

**NEW MEXICO
ALTERNATIVE
RETIREMENT PLAN**

OPERATIONS MANUAL

**AMENDED AND RESTATED
JANUARY 1, 2010**

POSITION STATEMENT

Article II, Section 22, NMSA, 1978 compilation, as amended, passed by the 1991 New Mexico Legislature, and signed into law by Governor Bruce King, provides for the implementation of an Alternative Retirement Plan (ARP) in Sections 22-11-47 through 22-11-52. The ARP is designed for newly appointed employees who are faculty or professionals with the four-year Institutions of Higher Education (the "Institution"). House Bill 168 was enacted by the 1999 Legislature and signed by Governor Johnson to include Junior and Community Colleges in the ARP. While the plan is for specified employees of these Institutions, the administration of the program is placed with the Educational Retirement Board of New Mexico.

The Alternative Retirement Plan shall be offered as a recruitment tool to induce new additions to the faculties of these Institutions. The Plan shall not be made available to present members of the Educational Retirement Act System (ERA) nor to new employees who are not faculty or professionals as defined in Article 1 of this manual.

At the time a newly hired person who may participate in the Alternative Retirement Program is processed for employment by the various Institutions, that person shall receive from the Institution a full and complete explanation of the options available to them in the selection of the retirement plans, including the Educational Retirement Act.

After having been fully advised of the advantages and disadvantages of the various options, the employee shall execute the necessary documents to become a covered Participant under the Educational Retirement Act or the Alternative Retirement Plan.

DEFINITIONS OF RELEVANT TERMS

The following terms when used herein shall have the following meaning. Capitalized terms are used throughout the text of the Operations Manual for terms defined by this and other sections.

Accumulation Account. "Accumulation Account" means the separate account established for each Participant to which will be credited all Plan Contributions, less expense charges and the earnings thereon.

Alternative Retirement Plan (ARP). "Alternative Retirement Plan" means the Plan provided for in Sections 22-11-47 through 22-11-52, NMSA, 1978 compilation, as amended.

Annual Additions. "Annual Additions" means the sum of the amounts credited to a Participant's Accumulation Account for the Limitation Year, including the contributions made by the Institution and the Participant.

Annuity Carrier. Firm or firms chosen by the Educational Retirement Board to provide participants with Alternative Retirement Program investments and annuities.

Beneficiary. "Beneficiary" means the individual, institution, trustee or estate designated by the Participant to receive benefits.

Board. "Board" means the Educational Retirement Board of the State of New Mexico.

Code. "Code" means the Internal Revenue Service Code of 1986, as amended. Reference made to any specific section of the Code includes the section and any comparable section or sections of any future legislation that amends, supplements, or supercedes the section.

Code Section 401(a) Defined Contribution (Money Purchase) Retirement Plan. A "Code Section 401(a) Defined Contribution (Money Purchase) Retirement Plan" means a plan that provides a separate account for each Participant and benefits based solely on the amount of vested Plan Contributions to the Participant's Accumulation Account(s) and earnings thereon, and that meets the requirements of Code Section 401(a). All benefits under the Plan are fully funded and provided solely through the Funding Vehicles selected by the Participants; therefore, benefits are not subject to, nor covered by, federal plan termination insurance.

Director. "Director" means the Director of the Educational Retirement Board of New Mexico.

Effective Date. "Effective Date" means July 1, 1991, which is the Effective Date of the Plan.

Employment Date. "Employment Date" means the effective date of the appointment on which Salary/Wages begin for the Participant.

ERA. "ERA" means the Educational Retirement Act, administered by the Educational

Retirement Board, as amended through 1999, enacted to assure a sustained program of retirement benefits for public school employees, college and university employees, and other employees of State Educational Institutions and Agencies.

Fund Sponsor/Annuity Carrier. "Fund Sponsor" means an insurance, variable annuity or investment company that provides Funding Vehicles available to Participants under this Plan as approved by the Board.

Funding Vehicle/Annuity Contract. "Funding Vehicle" means tax-deferred annuities, fixed or variable in nature or a combination thereof, issued for the purpose of funding accrued benefits under this Plan.

Institution. "Institution" means qualifying State Educational Institutions of Higher Learning as included in Section 22-11-2(v) as follows:

- (a) University of New Mexico
- (b) New Mexico State University
- (c) New Mexico Institute of Mining and Technology
- (d) New Mexico Highlands University
- (e) Western New Mexico University
- (f) Eastern New Mexico University
- (g) Albuquerque Technical-Vocational Institute
- (h) Clovis Community College
- (i) Luna Technical-Vocational Institute
- (j) Mesa Technical College
- (k) New Mexico Junior College
- (l) Northern New Mexico State School
- (m) San Juan College
- (n) Santa Fe Community College

Institution Plan Contributions: "Institution Plan Contributions" means contributions by the Institution under this Plan as required in Article III on Contributions.

Limitation Year. "Limitation Year" means calendar year.

Normal Retirement Age. "Normal Retirement Age" means age 65.

Participant. "Participant" means an eligible employee of an Institution who becomes first employed on or after July 1, 1991, and who elects to participate in the Plan, except as provided for in Section B(4)(a) of Article 1 on Eligibility.

Participant Plan Contributions. "Participant Plan Contributions" means contributions by a Participant under this Plan, as required under Article III on Contributions. Participant Plan contributions are designated by the Institution as being made in lieu of contributions to ERA. Furthermore, the "pick-up" amounts cannot be received directly by Participants in accordance with Code Section 414(h)(2).

Plan. "Plan" means the Alternative Retirement Plan as defined in Section 2.2 of this Article.

Plan Contributions. "Plan Contributions" means contributions made by both the Institution and the Participant as defined in this Plan as required by Article IV on Plan Contributions. This Plan does not accept nondeductible employee contributions or provide for forfeitures.

Plan Entry Date. "Plan Entry Date" means the later of the Effective Date of the Plan or the Eligible Employee's Employment Date.

Plan Year. "Plan Year" means the Fiscal or Academic Year, which is the 12 consecutive month period beginning July 1 and ending on June 30.

Salary/Wages. "Salary/Wages" means the amount paid for employment or contracted services by the Institution to the Participant during the taxable year ending within the Plan Year which is required to be reported as wages on the Participant's Form W-2, and as consistent with ERA Rule III Section A (1).

Years of Participation. "Years of Participation" means any year of service after participation in the Plan begins and during which Institution and Participant Plan Contributions are made.

ALTERNATIVE RETIREMENT PLAN MARKETING POLICY AND GUIDELINES

The marketing objective is to provide eligible employees with a clear understanding of the Educational Retirement Act (ERA) and the Alternative Retirement Plan (ARP) through a fair and balanced presentation.

In order to assure that the eligible employees have all the information needed to make informed and unbiased decisions, they should be encouraged to review materials and/or talk to both of the ARP carriers and the Educational Retirement Board (the "Board").

Each eligible employee will be provided with a list of both authorized carriers and their representatives, in order to initiate contact with the carrier. ARP sales representatives will not make unsolicited contact with the participant.

All presentation materials presented to eligible employees by the ARP carriers will have been reviewed and approved by the Board. This is to include all sales material and video presentations.

Full and complete provision disclosure under the various investment vehicles as required by the National Association of Securities Dealers (NASD) and the Securities Exchange Commission (SEC) shall be made.

The registered representatives will work within the following marketing guidelines set forth by the Educational Retirement Board.

1. The Board has the authority over coordination of the ARP marketing effort of the approved Annuity Carrier. The contact is:

Director
Educational Retirement Board
701 Camino De Los Marquez
Santa Fe, NM 87501
(505) 827-8030

2. Each Institution will provide each eligible employee with the names of the Annuity Carriers and the name(s) of the contact person for each company, as well as information about ERA.

3. Eligible employees will receive information on the ARP through brochure distribution in Personnel Offices of the Institution, or at Institution sanctioned new employee orientation meetings. Authorized representatives of the Annuity Carriers may attend the orientation session only if specifically invited by the Institution. Otherwise, there is to be no unsolicited contact of Participants by the personnel of the Annuity Carrier.

4. Gifts or any other monetary award or gratuity with reference to performance under the ARP contract are strictly prohibited to Participants or to anyone else associated with the ARP.
5. This manual on the ARP is intended to govern only ARP products approved by the Board. However, when specifically requested by the Participant, the Annuity Carrier may make available other products outside the ARP to Participants in order to satisfy their requests.
6. The Board must approve all company sales literature concerning the ARP and explanatory materials before any such materials may be distributed to employees in any way. Approved literature will be included in one portfolio.

I. ELIGIBILITY - UNIVERSITIES

In order to be eligible for the Alternative Retirement Plan, the employee must meet the following requirements, as set forth in Article 2.10 of the Plan Document, with the exception of Section B(4)(a) and Section B (5) of this Article:

A. Must be a new employee, on or after July 1, 1991, of one of the Institutions listed below:

- (1) University of New Mexico
- (2) New Mexico State University
- (3) New Mexico Institute of Mining and Technology
- (4) New Mexico Highlands University
- (5) Western New Mexico University
- (6) Eastern New Mexico University

B. Must be an eligible employee from one of the groups as set forth below:

(1) Faculty means all instructional or research personnel who are classified as:

- (a) Instructors or Lecturers
- (b) Assistant Professors
- (c) Associate Professors
- (d) Professors (including Visiting Professors)
- (e) Research Professors (includes both Assistant and Associate Research Professors)

(2) Professionals shall mean:

- (a) President
- (b) Vice-President
- (c) Provost to be replaced with Campus Director
- (d) Dean
- (e) Assistant or Associate Presidents, Vice-Presidents
- (f) Academic Department Chairs
- (g) Directors or Managers who report directly to a Vice-President, Provost, or a President
- (h) Medical Doctors
- (i) Intercollegiate Athletic Coaches
- (j) Senior Institutional Developers and Fund Raisers

(3) Research and Development Personnel are limited to employees whose responsibilities are solely in engineering or scientific research at the senior level positions.

Because the titles that are associated with this type of position vary greatly from one Institution to another, each Institution must submit for approval by the Board, a list of

positions that qualify in this category. Any changes in this list must be approved by the Board.

(4) Any employee of an Institution working out-of-state under a research contract between the Institution and the United States Government may be a Participant.

(a) National Scientific Balloon Facility/Physical Laboratory. All employees employed through New Mexico State University and the United States Government at the National Scientific Balloon Facility/Physical Laboratory located in Palestine, Texas, will automatically become an eligible employee regardless of his/her job classification for purposes of this Article.

Persons employed on the Effective Date of this Plan (July 1, 1991) will have the option of joining the ARP and receiving a refund of ERA member contributions plus interest at a rate provided for ERA withdrawn contributions. Additionally, Institution Plan Contributions of 4.6% of Salary/Wages plus applicable interest may be transferred to the ARP on behalf of the Participant pursuant to Section 22-11-47(c).

(5) Temporary Employees - An otherwise eligible Participant with a predetermined termination date of less than one year is not eligible for participation in the ARP.

(6) Leased Employees – Leased Employees are not eligible for participation in the ARP. A "Leased Employees" means individuals who are: (a) supplied to the Institution by or through employment, leasing or temporary service agencies; (b) classified by the Institution as temporary or leased personnel; and (c) who are paid by or through an agency or third party. Leased employees within the meaning of Code section 414(n) shall be considered employees solely for purposes of complying with any applicable Code requirements that require that they be treated as employees, but such leased employees shall not be treated as eligible employees for any other purpose and shall not be eligible participate in the Plan or to accrue benefits of any kind while leased employees described in Code section 414(n).

C. Transfers from one covered Institution to another do not constitute a break in service and the employee would not be classified as a new employee on or after July 1, 1991.

D. When an individual returns to employment covered by the Alternative Retirement Plan, he or she is not considered an eligible employee for purposes of this article. If an individual has been an ERA member at any time prior to July 1; 1991, he or she is not eligible for the ARP.

E. To the extent permitted by Section 22-11-47.D, NMSA, on July 1, 2009, any Participant who has made contributions to the Alternative Retirement Plan for a cumulative total of seven years or more shall have a one-time option of electing to become a regular member of the ERA. Thereafter, to the extent permitted by Section 22-11-47.D, NMSA, once a Participant has made contributions to the Alternative Retirement Plan for a cumulative total of seven years, such Participant shall have a one-time option of electing to become a regular member of the ERA.

Participants electing to become regular members of the ERA shall exercise that option within one hundred twenty days of the date of becoming eligible to elect to become a regular member. Any amounts on deposit in an employee's Alternative Retirement Plan account when a Participant becomes a regular member of the ERA shall remain on deposit with the contractor or carrier subject to the provisions of the Alternative Retirement Plan.

F. The Board shall approve the positions at each qualifying state educational institution that are eligible for participation in the Alternative Retirement Plan.

II. ELIGIBILITY - COMMUNITY COLLEGES

In order to be eligible for the Alternative Retirement Plan, the employee must meet the following requirements, as set forth in Article 2.10 of the Plan Document, with the exception of Section (B) (4)(a) and Section B (5) of this Article:

A. Must be a new employee, on or after July 1, 1999, of one of the Institutions listed below:

- (1) Albuquerque Technical-Vocational Institute
- (2) Clovis Community College
- (3) Luna Vocational-Technical Institute
- (4) Mesa Technical College
- (5) New Mexico Junior College
- (6) Northern New Mexico Community College
- (7) San Juan College
- (8) Santa Fe Community College

B. Must be an eligible employee from one of the groups as set forth below:

(1) Faculty means all instructional or research personnel who are classified as:

- (a) Instructors or Lecturers
- (b) Assistant Professors
- (c) Associate Professors
- (d) Professors (including Visiting Professors)
- (e) Research Professors (includes both Assistant and Associate Research Professors)

(2) Professionals shall mean:

- (a) President
- (b) Vice-President
- (c) Provost
- (d) Dean
- (e) Assistant or Associate Presidents, Vice-Presidents
- (f) Academic Department Chairs
- (g) Directors or Managers who report directly to a Vice-President, Provost, or a President
- (h) Intercollegiate Athletic Coaches
- (i) Senior Institutional Developers and Fund Raisers

Because the titles that are associated with this type of-position vary greatly from one Institution to another, each Institution must submit for approval by the Board, a list of positions that qualify in this category. Any changes in this list must be approved by the Board.

(3) Temporary Employees - An otherwise eligible Participant with a predetermined termination date of less than one year is not eligible for participation in the ARP.

C. Transfers from one covered Institution to another do not constitute a break in service and the employee would not be classified as a new employee on or after July 1, 1999.

D. When an individual returns to employment covered by the Alternative Retirement Plan, he or she is not considered an eligible employee for purposes of this article. If an individual has been an ERA member at any time prior to July 1, 1999, he or she is not eligible for the ARP.

III. FUND ADMINISTRATION

A. ERA FUND ADMINISTRATION

The Institution will remit to the Educational Retirement Board three percent (3%) of all ARP Participants' earnings, in accordance with the provisions of Section 22-11-49(b), on the same schedule and in the same manner that the contributions are made for members to ERA.

B. PARTICIPATION ACCUMULATION ACCOUNT

The Institution will remit to the selected Annuity Carrier all Institution and Participant Plan Contributions to be made to the Participant's Accumulation Account. The mechanisms or methods that will be used for transmission will be agreed upon by both the Institution and the Annuity Carrier.

IV. CONTRIBUTIONS

Each Participant will contribute monthly to the Alternative Retirement Plan the same amount which he or she would be required to contribute to the ERA if he or she were a member of that system. The present rate for Participant Plan Contributions is 7.6%. Participant Plan Contributions may be made by a reduction of salary in accordance with the provisions of Section 22-11-49(c). The entirety of each Participant's Plan Contribution shall be remitted to the appropriate Annuity Carrier for application to the Participant's Accumulation Account(s).

Each Institution, as the employer of a Participant in the ARP, shall contribute on behalf of each Participant the same amount that the employer would be required to contribute to ERA if the Participant were a member of that retirement system. The present rate for Institution Plan Contributions is 8.65%. The Institution's Plan Contribution shall be remitted as follows:

(a) An amount equal to five and sixty-five hundredths (5.65%) of the Participant's total earned Salary/Wages as defined in Section 22-11-49(b), as amended, shall be remitted directly to the appropriate Annuity Carrier for allocation to the Participant's Accumulation Account(s).

(b) An amount equal to three percent (3.0%) of the Participant's total earned Salary/Wages as defined in Section 22-11-49(b), as amended, shall be remitted to the Educational Retirement Board. This remittance is to reduce the past unfunded liability of the ERA. If this contribution percentage is reduced pursuant to Section 22-11-49(b), and the Institution is notified by the Board, the amount of reduction shall be remitted to the appropriate Annuity Carrier for application to the Participant's Accumulation Account. In establishing the Participant's total earned Salary/Wages as defined in Section 22-11-49(b), as amended, for purposes of Plan Contributions, salary or wages in excess of the limitations set forth in Section 401(a)(17) of the Code, as amended, shall be disregarded. The limitation on compensation for eligible employees shall not be less than the amount allowed pursuant to the Educational Retirement Act in effect on July 1, 1993. For purposes of this Article IV, an "eligible employee" means an individual who was a member of the ERA or a Participant in this ARP prior to the first plan year beginning after December 31, 1995.

A comparison of the contributions into ERA and the contributions into the ARP shows:

ERA Contributions as a Percentage of Salary/Wages

Participant Plan Contributions	Institution Plan Contributions	TOTAL
7.6%	8.65%	16.25%

ARP Contributions as a Percentage of Salary/Wages

Participant Plan Contributions	Institution Plan Contributions	TOTAL
7.6%	5.65%	13.25%

Any remittance required to be made by the Institution to the Educational Retirement Board shall be made at the same time, and subject to the same requirements, that are followed when the Institution remits contributions for members of ERA.

A. EMPLOYER PICKUP

The Institution shall pick up the Participant Plan Contributions by this Article for all Salary/Wages earned on or after July 1, 1999, and the contributions so picked up shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Service Code, Section 414(h). All "pick-up" contributions shall satisfy the requirements of IRS Rev. Rul. 2006-43 and other applicable Internal Revenue Service guidance.

B. CONTRIBUTION ALLOCATIONS

The following Annuity Carriers and Annuity Contracts have been chosen to provide annuity options for investments with the Alternative Retirement Plan:

(1) Teachers Insurance and Annuity Association - College Retirement Equities Fund (TIAA-CREF)

- (a) TIAA
- (b) CREF Stock Account
- (c) CREF Money Market Account
- (d) CREF Bond Market Account
- (e) CREF Social Choice Account
- (f) CREF Global Equities Account
- (g) CREF Equity Index Account
- (h) CREF Growth Account
- (i) CREF Inflation Linked Bond Account

(2) Variable Annuity Life Insurance Company (VALIC)

- (a) Fixed Account Plan
- (b) Fixed Account
- (c) Midcap Index (Bankers Trust)
- (d) Timed Opportunity
- (e) Money Market
- (f) Capital Conservation

- (g) Government Securities
- (h) Stock Index (Bankers Trust)
- (i) International Equities
- (j) Social Awareness
- (k) International Government Bond
- (l) Small Cap Index (Bankers Trust)
- (m) Templeton International Fund
- (n) Dreyfus Small Cap Fund
- (o) Science & Technology Fund (T. Rowe Price)
- (p) Growth Fund (T. Rowe Price)
- (q) Growth & Income Fund (Value Line)
- (r) Templeton Asset Allocation Fund

While the Educational Retirement Board has approved the afore-mentioned Annuity Carriers and Annuity Contracts, the Participant will invest in these vehicles at their own risk and discretion. The Board recognizes these Annuity Contracts but does not endorse, and is not liable for losses relating to their use.

The Annuity Carriers may be contacted at:

- (1) TIAA-CREF
Two United Bank Center
1700 Broadway, Suite 770
Denver, Colorado 80290
1-800-842-2009
- (2) VALIC
Phoenix Regional Office
4722 N. 42nd, Suite 150
Phoenix, Arizona 85016
1-800-448-2542

A Participant may specify that a part or all of his or her Accumulation Account in one Annuity Contract may be transferred to another Annuity Contract of the same Annuity Carrier. There are no Plan allocation restrictions concerning the allocation of contributions within an Annuity Carrier. Each Annuity Carrier however does have restrictions that will govern these allocations.

The Participant may select one Annuity Carrier per Plan Year, and once per Plan Year a Participant may change Annuity Carriers for the allocation of future contributions. Accumulated contributions may be transferred to another Annuity Carrier subject to the rules and regulations of the Annuity Carriers governing these transfers. The election to change Annuity Carriers must be done no later than December 15, to be effective the following January 1. If the Participant fails to submit in writing an election to change Annuity Carriers by December 15, the Participant will continue his/her existing relationship with their Annuity Carrier.

C. INVESTMENT AND INVESTMENT EARNINGS

The Annuity Carrier and Annuity Contract(s) chosen by the Participant determine the earnings for the fixed and/or variable annuities and apply the earnings or losses to each Participant's Accumulation Account. Statements are provided to the Participant on a quarterly basis by the Annuity Carrier, which will reflect contributions and earnings thereon.

D. INTERNAL REVENUE CODE LIMITATIONS

Notwithstanding any other provision of this Alternative Retirement Plan, Plan Contributions shall not exceed the limitations on annual additions under Code section 415(c). For this purpose, compensation shall have the safe harbor definition set forth in Treas. Reg. section 1.415-2(d)(1).

E. VESTING

All Plan Contributions are 100 percent vested at all times.

V. BENEFITS

This Plan is a Defined Contribution Plan and the benefits available will vary according to the earnings or the fixed or variable annuity selected by the Participant and the guarantees available therefrom, if any, and for the length of time that the Participant has been contributing. There is no formula available for such a plan to determine retirement benefits as is available to Participants under ERA.

A. ESTIMATES

The computation of retirement benefits under the Alternative Retirement Plan shall be obtained from the Annuity Carrier and shall not be provided by the Educational Retirement Board.

B. OPTIONS

Participants in the Plan may select between various options provided by the Annuity Carrier. Estimates of these options must be obtained by the Participant directly from the Annuity Carrier, and not from the Educational Retirement Board. Since New Mexico is a "community property" state, the option selected by a Participant for the distribution of his/her retirement benefits, must be confirmed in writing by the Participant's spouse.

C. DEATH

In the event that the Participant dies prior to commencement of retirement benefits, the full current value of the vested amount in the Accumulation Account is then payable to the Beneficiary under one of the options offered by the Annuity Carrier. Lump sum distributions are only permissible under the statutes in the event of the death of the Participant, and are subject to the restrictions of the Annuity Carrier.

D. DISABILITY RETIREMENT

When a person who is eligible for participation in the Plan shall retire because of disability, his retirement benefits shall be computed as a lifetime annuity subject to the restrictions stipulated by the carrier, who determines disability.

E. BENEFICIARIES

Any person who is entitled to coverage under this Plan may designate a Beneficiary in the manner prescribed by the Annuity Carrier selected by the Participant. In the event that no Beneficiary has been designated, then the distribution shall be made to the estate of the deceased.

F. REFUNDS

Under Section 22-11-51, lump sum payments are disallowed except in the event of the death of the Participant. No refunds will be allowed on Participant Plan Contributions or on Institutional

Plan Contributions made on behalf of the Participant. All payments are to be made in the form of lifetime annuity payments.

G. TERMINATION OF MEMBERSHIP

The membership of any eligible member shall terminate upon the Participant terminating employment with the Institution for any cause.

H. PAYMENT MECHANISMS

At the time of retirement, a covered Participant may determine his or her options and the manner of payment from the list of those available from the selected Annuity Carrier. All payments will be lifetime annuity payments except in the event of the death of the Participant.

The entire contractual relationship will be between the Participant and the Annuity Carrier. The Educational Retirement Board shall have no interest of responsibility in this process.

(1) Lost, Stolen or Misplaced Checks

The retiree must notify the Annuity Carrier that an annuity check has been lost, misplaced or stolen. The Annuity Carrier will assist the Participant in such ways as might be appropriate, and the ultimate process to be used is entirely up to the Annuity Carrier and is not the responsibility or obligation of the Educational Retirement Board.

(2) Exemptions

Annuity Contracts issued under the Alternative Retirement Plan and all rights thereto of a Participant in the Alternative Retirement Plan shall be exempt from state or municipal tax, shall be exempt from any levy and sale, garnishment, attachment, or any process whatsoever, and shall be unassignable except as specifically otherwise provided in the Annuity Contract.

I. DIRECT ROLLOVERS

(1) General Rule. This Section I shall apply to payments made on or after January 1, 1993. Notwithstanding any other provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Section I, a Distributee may elect, at the time and in the manner prescribed by the Educational Retirement Board, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover. Any attempt by a Distributee to elect to have an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan which is a Roth IRA shall be subject to the requirements contained in Code section 408A.

(2) Definitions. The following definitions shall apply for purposes of this Section I:

(a) "Eligible Rollover Distribution" means any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution shall not include (1) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated Beneficiary, or for a specified period of ten years or more, (2) any distribution to the extent such distribution is required under Code section 401(a)(9), and (3) the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities). A portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to (1) an individual retirement account or annuity described in Code section 408(a) or Code section 408(b); (2) for taxable years beginning after December 31, 2001 and before January 1, 2007; to a qualified trust which is part of a defined contribution plan that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible; or (3) for taxable years beginning after December 31, 2006, to a qualified trust or to an annuity contract described in Code section 403(b), if such trust or contract provides for separate accounting for amounts so transferred (including interest thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible. Effective for distributions after December 31, 2007, a portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because it is transferred to a Roth individual retirement account as described in Code section 408A(a).

(b) "Eligible Retirement Plan" means an individual retirement account described in Code section 408(a), an individual retirement annuity described in Code section 408(b), an annuity plan described in Code section 403(a), an annuity contract described in Code section 403(b), an eligible plan under Code section 457(b) which is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan, or a qualified trust described in Code section 401(a), that accepts the Distributee's Eligible Rollover Distribution. However, in the case of an Eligible Rollover Distribution to the surviving spouse, an Eligible Retirement Plan shall be an individual retirement account or individual retirement annuity. Effective for distributions after December 31, 2007, a Roth individual retirement account described in Code section 408A(a) shall be considered an Eligible Retirement Plan.

(c) "Distributee" includes a Participant or former Participant. In addition, the Participant or former Participant's surviving spouse and the Participant or former

Participant's spouse or former spouse who is the alternate payee under a Qualified Domestic Relations Order shall be Distributees with regard to the interest of the spouse or former spouse.

(d) "Direct Rollover" means a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

(3) Non-Spouse Rollovers. Effective for Plan Years beginning on or after July 1, 2010, a non-spouse Beneficiary may elect to make a direct rollover to an inherited individual retirement account or annuity described in Code Section 408(a) or Code Section 408(b) that is established on behalf of the Beneficiary. Such rollover shall be made in a manner consistent with Code Section 402(c)(11) and any other applicable guidance.

J. REQUIRED MINIMUM DISTRIBUTIONS

Notwithstanding any provision of the ARP to the contrary, benefits will be distributed in accordance with Code section 401(a)(9) and the regulations thereunder, including the minimum incidental death benefit restrictions of Code section 401(a)(9)(G).

VI. ADMINISTRATION OF THE PLAN

A. SEPARATE ARTICLE

The provisions of this Alternative Retirement Plan are codified as a new article under the NMSA 1978 compilation, as amended, in Sections 22-11-47 to 22-11-52, and shall take effect on July 1, 1991.

B. FORMS

The Alternative Retirement Plan shall use the forms approved for this system which will be provided for Participants by the Annuity Carrier.

C. PERSONNEL

The Alternative Retirement Plan shall be administered by the Educational Retirement Board of New Mexico.

Inquiries are to be directed to:

Director
Educational Retirement Board
701 Camino De Los Marquez
Santa Fe, New Mexico 87501
(505) 827-8030

D. INTERNAL REVENUE CODE SELECTION

The Educational Retirement Board has determined that this Plan shall be operated under the provisions of Section 40 I (a) of the Internal Revenue Code. The Plan Document is pending IRS approval.

E. USERRA

Notwithstanding any provision of the ARP to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Code.

F. EXCLUSIVE BENEFIT

The assets of the Alternative Retirement Plan may not be diverted to or used for other than the exclusive benefit of the Participants or their Beneficiaries. Any contribution made by an Institution because of a mistake of fact must be returned to the employer within one year of the contribution.

VII. REPORTING

Each Institution will continue to furnish the Educational Retirement Board with a Monthly Cash Report and a Quarterly Cash Report similar to the reports now submitted for remittance of ERA Contributions (ARP reports will be on blue paper so that they will be easier to distinguish from regular ERA Monthly Cash Reports). Upon receipt of these reports, the staff of the Educational Retirement Board shall audit them in accordance with established procedures. Errors found will be reconciled and returned to the employing agency for resubmission.

A. MONTHLY CASH REPORTS

The 3% remittance required to be made by the Institution to ERA pursuant to Section 22-11-49(b) shall be made at the same time, and subject to the same requirements, under which the Institution remits contributions for members of ERA. The requirements dictate that contributions and their accompanying cash reports be made by the 10th of each month except for those months wherein the quarterly reports are due, whereby the remittance is due by the 15th of the following months: October, January, April and July.

The Monthly Cash Report for the ARP (please see appendix #1) will be filled out just like the ERA Monthly Cash Report, except that "Gross Salaries" will consist only of the salaries for ARP participants.

Each Institution may continue to remit contributions in the same format presently used (check, wire transfer, etc.).

B. QUARTERLY REPORT INFORMATION

The Quarterly Cash Report (please see appendix #2) will be filled out just like the Quarterly Cash Report currently submitted to ERA, except that "Gross Salaries upon which contributions are made" are to include only ARP salaries.

VIII. BOARD ACTIONS

A. RESPONSIBILITIES

(1) The general administration and responsibility for the proper operation of the ARP and for making effective the provisions thereof are vested in the Educational Retirement Board of the State of New Mexico.

(2) Subject to the limitations hereof, the Board from time to time shall establish rules and regulations for the administration of the ARP and for the transaction of business.

(3) The Board shall keep a record of all its proceedings under this Article, which will be in the form of a Manual of Operations that will be open to public inspection. At no time will individual Participant records be available to the public.

B. APPROVAL

The contents of this manual and all interpretations hereunder shall be the exclusive responsibility of the Educational Retirement Board of the State of New Mexico.

C. LITIGATION

When any member of the Educational Retirement Board shall receive notice that the system, the Alternative Retirement Plan, or any Board member, officer, employee or other staff member that litigation is under way or is threatened, the Director of the Educational Retirement Board shall immediately be notified of the potential litigation. The Director shall immediately notify all Board members.

No Board member, officer, employee or staff member shall take any action in any litigated matter unless specifically instructed to do so by the Educational Retirement Board or its Director.

D. AMENDMENTS

Amendments to this manual shall be made when required by changes in the statutes, or when found to be appropriate by the Educational Retirement Board. All proposed amendments shall be reduced to writing and presented to the Educational Retirement Board prior to any meeting when they shall be considered. Final acceptance of the proposed amendment by the Board shall result in the publishing of appropriate changes to this manual.

Any potential change in Annuity Carriers must be done only after consultation with the Institution or their designated representative(s).

E. LIABILITY

Benefits payable to Participants under the Alternative Retirement Plan are not obligations of the State of New Mexico or the Educational Retirement Board of the State of New Mexico. Such benefits and other rights of Alternative Retirement Plan Participants or their Beneficiaries are the liability and responsibility solely of the designated Annuity Carrier and shall be governed solely by the terms of the Annuity Contracts issued by such company or companies.