

Eligibility for Membership in the South Dakota Retirement System

FEDERAL FRAMEWORK

SDRS is a qualified governmental plan under Internal Revenue Code (IRC) Section 401(a). As part of the IRC qualified plan framework, IRC Subsection 414(d) identifies a "governmental plan" as follows:

For purposes of this part, the term "governmental plan" means a plan established and maintained for its employees by the Government of the United States, by the government of any state or political subdivision thereof, or by any agency of instrumentality of any of the foregoing...

The federal government, state governments, and political subdivisions of states are easily identified. The more difficult entities to identify are the agencies and instrumentalities of states. These entities may be recognized as governments by state law, court decision, or an examination of facts and circumstances that indicate the entity has characteristics of a government. Generally, an instrumentality is operated for public purposes, i.e., performs governmental functions, but does not have the full powers of a government (e.g. police powers, taxation). An entity performing governmental functions is most often considered an instrumentality of the state.

STATE FRAMEWORK

SDRS is also governed by state law, which does not differ in any significant way from the federal law. SDCL Chapter 3-12 addresses what entities or employer units may be members of SDRS. SDCL 3-12-47 (30) sets out employer membership in SDRS by defining "employer" as follows:

(30) "Employer," the State of South Dakota and any department, bureau, board, or commission thereof, or any of its governmental or political subdivisions or any public corporation of the State of South Dakota which elects to become a participating unit;

Any employer unit may join SDRS as provided in SDCL 3-12-67, which states, in part:

Any political subdivision and any public corporation, including municipalities, counties or chartered governmental units in the State of South Dakota, may become a participating unit by a duly passed resolution of its governing body...

SDCL 3-12-47(56) defines "political subdivision" as follows:

(56) "Political subdivision" includes but is not limited to municipalities, school districts, counties, chartered governmental units, any public corporation or entity, and any special districts created for any governmental function;

CLOSING REMARKS

To be a member of SDRS the employer must be qualified under federal and state law. If qualified there is no prohibition to their participation in SDRS. Any attempt to change or limit participation of employers must be viewed with caution if such actions would treat new employers in a manner different from other qualified employers that are members of SDRS. In addition, the IRS currently has regulations under consideration to provide further guidance on the definition of governmental plan, specifically who is eligible for membership. Until some determination is made at the federal level, any action at the state level is premature.

As a final note, SDRS quite frequently rejects employer requests for membership. Those employers usually are public-spirited, but private, non-profit corporations that are not mentioned in or regulated by state statute. Such employers thus are not included in the IRC definition or in SDRS law.

