



**STATE OF NEW MEXICO**  
**Educational Retirement Board**  
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PROPOSED RULE AMENDMENT  
PUBLIC COMMENT PERIOD  
*February 21, 2013 through March 23, 2013*

PROPOSED ERB RULE 5.16 -  
TERMINATION OF PLAN; ACCRUED RIGHTS OF MEMBERS

The Educational Retirement Board (“ERB”) is asking for public comment on the attached draft to amend Rule 5 to include new material as Rule 5.16.

The proposed amendment would add a section to Rule 5 addressing the accrued rights of members to benefits in the event that the defined benefit plan were ever to be terminated or if there was ever a complete discontinuance of contributions. The amendment provides that, to the extent that they are funded, the rights of members to benefits accrued to the date of any such termination or discontinuance would become vested to the extent required by and upon the events set forth in U.S. Treasury Regulation 26 CFR 1.401-6. The proposed rule does not alter or diminish the benefits earned by members of the ERB defined benefit retirement plan (also sometimes referred to as the “ERB regular plan”). The proposed rule is also consistent with the rights currently provided to members of the ERB regular plan under the New Mexico Constitution and the Educational Retirement Act. The proposed amendment does not impose any additional obligations on the ERB or on the State of New Mexico.

The proposed rule is the result of an Internal Revenue Service (“IRS”) requirement that defined benefit plans such as that managed by the ERB have a provision addressing the rights of members in the event that a plan were to be terminated or there was a complete discontinuance of contributions to the plan. The proposed rule should not be taken to imply that the ERB or the New Mexico Legislature are considering terminating the ERB defined benefit retirement plan or completely discontinuing contributions to it. The ERB is proposing this rule to comply with IRS requirements that are consistent with the New Mexico constitution and statutes and as part of the process of maintaining the ERB defined benefit plan’s tax-favor status under federal tax law.

The ERB looks forward to receiving your comments on the proposed adoption of Rule 5.16.

Comments should be e-mailed to [rulechange@nmerb.org](mailto:rulechange@nmerb.org) by 5 pm on March 23, 2013.