



# Board Meeting Agenda

**Location:** WSI Board Room, 1600 East Century Avenue, Bismarck ND  
By phone: 701.328.0950 Conference ID: 501 960 686#  
**Date:** **Tuesday, June 11, 2024** [Click here to join the meeting](#)  
**Time:** 8:30 A.M.

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## I. MINUTES

- A. May 23, 2024

## II. CONFLICT OF INTEREST DISCLOSURE CONSIDERATION

## III. DEFINED CONTRIBUTION PLAN IMPLEMENTATION

- A. House Bill 1040 Implementation Update – Rebecca (Information)

## IV. DEFERRED COMPENSATION / DEFINED CONTRIBUTION

- A. 457 Companion Plan and 401(a) Plan 1<sup>st</sup> Quarter 2024 Report – Derrick (Information)
- B. Recordkeeper Vendor Transition Status Update – Derrick (Information)
- C. Investment Consultant Renewal or RFP -- Derrick (Board Action)
- D. Empower Custodial Agreement & Schedule of Services – Derrick (Board Action)
- E. 401(a) Defined Contribution Plan & 457 Companion Plan Statement of Investment Policies – Derrick (Board Action)
- F. 401(a) Defined Contribution Plan IRS Letter of Determination and 457(b) Deferred Compensation Private Letter Ruling – Rebecca (Board Action)

## V. GROUP INSURANCE / FLEXCOMP

- A. FlexComp RFP – Kathyne (Board Action) **\*EXECUTIVE SESSION**
- B. 2023 Health Plan Claims Review -- Rebecca (Information)
- C. Legislative Diabetes Burden Report – Rebecca (Information)

## VIII. LEGISLATION / ADMINISTRATIVE RULES

- D. Proposed Administrative Rules - Rebecca (Board Action)

## VI. OPERATIONS / ADMINISTRATIVE

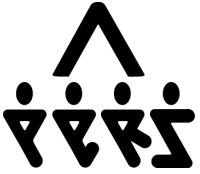
- A. Board Election Results -- Tyler Erickson, Committee Chair (Board Action)
- B. Election Subcommittee Charter -- Rebecca (Board Action)
- C. Contracts Under \$10,000 – Rebecca (Information)
- D. Audit Committee Report – Shawna (Information)
- E. Budget -- Derrick (Board Action)
- F. Next Meeting Date: July 9, 2024

## VII. MEMBER **\*\*EXECUTIVE SESSION**

- A. Insurance Benefit Appeal Case #859 – Lindsay (Board Action)
- B. Unforeseeable Financial Hardship Case #860 – MaryJo (Board Action)

\*Executive Session pursuant to N.D.C.C. §44-04-19.1(9) and §44-04-19.2) to discuss negotiating strategy or provide negotiating instructions to its attorney or other negotiator.

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



# Memorandum

**TO:**                   NDPERS Board

**FROM:**               Rebecca

**DATE:**               June 11, 2024

**SUBJECT:**           House Bill 1040 Implementation Update

The following activities have occurred for House Bill 1040 implementation since our last Board discussion:

- Continued discussions with Sagitec, our business system vendor, regarding requirements of the bill and updates needed for programming, as vendor has questions. Sagitec has indicated they will be releasing the initial stages of programming soon, which staff will then begin testing.
- Continued review of Defined Contribution Plan Document, including input from legal counsel (both Ice Miller and Dean) on suggested changes. Once final, the document will be brought to the Board for approval.
- Continued review of 457 Deferred Compensation Plan Document and 457 Companion Plan Document, including input from legal counsel (both Ice Miller and Dean) on suggested changes to ensure state and federal law compliance. Once final, the document will be brought to the Board for approval.
- Continued development of internal staff training presentation regarding plan provisions. It is anticipated that this presentation can then be broken into shorter videos to be used as education for members and employers also.
- Conducted meetings with RDA Systems, Black Mountain, Counties Providing Technology, and Tyler Technologies on HB 1040 programming requirements. Software Unlimited is scheduled for June 18<sup>th</sup>. Software Innovations does not have any employers that upload files, so they didn't feel like a meeting was necessary. GovernSoft is going out of business and has confirmed they will not be programming any updates for the counties currently on that platform. Banyan Technology has been unresponsive to requests, and was the last large developer we had identified to try and do outreach to.

- Recorded a video for employers outlining payroll reporting responsibilities and introducing file layout requirements. The video is to be disseminated in June.
- Sent the transition guide regarding the upcoming change from TIAA to Empower to participants of the 401(a), 457(b) Companion Plan and those eligible to enroll in the Companion Plan.
- Scheduled a meeting to present a transition update to the Cities on June 24<sup>th</sup>.

Discussion on Ice Miller's recommendation to seek an IRS Letter of Determination and a Private Letter Ruling will occur under a separate topic.

Attachment 1 is the overview of work efforts and timelines identified.

# House Bill 1040 Administrative Implementation

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
<b>HB 1040 Administrative Implementation</b>												
Marketing intern recruitment	★											
1% employer contribution increase launched	★											
Inventory the PERSLink correspondence updates			★									
Targeted communications to subs in main but not public safety				★								
Targeted communications to subs in main but not deferred comp				★								
Recordkeeper transition						★						
PERSLink correspondence updates						★				★		
PERSLink correspondence testing						★				★		
Form updates						★				★		
Plan document updates										★		
Plan handbook updates										★		
Special election window education for eligible employees											★	
Administrative rule making promulgation												★
Employer training												★
Website updates												★
Revise new hire, transfer, termination guides												★
Staff training												★
Biweekly internal administrative implementation meetings												★
Communication team biweekly meetings												★
Education on new plan provision to members					★			★			★	★
Education on new plan provision to employers			★			★			★			★

## KEY

★ Deadline

Task Completed
Work Effort
Deadline Missed

# House Bill 1040 Programming Implementation Timeline

	2023						2024											
	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
<b>HB 1040 Programming Implementation</b>																		
Funding for development effective	★																	
HB 1040 section-by-section analysis to determine system enhancements		★																
Meet with GRS to discuss the incentive, and get programming parameters		★																
NDPERS updates file layout documentation for employers											★							
NDPERS develops sample file layouts for employers											★							
Biweekly meetings to discuss section-by-section coding														★				
NDPERS user acceptance testing of enhancements														★				
State PeopleSoft development																		★
Higher Ed PeopleSoft development																		★
Political sub development																		★
Employer file testing																		★

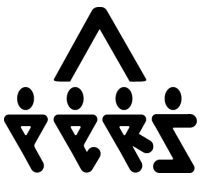
## KEY

★ Deadline

Task Completed

Work Effort

Deadline Missed



# Memorandum

**TO:** NDPERS Board

**FROM:** Derrick Hohbein

**DATE:** June 11, 2024

**SUBJECT:** 457 Companion Plan & 401(a) Plan 1st Quarter 2024 Report

Attached is the 1st quarter 2024 investment report for the 401(a) & 457 Companion Plans, which was reviewed by the Investment Subcommittee. The reports are available separately on the NDPERS website. The two plans have 10,610 (10,328 in Q4) participants with \$243.9 million (\$228.1 million in Q4) in assets.

Assets in the 401(a) plan increased to \$22.6 million (\$21.0 million in Q4) as of January 31, 2024. The number of active participants slightly increased and is now at 93 (90 in Q4). The TIAA-CREF Target Date funds have 60% of the plan assets.

Assets in the 457 Companion Plan increased to \$221.4 million (\$207.1 in Q4) as of January 31, 2024. The number of active participants slightly increased and is now at 7,150 (7,003 in Q4). The TIAA-CREF Target Date funds have 69% of the plan assets.

## Benchmarks:

Fund returns for the quarter were mostly positive for the funds in the core lineup. 32 core funds had positive returns for the quarter (4 had negative returns). Core fund performance was mixed when compared to benchmarks. Note that index funds are expected to slightly underperform their benchmarks because of fund administration fees.

## Fund / Investment News:

The NDPERS Investment Subcommittee reviewed the 1st Quarter 2024 plan review and field activity report with TIAA. Callan gave a market overview, investment performance report, as well as education on annuity options to comply with the requirements of HB 1040.

SEI presented the current asset allocation portfolios on the Job Service and RHIC funds. SEI is not recommending any portfolio changes at this time.

The investment subcommittee did have a actionable items for the Board, and are included as separate agenda items for consideration.

# Attachment #1

## NDPERS Quarterly Investment Report 1st Quarter 1/01/2024 – 3/31/2024



North Dakota Public Employees Retirement System  
1600 East Century Ave, Suite 2  
Box 1657  
Bismarck, ND 58502

## 457 & 401(a) Investment Structure

Tier I: Asset Allocation	Tier II: Core	Tier III: Specialty
<b>Target Date</b> TIAA-CREF Lifecycle Retirement 5-Year Increments	<b>Capital Preservation</b> Galliard Stable Value Vanguard Treasury MM	
<b>Balanced</b> TRP Capital Appreciation	<b>Domestic Fixed Income</b> Vanguard Total Bond Index Baird Core Plus Bond	<b>Specialty Fixed Income</b> MassMutual Inflation Protected PGIM High Yield Templeton Global Bond
	<b>Large Cap U.S. Equity</b> Franklin Growth Fund Allspring Growth Vanguard Dividend and Income Vanguard Institutional Index Hartford Dividend and Growth T. Rowe Price Equity Income	
	<b>Mid Cap U.S. Equity</b> PGIM Jennison Mid-Cap Growth Columbia Mid Cap Index Fund Virtus Ceredex Mid Cap Value	
	<b>Small Cap U.S. Equity</b> Brown Small Company Fund DFA U.S. Small Cap Northern Small Cap Value Fund	
	<b>International Equity</b> AF New Perspective Vanguard Total Intn'l Stock	<b>Specialty International Equity</b> Invesco Developing Markets
		<b>Specialty Sector Fund</b> Cohen & Steers Realty Shares
		<b>Brokerage Window</b>



## New Investment Structure\*

Tier I: Asset Allocation	Tier II: Passive Core	Tier II: Active Core	Tier III: Specialty
<b>Target Date Funds</b> TIAA-CREF Lifecycle Retirement		<b>Capital Preservation</b> Galliard Stable Value Vanguard Treasury MM	
	<b>Core Fixed Income</b> Vanguard Total Bond Index	<b>Core Plus Fixed Income</b> Baird Core Plus Bond	
	<b>U.S. Large-Cap Equity</b> Vanguard Institutional Index		
	<b>Broad Non-U.S. Equity</b> Vanguard Total Intl Index	<b>Broad Non-U.S. Equity</b> Active Non-U.S. Equity	
		<b>U.S. Small/Mid-Cap Equity</b> Active Core SMID	
			<b>Real Estate</b> Cohen & Steers Realty
			<b>Brokerage Window</b>

\* Line-up will be implemented after the recordkeeper RFP process.

## Plan Performance Monitoring

As of March 31, 2024

	Last Quarter	Last Year	Last 3 Years	Last 5 Years	Last 7 Years
<b>Asset Allocation Funds</b>					
TIAA-CREF Lifecycle Ret. Inc	3.31%	10.09%	1.83%	4.92%	5.00%
LifeCycle Ret Income CB	2.92%	10.29%	2.09%	5.45%	5.45%
Callan Tgt Dt Idx 2010	2.58%	9.31%	1.91%	4.91%	5.02%
TIAA-CREF Lifecycle Ret. 2010	3.23%	10.01%	1.79%	4.93%	5.06%
LifeCycle 2010 CB	2.65%	9.64%	1.89%	5.31%	5.41%
Callan Tgt Dt Idx 2010	2.58%	9.31%	1.91%	4.91%	5.02%
TIAA-CREF Lifecycle Ret. 2015	3.40%	10.41%	1.89%	5.25%	5.39%
LifeCycle 2015 Cust Bnch	3.03%	10.64%	2.23%	5.80%	5.87%
CAI Tgt Dt Idx 2015	2.76%	9.78%	2.09%	5.21%	5.31%
TIAA-CREF Lifecycle Ret. 2020	3.88%	11.49%	2.19%	5.68%	5.84%
LifeCycle 2020 Cust Bnchm	3.43%	11.68%	2.59%	6.33%	6.39%
CAI Tgt Dt Idx 2020	3.07%	10.56%	2.40%	5.70%	5.83%
TIAA-CREF Lifecycle Ret. 2025	4.39%	12.87%	2.61%	6.40%	6.50%
LifeCycle 2025 Cust Bnch	3.89%	12.95%	3.06%	7.00%	7.04%
CAI Tgt Dt Idx 2025	3.60%	12.01%	3.01%	6.55%	6.62%
TIAA-CREF Lifecycle Ret. 2030	5.08%	14.75%	3.21%	7.21%	7.23%
LifeCycle 2030 Cust Bnch	4.55%	14.66%	3.69%	7.81%	7.79%
CAI Tgt Dt Idx 2030	4.43%	14.09%	3.82%	7.53%	7.50%
TIAA-CREF Lifecycle Ret. 2035	5.98%	17.04%	3.96%	8.12%	8.02%
LifeCycle 2035 Cust Bnch	5.31%	16.70%	4.48%	8.71%	8.59%
CAI Tgt Dt Idx 2035	5.33%	16.32%	4.73%	8.53%	8.36%
TIAA-CREF Lifecycle Ret. 2040	7.05%	19.61%	4.86%	9.11%	8.84%
LifeCycle 2040 Cust Bnch	6.25%	19.06%	5.43%	9.70%	9.44%
CAI Tgt Dt Idx 2040	6.14%	18.28%	5.49%	9.32%	9.02%
TIAA-CREF Lifecycle Ret. 2045	7.70%	21.23%	5.38%	9.87%	9.42%
LifeCycle 2045 Cust Bnch	6.88%	20.57%	6.00%	10.45%	10.05%
CAI Tgt Dt Idx 2045	6.73%	19.68%	6.02%	9.87%	9.46%
TIAA-CREF Lifecycle Ret. 2050	8.11%	22.02%	5.60%	10.09%	9.60%
LifeCycle 2050 Cust Bnch	7.15%	21.27%	6.21%	10.68%	10.23%
CAI Tgt Dt Idx 2050	7.09%	20.51%	6.31%	10.13%	9.67%
TIAA-CREF Lifecycle Ret. 2055	8.21%	22.32%	5.71%	10.21%	9.70%
LifeCycle 2055 Cust Bnch	7.26%	21.56%	6.32%	10.81%	10.35%
CAI Tgt Dt Idx 2055	7.26%	20.89%	6.44%	10.25%	9.76%
TIAA-CREF Lifecycle Ret. 2060	8.37%	22.61%	5.82%	10.35%	9.81%
LifeCycle 2060 Cust Bnch	7.37%	21.85%	6.44%	10.95%	10.47%
Callan Tgt Dt Idx 2055	7.26%	20.89%	6.44%	10.25%	9.76%
T. Rowe Capital Appreciation Adv	5.09%	17.15%	7.52%	11.09%	10.99%
S&P 500 Index	10.56%	29.88%	11.49%	15.05%	14.09%

**Callan** Knowledge. Experience. Integrity.

NDPERS Quarterly Performance Review

## Plan Performance Monitoring

As of March 31, 2024

	Last Quarter	Last Year	Last 3 Years	Last 5 Years	Last 7 Years
<b>Large Cap U.S. Equity</b>					
Franklin Growth Fund Advisor	10.88%	29.91%	8.46%	14.40%	14.43%
S&P 500 Index	10.56%	29.88%	11.49%	15.05%	14.09%
Allspring Growth Adm	14.53%	33.85%	2.07%	12.18%	14.47%
Russell 3000 Growth Index	11.23%	37.95%	11.54%	17.82%	17.43%
Vanguard Dividend Growth Inv	6.01%	14.46%	9.29%	11.90%	12.32%
S&P 500 Index	10.56%	29.88%	11.49%	15.05%	14.09%
Vanguard Institutional Index	10.54%	29.84%	11.45%	15.02%	14.06%
S&P 500 Index	10.56%	29.88%	11.49%	15.05%	14.09%
Hartford Dividend and Growth R5	7.31%	21.49%	9.90%	12.75%	11.75%
S&P 500 Index	10.56%	29.88%	11.49%	15.05%	14.09%
T. Rowe Price Equity Income	8.82%	20.10%	8.55%	10.88%	9.58%
Russell 1000 Value Index	8.99%	20.27%	8.11%	10.32%	9.16%
<b>Mid Cap U.S. Equity</b>					
PGIM Jennison Mid-Cap Growth Z	8.13%	20.18%	3.16%	12.71%	12.35%
Russell MidCap Growth Idx	9.50%	26.28%	4.62%	11.82%	12.87%
Columbia Mid Cap Index Fund A	9.87%	22.82%	6.51%	11.20%	9.75%
S&P Mid Cap 400 Index	9.95%	23.33%	6.96%	11.71%	10.26%
Virtus Ceredex Mid-Cap Value I	9.24%	21.90%	6.48%	9.13%	8.17%
Russell MidCap Value Idx	8.23%	20.40%	6.80%	9.94%	8.41%
<b>Small Cap U.S. Equity</b>					
Brown Small Company Fund Investor	0.44%	9.83%	(8.84%)	2.24%	6.66%
Russell 2000 Growth Index	7.58%	20.35%	(2.68%)	7.38%	8.40%
DFA U.S. Small Cap Inst'l	5.06%	19.82%	5.65%	10.94%	8.87%
Russell 2000 Index	5.18%	19.71%	(0.10%)	8.10%	7.73%
Northern Small Cap Value Fund	3.13%	18.78%	4.31%	7.57%	5.84%
Russell 2000 Value Index	2.90%	18.75%	2.22%	8.17%	6.55%
<b>Non-U.S. Equity</b>					
AF New Perspective R4	8.38%	22.50%	4.85%	12.39%	12.36%
MSCI ACWI	8.20%	23.22%	6.96%	10.92%	10.24%
Vanguard Total Intl Stock Adm	4.30%	12.96%	1.88%	6.16%	5.92%
FTSE GI All Cap ex US Idx	4.34%	13.53%	2.05%	6.29%	6.04%
Invesco Developing Markets Y	2.12%	2.19%	(7.74%)	0.57%	3.11%
MSCI EM	2.37%	8.15%	(5.05%)	2.22%	3.72%





## Plan Performance Monitoring

As of March 31, 2024

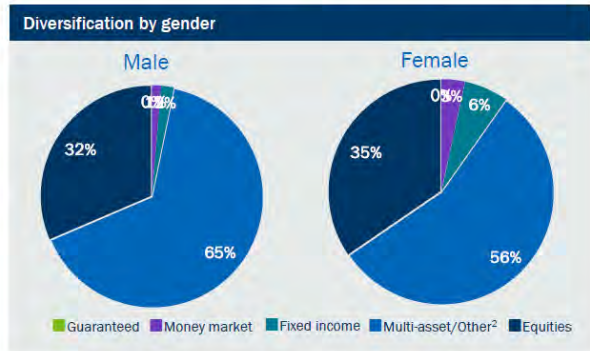
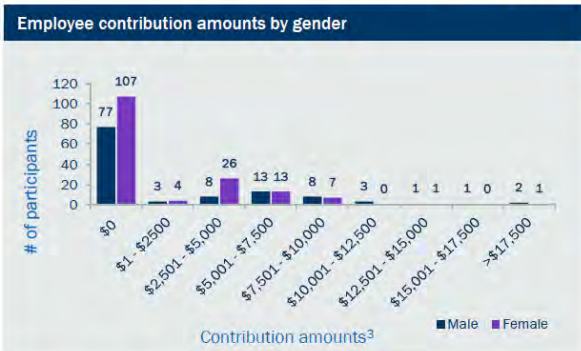
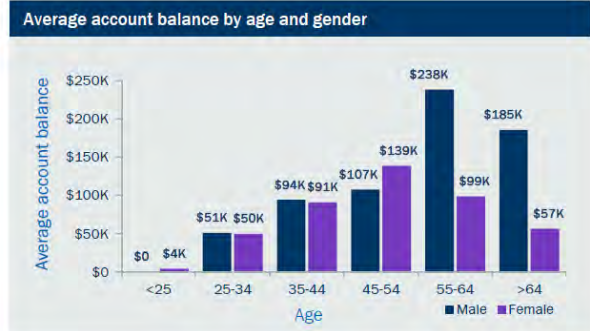
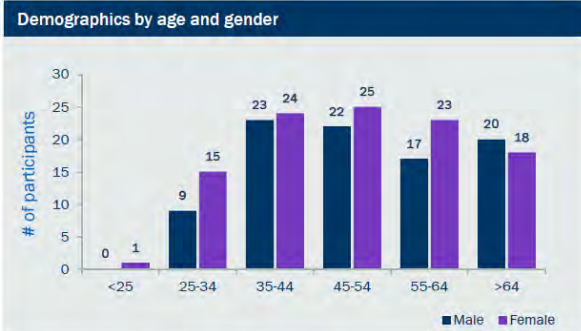
	Last Quarter	Last Year	Last 3 Years	Last 5 Years	Last 7 Years
<b>Fixed Income</b>					
Vanguard Total Bond Index Adm	(0.79%)	1.65%	(2.42%)	0.37%	1.05%
Blmbg:Aggregate Fit Adj	(0.72%)	1.77%	(2.39%)	0.43%	1.11%
Baird Core Plus Bond Investor	(0.22%)	3.33%	(1.94%)	1.00%	1.56%
Blmbg:Universal	(0.47%)	2.67%	(2.11%)	0.69%	1.34%
MM Premier Infi-Pr and Inc Srv	0.17%	1.80%	(0.59%)	2.49%	2.27%
Blmbg:TIPS	(0.08%)	0.45%	(0.53%)	2.49%	2.29%
PGIM High Yield Fund Z	1.60%	10.63%	1.76%	4.10%	4.45%
Blmbg HY Corp 1% Iss Cap	1.53%	11.22%	2.20%	4.10%	4.30%
Templeton Global Bond Advisor	(4.55%)	(3.76%)	(3.33%)	(3.60%)	(2.39%)
FTSE WGBI	(2.42%)	(0.84%)	(6.12%)	(2.21%)	(0.65%)
<b>Capital Preservation</b>					
Galliard Stable Value J	0.58%	2.24%	1.68%	1.85%	1.70%
3-month Treasury Bill	1.29%	5.24%	2.58%	2.02%	1.90%
Vanguard Treasury MM Inv	1.32%	5.29%	2.62%	1.97%	1.84%
3-month Treasury Bill	1.29%	5.24%	2.58%	2.02%	1.90%
<b>Sector Funds</b>					
Cohen & Steers Realty Shares	(0.49%)	9.53%	3.39%	5.73%	6.61%
FTSE NAREIT All Eq Index	(1.30%)	8.02%	2.47%	3.96%	5.42%

# Active Manager Monitoring Summary

As of March 31, 2024

Manager	Below Benchmark	Above Benchmark		Above Peer Median		Qualitative Assessment					Overall Eval.
	8 Straight Quarters	3-Year Period	5-Year Period	3-Year Period	5-Year Period	Firm	Team	Process	Perf.	Product	
<b>Large U.S. Equity</b>											
Franklin Growth Fund	No	No	No	No	No						Stable
Allspring Growth	No	No	No	No	No						On Watch
Vanguard Dividend Growth	No	No	No	No	No						Stable
Hartford Dividend and Growth	No	No	No	Yes	Yes						Stable
T. Rowe Price Equity Income	No	Yes	Yes	No	No						Stable
<b>Mid U.S. Equity</b>											
PGIM Jennison Mid-Cap Growth	No	No	Yes	Yes	Yes						Stable
Virtus Ceredex Mid-Cap Value	No	No	No	No	No						Stable
<b>Small U.S. Equity</b>											
Brown Small Compay Fund	No	No	No	No	No						Stable
DFA U.S. Small Cap	No	Yes	Yes	Yes	Yes						Stable
Northern Small Cap Value Fund	No	Yes	No	No	No						Stable
<b>Global Equity</b>											
AF New Perspective	No	No	Yes	No	Yes						Stable
Invesco Developing Markets	No	No	No	No	No						Stable
<b>Fixed Income</b>											
Baird Core Plus Bond	No	Yes	Yes	Yes	Yes						Stable
MM Premier Inf-Pr and Inc Srvc	No	No	Yes	No	Yes						Stable
PGIM High Yield Fund	No	No	Yes	No	Yes						Stable
Templeton Global Bond	No	Yes	No	No	No						On Watch
<b>Sector Fund</b>											
Cohen & Steers Realty Shares	No	Yes	Yes	Yes	Yes						Stable
<b>Assessment</b>											
<b>Stable</b>		Firm, Team, Strategy are performing as expected									
<b>In Review</b>		Callan is proposing that the fund be added to the watchlist									
<b>Cautionary</b>		Staff is reviewing strategy with consultant and scheduling an update meeting with manager									
<b>Terminating</b>		Following staff review and consultant recommendation, manager will be terminated following a successful replacement search									

# Employee summary: Gender and age<sup>1</sup>



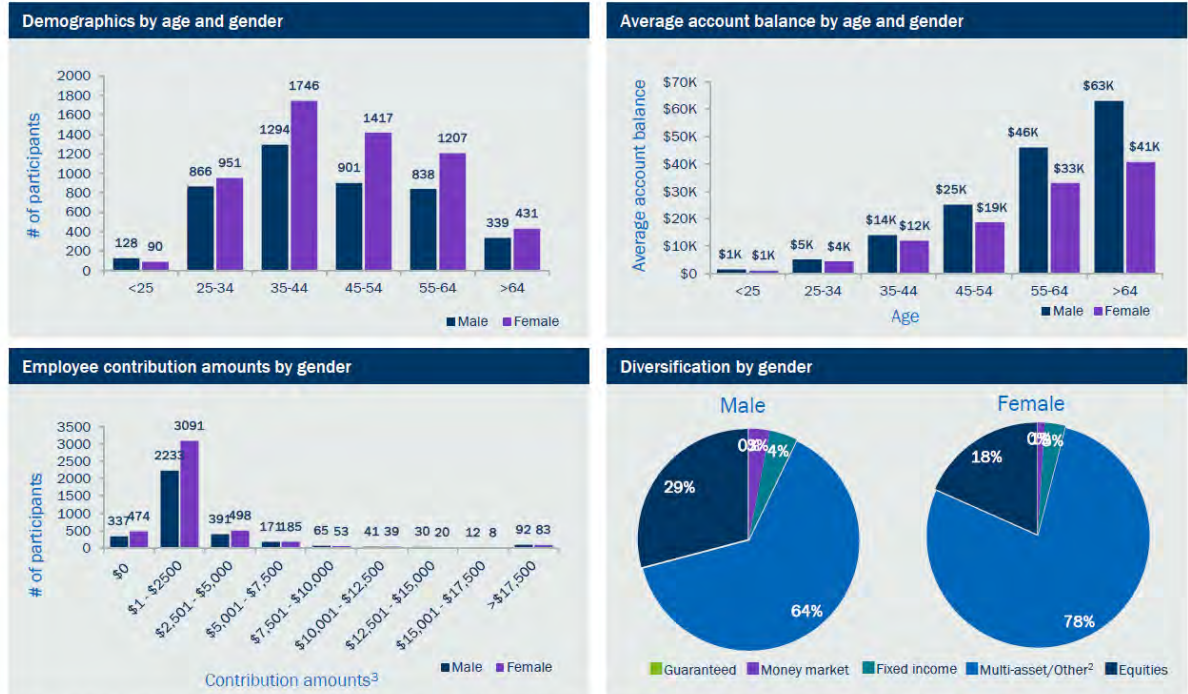
This report is as of the period ending 03/31/2024 and reflects the trailing 12 months of activity unless otherwise noted. The report includes all TIAA plans except 457(f), 457(b) Private, Nonqualified Deferred Compensation, and Retirement Healthcare plans. 1. Data reflected is for all participant statuses except Employee Contribution Amounts by Gender which includes only active or leave status. Does not include 268 participants with no age or gender on file. 2. Multi-Asset/Other includes Lifecycle, Real Estate, and Brokerage. 3. Contribution data reflects the trailing 12 months of data.



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NORTH DAKOTA PUBLIC EMPLOYEES | MAY 28, 2024

# Employee summary: Gender and age<sup>1</sup>



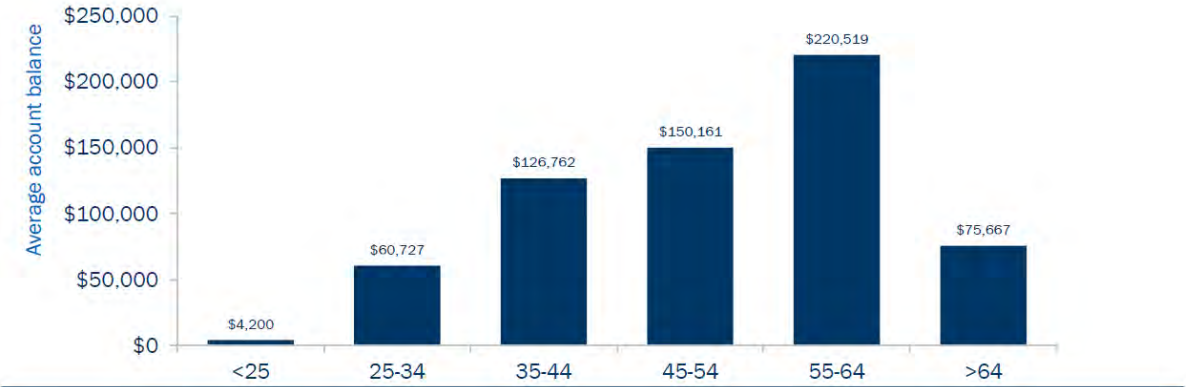
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NORTH DAKOTA PUBLIC EMPLOYEES | MAY 28, 2024

## Active participants: Average account balance by age



	<25	25-34	35-44	45-54	55-64	>64	Total
# of active participants	1	16	27	27	18	4	93
% of total active participants	1%	17%	29%	29%	19%	4%	100%
Total active assets	\$4,200	\$971,634	\$3,422,577	\$4,054,344	\$3,969,337	\$302,670	\$12,724,763
% of total active assets	0%	8%	27%	32%	31%	2%	100%

This report is as of the period ending 3/31/24 and reflects the trailing 12 months of activity unless otherwise noted. The report includes all TIAA plans except 457(f), 457(b) Private, Nonqualified Deferred Compensation, and Retirement Healthcare plans.

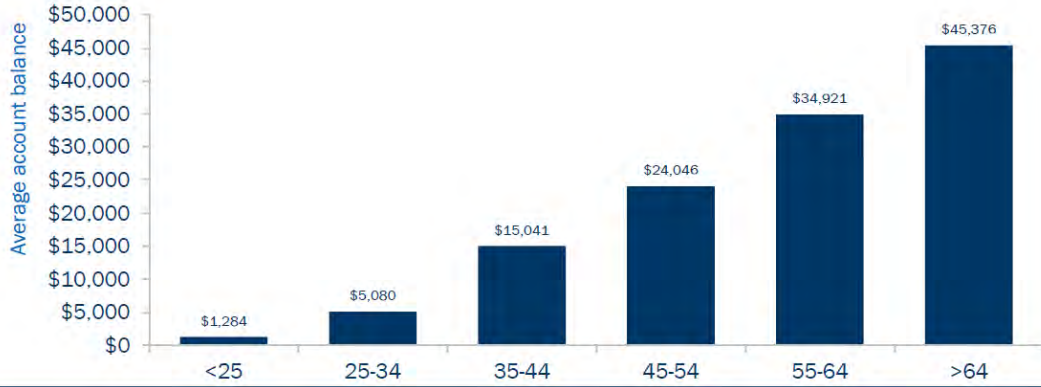


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NORTH DAKOTA PUBLIC EMPLOYEES | MAY 28, 2024



## Active participants: Average account balance by age



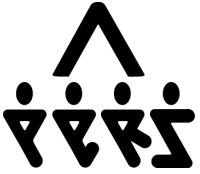
	<25	25-34	35-44	45-54	55-64	>64	Total
# of active participants	177	1372	2203	1745	1436	217	7,150
% of total active participants	2%	19%	31%	24%	20%	3%	100%
Total active assets	\$227,318	\$6,970,165	\$33,134,840	\$41,959,655	\$50,146,592	\$9,846,596	\$142,285,167
% of total active assets	0%	5%	23%	29%	35%	7%	100%

This report is as of the period ending 3/31/24 and reflects the trailing 12 months of activity unless otherwise noted. The report includes all TIAA plans except 457(f), 457(b) Private, Nonqualified Deferred Compensation, and Retirement Healthcare plans.



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NORTH DAKOTA PUBLIC EMPLOYEES | MAY 28, 2024



# Memorandum

**TO:** NDPERS Board

**FROM:** Derrick Hohbein

**DATE:** June 11, 2024

**SUBJECT:** Recordkeeper Vendor Transition Status Update

This memo is to provide the Board with an update on the Recordkeeper vendor transition from TIAA to Empower.

Weekly conversion meetings continue to take place between Staff & Empower. Attachment 1 is an updated project plan as of June 3<sup>rd</sup>. All tasks are on schedule to be successfully completed by the transition date.

NDPERS, Ice Miller, our Assistant Attorney General, and Callan have been working the last two months on the next phase of contracting for these plans by reviewing the Schedule of Services & Custodial Agreements. These completed documents are being included as a separate agenda item for consideration and approval.

Given our investment lineup is changing, Callan provided insight into the Investment Policy Statements. The recommendations are included as a separate agenda item for consideration and approval, and will be published to our website on July 1<sup>st</sup> once we are live with Empower.

Updated demographic information was provided to Empower to help ensure they begin their record keeping services with up-to-date emails and phone numbers for our membership.

Communication was provided to 36 individuals in the Self-Directed Brokerage Account that had investments that could not be mapped to the Empower Brokerage Account. Members that had investments in the Invesco DB Commodity Index Tracking Fund (1 individual), or the Federated Hermes TR US Treasury Fund (36 individuals) were provided communication to either liquidate those funds or the holdings will be liquidated on their behalf for the conversion, then invested in the qualified default with Empower if no action is taken.

Phase II of HB 1040 includes looking into Annuity options that may be available to participants. Empower is in the process of reviewing Empower products that meet the intent of the law. Callan provided foundational education to the Investment Subcommittee, and we anticipate having formal recommendations to meet the annuity requirements be made at the August Investment Subcommittee meeting, with full approval by the Board coming in September on the annuity options the Board would like to move forward with.

The revenue credit account with TIAA has been liquidated and the funds deposited with the State Treasurer to offset our administrative expenses. The 401(a) plan had \$1,017.76 in the revenue credit account, while the 457 Deferred Compensation plan had \$1,040.49. These amounts came from TIAA not meeting their performance goals, as revenue sharing with participants has not come to fruition for a couple years now (i.e. why there is a historical revenue shortfall).

Below is a timeline of important events. The only change to what previously has been reported to the Board (but not communicated to members) was moving the Blackout date to June 18<sup>th</sup> instead of the 19<sup>th</sup>. In addition, the blackout period will be communicated as “no later than July 3<sup>rd</sup>” to give Empower some flexibility if things do not go as planned so they don’t have to send additional notices to participants if there are any hiccups.




The final contribution will be sent to TIAA on Friday, June 14. NDPERS will continue processing contribution files on a daily basis starting Monday, June 17. Empower will hold these files in a pending status until the conversion process is completed, and will post the contributions to member accounts on July 1.

Important Dates	
Date	Item
February 27, 2024	Investment Sub-Committee Meeting
March 12, 2024	Board Meeting – Basic Service Agreement Approval for signature
March 26, 2024	Special Investment Sub-Committee Meeting - Finalized Fund Lineup (to Empower 3/27/2024)
Week of April 8 <sup>th</sup>	Board Meeting April 9 <sup>th</sup> – Formally Approved Finalized Fund Lineup
May 2, 2024	Deadline – Transition Guide to printers
5/17/2024	Transition Guide/SOX communications mailing date
5/28/2024	Investment Sub-Committee Meeting
6/14/2024	Last contribution files to TIAA (Coincides with NDPERS system release on 6/15/2024)
6/17/2024	First contribution files to Empower
6/18/2024 at 3:00 PM CT	Blackout start
<b>6/20/2024 by 3:00 PM CT</b>	TIAA to set Brokerage Accounts to RELEASED Status – to allow ACAT initiation by Empower Brokerage
6/21/2024	Refresh Data File from TIAA to Empower – Generated as of 6/20/2024 market close
6/26/2024	TIAA begins asset transfer (liquidation & in-kind transfer)
<b>6/27/2024 by 3:00 PM CT</b>	Transfer of Assets (TOA) with asset breakdown by fund to Empower prior to 3:00 PM CT (for same day investment)
6/27/2024, or 6/28/2024	Final Record Deadline from TIAA
6/29/2024 – 6/30/2024	Balances loaded to Participant Accounts and Reconciliation completed
7/1/2024	Blackout Ends/Go-Live

This item is informational only and does not require any action by the Board. We will be available at the meeting to discuss any questions you may have.

## North Dakota Public Employees Retirement System Plans

KEY MILESTONES  
TRANSFER OF ASSET DATE 06/28/2024

 <p><b>Planning</b> Learning your needs, understanding required services and building the project plan.</p>	 <p><b>Implementation</b> Communicating, and setting you up for a seamless transition.</p>	 <p><b>Conversion</b> Activating the project plan and bringing your plan to life with Empower.</p>
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TASK	COMPLETION DUE DATE	ACTUAL COMPLETION DATE	STATUS / COMPLETE	COMMENTS
<b>Phase I - Planning</b>				
Sale Confirmed and Internal Project Assignment initiated	01/10/24 (Wed)	01/15/24 (Mon)	COMPLETE	Sale confirmed and internal project assignment initiated
Prior Recordkeeper Termination Letter sent	01/31/24 (Wed)	01/29/24 (Mon)	COMPLETE	Signed Service termination letter sent to Prior Recordkeeper(s)
Conduct Implementation Meeting (Kick-off Call)	02/01/24 (Thu)	02/01/24 (Thu)	COMPLETE	Meeting with the Empower Team to begin transition discussions
Empower Services Setup Confirmation	02/01/24 (Thu)	02/01/24 (Thu)	COMPLETE	Discussion to talk about what services are available to the plan
Participant Communication Strategy Reviewed	02/07/24 (Wed)	02/08/24 (Thu)	COMPLETE	Empower to work with plan sponsor to develop the participant communication campaign for the Plan
Implementation Welcome Kit Review Finalized / Prior Document Discovery collection completed	02/12/24 (Mon)	02/07/24 (Wed)	COMPLETE	Will be reviewed on our weekly status call
Schedule and conduct Initial Payroll conference call(s)	02/21/24 (Wed)	02/26/24 (Mon)	COMPLETE	Empower to work with the payroll contact to begin discussions with your payroll vendor
Plan Document Comments Review	03/13/24 (Wed)	03/14/24 (Thu)	COMPLETE	Empower to review plan document comments and features
Complete additional paperwork for Prior Recordkeeper, Trustee, and Funds	04/19/24 (Fri)	05/02/24 (Thu)	COMPLETE	Empower to work with Plan Sponsor to complete additional paperwork requirements
Prior Recordkeeper Review of Test Data and Other Conversion Details	04/24/24 (Wed)	05/06/24 (Mon)	COMPLETE	Empower to review conversion data and other requirements with prior recordkeeper(s)
Fund Mapping and Line-up Finalized (Signed Fund LOI)	05/20/24 (Mon)	05/16/24 (Thu)	COMPLETE	Empower to provide to advisor and plan sponsor for review and execution
<b>Phase II - Implementation</b>				
Payroll Meeting - Requirements finalized/Discuss 1st Test File Timing	02/27/24 (Tue)	02/26/24 (Mon)	COMPLETE	Call with Empower, plan sponsor, payroll contact, and payroll vendor to discuss deliverables
Plan Document Provisions, Features Finalized (457 by 4/9/2024, 401a by 4/10/2024)	04/03/24 (Wed)	04/09/24 (Tue)	COMPLETE	Coordinated by Empower project team
Initial Announcement Delivery (Word version to Retirees/Deferred 4/1 & Email to Actives 1st week of May)	04/05/24 (Fri)	03/27/24 (Wed)	COMPLETE	Delivered (e-mail) approx 3 weeks prior to Transition Guide Delivery
Test Files Received from TIAA	04/19/24 (Fri)	04/25/24 (Thu)	COMPLETE	Prior Recordkeeper delivers 1st round of test files
Data Conversion Testing Complete	05/08/24 (Wed)	05/06/24 (Mon)	COMPLETE	Complete analysis of the prior recordkeeper data
<b>Participant Transition Guide Delivered including other disclosures as applicable</b>	05/17/24 (Fri)	05/17/24 (Fri)	COMPLETE	<b>Mailed at least 30 days prior to blackout</b>
Payroll File Testing Complete - sFTP Setup	05/31/24 (Fri)		In Process	Payroll program moved to production
Online Enrollment (OE) Setup Complete	07/30/24 (Tue)			Online Enrollment setup to take place post-conversion
Feedback File Testing Complete	07/30/24 (Tue)			Feedback file from Empower to Payroll programming moved to production
Base Services Agreement Signed (Schedule of Services & Trust Agreement will be separate)	06/13/24 (Thu)	03/21/24 (Thu)	COMPLETE	Empower to receive executed Services Agreement
<b>Final payroll file transmission and funding accepted (4 pm ET)</b>	06/14/24 (Fri)			<b>Final Date to Allow for Payroll transmission and funding with Prior Recordkeeper</b>
<b>Final Date for Enrollment Processing with prior recordkeeper</b>	06/18/24 (Tue)			<b>Final Date to Allow for Enrollment Processing with Prior recordkeeper</b>
<b>Final day to receive paperwork for distribution, loan or other for processing ("soft blackout")</b>	06/18/24 (Tue)			<b>Prior Recordkeeper restricts receipt of any paperwork for transaction processing</b>
<b>Final day for electronic Distribution, withdrawal and loan requests accepted (4 pm ET)</b>	06/18/24 (Tue)			<b>Prior Recordkeeper restricts any electronic distributions, loans or other withdrawal requests</b>
<b>Final transaction processing date for all transactions including fund transfers or exchanges (4 pm ET) - ("hard blackout")</b>	06/18/24 (Tue)			<b>Prior Recordkeeper restricts all activity for Participants at market close</b>
<b>Final day participants can access prior recordkeeper system (vru/web/phone)</b>	06/18/24 (Tue)			<b>Prior Recordkeeper closes participant access to system access</b>

**Planning**

Learning your needs, understanding required services and building the project plan.

**Implementation**

Communicating, and setting you up for a seamless transition.

**Conversion**

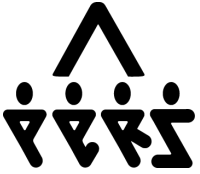
Activating the project plan and bringing your plan to life with Empower.

TASK	COMPLETION DUE DATE	ACTUAL COMPLETION DATE	STATUS / COMPLETE	COMMENTS
<b>Phase III - Conversion</b>				
*Refresh Data Files Delivered to Empower for TIAA	06/21/24 (Fri)			Prior recordkeeper delivers refresh files after blackout start but before final files available
Prior Recordkeeper begins Asset Transfer process	06/26/24 (Wed)			Last valuation performed by prior recordkeeper
<b>Transfer in kind shares receipt</b>	06/27/24 (Thu)			<b>Receipt of all share reregistrations for assets transferring in-kind</b>
<b>Transfer of Assets (TOA) - wire receipt</b>	06/27/24 (Thu)			<b>Expected Wire receipt date</b>
*Final Data Files Delivered to Empower for TIAA	06/28/24 (Fri)			Prior recordkeeper delivers final account balances and other conversion records in good order
Balances Loaded to Participant Accounts	06/29/24 (Sat)			Balances and finalized data loaded to Participant accounts
Reconciliation Complete	06/30/24 (Sun)			Reconciliation provided to Plan Sponsor
<b>*Projected Live Date</b>	07/01/24 (Mon)			<b>Plan is released and Participants have full access to their accounts</b>
First Cash Processed (Payroll File receipt and funding)	07/01/24 (Mon)			Is it necessary for the demographic, loans above, should it be here? Process all pending payroll files
Live e-mail / postcard delivered to plan participants	07/01/24 (Mon)			Delivered in conjunction with plan live status
Soft Open for Plan Sponsor Pre-Live review	07/01/24 (Mon)			Select accounts opened for Plan Sponsor review prior to full Live
Transition Guide Live Date	07/01/24 (Mon)			Remove Task - Do use if the plan is Live Term. Transition Notice stated week that Participants have full access to their accounts
First Feedback Files for Payroll System updates for participant activity	07/02/24 (Tue)			Process feedback files to payroll updating participant activity to the payroll system

STATUS KEY	COMPLETE
	In Process
	Follow Up
	Delayed
	TBD
	N/A

**Notes:**

\*These dates are tentative until final discussions are complete with the prior recordkeeper (PRK).



**North Dakota  
Public Employees Retirement System**  
1600 East Century Avenue, Suite 2 • PO Box 1657  
Bismarck, North Dakota 58502-1657

**Rebecca Fricke**  
Executive Director  
(701) 328-3900  
1-800-803-7377

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Fax (701) 328-3920    Email [ndpers-info@nd.gov](mailto:ndpers-info@nd.gov)    Website [www.ndpers.nd.gov](http://www.ndpers.nd.gov)

# Memorandum

**TO:**                   NDPERS Board

**FROM:**               Derrick Hohbein

**DATE:**               June 11, 2024

**SUBJECT:**           Investment Consultant Renewal or RFP

Callan is currently under contract through 2024, and has one renewal opportunity left before we'd historically go out to bid. Attached is a renewal estimate, with Callan proposing a 3% increase to their existing fee for both 2025 and 2026.

The Investment Subcommittee reviewed the proposal (Attachment 1) at the May Investment Subcommittee meeting, and is recommending renewing with Callan through 2026.

If the Board is instead interested in going out to bid for an Investment Consultant, the RFP is included as Attachment 2, and is ready to be distributed July 1, 2024, if necessary.

## **Board Action Requested**

Consider the Investment Consultants renewal, and either approve the renewal rate or the RFP for distribution.

**To: North Dakota Public Employees Retirement System Board of Trustees**  
**Date: April 23, 2024**  
**Subject: 457(b) Companion Plan and 401(a) Defined Contribution Plan – Callan Consulting Renewal**

Callan is pleased to provide this renewal quote to the North Dakota Public Employees Retirement System (NDPERS) Board of Trustees for defined contribution consulting services for 2025. The scope of work, consistent with Callan's current agreement with NDPERS, would include quarterly Fund analysis, recommendation of fund changes and review of investment policies. Consistent with the scope of services, Callan is able to provide additional consulting services on an hourly basis for: 1) comprehensive glidepath studies 2) active vs. passive studies 3) member investment education and financial wellness services and support and 4) technical assistance for legislative proposals and plan design changes.

Callan recently assisted NDPERS with a recordkeeper search for the Plans which included development of the RFP, analysis of proposals and assistance with implementation. Through the process, Callan worked with the Investment Subcommittee and Board on streamlining the investment line-up and selection of several new investment options. Callan does not expect the RFP process to be needed in 2025, and it is not included in the below fee proposal.

The proposed fee for the above outlined services would be:

Year	Annual Fee
2025	\$54,417
2026	\$56,049

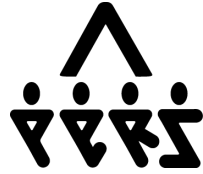
These fees represent a 3% increase from our 2024 fee. Should there be a desire to expand the scope of services beyond those outlined above, Callan will be happy to discuss and provide an updated fee proposal.

Thank you for the opportunity to continue working with NDPERS and please contact me at (303) 226-4941 or chaikin@callan.com if you should have any questions about this proposal.

Sincerely,



Craig Chaikin, CFA  
Senior Vice President



**North Dakota Public Employees Retirement System**  
***Request for Proposal***

**Project Name:**

**Investment Consultant Services**

**457(B) DEFERRED COMPENSATION PLAN  
AND  
401(A) DEFINED CONTRIBUTION PLAN**

**RFP Issue Date: July 1, 2024**

**Proposal Due Date: August 30, 2024**

**Proposed Effective Date: January 1, 2025**

1600 East Century Avenue, Suite 2  
PO Box 1657  
Bismarck, ND 58502-1657  
1-800-803-PERS (7377) [www.ndpers.nd.gov](http://www.ndpers.nd.gov)



**Request for Proposal  
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## SECTION 1 – INTRODUCTION

---

The North Dakota Public Employee Retirement System (NDPERS) is soliciting proposals from qualified firms to provide consultant services for the NDPERS 457(b) Deferred Compensation Plan (referred to as the Companion Plan), and 401(a) Defined Contribution Plan. The contract period shall be for a twenty-four-month period (January 1, 2025, through December 31, 2026). In addition, the Board intends that the successful bidder will have the opportunity to renew its contract for two subsequent two-year periods if an acceptable agreement can be reached between the contractor and the Board.

This Request for Proposal (RFP) is divided into 10 sections: Section 1 - Introduction, Section 2 - Background, Section 3 - Scope of Services, Section 4 - Information Requests, Section 5 - Cost Proposal (Fees/Hours), Section 6 - Submission of Proposal, Section 7 - Review Process, Section 8 - Confidential/Proprietary Information, Section 9 - Conflicts of Interest List, and Section 10 - Offer (Agreements).

### RFP Proposed Timetable

The timeline is provided below for informative purposes. NDPERS reserves the right to change the dates. Every effort will be made to notify Vendors of changes to the proposed timeline.

Date	Activity
July 1, 2024	RFP is issued.
July 23, 2024	Written questions regarding proposals must be received by NDPERS no later than 5:00 p.m. (CDT).
August 6, 2024	NDPERS posts responses to all questions received.
August 30, 2024	Proposals must be received by NDPERS no later than 5:00 p.m. (CDT).
October 2024	NDPERS Board review of proposals.
November 2024	Finalist interviews and Best and Final Offers due, if deemed necessary by the NDPERS Board
November/December 2024	Selection and award of contract by NDPERS.

## SECTION 2 – BACKGROUND

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### 2.1 The Agency:

The North Dakota Public Employees Retirement System is responsible for the administration of the State's retirement, vision, health, life, dental, deferred compensation, flex comp, retiree health insurance credit, and EAP programs. This Request for Proposal is to provide consultant services for the NDPERS 457(b) Companion Plan and 401(a) Defined Contribution Plan.

Pursuant to 54-52-03, <https://www.ndlegis.gov/cencode/t54c52.pdf>, NDPERS is managed by a Board of trustees.

NDPERS is a separate agency created under North Dakota state statute and, while subject to state budgetary controls and procedures as are all state agencies, is not a state agency subject to direct executive control.

The NDPERS Investment Subcommittee meets quarterly (February, May, August, November) to review plan performance, fund performance, and conduct other business delegated by the NDPERS Board. Special meetings may also be held as needed.

### 2.2 Defined Contribution Programs Administered by PERS

#### **PERS IRC Section 457(b) Deferred Compensation Plan:**

The administration of the Deferred Compensation Plan for public employees was given to the Retirement Board on July 1, 1987. All state employees are eligible to participate, as well as political subdivision employees, if the governing authority of the political subdivision elects to offer the state plan.

Presently, 16,000 employees have accounts with thirteen investment providers and four active providers. Assets are nearly \$400 million. The NDPERS Board has developed a plan and contracts with investment providers (mainly insurance companies) to invest the contributions of employees. NDPERS does not select or monitor the investment products offered by these vendors, and does not act as a trustee for their products. The NDPERS Board is currently not allowing new vendors to enroll as an eligible provider for offering services. In addition, the NDPERS Board has made it a long term goal to limit future elections to a single provider.

The Deferred Compensation Plan is found in Chapter 54-52.2 of the North Dakota Century Code (NDCC).

In 1998 the NDPERS Board decided to add a product: 1) selected by the Board based upon a competitive RFP process, 2) for which the Board would act as trustee, 3) with investments it would select and monitor, and 4) comprising mutual funds. This product is called the NDPERS Companion Plan. The Board developed a Statement of Investment Policies for this plan. This policy may be viewed on our website at: <https://www.ndpers.nd.gov/sites/www/files/documents/about/investments/investment-policy-companion-plan.pdf>. The Board also monitors the investment products for this plan. This report can also be found on the NDPERS web site at: <https://www.ndpers.nd.gov/sites/www/files/documents/about/investments/companion-plan-quarterly-report.pdf>

The Companion Plan has over \$207.0 million in assets with over \$1,500,000 in monthly contributions from over 10,000 member accounts. Empower is the present provider for these services.

**PERS 401(a) Defined Contribution Plan:**

The state of North Dakota approved the defined contribution plan for certain state employees, effective January 1, 2000. This program is offered as an alternative option to the state's defined benefit plan. Eligible employees are those who are not classified by Human Resource Management Services; however, this does not include employees of the University System or the Supreme Court. Approximately 258 employees selected the DC plan. In 2015 the legislature approved an option to allow members of this plan to forfeit their participation in the DC plan and rejoin the DB plan. One hundred and seventy elected to transfer back to the DB plan. In so doing, \$23.5 million of assets were transferred from the DC plan to DB plan. The estimated value of assets in this plan is approximately \$21,000,000 for approximately 200 members. Monthly contributions in the amount of 14.12% of salary (approximately \$100,000) are added to the plan for each month. Effective January 1, 2020, contributions for any new hires enrolled into this plan equals 15.26% of salary. New hires after January 1, 2025, that are participating in the Defined Contribution Plan will receive a one-time irrevocable election to increase their contributions from the statutorily required 4% contribution. Employees have an opportunity to increase their contributions an additional 1%, 2%, or 3% (up to a maximum 7%) employee contribution. If the employee elects contributions in excess of 4%, the employer will match the additional contributions being made by the employee. If an employee does not maximize their contribution in the 401(a) Defined Contribution Plan at the onset of employment, the additional contributions and employer match are eligible as a benefit in the Deferred Compensation Plan and is not exclusive to Companion Plan selection.

Similar to the Deferred Compensation plan, the 401(a) Statement of Investment Policy is on the NDPERS web site at: <https://www.ndpers.nd.gov/sites/www/files/documents/about/investments/investment-policy-defined-contribution-plan.pdf>. The 401(a) Quarterly Report is on the NDPERS web site at: <https://www.ndpers.nd.gov/sites/www/files/documents/about/investments/defined-contribution-quarterly-report.pdf>. Empower is the present provider for these services.

## **SECTION 3 - SCOPE OF SERVICES**

---

This Section outlines the scope of services to be provided to NDPERS.

### **3.1 Scope of Services**

The North Dakota Public Employees Retirement System is seeking technical assistance relating to its two defined contribution plans discussed in Section 2 of the proposal. The Board is seeking technical assistance in three areas:

#### **3.1.1 Quarterly analysis of NDPERS core investment funds.**

##### **Quarterly Fund Analysis**

NDPERS is seeking technical assistance to quarterly analyze its core investment funds for its 457(b) Companion Plan and 401(a) Defined Contribution plan. Funds should be compared to benchmarks, peer funds, and reviewed for other factors such as management changes, fee changes, distributions, style change, etc. in a quarterly report. Prepare report for NDPERS Investment Subcommittee and web site for two DC plans no later than six weeks after quarter end. View examples of current reports at: <https://www.ndpers.nd.gov/about/investments>  
Attend quarterly NDPERS Investment Subcommittee meeting to review analysis.

#### **3.2.1 Guidance of investment fund offerings and investment policies.**

##### **Recommend Fund Changes & Review Investment Policies**

NDPERS is seeking technical assistance to place funds on formal fund review, close funds, and find replacements (providing documentation of all investment decisions necessary to fulfill fiduciary responsibilities). Annually perform 'gap' analysis of core investment options and advise on investment actions. At least annually review investment policies for its 457(b) Companion Plan and 401(a) Defined Contribution Plan and advise on policy changes.

#### **3.3.1 As needed, develop an RFP to solicit vendors for recordkeeping and investment management services. NDPERS seeks a bundled provider who will review submitted proposals and assist with implementation. NDPERS expects to issue an RFP for the two DC plans in 2032, or sooner if vendor performance and/or pricing is unsatisfactory.**

##### **Develop Request for Proposal**

NDPERS seeks technical assistance to prepare a request for proposal for recordkeeping/investment services for its 457(b) Companion Plan and 401(a) defined contribution plan. The Board's intent is to award for a two-year period with two possible two-year renewals. The consultant is expected:

- To draft the RFP for the staff and Board's review.
- To develop and suggest a proposed list of vendors to solicit directly. The goal would be to issue the RFP in early December with responses due by January.
- All requests for proposals will be distributed by the consultant.
- The consultant will be listed as the point of contact for questions.
- The consultant will prepare a list of all questions asked and the answers and distribute it to all firms getting a copy of the RFP.

The consultant is asked to bid this portion of the work effort on a fixed fee basis. No on-site meetings with staff or Board are anticipated during this phase.

### **Analysis of Proposals**

NDPERS is seeking a consultant to analyze the proposals received in response to the RFP. This analysis will be in two phases. The first phase will be to do a general assessment of all proposals received and recommend to the Board finalist responses that would be reviewed in detail. The consultant should be prepared to make this recommendation at an NDPERS Board meeting. The second phase would be to conduct a detailed review of the final proposals selected by the Board and to provide a recommendation to the Board on which proposal to accept. The detailed evaluation should be presented to the Board. If necessary, the Board may elect to interview one or more of the finalists. Such an interview would be conducted at a special meeting. The consultant is asked to bid this portion of the work effort on a fixed fee basis. The consultant should include in the fixed fee one on-site meeting with the NDPERS Board to review the results.

### **Implementation Assistance**

The NDPERS Board seeks assistance with implementation of the vendor contracts. This will include assistance with reviewing the proposed contract(s), assistance with changing vendors (if that is what is decided by the Board), and any other implementation issues. Since efforts relating to implementation will be defined later (or not needed), the consultant will be reimbursed for efforts relating to this phase on a fee for service basis.

#### **3.4.1 Additional Consulting Services**

Additional Consulting Services on an hourly basis may be requested including, but not limited to:

- Comprehensive glide path studies
- Active vs. passive studies
- Member investment education and financial wellness services and support

- Technical assistance for legislative proposals and plan design changes

## **SECTION 4 - INFORMATION REQUESTS**

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The proposal must contain in a separate section your organization's response to the following requested information. Please respond by restating the information request, with the response following.

### **4.1 Technical Proposal – This Shall be Labeled “Technical Proposal”**

The proposal shall be formatted as identified in this section and contain specific responses to the information requested.

**4.1.1 Management Summary.** This section should include a brief synopsis of the offeror’s understanding of the Board’s needs and services. It should also describe the resources that will be used to fulfill the requirements of this RFP and how it is projected that those resources will be consistently available to the Board.

**4.2.1 Technical Approach - Proposed Services.** This Section should present a detailed description of the offeror’s services. The sequence should follow the order described in Section 3. This Section must clearly indicate whether the offeror’s proposal satisfies each specification of the RFP. The offeror’s refusal or inability to accept all the terms and conditions of this RFP and meet each requirement must be clearly noted and explained. Offerors are advised, however, that any such exception may result in its proposal being deemed unacceptable.

The offeror shall identify in this Section each task that will be performed in response to this RFP and a timeline for each. The detailing of the scope of work by the offeror is critical in demonstrating an understanding of the effort.

**4.4.1 Copy of previous similar work.** In this Section the offeror shall provide a copy of a similar project that NDPERS can view to determine the type of report it will receive pursuant to the RFP.

**4.5.1 Personnel.** This Section should include resumes for the personnel assigned to the project, if the offeror is awarded the contract, and indicate each individual’s proposed project role. The offeror shall include a table at the beginning of this Section that provides the number of hours each individual is assigned to the project. The project team should include staff with experience in developing RFPs of the type requested herein, evaluating responses, and assisting with implementation. The team should also include investment professionals that can evaluate the proposed products being offered.



**4.6.1 Organization.** This Section must document the overall structure of the offeror's organization, including any parent companies, affiliates, and subsidiaries. Description and reported resolution of any potential/apparent conflict of interest must be presented here.

**4.7.1 Additional Information.** This Section, which is optional, should include any additional information the offeror deems relevant to this procurement and the satisfaction of the Board's objectives.

**4.8.1 Company Literature.** (If applicable) If company literature or other material is intended to respond to any RFP requirement, it must be included in this section. The offeror's responses in previous sections of the proposal must include reference to the document by name and page citation.

**4.2 Financial Proposal – This Shall be Labeled “Price Proposal” and bound separately from the Technical Proposal.**

It must contain the Pricing Proposal of the work efforts identified under Section 3.

## SECTION 5 – COST PROPOSAL (FEES/HOURS)

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### 5.1 Pricing

This Section shall contain information on the pricing for the work efforts in Section 3. The bid shall be on a not to exceed basis with actual hours charged to the project as incurred, up to the maximum of the fixed fee. Pricing should include all expenses including any travel. The consultant shall use the following format for presenting pricing information.

#### Quarterly Fund Analysis (3.1.1)

Fixed Fee: \$ \_\_\_\_\_

Staff Assigned	Estimated Hours	Rate

#### Guidance of investment fund offerings and investment policies (3.2.1)

Investment fund replacement search per episode Variable Fee: \$ \_\_\_\_\_

Fixed Fee: \$ \_\_\_\_\_

Staff Assigned	Estimated Hours	Rate

#### Development of RFP & Evaluation of Responses (3.3.1)

Fixed Fee \$ \_\_\_\_\_

Staff Assigned	Estimated Hours	Rate

**Total Package Pricing (3.1.1, 3.2.1, 3.3.1): \$ \_\_\_\_\_**

**Additional Work/Implementation (3.4.1)** (the consultant shall identify the fee for service hourly rates that will be used for services pursuant to this Section and any supplemental work needed associated with this contract)

<b>Staff Assigned</b>	<b>Rate</b>

## SECTION 6 - SUBMISSION OF PROPOSAL

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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 chargeable to NDPERS.

### 6.1 Inquiries Regarding Specifications

Offeror will have until 5:00 p.m. (CDT) on July 23, 2024, 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 query submissions must include the identity of the sender, the sender's title, firm name, mailing address, telephone number, and e-mail address.

Questions must be submitted by email to [ndpersbids@nd.gov](mailto:ndpersbids@nd.gov). NDPERS is not responsible for questions received after the submittal deadline.

Answers to questions will be made available on the NDPERS website at <https://www.ndpers.nd.gov/about/bid-opportunities> by August 6, 2024, at 5:00 p.m. (CDT).

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 submitted by email to [ndpersbids@nd.gov](mailto:ndpersbids@nd.gov).

### 6.2. Minimum Qualifications

Offeror of services sought will have substantial experience in performing said services in the public and private environment for large pension plans, preferably contributory plans. Substantial experience will be defined and evaluated with regards to the type of plan [457(b), 401(k), 401(a) and 403(b)], size of the plan [assets and number of participants in the plan], and public or private plan experience. Offerors are required to provide a listing of such engagements over the past five years which includes data on plan type, size, number of participants covered, and other pertinent data such as number of investment options, number of participants on payout, and frequency of asset transfers permitted. The offeror shall also offer a multi-disciplinary team with experience in development of

RFPs, analysis of offers, and review investment products. Offerors shall not have any conflicts of interests.

The minimum mandatory experience required of offerors shall consist of comparable assignments with at least two plans of the types indicated above.

Plan Name	Plan Type	Plan Assets	Participants	Investment Options	# Payees

**6.3. Selection Criteria (also see Section 7)**

Responses to this RFP will be evaluated based upon the following factors as presented in the bidder’s response to this RFP:

- < The ability of the organization to meet the terms of the RFP and the technical approach.
- < Qualifications of the staff assigned to the NDPERS account. NDPERS may require that the appropriate individuals be interviewed.
- < Ability to meet the minimum qualifications.
- < Fees and other compensation.

Fees and compensation will be an important factor in the evaluation process. NDPERS, however, is not required to select the lowest cost bidder.

**6.4. Rules and Regulations**

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

**6.5. 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 the property of NDPERS and upon receipt by NDPERS are subject to the North Dakota Open Records law.

**PLEASE NOTE** that proposals should follow the Confidential/Proprietary Information instructions in Section 8. Any provisions of the Responder’s proposal that are desired to be confidential must be identified specifically on each page of the proposal and included in the table provided in Section 8.

## 6.6. 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 posting at: <https://www.ndpers.nd.gov/about/bid-opportunities>. It shall be **the responsibility of the Offeror** to recheck the RFP posting at: <https://www.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 either signing and returning such document(s) or indicating receipt on the Signature Page of the 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.

## 6.7. 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 (See Section 10). No proposed variation is binding on NDPERS unless and until accepted by NDPERS.

## 6.8. Submission of Proposals

To be considered for award, six (6) printed and bound copies of the technical proposal, one (1) unbound copy of the Offeror's technical and price proposal, one (1) electronic, PDF redacted copy of the proposal on a separate USB flash drive labeled "REDACTED", and one (1) electronic, editable, PDF original copy of the proposal on a separate USB flash drive labeled "ORIGINAL" (note that the electronic redacted and original copies may not be a picture) must be received by NDPERS on or before 5:00 P.M. (CDT), August 30, 2024. The Request for Redaction chart in Section 8 MUST be completed and submitted with the proposal. 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, one (1) copy of the "REDACTED" proposal on a USB flash drive, and one (1) copy of the "ORIGINAL" proposal on a USB flash drive shall be provided in separate sealed envelopes.

Responder acknowledges that NDPERS is subject to the North Dakota Open Records Laws, and the documents submitted pursuant to this RFP may be subject to an open records request. Responder is also put on notice that, except for the information that is determined by NDPERS to be confidential or otherwise exempt from the North Dakota Open 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 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 Open Records law will be disclosed as an open record. If, as a result of the position taken by Respondent regarding the confidentiality of the information, NDPERS is assessed any damages or fees, Respondent shall indemnify NDPERS for such damages or fees. If no documents or materials are identified and marked by Respondent as confidential, Respondent will be deemed to have consented to the release of the document or material and to have waived any cause of action against NDPERS resulting from the release of the documents or materials. NDPERS will not consider the prices submitted by the Responder to be confidential.

Copies of the proposal shall be delivered to:

**Katheryne Korom, Research & Project Manager  
NDPERS  
1600 East Century Avenue, Suite 2  
PO Box 1657  
Bismarck, ND 58502-1657**

- The base contract will be for a two-year period of January 1, 2025, through December 31, 2026. All rates and fees must be firm, fixed, and valid for the duration of the base period. Additionally, NDPERS is seeking two, 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 show clearly the submittal deadline, the organization name, and the return address of the organization. The package the proposal is delivered in must also be plainly marked "PROPOSAL TO PROVIDE INVESTMENT CONSULTANT SERVICES".

- A proposal shall be considered late if received at any time after the exact time specified for the return of proposals. Late proposals may be returned to the organization unopened at the organization's expense. Late proposals will not be considered unless the NDPERS Board determines otherwise.
- Proposals submitted via email or fax will not be accepted.
- Any award is contingent upon a contract acceptable to NDPERS being executed.

### **6.9. Conflicts of Interest List**

Bidders must provide a list of all entities with which it has relationships that create, or appear to create, a conflict of interest with the work that is contemplated in this request for proposals. The Conflicts of Interest List in Section 9 MUST be completed and submitted with the proposal. This list should indicate the name of the entity, the relationship, and a discussion on the conflict.

### **6.10. 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 statutory guidelines and any factors 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, 2025, through December 31, 2026. The Board at its discretion may extend the contract for up to two additional two-year periods. The premium and benefits 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.

### **6.11. Non-Responsive Proposals**

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

### **6.12. References**

Each Offeror must provide at least three references from other current and three references from other former public entities of similar size or larger. 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 entities.



### **6.13. 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.

### **6.14. Additional Information from Responding Organizations**

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

### **6.15. Interview with Responding Organizations**

The NDPERS Board may request representatives of your organization to appear for interviewing purposes. Travel expenses and costs related to the interview will be the responsibility of the bidder.

### **6.16. Modification**

No proposal may be changed after the deadline for submissions of proposals unless language within the proposal is needing clarification at NDPERS' request.

### **6.17. 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.

### **6.18. News Release**

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

### **6.19. Change Required by Statute, Regulations, 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.

## **6.20. Acceptance Of Proposal Interpretations & Agreements**

The contents of this RFP and the proposal will become contractual obligations. Please note NDPERS has provided a proposed contract in Section 10 – Offer (Agreements). Please return a signed version or a redline version clearly identifying any proposed language changes. Failure of the successful bidder to accept these obligations may result in cancellation of the award.

NDPERS further reserves the right to interview the key personnel assigned by the successful bidder to this project and to recommend reassignment of personnel deemed appropriate by NDPERS.

## **6.21. Contract Award**

The policy of the NDPERS Board is to solicit proposals with a bona fide intention to award a contract. This policy will not affect the right of the NDPERS Board to reject any, or all, proposals.

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; and, general reputation.

The failure to meet all procurement policy requirements shall not automatically invalidate a proposal or procurement. The final decision rests with the Board.

## **6.22. Accounting Records**

The vendor will be required to maintain all pertinent financial and accounting records and evidence pertaining to the contract in accordance with generally accepted principles of accounting. Financial and accounting records, including individual account balance records and information concerning the State's plan, shall be made available, upon request, to PERS, its designees, or the State

Auditor at any time during the contract period and any extension thereof, and for three (3) years from expiration date and final payment on the contract or extension thereof.

### **6.23. Confidentiality**

The contractor shall instruct its employees, and the employees of any subcontractor, to keep as confidential all information concerning the State's employees as well as any other information which may be specifically classified as confidential by the State. Please refer to NDPERS statutes under chapter 54-52 and please note that violations of this statute are a felony under North Dakota law.

All copies of information developed by the contractor in connection with the contract are the property of the State. The contractor will not reveal or disclose either information or findings concerning this contract with anyone who does not have a substantial need-to-know and who has not been expressly authorized in writing by the State to receive the information/findings. Contractors must ensure that all safeguards and proper procedures are implemented to protect confidential information.

### **6.24. Cancellation**

Cancellation of the contract by NDPERS may be for any reason upon written notice to the contractor. The contract may also be canceled due to default by the contractor. Default is defined as the failure of the contractor to fulfill the obligations of this contract. In case of cancellation due to default by the contractor, the State may procure the articles or services from other sources and hold the contractor responsible for any excess costs occasioned thereby.

### **6.25. Delegation and/or Assignment**

The contractor shall not delegate any duties under this contract to a subcontractor other than a subcontractor named in the bid unless NDPERS has given written consent to the delegation. The primary contractor may not assign the right to receive money due under the contract without the prior written consent of NDPERS.

## **SECTION 7 - REVIEW PROCESS**

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Proposals will be evaluated in a three-step approach. The first step will be done by a review team composed of NDPERS staff and will be an initial screening of each proposal to determine if it is sufficiently responsive to the RFP to permit a valid comparison and meets the minimum qualifications of having completed past projects similar to the efforts requested herein. The qualifying factor will be on a Yes/No basis. The proposal will be dropped from consideration if a majority of viewers respond "No".

The proposals that pass the initial screening will then be reviewed by the same review team. Each individual will review the proposal for all areas but price. Every proposal will be awarded points for specified areas by the reviewers. Points for price are awarded automatically. Following is the weighting factor for each area:

- Technical Approach 25 points
- Prior Experience 10 points
- Staffing 15 points
- Sample product 15 points
- Organization 5 points
- Pricing 30 points

The purpose of this review is to assess the Consultant's understanding of the work requirements, capabilities, and resources. It is important that proposals relate to the offeror's understanding in order to be rated. A statement that the offeror will comply with the RFP is not sufficient, nor is repeating the RFP requirements. The findings will be reported to the NDPERS Board. This will be the third step of the review. The Board at its discretion may require vendor interviews. The Board retains the option to make the final selection based upon not only the above review but all other factors it deems applicable to determining which firm is awarded the contract.

## **SECTION 8 - CONFIDENTIAL/PROPRIETARY INFORMATION**

### **Request for Redaction Chart**

The Responder submitting a proposal to the attached RFP is **required** to complete the following.

Any provisions of the company’s proposal that are desired to be confidential must be identified specifically on each page of the proposal and in a table format as provided below.

Information not identified in the table will be considered an open record by NDPERS, regardless of whether the information is marked confidential in the body of the proposal.

In response to the Request for Proposals entitled Investment Consultant Services (please check one):

\_\_\_\_\_ Offeror asserts that the information noted in the table below constitutes proprietary, trade secret, commercial, or financial information as defined by North Dakota Century Code section 44-04-18.4, and desires that the information noted in the table below not be disclosed if requested pursuant to the North Dakota Open Records law. **Offeror has submitted a redacted copy of the proposal on a USB flash drive labeled “REDACTED” that accurately and completely redacts the information noted in the table below.**

\_\_\_\_\_ Offeror makes NO assertion that any information in its Proposal, in whole or in part, should be protected from disclosure under the North Dakota Open Records law.

Technical Proposal:				
Specific wording that Responder desires to protect	Page Number, Section Number	Specific reason Responder believes the language should not be disclosed	North Dakota Century Code provision that allows NDPERS to withhold the information if requested	Has this information ever been publicly disclosed? (Yes/No)
Insert rows above as necessary				
Cost Proposal:				
Specific wording that Responder desires to protect	Page Number, Section Number	Specific reason Responder believes the language should not be disclosed	North Dakota Century Code provision that allows NDPERS to withhold the information if requested	Has this information ever been publicly disclosed? (Yes/No)
Insert rows above as necessary				

The above information has been reviewed by Responder’s legal counsel and is attested to by \_\_\_\_\_ (insert name of Responder representative who is authorized to contractually bind Responder), on this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_ (Signature) \_\_\_\_\_ (Vendor)

**SECTION 9 - CONFLICTS of INTEREST LIST**

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Conflicts of Interest List:
Bidders must provide a list of all entities with which it has relationships that create, or appear to create, a conflict of interest with the work that is contemplated in this request for proposals. This list should indicate the name of the entity, the relationship, and a discussion of the conflict.

## **SECTION 10 - OFFER (AGREEMENTS)**

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

#### **1. PARTIES**

The parties to this contract (Contract) are the state of North Dakota, acting through its *North Dakota Public Employees Retirement System* (STATE), and *Name of Business a type of business [Insert Business Name]* having its principal place of business at *principal business address [Insert Business Address]* (CONTRACTOR);

#### **2. SCOPE OF WORK**

CONTRACTOR agrees to provide the service(s) as specified in the 2024 bid document and VENDOR proposal (attached hereto and incorporated by reference Exhibit A).

#### **3. COMPENSATION – PAYMENTS**

##### **a. Contractual Amount**

STATE will pay for the services provided by CONTRACTOR under this contract pursuant to Exhibit A.

The Contractual Amount is firm for the duration of this Contract and constitutes the entire compensation due CONTRACTOR for performance of its obligations under this Contract regardless of the difficulty, materials or equipment required, including fees, licenses, overhead, profit and all other direct and indirect costs incurred by CONTRACTOR, except as provided by an amendment to this Contract.

##### **b. Payment**

- 1) Payment made in accordance with this Compensation section shall constitute payment in full for the services and work performed and the deliverables and work(s) provided under this Contract and CONTRACTOR shall not receive any additional compensation hereunder.
- 2) STATE shall make payment under this Contract within forty-five (45) calendar days after receipt of a correct invoice.
- 3) Payment of an invoice by STATE will not prejudice STATE's right to object to or question that or any other invoice or matter in relation thereto. CONTRACTOR's invoice will be subject to reduction for amounts included in any invoice or payment made which are determined by STATE, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute allowable costs. At STATE's sole discretion, all payments shall be subject to reduction for amounts equal to prior

overpayments to CONTRACTOR.

- 4) For any amounts that are or will become due and payable to STATE by CONTRACTOR, STATE reserves the right to deduct the amount owed from payments that are or will become due and payable to CONTRACTOR under this Contract.

**c. Travel**

CONTRACTOR acknowledges travel costs are covered by the Contractual Amount and shall not invoice STATE for travel costs.

**d. Prepayment**

STATE will not make any advance payments before performance or delivery by CONTRACTOR under this Contract.

**e. 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. STATE will furnish certificates of exemption upon request by the CONTRACTOR.

**f. Taxpayer ID**

CONTRACTOR'S federal employer ID number is: *[Insert FEIN]*.

**4. TERM OF CONTRACT**

This Contract term (Term or Initial Term) begins on *January 1, 2025*, and ends on *December 31, 2026*.

**a. No Automatic Renewal**

This Contract will not automatically renew.

**b. Renewal Option**

STATE may renew this Contract upon satisfactory completion of the Initial Term. STATE reserves the right to execute up to **2** options to renew this Contract under the same terms and conditions for a period of **24** months each (Renewal Term).

**c. Extension Option**

STATE reserves the right to extend this Contract for an additional period, not to exceed 24 months, beyond the current termination date of this Contract.

**d. Renegotiation Option**



If, during the initial Term, any renewal, or extension, STATE determines a realignment of the Term is needed (e.g. to align with STATE'S fiscal biennium), the parties may mutually agree, in writing, to a new Term with a termination date not to exceed the total available length of Contract including its initial Term, renewals, and extensions.

## **5. TIME IS OF THE ESSENCE**

CONTRACTOR hereby acknowledges that time is of the essence for performance under this Contract unless otherwise agreed to in writing by the Parties.

## **6. TERMINATION**

### **a. Termination by Mutual Agreement**

This Contract may be terminated by mutual consent of both Parties executed in writing.

### **b. Early Termination in the Public Interest**

STATE is entering this Contract for the purpose of carrying out the public policy of the State of North Dakota, as determined by its Governor, Legislative Assembly, Agencies and Courts. If this Contract ceases to further the public policy of the State of North Dakota, STATE, in its sole discretion, by written notice to CONTRACTOR, may terminate this Contract in whole or in part.

### **c. Termination for Lack of Funding or Authority**

STATE by written notice to CONTRACTOR, may terminate the whole or any part of this Contract under any of the following conditions:

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

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

### **d. Termination for Cause.**

STATE may terminate this Contract effective upon delivery of written notice to CONTRACTOR, or

any later date stated in the notice:

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

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

## **7. FORCE MAJEURE**

Neither Party shall be held responsible for delay or default caused by fire, riot, terrorism, pandemic (excluding COVID-19), acts of God, or war if the event was not foreseeable through the exercise of reasonable diligence by the affected Party, the event is beyond the Party's reasonable control, and the affected Party gives notice to the other Party promptly upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default. If CONTRACTOR is the affected Party and does not resume performance within fifteen (15) days or another period agreed between the Parties, then STATE may seek all available remedies, up to and including termination of this Contract pursuant to its Termination Section, and STATE shall be entitled to a pro-rata refund of any amounts paid for which the full value has not been realized, including amounts paid toward software subscriptions, maintenance, or licenses.

## **8. INDEMNIFICATION**

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.

## **9. INSURANCE**

Contractor shall secure and keep in force during the term of this agreement and Contractor shall require all subcontractors, prior to commencement of an agreement between Contractor and the subcontractor,

to secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$2,000,000 per occurrence.
- 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$500,000 per person and \$2,000,000 per occurrence.
- 3) Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.
- 4) Employer's liability or "stop gap" insurance of not less than \$2,000,000 as an endorsement on the workers compensation or commercial general liability insurance.
- 5) Professional errors and omissions with minimum limits of \$1,000,000 per claim 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.

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. The amount of any deductible or self-retention is subject to approval by the State.
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State. The policies shall be in form and terms approved by the State.
- 3) The duty to defend, indemnify, and hold harmless the State under this agreement shall not be limited by the insurance required in this agreement.
- 4) The state of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. The State shall have all the benefits, rights and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the Contractor.
- 5) A "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State.
- 6) The Contractor shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.
- 7) Failure to provide insurance as required in this agreement is a material breach of contract entitling the State to terminate this agreement immediately.
- 8) Contractor shall provide at least 30 day notice of any cancellation or material change to the policies or endorsements. Contractor shall provide on an ongoing basis, current certificates of insurance during the term of the contract. A renewal certificate will be provided 10 days prior to coverage expiration.

**10. WORKS FOR HIRE**

CONTRACTOR acknowledges that all work(s) under this Contract is "work(s) for hire" within the meaning of the United States Copyright Act (Title 17 United States Code) and hereby assigns to STATE all rights and interests CONTRACTOR may have in the work(s) it prepares under this Contract, including any right to derivative use of the work(s). All software and related materials developed by CONTRACTOR in performance of this Contract for STATE shall be the sole property of STATE, and CONTRACTOR hereby assigns and transfers all its right, title, and interest therein to STATE. CONTRACTOR shall execute all necessary documents to enable STATE to protect STATE’s intellectual property rights under this section.

**11. WORK PRODUCT**

All work product, equipment or materials created for STATE or purchased by STATE under this Contract belong to STATE and must be immediately delivered to STATE at STATE’s request upon termination of this Contract.

**12. NOTICE**

All notices or other communications required under this Contract must be given by registered or certified mail and are complete on the date postmarked when addressed to the Parties at the following addresses:

<b>STATE</b>	<b>CONTRACTOR</b>
Name: Rebecca Fricke	Name <a href="#">[Insert Name]</a>
Title: Executive Director	Title <a href="#">[Insert Title]</a>
Address: 1600 East Century Ave, Suite 2 PO Box 1657	Address <a href="#">[Insert Address]</a>
City, State, Zip: Bismarck, ND 58502-1657	City, State, Zip <a href="#">[Insert City, State, Zip]</a>

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.

**13. CONFIDENTIALITY**

CONTRACTOR shall not use or disclose any information it receives from STATE under this Contract that STATE has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Contract or as authorized in advance by STATE. STATE shall not disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that STATE 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 STATE and CONTRACTOR to maintain confidentiality of information under this section continues beyond the Term of this Contract.

**14. COMPLIANCE WITH PUBLIC RECORDS LAWS**

Under the North Dakota public records law and subject to the Confidentiality clause of this Contract, certain records may be open to the public upon request.

Public records may include: (a) records STATE receives from CONTRACTOR under this Contract, (b) records obtained by either Party under this Contract, and (c) records generated by either Party under this Contract.

CONTRACTOR agrees to contact STATE immediately upon receiving a request for information under the public records law and to comply with STATE's instructions on how to respond to such request.

## **15. INDEPENDENT ENTITY**

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

## **16. ASSIGNMENT AND SUBCONTRACTS**

CONTRACTOR may not assign or otherwise transfer or delegate any right or duty without STATE's express written consent, provided, however, that CONTRACTOR may assign its rights and obligations hereunder in the event of a change of control or sale of all or substantially all of its assets related to this Contract, whether by merger, reorganization, operation of law, or otherwise. Should Assignee be a business or entity with whom STATE is prohibited from conducting business, STATE shall have the right to terminate in accordance with the Termination for Cause section of this Contract.

CONTRACTOR may enter subcontracts provided that any 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 with whom CONTRACTOR contracts. CONTRACTOR does not have authority to contract for or incur obligations on behalf of STATE.

## **17. SPOILIATION – PRESERVATION OF EVIDENCE**

CONTRACTOR shall promptly notify STATE of all potential claims that arise or result from this Contract. CONTRACTOR shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to STATE the opportunity to review and inspect such evidence, including the scene of an accident.

## **18. MERGER AND MODIFICATION, CONFLICT IN DOCUMENTS**

This Contract, including the following documents, constitutes the entire agreement between the Parties. There are no understandings, agreements, or representations, oral or written, not specified within this Contract. This Contract may not be modified, supplemented, or amended, in any manner, except by written agreement signed by both Parties.

Notwithstanding anything herein to the contrary, in the event of any inconsistency or conflict among the documents making up this Contract, the documents must control in this order of precedence:

- a. The terms of this Contract, including any BAA and/or MOU (if applicable), as may be amended;
- b. STATE's Request for Proposal ("RFP") number 192.07-01-24,
- c. CONTRACTOR's proposal in response to RFP number 192.07-01-24.
- d. All automated end-user agreements (e.g., click-through, shrink-wrap, or browse-wrap) are specifically excluded and null and void. Clicking shall not represent acknowledgement or agreement to any terms or conditions contained in those agreements.

## **19. SEVERABILITY**

If any term of this Contract is declared to be illegal or unenforceable by a court having competent jurisdiction, the validity of the remaining terms is unaffected and, if possible, the rights and obligations of the Parties are to be construed and enforced as if this Contract did not contain that term.

## **20. APPLICABLE LAW AND VENUE**

This Contract is 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. Each Party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or *forum non conveniens*.

## **21. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL**

By entering this Contract, STATE does not agree to binding arbitration, mediation, or any other form of mandatory Alternative Dispute Resolution. The Parties may enforce the rights and remedies in judicial proceedings. STATE does not waive any right to a jury trial.

## **22. ATTORNEY FEES**

In the event a lawsuit is instituted by STATE to obtain performance due under this Contract, and STATE is the prevailing Party, CONTRACTOR shall, except when prohibited by N.D.C.C. § 28-26-04, pay STATE's reasonable attorney fees and costs in connection with the lawsuit.

## **23. NONDISCRIMINATION AND COMPLIANCE WITH LAWS**

CONTRACTOR agrees to comply with all applicable federal and state laws, rules, and policies, including those relating to nondiscrimination, accessibility and civil rights. (See N.D.C.C. Title 34 – Labor and Employment, specifically N.D.C.C. ch. 34-06.1 Equal Pay for Men and Women.)

CONTRACTOR agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes, unemployment compensation and workers' compensation premiums.

CONTRACTOR shall have and keep current all licenses and permits required by law during the Term of this Contract all licenses and permits required by law.

CONTRATOR is prohibited from boycotting Israel for the duration of this Contract. (See N.D.C.C § 54-44.4-15.) CONTRACTOR represents that it does not and will not engage in a boycotting Israel during the term of this Contract. If STATE receives evidence that CONTRACTOR boycotts Israel, STATE shall determine whether the company boycotts Israel. The foregoing does not apply to contracts with a total value of less than \$100,000 or if CONTRACTOR has fewer than ten full-time employees.

CONTRACTOR’s failure to comply with this section may be deemed a material breach by CONTRACTOR entitling STATE to terminate in accordance with the Termination for Cause section of this Contract.

**24. STATE AUDIT**

Pursuant to N.D.C.C. § 54-10-19, all records, regardless of physical form, and the accounting practices and procedures of CONTRACTOR relevant to this Contract are subject to examination by the North Dakota State Auditor, the Auditor’s designee, or Federal auditors, if required. CONTRACTOR shall maintain these records for at least three (3) years following completion of this Contract and be able to provide them upon reasonable notice. STATE, State Auditor, or Auditor’s designee shall provide reasonable notice to CONTRACTOR prior to conducting examination.

**25. COUNTERPARTS**

This Contract may be executed in multiple, identical counterparts, each of which is to be deemed an original, and all of which taken together shall constitute one and the same contract.

**26. EFFECTIVENESS OF CONTRACT**

This Contract is not effective until fully executed by both Parties. If no start date is specified in the Term of Contract, the most recent date of the signatures of the Parties shall be deemed the Effective Date.

<b>CONTRACTOR</b>	<b>STATE OF NORTH DAKOTA</b>
<i>[insert business]</i>	Acting through its <b>NDPERS</b>
BY: <i>[Signature]</i>	BY: <i>[Executive Director Signature]</i>
<i>[Printed Name]</i>	Rebecca Fricke
<i>[Title]</i>	NDPERS Executive Director
Date:	Date:



**North Dakota  
Public Employees Retirement System**  
1600 East Century Avenue, Suite 2 • PO Box 1657  
Bismarck, North Dakota 58502-1657

**Rebecca Fricke**  
Executive Director  
(701) 328-3900  
1-800-803-7377

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Fax (701) 328-3920    Email [ndpers-info@nd.gov](mailto:ndpers-info@nd.gov)    Website [www.ndpers.nd.gov](http://www.ndpers.nd.gov)

# Memorandum

**TO:**                   NDPERS Board

**FROM:**               Derrick Hohbein

**DATE:**               June 11, 2024

**SUBJECT:**           Empower Custodial Agreement & Schedule of Services

Over the last two months, Staff, Callan, our legal (including the Attorney General's Office as well as Ice Miller), and Empower have been working through the custodial agreement and the schedule of services agreement (Attachment). These agreements memorialize the requirements of Empower and the fees for services, and establishes the custodial accounts with Empower.

Callan helped ensure the agreements coincide with the RFP submission and industry standards, and our legal representatives helped ensure the agreements comply with North Dakota Century Code, IRS provisions, and industry best practices.

## **Board Action Requested**

Review and approve the custodial agreement and schedule of services with Empower, and give authority for the Executive Director to sign.



**MASTER SERVICES AGREEMENT  
BETWEEN EMPOWER RETIREMENT, LLC AND  
STATE OF NORTH DAKOTA,  
ACTING THROUGH ITS NORTH DAKOTA  
PUBLIC EMPLOYEES RETIREMENT SYSTEM**

**Group Client Number:**

**100455**

**and**

**100456**

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## 1. PARTIES

The parties to this Master Services Agreement (“Agreement”) are the state of North Dakota (“Plan Sponsor”), acting through its North Dakota Public Employees Retirement System (“NDPERS”), and Empower Retirement, LLC (“Empower”) having its principal place of business at 8515 East Orchard Road, Greenwood Village, Colorado, 80111. The Agreement is dated July 1, 2024, or such earlier date as modified under Section 5 herein (“**Effective Date**”) and sets forth the general terms and conditions under which Empower will provide Services to Plan Sponsor with respect to the employee benefit plan(s) sponsored by Plan Sponsor, as identified in the attached Schedules (the “**Plan**” or “**Plans**”).

## 2. DEFINITIONS

“**Affiliate**” means a corporate entity that directly or indirectly is controlled by or is under common control with a party, including any entity that conforms to this definition after the effective date of this Agreement.

“**Agreement**” includes this Master Services Agreement and any Exhibits, Schedules, notices and other documents attached, incorporated or referenced herein.

“**Business Day**” means any day, and only for as many hours as, the New York Stock Exchange is open.

“**Code**” means the Internal Revenue Code of 1986, as amended from time to time.

“**Data**” has the meaning set forth in the Data Security & Privacy Addendum, attached as Exhibit 1.

“**Data Protection Laws**” has the meaning set forth in the Data Security & Privacy Addendum, attached as Exhibit 1.

“**Direction**” and “**Direct**” and their similar terms shall mean the instruction, authorization, or direction given to Empower by Plan Sponsor or a person or designee authorized in writing to Empower to act on behalf of Plan Sponsor. Plan Sponsor directs Empower to process certain Plan transactions based solely on Participant instruction under the terms of this Agreement.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

“**Empower**” and “**Empower Retirement**” refer to Empower Retirement, LLC and its Affiliates with respect to products and services offered in the retirement markets, including but not limited to recordkeeping and other financial services.

“**Information Security Breach**” has the meaning set forth in the Data Security & Privacy Addendum, attached as Exhibit 1.

“**Investment Options**” means those investment options made available under the Plan at the Direction of Plan Sponsor or a Plan investment fiduciary designated by Plan Sponsor (other than Empower or one of its Affiliates).

“**NDPERS**” means North Dakota Public Employees Retirement System.

“**Participant**” shall mean an employee, former employee, participant, former participant, member, beneficiary, or alternate payee who is or may be entitled to participate in or receive benefits under the Plan.

“**Personal Data**” has the meaning set forth in the Data Security & Privacy Addendum, attached as Exhibit 1.

“**Plan Administrator**” means NDPERS, an employee or committee designated by NDPERS, or a third party retained by NDPERS (other than Empower or one of its Affiliates), to be the “plan administrator” and “fiduciary” as defined by applicable law.

“**Plan Data**” has the meaning set forth in the Data Security & Privacy Addendum, attached as Exhibit 1.

“**Plan Sponsor**” means the state of North Dakota.

“**Services**” means the services provided by Empower or one of its Affiliates, as applicable, acting as a service provider Directed by Plan Sponsor to perform such Services under an applicable Schedule. Empower shall provide the Services in a non-fiduciary capacity (except where Empower acknowledges its or its Affiliate’s fiduciary status in writing). The provision of Services shall be governed by the terms and conditions set forth in this Agreement, by applicable law and regulations, and by any additional terms and conditions contained in the applicable Schedule.

“**TOA**” means the date that the initial Plan assets transfer to Empower.

### **3. SCOPE OF WORK**

- a. Empower agrees to provide the Services specified in the 2023 bid document, incorporated by reference as Exhibit 5, and vendor proposal, incorporated by reference as Exhibit 6, and as further described in this Agreement and any applicable Schedule.
- b. Except with respect to any Services for which Empower has specifically agreed to act as a fiduciary under this Agreement, Plan Sponsor acknowledges that (i) Empower acts as a non-discretionary service provider Directed by the Plan Sponsor or its designee and, as authorized by Plan Sponsor, by Participants; and (ii) performance of the Services do not involve the exercise of any discretion in the administration or management of the Plan that would cause Empower to be a fiduciary or a Plan Administrator as defined under the Code, the Investment Advisors Act of 1940, or state law, as applicable. Plan Sponsor has appointed a Plan Administrator that has discretionary authority for the administration and management of the Plan. The parties agree that Empower will not perform a Service that could cause it to have discretionary authority or responsibility for the administration or management of the Plan or disposition of Plan assets. Empower shall not render, or have any authority or responsibility to render, investment advice for a fee or other compensation, direct or indirect, with respect to any Plan assets, except as specifically provided for under this Agreement.
- c. As authorized by Plan Sponsor and subject to applicable law, Empower will administer Qualified Domestic Relations Orders received by Empower in accordance with the instructions of Plan Sponsor.

#### **4. COMPENSATION – PAYMENTS**

##### **a. Contractual Amount**

Plan Sponsor will pay for the Services provided by Empower under this Agreement pursuant to Exhibit 6 or any applicable Schedule attached hereto (“Contractual Amount”).

The Contractual Amount is fixed for the Term of this Agreement (“Guarantee Period”) and constitutes the entire compensation due Empower for performance of its obligations under this Agreement regardless of the difficulty, materials or equipment required, including fees, licenses, overhead, profit and all other direct and indirect costs incurred by Empower, except as provided by an amendment to this Agreement.

Notwithstanding anything to the contrary, Empower reserves the right to adjust the Contractual Amount at any time upon written advance notice to Plan Sponsor in the event

that: (i) Plan Sponsor elects to utilize different or additional services; (ii) Plan Sponsor changes any Investment Option utilized by the Plan that provide service fees or other compensation to Empower, if applicable; or (iii) there is a Plan Sponsor-initiated event such as a plan merger or layoff resulting in a material decrease in the Contractual Amount or requiring Empower to perform additional services; (iv) legislative, regulatory or US postal rate change impacts the Services; or (v) there is a material change in the service fees received by Empower from any Investment Option utilized by the Plan, if applicable. Empower may adjust the Contractual Amount at any time after the Guarantee Period expires upon written advance notice to Plan Sponsor.

**b. Payment**

- 1) Payment made in accordance with this Compensation section shall constitute payment in full for the Services and work performed and the deliverables and work(s) provided under this Agreement and Empower agrees that it shall not receive any additional compensation hereunder from Plan Sponsor. Empower will provide a written statement describing all plan-level direct and indirect compensation reasonably expected to be received by Empower. Unless otherwise Directed by Plan Sponsor, Plan Sponsor hereby Directs Empower to deduct applicable Plan expenses from the Plan and/or Participant accounts, as applicable.
  
- 2) Plan Sponsor shall make payment under this Agreement within forty-five (45) calendar days after receipt of a correct invoice unless another arrangement has been pre-approved by Empower in writing. In the event any undisputed fees reasonably and properly chargeable under the terms of the Agreement remain unpaid sixty (60) days after the date billed, Plan Sponsor Directs Empower to deduct such fees from the applicable Plan and Plan Sponsor affirms that the Plan document specifically allows such deduction from the Plan. To the extent that the forfeiture or other Plan-level accounts would not pay Plan expenses under the Plan document or the Plan accounts are insufficient, Plan Sponsor Directs Empower to allocate such fees to the Participant accounts, and to the Investment Options in which the Participant accounts are invested, on a pro rata basis using Participant account and Investment Option balance ratios as of the date of deduction. Plan Sponsor agrees to amend the Plan, if necessary, to provide for the payment of expenses from Plan assets consistent with the foregoing.

If Plan Sponsor disputes any invoice, Plan Sponsor will pay the undisputed portion of the invoice and will provide Empower prompt written notice of the dispute, including a detailed description of the nature of the dispute. The parties agree to

work together, in good faith, to settle any such fee dispute as soon as administratively practicable, and, upon resolution, Plan Sponsor will pay the agreed-upon amount of the invoice by the later of (i) forty-five (45) days from the original invoice date, or (ii) fifteen (15) days after the date the dispute is resolved.

- 3) Payment of an invoice by Plan Sponsor will not prejudice Plan Sponsor's right to object to or question that or any other invoice or matter in relation thereto. Empower's invoices will be subject to reduction for amounts included in any invoice or payment made which are determined by Plan Sponsor, on the basis of audits conducted in accordance with the terms of this Agreement, not to constitute allowable costs. At Plan Sponsor's sole discretion, all payments shall be subject to reduction for amounts equal to prior overpayments to Empower.
- 4) For any amounts that are or will become due and payable to Plan Sponsor by Empower, Plan Sponsor reserves the right to deduct the amount owed from payments that are or will become due and payable to Empower under this Agreement.

**c. Travel**

Empower acknowledges travel costs are covered by the Contractual Amount and shall not invoice Plan Sponsor for travel costs.

**d. Prepayment**

Plan Sponsor will not make any advance payments before performance or delivery by Empower under this Agreement.

**e. Payment of Taxes by Plan Sponsor**

Plan Sponsor is not responsible for and will not pay local, state, or federal taxes. Plan Sponsor sales tax exemption number is E-2001. Plan Sponsor will furnish certificates of exemption upon request by the Empower. Each party shall bear sole responsibility for its own taxes, including income, franchise, privilege, gross receipts, sales and use, excise, real and personal property (including software), payroll and any other taxes or assessments, surcharges or governmental charges that may be imposed, levied, collected or assessed by a taxing jurisdiction.

**f. Taxpayer ID**



Empower’s federal employer ID number is: **84-1233483**.

## **5. TERM OF AGREEMENT**

This Agreement term begins on **July 1, 2024**, and ends on **June 30, 2028** (“Initial Term” or “Term”).

To the extent any Services are provided prior to the Effective Date, including without limitation, implementation and conversion Services, or the receipt of payroll contributions, the Effective Date of this Agreement is modified to the date that such contributions are determined to be in good order by Empower or its Affiliate and this Agreement will be in effect for the limited purpose of accepting such contributions and holding them in trust. For all other Services, the Effective Date of the Agreement shall be on TOA.

### **a. No Automatic Renewal**

This Agreement will not automatically renew.

### **b. Renewal Option**

Plan Sponsor may renew this Agreement upon satisfactory completion of the Initial Term. Plan Sponsor reserves the right to execute up to **two** options to renew this Agreement under the same terms and conditions for a period of **two years** each (each a “Renewal Term”).

### **c. Extension Option**

Plan Sponsor, at the discretion of the NDPERS’ Board, may extend the Agreement for up to two additional two-year periods (each, an “Extended Term”). The Contractual Amount and other terms of these extensions will be subject to negotiations prior to renewal.

### **d. Renegotiation Option**

If, during the Initial Term, any Renewal Term, or Extended Term (collectively, as applicable, the “Term”), Plan Sponsor determines a realignment of the Term is needed (e.g. to align with Plan Sponsor’s fiscal biennium), the parties may mutually agree, in writing, to a new Term with a termination date not to exceed the total available length of Agreement including its Initial Term, Renewal Terms, and Extended Terms.

**6. TIME IS OF THE ESSENCE**

Empower hereby acknowledges that time is of the essence for performance under this Agreement unless otherwise agreed to in writing by the parties.

**7. TERMINATION**

**a. Termination for Convenience**

This Agreement may be terminated by either party with ninety (90) days' advance written notice to the other party, or as mutually agreed to by the parties.

**b. Early Termination in the Public Interest**

Plan Sponsor is entering this Agreement for the purpose of carrying out the public policy of the State of North Dakota, as determined by its Governor, Legislative Assembly, Agencies and Courts. If this Agreement ceases to further the public policy of the State of North Dakota, Plan Sponsor, in its sole discretion, by written notice to Empower, may terminate this Agreement in whole or in part.

**c. Termination for Lack of Funding or Authority**

Plan Sponsor, by written notice to Empower, may terminate the whole or any part of this Contract under any of the following conditions:

- 1) If funding from federal, state, or other sources is not obtained or continued at levels sufficient to allow for purchase of the Services or goods in the indicated quantities or term.
- 2) If federal or state laws or rules are modified or interpreted in a way that the Services or goods 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.

**d. Termination for Cause**

Plan Sponsor may terminate this Agreement by written notice to Empower if the following defaults are incapable of cure, or which being capable of cure, have not been cured within ninety (90) days after receipt of written notice of such default from Plan Sponsor, or within such additional cure period as mutually agreed upon by the parties:

- 1) If Empower fails to provide Services or goods required by this Agreement within the time specified or any extension agreed to in writing by Plan Sponsor; **or**
- 2) If Empower 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 Plan Sponsor provided in this subsection are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

Empower may, by written notice to Plan Sponsor, terminate this Agreement or any Schedule attached hereto if Plan Sponsor materially breaches or is in default of any material obligation hereunder, which default is incapable of cure, or which being capable of cure, has not been cured within ninety (90) days after receipt of notice of such default from Empower, or within such additional cure period as mutually agreed upon by the parties.

**e. Transition Assistance Services**

Upon termination of the Agreement for any reason, Empower will provide to Plan Sponsor the deconversion and transition assistance services set forth in the Recordkeeping Services Schedule. For the avoidance of doubt, this Agreement will govern the transition assistance services provided. This section and the deconversion and transition assistance services shall survive the termination of the Agreement until such services are complete.

**8. FORCE MAJEURE**

Neither party shall be held responsible for delay or default caused by fire, riot, terrorism, pandemic (including COVID-19), acts of God, or war if the event was not foreseeable through the exercise

of reasonable diligence by the affected party, the event is beyond the party's reasonable control, and the affected party gives notice to the other party as soon as administratively practicable upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default. If Empower is the affected party and does not resume performance within fifteen (15) days or another period agreed between the parties, then Plan Sponsor may seek all available remedies, up to and including termination of this Agreement pursuant to its Termination section, and Plan Sponsor shall be entitled to a pro-rata refund of any amounts paid for which the full value has not been realized, including amounts paid toward software subscriptions, maintenance, or licenses.

## **9. INDEMNIFICATION, LIMITATION OF LIABILITY**

### **a. Indemnification**

Empower agrees to indemnify Plan Sponsor from and against any and all expenses, costs, reasonable attorneys' fees, settlements, fines, judgments, damages, liabilities, penalties or court awards asserted by a third party (collectively, "**Damages**") to the extent resulting from Empower's breach of this Agreement, negligence, or willful misconduct. Notwithstanding anything to the contrary herein, Empower shall not be liable to Plan Sponsor for any Damages resulting from: 1) any acts or omissions undertaken at the Direction of the Plan Sponsor or any agent or any third party authorized by Plan Sponsor to provide Direction to Empower, including but not limited to prior service providers, investment advisors, or any authorized agent thereof; 2) any performance of the Services that is in strict compliance with the terms of this Agreement; or 3) Plan Sponsor's or its designee's failure to provide accurate documents, material, information or data to Empower or its Affiliates, as applicable on a timely basis. Plan Sponsor acknowledges that Empower and its directors, officers, employees and authorized representatives are not responsible for the investment performance of any Investment Options under the Plan. The legal defense provided by Empower 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. Empower 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 Empower in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this Agreement.

### **b. Limitation of Liability**

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE OR PROFIT) EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FOR THE AVOIDANCE OF DOUBT, DAMAGES ASSERTED UNDER THE PRECEDING SUBSECTION SHALL BE CONSIDERED DIRECT DAMAGES REGARDLESS OF HOW THEY ARE CHARACTERIZED BY THE THIRD PARTY ASSERTING THEM.

## **10. INSURANCE**

Empower shall secure and keep in force during the Term of this Agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in the State of North Dakota, the following insurance coverages:

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$2,000,000 per occurrence and in the aggregates.
- 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$2,000,000 per accident.
- 3) Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this Agreement.
- 4) Employer's liability or "stop gap" insurance of not less than \$2,000,000 for each accident, disease each employee, and disease policy limit as an endorsement on the workers compensation or commercial general liability insurance.
- 5) Professional errors and omissions with minimum limits of \$1,000,000 per claim and in the aggregate, Empower shall continuously maintain such coverage during the Term and for three years thereafter. In the event of a change or cancellation of coverage, Empower shall purchase an extended reporting period or the new coverage will meet the time periods required in this section.
- 6) Empower shall secure and maintain Cyber Liability and Network Security Insurance or equivalent insurance product(s), with minimum liability limits of not less than \$5,000,000 (USD equivalent) per claim and first party limits of not less than \$1,000,000 (USD equivalent) per claim and \$10,000,000 (USD equivalent) policy aggregate.

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 Empower.
- 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.
- 3) The duty to defend, indemnify, and hold harmless the Plan Sponsor 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 shall be endorsed by blanket form on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insureds. Plan Sponsor 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 Empower.
- 5) A “Waiver of Subrogation” waiving any right to recovery the insurance company may have against Plan Sponsor.
- 6) Empower shall furnish a certificate of insurance to the undersigned Plan Sponsor representative prior to commencement of this Agreement. All endorsements shall be provided as soon as practicable.
- 7) Failure to provide insurance as required in this Agreement is a material breach of contract entitling Plan Sponsor to terminate this Agreement immediately; provided that, the parties agree the Agreement will remain in effect until such time as all Plan assets transfer to Plan Sponsor’s successor service provider.
- 8) Upon request, Empower shall provide on an ongoing basis, current certificates of insurance during the term of the Agreement. A renewal certificate will be provided no later than 30 days after coverage expiration and will suffice as evidence that required insurance is maintained.
- 9) If any subcontractors are engaged by Empower specifically for the provision of Services to Plan Sponsor, subcontractors’ insurance coverages may or may not comply with Plan Sponsor’s minimum insurance requirements. Empower agrees that it retains responsibility for performance of all Services herein, including components performed by subcontractors.

## **11. INTELLECTUAL PROPERTY RIGHTS**

### **a. Plan Sponsor Materials**

Excluding the Empower Materials (as defined below), Plan Sponsor shall own materials,

trademarks, trade names, logos, trade dress, and other Confidential Information (as defined below) provided or made accessible by Plan Sponsor to Empower for use in providing the Services (collectively, the “**Plan Sponsor Materials**”). Plan Sponsor grants Empower a limited, revocable right and license to use Plan Sponsor’s name, logo, and trademarks in materials created by Empower in connection with providing the Services. Nothing contained herein shall prohibit Empower from referencing client partnerships in the normal course of public-relations communications or in materials prepared at the request of prospective clients.

**b. Empower Materials**

Excluding the Plan Sponsor Materials (as defined above), Empower and its Affiliates shall own all materials, documentation, user guides, forms, templates, business methods, trademarks, trade names, logos, websites, Empower Software (as defined below), technology, computer codes, domain names, text, graphics, photographs, artwork, interfaces, and other information or material provided by Empower or its Affiliates hereunder (collectively, the “**Empower Materials**”). Empower grants to Plan Sponsor and Participants (as applicable) a non-exclusive, non-transferable license to use the Empower Materials during the Term of the Agreement for purposes of using Empower’s Services hereunder and subject to the terms and conditions set forth in this Agreement and any terms of use associated with Empower Software. All rights with respect to the Empower Materials not specifically granted hereunder are reserved by Empower.

**12. WORK PRODUCT**

Notwithstanding any other provision of this Agreement, all work product, equipment or materials created for Plan Sponsor or purchased by Plan Sponsor under this Agreement belong to Plan Sponsor and must be immediately delivered to Plan Sponsor at Plan Sponsor’s request upon termination of this Agreement. For the avoidance of doubt, no work product will be created under this Agreement.

**13. NOTICE**

All notices or other communications required under this Agreement must be given by registered or certified mail and are complete on the date postmarked when addressed to the parties at the following addresses:

STATE	CONTRACTOR
Name: Rebecca Fricke	Name:
Title: Executive Director	Title: General Counsel
Address: 1600 East Century Ave, Suite 2 PO Box 1657	Address: 8515 E. Orchard Road
City, State, Zip: Bismarck, ND 58502-1657	City, State, Zip: Greenwood Village, CO 80111

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.

#### 14. CONFIDENTIALITY

- a. **Confidential Information.** In order to perform the Services, both parties may have access to certain information of the other party, including, without limitation, trade secrets, commercial and competitively sensitive information of the party related to business methods or practices, and proprietary information, software or websites of a party (“**Confidential Information**”). For the purpose of clarity, any software or website owned, licensed, or made available by Empower (“**Empower Software**”) is Confidential Information of Empower. The parties mutually agree to hold all Confidential Information of the other party in confidence and not to disclose any Confidential Information of the other party to anyone except the parties’ Affiliates, suppliers, and respective personnel in connection with the performance or receipt of Services hereunder, or as otherwise directed or approved by the other party or its agents. Confidential Information does not include: information that is otherwise in the public domain through no action of the non-disclosing party; information that is acquired by a party from a person other than the other party or its agents without any obligation of confidentiality; or information that is independently developed by a party without reference to the Confidential Information of the other party.

Empower shall not use or disclose any information it receives from Plan Sponsor under this Agreement that Plan Sponsor 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 Plan Sponsor. Plan Sponsor shall not disclose any information it receives from Empower that Empower has previously identified as confidential and that Plan Sponsor 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 Plan Sponsor and Empower to maintain confidentiality of information under this section continues beyond the Term of this Agreement.

**b. Permitted Disclosures of Confidential Information**

- 1) **Legally Required Disclosures.** In the event a party is required to make a legally required disclosure of the other party's Confidential Information, such party shall notify the other party of the disclosure as soon as reasonably practicable. The foregoing shall not apply to (i) broad-based regulatory examinations associated with a party's general business or operations; (ii) disclosures made in conjunction with a law enforcement investigation or inquiry; (iii) or where notice is prohibited by law. For purposes of Rule 14(b)-1 and Rule 14(b)-2 of the Securities Exchange Act of 1934, as amended from time to time, Plan Sponsor authorizes Empower and/or its Affiliates and services providers, to provide the name, address and share position of the Plan with respect to any class of securities registered under the Investment Company Act of 1940 when requested by such SEC registrant for purposes of shareholder meetings. The above-referenced rules prohibit the requesting SEC registrant from using the Plan's name and address for any purpose other than corporate communications of the type contemplated under the rules.
  
- 2) **Authorized Disclosures.** STATE authorizes Empower to disclose Data to Empower's Affiliates and service providers in connection with Empower's performance of Services under this Agreement. Any Affiliate or service provider retained by Empower in connection with Empower's performance of Services under this Agreement shall be bound by the same confidentiality provisions applicable to the parties and to use such Data only for the performance of specific Services under the Agreement. In addition, Plan Sponsor authorizes Empower to disclose Data to Plan Sponsor's advisors, third-party administrators, service providers (such as payroll providers) and representatives authorized by Plan Sponsor in writing to receive such Data. Empower may use and disclose, for benchmarking and research purposes, de-identified Data that is aggregated with other anonymized data of a similar nature across Empower's client base in a manner that makes such Data unidentifiable to a particular individual or plan. Empower's current Privacy Notice is attached to this Agreement but shall not lessen any of Empower's obligations regarding

Personal Data hereunder. Plan Sponsor agrees that any changes to the Privacy Notice may be delivered to Plan Sponsor through the Plan Service Center or by email to designated representatives of Plan Sponsor.

- 3) **Disclosures of Personal Data to Plan Sponsor.** Plan Sponsor may Direct Empower to provide Plan Sponsor or its designated agent with information (which may include Personal Data) received from or in relation to Participants in connection with the performance of Services under this Agreement, which may include private information shared by the Participant during recorded phone calls and written or electronic correspondence.

## 15. DATA PROTECTION

### a. Mutual Obligation to Protect Data

Empower and Plan Sponsor each agree to maintain and hold in confidence all Data and Confidential Information, as applicable, received in connection with the performance of Services under this Agreement. Empower and Plan Sponsor agree that their collection, use and disclosure of all Data is and will at all times be conducted in compliance with all applicable Data Protection Laws. Each party will implement, support, and maintain appropriate physical and logical security measures designed to secure Data, and will take all commercially reasonable organizational and technical steps to protect against unlawful and unauthorized access to and processing of Personal Data. In accordance with the foregoing, Empower maintains a comprehensive data security program designed to safeguard Data and access to the Empower Software and systems, as further set forth in the Data Security & Privacy Addendum attached hereto as Exhibit 1.

### b. Mutual Notice of an Information Security Breach

**(A) Notice by Empower.** Empower will notify the Plan Sponsor of an Information Security Breach as set forth Exhibit 1, Data Security & Privacy Addendum.

**(B) Notice by Plan Sponsor.** In order to help Empower facilitate the safety of Data and Participant accounts, Plan Sponsor will notify Empower: (i) promptly in the event of a security breach of Plan Sponsor's systems that could impact Empower's systems or the integrity of Data sent to Empower, including without limitation a suspected virus or malware event; and/or (ii) immediately upon discovering a compromise of the security and/or log-on credentials of any Plan Sponsor employee or agent that has a plan administration role in Empower's system. Such notice shall include: (a) information

reasonably necessary to enable Empower to promptly put additional protective measures in place, such as file scrubbing protocols and/or fraud alerts on Participant accounts; and (b) the corrective action taken to remedy the breach.

## **16. COMPLIANCE WITH PUBLIC RECORDS LAWS**

Under the North Dakota public records law and subject to the Confidentiality section of this Agreement, certain records may be open to the public upon request.

Public records may include: (a) records Plan Sponsor receives from Empower under this Agreement, (b) records obtained by either party under this Agreement, and (c) records generated by either party under this Agreement. Notwithstanding the foregoing, Plan Sponsor acknowledges the exemption for disclosure of trade secrets, proprietary commercial and financial information and privileged information under NDCC §44-04-18-4.

Empower agrees to contact Plan Sponsor immediately upon receiving a request for information under the public records law and to comply with Plan Sponsor's instructions on how to respond to such request.

## **17. INDEPENDENT ENTITY**

Empower is an independent entity under this Agreement and is not a Plan Sponsor 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. Empower retains sole and absolute discretion in the manner and means of carrying out Empower's activities and responsibilities under this Agreement, except to the extent specified in this Agreement.

## **18. ASSIGNMENT AND SUBCONTRACTS**

Empower may not assign or otherwise transfer or delegate any right or duty without Plan Sponsor's express written consent, provided, however, that Empower may assign its rights and obligations hereunder in the event of a change of control or sale of all or substantially all of its assets related to this Agreement, whether by merger, reorganization, operation of law, or otherwise. Should Empower's assignee be a business or entity with whom Plan Sponsor is prohibited from conducting business, Plan Sponsor shall have the right to terminate the Agreement in accordance with the Termination for Cause section of this Agreement.

Empower may utilize the services of Affiliates, agents and suppliers selected by Empower.

Empower's use of any such party will not relieve Empower of its obligations under this Agreement and Empower shall at all times remain liable for the performance of such Services.

Empower may enter subcontracts. To the extent Empower retains a subcontractor to perform Services under the Agreement solely and uniquely for Plan Sponsor, Empower will endeavor to incorporate substantively similar terms in the subcontract that are included in the Agreement. Empower is solely responsible for the performance of any subcontractor with whom Empower contracts, and Empower's retention of a subcontractor will not relieve Empower of its obligations under this Agreement. Empower does not have authority to contract for or incur obligations on behalf of Plan Sponsor.

#### **19. SPOILIATION – PRESERVATION OF EVIDENCE**

Empower shall promptly notify Plan Sponsor of all potential claims that arise or result from this Agreement. Empower shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to Plan Sponsor the opportunity to review and inspect such evidence, including the scene of an accident.

#### **20. MERGER AND MODIFICATION, CONFLICT IN DOCUMENTS**

This Agreement constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this Agreement. This Agreement may not be modified, supplemented, or amended, in any manner, except by written agreement signed by both parties.

Notwithstanding anything herein to the contrary, in the event of any inconsistency or conflict among the documents making up this Agreement, the documents must control in this order of precedence:

- a.** The terms of this Agreement (not including Exhibits 5 and 6) as amended;
- b.** Plan Sponsor's Request for Proposal ("RFP") number 192.08-16-23, incorporated by reference as Exhibit 5; and
- c.** Empower's proposal in response to RFP number 192.08-16-23, incorporated by reference as Exhibit 6.

#### **21. SEVERABILITY**

If any term of this Agreement is declared to be illegal or unenforceable by a court having

competent jurisdiction, the validity of the remaining terms is unaffected and, if possible, the rights and obligations of the parties are to be construed and enforced as if this Agreement did not contain that term.

## **22. APPLICABLE LAW AND VENUE**

This Agreement is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Agreement must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or *forum non conveniens*.

## **23. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL**

By entering this Agreement, Plan Sponsor does not agree to binding arbitration, mediation, or any other form of mandatory Alternative Dispute Resolution. The parties may enforce the rights and remedies in judicial proceedings. Plan Sponsor does not waive any right to a jury trial.

## **24. ATTORNEY FEES**

In the event a lawsuit is instituted by Plan Sponsor to obtain performance due under this Agreement, and Plan Sponsor is the prevailing party, Empower shall, except when prohibited by N.D.C.C. § 28-26-04, pay Plan Sponsor's reasonable attorney fees and costs in connection with the lawsuit.

## **25. NONDISCRIMINATION AND COMPLIANCE WITH LAWS**

Empower agrees to comply with all applicable federal and state laws, rules, and policies, including those relating to nondiscrimination, accessibility and civil rights. (*See* N.D.C.C. Title 34 – Labor and Employment, specifically N.D.C.C. ch. 34-06.1 Equal Pay for Men and Women.)

Empower agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes, unemployment compensation and workers' compensation premiums.

Empower shall have and keep current all licenses and permits required by law during the Term of this Agreement.

Empower's failure to comply with this section may be deemed a material breach by Empower entitling Plan Sponsor to terminate in accordance with the Termination for Cause section of this

Agreement.

Empower is prohibited from boycotting Israel for the duration of this Agreement. (See N.D.C.C § 54-44.4-15.) Empower represents that it does not and will not engage in a boycotting Israel during the term of this Agreement. If Plan Sponsor receives evidence that Empower boycotts Israel, Plan Sponsor shall determine whether the company boycotts Israel. The foregoing does not apply to contracts with a total value of less than \$100,000 or if Empower has fewer than ten full-time employees.

## **26. STATE AUDIT**

Pursuant to N.D.C.C. § 54-10-19, all records, regardless of physical form, and the accounting practices and procedures of Empower relevant to this Agreement are subject to examination by the North Dakota State Auditor, the Auditor's designee, or Federal auditors, if required. Empower shall maintain these records for at least three (3) years following completion of this Agreement and be able to provide them upon reasonable notice. Plan Sponsor, State Auditor, or the Auditor's designee shall provide reasonable notice to Empower prior to conducting examination. Such examination shall not exceed more than one per calendar year and will not require Empower to provide more than eighty (80) hours of assistance. In the event Plan Sponsor requests audit support in excess of eighty (80) hours, Empower reserves the right to charge an additional fee, with advance notice and consent of Plan Sponsor, which shall not be unreasonably withheld.

Each year upon the request of Plan Sponsor, Empower will provide a copy of the review performed by Empower's external auditors under the "Statement of Standards for Attestation Engagements Number 18, Attestation Standards: Clarification and Recodification" of the American Institute of Certified Public Accountants ("SSAE18") SOC 1, or any new or replacement standard or protocol established by the American Institute of Certified Public Accountants.

## **27. BUSINESS CONTINUITY & DISASTER RECOVERY**

Empower will maintain business continuity and disaster recovery procedures to address the security, integrity and availability of the technology, operational, financial, human and other resources required to provide mission-critical Services in the event of a natural disaster or other interruption of normal business operations. Such procedures will be tested at least once annually. Empower Financial Services, Inc.'s current Business Continuity Plan Notice is attached to this Agreement. By executing this Agreement, Plan Sponsor acknowledges receipt of this Notice.

## **28. RECORD RETENTION**

Empower shall retain all records in its custody and control that are pertinent to performance under this Agreement in accordance with its record retention policy and as required by law. Subject to the foregoing, each party agrees to return or destroy the other party's Confidential Information and Data once it is no longer required for the purpose of performing or receiving the Services, provided that the parties are not obligated to destroy copies of Confidential Information or Data that must be retained for audit, legal, regulatory, or Plan administration purposes, or that is stored in non-readily accessible electronic format, such as on archival systems; in such cases Empower's data protection obligations shall continue until such Data is destroyed in accordance with Empower's record retention policy.

**29. COUNTERPARTS**

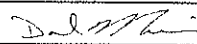
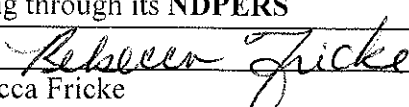
This Agreement may be executed in multiple, identical counterparts, each of which is to be deemed an original, and all of which taken together shall constitute one and the same contract.

**30. EFFECTIVENESS OF AGREEMENT**

This Agreement is not effective until fully executed by both parties. If no start date is specified in the Term of Agreement, the most recent date of the signatures of the parties shall be deemed the Effective Date.

**31. ELECTRONIC SIGNATURES**

Each party agrees that this Agreement and any other documents to be delivered in connection herewith may be electronically signed, and that any electronic signatures reasonably believed to be genuine on this Agreement or such other documents are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

CONTRACTOR	STATE OF NORTH DAKOTA
Empower Retirement, LLC	Acting through its NDPERS
BY: 	BY: 
Daniel A. Morrison	Rebecca Fricke
EVP Government & Taft Hartley Markets	NDPERS Executive Director
Date: 03/15/2024	Date: 3/19/2024

**EXHIBIT 1:  
DATA SECURITY & PRIVACY ADDENDUM**

This Data Security & Privacy Addendum applies to Empower and its Affiliates and describes how Empower protects Personal Data and Plan Data (the “**Addendum**”). Capitalized terms used but not defined herein have the meanings given to them in the Master Service Agreement executed by Empower and Plan Sponsor under which Empower provides services to Plan Sponsor (“**Agreement**”).

**1. Definitions.** The following terms have the meanings set out below and similar terms shall be construed accordingly:

“**Data**” means Personal Data and Plan Data.

“**Data Protection Laws**” means any law with respect to the protection of Personal Data that is applicable to Empower’s Services under the Agreement or any Schedule thereto.

“**Information Security Breach**” means a confirmed compromise of an information system within the authority or responsibility of Empower that results in the unauthorized acquisition, disclosure, modification or use of unencrypted Personal Data, or encrypted Personal Data where the encryption key has also been compromised. An Information Security Breach includes, without limitation, theft and/or malicious use of Data by Empower personnel. A good faith but unauthorized or unintentional acquisition, disclosure, modification or use of Personal Data by an employee or contractor of Empower or a party who has signed a confidentiality agreement with Empower does not constitute a Security Breach if the Personal Data is not subject to further unauthorized acquisition, disclosure, loss, modification, or use.

“**Personal Data**” shall mean information that identifies or is reasonably capable of being associated with a Participant in the Plan or an eligible employee of Plan Sponsor, and includes personally identifiable financial information as defined by Title V of the Gramm-Leach-Bliley Act, but excluding data that is publicly-available and data from which individual identities have been removed and that is not linked or reasonably linkable to any individual.

“**Plan Data**” shall mean non-public Plan level information that is provided to Empower in connection with receipt of the Services. Plan Data excludes data that is de-identified and aggregated for benchmarking and research purposes.

“**Subprocessor**” means any person (including any third party service provider and any Empower Affiliate, but excluding personnel employed by such parties) engaged by Empower to process Personal Data.

**2. Direction.** Plan Sponsor Directs Empower and its Affiliates (and authorizes Empower and its Affiliates to Direct each Subprocessor), where applicable, to process Personal Data as follows: (a) processing in accordance with the Master Agreement and any amendments thereto as executed by the parties; and (b) processing initiated by Participants in their use of the Services. Plan Sponsor



represents that it is and covenants that it will at all relevant times remain duly and effectively authorized to give the Direction set out herein.

**3. Security.** In order to protect Personal Data, Empower will implement appropriate technical and organizational measures designed to protect Personal Data in accordance with the requirements of any Data Protection Laws. In addition to the foregoing, Empower's security program shall conform to the commitments described below.

**4. CCPA Compliance.** Each Party hereto agrees and certifies that such Party complies with all applicable sections of the California Consumer Privacy Act of 2018 and its implementing regulations, as amended or superseded (the "CCPA"), in connection with this Agreement. Empower will notify Plan Sponsor in the event it determines that it is no longer able meet its obligations under the CCPA.

**4.1** Empower processes Personal Data to provide the Services under the Agreement for the following purposes: to maintain or service retirement accounts, provide participant service, education and support, to offer financial wellness programs to participants, to maintain online participant accounts, to provide call center services, to respond to inquiries, to provide benchmarking services to Plan Sponsor, and additional specific services as further described in Schedule A-1 (collectively, the "**Business Purpose**").

**4.2** Except as otherwise permitted by the CCPA, Empower will use, disclose, and retain Personal Data solely for the Business Purpose and will not use, disclose, or retain Personal Data for commercial purposes other than for the Business Purpose. Except as otherwise permitted under the CCPA, Empower will not use, disclose, or retain Personal Data processed in connection with the Services outside the direct business relationship with Plan Sponsor nor combine personal information that it received from, or on behalf of, Plan Sponsor with personal information that it received from another source or collected from its own interaction with the consumer, except as required to provide the Business Purpose or as otherwise permitted by applicable laws.

**4.3** Empower will not sell or share Personal Data in any manner in violation of the CCPA.

**4.4** Upon prior written notice to Empower, Plan Sponsor may take reasonable and appropriate steps to (i) ensure Empower uses the Personal Data collected is in a manner that complies with the CCPA and (ii) stop and remediate any unauthorized use of Personal Data by Empower.

**4.5** Empower shall enable the Plan Sponsor to comply with consumer requests made pursuant to the CCPA to the extent compliance with such requests is required by the CCPA.

**4.6** In the event the CCPA is pre-empted by Federal laws, the terms of this Section 4 shall no longer be applicable, and upon the request of either party hereto, the parties shall cooperate in good faith to reasonably amend or modify these terms to address future changes to Data Protection Laws that require such amendments.

**4.7** Empower shall implement security practices and procedures appropriate to the nature of the Personal Information as set forth herein.

**5. Subprocessing.** Plan Sponsor hereby agrees that Empower may engage its Affiliates and third parties as Subprocessor in connection with the provision of Services under the Agreement. Empower shall carry out reasonable due diligence as appropriate to the nature of each Subprocessor's services to ensure that the Subprocessor is capable of providing the level of protection for Personal Data required by the Information Security Policies. Empower shall ensure that its Affiliates and Subprocessors are bound by privacy protections at least as restrictive as those provided for by this Agreement. Upon request, Empower shall make available a current list of any material Subprocessors that have access to Personal Data; the parties hereto agree that such list is the Confidential Information of Empower and subject to the confidentiality provisions of the Agreement.

**6. Data Subject Rights.** In the event that Empower receives a request from a Participant relating to an exercise by the Participant of the Participant's rights under applicable Data Protection Laws (such as a "right to know" or "right to delete" request), Empower will direct such Participant to take the request to Plan Sponsor. Empower will cooperate with any request by Plan Sponsor to respond to requests to the extent required by applicable Data Protection Laws. respect to the response to such Participant.

**7. Data Security.** Empower's Information Security Policies and related policies address the management of information security, the security controls employed by the organization. These policies include, without limitation:

**7.1** An Information Security Board that is responsible for the development, implementation, and ongoing maintenance of Empower's data security.

**7.2** Documented policies ("**Information Security Policies**") that Empower formally approves, internally publishes, communicates to appropriate personnel and reviews at least annually. Empower's Information Security Policies shall (i) mandate the secure protection and handling of confidential data, (ii) comply with applicable laws, (iii) conform to or exceed applicable industry standards for the retirement plan services industry, and (iv) documented, clear assignment of responsibility and authority for data security-related activities.

**7.3** Policies covering acceptable computer use, record retention/destruction, information classification, cryptographic controls, access control, network security, removable media, remote access, mobile computing and wireless access.

**7.4** Regular testing of the key controls, systems and procedures, including (i) testing of information technology general controls (ITGC) at least annually or whenever there is a material change in business practices, and (ii) infrastructure penetration tests and scans against internet-facing points of presence. Empower will correct vulnerabilities or security issues discovered through such assessments in a manner and time frame consistent with established standards.

**7.5** Policies and procedures designed to protect the security of Plan Data and Personal Data that is accessible to, or held by, Empower's third party suppliers. Such policies shall be based on Empower's Information Security Policies, and shall address, as applicable: (i) the identification and risk assessment of such supplier; (ii) minimum cybersecurity standards required to be met by such suppliers; (iii) due diligence processes used to evaluate the adequacy of cybersecurity practices of such suppliers; and (iv) periodic assessment of such suppliers based on the risk they present and the continued adequacy of their cybersecurity practices.

**7.6** Use of appropriate administrative, technical and operational measures designed to ensure Personal Data and Plan Data is secure.

**7.7** Monitoring, evaluating and adjusting, as appropriate, its data security protocols summarized herein, in light of relevant changes in Data Protection Laws, Services, technology or industry security standards, the sensitivity of data collected or processed by Empower in the provision of its Services, and evolving internal or external risks. Empower may make such updates to its data security protocols and the terms hereof at any time without notice so long as such updates maintain a comparable or better level of security. Individual measures may be replaced by new measures that serve the same purpose without diminishing the security level protecting Personal Data or Plan Data.

**8. Risk Management.** Empower has a risk assessment program that includes regular risk assessments and management for risk identification, analysis, monitoring and reporting.

**9. Human Resources.**

**9.1 Acknowledgements.** Empower shall provide training on its information security practices to its personnel at least annually. Empower personnel shall acknowledge their information security and privacy responsibilities under Empower's policies.

**9.2 Personnel Controls.** Empower completes appropriate pre-employment background checks and screening on its personnel, and requires personnel to complete initial security training at the time they are first employed with Empower and annually thereafter. All personnel attest annually to Empower's Code of Business Conduct and Ethics, which enforces the tenets of Empower's Information Security Policies and its privacy policies. Empower has disciplinary processes for violations of information security or privacy requirements, and promptly removes personnel access to Plan Data or Personal Data upon termination or applicable role change.

**10. Physical and Environmental Safety.**

**10.1 Physical and Environmental Security Controls.** Empower has appropriate physical and environmental controls to protect Empower's equipment, assets, and facilities used to provide services. Physical Security includes, without limitation (i) physical security in the protection of valuable information assets of the business enterprise; and (ii) the provision of

protection techniques for the entire facility, from the outside perimeter to the inside office space, including the datacenters and wiring closets.

**10.2 Ongoing Operations.** Empower protects its facilities and systems containing Data from failures of power, networks, telecommunications, water supply, sewage, heating, ventilation, and air-conditioning.

## **11. Communications and Operations Management.**

**11.1 Controls.** Empower has policies and procedures in place for communications and operations management controls. Such controls address: hardening, change control, segregation of duties, separation of development and production environments, network security, virus protection, patch management, media controls, data in transit, encryption, audit logs, and time synchronization.

**11.2 Operations Security.** Empower's Information Security Policies mandate ongoing Operations Security requirements, including but not limited to, installing or maintaining (i) security patches for operating systems and applications within standard timeframes based on severity; (ii) industry standard versions of operating systems, software and firmware for system applications and components; and (iii) up-to-date system security agent software which includes updated malware and virus definitions.

## **12. Access Control.**

**12.1 Access Control.** Empower utilizes access controls designed to ensure that only Empower personnel with the proper need and authority can access its internal recordkeeping system and associated data. Empower's access controls include but are not limited to: limiting access to personnel with a requirement to view Personal Data; establishing least-privilege controls to protect systems and Personal Data; generation of audit trails; periodic review and approval of personnel who need to access the Empower recordkeeping system; and termination of personnel access promptly following severance from employment.

**12.2 Authentication.** Empower authenticates user identity through appropriate authentication controls such as strong passwords, token devices, or biometrics. Passwords must meet minimum length and complexity requirements.

**12.3 Remote Access to Empower Systems.** Empower uses multi-factor authentication for remote access to its systems.

## **13. Information Systems Acquisition, Development and Maintenance.**

**13.1 Systems Development Security.** Empower addresses security as part of information systems development and operations and follows secure coding methodologies based on application development security best practices.

**13.2 Software Security Management.** Empower’s information systems (including operating systems, infrastructure, business applications, off-the-shelf products, services and user-developed applications) adheres to the information security standards set forth in Empower’s Information Security Policies.

**13.3 Vulnerability Assessments/Ethical Hacking.** Empower performs vulnerability assessments and penetration testing against Internet-facing points of presence. Empower corrects vulnerabilities or security issues discovered through such assessments in a manner and time frame consistent with established standards set forth in Empower’s Information Security Policies.

**13.4 Cryptography.** Empower uses cryptography techniques that assist Empower with preventing the unauthorized capture, modification of or access to data or information. Empower uses standard encryption algorithms that follow up-to-date encryption standards and industry practices. Such cryptography techniques may include but are not limited to: encryption of sensitive data sent across external communication lines; requirement of minimum 128-bit encryption TLS encryption for web browsers; and encryption of Personal Data while stored on laptops, mobile devices, and in recordkeeping databases.

#### **14. Information Security Breach Management.**

**14.1 Incident Management Program.** Empower maintains investigative measures and techniques for incident handling, including but not limited to: a formalized, enterprise-wide Computer Security Incident Response Team (“CSIRT”), and CSIRT processes which are tested at least annually.

**14.2 Information Security Breach Response.** Empower will notify Plan Sponsor after becoming aware of any Information Security Breach in accordance with all applicable Data Protection Laws. For the avoidance of doubt, Empower will (i) keep the Plan Sponsor informed of significant developments in connection with the investigation of such incident; (ii) investigate and assist any regulator or other governmental body with oversight over the Information Security Breach in investigating, remedying and taking any other action regarding the Information Security Breach as appropriate or required by law; and (iii) provide Plan Sponsor with information about remedial measures that have been undertaken to prevent such Information Security Breach from reoccurring. In the event that individual or regulatory notifications are required under applicable Data Protection Laws, the parties will cooperate with respect to notifications. To the extent the Information Security Breach is caused by Empower’s failure to abide by its obligations as set forth in this Data Security Addendum, Empower shall bear the costs of such notifications and provision of credit monitoring services to affected individuals to the extent required by law or otherwise appropriate in Plan Sponsor’s and Empower’s reasonable judgment.

#### **15. Plan Sponsor Assessment Rights.**

**15.1 Assessment via Security Assurance Package.** Within the secure Plan Sponsor website provided by Empower, Empower provides documentation that supports and informs the reader about Empower’s current security program and practices. These documents are referred to

as the Security Assurance Package (“**SAP**”), which currently consists of the following items: Security Program Overview document, SOC 1 report, SOC 2 report, available IT certification reports (e.g. Verizon CRP), and a completed SIG questionnaire with related supporting materials. (The SIG is a standardized document template created by the Shared Assessments Program, a consortium of leading financial institutions, the Big 4 accounting firms, and companies from a wide array of industries.)

**15.2 Regulatory Assessment.** If Plan Sponsor’s governmental regulators require that Plan Sponsor perform an on-site audit of Empower’s network security, as supported by evidence provided by Plan Sponsor, Plan Sponsor may conduct an on-site audit of Empower’s network security, relevant to the security of Plan Data (“**Regulatory Audit**”). Unless a different notice or frequency is required by Plan Sponsor’s governmental regulators, a Regulatory Audit may be conducted by Plan Sponsor once per year at a mutually agreed-upon time with at least 60 days’ advance written notice to Empower. If a Regulatory Audit requires the equivalent of more than two business days of Empower Personnel’s time to support such audit, Empower may charge Plan Sponsor’s an audit fee at Empower’s then-current rates for each day thereafter.

**15.3 Miscellaneous.** This Addendum is governed by and incorporated into the Agreement. In the event of any conflict between the Agreement and this Addendum, the Agreement will prevail. Any capitalized terms used but not otherwise defined herein shall have the meaning set forth in the Agreement.

**EXHIBIT 2:  
PROCEDURES FOR COMPLYING WITH FUND COMPANY MARKET TIMING AND  
EXCESSIVE TRADING**

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This Exhibit 2 shall apply to any Recordkeeping Services Schedule under the Master Services Agreement

**PROCEDURES FOR COMPLYING WITH FUND COMPANY MARKET TIMING AND EXCESSIVE  
TRADING POLICIES**

The prospectuses, policies and/or procedures of certain fund companies require retirement plan providers offering their fund(s) to agree to restrict market timing and/or excessive trading ("prohibited trading") in their funds. The following procedures describe how we will comply with fund company instructions designed to prevent or minimize prohibited trading.

Various fund companies instruct intermediaries to perform standardized trade monitoring while others perform their own periodic monitoring and request trading reports when they suspect that an individual is engaging in prohibited trading. If an individual's trading activity is determined to constitute prohibited trading, as defined by the applicable fund company, the individual will be notified that a trading restriction will be implemented if prohibited trading does not cease. (Some funds may require that trading restrictions be implemented immediately without warning, in which case notice of the restriction will be provided to the individual and plan, if applicable). If the individual continues to engage in prohibited trading, the individual will be restricted from making transfers into the identified fund(s) for a specified time period, as determined by the applicable fund company. Individuals are always permitted to make transfers out of the identified fund(s) to other available investment options. When the fund company's restriction period has been met, the individual will automatically be allowed to resume transfers into the identified fund(s).

Additionally, if prohibited trading persists, the fund company may reject all trades initiated by the plan, including trades of individuals who have not engaged in prohibited trading.

Note: certain plan sponsors have or may elect to implement plan level restrictions to prevent or minimize individual prohibited trading. To the extent that such procedures are effective, we may not receive requests for information from the fund companies or requests to implement the restrictions described above.

01/2022

## EXHIBIT 3: PRIVACY NOTICE

**PRIVACY NOTICE**  
REV 2/2023



<b>FACTS</b>	What does Empower Retirement, LLC (Empower) do with your personal information?
<b>WHY?</b>	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
<b>WHAT?</b>	<p>The types of personal information we collect and share depend on the product or service you have with us. This information can include:</p> <ul style="list-style-type: none"> <li>• Social Security number and account balances.</li> <li>• Retirement assets and transaction history.</li> <li>• Employment information and income.</li> </ul> <p>When you are no longer our customer, we continue to share your information as described in this notice.</p>
<b>HOW?</b>	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information, the reasons Empower chooses to share, and whether you can limit this sharing.

REASONS WE CAN SHARE YOUR PERSONAL INFORMATION	DOES EMPOWER SHARE?	CAN YOU LIMIT THIS SHARING?
<b>For our everyday business purposes —</b> such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus	Yes	No
<b>For our marketing purposes —</b> to offer our products and services to you	Yes	No
<b>For joint marketing with other financial companies</b>	No	We don't share
<b>For our affiliates' everyday business purposes —</b> information about your transactions and experiences	Yes	No
<b>For our affiliates' everyday business purposes —</b> information about your creditworthiness	No	We don't share
<b>For nonaffiliates to market to you</b>	No	We don't share

<b>QUESTIONS?</b>	Call toll-free at 855-756-4738 or go to <a href="https://empower.com/privacy">empower.com/privacy</a>
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WHO WE ARE	
<b>Who is providing this notice?</b>	Empower and its affiliates. A list of companies is provided at the end of this notice.
WHAT WE DO	
<b>How does Empower protect my personal information?</b>	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include physical, technical, and procedural safeguards, such as building and system security, and personnel training.
<b>How does Empower collect my personal information?</b>	<p>We collect your personal information, for example, when you:</p> <ul style="list-style-type: none"> <li>• Provide account information or apply for a loan.</li> <li>• Enter into an investment advisory contract or seek advice about your investments.</li> <li>• Tell us about your investment or retirement portfolio.</li> </ul> <p>We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.</p>
<b>Why can't I limit all sharing?</b>	<p>Federal law gives you the right to limit only:</p> <ul style="list-style-type: none"> <li>• Sharing for affiliates' everyday business purposes — information about your creditworthiness.</li> <li>• Affiliates from using your information to market to you.</li> <li>• Sharing for nonaffiliates to market to you.</li> </ul> <p>State laws and individual companies may give you additional rights to limit sharing.</p>
DEFINITIONS	
<b>Affiliates</b>	<p>Companies related by common ownership or control. They can be financial and nonfinancial companies.</p> <ul style="list-style-type: none"> <li>• <i>Our affiliates include companies with the Empower names, as listed below, and other financial companies such as Empower Advisory Group, LLC.</i></li> </ul>
<b>Nonaffiliates</b>	<p>Companies not related by common ownership or control. They can be financial and nonfinancial companies.</p> <ul style="list-style-type: none"> <li>• <i>Empower does not share with nonaffiliates so they can market to you.</i></li> </ul>
<b>Joint marketing</b>	<p>A formal agreement between nonaffiliated financial companies that together market financial products or services to you.</p> <ul style="list-style-type: none"> <li>• <i>Empower doesn't jointly market.</i></li> </ul>
WHO IS PROVIDING THIS NOTICE?	
<p>Empower Retirement, LLC; Empower Annuity Insurance Company of America; Empower Life &amp; Annuity Insurance Company of New York; Empower Plan Services, LLC; Empower Advisory Group, LLC; Empower Financial Services, Inc.; The Canada Life Assurance Company (U.S. operations); Great-West Life &amp; Annuity Insurance Company of South Carolina; Empower Capital Management, LLC; Empower Funds, Inc.; Empower Trust Company, LLC; Empower Holdings, Inc.; Empower Annuity Insurance Company; Prudential Bank &amp; Trust, FSB (to be merged into Empower Trust Company, LLC in or around March 2023); TBG Insurance Services Corporation; MC Insurance Agency Services, LLC; Mullin TBG Insurance Agency Services, LLC; COMOSA REIT Corp. Empower Personal Wealth, LLC; Empower Services Holdings, LLC; Personal Capital Advisors Corporation (to be merged into Empower Advisory Group, LLC in or around April 2023); and Personal Capital Services Corporation. Empower and/or certain Affiliates also administer certain insurance policies on behalf of other insurance companies as a "Third Party Administrator" in connection with certain acquisitions it has made of businesses previously owned by other companies.</p>	

GEN-FLY-WF-1831220-0223(2332382)

## EXHIBIT 4: BUSINESS CONTINUITY PLAN NOTICE

### BUSINESS CONTINUITY PLAN NOTICE

Empower Financial Services, Inc. ("Empower"), a subsidiary of Empower Annuity Insurance Company of America and affiliate of Empower Life & Annuity Insurance Company of New York\* and Empower Retirement, LLC, maintains a comprehensive business continuity plan designed to respond reasonably and effectively to events that lead to significant business disruption, such as natural disasters, power outages, or other events of varying scope. This plan defines critical functions and systems, alternate work locations, vital books and records, and staff resources, and provides for the continuation of business operations with minimal impact, depending on the severity and scope of the disruption. The plan is reviewed and tested no less than once annually to ensure that the information in the plan is kept current and that documented recovery and continuity strategies adequately support its business operations. Of utmost importance to the plan is the ability for customers to maintain access to securities accounts and assets in those accounts.

In the event that one of the contact centers or back office operation facilities becomes unavailable for any reason, calls would be re-routed to one of the firm's alternative contact center or operations facilities.

In the event of a significant business disruption to the primary office and/or data center, access to customer accounts will be provided via the Company's Web site and voice response system, operated from an alternative data center. Customer service will continue to be provided by re-routing telephone calls to a contact center located in one or more alternative sites located outside of the region. Secure work from home solutions are available for all staff.

While no contingency plan can eliminate the risk of business interruption, or prevent temporary delays with account access, the firm's continuity plan is intended to mitigate all reasonable risk and resume critical business operations within 24 hours or the next business day, whichever is later.

\* Record keeping and administrative services are provided by Empower Retirement, LLC, and in New York, Empower Life & Annuity Insurance Company of New York, or one of its subsidiaries or affiliates. Securities offered in your account may be offered through another broker/dealer firm other than Empower Financial Services, Inc., a wholly owned subsidiary of Empower Annuity Insurance Company of America. Please contact your investment provider for more information if needed.

This disclosure is subject to modification at any time. The most current version of this disclosure can be found on the the Company's website or can be obtained by requesting a written copy by mail.

BCP – Empower Customer Notice (Ed. August 2022)

**EXHIBIT 5: PLAN SPONSOR REQUEST FOR PROPOSAL**

Plan Sponsor's Request for Proposal ("RFP") number 192.08-16-23, incorporated by reference.

## **EXHIBIT 6: VENDOR PROPOSAL**

Empower's proposal in response to RFP number 192.08-16-23, incorporated by reference.

**SCHEDULE A-1:  
LIST OF PLANS**

1. The North Dakota Section 457(b) Deferred Compensation Plan and Trust (“457(b) Plan”)  
Group Account Number: 100455-01
2. The North Dakota Public Employees Retirement System Defined Contribution Plan (“401(a) Plan”)  
Group Account Number: 100456-01

**SCHEDULE A-2:  
RECORDKEEPING SERVICES & FEE SCHEDULE**

**for the**

- The North Dakota Section 457(b) Deferred Compensation Plan and Trust (“457(b) Plan”); and
- The North Dakota Public Employees Retirement System Defined Contribution Plan (“401(a) Plan”)

**1. GENERAL**

This Recordkeeping Services Schedule (“**Schedule**”) is a separate agreement between the parties hereto and incorporates the terms and conditions of the Master Services Agreement (“**Agreement**”) between Empower Retirement, LLC and Plan Sponsor. All references to “Empower” in this Schedule are deemed to be references to Empower or the Empower Affiliate, as the case may be, that enters into this Schedule. All references to “Plan” on this Schedule are deemed to be references to the plan or plans listed above. Capitalized terms used but not defined herein shall have the meanings given to them in the Agreement. Any conflict between this Schedule and the terms of the Agreement shall be resolved in favor of the Agreement, unless this Schedule specifically states that its provision will prevail.

**2. SCHEDULE TERM**

**2.1.** The Effective Date of this Schedule is June 27, 2024 (“**Schedule Effective Date**”). This Schedule shall remain in full force and effect during the duration of the Agreement, unless terminated in accordance with the termination provisions of Section 5 of the Agreement. The termination of this Schedule shall also operate as a termination of all Schedules to the Agreement.

**2.2.** Upon termination, Plan Sponsor Directs Empower to deduct any and all outstanding expenses and fees reasonably and properly owed to Empower under the terms of the Agreement from the applicable Plan’s trust on the termination date, unless paid by the Plan Sponsor. Upon termination of this Schedule, Empower will cease to provide the Services herein. Plan Sponsor acknowledges that after the termination of this Schedule, Plan Sponsor (or if delegated by the Plan Sponsor, the successor recordkeeper) will be responsible for performing all actions required to be taken with respect to the Plan including, but not limited to: processing of contributions, loans and distributions, and the distribution of forms to Participants. On and after the actual date of termination of this Schedule, Empower shall have no further obligations hereunder except as set forth in Section 13 of the Schedule, Transition Assistance Services.

### 3 NATURE OF EMPOWER'S SERVICES

**3.1 Services.** Empower will provide the Services set forth in this Schedule or as further described in the Exhibits attached hereto. Empower agrees to provide the Services in accordance with the performance standards set forth in Exhibit A-1 Integration Milestones & Performance Guarantees.

### 4 PLAN SPONSOR RESPONSIBILITIES

Plan Sponsor acknowledges that Empower cannot effectively perform the Services without Plan Sponsor's cooperation. Accordingly, Plan Sponsor acknowledges and agrees that it will fulfill the following duties and obligations:

**4.1 Provision of Information.** Plan Sponsor or its designee, including any third parties retained by or on behalf of the Plan or Plan Sponsor, will provide all information necessary for Empower to perform the Services in a manner and format that does not require manual intervention or manipulation by Empower. Plan Sponsor acknowledges and agrees that Empower shall not bear any responsibility for any penalties or other costs incurred as a result of Plan Sponsor's failure to provide such information in a timely manner. Plan Sponsor further acknowledges and agrees that Empower, upon providing written notice, may charge an additional fee if any necessary information is not provided on a timely basis, or in an electronic format usable by Empower without any manual intervention or manipulation. Plan Sponsor agrees that Empower shall be entitled to fully rely upon the accuracy and completeness of information Plan Sponsor submits and that Empower shall have no duty or responsibility to verify such information; provided, however, that in the event Empower has actual knowledge of any inaccuracy or discrepancy with respect to information received, Empower shall use its best efforts to confirm the information with Plan Sponsor. If, as a result of incorrect or incomplete information furnished by Plan Sponsor, it becomes necessary to repeat any calculation or service, complete any new forms or revise any completed forms, Empower reserves the right to charge an additional fee. Each party agrees to bear its own transmission costs and is solely responsible for its own acts and omissions relating to transmitting, receiving, storing and handling documents and information, including the maintenance of all equipment, software and testing necessary to effectively, reliably and securely send and receive such documents and information.

**4.2 Remitting Contributions and Allocation Instructions.** Plan Sponsor agrees that it is solely responsible for collecting and remitting all initial and recurring contributions and loan repayments to Empower electronically via Empower's plan sponsor website, or another mutually agreed-upon manner within the time prescribed by applicable law. Plan Sponsor acknowledges that Empower is not responsible for monitoring the amount and/or timeliness of such contributions and loan repayments.

**4.3 Plan Document Responsibilities.** Plan Sponsor has the responsibility to ensure that the Plan documents are accurate and complete, to interpret Plan terms and to review the Plan document services provided by Empower, if any. Plan Sponsor is responsible to ensure that the Plan is being operated in accordance with its terms. Plan Sponsor shall provide Empower with a signed copy of the Plan document and all amendments to the Plan document within thirty (30) days after such document and/or amendment is adopted.

**4.4 Investment Options.** Plan Sponsor is responsible for the selection of all Investment Options based on Plan Sponsor's independent evaluation, or that of its registered investment advisor, consultant, broker or other agent, as applicable. Plan Sponsor must notify Empower in writing of the Investment Options intended to be serviced by Empower and such Investment Option services are only provided as agreed upon by Empower and may be subject to certain limitations or conditions. Plan Sponsor acknowledges that Empower or its Affiliates may receive fees from mutual fund families or other Investment Option Sponsors or their affiliates for providing certain administrative or other services thereto ("**Fund Service Fees**") in connection with the Plan. Plan Sponsor may request additional information regarding such fees at any time. If the provider of an Investment Option causes an Investment Option to become unavailable to the Plan, Empower will notify Plan Sponsor as soon as practicable after the Investment Option Sponsor notifies Empower.

**4.5 Plan Sponsor Acknowledgment of Market Timing Procedures.** Plan Sponsor acknowledges that the SEC requires mutual fund companies to establish procedures to prevent market timing and excessive trading. Plan Sponsor acknowledges receipt of, and agrees to adhere to, the terms and conditions of the Procedures for Complying with Fund Company Market Timing and Excessive Trading Policy attached as an Exhibit to the Agreement, as amended from time to time.

**4.6 Payment of Plan Expenses.** Plan Sponsor may Direct Empower in writing to deduct Plan expenses from the Plan to the extent Plan Sponsor has determined that deduction is specifically allowed by the Plan document and applicable law, and to remit to the party designated by the Plan Sponsor.

**4.7 Plan Sponsor Direction to Perform the Services.** In performing the Services, Empower is acting at the Direction of the Plan Sponsor or designee by following the procedures set forth in a plan administration guide or similar procedural document provided by Empower to the Plan Sponsor, including by posting such procedural documents to the Plan Sponsor website. To the extent the procedures do not fully address a specific issue, the Plan Sponsor agrees to provide Direction in a manner reasonably requested by Empower, and Empower may rely upon any such Direction by a designee of Plan Sponsor that Empower reasonably believes to be



authorized to act on behalf of Plan Sponsor.. Plan Sponsor specifically intends that Empower will have no discretionary authority with respect to following such Direction.

**4.8 Electronic Delivery.** Empower will deliver Plan-related notices and other documents to Participants under the Schedule in an electronic manner, as follows:

**4.8.1** Plan Sponsor Directs Empower to deliver Plan notices to the Participant's email address in the following order:

- (i) to a work or personal email address provided and agreed to by the Participant.
- (ii) to a work email address provided by the Plan Sponsor. The Plan Sponsor confirms the Participant has the effective ability at work to access notices delivered to the work email addresses provided to Empower.
- (iii) to a personal email address provided by the Plan Sponsor or Participant.

**4.8.2** If **4.8.1(iii)** above is used, Empower will send an initial notification of electronic delivery via regular mail to each Participant at least 10 days prior to delivering any Plan-related documents via email, unless Empower receives confirmation that the initial notification has already been provided to the Participant.

- (i) If notice of availability of a Plan-related document is returned undeliverable, Empower will send the notice to another email on file for the Participant. If no other email is on file for the Participant or such other email is also returned undeliverable, Plan related documents will be delivered via regular mail to the Participant until such time as Empower is provided another email address for the Participant.
- (ii) Participants may request to receive a paper copy of a Plan-related document for no cost. In addition, Participants may opt out of electronic delivery and request that their Plan-related documents be delivered via regular mail at any time.
- (iii) Empower will maintain access to Plan-related documents on the Participant website.

**4.8.3** If Empower is not provided with an email address, Plan-related documents will be delivered to the Participant via regular mail.

**4.8.4** The Plan Sponsor agrees to provide work email addresses in its records to Empower for all Participants by the TOA and to provide Empower with email addresses for all Participants that enroll in the Plan after the effective date.

**4.9 Review of Reports.** Plan Sponsor is responsible for reviewing and monitoring reports made available by Empower (whether provided electronically, by posting on an Empower website, or otherwise) regarding Plan activity, transactions and investments to verify that the transactions indicated in the reports properly reflect the Direction provided by the Plan Sponsor. Empower's performance of its obligations under this Agreement shall be presumed to be accurate unless Plan Sponsor provides Empower with proper notice of discrepancies.

#### **4.10 Error Correction.**

**4.10.1 Transactional Errors.** If Empower does not accurately process contribution or investment instructions provided in good order by a Participant or the Plan Sponsor (e.g., investment allocation of Plan contributions, investment exchanges or transfers) or does not accurately process a Plan transaction as instructed by a Participant or Directed by the Plan Sponsor (e.g. timely process a Plan distribution or process a Participant's direct rollover request as a lump sum) and the issue is brought to Empower's attention within ninety (90) days from the statement date following the occurrence of the error, Empower will, at its own expense, retroactively correct the error by adjusting the Participant's account to the financial position where it would have been, adjusted for earnings and reduced by any losses, had the error not occurred. If the issue is not timely brought to Empower's attention, Empower may correct the error by adjusting the Participant's account prospectively.

**4.10.2 Plan Operational Errors.** If Empower makes an error in providing any other administrative Service described under this Agreement to the Plan that materially impacts Participants' accounts or creates an operational or fiduciary issue for the Plan (e.g. failures to follow an administrative procedure or Plan Sponsor Direction, etc.), Empower will, within a reasonable time after being notified of or discovering such error, notify the Plan Sponsor and describe the corrective option that Empower proposes to employ that is consistent with the Internal Revenue Service, Department of Labor, or other agency correction guidelines, where applicable, and Plan Sponsor shall review the proposed correction option. Unless the Plan Sponsor objects to such proposed correction and requests an alternate correction option within ten (10) business days after receiving notice of Empower's suggested corrective option, or a longer period as mutually agreed to in advance by the parties, the Plan Sponsor Directs Empower to promptly process the correction in accordance with the proposal, at Empower's expense. If Empower's proposed

correction is consistent with Internal Revenue Service, Department of Labor, other agency correction guidelines, or other guidance, but the Plan Sponsor requests an alternate correction method resulting in expenses in excess of what Empower would have incurred under its proposed correction, the Plan Sponsor shall bear such additional expenses (including without limitation any additional net loss resulting from such method).

**4.10.3 Trading Errors.** If Empower does not accurately process a trade with the mutual fund company or Investment Option Sponsor as Directed by the Plan Sponsor or as instructed by a Participant, then Empower will correct the share position at the mutual fund company or Investment Options as if the error had not occurred. In the event there are multiple funds or related errors in one or more funds involved, Empower will net gains and losses across all Investment Options involved in the associated error(s). If the Plan Sponsor utilizes the services of a third-party trustee and/or custodian (“**Third-Party Trustee**”), Empower shall in no event be required to perform any correction: (i) for a trading error that results from an error or omission by the Third-Party Trustee, (ii) to be performed under the terms of any service arrangements between the Plan Sponsor and such Third-Party Trustee (the “**Third-Party Trust Agreement**”), (iii) that falls within error tolerance ranges under the Third-Party Trust Agreement, or (iv) that otherwise would exceed any requirements for error correction by the Third-Party Trustee under the Third-Party Trust Agreement.

**4.10.4** The parties acknowledge and agree that Empower will have no liability for an error caused by acts or omissions of the Plan Sponsor, Participants or any other third party other than Empower’s Affiliates, agents, vendors and suppliers. Empower will provide assistance to Plan Sponsor, at the Direction of Plan Sponsor and at Plan Sponsor’s expense, in the correction of errors.

**4.10.5 Duty to Mitigate.** The parties acknowledge and agree that each party has a duty to mitigate any such errors so as to minimize the expenses that may be incurred to correct such errors by promptly reviewing transaction confirmations, account statements and other Plan reports, as applicable, and providing notification of any error, providing timely approval of correction measures and taking such other reasonable steps as may be necessary (e.g., proactively transferring account holdings into the appropriate Investment Option).

**4.10.6 Transactional Gain/Loss Compensation Policies for Error Correction.** Empower may incur a gain or loss in the process of adjusting a Plan or Participant account to correct certain errors due to changes in the share/unit price of an Investment Option between the original transaction date and the correction date. The adjusted position of Plan and Participant accounts are not impacted by transactional gains or losses incurred by Empower to settle the Investment Option positions in the course of correcting the account. Empower will net any Investment Option pricing differences as part of the correction process. If a correction is made at

Empower's expense, Empower, not the Plan or Participant, will incur any transactional loss and Empower will retain any transactional gain.

**4.11 Account Protection.** Empower or Plan Sponsor will promptly notify the other party if it discovers (or if either party is notified by the Participant) that an unauthorized distribution was made from the Participant's account. Empower will conduct an investigation and take any appropriate steps, which may include working with law enforcement, to determine the root cause of the unauthorized distribution. Plan Sponsor agrees to cooperate in any such investigation and will comply with reasonable requests for information. To the extent Empower offers Participants protection against account losses that result from unauthorized transactions, Empower will restore losses as of the date of the account loss once Empower has had sufficient time to conduct a preliminary investigation and attempt to ascertain the root cause. Such protection is not available if Plan Sponsor refuses or neglects to follow commercially reasonable security practices, as set forth in Section 15 Mutual Obligation to Protect Data of the Agreement, or if the loss resulted from a compromise of the systems or security protocols of Plan Sponsor or its third party service providers (other than Empower).

## **5 PLAN INVESTMENT OPTIONS & FEES**

### **5.1 Selection of Investment Options**

**5.1.1** The parties agree that the purchase and sale of securities for the Plan, except for employer stock and unaffiliated self-directed brokerage, will be effected through Empower Financial Services, Inc., a broker/dealer affiliate of Empower.

**5.1.2** In addition to the sole responsibility for the selection of the Investment Options to be made available under the Plan, Plan Sponsor will also Direct Empower to designate one of the Investment Options available to be the default investment, in which any contribution or other amount credited under the Plan for which neither the Participant nor the Plan Sponsor has provided Empower with investment directions in good order will be invested ("**Default Investment Fund**"). Plan Sponsor may designate a Default Investment Fund(s) for Participant contributions and also designate a second Default Investment Fund for employer contributions.

**5.1.3** Plan Sponsor Directs Empower and its Affiliates, as applicable, to cause all dividends, capital gain distributions, interest or other earnings paid by an Investment Option under the Plan to be reinvested in such Investment Option unless Directed otherwise by the Plan Sponsor and agreed to by Empower.

### **5.2 Information Regarding Investment Options**

Plan Sponsor Directs Empower to obtain, or cause its designee to obtain, all necessary information (including but not limited to valuation, performance, prospectuses and other investment information) regarding any Investment Option available under the Plan from any third parties representing such Investment Options (“**Investment Option Sponsor(s)**”). Plan Sponsor acknowledges that prospectuses for the Investment Options, as applicable, will be made available electronically through one or more websites maintained by Empower or its Affiliates. In the event an Investment Option Sponsor does not provide all necessary information and Empower agrees, Plan Sponsor will arrange to provide Empower or its designee, or cause Empower or its designee to be provided, the necessary information regarding said Investment Option. In no event will Empower be responsible for the accuracy of any such information provided to Empower or its designee regarding any Investment Option, and Empower or its designee will have no duty or obligation to question, confirm or independently verify any such information.

### **5.3 Investment Option Changes.**

**5.3.1** Plan Sponsor may replace the Investment Options at any time, subject to applicable notice requirements. Plan Sponsor will notify Empower in writing of any changes to such Investment Options or the Default Investment Fund(s), and the parties will agree upon a process for the transfer of assets and investment elections, if applicable, from prior Investment Options to new Investment Options.

**5.3.2** If any Investment Option is terminated by the Investment Option Sponsor, and Plan Sponsor wishes to replace the terminated option, Plan Sponsor agrees to replace the terminated option with an available fund from any fund company that currently has, or will enter into, a trading agreement with Empower.

### **5.4 Self-Directed Brokerage Account.**

**5.4.1** A self-directed brokerage (“**SDB**”) account shall be made available to Participants, provided Plan Sponsor executes all required Empower and SDB provider documents. Plan Sponsor acknowledges that the SDB shall be administered in accordance with procedures provided by Empower, and that the core investment minimum shall be \$2,500, the initial transfer minimum shall be \$500, and the subsequent transfer minimum shall be \$100, as described in the SDB policies and procedures.

**5.4.2 Fees for Self-Directed Brokerage.** If SDB is an Investment Option under the Plan, Empower and the Plan Sponsor will execute a separate agreement specifying services, terms, and fees for the SDB program. Any fees charged by the SDB provider are in addition to those described below and subject to execution of a separate SDB agreement. At a minimum the following administration fee will apply:

\$50.00 per Participant, who opens a SDB, per year, deducted from the Participant's account balance in an amount of \$12.50 per quarter.

## **6 PLAN IMPLEMENTATION, CONVERSION & ACH AUTOMATION**

**6.1 Initial Implementation and Conversion.** Empower will, together with the Plan Sponsor and their designees, coordinate the transfer of records and assets from the Plan's prior service provider(s) to provide an accurate database for conversion of Plan administration to Empower, beginning at a time mutually agreed to by the parties. Empower requires a full test file in good order from the prior service provider at least 60 days in advance of the conversion date and Plan Sponsor agrees to provide the data elements required by Empower. Plan conversion will be conducted during a period commencing on TOA and extending for a period to be agreed upon with the Plan Sponsor (the "**Transition Period**"). During the Transition Period, Empower will not accept contributions, and will not process investment transfers or exchanges, distributions, loans or other Participant transactions unless specifically agreed upon with the Plan Sponsor. The prior service provider(s) will process Participant contributions received prior to TOA and will issue final quarterly Participant statements accordingly.

**6.2 Reconciliation of Trust Assets and Participant Accounts.** If applicable, before the end of the Transition Period, Empower must receive the Plan's final records and the value of the assets held for the Plan must equal the aggregate value of Participant accounts, as reconciled by Empower and reviewed by the Plan Sponsor. If there is any discrepancy in balances that cannot be resolved by the Plan Sponsor or a prior service provider to the Plan, Plan Sponsor will Direct Empower regarding the allocation of any surplus or will arrange for contribution of additional amounts to the Plan to make-up any shortfall, as the case may be, before the end of the Transition Period. Plan Sponsor acknowledges that extension of the Transition Period may be necessary because of the action or inaction of the Plan Sponsor or a prior service provider, or because of inaccurate or incomplete information.

**6.3 ACH Automation.** Plan Sponsor Directs Empower to accept a transfer of Plan records that reflects Participant ACH banking information as provided by the Plan Sponsor or by the Plan's prior service provider, without any further review and validation of the ACH information provided.

**6.3.1** In Directing Empower to accept a transfer of existing Participant ACH banking information to its recordkeeping system, the Plan Sponsor certifies the following:

**6.3.1.1** The Participant has previously authorized the Plan to process an ACH debit and/or credit of the Participant's account at the designated financial institution ("Account") in connection with all applicable Plan transactions and has authorized the designated

financial institution, in the form of electronic fund transfer, to credit and/or debit the same to such Account.

**6.3.1.2** The Participant has not revoked the ACH authorization for the Account prior to the transfer and the Plan shall treat the Participant's ACH authorization for the Account as remaining in effect until Empower receives a notice of cancellation from the Participant.

**6.3.1.3** Plan Sponsor Directs Empower to administer all ACH transactions for all Plan purposes under the terms of Empower's separate ACH Agreement, which the Plan Sponsor has adopted as the Plan's terms and conditions governing all applicable ACH transactions processed on the Empower platform.

**6.4 Payroll Contributions Prior to TOA.** To the extent that Empower agrees in writing to accept and hold in trust or custody employer and employee contributions to the Plan from payroll contributions that occur prior to TOA, this Schedule Effective Date is modified to the date that such contributions are determined to be in good order by Empower, and the Agreement will be in effect for the limited purpose of accepting such contributions and holding them in trust or custody. The contributions will be held in trust or custody in a plan level account and Plan Sponsor will provide written Direction to Empower as to how such contributions shall be invested until allocated to Participant accounts following TOA as Directed by the Plan Sponsor. Plan Sponsor agrees that Empower is not responsible as recordkeeper for any assets that have not been received and accepted. If TOA occurs at the beginning of a calendar year and payroll contributions are accepted in the prior calendar year under this section, Plan Sponsor agrees that Empower is not responsible for performing compliance testing for the prior calendar year.

## **7 RECORDKEEPING AND ADMINISTRATION SERVICES & FEES**

**7.1 Basic Plan Administration Fee.** Commencing on TOA, Empower will be entitled to the following annual administration fee ("**Basic Plan Administration Fee**"). This fee is used, in whole or in part, for administrative services provided by Empower as described in this Schedule. In addition, some or all of the fee (or any other compensation, revenue, asset or source of funding available to Empower, in Empower's sole discretion) may be used by Empower to make payments to the Plan under a Plan Expense Account or similar arrangement, if applicable, between the Plan Sponsor and Empower. All Services set forth in this Schedule are included in the Basic Plan Administration Fee unless an additional fee is otherwise noted herein. In the event that the Plan Sponsor requests different or additional Services, the parties shall meet to discuss relevant Empower capabilities and any additional fees that may apply, which fees shall be agreed to in writing by the parties in connection with providing the additional Services.

The Basic Plan Administration Fee is \$46.00 per Participant per year per Plan.

The Basic Plan Administration Fee will be payable on a quarterly basis, \$11.50 per quarter, based on the number of Participant accounts with an account balance greater than \$1,000.00, including self-directed brokerage account balances, at the end of the assessment period. Participants taking a full withdrawal prior to a processing date will be charged the fee at the time of withdrawal.

In addition, Empower and/or one or more of its Affiliates may receive Fund Service Fees in connection with the Plan.

## **7.2 Revenue Credit Arrangement.**

**7.2.1** Notwithstanding Sections 4.4 and 7.1 of this Schedule, Empower and Plan Sponsor agree that Empower will pay to the Plan, on a quarterly basis, the Revenue Credits amount as described below. Revenue Credits shall be determined by multiplying the Plan's average daily balance in each of the Plan's Investment Options for the quarter by the annual rate (prorated for the quarter) of Fund Service Fees paid to Empower by the Investment Option or its affiliates as reflected in the Plan's Plan Fee Disclosure Report (a copy of the Plan's most recent Fee Disclosure Report is available on the Plan Sponsor Website) ("**Revenue Credits**"). Plan Sponsor Directs Empower to allocate any Revenue Credits to Participant accounts proportionately based on the average daily balance of such accounts in the Investment Option during the quarter and to invest such amounts based on the Participant's investment elections with respect to future contributions or, if none, the applicable Plan Default Investment Fund. Revenue Credits shall be determined and allocated to the Participant accounts within 45 days after the end of the quarter. In the event that the Agreement is terminated, Empower will determine and allocate Revenue Credits to the Plan in advance of the Plan's scheduled termination date based on an estimate of the Plan's average daily balance in each of the Plan's Investment Options.

**7.2.2** The Revenue Credit under this arrangement is funded from Empower's general assets and is being made available as a reduction in the compensation that Empower would otherwise earn in connection with the Services it provides to the Plan. No specific funds will be set aside in an account or fund for the Plan's benefit or otherwise segregated for purposes of funding this arrangement, and the Plan has no right, title or interest in any Revenue Credits prior to the time that the Revenue Credit is paid to the Plan. No interest will be earned by the Plan or paid on Revenue Credits that are accrued. The Plan Sponsor understands that the Investment Options are held in omnibus accounts and that the amount of service fees received by Empower in relation to Plan assets from the Investment Options may differ from the amount of Revenue Credits due to differences in calculation methods between the Investment Options and Empower. Plan Sponsor represents that it has reviewed this arrangement and the allocation method with its legal and tax advisors and has determined that the arrangement is consistent with the terms of the Plan



and with its fiduciary obligations and will not result in a violation of the Code or any other applicable law. Plan Sponsor acknowledges and agrees that Empower shall not be considered a fiduciary and shall not have or exercise any discretion, with respect to its offering or administration of this arrangement. Plan Sponsor acknowledges that the amount of the Revenue Credit may vary with changes in the Plan's Investment Options or if the amounts paid to Empower by the Plan's Investment Options change.

**7.3 Trustee/Custodian Services.** Trustee or custodian services, as applicable, are provided by Empower Trust Company, LLC ("ETC"). The compensation received by ETC for its services is included in the Basic Plan Administration Fee and reflected in the Plan's fee disclosure report provided by Empower and the Empower Trust Company Bank Credits or Float, as applicable, below. If Plan Sponsor selects a trustee or custodian, as applicable, that requires changes to any procedures or services in the Agreement, Empower reserves the right to change fees in this section.

**7.3.1 Empower Trust Company Bank Credits.** As of the Effective Date of this Schedule, if Plan assets pass through a bank account held by ETC or its Affiliates, ETC may earn credits on Plan assets awaiting investment or pending distribution. Any credits earned by ETC are aggregated with credits earned by ETC's Affiliates and will be used to defray the aggregate expenses for the maintenance of bank accounts. ETC will not retain credits earned in excess of such maintenance expenses. Credits are earned from the use of (i) uninvested contributions received too late in the day or not received in good order to be invested same-day and (ii) proceeds from Investment Option redemptions where Plan distribution checks have not been presented for payment by Participants. Credits (i) begin to accrue on contributions on the date such amounts are deposited into the bank account and end on the date such amounts are invested pursuant to Participant instructions, and (ii) begin to accrue on distributions on the date the check is written or on the ACH date, as applicable, and end on the date the check is presented for payment or when the ACH clears against the account, as applicable. Earnings of credits are at the rate the bank provides from time to time.

**7.3.2 Float.** On or after July 1, 2024, or a later date as agreed to by the parties, the Compensation received by ETC for its services will be reflected in (a) the Plan's fee disclosure report provided by Empower, (b) the Float Disclosure provided by Empower and which may be made available online, and (c) any trust/custodial agreement(s) between ETC and Plan Sponsor. If Plan Sponsor selects a different trustee or custodian other than ETC, as applicable, that requires changes to any procedures or services in the Agreement, Empower reserves the right to change fees in this section.

**7.3.2.1 Omnibus Account.** Plan assets awaiting investment or pending distribution are held in various omnibus accounts at an unaffiliated bank (collectively, the

“Omnibus Account”) to facilitate transactions for or in connection with the Plan. The Plan is not responsible for paying directly the expenses associated with ETC’s maintenance of the Omnibus Account. However, the expenses of the Omnibus Account are defrayed by the earnings on the assets held in the Omnibus Account.

While assets are held in the Omnibus Account, the assets may generate earnings under circumstances summarized in the Float Disclosure provided to the Plan Sponsor and which may be made available on the Plan Sponsor’s website. The earnings are used to defray the expenses for the maintenance of the Omnibus Account, and in some cases, the earnings on the Omnibus Account attributable to the Plan will exceed the portion of the expenses of the Omnibus Account attributable to the Plan. Notwithstanding Exhibit A-2, Empower will deposit these “Excess Earnings” in the Plan within 45 days following the end of the calendar quarter.

The Plan Sponsor Directs Empower to deposit the Plan’s Excess Earnings into a Plan registered account and to invest such amounts in the same Investment Option in which the Plan’s forfeiture assets are invested unless Directed otherwise by the Plan Sponsor. Plan Sponsor is solely responsible for determining the appropriate use of such amounts under the terms of the Plan and agrees to Direct Empower accordingly.

The Excess Earnings paid to the Plan under this arrangement are being made available as a reduction in the compensation that Empower would otherwise earn in connection with the services it provides to the Plan. The parties acknowledge that the Omnibus Account does not hold plan assets and that Empower is not a fiduciary (as defined under ERISA section 3(21)) with respect to the Omnibus Account or the Plan. No earnings on the Omnibus Account will be set aside or otherwise segregated prior to the disbursement of Excess Earnings each calendar quarter, if any, and the Plan has no right, title or interest in any earnings generated by the Omnibus Account prior to the time that the Excess Earnings are deposited in Plan.

## **7.4 Enrollment**

**7.4.1 Enrollment.** Based on information provided by the Plan Sponsor or its designee, Empower will enroll Participants in the Plan in a manner mutually agreed upon by the parties.

**7.5 Vesting Services.** Plan Sponsor will provide Empower with up-to-date full-service vesting information electronically and ongoing Participant information as needed for the purpose of performing vesting services. Plan Sponsor Directs Empower to:(i) maintain each Participant’s vesting percentage on Empower’s recordkeeping system; (ii) calculate and process withdrawals and/or loans according to the vested percentage; and (iii) display the Participant’s vested account balance on the quarterly statements.

**7.6 Establishment of Participant Accounts.** Empower shall establish and maintain an account for each Participant. Each account record shall consist of the Participant's name, social security number, address, date of birth, telephone number, 457(b) Plan beneficiary information, and such other information as may be required from time to time for administration of the Plan. If the Plan allows for Roth after-tax contributions, Empower will maintain an accounting of the contributions and earnings in separate accounts and will separately account for the 5-taxable year period that applies to such account for purposes of determining whether a subsequent distribution is qualified. Amounts distributed from Roth accounts will be made and tax reported pursuant to the applicable provisions of the Agreement. For the avoidance of doubt, the parties agree that as of the TOA there are no Roth after-tax contributions under the Plans.

### **7.7 Beneficiary Recordkeeping for the 457(b) Plan**

**7.7.1 Spousal Consent.** If there are any Plan requirements with respect to spousal consent for beneficiary designations, Plan Sponsor Directs Empower to rely on the marital status specified by the Participant on the beneficiary designation form, and to obtain spousal consent, when applicable. If a beneficiary designation requires spousal consent, such designation may be made only by a Plan administrative paper form.

**7.8 Receipt and Investment of Contributions.** Empower will credit contributions for allocation to Participant accounts in accordance with Direction from the Plan Sponsor and as set forth below. Empower will allocate or otherwise apply forfeitures under the Plan accounts, if any, as Directed by the Plan Sponsor. Empower will pass Directions to invest such contributions, and to execute appropriate transactions related to forfeitures, to the Plan trustee or custodian in accordance with investment Directions of the Plan Sponsor.

**7.8.1 Timing Requirements for Contributions Funded via ACH, Check or Wire.** Contributions received by Empower in good order prior to the close of any Business Day will be processed effective that Business Day, at that Business Day's net asset / unit values. Contributions not received by Empower prior to the close of Business Day will be processed effective the next Business Day.

### **7.9 Transfers.**

**7.9.1** Empower will process plan to plan transfers as Directed by Plan Sponsor and pursuant to Empower's procedures. Plan Sponsor acknowledges plan to plan transfers must be of the same plan types or IRS codes (e.g., 457(b) to 457(b)).

**7.9.2** Empower will process trustee to trustee transfers as Directed by Plan Sponsor and pursuant to Empower's procedures.

**7.10 Monitoring the Deferral Limits.** Unless otherwise Directed, Empower will monitor Participants' total deferrals, including age 50 catch-ups, under the 457(b) Plan under this Schedule for the calendar year and provide warning messages for payroll contributions processed within the Plan Service Center (PSC). However, it is the Plan Sponsor's responsibility to ensure that the applicable limit(s) for the Plan and any other Plans maintained by the Plan Sponsor are not exceeded. Any distributions requested by the Plan Sponsor to correct excess deferrals will be appropriately tax reported.

**7.10.1** For the 457(b) Plan only, Empower will provide assistance to Participants in calculating special catch-up contributions. Plan Sponsor acknowledges that Empower is not responsible for the accuracy of Participant calculations.

**7.10.2** For the 401(a) Plan only, Empower will provide Participant contribution reporting to assist Plan Sponsor in monitoring Code Section 415(c) limits.

**7.11 Investment Transfers of Existing Assets.** Empower or its designee will process investment transfers or exchanges, as applicable, received in good order subject to any conditions and/or limitations imposed by the available Investment Options under the Plan or Investment Option Sponsors. Empower will pass to the Plan trustee or custodian, as applicable, Directions to execute or record as appropriate the corresponding transactions involving the assets of the Plan's trust. Requests for Participant-initiated transfers between Investment Options will be processed if the request is received by Empower in good order prior to market close on a Business Day. Any transfer request not received by Empower during a Business Day will be processed the next Business Day, or such earlier time as may be required in order to comply with applicable law.

**7.12 Equity Wash Provision.** Plan Sponsor Directs Empower to restrict Participants from transferring directly from the Galliard Stable Return Fund (the "**Fund**") to an Investment Option that qualifies as a Competing Fund, as defined below. Instead, all such transfer request amounts must first be transferred to another, non-Competing Fund. Thereafter, the Participant will not be allowed to transfer such amounts to a Competing Fund until at least ninety (90) calendar days after the date of the transfer from the Fund. Any amounts that were already in a non-Competing Fund prior to the date of the transfer from the Fund, and that are not subject to a restriction under this section due to a previous transfer from the Fund, may be transferred to a Competing Fund at any time. A Competing Fund is defined as the Vanguard Treasury Money Market.

**7.13 Distributions.**

**7.13.1** Empower will make payments to Participants pursuant to a Participant’s request and Plan Sponsor’s Direction received in good order and will debit Participant accounts accordingly.

**7.13.2** Except for those certain distributions described in Section 8 [Signatureless Recordkeeping Services] of this Schedule, Plan Sponsor agrees to provide a signature authorization for certain distribution requests, including without limitation Plan Sponsor Directed alternate payee or beneficiary distributions. Empower reserves the right to charge an additional fee for services related to other distributions outside the ordinary course of plan administration.

### **7.13.3 Tax Withholding and Reporting of Distributions**

**7.13.3.1 Responsibility for Withholding and Reporting.** Plan Sponsor appoints Empower or its designee as its agent to perform income tax withholding and reporting for all distributions Empower processes and to collect and remit state documentary stamp or similar taxes on all loans Empower processes, to the extent applicable. Plan Sponsor agrees to provide all information needed by Empower to perform these services. Empower or its designee shall deposit the income tax withheld with the Internal Revenue Service (“**IRS**”) and other appropriate governmental entities, as applicable, on or before the applicable due dates for such remittances. Empower will complete necessary tax reporting forms for distributions it processes, file the tax reporting forms with the IRS or other governmental authority, as applicable, and send copies to the distributee. Distributions to a person subject to reporting and withholding rules that differ from those applicable to United States residents will be subject to withholding applicable to non-resident aliens unless otherwise Directed by the Plan Sponsor.

**7.13.3.2 Withholding and Reporting for Plan Sponsor Initiated Distributions and Rollovers.** With respect to Plan Sponsor-initiated distributions or rollovers from the Plan, Plan Sponsor Directs Empower to rely upon the information on Empower’s recordkeeping system for purposes of tax reporting and withholding, and to treat payees with U.S. addresses as U.S. persons and payees with foreign addresses as foreign persons. Plan Sponsor certifies that such information is accurate and compliant with the Foreign Account Tax Compliance Act (“**FATCA**”) and the Code, and that required documentation supporting such information has been collected by Plan Sponsor.

### **7.13.4 Distribution Withdrawal Fees**

For each benefit disbursement the following administration fee will apply and will be assessed to the Participant:

\$50.00 for each benefit disbursement.

**7.14 Code Section 402(f) Notice.** Empower shall provide Participants with the IRS model notice, as amended from time to time, pursuant to Code Section 402(f), a copy of which is available on the Participant website.

**7.15 Uncashed Checks.** With respect to any checks issued from Plan assets during the term of the Agreement, Plan Sponsor Directs Empower to follow state unclaimed property regulations and escheat such assets to the Plan's or the Participant's state of residence based on Empower's records. However, Plan Sponsor may Direct Empower, in writing, to treat the Plan's uncashed checks in a different manner. Plan Sponsor is solely responsible for determining the appropriate handling of uncashed checks and any unclaimed property under the applicable federal and state laws including the determination and handling of amounts related to lost Participants.

**7.16 Missing Participant Administrative Services.** Plan Sponsor is solely responsible for identifying and locating missing Participants. Empower will place mail holds and search for returned checks, stale date letters, and tax forms pursuant to its procedures, which may be amended from time to time, at no additional fee. Plan Sponsor may access a report of the Plan's mail hold population via the PSC.

**7.16.1** Upon request by Plan Sponsor, Empower will provide reports or other information to the Plan Sponsor with respect to Participants with undeliverable addresses as reflected in Empower's records. Also at Plan Sponsor's request, Empower will provide a description of administrative services and associated fees, as updated from time to time, to assist the Plan Sponsor with identifying and locating missing Participants and reissuing benefit payments to Participants. The administrative services may include performing Participant address searches using a commercial locator service, updating Participant address records and attempting to contact Participants using certified U.S. mail. Plan Sponsor may select such services and agree to the associated fees via a separate letter of direction.

**7.17 Retired Public Safety Office Health Premiums.** Plan Sponsor Directs Empower to process eligible retired public safety officers special election forms received in good order in accordance with its procedures.

## 8 SIGNATURELESS RECORDKEEPING SERVICES.

**8.1 General Requirements.** This Section 8 [Signatureless Recordkeeping Services] describes certain services under which Empower will process Participant requests without obtaining Plan Sponsor signature or other further approval. In doing so, Empower will not exercise any fiduciary authority or make any discretionary determinations. Rather, this Section 8 [Signatureless Recordkeeping Services] will act as Direction by Plan Sponsor for Empower to process all Participant requests that meet the stated criteria. In order to receive the signatureless services detailed in this Section 8 [Signatureless Recordkeeping Services] Plan Sponsor must utilize the Plan Service Center (“PSC”) and must provide all necessary information in a PDI file. Plan Sponsor must also provide any additional information or Direction as required by, and in a form acceptable to, Empower. In addition, in most cases, Empower must be the sole recordkeeper for the Plan. If at any time Plan Sponsor does not meet these general requirements, or does not meet the specific requirements of any service described in this Section 8 [Signatureless Recordkeeping Services], Empower shall not be responsible to continue to provide such service.

**8.2 Death Benefit Claim Payment Processing.** Plan Sponsor Directs Empower to process, without Plan Sponsor’s further approval, death benefit claim forms received in good order from Participants under the Plan in accordance with the procedures provided by Empower to Plan Sponsor. Death benefit claim forms submitted without complete information or without a certified copy of the deceased Participant’s death certificate or other required documentation will not be processed, and the claimant will be notified of the deficiency. Processing will continue once Empower receives all required information and documentation in good order. Plan Sponsor agrees to make determinations with respect to any competing claims, claims which require the Plan Sponsor’s interpretation or other claims that are not specifically addressed in the procedures. In order to receive this service, Plan Sponsor must also utilize Empower’s beneficiary recordkeeping and vesting tracking services, if applicable. This service shall commence following completion of initial beneficiary solicitation.

### 8.2.2 Death Benefit Distribution Fee.

For each benefit disbursement the following administration fee will apply and will be assessed to the Participant:

\$50.00 for each benefit disbursement.

**8.3 Participant Rollover Contributions.** For the 457(b) Plan under this Schedule, Plan Sponsor Directs Empower to process Participant rollover contributions to the Plan received in good order pursuant to the Participant’s instruction in accordance with procedures provided by Empower to the Plan Sponsor and without the Plan Sponsor’s further approval. In the event that a

Participant does not elect Investment Options on the incoming direct rollover form but otherwise completes the form, Plan Sponsor further Directs Empower to invest the money according to the Participant's on-going investment elections, and if none are elected, then in the Default Investment Option under the Plan at the time the incoming rollover is received. Separate accounts within the Participant's account will be maintained for such rollovers. For rollovers of designated Roth 457(b) accounts, Empower will also separately maintain a record of each such rollover for purposes of monitoring the 5-taxable year period that applies for purposes of determining whether a subsequent distribution is qualified. For the avoidance of doubt, the parties agree that as of the TOA there are no Roth after-tax contributions.

**8.4 Distributions Due to Severance from Employment for Reasons Other than Death or Disability.** Plan Sponsor Directs Empower to process, without Plan Sponsor's further approval, Participant requests for distribution due to severance of employment for any reason other than death or disability, provided such requests are received in good order and in a manner acceptable to Empower. In order to receive this service, Plan Sponsor must also utilize Empower's vesting tracking service, if the Plan has a vesting schedule. If Plan Sponsor has not provided a Participant's termination date or other required information, Plan Sponsor Directs Empower to notify Plan Sponsor to obtain missing information before processing the distribution. For spousal consent purposes, Plan Sponsor Directs Empower to rely on the marital status specified by the Participant in the request form, or as stored on Empower's recordkeeping system, as applicable.

**8.4.2 Distribution Withdrawal Fees Due to Severance from Employment.**

For each benefit disbursement the following administration fee will apply and will be assessed to the Participant:     \$75.00 for each benefit disbursement.
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**8.5 Mandatory Distributions.** Plan Sponsor Directs Empower to automate mandatory distributions of small account balances, as elected by Plan Sponsor in good order and in accordance with procedures provided by Empower.

**8.6 De Minimis Distributions.** For the 457(b) Plan, Plan Sponsor Directs Empower to process, without Plan Sponsor's further approval, Participant-initiated de minimis distribution requests received in good order and in a manner acceptable to Empower.

**8.7 Required Minimum Distributions (RMDs).** Commencing on TOA, Plan Sponsor Directs Empower to provide a notice to Participants who, based on the Plan records reflected on Empower's recordkeeping platform, are RMD eligible. Plan Sponsor may download an RMD report via the PSC to verify the accuracy of Participant data and to confirm whether a Participant has already met the Plan's RMD rules for the applicable tax year. If the Participant does not timely provide an election for the RMD as described in the notice, Plan Sponsor acknowledges and agrees that it must provide timely Direction to Empower with respect to processing any RMD payments



prior to the regulatory deadline. Empower will process RMDs upon receipt of a Participant or Plan Sponsor request in good order.

**8.7.1** Plan Sponsor may elect to use Empower's automated RMD process at a later date as mutually agreed to by the parties, such service to be available only to the extent the Plans utilize Empower's vesting tracking services. At such time, Plan Sponsor Directs Empower to provide a notice to Participants who, based on the Plan records reflected on Empower's recordkeeping platform, are RMD eligible and have not already set up a RMD on Empower's system. Unless the Plan Sponsor separately Directs Empower otherwise in writing, if the Participant does not timely provide an election for the RMD as described in the notice, Plan Sponsor Directs Empower to calculate and process a RMD with respect to such Participant in accordance with procedures provided by Empower, provided Empower has sufficient data required to make such a distribution.

**8.8 Distributions Due to Unforeseeable Emergencies.** For the 457(b) Plan only, Plan Sponsor Directs and authorizes Empower to process, without Plan Sponsor's further approval, all Participant requests, received in good order and in a manner acceptable to Empower, for distributions due to unforeseeable emergency resulting in a severe financial hardship to the Participant that cannot be alleviated by any other means available to the Participant. Empower shall only process such requests if they meet the safe harbor definition set forth in the Treasury Regulations, as described below. Plan Sponsor further Directs Empower to rely on any and all representations made by a Participant in a request. The following situations shall qualify for a distribution under this section:

**8.8.1** An illness or accident of the Participant, the Participant's spouse, or the Participant's dependent (as defined in Code §152, and for taxable years beginning on or after January 1, 2005, without regard to Code §152(b)(1), (b)(2) and (d)(1)(B));

**8.8.2** Loss of the Participant's property due to casualty;

**8.8.3** The following extraordinary and unforeseeable circumstances, if they arise as a result of events beyond the control of the Participant: (a) the imminent foreclosure of or eviction from the Participant's primary residence; (b) the need to pay for medical expenses, including nonrefundable deductibles, as well as the cost of prescription drug medication; and (c) the need to pay for the funeral expenses of a spouse or a dependent (as defined in Code §152, and for taxable years beginning on or after January 1, 2005, without regard to Code §152(b)(1), (b)(2) and (d)(1)(B)) of Participant; (d) except in extraordinary circumstances, the following are examples of situations that shall NOT qualify for a distribution under this section: (i) purchase of real estate; (ii) payment of college tuition; (iii) unpaid rent or mortgage payments, except in the event of imminent foreclosure or eviction; (iv) unpaid utility bills; (v) loan repayments; (vi)

personal bankruptcy (except when resulting directly and solely from illness, casualty loss or other similar extraordinary and unforeseeable circumstances beyond the Participant’s control); (vii) payment of taxes, interest or penalties; or (viii) marital separation or divorce.

**8.8.4** Plan Sponsor will make determinations with respect to any unforeseeable emergency distribution request that does not clearly fall within the guidelines set forth above. In the event of any changes to applicable law, including safe harbor defined in the Treasury Regulations, Empower may revise this Direction from time to time and without further notice to Plan Sponsor. This Direction shall remain in effect until revoked by either party. In order to receive this service, Plan Sponsor must also utilize Empower’s beneficiary recordkeeping and deferral recordkeeping services.

**8.8.5** Empower is Directed to deny any request where the unforeseeable emergency event occurred prior to the Schedule Effective Date, or more than one year prior to the date the request is received. Empower may contact Plan Sponsor for Direction when unusual situations arise. For each request that is denied or that cannot be processed due to its failure to satisfy an unforeseeable emergency event, Plan Sponsor Directs Empower to notify the Participant to contact Plan Sponsor if the Participant wishes to appeal the determination.

**8.8.5.1 Unforeseeable Emergency & Distribution Approval Fees.**

<p><b><u>Unforeseeable Emergency Approval</u></b>          For each unforeseeable emergency distribution approval the following administration fee will apply:</p> <p style="padding-left: 40px;">\$0.00 for each unforeseeable emergency approval.</p> <p><b><u>Distribution Withdrawal Fee</u></b>          For each disbursement the following administration fee will apply and will be assessed to the Participant:</p> <p style="padding-left: 40px;">\$50.00 for each disbursement.</p>
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**9 ADDITIONAL SERVICE FEES AND FEE INFORMATION**

**9.1 Additional Service Fees**

Service	Current Fee/Rate*

<b>Express Delivery Fees.</b> Empower will assess an additional fee to the Participant upon a Participant's request for express delivery.	\$40.00 per disbursement
<b>ACH Special Handling Fee.</b> Empower will assess an ACH special handling fee to the Participant upon a Participant's request for a disbursement via ACH.	\$15.00 per disbursement
<b>Reprocessing Fee.</b> If Plan Sponsor provides incorrect or incomplete information or provides data in an unusable electronic or hard copy paper format, Empower will assess a fee at Empower's then current rate to the Plan Sponsor to reprocess or put the data into a useable format. (Submission of data in a hard copy format will be considered a request to provide this service; this includes submission of Participant account takeover data).	\$200.00 per hour or as quoted.
<b>Additional Plan Work.</b> Empower may, at its discretion, provide additional plan work at the Plan Sponsor's request, which will be charged to the Plan Sponsor at Empower's then current hourly rate or as quoted based on the additional plan work requested.	\$200.00 per hour

\*Additional Service Fees reflect current rates as of the effective date of this Agreement and may be adjusted from time to time to reflect cost increases which shall be disclosed to Plan Sponsor in advance of such services being provided.

## 10 ACCESS TO RECORDKEEPING SYSTEM & SERVICE REPRESENTATIVES

**10.1 Automated Voice Response System.** Participants will have access to an automated voice response system via a domestic toll-free number and international toll number to inquire or make account changes from a touch-tone telephone. Inquiry services available from the automated voice response system will utilize share prices, unit values and account balances that are as of the last calculated unit value/share price. The automated voice response system will be available 24 hours a day, 7 days a week, except for routine maintenance of the system which, when necessary, will generally take place on Sunday between the hours of 2:01 am and 2:01 pm Eastern Time. However, the system may also be limited or unavailable during periods of peak demand, market volatility, systems upgrades, or maintenance, or for other reasons.

**10.2 Participant Service Representatives.** Participant service representatives will be available via a domestic toll-free number and international toll number to Empower to answer Participant questions and process applicable transactions each Business Day between the hours of 8:00 am and 10:00 pm Eastern Time and on Saturdays between 9:00 am and 5:30 pm Eastern Time.

**10.3 Plan Sponsor Access to Recordkeeping System.** Plan Sponsor may interface with Empower's recordkeeping system online via Empower's Plan Sponsor website to inquire or make

changes while administering the Plan. Upon request, Empower representatives will be made available to assist and train employees of Plan Sponsor in properly accessing and processing transactions on the Empower's Plan Sponsor website. Empower's Plan Sponsor website will be available consistent with the availability of the automated VRU.

## **10.4 Participant Website**

**10.4.1 Website Use.** Empower will, as part of the Services, host, maintain and make certain information available to Plan Sponsor and Participants on a website or websites (the “**Website Services**”). Plan Sponsor will not use or permit any use of the Website Services (i) in any unlawful or illegal manner; (ii) in any way that could impair the Website Services or any other party's use thereof; or (iii) to distribute, sell, resell, license or transfer any of Plan Sponsor's rights to access or use the Website Services or make the Website Services available to any third party. Any user credentials, including user identification and passwords, established by Plan Sponsor and its delegates or any Participant (each a “**User ID**”) is issued to a specific user and may not be shared or used by any individual other than that user. Plan Sponsor will be responsible for the compliance by its users with the applicable terms of this section. Empower may terminate the User ID, or portions thereof, for any user involved in a breach of this section. Plan Sponsor acknowledges that transmissions through the internet are inherently unsecure, that virus protection software, firewalls and other security measures are not foolproof, and that the Website Services and their content are not invulnerable to fraud or hacking. In addition, Plan Sponsor acknowledges that Empower shall from time to time perform scheduled or emergency repairs, maintenance, and disaster recovery testing on the websites, and that such activity, or other circumstances beyond Empower's reasonable control, may cause the Website Services to be unavailable or delayed. Plan Sponsor agrees that Empower shall not be liable for any such delays or downtime in the Website Services, or for any virus or malicious access to the Website Services by third parties, provided that Empower has implemented and maintained security features with respect to the Website Services that are consistent with the Agreement and commercially reasonable industry standards.

**10.4.2 Access to Participant Website.** Participants will have access to a website to inquire or make certain account changes via the internet. In addition, Participants can download a complimentary Android app and an iOS phone, iPad and Apple Watch app. The Android and Apple Watch apps currently support inquiry-only capabilities while the iOS phone / iPad app supports both inquiry and certain change capabilities. All such apps will be subject to the terms of the Agreement, as related to privacy and data security.

**10.4.3 Website Availability.** The website will be available 24 hours a day, 7 days a week, except for routine maintenance of the system which, when necessary, will generally take place on Saturday at 4:00 pm and end on Sunday at 12:00 pm Mountain Time. However, the system

may also be limited or unavailable during periods of peak demand, market volatility, systems upgrades, or maintenance, or for other reasons.

**10.4.4 Enhancements.** Empower may periodically update or add new content, features, services, tools or other functionality to the Participant website or other Empower Software as part of its ongoing enhancement of the Services offered to Plan Sponsor or its Participants. Such additions will be offered at no additional cost unless expressly agreed by Plan Sponsor or Participants (as applicable).

## **11 PARTICIPANT EDUCATION, FINANCIAL WELLNESS AND ADVICE SERVICES**

**11.1 Participant Education.** Empower will provide support for employee enrollment and education meetings, and will provide employee education and communications materials, including education and planning tools through the internet:

**11.1.1** Empower will provide fifty (50) educational or enrollment days in year one, to be used across all Plans as Directed by Plan Sponsor; and fifty (50) educational or enrollment days will be provided annually thereafter to be used as Directed by Plan Sponsor. Any additional educational or enrollment meetings will be provided for a fee at Empower's then current rate.

**11.2 Education and Planning Tools.** Empower will provide employee plan and investment education and communications materials, including education and planning tools.

**11.2.1 Empower Participant Experience.** With certain exceptions, Empower provides Participants with an estimated hypothetical monthly retirement income and goal based on a number of factors including the Participant's Plan assets, Plan contribution rates and compensation data on the Participant website.

**11.2.2 Health Cost Estimator.** With certain exceptions, Empower will provide Participants access to Empower's Health Cost Estimator (as defined below) on the Participant website. Health Cost Estimator provides Participants with estimated monthly health care expenses based on retirement age and certain personal health condition information provided to Empower by Participants ("**Health Cost Estimator**"). All health care costs and projections are provided by an unrelated third party vendor. Plan Sponsor agrees that the Health Insurance Portability and Accountability Act of 1996 does not apply to any personal health condition information provided to Empower by Participants. Plan Sponsor also acknowledges that such health condition information is owned by the Participant and not the Plan Sponsor and that Empower will not disclose any health condition information provided to Empower by Participants to Plan Sponsor without the Participant's consent. Empower agrees that, except as provided in the preceding

sentence, it will otherwise treat such health condition information as Personal Data in accordance with Section 14 [Confidentiality] of the Agreement. Plan Sponsor further agrees not to use any information it obtains through Health Cost Estimator other than for Plan purposes, contribution rates and compensation data.

**11.2.3 Plan and Financial Education.** Empower will send certain action-oriented education communications to Participants according to a Participant's behavior, preferences, and information. Messaging will include: (i) educational information about the tools and services available in the Plan and what actions a Participant may take to build individual retirement savings, and will address topics such as enrollment, beneficiary designations, contribution increases, asset allocation, etc.; (ii) general financial topics to help Participants reach their financial goals and will point Participants to the education library on the Participant website on topics such as budgeting, debt management, investing basics, emergency funds, etc.; and (iii) information on additional options available that may provide a Participant with a more comprehensive savings strategy. Except as permitted under 11.2.4 or otherwise agreed to by the parties, Empower agrees that in no event will any such personalized Participant education communications be used to market any non-Plan service or product offered by Empower or its Affiliates. A Participant must have an email address on file with Empower in order to receive such communications via email. The Participant can opt out of receiving these emails at any time as required by applicable law. Empower represents that education communications distributed to Participants under this Section are for educational purposes only and will not constitute investment advice under ERISA or other applicable law or regulation.

**11.2.4 Distribution Education.** Empower or its Affiliates will make retirement education consultants available to provide distribution education services to Participants and may contact terminated Participants who are eligible to receive distributions under the Plan to provide information regarding distribution options available under the Plan; provided, however, that Empower agrees that if it provides any recommendations regarding rollovers, it shall do so in the capacity of a fiduciary as provided in Section 11.2.6; and provided further, that Empower shall provide regular reports regarding terminated Participant decisions to maintain their account in the Plan, take a cash distribution, or directly rollover their account and, if directly rolled over, the recipient of the rollover.

**11.2.5 Financial Wellness Services.** Empower's financial wellness program provides Participants with tools and services to review overall financial wellness including the ability to assess total assets and liabilities and access tools that allow Participants to complete a personalized online assessment, the output of which provides the user with ideas on the next steps they can take to address financial concerns they identified when completing the assessment and educational resources to learn more about financial topics of interest, including a learning center with educational content on certain financial wellness topics. Empower or its Affiliates may make

financial education consultants available to Participants to provide financial wellness consultations and may contact Participants to offer financial wellness consultations as agreed to by the Participant. Consultations involve topics such as (but not limited to): budgeting, saving, student debt, debt prioritization, life insurance, managing investments and consolidating assets. Empower's financial wellness tools, services and consultations may include information on financial products and services made available by Empower or third-party providers if such information is requested or agreed to by the Participant. Participants may pay fees if they choose certain products. Empower may receive fees and other payments from the products selected by Participants. More information on the applicable financial wellness products and the fees and payments that may be received by Empower is available upon request. Notwithstanding the above, Empower agrees that it shall not use Plan Data to solicit or market to Participants any non-Plan service or product offered by Empower or an Affiliate unless requested and consented to by the Participant. Empower further agrees that it shall not solicit or market to Participants any non-Plan service or product offered by Empower or an Affiliate except those that have been reviewed and agreed to by Plan Sponsor as of the Effective Date of the Agreement. Plan Sponsor reserves the right to retract its prior approval and/or to modify the parameters under which non-Plan services or products may be solicited or marketed to Participants, as mutually agreed to by the parties.

**11.2.6 Investment and Distribution Advice.** Empower may offer investment advice and provide recommendations as a fiduciary under applicable law to Participants on certain Plan transactions, such as point-in-time investment advice on designated investment alternatives, investment advisory services available under the Plan, and recommendations on distribution and rollover options, which may include services and products offered by Empower and its Affiliates. When Empower acts as a fiduciary, it will do so in the best interest of the Participants. Empower will provide such fiduciary services pursuant to applicable law.

## **12 REPORTING SERVICES**

**12.1 Participant Reporting.** Empower will provide Participants a confirmation for transactions involving investment allocations, investment transfers, contribution rates, change of address, rollover contributions, and rebalance activity. Empower will also make available to each Participant account information on at least a quarterly basis, including beginning and ending balances, all contributions and transactions processed, interest credited or change in value, fees and withdrawals deducted, transfers processed and performance data on Investment Options held by the Plan to the extent such data is provided by the Investment Option Sponsor, personal rate of return on investments, account balance translated into an estimated monthly income amount, and balance in the SDB, as applicable. Participants' statements shall be distributed in accordance with Section 4.8 [Electronic Delivery] of this Schedule. Statements will be available within fifteen (15) Business Days after receipt of final information in good order from third party sources. The first

quarterly statement following the Schedule Effective Date may be available at a later date while records are being established.

**12.2 Plan Sponsor Reporting.** Empower will provide an Employer Plan Summary Report to Plan Sponsor, summarizing Plan-level assets and Participant account balances, within thirty (30) Business Days after each calendar quarter end (“**Employer Plan Summary Report**”). The first report following the Schedule Effective Date may be available at a later date while records are being established. The following Plan information will be addressed in the Employer Plan Summary Report: (i) summary of Plan transactions and assets; (ii) summary of contributions processed; (iii) withdrawals; (iv) annuities purchased, if applicable; (v) periodic payments; (vi) Investment Option grand totals – summarizes both dollars and units/shares and Plan activity; (vii) Investment Option totals by money type – summarizes both dollars and units/shares and money type activity; (viii) Participant summary – a report of account activity for each Participant.

**12.3 Additional Optional Services and Fees**

<b>Additional Services and Fees</b>	
<b>No Plan Document Services Provided by Empower</b>	Plan Sponsor acknowledges that Empower has not been retained to provide any Plan document services. Plan Sponsor acknowledges its responsibility to draft, amend and maintain the Plan document(s) or to retain a third party to provide such services.

**13 TRANSITION ASSISTANCE SERVICES**

**13.1 Transition Services.** Empower agrees to support the transition of recordkeeping and administrative services (“**Transition Services**”) to a successor service provider subject to the terms and conditions of the Agreement. Empower shall provide the following Transition Services prior to the Service End Date (as defined below) of the Agreement.

**13.2 Planning.** Participate in conference calls and in-person meetings, as needed, with Plan Sponsor and the successor service provider to designate the transfer team, define communication channels, discuss the transfer process and define expectations, responsibilities, and applicable deadlines. Empower will designate a transition Project Manager to lead and be the contact person for the transition effort. In the event Plan Sponsor requests that the Project Manager or other deconversion team member attend a transition services meeting in person at a site other than Empower’s office location, Empower’s fees for time and travel for such in-person meetings are \$1,500 per day, per person.

**13.3 Data Layouts.** Provide the successor service provider with data layouts for Participants and Plan Data residing on Empower administration systems, including but not limited



to data layouts for paper statement indicators, rebalance frequency elections, ACH indicators, outstanding loan terms and payment amounts, allocated QDROs, powers of attorney on file, and dividend pass-through elections. The data layouts will correspond to Empower standard file formats.

**13.4 Plan Materials.** Upon termination, Empower shall provide the successor service provider with copies of all Plan summaries, individual Participant statements (upon request) and other forms, reports, or web content; provided, however, Empower will provide such Plan materials only to the extent designed specifically for the Plan and not deemed by Empower to be proprietary. In addition, Plan Sponsor agrees, and will require any third party to whom Plan Sponsor provides the materials to agree, to maintain the confidentiality of all Empower materials and information, including but not limited to web content, communications material, and information on Empower's Plan Sponsor Website.

**13.5 "Test" Data Transfer Files.** Provide the successor service provider with two (2) full volume test extract data transfer files for the Plan. Such files will be provided at a time mutually agreed upon by the parties. Control totals and standard Empower reports will accompany the files.

**13.6 "Refresher" Data Transfer Files.** Provide the successor service provider with one (1) full volume test extract refresher data transfer files for the Plan. Such files will be provided at a time mutually agreed upon by the parties. Control totals and standard Empower reports will accompany the files.

**13.7 "Live" Data Transfer Files.** Provide the successor service provider with one (1) full live data transfer file in Empower standard file format for the Participant and Plan Data residing on Empower administration systems as of a date mutually agreed upon by the parties. The live data file will be in the same format as the test data file or in the test data file format. Control totals and standard Empower reports will accompany the live data transfer file.

**13.8 Questions about Data on Transfer Files.** Provide up to twenty-five (25) aggregate hours of Empower's time to answer questions about system data provided by Empower on the test data transfer files, the refresher data transfer files and the live data transfer file. Empower will charge the Plan or Plan Sponsor at then-current hourly rates for time spent in excess of twenty-five (25) hours.

**13.9 Answering Questions.** Provide up to twenty-five (25) aggregate hours of Empower's time responding to questions about Plan administrative practices and communication materials used by Empower in servicing the Plan. Empower will charge the Plan or Plan Sponsor at then-current hourly rates for time spent in excess of twenty-five (25) hours.

**13.10 Final Participant Valuation.** Send to the successor service provider, at a mutually agreed upon date, reports of all historical files, documents and records necessary for the continuing administration and recordkeeping of the Plan in electronic form (where available) and/or paper form (“**Final Participant Valuation**”). As of the Service End Date, the Final Participant Valuation includes: (i) Current Participant indicative and financial data; (ii) Participant level reports; (iii) Plan level totals; (iv) Investment valuation statement; (v) Employee loan status report; (vi) Loan summary report; (vii) Deemed loan report; (viii) Highest outstanding loan balance report; (ix) RMD report; (x) Installment tax withholding report; and (xii) On-line beneficiary data. Notwithstanding the foregoing, the parties acknowledge that the reports and information identified as Final Participant Valuation are subject to change based upon changes in plan administration and/or system requirements. Plan Sponsor acknowledges that at the mutually agreed upon date, Empower will provide only those reports applicable to the Plan and currently available from Empower’s recordkeeping system.

**13.11 Open Participant Case Records.** Send open case records at a mutually agreed upon date, or Service End Date, if later, to Plan Sponsor or to successor service provider at Plan Sponsor’s Direction.

**13.12 Year-end Processing.** For Services that conclude as of December 31 for a calendar year plan or the end of the Plan’s fiscal year, as applicable, perform any compliance testing, government filings, or other reporting required as of that year-end. For Services that conclude as of any date other than December 31, perform any government filings for completed Services (e.g., Forms 1099-R for Participant distributions) and provide to Plan Sponsor the same year-end reports and information otherwise provided for a calendar or fiscal year, as applicable, but only reflecting the portion of the calendar or fiscal year, as applicable, for which Services were provided.


**13.13 Fees Related to Transition Services.** In the event Plan Sponsor requests Empower to provide additional or extraordinary Transition Services (beyond those described in items 13.1 through 13.12 above) including, but not limited to, change in data layout, change of data elements in standard layouts, number of data transfer files, or services beyond Service End Date, Empower reserves the right to charge the Plan or Plan Sponsor, as Directed by the Plan Sponsor, for additional or extraordinary Transition Services at then-current hourly rates. Empower shall receive payment for services rendered within 30 days of invoice delivery. In the event payment is not received within the stated timeframe all Transition Services will cease until such time payment is received.

**13.14 Transition Services after Service End Date.** In addition to the foregoing, Empower agrees to provide the following Transition Services for ninety days following the Agreement’s termination effective date (“**Service End Date**”).

**13.14.1** Provide up to 20 hours of Empower’s time responding to questions from the Plan Sponsor or its auditor. Empower will charge the Plan or Plan Sponsor at then-current hourly rates for time spent in excess of 20 hours.

**13.14.2** To the extent information and/or reporting is readily available from Empower’s systems, Empower agrees to provide to the successor service provider the following Transition Services for up to 110 requests per month: (a) loan repayment information; (b) Participant account balances as of specific dates; (c) Participant account earnings and/or dividends for specific time periods; (d) distribution history information; (e) reporting or respond to other Participant account history information requests; (f) Participant account history information (excluding QDRO related information); (g) Participant Statements; (h) Duplicate Forms 1099-R; (i) Provide QDRO related account history; (j) Respond to questions regarding Plan specific processes, provided however that if the number of requests exceeds 110 in any given month, a per-request fee of \$500 will be assessed.

By signing this Recordkeeping Services Schedule, the parties certify that they agree to be bound by its terms and it’s to be executed by their respective duly authorized officers as of the Schedule Effective Date.

<b>CONTRACTOR</b>	<b>STATE OF NORTH DAKOTA</b>
Empower Retirement, LLC	Acting through <b>NDPERS</b>
BY: 	BY:
Daniel A. Morrison	Rebecca Fricke
EVP Government & Taft Hartley Markets	NDPERS Executive Director
Date: 06/05/2024	Date:

**EXHIBIT A-1:  
INTEGRATION MILESTONES & PERFORMANCE GUARANTEES**

**INTEGRATION MILESTONES**

	<b>Minimum Service Standard</b>	<b>Performance Measurement</b>	<b>Fees at Risk</b>
<p><b>Conversion meets the deadlines as established in the conversion timeline;</b> this should include making Participants whole as well as renumeration to the Plans</p>	<p>Plan is live within the scheduled time frame in the project plan.</p>	<ul style="list-style-type: none"> <li>• All conversion data is loaded to the recordkeeping platform. Note that some data that is not essential for opening the plan (i.e. future periodic payments, etc.) may be loaded post-conversion as mutually agreed. <i>Empower is not required to waive or return any fees, restore any losses to the plan or for any other plan or participant account corrections if the conversion does not meet the deadlines established in the conversion timeline due to failure of the prior recordkeeper, another plan service provider or the Plan Sponsor to timely deliver Plan and Participant data or a failure by the Plan Sponsor to make Plan administration decisions as required by Empower in its sole discretion to facilitate the conversion by the applicable deadlines we communicate.</i></li> <li>• Empower will document requests for Plan/Participant data and Plan administration decisions and the applicable deadlines.</li> <li>• All systems are operational where requirements were approved by Plan Sponsor, and quality is consistent with testing results.</li> <li>• Customer Care Center is fully trained and operational.</li> <li>• Communications have been developed and distributed per the project plan.</li> </ul>	<p>\$20,000</p>

## PERFORMANCE GUARANTEES

Empower agrees to provide Services in accordance with the performance standards stated herein.

In the event Empower does not meet the performance standards listed below, Empower will be given an opportunity to cure such failure. If Empower fails to meet the performance standard in the subsequent quarter, Empower agrees to forfeit revenue for each performance standard not met pursuant to the *Fees at Risk* column below. The forfeited revenue will be credited on the next invoice if the Plan is invoiced for Empower’s recordkeeping fee. If the recordkeeping fee is deducted against Participant accounts, the forfeited revenue will be deposited to the plan expense account. In no event, however, shall the total amount forfeited by Empower in any given calendar quarter exceed 15% of Empower’s quarterly per participant/recordholder fees determined as of the beginning of each calendar quarter based upon the number of participants/recordholders with a balance in the Plan as of the last day in any given quarter. For illustrative purposes, the calculation for quarterly revenue placed at risk would be:  $[(A * B) * C]$ , in which:

A is the quarterly per participant/recordholder fee for qualified defined contribution plan(s) and;

B is the number of participants/recordholders in the Plan with an account balance as of the last day of each calendar quarter; and

C equals the lesser of the sum of the percentages attributed to each performance standard not met by Empower for a calendar quarter or up to 15%.

	Minimum Service Standard	Performance Measurement	Fees at Risk
<b>Plan Sponsor Satisfaction</b>	We conduct periodic client satisfaction surveys both internally and through the use of independent third-party providers. Our assessments include pulse surveys to gauge your general satisfaction and your satisfaction with members of your service team.	Your relationship manager will meet with you to discuss your satisfaction on a regular basis.	No fees at risk
<b>Participant Satisfaction</b>	We currently deliver an after-call survey to 100% of participants who opt to speak with a representative. Survey questions focus on the caller’s opinion of the representative’s performance and their overall service experience based on their most recent call. Participants are also able to provide their feedback by providing commentary or a verbatim at the conclusion of the after-call survey.	We monitor our Customer Care Center to gauge a variety of performance statistics including wait time, call-abandonment rate, and resolution rate.	No fees at risk

<b>Notify Plan Sponsor of changes in federal tax laws and regulations that impact the Plan</b>	We do not have a specific service benchmark for this item but we are constantly reviewing law and regulation changes and promptly notify our clients of any change that may affect your Plan.	We send newsletters to you regarding regulation news and changes regularly. Also your relationship manager keeps you informed and will assist with any changes or decisions that would need to be made.	No fees at risk
<b>Complete Investment Allocation Changes</b>	99% of investment transfers processed accurately on the same business day if participant direction received in good order by Empower by 4 p.m. EST, early close time of investment, or close of market due to shortened hours associated with early market close or holiday eves.	Executed as part of automated processes. Accuracy will be consistent with minimum service standard unless otherwise disclosed.  Reported as part of the quarterly Empower Service Level Report.	1% of quarterly fees
<b>Notification of any Cyber-Security Breach, or Significant Unintentional Disclosure of PII</b>	As described in Empower's Master Services Agreement, Empower will promptly notify Plan Sponsor in the event of (i) any confirmed breach of the party's security measures that results in unauthorized access to or theft of NPI; (ii) the consequences of the breach, including (without limitation) any potential impact on the other party's security measures, systems, data (including but not limited to NPI) or the Empower Software (defined above); and (iii) the corrective action taken to remedy the breach.	Not applicable	Not applicable
<b>CSR Hours of Availability</b>	Retirement Representatives available 99% of time during regular hours of service. (7 a.m. to 9 p.m. CT, Monday through Friday and 8 a.m. to 4:30 p.m. CT, Saturdays) except for closings of NYSE, holidays and shortened hours associated with early market close or holiday eves.	Metric provided as part of the quarterly Empower Service Level Report.	1% of quarterly fees
<b>Call Abandon Rate</b>	Less than 3% of participant calls abandoned (Empower complex wide).	Metric provided as part of the quarterly Empower Service Level Report.	1% of quarterly fees
<b>Call Answering Speed</b>	80% of participant calls answered within 20 seconds (Empower complex wide).	Metric provided as part of the quarterly Empower Service Level Report.	1% of quarterly fees

<b>Timeliness of Callbacks to Participants</b>	Average resolution time complex wide will be within 5 business days of participant complex wide will be within 5 business days of participant first call reporting issue assuming timely responses from Plan Sponsor (excludes death cases).	Evaluated as part of standard business process. Accuracy consistent with minimum service standard unless otherwise disclosed.	1% of quarterly fees
<b>Percentage of First Call Resolution by Customer Service Representatives</b>	90% of participant questions resolved during first call.	Metric provided as part of the quarterly Empower Service Level Report.	1% of quarterly fees
<b>Internet Availability - # of times down</b>	99% of the time Internet available excluding regularly scheduled maintenance.	Reported as part of the quarterly Empower Service Level Report	1% of quarterly fees
<b>IVR Availability - # of times down</b>	This is accounted for under the Internet Availability standard above.	This is accounted for under the Internet Availability standard above.	Not applicable
<b>Number and timeliness of one-on-one (individual) meetings; to be established during the annual planning session</b>	We are committing to 50 on-site meeting days in our proposal.	Your relationship manager will work with you on a schedule for these meetings to ensure we deliver.	Not applicable
<b>Number and timeliness of group meetings; to be established during the annual planning session</b>	We are committing to 50 on-site meeting days in our proposal.	Your relationship manager will work with you on a schedule for these meetings to ensure we deliver.	Not applicable
<b>Participant Statement Mailing</b>	Participant statements mailed/made electronically available within 15 business days of quarter-end. Initial quarter following conversion is 20 business days.	Metric provided as part of the quarterly Empower Client Service Report.	1% of quarterly fees
<b>Participant Statement Accuracy</b>	Not applicable	Not applicable	Not applicable
<b>Participant Confirmation Statement Mailing</b>	Mailed or available online on within two business days following completion of transaction processing.	Executed as part of automated processes. Accuracy consistent with minimum service standard unless otherwise disclosed.	1% of quarterly fees

<b>Loan, termination distribution, and in-service withdrawal check mailings to Participants</b>	This is accounted for under the distribution standard below.	This is accounted for under the distribution standard below.	Not applicable
<b>Distribution of lump sum payments for DC plans</b>	99% of participant disbursement requests processed accurately within two business days of completed requests received in good order. Transactions must be entered by 3 p.m. CT or close of market due to shortened hours associated with early market close / holiday eves.	Metric provided on the quarterly Empower Client Service Report.	1% of quarterly fees
<b>Distribution upon request of standard Participant specific documents including administrative forms, Participant statement copies, etc.</b>	99% of documents distributed within one business day of participant request.(Excludes enrollment material delays directly related to quarterly performance information updates required by FINRA).	Executed as part of automated processes. Accuracy consistent with minimum service standard unless otherwise disclosed.	1% of quarterly fees
<b>Distribution of Survivor Benefit Payments</b>	This is accounted for under the distribution standard above.	This is accounted for under the distribution standard above.	Not applicable
<b>Timeliness for Contribution and Loan Posting</b>	Contribution and loan repayment processing completed the same business day following confirmation of totals provided in funding request to the plan sponsor and wire received by 3 p.m. CT. Wires received after 3 p.m. CT will receive the following days trade date.	Metric provided on the quarterly Empower Client Service Report.	1% of quarterly fees
<b>Accuracy of Contribution and Loan Posting</b>	This is accounted for in the contribution standard above.	This is accounted for in the contribution standard above.	Not applicable
<b>Submission of Feedback Files to the Client's Payroll</b>	95% of interfaces and feed files will be accurate and provided within timeframe as mutually agreed by parties.	Metric provided on the quarterly Empower Client Service Report	1% of quarterly fees
<b>Timeliness of Callbacks to Benefits Staff</b>	Your relationship manager and client service manager will normally respond back to you immediately or within a few hours.	We do not have a metric for this item but we do pride ourselves on our responsiveness to our clients.	Not applicable



<b>QDRO Processing</b>	95% QDRO segregations will be completed within 5 business days if received in good order prior to 3 pm CT.	Metric provided on the quarterly Empower Client Service Report.	Not applicable
<b>Timely Mailing of Required Notices (QDIA, SAR, Participant Fee Disclosure, etc.)</b>	Notices and delivery of notices will be provided for within Empower's Master Services Agreement.	Not applicable	Not applicable
<b>Timeliness of Monthly Reporting to Plan Sponsor Staff</b>	99% of the time reports available online - updated monthly and nightly excluding regularly scheduled maintenance.	Metric provided on the quarterly Empower Client Service Report	1% of quarterly fees
<b>Timeliness of Quarterly Reporting to Plan Sponsor Staff, including Plan Review</b>	This is accounted for under the reporting standard above	This is accounted for under the reporting standard above	Not applicable
<b>Timeliness of Processing Trustee-to-Trustee Transfers in line with Plan Sponsor Requirements</b>	This is accounted for under the distribution standard above	This is accounted for under the distribution standard above	Not applicable
<b>Timeliness of Processing Service Credit Purchases in line with Plan Sponsor Requirements</b>	This is accounted for under the distribution standard above	This is accounted for under the distribution standard above	Not applicable

Empower shall not be liable for the performance standards stated herein for failure to meet any of the performance standards as a result of an interruption of any service provided under the Agreement or delayed or defective performance of such service arising out of war, natural disasters, acts of terrorism, loss of utilities, government restrictions, trading halts, exchange or market rulings, extraordinary market volatility or exchange conditions, disabling strikes or any other causes beyond its reasonable control. If call volumes exceed 10% of normal or budgeted volumes the month would be excluded. Empower shall maintain a reasonable disaster recovery plan and shall use its best efforts to resume services on a normal basis as soon as practicable.

## EXHIBIT A-2:

### FLOAT DISCLOSURE

Empower Trust Company, LLC and its affiliates utilize various omnibus accounts at an unaffiliated bank (collectively, the "Omnibus Account") to facilitate transactions for or in connection with the Plan, including contributions and distributions. Empower's use of the Omnibus Account for many clients allows Empower to increase efficiency and charge plans lower fees than if the Plan utilized its own bank account. While assets are held in the Omnibus Account, the assets may generate earnings, which are commonly referred to as "float." This Float Disclosure describes how float is earned and used.

#### ***When is float earned?***

Float begins to accrue when assets are deposited in the Omnibus Account and ceases to accrue when the assets leave the Omnibus Account. The amount of float earned with respect to Plan-related transactions depends on (i) the length of time the assets are held in the Omnibus Account and (ii) the rate or return earned by the investment of assets deposited in the Omnibus Account.

#### ***Under what circumstances are assets held in the Omnibus Account?***

*Contributions Pending Investment.* Contributions to the Plan will generally be held in the Omnibus Account when they are received and not able to be invested the same day. This may occur because the contributions are received too late in the day to be invested (e.g., after market close). In such cases, the contributions are generally invested the following business day. Contributions may also be held in the Omnibus Account where the instructions to purchase investment options are not in good order when the contributions are received. A contribution is received in "good order" when a contribution is accompanied by usable and complete data, and available funds equal to the total amount shown in the data. The Plan Sponsor is responsible for providing good order instructions to Empower. In such cases, contributions are generally invested within one business day after Empower receives instructions and funding that are deemed to be in good order. If the Plan Sponsor or participant (for example, in the case of a rollover) does not provide good order instructions or funding within a reasonable period of time (generally 15 business days), Empower will return the funding without earnings to the Plan Sponsor.

*Proceeds Pending Distribution.* Proceeds from Investment Option redemptions and other distributions will generally be held in the Omnibus Account pending distribution. The proceeds typically will be deposited in the Omnibus Account the day a transaction is settled and will be held in the Omnibus Account until the distribution check, ACH payment, or other form of payment is (i) cleared by the bank on which the check or payment is drawn or (ii) in the case of an uncashed check or failed payment, the amounts are processed following the stale date of the check consistent with the administrative procedures provided to the Plan Sponsor and which may be made available online via the Plan Sponsor Center ("PSC") website, which may result in marking the funds for pre-escheatment or returning the funds to the plan. The amount of time we hold funds in the Omnibus Account depends on the time it takes for the recipient to receive the distribution. For example, proceeds distributed by check may be held in the Omnibus Account until the check is cashed by the recipient, which is beyond our control. Funds distributed via ACH generally remain in an Omnibus Account for one business day. Funds distributed by Wire Transfers are generally sent within one business day following the day they are deposited into the Omnibus Account.

Upon request, Empower will provide you a report on the status of your Plan's outstanding distribution checks. You may also review outstanding plan distributions by reviewing a plan disbursement report via your account on the PSC website.

***What rate of return is earned on assets deposited in the Omnibus Account?***

Amounts deposited in the Omnibus Account are generally invested in the higher-returning product of interest-bearing deposit accounts or in S&P AAA-rated government or treasury-backed money market mutual funds with weighted average maturities of less than 60 days with the aim of earning market returns for similar investment types. Neither the Plan Sponsor nor the Plan shall be liable for any diminution in the value of investments made with amounts deposited in the Omnibus Account.

Earnings rates for Omnibus Account deposits may change daily. Historical rates are available upon request and may also be posted to your PSC account to assist you with calculating an estimate of float earnings for your plan.

***How is float used?***

Any float earned by ETC, Empower, and/or its affiliates is used to defray the expenses for the maintenance of the Omnibus Account, and in the event the amount of float earned exceeds the amount necessary to defray the expenses for the maintenance of the Omnibus Account, such excess is retained by ETC, Empower, and/or its affiliates as compensation for its services to the Plan. To the extent the expenses associated with the maintenance of the Omnibus Account exceed the float earned, ETC, Empower and/or its affiliates will pay the maintenance expenses. The Plan is not responsible for the expenses associated with ETC's maintenance of the Omnibus Account.

Plan Sponsor may estimate the float earnings retained by Empower as compensation for the services it provides to the Plan by reviewing the ***Hypothetical Illustration of Float Earnings*** document attached to this float disclosure. In addition, you may request an estimated float earnings report for your plan at any time by contacting your Empower representative. Please note that the estimates calculate float earnings on a gross basis and do not reflect the applicable deductions for bank maintenance and transaction fees paid by Empower.

**HYPOTHETICAL ILLUSTRATION OF FLOAT EARNINGS**

**How can the plan fiduciaries estimate the float compensation earned by Empower?**

Empower and its affiliates utilize various omnibus accounts at an unaffiliated bank (collectively, the "Omnibus Account") to facilitate transactions for or in connection with the Plan, including contributions and distributions. This means there are not separate accounts maintained for each client's plan but rather all contributions that Empower receives for investment and held pending disbursement are invested in a commingled account. While assets are held in the Omnibus Account, the assets may generate earnings, which are commonly referred to as "float." This is because the assets are generally invested by Empower in either interest-bearing deposit accounts or S&P AAA-rated government or treasury-backed money market mutual funds with weighted average maturities of less than 60 days (collectively, the "Investment"). Empower will generally choose Investment with the higher return.

Empower's use of the Omnibus Account for many clients allows Empower to increase efficiency and charge plans lower fees than if the Plan utilized its own bank account. Although float is earned from all the assets held for multiple plans in the Omnibus Account, the chart and formulas below can be used by the Plan fiduciaries to estimate the amount of float Empower earns that may be attributed to their Plan.

<b>Plan Transaction Type</b>	<b>Payment Type</b>	<b>Is Float Earned?</b>	<b>Amount of Float Interest Earned</b>
<b>Contributions</b>	Incoming Wires	Yes	Daily until Settlement Date, generally wire date + 1 business day
	Credit ACH	Yes	Daily until Settlement Date, generally ACH date + 1 business day
	Debit ACH	No	Not applicable
	Checks – received in good order	No	Not applicable
	Checks – received not in good order	Yes	Daily until contribution request deemed in good order
<b>Distributions</b>	Check	Yes	Daily until check is cleared or voided
	Credit ACH	Yes	One day of interest

**Float on Contributions.** If the plan sponsor or participant initiates contributions by wire or Credit ACH, then Empower receives float on the contributions received before 4 pm ET on a business day until Empower settles the trade on the next business day (the "Settlement Date"). This will result in one day of interest for contributions received on a Monday through Thursday and additional days for money received on Friday or on a day before a holiday.

The factors for calculating the float on contributions received by wire or Credit ACH initiated by the plan sponsor are as follows:

- A plan's total annual profit-sharing contribution of \$1,000,000 (A) would earn one day of interest (the trade date on which the money is received at Empower's bank until Settlement Date).

- By way of example, the 1-day yield\* of the Investment is assumed to be 5.2% (B). This rate is subject to change on a daily basis.
- To determine one day of earnings, the annual rate would be divided by 365 (C).

Based on these factors, the un compounded formula is:

(A) multiplied by (B) divided by (C) or in our example  $\$1,000,000 \times 5.2\%/365 = \$142.47$

This calculation does not include a deduction for bank fees, which will reduce the earnings retained by Empower. This calculation would need to be performed for each contribution deposited with Empower or could be estimated based on an average contribution amount.

**Float on Disbursements.** If disbursements are made by check, Empower receives float until the check is cashed/presented back to our check disbursement bank account or voided.

- A plan that has annual benefit payments of \$1,000,000 (D) would earn interest on the balance during the period of time the check is outstanding. For illustration purposes, although Empower does not control when a participant cashes a check, let's assume checks are outstanding for 7 (E) days on average.
- By way of example, the 1-day yield\* of the Investment is assumed to be 5.2% (B). This rate is subject to change on a daily basis.

To calculate the estimated float for the period of time the checks are outstanding, the un compounded formula is:

(D) multiplied by (B) divided by (C) and multiplied by (E) or in our example  $\$1,000,000 \times 5.2\% / 365 \times 7 = \$997.26$

This calculation does not include a deduction for bank fees which will reduce the earnings retained by Empower.

- A plan carrying an average outstanding check balance of \$10,000 (F) would generate float interest on that balance throughout the year. You may request a report from Empower of uncashed checks over a 6-month period which could give you an estimate of your average outstanding check balance during that period. Assuming this same level of activity persists for an entire year, these outstanding checks would be subject to a full year of interest.
- By way of example, the 1-day yield\* of the Investment is assumed to be 5.2% (B). This rate is subject to change on a daily basis.

Over a full year, the average interest rate would be applied to the average outstanding balance. Based on these factors, the un compounded formula is:

(F) multiplied by (B) or in our example  $\$10,000 \times 5.2\% = \$520.00$

This calculation does not include a deduction for bank fees, which will reduce the earnings retained by Empower.

If disbursements are made by Credit ACH, most transactions post to the plan account the next business day, so Empower may receive one day of float. This calculation would use the same formula but would divide the annual amount by 365 to calculate the daily amount. Using \$10,000 (G) as an example of a

distribution paid via ACH, the uncompounded formula is: (G) multiplied by (B) divided by (C) or in our example  $\$100,000 \times 5.2\% / 365 \times 1 = \$28.49$

This calculation does not include a deduction for bank fees, which will reduce the earnings retained by Empower.

In summary, for each of the examples provided above:

Letters corresponding to examples above	Transaction Type	Amount	Estimated Uncompounded Float Earned, Not Including Deductions for Bank Fees
A	Annual contributions made by wire or Credit ACH	\$1,000,000	\$142.47
B	Assumed 1-Day Yield	5.2%	-
C	365 Days used to determine one day of earnings	-	-
D	Annual Disbursements made by check	\$1,000,000	\$997.26
E	7-day outstanding check period	-	-
F	Uncashed Check Disbursements outstanding full year	\$10,000	\$520.00
G	Disbursements made via Credit ACH	\$100,000	\$28.49
<b>Total Estimated Float</b>			<b>\$1,688.22</b>

(A) multiplied by (B) divided by (C) or  $\$1,000,000 \times 5.2\%/365 = \$142.47$

(D) multiplied by (B) divided by (C) and multiplied by (E) or  $\$1,000,000 \times 5.2\% / 365 \times 7 = \$997.26$

(F) multiplied by (B) or  $\$10,000 \times 5.2\% = \$520.00$

(G) multiplied by (B) divided by (C) or  $\$100,000 \times 5.2\% / 365 = \$28.49$

\*Current 1-day yield as of September 30, 2023, used for illustrative purposes in these examples. Historical earnings rates for Omnibus Account deposits are available upon request by contacting Empower.

**SCHEDULE B-1:  
CUSTODIAL ACCOUNT AGREEMENT**

**for  
The North Dakota Section 457(b) Deferred Compensation Plan and Trust  
("457(b) Plan" or "Plan")**

**Group Account Number: 100455-01**

This Custodial Account Agreement Schedule ("**Schedule**") is entered into by the parties pursuant to the Master Services Agreement between Empower and Plan Sponsor dated July 1, 2024 (the "**Agreement**"). This Schedule shall be entered into between Empower Trust Company, LLC, an Affiliate of Empower and a trust company chartered under the laws of the State of Colorado having a place of business in Greenwood Village, Colorado (hereinafter referred to as "**Custodian**") and Plan Sponsor effective as of June 27, 2024 (the "**Schedule Effective Date**"). This Schedule hereby incorporates by reference, and each party agrees to be bound by, the terms of the Agreement. As such, this Schedule forms a separate and independent Custodial Account Agreement for the Plan. In the event of a conflict between the terms of the Agreement and this Schedule, this Schedule shall supersede and control, but only with regard to the Services rendered by Custodian hereunder. For the avoidance of doubt, the terms of this Schedule will not govern nor have any applicability to other relationships or Services between Empower, or any other Empower Affiliate, and Plan Sponsor.

The Plan is established or adopted by the Plan Sponsor as a Code section 457(b) eligible deferred compensation plan (defined contribution) that is a governmental plan within the meaning of Code section 414(e) and ERISA section 33(3) and, as such, is exempt from ERISA.

Plan Sponsor is authorized under the terms of the Plan to appoint a custodian.

If applicable, the Plan Administrator is authorized under the Plan to appoint a custodian to hold Plan funds in a custodial account designed to meet the requirements of Code section 401(f)(2) and Treasury Regulation Section 1.457-8(a)(3).

The Plan Sponsor or Plan Administrator, as applicable, desires the Custodian to hold Plan funds and the Custodian is willing to hold such funds pursuant to the terms of this Schedule.

**1. Custodial Account.**

**1.1 Establishment of Custodial Account.**

**1.1.1** In order to carry out the purposes of the Plan, a Custodial Account (hereinafter called the “**Custodial Account**”) is hereby created and established. The Custodian accepts this Custodial Account and agrees to act as Custodian hereunder, but only on the terms and conditions set forth in this Schedule.

**1.1.2** The Custodial Account shall include only those assets which the Custodian initially accepts, and assets that are subsequently added pursuant to the provisions of Sections 1.3 and 1.4 of this Schedule. Only assets actually received by the Custodian will become part of the Custodial Account. The Plan Sponsor, or Plan Administrator, as applicable, acknowledges and agrees that it is responsible for effectuating the transfer of any assets held by a prior custodian to the Custodian. All assets so received, together with the income therefrom and any other increment thereon, shall be held by the Custodian pursuant to the terms of this Schedule without distinction between principal and income and without liability for the payment of interest thereon.

**1.1.3 Payroll Contributions Prior to TOA.** To the extent that Custodian agrees in writing to accept and hold in custody employer and employee contributions to the Plan from payroll contributions that occur prior to TOA, this Schedule Effective Date is modified to the date that such contributions are determined to be in good order by Custodian, and the Agreement will be in effect for the limited purpose of accepting such contributions and holding them in custody. The contributions will be held in custody in a plan level account and Plan Sponsor will provide written Direction to Custodian as to how such contributions shall be invested until allocated to Participant accounts following TOA as Directed by the Plan Sponsor. Plan Sponsor agrees that Custodian is not responsible as custodian for any assets that have not been received and accepted.

**1.2 General Duties of the Plan Sponsor.** The Plan Sponsor shall control and manage the operation of the Plan. The Plan Sponsor shall be responsible for determining benefit rights under the Plan, instructing the Custodian in the disbursement of benefits, investment management, soliciting stock voting instructions from Plan participants, Directing the Custodian in voting proxies, and performing those plan administration functions specified in the Plan.

**1.3 General Duties of Custodian.**

**1.3.1** The Custodian shall receive, hold, invest and reinvest the assets of the Custodial Account pursuant to the provisions of this Section 1.3 and Section 1.4, in accordance with the Directions received by it from Plan Sponsor, Plan Administrator, or its designees, as applicable, and shall have no duty to determine any facts or the propriety of any action taken or omitted by the Custodian in good faith pursuant to instructions from the Plan Administrator, Plan Sponsor, or its authorized designees.



**1.3.2** The Custodian shall be responsible only for such assets as are actually received by it as Custodian hereunder. The Custodian shall have no duty or authority to ascertain whether any contributions should be made to it pursuant to the Plan or to bring any action to enforce any obligation to make any contribution, nor shall it have any responsibility concerning the amount of any contribution or the application of the Plan's contribution formula.

**1.3.3** The duties and obligations of the Custodian hereunder shall be limited to those expressly imposed upon it by this Schedule, notwithstanding any reference to the contrary in the Plan, and no further duties or obligations of the Custodian shall be implied. The Custodian shall not be liable for any loss to, or diminution of the Plan assets, or for any other loss or damage which may result from the discharging of its duties hereunder if it acts in good faith and in accordance with the terms of this Schedule and in accordance with applicable federal or state laws, rules, and regulations.

**1.3.4** Custodian and its agents shall perform their responsibilities in a manner consistent with that of a professional custodian acting in the jurisdiction in which the assets are located.

**1.4 Powers and Duties of Custodian with Respect to Custodial Account Assets.** The Custodian shall have the following powers and duties regarding the Custodial Account:

**1.4.1** To hold title to the assets of the Custodial Account, which may include entering into depository arrangements for the safekeeping of assets and records relevant to the ownership of such assets with any bank or banks and/or depositories as the Custodian may choose and the right to hold such assets in nominee name and in any other book entry or any other data processing form.

**1.4.2** To invest the assets of the Custodial Account in Investment Options selected by the Plan Sponsor for which an affiliate of Custodian (hereinafter called "Recordkeeper") provides recordkeeping services pursuant to an election made by the Plan Sponsor with Recordkeeper including, but not limited to, funds invested through a self-directed option. The Custodian shall have no duty or responsibility to determine the appropriateness of any Plan investment Directed to be made by the Plan Sponsor or its designees, to cause such investments to be changed to diversify investments, or to make any investment decisions.

**1.4.3** To make transfers among investment vehicles or disbursements from the Custodial Account as Directed by the Plan Sponsor, its authorized designees, or directed by Participants as allowed by the terms of the Plan. The Custodian shall be entitled to rely on such Direction, and shall have no responsibility to ascertain whether the Plan permits such a transfer or disbursement.

**1.4.4** To delegate to Recordkeeper, Affiliates or others, any or all of its duties arising out of this Schedule, including but not limited to, recordkeeping and reporting. Also, the Custodian may utilize the services of outside custodians to hold on the Custodian's behalf any of the Plan's assets invested in securities, which assets may be held in the Custodian's nominee name.

**1.4.5** To vote securities proxies pursuant to the Direction of the Plan Sponsor or its authorized designees.

## **1.5 Disbursement of Custodial Account Assets.**

**1.5.1** Upon receipt of written Direction of the Plan Sponsor, Plan Administrator or authorized designee thereof, the Custodian shall make payments from the Custodial Account to such persons in such manner and in such amounts as the Plan Sponsor or Plan Administrator, as applicable, shall Direct in writing, and amounts paid pursuant to such Direction shall no longer constitute a part of the Custodial Account. Notwithstanding the foregoing, the Plan Sponsor or Plan Administrator, as applicable, expressly reserves the right to provide Direction directly to Recordkeeper regarding payments of Plan benefits or other disbursements.

**1.5.2** At no time prior to the satisfaction of all liabilities with respect to Participants and beneficiaries under this Custodial Account, shall any part of the corpus or income of the Custodial Account be used for, or diverted to, purposes other than for the exclusive benefit of Participants or beneficiaries. The assets of the Custodial Account shall be held for the exclusive purposes of providing benefits to Participants in the Plan or their beneficiaries and defraying the reasonable expenses of administering the Plan and the Custodial Account.

**1.6 Reports of the Custodian.** The Custodian has accepted this Custodial Account with the understanding that the Plan Sponsor or Plan Administrator, as applicable, has entered into the Agreement with Recordkeeper, whereby Recordkeeper will provide recordkeeping services for all Plan assets held pursuant to this Schedule. The recordkeeping reports will constitute the reports of the Custodian.

**2. Alienation.** No interest in the Custodial Account shall be assignable or subject to anticipation, sale, transfer, mortgage, pledge, charge, garnishment, attachment, bankruptcy or encumbrance or levy of any kind, and the Custodian or its agent shall not recognize any attempt to assign, sell, transfer, mortgage, pledge, charge, garnish, attach or otherwise encumber the same except to the extent that such attempt is made pursuant to (i) a court order determined by the Plan Administrator to be a qualified domestic relations order, as defined in Section 414 of the Code, (ii) as required by a federal tax levy made in accordance with Section 6331 of the Code, (iii) pursuant to an offset under Section 401(a)(13)(C) of the Code or (iv) as otherwise allowed under the Code.

**2.1 Bond.** Custodian shall not be required to give any bond or any other security for the faithful performance of its duties under this Schedule except as required by law.

**2.2 Proxies and Other Incidents of Ownership.**

**2.2.1** The Custodian shall have no discretion with respect to voting proxies, tendering shares in a tender or exchange offer, or exercising any other rights of ownership.

**2.2.2** The Custodian shall deliver or cause to be delivered, as Directed by the Plan Sponsor or Plan Administrator, to the Plan Sponsor, Plan Administrator, the designated investment manager, or a designated transfer agent, all notices, prospectuses, finance statements and proxies and proxy related materials received by Custodian relating to investments held in the Custodial Account.

**2.2.3** The Plan Sponsor shall assign a named fiduciary (which may be Participants, or a person, committee or entity designated by the Plan Sponsor, or the Plan Sponsor, but which shall not be the Custodian) who shall be responsible for voting proxies, tendering shares and exercising shareholder rights. Where the Plan Sponsor has assigned the Participants as the named fiduciary for purposes of proxy voting, tendering of shares or exercising other rights of ownership, the Plan Sponsor or Plan Administrator shall be responsible for distributing or causing to be distributed, proxies and proxy-related materials to the Plan Participants.

**2.2.4** With respect to investments held in Participant-directed brokerage accounts, each Participant shall be responsible for directly voting proxies, tendering shares and exercising shareholder rights.

**3. Compensation and Expenses.**

**3.1** Custodian shall be compensated in accordance with the fee schedule or other fee documentation provided to Plan Sponsor under the Agreement between the Plan Sponsor and Empower to provide recordkeeping or other administrative services to the Plan where such fees may be paid by Empower on behalf of the Plan. Custodian reserves the right to liquidate Custodial Account assets in satisfaction of its fees hereunder in the event of non-payment by Plan Sponsor.

**3.2 Trustee/Custodian Services.**

**3.2.1 Empower Trust Company Bank Credits.** As of the Effective Date of Schedule A-2 of the Agreement and this Schedule B-1, Plan Sponsor acknowledges and agrees if the Plan's assets pass through a bank account held by Custodian, it may earn credits on Plan assets

awaiting investment or pending distribution. Any credits earned by Custodian are aggregated with credits and/or interest earned by its Affiliates and will be used to defray the aggregate expenses for the maintenance of bank accounts. Custodian will not retain credits earned in excess of such maintenance expenses.

**3.2.1.1** Credits are earned from the use of (i) uninvested contributions received too late in the day or not received in good order to be invested same-day and (ii) proceeds from investment option redemptions where distribution checks have not been presented for payment by Plan participants. Credits (i) begins to accrue on contributions, on the date such amounts are deposited into the bank account and ends on the date such amounts are invested pursuant to Plan Participant or Plan representative instructions, and (ii) begins to accrue on distributions, on the date the check is written or on the ACH date, as applicable and ends on the date the check is presented for payment or when the ACH clears against the account, as applicable. Earnings of credits are at the rate the bank provides from time to time.

**3.2.2 Float.** On or after July 1, 2024, or a later date as agreed to by the parties, the compensation received by ETC for its services are reflected in (a) the Plan's fee disclosure report provided by Empower, (b) the Float Disclosure provided by Empower and which may be made available online, and (c) any trust/custodial agreement(s) between ETC and Plan Sponsor. If Plan Sponsor selects a different trustee or custodian other than ETC, as applicable, that requires changes to any procedures or services in the Agreement, Empower reserves the right to change fees in this section.

**3.2.2.1 Omnibus Account.** Plan assets awaiting investment or pending distribution are held in various omnibus accounts at an unaffiliated bank (collectively, the "Omnibus Account") to facilitate transactions for or in connection with the Plan. The Plan is not responsible for paying directly the expenses associated with ETC's maintenance of the Omnibus Account. However, the expenses of the Omnibus Account are defrayed by the earnings on the assets held in the Omnibus Account.

While assets are held in the Omnibus Account, the assets may generate earnings under circumstances summarized in the Float Disclosure provided to the Plan Sponsor and which may be made available on the Plan Sponsor's website. The earnings are used to defray the expenses for the maintenance of the Omnibus Account, and in some cases, the earnings on the Omnibus Account attributable to the Plan will exceed the portion of the expenses of the Omnibus Account attributable to the Plan. Notwithstanding Exhibit A-2 to Schedule A-2 of the Agreement, Empower will deposit these "Excess Earnings" in the Plan within 45 days following the end of the calendar quarter.

The Plan Sponsor Directs Empower to deposit the Plan's Excess Earnings into a Plan registered account and to invest such amounts in the same Investment Option in which the Plan's forfeiture

assets are invested unless Directed otherwise by the Plan Sponsor. Plan Sponsor is solely responsible for determining the appropriate use of such amounts under the terms of the Plan and agrees to Direct Empower accordingly.

The Excess Earnings paid to the Plan under this arrangement are being made available as a reduction in the compensation that Empower would otherwise earn in connection with the services it provides to the Plan. The parties acknowledge that the Omnibus Account does not hold plan assets and that Empower is not a fiduciary (as defined under ERISA section 3(21)) with respect to the Omnibus Account or the Plan. No earnings on the Omnibus Account will be set aside or otherwise segregated prior to the disbursement of Excess Earnings each calendar quarter, if any, and the Plan has no right, title or interest in any earnings generated by the Omnibus Account prior to the time that the Excess Earnings are deposited in Plan.

**3.3** Custodian shall pay out of the Custodial Account, income taxes levied or assessed under existing or future laws against the Custodial Account, (including all Participant accounts) upon direction by a regulatory authority or agency or Plan Sponsor or Plan Administrator, as applicable.

**3.4** Plan Sponsor shall pay, or if not paid by Plan Sponsor and the Plan so permits, Plan Sponsor hereby Directs Custodian to pay from the Custodial Account, the reasonable expenses relating to the Plan and Custodial Account that are permitted by law to be paid from the Custodial Account.

#### **4. Confidential Information.**

Plan Sponsor authorizes Custodian to disclose Confidential Information to: (i) any sub-custodian, subcontractor, agent, securities depository, securities exchange, broker, third party agent, proxy solicitor, issuer, or any other person that Custodian believes is reasonably required to receive such information in connection with Custodian's provision of relevant services under this Schedule; (ii) its professional advisors, auditors or public accountants; (iii) its Affiliates, and (iv) any revenue authority or any governmental entity in relation to the processing of any tax relief claim.

#### **5. Resignation & Termination.**

##### **5.1 Resignation or Removal of Custodian.**

**5.1.1** Custodian may resign at any time by giving one hundred eighty (180) days' written notice to Plan Sponsor. The Plan Sponsor may remove Custodian at any time by giving ninety (90) days' written notice to Custodian. In the case of the resignation or removal of Custodian, the Plan Sponsor shall appoint a successor Custodian who shall have the same powers

and duties as those conferred upon Custodian. If the Plan Sponsor fails to appoint a successor Custodian as of the effective date of the Custodian resignation or removal and no other Custodian remains, the Custodian will treat the Plan Sponsor as having appointed itself as Custodian and as having filed the Plan Sponsor's acceptance of appointment as successor Custodian with the Custodian. If state law prohibits the Plan Sponsor from serving as successor Custodian, the appointed successor Custodian is the director of the Plan Sponsor.

**5.1.2** Custodian shall execute, acknowledge and deliver all documents and written instruments necessary to transfer and deliver all of the assets of the Custodial Account and all rights and privileges therein to the successor Custodian or, in its discretion, to a court of competent jurisdiction as the Custodian deems necessary, within a reasonable time, after reserving such reasonable amount as it shall deem necessary to provide for any expenses and payments then chargeable against the Custodial Account for which the Custodial Account may be liable, or for payment of the retiring Custodian's fees and expenses in connection with the settlement of its account or otherwise. If the assets so withheld shall be insufficient or excessive for such purposes, the retiring Custodian shall be entitled to reimbursement for any deficiency out of the Custodial Account from the successor Custodian, or shall deliver the excess to the successor Custodian, as the case may be. Following the effective date of the removal or resignation of Custodian, upon request, the Custodian shall provide the Plan Sponsor a written account of all Custodial Account transactions since the most recent report provided to the Plan Sponsor. The provisions of Section 1.6 shall be applicable to such account. The term "Custodian" as used in this Schedule shall be deemed to apply to any successor Custodian.

**5.1.3** Upon the appointment of a successor Custodian, the resigning and removed Custodian shall be discharged from further accountability for the Custodial Account, and shall be under no further duty, obligation or responsibility for the disposition by such successor Custodian of the Custodial Account or any part thereof.

## **5.2 Termination.**

**5.2.1** In the event the Agreement is terminated, this Schedule shall be terminated as well, as of the date of termination of the Agreement, with no further notice required from either party to the other.

**5.2.2** In addition, Custodial Account may be terminated at any time by the Plan Sponsor upon ninety (90) days prior written notice delivered to Custodian. Upon receipt of such notice of termination, the Custodian shall, after payment of all expenses incurred in the administration of the Custodial Account and such compensation as to which Custodian may be entitled, distribute the Custodial Account in cash or in kind to such persons or entities, including Plan Sponsor, at such time and in such amounts as Plan Sponsor or Plan Administrator shall Direct,

which Direction shall be in conformity with the provisions of the Plan. Notwithstanding the foregoing, Custodian shall not be required to pay out any assets of the Custodial Account until it shall have received such rulings or determinations of the Internal Revenue Service, or any other administrative agency as it may deem necessary or appropriate in order to assure itself that any such payment is made in accordance with applicable provisions of law, or that it will not subject the Custodial Account or the Custodian, individually or jointly as such Custodian, to liability. The Plan Sponsor or Plan Administrator shall be responsible for obtaining such rulings.

## **6. Miscellaneous.**

**6.1 Entire Agreement.** This Schedule, including the terms of the Agreement as incorporated by reference, and all appendices, exhibits, schedules, notices and attachments thereto, constitutes the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior drafts, agreements, negotiations and proposals, written or verbal, relating to the Services, and supersedes any prior custody agreement, statement, or representation relating to the obligations of the Custodian, whether oral or written.

**6.2 Amendment.** Except as otherwise provided herein, this Schedule may be modified only by an amendment signed by authorized representatives of each party. Notwithstanding anything contained in this Section to the contrary, no amendment shall divert any part of the Custodial Account to, and no part of the Custodial Account shall be used for, any purpose other than for the exclusive purpose of providing benefits to Participants; provided, however, that nothing in this Section shall be deemed to limit or otherwise prevent the payment from the Custodial Account of expenses and other charges as provided in Section 3.

**6.3 Assignment.** This Agreement shall be binding upon and inure to the benefit of each of the parties, their Affiliates, successors and permitted assigns; provided, however, that neither party may assign its rights or obligations hereunder without the other party's prior written consent.

**6.4 Governing Law; Jurisdiction.** Notwithstanding anything in the Agreement, to the extent not preempted by Federal law, this Schedule and the Custodial Account shall be construed, regulated, and administered under the laws of the United States or the State of Colorado as they relate to the activities of the Custodian, and otherwise, in accordance with the laws of the State of North Dakota, as applicable, without regard to conflict of law principles, and any claim arising under or related to this Schedule shall be subject to the exclusive jurisdiction of the state courts located in Burleigh County, North Dakota.

**6.5 Notices.** All formal notices required by this Schedule will be in writing and shall be sent to Custodian as set forth below or to Plan Sponsor. The Plan Sponsor will be deemed to have received any applicable notices on behalf of the Plan Administrator. All notices sent shall be

effective upon receipt. Provided, however, that upon either party's written request, such communications shall be sent to such other address as a party may specify. No communication shall be binding on either party until it is received by such party.

**Custodian:**

Notice To Custodian: Empower Trust Company, LLC  
8515 East Orchard Road  
Greenwood Village, CO 80111  
Attn: Trust Officer

With a copy to: Empower Trust Company, LLC  
8515 East Orchard Road  
Greenwood Village, CO 80111  
Attn: General Counsel

**Plan Sponsor:**

Notice To Plan Sponsor: Plan Sponsor's address of record as provided to the Trustee or its Affiliates from time to time.

**6.6 Reports.** The Custodian has accepted this Custodial Account with the understanding that Plan Sponsor or Plan Administrator has entered into an Agreement with Empower, whereby Empower is providing recordkeeping services for all Plan assets held pursuant to this Schedule. The recordkeeping reports and related financial information provided by Empower shall constitute the reports of the Custodian.

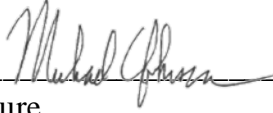
**[Signature page follows]**



The Plan Sponsor and the Custodian have executed this instrument on such dates specified below.

**Empower Trust Company, LLC**

**Plan Sponsor: State of North Dakota**

  
-----  
Signature

-----  
Signature

Michael Johnson  
-----  
Printed Name

-----  
Printed Name

Trust Officer  
-----  
Title

-----  
Title

6/5/2024  
-----  
Date Signed

-----  
Date Signed

**Plan Administrator: North Dakota Public  
Employees Retirement System**

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Signature

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Printed Name

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Title

-----  
Date Signed

**SCHEDULE B-2:  
CUSTODIAL ACCOUNT AGREEMENT**

**for  
The North Dakota Public Employees Retirement System Defined Contribution Plan  
("401(a) Plan" or "Plan")**

**Group Account Number: 100456-01**

This Custodial Account Agreement Schedule ("**Schedule**") is entered into by the parties pursuant to the Master Services Agreement between Empower and Plan Sponsor dated July 1, 2024 (the "**Agreement**"). This Schedule shall be entered into between Empower Trust Company, LLC, an Affiliate of Empower and a trust company chartered under the laws of the State of Colorado having a place of business in Greenwood Village, Colorado (hereinafter referred to as "**Custodian**") and Plan Sponsor effective as of June 27, 2024 (the "**Schedule Effective Date**"). This Schedule hereby incorporates by reference, and each party agrees to be bound by, the terms of the Agreement. As such, this Schedule forms a separate and independent Custodial Account Agreement for the Plan. In the event of a conflict between the terms of the Agreement and this Schedule, this Schedule shall supersede and control, but only with regard to the Services rendered by Custodian hereunder. For the avoidance of doubt, the terms of this Schedule will not govern nor have any applicability to other relationships or Services between Empower, or any other Empower Affiliate, and Plan Sponsor.

The Plan is established or adopted by the Plan Sponsor as a Code section 401(a) qualified plan (defined contribution) that is a governmental plan within the meaning of Code section 414(e) and ERISA section 33(3) and, as such, is exempt from ERISA.

Plan Sponsor is authorized under the terms of the Plan to appoint a custodian.

If applicable, the Plan Administrator is authorized under the Plan to appoint a custodian to hold Plan funds in a custodial account designed to meet the requirements of Code section 401(f)(2).

The Plan Sponsor or Plan Administrator, as applicable, desires the Custodian to hold Plan funds and the Custodian is willing to hold such funds pursuant to the terms of this Schedule.

**1. Custodial Account.**

**1.1 Establishment of Custodial Account.**

**1.1.1** In order to carry out the purposes of the Plan, a Custodial Account (hereinafter called the “**Custodial Account**”) is hereby created and established. The Custodian accepts this Custodial Account and agrees to act as Custodian hereunder, but only on the terms and conditions set forth in this Schedule.

**1.1.2** The Custodial Account shall include only those assets which the Custodian initially accepts, and assets that are subsequently added pursuant to the provisions of Sections 1.3 and 1.4 of this Schedule. Only assets actually received by the Custodian will become part of the Custodial Account. The Plan Sponsor, or Plan Administrator, as applicable, acknowledges and agrees that it is responsible for effectuating the transfer of any assets held by a prior custodian to the Custodian. All assets so received, together with the income therefrom and any other increment thereon, shall be held by the Custodian pursuant to the terms of this Schedule without distinction between principal and income and without liability for the payment of interest thereon.

**1.1.3 Payroll Contributions Prior to TOA.** To the extent that Custodian agrees in writing to accept and hold in custody employer and employee contributions to the Plan from payroll contributions that occur prior to TOA, this Schedule Effective Date is modified to the date that such contributions are determined to be in good order by Custodian, and the Agreement will be in effect for the limited purpose of accepting such contributions and holding them in custody. The contributions will be held in custody in a plan level account and Plan Sponsor will provide written Direction to Custodian as to how such contributions shall be invested until allocated to Participant accounts following TOA as Directed by the Plan Sponsor. Plan Sponsor agrees that Custodian is not responsible as custodian for any assets that have not been received and accepted.

**1.2 General Duties of the Plan Sponsor.** The Plan Sponsor shall control and manage the operation of the Plan. The Plan Sponsor shall be responsible for determining benefit rights under the Plan, instructing the Custodian in the disbursement of benefits, investment management, soliciting stock voting instructions from Plan participants, Directing the Custodian in voting proxies, and performing those plan administration functions specified in the Plan.

**1.3 General Duties of Custodian.**

**1.3.1** The Custodian shall receive, hold, invest and reinvest the assets of the Custodial Account pursuant to the provisions of this Section 1.3 and Section 1.4, in accordance with the Directions received by it from Plan Sponsor, Plan Administrator, or its designees, as applicable, and shall have no duty to determine any facts or the propriety of any action taken or omitted by the Custodian in good faith pursuant to instructions from the Plan Administrator, Plan Sponsor, or its authorized designees.

**1.3.2** The Custodian shall be responsible only for such assets as are actually

received by it as Custodian hereunder. The Custodian shall have no duty or authority to ascertain whether any contributions should be made to it pursuant to the Plan or to bring any action to enforce any obligation to make any contribution, nor shall it have any responsibility concerning the amount of any contribution or the application of the Plan's contribution formula.

**1.3.3** The duties and obligations of the Custodian hereunder shall be limited to those expressly imposed upon it by this Schedule, notwithstanding any reference to the contrary in the Plan, and no further duties or obligations of the Custodian shall be implied. The Custodian shall not be liable for any loss to, or diminution of the Plan assets, or for any other loss or damage which may result from the discharging of its duties hereunder if it acts in good faith and in accordance with the terms of this Schedule and in accordance with applicable federal or state laws, rules, and regulations.

**1.3.4** Custodian and its agents shall perform their responsibilities in a manner consistent with that of a professional custodian acting in the jurisdiction in which the assets are located.

**1.4 Powers and Duties of Custodian with Respect to Custodial Account Assets.** The Custodian shall have the following powers and duties regarding the Custodial Account:

**1.4.1** To hold title to the assets of the Custodial Account, which may include entering into depository arrangements for the safekeeping of assets and records relevant to the ownership of such assets with any bank or banks and/or depositories as the Custodian may choose and the right to hold such assets in nominee name and in any other book entry or any other data processing form.

**1.4.2** To invest the assets of the Custodial Account in Investment Options selected by the Plan Sponsor for which an affiliate of Custodian (hereinafter called "Recordkeeper") provides recordkeeping services pursuant to an election made by the Plan Sponsor with Recordkeeper including, but not limited to, funds invested through a self-directed option. The Custodian shall have no duty or responsibility to determine the appropriateness of any Plan investment Directed to be made by the Plan Sponsor or its designees, to cause such investments to be changed to diversify investments, or to make any investment decisions.

**1.4.3** To make transfers among investment vehicles or disbursements from the Custodial Account as Directed by the Plan Sponsor, its authorized designees, or directed by Participants as allowed by the terms of the Plan. The Custodian shall be entitled to rely on such Direction, and shall have no responsibility to ascertain whether the Plan permits such a transfer or disbursement.

**1.4.4** To delegate to Recordkeeper, Affiliates or others, any or all of its duties arising out of this Schedule, including but not limited to, recordkeeping and reporting. Also, the Custodian may utilize the services of outside custodians to hold on the Custodian's behalf any of the Plan's assets invested in securities, which assets may be held in the Custodian's nominee name.

**1.4.5** To vote securities proxies pursuant to the Direction of the Plan Sponsor or its authorized designees.

## **1.5 Disbursement of Custodial Account Assets.**

**1.5.1** Upon receipt of written Direction of the Plan Sponsor, Plan Administrator or authorized designee thereof, the Custodian shall make payments from the Custodial Account to such persons in such manner and in such amounts as the Plan Sponsor or Plan Administrator, as applicable, shall Direct in writing, and amounts paid pursuant to such Direction shall no longer constitute a part of the Custodial Account. Notwithstanding the foregoing, the Plan Sponsor or Plan Administrator, as applicable, expressly reserves the right to provide Direction directly to Recordkeeper regarding payments of Plan benefits or other disbursements.

**1.5.2** At no time prior to the satisfaction of all liabilities with respect to Participants and beneficiaries under this Custodial Account, shall any part of the corpus or income of the Custodial Account be used for, or diverted to, purposes other than for the exclusive benefit of Participants or beneficiaries. The assets of the Custodial Account shall be held for the exclusive purposes of providing benefits to Participants in the Plan or their beneficiaries and defraying the reasonable expenses of administering the Plan and the Custodial Account.

**1.6 Reports of the Custodian.** The Custodian has accepted this Custodial Account with the understanding that the Plan Sponsor or Plan Administrator, as applicable, has entered into the Agreement with Recordkeeper, whereby Recordkeeper will provide recordkeeping services for all Plan assets held pursuant to this Schedule. The recordkeeping reports will constitute the reports of the Custodian.

**2. Alienation.** No interest in the Custodial Account shall be assignable or subject to anticipation, sale, transfer, mortgage, pledge, charge, garnishment, attachment, bankruptcy or encumbrance or levy of any kind, and the Custodian or its agent shall not recognize any attempt to assign, sell, transfer, mortgage, pledge, charge, garnish, attach or otherwise encumber the same except to the extent that such attempt is made pursuant to (i) a court order determined by the Plan Administrator to be a qualified domestic relations order, as defined in Section 414 of the Code, (ii) as required by a federal tax levy made in accordance with Section 6331 of the Code, (iii) pursuant to an offset under Section 401(a)(13)(C) of the Code or (iv) as otherwise allowed under the Code.

**2.1 Bond.** Custodian shall not be required to give any bond or any other security for the faithful performance of its duties under this Schedule except as required by law.

**2.2 Proxies and Other Incidents of Ownership.**

**2.2.1** The Custodian shall have no discretion with respect to voting proxies, tendering shares in a tender or exchange offer, or exercising any other rights of ownership.

**2.2.2** The Custodian shall deliver or cause to be delivered, as Directed by the Plan Sponsor or Plan Administrator, to the Plan Sponsor, Plan Administrator, the designated investment manager, or a designated transfer agent, all notices, prospectuses, finance statements and proxies and proxy related materials received by Custodian relating to investments held in the Custodial Account.

**2.2.3** The Plan Sponsor shall assign a named fiduciary (which may be Participants, or a person, committee or entity designated by the Plan Sponsor, or the Plan Sponsor, but which shall not be the Custodian) who shall be responsible for voting proxies, tendering shares and exercising shareholder rights. Where the Plan Sponsor has assigned the Participants as the named fiduciary for purposes of proxy voting, tendering of shares or exercising other rights of ownership, the Plan Sponsor or Plan Administrator shall be responsible for distributing or causing to be distributed, proxies and proxy-related materials to the Plan Participants.

**2.2.4** With respect to investments held in Participant-directed brokerage accounts, each Participant shall be responsible for directly voting proxies, tendering shares and exercising shareholder rights.

**3. Compensation and Expenses.**

**3.1** Custodian shall be compensated in accordance with the fee schedule or other fee documentation provided to the Plan Sponsor under the Agreement between the Plan Sponsor and Empower to provide recordkeeping or other administrative services to the Plan where such fees may be paid by Empower on behalf of the Plan. Custodian reserves the right to liquidate Custodial Account assets in satisfaction of its fees hereunder in the event of non-payment by Plan Sponsor.

**3.2 Trustee/Custodian Services.**

**3.2.1 Empower Trust Company Bank Credits.** As of the Effective Date of Schedule A-2 of the Agreement and this Schedule B-2, Plan Sponsor acknowledges and agrees if the Plan's assets pass through a bank account held by Custodian, it may earn credits on Plan assets awaiting investment or pending distribution. Any credits earned by Custodian are aggregated with

credits earned by its Affiliates and will be used to defray the aggregate expenses for the maintenance of bank accounts. Custodian will not retain credits earned in excess of such maintenance expenses.

**3.2.1.1 Credits** are earned from the use of (i) uninvested contributions received too late in the day or not received in good order to be invested same-day and (ii) proceeds from investment option redemptions where distribution checks have not been presented for payment by Plan participants. Credits (i) begins to accrue on contributions, on the date such amounts are deposited into the bank account and ends on the date such amounts are invested pursuant to Plan Participant or Plan representative instructions, and (ii) begins to accrue on distributions, on the date the check is written or on the ACH date, as applicable and ends on the date the check is presented for payment or when the ACH clears against the account, as applicable. Earnings of credits are at the rate the bank provides from time to time.

**3.2.2 Float.** On or after July 1, 2024, or a later date as agreed to by the parties, the compensation received by ETC for its services are reflected in (a) the Plan's fee disclosure report provided by Empower, (b) the Float Disclosure provided by Empower and which may be made available online, and (c) any trust/custodial agreement(s) between ETC and Plan Sponsor. If Plan Sponsor selects a different trustee or custodian other than ETC, as applicable, that requires changes to any procedures or services in the Agreement, Empower reserves the right to change fees in this section.

**3.2.2.1 Omnibus Account.** Plan assets awaiting investment or pending distribution are held in various omnibus accounts at an unaffiliated bank (collectively, the "Omnibus Account") to facilitate transactions for or in connection with the Plan. The Plan is not responsible for paying directly the expenses associated with ETC's maintenance of the Omnibus Account. However, the expenses of the Omnibus Account are defrayed by the earnings on the assets held in the Omnibus Account.

While assets are held in the Omnibus Account, the assets may generate earnings under circumstances summarized in the Float Disclosure provided to the Plan Sponsor and which may be made available on the Plan Sponsor's website. The earnings are used to defray the expenses for the maintenance of the Omnibus Account, and in some cases, the earnings on the Omnibus Account attributable to the Plan will exceed the portion of the expenses of the Omnibus Account attributable to the Plan. Notwithstanding Exhibit A-2 to Schedule A-2 of the Agreement, Empower will deposit these "Excess Earnings" in the Plan within 45 days following the end of the calendar quarter.

The Plan Sponsor Directs Empower to deposit the Plan's Excess Earnings into a Plan registered account and to invest such amounts in the same Investment Option in which the Plan's forfeiture assets are invested unless Directed otherwise by the Plan Sponsor. Plan Sponsor is solely

responsible for determining the appropriate use of such amounts under the terms of the Plan and agrees to Direct Empower accordingly.

The Excess Earnings paid to the Plan under this arrangement are being made available as a reduction in the compensation that Empower would otherwise earn in connection with the services it provides to the Plan. The parties acknowledge that the Omnibus Account does not hold plan assets and that Empower is not a fiduciary (as defined under ERISA section 3(21)) with respect to the Omnibus Account or the Plan. No earnings on the Omnibus Account will be set aside or otherwise segregated prior to the disbursement of Excess Earnings each calendar quarter, if any, and the Plan has no right, title or interest in any earnings generated by the Omnibus Account prior to the time that the Excess Earnings are deposited in Plan.

**3.3** Custodian shall pay out of the Custodial Account, income taxes levied or assessed under existing or future laws against the Custodial Account, (including all Participant accounts) upon direction by a regulatory authority or agency or Plan Sponsor or Plan Administrator, as applicable.

**3.4** Plan Sponsor shall pay, or if not paid by Plan Sponsor and the Plan so permits, Plan Sponsor hereby Directs Custodian to pay from the Custodial Account, the reasonable expenses relating to the Plan and Custodial Account that are permitted by law to be paid from the Custodial Account.

#### **4. Confidential Information.**

Plan Sponsor authorizes Custodian to disclose Confidential Information to: (i) any subcustodian, subcontractor, agent, securities depository, securities exchange, broker, third party agent, proxy solicitor, issuer, or any other person that Custodian believes is reasonably required to receive such information in connection with Custodian's provision of relevant services under this Schedule; (ii) its professional advisors, auditors or public accountants; (iii) its Affiliates, and (iv) any revenue authority or any governmental entity in relation to the processing of any tax relief claim.

#### **5. Resignation & Termination.**

##### **5.1 Resignation or Removal of Custodian.**

**5.1.1** Custodian may resign at any time by giving one hundred eighty (180) days' written notice to Plan Sponsor. The Plan Sponsor may remove Custodian at any time by giving ninety (90) days' written notice to Custodian. In the case of the resignation or removal of Custodian, the Plan Sponsor shall appoint a successor Custodian who shall have the same powers and duties as those conferred upon Custodian. If the Plan Sponsor fails to appoint a successor



Custodian as of the effective date of the Custodian resignation or removal and no other Custodian remains, the Custodian will treat the Plan Sponsor as having appointed itself as Custodian and as having filed the Plan Sponsor's acceptance of appointment as successor Custodian with the Custodian. If state law prohibits the Plan Sponsor from serving as successor Custodian, the appointed successor Custodian is the director of the Plan Sponsor.

**5.1.2** Custodian shall execute, acknowledge and deliver all documents and written instruments necessary to transfer and deliver all of the assets of the Custodial Account and all rights and privileges therein to the successor Custodian or, in its discretion, to a court of competent jurisdiction as the Custodian deems necessary, within a reasonable time, after reserving such reasonable amount as it shall deem necessary to provide for any expenses and payments then chargeable against the Custodial Account for which the Custodial Account may be liable, or for payment of the retiring Custodian's fees and expenses in connection with the settlement of its account or otherwise. If the assets so withheld shall be insufficient or excessive for such purposes, the retiring Custodian shall be entitled to reimbursement for any deficiency out of the Custodial Account from the successor Custodian, or shall deliver the excess to the successor Custodian, as the case may be. Following the effective date of the removal or resignation of Custodian, upon request, the Custodian shall provide the Plan Sponsor a written account of all Custodial Account transactions since the most recent report provided to the Plan Sponsor. The provisions of Section 1.6 shall be applicable to such account. The term "Custodian" as used in this Schedule shall be deemed to apply to any successor Custodian.

**5.1.3** Upon the appointment of a successor Custodian, the resigning and removed Custodian shall be discharged from further accountability for the Custodial Account, and shall be under no further duty, obligation or responsibility for the disposition by such successor Custodian of the Custodial Account or any part thereof.

## **5.2 Termination.**

**5.2.1** In the event the Agreement is terminated, this Schedule shall be terminated as well, as of the date of termination of the Agreement, with no further notice required from either party to the other.

**5.2.2** In addition, Custodial Account may be terminated at any time by the Plan Sponsor upon ninety (90) days prior written notice delivered to Custodian. Upon receipt of such notice of termination, the Custodian shall, after payment of all expenses incurred in the administration of the Custodial Account and such compensation as to which Custodian may be entitled, distribute the Custodial Account in cash or in kind to such persons or entities, including Plan Sponsor, at such time and in such amounts as Plan Sponsor or Plan Administrator shall Direct, which Direction shall be in conformity with the provisions of the Plan. Notwithstanding the

foregoing, Custodian shall not be required to pay out any assets of the Custodial Account until it shall have received such rulings or determinations of the Internal Revenue Service, or any other administrative agency as it may deem necessary or appropriate in order to assure itself that any such payment is made in accordance with applicable provisions of law, or that it will not subject the Custodial Account or the Custodian, individually or jointly as such Custodian, to liability. The Plan Sponsor or Plan Administrator shall be responsible for obtaining such rulings.

## **6. Miscellaneous.**

**6.1 Entire Agreement.** This Schedule, including the terms of the Agreement as incorporated by reference, and all appendices, exhibits, schedules, notices and attachments thereto, constitutes the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior drafts, agreements, negotiations and proposals, written or verbal, relating to the Services, and supersedes any prior custody agreement, statement, or representation relating to the obligations of the Custodian, whether oral or written.

**6.2 Amendment.** Except as otherwise provided herein, this Schedule may be modified only by an amendment signed by authorized representatives of each party. Notwithstanding anything contained in this Section to the contrary, no amendment shall divert any part of the Custodial Account to, and no part of the Custodial Account shall be used for, any purpose other than for the exclusive purpose of providing benefits to Participants; provided, however, that nothing in this Section shall be deemed to limit or otherwise prevent the payment from the Custodial Account of expenses and other charges as provided in Section 3.

**6.3 Assignment.** This Agreement shall be binding upon and inure to the benefit of each of the parties, their Affiliates, successors and permitted assigns; provided, however, that neither party may assign its rights or obligations hereunder without the other party's prior written consent.

**6.7 Governing Law; Jurisdiction.** Notwithstanding anything in the Agreement, to the extent not preempted by Federal law, this Schedule and the Custodial Account shall be construed, regulated, and administered under the laws of the United States or the State of Colorado as they relate to the activities of the Custodian, and otherwise, in accordance with the laws of the State of North Dakota, as applicable, without regard to conflict of law principles, and any claim arising under or related to this Schedule shall be subject to the exclusive jurisdiction of the state court located in Burleigh County, North Dakota.

**6.8 Notices.** All formal notices required by this Schedule will be in writing and shall be sent to Custodian as set forth below or to Plan Sponsor. The Plan Sponsor will be deemed to have received any applicable notices on behalf of the Plan Administrator. All notices sent shall be effective upon receipt. Provided, however, that upon either party's written request, such

communications shall be sent to such other address as a party may specify. No communication shall be binding on either party until it is received by such party.

**Custodian:**

Notice To Custodian: Empower Trust Company, LLC  
8515 East Orchard Road  
Greenwood Village, CO 80111  
Attn: Trust Officer

With a copy to: Empower Trust Company, LLC  
8515 East Orchard Road  
Greenwood Village, CO 80111  
Attn: General Counsel

**Plan Sponsor:**

Notice To Plan Sponsor: Plan Sponsor's address of record as provided to the Trustee or its Affiliates from time to time.

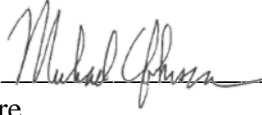
**6.9 Reports.** The Custodian has accepted this Custodial Account with the understanding that Plan Sponsor or Plan Administrator has entered into an Agreement with Empower, whereby Empower is providing recordkeeping services for all Plan assets held pursuant to this Schedule. The recordkeeping reports and related financial information provided by Empower shall constitute the reports of the Custodian.

**[Signature page follows]**

The Plan Sponsor and the Custodian have executed this instrument on such dates specified below.

**Empower Trust Company, LLC**

**Plan Sponsor: State of North Dakota**

  
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Signature

-----  
Signature

Michael Johnson  
-----  
Printed Name

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Printed Name

Trust Officer  
-----  
Title

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Title

6/5/2024  
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Date Signed

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Date Signed

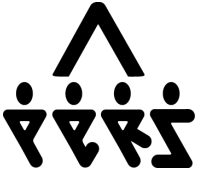
**Plan Administrator: North Dakota Public  
Employees Retirement System**

-----  
Signature

-----  
Printed Name

-----  
Title

-----  
Date Signed



# Memorandum

**TO:** NDPERS Board

**FROM:** Derrick Hohbein

**DATE:** June 11, 2024

**SUBJECT:** 401(a) Defined Contribution Plan & 457 Deferred Compensation Companion Plan Statement of Investment Policies

Callan reviewed our existing Statement of Investment Policies for both the 401(a) Defined Contribution Plan and the 457 Deferred Compensation Companion Plan. The Investment Subcommittee reviewed their proposed changes at the May 2024 Investment Subcommittee meeting and agreed with Callan's recommendations, with an additional recommendation that the Board consider the removal of the Appendix. The Subcommittee also requested that Ice Miller review the policies and make suggested changes. Attachment 1 is the 401(a) Statement of Investment Policies and Attachment 2 is the 457(b) Deferred Compensation Companion Plan Statement of Investment Policies with changes suggested by both Callan and Ice Miller tracked. Please note that the Investment Subcommittee has not reviewed the changes suggested by Ice Miller. Representatives from both Callan and Ice Miller will be available to respond to questions the Board may have.

We are seeking approval for the updated investment policies for both plans.

**Board Action Requested:**

Approve the updated 401(a) Defined Contribution & 457(b) Deferred Compensation Companion Plan Statements Investment Policies.

# Attachment 1

STATE OF NORTH DAKOTA  
PUBLIC EMPLOYEES  
RETIREMENT SYSTEM  
| ~~401(A)~~401(a) DEFINED  
CONTRIBUTION PROGRAM

Statement of Investment Policy

Board Adopted: ~~June 2022~~ May June 2024 |

4867-4427-9748.1

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STATE OF NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM 401(A)  
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## INTRODUCTION

The Public Employees Retirement System Board of Trustees (Board) hereby adopts this Statement of Investment Policy for the 401(a) Defined Contribution Plan (Plan). This IPS may be modified as needed by action of the Board. The policy identifies a set of investment objectives, guidelines, and performance standards for the investment of the Plan assets. This Investment Policy Statement (IPS) does not create or imply any contract between the Public Employees Retirement System (PERS) and/or the Board and any participant. If there is any conflict between this IPS and the Plan Document, the terms and conditions of the Plan Document will control.

### Objectives of the Plan

The Plan is a long-term retirement savings option intended as a source of retirement income for eligible ~~participants~~ participants and beneficiaries (collectively, "Participants"). –The investment options available from the Plan are intended to cover a broad range of investment risks and rewards typical of this kind of retirement savings program. -The Plan permits Participants to direct the investment of their accounts among a number of pre-selected investment options. Participants bear the risks and reap the rewards of investment returns that result from the investment options which they select.

This Statement of Investment Policy:

- Establishes the parameters of an investment program that will allow ~~p~~Plan participants Participants the opportunity to structure an investment strategy that meets their individual return objectives and risk tolerances;
- Identify the roles and responsibilities of the Plan fiduciaries;
- Defines the investment categories offered by the Plan;
- Establishes benchmarks and performance standards for each investment category by which to ~~evaluate~~ each fund's performance;



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- Establishes a procedure for reporting and evaluating the various funds and a methodology for monitoring their performance; and,
- Defines the procedures for investment fund evaluation and formal fund review.

### PRUDENCE, ETHICS, AND CONFLICTS OF INTEREST

All fiduciaries involved in the investment process shall act responsibly and without conflict

with other business or personal interests. The standard of prudence to be applied to the Board of Trustees, Staff, the Investment Sub-committee (Subcommittee), the Investment Consultant, each Investment Manager, the Recordkeeper, and each other fiduciaries of the Plan shall be the "prudent investor" rule. This rule requires each fiduciary to manage assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the Plan. In satisfying this standard, the fiduciary shall exercise reasonable care, skill, and caution. A fiduciary's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the Plan as a whole.

### ROLES AND RESPONSIBILITIES

#### Board of Trustees

The responsibility for the Plan rests with the ~~NDPERS Board of Trustees~~ (Board). The Board has delegated responsibility for the overall management of the investment program to the Investment Subcommittee. The ~~Committee~~ Subcommittee has delegated day-to-day supervisory and operating responsibilities to NDPERS Staff.

The Board is broadly responsible for oversight of the administration of the plan and the investment of plan assets. The responsibilities of the Board, as named fiduciary for the plan, include:

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- Establishing the number and types of investment options available to ~~planPlan~~ participantsParticipants, including the default investment alternative for participantsParticipants who fail to make investment elections;
- Approving investment options within each asset class that it deems appropriate and prudent to make available to ~~planPlan~~ participantsParticipants;
- Monitoring the performance and continued prudence of the available investment options; and
- Retaining and monitoring service providers as necessary including, but not limited to, recordkeeper, ~~trustee~~, investment consultants, and investment managers.

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### Staff

Staff is responsible for the day-to-day management of the ~~planPlan~~; for bringing relevant issues to the attention of the Investment Subcommittee; and for working with various service providers to implement the decisions made by the Investment Subcommittee and Board. Specifically, the staff is responsible for the following:

- Managing and monitoring ~~planPlan~~ activity;
- Coordinating the Investment Subcommittee meetings, investment manager presentations and discussions, and investment consultant activities, presentations, and discussions with the Investment Subcommittee;
- Identifying issues to be brought before the Investment Subcommittee and preparing recommendations to the Investment Subcommittee on those matters;
- Providing information to the ~~planPlan~~'s recordkeeper as appropriate; and,
- Verifying compliance with guidelines and regulations.

### Investment Subcommittee

The ~~Investment Subcommittee~~ (Subcommittee) is broadly responsible to oversee the

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administration of the ~~plan~~Plan- ~~Plan~~ and the Plan's investment ~~of plan assets~~options. Its duties include establishing and reviewing the investment policy as well as making recommendations to the Board. On a quarterly-regular basis, the Subcommittee will review ~~total Plan performance as well as~~ the performance of the underlying investment options and make recommendations to the Board regarding retaining or removing investment options.

The Subcommittee will also review the expense ratios of each investment option, as well as all other expense items charged to each investment option to determine whether such expenses are reasonable and appropriate. The Subcommittee will regularly review, generally annually, the Plan's administrative expenses in the context of services provided and relative to reasonable fees in the market at the time.

#### Investment Consultant

The primary role of the investment consultant is to assist the Subcommittee and staff in fulfilling their responsibilities by providing information, analysis, and recommendations that support a prudent process. The responsibilities of the investment consultants ~~are~~ is as follows:

- Provide perspectives on capital markets;
- Periodically review investment policies and objectives;
- Research and recommend structure and investments that are appropriate in furthering the ~~plan's~~ Plan's investment policies and objectives;
  
- Recommend appropriate performance measures and benchmarks and report on the effectiveness of those adopted;
- Maintain contact with and report on changes within the investment manager organizations (including the gain or loss of key individuals and accounts);
- Measure, evaluate, and report investment managers' performance results;
- Monitor recordkeeper and investment option administrative expenses in the context

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of services provided;

- [Monitor investment options' performance and expenses](#); and,
- Report ~~quarterly~~ ~~regularly~~ ~~at least~~ ~~—~~ ~~(semiannually?)~~ to the Investment Subcommittee.

### Investment Managers

The specific duties and responsibilities of each of the Plan's investment managers are to manage the assets under their supervision in accordance with the guidelines and objectives outlined in their respective prospectuses, participation agreements or other governing documents (e.g., Investment Management Agreements).

Managers should be responsive to the Subcommittee, [investment](#) consultant, or staff and provide information as necessary [assuming they have a contract with the Plan and are not invested through an omnibus account with the Plan recordkeeper](#).

### SELECTION OF INVESTMENT OPTIONS

~~Each investment option offered under the Plan must:~~

- ~~▪ Operate under its published prospectus and/or other governing documents (e.g., Investment Management Agreements);~~
- ~~▪ Have its performance results measured against the applicable performance standards described herein for that investment category.~~

~~The Board may add or replace investment options in any category using any or all of the following general criteria:~~

- ~~A. Historical risk and performance over a reasonable time frame.~~
- ~~B. Investment manager performance and tenure.~~
- ~~C. Costs, including the expense ratio and any other fees.~~

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- ~~D. Ownership or key personnel changes.~~
- ~~E. Changes in the decision-making process or investment philosophy.~~
- ~~F. Changes in portfolio characteristics that are inconsistent with expectations.~~
- ~~G. Involvement in material litigation or fraud~~

~~Mutual fund investment options will be selected through a comprehensive search process generally lead by the Investment Consultant. Absent a competitive offering from the vendor's list of alliance funds, the Board will select from qualified non-alliance funds.~~

### INVESTMENT CATEGORIES

The Board in its judgment selects the number, types, and status of individual investment offerings. In general, the Board will seek to offer a sufficient number of investment funds to allow each participant the ability to construct a diversified portfolio consistent with his/her risk tolerance and time horizon. ~~(See Appendix 1 for a classification of the current offerings.) The Board will also seek to comply with all statutory mandates.~~

~~The Board has chosen to adopt a three-tiered investment structure that provides (1) asset allocation options for "do-it-for-me" participants; (2) core asset class building blocks that allow "do-it-yourselfer" participants to create their own asset allocations based on their unique investment profiles; and (3) specialty options for the more investment savvy participants.~~

- ~~▪ Asset Allocation Options offer diversification and professional management. The assets of participants who do not make an active selection among the available investment options will be placed in the asset allocation options, which are Qualified Default Investment Alternatives (QDIAs), within the meaning of ERISA Section 404(c)(5), even though ERISA does not apply to the Plan.~~
- ~~▪ Core Investment Options include the basic building blocks participants need to create a diversified portfolio.~~
- ~~▪ Specialty Options include Investment funds not considered core.~~

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The self-directed brokerage option is designed for a sophisticated, experienced and knowledgeable investor. Participants selecting this option will be required to sign an election form containing the following:

- (a) The participant understands and accepts any and all risks associated with this selection
- (b) The participant understands and accepts that none of the investment options available in the self-directed brokerage option have been reviewed for suitability by the Board;
- (c) The participant is solely responsible for determining the suitability or appropriateness of any selected investment option; and,
  
- (d) The participant agrees to hold the Plan and the Board harmless for any negative consequences resulting from use of the self-directed brokerage option.

**SELECTION OF INVESTMENT OPTIONS**

In the event an investment manager search is deemed prudent by the Subcommittee, a “candidate profile” will be created for each search that lists the rationale and objective in addition to any preferences and requirements deemed relevant to the selection of candidates. When selecting investment managers, the Subcommittee will employ a search process as outlined below:

1. Formulation of specific investment manager search criteria that reflect the requirements for the mandate under consideration.
2. Identification of qualified candidates from the manager search database maintained by a the C consultant and other sources.
3. Analysis of qualified candidates in terms of:
  - A. Quantitative characteristics (e.g., return, risk, other relevant portfolio

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characteristics) and fees relative to similar funds or mandates.

B. Qualitative characteristics such as key personnel, investment philosophy, and decision-making process.

4. Selection and hiring of finalist candidate based on due diligence reviewed and analyzed by the CSubcommittee and Board.

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## INVESTMENT FUND EVALUATION

The Board will at least annually review the ~~plan-Plan~~ and its investment funds, including investment performance. The investment performance review will include comparisons against the appropriate benchmark indices and peer groups over relevant time frames. The focus of the review will be to ensure that the Board is offering funds with competitive (average or above) performance within each category over reasonable measurement periods, typically encompassing a market cycle (3 to 5 years). The Board will also review the fund's investment style relative to ~~its mandate and the stability of the personnel responsible for investment results~~the goal of allowing Participants the opportunity to save, manage, accumulate, and preserve retirement savings account assets. ~~As the investment funds are mutual funds, the Board may rely on ratings produced by recognized performance evaluation services to evaluate long term risk adjusted performance relative to peers.~~ Except for the annual review, the Board may delegate these duties to the Investment Sub-committee. The ~~NDPERS~~ Board will make the performance review available for the membership.

~~A. Funds rated as not meeting performance standards and policy objectives will, at the Board's discretion, be placed on a "formal fund review list".~~

~~B.A. The Board, at its discretion, may remove funds from the "formal fund review list" should the fund's performance recover sufficiently to meet performance standards.~~

~~C.A. Funds that do not meet performance standards and/or policy objectives may~~

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~~be terminated.~~

~~D.A. Failure by a fund to comply with these policy objectives and guidelines is cause for the Board to place the fund under "formal fund review" or terminate the fund.~~

~~The Board may also place a fund under formal fund review or terminate it for any of the~~

~~following reasons, including:~~

- ~~A. The fund has made significant changes in its investment management, or such change appears imminent;~~
- ~~B. The fund has had a significant change in ownership or control;~~
- ~~C. The fund has significantly changed investment focus or has experienced style drift, departing from the investment objectives;~~
- ~~D. The fund has violated a SEC rule or regulation;~~
- ~~E. The fund has experienced difficulty in transacting trades, fund transfers, or pricing;~~
- ~~F. The fund has experienced other changes or problems in its procedures, operations, investing, or reporting which, in the Board's view, has or could detract from the objectives of the Plan;~~
- ~~G. The fund has increased its fees or expenses;~~
- ~~H. Other reasons the NDPERS Board deems requires such action.~~

~~Funds rated as not meeting performance standards and policy objectives will, at the Board's discretion, be placed on a "formal fund review list".~~

~~The Board, at its discretion, may remove funds from the "formal fund review list" should the fund's performance recover sufficiently to meet performance standards.~~

~~Funds that do not meet performance standards and/or policy objectives may be terminated.~~

~~Failure by a fund to comply with these policy objectives and guidelines is cause for the Board to place the fund under "formal fund review" or terminate the fund.~~

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~~The Board retains the right to waive any of the above policies if it deems that such waiver is in the best interest of the plan and/or its participants.~~

**FORMAL FUND REVIEW**

~~A number of factors may contribute to an investment option's or manager's over- or underperformance at any given time, including market dynamics, investment skill, and/or chance. Because an investment option's or manager's performance might be attributable to factors that do not reflect deficiencies in skills or strategy, it is unwise to recommend termination solely because an option or manager performs below expectations for certain periods of time.~~ A formal fund review list will be utilized to identify investments whose performance or other factors are cause for further assessment, possible termination, or other action.

When a fund has been placed under formal review, the Board shall monitor the fund, its operations, and its performance.

The Board may place a fund or Investment Manager on a formal fund-review list or terminate it for any of the

following reasons, including:

- ~~A. The fund is rated as~~ Not meeting performance standards and policy objectives;
- ~~B. The fund has made~~ Making significant changes in its investment management, or such change appears imminent;
- ~~C. Incurring~~ The fund has had a significant change in ownership or control;
- ~~D. The fund has s~~ Significantly changed investment focus or has experienced style drift, departing from the investment objectives;
- ~~E. The fund has v~~ Violating an SEC rule or regulation;
- ~~F. The fund has experienced~~ Difficulty in transacting trades, fund transfers, or pricing;
- ~~G. The fund has experienced~~ Experiencing other changes or problems in its procedures, operations, investing, or reporting which, in the Board's view, has or could detract from the objectives of the Plan;

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H. ~~The fund has increased~~Increasing its fees or expenses in a manner which is unreasonable in relation to the benchmarks or comparable investment options;

I. Insufficient utilization of the investment option by Participants;

J. Other reasons the ~~NDPERS~~ Board deems requires such action.

Funds repeatedly or consistently on the “formal review list” may be candidates for replacement. However, the “formal review list” is only one tool to be used by the Subcommittee in evaluating Investment Managers and/or funds. The placement of an fund on the “formal review list”, or the continuation of its presence on the “formal review list”, shall not be considered an automatic basis for terminating the fund as an investment choice. Nor is the “formal review list” procedure intended to circumscribe the Subcommittee's ability to terminate investment options without the fund having been on the “formal review list.” All relevant facts and circumstances shall be considered in making such decisions.~~The Board, at its discretion, may remove funds from the “formal fund review list” should the fund's performance recover sufficiently to meet performance standards or should any of the above issues be resolved to the Board's satisfaction.~~

The Board retains the right to waive any of the above policies if it deems that such waiver is in the best interest of the Plan and/or its ~~participants~~Participants.

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## TERMINATED FUNDS

If the Board terminates a fund it shall:

1. Determine what to do with assets currently in the fund. Generally, Participants will be given an opportunity to direct the investment of their accounts to another investment option under the Plan. Assets that are not directed by Participants ~~assets~~ will be transferred or “mapped” to an investment option with similar investment goals and risk characteristics that is replacing the terminated fund or to the default option if there will be no similar option after the fund is terminated.

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This process is intended to substantially follow best practices guidance of ERISA 404(c).

- ~~4.2.~~ Promptly notify the Plan ~~provider~~recordkeeper as to the intended actions;
- ~~2.~~ With the assistance of the Plan recordkeeper, Promptly notify planPlan participantsParticipants of the upcoming change and any applicable actions to take prior to or after the fund change. who are currently investing in the fund or who have assets in the fund that the Board has terminated the fund as an investment option

—  
—

— under the Plan and that:

- ~~•~~ New investment monies must be redirected to another fund option under the Plan within a time specified by the Board and;
- ~~•~~ 3. After 90 days' notice to an affected member by the Board, all assets remaining in the terminated fund will be transferred to the default option designated by the Board.

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## TARGET DATE SUITABILITY

The ~~Committee-Subcommittee~~ will engage in periodic evaluation of the Plan's target date fund ("TDF"), by appraising the suitability of the target date glide path based on the Plan's underlying demographics and design. The evaluation process might include the following factors and/or others that the ~~Committee-Subcommittee~~ determines appropriate:

- A. Consideration of how well the TDF's characteristics align with eligible employees' ages and likely retirement as well as other characteristics of the participant population.
- B. Examination of whether there have been any significant changes in the Plan, the participant population, or the TDF under examination.

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- C. Understanding of the TDF's investments—the allocation in different asset classes (stocks, bonds, cash), individual investments, and how these will change over time.
- D. Review the TDF's fees and investment expenses.
- E. Inquiry into whether a custom or non-proprietary TDF would be a good fit for the Plan.

### SELF-DIRECTED BROKERAGE ACCOUNT PROVIDER SELECTION

In selecting a self-directed brokerage account provider, the ~~Subc~~Committee will evaluate and monitor fees, including annual maintenance charges and trading costs. In addition, the self-directed brokerage provider will be required to provide appropriate services, such as

trading, transactional oversight, and customer service. Because the self-directed brokerage account is not a designated investment account within the ~~plan~~Plan, the ~~Subc~~Committee will not monitor the individual investments or their expenses within the self-directed brokerage account.

### FEE PAYMENT POLICY

The ~~Committee~~Board will seek to provide ~~participants~~Participants with access to high-quality investment options with reasonable investment management ~~fees~~ and ~~appropriate~~ administrative ~~services at fees reasonable expenses relative~~ to services provided.

~~Investment management~~

~~Plan related fees expenses~~ will be reviewed periodically to determine ~~if they are still reasonable and~~ whether ~~opportunities exist to a lower costs share class or investment vehicle is available and feasible~~.

Regarding fees for ~~plan~~Plan administration:

- Participants will pay for the administration of the Plan, and for their own individual transactions.

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- It is the policy of the [Committee Board](#) that excess revenue sharing generated by the Plan's investment options will be reimbursed to ~~participants~~[Participants](#).
- Float income ~~and its retention will be outlined in the administrative services agreement with the recordkeeper as part of the contracting process. earned on the invested balances of administrative accounts will be retained by the Plan to reduce expenses charged to participants~~[Participants](#), ~~net of reasonable investment management expenses.~~
- Loan, withdrawal, QDRO and other transaction fees will be determined [by the recordkeeper and](#) based on the administrative expense of providing these transactions.

The [Subc](#)Committee will work with the Investment Consultant to evaluate investment costs and administrative fees on a periodic basis. This information will be benchmarked appropriately.

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**APPENDIX 1**

**457(b) Companion Plan Investment Options by Investment Category**

Fund	Mandate	Benchmark
<b>Balanced</b>	-	-
T.Rowe Price Capital Appreciation	Balanced	S&P 500
<b>Asset Allocation</b>	-	-
TIAA-CREF Lifecycle Fund Series	Target Date Fund	Lifecycle Custom Benchmarks
<b>Large Cap US Equity</b>	-	-
Franklin Growth Fund Advisor	Large Cap Growth	S&P 500
Wells Fargo Growth Adm	All Cap Growth	Russell 3000 Growth Index
Vanguard Dividend Growth Inv	Large Cap Core	S&P U.S. Dividend Growers Index
Vanguard Institutional Index	Passive Large Cap Core	S&P 500
Hartford Dividend and Growth R5	Large Cap Value	S&P 500
T. Rowe Price Equity Income	Large Cap Value	Russell 1000 Value Index
<b>Mid Cap US Equity</b>	-	-
PGIM Jennison Mid Cap Growth Z	Mid Cap Growth	Russell MidCap Growth Index
Columbia Mid Cap Index Fund A	Mid Cap Core	S&P MidCap 400 Index
Virtus Ceredex Mid Cap Value I	Mid Cap Value	Russell MidCap Value Index
<b>Small Cap US Equity</b>	-	-
Brown Small Compay Fund Investor	Small Cap Growth	Russell 2000 Growth Index
DFA U.S. Small Cap Inst'l	Small Cap Core	Russell 2000 Index
Northern Small Cap Value Fund	Small Cap Value	Russell 2000 Value Index
<b>Global Equities</b>	-	-
American Funds New Perspective R4	Large Global Growth	MSCI ACWI
Vanguard Total Int'l Stock Adm	International Large Core	FTSE Global All Cap ex US Index
Invesco Developing Markets Y	Emerging Markets	MSCI EM

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<b>Fixed Income</b>	-	-
Vanguard Total Bond Index Adm	Passive Core	Bloomberg Aggregate Flt Adj
Baird Core Plus Bond Investor	Core Plus	Bloomberg Universal
MassMutual Premier Inflation Protection	Inflation Protected	Bloomberg TIPS
PGIM High Yield Fund Z	High Yield	Bloomberg U.S. Corporate High Yield 1% Issuer Capped Index
Templeton Global Bond Advisor	Global	FTSE WGBI
<b>Capital Preservation</b>	-	-
Wells Fargo Stable Value <u>Galliard Stable</u>	Stable Value	3-month Tbill
<u>Return Fund J</u>		
Vanguard Treasury MM Inv	Money Market	3-month Tbill
<b>Real Estate</b>	-	-
Cohen & Steers Realty Shares	REIT	FTSE NAREIT All Equity Index

# Attachment 2

STATE OF NORTH DAKOTA  
PUBLIC EMPLOYEES  
RETIREMENT SYSTEM  
DEFERRED COMPENSATION  
457(b) COMPANION PLAN

Statement of Investment Policy

Board Adopted: ~~June 2022~~ May June 2024 |

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STATEMENT OF INVESTMENT POLICY

## INTRODUCTION

The Public Employees Retirement System Board of Trustees (Board) hereby adopts this Statement of Investment Policy for the Deferred Compensation 457(b) Companion Plan (Plan). This IPS may be modified as needed by action of the Board. The policy identifies a set of investment objectives, guidelines, and performance standards for the investment of the Plan assets. This Investment Policy Statement (“IPS”) does not create or imply any contract between the Public Employees Retirement System (PERS) and/or the Board and any participant. If there is any conflict between this IPS and the Plan Document, the terms and conditions provisions of the Plan Document will control.

### Objectives of the Plan

The Plan is a long-term retirement savings option intended as a source of retirement income for eligible participants and beneficiaries (collectively, “Participants”)participants. –The investment options available from the Plan are intended to cover a broad range of investment risks and rewards typical of this kind of retirement savings program. -The Plan permits Participants to direct the investment of their accounts among a number of pre-selected investment options. Participants bear the risks and reap the rewards of investment returns that result from the investment options which they select.

This Statement of Investment Policy:

- Establishes the parameters of an investment program that will allow Plan Participants the opportunity to structure an investment strategy that meets their individual return objectives and risk tolerances;
- Identify the roles and responsibilities of the Plan fiduciaries;
- Defines the investment categories offered by the Plan;
- Establishes benchmarks and performance standards for each investment category

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by which to evaluate each fund's performance;

- Establishes a procedure for reporting and evaluating the various funds and a methodology for monitoring their performance; and,
- Defines the procedures for investment fund evaluation and formal fund review.

### PRUDENCE, ETHICS, AND CONFLICTS OF INTEREST

All fiduciaries involved in the investment process shall act responsibly and without conflict

with other business or personal interests. The standard of prudence to be applied to the Board of Trustees, Staff, the Investment Sub-committee (~~Subcommittee~~), the Investment Consultant, each Investment Manager, ~~the Recordkeeper~~, and ~~each~~ other fiduciaries of the Plan shall be the "prudent investor" rule. This rule requires each fiduciary to manage assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the Plan. In satisfying this standard, the fiduciary shall exercise reasonable care, skill, and caution. A fiduciary's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the Plan as a whole.

### ROLES AND RESPONSIBILITIES

#### Board of Trustees

The responsibility for the Plan rests with the ~~NDPERS Board of Trustees~~ (Board). The Board has delegated responsibility for the overall management of the investment program to the Investment Subcommittee. The ~~Committee~~ ~~Subcommittee~~ has delegated day-to-day supervisory and operating responsibilities to NDPERS Staff.

[The Board is broadly responsible for oversight of the administration of the Plan and the](#)

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investment of pPlan assets. The responsibilities of the Board, as named fiduciary for the pPlan, include:

- Establishing the number and types of investment options available to pPlan pParticipants, including the default investment alternative for Pparticipants who fail to make investment elections;
- Approving investment options within each asset class that it deems appropriate and prudent to make available to Pplan Pparticipants;
- Monitoring the performance and continued prudence of the available investment options; and
- Retaining and monitoring service providers as necessary including, but not limited to, recordkeeper, trustee, investment consultants, and investment managers.

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### Staff

Staff is responsible for the day-to-day management of the pPlan; for bringing relevant issues to the attention of the Investment Subcommittee; and for working with various service providers to implement the decisions made by the Investment Subcommittee and Board. Specifically, the staff is responsible for the following:

- Managing and monitoring pPlan activity;
- Coordinating the Investment Subcommittee meetings, investment manager presentations and discussions, and investment consultant activities, presentations, and discussions with the Investment Subcommittee;
- Identifying issues to be brought before the Investment Subcommittee and preparing recommendations to the Investment Subcommittee on those matters;
- Providing information to the plan's Plan's recordkeeper as appropriate; and,
- Verifying compliance with guidelines and regulations.

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**Investment Subcommittee**

The ~~Investment Subcommittee~~ (Subcommittee) is broadly responsible to oversee the administration of the ~~plan~~ Plan and the Plan's investment ~~of plan asset options~~. Its duties include establishing and reviewing the investment policy as well as making recommendations to the Board. On a ~~quarterly~~ regular basis, the Subcommittee will review ~~total Plan performance as well as the performance of the underlying~~ investment options and ~~make recommendations to the Board regarding retaining or removing investment options~~.

The Subcommittee will also review the expense ratios of each investment option, as well as all other expense items charged to each investment option to determine whether such expenses are reasonable and appropriate. ~~The Subcommittee will regularly review, generally annually, the Plan's administrative expenses in the context of services provided and relative to reasonable fees in the market at the time.~~

**Investment Consultant**

The primary role of the investment consultant is to assist the Subcommittee and staff in fulfilling their responsibilities by providing information, analysis, and recommendations that support a prudent process. The responsibilities of the investment consultants ~~are~~ is as follows:

- Provide perspectives on capital markets;
- Periodically review investment policies and objectives;
- Research and recommend structure and investments that are appropriate in furthering the ~~plan's~~ Plan's investment policies and objectives;
- Recommend appropriate performance measures and benchmarks and report on the effectiveness of those adopted;

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- Maintain contact with and report on changes within the investment manager organizations (including the gain or loss of key individuals and accounts);
- Measure, evaluate, and report investment managers' performance results;
- Monitor recordkeeper and ~~investment option administrative~~ expenses in the context of services provided;
- ~~Monitor investment options' performance and expenses;~~ and,
- Report ~~quarterly~~ regularly at least ~~(semiannually?)~~ to the Investment Subcommittee.

#### Investment Managers

The specific duties and responsibilities of each of the Plan's investment managers are to manage the assets under their supervision in accordance with the guidelines and objectives outlined in their respective prospectuses, participation agreements or other governing documents (e.g., Investment Management Agreements).

Managers should be responsive to the Subcommittee, investment consultant, or staff and provide information as necessary assuming they have a contract with the Plan and are not invested through an omnibus account with the Plan recordkeeper.

#### SELECTION OF INVESTMENT OPTIONS

~~Each investment option offered under the Plan must:~~

- ~~▪ Operate under its published prospectus and/or other governing documents (e.g., Investment Management Agreements);~~
- ~~▪ Have its performance results measured against the applicable performance standards described herein for that investment category.~~

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The Board may add or replace investment options in any category using any or all of the following general criteria:

- A. Historical risk and performance over a reasonable time frame.
- B. Investment manager performance and tenure.
- C. Costs, including the expense ratio and any other fees.
- D. Ownership or key personnel changes.
- E. Changes in the decision-making process or investment philosophy.
- F. Changes in portfolio characteristics that are inconsistent with expectations.
- G. Involvement in material litigation or fraud.

Mutual fund investment options will be selected through a comprehensive search process generally lead by the Investment Consultant. Absent a competitive offering from the vendor's list of alliance funds, the Board will select from qualified non-alliance funds.

## INVESTMENT CATEGORIES

The Board in its judgment selects the number, types, and status of individual investment offerings. In general, the Board will seek to offer a sufficient number of investment funds to allow each participant the ability to construct a diversified portfolio consistent with his/her risk tolerance and time horizon. (See Appendix 1 for a classification of the current offerings.) The Board will also seek to comply with all statutory mandates.

The Board has chosen to adopt a three-tiered investment structure that provides (1) asset allocation options for "do-it-for-me" Pparticipants; (2) core asset class building blocks that allow "do-it-yourselfer" Pparticipants to create their own asset allocations based on their unique investment profiles; and (3) specialty options for the more investment savvy Pparticipants.

- Asset Allocation Options offer diversification and professional management. The

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assets of participants who do not make an active selection among the available investment options will be placed in the asset allocation options, which are Qualified Default Investment Alternatives (QDIAs), within the meaning of ERISA Section 404(c)(5), even though ERISA does not apply to the Plan. QDIAs.

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- Core Investment Options include the basic building blocks participants need to create a diversified portfolio.
- Specialty Options include Investment funds not considered core.

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~~The self-directed brokerage option is designed for a sophisticated, experienced and knowledgeable investor. Participants selecting this option will be required to sign an election form containing the following:~~

- ~~(a) The participant understands and accepts any and all risks associated with this selection~~
- ~~(b) The participant understands and accepts that none of the investment options available in the self-directed brokerage option have been reviewed for suitability by the Board;~~
- ~~(c) The participant is solely responsible for determining the suitability or appropriateness of any selected investment option; and,~~
  
- ~~(d) The participant agrees to hold the Plan and the Board harmless for any negative consequences resulting from use of the self-directed brokerage option.~~

**SELECTION OF INVESTMENT OPTIONS**

In the event an investment manager search is deemed prudent by the Subcommittee, a “candidate profile” will be created for each search that lists the rationale and objective in addition to any preferences and requirements deemed relevant to the selection of

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candidates. When selecting investment managers, the SubCommittee will employ a search process as outlined below:

1. Formulation of specific investment manager search criteria that reflect the requirements for the mandate under consideration.
2. Identification of qualified candidates from the manager search database maintained by the Consultant and other sources.
3. Analysis of qualified candidates in terms of:
  - A. Quantitative characteristics (e.g., return, risk, other relevant portfolio characteristics) and fees relative to similar funds or mandates.
  - B. Qualitative characteristics such as key personnel, investment philosophy, and decision-making process.
4. Selection and hiring of finalist candidate based on due diligence reviewed and analyzed by the SubCommittee and Board.

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**INVESTMENT FUND EVALUATION**

The Board will at least annually review the ~~plan-Plan~~ and its investment funds, including investment performance. The investment performance review will include comparisons against the appropriate benchmark indices and peer groups over relevant time frames. The focus of the review will be to ensure that the Board is offering funds with competitive (average or above) performance within each category over reasonable measurement periods, typically encompassing a market cycle (3 to 5 years). The Board will also review the fund's investment style relative to ~~the goal of allowing Participants the opportunity to save, manage, accumulate, and preserve retirement savings account assets, its mandate and the stability of the personnel responsible for investment results. As the investment funds are mutual funds, the Board may rely on ratings produced by recognized performance evaluation services to evaluate long term risk adjusted performance relative to peers.~~ Except for the annual review, the Board may delegate these duties to the

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Investment Sub-committee. The ~~NDPERS~~ Board will make the performance review available for the membership.

~~A. Funds rated as not meeting performance standards and policy objectives will, at the Board's discretion, be placed on a "formal fund review list".~~

~~B.A. The Board, at its discretion, may remove funds from the "formal fund review list" should the fund's performance recover sufficiently to meet performance standards.~~

~~C.A. Funds that do not meet performance standards and/or policy objectives may be terminated.~~

~~D.A. Failure by a fund to comply with these policy objectives and guidelines is cause for the Board to place the fund under "formal fund review" or terminate the fund.~~

~~The Board may also place a fund under formal fund review or terminate it for any of the~~

~~following reasons, including:~~

~~A. The fund has made significant changes in its investment management, or such change appears imminent;~~

~~B. The fund has had a significant change in ownership or control;~~

~~C. The fund has significantly changed investment focus or has experienced style drift, departing from the investment objectives;~~

~~D. The fund has violated a SEC rule or regulation;~~

~~E. The fund has experienced difficulty in transacting trades, fund transfers, or pricing;~~

~~F. The fund has experienced other changes or problems in its procedures, operations, investing, or reporting which, in the Board's view, has or could detract from the objectives of the Plan;~~

~~G. The fund has increased its fees or expenses;~~

~~H. Other reasons the NDPERS Board deems requires such action.~~

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~~Funds rated as not meeting performance standards and policy objectives will, at the Board's discretion, be placed on a "formal fund review list".~~

~~The Board, at its discretion, may remove funds from the "formal fund review list" should the fund's performance recover sufficiently to meet performance standards.~~

~~— Funds that do not meet performance standards and/or policy objectives may be terminated.~~

~~— Failure by a fund to comply with these policy objectives and guidelines is cause for the Board to place the fund under "formal fund review" or terminate the fund.~~

~~The Board retains the right to waive any of the above policies if it deems that such waiver is in the best interest of the plan Plan and/or its participants.~~

#### FORMAL FUND REVIEW

~~A number of factors may contribute to an investment option's or manager's over or underperformance at any given time, including market dynamics, investment skill, and/or chance. Because an investment option's or manager's performance might be attributable to factors that do not reflect deficiencies in skills or strategy, it is unwise to recommend termination solely because an option or manager performs below expectations for certain periods of time. A formal fund review list will be utilized to identify investments whose performance or other factors are cause for further assessment, possible termination, or other action.~~

~~When a fund has been placed under formal review, the Board shall monitor the fund, its operations, and its performance.~~

~~The Board may place a fund or Investment Manager on a formal fund-review list or terminate it for any of the following reasons, including:~~

~~A. The fund is rated as ~~rated as~~ Not meeting performance standards and policy~~

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objectives:

- B. ~~The fund has made~~ Making significant changes in its investment management, or such change appears imminent;
- C. ~~The fund has had~~ Incurring a significant change in ownership or control;
- D. ~~The fund has s~~Significantly changing investment focus or has experienced style drift, departing from the investment objectives;
- E. ~~The fund has v~~Violating an SEC rule or regulation;
- F. ~~The fund has experienced d~~Difficulty in transacting trades, fund transfers, or pricing;
- G. ~~The fund has e~~Experiencing other changes or problems in its procedures, operations, investing, or reporting which, in the Board's view, has or could detract from the objectives of the Plan;
- H. ~~The fund has i~~Increasing its fees or expenses in a manner which is unreasonable in relation to the benchmarks or comparable investment options;
- I. ~~Insufficient utilization of the investment option by Participants;~~
- J. ~~Other reasons the NDPERS Board deems requires such action.~~

Funds repeatedly or consistently on the "formal review list" may be candidates for replacement. However, the "formal review list" is only one tool to be used by the Subcommittee in evaluating Investment Managers and/or funds. The placement of an fund on the "formal review list", or the continuation of its presence on the "formal review list", shall not be considered an automatic basis for terminating the fund as an investment choice. Nor is the "formal review list" procedure intended to circumscribe the Subcommittee's ability to terminate investment options without the fund having been on the "formal review list." All relevant facts and circumstances shall be considered in making such decisions. ~~The Board, at its discretion, may remove funds from the "formal fund review list" should the fund's performance recover sufficiently to meet performance standards or should any of the above issues be resolved to the Board's satisfaction.~~

The Board retains the right to waive any of the above policies if it deems that such waiver is

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in the best interest of the Plan and/or its participants.

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**TERMINATED FUNDS**

If the Board terminates a fund it shall:

1. Determine what to do with assets currently in the fund. Generally, Participants will be given an opportunity to direct the investment of their accounts to another investment option under the Plan. Assets that are not directed by Participants assets will be transferred or "mapped" to an investment option with similar investment goals and risk characteristics that is replacing the terminated fund or to the default option if there will be no similar option after the fund is terminated. This process is intended to substantially follow best practices guidance of ERISA 404(c).

2. Promptly notify the Plan provider/recordkeeper as to the intended actions;

2. With the assistance of the Plan recordkeeper, Promptly notify Plan participants of the upcoming change and any applicable actions to take prior to or after the fund change, who are currently investing in the fund or who have assets in the fund that the Board has terminated the fund as an investment option

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— under the Plan and that:

• New investment monies must be redirected to another fund option under the Plan within a time specified by the Board and;

• 3. After 90 days' notice to an affected member by the Board, all assets remaining in the terminated fund will be transferred to the default option designated by the Board.

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**TARGET DATE SUITABILITY**

The SubcCommittee will engage in periodic evaluation of the Plan's target date fund ("TDF"), by appraising the suitability of the target date glide path based on the Plan's underlying demographics and design. The evaluation process might include the following factors and/or others that the Committee-Subcommittee determines appropriate:

- A. Consideration of how well the TDF's characteristics align with eligible employees' ages and likely retirement as well as other characteristics of the participant population.
- B. Examination of whether there have been any significant changes in the Plan, the participant population, or the TDF under examination.
- C. Understanding of the TDF's investments—the allocation in different asset classes (stocks, bonds, cash), individual investments, and how these will change over time.
- D. Review the TDF's fees and investment expenses.
- E. Inquiry into whether a custom or non-proprietary TDF would be a good fit for the Plan.

**SELF-DIRECTED BROKERAGE ACCOUNT PROVIDER SELECTION**

In selecting a self-directed brokerage account provider, the SubcCommittee will evaluate and monitor fees, including annual maintenance charges and trading costs. In addition, the self-directed brokerage provider will be required to provide appropriate services, such as

trading, transactional oversight, and customer service. Because the self-directed brokerage account is not a designated investment account within the planPlan, the SubcCommittee will not monitor the individual investments or their expenses within the self-directed brokerage account.

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**FEE PAYMENT POLICY**

The ~~Committee Board~~ will seek to provide participants with access to high-quality investment options with reasonable investment management fees and appropriate administrative services at fees reasonable expenses relative to services provided.

Investment management

Plan related fees expenses will be reviewed periodically to determine if they are still reasonable and whether opportunities exist to a lower costs share class or investment vehicle is available and feasible.

Regarding fees for ~~plan~~ Plan administration:

- Participants will pay for the administration of the Plan, and for their own individual transactions.
- It is the policy of the ~~Committee Board~~ that excess revenue sharing generated by the Plan's investment options will be reimbursed to participants.
- Float income and its retention will be outlined in the administrative services agreement with the recordkeeper as part of the contracting process earned on the invested balances of administrative accounts will be retained by the Plan to reduce expenses charged to participants, not of reasonable investment management expenses.
- Loan, withdrawal, QDRO and other transaction fees will be determined by the recordkeeper and based on the administrative expense of providing these transactions.

The ~~Subc~~Committee will work with the Investment Consultant to evaluate investment costs and administrative fees on a periodic basis. This information will be benchmarked appropriately.

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**APPENDIX 1**

**40157(ab) Companion Deferred Compensation Plan Investment Options by  
Investment Category**

Fund	Mandate	Benchmark
<b>Balanced</b>	-	-
T.Rowe Price Capital Appreciation	Balanced	S&P 500
<b>Asset Allocation</b>	-	-
TIAA-CREF Lifecycle Fund Series	Target Date Fund	Lifecycle Custom Benchmarks
<b>Large Cap US Equity</b>	-	-
Franklin Growth Fund Advisor	Large Cap Growth	S&P 500
Wells Fargo Growth Adm	All Cap Growth	Russell 3000 Growth Index
Vanguard Dividend Growth Inv	Large Cap Core	S&P U.S. Dividend Growers Index
Vanguard Institutional Index	Passive Large Cap Core	S&P 500
Hartford Dividend and Growth R5	Large Cap Value	S&P 500
T. Rowe Price Equity Income	Large Cap Value	Russell 1000 Value Index
<b>Mid <u>SMID</u> Cap US Equity</b>	-	-
PGIM Jennison Mid-Cap Growth ZJPM-US <u>SMID Core</u>	Mid <u>SMID</u> Cap Growth <u>Core</u>	Russell MidCap Growth 2500 Index
Columbia Mid-Cap Index Fund A	Mid-Cap Core	S&P MidCap 400 Index
Virtus Coredex Mid-Cap Value I	Mid-Cap Value	Russell MidCap Value Index
<b>Small Cap US Equity</b>	-	-
Brown Small Compay Fund Investor	Small Cap Growth	Russell 2000 Growth Index
DFA U.S. Small Cap Inst I	Small Cap Core	Russell 2000 Index
Northern Small Cap Value Fund	Small Cap Value	Russell 2000 Value Index
<b>Global <u>Non-US</u> Equities</b>	-	-
American Funds New Perspective R4	Large Global Growth	MSCI ACWI
Vanguard Total Int'l Stock Adm	International Large Core	FTSE Global All Cap ex US Index

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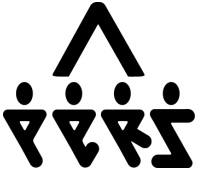
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<u>Invesco Developing Markets YMFS</u>	<u>Emerging</u>	
<u>International Diversification</u>	<u>Markets International Large</u>	<u>MSCI EMACWI ex US (net) Index</u>
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<b>Fixed Income</b>	-	-
Vanguard Total Bond Index Adm	Passive Core	Bloomberg Aggregate Flt Adj
Baird Core Plus Bond Investor	Core Plus	Bloomberg Universal
MassMutual Premier Inflation Protection	Inflation Protected	Bloomberg TIPS
PGIM High Yield Fund Z	High Yield	Bloomberg U.S. Corporate High Yield 1% Issuer Capped Index
Templeton Global Bond Advisor	Global	FTSE WGBI
<b>Capital Preservation</b>	-	-
Wells Fargo Stable Value <u>Galliard Stable Return Fund J</u>	Stable Value	3-month Tbill
Vanguard Treasury MM Inv	Money Market	3-month Tbill
<b>Real Estate</b>	-	-
Cohen & Steers Realty Shares	REIT	FTSE NAREIT All Equity Index



# Memorandum

**TO:** NDPERS Board

**FROM:** Rebecca

**DATE:** June 11, 2024

**SUBJECT:** 401(a) Defined Contribution Plan IRS Letter of Determination and 457(b) Deferred Compensation Private Letter Ruling

At the May meeting, the Board discussed a recommendation made by Ice Miller regarding requesting an IRS Letter of Determination for the 401(a) Defined Contribution Plan and a Private Letter Ruling for the 457(b) Deferred Compensation Plan (Attachment). The Board asked if Ice Miller could attend the June meeting to assist with questions the Board had on the process and potential expense.

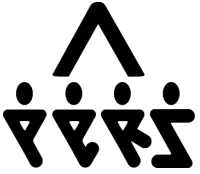
As discussed in May, staff would recommend that the Board move forward with requesting an IRS Letter of Determination for the 401(a) Defined Contribution Plan and a Private Letter Ruling for the 457(b) Deferred Compensation Plan given the expected increase in membership of both plans due to the provisions of HB 1040 related to the employer match.

The 68<sup>th</sup> Legislative Assembly provided NDPERS with one-time funding this biennium to successfully close the Main Plan. Staff has confirmed with OMB that this funding could be used any way the Board deems appropriate to ensure the conversion is not only successful, but also complies with IRS regulations. If the Board would like to move forward with the Determination Letter and the Private Letter Ruling this biennium, we should be able to accommodate the project from a budget perspective. If the Board would like to delay the project into next biennium, we can also request separate funding next session, or also consider using our Contingency funding as well.

**Board Action Requested:**

- 1) Direct staff regarding working with Ice Miller to obtain an IRS Letter of Determination for the 401(a) Defined Contribution Plan, including the timing of the work effort.

- 2) Direct staff regarding working with Ice Miller to obtain an IRS Private Letter Ruling for the 457(b) Deferred Compensation Plan, including the timing of the work effort.



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# Memorandum

**TO:**                   NDPERS Board

**FROM:**               Rebecca

**DATE:**               May 23, 2024

**SUBJECT:**           House Bill 1040 Implementation Update

The following activities have occurred for House Bill 1040 implementation since our last Board discussion:

- Continued discussions with Sagitec, our business system vendor, regarding requirements of the bill and updates needed for programming, as vendor has questions. Sagitec has indicated they will be releasing the initial stages of programming soon, which staff will then begin testing.
- Continued review of Defined Contribution Plan Document, including input from legal counsel (both Ice Miller and Dean) on suggested changes. Once final, the document will be brought to the Board for approval.
- Continued review of 457 Deferred Compensation Plan Document and 457 Companion Plan Document, including input from legal counsel (both Ice Miller and Dean) on suggested changes to ensure state and federal law compliance. Once final, the document will be brought to the Board for approval.
- Documented necessary changes due to recordkeeper transition and House Bill 1040 for correspondence templates and forms so that programming can be done to update documents.
- Working on development of internal staff training presentation regarding provisions of House Bill. It is anticipated that this presentation can then be broken into shorter videos to be used as education for members and employers also.
- Presented a transition up on expectations of the DB closure to the School Business Managers on April 24, 2024.
- Presented to the Employee Benefits Programs Committee on April 25, 2024 regarding updates in implementation since the last committee meeting on November 15<sup>th</sup>.

- Presented to the Retirement Committee on April 30, 2024 regarding updates in implementation since the last committee meeting on February 7<sup>th</sup>.
- Presented a transition up on expectations of the DB closure to the Counties on May 13, 2024.
- Completed file layout requirements for employers to begin developing their payroll systems.
- Inventoried the largest political subdivision developers to schedule meetings on the requirements for programming payroll for HB 1040.
- Requested a developer from NDIT to begin analyzing the State's PeopleSoft platform. Once the State parameters are complete, Staff will begin outreach to Higher Ed and share the State's parameters.

Attachment 1 is the overview of work efforts and timelines identified.

There are a few items that staff would like direction from the Board on related to the implementation.

#### **401(a) Defined Contribution Plan IRS Letter of Determination**

In our review of the Defined Contribution Plan Document, Ice Miller asked whether NDPERS had requested and received a favorable Letter of Determination from the IRS for the 401(a) Defined Contribution Plan. Staff could not find record that this had ever been requested or received, likely due to the small volume of members that were previously eligible and participating in the plan. Given the significant change in the population that will occur in future years, Ice Miller encouraged the Board to consider submitting a request to the IRS for this plan. Attachment 2 and Attachment 3 provide information from Ice Miller regarding what this process would entail and also their input on the timing of making the request, whether prior to or after January 1, 2025. Ice Miller indicated that the timing is not a significant consideration from their view point but it would be something we'd need to ensure we had the budget to provide for the costs associated with it. Note that the costs would include additional expenses to Ice Miller to assist us in the application process and the fee that the IRS charges for the determination, which is \$2,500 per plan application.

Staff would recommend that the Board move forward with requesting an IRS Letter of Determination for the 401(a) Defined Contribution Plan given the input of Ice Miller and given the significant increase in membership that this plan will experience following January 1, 2025.

#### **457(b) Deferred Compensation Plan IRS Private Letter Ruling**

Ice Miller also discussed the ability to request an IRS Private Letter Ruling for the NDPERS 457(b) Deferred Compensation Plan. Page 5 of Attachment 2 provides more specific details regarding this type of IRS request. As you can see from Page 7 of Attachment 2, the fee for requesting a Private Letter Ruling is substantially higher (\$38,000) than the Letter of Determination fee. Attachment 3 also gives information regarding Ice Miller's suggestion to conform with the IRS Model Language, which is the IRS' preferred wording and format.

This may take additional time, but most of that time would likely fall under Ice Miller rather than NDPERS staff.

Staff would recommend that the Board move forward with requesting an IRS Private Letter Ruling for the 457(b) Deferred Compensation Plan, including the NDPERS 457(b) Deferred Compensation Companion Plan given the input of Ice Miller.

The 68<sup>th</sup> Legislative Assembly provided NDPERS with one-time funding this biennium to successfully close the Main Plan. Staff has confirmed with OMB that this funding could be used any way the Board deems appropriate to ensure the conversion is not only successful, but also complies with IRS regulations. If the Board would like to move forward with the Determination Letter and the Private Letter Ruling this biennium, we should be able to accommodate the project from a budget perspective. If the Board would like to delay the project into next biennium, we can also request separate funding next session, or also consider using our Contingency funding as well.

### **457(b) Deferred Compensation Plan Expedited Enrollment**

In July 2006, NDPERS implemented an expedited enrollment process for individuals eligible to participate in the 457 (b) Deferred Compensation Plan. This expedited process was developed mainly because staff at that time were hearing from new hires that they were unaware of the Portability Enhancement Provision (PEP), which allowed them to vest in a portion of the Defined Benefit Plan employer contribution subject to participation in the 457 (b) Deferred Compensation Plan. A survey of new hires conducted at that time had also indicated that some of the obstacles for new hires in enrolling were not knowing how much they were comfortable deferring or which of the multiple provider options to select as a provider. The original expedited process took away these decision points by setting the deferral as the minimum of \$25 per month that would go to the NDPERS Companion Plan. This would at least begin the employee down the path of supplemental savings while ensuring they'd begin vesting in a portion of the employer contribution in the Defined Benefit Plan. There was also a section of the expedited form that the employee could sign to decline enrollment that specifically spoke to the connection between the two plans. Attachment 4 is the current form used for this expedited enrollment.

As staff have been reviewing the various forms and processes that need to be modified due to House Bill 1040, discussion has taken place on the need to continue this expedited process after January 1, 2025 given the majority of new hires after this date will become members of the Defined Contribution Plan with automatic employer vesting based upon service and more specifically, members of the new tier of the Defined Contribution Plan that has the up to 3% additional contribution option with a subsequent employer match.

Staff would recommend that the expedited enrollment process be discontinued as of January 1, 2025 as the plan enrollment for the majority of new hires will be different than when the process was established in 2006 and will eliminate confusion for members wanting to enroll in the 457 (b) Deferred Compensation Plan as there would then only be one enrollment option on Member Self Service or for those that prefer paper enrollments, one form to enroll in this plan.



**Board Action Requested:**

- 1) Direct staff regarding working with Ice Miller to obtain an IRS Letter of Determination for the 401(a) Defined Contribution Plan.
- 2) Direct staff regarding working with Ice Miller to obtain an IRS Private Letter Ruling for the 457(b) Deferred Compensation Plan, including the NDPERS Companion Plan.
- 3) Direct staff regarding discontinuing the 457(b) Deferred Compensation Plan Expedited Enrollment/Waiver process.

## House Bill 1040 Administrative Implementation

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
<b>HB 1040 Administrative Implementation</b>												
Marketing intern recruitment	★											
1% employer contribution increase launched	★											
Inventory the PERSLink correspondence updates			★									
Targeted communications to subs in main but not public safety				★								
Targeted communications to subs in main but not deferred comp				★								
Recordkeeper transition						★						
PERSLink correspondence updates						★				★		
PERSLink correspondence testing						★				★		
Form updates						★				★		
Plan document updates										★		
Plan handbook updates										★		
Special election window education for eligible employees											★	
Administrative rule making promulgation												★
Employer training												★
Website updates												★
Revise new hire, transfer, termination guides												★
Staff training												★
Biweekly internal administrative implementation meetings												★
Communication team biweekly meetings												★
Education on new plan provision to members					★			★			★	★
Education on new plan provision to employers			★			★			★			★

### KEY

★ Deadline

Task Completed

Work Effort

Deadline Missed

May 1, 2024

WRITER'S DIRECT NUMBER: (317) 236-2249  
EMAIL: [Audra.Ferguson@icemiller.com](mailto:Audra.Ferguson@icemiller.com)

WRITER'S DIRECT NUMBER: (317) 236-2133  
EMAIL: [GAUSS@ICEMILLER.COM](mailto:GAUSS@ICEMILLER.COM)

**VIA ELECTRONIC MAIL**

Rebecca Fricke  
Executive Director  
North Dakota Public Employees' Retirement System  
PO Box 1657  
Bismarck, ND 58502-1657

***RE: Overview of Determination Letter Process***

Dear Rebecca:

This letter provides an overview of the value of obtaining a favorable determination letter from the Internal Revenue Service ("IRS") on the qualified status of a retirement plan, as well as the process involved to secure a determination letter for the North Dakota Defined Contribution Retirement Plan ("DC Plan"), an Internal Revenue Code ("Code") Section 401(a) governmental defined contribution retirement plan administered by the North Dakota Public Employee Retirement Systems ("NDPERS"). It is our understanding that the DC Plan has never sought nor obtained a determination letter from the IRS. Accordingly, we strongly encourage obtaining a favorable determination letter to protect both the Plan and the Plan's participants.

In addition, NDPERS administers a Code Section 457(b) governmental deferred compensation plan ("457(b) Plan"). You have stated that the 457(b) Plan has never sought nor obtained a private letter ruling ("PLR") on the 457(b) Plan terms. As noted below, the cost to obtain a PLR is more significant than for a determination letter; however, we think there is a tremendous amount of value and security to the 457(b) Plan in obtaining a favorable PLR from the IRS.

**REVIEW OF FUNDAMENTAL LEGAL STATUS**

To start this discussion, it is critical to review the fundamental legal status of a pension plan under federal tax law. Most governmental pension plans are intended to be, and act as if they are, qualified governmental retirement plans under Sections 401(a) and 414(d) of the Code. Qualified governmental plan status is critical to maintain the benefits for plan members that are outlined below. There is no other way under federal law to qualify members for these benefits.

**BENEFITS OF STATUS AS A QUALIFIED 401(a) PLAN**

In the public sector, the benefits of tax qualified status flow to the members of the retirement plan. These tax benefits are as follows:

- Employer contributions are not taxable to members as they are made (or even when vested); taxation only occurs when plan distributions are made.
- Earnings and income are not taxed to the trust or the members (until distribution).
- Certain favorable tax treatments may be available to members and beneficiaries when they receive plan distributions, e.g., ability to rollover eligible distributions.
- Employers and members do not pay employment taxes (even if the positions are Social Security covered) where contributions are made or when benefits are paid.

These advantages would generally not apply to a non-qualified plan.

### **BENEFITS OF STATUS AS A QUALIFIED GOVERNMENTAL PLAN**

There are also a number of special provisions and/or exemptions that are applicable solely to governmental plans. Chief among these is that governmental plans are exempt from Title I and Title IV of ERISA. Additionally, governmental plans are exempt from many Code requirements that were made applicable by ERISA to retirement plans. The authority provided to state and local government plans and employers allows for increased flexibility. For this and other reasons, it is important for participating employers and policy makers to guard against their plans losing their governmental plan status. Notable examples of the special provisions for governmental plans of state and local employers include:

- State and local government employers may "pick up" employee contributions and thereby make them pre-tax, rather than post-tax.
- Favorable grandfathering and transitional rules apply to significant parts of Internal Revenue Service ("IRS") guidance.
- Special benefit limits under Code § 415 apply that are more favorable than those that apply to private sector plans.
- Certain service purchase opportunities may be used that apply only to governmental plans.
- Plans are exempt from many costly and cumbersome nondiscrimination testing requirements.

### **EFFECT OF A FAVORABLE DETERMINATION LETTER**

An IRS favorable determination letter contains the opinion of the IRS that a particular plan document is qualified under Code § 401(a). The IRS refers to the determination letter as an "insurance policy" because it protects a plan from being challenged as not qualified on account of its

written terms. A determination letter is the only way to secure the IRS's opinion on a plan's tax qualified status.

A determination letter also means that:

- The "plan document" (statutes, regulations, rules, policies) complies with the Code, Treasury Regulations and other IRS guidance.
- All "required amendments" have been made.
- The plan does not have any provisions that are impermissible.

Having a current favorable determination letter provides the following advantages for plan administration:

- A qualified plan with a current determination letter may use self-correction under the IRS Employee Plans Compliance Resolution System ("EPCRS") to correct certain plan document failures and operational failures to comply with federal law. Following this self-correction process means that the plan will not have to make IRS filings and pay fees for those corrections. This process can be very efficient, streamlined and flexible.
- Having a favorable determination letter will measurably reduce the burden of an IRS audit with respect to the plan.
- For any foreign investments, a current determination letter is helpful (and may be required) with respect to foreign tax recapture.

Having a current determination letter can be advantageous for members in the following ways:

- All of the benefits of a tax qualified plan are confirmed for the member.
- A member's assets in a qualified plan are protected in a member's bankruptcy. (If the member's plan has a determination letter, it makes it easier for the member to protect his/her assets in that case.)
- If a plan has a favorable determination letter, a member can more easily respond to questions from financial institutions regarding rollovers.
- If a member is audited by the IRS, a member can more easily respond to certain IRS questions if his/her plan has a favorable determination letter.

Effective January 1, 2017, the IRS eliminated the staggered five-year remedial amendment cycle system for individually designed qualified retirement plans. *See* Rev. Proc. 2016-37. As of that date, the IRS no longer accepts applications for determination letters based on the five-year remedial amendment cycle system. However, the IRS will accept determination letter applications for (1)

initial plan qualification, (2) plan termination, and (3) other circumstances determined by the IRS. *See also* Rev. Proc. 2024-4, Section 8.04.

You have advised us that the DC Plan has never received an IRS determination letter. Thus, the DC Plan could be submitted to the IRS as an initial plan qualification filing. Again, it is our strong recommendation that the Plan seek a determination letter.

## **REMEDIAL AMENDMENT PERIOD**

Code Section 401(b) provides a remedial amendment period during which a plan may be amended retroactively to comply with the Code's qualification requirements. Treasury Regulation § 1.401(b)-1 describes the disqualifying provisions that may be amended retroactively and the remedial amendment period during which retroactive amendments may be adopted. The regulations also grant the IRS Commissioner the discretion to designate certain plan provisions as disqualifying provisions and to extend the remedial amendment period. Rev. Proc. 2005-66 § 2.01.

Revenue Procedure 2005-66 established a cyclical remedial amendment period for plans with determination letters. It essentially gave all individually designed plans a regular five year amendment and submission cycle, but this prolonged remedial amendment period and cycle was only available to plans with current determination letters.

As noted previously, effective January 1, 2017, the IRS eliminated the staggered five-year remedial amendment cycle system for individually designed qualified retirement plans. *See* Rev. Proc. 2016-37. Going forward, the required amendments list issued annually by the IRS establishes the date that the remedial amendment period for individually-designed plans expires for changes in qualification requirements contained on the list. Rev. Proc. 2106-37, Section 5.05(3).

## **LACK OF DISADVANTAGES IN OBTAINING DETERMINATION LETTERS**

There are no significant disadvantages to obtaining a determination letter. Certainly, there will be an outlay of cost in preparing and filing the determination letter. However, given the significant advantages to receiving a favorable determination letter and the modest cost in relation to the plan assets, we strongly encourage NDPERS to seek a determination letter for the DC Plan.

## **457(b) GOVERNMENTAL DEFERRED COMPENSATION PLANS**

Governmental deferred compensation plans under Code § 457(b) are not "qualified" plans, and they do not receive determination letters. Instead, the IRS will issue a private letter ruling regarding the status of a governmental 457(b) plan as an eligible plan.

In addition, governmental 457(b) plans have a special correction period for plan failures that is not available for qualified plans:

- (a) **Eligible governmental plans.** A plan of a State ceases to be an eligible governmental plan on the first day of the first plan year beginning more than 180 days after the date on which the Commissioner notifies the State in writing that the plan is being administered in a manner that is inconsistent with one or more of the requirements of §§1.457-3 through §1.457-8 or §1.447-10. However, the plan may correct the plan inconsistencies specified in the written notification before the first day of that plan year and continue to maintain plan eligibility....

Treas. Reg. § 1.457-9(a).

## **DOCUMENT COMPLIANCE REVIEW STEPS AND PROCESS**

The following are the next steps in applying for a determination letter from the IRS:

**A. Draft the IRS Determination Letter Application Packages (and VCP Filings, if Necessary)**

This would involve completing the various IRS forms (including Form 5300 and Form 2848, power of attorney to allow Ice Miller to represent the plan with the IRS), along with various explanatory attachments. If necessary, a Voluntary Correction Program (“VCP”) filing (which also consists of completing various IRS forms and attachments) would also be drafted under the non-amender correction process. (Note: It appears that the DC Plan has been timely amended for all changes under federal law. We will want to verify the timing of the various amendments though.)

**B. Submit the Determination Letter Applications (and VCP filings, if Necessary) to the IRS**

We would work with you and staff on each step to ultimately submit the filings to the IRS. At that point, we would work with you and staff to respond to any requests for additional information from the IRS as they complete their review. Once the IRS has reached a favorable conclusion, the IRS would issue a favorable determination letter for the DC Plan and, if necessary, a compliance statement for the correction of any non-amender failures.

**C. Private Letter Ruling Request, 457(b) Deferred Compensation Plan**

The qualified plan determination letter process is not applicable to governmental 457(b) plans. For the 457(b) plan, we would (similar to the qualified plans) do a document review for compliance with federal law requirements and draft any necessary legislative or rule language in order to address any compliance issues. After that, the plan could be submitted to the IRS through the private letter ruling process. This process involves drafting a letter requesting certain rulings from the IRS to confirm that the plan meets the applicable federal law requirements, and the IRS would ultimately issue a private letter ruling in response.

Given the generous self-correction period for governmental deferred compensation plans described above, we would not anticipate that a separate correction filing would be necessary for the deferred compensation plan.

### **ESTIMATED FEES**

Given that we have worked with NDPERS on drafting the DC Plan restatement, we do not anticipate significant legal fees. As noted above, though, we will need to confirm that the various federal law requirements amendments were timely made to the DC Plan. Further, the legal fees will be more significant if a VCP filing is required.

We can provide you with the following IRS filing fee schedule, which is current for 2024:



**Determination Letter Filing (Rev. Proc. 2024-4, Appendix A .06(1):**

\$2,500 per plan application

**VCP Filing (Rev. Proc. 2024-4, Appendix A .09(1):**

Plans with assets of—

(a) \$500,000 or less	\$1,500
(b) Over \$500,000 to \$10,000,000	\$3,000
(c) Over \$10,000,000	\$3,500

**Private Letter Ruling Request (Rev. Proc. 2024-1, Appendix A (A)(3):**

\$38,000

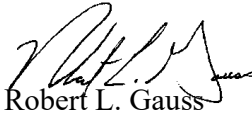
Of course, if you or the Board have any questions, please do not hesitate to let us know.

Very truly yours,

ICE MILLER LLP



Audra Ferguson



Robert L. Gauss

# Attachment

**From:** [Audra.Ferguson@icemiller.com](mailto:Audra.Ferguson@icemiller.com)  
**To:** [Fricke, Rebecca D.](#); [Hohbein, Derrick L.](#); [DePountis, Dean](#)  
**Cc:** [Anderson, MaryJo V.](#); [Aldinger, Marcy D.](#); [Robert.Gauss@icemiller.com](mailto:Robert.Gauss@icemiller.com); [Cindy.Worth@icemiller.com](mailto:Cindy.Worth@icemiller.com); [Lindsay.Knowles@icemiller.com](mailto:Lindsay.Knowles@icemiller.com)  
**Subject:** RE: 401(a) Defined Contribution Plan Handbook  
**Date:** Thursday, May 2, 2024 1:25:41 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)

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Hi Rebecca –

Overall, we would view the staff time as limited. For the Defined Contribution Plan determination letter, NDPERS will need to provide us with any amendments to the Plan and the effective dates. To the extent those amendments are statutory, we can determine that without staff assistance via legislative history, but we will need copies of any Board resolutions or other actions taken to amend the Plan. Given that the Plan was established effective January 1, 2000, there could be some time involved in locating those documents if they are not easily available. Other than locating historical documents, NDPERS staff time would be limited to reviewing and signing Power of Attorney forms and a review of the final submission requesting the determination letter.

For the 457(b) Deferred Compensation Plan, there would be less time involved because historical documents are not necessary. If NDPERS does want to obtain a PLR, we recommend the Plan be restated to conform with the IRS Model Language provided in Rev. Proc. 2004-56. In this regard, we may restate the Plan to conform to the IRS's preferred wording and format. Although this would not change the substantive terms of the Plan, some staff time may be involved in reviewing the restated plan to make sure NDPERS understands the changes that have been made. However, we do not think this would take more than one meeting.

NDPERS would not be directly involved with submitting the applications to the IRS. We would be responsible for submitting the applications to the IRS and dealing directly with the IRS regarding any requests for additional information under a Power of Attorney.

Of course, if you have any other questions, please do not hesitate to let us know.

Best regards,  
Audra and Rob

---

**From:** Fricke, Rebecca D. <rfricke@nd.gov>  
**Sent:** Thursday, May 2, 2024 11:58 AM  
**To:** Ferguson, Audra <Audra.Ferguson@icemiller.com>; Hohbein, Derrick L. <dhohbein@nd.gov>; DePountis, Dean <ddepountis@nd.gov>  
**Cc:** Anderson, MaryJo V. <msteffes@nd.gov>; Aldinger, Marcy D. <mdaldinger@nd.gov>; Gauss,

Robert L. <Robert.Gauss@icemiller.com>; Worth, Cindy <Cindy.Worth@icemiller.com>

**Subject:** RE: 401(a) Defined Contribution Plan Handbook

Audra & Robert, as we analyze this and discuss with the Board on timing, can you give some perspective on the time/work effort that may be required of NDPERS staff? We obviously have a substantial work effort with HB 1040 implementation for the remainder of the year, and then it will be legislative Session. It would be helpful to know more on what staff will need to gather for documentation, application processing, etc as we evaluate a recommendation to our board.

Thanks.

Rebecca Fricke



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**From:** [Audra.Ferguson@icemiller.com](mailto:Audra.Ferguson@icemiller.com) <[Audra.Ferguson@icemiller.com](mailto:Audra.Ferguson@icemiller.com)>

**Sent:** Thursday, May 2, 2024 10:08 AM

**To:** Hohbein, Derrick L. <[dhohbein@nd.gov](mailto:dhohbein@nd.gov)>; Fricke, Rebecca D. <[rfricke@nd.gov](mailto:rfricke@nd.gov)>; DePountis, Dean <[ddepountis@nd.gov](mailto:ddepountis@nd.gov)>

**Cc:** Anderson, MaryJo V. <[msteffes@nd.gov](mailto:msteffes@nd.gov)>; Aldinger, Marcy D. <[mdaldinger@nd.gov](mailto:mdaldinger@nd.gov)>; [Robert.Gauss@icemiller.com](mailto:Robert.Gauss@icemiller.com); [Cindy.Worth@icemiller.com](mailto:Cindy.Worth@icemiller.com)

**Subject:** RE: 401(a) Defined Contribution Plan Handbook



Hi Derrick –

Either approach would be fine. Certainly, there is no need to wait until January 1, 2025 to submit the determination letter (or Private Letter Ruling) request. They can be submitted prior to then. If it would be helpful to budget it for the current biennium, we can make sure it is filed by June 30<sup>th</sup> or it can be filed with the next budget.

Best regards,  
Audra and Rob

---

**From:** Hohbein, Derrick L. <[dhohbein@nd.gov](mailto:dhohbein@nd.gov)>  
**Sent:** Thursday, May 2, 2024 11:04 AM  
**To:** Ferguson, Audra <[Audra.Ferguson@icemiller.com](mailto:Audra.Ferguson@icemiller.com)>; Fricke, Rebecca D. <[rfricke@nd.gov](mailto:rfricke@nd.gov)>; DePountis, Dean <[ddepountis@nd.gov](mailto:ddepountis@nd.gov)>  
**Cc:** Anderson, MaryJo V. <[msteffes@nd.gov](mailto:msteffes@nd.gov)>; Aldinger, Marcy D. <[mdaldinger@nd.gov](mailto:mdaldinger@nd.gov)>; Gauss, Robert L. <[Robert.Gauss@icemiller.com](mailto:Robert.Gauss@icemiller.com)>; Worth, Cindy <[Cindy.Worth@icemiller.com](mailto:Cindy.Worth@icemiller.com)>  
**Subject:** RE: 401(a) Defined Contribution Plan Handbook

Thanks, Audra. Very helpful.

Timing wise – how should this look? Is this something we should try and seek prior to January 1, 2025 or is this something that should be done after?

Our biennium runs though June 2025, so I am trying to determine if I need to look at possible spending this biennium or if I need to work it into our base budget next biennium.

Thank you,

Derrick Hohbein, CPA MBA CEBS  
Chief Operating / Financial Officer



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---

**From:** [Audra.Ferguson@icemiller.com](mailto:Audra.Ferguson@icemiller.com) <[Audra.Ferguson@icemiller.com](mailto:Audra.Ferguson@icemiller.com)>  
**Sent:** Thursday, May 2, 2024 9:53 AM  
**To:** Fricke, Rebecca D. <[rfricke@nd.gov](mailto:rfricke@nd.gov)>; DePountis, Dean <[ddepountis@nd.gov](mailto:ddepountis@nd.gov)>  
**Cc:** Anderson, MaryJo V. <[msteffes@nd.gov](mailto:msteffes@nd.gov)>; Aldinger, Marcy D. <[mdaldinger@nd.gov](mailto:mdaldinger@nd.gov)>; Hohbein, Derrick L. <[dhohbein@nd.gov](mailto:dhohbein@nd.gov)>; [Robert.Gauss@icemiller.com](mailto:Robert.Gauss@icemiller.com); [Cindy.Worth@icemiller.com](mailto:Cindy.Worth@icemiller.com)  
**Subject:** RE: 401(a) Defined Contribution Plan Handbook

Rebecca –

We updated the letter to include information regarding the 457(b) private letter ruling process. Of course, if you have any questions, please do not hesitate to let us know.

Best regards,  
Audra and Rob

---

**From:** Fricke, Rebecca D. <[rfricke@nd.gov](mailto:rfricke@nd.gov)>  
**Sent:** Thursday, May 2, 2024 8:43 AM  
**To:** Ferguson, Audra <[Audra.Ferguson@icemiller.com](mailto:Audra.Ferguson@icemiller.com)>; Gauss, Robert L. <[Robert.Gauss@icemiller.com](mailto:Robert.Gauss@icemiller.com)>; DePountis, Dean <[ddepountis@nd.gov](mailto:ddepountis@nd.gov)>  
**Cc:** Anderson, MaryJo V. <[msteffes@nd.gov](mailto:msteffes@nd.gov)>; Aldinger, Marcy D. <[mdaldinger@nd.gov](mailto:mdaldinger@nd.gov)>; Hohbein, Derrick L. <[dhohbein@nd.gov](mailto:dhohbein@nd.gov)>  
**Subject:** RE: 401(a) Defined Contribution Plan Handbook

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Rebecca Fricke



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**Sent:** Wednesday, May 1, 2024 3:05 PM  
**To:** Fricke, Rebecca D. <[rfricke@nd.gov](mailto:rfricke@nd.gov)>; [Robert.Gauss@icemiller.com](mailto:Robert.Gauss@icemiller.com); DePountis, Dean <[ddepountis@nd.gov](mailto:ddepountis@nd.gov)>  
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**Sent:** Tuesday, April 30, 2024 9:48 AM

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**Subject:** 401(a) Defined Contribution Plan Handbook

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Please review again and provide comments back to me by May 15 if possible.

Audra & Robert, can you also provide information related to the IRS Letter of Determination as I think we'll want to discuss having a request made to the IRS for the 401(a) DC plan. Can you share estimated cost, timeline and other considerations you think the Board should be aware of? From a timeline perspective, given the changes we are making in the Plan Document are effective 1/1/2025 when the provisions of HB 1040 take effect, do you recommend we request the determination after the effective date, therefore after 1/1/2025?

Thanks, all, for your help on this.

Rebecca Fricke

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**From:** [Audra.Ferguson@icemiller.com](mailto:Audra.Ferguson@icemiller.com)  
**To:** [Fricke, Rebecca D.](#); [Hohbein, Derrick L.](#); [DePountis, Dean](#)  
**Cc:** [Anderson, MaryJo V.](#); [Aldinger, Marcy D.](#); [Robert.Gauss@icemiller.com](mailto:Robert.Gauss@icemiller.com); [Cindy.Worth@icemiller.com](mailto:Cindy.Worth@icemiller.com); [Lindsay.Knowles@icemiller.com](mailto:Lindsay.Knowles@icemiller.com)  
**Subject:** RE: 401(a) Defined Contribution Plan Handbook  
**Date:** Thursday, May 2, 2024 1:25:41 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)

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Hi Rebecca –

Overall, we would view the staff time as limited. For the Defined Contribution Plan determination letter, NDPERS will need to provide us with any amendments to the Plan and the effective dates. To the extent those amendments are statutory, we can determine that without staff assistance via legislative history, but we will need copies of any Board resolutions or other actions taken to amend the Plan. Given that the Plan was established effective January 1, 2000, there could be some time involved in locating those documents if they are not easily available. Other than locating historical documents, NDPERS staff time would be limited to reviewing and signing Power of Attorney forms and a review of the final submission requesting the determination letter.

For the 457(b) Deferred Compensation Plan, there would be less time involved because historical documents are not necessary. If NDPERS does want to obtain a PLR, we recommend the Plan be restated to conform with the IRS Model Language provided in Rev. Proc. 2004-56. In this regard, we may restate the Plan to conform to the IRS's preferred wording and format. Although this would not change the substantive terms of the Plan, some staff time may be involved in reviewing the restated plan to make sure NDPERS understands the changes that have been made. However, we do not think this would take more than one meeting.

NDPERS would not be directly involved with submitting the applications to the IRS. We would be responsible for submitting the applications to the IRS and dealing directly with the IRS regarding any requests for additional information under a Power of Attorney.

Of course, if you have any other questions, please do not hesitate to let us know.

Best regards,  
Audra and Rob

---

**From:** Fricke, Rebecca D. <rfricke@nd.gov>  
**Sent:** Thursday, May 2, 2024 11:58 AM  
**To:** Ferguson, Audra <Audra.Ferguson@icemiller.com>; Hohbein, Derrick L. <dhohbein@nd.gov>; DePountis, Dean <ddepountis@nd.gov>  
**Cc:** Anderson, MaryJo V. <msteffes@nd.gov>; Aldinger, Marcy D. <mdaldinger@nd.gov>; Gauss,



Robert L. <Robert.Gauss@icemiller.com>; Worth, Cindy <Cindy.Worth@icemiller.com>

**Subject:** RE: 401(a) Defined Contribution Plan Handbook

Audra & Robert, as we analyze this and discuss with the Board on timing, can you give some perspective on the time/work effort that may be required of NDPERS staff? We obviously have a substantial work effort with HB 1040 implementation for the remainder of the year, and then it will be legislative Session. It would be helpful to know more on what staff will need to gather for documentation, application processing, etc as we evaluate a recommendation to our board.

Thanks.

Rebecca Fricke



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**From:** [Audra.Ferguson@icemiller.com](mailto:Audra.Ferguson@icemiller.com) <[Audra.Ferguson@icemiller.com](mailto:Audra.Ferguson@icemiller.com)>

**Sent:** Thursday, May 2, 2024 10:08 AM

**To:** Hohbein, Derrick L. <[dhohbein@nd.gov](mailto:dhohbein@nd.gov)>; Fricke, Rebecca D. <[rfricke@nd.gov](mailto:rfricke@nd.gov)>; DePountis, Dean <[ddepountis@nd.gov](mailto:ddepountis@nd.gov)>

**Cc:** Anderson, MaryJo V. <[msteffes@nd.gov](mailto:msteffes@nd.gov)>; Aldinger, Marcy D. <[mdaldinger@nd.gov](mailto:mdaldinger@nd.gov)>; [Robert.Gauss@icemiller.com](mailto:Robert.Gauss@icemiller.com); [Cindy.Worth@icemiller.com](mailto:Cindy.Worth@icemiller.com)

**Subject:** RE: 401(a) Defined Contribution Plan Handbook



Hi Derrick –

Either approach would be fine. Certainly, there is no need to wait until January 1, 2025 to submit the determination letter (or Private Letter Ruling) request. They can be submitted prior to then. If it would be helpful to budget it for the current biennium, we can make sure it is filed by June 30<sup>th</sup> or it can be filed with the next budget.

Best regards,  
Audra and Rob

---

**From:** Hohbein, Derrick L. <[dhohbein@nd.gov](mailto:dhohbein@nd.gov)>  
**Sent:** Thursday, May 2, 2024 11:04 AM  
**To:** Ferguson, Audra <[Audra.Ferguson@icemiller.com](mailto:Audra.Ferguson@icemiller.com)>; Fricke, Rebecca D. <[rfricke@nd.gov](mailto:rfricke@nd.gov)>; DePountis, Dean <[ddepountis@nd.gov](mailto:ddepountis@nd.gov)>  
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**Subject:** RE: 401(a) Defined Contribution Plan Handbook

Thanks, Audra. Very helpful.

Timing wise – how should this look? Is this something we should try and seek prior to January 1, 2025 or is this something that should be done after?

Our biennium runs though June 2025, so I am trying to determine if I need to look at possible spending this biennium or if I need to work it into our base budget next biennium.

Thank you,

Derrick Hohbein, CPA MBA CEBS  
Chief Operating / Financial Officer



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**Subject:** RE: 401(a) Defined Contribution Plan Handbook

Rebecca –

We updated the letter to include information regarding the 457(b) private letter ruling process. Of course, if you have any questions, please do not hesitate to let us know.

Best regards,  
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**457 DEFERRED COMPENSATION PLAN QUICK ENROLLMENT/WAIVER**

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SFN 54362 (Rev. 08-2021)

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**PART A EMPLOYEE INFORMATION**

Name (Last, First, Middle)	NDPERS Member ID
Last Four Digits of Social Security Number	Date of Birth (mm/dd/yyyy)
Preferred Email Address	Organization Name

**PART B NDPERS COMPANION PLAN ENROLLMENT**

I elect to enroll in the NDPERS Companion Plan. My enrollment automatically entitles me to maximize my retirement savings by vesting in the employer's contribution to the Defined Benefit Retirement Plan.

**Choose one type of enrollment selection:**

<input type="checkbox"/> \$25 monthly (minimum enrollment amount)	Pay Period Beginning Date (Not Date Paid) mm/dd/yyyy
<input type="checkbox"/> \$_____ Per Pay Period (must be higher than the \$25 monthly minimum)	

*Terms of Agreement*

- I understand that by electing to participate, my monthly salary will be reduced by the amount I have selected.
- I acknowledge my total monthly contribution will be divided, if applicable, to align with my employer's pay period schedule.
- I understand that by participating in the Companion Plan and the NDPERS Defined Benefit Retirement Plan, I am automatically enrolled in the Portability Enhancement Provision (PEP). Thus, the applicable employer contribution is redistributed to my NDPERS member retirement account as stated on the vesting schedule provided on this form.
- I acknowledge I have the right to increase or decrease the amount of contribution, change to another Provider company or suspend contributions at any time by completing the Participant Agreement for Salary Reduction - SFN 3803.
- I understand the accumulated deferred salary is not available to me until I separate from service, or when I experience an approved unforeseeable emergency. Early withdrawal of funds may incur in financial penalties.
- I acknowledge the NDPERS Board makes no recommendation as to any fund investment, and I understand the NDPERS Board does not warrant or guarantee the investment performance of the funds offered by any provider.
- I understand all compensation deferred under the Plan, and all earnings accruing thereof, shall be held for the exclusive benefit of myself or my beneficiary, until such time as it is made available to me pursuant to the terms of the Plan.
- I authorize NDPERS to work with the North Dakota Office of Management and Budget if necessary to insure the appropriate amount is withheld from my paycheck.

I accept the Terms of Agreement, and I authorize my employer to deduct my Companion Plan contribution by my own designated amount on the Pay Period Beginning Date (Not Date Paid) listed above.

Member's Signature (Electronic Signature will <u>not</u> be accepted)	Date (Must be prior to Pay Period Beginning Date above)
---	---

**PART C DECLINE ENROLLMENT IN NDPERS 457 DEFERRED COMPENSATION PLANS**

I elect to decline enrollment in an NDPERS sponsored 457 Deferred Compensation Plan, including but not limited to the Companion Plan. I understand I will not maximize my retirement savings through vesting in the employer's contribution to the Defined Benefit Retirement Plan. I acknowledge I am eligible to begin participation in an NDPERS sponsored 457 Deferred Compensation Plan at a later date and by doing so, will proactively vest in the employer's contribution.

Member's Signature to Waive Participation (Electronic Signature will <u>not</u> be accepted)	Date
--	------

By electing to enroll in the Deferred Compensation Program through your employer at a minimum required monthly contribution of \$25.00, you automatically enroll in the Portability Enhancement Provision (PEP) for the NDPERS Defined Benefit Retirement Plan. Your NDPERS retirement account will automatically be credited with the percentage of the employer contribution to which you are entitled based upon your years of credited service. As you attain additional service credit, you must increase your 457 contribution amount to the corresponding percentage of salary to achieve maximum vesting.

<b>Service Credit</b>	<b>Minimum Contribution</b>	<b>Maximum Vesting %</b>
0-12 Months	\$25	1%
13-24 Months	\$25	2%
25-36 Months	\$25	3%
37+ Months	\$25	4%

**INSTRUCTIONS:**

**PART A EMPLOYEE INFORMATION**

This form must be completed regardless of whether the employee elects to participate or declines to participate in the 457 Deferred Compensation Plan and Portability Enhancement Provision (PEP).

For member identification, please provide all requested information.

**Part B QUICK ENROLLMENT IN DEFERRED COMP/PEP**

**This section should be completed if the employee elects to participate in the 457 Deferred Compensation Plan and the Portability Enhancement Provision (PEP).** The employee's signature in this section **will authorize** a reduction in the employee monthly wage and contribution to a deferred compensation plan.

The employee must sign and date this section. **(This date must be in the month prior to the date entered above).**

**Part C WAIVER OF PARTICIPATION**

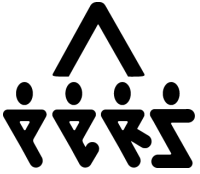
The employee must sign and date this section only if the employee waives participation in the Deferred Compensation Plan.

GROUP INSURANCE / FLEXCOMP  
FlexComp RFP

\*Executive Session pursuant to N.D.C.C. §44-04-19.1(9) and §44-04-19.2) to discuss negotiating instructions to its attorney or other negotiator.

Material for the Executive Session  
will be sent under separate cover.





**North Dakota  
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# Memorandum

**TO:**                   NDPERS Board

**FROM:**               Rebecca

**DATE:**               June 11, 2024

**SUBJECT:**           2023 Health Plan Claims Review

Each year, NDPERS performs a review of a sample of the Sanford health plan medical and pharmacy claims, as well as claims for the Humana Medicare Part D plan. This review is conducted by the NDPERS Internal Audit Division, led by Shawna Piatz as Chief Audit Officer.

Attached are the results of this audit, referred to as observations. In addition, the attached provides management's responses to the observations, along with a list of the types of claims that were reviewed through the audit. The audit report has been shared with the Audit Committee at their May 2023 meeting. Any outstanding issues are being tracked by both Internal Audit and management to ensure resolution.

This item is informational only. Shawna and I will be available at the meeting should the Board have any questions.

# Attachment

**PURPOSE:** Each year we conduct an audit to verify the accuracy of the health plan claims processing to the current Certificate of Insurance (COI) documents.

**PROCEDURES:** In March 2024, the Internal Auditors met virtually with Sanford Health Plan (SHP) and Humana staff to review a sample of 105 NDPERS claims. A list of the claim specifications reviewed is provided in Attachment A. A random sample of claims from 2023 within each of the categories noted was reviewed. Sanford had pre-built queries to pull the total claims for 2023 for each of the categories, the queries were run during the virtual meetings and NDPERS Internal Audit pulled the random claim sample from the query population.

## RESULTS:

**Observation #1: Institutional Psych Claims** – One of the claims reviewed went to the bucket for five free substance abuse visits even though the visit was for mental health. This claim should have instead gone to the bucket for five free mental health visits until exhausted, otherwise deductible and co-insurance should have applied. SHP determined that in their system build, a mental health diagnosis disqualifier was missed in the Substance Use Disorder component which caused mental health claims to first go to the five free Substance Use Disorder bucket. Their system has been corrected and the claims that may have been impacted in 2023 and 2024 were identified in March of 2024. For 2023, there were 79 claims for 37 members identified and In 2024 there were 8 claims for 6 members identified. SHP did adjust the 8 claims identified for 2024 but will not be able to determine the financial impact of the 2023 identified claims unless each claim is reviewed individually.

**Recommendation:** NDPERS management should direct SHP as to if the 2023 claims should be reprocessed. Institutional Psych claims should be reviewed again during the 2024 claims review to ensure that claims are being processed as expected.

### Management Response:

*Management agrees with the recommendation and will ask SHP to reprocess the claims.*

**Observation #2: Professional Dilated Eye Exam for Diabetes Related Diagnosis Claims** – During the 2022 claims review, it was discovered that there was an error in the configuration of a formula for this claim type in the SHP system and the co-insurance was not being applied as expected. The formula had been fixed, an impact query run and all known errors were reprocessed. During this year's review, the same error was discovered and it was determined that the query had only been run for dates in 2022. SHP ran the query for 2023 and found an additional 191 claims that have been reprocessed.

**Recommendation:** Claims in this category should be reviewed again in the 2024 claims audit to ensure they are processing as expected. NDPERS management should request a financial impact of the 2023 claims that were reprocessed.

### Management Response:

*Management agree with the recommendation and will request of SHP a financial impact statement of the 2023 claims that were reprocessed.*

**Observation #3: Hearing Aids** – For hearing aids, deductible and co-insurance should apply however for the claims reviewed, it was found that cost shares were not applied for two claims with coordination of benefits and one claim without. The 2022 claims were re-reviewed to determine if the same issue occurred and it appeared the claim from January 2022 process correctly but the claim from November 2022 did not and had this same issue. It was

determined that something changed in the later part of 2022 resulting in claims not processing correctly. SHP has submitted a Service Now ticket to their Build team to investigate the issue.

**Recommendation:** NDPERS management should direct SHP as to if the claims already identified, and other claims with the same issue, should be reprocessed. NDPERS should continue to monitor to determine if updates need to be made to SHP's claims processing system to ensure cost shares are applied correctly going forward.

**Management Response:**

*Management will direct SHP to reprocess identified claims and any other claims that are determined to have had the same issue. In addition, SHP will be asked to provide monthly updates at our status meeting regarding the Service Now ticket and the resolution of the programming error.*

**Observation #4: Infertility Benefit Claims** - During the 2022 claims review, it was discovered that there was an error in the configuration of a formula for the infertility lifetime deductible bucket in the SHP system in which the claims did not go to the lifetime infertility deductible bucket even though the \$500 lifetime deductible had not yet been met. SHP had indicated that the issue had been fixed as of October 2022 and that since that time benefits have processed as expected, members affected have had their cost share amounts balanced out with the receipt of claims after the original error and no claims required reprocessing.

However, during the 2023 claims review, there again were claims found that did not go to the infertility lifetime deductible which does not align with the timing of the system fix previously indicated. SHP has submitted a Service Now ticket to their Build team to investigate the issue.

**Recommendation:** NDPERS management should direct SHP as to if the claims already identified, and other claims with the same issue, should be reprocessed. NDPERS should continue to monitor to determine if updates need to be made to SHP's claims processing system to ensure claims are processing as expected.

**Management Response:**

*Management will direct SHP to reprocess identified claims and any other claims that are determined to have had the same issue. In addition, SHP will be asked to provide monthly updates at our status meeting regarding the Service Now ticket and the resolution of the programming error.*

**Observation #5: Out of Country Care** – Section 5.5 related to health care services received outside of the United States says, "Covered services for Medically Necessary emergency and urgent care services received in a foreign country are covered at the In-Network level. There is no coverage for elective Health Care Services if a Member travels to another country for the purpose of seeking medical treatment outside the United States."

During the review, an out of country claim was reviewed which included an ER visit but did not have a copay, deductible or co-insurance applied even though in-network coverage for emergency services require a \$60 copayment, deductible and 20% coinsurance for most emergency services. SHP indicated that it is difficult to determine what services are received because out of country claims are often received in a foreign language and without the standard coding that is standard for claims in the United States.

NDPERS understands the difficulties that arise when processing foreign claims but does not agree with the plan paying 100% for services that would require cost shares in the United States.

An additional scenario was discussed in which the claims of an NDPERS member's family, who lives overseas, had previously had their out of country claims paid for under this plan. The language in Section 5.5 does not address this scenario and in 2023 it was determined that these claims would no longer be covered.

**Recommendation:** NDPERS management should consider revising the language under Section 5.5 to address the findings above. Suggested language would be as follows:

“Deductible and 20% co-insurance up to the Plan maximums will apply for medically necessary emergency and urgent care services received in a foreign country-are covered at the In-Network level. There is no coverage for elective or preventative Health Care Services if a Member or their dependents travels to another country for the purpose of seeking medical treatment outside the United States.”

NDPERS management should further consider revising the language under Section 1.4 to address the findings above. Suggested additional language would be as follows:

There is no coverage for any Health Care Services if a Member or their dependents reside in another country.”

**Management Response:**

*Management agrees with the recommendation and will direct SHP to update the COI language when the next revision is done.*

**Observation #6: Prescription Drug History for HDHP members** – During the review, the full prescription drug claims history for two members on the High Deductible Health Plan were reviewed. The prescription drug claims are processed by a third party vendor and later imported into the SHP system and members’ metered benefits. The information for one claim did not import into the member’s metered benefits as expected. The claim did process as expected with the third party vendor and the member had met his deductible within the year so no reprocessing is required. This appears to be an isolated event.

**Recommendation:** No recommendation as this appears to be an isolated event and no reprocessing is required.

**Management Response:**

*Management agrees with the recommendation.*

**Observation #7: Protected Health Information** – Optum is SHP’s third party vendor that processes subrogation claims. Optum invoices were reviewed to try to find a member with a worker’s comp claim for one of the audit sample categories. During the review, NDPERS was able to see PHI for non-PERS members on the invoices that had previously been sent to PERS for support in the monthly financial reconciliations. If NDPERS can see PHI of non-PERS members, it is likely that other lines of business may be receiving PHI for NDPERS members as well.

**Recommendation:** NDPERS management should work with SHP to ensure that the invoices received do not contain PHI for non-NDPERS members and that NDPERS PHI is not being shared with other lines of business or vendors who should not have the information.

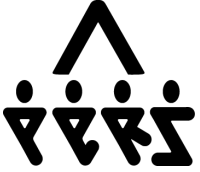
**Management Response:**

*Management agree with the recommendation and will discuss with SHP.*

NDPERS Audit of 2023 Sanford Health Plan Claims

1. Institutional COB (2 claims)
2. Institutional COB (2 with Medicare Member age 65+)
3. Institutional COB (2 with Medicare Member age <65)
4. Institutional COB (3 with Workers Compensation)
5. Professional COB (2 claims Other Insurance Plan)
6. Professional COB (2 with Medicare)
7. Professional COB (2 with Workers Compensation)
8. Institutional Psych (3 claims)
9. Professional Psych (3 claims)
10. Institutional Chemical Dependency (3 claims)
11. Professional Chemical Dependency (2 claims)
12. Professional Dilated Eye Exam for diabetes related diagnosis (3 claims) (No COB)
13. Professional Mammograms (2 claims) (No COB)
14. Professional A1C Screening (2 claims) (No COB)
15. Adult Routine Diagnosis Physical Office Visit with Screenings (2 claims)
16. Prosthetic limb (2 claims)
17. Skilled nursing care (3 claims)
18. Outpatient Sterilization (2 claims)
19. Tobacco Cessation Services (2 claims)
20. Lasik eye surgery (2 claim)
21. Well Child visits (2 PPO & 2 HDHP)
22. Institutional 'Denied Experimental' (2 claims)
23. Hearing aids (3 claims)
24. Claims for Durable Medical Equipment (2 claims)
25. Professional from HDHP member (3 claims)
26. Institutional from HDHP member (3 claims)
27. Infertility Benefits - (3 claims – review the member and the spouse)
28. Emergency room visit with admittance into inpatient stay (3 claims gf or ngf only)
29. Diabetic supplies (3 gf and 2 HDHP)
30. Out-Of-State Out-Of-Network Professional Claims (4 claims)
31. Out of country care (2 claims)
32. Institutional Delivery Claim on Healthy Pregnancy Program (2 claims)
33. Prescription Drug Formulary (3 claims)
34. Prescription Drug Non-Formulary (3 claims)
35. Prescription Drug Contraception (2 claims PPO & 3 claims HDHP)
36. Prescription Drug for Flu Vaccine (2 claims) (No COB)
37. Prescription Drug for COVID-19 Vaccine (3 claims) (No COB)
38. Prescription Drug for Diabetic medications (3 gf and 2 HDHP)
39. Prescription Drug 2021 history for HDHP member (2 members)
40. Prescription Drug Medicare Part-D claims (5 claims) - Humana  
- One claim from each Tier and an additional from Tier 4

Total 105 Claims from Sanford  
Total 5 Claims from Humana



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# Memorandum

**TO:**                   NDPERS Board

**FROM:**               Rebecca

**DATE:**               June 11, 2024

**SUBJECT:**           Legislative Diabetes Burden Report

Attached is the 2024 diabetes report given to legislative management as required by NDCC 23-01-40. This report is a collaborative effort between the Department of Health and Human Services, Indian Affairs, and NDPERS. The report is done every two years and was presented at the May 30<sup>th</sup> Health Care Committee.

This item is informational only and does not require any action by the board.



# North Dakota 2024 Diabetes Report

*North Dakota Century Code 23-01-40*

**Compiled by the North Dakota Diabetes Prevention  
and Control Program on behalf of:**

- North Dakota Department of Health and Human Services
- North Dakota Public Employees Retirement System
- North Dakota Indian Affairs Commission
- Mandan, Hidatsa, Arikara Nation | Three Affiliated Tribes
- Spirit Lake Nation



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## EXECUTIVE SUMMARY

This report has been completed to comply with North Dakota Century Code (N.D.C.C.) 23- 01-40. Diabetes goals and plans - which requires in even numbered years, three state agencies, the North Dakota Department of Health and Human Services (HHS), the North Dakota Indian Affairs Commission, and the North Dakota Public Employees Retirement System (NDPERS), to collaborate to develop a report identifying goals and associated plans to reduce the incidence of diabetes in the state, improve diabetes care, and control complications associated with diabetes.

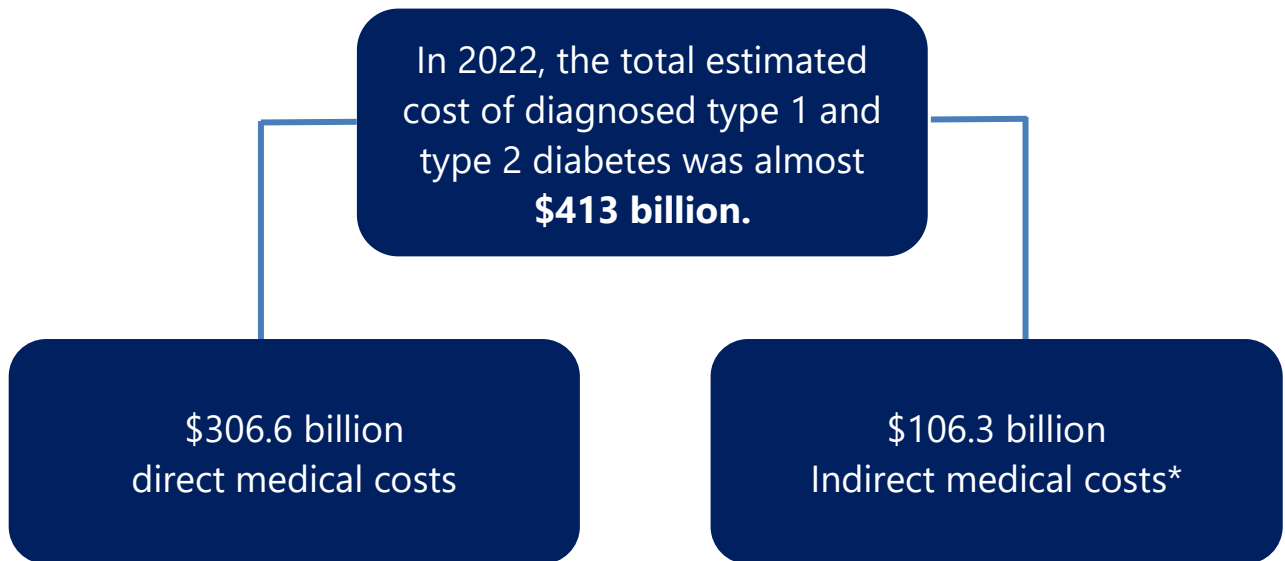
This report describes the prevalence, complications, cost of diabetes, and how the three reporting agencies address diabetes in the populations they serve. In addition, the report presents recommendations on how to improve the health of North Dakota residents with, or at risk for developing, diabetes.

The North Dakota Diabetes Prevention and Control Program (NDDPCP) Coordinator requested and compiled data about diabetes in the populations each entity serves, including how diabetes is addressed and actionable strategies for future efforts. Many of the future action items rely on policy, system, and environment change approaches in partnership across sectors and stakeholders. Each contributing partner and the three state agencies reviewed and came to consensus on the report that follows.

### Acknowledgements

- *Brianna Monahan, Diabetes Prevention and Control Program Coordinator, HHS*
- *Clint Boots, Research Analyst, HHS*
- *Susan Mormann, Health Promotion and Chronic Disease Prevention Unit Director, HHS*
- *Erik Elkins, North Dakota Medicaid, HHS*
- *Rebecca Fricke, Chief Benefits Officer, NDPERS*
- *North Dakota Indian Affairs Commission*
- *Gwen Davis, Fort Berthold Diabetes Program*
- *Challsey Scallon, Spirit Lake Nation*

## The Cost of Diabetes<sup>[1]</sup>



\*Related to absenteeism, presenteeism, inability to work, reduced productivity for those in the workforce, and premature mortality.

Inflation-adjusted direct medical costs of diabetes rose 35% from 2012 to 2022.

Medical expenses for people with diabetes are approximately 2.6 times higher than for those

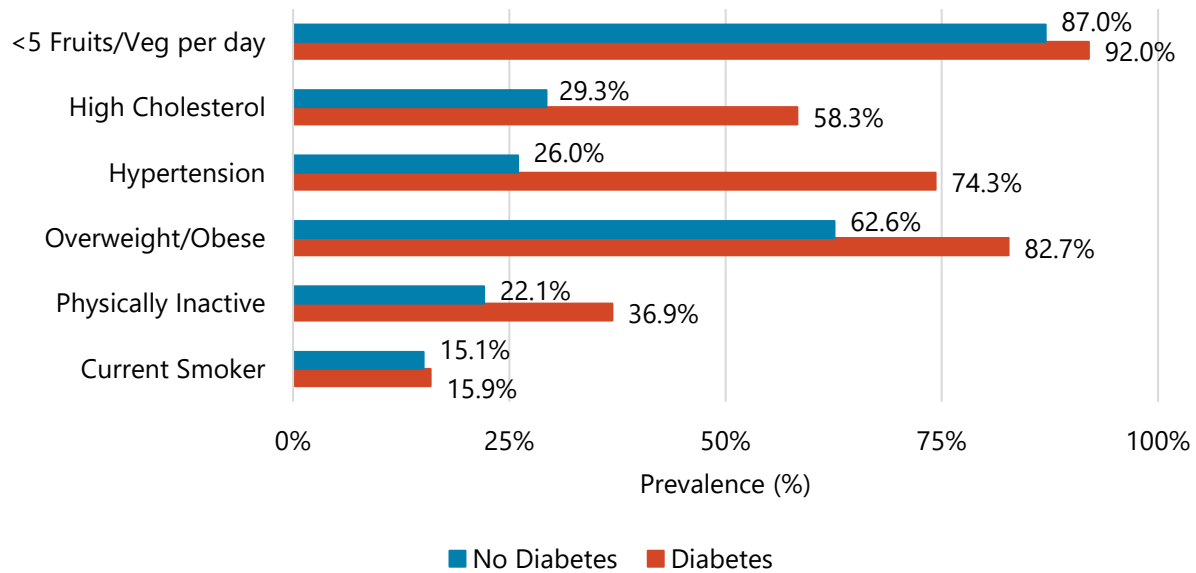
The direct and indirect medical costs cited above place many families at an economic disadvantage, including the additional psychological burden associated with the management of a chronic condition. People with diabetes are on average 2-3 times more likely to experience depression, and parents of children with chronic disease report decreased physiological and physical quality of life.

### **Associated Complications**

Diabetes increases the risk for many health conditions including heart disease, blindness, end stage kidney disease and amputations. Diabetes also reduces a person's ability to fight infections and increases risk for complications from communicable illnesses. By managing diabetes with routine testing and medical visits, those impacted by diabetes can prevent and delay the onset of complications<sup>[2]</sup>.

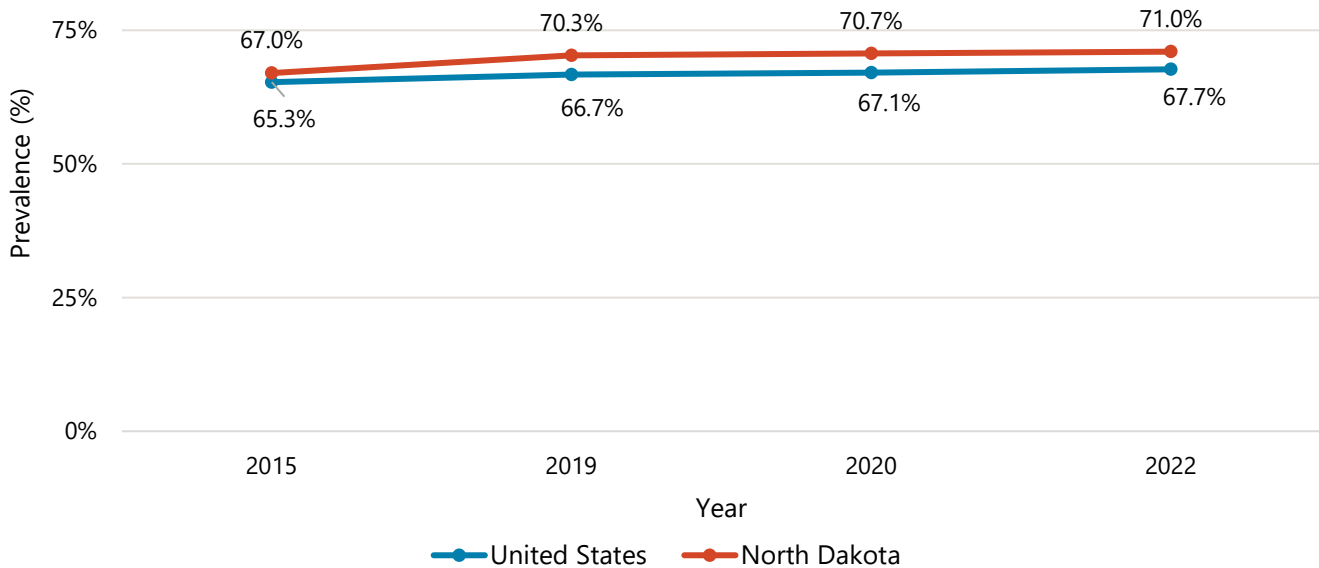
Due to the many risks and reduced quality of life, it is important to increase screening and diagnosis of prediabetes so that individuals at risk for type 2 diabetes can modify lifestyle behaviors that can prevent or delay the onset of diabetes.

### Lifestyle Risk Factors, 2022<sup>[3]</sup>



Obesity is a primary risk factor for type 2 diabetes, increasing the risk for disease by at least six times. Rates of obesity and type 2 diabetes have increased linearly in recent decades, with rate of diabetes increasing primarily among obese individuals. Research suggests that if current trends in obesity continue, 1 in 3 adults will be living with type 2 diabetes by 2050. Obesity and diabetes are both chronic, progressive diseases with shared etiology, risk factors, health outcomes and treatments <sup>[4]</sup>.

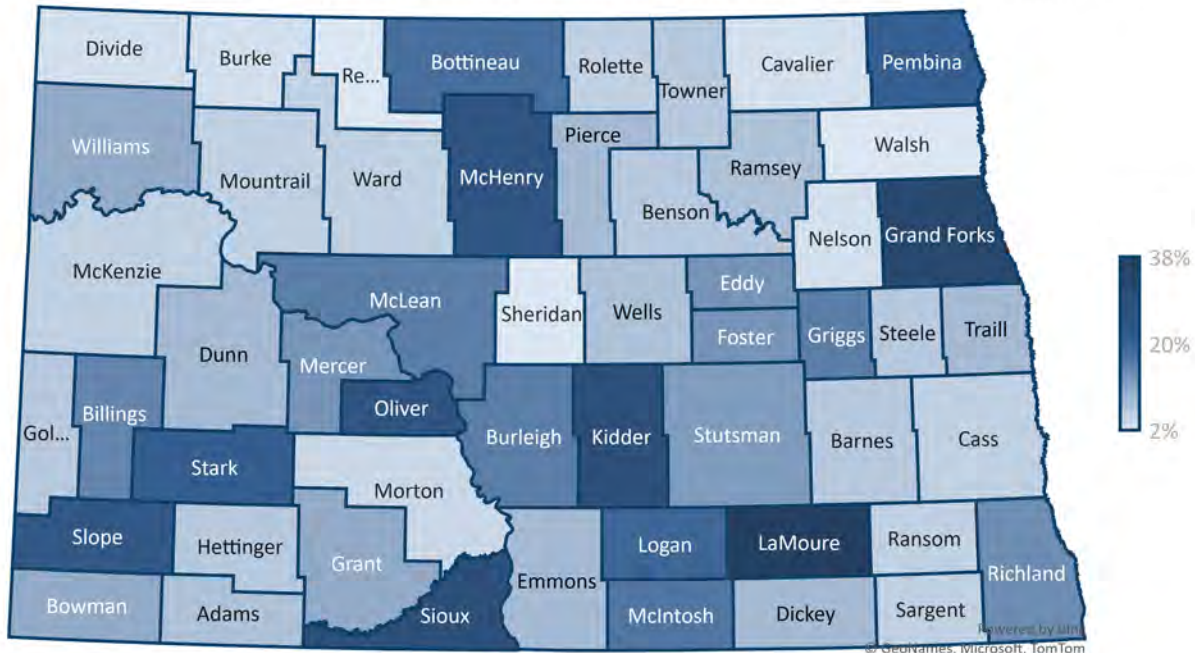
### Overweight and Obesity Rates in the United States and North Dakota<sup>[3]</sup> Adults age 18 and older



## Food Insecurity in North Dakota

For adults and children who already have type 1 or type 2 diabetes, food insecurity can compound the risk of complications. Chronic disease rates are also higher among adults who are food insecure and low-income. Poor diet quality is associated with negative health outcomes.

Percent of Population with Limited Access to Healthy Foods<sup>[5]</sup>



In 2023, the Great Plains Food Bank conducted a study of the charitable feeding network and those it serves in North Dakota and Clay County, Minnesota, entitled “Hunger on the Plains.” The study included surveys from over 500 individuals served by the feeding network across 64 sites in 44 counties.

**75%** of those surveyed report having at least one **chronic health condition**, and **65%** report managing **multiple comorbidities**<sup>[6]</sup>.

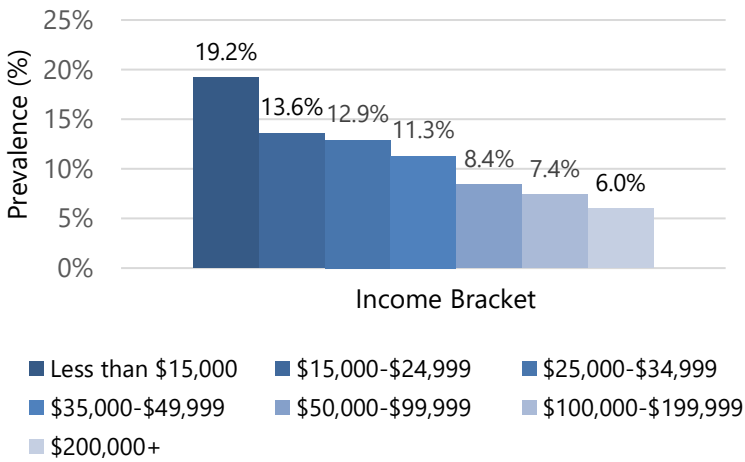
Disease	Reported Rate
High blood pressure	32%
Mental health condition	31%
<b>Diabetes</b>	<b>24%</b>
Obesity	14%
Heart disease	10%

A recent national study found that families experiencing food insecurity have annual **healthcare expenditures 20% higher** than non-food insecure families, *regardless of insurance payer type*<sup>[7]</sup>.

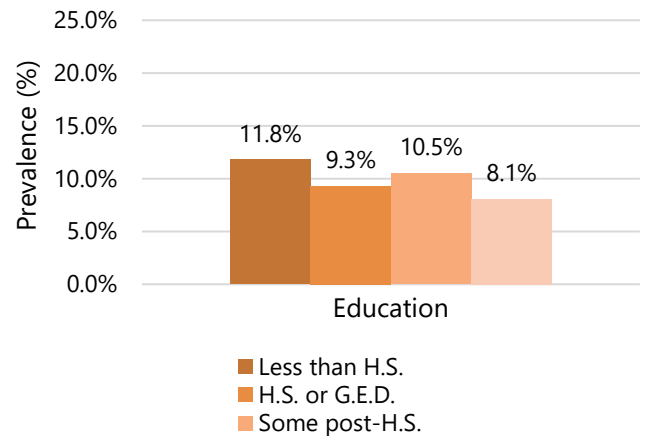
In North Dakota, the **most vulnerable and underserved** populations suffer from the highest rates of diabetes and have the **poorest health outcome**.

The graphs below illustrate the degree to which the overall rates of diabetes among adults 18 years and older in North Dakota varied by demographic and geography in 2018-2022, based on Behavioral Risk Factor Surveillance System (BRFSS) data<sup>[3]</sup>.

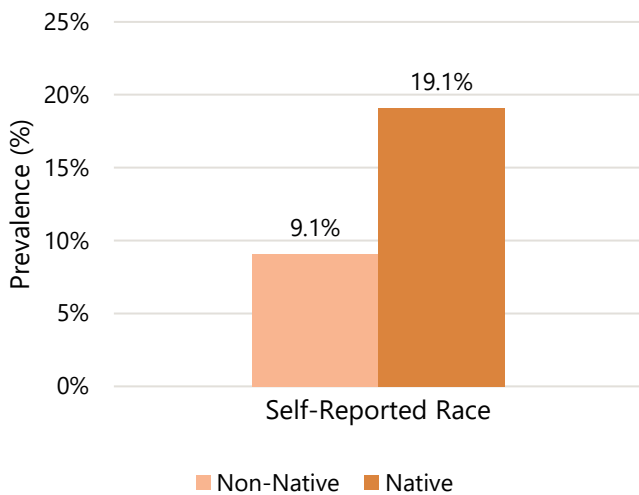
Diabetes Rates by Income



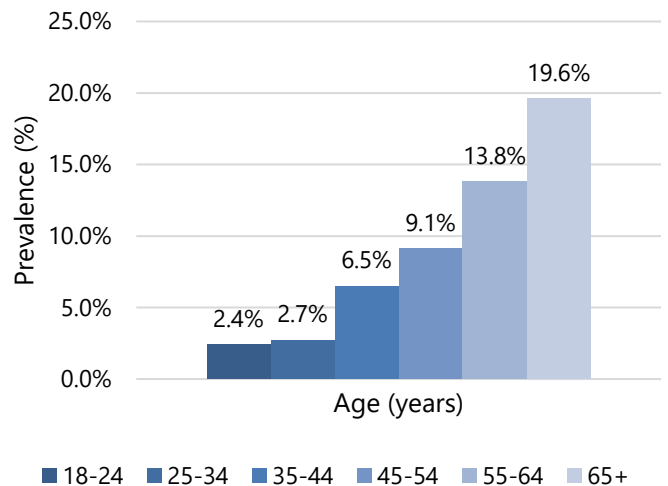
Diabetes Rates by Education



Diabetes Rates by Race



Diabetes Rates by Age

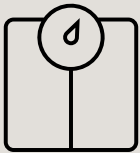


The overall rate of diabetes in North Dakota has consistently fallen below that of the United States average. However, rates vary by demographics and significant disparities exist in the state. Individuals of lower income and education levels experience higher rates of diabetes than those of higher income and education.

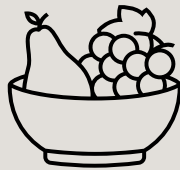
The most significant disparity that exists is among American Indians. Not only is the prevalence of diabetes higher for American Indians, but they also experience the highest rates of diabetes-related amputations and mortality compared to any other race<sup>[8,9]</sup>.

National data also illustrates that American Indian children **ages 10-19** are **nine times** more likely to be diagnosed with type 2 diabetes than their white counterparts<sup>[10]</sup>.

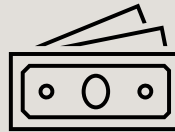
**These high rates of diabetes are primarily attributable to:**



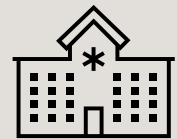
Increased prevalence of contributing risk factors such as obesity and tobacco use<sup>[3]</sup>



Limitations in food access and affordability<sup>[11]</sup>

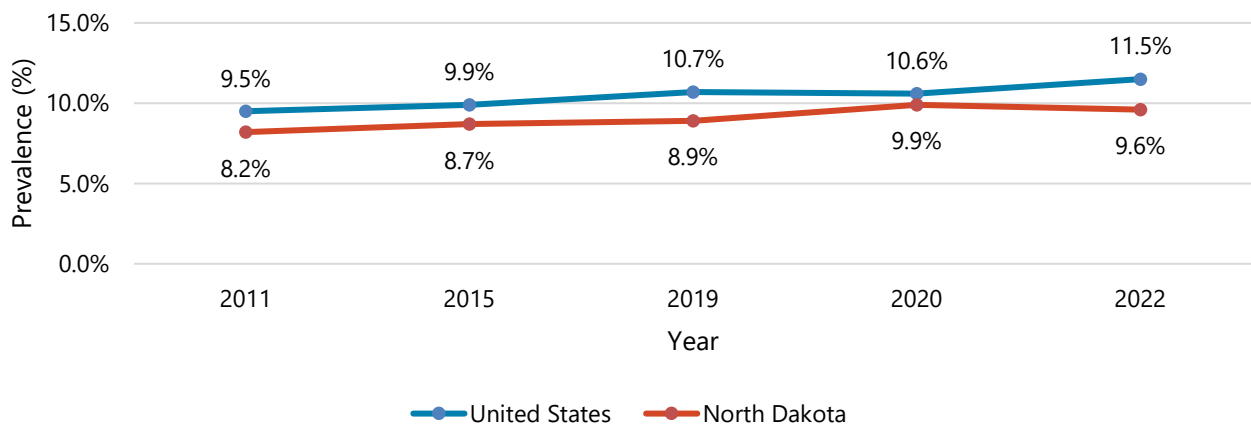


Economic instability<sup>[12]</sup>

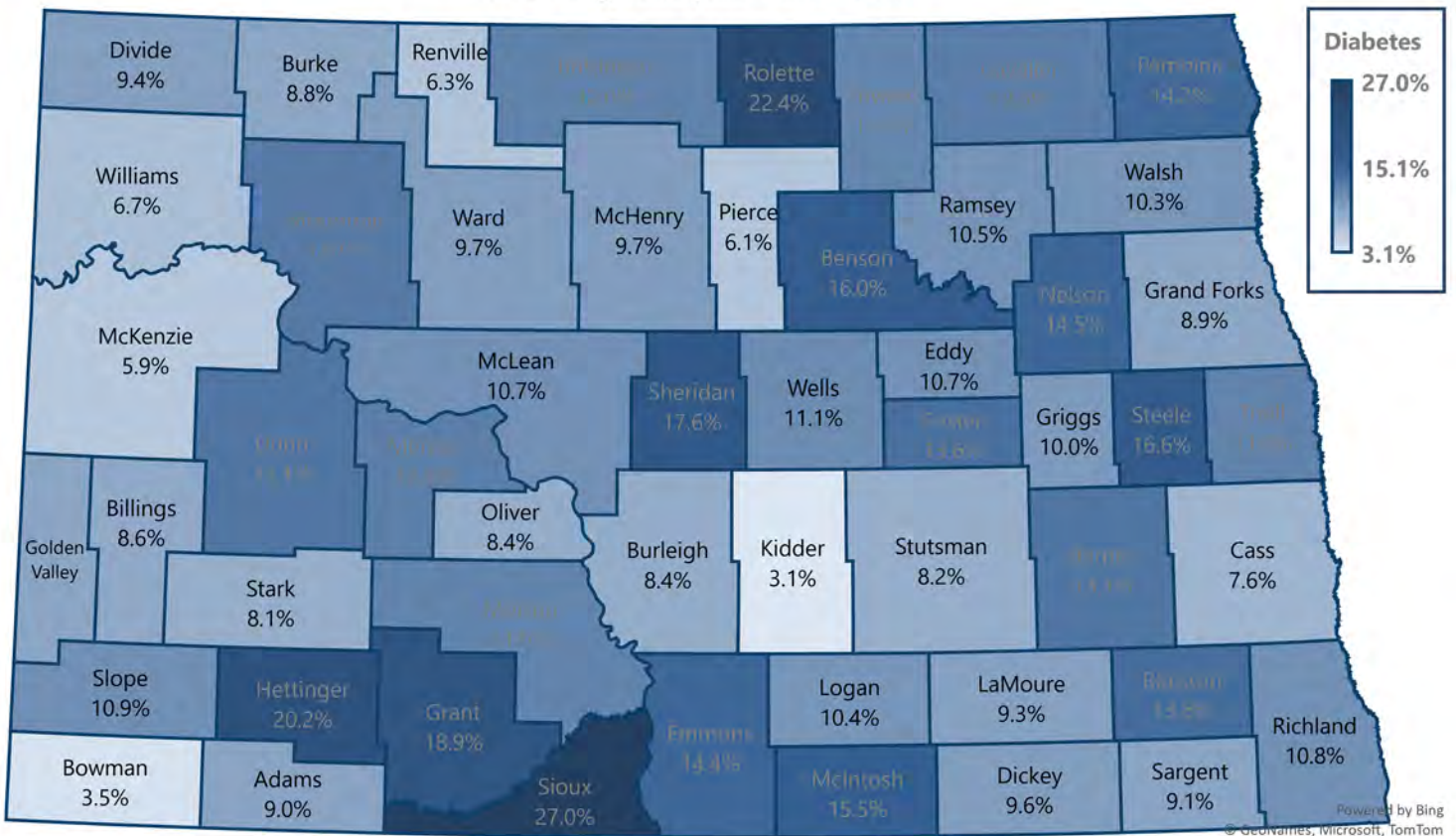


Low access to quality healthcare due to geographical and transportation barriers and racialization in clinical decision making<sup>[12,13]</sup>

**Diabetes Rates in the United States and North Dakota<sup>[3]</sup>**  
adults ages 18 years and older



## 2018-2022 North Dakota Diabetes Prevalence<sup>[3]</sup> adults ages 18 years and older



In 2022 in North Dakota, an estimated:



57,203 adults were living with diagnosed diabetes<sup>[3]</sup>



15,965 adults had undiagnosed diabetes<sup>[14]</sup>



226,430 adults had prediabetes (38%), including 48,560 aged 65 years or older (48.8%)<sup>[3]</sup>



## The North Dakota Diabetes Prevention and Control Program

The North Dakota Department of Health and Human Services (HHS) receives federal funding for the North Dakota Diabetes Prevention and Control Program (NDDPCP) from the Centers for Disease Control and Prevention (CDC) award DP23-0020: A Strategic Approach to Advancing Health Equity for Priority Populations with or at Risk for Diabetes. Federal funding for the NDDPCP totals \$1.8 million in the 2023-2025 biennium. The purpose of the DP23-0020 grant is to implement and evaluate evidence-based strategies to reduce the burden of diabetes in North Dakota, especially for underserved populations. The NDDPCP carries out this work through collaborations with health systems, federally qualified health centers, pharmacies, and community entities to improve policies and processes that help patients prevent or manage diabetes. The NDDPCP currently partners with entities across the state to reach 75% of North Dakota's adult population.

The NDDPCP Strategies for 2023-2028 include:

- **Strengthen self-care practices** by improving access, appropriateness, and feasibility of diabetes self-management education and support (DSMES) services for priority populations.
- **Prevent diabetes complications** for priority populations through early detection by:
  - a) Increasing diabetic retinopathy (DR) screening in priority populations with diabetes and
  - b) Improving early detection of chronic kidney disease (CKD) in priority populations with diabetes.
- **Improve acceptability and quality of care** for priority populations with diabetes.
- Increase enrollment and retention of priority populations in the **National Diabetes Prevention Program** (National DPP) lifestyle intervention and the Medicare Diabetes Prevention Program by improving access, appropriateness, and feasibility of the programs.
- Support the development of **multi-directional e-referral systems** that underpin electronic exchange of information between health care and Community-Based Organizations (CBOs).
- Improve the capacity of the diabetes workforce to **address factors related to the Social Determinants/Drivers of Health (SDOH) that impact health outcomes** for priority populations with and at risk for diabetes.

The primary, long-term measures and expected outcomes for the above diabetes management and prevention strategies are to, by July 2028, 1) decrease the proportion of adults with type 2 diabetes that have an A1C greater than 9% (indicative of poor control) from 9.8% (2023) to 7.5% and 2) increase the proportion of participants served by CDC recognized National DPP delivery organizations who successfully reduce their risk for type 2 diabetes (as measured by CDC Diabetes Prevention Recognition Program standards) from 17.% (2023) to 30%.

Additional, intermediate metrics include the number and percent of patients with diabetes who have 1) received DR and CKD screening tests in partnering health care organizations and 2) are served by

health care organizations that have adopted or enhanced a) team-based care supported by sustainable payment models and b) clinical systems and care practices to improve health outcomes for people with diabetes.

The NDDPCP partners with other HHS programs, when possible, to leverage available funding for addressing the lifestyle risk-factors and comorbidities associated with diabetes and increasing awareness and identification of prediabetes. Recent collaborations include the Heart Disease Prevention and Stroke Program, Preventive Health and Health Services Block Grant, Oral Health Program and North Dakota Family Planning.

### North Dakota Medicaid

North Dakota Medicaid provides coverage for approximately 106,350 North Dakotans including families with children, pregnant women and people who are elderly or disabled<sup>[15]</sup>. Diabetes affects many North Dakota Medicaid members and can be costly to manage.

Between July 1, 2022, and June 30, 2023, 11,790 unique, traditional (fee for service) North Dakota Medicaid members had incurred at least one claim that included a diabetes diagnosis code or for diabetes-related medication or blood glucose test strips. The net payment made by North Dakota Medicaid for these claims was \$25,041,486.43.

ND Medicaid Condition Prevalence by Age Between July 1, 2022, and June 30, 2023					
	Under 18yr	18-44 years	45-64	65+	Total
Prediabetes	210	875	933	627	2,645
Obesity	3,894	8,686	4,639	2,823	20,042
Diabetes	888	6,002	6,152	3,528	16,570

ND Medicaid – Diabetes – All Patient Claims by Age Between July 1, 2022, and June 30, 2023					
	Under 18yr	18-44 years	45-64	65+	Total
Charges Submitted	\$3,813,436.57	\$47,601,242.11	\$131,558,386.42	\$128,033,912.59	\$311,006,977.69
Net Payment	\$1,025,158.24	\$7,749,139.01	\$14,146,539.29	\$2,120,649.89	\$25,041,486.43

ND Medicaid – Prediabetes and Obesity – All Patient Claims by Age Between July 1, 2022, and June 30, 2023			
	45-64	65+	Total
Charges Submitted	\$499,350.53	\$279,911.39	\$779,261.92
Net Payment	\$889.37	\$50.34	\$939.71

North Dakota Medicaid covers a variety of services, equipment, and medications to help members manage diabetes:

- Diabetes Self-Management Training by programs accredited or recognized by the Association of Diabetes Care and Education Specialists or American Diabetes Association, respectively.
- Medical Nutrition Therapy provided by a registered dietitian nutritionist.
- Medication Therapy Management by a pharmacist
- Annual eye exams
- Continuous blood glucose monitoring
- Diabetic shoes and inserts
- Access to “smart devices,” including Omnipod and InPen
- Medications and supplies including insulin, test strips, syringes, needles, etc.

## **North Dakota Medicaid Expansion**

### **Provided by Blue Cross Blue Shield of North Dakota (BCBSND)**

Medicaid Expansion is available to individuals ages 19-64 with household incomes up to 138% of the federal poverty level (FPL).

Covered benefits for eligible North Dakota Medicaid Expansion members include:

- Diabetes screening
- Medical Nutrition Therapy provided by a registered dietitian nutritionist, 4 visits per benefit period.
- Diabetes Self-Management Education and Support
- The National DPP
- Dilated eye examinations
- Diabetes supplies

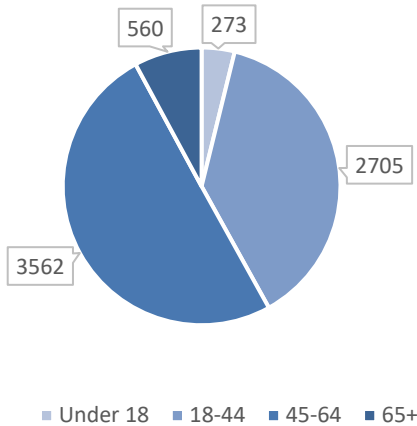
Due to the prevalence of diagnosed diabetes, undiagnosed diabetes and prediabetes seen in residents of North Dakota, BCBSND recognizes the opportunity to diagnose individuals that are going undiagnosed, monitor closely the individuals that are currently prediabetic and ensure proper treatment is provided for individuals diagnosed with diabetes. Early interventions can decrease the short-term and long-term issues related to diabetes. For this reason, BCBSND currently has a Performance Improvement Project (PIP) related to diabetes care. Performance indicators tracked for the PIP include the percent of:

1. Enrollees who have had at least one annual visit with a health care provider for a principal diagnosis of diabetes during the calendar year.
2. Acute inpatient and observation stay discharges during the measurement year for a principal diagnosis of diabetes during the calendar year.
3. Enrollees discharged from acute inpatient and observation stay discharges for a principal diagnosis of diabetes who also had a visit with a health care provider for a principal diagnosis of diabetes during the calendar year.

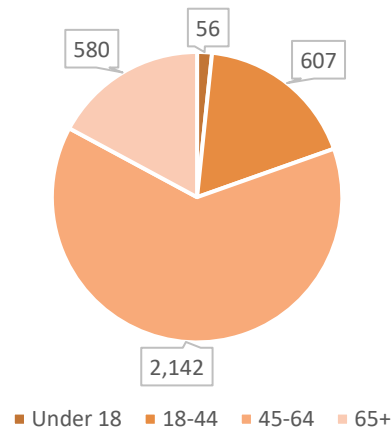
4. Diabetes admissions for a diagnosis of diabetes with short-term complications (ketoacidosis, hyperosmolarity, or coma), per 100,000 Member months for ages 21-6 years.
5. Diabetes admissions per 100,000 member months, ages 21 - 64 years. Includes admissions for one of the following conditions: diabetes with short-term complications, diabetes with long-term complications, uncontrolled diabetes without complications, diabetes with lower extremity amputation.
6. Enrollees with diabetes (types 1 and 2) whose hemoglobin A1c (HbA1c) was in control (HbA1c <8.0%).
7. Enrollees with diabetes (types 1 and 2) whose hemoglobin A1c (HbA1c) was in poor control (HbA1c >9.0%).
8. Enrollees with diabetes (types 1 and 2) who had a retinal eye exam.

**North Dakota Public Employees Retirement System (NDPERS)  
Provided by Sanford Health Plan (SHP)**

Number of Individuals with Obes  
Diagnosis by Age Group  
NDPERS Jan 2023 - Dec 2023



Number of Individuals with Diabetes  
Diagnosis by Age Group  
NDPERS Jan 2023 - Dec 2023



The NDPERS members identified with diabetes incurred a total of \$74.2 million in allowed medical expenses. This amount includes all medical claims paid for these members, including both diabetes- and non-diabetes-related expenses. \$15.97 million was the amount allowed for claims with diabetes as the primary diagnosis. Members with diabetes claims had the fourth highest cost during this twelve-month period.

Based on December 2023 data, there are 71 NDPERS members under age 20 with diabetes claims. This represents 0.42% of the NDPERS population under age 20 (16,778 members).

All data and graphs for NDPERS are based on Reporting period January 1, 2023 to December 31, 2023. Information provided by Sanford Health Plan (SHP).

NDPERS Top 10 Conditions by Total Allowed NDPERS Jan 2023 - Dec 2023			
Disease	Total Members	Total Amount Allowed	Amount Allowed Total/Member
Hypertension	9,895	\$134,177,217.91	\$13,560.10
Joint degeneration, localized	8,318	\$117,221,333.29	\$14,092
Mood disorder, depressed	5,919	\$75,098,870.65	\$12,687.76
*Diabetes	4,279	\$74,229,708.74	\$17,347.44
Ischemic heart disease	2,394	\$52,565,341.60	\$21,957.12
Inflammatory bowel disease	449	\$18,604,567.99	\$41,435.56
Psoriasis	639	\$16,817,782.99	\$26,318.91
Adult rheumatoid arthritis	461	\$13,792,954.98	\$29,919.64
Malignant neoplasm of breast	581	\$12,555,162.99	\$21,609.57
Multiple Myeloma	49	\$5,334,496.52	\$108,948.91

Costs Associated by Type 1 or 2 Diabetes: Annual Allowed Costs by Age NDPERS Jan 2023 - Dec 2023		
Age	Type 1	Type 2
Under 18	\$518,626.86	\$257,834.39
18-44	\$3,710,852.63	\$7,681,825.03
45-64	\$4,840,074.88	\$41,136,750.41
65+	\$455,950.43	\$13,611,908.70
<b>Grand Total</b>	<b>\$9,525,504.80</b>	<b>\$62,688,318.53</b>

Incurred Claims Related to Diabetes and Its Complications NDPERS Jan 2023 - Dec 2023				
Diabetes with:	Inpatient	Outpatient	Professional	Total Allowed
Diabetes in Pregnancy	\$562,195.78	\$66,747.34	\$361,257.83	\$990,200.95
Diabetes Insipidus	\$258,129	\$0.00	\$1,427.58	\$259,556.58
Diabetes with severe retinopathy	\$46,500.07	\$16,584.97	\$172,570.98	\$235,656.02
Diabetes Type I	\$155,839.83	\$33,681.82	\$225,066.45	\$414,588.10
Diabetes Type II	\$528,370.75	\$334,827.67	\$1,310,584.33	\$2,173,782.75
Diabetes with chronic micro & macrovascular complications	\$586,531.25	\$134,688.00	\$605,832.68	\$1,327,051.93
Diabetic Coma	\$0	\$0	\$914.41	\$914.41
Diabetic hyperosmolar coma	\$366,926.66	\$2,582.54	\$22,990.78	\$392,499.98
Diabetic Ketoacidosis	\$171,100.41	\$9,649.06	\$56,527.66	\$237,277.13
<b>Total Allowed</b>	<b>\$2,675,593.75</b>	<b>\$598,761.40</b>	<b>\$2,757,172.70</b>	<b>\$6,031,527.85</b>

Average Allowed Costs per Individual NDPERS Jan 2023 - Dec 2024		
Age	Type 1	Type 2
Under 18	\$11,274.50	\$25,783.44
18-44	\$21,326.74	\$17,864.71
45-64	\$34,820.68	\$20,547.83
65+	\$22,797.52	\$24,614.66
<b>Grand Total</b>	<b>\$25,133.26</b>	<b>\$20,930.99</b>

Incurred Out-of-Pocket Costs for Individuals with Diabetes NDPERS Jan 2023 - Dec 2024			
<i>*Costs may not be directly related to treatment of diabetes diagnosis</i>			
<i>**Only Endocrine Drugs</i>			
Total Out of Pocket		Average Out of Pocket per Member	
*Medical	\$7,343,098.24	*Medical	\$2,176.38
**Pharmacy	\$1,989,801.84	**Pharmacy	\$589.75
<b>Grand Total:</b>	<b>\$9,332,900.08</b>	<b>Grand Total:</b>	<b>\$2,766.12</b>

## Current NDPERS/Sanford Health Plan (SHP) Programs and Services

<p><b><u>Exercise is Medicine</u></b> A fee-reduced “Exercise is Medicine” program is available for all SHP members with type 2 diabetes, prediabetes, obesity, metabolic syndrome, high blood pressure, high cholesterol and/or depression/anxiety.</p>	<p><b><u>Sanford Health Plan Member Outreach</u></b> Targeted outreach twice per year to members with type 2 diabetes and prediabetes, ensuring members know about all the wellness benefits available to them.</p>
<p><b><u>Health Coaching</u></b> Provided by a trained health professional such as a registered dietitian, wellness coach or fitness expert to help members establish a personalized wellness program that may include exercise, nutrition, weight management, stress management, tobacco cessation or other topics based on the member’s needs, desires, and goals.</p>	<p><b><u>Online Wellness Portal</u></b></p> <ul style="list-style-type: none"> <li>• Health Assessment to evaluate current health status and provide resources for improving well-being.</li> <li>• Daily Habits plans to encourage long-term behavior change.</li> <li>• Community forum to connect on a variety of wellness topics.</li> <li>• Media Library for members to watch easy-to-follow exercise videos, recipes, and podcasts on mental health.</li> </ul>

**Current NDPERS/Sanford Health Plan (SHP)  
Programs and Services (continued)**

<p><b><u>Sanford Health Plan Case Management Programs</u></b> Offered at no cost to members with chronic health conditions, this program provides support to members with conditions like diabetes, ensuring they understand their condition, have a self-management plan in place and are coordinated between all members of the care team. As part of the program, an assessment is completed to identify any social determinants/drivers of health that are impacting the health of the member. When needs are identified, a referral is placed for the social work team to address and remove any barriers.</p>	<p><b><u>Diabetes Prevention Programming</u></b> Change Your Weigh is a recognized National Diabetes Prevention Program (DPP) where participants meet in a group with a trained coach to focus on strategies to lose weight, increase physical activity and decrease their risk of developing type 2 diabetes. Positively Me is individual health coaching focused on reducing risk of developing type 2 diabetes and is offered through the online wellness partnership with WebMD Health Services.</p>
<p><b><u>About the Patient</u></b> Administered by the North Dakota Pharmacists Association, this program reduces out-of-pocket expenses for diabetic medication and supplies while including pharmacy consultation at no cost. On average, program participants reduced their A1c by 0.5 points.</p>	<p><b><u>North Dakota Worksites</u></b> Sanford Health Plan staff help North Dakota workplaces with interventions to increase cultures of wellness, including helping to start fresh fruit programs, wellness education presentations, cooking classes and employee health screens.</p>
<p><b><u>North Dakota Schools</u></b> Provide free access to <a href="https://fit.sanfordhealth.org/">https://fit.sanfordhealth.org/</a>, which includes classroom curriculum and lesson ideas. The Sanford fit team also consults with North Dakota schools free of charge.</p>	<p><b><u>Livongo Diabetes Solution</u></b> SHP has partnered with Livongo to offer a digital diabetes management solution to empower members with type 1 or type 2 diabetes to live better and healthier lives.</p>

Each tribal community was asked to provide input from their communities. The Mandan, Hidatsa, Arikara (MHA) Nation-Three Affiliated Tribes and Spirit Lake Nation responded. Prevalence and mortality data provided previously under “Diabetes in North Dakota” is inclusive of all American Indians residing in North Dakota.

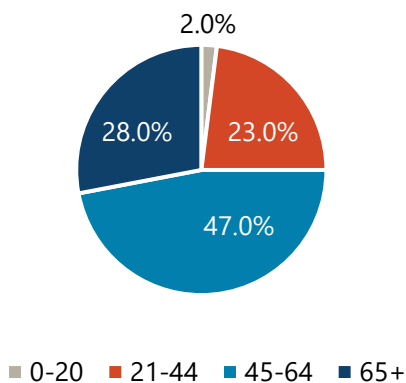
## MHA Nation

*In 2023, diabetes was the top condition in the MHA Nation health system.*

### The Fort Berthold Diabetes Program (FBDP)

FBDP conducts community blood sugar, total cholesterol, and blood pressure screenings for community members throughout Fort Berthold.

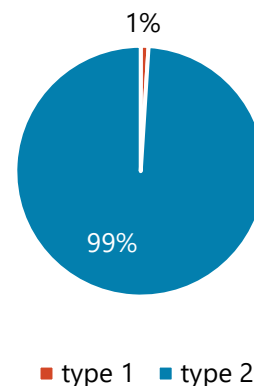
Distribution of Diabetes Cases by Age (2023)



Annual school screenings, consisting of height/weight and hemoglobin A1c, are conducted to assess for risk factors related to diabetes and other chronic diseases. Diabetes prevention education is scheduled at each school to promote healthy lifestyle changes. The FBDP has an adolescent diabetes prevention and lifestyle adaptation program, Health Futures, which focuses on youth at risk for developing diabetes.

MHA Nation and the FBDP address diabetes prevention efforts and promote healthy lifestyle change through community outreach and education. The FBDP Registered Dietitians provide monthly cooking classes and other nutrition activities to community members in a state-of-the-art teaching kitchen. Fitness classes and activities, including circuit training and walking clubs, are provided by FBDP Health Education Technicians.

Distribution of Diabetes Cases By Type (2023)





Diabetes self-management education services are provided at monthly Diabetes Education clinics throughout Fort Berthold.

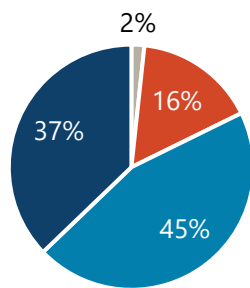
The Elbowoods Memorial Health Center offers:

- Daily diabetes care and self-management education
- Monthly specialty clinics (podiatry, nephrology)
- Field clinics to better provide services to all communities on Fort Berthold
- Monthly diabetes shoe clinics at the FBDP
- A continuous glucose monitor (CGM) program

## Spirit Lake Nation

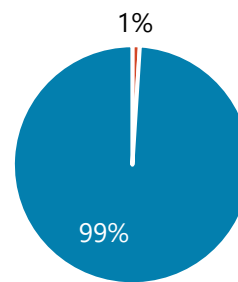
*In 2023, diabetes was the top condition in the Spirit Lake Health Center, followed by hypertension, hyperlipidemia, Vitamin D Deficiency and Anxiety.*

Distribution of Diabetes Cases by Age (2023)



■ Under 20 ■ 20-44 years ■ 45-64 years ■ >65 years

Distribution of Diabetes Cases By Type (2023)



■ type 1 ■ type 2

## The Spirit Lake Health Center (SLHC)

Diabetes program services include:

- Daily diabetes care and management
- Diabetes Self-Management Education & Support (DSMES)-individual or group
- Medical Nutrition Therapy (MNT), including prediabetes education.
- Gestational diabetes education
- Retinal eye imaging
- Foot care & Podiatry
- Continuous Glucose Monitoring (CGM) Program

## Special Diabetes Program for Indians (SDPI) and a Sacred Life Center

In a 2015 Spirit Lake Nation Comprehensive Community Assessment, survey respondents identified diabetes and cancer as the top critical health issues, and a pressing need to have regular community activities, especially for children.

This data drove SDPI's decision to create a facility to help reduce the incidence of type 2 diabetes and other chronic health conditions across the lifespan. This facility was named by a community member and is known locally as *a Sacred Life Center*.

The Center is a two-story fitness and diabetes center that provides up-to-date exercise equipment, group fitness classes, fitness consultations with a certified trainer, educational sessions (e.g., diabetes care, diabetes prevention, healthy eating, etc.) and much more.

Additional initiatives by SDPI and a Sacred Life Center to address risk factors associated with diabetes and diabetes complications include:

- Prediabetes education
- In-school screenings to identify students at risk for type 2 diabetes
- An after-school diabetes prevention program (DPP) for youth known as the "Power Hour" that follows the Sanford Fit curriculum.
- A summer youth DPP known as "Wicozani Waste Wicoti," which means "Good Health Camp" in Dakota Sioux language.
- Culturally tailored raised garden bed project for youth to learn about the basics of gardening and food preservation in collaboration with the local community college.
- A day camp for youth with a diagnosis of diabetes in collaboration with the SLHC diabetes program and other healthcare professionals
- Monthly lunch and learns to provide education regarding certain nutrition/healthy eating topics.
- A healthy food and beverage vending machine in the local tribal headquarters building.

Each of the contributing agencies agreed that, in addition to ongoing evaluation and improvement of their own strategies, diabetes can best be prevented through a cross-sector, community-based approach with goals to increase:

- Access to nutritious food options— addressing availability, affordability, food security and knowledge among communities.
- Wellness programming for youth, including physical activity and cooking instruction.
- Equitable access to quality medical care that is aligned with best practice guidelines.
- Mental and behavioral health services for persons with or at risk for diabetes.

**The contributors recommend investing in and/or implementing the following:**

Develop sustainable food systems at the community level including greenhouses, food sovereignty initiatives, rural grocer/food distribution cost reductions and/or community gardens. (Budget: Approximate initial cost for a community greenhouse would be \$30,000 - 300,000 per site. Approximate initial cost for a community garden would be \$3,500-7,500 per site)

Develop a grant fund to support organizations statewide in implementing meal repack programs to reduce food waste and increase community access to low-barrier, low-stigma food. (Budget: Approximate initial cost for program implementation would be \$1,000 per site.)

Support the implementation and licensure of community health workers as deemed appropriate through the task force established in House Bill No. 1028 (2023). Community health workers can deliver individual or group education on diabetes self-management, provide adherence support for medications, and monitor patients' blood pressure as recommended by the American Diabetes Association. A community health worker also serves as a liaison/intermediary between individuals, communities and health and social services to facilitate access to care, improve the quality and cultural responsiveness of service delivery, and address social determinants of health.

Support cities and counties implementing transformation projects that improve infrastructure and green space that encourages year-round, healthy living and physical recreation for residents of all ages and abilities. (Budget: Depending on the scope of the project and size of community, the needed financial support varies.)

Support a comprehensive transition towards value-based care and reimbursement models designed to increase utilization of preventive care, improve quality of services, and reduce incurred costs related to the treatment of chronic disease. These efforts should encourage health systems to follow best practice guidelines for disease management; provide effective coordination of team-based, patient-centered care; and innovate ways of preventing disease and monitoring patient outcomes. Currently CDC DP23-0020 funds are allocated to three tertiary health systems for technical assistance and support in improving health care outcomes for diabetes patients.

Implement policy and system changes at the state and local level that address socio-economic factors contributing to rising obesity rates. Examples include un/under employment, increasing reliance on commodity and food pantry services, low wages, high cost of living, access to greenspace and lack of active transportation-friendly community development. (Budget: Varies, based on the size and scope of project(s) chosen).

Invest in interventions and innovative lifestyle change programs for all ages.

- Sustain NorthDakota360 wellness platform (budget: \$24,000/year licensing fee) and support Artificial Intelligence enhancements to ensure equitable access to diverse programming in the face of workforce shortage and language barriers.
- Support local communities in delivering family-centered, multigenerational nutrition and food preparation classes in ways best suited to their demographics (e.g., provision of funding for mobile kitchens to serve rural communities within a region). (Approximate initial cost for this project would be \$10,000-30,000 per site).
- Support the development of a statewide, multidirectional Community Information Exchange (CIE) network to promote streamlined access to health-enhancing, non-clinical services (e.g., social services and supports, community programming, etc.) and coordinated care across a variety of clinical and non-clinical partners, while using data on existing community resources, needs and gaps to drive policy change. (Approximate initial cost for this project would be \$1-2 million over a 2-year period).
  - Investigate and implement opportunities for Artificial Intelligence-driven care coordination for all North Dakotans.

### **Financial Impact Related to Current and Future Strategies**

While none of the contributing entities suggested a need for additional funding at this time for their current workplans, there was consensus that implementation of the actionable items would best occur at the local level. For that reason, it is suggested to create a community grant fund specifically for communities and organizations to apply that would support local implementation of diabetes and risk-factor prevention strategies. The cost to implement any community strategies will vary based on the available resources and existing infrastructure.

The financial burden for individuals in North Dakota is related to the daily choices they must face that are beyond diabetes care, including access to affordable nutritious food, safe places to engage in physical activity, and out-of-pocket healthcare costs for prevention and intervention. Access to affordable, fresh, nutritious food is not widely available but is the single most effective prevention method for diabetes and many other chronic conditions and diseases.

**A1C:** The Hemoglobin A1C test reflects an individual's average blood sugar for the previous three months. Specifically, the A1C test measures the percentage of hemoglobin — a protein in red blood cells that carries oxygen — that is coated with sugar. A higher A1C level indicates poor blood sugar control and, in turn, a higher risk of complications.

**Allowed Claims:** The maximum amount of money that a health insurance company, or a payor, will pay a healthcare provider for a specific health care service. It may also be referred to as a negotiated rate, eligible expense, or payment allowance.

**BRFSS:** The Behavioral Risk Factor Surveillance System (BRFSS) is the nation's premier system of health-related telephone surveys that collect state data about US residents regarding their health-related risk behaviors, chronic health conditions, and use of preventive services.

**Diabetes Insipidus:** A rare disorder that causes the body to produce too much urine, causing extreme thirst and an inability to properly retain water.

**Diabetic Coma:** A severe complication associated with diabetes that causes loss of consciousness. May be caused by severely low blood sugar (hypoglycemia), Diabetic Ketoacidosis, or Diabetic Hyperosmolar Syndrome.

**Hyperosmolar Coma:** A life-threatening metabolic condition that can develop in people with diabetes. It is characterized by severe high blood sugar (hyperglycemia), dehydration, and electrolyte imbalance.

**Diabetic Ketoacidosis (DKA):** Occurs when the body lacks insulin and uses fat instead of glucose for energy. Ketone bodies accumulate in the bloodstream and, when left untreated, can lead to diabetic coma.

**Diabetic Retinopathy:** An eye condition that can cause vision loss and blindness in people who have diabetes. It results from high blood sugar levels causing damage to blood vessels in the retina (the light-sensitive layer of tissue in the back of the eye).

**DSMES:** Diabetes Self-Management Education and Support (DSMES) is an evidence-based diabetes management service model. Organizations offering DSMES services can apply for either accreditation by the American Association of Diabetes Educators (AADE) or recognition by the American Diabetes Association (ADA), and must be run by a Registered Dietitian, a Registered Nurse, or a pharmacist. Reimbursement for DSMES services varies by insurer and policy.

**Endocrine Drugs:** Endocrine drugs are agents directed to a malfunctioning endocrine path, which controls the hormones in the body (example: Metformin).

**Insulin:** a hormone produced by the pancreas that is required for blood sugar to enter the cells in the body to be used for energy.

**National DPP:** The National Diabetes Prevention Program (National DPP) is an evidence-based lifestyle change program developed by the Centers for Disease Control and Prevention (CDC) to address the increasing burden of prediabetes and type 2 diabetes. Participation in the year-long program can reduce an individual's risk of developing diabetes by up to 58%.

**Presenteeism:** The practice of employees habitually coming to work when they shouldn't—especially coming in sick or working overly long hours. Presenteeism is modeled after absenteeism, which is the opposite: employees habitually not coming to work.

**Type 1 Diabetes:** In type 1 diabetes, the pancreas does not make sufficient insulin to allow for carbohydrates (sugar) to be used for energy. Type 1 diabetes can be diagnosed at any age but is most often diagnosed in younger patients. Previously known as insulin-dependent or juvenile diabetes, type 1 diabetes accounts for only 5-10% of diabetes cases. There is no known prevention for type 1 diabetes, but it can be effectively managed with medical intervention.

**Type 2 Diabetes:** In type 2 diabetes, the body resists the effects of insulin or does not produce enough insulin, leading to increased blood sugar levels. Type 2 diabetes has historically been diagnosed most often in adults over 45 years old but is being seen with increasing frequency in progressively younger ages as rates of childhood obesity continue to rise. Type 2 diabetes accounts for 90-95% of diabetes cases and most are preventable. Lifestyle intervention is effective for both the prevention and management of type 2 diabetes.

**Value-Based Care:** Value-Based Care provides a model for delivery of healthcare and payment that is based on patient outcomes. As opposed to a traditional fee-for-service model, in which physicians are paid based on the number of services delivered, value-based care rewards providers based on improved patient health, reduction in the effects and incidence of chronic disease and improved quality of life as the result of evidence-based care.

**Vascular Complications:** Complications from T2DM can be classified as microvascular complications, such as retinopathy, neuropathy and nephropathy, or macrovascular complications, including cardiovascular, cerebrovascular, and peripheral vascular disease (3).

## North Dakota Century Code 23-01-40

TITLE 23 HEALTH AND SAFETY CHAPTER 23-01 STATE DEPARTMENT OF HEALTH 23-01-40.  
Diabetes goals and plans - Report to legislative management.

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1. The department of health and human services, Indian affairs commission, and public employees retirement system shall collaborate to identify goals and benchmarks while also developing individual agency plans to reduce the incidence of diabetes in the state, improve diabetes care, and control complications associated with diabetes.
2. Before June first of each even-numbered year the department of health and human services, Indian affairs commission, and public employees retirement system shall submit a report to the legislative management on the following:
  - a. The financial impact and reach diabetes is having on the agency, the state, and localities. Items included in this assessment must include the number of lives with diabetes impacted or covered by the agency, the number of lives with diabetes and family members impacted by prevention and diabetes control programs implemented by the agency, the financial toll or impact diabetes and diabetes complications places on the agency's programs, and the financial toll or impact diabetes and diabetes complications places on the agency's programs in comparison to other chronic diseases and conditions.
  - b. An assessment of the benefits of implemented programs and activities aimed at controlling diabetes and preventing the disease. This assessment must document the amount and source for any funding directed to the agency from the legislative assembly for programs and activities aimed at reaching those with diabetes.
  - c. A description of the level of coordination existing between the agencies on activities, programmatic activities, and messaging on managing, treating, or preventing diabetes and diabetes complications.
  - d. The development or revision of detailed action plans for battling diabetes with a range of actionable items for consideration by the legislative assembly. The plans must identify proposed action steps to reduce the impact of diabetes, prediabetes, and related diabetes complications. The plan must identify expected outcomes of the action steps proposed in the following biennium while also establishing benchmarks for controlling and preventing relevant forms of diabetes.
  - e. The development of a detailed budget blueprint identifying needs, costs, and resources required to implement the plan identified in subdivision d. This blueprint must include a budget range for all options presented in the plan identified in subdivision d for consideration by the legislative assembly.

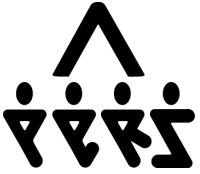
## References

- [1] Parker, E. D., Jyh Dong Lin, Mahoney, T. J., Nwanneamaka Ume, Yang, G., Gabbay, R. A., ElSayed, N. A., & Bannuru, R. R. (2023). Economic Costs of Diabetes in the U.S. in 2022. *Diabetes Care*, 47(1). <https://doi.org/10.2337/dci23-0085>
- [2] CDC. (2019, October 21). Put the Brakes on Diabetes Complications. Centers for Disease Control and Prevention. <https://www.cdc.gov/diabetes/library/features/pr-event-complications.html>
- [3] Centers for Disease Control and Prevention. (2022). CDC - BRFSS. CDC. <https://www.cdc.gov/brfss/index.html>
- [4] Bhupathiraju, S. N., & Hu, F. B. (2016). Epidemiology of Obesity and Diabetes and Their Cardiovascular Complications. *Circulation Research*, 118(11), 1723–1735. <https://doi.org/10.1161/CIRCRESAHA.115.306825>
- [5] North Dakota | County Health Rankings & Roadmaps. (2019). [www.countyhealthrankings.org](http://www.countyhealthrankings.org). <https://www.countyhealthrankings.org/health-data/north-dakota?year=2024&measure=Limited+Access+to+Healthy+Foods>
- [6] Syvertson, T., Tweet, J., & Koren, A. (2023). Hunger on the Plains 2023. In *Great Plains Food Bank*. <https://www.greatplainsfoodbank.org/ending-hunger-2-0/research/our-research/hunger-on-the-plains-2023/>
- [7] Caswell, M. (2023, February 23). *Food Insecurity is caused by and leads to Higher Health Care Cost*. PBGH. <https://www.pbgh.org/food-insecurity-cause-and-effect-of-higher-health-care-costs/>
- [8] Clayton, E. O., Confidence Njoku-Austin, Scott, D., Cain, J. D., & Hogan, M. V. (2023). Racial and Ethnic Disparities in the Management of Diabetic Feet. *Current Reviews in Musculoskeletal Medicine*, 16(11), 550–556. <https://doi.org/10.1007/s12178-23-09867-7>
- [9] *Disparities | Fact Sheets*. (2013, January 1). Newsroom. <https://www.ihs.gov/newsroom/factsheets/disparities>
- [10] Bloomgarden, Z., & Rapaport, R. (2023). Diabetes trends in youth. *Journal of Diabetes*, 15(4), 286–288. <https://doi.org/10.1111/1753-0407.13382>
- [11] Hales, L. J. & Alisha Coleman-Jensen (2024). Household food insecurity across race and ethnicity in the United States, 2016–21 (Report No. EIB-269). U.S. Department of Agriculture, Economic Research Service. <https://www.ers.usda.gov/webdocs/publications/108905/eib-269.pdf?v=9972.6>
- [12] National Indian Council on Aging. (2024). American Indian Health Disparities.
- [13] Racialization as a Barrier to Achieving Health Equity for Native Americans. (2020). *AMA Journal of Ethics*, 10.1001/amajethics.2020.874
- [14] Centers for Disease Control and Prevention. (2020, August 7). *Prevalence of Both Diagnosed and Undiagnosed Diabetes | Diabetes | CDC*. [www.cdc.gov](https://www.cdc.gov/diabetes/data/statistics-report/diagnosed-undiagnosed-diabetes.html). <https://www.cdc.gov/diabetes/data/statistics-report/diagnosed-undiagnosed-diabetes.html>
- [15] *Data Dashboards | Health and Human Services North Dakota | Medicaid Eligibility Statistics* <https://www.hhs.nd.gov/medicaid/data>



NORTH  
**Dakota** Be Legendary.

Health & Human Services



# Memorandum

**TO:** NDPERS Board

**FROM:** Rebecca

**DATE:** June 11, 2024

**SUBJECT:** Proposed Administrative Rules

As discussed at the May meeting, required notices of the proposed administrative rules were provided to legislators, Legislative Council and the various newspapers across the State. The Public Hearing was held on April 29<sup>th</sup> at 11:00 A.M. in the NDPERS Conference Room. There were not any verbal comments received at the hearing. Written comments were to be received by May 13, 2024. There were not any written comments received.

As a reminder, the following is the schedule:

## **2024 Proposed Administrative Rule Revision/Addition/Deletion Schedule**

January 9	Initial Board review of proposed rules.
February 13	Second Board review.
March 12	Third and Final Board review.
March 14	Post copy of proposed rules on NDPERS website, notify all employer groups that rules are on website, send formal notice and materials to Legislative Council.
March 14	Notify North Dakota Newspaper Association (NDNA) of upcoming notice and verify timing of printed notice.
April 8	(Week of) Notice has been printed in all required newspapers and notice sent to any pertinent legislator with proposed rule changes.

April 29	Public Hearing at 11:00 a.m. in NDPERS Conference Room
April 29	Hearing held and comment period opened.
May 13	Comment period closed.
June 11	Board review of comments. Final approval of proposed rules.
June 14	Send to Attorney General's office for review.
August/ September	After receipt of Attorney General review, send to Legislative Council.
October 31	Deadline to submit proposed rules to Legislative Council.
December TBD	Administrative Rules Committee Meeting held.
January 1	New rules take effect, provided there are no holds placed on them by the committee.

At this time, I am seeking final Board approval of the proposed rules (Attachment 1), subject to whether the Administrative Rules Committee raises specific concerns at the June 13<sup>th</sup> Administrative Rules Committee meeting. I have been invited to attend this meeting to review the proposed rules and answer questions of the Committee. If there are areas of concern raised at this meeting, then we would need to hold a special meeting later in June to discuss the items raised and continue moving the rules forward to meet the deadlines required for a January 1, 2025 effective date.

### **Board Action Requested**

Provide final approval of the proposed rules, subject to the Administrative Rules Committee meeting on June 13<sup>th</sup>. If there are not specific concerns raised by the Committee, then NDPERS will move forward with submitting the rules to the Attorney General's Office for their review.

ARTICLE 71-01  
GENERAL ADMINISTRATION

Attachment

Chapter

71-01-01	Organization of Board
71-01-02	Election Rules
71-01-03	Confidential Information Requests

CHAPTER 71-01-01  
ORGANIZATION OF BOARD

Section

71-01-01-01.	Organization of Public Employees Retirement Board
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Subsection 2 of Section 75-01-01-01 is amended as follows:

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

- History.** The 1965 legislative assembly created the public employees retirement system by legislation codified as North Dakota Century Code chapter 54-52. The starting date of the program was July 1, 1066. The board acts as the administrating body to manage the public employees retirement system, the judges retirement system, the highway patrol retirement system, the national guard security officers and firefighters system, the uniform group insurance program, the deferred compensation plan, the prefunded retiree health program, and a pretax benefit program for public employees.
- Board membership.** The board consists of ~~nine~~eleven members. ~~Two~~Four are members of the legislative assembly, appointed by the chairman of the legislative management The majority leader of the house of representatives shall appoint two members of the house of representatives and the majority leader of the senate shall appoint two members of the senate. The members of the legislature shall serve a term of two years, at the pleasure of the appointing majority leader. ~~one member, the chairman, is~~ Four members of the board must be appointed by the governor to serve a term of five years, at the pleasure of the Governor. one member is appointed by the attorney general from the attorney general's staff; one member is the state health officer or state health officer's designee; Three members are elected by the active membership of the system to serve a term of five years. ~~and one member is elected by the retired public employees.~~
- Executive director.** The executive director is appointed by the board and is responsible for the administration of the day-to-day activities of the retirement systems, the prefunded retiree health program, the uniform group insurance program, the deferred compensation program, and the pretax benefit program for public employees.
- Inquiries.** Inquiries regarding the board may be addressed to:

Executive Director  
Box 1657  
Bismarck, North Dakota 58502

**History:** Amended Effective November 1, 1981, November 1, 1985; April 1, 1988; September 1, 1989; January 1, 1992; May 1, 2004; April 1, 2016; \_\_\_\_\_

**General Authority:** NDCC 28-32-02.1, 54-52-04

**Law Implemented:** NDCC 28-32-02.1, 54-52-03

## CHAPTER 71-01-02 ELECTION RULES

Section	
71-01-02-01	Election Committee
71-01-02-02	Eligible Voters
71-01-02-03	Candidate Eligibility
71-01-02-04	Election Notification
71-01-02-05	Petition Format
71-01-02-06	Procedure For Completing and Filing Petitions
71-01-02-07	Election Ballots
71-01-02-08	Election
71-01-02-09	Canvassing Rules
71-01-02-10	Notification of Election
71-01-02-11	Special Elections
71-01-02-12	Penalties
71-01-02-13.1	Election Voting

### **71-01-02-01. Election Committee.**

1. The retirement board must appoint a committee of three, one of whom will be designated as chair, from its membership to oversee elections to the board.
2. Committee members, or their authorized representatives, are responsible for reviewing the election rules for the retirement board membership of the North Dakota public employees retirement system, for counting ballots, and for reporting the election results to the board.
3. Committee members will be appointed at the February meeting of the North Dakota public employees retirement system board to serve until the retirement board meeting for the following February.

**History:** Effective April 1, 1992.

**General Authority:** NDCC 54-52-04

**Law Implemented:** NDCC 54-52-03

Subsection 2 of Section 71-01-02-02 is amended as follows:

### **71-01-02-02. Eligible voters.**

1. All active employees, eligible to serve as elected members of the board in accordance with subsection 4 of North Dakota Century Code section 54-52-03, are eligible to cast one vote for each active member vacancy on the retirement board.
2. ~~All persons receiving retirement benefits are eligible to cast one vote for a retiree member vacancy on the retirement board.~~ Persons participating in the uniform group insurance program, the deferred compensation plan for public employees, or the pretax benefits program but not in the retirement system are ineligible to cast votes in retirement board elections.

**History:** Effective April 1, 1992; amended effective July 1, 1994; April 1, 2008; April 1, 2012; \_\_\_\_\_

**General Authority:** NDCC 54-52-04, 54-52-17(5)

**Law Implemented:** NDCC 54-52-03

Subsection 1 of Section 71-01-02-03 is amended as follows and Subsection 2 of Section 71-01-02-03 is repealed:

**71-01-02-03. Candidate eligibility.**

1. Any active participating member, members of the defined contribution retirement plan, the highway patrol retirement system, and the job service retirement plan are eligible to serve as an elected member of the board in accordance with subsection 45 of North Dakota Century Code section 54-52-03, may become a candidate for election to the board. An department/agency or political division may not be represented by more than one elected member. Employees who have terminated their employment for whatever reason are not eligible to serve as an active elected member of the board.
- ~~2. Any person, as of April fifteenth of the election year, who has accepted a retirement allowance, may become a candidate for the retiree member to the board.~~

**History:** Effective April 1, 1992; amended effective July 1, 1994; July 1, 2000; April 1, 2008; July 1, 2010; April 1, 2012; \_\_\_\_\_

**General Authority:** NDCC 54-52-04, 54-52-17(5)

**Law Implemented:** NDCC 54-52-03

Subsection 1 of Section 71-01-02-04 is amended as follows:

**71-01-02-04. Election notification.**

1. The director of the North Dakota public employees retirement system shall ensure that notification of an active member vacancy and the election is given to all employees through publication of a notice in the North Dakota public employees retirement system newsletter or any other method of communication as deemed appropriate by the director at least ~~three weeks~~ twenty-one calendar days in advance of a filing date for nomination petitions. ~~The director shall ensure that notification of the vacancy of a retiree member and the election is given to all persons who have accepted a retirement allowance through publication of a notice in the North Dakota public employees retirement system newsletter or any other method of communication as deemed appropriate by the director at least three weeks in advance of a filing date for nomination petitions.~~
2. The notice must include a statement of voter and candidate eligibility, the candidate nomination requirements, the date of election, and where to obtain the nomination petitions for filing.

**History:** Effective April 1, 1992; amended effective July 1, 2000; April 1, 2008; April 1, 2014; April 1, 2020; \_\_\_\_\_

**General Authority:** NDCC 54-52-04

**Law Implemented:** NDCC 54-52-03

Subsection 1 of Section 71-01-02-05 is amended as follows:

**71-01-02-05. Petition format.**

- 1 The nomination petition for an active member on the board must include the signatures of at least one hundred active eligible voters. ~~The nomination petition for the retiree member on the board must include the signatures of at least twenty-five persons receiving a retirement allowance.~~
- 2 The nomination petition must include the following statement: "We, the petitioners, who are members of the North Dakota Public Employees Retirement System, nominate \_\_\_\_\_ for election to the North Dakota Public Employees Retirement System board.
- 3 The nomination petition must include a certification by the candidate, as follows: "I accept the

nomination and if elected will fulfill the responsibilities as a member of the North Dakota Public Employees Retirement System board.

- 4 If there is not room for the required signatures on a single nomination petition, additional petitions may be used. Candidates may reproduce, at their own expense, blank nomination petitions that meet the format requirements without requesting additional petitions from the North Dakota public employees retirement system. All nomination petitions used must be certified and signed by the nominee when submitted to the North Dakota public employees retirement system office.

**History:** Effective April 1, 1992; amended effective May 1, 2004; April 1, 2008; April 1, 2012; \_\_\_\_\_

**General Authority:** NDCC 54-52-04

**Law Implemented:** NDCC 54-52-03

Subsection 5 of Section 71-01-02-06 is amended as follows:

**71-01-02-06. Procedure for completing and filing petitions.**

1. No period of time, on which an employee is entitled to receive wages or salary from the state of North Dakota or a political subdivision, may be used by the candidates to promote their election except as permitted by the employing agency. In addition, no public funds may be used for the purpose of promoting an election unless permitted by the employing agency.
2. Nomination petitions must be filed with the North Dakota public employees retirement system no later than four p.m. on the date provided in the election notice and must be validated by the election committee or their representatives following the filing deadline and prior to ballots being distributed.
3. Nomination petitions not furnished by the North Dakota public employees retirement system will be accepted provided they are submitted in the prescribed form.
4. A candidate may withdraw that candidate's nomination petition up until one week after the date the nomination petition is filed with the North Dakota public employees retirement system. The notice must be in writing and duly witnessed.
5. Nomination petitions may be accompanied by a three-inch [~~76.20-millimeter~~] by five-inch [~~127.00-millimeter~~] photograph of the candidate and a narrative not to exceed two hundred words. The absence of a photo or narrative will not invalidate the candidate's eligibility, but only the candidate's name will then appear with the other candidates' information that accompanies the ballots.
6. The retirement board or its representative reserves the right to edit lengthy narratives to the two hundred word limit.
7. The board or its representative shall inform all candidates of the validation of their candidacy.

**History:** Effective April 1, 1992; amended effective July 1, 2000; April 1, 2008; April 1, 2020; \_\_\_\_\_

**General Authority:** NDCC 54-52-04

**Law Implemented:** NDCC 54-52-03

**71-01-02-07. Election ballots.**

1. Ballots must be prepared by the North Dakota public employees retirement system staff in accordance with the election rules.
2. Ballots must be printed on postcards with return postage supplied and will be mailed to all eligible voters with a narrative on candidates who have provided that information.

3. Ballots must first be arranged with the names of each candidate on the ballot. In printing the ballots, the position of the names must be changed as many times as there are candidates' names on the ballot. The change must be accomplished by taking the name at the head of the ballot and placing it at the bottom and moving the name that was second before the change to the head of the names on the ballot. The same number of ballots must be printed after each change of position so as to result in an equal number of ballots with each candidate's name at the head of the ballot. The ballot must provide a space for write-in candidates.
4. If there is only one candidate for an election, the election will nonetheless be conducted in compliance with the provisions of this chapter
5. If there is no candidate, the board shall solicit at least two persons from the eligible pool of candidates to run for election to the board. The election will then be conducted in compliance with the provisions of this chapter.

**History:** Effective April 1, 1992; amended effective July 1, 2000; April 1, 2008.

**General Authority:** NDCC 54-52-04

**Law Implemented:** NDCC 54-52-03

Subsection 1 of Section 71-01-02-08 is amended as follows:

**71-01-02-08. Election.**

1. Ballots must be mailed by first-class United States mail to the address of all eligible active voters for an election of an active board member, ~~or all eligible retired voters for an election of a retired board member,~~ as determined by the North Dakota public employees retirement system's membership roles as of April fifteenth in the year of the election. Each eligible voter gets one ballot. Lost ballots may not be replaced.
2. North Dakota public employees retirement system members who become eligible to vote after April fifteenth, but before the deadline for the receipt of ballots, may be issued a special election ballot by making their request for such ballot in writing to the North Dakota public employees retirement system office no later than the two weeks before the deadline for receipt of ballots.
3. Ballots must be returned to the North Dakota public employees retirement system office no later than four p.m. on the date provided on the election ballots.
4. The candidate receiving the highest number of votes must be considered elected. When there is more than one active member board vacancy to be filled, the candidate with the second highest number of votes must be considered elected. If there are three active member board vacancies to be filled, the person with the third highest number of votes must be considered elected.

**History:** Effective April 1, 1992; amended effective April 1, 2008; April 1, 2020; \_\_\_\_\_

**General Authority:** NDCC 54-52-04

**Law Implemented:** NDCC 54-52-03

**71-01-02-09. Canvassing rules.**

1. Ballot counting by election committee members or their authorized representatives will commence on the date set for the election committee to do so and will continue until complete.
2. Each candidate may have one overseer present at the canvassing who may examine each ballot as to its sufficiency after the canvassers have completed the canvassing of all ballots. No overseer may possess a pen, pencil, or other device which could be considered capable of altering a ballot in any manner.



3. A candidate may act as his or her overseer. If a candidate wishes to designate a representative to act as his or her overseer, that candidate must provide a written authorization, duly witnessed, to the election committee at the canvassing. An overseer may act on behalf of more than one candidate; however, each person must show the required authorization from each candidate represented.
4. The overseer may question the decision of the canvassers regarding a ballot after completion of the canvassing. If questioned, the comments of an overseer will be heard. The canvassers will then vote regarding the acceptability of the ballot with the majority vote ruling.
5. A ballot is not valid where the number of votes on the ballot exceeds the number of vacancies in the election. A ballot that does not, in the opinion of a majority of the canvassers, show a clear indication of the voter's intention, may not be counted.
6. If the percentage of votes received by the candidate receiving the highest number of votes is less than one percent more than the votes received by the candidate receiving the next highest number of votes, the board shall order a recount.
7. Tie votes will be determined by a coin toss. If this procedure is necessary, the election committee will establish and notify the tied candidates of the procedure and location for resolving the tie.
8. If the committee should determine that the outcome of the election has been compromised for any reason, the committee may determine the election to be invalid. If the election is determined to be invalid, the committee shall call for a new election with a new election schedule.

**History:** Effective April 1, 1992; amended effective April 1, 2008; July 1, 2010; April 1, 2020.

**General Authority:** NDCC 54-52-04

**Law Implemented:** NDCC 54-52-03

#### **71-01-02-10. Notification of election results.**

1. Election results must be presented to the retirement board following the canvassing of votes. Such report must include an itemization of the number of ballots returned, votes cast for each candidate, votes invalidated, and votes not counted due to late receipt.
2. All candidates will be notified of the election results no later than the business day following the June meeting of the retirement board.
3. Employers and the membership participating in the North Dakota public employees retirement system will be notified of the election results.

**History:** Effective April 1, 1992; amended effective April 1, 2008; April 1, 2020.

**General Authority:** NDCC 54-52-04

**Law Implemented:** NDCC 54-52-03

Section 71-01-02-11 is amended as follows:

#### **71-01-02-11. Special elections.**

A special election ~~will~~ may be called for by the retirement board in the event of a vacancy resulting from the death, resignation, or termination of North Dakota public employees retirement system membership by any elected board members.

1. Special elections must be conducted in accordance with the regular elections rules, except that the board will determine a new election schedule.

2. In the case of a special election, the term to be filled is the unexpired portion of the vacant board position.

**History:** Effective April 1, 1992; \_\_\_\_\_

**General Authority:** NDCC 54-52-04

**Law Implemented:** NDCC 54-52-03

#### **71-01-02-12. Penalties.**

A violation of any provision under this chapter may result in one or more of the following penalties, as determined by the board:

1. A candidate's petitions may be declared void.
2. A candidate's nomination may be declared void.
3. A candidate's election may be declared void.
4. Within thirty days of beginning an elected member's term in office, the elected member may be removed.

**History:** Effective July 1, 2000.

**General Authority:** NDCC 54-52-04

**Law Implemented:** NDCC 54-52-03

Section 71-01-02-13 is amended as follows:

#### **71-01-02-13. Election voting.**

In lieu of sections 71-01-02-07 and 71-01-02-08, and 71-01-02-09 the retirement board may allow for a process by which electronic ballots are submitted to elect an active ~~or retiree~~ candidate to the board.

**History:** Effective April 1, 2014; \_\_\_\_\_

**General Authority:** NDCC 54-52-04

**Law Implemented:** NDCC 54-52-03

## CHAPTER 71-02-03 SERVICE CREDIT

### Section

71-02-03-01	Service Credit – General Rule
71-02-03-01.1	Noneligible Service Credit
71-02-03-01.2	Service Credit Given for Leave Taken
71-02-03-02	Military Credit [Repealed]
71-02-03-02.1	Purchase of Additional Service Credit and Repurchase of Past Service
71-02-03-02.2	Payment
71-02-03-02.3	Delinquent Payment
71-02-03-02.4	Crediting Purchased or Repurchased Service
71-02-03-02.5	Costs
71-02-03-03	Service After Age Sixty-Five [Repealed]
71-02-03-04	Cancellation of Credits
71-02-03-05	Coordination of Multiple Plan Membership
71-02-03-06	Conversion of Sick Leave
71-02-03-07	Employer Purchase of Service Credit or Sick Leave Program
71-02-03-08	Eligible Sick Leave

### **71-02-03-01. Service credit – General rule.**

A member receives credit for each month a contribution is made. Service credit shall be granted upon proper verification without member contribution after an employee has participated in eligible employment not less than two years for prior service employment as defined in North Dakota Century Code section 54-52-01. For employees employed prior to July 1, 2004, service credit shall be granted upon proper verification without member contribution after an employee has participated in eligible employment not less than two years for:

1. Probationary employment prior to July 1, 1979, that was previously excluded from eligible employment.
2. Eligible employment between the ages of eighteen and twenty-one that was previously excluded by the age limitation of twenty-one for participation in the retirement program.
3. Summer months for eligible school employees for the period July 1, 1979, to July 1, 1982.
4. Former members of the teachers' fund for retirement, job service North Dakota, or highway patrolmen's retirement systems will be granted credit for previous service in these funds if they received a lump sum refund prior to September 1, 1976.

**History:** Amended effective September 1, 1982; November 1, 1990; June 1, 1996; May 1, 2004.

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

**Law Implemented:** NDCC 54-52-01(11)(12)(16), 54-52-17

### **71-02-03-01.1. Noneligible service credit.**

Service credit will not be granted for:

1. Prior service if the member received a refund of contributions after July 1, 1966, unless service has been repurchased in its entirety.
2. Service if the member received a refund of contributions after July 1, 1966, unless it is repurchased or purchased in its entirety or in part as specified by the member.
3. Prior service for any member whose employer joined the retirement system on or after July 1, 1977, unless purchased for the member at the time the employer joined or unless purchased

by the member.

4. Service the member waived when transferring into the defined contribution retirement plan, including service not yet granted pursuant to section 71-02-03-01.

**History:** Effective November 1, 1990; amended effective April 1, 1992; July 1, 2000.

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

**Law Implemented:** NDCC 54-52-05, 54-52-17, 54-52-19.2

#### **71-02-03-01.2. Service credit given for leave taken.**

A member may take leave pursuant to policies, rules, and statutes applicable to the member's employing unit. However, service credit may only be given for leave that is part of a participating member's continuous service. Service credit may not be given for isolated leave that is not part of continuous service.

**History:** Effective June 1, 1996.

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

**Law Implemented:** NDCC 54-52-01(11)(12)(16), 54-52-17

#### **71-02-03-02.1. Military credit.**

Repealed effective November 1, 1990.

#### **71-02-03-02.1. Purchase of additional service credit and repurchase of past service.**

In order to purchase additional credit or repurchase past service, a member must notify the office, in writing, of the service for which they wish to receive credit. In addition to the written request, the following information must be submitted if applicable:

1. Verification by the former employer of previous North Dakota or out-of-state public service, or service with the federal government.
2. Documentation of military service by submitting a DD214 or NGB22.
3. Certification of approval by the member's employer of any leave of absence and length of that leave.
4. Statement from employee or former employer that service credits being applied for does not qualify for retirement benefits under another retirement system.

**History:** Effective November 1, 1990; amended effective July 1, 1994; June 1, 1996; May 1, 2004.

**General Authority:** NDCC 54-52-02.6, 54-52-04, 54-52-17, 54-52-17.2, 54-52-17.4

**Law Implemented:** NDCC 54-52-02.6, 54-52-17, 54-52-17.2, 54-52-17.4

#### **71-02-03-02.2. Payment.**

The total dollar amount for the purchase or repurchase may be paid in a lump sum or on a monthly, quarterly, semiannual, or annual basis. Payments may be subject to contribution limitations established under 26 U.S.C. 415. Payments must begin within ninety days of the date the written cost confirmation is prepared. If the installment method is used, the following conditions apply:

1. Simple interest at the actuarial rate of return must accrue monthly on the unpaid balance. Interest is calculated from the fifteenth of each month.
2. The installment schedule may extend while the employee is employed by a participating employer but for no longer than a fifteen-year time period.

3. Installment payments may be made by a payroll deduction where available. However, it is the responsibility of the member to initiate and terminate the payroll deduction.
4. Payments may only be received until the fifteenth of the month following the month of the member's termination date with a participating employer.
5. Payments are due by the fifteenth of the month to be credited for the month.
6. Payments must be greater or equal to fifty dollars per month, large enough to pay the current interest plus a portion of principal, and an amount necessary to complete the payment contract within the fifteen-year time period.

**History:** Effective November 1, 1990; amended effective July 1, 1994; June 1, 1996; May 1, 2004; July 1, 2006; July 1, 2010.

**General Authority:** NDCC 54-52-02.6, 54-52-04, 54-52-17, 54-52-17.2, 54-52-17.4

**Law Implemented:** NDCC 54-52-02.6, 54-52-17, 54-52-17.2, 54-52-17.4

### **71-02-03-02.3. Delinquent payment.**

If no payment is received within thirty days of the due date, the public employees retirement system shall send a letter to the member advising them of the delinquency. If no payment is received within sixty days after the due date, the account must be closed. Payments received on closed accounts must be returned to the member. The member may submit written documentation as to the cause for the delinquency to the executive director for review and to request that the purchase contract be reestablished without a new calculation.

**History:** Effective November 1, 1990; amended effective July 1, 1994; June 1, 1996; May 1, 2004.

**General Authority:** NDCC 54-52-02.6, 54-52-04, 54-52-17, 54-52-17.2, 54-52-17.4

**Law Implemented:** NDCC 54-52-02.6, 54-52-17, 54-52-17.2, 54-52-17.4

### **71-02-03-02.4. Crediting purchased or repurchased service.**

Service purchased or repurchased will be credited in the following manner:

1. For each month the system receives a payment toward a purchase contract, the member will earn a proportion of service credit.
2. Member acceptance of a service purchase contract extinguishes all pending service purchase cost estimates, excluding purchase of unused sick leave.
3. Service purchase contracts set up on a payment plan and only partially paid will have the remaining unpaid portion of service credit included when preparing the new service purchase cost calculation
4. For members converting service under the public employees retirement system to service under the judge's retirement system, each month of county judge service under the public employees retirement system will be converted to one month of judicial service credit. The account balance from the public employees retirement system will be transferred to the judges' retirement system account once the contract is paid in full or closed.

**History:** Effective November 1, 1990; amended effective July 1, 1994; June 1, 1996; May 1, 2004; July 1, 2010; April 1, 2020.

**General Authority:** NDCC 54-52-02.6, 54-52-04, 54-52-17, 54-52-17.2, 54-52-17.4

**Law Implemented:** NDCC 54-52-02.6, 54-52-17, 54-52-17.2, 54-52-17.4

### **71-02-03-02.5. Costs.**

If purchasing under North Dakota Century Code section 54-52-02.6 or subdivision d of subsection 1 of North Dakota Century Code section 54-52-17.4, the cost will be the higher of the amount refunded to the member plus interest at the actuarial rate of return or the actuarial cost to provide the credit. All other types of service purchases must be actuarially determined. An actuarial cost must be calculated by applying actuarial factors to the amount of retirement and retiree health insurance credit being purchased by the member. The member's current age, average salary, current credited service, and actuarial factors on record and in effect with the North Dakota public employees retirement system in the month in which the member's written request is processed by the office must be used in the cost calculation. A member's written request must be processed by the office within sixty days of receipt. The amount of retirement and retiree health insurance credit being purchased must be calculated using the benefit formulas in place at the time the written request from the member is processed by the office. When calculating the cost, enhancements to the benefit formula must be considered to be in place at the time the law is signed by the governor.

The member's average salary shall be calculated as follows:

1. For members working full time with more than twelve months of service credit, by using the calculation found in subsection 2 of North Dakota Century Code section 54-52-17.
2. For members working full time with less than twelve months of service credit, by using the calculation found in subsection 2 of North Dakota Century Code section 54-52-17, but disregarding any month in which the member was paid less than a full-month salary. A full-month salary is the compensation the member and the member's employer agreed the member would be paid for working a full month.
3. For members who have not yet received a full-month salary, the member's average salary shall equal the member's full-month salary, as defined in subsection
4. For members working part time, by using the applicable calculations found in subsections 1 and 2, but using a monthly salary equal to the equivalent of the salary the member would have received if the member was working full time.

The retirement board must adopt actuarial assumptions necessary to determine the actuarial factors for the cost calculation. The assumptions must be reviewed concurrently with the assumptions for the retirement program.

Upon receipt of the written request from the member, and all required documentation, a written cost confirmation must be prepared and mailed to the member. The cost stated in the confirmation letter is valid for a period of ninety days from the date of the letter unless the contributor terminates employment with a participating employer. If the contributor terminates employment, then the cost stated in the confirmation letter is valid only until the earlier of the end of the ninety-day period or the fifteenth day of the month following the month of termination.

**History:** Effective July 1, 1994; amended effective June 1, 1996; July 1, 2000; April 1, 2002; May 1, 2004; July 1, 2006; July 1, 2018.

**General Authority:** NDCC 54-52-02.6, 54-52-04, 54-52-17, 54-52-17.2, 54-52-17.4

**Law Implemented:** NDCC 54-52-02.6, 54-52-17, 54-52-17.2, 54-52-17.4

### **71-02-03-03. Service after age sixty-five.**

Repealed as the result of S.L. 1981, ch. 547, § 1.

#### **71-02-03-04. Cancellation of credits.**

If a member terminates service and receives a return of the member's accumulated contributions, service credit for the years of such contributions shall be canceled.

#### **History:**

**General Authority:** NDCC 54-52-04

**Law Implemented:** NDCC 54-52-17

#### **71-02-03-05. Coordination of multiple plan membership.**

Upon providing proper documentation of retirement plan participation, a member who meets the following criteria may use service credit in the teachers' insurance retirement fund for the purpose of meeting the normal retirement date for vesting purposes under North Dakota Century Code chapter 54-52. The member:

1. Must have participated in both the teachers' fund for retirement and the teachers' insurance and annuity association of America-college retirement equities fund.
2. Must have elected to transfer the member's teachers' insurance retirement fund account balance to teachers' insurance and annuity association of America-college retirement equities fund in connection with the administrative coordination of the various state retirement plans as provided under chapter 133 of the 1973 North Dakota Session Laws.
3. Did not have a cash out since the time of the transfer of funds.
4. Did not relinquish such service credit in writing.

**History:** Effective June 1, 1996; amended effective July 1, 1998; April 1, 2020.

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

**Law Implemented:** NDCC 54-52-01(11)(12)(16), 54-52-17

Subdivision c of Subsection 1 and Subdivision c of Subsection 3 of Section 71-02-03-06 are amended as follows:

#### **71-02-03-06. Conversion of sick leave.**

To convert unused sick leave to service credit, the member must submit an application to the office, no later than the end of the month in which the member is no longer eligible to accrue the sick leave hours, unless otherwise approved by the executive director. The member's employer must confirm the member's unused balance of accumulated sick leave as of the date the member is no longer eligible to accrue sick leave hours. For members transferring from one participating employer to another participating employer without terminating eligible employment, the public employees retirement system will record unused sick leave of a participating member if the new employer certifies that it will not transfer that leave. The certification must include documentation from the previous employer detailing the number of hours of sick leave. The public employees retirement system must receive the certification within sixty days after the member leaves employment with the former employer. One month of service credit must be awarded for each one hundred seventy-three and three-tenths hours of unused accumulated sick leave. The employer and employee contributions rates used to calculate the cost must be the rate of the retirement program of the member at termination.

1. Aftertax payments may be accepted from the member as early as six months prior to when the member is no longer eligible to accrue sick leave hours, if the following requirements are met:
  - a. A notice of employment change has been provided to the public employees retirement system.

- b. A written certification by the member's employer, as to the member's unused balance of accumulated sick leave as of the date the member wishes to begin payment, is on file with the public employees retirement system.
  - c. The sick leave conversion payment must be recalculated using the member's unused balance of accumulated sick leave confirmed by the member's employer, and the member's final average salary as of ~~that~~ the date of calculation. If there is a difference between the sick leave conversion payment amount and the amount the member has paid, any overpayment must be refunded to the member and any underpayment must be collected from the member by the fifteenth of the month following the month the member is no longer eligible to accrue sick leave hours.
2. The member's record must be updated with the additional service credit once payment is made in full.
  3. Pretax rollover or transfer payments may be accepted from the member as early as sixty days prior to when the member is no longer eligible to accrue sick leave hours, if the following requirements are met:
    - a. A notice of employment change has been provided to the public employees retirement system.
    - b. A written certification by the member's employer, as to the member's projected unused balance of accumulated sick leave no sooner than sixty days prior to the date the member is no longer eligible to accrue sick leave hours, is on file with the public employees retirement system. This certification must also include a certification by the employer of the projected salaries to be reported to the public employees retirement system during the final months of employment.
    - c. The sick leave conversion payment must be recalculated using the member's unused balance of accumulated sick leave confirmed by the member's employer and the member's final average salary as of the ~~date the member is no longer eligible to accrue sick leave hours.~~ of calculation. If there is a difference between the sick leave balance or conversion payment amount and the amount the member has paid, then only the amount of sick leave available as of the date the member is no longer eligible to accrue sick leave hours will be added to the member's record. The member account balance will be credited with the full amount of funds from the rollover or transfer.
    - d. If an underpayment has occurred, then the remaining amount must be collected from the member by the fifteenth of the month following the month the member is no longer eligible to accrue sick leave hours.
    - e. The retiree health credit portion must be paid as a personal aftertax payment.
  4. The member's record must be updated with the additional service credit once payment is made in full.

**History:** Effective June 1, 1996; amended effective April 1, 2002; May 1, 2004; July 1, 2006; April 1, 2008; July 1, 2018; \_\_\_\_\_

**General Authority:** NDCC 54-52-04

**Law Implemented:** NDCC 54-52-27

#### **71-02-03-07. Employer purchase of service credit or sick leave program.**

An employer may elect to purchase up to five years of service credit for an employee and purchase an employee's unused sick leave that meets the requirements of section 71-02-03-08. Before offering a purchase program to its employees, the employer must create a program and an employer must document



the program in writing and submit a copy to the public employees retirement system. The governing authority of the employer shall also submit to the executive director of the public employees retirement system a letter indicating:

1. The program meets all the requirements of the North Dakota Century Code.
2. The program meets all applicable federal requirements.
3. The employer agrees to remit to the public employees retirement system a lump sum payment of the cost of the purchase upon being billed.
4. The employer has not given the employee the option of a cash payment in lieu of the employer purchase.
5. The employer shall clearly specify who is eligible for the program and indicate if the program is intended to be permanent or will be for a specific time period only.
6. The employer agrees that all purchases for service credit will be based upon actuarial cost as determined by the public employees retirement system and all unused sick leave purchases will be based upon the computation specified in the North Dakota Century Code. The employer also agrees that all purchases will be completed no later than the fifteenth day of the month following the month of the employee's termination or sixty days from the date the employer and employee agree to the purchase, whichever comes first.
7. The employer agrees that in offering such a program the employer will direct each employee interested in the program to first apply to the employer's authorized agent who will then certify the eligibility of the member, the amount of service credit to be purchased or sick leave to be converted, and send such certification to the public employees retirement system. The employer also agrees that the employer's authorized agent will coordinate the program, authorize all purchases in writing to the public employees retirement system, and be the focal point for communications between the public employees retirement system, the employer, and the employee.
8. The employer agrees that for each employee certified to be eligible to have service credit purchased or sick leave converted, the employer will first obtain from the employee authorization for the public employees retirement system to share confidential information with the employer.
9. The employer certifies that in offering the program, the employer is making it available to all employees or a specified class of employees on a nondiscriminatory basis.
10. The employer agrees to provide information and policies relating to an employer purchase program pursuant to North Dakota Century Code section 54-52-26.

When an employer files the above letter with the public employees retirement system, it may offer the program to its employees. An employer may terminate this program at any time upon the governing authority of the employer sending to the executive director of the public employees retirement system a letter indicating when the program is to be canceled

**History:** Effective May 1, 2004; amended effective July 1, 2006; April 1, 2008; July 1, 2010.

**General Authority:** NDCC 54-52-04

**Law Implemented:** NDCC 54-52-17.4, 54-52-29

#### **71-02-03-08. Eligible sick leave.**

An employer or a member may only purchase unused sick leave that has not been previously purchased by a former employer or the member.

**History:** Effective May 1, 2004; amended effective July 1, 2006.

**General Authority:** NDCC 54-52-04

**Law Implemented:** NDCC 54-52-27

## CHAPTER 71-02-05 DISABILITY

### Section

71-02-05-01	Eligibility (Repealed)
71-02-05-02	Commencement of Benefit (Repealed)
71-02-05-03	Cancellation of Disability Benefits
71-02-05-04	Calculation of Disability Benefit (Repealed)
71-02-05-05	Conditions for changing to a Disability Retirement Benefit From, an Early Reduced Retirement Benefit
71-02-05-06	Determination of Disability Procedures
71-02-05-07	Optional Benefits
71-02-05-07.1	Judges' Retirement Plant Optional Benefits
71-02-05-08	Transitional Period
71-02-05-09	Interest Accrual on Accumulated Contributions for Disabled Annuitants

### **71-02-05-01. Eligibility.**

Repealed effective January 1, 1992.

### **71-02-05-02. Commencement of benefit.**

Repealed effective January 1, 1992.

Section 71-02-05-03 is repealed:

### ~~**71-02-05-03. Cancellation of disability benefit.**~~

~~When a member receiving a disability benefit attains the member's normal retirement date, that member may elect to terminate that member's disability benefits and draw retirement benefits as specified in North Dakota Century Code section 54-52-17.~~

~~**History:** Amended effective January 1, 1992; May 1, 2004; July 1, 2006. Repealed effective \_\_\_\_\_~~

~~**General Authority:** NDCC 54-52-04~~

~~**Law Implemented:** NDCC 54-52-17~~

### **71-02-05-04. Calculation of disability benefit.**

Repealed effective November 1, 1990.

### **71-02-05-05. Conditions for changing to a disability retirement benefit from an early reduced retirement benefit.**

A member may elect to start receiving an early reduced retirement benefit, should the member be eligible to do so, pending a disability determination or appeal. Upon receiving a disability determination, interest accrual shall resume beginning the first of the month following notice of the determination, continuing to accrue on the annuitant's accumulated contribution until the annuitant reaches the annuitant's normal retirement date. The disability benefit will be calculated, and a differential payment made retroactive to the first day of the month following the member's termination from covered employment.

**History:** Effective September 1, 1982; amended effective November 1, 1990; January 1, 1992; July 1, 1998; July 1, 2006.

**General Authority:** NDCC 54-52-04

**Law Implemented:** NDCC 54-52-17

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

### **1. Application.**

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

### **2. Medical consultant.**

- a. The board may retain a medical consultant to evaluate and make recommendations on disability retirement applications.
- b. The medical consultant shall review all medical information provided by the applicant.
- c. The medical consultant is responsible to determine eligibility for disability benefits for applicants not approved for social security disability benefits or for judges not approved pursuant to subsection 3 of North Dakota Century Code section 27-23-03 and shall advise the executive director of the decision in writing. Applicants who become eligible for disability benefits under the Social Security Act and who meet the requirements of subdivision h of subsection 3 of North Dakota Century Code section 54-52-17 are eligible for benefits under subdivision e of subsection 4 of North Dakota Century Code section 54-52-17 without submitting further medical information to the medical adviser, but are subject to recertification requirements specified in this chapter. The social security disability award must provide proof that the member's disability was determined during the member's period of eligible employment. In determining eligibility for judges not approved pursuant to the above, the medical director shall work with a review committee composed of one supreme court judge and a district court judge to review the proposed application. In order for the application to be approved, it must have the concurrence of the medical director and at least one judge. The executive director shall appoint two judges to serve on the review committee.

### **3. Medical examination.**

- a. The applicant for disability retirement shall provide the medical examination reports as requested by the medical consultant.
- b. The member is liable for any costs incurred by the member in undergoing medical examinations and completing and submitting the necessary medical examination reports, medical reports, and hospital reports necessary for initial determination of eligibility for benefits.

- c. If determined to be eligible for disability benefits, the member must be reimbursed for the cost of medical examinations specifically requested by the medical adviser and the executive director.

#### 4. **Appeal.**

- a. If the applicant has terminated employment, the public employees retirement system shall notify the applicant in writing of the decision. If the applicant is determined not to be eligible for disability benefits, the public employees retirement system shall advise the applicant of the appeal procedure. If the applicant is determined eligible for disability benefits, benefits must be paid pursuant to subsection 5.
- b. If the applicant has not terminated employment, the applicant must be provided with a preliminary notification of the decision in writing. The preliminary notification remains in effect for a period not to exceed two hundred seventy days. If an applicant does not terminate employment within two hundred seventy days of the date of termination provided on the disability application, the application must be considered to be vacated but the applicant may reapply as provided in subsection 1.
- c. The applicant may appeal an adverse determination to the board by providing a written notice of appeal within thirty days of the date that the public employees retirement system mailed the decision.
- d. The board shall consider all appeals at regularly scheduled board meetings. The applicant must be notified of the time and date of the meeting and may attend and be represented by legal counsel. The executive director shall provide to the board for its consideration a case history brief that includes membership history, medical examination summary, and the plan administrator's conclusions and recommendations. The board shall make the determination for eligibility at the meeting unless additional evidence or information is needed. The discussion concerning disability applications must be confidential and closed to the general public.
- e. If the initial board decision is adverse to the applicant after exhausting the administrative procedure under subdivisions a and b, the applicant may file a request for a formal hearing to be conducted under North Dakota Century Code chapter 28-32. The request for a formal hearing must be filed within thirty days after notice of the initial decision has been mailed or delivered. If an appeal is not filed within the thirty-day period, the initial decision of the board is final. If a request for a formal hearing is timely filed, notice of the hearing must be served at least thirty days prior to the date set for the hearing. The board shall request appointment of an administrative law judge from the office of administrative hearings to conduct the hearing and make recommended findings of fact, conclusions of law, and order. The board shall either accept the administrative law judge's recommended findings of fact, conclusions of law, and order or adopt its own findings of fact, conclusions of law, and order. The applicant may under North Dakota Century Code section 28-32-15 appeal the final decision resulting from this procedure to the district court.

#### 5. **Payment of annuity.**

If awarded, the disability annuity is payable on, or retroactive to, the first day of the month following the member's termination from covered employment minus any early retirement benefits that have been paid.

#### 6. **Redetermination and recertification.**

- a. A disabled annuitant's eligibility must be recertified eighteen months after the date the first check is issued and thereafter as specified by the medical consultant unless proof of receipt of ongoing social security disability benefits is received. The executive director

may waive the necessity for a recertification, based on the recommendation of the medical consultant or upon proof of receipt of ongoing social security disability benefits.

- b. The public employees retirement system will send a recertification application and request for a statement of annual earnings by certified mail with return receipt to the disabled annuitant to be completed and sent back to the office. If completed recertification application has not been received by the recertification date set in the recertification request, benefits will be suspended effective the first of the month following that date. If the recertification application is not received within six months of the recertification date set in the recertification request unless an alternative date has been approved by the executive director, the member will no longer be eligible to receive disability benefits. Benefits suspended within six months of the recertification date set in the recertification request will be reinstated the first of the month following recertification by the medical consultant, or upon proof of receipt of ongoing social security disability benefits, unless an alternative date has been approved by the executive director. The regular accrued disability benefits will commence with a lump sum equal to the amount of missed payments, without interest, retroactive to the first day of the month benefits were suspended, unless otherwise approved by the board.
- c. The medical consultant may require the disabled annuitant to be reexamined by a doctor. The submission of medical reports by the annuitant, and the review of those reports by the board's medical consultant, may satisfy the reexamination requirement. Upon recertification, the disabled annuitant must be reimbursed for the cost of the required reexamination if deemed necessary by the medical consultant and the executive director.
- d. When the member has not provided proof of receipt of ongoing social security disability benefits, the medical consultant will make the recertification decision. The executive director may require additional recertifications, if the facts warrant this action. The decision may be appealed to the board within ninety days of receiving the written recertification decision.
- e. Benefit payments must be suspended immediately upon notice received from the medical consultant that the annuitant does not meet recertification requirements. The executive director shall notify the annuitant of the suspension of benefits by certified mail and shall reinstate benefits back to date of suspension if the annuitant is subsequently found to meet recertification requirements.
- f. If it is determined that the disability annuitant was not eligible for benefits during any time period when benefits were provided, the executive director may do all things necessary to recover the erroneously paid benefits.

**History:** Effective January 1, 1992; amended effective July 1, 1994; June 1, 1996; April 1, 2002; May 1, 2004; July 1, 2006; April 1, 2016; July 1, 2018.

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

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

#### **71-02-05-07. Optional benefits.**

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

1. **One hundred percent joint and survivor benefit.** A member shall receive an actuarially reduced disability retirement benefit as long as the member remains eligible for benefits under subdivision e of subsection 3 of North Dakota Century Code section 54-52-17 and after the member's death the same amount will be continued to the member's surviving spouse during

the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Payments of benefits to a member's surviving spouse must be made on the first day of each month commencing on the first day of the month following the member's death, provided the beneficiary is still living and has supplied a marriage certificate and the member's death certificate. Benefits terminate in the month in which the death of the beneficiary occurs. In the event the designated beneficiary predeceases the member or, in the event of divorce, the option must be canceled and the member's benefit must be returned to the single life amount. Payment of the single life amount must commence on the first day of the month following the spouse's death providing written notification of death and a death certificate has been submitted or, in the event of divorce, a photocopy of the divorce decree.

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

**History:** Effective January 1, 1992; amended effective July 1, 1994; May 1, 2004; July 1, 2006; April 1, 2008; April 1, 2012; April 1, 2016.

**General Authority:** NDCC 54-52-04

**Law Implemented:** NDCC 54-52-06.4, 54-52-17

#### **71-02-05-07.1. Judges' retirement plan optional benefits.**

For the judges' retirement plan, an individual deemed eligible for a disability benefit may elect, as provided in this section, to receive one of the following optional benefits in lieu of the regular disability benefit.

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

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

**History:** Effective May 1, 2004; amended effective July 1, 2006; April 1, 2008; July 1, 2010; April 1, 2012.

**General Authority:** NDCC 54-52-04

**Law Implemented:** NDCC 54-52-17

#### **71-02-05-08. Transitional period.**

For purposes of providing a transition period during the twelve-month application period provided under previous law, amendments to chapter 71-02-05 dated January 1, 1992, apply to disabled employees who terminated on or after July 1, 1991. However, the previous rules will continue in effect for disabled employees who terminated before July 1, 1991.

**History:** Effective January 1, 1992.

**General Authority:** NDCC 54-52-04

**Law Implemented:** NDCC 54-52-17

#### **71-02-05-09. Interest accrual on accumulated contributions for disabled annuitants.**

Effective January 1, 1998, interest must accrue on accumulated contributions as defined in article 71-02 until the disabled annuitant reaches that person's normal retirement age, cancels the benefit in accordance with section 71-02-05-03, the account is closed, or until benefit payments commence to the member's beneficiary.

**History:** Effective July 1, 1998; amended effective May 1, 2004; July 1, 2006; July 1, 2010.

**General Authority:** NDCC 54-52-04

**Law Implemented:** NDCC 54-52-17

Section 71-02-05-10 is created as follows:

#### **71-02-05-10. Converting disability retirement benefit to normal unreduced retirement benefit.**

A member receiving a disability benefit will be provided a one-time irrevocable election to convert to an unreduced retirement benefit upon meeting normal retirement date, as defined in N.D.C.C. 54-52-17(3), if eligibility is met. A member receiving a disability benefit must begin receiving an unreduced retirement benefit upon meeting normal retirement age. Upon receipt of normal retirement benefits, interest accrual on the member account shall end and benefit option factors will be based upon the actuarial retirement factors on the date of disability to normal conversion.

**History:** Effective

**General Authority:** NDCC 54-52-04

**Law Implemented:** NDCC 54-52-17



## CHAPTER 71-02-08 PARTICIPATION BY GOVERNMENTAL UNITS

Section	
71-02-08-01	Participation
71-02-08-02	Withdrawal
71-02-08-03	Transfer of Funds [Repealed]
71-02-08-04	Transfer Date [Repealed]
71-02-08-05	Merger of Eligible Employer Groups

Section 71-02-08-01.1 is repealed.

### **~~71-02-08-01. Participation.~~**

~~Any governmental unit not participating in the retirement system on July 1, 1977, may choose to participate in the retirement system and may elect to purchase past service in accordance with North Dakota Century Code section 54-52-02.1. If the governmental unit elects to purchase past service and prior to the governmental unit's governing authority contracting with the retirement board, the governmental unit must furnish the board with information concerning the permanent employees of the governmental unit. This information should contain, but is not limited to (1) name; (2) social security number; (3) date of birth; (4) date of employment; (5) current monthly salary; and (6) any previous public employment.~~

~~After receipt of this data, the retirement office will calculate the cost to the governmental unit to participate in the retirement plan as offered in North Dakota Century Code section 54-52-17. The governmental unit's governing authority will then decide whether or not to participate in the plan and whether or not to provide service credit for employment prior to the date of participation.~~

~~**History:** Amended effective September 1, 1982; April 1, 2012. Repealed effective \_\_\_\_\_~~

~~**General Authority:** NDCC 54-52-04~~

~~**Law Implemented:** NDCC 54-52-02.1~~

### **71-02-08-02. Withdrawal.**

Any political subdivision may discontinue participation in the fund if the following requirements are met:

1. The political subdivision must provide the board with a copy of a resolution adopted by the governing authority authorizing the termination of participation in the fund.
2. Upon receiving a copy of the written resolution, an actuarial study must be done by the plan's actuary to determine the accrued benefit of all vested employees minus allocated assets from the date of participation. The interest assumption used must be two hundred basis points less than the plan's interest assumption used for funding purposes. The withdrawal liability must include an administrative expense assessment of five percent.
3. Any costs incurred by the fund, resulting from a political subdivision ceasing participation, including the actuarial fee study and the withdrawal liability, must be assessed against the political subdivision and paid in full before a political subdivision terminates its participation.
4. All employees of a political subdivision that has terminated participation in the fund must not be eligible for future benefit accruals or improvements granted to employees or former employees of participating governmental units after the date the employer's participation ceases.
5. An employee who is not vested at the time an employer ceases participation has the option of

taking a refund or rollover of the employee's contribution plus interest.

**History:** Effective September 1, 1982; amended effective June 1, 1996; April 1, 2019.

**General Authority:** NDCC 54-52-04

**Law Implemented:** NDCC 54-52-2.1

**71-02-08-03. Transfer of funds.**

Repealed effective April 1, 2012.

**71-02-08-04. Transfer date.**

Repealed effective April 1, 2012.

**71-02-08-05. Merger of eligible employer groups.**

If a merger between two or more eligible employer groups occurs, the following requirements apply:

1. Written notification must be provided to the office no later than sixty days before the merger is final.
2. When two or more employer groups merge into one, and all do not presently participate in the public employees retirement system, the units merging must decide upon one of the following:
  - a. The participating employer or employers may elect to cease participation as of the date of the merger, subject to payment of any actuarial liabilities accrued. An actuarial study must be conducted at the cost of the exiting employer upon providing the public employees retirement system with written notice of the employer's election to cease participation.
  - b. Subject to executing a revised participation agreement, eligible employees who have not previously participated shall be given the opportunity to participate or waive participation effective the date of the merger. Any person hired in an eligible position after the consolidation date must participate.

**History:** Effective June 1, 1996.

**General Authority:** NDCC 54-52-04

**Law Implemented:** NDCC 15-10-17, 54-52-02.1

## CHAPTER 71-03-03 EMPLOYEE RESPONSIBILITIES

### Section

71-03-03-01	Enrollment
71-03-03-02	Late Enrollment
71-03-03-03	Early Enrollment [Repealed]
71-03-03-04	Open Enrollment [Repealed]
71-03-03-05	Special Enrollment for Certain Qualifying Events [Repealed]
71-03-03-06	Continuation of Health, Dental, Vision, or Prescription Drug Coverage After Termination
71-03-03-07	Continuation of Health, Dental, Vision, or Prescription Drug Coverage for Dependents
71-03-03-08	Continuation of Life Insurance After Retirement
71-03-03-09	Leave Without Pay
71-03-03-10	Employee Contribution

Subsection 2 of Section 71-03-03-01 is amended as follows:

#### **71-03-03-01. Enrollment.**

An eligible employee is entitled to coverage the first of the month following the month of employment, or the month following meeting eligibility criteria, unless otherwise noted below, if the employee submits an application for coverage within the first thirty-one days of employment or within the thirty-one days of meeting eligibility for one of the following special enrollment periods:

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

**History:** Effective October 1, 1986; amended effective July 1, 1994; June 1, 1996; July 1, 1998; July 1, 2010; April 1, 2012; April 1, 2016; April 1, 2022. \_\_\_\_\_

**General Authority:** NDCC 54-52.1-08

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

#### **71-03-03-02. Late enrollment.**

An eligible employee failing to submit an application for coverage within the first thirty-one days of employment or eligibility for a special enrollment period may enroll during the annual open enrollment. Upon a showing of good cause, the executive director may waive the thirty-one day application requirement.

**History:** Effective October 1, 1986; amended effective June 1, 1996; July 1, 1998; May 1, 2004; April 1, 2016.

**General Authority:** NDCC 54-52.1-08

**Law Implemented:** NDCC 54-52.1-03, 42 U.S.C. 300gg-3

**71-03-03-03. Early enrollment.**

Repealed effective June 1, 1996.

**71-03-03-04. Open enrollment.**

Repealed effective June 1, 1996.

**71-03-03-05. Special enrollment for certain qualifying events.**

An eligible employee, retiree, or surviving spouse who elects to take a periodic distribution from the defined contribution retirement plan or a monthly retirement benefit from the North Dakota public employees retirement system, North Dakota highway patrolmen's retirement system, the retirement system established by job service North Dakota, the teachers' fund for retirement, or teachers' insurance and annuity association of America - college retirement equities fund, or retirees who have accepted a retirement allowance from a participating political subdivision's retirement plan and provide verification of distribution are eligible for coverage with the health, dental, vision, or prescription drug insurance program.

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

individuals in the defined contribution plan who take a cash withdrawal of the employee's account, roll their account into another qualified plan, or use the moneys in their account to purchase an annuity.

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

**History:** Effective October 1, 1986; amended effective November 1, 1990; July 1, 1994; June 1, 1996; July 1, 1998; July 1, 2000; May 1, 2004; April 1, 2012; April 1, 2016; July 1, 2018.

**General Authority:** NDCC 54-52.1-08

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

#### **71-03-03-06. Continuation of health, dental, vision, or prescription drug coverage after termination.**

An employee who terminates employment and is not receiving a monthly retirement benefit from one of the eligible retirement systems, and applies for continued coverage with the health, dental, vision, or prescription drug plan may continue such coverage for a maximum of eighteen months by remitting timely payments to the board. The employee desiring coverage shall notify the board within sixty days of the termination. Coverage will become effective on the first day of the month following the last day of coverage by the employing agency if an application is submitted within sixty days. An individual who fails to timely notify the board is not eligible for coverage.

**History:** Effective October 1, 1986; amended effective November 1, 1990; June 1, 1996; April 1, 2012.

**General Authority:** NDCC 54-52.1-08

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

#### **71-03-03-07. Continuation of health, dental, vision, or prescription drug coverage for dependents.**

Dependents of employees with family coverage may continue coverage with the group after their eligibility would ordinarily cease. This provision includes divorced or widowed spouses and children

when they are no longer dependent on the employee. Coverage is contingent on the prompt payment of the premium, and in no case will coverage continue for more than thirty-six months. Dependents desiring coverage shall notify the board within sixty days of the qualifying event and must submit an application in a timely manner. An individual who fails to notify the board within the sixty days, and who desires subsequent coverage, will not be eligible for coverage.

**History:** Effective October 1, 1986; amended effective November 1, 1990; April 1, 2012.

**General Authority:** NDCC 54-52.1-08

**Law Implemented:** NDCC 54-52.1-02; Pub. L. 99-272; 100 Stat. 232; 42 USC 300 et seq.

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

#### **71-03-03-08. Continuation of life insurance after retirement.**

An employee who is enrolled in the group life insurance program may continue the basic and supplemental life insurance coverage upon retirement or disability only if: 1) the employee is entitled to receives a retirement allowance from an eligible retirement system; and 2) by making application applying for life insurance coverage and remitting timely payments to the board. Life Insurance Coverage must be continuous from when active group life insurance ends and retired employee life insurance benefits coverage begins. Supplemental life insurance coverage can only be continued until age sixty-five.

**History:** Effective October 1, 1986; amended effective June 1, 1996; May 1, 2004; April 1, 2014; \_\_\_\_\_

**General Authority:** NDCC 54-52.1-08

**Law Implemented:** NDCC 54-52.1-03

#### **71-03-03-09. Leave without pay.**

An employee on an approved leave without pay may elect to continue coverage for the periods specified in the plans for life insurance, health, dental, vision, or prescription drug coverages by paying the full premium to the agency. An eligible employee electing not to continue coverage during a leave of absence is entitled to renew coverage for the first of the month following the month that the employee has returned to work if the employee submits an application for coverage within the first thirty-one days of returning to work. An eligible employee failing to submit an application for coverage within the first thirty-one days of returning to work or eligibility for a special enrollment period, may enroll during the annual open enrollment. Upon a showing of good cause, the executive director may waive the thirty-one day application requirement.

**History:** Effective October 1, 1986; amended effective November 1, 1990; June 1, 1996; September 1, 1997; July 1, 1998; May 1, 2004; April 1, 2012; April 1, 2022.

**General Authority:** NDCC 54-52.1-08

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

Section 71-03-03-10 is amended as follows:

#### **71-03-03-10. Employee contribution.**

An employee who selects a level of coverage which requires an additional amount of premium shall pay the amount due to the employing agency ~~in advance~~. The employee contribution may be paid via payroll deduction or any other means acceptable to the agency.

**History:** Effective October 1, 1986. \_\_\_\_\_

**General Authority:** NDCC 54-52.1-08

**Law Implemented:** NDCC 54-52.1-03

## CHAPTER 71-03-05 BOARD RESPONSIBILITIES

### Section

71-03-05-01	Premium Billing
71-03-05-02	Retiree Billing
71-03-05-03	Late Premium for Retirees [Repealed]
71-03-05-04	Late Premium for Terminated Employee [Repealed]
71-03-05-05	Appeal Process
71-03-05-06	Recovery of Benefit Payments
71-03-05-07	Erroneous Payment of Premiums – Overpayments
71-03-05-08	Erroneous Payment of Premiums – Underpayments
71-03-05-09	Erroneous Payment of Premiums – Appeals
71-03-05-10	Determining Amount of Premium Overpayments and Underpayments
71-03-05-11	Failure to Provide Notification and Errors

Section 71-03-05-01 is amended as follows:

#### **71-03-05-01. Premium billing.**

The board will maintain a monthly billing, and reconcile the moneys, for all agencies, individual retirees, employers, and other eligible individuals provided in N.D.C.C. 54-52.1 ~~terminated employees with continued coverage.~~

~~The board will reconcile the moneys received from each agency, retiree, and terminated employee to the billing.~~

**History:** Effective October 1, 1986. \_\_\_\_\_

**General Authority:** NDCC 54-52.1-08

**Law Implemented:** NDCC 54-52.1-08

#### **71-03-05-02. Retiree billing.**

Retirees receiving a monthly retirement benefit from the board in a sufficient amount to pay premium will have the total monthly premium deducted from their benefit check.

**History:** Effective October 1, 1986; amended effective November 1, 1990; April 1, 2008; July 1, 2018.

**General Authority:** NDCC 54-52.1-08

**Law Implemented:** NDCC 54-52.1-03

#### **71-03-05-03. Late premium for retirees.**

Repealed effective April 1, 2008.

#### **71-03-05-04. Late premium for terminated employees.**

Repealed effective April 1, 2012.

#### **71-03-05-05. Appeal process.**

If a member's benefits have been denied in whole or in part by the board or its agent, the member will be notified in writing of the denial and the reasons. Within sixty days of the date shown on the denial notice, the member may file a petition for review. The petition must be in writing, the reasons stated for disputing the denial and be accompanied by any documentation. Should the member filing a petition for review, or should the board or its agent desire information which cannot be presented satisfactorily by correspondence, the board or its designated appeals committee may schedule a hearing. The member filing the appeal will be notified in writing at least fifteen days prior to hearing of the time, date, and place.

The board or its agent will render a decision as soon as possible, but not later than one hundred twenty days after the receipt of the petition for review. The decision will be in writing.

**History:** Effective October 1, 1986; amended effective November 1, 1990; July 1, 2010; April 1, 2012.

**General Authority:** NDCC 54-52.1-08

**Law Implemented:** NDCC 54-52.1-08

#### **71-03-05-06. Recovery of benefit payments.**

Whenever benefits are paid in noncompliance with the contract, the board retains the right to recover the payments from the party responsible. In case the claims payor is at fault, the amount of overpayment will be withheld from the administrative fees paid by the board. In case overpayments are made because of false or misleading information provided by a member, the claims payor shall attempt to recover the amount. Any moneys recovered shall be credited to the board. In case an overpayment is made because of a mistake or deliberate act by a health care provider, the claims payor shall collect the money from the provider and credit that amount to the board. In cases of suspected fraud, the board may turn the evidence over to the state's attorney or attorney general's office for possible prosecution.

**History:** Effective October 1, 1986.

**General Authority:** NDCC 54-52.1-08

**Law Implemented:** NDCC 54-52.1-08

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

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

**History:** Effective April 1, 2002; amended effective April 1, 2016.

**General Authority:** NDCC 54-52.1-08

**Law Implemented:** NDCC 54-52.1-08

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

1. An "underpayment" means a payment of money to the public employees retirement system for group insurance premiums that is less than the premiums due for the level of coverage that should have been in effect. Underpayment of premium is solely an error in the amount of premium billed to the individual.
2. An individual who underpays premiums is liable to pay those premiums upon receiving a request for repayment and an explanation of the amount due from the executive director. All underpayments must be collected using the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like gains. If the cost of recovering the underpayment is estimated to exceed the amount of the underpayment, the underpayment is considered to be unrecoverable.
3. If an underpayment is discovered in the first month it occurs, the individual must pay the amount due in a lump sum within thirty days of the discovery of the error.
4. If an underpayment is not discovered within the first month it occurs, the following will apply:



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

**History:** Effective April 1, 2002; amended effective April 1, 2008; July 1, 2010; April 1, 2016.

**General Authority:** NDCC 54-52.1-08

**Law Implemented:** NDCC 54-52.1-08

**71-03-05-09. Erroneous payment of premiums - Appeals.**

1. A person not satisfied with the repayment arrangements made under this policy may appeal the executive director's decision in writing to the board. The written request must explain the basis of the appeal and must be received in the office within sixty days of the executive director's written decision.
2. The board may release a person from liability to repay an underpayment, in whole or in part, if it determines:
  - a. The underpayment is not the fault of the recipient; or
  - b. It would be contrary to equity and good conscience to collect the underpayment.

**History:** Effective April 1, 2002.

**General Authority:** NDCC 54-52.1-08

**Law Implemented:** NDCC 54-52.1-08

**71-03-05-10. Determining amount of premium overpayments and underpayments.**

1. The amount of the health premium overpayment or underpayment will be determined by calculating the difference between the premium that was paid and the premium that should have been paid, retroactively to the month the change in premium should have occurred, or July of the earliest contract period still open, whichever is more recent.
2. The amount of the life premium overpayment or underpayment will be determined by calculating the difference between the premium that was paid and the premium that should have been paid, retroactively to the month the change in premium should have occurred, or the first day of the first month of the earliest contract period still open, whichever is more recent.

3. The amount of the dental premium overpayment or underpayment will be determined by calculating the difference between the premium that was paid and the premium that should have been paid, retroactively to the month the change in premium should have occurred, or the first day of the first month of the earliest contract period still open, whichever is more recent.
4. The amount of the vision premium overpayment or underpayment will be determined by calculating the difference between the premium that was paid and the premium that should have been paid, retroactively to the month the change in premium should have occurred, or the first day of the first month of the earliest contract period still open, whichever is more recent.

**History:** Effective April 1, 2002; amended effective April 1, 2008; April 1, 2014.

**General Authority:** NDCC 54-52.1-08

**Law Implemented:** NDCC 54-52.1-08

**71-03-05-11. Failure to provide notification and errors.**

1. If the individual fails to notify the public employees retirement system of a change that affects the level of coverage in force, upon learning of the change, the guidelines for premium overpayment or underpayment will apply.
2. If an individual fails to notify the public employees retirement system to establish coverage, the guidelines for premium overpayment or underpayment will not apply. Coverage will only be established prospectively.
3. If the public employees retirement system makes an error that affects the level of coverage in force for the individual, upon learning of the error, the guidelines for premium overpayment or underpayment will apply.
4. If the public employees retirement system makes an error and does not establish coverage for an individual, upon learning of the error, the guidelines for premium underpayment will apply.
5. If an individual does not receive timely notification of COBRA continuation rights, premiums must be paid in full before continuation coverage is established retroactively.

**History:** Effective April 1, 2002.

**General Authority:** NDCC 54-52.1-08

**Law Implemented:** NDCC 54-52.1-08

**CHAPTER 71-03-06**  
**PARTICIPATION OF POLITICAL SUBDIVISIONS EMPLOYEE RESPONSIBILITIES**

Section

71-03-06-01	Enrollment
71-03-06-02	Late Enrollment
71-03-06-03	Special Enrollment for Certain Qualifying Events
71-03-06-04	Continuation of Hospital and Medical Coverages After Termination
71-03-06-05	Continuation of Health Benefits for Dependents
71-03-06-06	Continuation of Life Insurance After Retirement
71-03-06-07	Leave Without Pay
71-03-06-08	Employee Contribution

Section 71-03-06-01 and Subsection 3 and Subsection 4 are amended as follows:

**71-03-06-01. Enrollment.**

An eligible employee is entitled to coverage the first of the month following the month of employment, or the month following meeting eligibility criteria, unless otherwise noted below, if the employee submits an application for coverage within the first thirty-one days of employment, or within the thirty-one days of meeting eligibility for one of the following special enrollment periods:

1. Loss of coverage under any other health insurance plan.
2. Marriage. The enrollment of an employee's spouse. An employee who previously waived coverage must enroll for coverage at the time the employee's spouse is enrolled.
3. Addition of a dependent as a result of ~~birth, adoption, placement for adoption~~, receiving legal guardianship, or receiving a court order to provide health coverage. An employee who previously waived coverage must enroll for coverage at the same time that the employee's eligible dependent is enrolled.
4. Addition of a dependent as a result of birth, adoption, or placement for adoption. Effective date of coverage is the first of the month in which the event occurred. An employee who previously waived coverage shall enroll for coverage at the same time that the employee's eligible dependent is enrolled.

**History:** Effective June 1, 1996; amended effective July 1, 1998; July 1, 2010; \_\_\_\_\_

**General Authority:** NDCC 54-52-04

**Law Implemented:** NDCC 54-52.1-03.1, 54-52.1-03.4

**71-03-06-02. Late enrollment.**

Political subdivisions must follow the same late enrollment procedures as outlined in section 71-03-03-02.

**History:** Effective June 1, 1996; amended effective July 1, 1998; May 1, 2004; July 1, 2010.

**General Authority:** NDCC 54-52-04, 54-52.1-03.1

**Law Implemented:** NDCC 54-52.1-03, 54-52.1-03.1

**71-03-06-03. Special enrollment for certain qualifying events.**

Political subdivisions must follow the same enrollment procedures as outlined in section 71-03-03-05.

**History:** Effective June 1, 1996; amended effective July 1, 2010.

**General Authority:** NDCC 54-52-04, 54-52.1-03.1

**Law Implemented:** NDCC 54-52.1-03, 54-52.1-03.1

**71-03-06-04. Continuation of hospital and medical coverages after termination.**

Political subdivisions must follow the same continuation procedure as outlined in section 71-03-03-06.

**History:** Effective June 1, 1996.

**General Authority:** NDCC 54-52-04, 54-52.1-03.1

**Law Implemented:** NDCC 54-52.1-03, 54-52.1-03.1

**71-03-06-05. Continuation of health benefits for dependents.**

Political subdivisions must follow the same continuation procedure as outlined in section 71-03-03-07.

**History:** Effective June 1, 1996; amended effective July 1, 2010.

**General Authority:** NDCC 54-52-04, 54-52.1-03.1

**Law Implemented:** NDCC 54-52.1-03, 54-52.1-03.1

**71-03-06-06. Continuation of life insurance after retirement.**

Political subdivisions must follow the same continuation procedure as outlined in section 71-03-03-08.

**History:** Effective June 1, 1996.

**General Authority:** NDCC 54-52-04, 54-52.1-03.1

**Law Implemented:** NDCC 54-52.1-03, 54-52.1-03.1

**71-03-06-07. Leave without pay.**

Political subdivisions must follow the same leave without pay procedures as outlined in section 71-03-03-09.

**History:** Effective June 1, 1996.

**General Authority:** NDCC 54-52-04, 54-52.1-03.1

**Law Implemented:** NDCC 54-52.1-03, 54-52.1-03.1

Section 71-03-06-08 is amended as follows:

**71-03-06-08. Employee contribution.**

An employee who is enrolled in the group insurance plan and required by the ~~employing agency~~ employer to pay a part of the premium must pay the amount due to the ~~employing agency in advance of the employer's payment to the public employees retirement system~~ employer. The employee contribution may be paid via payroll deduction or any other means acceptable to the employer.

**History:** Effective June 1, 1996; amended effective July 1, 2010; \_\_\_\_\_

**General Authority:** NDCC 54-52-04, 54-52.1-03.1

**Law Implemented:** NDCC 54-52.1-02, 54-52.1-03.1

**ARTICLE 71-04**  
**DEFERRED COMPENSATION PLAN FOR PUBLIC EMPLOYEES**

Chapter

71-04-01	Definitions
71-04-02	Plan Design
71-04-03	Employee Responsibilities
71-04-04	Retirement Board Responsibilities
71-04-05	Employer Responsibilities
71-04-06	Provider Responsibilities
71-04-07	Benefits [Repealed]
71-04-08	Qualified Domestic Relations Orders
71-04-09	Uniform Services Employment and Retirement Rights Act

**Chapter 71-04-01**  
**Definitions**

Section

71-04-01-01	Definitions
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Subsection 10 of Section 71-04-01-01 is amended as follows:

**71-04-01-01. Definitions.**

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

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

10. Retirement board" or "board" means the ~~nine~~ eleven persons described in North Dakota Century Code chapter 54-52-03.
11. Separation from service" means that term as defined under Internal Revenue Code section 402(d)(4)(A)(3i) and includes termination of employment with the employer by reason of death, disability, retirement, resignation, or discharge.
12. "State" means the state of North Dakota, or any department, institution, or separate agency thereof acting as an employer of the participant.
13. "Unforeseeable emergency" means a severe financial hardship to the participant resulting from a sudden and unexpected illness or accident of the participant, the participant's spouse or dependent of the participant, loss of the participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant.

Subsection 14 of Section 71-04-01-01 is created as follows:

14. Wages" and "salaries" means earnings in eligible employment under this chapter reported as salary on a federal income tax withholding statement plus any salary reduction or salary deferral amounts under 26 U.S.C. 125, 401(k), 403(b), 414(h), or 457. "Salary" does not include fringe benefits such as payments for unused sick leave, personal leave, vacation leave paid in a lump sum, overtime, housing allowances, transportation expenses, early retirement, incentive pay, severance pay, medical insurance, workforce safety and insurance benefits, disability insurance premiums or benefits, or salary received by a member in lieu of previously employer-provided fringe benefits under an agreement between an employee and a participating employer. Bonuses may be considered as salary under this section if reported pursuant to rules adopted by the board.

**History:** Effective April 1, 1989; amended effective July 1, 1994; April 1, 2002; May 1, 2004; July 1, 2010; April 1, 2016; April 1, 2020; \_\_\_\_\_

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

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

## CHAPTER 71-04-03 EMPLOYEE RESPONSIBILITIES

Section	
71-04-03-01	Enrollment
71-04-03-02	Effective Date of Deferrals
71-04-03-03	Change in Monthly Deferral
71-04-03-04	Change in Beneficiary
71-03-04-05	Unforeseeable Emergency
71-04-03-06	Termination of Participation
71-04-03-07	Distribution of Assets

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

### **71-04-03-01. Enrollment.**

Public employees may enroll, with up to three providers, in the deferred compensation plan by completing and submitting a participant agreement to the office or the board's designated vendor.

**History:** Effective April 1, 1989; amended effective April 1, 2014; April 1, 2016; \_\_\_\_\_

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

**Law Implemented:** NDCC 54-52.2-03

### **71-04-03-02. Effective date of deferrals.**

All deferrals are effective the payroll period ending in the month following the month in which the deferral is authorized. Deferrals cannot be requested or authorized for the month in which income is being earned.

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

**General Authority:** NDCC 28-32-02

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

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

### **71-04-03-03. Change in monthly deferral.**

A participant may change the amount of deferral at any time, as long as a participant agreement is completed and submitted to the office or the board's designated vendor as set forth in section 71-04-03-01.

**History:** Effective April 1, 1989; amended effective April 1, 2016; \_\_\_\_\_

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

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

### **71-04-03-04. Change in beneficiary.**

The participant may change the primary or contingent beneficiary at any time by contacting the participant's designated provider representative.

**History:** Effective April 1, 1989; amended effective May 1, 2004.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 54-52.2-03

#### **71-04-03-05. Unforeseeable emergency.**

A participant who, prior to separation from service, experiences an unforeseeable emergency as defined in section 71-04-01-01 may apply for a distribution of the participant's deferred compensation in account to the extent reasonably needed to satisfy the financial need. The participant may make application by completing a financial hardship form and delivering it to the retirement board offices.

**History:** Effective April 1, 1989; amended effective July 1, 1994; April 1, 2002; July 1, 2010

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

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

#### **71-04-03-06. Termination of participation.**

Participation in the plan may be terminated at any time by completion of a participant agreement indicating a suspension of monthly deferrals.

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

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

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

#### **71-04-03-07. Distribution of assets.**

Distribution of assets may be made only upon separation from service as defined in section 71-04-01-01, or in accordance with section 71-04-03-05 or 71-04-08-01, or as a direct trustee-to-trustee plan transfer to a tax-qualified governmental defined benefit plan (as defined in Internal Revenue Code section 414(d)) for the purchase of permissive service credit (as defined in Internal Revenue Code section 415(n)(3)(A) or a repayment to which Internal Revenue Code section 415 does not apply by reason of section 415(k)(3), regardless of whether or not the participant has had a severance from employment, at a time and in a manner prescribed by the board, as set forth in the 457 deferred compensation plan document, and in a manner consistent with section 457(e)(17) of the Internal Revenue Code.

**History:** Effective May 1, 2004; amended effective April 1, 2016.

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

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



## CHAPTER 71-05-02 DISABILITY

Section	
71-05-02.01	Disability Retirement Eligibility
71-05-02-01.1	Conditions for Changing to a Disability Retirement Benefit From an Early Reduced Retirement Benefit
71-05-02-02	Determination of Disability – Procedures
71-05-02-03	Aggrieved Parties' rights [Repealed]
71-05-02-04	Optional Benefits
71-05-02-05	Interest Accrued on Accumulated Contributions for Disabled Annuitants
71-05-02-06	Cancellation of Disability Benefit

### **71-05-02-01. Disability retirement eligibility.**

A member of the highway patrol retirement system, who has completed at least one hundred eighty days of employment, is eligible for disability retirement benefits if the member became permanently and totally disabled during the period of covered employment and otherwise complies with section 71-05-02-02. A member eligible for normal retirement date shall receive the normal retirement benefit if it exceeds the disability retirement benefit.

**History:** Effective November 1, 1990; amended effective July 1, 2006.

**General Authority:** NDCC 39-03.1-06, 39-03.1-11

**Law Implemented:** NDCC 39-03.1-11

#### **71-05-02-01.1. Conditions for changing to a disability retirement benefit from an early reduced retirement benefit.**

A member may elect to start receiving an early reduced retirement benefit, should the member be eligible to do so, pending a disability determination or appeal. During this period, the member's account will be handled in the same manner as all early reduced retirement benefits. Upon receiving a disability determination, interest accrual on the member's account shall resume beginning the first of the month following notice of the determination, continuing to accrue on the annuitant's accumulated contribution until the annuitant reaches the annuitant's normal retirement date. The disability benefit will be calculated and a differential payment made retroactive to the first day of the month following the member's termination from covered employment.

**History:** Effective May 1, 2004; amended effective July 1, 2006.

**General Authority:** NDCC 39-03.1-06, 39-03.1-11

**Law Implemented:** NDCC 39-03.1-11

### **71-05-02-02. Determination of disability - Procedures.**

#### **1. Application.**

- a. Application for disability benefits must be made within one year from the last date of covered employment on the form provided by the plan administrator.
- b. If the member is unable or unwilling to file an application, the member's employer or legal representative may file the member's disability application.
- c. The application must explain the cause of the disability, the limitations caused by the disability, the treatment being followed, and the effect of the disability on the individual's ability to be engaged in any gainful occupation for which the person is, or could become, reasonably fitted by education, training, or experience.

**2. Medical examination.**

- a. The applicant for disability retirement must provide the plan administrator with medical examination reports.
- b. An initial medical examination should be completed by the member's attending or family physician on the medical examination form provided by the plan administrator. If deemed necessary by the board's medical consultant, an additional examination must be completed by a specialist in the disability involved. Available medical or hospital reports may be accepted in lieu of a medical examination report if deemed acceptable by the medical consultant.
- c. The member is liable for any costs incurred by the member in undergoing medical examinations and completing and submitting the necessary medical examination reports, medical reports, and hospital reports.

**3. Medical consultant.**

- a. The board will retain a medical doctor to act as its consultant on disability retirement applications.
- b. The medical consultant shall review all medical information provided by the applicant.
- c. The medical consultant will be responsible to advise the plan administrator of the medical diagnosis and whether the condition is a permanent and total disability.

**4. Decision and appeal.**

- a. The plan administrator shall consider applications for disability benefits and shall make a written decision whether an applicant is entitled to benefits. The decision must be mailed to the applicant's address of record.
- b. The applicant may appeal an adverse determination to the board by providing a written notice of appeal within thirty days of the date that the plan administrator mailed the decision.
- c. The board shall consider all appeals at regularly scheduled board meetings. The applicant must be notified of the time and date of the meeting and may attend and be represented by legal counsel. The executive director shall provide to the board for its consideration a case history brief that includes membership history, medical examination summary, and the plan administrator's conclusions and recommendations. The board shall make the determination for eligibility at the meeting unless additional evidence or information is needed. The discussion concerning disability applications must be confidential and closed to the general public.
- d. If the applicant has terminated employment, the plan administrator shall notify the applicant in writing of the decision. If the applicant is determined not to be eligible for disability benefits, the plan administrator shall advise the applicant of the appeal procedure. If the applicant is determined eligible for disability benefits, benefits must be paid pursuant to subsection 5.
- e. If the applicant has not terminated employment, the applicant must be provided with a preliminary notification of the decision in writing. The preliminary notification remains in effect for a period not to exceed two hundred seventy days. If an applicant does not terminate employment within two hundred seventy days of the date of termination provided on the disability application, the application must be considered to be vacated but the applicant may reapply as provided in subsection 1.

- f. If the initial board decision is adverse to the applicant, after exhausting the administrative procedure under subdivisions b and c, the applicant may file a request for a formal hearing to be conducted under North Dakota Century Code chapter 28-32. The request for a formal hearing must be filed within thirty days after notice of the initial decision has been mailed or delivered. If an appeal is not filed within the thirty-day period the initial decision of the board is final. If a request for a formal hearing is timely filed, notice of the hearing must be served at least thirty days prior to the date set for the hearing. The board shall request appointment of an administrative law judge from the office of administrative hearings to conduct the hearing and make recommended findings of fact, conclusions of law, and order or adopt its own findings of fact, conclusions of law and order. The applicant may under North Dakota Century Code section 28-32-15 appeal the final decision resulting from this procedure to the district court.
5. **Payment of annuity.** If awarded, the disability annuity is payable on, or retroactive to, the first day of the month following the member's termination from covered employment, minus any early retirement benefits that have been paid.
6. **Redetermination and recertification.**
  - a. A disabled annuitant's eligibility must be recertified eighteen months after the date the first check is issued and thereafter as specified by the medical consultant. The plan administrator may waive the necessity for a recertification based on the recommendation of the medical consultant.
  - b. The plan administrator will send a recertification form and request for a statement of annual earnings by certified mail with return receipt to the disabled annuitant to be completed and sent back to the office. If completed recertification has not been received by the recertification date set in the recertification request, benefits will be suspended effective the first of the month following that date. Benefits will be reinstated the first of the month following recertification by the medical consultant. The regular accrued disability benefits will commence with a lump sum equal to the amount of missed payments, without interest, retroactive to the first of the month that benefits were suspended, unless otherwise approved by the North Dakota public employees retirement system board.
  - c. The medical consultant may require the disabled annuitant to be reexamined by a doctor. The submission of medical reports by the annuitant, and the review of those reports by the board's medical consultant, may satisfy the reexamination requirement. Upon recertification, the disabled annuitant must be reimbursed up to four hundred dollars for the cost of the required reexamination if deemed necessary by the medical consultant and the plan administrator.
  - d. The medical consultant will make the recertification decision. The executive director may require additional recertifications. The decision may be appealed to the board within ninety days of receiving the written recertification decision.
  - e. Benefit payments must be suspended immediately upon notice received from the medical consultant that the annuitant does not meet recertification requirements. The plan administrator shall notify the annuitant of the suspension of benefits by certified mail and shall reinstate benefits back to the date of suspension if the annuitant is subsequently found to meet recertification requirements.
  - f. If it is determined that the disability annuitant was not eligible for benefits during any time period when benefits were provided, the executive director may do all things necessary to recover the erroneously paid benefits.

**History:** Effective November 1, 1990; amended effective June 1, 1992; June 1, 1996; May 1, 2004.

**General Authority:** NDCC 39-03.1-06, 39-03.1-11

**Law Implemented:** NDCC 39-03.1-11

**71-05-02-03. Aggrieved parties' rights.**

Repealed effective June 1, 1996.

**71-05-02-04. Optional benefits.**

An individual deemed eligible for a disability benefit may elect, as provided in this section, to receive one of the following optional benefits in lieu of the regular disability benefit.

1. **One hundred percent joint and survivor benefit.** A member shall receive an actuarially reduced disability retirement benefit as long as the member remains eligible for benefits under subdivision d of subsection 3 of North Dakota Century Code section 39-03.1-11 and after the member's death the same amount will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Payments of benefits to a member's surviving spouse must be made on the first day of each month commencing on the first day of the month following the member's death, provided the beneficiary supplies a marriage certificate and death certificate and is still living. Benefits must terminate in the month in which the death of the beneficiary occurs. If the designated beneficiary predeceases the member or, in the event of divorce, the member's benefit must be returned to the normal retirement amount. Payment of the normal retirement amount must commence on the first day of the month following the spouse's death if written notification of death, provided a death certificate has been submitted or, in the event of divorce, a photocopy of the divorce decree.
2. **Twenty-year or ten-year certain option.** A member may receive the actuarial equivalent of the member's normal, early, or deferred vested retirement pension payable for life with a twenty-year or ten-year certain feature, as designated by the member.

**History:** Effective July 1, 1998; amended effective May 1, 2004; July 1, 2006; April 1, 2008; April 1, 2012.

**General Authority:** NDCC 39-03.1-06, 39-03.1-11

**Law Implemented:** NDCC 39-03.1-11.4(d)

**71-05-02-05. Interest accrued on accumulated contributions for disabled annuitants.**

Effective January 1, 1998, interest shall accrue on accumulated contributions as defined in article 71-01 until the disabled annuitant reaches normal retirement age, cancels the benefit in accordance with section 71-05-02-06, the account is closed, or until benefit payments commence to the member's beneficiary.

**History:** Effective July 1, 1998; amended effective July 1, 2010.

**General Authority:** NDCC 39-03.1-06, 39-03.1-11

**Law Implemented:** NDCC 39-03.1-11.4(d)

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

**71-05-02-06. Cancellation of disability benefit.**

When a member receiving a disability benefit attains the member's normal retirement date, that member may elect to terminate that member's disability benefit and draw retirement benefits as specified in North Dakota Century Code section 39-03.1-11. Upon receipt of normal retirement benefits, interest

accrual on the member account shall end and benefit option factors will be based upon the actuarial retirement factors on the date of disability to normal conversion.

**History:** Effective May 1, 2004; amended effective July 1, 2006; \_\_\_\_\_

**General Authority:** NDCC 39-03.1-06, 39-03.1-11

**Law Implemented:** NDCC 39-03.1-11

## CHAPTER 71-05-04 SERVICE CREDIT

### Section

71-05-04-01	Service Credit – General Rule
71-05-04-02	Military Credit
71-05-04-03	Repurchase of Service Credit and Purchase of additional Service Credit
71-05-04-03.1	Purchase of Additional Years of Service [Repealed]
71-05-04-04	Payment
71-05-04-04.1	Costs
71-05-04-05	Delinquent Payment
71-05-04-06	Crediting Purchased or Repurchased Service
71-05-04-07	Cancellation of Credits
71-05-04-08	Conversion of Sick Leave
71-05-04-09	Employer Purchase of Service Credit or Sick Leave Program

### **71-05-04-01. Service credit - General rule.**

A member receives credit for each month a contribution is made.

**History:** Effective October 1, 1991; amended effective July 1, 1998.

**General Authority:** NDCC 39-03.1-06

**Law Implemented:** NDCC 39-03.1-11

### **71-05-04-02. Military credit.**

Eligible service credit may be granted as it pertains to the North Dakota highway patrol retirement system as established in chapter 71-02-11.

**History:** Effective October 1, 1991.

**General Authority:** NDCC 39-03.1-06

**Law Implemented:** 38 USC 2021-2026

### **71-05-04-03. Repurchase of service credit and purchase of additional service credit.**

To purchase additional credit or repurchase past service, a contributor must notify the public employees retirement system, in writing, of the service for which the person wishes to receive credit. In addition to the written request, the following information must be submitted, if applicable:

1. Documentation of military service by submitting a DD214 or NGB22.
2. Certification of approval by the member's employer of any leave of absence and length of that leave.

**History:** Effective October 1, 1991; amended effective June 1, 1996; April 1, 2002; May 1, 2004.

**General Authority:** NDCC 39-03.1-06, 39-03.1-10.1, 39-03.1-14.1

**Law Implemented:** NDCC 39-03.1-08.1, 39-03.1-10.1, 39-03.1-14.1

### **71-05-04-03.1. Purchase of additional years of service.**

Repealed effective May 1, 2004.

### **71-05-04-04. Payment.**

The total dollar amount for repurchase or purchase may be paid in a lump sum or on a monthly, quarterly, semiannual, or annual basis. Payments may be subject to contribution limitations established

under 26 U.S.C. 415. Payments must begin within ninety days of the date the written cost confirmation is prepared. If the installment method is used, the following conditions apply:

1. Simple interest at the actuarial rate of return must accrue monthly on the unpaid balance. Interest is calculated from the fifteenth of each month.
2. The installment schedule may extend while the member is employed by the participating employer but for no longer than a fifteen-year time period.
3. Installment payments may be made by a payroll deduction where available. However, it is the responsibility of the contributor to initiate and terminate the payroll deduction.
4. Payments are due by the fifteenth of the month to be credited for the month.
5. Payments may only be received from a contributor until the fifteenth of the month following the month of the member's termination date with a participating employer.
6. Payments must be greater or equal to fifty dollars per month, large enough to pay the current interest plus a portion of the principal and an amount necessary to complete the payment contract within the fifteen-year time period.

**History:** Effective October 1, 1991; amended effective June 1, 1996; May 1, 2004; July 1, 2006; July 1, 2010.

**General Authority:** NDCC 39-03.1-06, 39-03.1-08.1, 39-03.1-10.1, 39-03.1-14.1

**Law Implemented:** NDCC 39-03.1-08.1, 39-03.1-10.1, 39-03.1-14.1

#### **71-05-04-04.1. Costs.**

The cost to repurchase service credit must be calculated by applying actuarial factors to the amount of the retirement and retiree health insurance credit being purchased by the contributor or member of an alternative retirement system. The contributor's current age, average salary as calculated under subsection 2 of North Dakota Century Code section 39-03.1-11, and current credited service on record with the North Dakota public employees retirement system in the month in which the contributor's written request is received must be used in the cost calculation. The amount of retirement and retiree health insurance credit benefits being purchased must be calculated using the benefit formulas in place at the time the written request is received from the contributor. When calculating the cost, enhancements to the benefit formula must be considered to be in place at the time the law is signed by the governor.

The retirement board must adopt actuarial assumptions necessary to determine the actuarial factors for the cost calculation. The assumptions must be reviewed concurrently with the assumptions for the retirement program.

Upon receipt of the written request from the contributor, a written cost confirmation must be prepared and mailed to the individual. The cost stated in the confirmation letter is valid for a period of ninety days from the date of the letter unless the contributor terminates employment with the employer. If the contributor terminates employment, then the cost stated in the confirmation letter is valid only until the earlier of the end of the ninety-day period or the fifteenth day of the month following the month of termination.

**History:** Effective June 1, 1996; amended effective May 1, 2004; July 1, 2006.

**General Authority:** NDCC 39-03.1-06, 39-03.1-10.1, 39-03.1-14.1

**Law Implemented:** NDCC 39-03.1-08.1, 39-03.1-10.1, 39-03.1-14.1

#### **71-05-04-05. Delinquent payment.**

If a payment to be made pursuant to section 71-05-04-04 is not received within thirty days of the due

date, the public employees retirement system shall send a letter to the contributor or member of an alternative retirement system advising the person of the delinquency. If no payment is received within sixty days after the due date, the account must be closed. Payments received on a closed account must be returned to the member. The member may submit written documentation as to the cause for the delinquency to the executive director for review and to request that the purchase contract be reestablished without a new calculation.

**History:** Effective October 1, 1991; amended effective June 1, 1996; May 1, 2004.

**General Authority:** NDCC 39-03.1-06, 39-03.1-10.1, 39-03.1-14.1

**Law Implemented:** NDCC 39-03.1-08.1, 39-03.1-10.1, 39-03.1-14.1

#### **71-05-04-06. Crediting purchased or repurchased service.**

For each month the system receives a payment toward a purchase contract, the member will earn a proportion of service credit.

**History:** Effective October 1, 1991; amended effective June 1, 1996; May 1, 2004; July 1, 2010.

**General Authority:** NDCC 39-03.1-06, 39-03.1-10.1, 39-03.1-14.1

**Law Implemented:** NDCC 39-03.1-08.1, 39-03.1-10.1, 39-03.1-14.1

#### **71-05-04-07. Cancellation of credits.**

If a member terminates service and receives a return of the member's accumulated contributions, service credit for the years of such contributions must be canceled.

**History:** Effective October 1, 1991.

**General Authority:** NDCC 39-03.1-06

**Law Implemented:** NDCC 39-03.1-10.1, 39-03.1-14.1

Subdivision c of Subsection 1 is amended as follows:

#### **71-05-04-08. Conversion of sick leave.**

To convert unused sick leave to service credit, the member must notify the office, in writing, of the amount of unused sick leave to be converted and the member's employer must confirm the member's unused balance of accumulated sick leave as of the date the member terminates employment. For members transferring from one participating employer to another participating employer without terminating eligible employment, the public employees retirement system will record unused sick leave of a participating member if the new employer certifies that it will not transfer that leave. The certification must include documentation from the previous employer detailing the number of hours of sick leave. The public employees retirement system must receive the certification within sixty days after the member leaves employment with the former employer.

One month of service credit must be awarded for each one hundred seventy-three and three-tenths hours of unused accumulated sick leave. The cost to convert unused sick leave into service credit must be paid with after tax employee contributions.

1. Aftertax payments may be accepted from the member as early as six months prior to termination if the following requirements are met:
  - a. A notice of termination or application for monthly benefits form is on file with the public employees retirement system.
  - b. A written certification by the member's employer, as to the member's unused balance of accumulated sick leave as of the date the member wishes to begin payment, is on file with the public employees retirement system.



- c. At termination, the sick leave conversion payment must be recalculated using the member's unused balance of accumulated sick leave, confirmed by the member's employer, and the member's final average salary as of ~~that~~ the date of calculation.
- d. If there is a difference between the sick leave conversion payment amount and the amount the member has paid, any overpayment must be refunded to the member and any underpayment must be collected from the member by the fifteenth of the month following the month of the member's date of termination.
- e. The member's record must be updated with the additional service credit once payment is made in full and the member has terminated employment.

Subdivision c of Subsection 2 is amended as follows:

- 2. Pretax rollover or transfer payments may be accepted from the member as early as sixty days prior to termination if the following requirements are met:
  - a. A notice of termination or application for monthly benefits form is on file with the public employees retirement system.
  - b. A written certification by the member's employer, as to the member's projected unused balance of accumulated sick leave no sooner than sixty days prior to the date of termination, is on file with the public employees retirement system. This certification must also include a certification by the employer of the projected salaries to be reported to the public employees retirement system during the final months of employment.
  - c. At termination, the sick leave conversion payment must be recalculated using the member's unused balance of accumulated sick leave confirmed by the member's employer, and the member's final average salary as of ~~that~~ the date of calculation. If there is a difference between the sick leave balance or conversion payment amount and the amount the member has paid, then only the amount of sick leave available as of the termination date will be added to the member's record. The member account balance will be credited with the full amount of funds from the rollover or transfer.
  - d. If an underpayment has occurred, then the remaining amount must be collected from the member by the fifteenth of the month following the month of the member's date of termination.
  - e. The retiree health credit portion must be paid as a personal aftertax payment.
- 3. The member's record must be updated with the additional service credit once payment is made and the member has terminated employment.

**History:** Effective June 1, 1996; amended effective April 1, 2002; May 1, 2004; July 1, 2006; April 1, 2008; \_\_\_\_\_

**General Authority:** NDCC 39-03.1-06

**Law Implemented:** NDCC 39-03.1-30

**71-05-04-09. Employer purchase of service credit or sick leave program.**

An employer may elect to purchase up to five years of service credit for an employee and purchase an employee's unused sick leave that meets the requirements of section 71-02-03-08. Before offering a purchase program to its employees the employer must create a program and document the program in writing and submit a copy to the public employees retirement system. The governing authority of the employer shall also submit to the executive director of the public employees retirement system a letter indicating:

1. The program meets all the requirements of the North Dakota Century Code.
2. The program meets all applicable federal requirements.
3. The employer agrees to remit to the public employees retirement system a lump sum payment of the cost of the purchase upon being billed.
4. The employer has not given the employee the option of a cash payment in lieu of the employer purchase.
5. The employer shall clearly specify who is eligible for the program and indicate if the program is intended to be permanent or will be for a specific time period only.
6. The employer agrees that all purchases for service credit will be based upon actuarial cost as determined by the public employees retirement system. The employer also agrees that all purchases will be completed no later than the fifteenth day of the month following the month of the employee's termination or sixty days from the date the employer and employee agree to the purchase, whichever comes first.
7. The employer agrees that in offering such a program the employer will direct each employee interested in the program to first apply to the employer's authorized agent who will then certify the eligibility of the member, the amount of service credit to be purchased, and send such certification to the public employees retirement system. The employer also agrees that the employer's authorized agent will coordinate the program, authorize all purchases in writing to the public employees retirement system, and be the focal point for communications between the public employees retirement system, the employer, and the employee.
8. The employer agrees that for each employee certified to be eligible to have service credit purchased, the employer will first obtain from the employee authorization for the public employees retirement system to share confidential information with the employer.
9. The employer certifies that in offering the program, the employer is making it available to all employees or a specified class of employees on a nondiscriminatory basis.
10. The employer agrees to provide information and policies pertaining to the employer purchase program pursuant to North Dakota Century Code section 39-03.1-28.

When an employer files the above letter with the public employees retirement system, it may offer the program to its employees. An employer may terminate this program at any time upon the governing authority of the employer sending to the executive director of the public employees retirement system a letter indicating when the program is to be canceled.

**History:** Effective May 1, 2004; amended effective July 1, 2006; April 1, 2008; July 1, 2010.

**General Authority:** NDCC 39-03.1-06

**Law Implemented:** NDCC 39-03.1-10.2

**ARTICLE 71-08  
DEFINED CONTRIBUTION RETIREMENT PLAN**

Chapter

71-08-01	Election and Transfer
71-08-02	Membership in Defined Contribution Retirement Plan
71-08-03	Disability
71-08-04	Qualified Domestic Relations Order
71-08-05	Review Procedure
71-08-06	Uniformed Services Employment and Reemployment Rights Act
71-08-07	Additional Contributions
71-08-08	Temporary Employee Participation
71-08-09	Return to Service – Retired Member
<u>71-08-10</u>	<u>Permanent Employee Participation</u>
<u>71-08-11</u>	<u>Contributions</u>

**CHAPTER 71-08-01  
ELECTION AND TRANSFER**

Section

<del>71-08-01-01</del>	<del>Ability to Elect to Transfer Into the Defined Contribution Retirement Plan</del>
71-08-01-02	Vesting in Transferred Accumulated Fund Balance
71-08-01-03	Spousal Signature Requirements
71-08-01-04	Transfer of Members With Qualified Domestic Relations Order on Their Accounts
71-08-01-05	Transfer Amount of Persons Transferring Into Eligible Employment After December 31, 1999
71-08-01-06	Public Employees Retirement System Retirees Not Eligible to Transfer Upon Return to work
<del>71-08-01-07</del>	<del>Late Election Opportunity</del>
71-08-01-08	Transfer of Funds

Section 71-08-01-01 is repealed.

**~~71-08-01-01. Ability to elect to transfer into the defined contribution retirement plan.~~**

~~Once a member of the public employees retirement system under North Dakota Century Code chapter 54-52 has declined or failed to elect to transfer into the defined contribution retirement plan, that member may not later elect to transfer unless one of the following applies:~~

- ~~1. The member is appointed or elected to a new office that is eligible for the defined contribution retirement plan.~~
- ~~2. The member leaves eligible employment and later reacquires eligible employment.~~

~~**History:** Effective July 1, 2000. Repealed effective \_\_\_\_\_~~

~~**General Authority:** NDCC 28-32-02(1)~~

~~**Law Implemented:** NDCC 54-52.6-02~~

**71-08-01-02. Vesting in transferred accumulated fund balance.**

Vesting in that portion of the accumulated fund balance attributable to the employer's contribution which is transferred from the defined benefit public employees retirement system pursuant to North Dakota Century Code section 54-52.6-03 will follow the same schedule provided in North Dakota Century Code section 54-52.6-10.

**History:** Effective July 1, 2000.

**General Authority:** NDCC 28-32-02(1)

**Law Implemented:** NDCC 54-52.6-03, 54-52.6-10

**71-08-01-03. Spousal signature requirements.**

For purposes of the spousal signature requirements of subsection 4 of North Dakota Century Code section 54-52.6-02 and North Dakota Century Code section 54-52.6-11, extenuating circumstances alleviating the requirement of a spouse's signature are only present if the board determines the spouse is unavailable for the entire election period or the member has a power of attorney over the spouse which would legally allow the member to sign for the spouse.

**History:** Effective July 1, 2000.

**General Authority:** NDCC 28-32-02(1)

**Law Implemented:** NDCC 54-52.6-02(4), 54-52.6-11

**71-08-01-04. Transfer of members with qualified domestic relations orders on their accounts.**

Members of the public employees retirement system under North Dakota Century Code chapter 54-52 who have a valid qualified domestic relations order on their account may only transfer to the defined contribution retirement plan if they obtain a new qualified domestic relations order from the applicable court. The account shall not be transferred unless both the participating member and the member's ex-spouse agree to transfer to the defined contribution retirement plan.

**History:** Effective July 1, 2000.

**General Authority:** NDCC 28-32-02(1)

**Law Implemented:** NDCC 54-52.6-12

Section 71-08-01-05 is amended as follows:

**71-08-01-05. Transfer amount of persons transferring into eligible employment after December 31, 1999.**

The amount the board shall transfer for persons beginning or transferring to eligible employment after December 31, 1999 and before January 1, 2025, shall equal the actual employer and employee contributions plus interest, as provided in subsection 2 of North Dakota Century Code section 54-52.6-03.

**History:** Effective July 1, 2000; \_\_\_\_\_

**General Authority:** NDCC 28-32-02(1)

**Law Implemented:** NDCC 54-52.6-03

**71-08-01-06. Public employees retirement system retirees not eligible to transfer upon return to work.**

A member of the public employees retirement system defined benefit plan who has retired and received a retirement annuity and later returns to work in a position that is eligible for the defined contribution retirement plan is nonetheless ineligible to transfer into the defined contribution retirement plan and must remain a member of the public employees retirement system.

**History:** Effective July 1, 2000.

**General Authority:** NDCC 28-32-02(1)

**Law Implemented:** NDCC 54-52.6-02

Section 71-08-01-07 is repealed.

**~~71-08-01-07. Late election opportunity.~~**

~~An eligible member who is not provided a timely opportunity to enroll in the defined contribution plan within the first six months of employment may be provided additional time to make an election if:~~

- ~~1. The executive director determines that the member was not given an election opportunity within the first six months of employment. The executive director shall then give the member a special enrollment opportunity of three months beginning from the date a new enrollment packet is mailed to the member.~~
- ~~2. The board determines that member was not given timely notice or the member was unable to make an election within the first six months. If the board determines that the member should have an additional election opportunity, the member shall have three months from the date a new enrollment packet is mailed to the member.~~

**History:** Effective April 1, 2002.

**General Authority:** NDCC 28-32-02(1)

**Law Implemented:** NDCC 54-52.6-02

**71-08-01-08. Transfer of funds.**

Pursuant to subdivision a of subsection 4 of North Dakota Century Code section 15-10-7, funds may be transferred on behalf of those persons who are eligible through their employment with the state board of higher education. The following requirements apply:

1. Applicant must file a completed application for the teachers' insurance and annuity association of America - college retirement equities fund.
2. Notice of termination and verification of teachers' insurance and annuity association of America - college retirement equities fund eligibility must be filed by either the applicant or appropriate payroll officer.
3. A participating member is eligible to transfer that person's accumulated balance in the plan upon becoming a former participating member.

**History:** Effective April 1, 2012.

**General Authority:** NDCC 15-10-17

**Law Implemented:** NDCC 15-10-17

## CHAPTER 71-08-08 TEMPORARY EMPLOYEE PARTICIPATION

Section  
71-08-08-01 Temporary Employee Participation

Subsection 1 of Section 71-08-08-01 is amended as follows:

### **71-08-08-01. Temporary employee participation.**

For each eligible employee who elects to participate as such in the defined contribution plan, the following applies.

1. Before January 1, 2025, A temporary employee must submit a completed participation agreement within six months of the date of hire as a temporary employee or within six months of a change in status from a permanent to temporary position. If no application is made and filed with the office, an irrevocable waiver of participation will occur for as long as the employee is in temporary status.
2. Contributions for temporary employees must be submitted no later than the sixth working day of the month for the previous month's salary.
3. Delinquent payments of over thirty days, for reasons other than leave of absence or seasonal employment, will result in termination of eligibility to participate as a temporary member.
4. Upon taking a refund, future participation as a temporary member is waived.
5. A member may not participate as both a permanent and a temporary member. Permanent employment has precedence.

Subsections 6, 7, 8 of Section 71-08-08-01 are created.

6. All temporary employee contributions shall be made on an after-tax basis. An employer shall not enter into a pick-up arrangement under IRC 414(h) with any temporary employee.
7. A temporary employee first employed after December 31, 2024 may elect, within one hundred eighty days of beginning employment, to participate in the defined contribution retirement plan under this chapter. If no application is made and filed with the office, an irrevocable waiver of participation will occur for as long as the employee is in temporary employee status. Monthly, the temporary employee shall contribute an amount equal to nine and twenty-six hundredths percent times the temporary employee's present monthly salary, and may elect to contribute up to an additional one, two, three, four, five or six percent. The election to contribute an additional percent is a lifetime election and will continue for as long as the temporary employee is employed by any participating employer.
8. A temporary employee may continue to participate as a temporary employee until termination of employment or reclassification of the temporary employee as a permanent employee. For a temporary employee that becomes a permanent employee, all provisions applicable to permanent employees shall apply upon eligibility as a permanent employee.

**History:** Effective July 1, 2006; \_\_\_\_\_

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

**Law Implemented:** NDCC 54-52.6-01.3, 54-52.6-02.6, 54-52-02.9, 54-52.6-09.6

**CHAPTER 71-08-10**  
**PERMANENT EMPLOYEE PARTICIPATION**

Chapter 71-08-10 is created as follows:

Section

71-08-10-01 Permanent Employee Participation

71-08-10-02 Contribution

71-08-10-03 Designation of Beneficiary

**71-08-10-01. Permanent employee participation.**

1. Under this section "eligible employee" means a permanent employee who:
  - a. Meets all the eligibility requirements set by NDCC 54-52;
  - b. Is at least eighteen years of age;
  - c. Becomes a participating member after December 31, 2024; and
  - d. Is not eligible to participate in the law enforcement plan, judges' plan, highway patrol plan, teachers' fund for retirement plan, or alternative retirement program established under NDCC 15-10-17 for university system employees.
2. Effective January 1, 2025, the public employees retirement system defined benefit main plan maintained for employees is closed to new eligible employees. However, an employee who first becomes a participating or deferred member under NDCC 54-52 before January 1, 2025, remains in the defined benefit retirement plan under NDCC 54-52, regardless of being rehired after December 31, 2024.
3. Except as otherwise provided under this section, effective January 1, 2025, an eligible employee who begins employment with an employer shall participate in the defined contribution retirement plan under NDCC 54-52.6 as provided under NDCC 54-52.6-02.1.
4. This section does not impact an employee to the extent the employee is a participating member in one or more of the following enumerated plans: law enforcement plan, judges' plan, highway patrol plan, teachers' fund for retirement plan, or alternative retirement program established under NDCC 15-10-17 for university system employees.
  - a. A participating or deferred member in the defined contribution retirement plan under NDCC 54-52.6 who becomes eligible to participate in a plan enumerated under this subsection 4 shall cease participation in the defined contribution retirement plan under NDCC 54-52.6 and commence participation in the retirement plan enumerated under this subsection.
  - b. Unless subsection 2 applies, a participating member of a retirement plan enumerated under this section 4 who ceases participation in that plan and becomes an eligible employee under the defined contribution retirement plan under NDCC 54-52.6 shall participate in the defined contribution retirement plan under NDCC 54-52.6.
5. An eligible employee under section 1 must be enrolled in the plan within the first thirty days of employment.

### **71-08-10-02. Contribution.**

1. A participating member who first joined the defined contribution retirement plan after December 31, 2024, except for an employee who elects to participate in the defined contribution plan under section 54-52.6-02.2, shall contribute monthly four percent of the monthly salary or wage paid to the participant. In addition, the participating member may elect, within thirty days of beginning employment, to contribute monthly to the defined contribution retirement plan up to an additional three percent of the monthly salary or wage paid to the participant. All additional contributions shall be in whole percentages.
2. An employee's election for additional contributions under section 1 is a one-time, irrevocable election as long as the individual is a participating member with any participating employer.

### **71-08-10-03. Designation of beneficiary.**

A member may designate a beneficiary or beneficiaries by filing such designation with the office. A member shall have the right to change the member's designation of beneficiary without the consent of the beneficiary, but no such change shall be effective or binding unless it is received by the office prior to the death of the member. If a vested, married member designates a beneficiary other than or in addition to a spouse, the member's spouse's consent must be obtained before benefits can be paid other than to the member's spouse.

**History:** Effective

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

**Law Implemented:** NDCC 54-52-02.15, 54-52.6-09



## CHAPTER 71-08-11 CONTRIBUTIONS

Chapter 71-08-11 is created as follows:

Section

<u>71-08-11-01</u>	<u>Adjustment for bonuses, profit sharing, and contributions paid in a month other than earned</u>
<u>71-08-11-02</u>	<u>Basis for calculation contributions – Salary reduction – Salary deferral arrangements</u>
<u>71-08-11-03</u>	<u>Employer payment of employee contributions</u>
<u>71-08-11-04</u>	<u>Retirement contributions for individuals working less than forty-hour workweek</u>
<u>71-08-11-05</u>	<u>Individual employee incentive payments</u>
<u>71-08-11-06</u>	<u>Contributions transferred from defined benefit retirement plan</u>
<u>71-08-11-07</u>	<u>Employer paid additional contribution for transferees</u>
<u>71-08-11-08</u>	<u>Employer obligations; employee eligibility</u>

**71-08-11-01. Adjustment for bonuses, profit sharing, and contributions paid in a month other than month earned.**

Adjustments for the following must be made for all members:

1. Participating employers shall report bonuses or profit-sharing amounts paid when remitting the contribution associated with the bonus. Recruitment and retention bonuses under North Dakota Century Code section 54-06-31 are not eligible for consideration as salary and no contributions associated with those types of bonuses shall be submitted.
2. Bonuses or profit-sharing amounts may not be submitted to the public employees retirement system for any month other than the month paid.

**History:** Effective

**General Authority:** NDCC 54-52.6-02

**Law Implemented:** NDCC 54-52.6-01, 54-52.6-02

**71-08-11-02. Basis for calculating contributions - Salary reduction - Salary deferral arrangements.**

1. Amounts deducted from a member's salary at the member's option to a qualified section 125 cafeteria plan, 401(k) plan, 403(b) plan, or 457 plan are part of wages or salary when calculating retirement contributions.
2. Employee contributions paid by the employer under IRC 414(h) pursuant to a salary reduction agreement do not reduce wages or salary when calculating retirement contributions.
3. Amounts contributed to a qualified section 125 cafeteria plan, 401(k) plan, 403(b) plan, or 457 plan by the employer are not part of wages or salary when calculating retirement contributions.

**History:** Effective

**General Authority:** NDCC 54-52.6-02

**Law Implemented:** NDCC 54-52.6-01, 54-52.6-02

**71-08-11-03. Employer payment of employee contributions.**

1. A written election submitted under subsection 3 of North Dakota Century Code section 54-52.6-09 shall be reported to the board a minimum of thirty-one days prior to the effective date.

2. An employer may not discriminate in its contributions to eligible participating employees within the same plan under North Dakota Century Code section 54-52.6-09.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 54-52.6-02

**Law Implemented:** NDCC 54-52.6-09

**71-08-11-04. Retirement contributions for individuals working less than a forty-hour workweek.**

Retirement contributions must be made on wages paid to eligible permanent employees who are regularly scheduled for less than forty hours per week but who work at least twenty hours per week during a twelve-month period.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 54-52.6-02

**Law Implemented:** NDCC 54-52.6-09.6

**71-08-11-05. Individual employee incentive payments.**

Individual employee incentive payments received under North Dakota Century Code section 54-06-24 or similar programs are not considered to be salary and are not subject to retirement contributions.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 54-52.6-02

**Law Implemented:** NDCC 54-52.6-01, 54-52.6-02

**71-08-11-06. Contributions transferred from defined benefit retirement plan.**

1. The lump sum amount to be transferred from the defined benefit retirement plan under NDCC 54-52.6-02.2 and NDCC 54-52.6-03 based on the actuarial present value of the eligible employee's accumulated benefit obligation, as of January 1, 2025, includes an employee contribution portion and an employer contributions portion.
2. The employee contribution portion of the actuarial present value of the eligible employee accumulated benefit obligation means the employee's direct contribution to the defined benefit retirement plan plus the interest on the employee's contributions in the defined benefit retirement plan.
3. The employer contribution portion of the actuarial present value of the eligible employee's accumulated benefit obligation means the lump sum amount transferred minus the employee share. The employee shall vest in the employer contribution under the provisions found in NDCC 54-52.6-10.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 54-52.6-02

**Law Implemented:** NDCC 54-52.6-02.2, NDCC 54-52.6-03

**71-08-11-07. Employer paid additional contribution for transferees.**

For eligible employees who transfer from the defined benefit plan to the defined contribution plan, the eligible employee's state employer, on January 1 of each year an additional contribution is due, will make the additional contribution under 54-52.6-02.2(3) no later than January 15 of the year in which the additional contribution is required. Only eligible employees who are employed by a state employer at the time each additional contribution is required will receive the additional contribution.

**History:** Effective \_\_\_\_\_:

**General Authority:** NDCC 54-52.6-02

**Law Implemented:** NDCC 54-52.6-02.2, NDCC 54-52.6-03

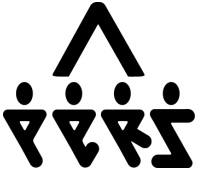
**71-08-11-08. Employer obligations; employee eligibility.**

For the purpose of identifying employer obligations under the provisions of NDCC 54-52-06(1)(a), NDCC 54-52.6-02.2, and NDCC 54-52.6-09.5, and determining employee eligibility under NDCC 54-52.6-02.2, "state governmental unit" and "state employer" are those state entities that receive budgetary approval from the state legislature.

**History:** Effective \_\_\_\_\_:

**General Authority:** NDCC 54-52.6-02

**Law Implemented:** NDCC 54-52-06(1)(a), NDCC 54-52.6-02.2, NDCC 54-52.6-09.5



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# Memorandum

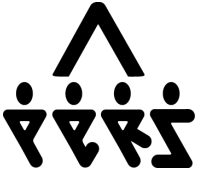
**TO:**                   NDPERS Board

**FROM:**               Tyler Erickson, Election Subcommittee Chair

**DATE:**               June 3, 2024

**SUBJECT:**           Board Election Results

The Election Subcommittee will meet on June 10, 2024, to canvass the electronic election ballots. The results will be announced during the June 11 Board Meeting.



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# Memorandum

**TO:**                   NDPERS Board

**FROM:**               Rebecca Fricke

**DATE:**               June 11, 2024

**SUBJECT:**           Election Subcommittee Charter


One of the goals that our Board set for staff in 2024 was the creation of Charters for each of the Board Subcommittees that did not previously have one. Staff has begun this work effort for the Investment Committee, Election Committee, and Performance and Compensation Review Committee.

During the May 16, 2024 Election Subcommittee meeting, staff presented the draft Charter (Attachment) for committee discussion & approval. Staff will plan on presenting the Charter to the subcommittee each time an election needs to be held, and any proposed edits during the review process will be brought forward to the full Board for approval in the future, if necessary.

**Board Action Requested:**

Review and approve the attached Election Subcommittee Charter.

# Attachment

 <p>NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM</p>	Original Effective Date:
	Revised:
	Approved by Board:
	Page 1 of 1
Election Subcommittee Charter	

## **PURPOSE**

The Election Subcommittee (“Committee”) is appointed by the Board of Trustees (“Board”) of the North Dakota Public Employees Retirement System (“Agency”) to provide oversight of the election process whenever a vacancy occurs, or term is expiring, of an elected member of the Board. Oversight includes ensuring the election rules are followed, counting ballots, and reporting election results to the full Board.

## **STRUCTURE**

The Committee will consist of three members appointed by the Board at the February meeting leading up to an election to serve until the retirement board meeting for the following February. The Board is also responsible for appointing a Committee Chair.

## **MEETINGS**

The Committee will meet to validate the nomination petitions received and approve names to be placed on the election ballot. The committee will again meet to canvass ballots once the election period has closed. Members of the Committee will be compensated for attendance at Committee meetings in accordance with NDPERS’ policy for compensation in effect at the time for Board members.

## **DUTIES AND RESPONSIBILITIES**

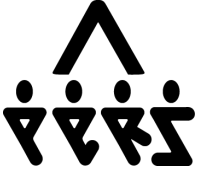
The Committee will carry out the following responsibilities:

### **1) Election Oversight:**

- a. Ensure administrative code ([Chapter 71-01-02](#)) has properly been followed in the election process.

### **2) Other Responsibilities:**

- a. Validate nomination petitions and approve names to be placed on the election ballot.
- b. Canvass the ballots at the end of the election period.
- c. Report election results to the full Board.



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# Memorandum

**TO:**                   NDPERS Board

**FROM:**               Rebecca

**DATE:**               June 11, 2024

**SUBJECT:**           Contracts under \$10,000

Attached is a document that shows the contracts under \$10,000 that have been signed since the last update. Please let me know if you have any questions on any of these contracts.

This topic is informational only.

# Attachment

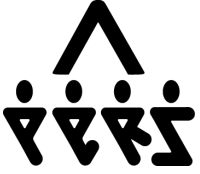
**All Contracts Signed During 2024:**

Vendor	Amount	Notes
CliftonLarsonAllen	\$ -	GASB 68 & 75 Representation Lettess
TIAA	\$ -	Termination notice due to recordkeeper award
BND	\$ 909.00	Staff Years of Service Awards (Gift Cards)
City of Berthold	\$ -	Joined Life Insurance Plan 3/1/2024
Mandaree Public Schools	\$ -	Joined Deferred Compensation Plan 3/1/2024
Interoffice	\$ 1,179.44	Office Chair
Emmons County	\$ -	Joined Public Safety Plan 4/1/2024
City of Leeds	\$ -	Joined Defined Benefit Plan 4/1/2024
City of Leeds	\$ -	Joined Deferred Compensation Plan 4/1/2024
City of Emerado	\$ -	Joined Public Safety Plan 2/1/2024
City of Riverdale	\$ -	Joined Defined Benefit Plan 4/1/2024
City of Riverdale	\$ -	Joined Deferred Compensatoin Plan 4/1/2024
Fireside	\$ 3,079.80	5 year total lease on multi-function printer
Advanced Business Methods	\$ 5,713.20	5 year total lease on document scanner
Eddy County	\$ -	Joined Life Insurance Plan 5/1/2024
Galliard Fund Agreements	\$ -	Lowering the share class in the Galliard investments in the 401(a) & 457 Plans
Larimore Public School	\$ -	Joined Deferred Compensation Plan 1/1/2025
TIAA Deconversion Guide	\$ -	Strategy guide with TIAA for deconvertig to Empower
TIAA Letter of Direction	\$ -	Direction to pay out RMDs & scheduled installments early with TIAA prior to blackout
Empower Letter of Instruction	\$ -	Letter of instruction on brokerage account in 457 and 401(a) plans
Empower Brokerage Application	\$ -	Application on brokerage account in 457 and 401(a) plans
TIAA Custodial Agreement Terminations	\$ -	Termination of Custodial Agreements with TIAA for both the 457 and 401(a) Plans
TIAA Record Keeper Amendment	\$ -	Authorization for TIAA to pull recordkeeper fees through June 2024
Beulah Public School # 27	\$ -	Joined Deferred Compensation Plan 7/1/2024
TIAA Brokerage Re-Registration Letter	\$ -	Authorizes the transfer of brokerage acocunts on both the 457 and 401(a) Plans
Empower Brokerage Transfer Request Form	\$ -	Authorizes the transfer of brokerage acocunts on both the 457 and 401(a) Plans
Empower Plan Asset Transfer & Investment Direction	\$ -	Directs the investments of brokerage acocunts on both the 457 and 401(a) Plans

**Contracts Signed Since Last Reported:**

Vendor	Amount	Notes
Inter Office	\$ 824.76	Rising legs for standing desk
Fireside	\$ 3,930.00	5 year total lease on multi-function printer





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# Memorandum

**TO:**                   NDPERS Board

**FROM:**               Shawna Piatz

**DATE:**               June 11, 2024

**SUBJECT:**           Audit Committee Minutes

Attached are the approved minutes from the February 12, 2024 Audit Committee meeting. The minutes may also be viewed on the NDPERS website at [www.nd.gov/ndpers](http://www.nd.gov/ndpers).

The next regular audit committee meeting is scheduled virtually and in person for August 19, 2024 at 3:00 pm. This is for your information.

Attachment

# Attachment

## MEMORANDUM

**TO:** Audit Committee  
Adam Miller  
Tyler Erickson  
Nina Sand  
Senator Dick Dever  
Joe Morrissette  
Rebecca Fricke  
Derrick Hohbein  
Dean DePountis  
Shannon Ennen

**FROM:** Shawna Piatz, Chief Audit Officer

**DATE:** Monday February 12, 2024

**SUBJECT:** **February 12, 2024 Audit Committee Meeting**

In Attendance:  
Joe Morrissette  
Senator Dick Dever  
Adam Miller  
Tyler Erickson  
Nina Sand  
Dean DePountis  
Shawna Piatz  
Shannon Ennen  
Rebecca Fricke  
Derrick Hohbein

The meeting was called to order at 3:00 p.m. by Mr. Morrissette

### **I. Conflict of Interest Disclosure**

- A. Per direction from the Attorney General's Office this will need to be on the agenda every meeting for the Board and its Subcommittees to consider any conflict of interest disclosures concerning any of the agenda topics. No conflicts of interest were disclosed.

### **II. Approval of prior Audit Committee Minutes**

- A. The Audit Committee minutes from the prior Audit Committee meetings held on November 13, 2023 were examined. Mr. Miller moved approval of the minutes. The motion was seconded by Mr. Erickson. This was followed and approved by voice vote.

### III. Internal Audit Reports

- A. Quarterly Audit Plan Status Report – Information was provided of the past quarter's activity and the 2022-2023 Audit Plan update was provided.
- B. Retirement Benefit Payment Status Report – Information was provided to the Audit Committee, which summarizes the accuracy percentages of the new monthly retirement benefit and refund payments. The report shows the number of new retirees or refunds each month, the total number of new retirees or refunds audited and whether issues identified were procedural, system or compliance issues.

As of January 1, 2024, 310 of the 726 new retirees or \$1,129,708 of the \$2,481,214 total gross benefits issued have been audited. The fiscal year-to-date internal calculation accuracy rate is 96.77% for FY 2024. The fiscal year-to-date compliance/other accuracy rate is 97.1% resulting in an overall accuracy rate of 93.87% for FY 2024.

As of January 1, 2024, 94 of the 1,367 or \$2,619,032 of the \$11,630,529 total gross refunds issued for FY 2024 were audited. The fiscal year-to-date internal calculation accuracy rate is 92.55% for FY 2024. The fiscal year-to-date compliance/other accuracy rate is 95.74% resulting in an overall accuracy rate of 88.3% for FY 2024.

- C. Sanford Interest Calculation Report – Information was provided to the Audit Committee which summarized the audit completed on the Sanford Health Plan 2019 – 2021 Final Settlement. The purpose of this audit was to verify the accuracy of the information contained in the Interest Calculation Report (ICR) and the Final Settlement Statement for the contract period July 1, 2019 through June 30, 2021, which includes an Initial Settlement period for the financial runout period through June 30, 2022 and a Final Settlement period for the financial runout period ending June 30, 2023.
- D. Benefit/Premium Adjustments Report – The quarterly benefit adjustment report was provided to the Audit Committee. The report is in several sections, each representing the type of corrections. The dollar amount and the number of errors has increased slightly over the last quarter. There were 10 adjustments that were new this quarter and 29 previously reported adjustments remain outstanding. The new adjustments were due to the untimely notification of changes in membership status or information, system programming errors and processing errors.
- E. Outstanding Issues Status Report – The Outstanding Issues Status report has been updated to reflect new and outstanding issues as of January, 2024. There were four existing recommendation with no change and fifteen new recommendations added to this report. Staff continue to be proactive about addressing recommendations as they are made.

### IV. Administrative

- A. Annual Comprehensive Financial Report (ACFR) - The 2023 Annual Comprehensive Financial Report (ACFR) has been completed. The report contains detailed financial, investment, actuarial, and statistical information for the

plans administered by NDPERS. Per the Audit Committee Charter, it is the responsibility of the Audit Committee to “Review the annual financial statements, consider whether they are complete, consistent with information known to the Committee, and reflect appropriate accounting principles.”

- B. 2024 Audit Plan - The Audit Plan is updated each biennium with a review and update provided every year. Internal Audit coordinated the completion of the annual risk assessment updates for 2023, reviewed the results and used the information to draft the attached proposed Audit Plan for calendar years 2023 - 2024. A summary of the results of the risk assessments with a comparison to the previous year’s results was provided for review. Senator Dick Dever moved approval of the 2024 Audit plan. The motion was seconded by Mr. Erickson. This was followed and approved by voice vote.
- C. Audit Committee Charter Matrix Review 2023 - Per the Audit Committee charter, the Audit Committee is to “Confirm annually all responsibilities outlined in this charter have been carried out. Review and assess periodically the adequacy of the Committee charter, request Board approval for proposed changes, and ensure appropriate disclosure as may be required by law or regulation.”

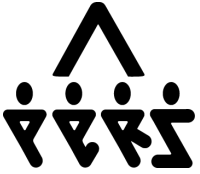
To meet this responsibility a matrix was developed to review against current practices to ensure that the audit committee is meeting its responsibilities. Provided was a summary of the progress made and activities completed through January 2024 for review as well as a copy of the Audit Committee Charter for signatures.

- D. Internal Audit Charter Matrix – In order to confirm all responsibilities outlined in the Audit Committee Charter are carried out annually, a matrix was developed to review each objective quarterly and ensure that the Audit Committee is meeting its responsibilities. The matrix was reviewed and discussed for progress and activities completed through November 2023.
- E. 2023 CAO Annual Performance Evaluation - ND PERS has started the process of completing annual performance reviews. Ms. Piatz will be completing the self-evaluation portion of the evaluation and sending to the Executive Director for her scores, as has been done in previous years. Once complete, a copy of the evaluation with those scores will be provided to each Committee member for their scores and comments. Reviews need to be completed and returned to Rebecca Fricke prior to the next Audit Committee meeting in May at which time the final results will be presented for final review and approval.
- F. 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.” Provided was a summary of the consulting, investment and administrative fees paid during the prior fiscal year ended December 2023
- G. Meeting Dates – The Audit Committee reviewed and discussed the purposed November 2024 Meeting Date. Mr. Erickson moved approval of the date. The

motion was seconded by Senator Dever. This was followed and approved by voice vote.

- H. Travel Expenditures – The Audit Committee reviewed the out-of-state travel expenditures incurred by the Board and/or Executive Director for the period November 1, 2023 through January 31, 2024. This was provided for the Audit Committee’s information.
- I. CPE, Training and Webinars – A report on the training and education, including continuing professional education (CPE) webinars and seminars, Internal Audit participated in for the period November 1, 2023 through January 31, 2024 was provided to the committee for their review.

The meeting adjourned at 4:43 p.m. by Mr. Morrissette.



# Memorandum

**TO:** NDPERs Board  
**FROM:** Derrick Hohbein  
**DATE:** June 11, 2024  
**SUBJECT:** Budget

As reported at the May board meeting, Governor Burgum is urging agencies to create budgets that focus on efficiencies that create budget savings while improving outcomes for our citizens. As a result, he has asked that agencies with appropriation authority that exceeds \$10 million submit a base budget that includes a 3% reduction (\$364,936).

The calculation of our base budget requirement (prior to reduction) is as follows.

	<b>Current Appropriation Authority</b>	<b>Remove One-Time Funding</b>	<b>Cost to Continue</b>	<b>2025-2027 Base Budget Limit</b>
Salaries & Benefits	\$ 7,738,479	\$ -	\$ 1,693,710	\$ 9,432,189
Operating Expenses	2,542,712	(125,000)	64,617	2,482,329
DB Closure	372,027	(330,000)	-	42,027
Contingency	250,000	-	-	250,000
<b>Total</b>	<b>10,903,218</b>	<b>(455,000)</b>	<b>1,758,327</b>	<b>12,164,518</b>

In order to comply with the budget reduction, staff analyzed the “Big Hairy Audacious Goals” (BHAG) that were discussed at the Board Planning Meeting. Because salaries and wages encompass 74% of our budget, any time budget reductions are discussed we need to strategize on how to become efficient and/or outsource benefits in order to reduce staffing levels to comply with the requirement.

One BHAG that staff wanted to consider in the future was analyzing whether the agency should consider having new retirees go to acquire insurance on the market place, rather than having PERS sponsor Retiree Insurance and/or the Medicare Part D plan.

Unfortunately, in order to reduce staff we would need to discontinue all retiree insurances (including Health, Medicare Part D, Dental, Vision, and possibly Life), including for existing retirees. If this option is considered, we'd need to look into if Voya can port the coverage so the individuals who have paid into this program during their post-career timeframes would get the benefit they're entitled to. If Voya cannot port our participant's coverage, Staff believes we'd need to look into our ability to absorb that portion of the benefit amongst remaining team members.

We'd also need to coordinate with the Insurance Department to better understand what that market would look like and see if there are even options where our retirees could obtain coverage.

Another BHAG that Staff wanted to consider in the future was limiting future 457 Deferred Compensation elections to the Companion Plan only, and grandfather existing participants in the plan they are contributing to today. Similar to retiree insurances, in order to comply with a budget reduction we'd not only need to consolidate all providers into the Companion Plan, we'd need to remove our oversight on the other existing providers and not allow any additional contributions to go into those plans. Members may have the ability to keep their funds in the existing providers, but NDPERS would no longer accept ongoing contributions and would not provide reconciliation services to our membership.

If this option is chosen, and ultimately accepted by the Legislature, we may need additional Legislation passed to allow us to move forward with this benefit reduction. We'd also want to better understand what options may be available to our membership, or what ramifications they may face if this were to move forward.

Choosing one of these options will allow staff to complete a base budget reduction that is necessary to comply with the Governor's recommendation.

### **Optional Change Packages:**

Staff is bringing the following optional packages forward for cost approval. At the July board meeting, a final budget will be presented and approved, with these optional packages being submitted as potential additions to our budget. In addition, we are asking the Board to place a "priority" on each change package so Staff can begin the process of entering information into the budgeting software.

#### **1) Restore Benefit Reductions Submitted to Comply with a 3% Reduced Budget**

Unfortunately, Staff believes we are three to four years away from recognizing sufficient efficiencies in our business system to streamline our operations without having to reduce benefits. Staff believes restoring the benefit reduction, along with the corresponding staff, is the most critical optional request heading into session. We do not believe the benefits (and services) we are proposing to discontinue is worth the \$365,000 it would save the State (but could ultimately lead to increased membership costs) or the disruption it would cause our membership.

**2) Cost to Continue Staff & Operational Inflationary Increases.**

In addition to the 3% reduced budget, the Governor did not include funding to continue the 4% Legislatively approved increase for staff, nor did it include funding to maintain the additional 1% contribution to the Main Plan that was included in HB 1040. In order to fund our existing staff salaries ongoing basis, an additional \$138,067 will be needed to maintain our existing staffing levels (assuming no staff are eliminated as a result of the budget reduction proposal). The Governor did fully fund the staffing levels that were part of the FTE pool passed during last session.

As was discussed during the Board planning meeting, technology expenses are the biggest budgetary challenge our agency faces. This is an industry that historically faces 8-12% inflation per year, and unfortunately can have negative perceptions attached to it despite the efficiencies that are gained from the utilization.

Staff is projecting our NDIT costs to go up 17%, or roughly \$95,667 next biennium. This includes NDIT providing telephone services, hosting services, desktop support, and data storage/maintenance. The Governor did include funding for some of this increase (\$64,617), but not the entire package for what our agency utilizes. An additional \$31,050 will be needed to fully offset the NDIT increases next biennium.

Sagitec, who owns and develops our internal operating system is also experiencing cost pressures to keep and maintain their development staff. To utilize the software, and continue our core development team (which includes one Business Analyst and three Developers), inflationary increases total \$203,233. Sagitec’s projected hourly development rate is \$93.36, as compared to NDIT’s projected base development rate of \$120.75 - \$145 an hour.

Finally, WSI has notified us that rent will be going up \$1 per square foot next biennium, or \$12,000 total.

In total we are looking to increase our operating budget by \$246,289 to maintain our day-to-day operations (9.93% for a two year period).

**3) Full-Time Equivalent (FTE) Staff.**

- a. One (1.0) Accounting FTE – This FTE would be used as an “Employer Support Specialist,” and would be a dedicated representative to onboard new authorized agents (the individual responsible for accurate and timely payroll reporting for our employer base). We believe given the critical deadlines within HB 1040 for new hires, that having a dedicated liaison to support our employer base is critical to the long-term success of the Defined Contribution Plan.

Salaries & Benefits	\$ 239,016
Operating Expenses	\$ 3,750



Included in operating expenses is the cost to add another user to NDIT's desktop support services and telephone.

- b. One (1.0) Benefits FTE – This FTE would be used as an additional Benefit Enrollment Specialist in our agency. The leanest division we currently have is our Enrollment Division, and they are the ones most impacted by the changes within HB 1040. Given the fact that elections and employer matchings will now vary by participant, having proper depth in our enrollment division is another component we view as being critical for the long-term success of the Defined Contribution plan.

Salaries & Benefits	\$ 203,648
Operating Expenses	\$ 3,750

Included in operating expenses is the cost to add another user to NDIT's desktop support services and telephone.

**4) Determination Letter.**

Staff will move forward with the IRS determination letter and letter of ruling based on the discussion during the June meeting. If it ultimately is decided to move forward with the process next biennium, then staff will bring forward an optional change package with the funding information for approval in July.

**5) One-Time Funding Request to Continue the Additional Sagitec Developer(s).**

Last session our agency asked for one additional developer to help us further modernize our business system, and one additional developer to program the closure of the Defined Benefit plan.

Staff is interested in trying to make a significant push in completing the automation that can exist in our business system. In order to accomplish this task, we believe we would need to add a Business Analyst, as well as two additional developers next biennium.

One additional Business Analyst would have an appropriated cost of \$274,424 a biennium. Each additional developer would have an appropriated cost \$132,585.50 a biennium.

**6) Staffing Compensation.**

At the May Board meeting, Staff discussed the compensation considerations within our office. In total, we are seeking approval for \$155,848 to be considered to recognize the one staff member that is significantly below where they should be compared to other ND state team members, the ongoing funding to add two

additional Board members that was not funded last session, a part-time intern in the agency, and lastly the workload shifts that have taken place on the Executive Management team with the permanent appointment of the Executive Director.

**7) Self-Funded Staffing.**

If the PERS Health Insurance Plan and/or pharmacy benefits were to be awarded on a self-funded basis, the administrative efforts would substantially increase in addition to PERS' accountability for the plan. Today, most of the administrative and financial/operational risk resides with Sanford Health Plan. However, on a self-funded basis that would become the Board's responsibility.

Last session staff proposed adding an Accountant, a Member Services Representative, a Benefits Manager, and a Registered Nurse onto the team to accommodate this transition. Cost information for each of these positions is as follows:

Accountant (Fiscal Services V)

Salaries & Benefits	\$ 239,016
Operating Expenses	\$ 3,750

Member Services (Admin Services III)

Salaries & Benefits	\$ 182,645
Operating Expenses	\$ 3,750

Benefits Manager (Manager III)

Salaries & Benefits	\$ 305,400
Operating Expenses	\$ 3,750

Registered Nurse (Medical Services IV)

Salaries & Benefits	\$ 236,097
Operating Expenses	\$ 3,750

Included in operating expenses is the cost to add another user to NDIT's desktop support services and telephone.

If we also carve out the PBM benefit and we end up with a bid that is self-insured/transparent on the pharmacy side we also feel like we'll need to add a Pharmacist or Pharmacist Technician to our team as well.

Pharmacist (Medical Services VII)

Salaries & Benefits	\$ 377,883
Operating Expenses	\$ 3,750

Included in operating expenses is the cost to add another user to NDIT's desktop support services and telephone.

**Board Action Requested:**

Staff is seeking cost approval and a priority assigned to Initiatives #1-7 from the memo. Based on that guidance, we will develop a specific budget proposal for your final approval at the July Board meeting.

**MEMBER \*\*EXECUTIVE SESSION**  
**Insurance Benefit Appeal Case #859**  
**Unforeseeable Financial Hardship Case #860**

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

Material for the Executive session will be sent under separate cover.