



**North Dakota  
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# Memorandum

**TO:** Employee Benefits Programs Committee

**FROM:** Scott Miller, NDPERS Executive Director

**DATE:** November 1, 2023

**SUBJECT:** Required Minimum Distribution Change

The federal government has again increased the age at which retirees must receive a "Required Minimum Distribution" from a retirement account. For many years that age was 71 ½. A few years ago the federal government raised it to age 72. In the SECURE 2.0 act, the federal government has now raised it to age 73, and have stated they will most likely raise it again in the future.

NDCC section 54-52-28(2) requires us to follow the required minimum distribution rules under section 401(a)(9) of the Internal Revenue Code. Unfortunately, NDCC section 54-52-28(2) also specifically provides the age 72 requirement. Given the change in federal law, and the probability of changes in the future, we would suggest removing the specific age and merely cite the federal law requirements, as follows.

54-52-28. Internal Revenue Code compliance.

2. The minimum distribution rules under section 401(a)(9) of the Internal Revenue Code, including the incidental death benefit requirements under section 401(a)(9)(G), and the regulations issued under that provision to the extent applicable to governmental plans, as amended. Accordingly, benefits must be distributed or begin to be distributed no later than a member's required beginning date, and the required minimum distribution rules override any inconsistent provision of this chapter. ~~For a member who attains age seventy and one-half before January 1, 2020, the member's required beginning date is April first of the calendar year following the later of the calendar year in which the member attains age seventy and one-half or terminates employment. For a member who attains age seventy and one-half after December 31, 2019, the member's required beginning date is April first of the calendar year following the later of the calendar year in which the member attains age seventy-two or terminates employment.~~

Because this is a federal law we must follow, NDCC section 54-52-23 allows the NDPERS Board to:

1. Determine that any section of chapter 54-52 does not comply with federal statutes or rules;
2. Adopt appropriate terminology to comply with those federal statutes or rules; and
3. Request the approval of the Employee Benefits Programs Committee.

Any modifications made in this manner are effective until the effective date of any legislation we propose to make the official modifications to the statute.

At its meeting on November 14<sup>th</sup>, the NDPERS Board determined that NDCC 54-52-28(2) does not comply with federal statutes, adopted the above terminology, and approved the submission of a request to the Employee Benefits Programs Committee to approve the use of this terminology until a new statute with the new terminology can be passed and become effective.

We ask for your approval of the use of the above terminology for purposes of determining the age at which retirees must take required minimum distributions.