

Nelson, Jeffrey N.

From: Collins, J. Sparb
Sent: Wednesday, January 07, 2009 6:56 AM
To: Webb, Aaron K.; Nelson, Jeffrey N.
Subject: FW: NDPERS - eligibility to participate for Metropolitan Planning Organization

FYI

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From: Walker, Melanie [mailto:mwalker@segalco.com]
Sent: Tuesday, January 06, 2009 5:32 PM
To: Collins, J. Sparb; Webb, Aaron K.
Subject: NDPERS - eligibility to participate for Metropolitan Planning Organization

Pursuant to our discussion on the above referenced topic today, I researched whether the fact that some services provided by the Metropolitan Planning Organization (MPO) are utilized in the State of Minnesota affects the governmental plan status of North Dakota PERS, which MPO joined in accordance State law. As you can imagine, there is not much guidance from the IRS, DOL or PBGC on this issue. The definition of "governmental plan" under Code section 414(d) requires only that the plan is established and maintained by the government of any State, political subdivision or agency or instrumentality thereof. To the extent MPO fits this description (e.g., it is an agency or instrumentality of the State), then there should be no effect on the status of PERS.

It is interesting to note that the IRS stopped issuing private letter rulings on whether a plan is a governmental plan under Code section 414(d) in 2007 because they stated they are working with the DOL and PBGC on joint guidance on this issue, but so far no such guidance has been provided. It is likely that any future guidance on the definition of governmental plan would apply prospectively only.

Also, there are a few rulings on interstate or multistate entities as governmental plans, and generally in such circumstances all states involved approve or govern the entity or it is controlled by the federal government. Still, there is no such explicit requirement for a governmental plan that all affected states be involved in the governance of the plan.

I hope this is helpful. If you want to discuss further, please let me know.

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