



STATE OF NEW MEXICO
Educational Retirement Board
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PUBLIC COMMENT PERIOD
ERB RULE 3 - MEMBER AND ADMINISTRATIVE UNIT CONTRIBUTIONS
(2.82.3 NMAC)

The Educational Retirement Board (the "Board") is asking for comment on the attached draft revision to ERB Rule 3. The rule addresses member and local administrative unit contributions to the Educational Retirement Fund. Comments received on the rule will be evaluated to determine whether further changes should be recommended to the Board for consideration and adoption. We ask that you share the draft with your human resources staff and with your business office or payroll department staff for their review. In addition, we ask that you forward this information to your employees so that they can be aware of the proposed changes to Rule 3 and have opportunity to comment should they choose.

The attached draft is a significant rewrite of the existing Rule 3. Because the revisions are so extensive, amendment of Rule 3 would not become effective until July 1, 2012, which is the start of a new fiscal year and prior to the start of a new school year. This would allow both the local administrative units ("LAUs" a/k/a "ERB employers") and ERB staff time to prepare for implementation. As noted, the revisions to Rule 3 are extensive so a comparison or 'redline' draft is not included. However, a copy of the present Rule 3 is attached to facilitate referring to it as needed when reviewing the revised rule.

Among the areas addressed in the revised rule are:

1. **Definitions.** The draft includes definitions for the terms "non-reported service," "refund rate," and "student teacher." Previously no terms were defined in Rule 3.
2. **Earnings Covered.** This section is substantially revised and reorganized, with separate sections addressing earnings that are covered for contribution purposes and earnings that are excluded. Contributions are not made on earnings excluded for contribution purposes and those earnings are not included in final average salary for purposes of calculating benefits. Many of the earnings listed as excluded are excluded under the current rule and ERB practice. Earnings listed as excluded for contribution purposes are: bonus or incentive pay; hazardous duty pay; pay differentials based on the location at which job duties are performed; 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.

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 will be a Tier 2 member. The process for closing out the balance of member contributions in a refunded account 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 who 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.

The ERB looks forward to receiving your comments on the revised Rule 3. Comments should be e-mailed to Rulechange3@nmerb.org by close of business on February 13, 2012.

Sincerely,
Jan Goodwin
Executive Director