

#### **2.82.4.9 ALLOWED SERVICE CREDIT:**

A. For purposes of granting allowed service credit pursuant to Section 22-11-34A(2), a member engaged in military service that interrupted the member's employment under a state system in New Mexico shall return to employment within eighteen months following honorable discharge.

(1) In order to claim such service credit the member shall furnish documentary evidence of: (a) the member's entry into and honorable discharge from military service; (b) the dates of service to an affiliated public employer prior to entry into military service.

(2) The director shall review the members' request for allowed service credit based upon the documentary evidence presented, and, in the director's discretion, shall request additional documentation to verify the member's eligibility for such allowed service credit.

B. For purposes of granting allowed service credit pursuant to Section 22-11-34A(3), a member engaged in United States military service, shall:

(1) be honorably discharged from such service;

(2) have five or more years of contributory employment at the time of the application for allowed service credit, in order to be eligible to purchase allowed service credit pursuant to Section 22-11-34A(3);

(3) contribute to the fund, for each year of service credit the member elects to purchase, a sum equal to the member's average annual actual salary for the five years of contributory employment preceding the date of the contribution multiplied by the sum of the member's contribution rate and the employer contribution rate in effect at the time of the member's written election to purchase, subject to the federal Uniformed Services Employment and Reemployment Rights Act of 1994;

(4) full payment shall be made in a single lump sum within sixty days of the date that the member is informed of the amount of the payment;

(5) the portion of the purchase cost derived from the employer's contribution rate shall be credited to the fund and, in the event that a member requests a refund of contributions pursuant to Section 22-11-15 NMSA 1978, the member shall not be entitled to a refund of that portion of the purchase cost derived from the employer contribution rate;

(6) the director shall use the salary information on file with the board in determining "average annual actual salary" under Section 22-11-34A(3). If reasonable evidence of the salaries earned is not available, the director shall set amounts to be used which, in his opinion, are representative of reasonable annual salaries for the periods of contributory employment for the position held by the applicant at that time;

(7) when the actual cost of purchase of allowed service credit for periods of military service is calculated under Section 22-11-34A(3), the "average annual actual salary" shall be based upon the member's most recent twenty calendar quarters of contributory employment prior to the date on which he makes payment;

(8) no allowed service credit shall be granted for service not performed by the member by reason of service in the uniformed services of the United States, nor for periods of service in the military reserves or national guard for short term

training during which the member was not activated pursuant to a federal call to duty, deployment or peacekeeping mission or other declared national emergency;

(9) purchase of allowed service credit as provided in Section 22-11-34A(3), may be carried out only while the member is currently employed by an administrative unit;

(10) the provisions of § 2.82.10.8 NMAC shall apply to purchase of allowed service credit under this paragraph;

(11) a member who has forfeited service credit may reinstate such service credit in order to establish the minimum period of contributory employment required by this subparagraph by repayment of withdrawn member contributions in the manner required by NMSA 1978 § 22-11-33C. Such repayment shall be made at the same time as the lump sum payment for allowed service credit as specified in NMSA 1978 § 22-11-34A(3).

C. Notwithstanding the provisions of Subsection A of § 2.82.3.8 NMAC, the "annual actual salary" to be used in calculating the cost of allowed service credit described in Section 22-11-34A(3) and (4) shall be an annualized salary. For the purpose of this rule, employment shall be viewed as either full-time or part-time employment, and an annualized salary shall be defined as follows:

(1) For full-time employees: The annual salary as defined in Subsection A of §2.82.3.8 NMAC.

(2) For part-time employees: The total remuneration for the part-time employment divided by the full-time equivalency, as defined by the director at the time of the contribution. In no event shall allowed service credit contributions be granted for any calendar quarter in which the member has failed to work more than .25 of the full-time equivalency for the applicable position as determined by pursuant to rules enacted by the board or the director.

(3) For employees on sabbatical leave: The amount that would have been earned during the entire year had the member been on regular assignment. In determining the full-time equivalency of an employee, the director may refer to the administrative unit's approved budget for the fiscal year under consideration.

D. For the purpose of granting allowed service credit, pursuant to Section 22-11-34A(4), a "public school or public institution of higher learning" in another state, territory, or possession of the United States shall be taken to mean one that is open to the public without regard to race, creed, or color, and such school or institution need not be tax supported. The out-of-state public school shall be accredited by the state in which it is located or another accrediting organization which is recognized by the state. Service credit purchasable pursuant to Section 22-11-34A(4)(a) shall not include employment as a graduate assistant, teaching assistant or teaching fellow or in any position of a similar nature while the member was enrolled as a student in that institution.

E. Prior to the purchase of allowed service credit under Section 22-11-34A(4)(d), NMSA, 1978, a member must provide satisfactory evidence that the private school was accredited by the state board of education at the time of the member's employment.

F. The board may accept rollover and employer pickup payroll deduction contributions for the purchase of allowed service credit if the following conditions are met:

(1) The payments must be all or a portion of the member's interest qualified under Section 401(a) of the Internal Revenue Code.

(2) The payments shall contain only tax-deferred contributions and earnings on the contributions. The member and employer must submit satisfactory documentation, releases or indemnifications to the board against any and all liabilities that may be connected with the transfer, verifying that the proposed transfer is a qualifying contribution under the Internal Revenue Code.

(3) Payroll deductions and employer pickups are authorized by the governing body of the ERA employer.

(4) The board may not accept rollover or employer pickup payroll deduction contributions in excess of the amount required to purchase the allowed service credit.

G. For payments to purchase allowed service credit which commence on and after January 1, 2002, the board may accept rollover and transfers if the following conditions are met:

(1) Rollovers must be eligible rollover distributions that are not includible in the income of the member by reason of Internal Revenue Code sections 402(c), 403(b)(8), 408(d) or 457 (e)(16).

(2) Transfers must be direct trustee-to-trustee transfers from a qualified plan described in Internal Revenue Code section 401(a) or 403(a), an annuity contract described in Internal Revenue Code section 403(b) to the extent permitted by Internal Revenue Code section 403(b)(13), or an eligible plan under Internal Revenue Code section 457(b) to the extent permitted by Internal Revenue Code section 457(e)(13).

(3) The rollovers and transfers shall contain only pre-tax deferred contributions and earnings on the contributions. The member and employer must submit satisfactory documentation, releases, or indemnification to the board against any and all liabilities that may be connected with the rollover or transfer verifying that the proposed rollover or transfer is permissible under the Internal Revenue Code.

(4) Payroll deduction contributions shall no longer be allowed for the purchase of allowed service credit if the contributions would commence on or after July 1, 2002.

(5) The board may not accept rollovers or transfers in excess of the amount required to purchase the allowed service credit.

[6-30-99; 2.82.4.9 NMAC - Rn, 2 NMAC 82.4.9, 11-30-2001; A, 4-15-2002; A, 10-31-2002]