



**North Dakota
Public Employees Retirement System**

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To: County Employers participating in NDPERS Retirement

From: NDPERS

Date: March 31, 2025

PARTICIPATION IN RETIREMENT AS AN ELECTED COUNTY OFFICIAL

NDPERS has recently received guidance from our federal compliance consultant that there is a conflict between federal law and North Dakota state law specific to participation of elected county officials in the NDPERS retirement plans. Specifically, federal law prohibits allowing a waiver of participation once an employee elects to join the retirement plan if the employee remains employed with the same employer in an eligible position.

NDPERS realizes the ND state law regarding elected county officials conflicts with federal Internal Revenue Service (IRS) code for elected officials and will address this with future proposed legislation; however, federal law supersedes state law.

The specific federal law is Return-to-Work IRS Treasury Regulation § 1.401-1(a)(2)(i); Revenue Ruling ("Rev. Rul.") 74-254, 1974-1 C.B. 94; Internal Revenue Code ("Code") § 401(a)(36) and Cash or Deferred Arrangement (CODA) Code § 401(k)(4)(A); Treas. Reg. §§ 1.401(k)-1(a)(3)(v) and 1.401(k)-1(e)(6).

Situation:

A member (employee or elected official) that previously participated in a NDPERS retirement plan with a county is elected to an elected official position with the same county.

Result:

The county elected official is required to participate in the retirement plan as an elected official because both positions with this same employer contribute on a pre-tax basis. Under federal CODA provisions, continued pre-tax contributions into the retirement plan is required if the employee remains with the same employer in an eligible position even if there is a break in service between the positions.

Based upon this guidance and NDPERS becoming aware of a member record being impacted; NDPERS will research retirement benefit eligibility, suspend benefits if needed, and request for funds to be returned to maintain federal compliance of the plan.