



STATE OF NEW MEXICO
Educational Retirement Board

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Summary of Changes to NMERB Rule 2 (Membership) and
Rule 3 (Member and Administrative Unit Contributions)
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NMERB Rule 2.82.2 NMAC (Membership) ("Rule 2") is being amended effective May 31, 2012 to add new provisions that require: (1) members to complete a new employment form each time that they were hired or rehired by an LAU and to provide the ERB contact information, including their mailing address and e-mail address; (2) make active members and retirees responsible for providing the ERB written notice of changes in their mailing address or e-mail address; and (3) require LAUs to provide the ERB the e-mail addresses that the LAU assigns members for purposes of providing members information regarding the ERB and members' accounts. Additional changes were made to: (1) modify the names of LAUs to those that now appear in the Educational Retirement Act and other New Mexico statutes, (2) revise other terms to use current terms or to be consistent in the use of terms, and (3) clarify language without changing substantive meaning.

A new Rule 2.82.3.8 NMAC (Member and Administrative Unit Contributions) ("Rule 3") is being adopted effective July 1, 2012 to replace the existing Rule 3. Among the areas addressed in the new Rule 3 are:

1. Definitions. The rule includes definitions for the terms "non-reported service," "refund rate," and "student teacher." Previously no terms were defined in Rule 3.

2. Salary Covered or Excluded. This section is substantially revised and reorganized, with separate sections addressing salary that is covered for contribution purposes and salary that is excluded from contributions (sometimes referred to as "not covered for contribution purposes").

a. Salary Covered. Salary paid for the following is included for purposes of contributions and for purposes of calculating final average salary for retirement benefits: teaching courses in addition to or above a full teaching load; teaching courses or performing research during summer; 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, and providing other additional services; additional pay based on professional certifications or qualifications, skills such as being bilingual or multilingual; and, overtime, shift differential, and 'on-call' or call back pay.

b. Salary Excluded. Contributions are not made on salary that is excluded for contributions purposes and that salary is not used in calculating final average salary for benefits. Many of the earnings listed as 'excluded' are excluded under the current rule and long standing practice.

Salary excluded for contribution purposes are: bonus or incentive pay; pay supplements or other “one-time” payments which do not increase base pay; allowances or reimbursements for travel, housing, food, equipment or similar items; lump-sum payment for accrued sick leave; lump-sum payment of accrued annual leave made after July 1, 2010; payments where services are not rendered (such as to “buy-out” employment contracts or in connection with early retirement), or as a result of a legal settlement (unless the payment is for salary not previously paid), and stipends or salary paid to student teachers. 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 (e.g., a location differential or hazard or hazardous duty pay) will not be included for contribution purposes.

The draft rule provides a framework to determine whether elements of salary are subject to contributions. If an LAU wants to confirm whether a specific element of salary is subject to or excluded from contributions, that LAU can request an interpretative letter from the Executive Director.

3. Refunds. Refunds are now addressed in two sections, one for refunds in the event of termination of employment and the other in the event of death. The effect on a Tier 1 member of taking a refund is also set forth. The elements of Tier 1 and Tier 2 membership are summarized below. A Tier 1 member who takes a refund terminates Tier 1 status; if that member repurchases service credit after July 1, 2010, the member becomes a Tier 2 member. The process for closing out the balance of member contributions in a refunded account also has been revised. The processes for closing or collecting excess refunds also are rewritten; however, they are substantially the same as the current process.

Tier 1 - Became a member prior to July 1, 2010 and had not been refunded all member contributions as of that date. Retirement eligibility requirements for Tier 1 members are: 25 years of earned and allowed service credit; Rule of 75 (age plus earned service credit = 75), or Age 65 plus 5 years earned service credit).

Tier 2 members are either: (1) persons who first became a member on or after July 1, 2011, or (2) persons who had been a member prior to July 1, 2010 but who refunded all member contributions and did not repurchase their withdrawn service credit until on or after July 1, 2010. Retirement eligibility requirements for Tier 2 members are: 30 years of earned and allowed service credit; Rule of 80 (age plus earned service credit = 80), or Age 67 plus 5 years earned service credit.

4. Interest. These provisions have been rewritten to reflect current statute.