

This is an amendment to 2.82.5 NMAC, Sections 11, 18, 19, 20, 21 and 22, effective 07/26/2022.

2.82.5.11 EFFECTIVE DATE OF BENEFIT:

A. Whenever a retiring member completes the academic year for which ~~he~~ the member has been contracted or employed, ~~his~~ the member's 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 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 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~~ Subsection D of [this Rule] 2.82.5.11 NMAC, 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; A, 07/26/2022]

2.82.5.18 RETURN TO WORK 36 MONTHS:

A. A retired member may return to employment pursuant to Subsection I of Section 22-11-25.1 NMSA 1978 without affecting the retired member's retirement benefit provided that:

(1) the retired member has not rendered service to a local administrative unit for at least 90 consecutive days after the date of retirement;

(2) the retired member returns to employment for a period of no more than 36 consecutive or nonconsecutive months; and

(3) the retired member submits a return to work application and is approved by ERB prior to commencing employment.

B. If a retired member returns to employment for more than 36 consecutive or nonconsecutive months pursuant to Subsection I of Section 22-11-25.1 NMSA 1978, the retired member's retirement benefit shall be suspended for the period of employment which exceeds 36 consecutive or nonconsecutive months and the retired member shall be returned to active status effective the first day of the month following the month in which the retired member's employment exceeded 36 consecutive or nonconsecutive months. 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 set by the board.

[2.82.5.18 NMAC - N, 07/26/2022]

~~2.82.5.18~~ 2.82.5.19 TERMINATION OF PLAN; ACCRUED RIGHTS OF MEMBERS: The rights of members to benefits accrued, to the extent funded, will become vested to the extent required by and upon the events set forth in Treas. Reg. Section 1.401-6(a)(1). See 26 CFR 1.401-6.

[2.82.5.19 NMAC - Rn, 2.82.5.18 NMAC, 07/26/2022]

~~2.82.5.19~~ 2.82.5.20 INTERNAL REVENUE CODE SELECTION: The Educational Retirement Act of New Mexico is intended to satisfy Section 401(a) of the Internal Revenue Code and to be a governmental plan within the meaning of Section 414(d) of the Internal Revenue Code.

[2.82.5.20 NMAC - Rn, 2.82.5.19 NMAC, 07/26/2022]

~~2.82.5.20~~ 2.82.5.21 ROLLOVER DISTRIBUTIONS FOR NON-SPOUSE BENEFICIARIES: The Educational Retirement Act shall allow direct rollovers to non-spouse beneficiaries for lump sum distributions only,

and such distributions must be requested before the end of the year after the year of the member's death. No partial rollovers shall be permitted. A direct rollover by a non-spouse beneficiary must be made into a traditional or Roth IRA established on behalf of the designated beneficiary and that will be treated as an inherited individual retirement account (IRA) pursuant to the provisions of Section 402(c) (11) of the Internal Revenue Code. The distribution must also otherwise satisfy the definition of an "eligible rollover distribution" under Section 401(a) (31) of the Internal Revenue Code. All other current rules applicable to rollover distributions under the Educational Retirement Act, or adopted by the board pursuant to the Educational Retirement Act, must be followed. The non-spouse beneficiary shall be notified that he or she is responsible for following the applicable minimum required distribution rules under Section 401(a) (9) of the Internal Revenue Code.

[2.82.5.21 NMAC - Rn, 2.82.5.20 NMAC, 07/26/2022]

~~[2.82.5.21]~~ **2.82.5.22 DEATH BENEFITS WHILE PERFORMING MILITARY SERVICE:** In the case of a death or disability occurring on or after January 1, 2007, if a member dies while performing qualified military service (as defined in section 414(u)), the survivors of the member are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service not otherwise credited under the terms of the Educational Retirement Act) provided under the plan as if the member had resumed and terminated employment on account of death.

[2.82.5.22 NMAC - Rn, 2.82.5.21 NMAC, 07/26/2022]