

**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 ~~22-11-53~~ 22-11-55, NMSA 1978.  
[6-30-99; 2.82.4.3 NMAC - Rn, 2 NMAC 82.4.3, 11-30-2001; ~~xx-xx-xxxx~~]

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

(b) If the local administrative unit has been reimbursed by the member for member contributions relating to the leave and paid to the board, such member contributions shall be paid to the member on a refund voucher separate from any other refund which might be requested by the member.

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

G. 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.

H. 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.

I. 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.

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

K. 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.

L. 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.

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

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

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

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

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

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

(1) Rollovers must be eligible rollover distributions that are not includible in the income of the member by reason of 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.

(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; A, 6-30-2016; xx-xx-xxxx]

#### **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)~~ Section 22-11-34A(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.

(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; xx-xx-xxxx]

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

[2.82.4.10 NMAC - N, 11-30-2001; xx-xx-xxxx]

**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]