



STATE OF NEW MEXICO
Educational Retirement Board
P.O. BOX 26129
SANTA FE, NEW MEXICO 87502-0129
PHONE: (505) 827-8030 FAX: (505) 827-1855

Proposed Amendments to
Rule 3 (Member and Administrative Unit Contributions) (2.82.3 NMAC)
and
Rule 2 (Membership) (2.82.2 NMAC)

In December 2011, the Educational Retirement Board (the "Board") asked for public comment on proposed amendments to Rule 3 and Rule 2. In response to the comments received, the amendments have been revised to address concerns raised by ERB members. The changes are described below. The revised drafts of Rule 3 and Rule 2 will be presented to the Board on April 20, 2012 for final adoption.

The Board and the staff of the ERB are very appreciative of the ERB members' comments and the effort taken to provide the feedback. We believe that the changes made in response to the members' comments substantially improve the proposed amendments.

Rule 3 (Member and Administrative Unit Contributions). As noted when the draft was published in December 2011, the Rule 3 is being entirely rewritten. Because of this, a "redline" copy could not be prepared that compared it to the existing rule. However, a "redline" is attached that shows the changes made to the December 2011 draft in response to member comments.

The comments received focused almost entirely on the elements of salary that are either included or excluded for purposes of contributions and calculating retirement benefits. Most comments requested more detail to further clarify which elements are covered and which are excluded. As a result, the changes summarized below were made.

1. *Salary Covered*. The revised draft states that the term "salary" includes, without limitation:
 - (a) base salary, compensation, or wages.
 - (b) salary, compensation or wages for additional services rendered, such as: teaching courses in addition to or above a full teaching load during the academic year; teaching courses or performing research during summer where such courses or research are not included in the duties on which the member's salary is based; 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. *Salary Excluded*. The draft also was revised to provide more detail about elements of salary or compensation that are not subject to contributions and or used in calculating retirement benefits. The elements added to the list include: bonuses, awards, prizes; stipends or one-

time payments for attending training sessions which are reimbursements for travel expenses; allowances or reimbursements for, or expenses related to, travel, housing, food, equipment, cars, or similar items; and, after July 1, 2012, additional pay or a pay differential that is based solely on a member performing duties at (i) a location that is different than the location at which the member regularly performs his or her job duties or (ii) that is based on the member performing duties outside of the United States and its insular areas, territories, and possessions.

Additional minor changes such as converting a singular phrase to a plural also were made. As noted above, “redline” copy of the revised Rule 3, showing the changes from the December 2012 draft is attached. In addition, for ease of reading, a copy with the changes incorporated into the text also is attached.

Rule 2 (Membership). The proposed amendment published in December 2011 added a new section to the end of the rule addressing membership enrollment and changes in contact information. The new section sets out existing ERB practice regarding enrollment forms and would require members to provide the ERB mail and e-mail addresses and to update those addresses when they change. The proposed amendment also would require LAUs to provide the ERB the e-mail addresses that those units assign to employees upon the ERB’s request to facilitate communicating information about the pension fund directly to members. This amendment was proposed at the suggestion of ERB members. The December 2011 draft also made several technical changes to Rule 2, such as adding word “local” before the phrase “administrative unit” so that the rule uses the statutorily defined term.

Comments received from members generally supported the proposed amendment. One commenter asked how members would notify the ERB of address changes. In response to that comment, the phrase “on forms made available for this purpose by the director” was added to draft Rule 2.8.2.12 (A)(2). Another commenter noted that the “state department of education” is now the “public education department.” After reviewing that comment and the existing rule, a decision was made to (1) modify the names of all the LAUs to those that now appear in the Educational Retirement Act and other state statutes, (2) revise other terms to use current terms or to be consistent in the use of terms, and (3) clarify other language without changing substantive meaning. As noted when the draft was published in December 2012, the amendment is an interim revision, with a more complete amendment to be done in the future. All of the proposed amendments to Rule 2 are reflected on the attached “redline” draft. In addition, as with Rule 3, for ease of reading a copy with the changes incorporated into the text also is attached.

Again, the Board and the ERB staff want to thank the ERB members who took the time to review and make the suggestions that resulted in modifications of the draft amendments. Your input was essential to this process and resulted in improvements to the draft amendments.

Sincerely,
Jan Goodwin
Executive Director