

# A PRIMER ON THE TEACHERS' RETIREMENT FUND & MILITARY SERVICE CREDIT

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## Introduction

The Teachers' Retirement Fund (TRF) is a public pension trust fund established by law to provide retirement, disability, and death benefits to its members and their beneficiaries.

We at TRF are very proud of our veterans and other public employees who have served our country and state. We do our best to ensure that every member receives all of the benefits of which they are entitled. However, because military service credit provisions are statutory and not merely Fund policy, the Board of Trustees does not have discretion to go outside of state pension law and provide benefits of which the legislature did not intend. This primer will explain the conditions for awarding of TRF service credit for qualifying members who have active duty military service.

## Definition

Military service means service in the military, naval, or air services of the United States armed services. This definition includes the National Guard and Reserves when they are on active duty.

## Rationale Underlying Active Military Service Credit

The rationale behind awarding TRF service credit for active military service is to replace TRF service credit that would have been earned, but for the member's teaching career being interrupted by active military service. Among other requirements, in order to be eligible for military service credit, the member must have been on active duty and received an honorable discharge. It makes no difference whether the military service was voluntary or through the "draft". The military document that is used to provide evidence that these requirements have been met is the DD214.

## Military Service Credit Evolution

Originally, the Legislature required that a member's active teaching service be interrupted by active military service in order to qualify for TRF service credit (1945 Teachers Retirement Act). The General Assembly has often been approached regarding military service credit issues and has made changes over the years on behalf of TRF members. Changes made to Indiana pension law are generally prospective and law changes made after retirement generally do not affect retired members.

One enhancement to the law made by the Legislature was to include military service for members who had begun but had not yet finished approved teacher training when they entered military service. This law applies only to members retiring "after May 1<sup>st</sup> 1989". The Legislature decided to recognize that a teacher's career begins when the member enrolls in an accredited teacher's college. Accordingly, an interruption of a member's teacher training due to active military service would cause a delay in the member entering the teaching profession and earning TRF service credit. Members who retired before May 1<sup>st</sup> 1989 were covered by the pension laws in force at the time of their retirement and this provision did not (and does not) apply to them.

#### Federal Uniformed Services Employment & Reemployment

#### Rights Act of 1994

As you may know, TRF military service credit regulations are more generous than those required under the Federal Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"), which generally requires employers to reemploy and preserve certain job benefits for "qualified" employees who engage in military service. The law, codified at 38 U.S.C. § 4301, also prevents an employer from discriminating against employees because of their service and obligations relating to the United States' uniformed services. USERRA establishes the time frames and requirements for reemployment rights and benefit preservation rights, and it also defines who is a "qualified" employee for purposes of these rights.

For purposes of computing Annuity Savings Account (ASA) contributions, USERRA states that an employee's compensation during the period of military service shall be computed: (1) at the rate the employee would have received but for the period of military service; or (2) in the case that the determination of such rate is not reasonably certain, on the basis of the employee's average rate of compensation during the 12-month period immediately preceding the period of the service. In most cases, a TRF employer should be able to compute compensation based on the rate the employee would have received but for the period of military service.

In the case of a member who makes post-tax contributions to his or her ASA, when the member returns from military service, the member is entitled under USERRA to make-up the missed contributions if he or she desires. These contributions would be withheld from the member's salary by the employer and then paid and reported by the employer to TRF.

USERRA rights also apply to a member for whom the employer was making a pre-tax payment (or "pick-up") of the ASA contributions before the member entered military service. In this case, when the member returns from military service pursuant to USERRA, the member is entitled to

have the employer report and pay to TRF on a pre-tax basis the contributions that would have been paid by the employer for that member if the member had not entered military service.

If before the member entered military service, the member's employer was paying the member's ASA contribution on a pre-tax pick-up basis under a salary reduction agreement, USERRA requires the member to be put in the position that he or she would have been in if he or she had not entered military service. Upon the member's return from military service, the member is entitled to have his or her salary reduced by an amount equal to the "missed" contributions. The employer would then report and pay to TRF the "made-up" contributions on a pre-tax basis.

### Basic Eligibility Requirements

(IC 21-6.1-4-6.1 recodified at: IC 5-10.4-4-8)

1. Member begun, but not yet completed teacher training when the member enters active military service or the member's active teaching service is interrupted by active military service.
2. Member receives an honorable discharge.
3. Member returns to school or teaching within 18 months after discharge unless prevented from doing so because of injury or illness sustained during active military service.
4. Member has at least 10 years of earned active TRF teaching service.
5. TRF service credit is subject to the 1/7<sup>th</sup> rule unless the service credit was earned during a period of hostilities.

The Legislature has also passed a law that provides that a qualified member may purchase TRF service credit based on active military service that cannot otherwise be awarded under Indiana pension law (P.L.184-2001, SEC.9).

### Computation of Service Credit

The amount of TRF service credit awarded is based on the actual amount of qualifying military service (Board of Trustees Resolution 2000-10-01). For example, two and one-half years of qualifying active military service would equal two and one-half years of TRF service credit. Please, do not confuse the manner in which actual teaching service credit is computed with military service credit.

What about a person who is attending a teacher college and is in the National Guard or Reserves that goes on weekend drills and summer camp while attending school, does that person qualify for active military service? It depends, if the member has a DD214 that indicates active military service during that period, then the member could be eligible

for TRF service credit because the member was on active duty after the member started teacher training. (Keep in mind the rationale behind awarding TRF service credit for active military service.) In most cases though, going to weekend drills once a month and a two week summer camp would not interrupt a student's ability to graduate from college on-time and delay his teaching career. Even so, the key is whether the DD214 gives the member active duty credit during the time the member was attending school. If it does, then provided the member meets the other requirements, the member gets the service credit.

Members can not get double credit. This means that if a teacher taught for enough days to get one year of service credit and then went into the military during the same year, the member cannot get more than one year of service credit for that year. It just makes sense that you cannot get more than one year of service in one year.

No double-dipping. Service for years that qualify and are used by a member for retirement in any federal retirement system may not be granted. For example, a member graduated from college, began teaching, and entered the military for 20 years and received a military pension based on the member's military service. The member after retiring from the military, returned to teaching and after 10 years, wants to add his military years to the member's TRF years. Since the member's military years are being used in another retirement plan, the member cannot use them in TRF.

The 1/7<sup>th</sup> rule does not apply for active military service during periods of hostilities.

#### Peace Corps & Conscientious Objector Service

Alternative service such as Peace Corps service or as a conscientious objector does not qualify for military service credit with the Indiana Teachers' Retirement Fund. Indiana statutes require that in order to qualify for service credit, the service be "military" service and the member receive an "honorable discharge."

A variety of sources in the United States Code and The Code of Federal Regulations (CFR) distinguish conscientious objector status from that of military service. The CFR (20 CFR § 404.1325(e)) indicates that a discharge or release from active service as a conscientious objector is other than an honorable discharge. United States Code § 5303 and 38 CFR § 3.12 disallow certain veteran benefits for conscientious objectors.

The definition of military service for TRF purposes is before stated in this primer. Also, as a secondary source, in its general provisions, Indiana Code Section 9-13-2-101 defines a member of the armed forces of the United States as: "Member of the armed forces of the United States" means a person who served or serves on active military or naval service in the land, air, or naval forces of the

United States. The term does not include service in the merchant marines (As added by P.L.2-1991, SEC.1).

The Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. 4301 et seq.), does not provide reemployment or retirement service benefits for conscientious objectors or service in the Peace Corps (38 USC § 4303(13)).

### Summary

This primer attempts to answer some of the common questions associated with military service credit. No primer can possibly anticipate all possible scenarios, but I hope this primer is a good foundation.

The military service credit provisions under TRF pension law are much more generous than those required under federal law. Even so, many members who are veterans do not qualify for free military service credit for one reason or another. Because these provisions are governed by state and federal law, the Board cannot grant service credit to individuals who do not meet the requirements. Keep in mind that there is an option to buy the military service credit that cannot otherwise be awarded.

### Basic Eligibility Requirements

- In order to be eligible, the member must have begun, but not yet completed teacher training at an accredited teacher college when the member entered active military service or the member's active teaching service was interrupted by military service.
- The member must receive an honorable discharge.
- The member must return to school or teaching within 18 months after discharge unless prevented from doing so because of injury or illness sustained during the active military service.
- The member must have at least 10 years of earned active TRF teaching service.
- The amount of service credit awarded is subject to the 1/7<sup>th</sup> rule unless the service credit was earned during a period of hostilities.

Service credit for alternative service such as the Peace Corps cannot be awarded.