

Proposed Rule Abstract

1. **Agency:** Educational Retirement Board
2. **Rule Citation:** 2.82.2 NMAC Membership; 2.82.3 NMAC Member and Administrative Unit Contributions; 2.82.4 NMAC Service Credit; and 2.82.5 NMAC Retirement Benefits
3. **Rulemaking Action:** Amendment
4. **Register Issue and Date of Notice of Proposed Rulemaking:** Volume 30, Issue 15, August 13, 2019
5. **Effective Date:** Unknown
6. **Citation to Specific Legal Authority:** The agency cites general rulemaking authority in Paragraph 5 of Subsection A of Section 22-11-6 NMSA 1978
7. **Short Explanation of the Rule's Purpose:** The proposed amendments reflect changes to the Educational Retirement Act enacted by Laws 2019, Chapter 258 (HB360) and Laws 2019, Chapter 173 (SB664).
8. **Link to Full Text of the Rule:**
<https://www.nmerb.org/pdfs/2.82.2%20Membership%20-%20Proposed%20changes.pdf>
<https://www.nmerb.org/pdfs/2.82.3%20Membership%20and%20Administrative%20Unit%20Contributions%20-%20proposed%20changes.pdf>
<https://www.nmerb.org/pdfs/2.82.4%20Service%20Credit%20-%20Proposed%20changes.pdf>
<https://www.nmerb.org/pdfs/2.82.5%20Retirement%20Benefits%20-%20Proposed%20changes.pdf>
9. **How Information on the Rule Can Be Obtained:** Contact Amanda Olsen at 505-476-6133 or visit the ERB website at www.nmerb.org.
10. **Comment Period and Deadlines:** Written comments must be received no later than 5:00 pm on October 15, 2019.
11. **Rule Hearing:** October 18, 2019 at 9:00 AM
12. **Link to Permanent Agency Rulemaking Record:** http://statenm.force.com/public/SSP_RuleHearingSearchPublic

Summary of Proposed Rule

The August 13, 2019 issue of the *New Mexico Register* contained proposed amendments to multiple sections of Chapter 82 of Title 2 of the New Mexico Administrative Code, which contains rules promulgated by the Educational Retirement Board (ERB). The proposed rule would make several changes to reflect legislation passed during the 2019 legislative session, including:

- Eliminating an administrative rule that allowed a retired member to return to work without enrolling in the statutorily-authorized return-to-work program if he or she earned under \$15 thousand per year;
- Requiring retired members employed by an ERB-covered employer for less than one quarter time (0.25 FTE) to make nonrefundable contributions to the fund;

- Requiring retired members of the Public Employees Retirement Association (PERA), other than certified police officers make contributions to the educational retirement fund; and
- Increasing the income level an employee must reach before being required to pay a higher contribution to the educational retirement fund, from a \$20 thousand annual salary to a \$24 thousand annual salary.

See **Attachment, Notice of Public Rule Hearing and Proposed Amendments to 2.82.2 NMAC through 2.82.5 NMAC.**

Analysis

In 2019, the Legislature approved and the governor signed two bills amending the Educational Retirement Act: Chapter 258 (HB360), which made several changes to enhance the long-term sustainability of the educational retirement fund, and Chapter 173 (SB664), which designated a surviving spouse or domestic partner as the beneficiary of a deceased member's retirement plan if the member did not name a beneficiary.

Proposed Changes Related to House Bill 360

Changes to the Return-to-Work Exception. The proposed rule contains several amendments to comply with a new provision of the Educational Retirement Act that requires a retirement member working for an ERB-covered employer at a level greater than 0.25 FTE to suspend their retirement benefit or join ERB's return-to-work program. ERB's current rules contain an exception for retired members earning less than \$15 thousand or working 0.25 FTE or less. See page 23, 2.82.5.16 "Return to Work Exception." Because House Bill 360 (HB360) contained a provision that required a retired member working greater than 0.25 FTE to suspend their retirement benefit or follow the return-to-work rules already outlined in statute, ERB must adopt this rule change to comply with the amended statute.

These changes to the Educational Retirement Act and the proposed rule will affect school district staffing and have a financial impact on employees working more than 0.25 FTE but earning less than \$15 thousand. While previously, these employees would not need to observe the one year break-in-service requirement of the return-to-work program, beginning this fiscal year these individuals must do so. While some of the affected members may already qualify for the return-to-work program due to a prior break-in-service, any member who began providing services to an ERB-covered employer without a break-in-service, which was allowed by the return to work exception, will need to observe the one year break prior to applying for ERB's return to work program.

One group that will be affected by the changes in the return-to-work exception are retired teachers who return to work as substitute teachers for less than \$15 thousand per year. According to media reports and public comment on the proposed rule received by ERB, many retired teachers were taking advantage of the return-to-work exception and some may need to reduce the number of days they were working as a substitute teacher. Those retirees who remain at 0.25 FTE or less will be required to

make nonrefundable contributions to the educational retirement fund, which is required by a provision of HB360. In addition, some retired teachers working as professors within colleges of education may be affected by the change. LESC staff have received reports that some professors have needed to limit the number of classes they teach to fall under the 0.25 FTE requirement.

A recent report from the National Association of State Retirement Administrators (NASRA) and the Center for State and Local Government Excellence (SLGE) notes every other state allows retired public employees to return to work for an employer covered by the same retirement system while continuing to receive their retirement benefit; however, states have placed different restrictions on this ability to protect the retirement plans' favorable tax treatment and to avoid abuses. All states require a break in service for public employees returning to work, due to regulations from the Internal Revenue Service which require a "bona fide termination" with no agreement for re-employment. However, the length of time needed to constitute a break in service varies from state to state and plan to plan.

While every other state allows retired public employees to return to work for a public employer covered by the same retirement system while continuing to receive an retirement benefit, the NASRA and SLGE report notes New Mexico's Public Employees' Retirement Association (PERA) is the one exception.

Changes Related to PERA Retirees. HB360 required public school employees who have retired from PERA to either suspend their PERA pension and become members of ERB or to make non-refundable contributions to the educational retirement fund. The proposed rule contains an amendment to the rule that allows PERA retirees to receive a refund of contribution with interest. Under HB360, this is not allowed for contributions made after July 1, 2019. A further amendment in the proposed rule provides the person shall not earn service credit unless the PERA benefit has been suspended. A similar provision is in the statute.

Although most PERA retirees must pay contributions, the law contained an exception for a police officer certified pursuant to the Law Enforcement Training Act that was hired prior to July 1, 2019. The proposed rule defines the term "police officer" and contains additional clarification on who ERB will consider a "police officer," even though the State Rules Act states that a word or phrase defined in an applicable statute should not be defined in rule. While the definition included in the proposed rule is largely consistent with the definition of "police officer" in that statute, the proposed rule goes on to provide examples of who ERB will or will not consider a "police officer." Under the proposed rule, ERB will determine if an employee is a police officer based on the job duties of the employee, which could lead to disputes between ERB and members or employers if ERB determines an employee that holds certification as a police officer is not included in the definition of police officer based on job duties. Any conflict between a definition in rule and a definition in statute will be resolved in favor of the statute.

Changes Related to Member Contributions. HB360 changed the salary cap a member must reach before being required to make a larger contribution to the educational retirement fund. Previously, members earning \$20 thousand or less contributed 7.9 percent of salary to the fund. From July 1, 2019, members earning \$24 thousand or less will contribute 7.9 percent. The proposed rule contains several amendments striking "\$20,000" and replacing it with "\$24,000."

Proposed Changes Related to Senate Bill 664

Senate Bill 664 provides that a surviving spouse or domestic partner of an ERB member who dies without naming a beneficiary will become that member's beneficiary. The proposed rule contains a provision to bring rule into compliance with the bill. Prior to the new law, ERB could only distribute a refund of the member's contributions to the member's estate; under the new law a surviving spouse or domestic partner could choose to receive a survivor benefit or a refund.

The proposed rule includes additional clarification on who will be considered a domestic partner. The term "domestic partner" is not defined in the educational retirement act. To qualify as a domestic partner, a person will be required to submit a domestic partnership affidavit and two of the following documents:

- Proof of shared residence, which can be shown by a joint mortgage statement, joint rental agreement, or deed;
- Proof of joint ownership of a vehicle, which can be shown by title or registration;
- A joint checking, bank, or investment account statement;
- A joint credit account statement;
- A will or life insurance policy; or
- Other supporting documents approved by the director of ERB.

**TITLE 2 PUBLIC FINANCE
CHAPTER 82 EDUCATIONAL RETIREMENT
PART 2 MEMBERSHIP**

2.82.2.1 ISSUING AGENCY: Educational Retirement Board, P.O. Box 26129, Santa Fe, New Mexico 87502-0129.
[2.82.2.1 NMAC - Rp, 2.82.2.1 NMAC, 10/31/2017]

2.82.2.2 SCOPE: This rule defines membership status and processes within the Educational Retirement Act, Sections 22-11-1 through 22-11-55 NMSA 1978.
[2.82.2.2 NMAC - Rp, 2.82.2.2 NMAC, 10/31/2017]

2.82.2.3 STATUTORY AUTHORITY: The Educational Retirement Act, Sections 22-11-1 to 22-11-55 NMSA 1978.
[2.82.2.3 NMAC - Rp, 2.82.2.3 NMAC, 10/31/2017]

2.82.2.4 DURATION: Permanent.
[2.82.2.4 NMAC - Rp, 2.82.2.4 NMAC, 10/31/2017]

2.82.2.5 EFFECTIVE DATE: October 31, 2017, unless a later date is cited at the end of a section.
[2.82.2.5 NMAC - Rp, 2.82.2.5 NMAC, 10/31/2017]

2.82.2.6 OBJECTIVE: The purpose of this rule is to govern operations and define the types of membership eligible for coverage, as well as employees excluded from coverage.
[2.82.2.6 NMAC - Rp, 2.82.2.6 NMAC, 10/31/2017]

2.82.2.7 DEFINITIONS: [RESERVED]

2.82.2.8 EMPLOYEES AND EMPLOYERS COVERED BY THE EDUCATIONAL RETIREMENT ACT:

- A.** Employers who are designated by statute as "local administrative units" shall be the following schools, institutions, and agencies:
- (1) all public school districts in New Mexico;
 - (2) educational institutions enumerated in Article 12, Section 11 of the constitution of New Mexico;
 - (3) public education department;
 - (4) educational retirement board;
 - (5) girls' welfare home;
 - (6) New Mexico boys' school;
 - (7) Los Lunas medical center;
 - (8) technical and vocational institutes created pursuant to the Technical and Vocational Institute Act;
 - (9) community colleges (also known as "junior colleges") created pursuant to the Community College Act;
 - (10) New Mexico activities association; and
 - (11) regional education cooperatives.

B. In addition to the local administrative units enumerated in Subsection A, any state institution or agency providing an educational program and employing certified school instructors shall be a local administrative unit with coverage in such unit limited to certified school instructors.
[2.82.2.8 NMAC - Rp, 2.82.2.8 NMAC, 10/31/2017]

2.82.2.9 REGULAR MEMBERS:

A. In four-year colleges, technical and vocational institutes and community or junior colleges, public school districts, and state operated schools, "regular members" shall be all employees other than retired members, participants in the return to work program, participants in the return to work exception; retired members working in the return to work program under 2.82.5.15 NMAC, retired members working full time equivalency ("FTE") .25

FTE or less under 2.82.5.16 NMAC, participants in the alternative retirement plan (ARP) or employees excluded under 2.82.2.11 NMAC.

B. Any member except retired members [~~participating in the return to work program, participants in the return to work exception~~] working in the return to work program under 2.82.5.15 NMAC, retired members working .25 FTE or less under 2.82.5.16 NMAC, participants in the alternative retirement plan (ARP), or employees excluded under 2.82.2.11 NMAC, who is regularly employed in any of the following local administrative units, shall be a "regular member" if the member holds a license issued by the public education department at the time of commencement of employment in such local administrative units:

- (1) northern New Mexico college;
- (2) New Mexico boys' school;
- (3) girls' welfare home;
- (4) Los Lunas medical center;
- (5) public education department;
- (6) educational retirement board;
- (7) New Mexico school for the blind and visually impaired;
- (8) New Mexico school for the deaf;
- (9) New Mexico activities association; and
- (10) regional education cooperatives.

C. Except retired members [~~participating in the return to work program, participants in the return to work exception;~~] working in the return to work program under 2.82.5.15 NMAC, retired members working .25 FTE or less under 2.82.5.16 NMAC, participants in the alternative retirement plan (ARP) or employees excluded under 2.82.2.11 NMAC, regular membership is a condition of employment and all local administrative unit employees who qualify as "regular members" must be covered under the Educational Retirement Act, commencing with the first day of employment.

D. Except retired members [~~participating in the return to work program, participants in the return to work exception;~~] working in the return to work program under 2.82.5.15 NMAC, retired members working .25 FTE or less under 2.82.5.16 NMAC, participants in the alternative retirement plan (ARP) or employees excluded under 2.82.2.11 NMAC, any person regularly employed, whether full-time or part-time, in any state institution or agency described in Subsection B of 2.82.2.8 NMAC, shall be a regular member if employed in an educational program and holds a license issued by the public education department.
[2.82.2.9 NMAC - Rp, 2.82.2.9 NMAC, 10/31/2017; A, X/XX/2019]

2.82.2.10 PROVISIONAL MEMBERS:

A. Any provisional member employed by any of the following local administrative units may elect to be covered under the public employees retirement association in lieu of coverage under the Educational Retirement Act within the first six months of employment or re-employment, but may not be exempted completely from being covered under either retirement system unless excluded from coverage under 2.82.2.11 NMAC:

- (1) New Mexico boys' school;
- (2) girls' welfare home;
- (3) New Mexico school for the deaf;
- (4) educational retirement board
- (5) public education department;
- (6) northern New Mexico college;
- (7) Los Lunas medical center;
- (8) New Mexico school for the blind and visually impaired;
- (9) until or unless such provisional member does elect coverage under the Public Employees Retirement Act that provisional member must be covered under the Educational Retirement Act commencing with the first day of his employment, or re-employment in any of the local administrative units enumerated in this section. Likewise, the election of coverage under the Public Employees Retirement Act requires continued coverage under that act for the duration of employment or re-employment in any of the units specified in this section.

(10) It shall be the policy of the board, in cooperation with the public employees retirement association ("PERA"), to determine annually if there are provisional members employed by these local administrative units who are retired from one system while having elected to participate in the second system.

B. To elect coverage under the Public Employees Retirement Act, a provisional member must complete a form provided by the board for that purpose. The local administrative unit shall forward the completed form to the director. The director shall approve the election of such coverage if it is in order and forward a copy of

the approved form to PERA and to the local administrative unit as notice that the employee's election to be covered under the Public Employees Retirement Act has been approved. The director shall retain the original approved election form as the board's record of the approved election.

C. No provisional member may be covered under the Public Employees Retirement Act in lieu of the Educational Retirement Act unless a properly approved form electing such coverage is on file with the director. [2.82.2.10 NMAC - Rp, 2.82.2.10 NMAC, 10/31/2017]

2.82.2.11 EMPLOYEES EXCLUDED FROM COVERAGE:

A. Any person enrolled as a student in any of the local administrative units outlined in Subsection A of 2.82.2.8 NMAC, and who is also employed by the local administrative unit in which he is enrolled, shall be considered a student and not eligible for either "regular" or "provisional" membership under the Educational Retirement Act, except that members of the faculty or full-time staff, who may be incidentally enrolled in classes, shall not be affected by this rule. Under no circumstances shall graduate assistants, teaching fellows, or students in positions of similar nature, be considered eligible for coverage under the Educational Retirement Act. This includes any and all participation in the teacher enhancement program or participation in similar graduate programs.

B. Any person whose full time equivalency ("FTE") is .25 or less, and who is not a covered employee of another local administrative unit, shall not be covered for contribution purposes. **On and after July 1, 2020, a retired member who has returned to employment at a level of .25 FTE or less, regardless of salary level, shall make nonrefundable contributions to the fund as would be required by Section 22-11-21 NMSA 1978 if the retired member were a non-retired employee.** For purposes of calculating a person's FTE, employment with all local administrative units shall be aggregated. Any person employed on July 1, 1994 who was then covered under the Educational Retirement Act shall continue to be covered for the duration of that employment.

C. Any employee engaged on a day-to-day basis to replace another employee who is temporarily absent shall be considered a "substitute" and shall not be covered under the Educational Retirement Act. An employee engaged to fill a vacant position (including a position vacated by an extended leave of absence) is not considered a "substitute" and must be covered under the Educational Retirement Act.

D. Independent contractors who perform services for local administrative units on a fee basis are not eligible for membership under the Educational Retirement Act as a result of having performed such service, and sums paid for such service shall not be covered for purposes of contributions. The following factors shall be considered in determining whether an individual qualifies as an independent contractor:

- (1) registration with the New Mexico department of taxation and revenue to pay gross receipts tax;
- (2) the existence of a written contract with the local administrative unit setting forth the services to be provided and the compensation to be paid;
- (3) whether the person receives benefits such as paid annual or sick leave, health insurance and other benefits that the local administrative unit provides its regular employees or is paid as an employee by the local administrative unit;
- (4) whether the person satisfies internal revenue service guidelines for determining that an individual is an independent contractor rather than an employee;
 - (a) as necessary, the director shall make available forms for use by local administrative units for use in making this determination;
 - (b) the board reserves the right to examine the complete forms, contracts and other agreements, and any other materials as may be necessary for the purpose of determining whether an individual is an independent contractor or employee.

E. All students enrolled in any public school, grades 1-12.

F. Any person retired pursuant to the Public Employees Retirement Act ("PERA") who is hired prior to July 1, 2019 by a local administrative unit as a certified police officer shall not make contributions to the fund. If subsequent termination of employment occurs, followed by re-employment as a police officer or in any other capacity on or after July 1, 2019, with either the same or a different local administrative unit, the provisions of Subsection B of Section 22-11-25.2 NMSA 1978 shall not apply and such person shall make contributions to the fund.

(1) For purposes of Subsection B of Section 22-11-25.2 NMSA 1978, "police officer" means an officer who is certified pursuant to the Law Enforcement Training Act and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal or traffic or highway laws of the state. For example, a university police officer, whose duty is to enforce the laws of the state, albeit within the boundaries set

forth in Subsection B of Section 29-5-2 NMSA 1978, is a "police officer". Examples of employees who are not police officers include, but are not limited to, police dispatchers, administrative staff and security guards.

(2) Whether an employee is considered a police officer will be based primarily on the employee's specific job duties. A mere connection to law enforcement activity is insufficient by itself to meet the definition of police officer. An employee will not be considered a police officer unless his or her primary responsibility is the prevention and detection of crime or the enforcement of the penal or traffic or highway laws of the state.

(3) The local administrative unit that employs the police officer shall make contributions to the fund as provided in the Educational Retirement Act.

[2.82.2.11 NMAC - Rp, 2.82.2.11 NMAC, 10/31/2017; A, X/XX/2019]

2.82.2.12 RETIRED MEMBERS: For the purposes of the return to work program, a retired member shall be defined as any member who has retired pursuant to the Educational Retirement Act.

[2.82.2.12 NMAC - Rp, 2.82.2.12 NMAC, 10/31/2017]

2.82.2.13 MEMBERSHIP ENROLLMENT; RECORDS:

A. Enrollment; changes in contact information.

(1) Members are required to complete a new employment form each time that they are hired or rehired by a local administrative unit and to provide the board with contact information, including their mailing address and e-mail address.

(2) Active members and retirees are responsible for providing the board notice in writing of any change of their mailing address or e-mail address on forms made available for this purpose by the director.

B. Local administrative units. For the purposes of providing members information regarding the board and the members' accounts, local administrative units are required to provide the educational retirement board the e-mail addresses assigned to members by a local administrative unit upon the board's request.

[2.82.2.13 NMAC - Rp, 2.82.2.13 NMAC, 10/31/2017]

HISTORY OF 2.82.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

ERB 67-3, Rules and Procedures, filed 6/30/1967.

ERB 78-1, Rules and Procedures, filed 8/7/1978.

ERB Rule II, Membership, filed 7/2/1982.

History of Repealed Material:

2.82.2 NMAC, Membership, filed 6/30/1999, repealed effective 10/31/2017.

TITLE 2 PUBLIC FINANCE
CHAPTER 82 EDUCATIONAL RETIREMENT
PART 3 MEMBER AND ADMINISTRATIVE UNIT CONTRIBUTIONS

2.82.3.1 ISSUING AGENCY: Educational Retirement Board, P. O. Box 26129, Santa Fe, New Mexico 87502-0129
 [2.82.3.1 NMAC - Rp, 2.82.3.1 NMAC, 7/1/2012]

2.82.3.2 SCOPE: This rule defines earnings on which member contributions shall be made, refund of contributions, purchase of contributory employment and non-reported service, and the payment of interest on refunds.
 [2.82.3.2 NMAC - Rp, 2.82.3.2 NMAC, 7/1/2012; A, 10/15/2012]

2.82.3.3 STATUTORY AUTHORITY: The Educational Retirement Act, Section 22-11-1 to 22-11-55, NMSA 1978.
 [2.82.3.3 NMAC - Rp, 2.82.3.3 NMAC, 7/1/2012]

2.82.3.4 DURATION: Permanent.
 [2.82.3.4 NMAC - Rp, 2.82.3.4 NMAC, 7/1/2012]

2.82.3.5 EFFECTIVE DATE: July 1, 2012, unless a later date is cited at the end of a section.
 [2.82.3.5 NMAC - Rp, 2.82.3.5 NMAC, 7/1/2012]

2.82.3.6 OBJECTIVE: Clarification of the definition of earnings on which member contributions shall be made, the process to obtain refunds and to purchase contributory employment and non-reported service and the calculation of interest on such refunds and purchases.
 [2.82.3.6 NMAC - Rp, 2.82.3.6 NMAC, 7/1/2012]

2.82.3.7 DEFINITIONS:

A. Terms used herein shall have the definitions as set forth in the Educational Retirement Act. Additional definitions used in this regulation are set forth below.

B. “Non-reported service” means service for which contributions should have been made by both a member and a local administrative unit pursuant to the Educational Retirement Act, but which were not made.

C. “Refund rate” means the rates at which interest is calculated for refunds to a member pursuant to Section 22-11-15 NMSA 1978, or to the beneficiary or estate of a member for refunds pursuant to Section 22-11-29 NMSA 1978. The refund rate shall be calculated based upon the process adopted by the board in its resolution entitled “the educational retirement board of trustees’ adoption of a revised process for calculating and credit interest for refunds”, June 4, 2010, or by a superseding resolution.

D. “Student teacher” means a person engaged in classroom teaching as part of a teacher education or training program whose employment in a local administrative unit is incidental to that person’s status as a student. For purposes of example, a student in a teacher training program who receives a stipend, salary or other compensation while student teaching is a “student teacher”; a regular employee of a local administrative unit who also is enrolled in classes, possibly related to that employee’s employment, in that or another local administrative unit, is not a student teacher.

[2.82.3.7 NMAC - N, 7/1/2012]

2.82.3.8 SALARY COVERED; SALARY EXCLUDED:

A. Except as otherwise set forth herein and subject to the limitations set forth in Section 22-11-21.2 NMSA 1978, a member’s annual salary for the purpose of contributions to the fund and computation of the member’s benefit shall consist of total compensation or wages paid to the member for services rendered during each of the four calendar quarters of a fiscal year, beginning July 1 and ending June 30 [~~excluding any salary earned while employed under the return to work program of the Educational Retirement Act~~]. For purposes of determining contribution rates, a member’s expected annual salary at the beginning of the fiscal year shall be considered. When relevant, a member’s annual salary shall take into consideration the FTE of the position and the aggregation of salaries if the member will have multiple positions with the same or other local administrative units during the fiscal year. If a member’s total annual salary is more than ~~[\$20,000]~~ **\$24,000**, the member shall be subject to the

contribution rate set forth in Subsection A of Section 22-11-21 NMSA 1978. If a member's total annual salary is ~~[\$20,000]~~ \$24,000 or less the member shall be subject to the lower contribution rate set forth in Subsection B of Section 22-11-21 NMSA 1978. When a member whose salary is ~~[\$20,000]~~ \$24,000 or less earns in excess of the ~~[\$20,000]~~ \$24,000 limit during the fiscal year, the member shall be subject to the higher contribution rate in Subsection A of Section 22-11-21 NMSA 1978 effective the first day of the month in which the member earns in excess of the ~~[\$20,000]~~ \$24,000 limit. However, if a member whose salary is ~~[\$20,000]~~ \$24,000 or less changes positions with a local administrative unit during the fiscal year or engages in additional employment with the same or other local administrative unit during the fiscal year, and that change in employment creates the expectation that the member's total annual salary shall be more than ~~[\$20,000]~~ \$24,000, then the member's contribution rate shall be adjusted in accordance with the change in employment beginning the first day of the month of the change in employment.

(1) Salary includes payments made directly to the member or to a third party on behalf of or for the benefit of the member. Salary includes, without limitation:

(a) base salary, compensation, or wages;
 (b) salary, compensation or wages for additional services rendered; examples include: teaching courses in addition to or above a full teaching load during the September to May academic year; teaching courses or performing research during summer (e.g., June through August) where such courses or research are not included in the duties on which the member's salary is based; and, performing work in addition to that specified in the employee's job description; performing administrative duties, such as serving as a department head, head of a faculty or staff group, or for providing other additional services;

(c) salary, compensation or wages based on professional certifications or qualifications, or skills such as being bilingual or multilingual;

(d) overtime, shift differential, and 'on-call' or call back pay.

(2) Retirement contributions shall be made by a local administrative unit and a member on base salary earnings before the salary is reduced due to the local administrative unit and member entering into a voluntary "cafeteria" plan.

(3) The salary or compensation paid to a member under a school bus owner-driver contract shall be covered for contributions and benefit calculation purposes. Contributions for compensation paid under a school bus owner-driver contract shall be based upon and limited to the compensation amount paid to a person who drives a single school bus owned by that person over a regularly established route under a regular contract in that person's name with a local administrative unit.

(4) Tips or other remuneration paid to a member by a third party are considered salary to the extent that a local administrative unit reports such amounts as the member's income for tax purposes.

B. The following items shall not be considered annual salary for the purposes of contributions to the fund and computation of the member's annual benefit:

(1) Bonuses, awards and prizes, pay supplements or salary supplements or other "one-time" payments which do not increase an employee's annual base pay or which are made in lieu of an increase in base pay, and similar additional payments, as well as allowances or reimbursements for travel, housing, food, equipment or similar items.

(2) Lump-sum payments to the member for accrued sick leave made at any time, and lump-sum payments of accrued annual leave (also referred to as "vacation leave") made after July 1, 2010. Lump-sum payments for accrued annual leave made on or before July 1, 2010 shall be includable as annual salary only to the extent that it does not include payment for more than 30 days of such leave.

(3) Payments made by a local administrative unit to a member where services are not rendered. By way of example, and with limitation to such examples: (a) payments by an employer to "buy-out" the remaining term of a member's employment contract or in connection with an early retirement program are not payments for services rendered, irrespective of whether payment is made in a lump-sum or distributed over a period of time, and (b) payments as a result of a legal settlement, whether related to the member's employment or otherwise, are not payments for services rendered, unless such payments are specifically made for salary that was not previously paid.

(4) Stipends, salary, or other compensation paid to student teachers.

(5) Stipends or one-time payments for attending training sessions where such payments are not reimbursements for travel expenses.

(6) Allowances or reimbursements for, or expenses related to, travel, housing, food, equipment, cars, or similar items.

(7) After July 1, 2012, additional pay or a pay differential that is based solely on a member performing duties at (a) a location that is different than the location at which the member regularly performs his or her job duties or (b) that is based on the member performing duties outside of the United States and its insular areas, territories, and possessions (e.g., a location differential or hazard or hazardous duty pay).
[2.82.3.8 NMAC - Rp, 2.82.3.8 NMAC, 7/1/2012; A, 10/15/2012; A, 9/26/2017; A, X/XX/2019]

2.82.3.9 REFUNDS OF CONTRIBUTIONS:

A. In the event that a member should terminate employment for reasons other than retirement, disability, or death, the member shall be entitled to a refund of the member's contributions, plus interest calculated at the refund rate, reduced by the sum of any disability benefits which that member might have previously received. Contributions made by an employer on behalf of an employee (also referred to as a "member") pursuant to Subsection A of Section 22-11-21 NMSA 1978 are "employee contributions" and are subject to refund. A member is not entitled to a refund of any "employer contributions" (also referred to as "local administrative unit contributions") made pursuant to Subsection B of Section 22-11-21 NMSA 1978. Interest paid by a member to reinstate withdrawn service credit is nonrefundable.

B. Any employee who was retired pursuant to the Public Employees Retirement Act (Chapter 10, Article 11 NMSA 1978) and who had made contributions to the fund prior to July 1, 2003, shall be entitled to a refund of such contributions, with interest calculated at the refund rate upon a bona fide termination of employment with the local administrative unit. Contributions made to the fund after July 1, 2019 by an employee who retired pursuant to the Public Employees Retirement Act shall be nonrefundable.

C. In order to obtain a refund of contributions, the eligible member must file a written request with the director on forms provided by the board.

D. A refund of a terminated member's contributions shall be made as soon as practical after receipt of a fully executed refund request form in the office of the board. If the member's record has been inactive for a full calendar quarter, the refund may be processed without further certification of termination by the last employer or the final monthly report upon which the member appears. If the member requesting a refund has an active record (i.e., a record reflecting contributions made in the preceding completed calendar quarter), the refund request shall not be processed without the last employer's certification of termination and the final monthly report upon which the refunding member will appear. No refund shall be processed until the board has received all required contributions. The board shall not accept contributions subsequent to the submission of the final monthly report, as certified by the employer. If a refunding member returns to employment with any local administrative unit before the refund process is complete, the refund request shall be denied. For purposes of this rule, "termination" means a complete severance of the employment relationship with no contract for, promise of, or expectation of future employment with any local administrative unit.

E. Refund of contributions for any period of service performed subsequent to July 1, 1957, will cancel all "prior service" credit which may have been credited to the member at the time of the refund. Restoration of all contributions withdrawn, together with interest calculated at the refund rate, will cause the prior service to be restored; provided, however, that as set forth Subsection C of 2.82.3.11 NMAC, effective July 1, 2011, a member who was a member at any time prior to July 1, 2010 and who, on or before June 30, 2010, had all of his or her member contributions refunded pursuant to Section 22-11-15 NMSA 1978, and who, on or after July 1, 2010, returns to employment or returns the withdrawn contributions to the fund together with interest at the rate set by the board, is eligible to retire as if initially becoming a member on or after July 1, 2010.

F. Whenever a terminated member leaves a balance of \$500.00 or less in the member's account, the account shall be closed into "unallocated income" after the member has been terminated for a period of not less than two years. The record of the terminated member's contribution balance at the time that it was closed into "unallocated income" shall be maintained. If the terminated member subsequently returns to employment, the balance shall be restored to that member's account. Alternatively, if the terminated member should later claim or request a refund of the amount transferred to unallocated income, such amount shall be restored to the terminated member's account and refunded.

G. Whenever a terminated member has received a refund in excess of the amount due the member, such excess may be "closed out" into unallocated income by the director if it does not exceed \$1,000.00 after the excess refund has been outstanding for a period of not less than two years, provided that staff has first made two or more separate attempts to contact the terminated member in writing and collect the excess refund. All such attempts must be documented by staff. All such "close out" actions shall be reported to the board in writing at its first regular meeting following that action. If a terminated member who received an excess refund that was closed into

"unallocated income" should return to employment, such excess refund shall be charged to the member's contribution account.

H. If a terminated member shall have received a refund in excess of \$1,000.00 over the amount due that member, and two or more separate attempts have been made to contact the terminated member and collect the excess refund, the director may, after taking into account the costs of doing so, direct staff to pursue legal action to recover the excess. If the amount is deemed uncollectible by the director, the matter shall be brought before the board to determine any further action.

I. Member contributions which have been withheld and paid to the educational retirement fund in error for a member who is not eligible to receive service credit for the time covered by the withholding, shall be returned to the employer, without interest, upon the member's written request or upon the board learning that the member was not eligible to receive service credit for the time covered. The employer shall be responsible for returning such contributions to the member.

[2.82.3.9 NMAC - Rp, 2.82.3.9 NMAC, 7/1/2012; A, 6/30/2016; A, 9/26/2017; A, X/X/2019]

2.82.3.10 REFUNDS OF CONTRIBUTIONS IN THE EVENT OF DEATH OF MEMBER OR BENEFICIARY:

A. In the event of the death of an active member who is not vested, member contributions together with interest calculated at the refund rate shall be refunded to the member's beneficiary or to the member's estate upon completion of the proper refund forms as provided for herein.

B. In the event of the death of a vested member who did not select Option B benefits prior to the effective date of retirement, the deceased member's beneficiary shall be have the option of electing to receive a refund of the member's contributions or receiving benefits in the form of Option B as provided in Section 22-11-29 NMSA 1978. Refunds, together with interest calculated at the refund rate and reduced by the sum of any disability benefits which that member ~~might have~~ previously received, shall be paid to the member's surviving beneficiary ~~[or]~~, **surviving spouse or domestic partner if no beneficiary had been named, or if there is no named surviving beneficiary, surviving spouse or domestic partner, to the member's** estate. If a beneficiary defers payment after the member dies as described in Section 22-11-29 NMSA 1978 and requests a lump sum payment in lieu of benefit under Option B, interest shall be calculated at the refund rate though the end of the calendar quarter prior to the date on which the completed refund request is received by the ERB. Under the provisions of Options B and C, if both the member and the designated beneficiary die before the total of the retirement benefits received by the member and the beneficiary equal the total contributions made by the member, the difference, less any disability benefits previously paid to the member, shall be paid to the member's or the beneficiary's estate.

C. In order to obtain a refund of contributions after the death of a member, the member's beneficiary must notify the director of the member's death and furnish a copy of the death certificate or other proof of death acceptable to the director, whereupon the director shall furnish the beneficiary the proper forms to request a refund.

D. If the amount of a deceased member's contribution does not exceed the sum of \$1,000.00 and no written claim is made to the board for it within one year from the date of the member's death, by the member's surviving beneficiary or estate, payment thereof may be made to the named beneficiary or, if none is named, to the person that the board determines to be entitled to the contribution under the laws of New Mexico.

E. **A person will be considered a domestic partner if the person submits a completed ERB domestic partner affidavit form and two of the following documents: proof of shared residence via joint mortgage statement, joint rental agreement, or deed; automobile title or registration showing joint ownership of a vehicle; joint checking, bank, or investment account statement; joint credit account statement; a will or life insurance policy that designates the other person as primary beneficiary; or such other supporting document(s) approved by the director.**

[2.82.3.10 NMAC - Rp, 2.82.3.10 NMAC, 7/1/2012; A, 10/15/2012; A, X/XX/2019]

2.82.3.11 RETURN OF REFUNDED CONTRIBUTIONS AND RETIREMENT ELIGIBILITY:

A. Member contributions which have been withdrawn from the fund by a member who has terminated employment may be returned to the fund, together with interest at the rate set by the board, without the member being required to return to employment if the termination was under one of the following circumstances:

- (1) the member terminated employment for reasons other than by retirement, disability or death;
- (2) the member exempted himself or herself from the Educational Retirement Act; or
- (3) the member has not been reemployed following a period of disability during which the member received disability benefits.

B. Contributions restored to the fund after having been withdrawn by a member that were originally made prior to July 1, 1971 shall not be considered as having been paid to the fund after July 1, 1971 for the purpose of earning interest and no interest shall be paid on such restored contributions.

C. Effective July 1, 2011, a member who was a member at any time prior to July 1, 2010 and who, on or before June 30, 2010, had all of his or her member contributions refunded pursuant to Section 22-11-15 NMSA 1978, and who, on or after July 1, 2010, returns to employment or returns the withdrawn contributions to the fund together with interest at the rate set by the board, is eligible to retire as if initially becoming a member on or after July 1, 2010.

[2.82.3.11 NMAC - Rp, 2.82.3.11 NMAC, 7/1/2012, A, 10/15/2012]

2.82.3.12 PURCHASE OF NON-REPORTED SERVICE; FAILURE TO DEDUCT MEMBER CONTRIBUTIONS:

A. Non-reported service must be purchased at the time it is discovered. Payment for non-reported service shall be at the contribution rate in effect at the time the non-reported service is discovered. The full fiscal year salary for the position for which the member was hired shall determine whether a member pays the contribution rate applicable to members who earn [~~\$20,000~~] \$24,000 or less per year in accordance with Section 22-11-21 NMSA 1978.

B. If the local administrative unit fails to deduct the applicable contribution from the salary paid to a member for each payroll period, the local administrative unit shall be responsible to remit to the fund the total amount due for both the member and the local administrative unit plus interest at a rate set by the board.

[2.82.3.12 NMAC - N, 7/1/2012; A, 9/26/2017; A, X/XX/2019]

2.82.3.13 INTEREST CREDITS AND PAYMENTS ON MEMBER CONTRIBUTIONS: At the time of refund of a member's contributory balance, interest shall be paid at the refund rate through the end of the calendar quarter preceding the date of the refund; except that no interest shall be paid on contributions credited to a member's account for any period prior to July 1, 1971, nor shall interest be paid on contributions on deposit for less than one year.

[2.82.3.13 NMAC - N, 7/1/2012]

HISTORY OF 2.82.3 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

ERB 67-3, Rules and Procedures, filed 6/30/1967.

ERB 78-1, Rules and Procedures, filed 8/7/1978.

ERB Rule III, Member and Administrative Unit Contributions, filed 7/2/1982.

History of Repealed Material:

2.82.3 NMAC, Member and Administrative Unit Contributions, filed 11/16/2001 - Repealed effective 7/1/2012.

TITLE 2 PUBLIC FINANCE
CHAPTER 82 EDUCATIONAL RETIREMENT
PART 4 SERVICE CREDIT

2.82.4.1 ISSUING AGENCY: Educational Retirement Board, P.O. Box 26129, Santa Fe, New Mexico 87502-0129
 [2.82.4.1 NMAC - Rp, 2.82.4.1 NMAC, 10/31/2017]

2.82.4.2 SCOPE: This rule applies to earned and allowed service credit.
 [2.82.4.2 NMAC - Rp, 2.82.4.2 NMAC, 10/31/2017]

2.82.4.3 STATUTORY AUTHORITY: The Educational Retirement Act, Sections 22-11-1 to 22-11-55 NMSA 1978.
 [2.82.4.3 NMAC - Rp, 2.82.4.3 NMAC, 10/31/2017]

2.82.4.4 DURATION: Permanent
 [2.82.4.4 NMAC - Rp, 2.82.4.4 NMAC, 10/31/2017]

2.82.4.5 EFFECTIVE DATE: October 31, 2017, unless a later date is cited at the end of a section.
 [2.82.4.5 NMAC - Rp, 2.82.4.5 NMAC, 10/31/2017]

2.82.4.6 OBJECTIVE: Clarifies requirements, conditions and procedures for determining a member's years of service, and the purchase of allowed service credit.
 [2.82.4.6 NMAC - Rp, 2.82.4.6 NMAC, 10/31/2017]

2.82.4.7 DEFINITIONS: [RESERVED]

2.82.4.8 EARNED SERVICE CREDIT:

- A.** Earned service credit shall be granted on a quarterly basis.
- B.** A member shall receive one quarter of credit for each calendar quarter in which the member has earnings from regular employment and renders services for a minimum of 16 days. A member is considered to have rendered services for each day upon which the member is paid salary, regardless of whether the member is on annual, sick, administrative or other form of paid leave. Four calendar quarters of credit shall constitute one year. The calendar quarters of a year shall begin and end as follows: July 1 through September 30; October 1 through December 31; January 1 through March 31; and April 1 through June 30.
- C.** Members who are granted paid sabbatical leave shall receive one calendar quarter of earned service credit for each quarter in which they receive pay for such.
- D.** If a member is granted earned service credit while on paid sabbatical leave and that sabbatical leave is subsequently revoked, with salary payments returned to, or demanded by the administrative unit, under the terms of the leave agreement between the administrative unit and the member, the earned service credit granted during such sabbatical leave shall be revoked.
- E.** In the event of revocation of earned service credit as provided in Subsection D of 2.82.4.8 NMAC, disposition of contributions made by the member and local administrative unit relating to the revoked period of earned service credit shall be as follows:
 - (1)** Local administrative unit contributions shall be credited to the local administrative unit to be used against future contribution costs.
 - (2)** Before the member contribution shall be disbursed, or credited, the local administrative unit shall furnish the board with proof of the settlement which has been made with the member. Following the receipt of this proof, the member contributions shall be handled as follows:
 - (a)** If the local administrative unit has completed the financial settlement with the member without being reimbursed for member contributions relating to the leave and paid to the board, the administrative unit shall be granted credit for such member contributions to be used against the future administrative unit contribution costs.
 - (b)** If the local administrative unit has been reimbursed by the member for member contributions relating to the leave and paid to the board, such member contributions shall be paid to the member on a refund voucher separate from any other refund which might be requested by the member.

F. An exchange teacher who is working outside the New Mexico public schools, but who is being paid a regular salary by a local administrative unit, shall receive earned service credit for such service.

G. The board shall not allow contributory service credit when token salaries are paid or when gratuitous service is performed. The ERB shall rule on each case involving gratuitous service or token salaries when each case is presented.

H. The board may accept rollover and employer payroll deduction contributions for the restoration of withdrawn earned service credit if the following conditions are met:

(1) The payments must be all or a portion of the member's interest qualified under Section 401(a) of the Internal Revenue Code.

(2) The payments shall contain only tax-deferred contributions and earnings on the contributions. The member and employer must submit satisfactory documentation, releases or indemnification to the board against any and all liabilities that may be connected with the transfer, verifying that the proposed transfer is a qualifying contribution under the Internal Revenue Code.

(3) Payroll deductions and employer pickups are authorized by the governing body of the ERA employer.

(4) The board may not accept rollover or employer pickup payroll deduction contributions in excess of the amount required to restore the withdrawn earned service credit.

I. For payments to restore earned service credit which commence on and after January 1, 2002, the board may accept rollover and transfers if the following conditions are met:

(1) Rollovers must be eligible rollover distributions that are not includible in the income of the member by reason of Sections 402(c), 403(b)(8), 408(d) or 457(e)(16) of the Internal Revenue Code.

(2) Transfers must be direct trustee-to-trustee transfers from a qualified plan described in Section 401(a) or 403(a) of the Internal Revenue Code, an annuity contract described in Section 403(b) of the Internal Revenue Code to the extent permitted by Section 403(b)(13) of the Internal Revenue Code, or an eligible plan under Section 457(b) of the Internal Revenue Code to the extent permitted by Section 457(e)(13) of the Internal Revenue Code.

(3) The rollovers and transfers shall contain only pre-tax deferred contributions and earnings on the contributions. The member and employer must submit satisfactory documentation, releases, or indemnification to the board against any and all liabilities that may be connected with the rollover or transfer verifying that the proposed rollover or transfer is permissible under the Internal Revenue Code.

(4) Payroll deduction contributions shall no longer be allowed for the purchase of earned service credit if the contributions would commence on or after July 1, 2002.

(5) The board may not accept rollovers or transfers in excess of the amount required to restore the withdrawn earned service credit.

J. A person who is employed by a local administrative unit and receives retirement benefits pursuant to the Public Employees Retirement Act shall not earn service credit unless the person has suspended their benefit. [2.82.4.8 NMAC - Rp, 2.82.4.8 NMAC, 10/31/2017, A, X/XX/2019]

2.82.4.9 ALLOWED SERVICE CREDIT:

A. For purposes of granting allowed service credit pursuant to Paragraph (2) of Subsection A of Section 22-11-34 NMSA 1978, a member engaged in military service that interrupted the member's employment under a state system in New Mexico shall return to employment within 18 months following honorable discharge.

(1) In order to claim such service credit the member shall furnish documentary evidence of: (a) the member's entry into and honorable discharge from military service; (b) the dates of service to an affiliated public employer prior to entry into military service.

(2) The director shall review the members' request for allowed service credit based upon the documentary evidence presented, and, in the director's discretion, shall request additional documentation to verify the member's eligibility for such allowed service credit.

B. For purposes of granting allowed service credit pursuant to Paragraph (3) of Subsection A of Section 22-11-34 NMSA 1978, a member engaged in United States military service, shall:

(1) be honorably discharged from such service;

(2) have five or more years of contributory employment at the time of the application for allowed service credit, in order to be eligible to purchase allowed service credit pursuant to Paragraph (3) of Subsection A of Section 22-11-34 NMSA 1978;

(3) contribute to the fund, for each year of service credit the member elects to purchase, a sum equal to the member's average annual actual salary for the five years of contributory employment preceding the

date of the contribution multiplied by the sum of the member's contribution rate and the employer contribution rate in effect at the time of the member's written election to purchase, subject to the federal Uniformed Services Employment and Reemployment Rights Act of 1994;

(4) full payment shall be made in a single lump sum within 60 days of the date that the member is informed of the amount of the payment;

(5) the portion of the purchase cost derived from the employer's contribution rate shall be credited to the fund and, in the event that a member requests a refund of contributions pursuant to Section 22-11-15 NMSA 1978, the member shall not be entitled to a refund of that portion of the purchase cost derived from the employer contribution rate;

(6) the director shall use the salary information on file with the board in determining "average annual actual salary" under Paragraph (3) of Subsection A of Section 22-11-34 NMSA 1978; if reasonable evidence of the salaries earned is not available, the director shall set amounts to be used which, in his opinion, are representative of reasonable annual salaries for the periods of contributory employment for the position held by the applicant at that time;

(7) when the actual cost of purchase of allowed service credit for periods of military service is calculated under Paragraph (3) of Subsection A of Section 22-11-34 NMSA 1978, the "average annual actual salary" shall be based upon the member's most recent 20 calendar quarters of contributory employment prior to the date on which he makes payment;

(8) no allowed service credit shall be granted for service not performed by the member by reason of service in the uniformed services of the United States, nor for periods of service in the military reserves or national guard for short term training during which the member was not activated pursuant to a federal call to duty, deployment or peacekeeping mission or other declared national emergency;

(9) purchase of allowed service credit as provided in Paragraph (3) of Subsection A of Section 22-11-34 NMSA 1978, may be carried out only while the member is currently employed by an administrative unit;

(10) the provisions of 2.82.10.8 NMAC shall apply to purchase of allowed service credit under this paragraph;

(11) a member who has forfeited service credit may reinstate such service credit in order to establish the minimum period of contributory employment required by this subsection by repayment of withdrawn member contributions in the manner required by Subsection C of Section 22-11-33 NMSA 1978; such repayment shall be made at the same time as the lump sum payment for allowed service credit as specified in Paragraph (3) of Subsection A of Section 22-11-34 NMSA 1978.

C. Notwithstanding the provisions of Subsection A of 2.82.3.8 NMAC the "annual actual salary" to be used in calculating the cost of allowed service credit described in Paragraphs (3) and (4) of Subsection A of Section 22-11-34 NMSA 1978 shall be an annualized salary. For the purpose of this rule, employment shall be viewed as either full-time or part-time employment, and an annualized salary shall be defined as follows.

(1) For full-time employees: The annual salary as defined in Subsection A of 2.82.3.8 NMAC.

(2) For part-time employees: The total remuneration for the part-time employment divided by the full-time equivalency, as defined by the director at the time of the contribution. In no event shall allowed service credit contributions be granted for any calendar quarter in which the member did not work more than .25 of the full-time equivalency for the applicable position as determined pursuant to rules enacted by the board or the director.

(3) For employees on sabbatical leave: The amount that would have been earned during the entire year had the member been on regular assignment. In determining the full-time equivalency of an employee, the director may refer to the administrative unit's approved budget for the fiscal year under consideration.

D. For the purpose of granting allowed service credit, pursuant to Paragraph (4) of Subsection A of Section 22-11-34 NMSA 1978, a "public school or public institution of higher learning" in another state, territory, or possession of the United States shall be taken to mean one that is open to the public without regard to race, creed, or color, and such school or institution need not be tax supported. The out-of-state public school shall be accredited by the state in which it is located or another accrediting organization which is recognized by the state. Service credit purchasable pursuant to Subparagraph (a) of Paragraph (4) of Subsection A of Section 22-11-34 NMSA 1978 shall not include employment as a graduate assistant, teaching assistant or teaching fellow or in any position of a similar nature while the member was enrolled as a student in that institution.

E. Prior to the purchase of allowed service credit under Subparagraph (d) of Paragraph (4) of Subsection A of Section 22-11-34 NMSA 1978, a member must provide satisfactory evidence that the private school was accredited by the state board of education at the time of the member's employment.

F. The board may accept rollover and employer pickup payroll deduction contributions for the purchase of allowed service credit if the following conditions are met.

(1) The payments must be all or a portion of the member's interest qualified under Section 401(a) of the Internal Revenue Code.

(2) The payments shall contain only tax-deferred contributions and earnings on the contributions. The member and employer must submit satisfactory documentation, releases or indemnifications to the board against any and all liabilities that may be connected with the transfer, verifying that the proposed transfer is a qualifying contribution under the Internal Revenue Code.

(3) Payroll deductions and employer pickups are authorized by the governing body of the ERA employer.

(4) The board may not accept rollover or employer pickup payroll deduction contributions in excess of the amount required to purchase the allowed service credit.

G. For payments to purchase allowed service credit which commence on and after January 1, 2002, the board may accept rollover and transfers if the following conditions are met.

(1) Rollovers must be eligible rollover distributions that are not includible in the income of the member by reason of Sections 402(c), 403(b)(8), 408(d) or 457(e)(16) of the Internal Revenue Code.

(2) Transfers must be direct trustee-to-trustee transfers from a qualified plan described in Section 401(a) or 403(a) of the Internal Revenue Code, an annuity contract described in Section 403(b) of the Internal Revenue Code to the extent permitted by Section 403(b)(13) of the Internal Revenue Code, or an eligible plan under Section 457(b) of the Internal Revenue Code to the extent permitted by Section 457(e)(13) of the Internal Revenue Code.

(3) The rollovers and transfers shall contain only pre-tax deferred contributions and earnings on the contributions. The member and employer must submit satisfactory documentation, releases, or indemnification to the board against any and all liabilities that may be connected with the rollover or transfer verifying that the proposed rollover or transfer is permissible under the Internal Revenue Code.

(4) Payroll deduction contributions shall no longer be allowed for the purchase of allowed service credit if the contributions would commence on or after July 1, 2002.

(5) The board may not accept rollovers or transfers in excess of the amount required to purchase the allowed service credit.

[2.82.4.9 NMAC - Rp, 2.82.4.9 NMAC, 10/31/2017]

2.82.4.10 RETURN TO WORK: No service credit can be earned, purchased or otherwise credited for any of the time a retired member is employed by a local administrative unit [~~while the member is participating in the return to work program of the Act or the return to work exception~~] unless the retired member has suspended their retirement benefit. While a retired member is [~~participating in the return to work program or the return to work exception~~] employed by a local administrative unit, no service credit can be purchased for service previously earned or withdrawn unless the retired member has suspended their retirement benefit.

[2.82.4.10 NMAC - Rp, 2.82.4.10 NMAC, 10/31/2017; A, X/XX/2019]

HISTORY OF 2.82.4 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

ERB 67-3, Rules and Procedures, filed 6/30/1967.

ERB 78-1, Rules and Procedures, filed 8/7/1978.

ERB Rule IV, Service Credit, filed 7/2/1982.

History of Repealed Material:

2.82.4 NMAC, Service Credit, filed 6/30/99, repealed effective 10/31/2017 and replaced by 2.82.4, Service Credit, effective 10/31/2017.

TITLE 2 PUBLIC FINANCE
CHAPTER 82 EDUCATIONAL RETIREMENT
PART 5 RETIREMENT BENEFITS

2.82.5.1 ISSUING AGENCY: Educational Retirement Board, P. O. Box 26129, Santa Fe, New Mexico 87502-0129
 [6/30/1999; 2.82.5.1 NMAC - Rn, 2 NMAC 82.5.1, 11/30/2001]

2.82.5.2 SCOPE: This rule applies to procedures and eligibility for retirement, and the calculation of and selection of options for benefits.
 [6/30/1999; 2.82.5.2 NMAC - Rn, 2 NMAC 82.5.2, 11/30/2001]

2.82.5.3 STATUTORY AUTHORITY: The Educational Retirement Act, Sections 22-11-1 to 22-11-55 NMSA 1978.
 [6/30/1999; 2.82.5.3 NMAC - Rn, 2 NMAC 82.5.3, 11/30/2001; A, 10/17/2017]

2.82.5.4 DURATION: Permanent
 [6/30/1999; 2.82.5.4 NMAC - Rn, 2 NMAC 82.5.4, 11/30/2001]

2.82.5.5 EFFECTIVE DATE: June 30, 1999, unless a later date is cited at the end of a section or paragraph.
 [6/30/1999; 2.82.5.5 NMAC - Rn, 2 NMAC 82.5.5, 11/30/2001]

2.82.5.6 OBJECTIVE: To specify procedures for retirement, benefits and options, and provide rules for the restoring process.
 [6/30/1999; 2.82.5.6 NMAC - Rn, 2 NMAC 82.5.6, 11/30/2001]

2.82.5.7 DEFINITIONS: [RESERVED]

2.82.5.8 ELIGIBILITY:

A. A member shall not be considered eligible to retire unless he shall have completed at least five years of contributory employment even though such member might otherwise be eligible by reason of age and service, and tender of payment for contributory employment.

B. A school bus owner-driver shall not be eligible to retire unless he/she terminates the owner-driver contract with the public schools.

[6/30/1999; 2.82.5.8 NMAC - Rn, 2 NMAC 82.5.8, 11/30/2001; A, 10/17/2017]

2.82.5.9 APPLICATIONS:

A. Retirement application forms furnished by the director and made available in each local administrative unit, may be initiated by the member or his employer. The member may also write to the director to apply for benefits. In either case, the application must be signed by the member.

B. If a member seeking retirement is not employed at the time of application, the director shall deal directly with the member in processing the application, without reference to, or concurrence of the last employer.

C. The application for retirement (being the completed form supplied by the director) must be filed in the office of the director prior to the desired effective date of benefits.

D. A member who has been re-employed following a previous retirement shall make application for benefits in the same manner as one who has not previously been retired.

E. Any member with an effective retirement date on or after July 1, 2015 shall provide authorization to the director for the electronic transfer of pension payments to the retiree's banking institution. Such authorization shall be executed in the form prescribed by the director. The director may waive this requirement upon a showing of exceptional circumstances.

F. In order to implement Section 22-11-32 NMSA 1978, the director shall, at the time of the member's application for benefits, obtain the member's written statement that he or his beneficiary does or does not receive any other benefit from any public agency which would be adversely affected by his or his beneficiary's receipt of benefits pursuant to the Educational Retirement Act. If he or his beneficiary does, or will receive such benefits, the director shall make the benefit adjustment called for in this section.

[6/30/1999; 2.82.5.9 NMAC - Rn, 2 NMAC 82.5.9, 11/30/2001; A, 6/16/2015]

2.82.5.10 COMPUTATION AND COMMENCEMENT OF RETIREMENT BENEFITS:

A. Upon retirement, the following procedures shall apply with regard to commencement of the member's benefit:

(1) If the retiring member's employment terminated at least 90 days prior to the effective date of retirement, the benefit may be commenced at the end of the month following the effective date of retirement.

(2) If the retiring member's employment terminated within 90 days prior to the effective date of retirement, the retiring member's benefit may be estimated by the director and commenced at the end of the month following the effective date of retirement.

(3) After the employer report is received from the administrative unit, reporting the retiring member's final earnings, the director shall determine whether or not the estimated benefit is correct. If the estimated benefit is incorrect, the director shall make the appropriate adjustment to the member's benefit, retroactive to the effective date of the benefit. This adjustment, if required, shall be made at the earliest practical date. The retiring member shall be advised regarding the nature of any such adjustment. An adjustment will be made in this manner if and only if the adjustment based upon the member's actual earnings would result in a monthly benefit which differs more than one dollar from the estimated benefit.

B. Whenever a retiring member completes the academic or fiscal year prior to July 1, he shall not be entitled to retirement benefits for the months of July or August if he returns to employment at the beginning of the next following academic or fiscal year. If a member shall have received benefits for such months, he shall be required by the director to return the sums received, to the educational retirement fund, in accordance with Section 22-11-40 NMSA 1978.

C. The retiring member shall be furnished with copies of all computations including a listing of his service credit, and he shall have 90 days after receipt of same in which to file notice of correction with the director, after which time the computations and service may not be corrected by the member.

D. A member's average annual salary as defined in Section 22-11-30 NMSA 1978 shall be the average annual earnings of the member in the last 20 calendar quarters in which there were earnings preceding retirement or the average annual earnings of any 20 consecutive calendar quarters in which there were earnings, whichever is greater. Salary earned by a retiree who has returned to employment under the return to work program described in 2.82.5.15 NMAC or the return to work .25 FTE or less provision described in 2.82.5.16 NMAC shall not be used in determining a member's average annual salary.

E. When determining a member's last five-year average annual salary (last 20 calendar quarters), the director shall use the reported earnings on which contributions have been made by the member during the 20 quarters of employment immediately preceding the member's date of termination, except that if a member's last employment terminated at least one month prior to the close of the calendar quarter (or one month prior to the close of the academic year if such ends in May), his the member's last five years' earnings shall be the reported earnings upon which contributions have been made by the member during the five years of employment preceding the end of the month in which termination occurs. In such cases, any earnings in a calendar quarter shall be considered as earnings for the full quarter, except for the first quarter and the last quarter of the last five years of employment.

F. When the member's application for benefits has been approved and his effective date of retirement has been reached, the member shall then be retired.

G. Benefits shall not be commenced until the retiring member has elected the retirement benefit as provided in Section 22-11-30 NMSA 1978, or an optional benefit pursuant to Section 22-11-29 NMSA 1978.

H. Re-retirement benefits shall be computed in the following manner:

(1) The re-retirement benefit will be calculated in the same way as his the member's last benefit and will be based on the last five-year average or the highest consecutive five-year average, whichever is greater, for which contributions were made, and his the member's total service at re-retirement. The retirement benefit formula will be the same as at last retirement unless the member returns to employment for at least four quarters after the effective date of change in the formula. If this occurs, the benefit computation will be based on the benefit formula in effect at the time of re-retirement.

(2) The re-retirement benefit calculated above is reduced under the following conditions:

(a) At re-retirement the member's retirement age shall be his the member's chronological age less any period of time(s) during which benefits were received while in retirement. If this age is under 60 and his the member's total service is under 25 years, his the benefit is reduced by six-tenths percent for each quarter year under 60, down to age 55, plus one and eight-tenths percent for each quarter year this age is under 55.

(b) If the last benefit was payable as a reduced benefit under the terms of an option, the same terms and reduction shall apply to the re-retirement benefit.

(c) In no case can [his] the member's re-retirement benefit be less than [he] the member was receiving when [he] the member returned to employment.
[6/30/1999; 2.82.5.10 NMAC - Rn, 2 NMAC 82.5.10, 11/30/2001; A, 10/31/2002; A, 10/17/2017; A, X/XX/2019]

2.82.5.11 EFFECTIVE DATE OF BENEFIT:

A. Whenever a retiring member completes the academic year for which he has been contracted or employed, his effective date of retirement shall be July 1, provided that application is made as stipulated in Subsection B of 2.82.5.11 NMAC. Whenever a retiring member terminates at a time other than at the end of the academic year for which [he] the retiring member has been contracted or employed, the effective date may be the first day of the month following termination, provided that application must be as stipulated in Subsection B of 2.82.5.11 NMAC.

B. The effective date of benefits cannot in any case be earlier than the first day of the month following receipt of the completed application forms (as provided by the director) from the member or [his] the member's employer, except as provided in Subsection D of 2.82.5.11 NMAC.

C. Section 22-11-28 NMSA 1978 shall be construed to mean that the effective date of benefits shall be in accordance with Section D of this Rule, and further that on concurrence of the local administrative unit for retirement on a date other than July 1 has been given when the local administrative unit certifies the member's termination on the application form.

D. If a member's application for benefits is received after the effective date desired by the member, and such desired effective date would otherwise be in accordance with the law and rules of the board, the director may commence the member's benefit as of such date, only if the delay in filing was due to delay in processing by the local administrative unit, and not due to any fault or wish of the member. The director shall also consider an application to have been duly filed in this office on the date postmarked if the application is mailed.
[6/30/1999; 2.82.5.11 NMAC - Rn, 2 NMAC 82.5.11, 11/30/2001; A, 10/17/2017; A, XX/XX/2019]

2.82.5.12 APPROVAL OF RETIREMENT APPLICATION: The director of educational retirement is authorized to approve duly executed applications for age and service retirement on behalf of the board in order to insure timely approval of same; however, all such approvals must be ratified by the educational retirement board at a subsequent meeting of the board.

[6/30/1999; 2.82.5.12 NMAC - Rn, 2 NMAC 82.5.12, 11/30/2001]

2.82.5.13 OPTIONS:

A. Option B provided in accordance with Subsection D of Section 22-11-29 NMSA 1978 shall be operative:

- (1) during periods of non-participation, if contributions are not withdrawn, and
- (2) during periods of time when a member is receiving disability benefits, and
- (3) during the period of time from a member's effective retirement date until the final election of option is received in the ERB office.

B. If a member with option B coverage should terminate employment and withdraw his contributions, thereby causing the option B to become inoperative, the member may restore the amount withdrawn, together with required interest, and cause the option to become operative again.

C. An option election on file with the director by a member who has not retired shall become void on July 1, 1984 at which time the member will automatically be afforded the coverage of option B.

D. Upon retirement, a member may elect an optional benefit in accordance with Section 22-11-29 NMSA 1978. If electing coverage under option B, the member may not designate a beneficiary more than 10 years younger than the member unless the beneficiary is the member's spouse. In order that the retiring member may have the opportunity to properly consider this decision and to allow sufficient time for the member and the board to carry out necessary administrative procedures relating to the election of an option, an option election filed with the director subsequent to the effective date of retirement, but prior to commencement of benefit payments, shall be deemed to have been filed in accordance with the provisions of Section 22-11-29 NMSA 1978.

E. Whenever a member with option B coverage dies prior to the member's effective retirement date, it shall be incumbent upon the member's beneficiary to furnish proof of death to the director. The director shall then advise the beneficiary of the amount payable as a lump-sum settlement. Additionally, the director shall advise the beneficiary of the monthly amount of benefit payable as of the first of the month following the death of the member,

as well as the approximate monthly amount payable, if the beneficiary defers receipt of the benefit to the date on which the member would have been age 60, had the member lived. The beneficiary shall then advise the director, in writing, whether he wishes to receive a lump-sum payment, commence the benefit at the earliest possible date, or defer the benefit to a date not later than the date on which the member would have attained age 60, had the member lived. If the beneficiary chooses a monthly benefit, he shall not be required to make formal application for such benefit as required of members seeking retirement status. If the beneficiary chooses to defer the benefit to a later date, he must advise the director at least 30 days in advance of the date on which he wishes benefit to start.

F. Upon the death of a member who has the automatic option B coverage, and who has failed to name or who has incorrectly named a beneficiary under the option, the following shall apply:

- (1) If the member has named one person on the **ERB beneficiary designation form or** form 42, that person shall be declared the beneficiary under option B.
- (2) If more than one person is named on the **ERB beneficiary designation form or** form 42 of which one is the spouse of the member, the spouse shall be declared the beneficiary for option B purposes.
- (3) If the beneficiary named on the **ERB beneficiary designation form or** form 42 is deceased, a lump-sum payment of contributions plus applicable interest will be paid to the estate of the member.
- (4) If the beneficiary named on the **ERB beneficiary designation form or** form 42 is a minor child, the legal guardian, if other than the parent, will designate the manner in which the alternative payments under option B will be paid to the minor.
- (5) If the beneficiary named on the **ERB beneficiary designation form or** form 42 is a minor child in the care and custody of a parent, the parent shall designate the method of payment to the minor child under the option B.
- (6) If more than one person is named on the **ERB beneficiary designation form or** form 42, none of which is the spouse of the member, a lump-sum payment of contributions plus appropriate interest shall be made to the beneficiaries as per the directions of the member on the **ERB beneficiary designation form or** form 42. In the absence of contrary directions by the member, equal shares will be made. If one or more of the beneficiaries are minors, the distribution to the minor(s) shall be made to:
 - (a) a trust fund for the minor(s), if established, or
 - (b) on behalf of the minor(s), a person who has care and custody of the minor, or
 - (c) directly to the beneficiary(ies) upon attainment of age 18.
 - (d) these methods of distribution of payments shall also apply to Paragraphs 4 and 5

above.

(7) If ~~a person(s) is not~~ **the beneficiary** named on the **ERB beneficiary designation form or** form 42 **is not a human being, the beneficiary shall not be eligible for Option B coverage and shall receive** a lump-sum payment of the member's contributions plus applicable interest ~~[will be made as the member has directed on the form 42]~~ **at the rate set by the board.**

[6/30/1999; 2.82.5.13 NMAC - Rn, 2 NMAC 82.5.13, 11/30/2001; A, 6/30/2016; A, **X/XX/2019**]

2.82.5.14 COST-OF-LIVING ADJUSTMENTS:

A. The adjustment factor to be applied annually to eligible benefits shall be determined by using the "*Consumer Price Index for All Urban Consumers U.S. City Average All Items*".

B. If a member who was certified by the board as disabled at the time of regular retirement returns to gainful employment with a local administrative unit in a position commensurate with the member's background, education and experience, the member's benefit shall no longer be subject to adjustments as provided for in Subsection G of Section 22-11-31 NMSA 1978. Any adjustments made prior to the date of reemployment shall remain in effect. All future adjustments shall be made solely as provided for in Subsections B and C of Section 22-11-31 NMSA 1978.

[6/30/1999; 2.82.5.14 NMAC - Rn, 2 NMAC 82.5.14, 11/30/2001; A, 6/30/2016]

2.82.5.15 RETURN TO WORK PROGRAM:

A. In order to qualify to return to employment (hereinafter "return to work") as provided for in Subsections A and ~~(E)~~ **F** of Section 22-11-25.1 NMSA 1978, a retired member must have a period of at least 12 consecutive months in which they have not been employed as an employee or independent contractor by a local administrative unit (hereinafter, a "break in service").

(1) To satisfy the requirements of a "break in service," the retired member must not have rendered service of any nature whatsoever to a local administrative unit for the 12 consecutive month period. "Service" shall be defined to include, without limitation, all employment whether full time, part-time including

service allowed under Subsection B of 2.82.2.11 NMAC, substitute teaching, performing duties as a volunteer, which would otherwise be, or in the past have been, performed for the local administrative unit by a paid employee or independent contractor, or services rendered as an independent contractor, an employee of an independent contractor, or any other employment as described in Subsections A through D of 2.82.2.11 NMAC. A “local administrative unit” shall include any entity controlled by or subject to the control of a local administrative unit, including without limitation, a corporation or other entity regardless of legal form and of whether such corporation or entity is created for profit or non-profit purposes.

(2) The break in service must have commenced after the effective date of retirement and been completed prior to the first day of re-employment, but need not have been the twelve consecutive months immediately prior to the first day of such re-employment (i.e. the break in service could have occurred at any time during the period after the effective date of retirement and before the first day of re-employment but must have been at least 12 consecutive months within that period).

B. ~~[In addition to a break in service of at least 12 consecutive months, in order to]~~ **To** satisfy the provisions of Subsection ~~[E]~~ **F** of Section 22-11-25.1 NMSA 1978, a member who retired on or before January 1, 2001, and who subsequently removed him or herself from retirement (also referred to as “suspending retirement”) pursuant to Section 22-11-25 NMSA 1978, and thereafter re-retired, must ~~[complete an additional period of at least 90 days after the re-retirement, during which the retired member has not been employed as an employee or an independent contractor by a local administrative unit. During the 90-day period, the retired member must satisfy the same requirements regarding employment by a local administrative unit as must be satisfied for a 12 consecutive month break in service. The 90-day period shall not include any portion of the period used to satisfy the 12 consecutive month break in service. In addition, the 90-day]~~ **not have rendered service to a local administrative unit for at least 12 consecutive months from the date of the initial retirement. The 12 consecutive month** period shall not include any scheduled breaks, vacations, paid administrative or sick leave, or holidays consisting of more than two business days.

C. Any and all time that a retired member has provided service to a local administrative unit under the return to work program cannot be used in the calculation of retirement benefits and a retired member is not entitled to acquire service credit or to acquire or purchase service credit in the future for the period of the retired member’s re-employment with a local administrative unit under the return to work program.

D. ~~[No]~~ **A** retired member is **not** eligible for the return to work program until the member submits a completed, signed and notarized return to work ~~[form]~~ **application** as supplied by ERB, (the “return to work application”), verifying their eligibility for the return to work program **and ERB has approved the retired member’s return to work application.**

E. The date of suspension of retirement for any retired member shall be the last day of the month in which the member suspended retirement.

F. Any retired member who is participating in the return to work program who has violated the provisions of the program, failed to submit the required return to work application, or is discovered to have been ineligible to participate in the program shall have their retirement immediately suspended and shall pay the educational retirement fund a sum equal to all retirement payments that they have received while ineligible under the provisions of the return to work program plus interest at a rate to be set by the board. Before his or her monthly retirement benefits can resume, the suspended retired member must certify to ~~[the]~~ ERB that they have terminated any and all employment that would disqualify them from retirement under the Educational Retirement Act **and must reapply for retirement.** To re-qualify for the return to work program, the retired member must complete the minimum break in service as described in Subsection A of 2.82.5.15 NMAC, calculated from the date of reinstatement of retirement.

G. A retired member is qualified under Subsection B of Section 22-11-25.1 NMSA 1978 to return to full time employment without being required to suspend retirement benefits if the member:

- (1) retired on or before January 1, 2001; and
- (2) did not work more than .25 FTE at any time after January 1, 2001 or provide any other service to a local administrative unit after that date that would have required the member to suspend retirement benefits under the act; and
- (3) did not suspend retirement after January 1, 2001; and
- (4) completed **and received approval of** a return to work application with ERB.

H. ~~[Member’s qualifying]~~ **A member who qualifies** under Subsection B of Section 22-11-25.1 NMSA 1978 may begin full time employment immediately after ERB approval without any additional waiting period. [2.82.5.15 NMAC - N, 11/30/2001; A, 12/14/2001; A, 10/31/2002; A, 7/15/2003; A, 12/31/2008; A, 6/16/2015; A, 10/17/2017 A, **X/XX/2019]**

2.82.5.16 RETURN TO WORK [EXCEPTION] .25 FTE OR LESS:

~~A. — A retired member may return to employment (includes "substitution") and earn up to \$15,000 per fiscal year or the amount possible under the .25 or less FTE provision, whichever is greater, without affecting the retired member's retirement benefit. For purposes of this provision, earnings shall include bonuses, annual and sick leave payouts, and any other form of cash remuneration for services rendered except for reimbursements and allowances for expenses.~~

~~B. — In the event that a retired member enters into an agreement which provides for earnings in excess of the above limits or the retired member actually has earnings in excess of the above limits, the retired member's retirement benefit will be suspended for the duration of the employment, and the retired member will be returned to an active status effective the first day of the month following the month in which the retired member has earnings in excess of the above limits. The retired member shall pay the educational retirement fund a sum equal to all retirement payments that they have received while ineligible under the provisions of the return to work exception plus interest at a rate to be set by the board.~~

~~C. — A retiree who is participating under the return to work program may elect to switch to the return to work exception. Such election shall be effective the first day of the quarter following the date of the election.]~~

A. A retired member may return to employment (includes "substitution") at a level of .25 FTE or less without affecting the retired member's retirement benefit provided the retired member submits a return to work application and is approved by ERB prior to commencing employment.

B. In the event that a retired member enters into an agreement which provides for employment at a level greater than .25 FTE or actually works greater than .25 FTE and has not met the requirement in Subsections A and F of Section 22-11-25.1 NMSA 1978, the retired member's retirement benefit will be suspended for the duration of the employment, and the retired member will be returned to an active status effective the first day of the month following the month in which the retired member's employment exceeded .25 FTE. The retired member shall pay the educational retirement fund a sum equal to all retirement payments the retired member received while ineligible plus interest at a rate to be set by the board.

[2.82.5.16 NMAC - N, 6/28/2013; 2.82.5.16 NMAC - N, 6/16/2015; A, X/XX/2019]

2.82.5.17 TERMINATION OF PLAN; ACCRUED RIGHTS OF MEMBERS: The rights of members to benefits accrued, to the extent funded, will become vested to the extent required by and upon the events set forth in Treas. Reg. Section 1.401-6(a)(1). See 26 CFR 1.401-6.

[2.82.5.17 NMAC - Rn, 2.82.5.16 NMAC, 6/16/2015]

2.82.5.18 INTERNAL REVENUE CODE SELECTION: The Educational Retirement Act of New Mexico is intended to satisfy Section 401(a) of the Internal Revenue Code and to be a governmental plan within the meaning of Section 414(d) of the Internal Revenue Code.

[2.82.5.18 NMAC - N, 6/16/2015]

2.82.5.19 ROLLOVER DISTRIBUTIONS FOR NON-SPOUSE BENEFICIARIES: The Educational Retirement Act shall allow direct rollovers to non-spouse beneficiaries for lump sum distributions only, and such distributions must be requested before the end of the year after the year of the member's death. No partial rollovers shall be permitted. A direct rollover by a non-spouse beneficiary must be made into a traditional or Roth IRA established on behalf of the designated beneficiary and that will be treated as an inherited individual retirement account (IRA) pursuant to the provisions of Section 402(c) (11) of the Internal Revenue Code. The distribution must also otherwise satisfy the definition of an "eligible rollover distribution" under Section 401(a) (31) of the Internal Revenue Code. All other current rules applicable to rollover distributions under the Educational Retirement Act, or adopted by the board pursuant to the Educational Retirement Act, must be followed. The non-spouse beneficiary shall be notified that he or she is responsible for following the applicable minimum required distribution rules under Section 401(a) (9) of the Internal Revenue Code.

[2.82.5.19 NMAC - N, 6/16/2015]

2.82.5.20 DEATH BENEFITS WHILE PERFORMING MILITARY SERVICE: In the case of a death or disability occurring on or after January 1, 2007, if a participant dies while performing qualified military service (as defined in section 414(u)), the survivors of the participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service not otherwise credited under the terms of the

Educational Retirement Act) provided under the plan as if the participant had resumed and terminated employment on account of death.

[2.82.5.20 NMAC - N, 6/16/2015]

HISTORY OF 2.82.5 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

ERB 67-3, Rules and Procedures, filed 6/30/1967.

ERB 78-1, Rules and Procedures, filed 8/7/1978.

ERB Rule V, Retirement Benefits, filed 7/2/1982.

History of Repealed Material: [RESERVED]