

FULL NOTICE OF INTENT TO ADOPT, AMEND, AND REPEAL ADMINISTRATIVE RULES

TAKE NOTICE that the ND Retirement and Investment Office, on behalf of the ND Teachers’ Fund for Retirement Board will hold a public hearing to address proposed new N.D. Admin. Code 82-03-01-10, 82-05-03-04, 82-05-03-05, 82-05-03-06, 82-05-03-07, amendments to N.D. Admin. Code 82-01-01-01, 82-02-01-01, 82-03-01-01, 82-03-01-04, 82-05-01-01, 82-05-03-01, 82-05-03-03, 82-05-04-02, 82-05-06-01, 82-07-01-01, 82-07-01-03, 82-07-03-01, 82-07-04-01, 82-08-01-03, 103-01-01-01 and repeal of N.D. Admin. Code 82-05-02-03 at 9:00a.m. on Friday, October 27, 2023, at the ND Retirement and Investment Office located at 1600 E. Century Avenue, Suite 3, Bismarck, ND 58507 (mailing address is P.O. Box 7100, Bismarck, ND 58507-7100). The purpose of the proposed rules, amendments, and rule repeal is to implement statute, including changes made to statute as a result of the most recent legislative session, make administrative process changes necessary to modernize a pension administration system, and clarify existing code provisions as such provisions relate to the administration of the North Dakota Teachers’ Fund For Retirement (TFFR) program. The proposed rules, amendments, and repeal addresses the following:

Rule (amended unless otherwise noted)	Description/Reason for Change
<u>82-01-01-01 & 103-01-01-01 - Amend</u>	Organization and Administration of the Fund and Agency -Amend agency address – refer to website.
<u>82-02-01-01 - Amend</u>	Definitions- Add definition of dual member. Needed for HB 1040 – closing PERS main plan. Clarify retirement date definition.
<u>82-03-01-01 - Amend</u>	Amend Fund refund process - Change medical “doctor” to “provider”.
<u>82-03-01-04 - Amend</u>	Amend repurchase of forfeited service credit provisions – Needed for HB 1219.
<u>82-03-01-10 - Create</u>	Create a Veteran’s exception – Needed for HB 1150.
<u>82-05-01-01 - Amend</u>	Amend application for benefits provisions.
<u>82-05-02-03 - Repeal</u>	Repeal level social security retirement benefit option – Needed for HB 1219.
<u>82-05-03-01 - Amend</u>	Amend to clarify timing of benefit payments.

<u>82-05-03-03 - Amend</u>	Amend to clarify overpayment of benefit and write off process.
<u>82-05-03-04 - Create</u>	Create – to clarify interest accrual on accounts for pre-retirement death benefits.
<u>82-05-03-05 - Create</u>	Create – to clarify overpayment of benefit process.
<u>82-05-03-06 - Create</u>	Create – to clarify underpayment of benefit process.
<u>82-05-03-07 - Create</u>	Create – to clarify appeals of actions relating to erroneous payment of benefits.
<u>82-05-04-02 - Amend</u>	Amend to remove level social security option – Needed for HB 1219.
<u>82-05-06-01 - Amend</u>	Amend to change retiree reemployment reporting requirements – Needed for HB 1219.
<u>82-07-01-01 - Amend</u>	Amend to clarify disability retirement eligibility definitions.
<u>82-07-01-03 - Amend</u>	Amend to clarify disability retirement determination process.
<u>82-07-03-01 - Amend</u>	Amend to remove level social security option – Needed for HB 1219.
<u>82-07-04-01 – Amend</u>	Amend to clarify suspension of disability benefit process.
<u>82-08-01-03 – Amend</u>	Amend to clarify pre-retirement Model Qualified Domestic Relations Order benefits.

The proposed rules, amendments, and repeal is not expected to have an impact on the regulated community in excess of \$50,000.

The proposed rulemaking implements bill numbers 1040, 1150, and 1219, enacted during the most recent legislative session, concerning closing of the ND Public Employees Retirement System main plan as it relates to dual members of the NDPERS and NDTFFR plans, and changes made to North Dakota Century Code Chapter 15-39.1 relating to administration of the TFFR program, including creation of a veteran's exception.

The proposed rules may be reviewed at the Retirement and Investment Office on behalf of the ND Teachers' Fund for Retirement Board. A copy of the proposed rules and/or a regulatory analysis may be requested by writing the above address, viewed on

the agency website located at www.rio.nd.gov, emailing rio@nd.gov, or calling 701-328-9885. Written or oral comments on the proposed rules sent to the above address or telephone number and received by Wednesday, November 8, 2023, will be fully considered.

If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please contact the Retirement and Investment Office at the above telephone number or address at least one day prior to the public hearing.

Dated this 22nd day of September, 2023.

Janilyn Murtha
Executive Director
Retirement and Investment Office

Section 82-01-01-01 is amended as follows:

82-01-01-01. Organization of the teachers' fund for retirement.

1. Organization and administration.

- a. History. The 1913 legislative assembly created the teachers' insurance and retirement fund by legislation codified as North Dakota Century Code chapter 15-39. This chapter provided a retirement program for public, nonpublic, and certain college teachers. In 1971, the legislative assembly repealed North Dakota Century Code chapter 15-39 and enacted North Dakota Century Code chapter 15-39.1 which created the present teachers' fund for retirement. The 1973 legislative assembly provided for teacher retirement options by enacting North Dakota Century Code chapter 15-39.2. The primary objective of the teachers' fund for retirement is to provide income security to retired teachers.
- b. Board of trustees. A seven-member board of trustees, as established by North Dakota Century Code section 15-39.1-05.1, is responsible for managing the fund.
- c. Qualified tax status of fund.
 - (1) Qualified plan. The fund is a qualified employee pension plan under sections 401 and 501 of the Internal Revenue Code of 1986, as amended [U.S.C. title 26].
 - (2) Exclusive benefit and purpose. As a qualified employee pension plan, all assets of the fund are held in trust for the exclusive benefit of members and their beneficiaries. Fund assets may not be diverted or used for any purpose other than to provide pension benefits and other incidental benefits allowed by law.
- d. Investment of the fund. The assets of the fund are invested and managed by the North Dakota state investment board. The state investment board invests the fund's assets in accordance with the "prudent investor" rule.
- e. Accrued benefits nonforfeitable. Upon plan termination or complete discontinuance of contributions under the fund, the rights of all participants to benefits accrued to the date of such termination or discontinuance will become nonforfeitable to the extent funded.

2. Description of portion of organization and functions subject to North Dakota Century Code chapter 28-32.

- a. Overview. The teachers' fund for retirement is an "administrative agency" within the definition of that term under subsection 1 of North Dakota Century Code section 28-32-01.
- b. Rulemaking. North Dakota Century Code section 15-39.1-07 authorizes the board of trustees to adopt rules as may be necessary to fulfill the responsibilities of the board. The board follows the procedures established in North Dakota Century Code chapter 28-32 in adopting rules. The rules adopted by the board implement various statutory provisions set forth in North Dakota Century Code chapter 15-39.1.
- c. Administration. Administration rules for the state retirement and investment office as they pertain to the teachers' fund for retirement are contained in North Dakota Administrative Code title 103.

3. Inquiries. General inquiries and questions relating to policies of the board may be ~~addressed~~ sent to the ~~executive director~~; address listed on the funds website at www.rio.nd.gov.

~~Executive Director~~

1930 Burnt Boat Drive
P.O. Box 7100
Bismarck, ND ~~58502-7100~~

History: Amended effective August 1, 1983; November 1, 1985; September 1, 1990; November 1, 1994; January 1, 1998; May 1, 1998; May 1, 2000;_____.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 28-32-02.1

Section 82-02-01-01 is amended as follows:

82-02-01-01. Definitions.

Unless made inappropriate by context, all words used in this title have the meanings given to them under North Dakota Century Code chapter 15-39.1. The following definitions are not established by statute and apply for the purpose of this title:

1. "Acceptance of benefit" means the benefit payment date that is the first calendar day of each month for benefits paid by paper check or electronic funds transfer to a financial institution.
2. "Account balance" or "value of account" means the member's accumulated contributions or assessments, plus the sum of any member purchase or repurchase payments, plus interest at an annual rate of six percent compounded monthly.
3. "Administrative" means to manage, direct, or superintend a program, service, or school district or other participating employer.
4. "Benefit payment date" means the date the member is paid a benefit which is the first day of the month. Benefits may be paid retroactive to a member's retirement date.
5. "Benefit service credit" means employment service used to determine benefits payable under the fund.
6. "Bonus" means an amount paid to a member in addition to regular contract salary which does not increase the member's base rate of pay, is not expected to recur or continue in future fiscal years, or is not expected to be a permanent salary increase. A bonus is not considered eligible retirement salary and is not subject to payment of member and employer contributions.

Bonuses include the following:

- a. Recruitment or contract signing payments defined in North Dakota Century Code section 15.1-09-33.1.
 - b. Retention, experience, or service-related payments.
 - c. Early retirement incentive payments, severance payments, or other payments conditioned on or made in anticipation of a member's retirement or termination.
 - d. Payments made to recognize or reward a member's accomplishments or service.
 - e. Other special or irregular payments which the board determines to be bonuses using criteria and documentation described in section 82-04-02-01.
7. "Cessation of employment" means severance or termination of employment.
 8. "Contributions" means the assessments or payments made to the fund.
 9. "Covered employment" means employment as a teacher in a North Dakota state agency, state institution, school district, special education unit, regional education association, or other governing body of a school district.
 10. "Covered payroll" means all amounts included in payroll, salary, or compensation paid to active members on which contributions to and benefits from the pension plan are based according to the definition of salary in subsection 10 of North Dakota Century Code section 15-39.1-04. Covered payroll may also be referred to as pensionable or eligible payroll, salary, compensation, or earnings.
 11. "Dual member" is a member who is also a member of an alternative plan as defined in North

Dakota Century Code section 15-39.1-10.3.

- ~~11-12.~~ 12-13. "Eligibility service credit" means employment service used to determine vesting and benefit eligibility for dual members and qualified veterans under the Uniformed Services Employment and Reemployment Rights Act of 1994. Eligibility service credit is not used for benefit calculation purposes.
- ~~12-13.~~ 13-14. "Extracurricular services" means outside of the regular curriculum of a school district or other participating employer which includes advising, directing, monitoring, or coaching athletics, music, drama, journalism, and other supplemental programs.
- ~~13-14.~~ 14-15. "Member" is a teacher as defined in North Dakota Century Code section 15-39.1-04 who is a participant in the fund.
- ~~14-15.~~ 15-16. "Participating employer" means the employer of a teacher, including a North Dakota state agency, state institution, school district, special education unit, area career and technology center, regional education association, or other governing body of a school district who contributes to the teachers' fund for retirement.
- ~~15-16.~~ 16-17. "Performance or merit pay" means an amount paid to a member pursuant to a written compensation plan or policy that links a member's compensation to attainment of specific performance goals and duties. The specific goals, duties, and performance measures under which performance pay is expected to be made must be determined in advance of the performance period and documented in writing. Performance or merit pay may be in addition to regular salary or may replace regular salary increases. Performance or merit pay is considered eligible retirement salary and subject to payment of member and employer contributions, unless the teachers' fund for retirement board determines the payments are ineligible salary using criteria and documentation described in section 82-04-02-01.
- ~~16-17.~~ 17-18. "Plan year" means the twelve consecutive months commencing July first of the calendar year and ending June thirtieth of the subsequent year.
- ~~17-18.~~ 18-19. "Referee" means all sporting and nonsporting event judges and officials, including referees, umpires, line judges, scorekeepers, timekeepers, ticket takers, ushers, and other judges or officials.
- ~~18-19.~~ 19-20. "Retirement date" means the date selected by the member to begin retirement benefits. The benefit is calculated as of the retirement date and can be no earlier than the first ~~or fifteenth~~ day of the month following eligibility for retirement benefits or the first day of the month following eligibility for disability or death benefits. Notwithstanding the foregoing a member's retirement will not be effective until the member accepts the first benefit payment.
- ~~19-20.~~ 20-21. "Salary reduction or salary deferral amounts under 26 U.S.C. section 125, 132(f), 401(k), 403(b), or 457" means amounts deducted from a member's salary, at the member's option, to these plans. These reductions or deferrals are part of salary when calculating retirement contributions. Employer contributions to plans specified in 26 U.S.C. section 125, 132(f), 401(k), 403(b), or 457 which are made for the benefit of the member will not be counted as retirement salary when calculating retirement contributions. Member contributions paid by the
employer under IRC section 414(h) pursuant to a salary reduction agreement do not
reduce salary when calculating retirement contributions.
- ~~20-21.~~ 21-22. "Special teachers" include licensed special education teachers, guidance and school counselors, speech and language pathologists, social workers, school psychologists, librarians, media specialists, technology coordinators, program coordinators, and other staff members licensed by the education standards and practices board provided they are under contract with a school district or other participating employer to provide teaching, supervisory, administrative, or extracurricular services.

~~21-22~~. "Supervisory" means to have general oversight or authority over students or teachers, or both, of a school district or other participating employer.

~~22-23~~. "Teaching" means to impart knowledge or skills to students or teachers, or both, by means of oral or written lessons, instructions, and information.

~~23-24~~. "Vested" means the status attained by a teacher when the teacher has earned three years of service credit for a tier one member or five years of service credit for a tier two member for covered employment in this state.

~~24-25~~. "Written agreement" means a teaching contract, school board minutes, or other official document evidencing a contractual relationship between a teacher and participating employer.

History: Effective September 1, 1990; amended effective May 1, 1992; May 1, 1998; May 1, 2000; May 1, 2004; July 1, 2008; July 1, 2012; April 1, 2016; _____.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1

CHAPTER 82-03-01
MEMBERSHIP IN THE FUND

Section	
82-03-01-01	Teachers' Withdrawal From Fund - Refund
82-03-01-02	Nonvested Teachers' Withdrawal From Fund - Refund [Repealed]
82-03-01-03	Termination of Participation
82-03-01-04	Repurchase of Forfeited Service Credit
82-03-01-05	Purchase of Benefit Service Credit
82-03-01-06	Veterans' Rights
82-03-01-07	Nonrecognition of Waived Service Credit
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
82-03-01-09	Employer Service Purchase
<u>82-03-01--10</u>	<u>Veteran's Exception – Proof of Qualified Military Retirement</u>

Section 82-03-01-01 is amended as follows:

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~~ provider 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

Section 82-03-01-04 is amended as follows:

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~~ A dual 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~~ The cost of the ~~remaining repurchased~~ 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 15-39.1-10.3, 15-39.1-15, 15-39.1-24

Section 82-03-01-10 is created as follows:

Section 82-03-01-10. Veteran's exemption – Proof of qualified military retirement.

A teacher applying for an exception to membership in the teachers' fund for retirement for retired military personnel must provide proof of at least twenty years of service in any branch of the armed forces of the United States on full-time active duty and proof of retirement with full military retirement benefits. The following documents will be accepted as proof of service and proof of military retirement benefits: military record of service, commonly referred to as DD214.

History: Effective _____.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-19.3

Section 82-05-01-01 is amended as follows:

82-05-01-01. Application for benefits.

A member or beneficiary must make written application for benefits on enrollment forms provided by the fund before benefits can be paid. The enrollment form must be signed by the member or beneficiary and notarized or witnessed by a plan representative. The form of payment option selected may not be changed after the first benefit payment has been accepted by the member or beneficiary except as allowed under section 82-05-01-03 and section 82-05-02-02. If the member dies before accepting the first benefit payment, the member's beneficiary is eligible for death benefits the first day of the month following the member's death.

Retirement benefits may not be issued to a member 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, 2000; July 1, 2012;_____.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-10, 15-39.1-17

CHAPTER 82-05-02
FORMS OF BENEFIT PAYMENTS

Section	
82-05-02-01	Standard Form of Benefit Payments
82-05-02-02	Optional Forms of Benefit Payments
82-05-02-03	Level Income Option <u>[Repealed]</u>
82-05-02-04	Retroactive Retirement Eligibility
82-05-02-05	Partial Lump Sum Distribution Option

Section 82-05-02-03 is repealed:-

82-05-02-03. Level income option. [repealed]

~~A teacher who retires prior to social security normal retirement age may elect the level income option. This choice of benefit option is irrevocable once the teacher has begun receiving benefits. Under the level income option, the teacher's monthly benefit is adjusted so that the combined benefits received from the fund and social security remain level before, and after, the date social security benefits begin. The adjusted benefit payable from the fund must be determined on an actuarial equivalent basis. A teacher is not eligible for the level income option if the reduced level income benefit is less than two hundred dollars per month.~~

~~**History:** Effective September 1, 1990; amended effective May 1, 2000.~~

~~**General Authority:** NDCC 15-39.1-07~~

~~**Law Implemented:** NDCC 15-39.1-16~~

**CHAPTER 82-05-03
PAYMENT OF BENEFITS**

Section

- 82-05-03-01 When Benefit Payments Begin - Direct Deposit
- 82-05-03-02 Death Benefits - Proof of Death
- 82-05-03-03 Overpayment of Retirement Benefits - Write-Offs
- 82-05-03-04 Interest Payments – Interest Accrual on Account – Pre-Retirement Death
- 82-05-03-05 Erroneous Payment of Benefits – Overpayments
- 82-05-03-06 Erroneous Payment of Benefits – Underpayments
- 82-05-03-07 Erroneous Payment of Benefits – Appeals

Section 82-05-03-01 is amended as follows:

82-05-03-01. When benefit payments begin - Direct deposit.

If the teacher terminates covered employment ~~or~~ and becomes eligible for retirement benefits ~~within the first fifteen days of the month~~, retirement benefits are paid beginning on the fifteenth first day of the month following the official date of retirement. If a teacher terminates covered employment or becomes eligible for retirement benefits after the first fifteen days of the month, retirement benefits are paid beginning the first day of the following month.

Annuity payments will be directly deposited to a teacher's account in a bank, credit union, savings and loan, or other financial institution provided that the financial institution is an automated clearing house (ACH) financial participant. The teacher must complete the official direct deposit form provided by the fund.

History: Effective September 1, 1990; amended effective May 1, 1998; _____.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-10

Section 82-05-03-03 is amended as follows:

82-05-03-03. Overpayment of retirement benefits - Write-offs.

All overpayments must be collected using the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like gains. If the cost of recovering the amount of the overpayment of retirement benefits is estimated to exceed the overpayment, the teachers' fund for retirement ~~board~~ may consider the repayment to be unrecoverable and written off.

History: Effective April 1, 2016; amended effective _____.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-29, 15-39.1-31

Section 82-05-03-04 is created as follows:

82-05-03-04. Interest payments – Interest accrual on account – Pre-retirement death.

The pre-retirement death benefit paid to any beneficiary shall be equal to the account value included accumulated interest up to the date of death. No interest shall continue to accrue to the account beyond the time of death of the member.

History: Effective _____

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-17

Section 82-05-03-05 is created as follows:

82-05-03-05. Erroneous Payment of Benefits – Overpayments.

1. An "overpayment" means a payment of money by the teachers fund for retirement that results in a person receiving a higher payment than the person is entitled to under the provision of the retirement plan of membership.
2. A person who receives an overpayment is liable to refund those payments upon receiving a written explanation and request for the amount to be refunded.
3. If the overpayment of benefits was not the result of any wrongdoing, negligence, misrepresentation, or omission by the recipient, the recipient may make repayment arrangements subject to the executive director's approval within sixty days of the written notice of overpayment with the minimum repayment amount no less than fifty dollars per month. If repayment arrangements are not in place within sixty days of the date of the written notice of overpayment, the executive director shall offset the amount of the overpayment from the amount of future retirement benefit payments so that the actuarial equivalent of the overpayment is spread over the benefit payment period.
4. If the overpayment of benefits was the result, in whole or in part, of the wrongdoing, negligence, misrepresentation, or omission of the recipient, the recipient is liable to pay simple interest charges at the rate of six percent on the outstanding balance to compensate the fund for lost earnings, from the time the erroneous benefit was paid through the time it has been refunded in full. Recovered funds are first applied to interest and, if any amount is left over, that amount is applied to principal. The recipient may make repayment arrangements, subject to the executive director's approval, within sixty days of the written request for refund with the minimum repayment amount no less than fifty dollars per month. If repayment arrangements are not in place within sixty days of the date of the written notice of overpayment, the executive director shall offset the amount of the overpayment from the amount of future retirement benefit payments so that the actuarial equivalent of the overpayment is spread over the benefit payment period.
5. If an individual dies prior to fully refunding an erroneous overpayment of benefits, the teachers' fund for retirement may make application to the estate of the deceased to recover the remaining balance.

History: Effective _____

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-17

Section 82-05-03-06 is created as follows:

82-05-03-06. Erroneous Payment of Benefits – Underpayments.

1. An "underpayment" means a payment of money by the teachers' fund for retirement that results in a person receiving a lower payment than the person is entitled to under the provisions of the retirement plan of membership.
2. If an underpayment occurs, the amount of the lump sum payment must be paid within sixty days of the discovery of the error.
3. If the underpayment of benefits was not the result of any wrongdoing, negligence, misrepresentation, or omission by the employer or recipient, the underpayment of benefits is to include simple interest at the rate of six percent from the time the underpayment occurred.
4. If the underpayment of benefits was the result, in whole or in part, of the wrongdoing, negligence, misrepresentation, or omission of the employer or recipient, the underpayment of benefits will not include simple interest.
5. If an individual dies prior to receiving the underpayment of benefits, the teachers' fund for retirement must pay the designated beneficiary on record or, in the absence of a designation of beneficiary, to the

estate.

History: Effective _____

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-17

Section 82-05-03-07 is created as follows:

82-05-03-07. Erroneous Payment of Benefits – Appeals.

1. A person not satisfied with repayment arrangements made under section 82-05-03-05 may appeal the executive director's decision in writing to the board. The written request must explain the basis of the appeal and must be received in the office within sixty days of the executive director's written decision.

2. The board may release a person from liability to refund an overpayment, in whole or in part, if it determines: a. The receipt of overpayment is not the fault of the recipient. b. It would be contrary to equity and good conscience to collect the refund.

History: Effective _____

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-17

Section 82-05-04-02 is amended as follows:

82-05-04-02. Actuarial factors - Optional payment forms.

Under the optional joint and survivor, term certain and life, and partial lump sum ~~and level income~~ forms of annuity payment shall be based on the following actuarial assumptions:

1. Interest rate - 7.25 percent per year, compounded annually.
2. Member's mortality (used for nondisabled members) - A mortality table constructed by blending thirty percent of the mortality rates under a combination of PubT-2010 employee and PubT-2010 healthy retiree tables for males, adjusted by one hundred four percent for ages fifty-five and older, and projected to 2022 using projection scale MP-2019, with seventy percent of the mortality rates under a combination of PubT-2010 employee and PubT-2010 healthy retiree tables for females, adjusted by one hundred four percent for ages fifty-five and older, and projected to 2022 using projection scale MP-2019.
3. Beneficiary's mortality - A mortality table constructed by blending seventy percent of the mortality rates under a combination of PubT-2010 employee and Pub-2010 contingent survivor tables for males, adjusted by ninety-five percent for ages forty-five and older, and projected to 2022 using projection scale MP-2019, with thirty percent of the mortality rates under a combination of PubT-2010 employee and Pub-2010 contingent survivor tables for females, adjusted by ninety-five percent for ages forty-five and older and projected to 2022 using projection scale MP-2019. Mortality tables for survivors under age eighteen use the RP-2014 juvenile tables with fifty percent blending of the male/female rates and projected to 2022 using projection scale MP-2019.
4. Disabled member's mortality - A mortality table constructed by blending thirty percent of the mortality rates under the PubNS-2010 non-safety disabled mortality table for males, projected to 2022 using projection scale MP-2019, with seventy percent of the mortality rates under the PubNS-2010 non-safety disabled mortality table for females, projected to 2022 using projection scale MP-2019.

In addition, the above actuarial assumptions shall be used to determine actuarial equivalence for other purposes not covered by sections 82-05-04-01, 82-05-04-03, and 82-05-04-04, such as the determination of the reduction to a member's benefit because of the existence of a qualified domestic relations order.

History: Effective May 1, 2000; amended effective May 1, 2004; July 1, 2008; April 1, 2016; July 1, 2021; _____.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-16, 15-39.1-24

Section 82-05-06-01 is amended as follows:

82-05-06-01. Retiree reemployment reporting requirements.

Participating employers and retirees must complete and submit a "~~TFFR Retired Member Employment Notification~~" form required by the fund and a copy of the employment contract within thirty days of the retired member's return to covered employment.

~~Time spent performing extracurricular duties and attending professional development sessions is excluded from the annual hour limit. Extracurricular duties include those duties outlined in the extracurricular schedule of a participating employer's master agreement, unless the duty was part of the retiree's regular job duties and base salary prior to retirement. Employer and member contributions are required to be paid based on the employer payment plan model. Contributions are calculated on the retirement salary paid to the reemployed retiree, including salary for extracurricular duties and professional development.~~

~~Employer and member contributions are required to be paid on salary earned by retirees who perform in-staff subbing duties while under contract with a teachers' fund for retirement participating employer.~~

~~Retirees who perform regular substitute teaching duties and are not under contract with that teachers' fund for retirement participating employer are not subject to the annual hour limit and employer and member contributions are not required to be paid.~~

History: Effective July 1, 2008; amended effective July 1, 2012; _____.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-19.1, 15-39.1-19.2

Section 82-07-01-01 is amended as follows:

82-07-01-01. Definitions.

The following definitions govern the determination of disability benefits under the fund:

1. "Medical examination" means an examination conducted by a licensed medical ~~doctor~~ provider or a psychologist that includes a diagnosis of the disability, the treatment being provided for the disability, the prognosis and classification of the disability, and a statement indicating how the disability prevents the individual from performing the duties of a teacher.
2. ~~"Permanent disability" means a condition of " and total disability" that is static or deteriorating and the prognosis does not indicate an anticipated recovery from the disability~~ means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than twelve months and results in the individual's inability to perform the duties of a teacher.
3. "Temporary disability" means a condition of "total disability" that is expected to last at least twelve months, but is not considered permanent.
4. ~~"Total disability" means any medically determinable physical or mental impairment that is expected to last for a continuous period of not less than twelve months and results in the individual's inability to perform the duties of a teacher. "Total disability" includes conditions of "temporary disability" and "permanent disability" as defined in this section.~~

History: Effective September 1, 1990; amended effective May 1, 1998; July 1, 2008;_____.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-18

Section 82-07-01-03 is amended as follows:

82-07-01-03. Determination of disability - Procedures.

The following procedures govern the determination of disability benefits under the fund:

1. **Application process.**
 - a. Application for disability benefits must be made within thirty-six months from the last date of covered employment on the form provided by the fund. On a case-by-case basis, the board may extend the thirty-six month period.
 - b. If the fund member is unable or unwilling to file an application, the member's employer or legal representative may file the member's disability application.
 - c. The application must describe the disability, explain the cause of the disability, the limitations caused by the disability, the treatment being followed, the efforts by the employer and the member to implement reasonable accommodations, and the effect of the disability on the individual's ability to perform as a teacher.
 - d. ~~Applicants shall be provided information on potential services offered by the office of vocational rehabilitation.~~
 - e.d. The employer's statement of disability must provide information about the member's sick leave benefits, explain how the disability affects the performance of the teaching duties, include a detailed listing of job duties, and describe efforts to provide reasonable accommodation for the member.

2. **Medical examination process.**

- a. The applicant for disability retirement must provide the fund with medical examination reports.
- b. An initial medical examination should be completed by the member's ~~attending or family physician~~ medical provider on the medical examination form provided by the fund. If deemed necessary by the fund's medical consultant, an additional examination must be completed by a specialist in the disability involved. Available medical or hospital reports may be accepted in lieu of a medical examination report if deemed acceptable by the fund's medical consultant.
- c. The fund is not liable for any costs incurred by the applicant in undergoing medical examinations and completing and submitting the necessary medical examination reports, medical reports, and hospital reports.
- d. A medical examination report is not necessary if the applicant provides written proof documenting eligibility for disability benefits under the Social Security Act. In such cases, the applicant is eligible for disability benefits under North Dakota Century Code section 15-39.1-18 without submitting further medical information to the fund but is subject to recertification requirements specified in this chapter.

3. **Medical consultant review.**

- a. The fund shall retain a ~~medical doctor~~ medical provider to act as its consultant and evaluate and make recommendations on disability retirement applications.
- b. The medical consultant shall review all medical information provided by the applicant.
- c. The medical consultant shall advise the board regarding the medical diagnosis and whether the condition is a "permanent and total disability" or "temporary disability".

4. **Decision.**

- a. The board shall consider applications for disability retirement at regularly scheduled board meetings. The discussion concerning disability applications must be confidential and closed to the general public.
- b. The applicant must be notified of the time and date of the meeting and may attend or be represented.
- c. The executive director or designee shall provide to the board for its consideration a case history brief that includes membership history, medical examination summary, and the medical consultant's conclusions and recommendations.
- d. The board shall make the determination for eligibility at the meeting unless additional evidence or information is needed.
- e. The executive director or designee may make an interim determination concerning eligibility for disability retirement benefits when the medical consultant's report verifies that a permanent and total or temporary disability exists. However, the board must review the interim determination and make a final determination at its next regularly scheduled board meeting unless additional evidence or information is needed.
- f. The applicant shall be notified in writing of the decision.
- g. If the applicant is determined to be eligible for disability benefits, the disability annuity is payable on, or retroactive to, the first day of the month following the member's last day of

paid employment.

- h. If the applicant is determined not to be eligible for disability benefits, the executive director or designee shall advise the applicant of the appeal procedure.

5. Redetermination and recertification.

- a. A disabled annuitant is subject to redetermination and recertification to maintain eligibility. The schedule for redetermination and recertification must be as follows:

- (1) Temporary disability. ~~On July first, following~~ Following the first anniversary date of disability retirement, and every two years thereafter (unless normal retirement is reached). No further recertification is required after the fourth recertification of temporary disability has been filed and accepted. Basis recovery will begin when the member reaches normal retirement age.

- (2) Permanent and total disability. ~~On July first, following~~ Following the second anniversary date of disability retirement, and five years thereafter unless normal retirement is reached. No further recertification is required after the second recertification of permanent disability has been filed and accepted. Basis recovery will begin when the member reaches normal retirement age.

- b. The fund may require additional recertifications, or waive the necessity for a recertification, if the facts warrant this action.

When a member who is drawing disability benefits is also eligible for normal retirement benefits at the time disability benefits commence, recertification will cease according to the following schedule:

Before age 60	Age 65
At or after age 60, before age 65	5 years
At or after age 65, before age 69	Age 70
At or after age 69	1 year

Basis recovery will also begin according to the above schedule.

- c. The fund will send a recertification form to the disabled annuitant to be completed and sent back to the fund.
- d. The fund may require the disabled annuitant to be reexamined by a ~~doctor~~ medical provider at the annuitant's own expense. The submission of medical reports by the member, and the review of those reports by the fund's medical consultant, may satisfy the reexamination requirement.
- e. The executive director must make the redetermination and recertification decision and bring the matter to the board only if warranted. The disability annuitant may appeal an adverse recertification decision to the board in the same manner as the initial determination.
- f. If it is determined that the disability annuitant was not eligible for benefits during any time period when benefits were provided, the executive director may do all things necessary to recover the erroneously paid benefits.

History: Effective September 1, 1990; amended effective April 1, 1994; May 1, 1998; May 1, 2000; July 1, 2012; _____.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-18

Section 82-07-03-01 is amended as follows:

82-07-03-01. Forms of disability benefits.

Except for the ~~level income with social security and partial lump sum distribution options option~~, all optional forms of retirement benefits are available to members entitled to disability retirement annuities.

History: Effective September 1, 1990; amended effective May 1, 1998; July 1, 2012; _____.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-18

Section 82-07-04-01 is amended as follows:

82-07-04-01. Suspension of disability benefits.

1. When a member receiving disability retirement benefits is not recertified as eligible for continued benefits, the board shall presume the member does not have a "total disability" and the disability benefits must cease on the first day of the month following the date the member is not recertified eligible for continued benefits.
2. When a member receiving disability retirement benefits returns to active teaching in North Dakota or out of state, the board shall do one of the following:
 - a. Presume the member does not have a "total disability" and, pursuant to subsection 3 of North Dakota Century Code section 15-39.1-18, suspend the member's disability benefits on the first day of the month following the date the member returns to active teaching.
 - b. If the member consents, allow continued payment of the disability benefit for up to six months to permit a member who has partially recovered from the disability to return to active teaching on a trial basis. If the member terminates employment prior to the end of the trial period as set by the board, the board shall not deem the member recovered under North Dakota Century Code section 15-39.1-18, and the member's benefits must continue as permitted under North Dakota Century Code chapter 15-39.1 and this title. If, at the end of the trial period, the member has not terminated employment, the board shall presume the member does not have a "~~total disability~~" qualified disability and shall suspend the member's disability benefits on the first day of the month following the date the member's trial period ends pursuant to North Dakota Century Code section 15-39.1-18. A member who has had their disability benefit terminated under this section must reapply to receive any future disability benefit after the conclusion of any trial period.

History: Effective September 1, 1990; amended effective May 1, 1998; July 1, 2008;_____.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-18, 15-39.1-19.1

Section 82-08-01-03 is amended as follows:

82-08-01-03. Format for a qualified domestic relations order.

A qualified domestic relations order must be substantially in the following form:

ACTIVE OR INACTIVE MEMBERS

STATE OF NORTH DAKOTA		IN DISTRICT COURT
COUNTY OF _____	_____	JUDICIAL DISTRICT
_____,)	
)	
Plaintiff,)	
)	QUALIFIED DOMESTIC
)	RELATIONS ORDER
-vs-)	
)	Case No. _____
)	
_____,)	
Defendant.)	

.....
This Order is intended to meet the requirements of a "Qualified Domestic Relations Order" relating to the North Dakota Teachers' Fund for Retirement, hereafter referred to as the "Plan". The Order is made pursuant to North Dakota Century Code section 15-39.1-12.2. The Order is an integral part of the judgment entered on [DATE OF DIVORCE] granting a divorce to the above-entitled parties. [This Order is also drawn pursuant to the laws of the state of North Dakota relating to the equitable distribution of marital property between spouses and former spouses in actions for dissolution of a marriage.] or [This Order is drawn pursuant to the laws of the state of North Dakota relating to the provision of child support to a minor child in actions for dissolution of a marriage.]

BACKGROUND INFORMATION

[MEMBER'S NAME AND SOCIAL SECURITY NUMBER] is the participating member whose last-known address is [MEMBER'S ADDRESS]. The member's date of birth is [MEMBER'S D.O.B.].

[ALTERNATE PAYEE'S NAME AND SOCIAL SECURITY NUMBER] is the alternate payee whose last-known address is [ALTERNATE PAYEE'S ADDRESS]. The alternate payee's date of birth is [ALTERNATE PAYEE'S D.O.B.].

The participating member and the alternate payee were married on [DATE OF MARRIAGE].

IT IS HEREBY ORDERED THAT:

I. BENEFITS

Benefits under the plan are distributed as follows: (Choose one)

1. The alternate payee is awarded [_____%] of the member's accrued monthly annuity benefit as of [DATE OF DIVORCE]; (OR)

2. The alternate payee is awarded [\$ _____] of the member's accrued monthly annuity benefit as of [DATE OF DIVORCE].

If payments to the alternate payee begin prior to the member's sixty-fifth birthday, such benefits shall be reduced actuarially, except that if the member retires or dies prior to the member's sixty-fifth birthday, the alternate payee shall receive a commensurate share of any early retirement subsidy, beginning as of the date of the member's retirement or death. Such increase shall be determined actuarially.

II. TIME OF BENEFIT RECEIPT

Benefit payments to the alternate payee will begin: (Choose one)

1. When the participating member qualifies for normal retirement benefits under the plan. (OR)
2. When the participating member qualifies for early retirement. (OR)
3. When the alternate payee reaches [DATE OR EVENT]. The date or event must be after the date participating member would qualify for early retirement. (OR)
4. When the participating member retires and begins receiving retirement benefits from the plan.

Benefits to the alternate payee are payable even if the member has not separated from covered employment. In all cases, the payment will not begin later than when the participating member retires.

If the participating member begins receiving disability retirement benefits, the alternate payee will also begin receiving the benefits awarded in section I of this Order. The alternate payee's benefit will begin when the member's benefits begin and will be actuarially reduced to reflect the earlier disability payment start date.

III. DURATION OF PAYMENTS TO ALTERNATE PAYEE OVER THE LIFE OF THE ALTERNATE PAYEE (Choose one)

1. The payments shall be made to the alternate payee on a monthly basis over the life of the alternate payee and shall cease upon the alternate payee's death and will not revert back to the member. The payment shall be calculated on the basis of a single life annuity and will be actuarially adjusted based upon the plan's assumptions to reflect the life expectancy of the alternate payee.

(OR)

2. The payments shall be made to the alternate payee on a monthly basis over the life of the alternate payee and calculated on the basis of:

(Choose one)

(a) a 20-year term certain and life option; (OR)

(b) a 10-year term certain and life option.

The payment will be actuarially adjusted based upon the plan's assumptions to reflect the life expectancy of the alternate payee.

Upon the alternate payee's death, payments will not revert back to the member, but will continue to the alternate payee's designated beneficiary under the term certain and life option identified above.

IV. MEMBER WITHDRAWS FROM RETIREMENT SYSTEM (Choose one)

- A. If the participating member discontinues employment and withdraws the member account in a

lump sum, the alternate payee shall receive [____%] of the member's account balance as of [DATE OF DIVORCE] accumulated with interest as required by the Plan from the divorce date until the refund is paid; (OR)

- B. If the participating member discontinues employment and withdraws the member account in a lump sum, the alternate payee shall receive [\$____] from the member's account balance accumulated with interest as required by the Plan from [DATE OF DIVORCE] until the refund is paid. [Note: The dollar amount in this option cannot exceed the member's account balance.]

V. LIMITATIONS OF THIS ORDER (Order must reflect all provisions of this section.)

- A. This Order recognizes the existence of the right of the alternate payee to receive all OR a portion of the benefits payable to the participating members as indicated above.
- B. Nothing contained in this Order shall be construed to require any Plan or Plan administrator:
1. To provide to the alternate payee any type or form of benefit or any option not otherwise available to the participating member under the Plan.
 2. To provide the alternate payee benefits, as determined on the basis of actuarial value, not available to the participating member.
 3. To pay any benefits to the alternate payee which are required to be paid to another alternate payee under another order previously determined by the Plan administrator to be a qualified domestic relations order.
 4. To provide to the alternate payee any increased benefit due to the participating member under the disability provisions of this plan.
- C. If the alternate payee dies prior to beginning receipt of benefits under this Order, the entire amount that may be due to the alternate payee reverts to the participating member.
- D. If the participating member dies prior to retirement and before the alternate payee begins benefits, the alternate payee will receive [____%] share of the member's survivor benefits based on service as of [DATE OF DIVORCE]. The alternate payee and any other beneficiaries will each select their own form of survivor benefit.
- If the alternate payee is already in payment, the benefits will continue and the value of the benefits to the alternate payee will reduce any survivor payment to other beneficiaries.
- E. The benefit enhancements provided by the North Dakota legislature for service during the marital relationship which are adopted after the end of the marital relationship apply to the alternate payee's portion of benefits under this Order.
- F. If participant or alternate payee receives any distribution that should not have been paid per this Order, the participant or alternate payee is designated a constructive trustee for the amount received and shall immediately notify RIO and comply with written instructions as to the distribution of the amount received.
- G. Alternate payee is ORDERED to report any payments received on any applicable income tax return in accordance with Internal Revenue Code provisions or regulations in effect at the time any payments are issued by RIO. The plan is authorized to issue Form 1099R, or other applicable form on any direct payment made to alternate payee. Plan participant and alternate payee must comply with Internal Revenue Code and any applicable regulations.
- H. Alternate payee is ORDERED to provide the plan prompt written notification of any changes in alternate payee's mailing address. RIO shall not be liable for failing to make payments to alternate payee if RIO does not have current mailing address for alternate payee at time of

payment.

I. Alternate payee shall furnish a certified copy of this Order to RIO.

J. The Court retains jurisdiction to amend this Order so that it will constitute a qualified domestic relations order under the plan even though all other matters incident to this action or proceeding have been fully and finally adjudicated. If RIO determines at any time that changes in the law, the administration of the plan, or any other circumstances make it impossible to calculate the portion of a distribution awarded to alternate payee by this Order and so notifies the parties, either or both parties shall immediately petition the Court for reformation of the Order.

Signed this _____ day of _____, 20_____.

(Judge Presiding)

OR
RETIRED MEMBERS

This Order is intended to meet the requirements of a "Qualified Domestic Relations Order" relating to the North Dakota Teachers' Fund for Retirement, hereafter referred to as the "Plan". The Order is made pursuant to North Dakota Century Code section 15-39.1-12.2. The Order is an integral part of the judgment entered on [DATE OF DIVORCE] granting a divorce to the above-entitled parties. [This Order is also drawn pursuant to the laws of the state of North Dakota relating to the equitable distribution of marital property between spouses and former spouses in actions for dissolution of a marriage.] or [This Order is drawn pursuant to the laws of the state of North Dakota relating to the provision of child support to a minor child in actions for dissolution of a marriage.]

BACKGROUND INFORMATION

[MEMBER'S NAME AND SOCIAL SECURITY NUMBER] is the participating member whose last-known address is [MEMBER'S ADDRESS]. The member's date of birth is [MEMBER'S D.O.B.].

[ALTERNATE PAYEE'S NAME AND SOCIAL SECURITY NUMBER] is the alternate payee whose last-known address is [ALTERNATE PAYEE'S ADDRESS]. The alternate payee's date of birth is [ALTERNATE PAYEE'S D.O.B.].

The participating member and the alternate payee were married on [DATE OF MARRIAGE].

IT IS HEREBY ORDERED THAT:

I. BENEFITS

Benefits to the participating member under the plan are distributed as follows: (Choose one)

1. The alternate payee is awarded [__%] of the monthly retirement benefit as of [DATE OF DIVORCE]; (OR)
2. The alternate payee is awarded [\$__] of the monthly retirement benefit as of [DATE OF DIVORCE].

II. TIME OF BENEFIT RECEIPT.

The benefits are payable to the alternate payee in the month following receipt of this signed Order by the plan or plan administrator as the participating member is currently retired and receiving benefits under the Plan.

III. DURATION OF BENEFITS TO ALTERNATE PAYEE OVER THE LIFE OF THE PARTICIPATING

MEMBER

The payments shall be made to the alternate payee on a monthly basis over the life of the participating member and, if applicable, a continuing monthly annuity will be payable to the surviving alternate payee after the member's death. The amount of the payments to the alternate payee will be calculated on the basis of: (Choose the annuity option in existence at the time of the divorce or legal separation.)

- (1) Single life annuity option (OR)
- (2) 100% joint and survivor option (OR)
- (3) 50% joint and survivor option (OR)
- (4) 20-year term certain and life option (OR)
- (5) 10-year term certain and life option.

If the alternate payee is the designated beneficiary, the alternate payee must remain as the beneficiary under the joint and survivor options.

IV. LIMITATIONS OF THIS ORDER (Order must reflect all provisions of this section.)

- A. This Order recognizes the existence of the right of the alternate payee to receive all OR a portion of the benefits payable to the participating members as indicated above.
- B. Nothing contained in this Order shall be construed to require any Plan or Plan administrator:
 1. To provide to the alternate payee any type or form of benefit or any option not otherwise available to the participating member under the Plan.
 2. To provide the alternate payee benefits, as determined on the basis of actuarial value, not available to the participating member.
 3. To pay any benefits to the alternate payee which are required to be paid to another alternate payee under another order previously determined by the Plan administrator to be a qualified domestic relations order.
- C. If the provisions of this Order are applied to disability benefits, the benefits will cease to all parties upon the member's recovery. The parties will then need to submit a new order to allow for the equitable distribution of any future benefits payable from the plan.
- D. Upon the alternate payee's death, if the member is still surviving, the entire amount that may be due to the alternate payee reverts to the participating member. Upon the member's death, if the alternate payee is still surviving, the entire benefit will cease under a single life option.

Under a joint and survivor option, the alternate payee will receive the one hundred percent or fifty percent survivor benefit for the remainder of the alternate payee's life, since the alternate payee is the joint annuitant. If a term certain option was selected, and the member passes away before the term certain period has expired while the alternate payee is still living, then the benefit to the alternate payee will continue and the member's portion will continue to the member's designated beneficiary to complete the term certain period. If in the last case, the alternate payee dies before all payments due under the certain period have been made, the alternate payee's share will continue to the alternate payee's designated beneficiary.
- E. The benefit enhancements provided by the North Dakota legislature for service during the marital relationship which are adopted after the end of the marital relationship apply to the alternate payee's portion of benefits under this Order.

- F. If the participant or alternate payee receives any distribution that should not have been paid per this Order, the participant or alternate payee is designated a constructive trustee for the amount received and shall immediately notify RIO and comply with written instructions as to the distribution of the amount received.
- G. Alternate payee is ORDERED to report any payments received on any applicable income tax return in accordance with Internal Revenue Code provisions or regulations in effect at the time any payments are issued by RIO. The plan is authorized to issue Form 1099R, or other applicable form on any direct payment made to alternate payee. Plan participant and alternate payee must comply with the Internal Revenue Code and any applicable regulations.
- H. Alternate payee is ORDERED to provide the plan prompt written notification of any changes in alternate payee's mailing address. RIO shall not be liable for failing to make payments to alternate payee if RIO does not have current mailing address for alternate payee at time of payment.
 - I. Alternate payee shall furnish a certified copy of this Order to RIO.
- J. The Court retains jurisdiction to amend this Order so that it will constitute a qualified domestic relations order under the plan even though all other matters incident to this action or proceeding have been fully and finally adjudicated. If RIO determines at any time that changes in the law, the administration of the plan, or any other circumstances make it impossible to calculate the portion of a distribution awarded to alternate payee by this Order and so notifies the parties, either or both parties shall immediately petition the Court for reformation of the Order.

Signed this _____ day of _____, 20 _____.

 (Judge Presiding)

History: Effective April 1, 1994; amended effective January 1, 1998; May 1, 1998; May 1, 2002; May 1, 2004; _____.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-12.2

Section 103-01-01-01 is amended as follows:

103-01-01-01. Organization of the state retirement and investment office.

1. Organization and administration.

- a. History. Chapter 667 of the 1989 Session Laws created the state retirement and investment office with the law expiring on June 30, 1991. Chapter 628 of the 1991 Session Laws extended the expiration date until June 30, 1993. In 1993, the legislative assembly repealed the expiration date creating North Dakota Century Code chapter 54-52.5. The office was created to coordinate the activities of the state investment board and the teachers' fund for retirement.
- b. Governing authority. The state investment board is the governing authority of the state retirement and investment office. This authority is established by North Dakota Century Code section 54-52.5-02. The board is responsible for overseeing and operating the agency to coordinate the activities of the state investment board and the teachers' fund for retirement.

2. Description of portion of organization and functions subject to North Dakota Century Code chapter 28-32. The state retirement and investment office is an administrative agency under subsection 1 of North Dakota Century Code section 28-32-01.

3. Inquiries. General inquiries and questions may be ~~addressed~~ sent to the address listed on the agency website at www.rio.nd.gov.

~~Retirement and Investment Office 1930 Burnt-
Boat Drive~~

~~P.O. Box 7100~~

~~Bismarck, ND 58507-7100~~

~~Telephone: 701-224-4885~~

~~800-952-2970~~

~~Fax: 701-224-4897~~

History: Effective September 1, 1994; amended effective _____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-02.1

Regulatory Analysis

1. Who are the classes of persons who will probably be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule?

Employers, Members and Beneficiaries of the TFFR Program are the class of persons affected by the proposed rule.

2. What is the probable impact, including economic impact, of the proposed rule?

To implement recent legislative requirements and comply with HB 1040, 1150 and 1219; to make administrative process changes necessary for the implementation of a new pension administration system; and to make the administrative code more germane, concise, and up to date. The changes to the existing code will result in compliance. The rules necessary to implement these changes should have a neutral economic impact.

3. What are the probable costs to the agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues?

Incidental cost to the agency relating to rule promulgation and corresponding system updates. The system updates are associated with the pension system modernization project approved by the Board and appropriated by the legislature, the cost of which is assessed against the fund. No state revenues are impacted because the agency and the fund are considered "special fund" and do not draw from the state general fund.

4. What were the alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency/board and why was each method rejected in favor of the proposed rule?

Many of the rule changes are required to maintain compliance with century code, while others are intended to allow the agency to run more effectively and efficiently. Some rule changes were made to enable the modernization of the pension administration system. Compliance with North Dakota law requires changes be made through amendments to current administrative rules.

5. Please explain the information and data assessment as well as how the amounts of impact were determined, to the extent practicable.

The information and data assessment were determined through internal staff assessment of current administrative code review, corresponding new legislation, and new pension system programming requirements.

Takings Assessment

1. Assess the likelihood that the proposed rule may result in a taking or regulatory taking.

Not Likely.

2. Clearly and specifically identify the purpose of the proposed rule.

To implement recent legislative requirements and comply with HB 1040, 1150 and 1219; to make administrative process changes necessary for the implementation of a new pension administration system; and to make the administrative code more germane, concise, and up to date. The changes to the existing code will result in compliance. The rules necessary to implement these changes should have a neutral economic impact.

3. Explain why the proposed rule is necessary to substantially advance that purpose and why no alternative action is available that would achieve the agency's goals while reducing the impact on private property owners.

Many of the rule changes are required to maintain compliance with century code, while others are intended to allow the agency to run more effectively and efficiently. Some rule changes were made to enable the modernization of the pension administration system. Compliance with North Dakota law requires changes be made through amendments to current administrative rules.

4. Estimate the potential cost to the government if a court determines that the proposed rule constitutes a taking or regulatory taking.

Not applicable.

5. Identify the source of payment within the agency's budget for any compensation that may be ordered.

Not applicable.

6. Certify that the benefits of the proposed rule exceed the estimated compensation costs.

Compensation costs are not applicable given the responses to question #4 and #5, in addition the promulgation of these proposed rules is either required due to changes in the century code or to make changes necessary to implement the pension administration project or to make the administrative code more germane and concise.

Small Entity Economic Impact Statement

1. Which small entities are subject to the proposed rule?

Generally, not applicable because only Fund employers, members and beneficiaries are affected.

2. What are the administrative and other costs required for compliance with the proposed rule?

Incidental cost to the agency relating to rule promulgation and corresponding system updates. The system updates are associated with the pension system modernization project approved by the Board and appropriated by the legislature, the cost of which is assessed against the fund. No state revenues are impacted because the agency and the fund are considered “special fund” and do not draw from the state general fund.

3. What is the probable cost and benefit to private persons and consumers who are affected by the proposed rule?

The proposed rule changes were necessary to implement recent legislative requirements and comply with HB 1040, 1150 and 1219; to make administrative process changes necessary for the implementation of a new pension administration system; and to make the administrative code more germane, concise, and up to date. The changes to the existing code will result in compliance. The rules necessary to implement these changes should have a neutral economic impact while providing an improved customer experience for Fund employers, members and beneficiaries.

4. What is the probable effect of the proposed rule on state revenues?

No state revenues are impacted because the agency and the fund are considered “special fund” and do not draw from the state general fund.

5. Is there any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule?

No other less intrusive or less costly alternative methods to achieve the purpose of the proposed rule were identified. Many of the rule changes are

required to maintain compliance with century code, while others are intended to allow the agency to run more effectively and efficiently. Some rule changes were made to enable the modernization of the pension administration system. Compliance with North Dakota law requires changes be made through amendments to current administrative rules.

Small Entity Regulatory Analysis

1. Was establishment of less stringent compliance or reporting requirements for small entities considered?

Generally, not applicable because only Fund employers, members and beneficiaries are affected. The least stringent compliance or reporting requirements were considered to effectuate the changes required by century code changes and to reflect modernization of the pension system and clarify existing processes.

To what result?

The proposed changes to administrative code will effectuate an improved fund experience for Fund employers, members, and beneficiaries and is the least stringent method for compliance.

2. Was establishment of less stringent schedules or deadlines for compliance or reporting requirements considered for small entities?

Generally, not applicable because only Fund employers, members and beneficiaries are affected. The least stringent schedules and deadlines for compliance were considered to effectuate the changes required by century code changes and to reflect modernization of the pension system and clarify existing processes.

To what result?

The proposed changes to administrative code will effectuate an improved fund experience for Fund employers, members, and beneficiaries and is the least stringent method for compliance.

3. Was consolidation or simplification of compliance or reporting requirements for small entities considered?

Generally, not applicable because only Fund employers, members and beneficiaries are affected. Simplification of compliance or reporting requirements was a primary goal in for all proposed changes that were needed to effectuate the changes required by century code changes and to reflect modernization of the pension system and clarify existing processes.

To what result?

The proposed changes to administrative code will effectuate an improved fund experience for Fund employers, members, and beneficiaries and is the least stringent method for compliance.

4. Were performance standards established for small entities for replacement design or operational standards required in the proposed rule?

Not applicable because only Fund employers, members and beneficiaries are affected.

To what result? **Not applicable.**

5. Was exemption of small entities from all or any part of the requirements in the proposed rule considered?

Not applicable because only Fund employers, members and beneficiaries are affected.

To what result? **Not applicable.**