



ND TFFR BOARD MEETING

Wednesday, October 7, 2020, 11:00 a.m.
RIO Conference Room (**Virtual Meeting Host**)
Teleconferencing – 328.0950 Participant Code – 905 677 825#
3442 East Century Avenue, Bismarck, ND

AGENDA

- I. **CALL TO ORDER AND ACCEPTANCE OF AGENDA**
- II. **GOVERNANCE**
 - A. Required Minimum Distribution Rule/Employee Benefits Programs Committee & Legislation continued discussion - President Lech (15 minutes) *Board Action*
- III. **ADJOURNMENT**

Any individual requiring an auxiliary aid or service, please contact the Retirement and Investment Office (701) 328-9885 at least three (3) days prior to the scheduled meeting.



MEMORANDUM

TO: TFFR Board

FROM: Jan Murtha

DATE: October 6, 2020

SUBJ: RMD/EBPC & Legislation continued discussion

President Lech requested further discussion regarding the Required Minimum Distribution Rule and action of the Employee Benefits Programs Committee regarding legislation.

The following is provided to assist with this discussion:

1. Communication from Melanie Walker, Senior Vice President, Segal
2. Communication from Dean DePountis, Assistant Attorney General
3. Bill Draft

BOARD ACTION REQUESTED: Board motion to approve proposed legislation for submission to the EBPC at its next scheduled meeting (likely October 28, 2020).



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Memorandum

To: Board of Trustees for the North Dakota Teachers' Fund for Retirement

From: Melanie Walker

Date: October 6, 2020

Re: SECURE Act changes to required minimum distribution rules

It is our understanding that the Board desires specific information about the applicable provisions of the SECURE Act (in P.L. 116-94), including the deadline for amending State of North Dakota statutes, the required actions and timeframe for operating the Fund in compliance with the new rules under Internal Revenue Code (IRC) §401(a)(9), and how governing statutes and operational compliance work together.

Section 114 of the SECURE Act changed the age component of the required beginning date for minimum distributions under IRC §401(a)(9) from age 70 ½ to age 72. Therefore, a member's required beginning date is April 1 of the calendar year following the calendar year in which the member either attains age 70 ½ (or age 72, as applicable) or terminates employment, whichever is later. The new required beginning date after age 72 only applies to members who did not attain age 70 ½ by December 31, 2019 (i.e., members born on or after July 1, 1949). This change also applies for determining the latest benefit commencement date for a surviving spouse where the member dies before distributions begin.

The SECURE Act requires an amendment to the Fund's governing plan documents that complies with these changes by the last day of the first plan year that begins on or after January 1, 2024. Since the Fund's plan year begins on July 1, North Dakota Century Code (NDCC) §15-39.1-10, paragraph 4. should be amended to comply with the new rules by no later than June 30, 2025.

In addition, the SECURE Act requires that the Fund operationally comply with the new definition of required beginning date as of the first plan year that begins after December 31, 2019, which is July 1, 2020. In this case, operational compliance means:

1. With respect to members who did not attain age 70 ½ by December 31, 2019, the Fund may generally do nothing until 2021 or later. If such a member attains age 72 in 2021 and receives a refund of contributions, some portion of that refund is a required minimum distribution that is not eligible for rollover. If such a member attains age 72 and applies for retirement benefits in 2021, that member's form of benefits should comply with the rules under IRC §401(a)(9). Otherwise, members who attain age 72 in 2021 must begin required distributions by April 1, 2022.

2. With respect to members who attained age 70 ½ by December 31, 2019, their required distributions should commence in 2020 and continue in the future, which does not require any change from current operations of the Fund.

Failure to comply with the SECURE Act changes on a timely basis may have both technical and practical consequences. Technically, the qualified plan rules under IRC §401(a) require that the Fund comply with applicable changes to the Internal Revenue Code in both form and operation. As a practical matter, if the Fund does not operationally comply with the SECURE Act changes, beginning in 2021 it may be difficult for the plan administrator to accurately report the taxable amount of benefit distributions to members on IRS Form 1099-R. This means that members may not be filing an accurate federal income tax return or paying the appropriate amount of federal income taxes on distributions from the Fund.

Finally, we cannot opine on interpretation of State of North Dakota law regarding the Board's authority to act on operational compliance with a change to the Internal Revenue Code. However, we note that the savings clause in NDCC §15-39.1-35 states *"If the board determines that any section of this chapter does not comply with applicable federal statutes or rules, the board shall adopt appropriate terminology with respect to that section as will comply with those federal statutes or rules, subject to the approval of the employee benefits programs committee"*, until appropriate legislative action is taken. Also, the last sentence of NDCC §15-39.1-10, paragraph 4. indicates that *"Payment of minimum distributions must be made in accordance with section 401(a)(9) of the Internal Revenue Code, **as amended**, and the regulations issued under that section, as applicable to governmental plans. [emphasis added]."* The language in this statutory section may mean that the Fund must operate in compliance with applicable Internal Revenue Code changes to required minimum distributions rules, regardless of Board action under the savings clause.

The information in this memorandum is provided within our role as the Fund's actuary and benefits consultant, and as such is not intended to provide legal advice. We recommend that you address all legal and tax issues under the Fund with your legal counsel.

cc: Janilyn Murtha
Dean DePountis
Kim M. Nicholl

Memorandum

To: Jan Murtha, TFFR Executive Director

From: Dean DePountis, Assistant Attorney General

Date: October 6, 2020

Re: Secure Act Required Minimum Distribution Rule Vis a Vis North Dakota State Law

Summary

You requested my opinion regarding the following two questions:

1) Can the TFFR plan operate contrary to NDCC 15-39.1-34(1) (specifically require and apply a different RMD than what's in the statute) without either a legislative change or pursuant to the savings clause in 15-39.1-35?

2) If use of the savings clause is required, can TFFR implement the change without EBPC approval under 15-39.1-35?

In short: 1) TFFR cannot operate contrary to NDCC 15-39.134(1); and (2) TFFR cannot implement the change without EBPC approval.

Analysis

TFFR was created by statute. N.D.C.C. 15-39.1-01. Like other state agencies created by statute, it has only such authority or powers as are granted to it or necessarily implied from the grant. N.D. Op. Att'y Gen. L-38 (1999) (citing *First Bank of Buffalo v. Conrad*, 350 N.W.2d 580, 584-585 (N.D. 1984)). Specifically applicable to the issue at hand are N.D.C.C. 15-39.1-05.2(5), N.D.C.C. 15-39.1-10(4), N.D.C.C. 15-39.1-34(1), and N.D.C.C. 15-39.1-35.

N.D.C.C. 15-39.1-05.2(5) provides "the Board...[s]hall submit to the legislative management's employee benefits programs committee any necessary or desirable changes in statutes relating to the administration of the fund."

N.D.C.C. 15-39.1-10(4) provides:

Retirement benefits must begin no later than April first of the calendar year following the year the member attains age seventy and one-half or April first of the calendar year following the year the member terminates covered employment, whichever is later. Payments must be made over a period of time which does not exceed the life expectancy of the member or the joint life expectancy of the member and the beneficiary. Payment of minimum distributions must be made in accordance with section 401(a)(9) of the Internal Revenue Code, as amended, and the regulations issued under that section, as applicable to governmental plans.

N.D.C.C. 15-39.1-34(1) provides "[t]he board shall administer the plan in compliance with section 415, section 401(a)(9), section 401(a)(17), and section 401(a)(31) of the Internal Revenue Code, as amended, and regulations adopted pursuant to those provisions as they apply to governmental plans."

N.D.C.C. 15-39.1-35 provides:

If the board determines that any section of this chapter does not comply with applicable federal statutes or rules, the board shall adopt appropriate terminology with respect to that section as will comply with those federal statutes or rules, *subject to the approval of the employee benefits programs committee*. Any plan modifications made by the board pursuant to this section are effective until the effective date of any measure enacted by the legislative assembly providing the necessary amendments to this chapter to ensure compliance with the federal statutes or rules. (Emphasis added).

Here, the SECURE ACT increased the required minimum distribution age to 72. In order to operate the TFFR plan in accordance with the new federal law (required by N.D.C.C. 15-39.1-34(1)), as well as state law (currently N.D.C.C. 15-39.1-10(4)), the state law must be amended. Until state law can be amended, N.D.C.C. 15-39.1-35 requires the board “shall adopt appropriate terminology...subject to the approval of the employee benefits programs committee.”

Conclusion

In order to comply with both federal and state law, TFFR must either amend state law or adopt EBPC approved terminology.

Introduced by

A BILL for an Act to amend and reenact subsection 4 of section 15-39.1-10 of the North Dakota Century Code, relating to Teacher's Fund for Retirement eligibility benefits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 15-39.1-10 of the North Dakota Century Code is amended and reenacted as follows:

4. ~~Retirement benefits must begin~~ For a member who attains age seventy and one-half prior to January 1, 2020, the member's required beginning date is no later than April first of the calendar year following the year the member attains age seventy and one-half or April first of the calendar year following the year the member terminates covered employment, whichever is later. For a member who attains seventy and one-half after December 31, 2019, the member's required beginning date is no later than April first of the calendar year following the year the member attains age seventy- two or April first of the calendar year following the year the member terminates covered employment, whichever is later. Payments must be made over a period of time which does not exceed the life expectancy of the member or the joint life expectancy of the member and the beneficiary. Payment of minimum distributions must be made in accordance with section 401(a)(9) of the Internal Revenue Code, as amended, and the regulations issued under that section, as applicable to governmental plans.