LEGISLATIVE EMPLOYEE BENEFITS PROGRAMS COMMITTEE
April 27, 2010

Fay Kopp, Deputy Director/Retirement Officer
ND Retirement and Investment Office - ND Teachers' Fund for Retirement

TFFR Legislative Proposal – Bill No. 56

Bill No. 56 was submitted by the TFFR Board. This proposal makes a number of technical and administrative changes to the TFFR program. These changes are not expected to have an actuarial effect on the plan, and are not being submitted for funding improvement purposes.

In general, the proposed changes clarify the definition of eligible retirement salary and update beneficiary and death benefit provisions. The bill also incorporates federal tax law changes to stay current with federal Internal Revenue Code (IRC) changes as they relate to qualified governmental plans. The amendments are intended to prevent a change in the federal IRC from automatically triggering a change in ND law.

Section 1. NDCC 15-39.1-04 (2) Definitions: Beneficiary

Clarifies the definition of beneficiary to include any person, estate, or organization designated in writing by a participating member, or any benefit recipient, or as provided for in NDCC 15-39.1-17 (payment of death benefits).

Language describing to whom and when death benefits are paid to a beneficiary or spouse, has been moved to NDCC 15-39.1-17. (See Section 4.)

Section 1. NDCC 15-39.1-04 (9) Definitions: Eligible Retirement Salary

State statutes broadly define eligible retirement salary for TFFR purposes. In general, eligible salary means a member's earnings in covered employment for teaching, supervisory, administrative, and extracurricular services during a school year. The current definition of salary also includes bonus amounts paid to members for performance, retention, experience, and other service-related bonuses, unless amounts are conditioned on or made in anticipation of an individual member's retirement or termination.

State statutes also describe what benefits or payments are not eligible retirement salary. For example, eligible retirement salary does not include fringe benefits; insurance programs; payments for unused leave; early retirement incentive payments, severance pay, or any other payments conditioned on or made in anticipation of retirement or termination; teacher's aide pay, referee pay, bus driver pay, or janitorial pay; amounts received by a member in lieu of previously employer-provided benefits or payments that are made on an individual selection basis; recruitment bonuses; or other benefits or payments not defined which the board determines to be ineligible teachers' fund for retirement salary.

Salary practices which used to be relatively simple and straightforward (employment contract based on negotiated agreement containing salary schedule and extracurricular activity pay schedules) are becoming more complex (one line salary schedules with special provisions, special payments funded through oil royalty funds, unused budget surpluses, new programs, special grants, additional professional development funding, etc.). Some special payments are included in negotiated agreements, while others are not included and based upon special school board action or policy. Sometimes special payment provisions are included on the member's employment contract; sometimes they are not. The reasons for these special payments are many and varied, and it is becoming more difficult to adequately and consistently address each individual situation. TFFR is increasingly faced with making determinations about whether special payments are eligible retirement salary for TFFR purposes, subject to employer and employee contributions, and ultimately used to calculate pension benefits at retirement. Also, TFFR monitors member accounts for potential "salary spiking" practices.

The proposed changes to the salary definition are being made to comply with IRS requirements, to better clarify eligible salary, and to clearly allow the Board to determine ineligible salary.

- Updates reference to federal tax law changes to comply with IRS qualification requirements. Increases the maximum annual compensation limit that can be used in benefit calculations ($245,000 in 2010). No active TFFR member has a salary large enough to be affected by this limit.

- Removes retention, experience and service related bonuses from automatically being included as eligible retirement salary. It is TFFR's understanding that the only bonuses that can legally be paid to teachers are signing bonuses (authorized in NDCC 15.1-09-33.1). Therefore, other amounts paid to members may need to be reviewed on a case by case basis to determine whether such special payments are for performance of duties and eligible retirement salary, or whether the amounts are payments intended to boost salary for retirement purposes (salary spiking) which would be ineligible retirement salary.

- Defines recruitment bonuses (which are not eligible retirement salary) as the signing bonuses authorized in NDCC 15.1-09-33.1 in 2007.

- Clarifies the TFFR Board is authorized to determine whether special benefits or payments not defined in this section are eligible or ineligible retirement salary on a case by case basis based on criteria determined by the Board.

Section 2. NDCC 15-39.1-10(4) Eligibility for benefits

Updates reference to federal tax law changes to comply with IRS qualification requirements. Provision relates to minimum distribution requirements requiring payment of retirement benefits at age 70.5 or termination of employment, whichever is later.

Section 3. NDCC 15-39.1-10.6 Benefit limitations

Updates reference to federal tax law changes to comply with IRS qualification requirements. Increases the Section 415 maximum annual benefit limit ($195,000 in 2010). To date, no retiree's benefit has ever exceeded the annual benefit limit, nor is it expected to apply to any retiree's benefit in the future.

Section 4. NDCC 15-39.1-17 Death of Member

Because some of TFFR's beneficiary and death benefit payment provisions are unclear, out of date, and could be better handled through probate proceedings, TFFR's legal counsel from the Attorney General's Office recommends amending this section.

- Deletes outdated language.

- Clearly describes to whom, under what conditions, and what amount of death benefits should be paid to a beneficiary, spouse, or estate.

- Updates death benefit language if there is no named beneficiary or spouse. Death benefits will no longer be paid directly to the surviving children, but will instead be paid to the estate of the deceased member. The estate would then be responsible for ensuring death benefits are paid out to surviving children or others as required under probate law. TFFR would no longer be responsible for identifying and locating surviving children in order to make death benefit payments. This is a task better suited for the court system through probate proceedings.

- Removes language that requires TFFR to pay benefits to any "heirs at law" who file claims with TFFR. Currently, TFFR is responsible for determining the meaning of "legal heirs" for the purpose of accepting or rejecting claims for death benefits. Again, this is an area of law that is well defined under North Dakota probate law. If there is no spouse, and no beneficiaries are named and no probate proceedings have been commenced for the member, under the proposed amendment, TFFR will maintain possession of the account balance until a probate estate has been opened.

- Removes the seldom used 60-monthly payment option for beneficiaries of a deceased vested non-retired member. Multiple beneficiaries would receive death benefits as a lump sum payment. If only one beneficiary is named, death benefits would be paid as a lifetime monthly annuity or a lump sum payment.

<u>Section 5. NDCC 15-39.1-20 Withdrawal from fund</u>

This amendment is being made at the request of TFFR's outside tax counsel as part of a legal review for compliance with Internal Revenue Code (IRC) qualification requirements. TFFR Board is filing a determination letter request in 2010 to ensure that the plan document meets all IRC requirements. TFFR's last determination letter was in 2001.

- Clarifies that a member or a member's beneficiary may elect to have any portion of an eligible rollover distribution paid to an eligible retirement plan permitted under IRC.