

This is an amendment to 2.82.5 NMAC, Sections 10, 11, 13, 15 and 16, effective 11/12/2019.

2.82.5.10 COMPUTATION AND COMMENCEMENT OF RETIREMENT BENEFITS:

A. Upon retirement, the following procedures shall apply with regard to commencement of the member's benefit:

(1) If the retiring member's employment terminated at least 90 days prior to the effective date of retirement, the benefit may be commenced at the end of the month following the effective date of retirement.

(2) If the retiring member's employment terminated within 90 days prior to the effective date of retirement, the retiring member's benefit may be estimated by the director and commenced at the end of the month following the effective date of retirement.

(3) After the employer report is received from the administrative unit, reporting the retiring member's final earnings, the director shall determine whether or not the estimated benefit is correct. If the estimated benefit is incorrect, the director shall make the appropriate adjustment to the member's benefit, retroactive to the effective date of the benefit. This adjustment, if required, shall be made at the earliest practical date. The retiring member shall be advised regarding the nature of any such adjustment. An adjustment will be made in this manner if and only if the adjustment based upon the member's actual earnings would result in a monthly benefit which differs more than one dollar from the estimated benefit.

B. Whenever a retiring member completes the academic or fiscal year prior to July 1, he shall not be entitled to retirement benefits for the months of July or August if he returns to employment at the beginning of the next following academic or fiscal year. If a member shall have received benefits for such months, he shall be required by the director to return the sums received, to the educational retirement fund, in accordance with Section 22-11-40 NMSA 1978.

C. The retiring member shall be furnished with copies of all computations including a listing of his service credit, and he shall have 90 days after receipt of same in which to file notice of correction with the director, after which time the computations and service may not be corrected by the member.

D. A member's average annual salary as defined in Section 22-11-30 NMSA 1978 shall be the average annual earnings of the member in the last 20 calendar quarters in which there were earnings preceding retirement or the average annual earnings of any 20 consecutive calendar quarters in which there were earnings, whichever is greater. Salary earned by a retiree who has returned to employment under the return to work program described in 2.82.5.15 NMAC or the return to work .25 FTE or less provision described in 2.82.5.16 NMAC shall not be used in determining a member's average annual salary.

E. When determining a member's last five-year average annual salary (last 20 calendar quarters), the director shall use the reported earnings on which contributions have been made by the member during the 20 quarters of employment immediately preceding the member's date of termination, except that if a member's last employment terminated at least one month prior to the close of the calendar quarter (or one month prior to the close of the academic year if such ends in May), ~~his~~ the member's last five years' earnings shall be the reported earnings upon which contributions have been made by the member during the five years of employment preceding the end of the month in which termination occurs. In such cases, any earnings in a calendar quarter shall be considered as earnings for the full quarter, except for the first quarter and the last quarter of the last five years of employment.

F. When the member's application for benefits has been approved and his effective date of retirement has been reached, the member shall then be retired.

G. Benefits shall not be commenced until the retiring member has elected the retirement benefit as provided in Section 22-11-30 NMSA 1978, or an optional benefit pursuant to Section 22-11-29 NMSA 1978.

H. Re-retirement benefits shall be computed in the following manner:

(1) The re-retirement benefit will be calculated in the same way as ~~his~~ the member's last benefit and will be based on the last five-year average or the highest consecutive five-year average, whichever is greater, for which contributions were made, and ~~his~~ the member's total service at re-retirement. The retirement benefit formula will be the same as at last retirement unless the member returns to employment for at least four quarters after the effective date of change in the formula. If this occurs, the benefit computation will be based on the benefit formula in effect at the time of re-retirement.

(2) The re-retirement benefit calculated above is reduced under the following conditions:

(a) At re-retirement the member's retirement age shall be ~~his~~ the member's chronological age less any period of time(s) during which benefits were received while in retirement. If this age is

under 60 and ~~his~~ the member's total service is under 25 years, ~~his~~ the benefit is reduced by six-tenths percent for each quarter year under 60, down to age 55, plus one and eight-tenths percent for each quarter year this age is under 55.

(b) If the last benefit was payable as a reduced benefit under the terms of an option, the same terms and reduction shall apply to the re-retirement benefit.

(c) In no case can ~~his~~ the member's re-retirement benefit be less than ~~he~~ the member was receiving when ~~he~~ the member returned to employment.
[6/30/1999; 2.82.5.10 NMAC - Rn, 2 NMAC 82.5.10, 11/30/2001; A, 10/31/2002; A, 10/17/2017; A, 11/12/2019]

2.82.5.11 EFFECTIVE DATE OF BENEFIT:

A. Whenever a retiring member completes the academic year for which he has been contracted or employed, his effective date of retirement shall be July 1, provided that application is made as stipulated in Subsection B of 2.82.5.11 NMAC. Whenever a retiring member terminates at a time other than at the end of the academic year for which ~~he~~ the retiring member has been contracted or employed, the effective date may be the first day of the month following termination, provided that application must be as stipulated in Subsection B of 2.82.5.11 NMAC.

B. The effective date of benefits cannot in any case be earlier than the first day of the month following receipt of the completed application forms (as provided by the director) from the member or ~~his~~ the member's employer, except as provided in Subsection D of 2.82.5.11 NMAC.

C. Section 22-11-28 NMSA 1978 shall be construed to mean that the effective date of benefits shall be in accordance with Section D of this Rule, and further that on concurrence of the local administrative unit for retirement on a date other than July 1 has been given when the local administrative unit certifies the member's termination on the application form.

D. If a member's application for benefits is received after the effective date desired by the member, and such desired effective date would otherwise be in accordance with the law and rules of the board, the director may commence the member's benefit as of such date, only if the delay in filing was due to delay in processing by the local administrative unit, and not due to any fault or wish of the member. The director shall also consider an application to have been duly filed in this office on the date postmarked if the application is mailed.
[6/30/1999; 2.82.5.11 NMAC - Rn, 2 NMAC 82.5.11, 11/30/2001; A, 10/17/2017; A, 11/12/2019]

2.82.5.13 OPTIONS:

A. Option B provided in accordance with Subsection D of Section 22-11-29 NMSA 1978 shall be operative:

(1) during periods of non-participation, if contributions are not withdrawn, and
(2) during periods of time when a member is receiving disability benefits, and
(3) during the period of time from a member's effective retirement date until the final election of option is received in the ERB office.

B. If a member with option B coverage should terminate employment and withdraw his contributions, thereby causing the option B to become inoperative, the member may restore the amount withdrawn, together with required interest, and cause the option to become operative again.

C. An option election on file with the director by a member who has not retired shall become void on July 1, 1984 at which time the member will automatically be afforded the coverage of option B.

D. Upon retirement, a member may elect an optional benefit in accordance with Section 22-11-29 NMSA 1978. If electing coverage under option B, the member may not designate a beneficiary more than 10 years younger than the member unless the beneficiary is the member's spouse. In order that the retiring member may have the opportunity to properly consider this decision and to allow sufficient time for the member and the board to carry out necessary administrative procedures relating to the election of an option, an option election filed with the director subsequent to the effective date of retirement, but prior to commencement of benefit payments, shall be deemed to have been filed in accordance with the provisions of Section 22-11-29 NMSA 1978.

E. Whenever a member with option B coverage dies prior to the member's effective retirement date, it shall be incumbent upon the member's beneficiary to furnish proof of death to the director. The director shall then advise the beneficiary of the amount payable as a lump-sum settlement. Additionally, the director shall advise the beneficiary of the monthly amount of benefit payable as of the first of the month following the death of the member, as well as the approximate monthly amount payable, if the beneficiary defers receipt of the benefit to the date on which the member would have been age 60, had the member lived. The beneficiary shall then advise the director, in writing, whether he wishes to receive a lump-sum payment, commence the benefit at the earliest possible date, or

defer the benefit to a date not later than the date on which the member would have attained age 60, had the member lived. If the beneficiary chooses a monthly benefit, he shall not be required to make formal application for such benefit as required of members seeking retirement status. If the beneficiary chooses to defer the benefit to a later date, he must advise the director at least 30 days in advance of the date on which he wishes benefit to start.

F. Upon the death of a member who has the automatic option B coverage, and who has failed to name or who has incorrectly named a beneficiary under the option, the following shall apply:

(1) If the member has named one person on the ERB beneficiary designation form or form 42, that person shall be declared the beneficiary under option B.

(2) If more than one person is named on the ERB beneficiary designation form or form 42 of which one is the spouse of the member, the spouse shall be declared the beneficiary for option B purposes.

(3) If the beneficiary named on the ERB beneficiary designation form or form 42 is deceased, a lump-sum payment of contributions plus applicable interest will be paid to the estate of the member.

(4) If the beneficiary named on the ERB beneficiary designation form or form 42 is a minor child, the legal guardian, if other than the parent, will designate the manner in which the alternative payments under option B will be paid to the minor.

(5) If the beneficiary named on the ERB beneficiary designation form or form 42 is a minor child in the care and custody of a parent, the parent shall designate the method of payment to the minor child under the option B.

(6) If more than one person is named on the ERB beneficiary designation form or form 42, none of which is the spouse of the member, a lump-sum payment of contributions plus appropriate interest shall be made to the beneficiaries as per the directions of the member on the ERB beneficiary designation form or form 42. In the absence of contrary directions by the member, equal shares will be made. If one or more of the beneficiaries are minors, the distribution to the minor(s) shall be made to:

- (a) a trust fund for the minor(s), if established, or
- (b) on behalf of the minor(s), a person who has care and custody of the minor, or
- (c) directly to the beneficiary(ies) upon attainment of age 18.
- (d) these methods of distribution of payments shall also apply to Paragraphs 4 and 5

above.

(7) If ~~a person(s) is not~~ the beneficiary named on the ERB beneficiary designation form or form 42 ~~is not a human being, the beneficiary shall not be eligible for Option B coverage and shall receive a lump-sum payment of the member's contributions plus applicable interest [will be made as the member has directed on the form 42] at the rate set by the board.~~

[6/30/1999; 2.82.5.13 NMAC - Rn, 2 NMAC 82.5.13, 11/30/2001; A, 6/30/2016; A, 11/12/2019]

2.82.5.15 RETURN TO WORK PROGRAM:

A. In order to qualify to return to employment (hereinafter "return to work") as provided for in Subsections A and ~~[E]~~ F of Section 22-11-25.1 NMSA 1978, a retired member must have a period of at least 12 consecutive months in which they have not been employed as an employee or independent contractor by a local administrative unit (hereinafter, a "break in service").

(1) To satisfy the requirements of a "break in service," the retired member must not have rendered service of any nature whatsoever to a local administrative unit for the 12 consecutive month period. "Service" shall be defined to include, without limitation, all employment whether full time, part-time including service allowed under Subsection B of 2.82.2.11 NMAC, substitute teaching, performing duties as a volunteer, which would otherwise be, or in the past have been, performed for the local administrative unit by a paid employee or independent contractor, or services rendered as an independent contractor, an employee of an independent contractor, or any other employment as described in Subsections A through D of 2.82.2.11 NMAC. A "local administrative unit" shall include any entity controlled by or subject to the control of a local administrative unit, including without limitation, a corporation or other entity regardless of legal form and of whether such corporation or entity is created for profit or non-profit purposes.

(2) The break in service must have commenced after the effective date of retirement and been completed prior to the first day of re-employment, but need not have been the twelve consecutive months immediately prior to the first day of such re-employment (i.e. the break in service could have occurred at any time during the period after the effective date of retirement and before the first day of re-employment but must have been at least 12 consecutive months within that period).

B. ~~[In addition to a break in service of at least 12 consecutive months, in order to]~~ To satisfy the provisions of Subsection ~~[E]~~ F of Section 22-11-25.1 NMSA 1978, a member who retired on or before January 1,

2001, and who subsequently removed him or herself from retirement (also referred to as “suspending retirement”) pursuant to Section 22-11-25 NMSA 1978, and thereafter re-retired, must ~~[complete an additional period of at least 90 days after the re-retirement, during which the retired member has not been employed as an employee or an independent contractor by a local administrative unit. During the 90 day period, the retired member must satisfy the same requirements regarding employment by a local administrative unit as must be satisfied for a 12 consecutive month break in service. The 90 day period shall not include any portion of the period used to satisfy the 12 consecutive month break in service. In addition, the 90 day]~~ not have rendered service to a local administrative unit for at least 12 consecutive months from the date of the initial retirement. The 12 consecutive month period shall not include any scheduled breaks, vacations, paid administrative or sick leave, or holidays consisting of more than two business days.

C. Any and all time that a retired member has provided service to a local administrative unit under the return to work program cannot be used in the calculation of retirement benefits and a retired member is not entitled to acquire service credit or to acquire or purchase service credit in the future for the period of the retired member’s re-employment with a local administrative unit under the return to work program.

D. ~~[No]~~ A retired member is not eligible for the return to work program until the member submits a completed, signed and notarized return to work ~~[form]~~ application as supplied by ERB, (the “return to work application”), verifying their eligibility for the return to work program and ERB has approved the retired member’s return to work application.

E. The date of suspension of retirement for any retired member shall be the last day of the month in which the member suspended retirement.

F. Any retired member who is participating in the return to work program who has violated the provisions of the program, failed to submit the required return to work application, or is discovered to have been ineligible to participate in the program shall have their retirement immediately suspended and shall pay the educational retirement fund a sum equal to all retirement payments that they have received while ineligible under the provisions of the return to work program plus interest at a rate to be set by the board. Before his or her monthly retirement benefits can resume, the suspended retired member must certify to ~~[the]~~ ERB that they have terminated any and all employment that would disqualify them from retirement under the Educational Retirement Act and must reapply for retirement. To re-qualify for the return to work program, the retired member must complete the minimum break in service as described in Subsection A of 2.82.5.15 NMAC, calculated from the date of reinstatement of retirement.

G. A retired member is qualified under Subsection B of Section 22-11-25.1 NMSA 1978 to return to full time employment without being required to suspend retirement benefits if the member:

- (1) retired on or before January 1, 2001; and
- (2) did not work more than .25 FTE at any time after January 1, 2001 or provide any other service to a local administrative unit after that date that would have required the member to suspend retirement benefits under the act; and
- (3) did not suspend retirement after January 1, 2001; and
- (4) completed and received approval of a return to work application with ERB.

H. ~~[Member’s qualifying]~~ A member who qualifies under Subsection B of Section 22-11-25.1 NMSA 1978 may begin full time employment immediately after ERB approval without any additional waiting period. [2.82.5.15 NMAC - N, 11/30/2001; A, 12/14/2001; A, 10/31/2002; A, 7/15/2003; A, 12/31/2008; A, 6/16/2015; A, 10/17/2017 A, 11/12/2019]

2.82.5.16 RETURN TO WORK [EXCEPTION] .25 FTE OR LESS:

~~[A. — A retired member may return to employment (includes “substitution”) and earn up to \$15,000 per fiscal year or the amount possible under the .25 or less FTE provision, whichever is greater, without affecting the retired member’s retirement benefit. For purposes of this provision, earnings shall include bonuses, annual and sick leave payouts, and any other form of cash remuneration for services rendered except for reimbursements and allowances for expenses.~~

~~— [B. — In the event that a retired member enters into an agreement which provides for earnings in excess of the above limits or the retired member actually has earnings in excess of the above limits, the retired member’s retirement benefit will be suspended for the duration of the employment, and the retired member will be returned to an active status effective the first day of the month following the month in which the retired member has earnings in excess of the above limits. The retired member shall pay the educational retirement fund a sum equal to all retirement payments that they have received while ineligible under the provisions of the return to work exception plus interest at a rate to be set by the board.~~

~~C. A retiree who is participating under the return to work program may elect to switch to the return to work exception. Such election shall be effective the first day of the quarter following the date of the election.]~~

A. A retired member may return to employment (includes "substitution") at a level of .25 FTE or less without affecting the retired member's retirement benefit provided the retired member submits a return to work application and is approved by ERB prior to commencing employment.

B. In the event that a retired member enters into an agreement which provides for employment at a level greater than .25 FTE or actually works greater than .25 FTE and has not met the requirement in Subsections A and F of Section 22-11-25.1 NMSA 1978, the retired member's retirement benefit will be suspended for the duration of the employment, and the retired member will be returned to an active status effective the first day of the month following the month in which the retired member's employment exceeded .25 FTE. The retired member shall pay the educational retirement fund a sum equal to all retirement payments the retired member received while ineligible plus interest at a rate to be set by the board.

[2.82.5.16 NMAC - N, 6/28/2013; 2.82.5.16 NMAC - N, 6/16/2015; A, 11/12/2019]