

ARTICLE 82-03 PARTICIPATION

Chapter
82-03-01 Membership in the Fund

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82-03-01-01. Teachers' withdrawal from fund - Refund.

When a teacher terminates covered employment, the teacher may claim a refund of assessments paid to the fund during membership. A teacher wishing to claim a refund of assessments must request an application from the administrative office, complete the form, and return it for processing. Once the application has been processed, the refund will be paid the first day of the month following the expiration of one hundred twenty calendar days from the last date of covered employment.

The waiting period may be waived by the board if the teacher produces evidence that the teacher will not be returning to covered employment in North Dakota. The following written evidence is required before the board will grant a waiver:

1. Proof of resignation or nonrenewal of contract;
2. Proof that the teacher's employer has accepted the resignation, i.e., letter or copy of official school board minutes; and
3. Proof that the individual has either accepted noncovered employment or permanently relocated out of state, or a medical statement from a medical doctor attesting to nonemployment during the upcoming school year for medical reasons.

No refund can be issued to a teacher who has terminated a teaching position only for the summer months or for a leave of absence.

History: Effective September 1, 1990; amended effective April 1, 1994; May 1, 1998; May 1, 2000.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-20

82-03-01-02. Nonvested teachers' withdrawal from fund - Refund.

Repealed effective July 1, 2008.

82-03-01-03. Termination of participation.

A teacher who terminates covered employment and receives a refund of the teacher's account balance forfeits all benefit service credit under the fund.

History: Effective September 1, 1990.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-20

82-03-01-04. Repurchase of forfeited service credit.

An individual who has forfeited service credit under section 82-03-01-03 may repurchase such service upon returning to teach or becoming an active dual member in accordance with the following:

1. An active teacher may immediately repurchase forfeited service credit upon returning to TFFR-covered employment. If the repurchase payment is made within five years of returning to teach, the repurchase cost must be the amount withdrawn plus interest.
2. An active member of the public employees retirement system or the highway patrol retirement system may repurchase withdrawn service credit from the fund. If the repurchase is made within five years from the date of initial eligibility or July 1, 1987, the repurchase cost must be the amount withdrawn plus interest.
3. If the repurchase payment is not made within five years, the cost of the remaining service credit will be calculated on an actuarial equivalent basis.
4. The cost may be paid in a lump sum or in installments. Installments may be made monthly, quarterly, semiannually, or annually for up to five years. Interest is charged on the unpaid balance based on the actuarially assumed investment return rate in effect at the time the member signs the installment agreement.
5. If a teacher retires prior to full payment of the repurchase amount, service credit will be granted in proportion to the actual principal payments made or the teacher may elect to make a lump sum payment to complete the purchase or elect to have the payments included in a refund of the account balance.
6. If a teacher passes away prior to full payment of the repurchase amount, service credit will be granted in proportion to the actual principal payments made or the designated beneficiary may elect to make a lump sum payment to complete the purchase or elect to have the payments included in a refund of the account balance.

History: Effective September 1, 1990; amended effective May 1, 1992; April 1, 1994; May 1, 1998.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-24

82-03-01-05. Purchase of benefit service credit.

A teacher may purchase additional eligible benefit service credit in accordance with the following:

1. Out-of-state teaching service at a public, private, or parochial school must be verified by the out-of-state employer or retirement system, or both, where the service was earned.
2. Military service must be verified by submitting military service discharge documents.
3. Professional education organization service must be certified by the teacher's participating employer.

4. Legislative service must be certified by the teacher's participating employer and must indicate the number of uncompensated days and salary information as required by the fund.
5. Government agency service as an administrator or teacher must be verified by the federal agency which employed the teacher.
6. Leave of absence from teaching service must be verified by the employer who granted such leave.
7. Nonpublic teaching service at a North Dakota private or parochial school must be verified by the employer or the retirement system, or both, where the service was earned.

In all cases, the purchase cost must be on an actuarial equivalent basis determined by applying the actuarial factors adopted by the board.

The cost may be paid in a lump sum or in installments. Installments may be made monthly, quarterly, semiannually, or annually for up to five years. Interest is charged on the unpaid balance at the actuarial assumption rate for investment earnings.

If a teacher retires prior to full payment of the purchase amount, service credit will be granted in proportion to the actual principal payments made, or the teacher may elect to make a lump sum payment to complete the purchase or elect to have the payments included in a refund of the account balance.

If a teacher passes away prior to full payment of the purchase amount, service credit will be granted in proportion to the actual principal payments made or the designated beneficiary may elect to make a lump sum payment to complete the purchase or elect to have the payments included in a refund of the account balance.

History: Effective September 1, 1990; amended effective May 1, 1992; April 1, 1994; May 1, 1998; May 1, 2000.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-24

82-03-01-06. Veterans' rights.

A member may be entitled to eligibility service credit for military service under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301 et seq.] provided that the member received an honorable discharge and had the member's North Dakota teaching service interrupted by military duty after December 31, 1994. Interruption of service requires the member to enter military service within ninety days of leaving covered teaching employment and reenter covered employment within ninety days of the member's honorable discharge. Notwithstanding the preceding sentence, effective for deaths occurring on or after January 1, 2007, if a member dies while performing qualified military service (as defined in the Internal Revenue Code section 414(u)(5)), the fund shall provide all applicable benefits required in accordance with Internal Revenue Code section 401(a)(37), as if the member had resumed covered employment on the day preceding death and terminated employment as of the actual date of death. For benefit calculation purposes, the fund will treat a member who dies or becomes disabled (as defined under the terms of the fund) while performing qualified military service as if the member resumed employment in accordance with the member's reemployment rights under USERRA on the day preceding death or disability and terminated employment on the actual date of death or disability. A member eligible to receive military credit under USERRA will have the service credit recognized for vesting and benefit eligibility purposes.

In addition to having the service credit recognized for vesting and benefit eligibility purposes, at the member's option, a member eligible to receive military credit under USERRA may pay an amount calculated by the fund to allow the credit to be used for benefit calculation purposes. A member may

purchase up to five years of military credit and must apply for and complete the purchase prior to retirement. The member must provide a copy of the member's military discharge papers (DD214) as proof of eligibility. The time frame to purchase military service under USERRA begins with reemployment and is equal to three times the length of the military service but may not exceed five years.

The cost to purchase USERRA military credit for benefit calculation purposes is the member and employer contributions required under North Dakota Century Code section 15-39.1-09 had the member's employment not been interrupted by military service. The member contributions must be applied to the member's annual salary at the time of the military leave. The member contributions must be paid by the member if the employer is withholding contributions under a salary reduction plan. If the employer is paying all of the member contributions as a salary supplement, the employer is responsible for payment of any member contributions owed. If the employer is paying a portion of the member contributions as a salary supplement, both the member and employer are responsible for payment of the member contributions. The employer is required to pay the employer contributions. No interest is charged if the credit is purchased within the time frame allowed under USERRA.

Effective January 1, 2009, compensation shall include military differential wage payments, as defined in Internal Revenue Code section 3401(h), for purposes of calculation of contributions and benefits.

If the credit is not purchased within the USERRA time frame, the cost becomes the responsibility of the member and six percent interest is charged beginning with the date the USERRA time frame elapsed.

History: Effective May 1, 1992; amended effective May 1, 1998; May 1, 2000; July 1, 2012; April 1, 2016.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-24, 15-39.2-01.2; 26 USC 401(a)(37), 26 USC 414(u)(12)(A)

82-03-01-07. Nonrecognition of waived service credit.

The teachers' fund for retirement will not recognize for any purpose service credit from another retirement system that the member waived as a result of the member's participation in the public employees retirement system's defined contribution retirement plan.

History: Effective May 1, 2000.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-24

82-03-01-08. Dual membership - Receipt of retirement benefits while contributing to the public employees retirement system or the highway patrolmen's retirement system.

1. Dual members may select one of the following options at retirement eligibility:
 - a. Begin receiving retirement benefits from one plan prior to ceasing employment covered by the alternate plan, unless the continued employment is with the same employer.
 - b. Begin receiving retirement benefits from one plan and begin work in a job covered by the alternate plan if for a different employer.
 - c. Continue participating as a dual member and begin receiving retirement benefits from both plans after ceasing employment.
2. The following limitations apply when a member elects an option under subsection 1:

- a. Eligible service credit may be used for vesting purposes and determining when the dual member may begin drawing normal retirement benefits. A member may begin drawing retirement benefits from one fund and use the same years, and any additional years, for reaching retirement from the alternate fund so long as service credit does not exceed one year in any fiscal year.
- b. If a dual member elects to receive retirement benefits as provided in subdivision a or b of subsection 1, the final average salary, service credit, and member's age used to calculate the benefit that is applicable at the time retirement benefits begin may not be adjusted after the benefit effective date.
- c. The salary used in calculating the retirement benefit must be provided in writing by the alternate retirement system.

History: Effective May 1, 2004; amended effective April 1, 2016.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-10.3

82-03-01-09. Employer service purchase.

An employer may elect to purchase up to three years of service credit for an active employee. In order to make the purchase, an employer must develop an employer service purchase program as outlined below:

1. The program must be in writing and meet all the conditions and member eligibility requirements in North Dakota Century Code section 15-39.1-33.
2. The program must be in compliance with the federal Age Discrimination in Employment Act and other federal and state laws.
3. The program must include specific guidelines for determining for whom the employer will purchase service credit.
4. The employer must not give the employee the option of a cash payment in lieu of the employer service purchase.
5. The employer must certify in writing that the program meets the necessary legal requirements prior to making the employer service purchase.
6. The teachers' fund for retirement will provide the purchase price amount to the employer.
7. If the service is purchased, the teachers' fund for retirement will credit the service to the member.

History: Effective May 1, 2004.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-33