

**TITLE 2 PUBLIC FINANCE**  
**CHAPTER 80 PUBLIC EMPLOYEES RETIREMENT**  
**PART 2100 MEMBER CONTRIBUTIONS**

**2.80.2100.1 ISSUING AGENCY:** Public Employees Retirement Association (PERA), 33 Plaza La Prensa, Santa Fe, New Mexico 87507  
[2.80.2100.1 NMAC - Rp, 2.80.2100.1 NMAC, 12/30/2015]

**2.80.2100.2 SCOPE:** This rule affects the members, public employers, retirement board and the association under the Public Employees Retirement Act.  
[2.80.2100.2 NMAC - Rp, 2.80.2100.2 NMAC, 12/30/2015]

**2.80.2100.3 STATUTORY AUTHORITY:** This rule is authorized by Sections 10-11-124, 10-11-129 and 10-11-130 NMSA 1978, as amended.  
[2.80.2100.3 NMAC - Rp, 2.80.2100.3 NMAC, 12/30/2015]

**2.80.2100.4 DURATION:** Permanent.  
[2.80.2100.4 NMAC - Rp, 2.80.2100.4 NMAC, 12/30/2015]

**2.80.2100.5 EFFECTIVE DATE:** December 30, 2015, unless a different date is cited at the end of a section.  
[2.80.2100.5 NMAC - Rp, 2.80.2100.5 NMAC, 12/30/2015]

**2.80.2100.6 OBJECTIVE:** The objectives of this rule are to establish standards and procedures for refunding member contributions and to identify federal obligations which may be satisfied out of benefits payable.  
[2.80.2100.6 NMAC - Rp, 2.80.2100.6 NMAC, 12/30/2015]

**2.80.2100.7 DEFINITIONS:**

**A. "Another qualified plan"** for the purposes of the direct rollover provisions in Subsection C of Section 10-11-124 NMSA 1978, means an eligible retirement plan, including:

- (1) an individual retirement account described in Internal Revenue Code Section 408(a);
- (2) an individual retirement annuity described in Internal Revenue Code Section 408(b);
- (3) a qualified trust described in Internal Revenue Code Section 401(a) that accepts the distributee's eligible rollover distribution;
- (4) an annuity plan described in Internal Revenue Code Section 403(a);
- (5) effective January 1, 2002, an annuity contract described in Internal Revenue Code Section 403(b);
- (6) effective January 1, 2002, a plan eligible under Internal Revenue Code Section 457(b) that is maintained by a state, political subdivision of a state or any agency or instrumentality of a state or political subdivision of a state that agrees to separately account for amounts transferred into the plan; or
- (7) effective January 1, 2008, a Roth IRA described in Internal Revenue Code Section 408A.

**B. "Direct rollover"** means a payment by the retirement system to the eligible retirement plan specified by the distributee.

**C. "Distributee"** means:

- (1) an employee or a former employee;
- (2) an employee's or former employee's surviving spouse;
- (3) an employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Internal Revenue Code Section 414(p);
- (4) effective January 1, 2007, a non-spouse beneficiary who is a designated beneficiary as defined by Internal Revenue Code Section 401(a)(9)(E); or
- (5) effective January 1, 2002, a surviving spouse, as defined by federal law, or a spouse or former spouse who is an alternate payee under a domestic relations order dividing PERA benefits, as defined in Internal Revenue Code Section 414(p).

**D. "Eligible rollover distribution"** means:

- (1) any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments, not less frequently than annually, made for the life, or the life expectancy, of the distributee or

the joint lives, or joint life expectancies, of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more;

(2) any distribution to the extent such distribution is required under Internal Revenue Code Section 401(a)(9);

(3) the portion of any distribution that is not includible in gross income; or

(4) any other distribution that is reasonably expected to total less than two hundred dollars (\$200) during the year.

[2.80.2100.7 NMAC - Rp, 2.80.2100.7 NMAC, 12/30/2015]

#### **2.80.2100.8 GENERAL PROVISIONS:**

**A.** No partial refund of a member's contributions is permitted.

**B.** A member shall not receive a refund of contributions if the member terminates employment with one affiliated public employer and is thereafter employed by the same or another affiliated public employer within thirty (30) days of termination. The application for a refund of member contributions, if desired, must be filed prior to any subsequent employment. If the application for refund is not filed within this period of time, no refund shall be permitted until termination of all affiliated public employment.

**C.** Requests for refunds of member contributions shall be made on forms provided by the association.

(1) The member or the member's legal representative, or the member's designated refund beneficiary or the beneficiary's legal representative, if the member is deceased, must complete and sign the request for refund.

(2) If the member is deceased, the applicant for refund must provide PERA with a copy of the member's death certificate. If the deceased member has no living beneficiary, then the personal representative of the estate must provide PERA with a copy of the letters of administration or order of appointment of personal representative, signed and filed in court; or must comply with Section 45-3-1201 NMSA 1978.

(3) If the member has been divorced, the member shall provide PERA with complete endorsed copies of all court documents necessary to ascertain the current marital status of the member and whether any ex-spouse of the member is entitled to any portion of the member's contributions. Such documents shall include the final decrees and marital property settlements for all marriages during the member's employment with an affiliated public employer. If the member's only divorce was prior to becoming a PERA member, then the final divorce decree is required, but no marital property settlement is required. If the member was divorced more than once before becoming a PERA member, then only the most recent final decree is required. The requirement for providing a copy of a final decree may be waived, in PERA's discretion, when PERA can establish through online court records that a divorce decree was entered on a specific date and no further documentation is deemed necessary to administer benefits. If the member's former spouse is entitled to a portion of a refund of member contributions pursuant to a court order entered under Section 10-11-136 NMSA 1978,, the member's former spouse may request, on a form prescribed by the association, that his or her share of a refund of member contributions be transferred directly to another qualified plan as allowed by the Internal Revenue Code, as specified under Subsection L of 2.80.2100.8 NMAC.

(4) The member's last affiliated public employer must certify to the termination of employment of the member before a refund may be made.

(5) No refund shall be permitted unless a membership application is on file with PERA. The requirement for a membership application may be waived, in PERA's discretion, when PERA can establish membership for the applicable time period through other documentation.

(6) After tax employee contributions that are not includible in gross income may be directly refunded to the member.

**D.** Interest on member contributions shall be posted annually effective June 30 of each year at the rate of 2.0%.

**E.** A refund of member contributions includes interest on those contributions calculated through the last working day of the month prior to the date of refund.

**F.** A refund of member contributions shall not include the purchase cost received to buy permissive service credit pursuant to Subsection H of Section 10-11-7 NMSA 1978.

**G.** If a court order issued pursuant to Section 10-11-136 NMSA 1978 or Section 10-11-136.1 NMSA 1978 restraining, withholding or dividing a refund of member contributions is received by PERA after a request for refund of contributions has been received but has not been paid, PERA will comply with the order.

**H.** Pursuant to Section 10-11-135, NMSA 1978, PERA retirement accounts are not subject to legal process under other state laws, except for division of a community interest in such accounts as provided in Section

10-11-136 NMSA 1978 or in enforcement of child support obligations as provided in Section 10-11-136.1 NMSA 1978. In the following instances, however, federal laws pre-empt the provisions of the Public Employees Retirement Act and PERA will honor the federal action if the account is in pay status, i.e. if the member has terminated employment and requested a refund of contributions or if a pension is payable. If the federal action is applied against a refund of member contributions, non-tax deferred contributions shall be paid before tax-deferred contributions.

- (1) IRS notices of levy for unpaid taxes.
- (2) Orders by a United States bankruptcy court.
- (3) Orders of garnishment for fines or restitution by a federal court in a criminal case.

**I.** Members may designate only one refund beneficiary. Such designation shall be in writing in the form prescribed by PERA. If the refund beneficiary is other than a natural person, the member shall provide documentation as required by the association. The member shall be responsible for updating the beneficiary designation form with current information, including but not limited to, the beneficiary's name and address. If a warrant for a refund to the most recent beneficiary on file with the association is returned as undeliverable because of incorrect name or address, the money will remain with the association until it is furnished with the correct information.

**J.** Forfeitures arising from severance of employment, death or any other reason, must not be applied to increase the benefits any member would otherwise receive under the plan. PERA shall make all reasonable efforts to refund contributions or to pay pensions as required by the plan.

**K.** The maximum annual contribution limits contained in Internal Revenue Code Section 415(c), as amended and adjusted, are incorporated herein by reference.

**L.** For distributions made on or after January 1, 1993, notwithstanding any contrary provision or retirement law that would otherwise limit a distributee's election under this rule, a distributee may elect, at the time and in the manner prescribed by the PERA, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(1) A non-spouse beneficiary may only rollover the distribution to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution and the account or annuity will be treated as an inherited individual retirement account or annuity.

(2) Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Internal Revenue Code Section 408(a) or (b), or to a qualified defined contribution plan described in Internal Revenue Code Section 401(a), or on or after January 1, 2007, to a qualified defined benefit plan described in Internal Revenue Code Section 401(a) or to an annuity contract described in Internal Revenue Code Section 403(b), that agrees to separately account for amounts so transferred, and earnings thereon, including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible.

[2.80.2100.8 NMAC - Rp, 2.80.2100.8 NMAC, 12/30/2015]

#### **2.80.2100.9 UNCLAIMED CONTRIBUTIONS:**

**A.** A member's accumulated member contributions, plus interest, shall constitute unclaimed member contributions pursuant to Section 10-11-128 NMSA 1978 if the following conditions are met:

- (1) the member has applied for and received a refund of member contributions;
- (2) a balance of five hundred dollars (\$500) or less remains on the member's account;
- (3) PERA has sent a letter to the member's last known address on file with the association

notifying the member that the funds are available for disbursement and received no response within 60 days of the mailing.

**B.** A deceased member's accumulated member contributions, plus interest, shall constitute unclaimed member contributions, pursuant to Section 10-11-128 NMSA 1978, if the following conditions are met:

- (1) PERA has received notification of the member's death through an authorized death notification provider or a certified copy of the member's death certificate;
- (2) a survivor pension benefit is not payable;
- (3) a balance of member contributions, plus interest, remains in the deceased member's

account;

(4) PERA has sent an initial letter to the deceased member's last known address on file with the association and to the address of the member's refund beneficiary or estate, if known, notifying the deceased

member's refund beneficiary or estate that the funds are available for disbursement and if no response is received within 60 days of mailing the initial letter, PERA has sent a final letter the following year to the deceased member's last known address on file with the association and to the address of the member's refund beneficiary or estate, if known, notifying the deceased member's refund beneficiary or estate that the funds are available for disbursement.

(5) PERA has received no response within two years of the date of the member's death.

C. Unclaimed member contributions, plus interest, shall be credited to the income fund, and the member's account shall be closed.

D. PERA shall perpetually maintain a list of members and the value of the accounts which were closed in accordance with this provision.

E. No interest shall accrue on unclaimed member contributions which have been credited to the income fund.

F. A member, beneficiary or estate of a member may at any time apply to receive a refund of unclaimed member contributions and interest accrued before the account was closed in accordance with the provisions of this rule.

G. For the limited purpose of receiving a form 1099 to file taxes for a deceased member, PERA will accept a notarized affidavit from the member's surviving representative. The affidavit shall include the deceased member's social security number, an identification of the relationship between the deceased member and surviving representative, and an affirmation that the request for the form 1099 is for the purpose of settling the affairs or filing taxes for the deceased member.

H. If a member whose account has been closed is subsequently employed by an affiliated public employer, the member's account shall be reopened effective the date of reemployment, and the account balance, accrued interest and service credit shall be restored to the amounts in effect at the time the account was closed. [2.80.2100.9 NMAC - Rp, 2.80.2100.9 NMAC, 12/30/2015; A, 12/28/2021]

**HISTORY of 2.80.2100 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under: PERA Rule 2100, Refund of Member Contributions, filed on 7/1/1993; PERA Rule 2100, Member Contributions, filed on 11/1/1994.

**History of Repealed Material:**

2.80.2100 NMAC, Member Contributions, filed 12-28-2000 - Repealed effective 12/30/2015.