

TITLE 2 PUBLIC FINANCE
CHAPTER 82 EDUCATIONAL RETIREMENT
PART 4 SERVICE CREDIT

2.82.4.1 ISSUING AGENCY: Educational Retirement Board, P.O. Box 26129, Santa Fe, New Mexico 87502-0129
[2.82.4.1 NMAC - Rp, 2.82.4.1 NMAC, 10/31/2017]

2.82.4.2 SCOPE: This rule applies to earned and allowed service credit.
[2.82.4.2 NMAC - Rp, 2.82.4.2 NMAC, 10/31/2017]

2.82.4.3 STATUTORY AUTHORITY: The Educational Retirement Act, Sections 22-11-1 to 22-11-55 NMSA 1978.
[2.82.4.3 NMAC - Rp, 2.82.4.3 NMAC, 10/31/2017]

2.82.4.4 DURATION: Permanent
[2.82.4.4 NMAC - Rp, 2.82.4.4 NMAC, 10/31/2017]

2.82.4.5 EFFECTIVE DATE: October 31, 2017, unless a later date is cited at the end of a section.
[2.82.4.5 NMAC - Rp, 2.82.4.5 NMAC, 10/31/2017]

2.82.4.6 OBJECTIVE: Clarifies requirements, conditions and procedures for determining a member's years of service, and the purchase of allowed service credit.
[2.82.4.6 NMAC - Rp, 2.82.4.6 NMAC, 10/31/2017]

2.82.4.7 DEFINITIONS: [RESERVED]

2.82.4.8 EARNED SERVICE CREDIT:

- A.** Earned service credit shall be granted on a quarterly basis.
- B.** A member shall receive one quarter of credit for each calendar quarter in which the member has earnings from regular employment and renders services for a minimum of 16 days. A member is considered to have rendered services for each day upon which the member is paid salary, regardless of whether the member is on annual, sick, administrative or other form of paid leave. Four calendar quarters of credit shall constitute one year. The calendar quarters of a year shall begin and end as follows: July 1 through September 30; October 1 through December 31; January 1 through March 31; and April 1 through June 30.
- C.** Members who are granted paid sabbatical leave shall receive one calendar quarter of earned service credit for each quarter in which they receive pay for such.
- D.** If a member is granted earned service credit while on paid sabbatical leave and that sabbatical leave is subsequently revoked, with salary payments returned to, or demanded by the administrative unit, under the terms of the leave agreement between the administrative unit and the member, the earned service credit granted during such sabbatical leave shall be revoked.
- E.** In the event of revocation of earned service credit as provided in Subsection D of 2.82.4.8 NMAC, disposition of contributions made by the member and local administrative unit relating to the revoked period of earned service credit shall be as follows:
 - (1)** Local administrative unit contributions shall be credited to the local administrative unit to be used against future contribution costs.
 - (2)** Before the member contribution shall be disbursed, or credited, the local administrative unit shall furnish the board with proof of the settlement which has been made with the member. Following the receipt of this proof, the member contributions shall be handled as follows:
 - (a)** If the local administrative unit has completed the financial settlement with the member without being reimbursed for member contributions relating to the leave and paid to the board, the administrative unit shall be granted credit for such member contributions to be used against the future administrative unit contribution costs.
 - (b)** If the local administrative unit has been reimbursed by the member for member contributions relating to the leave and paid to the board, such member contributions shall be paid to the member on a refund voucher separate from any other refund which might be requested by the member.

F. An exchange teacher who is working outside the New Mexico public schools, but who is being paid a regular salary by a local administrative unit, shall receive earned service credit for such service.

G. The board shall not allow contributory service credit when token salaries are paid or when gratuitous service is performed. The ERB shall rule on each case involving gratuitous service or token salaries when each case is presented.

H. The board may accept rollover and employer payroll deduction contributions for the restoration of withdrawn earned 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 indemnification 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 restore the withdrawn earned service credit.

I. For payments to restore earned 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 Sections 402(c), 403(b)(8), 408(d) or 457(e)(16) of the Internal Revenue Code.

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

(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 earned 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 restore the withdrawn earned service credit.

J. A person who is employed by a local administrative unit and receives retirement benefits pursuant to the Public Employees Retirement Act shall not earn service credit unless the person has suspended their benefit. [2.82.4.8 NMAC - Rp, 2.82.4.8 NMAC, 10/31/2017, A, 11/12/2019]

2.82.4.9 ALLOWED SERVICE CREDIT:

A. For purposes of granting allowed service credit pursuant to Paragraph (2) of Subsection A of Section 22-11-34 NMSA 1978, a member engaged in military service that interrupted the member's employment under a state system in New Mexico shall return to employment within 18 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 Paragraph (3) of Subsection A of Section 22-11-34 NMSA 1978, 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 Paragraph (3) of Subsection A of Section 22-11-34 NMSA 1978;

(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 60 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 Paragraph (3) of Subsection A of Section 22-11-34 NMSA 1978; 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 Paragraph (3) of Subsection A of Section 22-11-34 NMSA 1978, the "average annual actual salary" shall be based upon the member's most recent 20 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 Paragraph (3) of Subsection A of Section 22-11-34 NMSA 1978, 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 subsection by repayment of withdrawn member contributions in the manner required by Subsection C of Section 22-11-33 NMSA 1978; such repayment shall be made at the same time as the lump sum payment for allowed service credit as specified in Paragraph (3) of Subsection A of Section 22-11-34 NMSA 1978.

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 Paragraphs (3) and (4) of Subsection A of Section 22-11-34 NMSA 1978 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 did not work more than .25 of the full-time equivalency for the applicable position as determined 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 Paragraph (4) of Subsection A of Section 22-11-34 NMSA 1978, 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 Subparagraph (a) of Paragraph (4) of Subsection A of Section 22-11-34 NMSA 1978 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 Subparagraph (d) of Paragraph (4) of Subsection A of Section 22-11-34 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 Sections 402(c), 403(b)(8), 408(d) or 457(e)(16) of the Internal Revenue Code.

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

(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.

[2.82.4.9 NMAC - Rp, 2.82.4.9 NMAC, 10/31/2017]

2.82.4.10 RETURN TO WORK: No service credit can be earned, purchased or otherwise credited for any of the time a retired member is employed by a local administrative unit unless the retired member has suspended their retirement benefit. While a retired member is employed by a local administrative unit, no service credit can be purchased for service previously earned or withdrawn unless the retired member has suspended their retirement benefit.

[2.82.4.10 NMAC - Rp, 2.82.4.10 NMAC, 10/31/2017; A, 11/12/2019]

2.82.4.11 SICK LEAVE SERVICE CREDIT:

A. Beginning July 1, 2020, a member may pay to convert unused sick leave to earned service credit in accordance with Section 22-11-34.1 NMSA 1978. Earned service credit that is purchased in accordance with Section 22-11-34.1 NMSA 1978 shall be known as "sick leave service credit." To purchase sick leave service credit a member shall:

(1) submit an application on a form provided by the director specifying the number of days of unused sick leave the member desires to use to purchase earned service credit;

(2) be currently employed by a local administrative unit (LAU) as a regular member as defined under the Educational Retirement Act;

(3) pay to the fund the actuarial present value, as determined by the board, of the benefit attributable to the conversion; and

(4) have acquired at least five years of contributory employment to be eligible for retirement.

B. The member shall make full payment in a single lump sum within 90 calendar days of the date that the member is informed of the amount of the payment.

- C.** The board may accept rollovers or transfers for the purchase of sick leave 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 must submit satisfactory documentation, releases or indemnification 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)** The board may not accept rollovers or transfers in excess of the amount required to purchase sick leave service credit.
 - (4)** Rollovers must be eligible rollover distributions that are not includible in the income of the member by reason of Sections 402(c), 403(b)(8), 408(d) or 457(e)(16) of the Internal Revenue Code.
 - (5)** Transfers must be direct trustee-to-trustee transfers from a qualified plan described in Section 401(a) or 403(a) of the Internal Revenue Code, an annuity contract described in Section 403(b) of the Internal Revenue Code to the extent permitted by Section 403(b)(13) of the Internal Revenue Code, or an eligible plan under Section 457(b) of the Internal Revenue Code to the extent permitted by Section 457(e)(13) of the Internal Revenue Code.
 - (6)** The rollovers and transfers shall contain only pre-tax deferred contributions and earnings on the contributions. The member 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.
- D.** Any sick leave for which the member has been paid or which the member has otherwise used shall not be eligible for conversion to sick leave service credit.
- E.** The member shall only be eligible to convert his or her own earned sick leave to earned service credit. Donated sick leave or sick leave available to the member from a sick leave bank or similar repository shall not be eligible for conversion to sick leave service credit.
- F.** The LAU employing the member shall certify to ERB:
- (1)** the number of days of unused sick leave the member has available for conversion, and
 - (2)** the number of days of unused sick leave the member wishes to convert to sick leave service credit.
- G.** The director shall review the member's application for sick leave service credit and the information certified by the LAU. The director may request additional documentation or information from the LAU or the member that may be relevant to the processing of the application.
- H.** Unused sick leave that is converted to earned service credit shall be cancelled by the LAU and shall no longer be available to the member for use as sick leave or as a basis for monetary payment.
- I.** If a member receives a refund of the member's contributions, all sick leave service credit shall be cancelled from the member's account and shall not be available for purchase or be reinstated.
- J.** Conversion of unused sick leave to earned service credit is irrevocable. Sick leave service credit shall not convert back into or become unused sick leave.
- K.** Payments received by ERB for the purchase of sick leave service credit are nonrefundable.
- L.** A retired member who has not suspended their benefit and who has returned to employment with an LAU is not eligible to purchase sick leave service credit. Sick leave earned by a retired member who has not suspended their benefit and who has returned to employment with an LAU shall not be eligible for conversion to sick leave service credit.

[2.82.4.11 NMAC - N, 7/14/2020]

HISTORY OF 2.82.4 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

ERB 67-3, Rules and Procedures, filed 6/30/1967.

ERB 78-1, Rules and Procedures, filed 8/7/1978.

ERB Rule IV, Service Credit, filed 7/2/1982.

History of Repealed Material:

2.82.4 NMAC, Service Credit, filed 6/30/99, repealed effective 10/31/2017 and replaced by 2.82.4, Service Credit, effective 10/31/2017.