

**LEGISLATIVE MANAGEMENT
ADMINISTRATIVE RULES COMMITTEE
March 14, 2016**

Title 82, ND Administrative Code (p. 403-412)

**Fay Kopp, Chief Retirement Officer – Deputy Executive Director
ND Teachers' Fund for Retirement - Retirement and Investment Office**

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) The administrative rule changes did not result from statutory changes.
- 2) The rule changes were developed to maintain compliance with federal Internal Revenue requirements relating to veteran's rights under the HEART Act (Heroes Earnings Assistance and Relief Tax Act); to update actuarial factors used to calculate member benefits based on the 2015 Actuarial Experience Study conducted by the plan's actuarial consultant; and for administrative clarification purposes.
- 3) The TFFR Board follows a standard procedure in its rulemaking process as required by state law. The rule changes were drafted with the assistance of TFFR's legal counsel and actuarial/benefits consultant. The TFFR Board approved the proposed administrative rule changes at its September 24, 2015 board meeting.

On October 8, 2015, 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 October 21-27, 2015. The hearing notice and proposed rules were also posted on the NDRIO website and emailed to all school districts/participating employers and member and

employer interest groups (ND United, ND Council of Educational Leaders, ND Retired Teachers Association, ND School Boards Association, and ND Association of School Business Managers).

A public hearing was held on November 19, 2015 in the Conference Room of the ND Retirement and Investment Office. No members of the public were present at the hearing. After the public comment period which ended November 30, 2015, 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 as to their legality on January 12, 2016. The TFFR Board formally adopted the administrative rules on January 21, 2016.

4) Two minor typographical errors were noted by staff during the hearing and the proposed rules were updated to reflect consideration and incorporation of those comments. No other oral or written comments on the proposed rules were submitted at the public hearing, nor during the public comment period.

5) The total cost for developing and adopting the rules was \$9,866. This includes advertising costs of \$2,426 for publishing the notice in the county newspapers. It also includes \$6,195 from the Fund's actuarial/benefit consultant to advise and prepare required rule changes; and \$1,245 from the Attorney General's Office to draft and review the proposed rules.

6) Following is an explanation of the new rules and amendments made to Title 82 of North Dakota Administrative Code, pages 403-412.

Section	Description of Change	Reason for Change
82-02-01-01 (4)	Proposed new rule defines “ benefit payment date ” as the date the member is paid a benefit which is the first day of the month. Benefits are paid on the benefit payment date retroactive to a member’s retirement date. (p. 405)	Administrative clarification
82-02-01-01(10)	Proposed new rule defines “ covered payroll ” as 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 NDCC 15-39.1-04(10). (p. 406)	Administrative clarification
82-02-01-01(18)	Proposed new rule defines “ retirement date ” as the effective date selected by the member to begin retirement benefits. Benefits are calculated as of the retirement date. A member’s retirement will not be effective until the member accepts the first benefit payment. (p. 406)	Administrative clarification
82-02-01-01(20)	Proposed amendment to the rule updates the definition of “ special teachers ” to clarify that school counselors, language pathologists, and program coordinators are members of the plan if licensed by ESPB and under contract. (p. 407)	Administrative clarification
82-03-01-06	Veterans’ rights – Proposed amendment to the rule to reflect specific language outlining benefit eligibility for members who die or become disabled while performing qualified USERRA military service under the federal HEART Act (Heroes Earnings Assistance and Relief Tax Act.) (p. 408)	Maintain compliance with federal IRC requirements relating to (HEART Act, Public Law No. 110-245)
82-03-01-08	Dual Membership – Proposed amendment to the rule to update plan requirements for receiving salary information from the alternate retirement system by replacing the phrase “certified in writing” with “provided in writing” since certified copies of account copies are not needed. (p. 409)	Administrative clarification

82-05-03-03	Overpayment of retirement payments – Write offs –Proposed new rule clarifies that the TFFR Board may write off an overpayment of retirement benefits if the cost of recovering the amount is estimated to exceed the overpayment. (p. 410)	Administrative clarification
82-05-04-01	Actuarial factors – Early retirement	Update actuarial factors used to calculate benefits based on 2015 Actuarial Experience Study.
82-05-04-02	Actuarial factors – Optional payment forms	
82-05-04-04	Actuarial factors – Purchase of service Proposed amendment to rules to implement the Actuarial Experience study conducted every 5 years to compare actual and assumed plan experience as required by NDCC 15-39.1-05.2(3). Based on 2015 review, actuary recommended changes to certain plan assumptions and factors which were approved by the TFFR Board. (p. 411-412)	

7) A regulatory analysis was not issued nor 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 and economic impact statement were prepared (attached). The rule changes are not expected to have an adverse economic impact.

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. Thank you.