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April 15, 2016

MEMORANDUM

TO: Legislative Education Study Committee
FR: Kevin Force *KCF*
RE: ADMINISTRATIVE RULEMAKING

Proposed Rules:

- 2.82.2 NMAC, Public Finance, Educational Retirement, Membership
- 2.82.3 NMAC, Public Finance, Educational Retirement, Member and Administrative Unit Contributions
- 2.82.4 NMAC, Public Finance, Educational Retirement, Service Credit
- 2.82.5 NMAC, Public Finance, Educational Retirement, Retirement Benefits
- 2.82.9 NMAC, Public Finance, Educational Retirement, Administrative Unit Reports and Remittances

Adopted Rules:

- 6.12.14, Primary and Secondary Education, Public School Administration – Health and Safety, Tobacco, Alcohol and Drug Free Schools
- Other Administrative Issues: 11.2.31, Labor and Workers' Compensation, Job Training, and Apprenticeship Assistance

Proposed Rules

In the February 12, 2016 issue of the *New Mexico Register*,¹ the Educational Retirement Board (ERB) published a Notice of Proposed Rulemaking, announcing amendments to the following rules:

- 2.82.2 NMAC, Membership
- 2.82.3 NMAC, Member and Administrative Unit Contributions
- 2.82.4 NMAC, Service Credit
- 2.82.5 NMAC, Retirement Benefits
- 2.82.9 NMAC, Administrative Unit Reports and Remittances

The Notice solicited comments on the proposed rules and announced a public hearing, to be held on April 22, 2016, at ERB's Albuquerque office, 6201 Uptown Boulevard, Suite 203, Albuquerque, New Mexico 87110. The Notice indicated ERB will vote on the proposed rules at the meeting. Written comments were accepted via email until 5:00 pm, on March 31, 2016. Oral comments will be accepted at ERB's April 24, 2016 meeting, subject to time limits. **See Attachment 1, "Notice of Proposed Rulemaking, 2/12/16" and Attachment 2, "Proposed Rules, 2.82.2 through 2.28.5 and 2.82.9 NMAC, 2/12/16."**

2.82.2 NMAC, Membership

The board proposes to amend Section 2.82.2.11, "Employees Excluded from Coverage," in two respects. First, in Paragraph B, regarding the exclusion of certain employees based on their FTE being .25 or less, the proposed rule requires the aggregation of a person's employment with all local administrative units for purposes of calculating whether an employee's FTE satisfies the .25 threshold for inclusion. ERB notes that this rule change is reflective of longstanding board policy that was not explicitly stated in the rule.

Additionally, Paragraph C is deleted, which states:

"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."

ERB indicates that the current wording of Paragraph C attempts to differentiate between long-term and short-term substitute teachers, but the ambiguous phrasing has raised concerns that the provision is being inconsistently applied by local administrative units. By deleting the entire paragraph, a substitute teacher's status would be determined according to their FTE, consistent with determinations for other ERB-eligible employees.

¹ Please note that, while the parts and sections being amended fall under Chapter 82 of Article 2, the Notice of Proposed Rulemaking for these rules, in every case, transposed the digits "82" so that the Notice incorrectly reads, "28." Staff informed ERB of the error.

2.82.3 NMAC, Member and Administrative Unit Contributions

The board proposes to amend Section 2.82.3.9, "Refunds of Contributions," to make interest paid by a member to reinstate withdrawn service credit nonrefundable. Practically speaking, if a member withdraws service credit from their account and decides at a later time to buy back that withdrawn credit, all earned interest must be paid back with the principal, and any such interest would not be refunded in any case. The interest payment is used to reimburse the retirement trust fund for the loss of investment gains which occurred from the date of the initial refund to the date of the purchase; this proposed amendment is consistent with longstanding ERB policy, as stated in the Member Handbook.

Paragraph D notes that refunds of a terminated member's contributions are to be made as soon as practicable after receipt of a properly executed request form. The amendment strikes language indicating that if a terminated member's last employer certified the member's termination on the last employer report filed with the board, the member's refund may be processed without delay. Instead, it proposes to add language permitting a refund for a terminated member to be processed without further certification of termination by the last employer, "or the final monthly report upon which the member appears."

However, the amendment indicates that if the member requesting the refund has an active employment record, the refund request shall not be processed without the employer's certification of termination, and "the final report upon which the refunding member will appear." No refunds will be processed until the board receives all contributions, and the board will be prohibited from accepting contributions after the submission of the final report. Under current rule, ERB often processes refund requests before final payroll contributions are posted to member accounts, leading ERB to produce two refund checks for a single request, the second often being made after the former member has moved, sometimes making it difficult to locate the retiree to make the second refund payment.

This rulemaking also proposes deleting Paragraph E, which reads:

"Whenever a member's refund request is properly filed, with the appropriate certification of termination, if required, and the member's termination date has passed, the director shall refund the amount of contributions on deposit with the board through the date of the last quarterly reporting period, if the member desires, and any balance owing to the member shall be paid when received by the board."

2.82.4 NMAC, Service Credit

The board proposes to amend Section 2.82.4.8 NMAC, "Earned Service Credit," to make the following changes:

- earned service credit is to be granted on a quarterly basis;
- a member is considered to have rendered service for any day for which the member is paid a salary, whether actively at work, or on annual, sick, administrative, or some other form of paid leave;

- outdated language referring to paid sabbatical leave taken prior to or after July 1, 1957 is deleted; and
- Paragraph G, which addressed earned service credit for public school nurses between 1957 and 1959 is deleted.

This section clarifies the status quo that earned service credit is still granted on a quarterly basis and further clarifies that a member earns service credit on any day on which a member is paid a salary, whether the member is working or on leave.

2.82.5 NMAC, Retirement Benefits

The board proposes to amend this part in two respects. First, in Section 2.82.5.13 NMAC, "Options," the selection of benefits and beneficiaries upon retirement is amended so that if a member elects "Option B," according to Section 22-11-29 NMSA 1978² they may not designate a beneficiary more than 10 years younger than the member, unless that beneficiary is the member's spouse. This proposed amendment is consistent with longstanding board policy, as well as the advice of its tax attorneys.

Second, the title of Section 2.82.5.14 NMAC, is amended to read, "Cost-of-Living Adjustments," rather than "Cost-of-Living." The rulemaking also adds a new Paragraph B to the section, noting that, if a member who was certified by ERB as disabled at the time of regular retirement returns to work in a local administrative unit in a position commensurate with their background, experience, and education, that member's benefit may no longer be adjusted for cost-of-living increases. Adjustments made before reemployment remain effective and future adjustments are to be made according to Section 22-11-31 NMSA 1978, the provision addressing cost-of-living adjustments for retired ERB members.

2.82.9 NMAC, Administrative Unit Reports and Remittances

The board proposes to amend Section 2.82.9.8 NMAC to require that local administrative units report compensation paid to all employees, not just ERB members, to help determine whether local administrative units are making all required contributions, particularly for members who work for multiple administrative units. Proposed amendments to this rule also include relatively minor clean-up, such as specifying that administrative units are "local" administrative units and mailing requirements are either changed to requirements for electronic transmission or electronic transmission is added as another submission option. The rulemaking also creates a daily fee of \$50 to be levied against administrative units for untimely reports and allows the director to waive such charges upon a written showing of good cause. The rulemaking also clarifies any fee imposed for late contributions may not be waived.

Adopted Rules

The December 15, 2015 issue of the *New Mexico Register* contained the Public Education Department's (PED) repeal and replacement of Part 6.12.4 NMAC, "Tobacco, Alcohol and Drug

² Section 22-11-29 (A)(1), NMSA 1978, "OPTION B. A reduced annuity payable during the member's life with the provision that upon the member's death the same annuity shall be continued during the life of and paid to the beneficiary designated by the member in writing at the time of electing this option . . ."

Free Schools.” The proposed changes included the expansion of the scope of the rule to encompass all public schools, instead of just local school districts, the extension of the prohibition on tobacco products to include nicotine vapor cartridges and devices, and additional definitions. Staff presented the proposed changes at the October 28, 2015 LESC meeting; the proposed rule was adopted on December 15, 2015 without change.

Other Administrative Issues

With the publication of the March 31, 2016 issue of the *New Mexico Register*, PED repealed its rule, Part 11.2.31 NMAC, “Apprenticeship Assistance,” following a public hearing conducted by the Department of Workforce Solutions (DWS). As required by Laws 2014, Chapter 51, Section 10, all functions for administration or oversight of provisions of the Apprenticeship Assistance Act were transferred from the Instructional Support and Vocational Education Division of PED to DWS. Thus, this issue of the *Register* also included adoption of these rules by DWS.

Notice of Proposed Rulemaking, 2/12/16

ATTACHMENT 1

New Mexico Register / Volume XXVII, Issue 3 / February 12, 2016

NOTICE OF RULEMAKING AND PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the New Mexico Educational Retirement Board of Trustees will hold a rulemaking hearing on April 22, 2016. The hearing will be held during the Board's regular business meeting at the ERB's Albuquerque office located at 6201 Uptown Boulevard, Suite 203, Albuquerque, NM 87110 beginning at 9:00 a.m. The purpose of the rulemaking hearing is to consider adoption of proposed revisions to the following rules - 2.28.2 NMAC, 2.28.3 NMAC, 2.28.4 NMAC, 2.28.5 NMAC and 2.28.9 NMAC. The Board will vote on the proposed rules during the meeting.

A summary of the proposed revisions and copies of the proposed rules may be accessed at the ERB's website www.nmerb.org or by contacting Amanda Olsen at AmandaSOlsen@state.nm.us, 701 Camino del Los Marquez, Santa Fe, New Mexico 87505 or (505) 476-6133.

Interested persons may submit their comments on the proposed rules to the Board via email at rule.change@nmerb.org no later than 5 p.m. on March 31. In the subject line, please indicate the number of each rule(s) for which you are providing comments. Oral comments will also be accepted at the April 24, 2015 Board meeting, subject to time limitations.

Any person with a disability who is in need of auxiliary aid or service to attend or participate in the hearing should contact Debbi Lucero at 505-827-8030 one week prior to the meeting.

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
[6-30-99; 2.82.2.1 NMAC - Rn, 2 NMAC 82.2.1, 11-30-2001]

2.82.2.2 **SCOPE:** This rule defines membership status and processes within the Educational Retirement Act, Section 22-11-1 to 22-11-55, NMSA 1978.
[6-30-99; 2.82.2.2 NMAC - Rn, 2 NMAC 82.2.2, 11-30-2001; A, 5-31-2012]

2.82.2.3 **STATUTORY AUTHORITY:** The Educational Retirement Act Section 22-11-1 to 22-11-55, NMSA 1978.
[6-30-99; 2.82.2.3 NMAC - Rn, 2 NMAC 82.2.3, 11-30-2001; A, 5-31-2012]

2.82.2.4 **DURATION:** Permanent
[6-30-99; 2.82.2.4 NMAC - Rn, 2 NMAC 82.2.4, 11-30-2001]

2.82.2.5 **EFFECTIVE DATE:** June 30, 1999, unless a later date is cited at the end of a section or paragraph.
[6-30-99; 2.82.2.5 NMAC - Rn, 2 NMAC 82.2.5, 11-30-2001]

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.
[6-30-99; 2.82.2.6 NMAC - Rn, 2 NMAC 82.2.6, 11-30-2001]

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 XII, Section 11 of the Constitution of New Mexico;
- (3) public education department;
- (4) educational retirement board;
- (5) New Mexico girls' school;
- (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 Chapter 21, Article 13 NMSA 1978 (the "Community College Act"); and
- (10) New Mexico activities association.

B. In addition to the local administrative units enumerated in Subsection A of this section, 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.

C. All employees of the schools, institutions and agencies enumerated in Subsection A of this section, except for those employees enumerated in Section 11 of this rule, are either "regular" "retired" or "provisional" members under the "Educational Retirement Act."

[6-30-99; 2.82.2.8 NMAC - Rn & A, 2 NMAC 82.2.8, 11-30-2001; A, 5-31-2012]

2.82.2.9 **REGULAR MEMBERS:**

A. In four year colleges, technical and vocational institutes and community or junior colleges, "regular members" shall be all regularly employed teaching staff, whether full-time or part-time (except retired members participating in the return to work program and exclusions under Section 11 of this rule); all regularly employed administrators, whether full-time or part-time, who hold a bachelor's degree or the professional equivalent thereof and who have managerial and supervisory responsibilities, (except retired members participating in the return to work program and exclusions under Section 11 of this rule); and all regularly employed nurses, whether full-time or part-time (except retired members participating in the return to work program and exclusions under Section 11 of this rule).

B. In the public school districts and state operated schools other than those listed in Subsection A above, "regular members" shall be all regularly employed teachers, administrators, and nurses who are holders of appropriate certificates issued by the public education department, regardless of whether employed full-time or part-time, (except retired members participating in the return to work program and exclusions under Section 11 of this rule).

C. Any member except a retired member participating in the return to work program, who is regularly employed in any of the following local administrative units, shall be a "regular member" if he holds a teacher's, nurse's or administrator's certificate (which is issued by the public education department at the time of commencement of employment in such local administrative units:

- (1) northern New Mexico state school;
- (2) New Mexico boys' school;
- (3) New Mexico girls' school;
- (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; and
- (9) New Mexico activities association.

D. Except retired members participating in the return to work program, 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.

E. Except retired members participating in the return to work program, 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 he is employed in an educational program and if he holds a certified school instructor's certificate issued by the public education department.

[6-30-99; 2.82.2.9 NMAC - Rn & A, 2 NMAC 82.2.9, 11-30-2001; A, 5-31-2012]

2.82.2.10 PROVISIONAL MEMBERS:

A. All persons regularly employed by the schools, institutions, and agencies outlined in Section 8 of this rule who are not "regular members" are "provisional members" and if employed or re-employed after July 1, 1971 must be covered under the Educational Retirement Act beginning with the first day of employment or re-employment, as a condition of employment, or if employed by a local administrative unit set forth in Subsection E of 2.82.2.10 NMAC, such provisional member may make the election provided therein.

B. Provisional members who entered employment prior to July 1, 1971 could exempt themselves from coverage under the Educational Retirement Act in the manner provided in Section 22-11-17 NMSA 1978 Compilation, as that section existed prior to July 1, 1971. If such provisional member did not exempt him- or herself, that provisional member must be covered under the provisions of the Educational Retirement Act beginning with the first day of his employment.

C. For the purpose of coverage under the Educational Retirement Act, school bus owner-drivers shall be considered as provisional members. The term "owner-driver" shall be taken to mean the person who drives a school bus owned by the person, over a regularly established route, under a regular contract in that person's name, approved by the state director of school transportation, and using equipment approved by the state director of school transportation for the regular transportation of children.

D. Any provisional member who has exempted him- or herself may, at any future date, revoke such exemption and commence coverage under the Educational Retirement Act on the first day of the month following his revocation.

E. 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 6 months of his employment or re-employment, but may not exempt himself.

- (1) New Mexico boys' school;
- (2) New Mexico girls' school;
- (3) New Mexico school for the deaf;
- (4) educational retirement board
- (5) public education department;
- (6) northern New Mexico state school;
- (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.

F. 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.

G. 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.

H. All employees of the public schools who are engaged as teacher aides or classroom aides but who do not teach shall be classified as provisional members even though such employees may hold certificates in some form issued by the public education department.

I. There shall be no provisional membership extended to employees of the local administrative units described in Subsection B of 2.82.2.8 NMAC.

[6-30-99; 2.82.2.10 NMAC - Rn, 2 NMAC 82.2.10, 11-30-2001; A, 5-31-2012]

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. 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.]~~ C. 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]D. All students enrolled in any public school, grade 1-12.

[F]E. Employees who have a portion of their salaries paid through the Comprehensive Employment and Training Act (Public Law 95-524) shall not be covered for contributions on that portion except those employees who have vested.

[6-30-99; 2.82.2.11 NMAC - Rn, 2 NMAC 82.2.11, 11-30-2001; A, 10-31-2002; A, 9-15-2006; A, 5-31-2012; A, 6-16-2015]

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 - N, 11-30-2001]

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.

[2.82.2.12 NMAC - N, 5-31-2012]

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 6-30-67.

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

ERB Rule II, Membership, filed 7-2-82.

History of Repealed Material: [RESERVED]

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 member contributions, refund of contributions, purchase of contributory service, and the payment of interest on refunds.

[2.82.3.2 NMAC - Rp, 2.82.3.2 NMAC, 7-1-2012]

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, 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.

(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 thirty (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]

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 Section 22-11-21(A) 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 Section 22-11-21(B) 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.

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 terminated member's last employer has certified the member's termination on the last employer report filed with the board, or 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), ~~[and is not certified to be terminated on the last monthly report filed by the member's employer,]~~ the refund request ~~[cannot]~~ shall not be processed without the last employer's certification of termination ~~[on the refund request form]~~ 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. Whenever a member's refund request is properly filed, with the appropriate certification of termination, if required, and the member's termination date has passed, the director shall refund the amount of contributions on deposit with the board through the date of the last quarterly reporting period, if the member desires, and any balance owing to the member shall be paid when received by the board.]~~

~~[F]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 2.82.3.10 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.

~~[G]E.~~ 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.

~~[H]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]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.

~~[H]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]

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 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 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 through 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.

[2.82.3.10 NMAC - Rp, 2.82.3.10 NMAC, 7-1-2012]

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]

2.82.3.12 PURCHASE OF NON-REPORTED SERVICE: Non-reported service must be purchased at the time it is discovered at a rate adopted by the board.

[2.82.3.12 NMAC - N, 7-1-2012]

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 6-30-67.

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

ERB Rule III, Member and Administrative Unit Contributions, filed 7-2-82.

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

[6-30-99; 2.82.4.1 NMAC - Rn, 2 NMAC 82.4.1, 11-30-2001]

2.82.4.2 SCOPE: This rule applies to earned and allowed service credit.

[6-30-99; 2.82.4.2 NMAC - Rn, 2 NMAC 82.4.2, 11-30-2001]

2.82.4.3 STATUTORY AUTHORITY: The Educational Retirement Act, Section 22-11-1 to 22-11-5[3], NMSA 1978.

[6-30-99; 2.82.4.3 NMAC - Rn, 2 NMAC 82.4.3, 11-30-2001]

2.82.4.4 DURATION: Permanent

[6-30-99; 2.82.4.4 NMAC - Rn, 2 NMAC 82.4.4, 11-30-2001]

2.82.4.5 EFFECTIVE DATE: June 30, 1999, unless a later date is cited at the end of a section or paragraph.

[6-30-99; 2.82.4.5 NMAC - Rn, 2 NMAC 82.4.5, 11-30-2001]

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.

[6-30-99; 2.82.4.6 NMAC - Rn, 2 NMAC 82.4.6, 11-30-2001]

2.82.4.7 DEFINITIONS: [RESERVED]

2.82.4.8 EARNED SERVICE CREDIT:

A. ~~Earned service credit shall be granted [for prior employment on the basis of one month of credit for each month worked in regular employment, and when a regular work year consisted of a period of time less than 12 months, such period of time shall be considered a full year] on a quarterly basis.~~

B. ~~[Earned service credit shall be granted for employment after July 1, 1957, on a quarterly basis.]~~ 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 leave ~~[after July 1, 1957. Members who received pay for sabbatical leave prior to July 1, 1957 shall receive one month of earned service credit for such month during which they received pay for such leave].~~

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 administrative unit relating to the revoked period of earned service credit shall be as follows:

(1) Administrative unit contributions shall be credited to the administrative unit to be used against future contribution costs.

(2) Before the member contribution shall be disbursed, or credited, the 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 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 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. ~~[Public school nurses whose first employment commenced after July 1, 1957 and prior to June 12, 1959 may acquire earned service credit for such employment if the contributions required by law are made. Such nurses are considered to have been provisional members prior to June 12, 1959.]~~

H. Provisional members who were employed between July 1, 1957 and July 1, 1961 and who were not covered at that time, may receive earned service credit for such service if the contributory requirements set forth in Section 22-11-17 are met, and if such provisional members do not exempt themselves.

I. A provisional member who has exempted himself, may revoke such exemption by filing ERA form #42 with his employer and by commencing regular contributions to the educational retirement fund on the first day of the month following the filing of ERA form #42, and earned service credit shall commence on that date.

J. A provisional member who exempted himself during the period July 1, 1957 to July 1, 1961 may receive earned service credit for service rendered prior to July 1, 1957 if he became covered under ERA subsequent to July 1, 1961 in lieu of exemption as provided in Section 22-11-17 as amended July 1, 1961. If a provisional member exempted himself from ERA coverage on or after July 1, 1961, he shall not be entitled to receive earned service credit for service rendered prior to July 1, 1957 by reason of later revoking the exemption or otherwise becoming covered.

K. 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.

L. Notwithstanding Section 22-11-17(B) NMSA, 1978, a member may purchase any or all of the time that the member was exempt from ERA coverage. The cost of purchase shall be as prescribed in Section 22-11-17(C) or (D), NMSA, 1978, except that if the member purchases only a portion of the total exempt time, the cost shall be calculated by multiplying the cost of the exempt time by the ratio of time purchased to the total exempt time. Prior service, which was canceled due to the member's exemption, shall be restored in the same proportion as the exempt time purchased to the total exempt time. Any contribution paid through a payroll deduction plan as prescribed in Section 22-11-21.3 must be done under the local administrative unit's payroll deduction plan, and not through partial payments made to ERB. ERB shall not accept such partial payments as any service time purchased under Section 22-11-17(C) or (D) must be paid to ERB in a lump sum.

M. In the event that a member was neither covered nor exempt from coverage under ERA, the member shall have the right to purchase such service, or portion thereof, at a cost calculated in the same manner as for the purchase of exempt service delineated in Section 22-11-17(C). In such cases, the local administrative unit must pay the employer cost, but only if the member purchases non-covered time.

N. 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.

O. 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 Internal Revenue Code sections 402(e), 403(b)(8), 408(d) or 457 (e)(16).

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

(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.

[6-30-99; 2.82.4.8 NMAC - Rn, 2 NMAC 82.4.8, 11-30-2001; A, 4-15-2002; A, 7-15-2003; A, 6-16-2015]

2.82.4.9 ALLOWED SERVICE CREDIT:

A. For purposes of granting allowed service credit pursuant to Section 22-11-34A(2) 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 eighteen 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 Section 22-11-34A(3) 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 Section 22-11-34A(3) 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 sixty 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 Section 22-11-34A(3) 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 Section 22-11-34A(3) NMSA 1978, the "average annual actual salary" shall be based upon the member's most recent twenty 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 Section 22-11-34A(3) 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 Section 22-11-33C NMSA 1978; such repayment shall be made at the same time as the lump sum payment for allowed service credit as specified in Section 22-11-34A(3) 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 Section 22-11-34A(3) and (4) 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 Section 22-11-34A(4) 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 Section 22-11-34A(4)(a) 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 Section 22-11-34 4(d), 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 Internal Revenue Code sections 402(c), 403(b)(8), 408(d) or 457 (e)(16).

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

(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.

Proposed Rules, 2.82.2 through 2.82.5, and
2.82.9 NMAC, 2/12/16

(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.

[6-30-99; 2.82.4.9 NMAC - Rn, 2 NMAC 82.4.9, 11-30-2001; A, 4-15-2002; A, 10-31-2002; A, 12-31-2009]

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 an administrative unit while the member is participating in the return to work program of the Act. While a member is participating in the return to work program, no service credit can be purchased for service previously earned or withdrawn.

[2.82.4.10 NMAC - N, 11-30-2001]

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 6-30-67.

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

ERB Rule IV, Service Credit, filed 7-2-82.

History of Repealed Material: [RESERVED]

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

[6-30-99; 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.

[6-30-99; 2.82.5.2 NMAC - Rn, 2 NMAC 82.5.2, 11-30-2001]

2.82.5.3 STATUTORY AUTHORITY: The Educational Retirement Act, Section 22-11-1 to 22-11-5[3], NMSA 1978.

[6-30-99; 2.82.5.3 NMAC - Rn, 2 NMAC 82.5.3, 11-30-2001]

2.82.5.4 DURATION: Permanent

[6-30-99; 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.

[6-30-99; 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.

[6-30-99; 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 one year 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.

[6-30-99; 2.82.5.8 NMAC - Rn, 2 NMAC 82.5.8, 11-30-2001]

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, 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.

[6-30-99; 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 \$1 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 Compilation.

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 shall be the average annual earnings of the member in the twenty calendar quarters in which there were earnings preceding retirement or the average annual earnings of any twenty consecutive calendar quarters in which there were earnings, whichever is greater.

E. No member covered under the Educational Retirement Act prior to July 1, 1957 may receive a benefit computed under the terms of Section 22-11-44 unless such member shall have fulfilled all of the requirements of the retirement law repealed by the Educational Retirement Act; however, in determining whether the member has five years of service consecutive and immediately prior to the date of retirement, the director may allow an interruption of such service of not to exceed one calendar quarter.

F. In determining a member's last five-year average annual salary, the director shall use the reported earnings on which contribution has been made by the member during the twenty 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 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.

G. 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.

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

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

(1) The re-retirement benefit will be calculated in the same way as his 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 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 chronological age less any period of time(s) during which benefits were received while in retirement. If this age is under 60 and his total

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2.82.9 NMAC, 2/12/16

service is under 25 years, his benefit is reduced by .6% for each quarter year under 60, down to age 55, plus 1.8% 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 re-retirement benefit be less than he was receiving when he returned to employment.

[6-30-99; 2.82.5.10 NMAC - Rn, 2 NMAC 82.5.10, 11-30-2001; A, 10-31-2002]

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 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 employer, except as provided in Subsection D of 2.82.5.11 NMAC.

C. Section 22-11-28 shall be construed to mean that the effective date of benefits shall be in accordance with Section D, Paragraph (1) and (2) 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.

[6-30-99; 2.82.5.11 NMAC - Rn, 2 NMAC 82.5.11, 11-30-2001]

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.

[6-30-99; 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 Section 22-11-29, Paragraph D, 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. 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.

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 thirty 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 form 42, that person shall be declared the beneficiary under option B.
- (2) If more than one person is named on the 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 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 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 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 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 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 named on the form 42, a lump-sum payment of the member's contributions plus applicable interest will be made as the member has directed on the form 42.

[6-30-99; 2.82.5.13 NMAC - Rn, 2 NMAC 82.5.13, 11-30-2001]

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.

[6-30-99; 2.82.5.14 NMAC - Rn, 2 NMAC 82.5.14, 11-30-2001]

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 of Section 22-11-25.1, NMSA 1978, a retired member must have a period of at least twelve 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 twelve consecutive month period. "Service" shall be defined to include, without limitation, all employment whether full time, part-time including service allowed under Paragraph (1) of 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 twelve consecutive months within that period). After completing a twelve consecutive month break in service, a retired member may work .25 FTE or less as provided by Paragraph (1) of Subsection B of 2.82.5.16 NMAC, without affecting that member's eligibility for the return to work program.

B. In addition to a break in service of at least twelve consecutive months, in order to satisfy the provisions of Section 22-11-25.1 (E), 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 ninety 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 ninety day period, the retired member must satisfy the same requirements regarding employment by a local administrative unit as must be satisfied for a twelve consecutive month break in service. The ninety day period shall not include any portion of the period used to satisfy the twelve consecutive month break in service. In addition, the ninety day 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 retired member is eligible for the return to work program until the member submits a completed, signed and notarized return to work form as supplied by ERB, (the "return to work application"), verifying their eligibility for the return to work program.

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. 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 Section 22-11-25.1(B) 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 a return to work application with ERB.

H. Member's qualifying under Section 22-11-25.1(B) 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]

2.82.5.16 RETURN TO WORK EXCEPTION:

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.
[2.82.5.16 NMAC - N, 6-28-13; 2.82.5.16 NMAC - N, 6-16-2015]

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 6-30-67.

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

ERB Rule V, Retirement Benefits, filed 7-2-82.

History of Repealed Material: [RESERVED]

TITLE 2 PUBLIC FINANCE
CHAPTER 82 EDUCATIONAL RETIREMENT
PART 9 ADMINISTRATIVE UNIT REPORTS AND REMITTANCES

2.82.9.1 ISSUING AGENCY: Educational Retirement Board, P. O. Box 26129, Santa Fe, New Mexico 87502-0129.

[6-30-99; 2.82.9.1 NMAC - Rn, 2 NMAC 82.9.1, 10-31-2002]

2.82.9.2 SCOPE: This rule applies to local administrative units and state agencies required to file reports on contributions to the ERA fund.

[6-30-99; 2.82.9.2 NMAC - Rn, 2 NMAC 82.9.2, 10-31-2002]

2.82.9.3 STATUTORY AUTHORITY: The Educational Retirement Act, Sections 22-11-1 to 22-11-5[3], NMSA 1978.

[6-30-99; 2.82.9.3 NMAC - Rn, 2 NMAC 82.9.3, 10-31-2002]

2.82.9.4 DURATION: Permanent.

[6-30-99; 2.82.9.4 NMAC - Rn, 2 NMAC 82.9.4, 10-31-2002]

2.82.9.5 EFFECTIVE DATE: June 30, 1999, unless a later date is cited at the end of a section or paragraph.

[6-30-99; 2.82.9.5 NMAC - Rn, 2 NMAC 82.9.5, 10-31-2002]

2.82.9.6 OBJECTIVE: Instructions for preparing and filing timely reports, and specifies penalties for late filing of reports or late deposit of contributions.

[6-30-99; 2.82.9.6 NMAC - Rn, 2 NMAC 82.9.6, 10-31-2002]

2.82.9.7 DEFINITIONS: [RESERVED]

2.82.9.8 EMPLOYER REPORTS:

A. Instructions for the preparation and handling of employer reports and monthly remittances by the local administrative units shall be outlined in detail once each year and ~~[mailed]~~electronically transmitted to each local administrative unit by the director.

B. ~~[Forms shall be prepared for all regular reports and made available to the administrative units by the director.]~~Employer reports shall encompass all local administrative unit employees, including those employees whom the local administrative unit has identified as excluded from coverage.

C. Monthly contributions from employees and local administrative units shall be ~~[postmarked]~~electronically transmitted no later than the fifteenth (15th) day of the month following the month for which contributions are withheld.

(1) Employer reports and contributions shall be electronically transmitted or postmarked no later than the fifteenth (15th) of the following month. The director may enter into an agreement with a local administrative unit for an extension of this deadline for the employer report. No such extension is available for submission of the contributions.

(2) When the fifteenth (15th) of the month is on a Saturday, reports and contributions are due the previous work day. If the fifteenth (15th) of the month falls on a Sunday or holiday, the report and contributions are due on the next workday.

(3) Local administrative units shall be assessed late charges for not submitting reports or contributions in accordance with the above schedule. A charge of fifty dollars (\$50) per day shall be assessed for untimely reports. Upon a written ~~[statement of hardship]~~showing of good cause, the director may waive charges to the local administrative unit for untimely reports. No such waiver of charges is available for late contributions. The charges ~~[if applicable,]for late contributions~~ will be calculated at a rate equal to the state treasurer's overnight investment program rate plus one (1) percent. The rate will be applied daily and cumulatively for the period of time from the fifteenth (15th) to the date of postmark. The late charge shall be the greater amount calculated by applying the foregoing rate or ten dollars (\$10). The director shall report any and all such assessments and waivers to the board.

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D. The director shall prepare forms for all regular reports, or make available other means for such regular reports from the local administrative units as may be required in the administration of the Educational Retirement Act.

[6-30-99; 2.82.9.8 NMAC - Rn & A, 2 NMAC 82.9.8, 10-31-2002]

HISTORY OF 2.82.9 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 6-30-67.

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

ERB Rule IX, Administrative Unit Reports and Remittances, filed 7-2-82.

History of Repealed Material: [RESERVED]