request for Proposal (RFP) is issued for administrative and recordkeeping functions as described in this RFP relating to the North Dakota Public Employees Retirement System (NDPERS) FlexComp Plan. The Board is seeking proposals for a vendor to assist with the services identified in this RFP. The following is a sequence of activities for this RFP:

March 16, 2018	RFP issued.
March 30, 2018	Deadline for RFP Questions.
April 13, 2018	Answers to RFP Questions posted to NDPERS Website
April 27, 2018	RFP's Due
July/August 2018	NDPERS Board Selects Vendor

B. Fees

The Board is seeking a proposal on a per participant per month basis. This number should include full payment for all the services requested in this RFP. This is a fee only contract, no product sales should be part of the pricing.

C. Rating

This proposal will be rated by a review team at NDPERS. Please submit your Technical Proposal and Cost Proposal separately. This evaluation will be submitted to the PERS Board for its consideration in determining if a vendor should be selected pursuant to this RFP. Please note the ratings are one factor that will be used by the PERS Board in its considerations, the board will consider other factors it deems appropriate and necessary in making a decision including an interview.

Staff will rate all proposals based on the following criteria:

Technical Proposal:

General Background (Questions Section IV, A.1 to A.4)	10 points
Scope of Work (Questions Section IV, B.1 to B.4)	35 points
Experience	
Firm (Questions Section IV, C.1 to C.4)	7 points
Staffing (Questions Section IV, D.1 to D.3)	8 points

Cost Proposal: 40 points

SECTION II - BACKGROUND

A. The Agency:

The North Dakota Public Employees Retirement System is responsible for the administration of the State's retirement, health, life, dental, vision, deferred compensation, FlexComp, retiree health insurance credit, long term care and EAP programs. This proposal is for assistance with the FlexComp Plan.

NDPERS is managed by a Board comprised of nine members:

- 1-Chairman appointed by the Governor
- 1-Member appointed by the Attorney General
- 1-Member elected by retirees
- 3-Members elected by active employees
- 1-State Health Officer
- 2-Members appointed by Legislative Management

NDPERS is a separate agency created under North Dakota state statute.

B. FlexComp Plan:

The FlexComp Plan is authorized under Chapter 54-52.3 of the North Dakota Century Code (NDCC). Additional information on the FlexComp Plan including the plan document can be found on our web site at: <https://ndpers.nd.gov/active-members/insurance-plans/flexcomp-plan/>

The Board is hiring a vendor to do the administrative services for this plan. The contract period will be for 2019 and 2020 calendar years with an option to renew the contract for the 2021 and 2022 calendar years and the 2023 and 2024 calendar years. Such renewals will be based upon the cost and the history of the services provided.

The NDPERS annual enrollment for the 2019 plan year is a three-week period beginning in mid October 2018 and ending in November 2018. If selected, the contractor will need to provide the services under the scope of work sections.

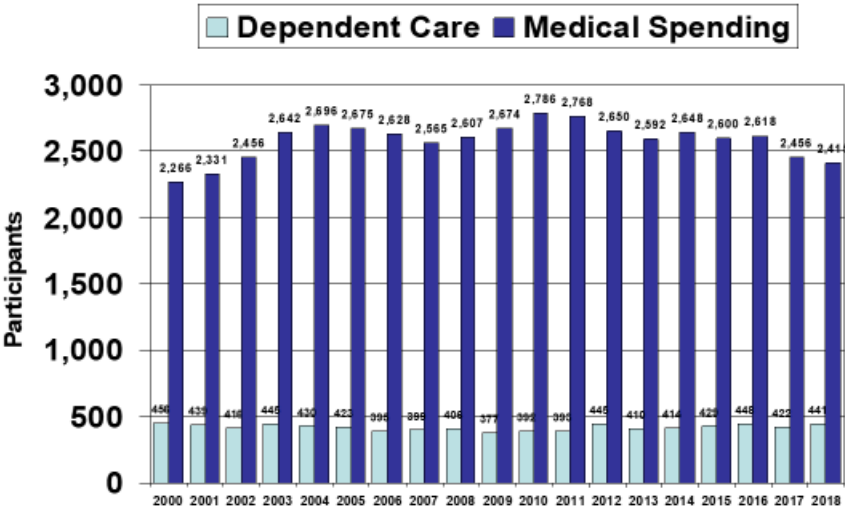
North Dakota Higher Education Participation:

The NDPERS Flexcomp Plan contract allows for the North Dakota higher education groups to participate with the vendor under the same terms.

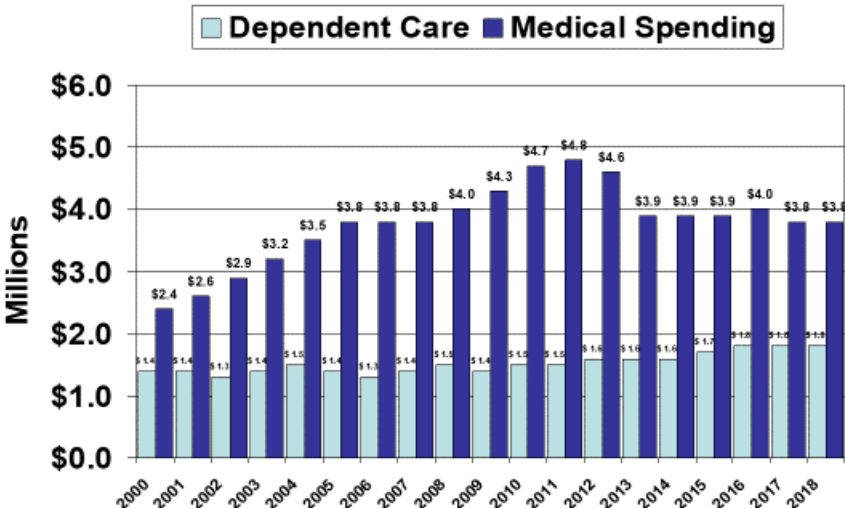
FlexComp Plan:

The following information relates to FlexComp Plan participation and elections:

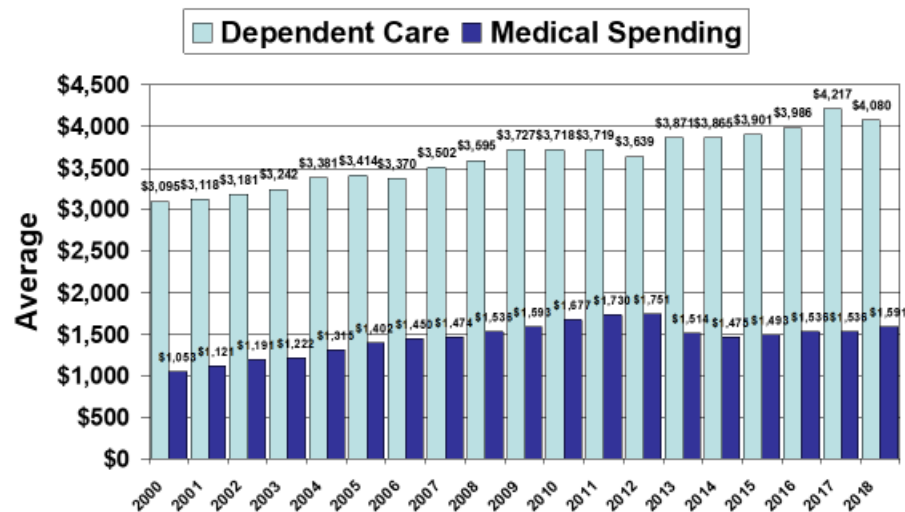
NDPERS Flexcomp Participation



NDPERS Flexcomp Participation



NDPERS Flexcomp Participation



Average deferrals by account per participant per year

SECTION III - SCOPE OF SERVICES

This Section outlines the scope of services.

A: BID SOLICITATION AND EVALUATION FOR THE FLEXCOMP PLAN

A.1 GENERAL REQUIREMENTS

The contractor selected by the NDPERS Board shall handle all administrative and recordkeeping functions, including processing enrollments, terminations and election changes, member correspondence, maintaining individual flexible spending accounts (FSA) accounts for participating employees, assistance with maintaining the plan document, processing reimbursement claims and recovering/correcting any claim payment errors. Administrative services to be provided shall also include preparing informational plan materials and providing employer and employee training.

A.2 SPECIFIC REQUIREMENTS

The contractor shall be required to provide the following administrative services:

A.2.1 ENROLLMENT SERVICES

The contractor shall participate in the annual enrollment for the 2019 calendar year that will run for a three-week period beginning mid October ending in November 2018. Annual enrollment periods for subsequent years will generally be within the same time periods and communicated in advance. New members and members enrolling during the annual open enrollment will utilize the PERSLink business system or submit enrollment forms. All enrollments will be forwarded to the contractor via an electronic file transfer for processing on the contractor's system. All required enrollment services shall be in place prior to the start of the annual enrollment period. The contractor shall meet with NDPERS staff to discuss and organize the annual open enrollment. The contractor shall conduct employer and employee training, as requested, during and around the annual open enrollment period. The contractor shall prepare communication/marketing materials for the flexible spending account (FSA) components of the plan.

At a minimum, the contractor must provide the following informational materials:

- Informational material that provides a general description of the flexible spending account plans, lists the major expenses covered by the accounts, stresses the advantages of participating in the program, covers important enrollment and claim filing deadlines, and lists available IVR and internet services. The informational material will be put on the NDPERS website.

- Informational material containing a more detailed description of the plans, a comprehensive listing of eligible and ineligible expenses under each plan, use-it-or-lose-it rule, change in family status requirement for election changes, important plan deadlines and cutoffs, procedures for filing claims and using the debit card, a COBRA qualifying event, comprehensive listing of available services, and description of other important plan provisions. The informational material will be put on the NDPERS website.
- All required FSA forms with instructions. Please note the NDPERS enrollment forms should be used by the contractor (the contractor shall indicate what additional forms it proposes to use including an explanation for their use). If the contractor is unable to use the NDPERS enrollment forms, it shall so specify and indicate why.
- Reimbursement options brochure detailing various reimbursement options and details about submitting for reimbursement under each option.
- All materials must be co-branded with the vendor and NDPERS logo.

For those enrolling in the FSA plans, the contractor shall provide a welcome kit which shall include the following information:

- An enrollment confirmation letter;
- An explanation of the debit card feature with instructions;
- Co-branded Debit card(s) for medical spending accounts;
- Reimbursement claim forms with instructions;
- Information regarding COBRA;
- Reimbursement options flyer.

The contractor shall mail welcome kits/informational materials to the participant's home address.

A.2.2 ADMINISTRATIVE SERVICES

The contractor shall administer a debit card program. Debit card(s) shall be provided to each participant prior to the start of the plan year and, for new hires and other newly eligible employees, upon enrolling in the medical spending account. The contractor shall adhere to IRS substantiation rules applicable to the use of debit cards in FSA programs. Any fees associated with the issuance or use of debit cards should be included in the per participant/per month base cost and no cost shall be charged to the participant.

The contractor shall establish a website for the State's FSA program that employees can access to obtain account information and to utilize on-line services. The website shall include general information regarding the FSA plans. Desired internet services provided by the contractor shall include: (a) ability to download plan forms, (b) access to member account information, including claim payments, pending claims and account balances; and (c) ability to file reimbursement claim forms on-line.

The contractor shall provide a toll-free number that employees can call for general account information or to speak to a representative. Customer service representatives shall be available Monday through Friday, between the hours of 8:00 a.m. and 5:00 p.m. central time.

A.2.3 CLAIMS PROCESSING SERVICES

Salary reduction amounts deducted by employers shall be forwarded to the contractor by NDPERS. The contractor shall post contributions received from participating employers to individual participant accounts. Reimbursements for incurred expenses shall be made to employees upon the submission of a properly completed reimbursement claim form with required documentation. The contractor shall establish and maintain controls to ensure that only valid claims are processed and that proper documentation to substantiate incurred expenses accompany submitted claims. Participants shall be permitted to mail or fax claim forms to the contractor, and to file claim forms electronically via the contractor's internet site.

If a filed claim is deemed to be invalid or if additional information is required to process a claim, notification must be sent to the claimant detailing the reason for the denial of the claim or the specific information needed in order to process the claim. The contractor shall process claim reimbursements on a daily basis during the work week. In accordance with federal rules and guidelines, the maximum amount of reimbursement in the medical spending account (MSA) shall be available at all times during the plan year. To ensure that dependent care spending account (DCSA) participants have immediate access to funds deducted for their DCSA coverage, payroll deductions received from NDPERS shall be posted to the participant's account and available for reimbursement. The contractor shall detail their timelines for posting contributions.

A.2.4 ELECTRONIC FILE TRANSFER REQUIREMENTS:

The contractor shall provide a secure internet site from which enrollment and payroll deduction files can be safely transferred between the contractor and NDPERS.

A.2.5 END OF YEAR SERVICES

The NDPERS plan year runs from January 1, through December 31. The program's cut-off date for filing reimbursement claims is April 30, following the end of the plan year. The contractor shall be required to process reimbursement claims received from participants up through the April 30 cutoff date pursuant to applicable IRS guidelines.

The NDPERS program adopted the grace period extension rule for both FSA accounts, which allows participants to be reimbursed for qualifying expenses incurred between January 1 and March 15 following the end of the plan year from the prior year's election. Debit card charges for MSA participants shall be applied toward any prior year unused amount before charging expenses to the current year's election.

The contractor shall prepare and send a final reconciliation report of the individual member accounts to NDPERS. This listing shall include the participant's name, NDPERS ID number and forfeiture amount. This must be accomplished within 60 days of the April 30 cutoff date.

A.3 REPORTS

The contractor shall compile, on a periodic basis, reports that summarize the claims activity and provide detailed member account information. At a minimum, the following reports shall be available to NDPERS:

1. A report prior to the start of the plan year that lists the plan participants and their election amount.
2. A quarterly activity report which includes a detailed listing of participants, deposits to date, claims submitted, claims paid and current account balances.
3. A preliminary forfeiture report prepared as of December 31 with member account detail.
4. A final forfeiture report with member account detail within sixty (60) days following the close of the plan year.
5. A year to year enrollment comparison to be provided in January of each year following annual enrollment.
6. Monthly call center activity and claims processing reports.

A.4 CONFIDENTIALITY & HIPAA

The vendor shall comply with the state's confidentiality requirements as set forth in NDCC 54-52.3-05 and all applicable HIPAA requirements.

A.5 PLAN DOCUMENT

The contractor shall review the NDPERS plan document. Unless noted in the proposal, NDPERS will assume that your proposal agrees to follow all the provisions in our plan document.

B: SEQUENCE OF ACTIVITIES

Following is a sequence of major activities:

July/August, 2018	NDPERS Board selects a vendor.
August, 2018	Vendor will begin work with the NDPERS staff concerning the upcoming annual enrollment.
September, 2018	Vendor will supply to NDPERS the written informational material identified in A.2.1 and such other information identified in the August meeting.
October 15, 2018	Annual Enrollment starts (tentative).
November 2, 2018	Annual Enrollment ends (tentative).
December, 2018	NDPERS sends enrollment files. Vendor must start providing welcome kits to members enrolling pursuant to A.2.1.
January 1, 2019	Vendor starts processing NDPERS claims.

C. MEETINGS

The consultant should plan on one on-site meeting each year with the NDPERS Board. The vendor will not participate in any annual enrollment meetings or informational meetings. The vendor will attend the 1-day NDPERS biannual payroll conference and annual wellness fair.

D: ONGOING ASSISTANCE

The vendor shall assist NDPERS with maintaining plan document and other plan compliance activities.

SECTION IV - INFORMATION REQUESTS

The proposal must contain your organization's response to the following requested information. Please respond by using the following format and answering each request by restating it followed by your response **(proposals not following this format will lose points)**.

A. General Background:

1. Provide a brief description of the size, structure and services provided by your organization.
2. Generally, provide your understanding of the services NDPERS is requesting.
3. Describe your organization's approach to administrative and recordkeeping services for Section 125 flexible spending accounts.
4. Indicate your organization's depth of experience in each of the following areas:
 - ◀ FlexComp Plan Medical Spending Accounts
 - ◀ Dependent Care Spending Accounts
 - ◀ Preparation of Plan Documents
 - ◀ Preparation of Informational Materials
 - ◀ On-Line Claims Processing
 - ◀ Debit Cards
 - ◀ Mobile Apps
 - ◀ COBRA Administration
 - ◀ Annual Enrollment
 - ◀ Dispute Resolution
 - ◀ Appeals Process
 - ◀ Process for returning and correcting funds paid in error
 - ◀ Grace period claims
5. How would you increase participation and deferrals in the NDPERS Flexcomp Plan? Provide an example of how you did this for another client.

B. Scope of Work

1. Detail your understanding of the work effort by restating each of the items in Section III A and discussing how you intend to provide services that respond to the work effort identified.
2. It is essential that the vendor move forward quickly upon notification of award. Therefore, the bidder must include as part of its proposal a mobilization and implementation plan, beginning with the date of notification of contract award. Such mobilization and implementation plan should include the following elements:
 - (a) A detailed timetable for the mobilization and implementation period. Such detailed timetable shall be designed to demonstrate how the bidder will have the contract up and operational following the notification of the contract award. In preparing the timetable, the following key elements should be taken into consideration:
 - All plan materials.
 - The timeline and a procedure for the importing and exporting of eligibility and payroll files must be established with NDPERS. The contractor shall identify when this needs to be in place for a January 1, 2019 effective date.
 - All administrative services must be available and in place by the start of the plan year on January 1, 2019 effective date.
 - (b) The bidder's plan for the deployment and use of management, supervisory or other key personnel during the mobilization and implementation period. The plan should show all management, supervisory and key personnel that will be assigned to manage, supervise and monitor the bidder's mobilization and implementation of the contract.
3. The bidder should set forth a summary of any and all challenges/problems that the bidder anticipates during implementation or the term of the contract. For each challenge/problem identified, the bidder should provide its proposed solution.

4. The bidder should include the location of the bidder's office that will be responsible for managing the contract. The bidder should include the telephone number and name of the individual to contact.
5. Provide any deviations to the following performance guarantees for this contract.

Performance Indicator		Reporting Measurement (subject to audit by NDPERS and/or contract auditors)	Standard/Goal	Penalty
PG-1	Final Implementation Plan	The Final Implementation Plan, as described in AR-1 of Attachment A-3: Administrative Requirements, will be submitted to NDPERS.	Within 2 weeks of the contract award	\$100 per day for each day or partial day during which the Contractor is not in compliance with the Final Implementation Plan.
PG-2	Turnaround Time - All Claims	Contractor will adjudicate at least 95% of all eligible claims which received by the Contractor within 14 calendar days. The claim turnaround time is measured from the date received by the Contractor to the date adjudicated (paid, denied or pending). Adjudication is considered to be finalized upon the date the check or an Explanation of Benefits (EOB) is issued.	14 Calendar Days	\$2500 per year
PG-3	Telephone Response - Incoming Calls	80% of Incoming calls will be answered by an attendant or interactive voice response within 30 seconds.	30 seconds or less	\$300 per quarter
PG-4	Telephone Response - Abandonment Rate	The telephone abandonment rate will be less than 3% of calls.	3% or less	\$300 per quarter
PG-5	Satisfaction Survey - Customer Service	At least once per year, the Contractor shall measure employee and retiree satisfaction through a customer satisfaction survey. Employees and retirees will indicate their level of satisfaction pertaining to customer service using a five-point scale with one being the lowest rating and five being the highest rating. NDPERS and the Contractor will mutually agree on the number and content of the questions to be included in the survey.	85.0% and higher	\$1200 per year

C. Experience of Firm

1. Provide a listing of similar projects your firm has worked on, names of clients and contact individuals for each.
2. The bidder shall include an organizational chart showing the bidder's entire organizational structure. This chart should show the relationship of the individuals assigned to the contract to the bidders overall organizational structure
3. Provide a listing and the experience your firm has with public sector clients and other clients.
4. The vendor shall also discuss its business continuity planning procedures for its operations and their data security policies & procedures.

D. Staffing

1. Provide a list and resume of staff assigned to this project.
2. The bidder should also include a list of backup staff that may be called upon to assist or replace primary individuals assigned.
3. Provide the locations of where the work will be done on this project and its staff.

SECTION V – FEES/HOURS

Contractor's proposal for fees shall be on a per participant per month fee. A participant may be in one or both FlexComp accounts. This fee will include all services identified in this RFP.

Separately, please identify the hourly rate for any services that NDPERS may request that are outside the scope of the services requested herein.

THE COST PROPOSAL SHALL BE UNDER SEPARATE COVER AND NOT PART OF THE RESPONSES TO THE OTHER INFORMATION REQUESTS.

SECTION VI - SUBMISSION OF PROPOSAL

- A. Proposals should be prepared in a straightforward manner to satisfy the requirements of this RFP. Emphasis should be on completeness and clarity of content. Costs for developing proposals are entirely the responsibility of the proposer and shall not be reimbursed by NDPERS.
- B. Section VII – Contract Offer, must be signed by a partner or principal of the firm and included with your proposal. This will constitute the contract between NDPERS and the vendor if your proposal is accepted. If you have any exceptions or changes they should be added to this contract. **Do not replace this contract with a new contract.**
- C. Address or deliver the RFP to:

Bryan Reinhardt
Research & Planning Manager
North Dakota Public Employees Retirement System
400 E. Broadway, Suite 505
PO Box 1657
Bismarck, ND 58502-1657
Phone: 701.328.3900

Questions concerning the RFP shall be directed, by e-mail to breinhar@nd.gov by March 30, 2018. Responses will be posted on the NDPERS website by 5:00 p.m. April 13, 2018 at: <https://ndpers.nd.gov/about/bid-opportunities/>.

- D. Ten (10) copies of the proposal must be received at the above listed location by **5:00 p.m. central time, April 27, 2018.** The package the proposal is delivered in must be plainly marked "**PROPOSAL TO PROVIDE ADMINISTRATIVE AND RECORDKEEPING SERVICES FOR FLEXCOMP PLAN**". In addition to the ten copies, submit an electronic copy of the proposal. A proposal shall be considered late and may be rejected if received at any time after the exact time specified for return of proposals.
- E. NDPERS Board reserves the right to reject any or all proposals that are submitted pursuant to this solicitation.

- F. The NDPERS Board and/or its staff may request that representatives of your organization appear before them for interviewing purposes. Travel expenses and related costs will be the responsibility of the organization being interviewed.
- G. The NDPERS Board will award the contract for services no later than the end of August 2018 .
- H. In evaluating the proposals, price will not be the sole factor. The Board may consider any factors it deems necessary and proper, including but not limited to: price; quality of service; response to this request; experience; staffing, information from interviews and general reputation.
- I. The failure to meet all procurement policy requirements shall not automatically invalidate a proposal or procurement. The final decision rests with the NDPERS Board.

Appendix A – Model State Contract

AGREEMENT FOR SERVICES BETWEEN (Name of Contractor) AND NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM

(Name of Contractor) (hereinafter CONTRACTOR) has offered to provide services to the State of North Dakota acting through its Public Employees Retirement System (hereinafter NDPERS). The terms of this Contract shall constitute the services agreement ("Agreement"). CONTRACTOR and NDPERS agree to the following:

- 1) **SCOPE OF SERVICES:** CONTRACTOR agrees to provide the service(s) as specified in the 2018 RFP and proposal (attached hereto and incorporated by reference Exhibit A).
- 2) **TERM:** The term of this contract shall commence January 1, 2019.
- 3) **FEES:** NDPERS shall only pay pursuant to the terms in Exhibit A.
- 4) **BILLINGS:** NDPERS will pay for the services provided by CONTRACTOR under this contract pursuant to a per participant monthly fee in Section V of the proposal. Payments will be made monthly based upon an invoice identifying the number of participants for that month.
- 5) **TERMINATION:** Either party may terminate this agreement with thirty (30) days written notice mailed to the other party, or as mutually agreed to by the parties. Upon any termination the CONTRACTOR shall be compensated as described in Exhibit A for services performed up to the date of termination.

In addition, PERS by written notice to CONTRACTOR may terminate the whole or any part of this Agreement under any of the following conditions:

- 1) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term.
- 2) If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this Agreement or are no longer eligible for the funding proposed for payments authorized by this Agreement.
- 3) If any license, permit, or certificate required by law or rule, or by the terms of this Agreement, is for any reason denied, revoked, suspended, or not renewed.

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

In addition, NDPERS may terminate this Agreement effective upon thirty (30) days prior written notice to CONTRACTOR, or any later date stated in the notice:

- 1) If CONTRACTOR fails to provide services required by this Agreement within the time specified or any extension agreed to by NDPERS; **or**
- 2) If CONTRACTOR fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms.

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

- 6) **ASSIGNMENT AND SUBCONTRACTS:** CONTRACTOR may not assign or otherwise transfer or delegate any right or duty without STATE'S express written consent. However, the State expressly consents to CONTRACTOR entering into (i) subcontracts with its affiliates located in the United States, and (ii) third-party subcontracts provided

that any such third-party subcontract acknowledges the binding nature of this contract and incorporates this contract, including any attachments. CONTRACTOR is solely responsible for the performance of any subcontractor to the same extent as if such performance were done by CONTRACTOR. CONTRACTOR does not have authority to contract for or incur obligations on behalf of NDPERS.

- 7) **ACCESS TO RECORDS AND CONFIDENTIALITY:** The parties agree that all participation by NDPERS members and their dependents in programs administered by NDPERS is confidential under North Dakota law. CONTRACTOR may request and NDPERS shall provide directly to CONTRACTOR upon such request, confidential information necessary for CONTRACTOR to provide the services described in Exhibit A. CONTRACTOR shall keep confidential all NDPERS information obtained in the course of delivering services. Failure of CONTRACTOR to maintain the confidentiality of such information may be considered a material breach of the contract and may constitute the basis for additional civil and criminal penalties under North Dakota law. CONTRACTOR has exclusive control over the direction and guidance of the persons rendering services under this Agreement. Upon termination of this Agreement, for any reason, CONTRACTOR shall return or destroy all confidential information received from NDPERS, or created or received by CONTRACTOR on behalf of NDPERS. This provision applies to confidential information that may be in the possession of subcontractors or agents of CONTRACTOR. CONTRACTOR shall retain no copies of the confidential information. In the event that CONTRACTOR asserts that returning or destroying the confidential information is not feasible, CONTRACTOR shall provide to NDPERS notification of the conditions that make return or destruction infeasible. Upon explicit written agreement of PERS that return or destruction of confidential information is not feasible, CONTRACTOR shall extend the protections of this Agreement to that confidential information and limit further uses and disclosures of any such confidential information to those purposes that make the return or destruction infeasible, for so long as CONTRACTOR maintains the confidential information.

CONTRACTOR shall not use or disclose any information it receives from NDPERS under this Agreement that NDPERS has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Agreement or as authorized in advance by NDPERS. NDPERS shall not disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that NDPERS determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota public records law, N.D.C.C. ch. 44-04. The duty of NDPERS and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this Agreement.

CONTRACTOR understands that, except for disclosures prohibited in this Agreement, NDPERS must disclose to the public upon request any records it receives from CONTRACTOR. CONTRACTOR further understands that any records that are obtained or generated by CONTRACTOR under this Agreement, except for records that are confidential under this Agreement, may, under certain circumstances, be open to the public upon request under the North Dakota public records law. CONTRACTOR agrees to contact NDPERS immediately upon receiving a request for information under the public records law and to comply with NDPERS's instructions on how to respond to the request.

- 8) **APPLICABLE LAW AND VENUE:** This agreement shall be governed by and construed

in accordance with the laws of the State of North Dakota. Any action to enforce this contract must be adjudicated exclusively in the State District Court of Burleigh County, North Dakota.

- 9) **MERGER AND MODIFICATION:** This Agreement shall constitute the entire agreement between the parties. In the event of any inconsistency or conflict among the documents making up this agreement, the documents must control in this order of precedence: First – the terms of this Agreement, as may be amended and Second - the state's Request for Proposal (attached in Exhibit A) and Third – CONTRACTOR's Proposal (attached in Exhibit A). No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.
- 10) **INDEMNITY:** CONTRACTOR agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from and against claims based on the vicarious liability of the State or its agents, but not against claims based on the State's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. This obligation to defend, indemnify, and hold harmless does not extend to professional liability claims arising from professional errors and omissions. The legal defense provided by CONTRACTOR to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Any attorney appointed to represent the State must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08. CONTRACTOR also agrees to defend, indemnify, and hold the State harmless for all costs, expenses and attorneys' fees incurred if the State prevails in an action against CONTRACTOR in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this Agreement.
- 11) **INSURANCE**
CONTRACTOR shall secure and keep in force during the term of this Agreement, from insurance companies, government self-insurance pools or government self-retention funds, the following insurance coverages:
- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
 - 2) Professional errors and omissions with minimum liability limits of \$1,000,000 per occurrence and in the aggregate. CONTRACTOR shall continuously maintain such coverage during the contract period and for three years thereafter. In the event of a change or cancellation of coverage, CONTRACTOR shall purchase an extended reporting period to meet the time periods required in this section.
 - 3) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
 - 4) Workers compensation coverage meeting all statutory requirements.
The insurance coverages listed above must meet the following additional requirements:
 - 5) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the CONTRACTOR.
 - 6) This insurance may be in policy or policies of insurance, primary and excess,

including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State.

- 7) The duty to defend, indemnify, and hold harmless the State under this Agreement shall not be limited by the insurance required in this Agreement.
- 8) The state of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. The State shall have all the benefits, rights, and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this Agreement or by the contractual indemnity obligations of CONTRACTOR.
- 9) The insurance required in this Agreement, through a policy or endorsement, shall include:
 - a) "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State;
 - b) a provision that CONTRACTOR's insurance coverage shall be primary (i.e. pay first) as respects any insurance, self-insurance or self-retention maintained by the State and that any insurance, self-insurance or self-retention maintained by the State shall be in excess of the CONTRACTOR's insurance and shall not contribute with it;
 - c) cross liability/severability of interest for all policies and endorsements;
 - d) The legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary;
 - e) The insolvency or bankruptcy of the insured CONTRACTOR shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured CONTRACTOR from meeting the retention limit under the policy.
- 10) CONTRACTOR shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this Agreement.
- 11) Failure to provide insurance as required in this Agreement is a material breach of contract entitling State to terminate this Agreement immediately.
- 12) CONTRACTOR shall provide at least 30 day notice of any cancellation or material change to the policies or endorsements.
- 12) **SEVERABILITY:** If any term in this Agreement is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms must not be affected, and, if possible, the rights and obligations of the parties are to be construed and enforced as if the Agreement did not contain that term.
- 13) **INDEPENDENT ENTITY:** CONTRACTOR is an independent entity under this Agreement and is not a State employee for any purpose, including the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law and the North Dakota Workforce Safety and Insurance Act. CONTRACTOR retains sole and absolute discretion in the manner and means of carrying out CONTRACTOR'S activities and responsibilities under this Agreement, except to the extent specified in this Agreement.
- 14) **NDPERS RESPONSIBILITIES:** NDPERS shall cooperate with the CONTRACTOR hereunder, including, without limitation, providing the CONTRACTOR with reasonable and timely access to data, information and personnel of NDPERS. NDPERS shall be

responsible for the performance of its personnel and agents and for the accuracy and completeness of data and information provided to the CONTRACTOR for purposes of the performance of the Services.

- 15) **FORCE MAJEURE:** Neither party shall be held responsible for delay or default caused by fire, riot, terrorism, acts of God or war if the event is beyond the party's reasonable control and the affected party gives notice to the other party immediately upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default.
- 16) **ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL:** NDPERS does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. NDPERS does not waive any right to a jury trial.
- 17) **NOTICE:** All notices or other communications required under this contract must be given by registered or certified mail and are complete on the date mailed when addressed to the parties at the following addresses:

NDPERS:

Sharon Schiermeister, Chief Operating Officer
ND Public Employees Retirement System
400 East Broadway, Suite 505
PO Box 1657
Bismarck, ND 58502-1657

CONTRACTOR:

Notice provided under this provision does not meet the notice requirements for monetary claims against the State found at N.D.C.C. § 32-12.2-04.

- 18) **NONDISCRIMINATION AND COMPLIANCE WITH LAWS:** CONTRACTOR agrees to comply with all laws, rules, and policies, including those relating to nondiscrimination, accessibility and civil rights, as are applicable to CONTRACTOR. CONTRACTOR agrees to timely file all legally required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including unemployment compensation and workers' compensation premiums. CONTRACTOR shall have and keep current at all times during the term of this contract all licenses and permits required by law.
- 19) **STATE AUDIT:** All records, regardless of physical form, and the accounting practices and procedures of CONTRACTOR relevant to this Agreement are subject to examination by the North Dakota State Auditor, the Auditor's designee, or Federal auditors. CONTRACTOR shall maintain all of these records for at least three (3) years following completion of this Agreement and be able to provide them at any reasonable time. State, State Auditor, or Auditor's designee shall provide reasonable notice.
- 20) **TAXPAYER ID:** CONTRACTOR'S federal employer ID number is: _____.
- 21) **PAYMENT OF TAXES BY STATE:** State is not responsible for and will not pay local, state, or federal taxes. State sales tax exemption number is E-2001, and certificates will be furnished upon request by the NDPERS.
- 22) **EFFECTIVENESS OF CONTRACT:** This Agreement is not effective until fully executed by both parties.

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

**NORTH DAKOTA PUBLIC
EMPLOYEES RETIREMENT SYSTEM**

Executive Director
ND Public Employees Retirement System

Date

CONTRACTOR

Signature

Printed Name

Title

Date

Business Associate Agreement

This Business Associate Agreement, which is an addendum to the underlying contract, is entered into by and between, the North Dakota Public Employees Retirement System ("NDPERS") and XXXXX XXXXX.

1. Definitions

- a. Terms used, but not otherwise defined, in this Agreement have the same meaning as those terms in the HIPAA Privacy Rule, 45 C.F.R. Part 160 and Part 164, Subparts A and E, and the HIPAA Security rule, 45 C.F.R., pt. 164, subpart C.
- b. Business Associate. "Business Associate" means XXXXX XXXXX.
- c. Covered Entity. "Covered Entity" means the **North Dakota Public Employees Retirement System Health Plans**.
- d. PHI and ePHI. "PHI" means Protected Health Information; "ePHI" means Electronic Protected Health Information.

2. Obligations of Business Associate

2.1. The Business Associate agrees:

- a. To use or disclose PHI and ePHI only as permitted or required by this Agreement or as Required by Law.
- b. To use appropriate safeguards and security measures to prevent use or disclosure of the PHI and ePHI other than as provided for by this Agreement, and to comply with all security requirements of the HIPAA Security rule.
- c. To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of ePHI that it creates, receives, maintains or transmits on behalf of the Covered Entity as required by the HIPAA Security rule.
- d. To mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI or ePHI by Business Associate in violation of the requirements of this Agreement.
- e. To report to Covered Entity (1) any use or disclosure of the PHI not provided for by this Agreement, and (2) any "security incident" as defined in 45 C.F.R. § 164.304 involving ePHI, of which it becomes aware without unreasonable delay and in any case within thirty (30) days from the date after discovery and provide the Covered Entity with a written notification that complies with 45 C.F.R. § 164.410 which shall include the following information:
 - i. to the extent possible, the identification of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired or disclosed during the breach;
 - ii. a brief description of what happened;
 - iii. the date of discovery of the breach and date of the breach;
 - iv. the nature of the Protected Health Information that was involved;
 - v. identify of any person who received the non-permitted Protected Health Information;
 - vi. any steps individuals should take to protect themselves from potential harm resulting from the breach;
 - vii. a brief description of what the Business Associate is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; and

- viii. any other available information that the Covered Entity is required to include in notification to an individual under 45 C.F.R. § 164.404(c) at the time of the notification to the State required by this subsection or promptly thereafter as information becomes available.
- f. With respect to any use or disclosure of Unsecured Protected Health Information not permitted by the Privacy Rule that is caused by the Business Associate's failure to comply with one or more of its obligations under this Agreement, the Business Associate agrees to pay its reasonable share of cost-based fees associated with activities the Covered Entity must undertake to meet its notification obligations under the HIPAA Rules and any other security breach notification laws;
- g. Ensure that any agent or subcontractor that creates, receives, maintains, or transmits electronic PHI on behalf of the Business Associate agree to comply with the same restrictions and conditions that apply through this Agreement to the Business Associate.
- h. To make available to the Secretary of Health and Human Services the Business Associate's internal practices, books, and records, including policies and procedures relating to the use and disclosure of PHI and ePHI received from, or created or received by Business Associate on behalf of Covered Entity, for the purpose of determining the Covered Entity's compliance with the HIPAA Privacy Rule, subject to any applicable legal privileges.
- i. To document the disclosure of PHI related to any disclosure of PHI as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- j. To provide to Covered Entity within 15 days of a written notice from Covered Entity, information necessary to permit the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- k. To provide, within 10 days of receiving a written request, information necessary for the Covered Entity to respond to an Individual's request for access to PHI about himself or herself, in the event that PHI in the Business Associate's possession constitutes a Designated Record Set.
- l. Make amendments(s) to PHI in a designated record set as directed or agreed by the Covered Entity pursuant to 45 C.F.R. § 164.526 or take other measures as necessary to satisfy the covered entity's obligations under that section of law.

3. Permitted Uses and Disclosures by Business Associate

3.1. General Use and Disclosure Provisions

Except as otherwise limited in this Agreement, Business Associate may Use or Disclose PHI and ePHI to perform functions, activities, or services for, or on behalf of, Covered Entity, specifically, **Uniform Group Insurance Consulting Services** – provided that such use or disclosure would not violate the Privacy Rule or the Security Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

3.2. Specific Use and Disclosure Provisions

Except as otherwise limited in this Agreement, Business Associate may use PHI and ePHI:

- a. For the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

- b. To provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B), but Business Associate may not disclose the PHI or ePHI of the Covered Entity to any other client of the Business Associate without the written authorization of the covered entity Covered Entity.
- c. To report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. §§ 164.304 and 164.502(j)(1).

4. Obligations of Covered Entity

4.1. Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions

Covered Entity shall notify Business Associate of:

- a. Any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 C.F.R. § 164.520, to the extent that any such limitation may affect Business Associate's use or disclosure of PHI.
- b. Any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that any such changes may affect Business Associate's use or disclosure of PHI.
- c. Any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that any such restriction may affect Business Associate's use or disclosure of PHI.

4.2. Additional Obligations of Covered Entity. Covered Entity agrees that it:

- a. Has included, and will include, in the Covered Entity's Notice of Privacy Practices required by the Privacy Rule that the Covered Entity may disclose PHI for Health Care Operations purposes.
- b. Has obtained, and will obtain, from Individuals any consents, authorizations and other permissions necessary or required by laws applicable to the Covered Entity for Business Associate and the Covered Entity to fulfill their obligations under the Underlying Agreement and this Agreement.
- c. Will promptly notify Business Associate in writing of any restrictions on the Use and Disclosure of PHI about Individuals that the Covered Entity has agreed to that may affect Business Associate's ability to perform its obligations under the Underlying Agreement or this Agreement.
- d. Will promptly notify Business Associate in writing of any change in, or revocation of, permission by an Individual to Use or Disclose PHI, if the change or revocation may affect Business Associate's ability to perform its obligations under the Underlying Agreement or this Agreement.

4.2. Permissible Requests by Covered Entity

Covered Entity may not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule or the Security Rule if done by Covered Entity, except that the Business Associate may use or disclose PHI and ePHI for management and administrative activities of Business Associate.

5. Term and Termination

- a. Term. The Term of this Agreement shall be effective as of July 1, 2016, and shall terminate when all of the PHI and ePHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI and ePHI, protections are extended to any such information, in accordance with the termination provisions in this Section.
- b. Automatic Termination. This Agreement will automatically terminate upon the termination or expiration of the Underlying Agreement.
- c. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
 - 1. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement and the Underlying Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
 - 2. Immediately terminate this Agreement and the Underlying Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
 - 3. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
- d. Effect of Termination.
 - 1. Except as provided in paragraph (2) of this subsection, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI and ePHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI or ePHI.
 - 2. In the event that Business Associate determines that returning or destroying the PHI or ePHI is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon explicit written agreement of Covered Entity that return or destruction of PHI or ePHI is not feasible, Business Associate shall extend the protections of this Agreement to that PHI and ePHI and limit further uses and disclosures of any such PHI and ePHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains that PHI or ePHI.

6. Miscellaneous

- a. Regulatory References. A reference in this Agreement to a section in the HIPAA Privacy or Security Rule means the section as in effect or as amended.
- b. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule, the Security Rule, and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- c. Survival. The respective rights and obligations of Business Associate under Section 5.c, related to "Effect of Termination," of this Agreement shall survive the termination of this Agreement.
- d. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy and Security Rules.
- e. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything this Agreement confer, upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

- f. Applicable Law and Venue. This Business Associate Agreement is governed by and construed in accordance with the laws of the State of North Dakota. Any action commenced to enforce this Contract must be brought in the District Court of Burleigh County, North Dakota.
- g. Business Associate agrees to comply with all the requirements imposed on a business associate under Title XIII of the American Recovery and Reinvestment Act of 2009, the Health Information Technology for Economic and Clinical Health (HI-TECH) Act, and, at the request of NDPERS, to agree to any reasonable modification of this agreement required to conform the agreement to any Model Business Associate Agreement published by the Department of Health and Human Services.

7. Entire Agreement

This Agreement contains all of the agreements and understandings between the parties with respect to the subject matter of this Agreement. No agreement or other understanding in any way modifying the terms of this Agreement will be binding unless made in writing as a modification or amendment to this Agreement and executed by both parties.

IN WITNESS OF THIS, **NDPERS** [CE] and **ENTER BUSINESS ASSOCIATE NAME** [BA] agree to and intend to be legally bound by all terms and conditions set forth above and hereby execute this Agreement as of the effective date set forth above.

For Covered Entity:

Executive Director
ND Public Employees Retirement System

Date

For Business Associate:

Signature

Printed Name

Title

Date

MEMORANDUM OF UNDERSTANDING BETWEEN THE
NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM
AND NAME OF PROVIDER
RELATING TO MAINTAINING CONFIDENTIAL INFORMATION

This Memorandum of Understanding is between the State of North Dakota acting through its North Dakota Public Employees Retirement System (NDPERS) and NAME OF PROVIDER relating to maintenance and destruction of NDPERS Confidential Information held by NAME OF PROVIDER and its subsidiaries.

WHEREAS, NDPERS has previously entered into contracts with NAME OF PROVIDER to provide services related to administration of the NDPERS PUT THE PROGRAM SPECIFICS HERE (Contracts).

WHEREAS, the services provided by NAME OF PROVIDER under these Contracts required the exchange of information between the parties that is confidential under North Dakota Century Code §§ CHANGE ACCORDING TO PROGRAM 54-52.1-11 and 54-52.1-12 (Confidential Information).

WHEREAS, the parties acknowledge that these Contracts, including the Business Associate Agreements between the parties, required NAME OF PROVIDER to return or destroy Confidential Information subsequent to the termination of the applicable Contract, or if return or destruction of this information was infeasible to maintain its confidentiality.

WHEREAS, these Contracts have terminated and NAME OF PROVIDER has asserted and NDPERS agrees that member service, applicable audit, record keeping, and other required functions make the return or destruction of all Confidential Information infeasible at this time.

WHEREAS, NAME OF PROVIDER has provided and NDPERS has reviewed the NAME OF PROVIDER records retention policy (Policy) applicable to the Confidential Information and NAME OF PROVIDER has affirmed that it will maintain the confidentiality of NDPERS information pursuant to this Policy until such time as the information is destroyed in a manner designated by this Policy.

NOW THEREFORE, in consideration of the foregoing premises and in furtherance of the aforementioned contractual obligations, the parties agree as follows:

1. **NAME OF PROVIDER** shall continue to maintain the confidentiality of Confidential Information which it still possesses, in accordance with its Policy in a manner that is at least as secure and diligent as was done during the term of the applicable Contract, until such time as the Confidential Information is destroyed or returned.
2. Upon the request of NDPERS, **NAME OF PROVIDER** shall confirm the destruction of Confidential Information under its Policy.
3. Upon the request of NDPERS, **NAME OF PROVIDER** shall provide NDPERS a copy of any change to the Policy provided NDPERS on **DATE HERE**.
4. NDPERS agrees these actions are consistent with **NAME OF PROVIDER** obligations under these Contracts.
5. This Memorandum of Understanding will terminate upon notice to NDPERS by **NAME OF PROVIDER** that all Confidential Information has either been returned to NDPERS or destroyed, or earlier, upon thirty (30) days' notice by NDPERS to **NAME OF PROVIDER** if NDPERS determines that the Policy has been modified in a manner that is inconsistent with state or federal law.
6. This Memorandum of Understanding shall be governed by, and construed in accordance with, the laws of the State of North Dakota.

NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM

BY: _____
Executive Director

Date: _____

NAME OF PROVIDER

BY: _____

Its: _____

Date: _____

Attach Vendor Records Retention Policy



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

Sharon Schiermeister
Interim Director
(701) 328-3900
1-800-803-7377

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

Memorandum

TO: PERS Board

FROM: Derrick Hohbein, CPA

DATE: January 2, 2018

SUBJECT: Consultant Fees for the Quarter Ended June 2017

Attached is a quarterly report showing the consulting, investment, and administrative fees paid during the quarter ended December 2017

Attachment

**North Dakota Public Employees Retirement System
Consulting/Investment/Administrative Fees
For the Quarter ended December 31, 2017**

Program/Project		Fee Type	Oct-17	Nov-17	Dec-17	Fees Paid During The Quarter	Fees Paid Fiscal Year-To-Date
Actuary/Consulting Fees:							
Conduent	General Consulting	Fixed Fee		3,778	7,556	11,333	\$ 17,683
Mid Dakota Clinic	Retirement Disability	Time charges	550	100		650	\$ 3,700
Ice Miller	Legal fees Employee benefit matters			2,561	500	3,061	\$ 3,061
Callan & Associates	Travel Expenses					-	\$ -
Deloitte	Consulting		1,377	3,672		5,049	\$ 10,940
Gabriel Roeder Smith & Company	Retirement	Fixed Fee	33,500	33,500		67,000	\$ 94,776
Gabriel Roeder Smith & Company	RHIC	Fixed Fee	6,200	6,200		12,400	\$ 12,400
Gabriel Roeder Smith & Company	GASB 67/68	Fixed Fee				-	\$ -
Gabriel Roeder Smith & Company	Actuarial Factors Update	Fixed Fee			5,000	5,000	\$ 19,700
Gabriel Roeder Smith & Company	Retirement	Time Charges	3,643		15,041	18,684	\$ 21,551
Gabriel Roeder Smith & Company	Legislative Work	Time Charges				-	\$ -
Gabriel Roeder Smith & Company	Group Insurance	Time Charges					
Gabriel Roeder Smith & Company	RHIC	Time Charges					
Gabriel Roeder Smith & Company	Deferred Comp	Time Charges			4,629	4,629	\$ 7,329
Gabriel Roeder Smith & Company	Job Service	Time Charges					
Gabriel Roeder Smith & Company	Flexcomp	Time Charges				-	\$ -
Audit Fees:							
Clifton Larson Allen	Annual Audit Fee			45,000		45,000	\$ 45,000
Executive Director Search:							
EFL Associates	Director Search	Fixed Fee			15,000	15,000	\$ 15,000
EFL Associates	Director Search	Additional Expenses				-	\$ -
Website Redesign							
MABU	Website Redesign	Time Charges		340		340	\$ 1,216
Legal Fees:							
ND Attorney General	Administrative	Time charges		18,775	2,738	21,514	\$ 21,514
Investment Fees:							
SIB - Investment Fees	Retirement (DB)	% Allocation	119,822	826,687 *		946,509	\$ 3,350,142
SIB - Investment Fees	Ret Health Credit	% Allocation	883	915 *		1,798	\$ 105,947
SIB - Investment Fees	Insurance	% Allocation	285	269 *		554	\$ 44,306
SIB - Administrative Fees	Retirement (DB)	% Allocation	27,110	24,490 *		51,600	\$ 199,979
						1,000,461	\$ 3,700,374
Administrative Fee:							
Sanford Health Plan	Health Plan	Fixed fee	2,220,717	2,220,897 *		4,441,615	\$ 11,169,145

* fees not yet available



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

Sharon Schiermeister
Interim Executive Director
(701) 328-3900
1-800-803-7377

Fax: (701) 328-3920 Email ndpers-info@nd.gov Website <https://ndpers.nd.gov>

Memorandum

TO: NDPERS Board

FROM: Sharon and Bryan

DATE: January 9, 2018

SUBJECT: Procurement guidelines

Attached please find the PERS procurement guidelines. Periodically we review our guidelines and update them. We are seeking your consideration of the attached and any suggestions for additional changes.

Note that NDPERS follows OMB procurement guidelines, but is exempt under statute for certain services.

54-44.4-02. Office of management and budget purchasing services.

The office of management and budget shall purchase or lease or otherwise arrange for the procurement, for all state agencies and institutions in the executive branch of state government, all materials, furniture, fixtures, printing, insurance, services, and other commodities. The International Peace Garden may participate in the procurement authorized by this section. The following commodities and services, however, are not subject to the procurement requirements of this chapter:

...

10. Employee benefit services, trust-related services, and investment management services obtained by an agency with a fiduciary responsibility regarding those services.

All purchases made by the office of management and budget or a state agency or institution to which authority to purchase has been delegated by the office of management and budget must be made in accordance with this chapter, rules adopted under this chapter, and written policies of the office of management and budget.

NDPERS POLICY

Contract Procurement

The following shall be considered the policy for all contract procurements over \$10,000:

I. General Policy Statement:

It is NDPERS policy to procure services through full and fair competition. All procurement will be conducted in a manner that provides maximum open and free competition.

II. Contracting Frequency:

- A. Special Projects: Whenever it is deemed necessary by the PERS Board, special contracts will be awarded through a competitive bidding process. The contract shall only be for the duration of the particular project. Selection of a special project consultant shall, as is possible, comply with the following policy for consulting contracts.
- B. Ongoing Consulting Contracts: The following specific contracting areas shall be contracted for a period as established by the PERS Board. Specific areas for the hiring of the consultants are:

1. Retirement Actuarial Consulting
2. Group Health Insurance Consulting
3. Group Life Insurance Consulting
4. Deferred Compensation Consulting
5. Flexible Benefits Consulting
- 5-6. Retirement Disability Consulting

These contracts may be expanded or adjusted during the contract period to include special analysis or studies as determined by the Board.

- C. Group Benefit Contracts: the following specific program areas shall have a contract period as established by the NDPERS Board or specified in statute.

1. Health Insurance
2. Life Insurance
3. Dental Insurance
4. Vision Insurance
5. Employee Assistance Program Services
6. Long Term Care Insurance
7. Defined Contribution Retirement Services
 - a. 457 Deferred Compensation Program Services
 - b. 401(a) Defined Contribution Retirement Services
8. FlexComp Administrative Services
- b-9. Retiree Health Insurance Credit Administrative Services

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III. Procurement Process:

- A. Proposals must be solicited through a Request for Proposal (RFP). The RFP shall state:
 - 1. The work specifications.
 - 2. Review process.
 - 3. Terms & conditions.
- B. A professional listing of prospective bidders for each of the specific areas of contracting shall be maintained by PERS. A notice of RFP must be made available to firms on the respective bidders list. If it is determined practical, notice of the proposed procurement will be provided to other potential bidders. The notice of RFP may be advertised, mailed, emailed or posted to the NDPERS website to prospective bidders. The filing deadline must be a part of the RFP notice.
- C. Evaluation of proposals will be according to the procedure outlined in each specific RFP.
- D. The contract for the recommended consultant will be delivered to the Attorney General's Office for final review and approval prior to presentation to the Board.
- E. The PERS Board will make the final decision on hiring a consultant. Upon approval by the Board, the Executive Director may sign all approved contracts.

IV. Supervision of the Contract:

The Executive Director is responsible for the administration of all contracts and shall report to the Board any deficiencies or dissatisfaction.

- V. The Board's Code of Ethical Responsibility is hereby incorporated by reference and shall be supplied to all contractors.



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Interim Executive Director
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1-800-803-7377

Fax: (701) 328-3920 Email ndpers-info@nd.gov Website <https://ndpers.nd.gov>

Memorandum

TO: NDPERS Board

FROM: Derrick Hohbein

DATE: January 3, 2018

SUBJECT: Electronic Board Materials

A request was made during the September 2017 board meeting if it would be an option for Board member's to receive board materials electronically. NDPERS IT staff has researched different options available to accommodate this request.

The first option would be to have the Board use their own personal device to receive board materials electronically through an email link to the monthly board book on the NDPERS website. Any confidential materials will be sent out separately in a password protected .pdf which the board can also access on their own device. For board members opting into receiving materials electronically, our IT staff recommends downloading the free Adobe Acrobat Reader app to access the board books. This app gives users the ability to quickly navigate various topics in the event agenda items are completed out of sequence.

The second option would be to purchase devices for the Board which would require additional budget authority. The purchase cost for a Microsoft Surface tablet through ITD's desktop services is a one-time \$2,310 setup fee and an ongoing monthly fee of \$115. The cost of providing this device is not built into our current budget, but could be an option to include in next biennium's budget if the Board decides to move forward in that direction.

NDPERS does have one office iPad that would be available if a board member doesn't have access to a device that would be available to use during the meeting.

Staff is looking for direction from the board on how you would like to receive future board materials. If option #1, staff can accommodate this request immediately and Jan will contact you to get your preference. If option #2, staff will include this as an option in the budget request for the 19-21 biennium, which will be reviewed at the May or June board meeting.



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Sharon Schiermeister
Interim Director
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1-800-803-7377

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

Memorandum

TO: PERS Board

FROM: Derrick Hohbein, CPA

DATE: December 20, 2017

SUBJECT: 2017 COMPREHENSIVE ANNUAL FINANCIAL REPORT

The 2017 comprehensive annual financial report has been completed. The report contains detailed financial, investment, actuarial and statistical information for the plans administered by NDPERS. You can view, download or print the report from the NDPERS website at

<https://ndpers.nd.gov/image/cache/2017-cafr.pdf>

An email notice was sent to each participating employer notifying them that the annual report is available on the NDPERS website. The report was submitted to the Government Finance Officers Association with an application for the GFOA Certificate of Excellence in Financial Reporting.

Please let me know if you have any questions on the report.



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Interim Executive Director
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1-800-803-7377

Fax: (701) 328-3920 Email ndpers-info@nd.gov Website <https://ndpers.nd.gov>

Memorandum

TO: NDPERS Board

FROM: Sharon Schiermeister

DATE: December 26, 2017

SUBJECT: Board Meeting Dates – 2018

Due to the change in the Board's meeting schedule, we have noted there are two items in 2018 that may require the Board to make alternative meeting arrangements in order that action can be provided to comply with statutory and plan document requirements. Following are the two items:

- **Board Election** – The last day to submit ballots is the close of business on Friday, June 15th. The election rules specify that canvassing of the votes must occur on the third Monday of June which is the 18th. They further state that the election results must be presented to the Board following the canvassing of votes. The June 2018 meeting is scheduled for Tuesday the 12th, which precedes the canvassing date. The Board must take action on the election results prior to July 1st.
- **Job Service Cola** – The COLA index is usually released on October 15th. In the past, the Board has taken action on this item at its October meeting which was scheduled after the release date. This allowed staff sufficient time to make the adjustments, prepare communication to the members, and meet the December 1st effective date as indicated in the plan document. In 2018, the October meeting is on the 9th which precedes the release date and the November meeting isn't until the 13th; however, delaying the Board's action to the November meeting will not allow staff the time required to process the increase for the December 1st date.

Based on the above, the Board has the option to schedule special meetings for these two items or change the Board meeting date. If the Board wishes, staff can provide some suggested dates for either option for your consideration at the February meeting.

Staff is looking for guidance on how the Board wishes to proceed in resolving the above scheduling issues.



North Dakota
Public Employees Retirement System
400 East Broadway, Suite 505 • PO 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: Jamie Kinsella

DATE: December 8, 2017

SUBJECT: August 18, 2017 PERS Audit Committee Minutes

Attached are the approved minutes from the August 18, 2017 meeting. Those who attended the meeting are available to answer any questions you may have.

The minutes may also be viewed on the NDPERS web site at www.nd.gov/ndpers.

The next audit committee meeting is currently scheduled for December 8, 2017 at 10:00 a.m. in the NDPERS Conference Room.

Attachment

-
- | | | |
|------------------------------------|----------------------------------|-----------------------------------|
| • FlexComp Program | • Retirement Programs | • Retiree Health Insurance Credit |
| • Employee Health & Life Insurance | - Public Employees | • Deferred Compensation Program |
| • Dental | - Highway Patrol | • Long Term Care Program |
| • Vision | - National Guard/Law Enforcement | |
| | - Judges | |
| | - Prior Service | |
| | - Job Service | |



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Sparb Collins
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FAX: (701) 328-3920 • EMAIL: NDPERS-INFO@ND.GOV • www.nd.gov/ndpers

MEMORANDUM

TO: Audit Committee
Pamela Anderson
Mylynn Tufte
Adam Miller
Rebecca Dorwart

FROM: Jamie Kinsella, Internal Auditor

DATE: August 30, 2017

SUBJECT: August 18, 2017 Audit Committee Meeting

In Attendance:
Rebecca Dorwart
Mylynn Tufte
Adam Miller
Representative Pamela Anderson
Jamie Kinsella
Julie McCabe
Sharon Schiermeister
Derrick Hohbein
Bryan Reinhardt

The meeting was called to order at 1:05 p.m. New audit committee members, Adam Miller and Mylynn Tufte were welcomed.

I. May 23, 2017 Audit Committee Minutes

The audit committee minutes were examined and approved by the Audit Committee.

II. Internal Audit Reports

- A. Quarterly Audit Plan Status Report – A summary of the internal audit staff time spent for the past quarter was included with the audit committee materials. Of the total hours reported, 60.03% was spent in audit and 6.13% in consulting. This is in line with the audit plan of 50-60% auditing.
- B. Outstanding Issues Status Report – As stated in the Audit Policy #103, the Internal Audit Division is to report quarterly to management and the audit committee the status of the audit recommendations of the external auditors as well as any found by the internal auditor. The report has been updated to reflect what has been accomplished during May 1, 2017 through July 31, 2017. There were 2 issues completed, leaving 7 remaining.

- C. Benefit/Premium Adjustments Report – The quarterly benefit adjustment report was provided to the audit committee. The report is in three sections, Retirement Benefit Corrections, Retirement Benefits Corrected Prior to Checkwrite and Insurance. This report has 5 retirement adjustments. The adjustments resulted from a variety of reasons as shown on the attached report to the committee.

III. Administrative

- A. Audit Committee Meeting Date & Time - The next audit committee meeting is tentatively scheduled for November 15, 2017 at 10:00 a.m. When the chairman determines if he is going to be on the Audit Committee we will confirm the date and time then.
- B. Internship Update - NDPERS is in the process of recruiting for another intern for the summer and school year 2017-2018. The position was posted Friday, May 12, 2017 and was closed on May 18th. We did not obtain sufficient candidates in this short time frame; therefore, the position was re-advertised with a closing date of June 15th. There were six potential applicants of which three were interviewed. The internship was offered to Michael Scherr, who started work on July 31st.

IV. Miscellaneous

- A. Retirement Payment Status Report (Sharon) - Sharon provided an update on the Refunds, Retirement and RHIC Benefits Payment Status at the August meeting.
- B. CliftonLarsonAllen Update - Our external auditors, CliftonLarsonAllen, has been working off site on our financial audit, particularly with contribution confirmations and GASB 68 testing. They will be on site August 28th through September 1st to continue their fieldwork. They will complete the financial reporting and investment information from RIO later during scheduled weeks at their Denver or Baltimore offices between late August and the issuance of the report.
- C. Travel Expenditures Update - There were no travel expenditures incurred by the Board and/or Executive Director for out-of-state travel for the period May 1, 2017 through July 31, 2017.
- D. Risk Management Report - Bryan provided an overview of the past year's activities. The Loss Control Committee provides quarterly to the Audit Committee a copy of the Loss Control Committee's agenda from their last meeting as well as the approved minutes. Copies of the April 7, 2017 minutes and the agenda for the June 28, 2017 meeting were provided to the audit committee.
- E. Report on Consultant Fees - According to the Audit Committee Charter, the audit committee should "Periodically review a report of all costs of and payments to the external financial statement auditor. The listing should separately disclose

the costs of the financial statement audit, other attest projects, agreed-upon-procedures and any non-audit services provided.” A copy of the report showing the actuary/consulting audit, legal, investment and administrative fees paid during the quarter ended June 2017 was not available for the audit committee's information.

- F. Publications – The June 2017 publication of the Tone at the Top was provided to the audit committee for their perusal.
- G. CPEs and Webinars - Ms. Kinsella and Ms. McCabe have been participating in free Webinars that the Institute of Internal Auditors provides for their members. Each 1 hour webinar provides 1 hour of continuing professional education credits. The internal auditors have attended five webinars from May 1, 2017 through July 31, 2017 and one 2 day seminar. These webinars are held during the lunch hour so the internal auditors remain available to staff during normal business hours.

Meeting adjourned at 2:40 p.m.