

**TITLE 2 PUBLIC FINANCE**  
**CHAPTER 82 EDUCATIONAL RETIREMENT**  
**PART 3 MEMBER AND ADMINISTRATIVE UNIT CONTRIBUTIONS**

**2.82.3.1 ISSUING AGENCY:** Educational Retirement Board, P. O. Box 26129, Santa Fe, New Mexico 87502-0129  
 [6-30-99; 2.82.3.1 NMAC - Rn, 2 NMAC 82.3.1, 11-30-2001]

**2.82.3.2 SCOPE:** This rule defines member contributions, refund of contributions, purchase of contributory service, and the payment of interest on refunds.  
 [6-30-99; 2.82.3.2 NMAC - Rn, 2 NMAC 82.3.2, 11-30-2001]

**2.82.3.3 STATUTORY AUTHORITY:** The Educational Retirement Act, Section 22-11-1 to 22-11-53, NMSA 1978.  
 [6-30-99; 2.82.3.3 NMAC - Rn, 2 NMAC 82.3.3, 11-30-2001]

**2.82.3.4 DURATION:** Permanent  
 [6-30-99; 2.82.3.4 NMAC - Rn, 2 NMAC 82.3.4, 11-30-2001]

**2.82.3.5 EFFECTIVE DATE:** June 30, 1999, unless a later date is cited at the end of a section or paragraph.  
 [6-30-99; 2.82.3.5 NMAC - Rn, 2 NMAC 82.3.5, 11-30-2001]

**2.82.3.6 OBJECTIVE:** Clarification of procedures for obtaining refunds, purchasing contributory service and calculating interest on member contributions.  
 [6-30-99; 2.82.3.6 NMAC - Rn, 2 NMAC 82.3.6, 11-30-2001]

**2.82.3.7 DEFINITIONS [RESERVED]:**

**2.82.3.8 EARNINGS COVERED:**

A. A member's annual salary for the purpose of contributions to the fund and computation of the member's benefit shall consist of total remuneration to the member for services rendered during each of the four calendar quarters of a fiscal year, beginning July 1 and ending June 30, excluding any salary earned while employed under the return to work program of the Educational Retirement Act.

(1) Total remuneration to the member includes payment made directly to the member or to a third party on behalf of or for the benefit of the member, except that payment to the member for accrued sick leave shall not be covered for purposes of contributions or computation of retirement or disability benefits. Likewise, bonuses or incentive pay for early retirement during the four quarters preceding the member's retirement shall not be covered for contributions or benefit purposes.

(2) A lump-sum payment for accrued annual leave (vacation leave) shall be includable as annual salary only to the extent that it does not include payment for more than thirty (30) days of such leave. Thus, local administrative units shall withhold retirement contributions on lump-sum annual leave payments up to a maximum of thirty (30) days.

B. The salary paid to a member under a school bus owner/driver contract shall be covered for contributions and benefit calculation purposes.

C. Payment made to a member by an employer where services are not rendered are not subject to retirement contributions nor may such payments be used in the calculation of a retirement benefit. This rule is especially applicable in instances where the employer "buys-out" the member's contract whether or not payment is made in a lump-sum or distributed over a period of time.

D. Retirement contributions shall be made by employer and employee on base salary or earnings before the salary is reduced due to the employee and employer entering into a voluntary "cafeteria" plan.

[6-30-99; 2.82.3.8 NMAC - Rn & A, 2 NMAC 82.3.8, 11-30-2001]

**2.82.3.9 REFUNDS OF CONTRIBUTIONS:**

A. In the event of the death of a member, who does not qualify for the automatic Option B coverage or who has rejected that coverage, prior to the effective date of retirement or disability, the deceased member's contributions, together with interest at the rate set by the board, shall be paid to the member's surviving beneficiary or estate. If a beneficiary defers payment after the member dies as described in Section 22-11-29(D) and requests a lump sum in lieu of a monthly benefit, interest shall be paid as follows:

(1) The interest rate applied to the member's contributions shall be calculated at the refund interest rate in effect at the date of the member's death;

(2) The interest rate applied to the member's contributions plus interest from the date of the member's death until the beneficiary elects to receive a lump sum payment shall be the refund interest rate in effect at the time the beneficiary completes the refund request procedure with the agency.

B. In the event that a member should terminate employment for reasons other than retirement, disability, or death, he shall be entitled to a refund of his contributions, plus interest, less any disability benefits which he might have previously received.

C. Notwithstanding the provisions of Section 22-11-29, NMSA 1978, and under the provisions of Options B and C, if death should occur to both the member and the designated beneficiary prior to the combined retirement benefits received by the member and/or the beneficiary

equaling total contributions by the member the difference shall be paid to the member's or beneficiary's estate less any disability benefits previously received by the member.

D. Any provisional member who is qualified to elect coverage under PERA and who does so after having contributed to the educational retirement fund, shall be entitled to a refund of his contributions, with interest, if applicable.

E. In order to obtain a refund of contributions, the eligible member or his beneficiary, if the member is deceased, must file a written request with the director of educational retirement on forms provided by the board. Except for refunds due to death, forms are made available in the local administrative unit for the convenience of terminating employees. These forms are entitled "Request for Refund of Member's ERA Contributions", Form 3A. If the member is deceased, the beneficiary must notify the director and furnish a copy of the death certificate, or other proof of death, whereupon the director shall furnish the proper forms in order to make disbursement in the appropriate manner.

F. A refund of a terminated member's contributions shall be made as soon as practical after receipt of a fully executed refund request form in the office of the educational board. If the terminated member's last employer has certified the member's termination on the last employer report filed in the ERB office, or if the member's record is inactive, the refund may be processed without further certification of termination by the last employer. If the member requesting a refund has an active record, and is not certified to be terminated on the last quarterly report filed by his employer, the refund request cannot be processed without the last employer's certification of termination on the refund request form.

G. Whenever a member's refund request is properly filed, with the appropriate certification of termination, and the member's termination date has passed, the director shall refund the amount of contributions on deposit with the ERB through the date of the last quarterly reporting period, if the member desires, and any balance owing to the member shall be paid when received by the educational retirement board.

H. Refund of contributions for any period of service performed subsequent to July 1, 1957, will cancel all "prior service" credit which may have been credited to the member at the time of the refund. Restoration of all contributions withdrawn, together with interest, will cause the prior service to be restored.

I. Member contributions which have been withdrawn from the educational retirement fund by a member who has terminated employment, may be returned to the fund, together with appropriate interest, without the member being required to return to employment.

J. Whenever a terminated member leaves a balance of \$500.00 or less in his account, the account shall be closed into "unallocated income" after the following has occurred:

- (1) the member shall have been terminated for a period of two years and;
- (2) one or more attempts have been made to locate the member and refund the balance.
- (3) if such balance is closed into "unallocated income" and the member subsequently returns to employment, the balance shall be restored to the member.
- (4) if the member should claim the amount transferred, such amount shall be restored to his account and refunded to the member.

K. Whenever a terminated member shall have received a refund in excess of the amount due him, such excess shall be closed into "unallocated income" if it does not exceed \$100.00 after the following has occurred:

- (1) the excess refund has been outstanding for a period of three years;
- (2) one or more separate attempts have been made to collect the excess refund, at least one of which has been made through the office of the attorney general, or the courts.
- (3) if the member having had an excess refund closed into "unallocated income" should return to employment, such excess shall be charged to the member's account.

L. If a terminated member shall have received a refund in excess of \$100.00 over the amount due him and if the amount shall be deemed uncollectible by the director of educational retirement, the matter shall be brought before the educational retirement board for disposition.

M. Member contributions which have been withheld and paid to the educational retirement fund, in error, for a member who is not eligible to receive service credit for the time covered by the withholding, shall be returned to the member, without interest, upon his written request.

[6-30-99; 2.82.3.9 NMAC - Rn, 2 NMAC 82.3.9, 11-30-2001; A, 10-31-2002; A, 7-15-2003]

### **2.82.3.10 PURCHASE OF CONTRIBUTORY EMPLOYMENT:**

A. No person shall be considered to be a member for the purpose of purchasing "contributory employment" to acquire eligibility for retirement unless he has completed at least one year of service after July 1, 1957.

B. Interest charged on the cost of purchase of "contributory employment" shall be at the rate of 3 percent compounded annually from July 1, 1957 to the date that payment is made to the fund.

C. "Contributory employment" may be purchased at the time application is made for retirement, or, if the member is seeking to qualify for deferred retirement, at any time after employment terminates, but prior to actual retirement.

[6-30-99; 2.82.3.10 NMAC - Rn, 2 NMAC 82.3.10, 11-30-2001]

### **2.82.3.11 INTEREST CREDITS AND PAYMENTS ON MEMBER CONTRIBUTIONS:**

A. The five-year average rate of interest earned by the fund, to which reference is made in Section 22-11-15, Subsection A, NMSA 1978 Compilation, shall be determined as follows: the total earnings of the fund for the five-year period beginning with July 1, of the first year of the period, and ending with June 30, of the last year of the period, shall be divided by the average assets available for investment during that five-year period.

B. The term "earnings" shall be composed of the following:

- (1) dividends, interest, and discounts received.

- (2) realized gains and losses on outright sales of securities.
- (3) amortization's of premiums and discounts on securities.
- (4) accruals of interest and dividends either owed to, or by the fund at the end of the accounting period.

C. "Average assets" as used in Subsection A of 2.82.3.11 NMAC shall be determined as follows: The average of the 61-month end balances of the assets of the fund beginning with June 30 of the first year of the period and ending with June 30 of the last year of the period. The assets of the fund shall include cash as well as securities, and securities shall be valued at amortized acquisition costs.

D. At the time of refund of a member's contributory balance, interest shall be paid through the end of the calendar quarter preceding the date of the refund; except that no interest shall be paid on contributions credited to a member's account for any period prior to July 1, 1971, nor shall interest be paid on contributions on deposit for less than one year.

E. The interest referenced in Subsection D of 2.82.3.11 NMAC shall be determined by compounding quarterly at an annual rate which is 75 percent of the five-year average rate of interest earned by the fund as calculated in accordance with Subsection A of 2.82.3.11 NMAC. The interest rate to be applied quarterly shall be rounded to the nearest hundredths and shall become effective on September 1 of each fiscal year.

F. Whenever contributions are restored to the fund after having been withdrawn by a member, that portion of the sum restored which may include contributions originally deposited prior to July 1, 1971, shall not be considered as having been "... paid to the fund after July 1, 1971..." for the purpose of earning interest.

[6-30-99; 2.82.3.11 NMAC - Rn, 2 NMAC 82.3.11, 11-30-2001]

#### **HISTORY OF 2.82.3 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 III, Member and Administrative Unit Contributions, filed 7-2-82.

History of Repealed Material: [RESERVED]