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October 28, 2014

Senator Dick Dever, Chairman
Employee Benefits Program Committee
c/o Jennifer Clark
North Dakota Legislative Council
State Capitol
600 East Boulevard
Bismarck, ND 58505

Re: **Technical Comments on Draft Bill No. 15.0140.02000**

Dear Senator Dever:

As requested, we reviewed draft Bill No. 15.0140.02000, which proposes technical and administrative changes to the North Dakota Teachers' Fund for Retirement (TFFR). The following presents our analysis of such proposed changes found in the draft bill.

Summary: The proposed legislation automatically updates federal compliance provisions of the plan regarding Internal Revenue Code sections 401(a)(17), 401(a)(9), 401(a)(31), 402(c) and 415(b), (d) and (n), as such sections are amended, in various sections of the North Dakota Century Code (NDCC), chapter 15-39.1 (Sections 1, 2, 3 and 4). In addition, the proposed legislation automatically updates Internal Revenue Code sections relating to salary reduction or salary deferral amounts, including sections 125, 132(f), 401(k), 403(b), 414(h) and 457, as such sections are amended.

Actuarial Cost Analysis: This bill would have an immaterial actuarial cost impact on the TFFR.

Technical Comments: Our comments on the bill are as follows:

General Comments

The bill makes various provisions of the plan consistent with current federal income tax laws. The provisions of this bill do not appear to directly or significantly impact the benefits payable from the TFFR.

Compliance Issues

The bill amends various sections of the North Dakota Century Code, chapter 15-39.1 to change references under Internal Revenue Code section 401(a)(9), section 401(a)(17) (as well as Code references related to the definition of compensation under section 401(a)(17)), section 401(a)(31), section 402(c) and section 415(b), (d) and (n) from the Code language in effect on August 1, 2013 to instead be automatically updated as those Code sections are amended. No material changes have been made to these Internal Revenue Code sections since August 1, 2013, other than the statutory indexing of dollar amounts set forth in Code sections 401(a)(17) and 415(b).

It is our understanding that external legal counsel reviewed your statutes to determine whether any changes were necessary to comply with the Supreme Court ruling in *United States v. Windsor* relating to same-gender marriage and the definition of spouse for purposes of federal tax laws, and advised that revising the Internal Revenue Code references to be automatically updated as the Code sections are amended was sufficient for this purpose. Pursuant to IRS Notice 2014-19, any plan amendment necessary to comply with the *Windsor* decision must be effective June 26, 2013 (unless an earlier effective date is selected), and governmental plans must be amended no later than the close of the first legislative session of the legislative body with the authority to amend the plan that ends after December 31, 2014. The IRS Notice suggests that, even if a plan amendment is not required, a clarifying amendment may help ensure proper plan operations in the future.

The information contained in this letter is provided within our role as the plan's actuary and benefits consultant and is not intended to provide tax or legal advice. We recommend that you address all issues described herein with your legal counsel.

Please contact us if you have any questions or comments.

Sincerely yours,

Kim Nicholl

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