

**LEGISLATIVE ADMINISTRATIVE RULES COMMITTEE**  
**June 14, 2012**  
**Title 82, ND Administrative Code, July 2012 supplement**

**Shelly Schumacher, Retirement Program Manager**  
**ND Retirement and Investment Office - Teachers' Fund for Retirement**

On behalf of the TFFR Board of Trustees, the following testimony is given concerning the administrative rules adopted by the Board relating to its retirement plan for ND public school teachers and administrators.

- 1) Most of the rule changes are the result of statutory changes made by the 2011 Legislature (HB 1133 and HB 1134), with a few administrative changes to clarify certain provisions in NDCC Chapter 15-39.1.
- 2) There are also a few rule changes relating to changes in federal law, including the HEART Act (Heroes Earnings Assistance and Relief Tax Act), Public Law No. 110-245 updates.
- 3) The TFFR Board follows a standard procedure in its rulemaking process as required by state law. The rule changes were drafted under the direction of the TFFR Board of Trustees, and submitted to TFFR's legal counsel and actuarial consultant for input and review. The Board approved the proposed administrative rule changes at its October 27, 2011, board meeting.

On November 16, 2011, a Notice of Intent to Adopt and Amend Administrative Rules was filed with the Legislative Council and a Publication Notice was sent to the North Dakota Newspaper Association. The notice was published in each official county newspaper during the time frame of November 27 – December 9, 2011 (except for Minot Daily News which published notice on January 15, 2012). TFFR also uses direct mail and electronic mail to notify interested persons and organizations of proposed rulemaking. On November 16, 2011, the hearing notice

and proposed rules were posted on the NDRIIO website, sent to all school districts and participating employers, and sent to member and employer interest groups (ND Education Association, ND Council of Educational Leaders, ND Retired Teachers Association, and ND School Board Association). Notice was also included in member and employer newsletters distributed in December 2011 and January 2012.

A public hearing was held prior to the TFFR Board meeting on January 26, 2012 at the State Capitol. Individuals present were TFFR Board members, RIO staff, legal counsel, and representatives from member and employer interest groups.

After the public comment period which ended February 10, 2012, the proposed rules were sent to the Attorney General's Office for review. The Attorney General's Office examined the changes and the rulemaking process and approved them on March 15, 2012. The TFFR Board formally adopted the administrative rules on March 15, 2012.

4) No oral or written comments on the proposed rules were submitted at the public hearing, nor during the public comment period.

5) Total cost for developing and adopting the rules was \$9,952. This includes advertising costs of \$1,563 for publishing the notice in the county newspapers. It also includes fees to assist in drafting and reviewing the proposed rules of \$2,080 from the Attorney General's Office, \$3,328 from outside tax counsel, and \$2,981 from the Fund's actuarial consultant.

6) Following is an explanation of the new rules and amendments made to implement new statutory provisions (HB 1133 and HB 1134) approved by the 2011 Legislature, to clarify certain other provisions in NDCC Chapter 15-39.1, and to update rules to reflect changes in federal law, specifically relating to veteran's rights (HEART Act).

Section	SUMMARY / DESCRIPTION OF CHANGE	Reason for Change
82-02-01-01	<b>Definitions</b> – creates definitions for the following words or phrases.	Implement 2011 legislation, and Administrative update
82-02-01-01(1)	Defines “acceptance of benefit” as the benefit payment date which is first calendar day of each month for purposes of determining when retirement occurs. (p.163)	HB1133, Section 4-Death Benefits, and Administrative update
82-02-01-01(5)	Defines “bonus” as an amount paid in addition to regular contract salary which does not increase member’s base rate of pay, is not expected to recur, or is not expected to be a permanent salary increase. Clarifies that bonus pay is not eligible retirement salary under N.D.C.C. § 15-39.1-04(9). (p.163-164)	HB 1133, Section 1-Salary
82-02-01-01(11)	Defines “member” as a teacher. Teacher is defined in N.D.C.C. § 15-39.1-04(11). Clarifies that “member” and “teacher” are used interchangeably. (p. 164)	Administrative update
82-02-01-01(12)	Updates rule to make consistent with N.D.C.C. § 15-39.1-04(11)(a), which requires area career and technology centers to be included as “participating employers”. (p. 164)	Administrative update
82-02-01-01(13)	Defines “performance or merit pay” as an amount paid pursuant to a written compensation plan which links pay to attainment of specific performance goals and duties. Clarifies that pay for performance of duties is eligible retirement salary as defined in N.D.C.C. § 15-39.1-04(9). (p. 164-165)	HB1133, Section 1-Salary
82-02-01-01(16)	Updates rule to make consistent with N.D.C.C. § 15-39.1-04(9) which allows amounts deducted for qualifying transportation expenses pursuant to 26 U.S.C. 132(f) to be included as eligible salary. (p. 165)	Administrative update
82-03-01-06	<b>Veterans’ rights</b> – Incorporates provisions of HEART Act outlining benefit eligibility for member who dies or becomes disabled while performing qualified USERRA military service. Updates terminology from “teacher assessments” to “member contributions.” (p. 167-168)	Federal law change (HEART Act, Public Law No. 110-245), and Administrative update.

82-04-01-01	<b>Employer contributions and member contributions</b> Updates terminology from "teacher assessments" to "member contributions." (p.169)	Administrative update
82-04-01-02	<b>Employer payment of member contributions -</b> Removes requirement that employer and member contributions must be equal since statutory rates are not equal. Adds requirement that employers must file new forms under certain conditions. Updates terminology from "teacher assessments" to "member contributions." (p. 169-170)	HB1134, Section 2 - Contributions, and Administrative update
82-04-02-01	<b>Criteria for Eligible Salary Determinations</b> New Chapter created to outline the criteria and documentation required by the board to determine whether certain benefits or payments are included as eligible retirement salary under N.D.C.C. § 15-39.1-04(9). (p. 171-172)	HB1133, Section 1- Salary
82-05-01-01	<b>Application for Benefits</b> – Clarifies how death benefits are handled if death occurs before accepting the first benefit payment. Updates terminology from "teacher" to "member." (p.173)	HB1133, Section 4- Death Benefits, and Administrative update
82-05-01-03	<b>Designation of beneficiary</b> – Clarifies beneficiary designation requirements, and removes language relating to payment of death benefits pursuant to HB1133. Updates terminology from "teacher" to "member." (p.173-174)	HB1133, Sections 1,4 - Death Benefits, and Administrative update
82-05-01-05	<b>Benefit Eligibility</b> - New section created to clarify that age and service credit is rounded to nearest thousandth (0.000) when determining benefit eligibility. (p.174)	Administrative update
82-05-03-02	<b>Death Benefits</b> – Adds language requiring documentation naming administrator or personal representative before death benefits are paid to a member's estate. (p.175)	HB1133, Section 4- Death Benefits
82-05-06-01	<b>Retiree reemployment</b> – Updates rule to match statute which requires member contributions to also be paid on salary earned by retirees. (p.176)	HB1134, Sections 6, 7
82-07-01-02	<b>Disability retirement eligibility</b> – Updates rule to match statute which changed vesting for disability from 1 to 5 years. Updates terminology from "teacher" to "member." The 5 year provision will go into effect July 1, 2013. (p.177)	HB1134, Section 5 and Administrative update.

82-07-01-03	<b>Determination of disability</b> – Updates terminology from “teacher” to “member.” Removes unnecessary statutory reference in body of rule. (p.177-180)	Administrative update
82-07-03-01	<b>Forms of disability benefits</b> – Updates rule to match statute which does not allow partial lump sum distribution option for disability benefits. (p.181)	Administrative update

7) A regulatory analysis was not issued or requested by the Governor or member of the Legislative Assembly. The rule changes are not expected to have an economic impact on the regulated community.

8) A small entity regulatory analysis was prepared (attached). A small entity economic impact statement was not prepared because none of the rule changes are expected to have an adverse economic impact on small entities.

9) A fiscal note was not prepared since the rules do not have a fiscal impact.

10) A constitutional takings assessment was not required or prepared since the rules do not limit the use of private real property.

11) The rules were not adopted as emergency (interim final) rules.

This concludes my testimony describing the procedure followed by the TFFR Board in adopting administrative rules. I would be happy to respond to any questions from Committee members. Thank you.

**ND RETIREMENT AND INVESTMENT OFFICE – ND TEACHERS’ FUND FOR  
RETIREMENT**

**SMALL ENTITY REGULATORY ANALYSIS  
FOR PROPOSED CHANGES TO  
TITLE 82 OF ND ADMINISTRATIVE CODE**

1. Was establishment of less stringent compliance or reporting requirements for small entities considered?  
Yes.  
To what result? No effect on small entities expected.
2. Was establishment of less stringent schedules or deadlines for compliance or reporting requirements considered for small entities? Yes.  
To what result? No effect on small entities expected.
3. Was consolidation or simplification of compliance or reporting requirements for small entities considered? Yes.  
To what result? No effect on small entities expected.
4. Were performance standards established for small entities for replacement design or operational standards required in the proposed rules? No.  
To what result? No effect on small entities expected.
5. Was exemption of small entities from all or any part of the requirements in the proposed rule considered? Yes.  
To what result? No effect on small entities expected.