

TITLE 10 PUBLIC SAFETY AND LAW ENFORCEMENT
CHAPTER 2 DEPARTMENT OF PUBLIC SAFETY
PART 4 LAW ENFORCEMENT RETENTION FUND REPORTING, MONITORING AND
ADMINISTRATION

10.2.4.1 ISSUING AGENCY: Department of Public Safety.
[10.2.4.1 NMAC – N, 04/25/2023]

10.2.4.2 SCOPE: All law enforcement agencies eligible to receive funding from the law enforcement retention fund for the purpose of providing a retention differential disbursement to eligible law enforcement officers employed by that law enforcement agency.
[10.2.4.2 NMAC - N, 04/25/2023]

10.2.4.3 STATUTORY AUTHORITY: This rule is promulgated pursuant to Sections 9-19-6 E. and 9-19-14 NMSA 1978 of the Department of Public Safety Act. Section 9-19-14 creates a law enforcement retention fund in the state treasury and requires the Department to develop rules, forms, standards, procedures and related training for law enforcement agencies to report retention information when seeking monies to provide retention differential disbursements to eligible law enforcement officers within the law enforcement agency’s employ.
[10.2.4.3 NMAC - N, 04/25/2023]

10.2.4.4 DURATION: Permanent
[10.2.300.4 NMAC - N, 04/25/2023]

10.2.4.5 EFFECTIVE DATE: 04/25/2023, unless a later date is specified at the end of a section.
[10.2.4.5 NMAC - N, 04/25/2023]

10.2.4.6 OBJECTIVE: The objective of this rule is to provide forms, standards and procedures for law enforcement agencies to report retention information when seeking monies from the law enforcement retention fund, for the purpose of providing retention differential disbursements to eligible law enforcement officers within the law enforcement agency’s employ
[10.2.4.6 NMAC - N, 04/25/2023]

10.2.4.7 DEFINITIONS: This rule adopts the definitions found in Section 9-19-2 NMSA 1978 and Subsection M of Section 9-19-14 NMSA 1978 , as if fully set forth herein. In addition to the definitions adopted, the following terms have the following meaning:

A. “Date of hire” means the month, date and year the individual was hired by a law enforcement agency for the purpose of serving as a law enforcement officer with that agency.

B. “DPS” means the department of public safety.

C. “Eligible officer” means an officer who has remained employed as a law enforcement officer with the same law enforcement agency one year and one day after reaching four, nine, fourteen and nineteen years of consecutive service from the law enforcement officer’s date of hire with that law enforcement agency.

D. “Employer tax liability” means the employer contribution for payroll taxes outlined in the Federal Insurance Contribution Act for Social Security and/or Medicare. This does not include any employer contributions for retirement or other benefit plans.

E. “Law enforcement academy” means the New Mexico law enforcement academy created by Section 29-7-2 NMSA 1978 or any of the satellite academies certified by the New Mexico law enforcement academy board.

F. “Law enforcement retention fund” means a fund in the state treasury, consisting of money appropriated by the legislature, federal money granted to the state for the purposes of the fund, income from investment of the fund and money otherwise accruing to the fund. Money in the fund does not revert to any other fund at the end of the fiscal year. The fund is administered by DPS to provide monies to law enforcement agencies who request the funds for the purpose of providing retention differential disbursements to law enforcement officers within the agency’s employ who meet statutorily prescribed requirements.

G. “LERF” means law enforcement retention fund.

H. “Portal” means the electronic system through which law enforcement agencies annually report to the DPS the data required by this rule in order for the law enforcement agency to receive funding from the law

enforcement retention fund for the purpose of providing retention differential disbursements to eligible officers employed by that agency.

I. “**PRDD**” means the amount of the projected retention differential disbursement stated in dollars and cents to be paid to the eligible officer.

J. “**Reporting fiscal year**” means the fiscal year in which the law enforcement agency is reporting to DPS the information set forth in Subsection A of 10.2.4.9 NMAC.

K. “**Salary**” means the base hourly rate of pay of the law enforcement officer for two thousand eighty hours, excluding overtime, any percentage pay increases or multiple components of pay.

L. “**Years of service**” means the number of consecutive years, months and days, beginning with the date of hire, a law enforcement officer is employed for the purpose of serving as a law enforcement officer with a single law enforcement agency.

[10.2.4.7 NMAC - N, 04/25/2023]

10.2.4.8 CALCULATION OF THE PROJECTED FIVE PERCENT RETENTION DIFFERENTIAL DISBURSEMENT BY THE REPORTING LAW ENFORCEMENT AGENCY: The salary used by the law enforcement agency to calculate the five percent retention differential disbursement for those officers projected to be eligible officers in the upcoming fiscal year, shall be the salary of the officer on the date the officer reached four, nine, 14 or 19 years of consecutive service with the law enforcement agency requesting the retention differential disbursement.

[10.2.4.8 NMAC - N, 04/25/2023]

10.2.4.9 REPORTING REQUIREMENTS FOR AGENCIES SEEKING RETENTION DIFFERENTIAL DISBURSEMENTS

A. Every law enforcement agency seeking monies from the LERF for retention differential disbursements for officers within its employ, who are projected to be eligible officers in the upcoming fiscal year, shall annually report to DPS the following information:

(1) The full legal name and date of hire of the officer projected to be an eligible officer in the upcoming fiscal year, the PRDD for that officer, the amount of the annual salary on which the PRDD was calculated and the amount of the employer tax liability attributable to the PRDD. The amount of the employer tax liability shall specify the amount attributable to Social Security and the amount attributable to Medicare;

(2) The aggregate number of law enforcement officers employed by the law enforcement agency during each of the five fiscal years immediately preceding the reporting fiscal year. For any officer employed less than a full fiscal year, the law enforcement agency shall report the number of months and days the officer was employed, identifying the officer without personally identifying information (e.g. Officer # 1, Officer # 2, etc.).

(3) For each officer included in Paragraph (2) of Subsection A above, the number of years (or partial years) of service of each law enforcement officer with the reporting agency.

(4) The number of law enforcement officers that left the employ of the law enforcement agency during the fiscal year immediately preceding the reporting fiscal year. The number of years of service with the reporting law enforcement agency of each departing officer and the stated reasons why each law enforcement officer left the employ of the law enforcement agency.

(5) The number of applicants to the law enforcement agency for a position as a law enforcement officer during the fiscal year immediately preceding the reporting fiscal year.

(6) The number of applicants to the law enforcement agency for a position as a law enforcement officer in the fiscal year immediately preceding the reporting fiscal year, who attended a law enforcement academy.

(7) The number of law enforcement officers within the reporting agency’s employ who received one or more certifications during the fiscal year immediately preceding the reporting fiscal year.

(8) The number of law enforcement officers added to the law enforcement agency by way of lateral transfer during the fiscal year immediately preceding the reporting fiscal year and the years of service of each added officer at each previous law enforcement agency if known to the reporting agency.

(9) Any changes to compensation, recruiting, retention or benefits of officers implemented by the law enforcement agency during the fiscal year immediately preceding the reporting fiscal year.

(10) The number of officers that are projected to become eligible for a retention differential disbursement in the upcoming fiscal year, and the projected amount of the retention differential disbursement including any employer tax liabilities.

(11) Any other information requested by DPS that is used for determining retention rates, unless disclosure of such information is otherwise prohibited by law.

B. The information in Subsection A above shall be reported to the DPS for the upcoming fiscal year no later than May 31.

C. The information in Subsection A above shall be reported to the DPS through the electronic portal, unless DPS advises the applying law enforcement agencies that a different reporting method should be used. [10.2.4.9 NMAC - N, 04/25/2023]

10.2.4.10 PROCEDURE FOR CALCULATION OF DISBURSEMENTS FROM THE LERF, SUBMISSION OF OBJECTIONS TO THE DISBURSEMENT AND REVERSION OF UNDISBURSED FUNDS

A. Following receipt of the information required to be reported in 10.2.4.9 NMAC, DPS shall calculate the total amount necessary to be disbursed to each requesting law enforcement agency to provide a retention differential disbursement to all eligible officers employed by that law enforcement agency in the fiscal year for which the funds are requested, plus the employer tax liability for each PRDD.

B. Following calculation of the PRDD and employer tax liability for each officer projected to be an eligible officer in each requesting agency, the DPS shall determine whether the balance in the LERF is sufficient to permit the total disbursements calculated. If the balance in the LERF is insufficient to pay the total amount of the disbursement to each requesting agency, DPS shall reduce the amount to be disbursed to each law enforcement agency on a pro rata basis to an amount permitted by the monies available in the LERF.

C. Once the calculation of the PRDD, employer tax liability and any necessary pro rata deduction is complete, DPS shall issue a Notice of Intent to Disburse letter to each agency that requested monies from the LERF. This notice shall advise the agency of the amount DPS intends to distribute from the LERF to the agency for the PRDD and related employer tax liability, including an explanation of the pro rata deduction, if any. If the agency disagrees with the amount set forth in the Notice of Intent to Disburse letter, the agency shall have 30 days from its receipt of the letter to notify DPS of its objection and the reasons therefor.

D. The written Objections to the Notice of Intent to Disburse shall be sent to: DPS.LERF@dps.nm.gov.

E. DPS will respond to all objecting agencies in writing, within 30 days of the date on which all objections by all agencies are due. DPS will either affirm its original Notice of Intent to Disburse letter or issue an Amended Notice of Intent to Disburse letter. If the agency requesting monies from the LERF remains aggrieved, the agency may proceed as provided in 10.2.4.12 NMAC.

F. DPS shall disburse the monies to the requesting law enforcement agencies in accordance with the Notice of Intent to Disburse letter and any amendment thereto in accordance with the choice selected by the law enforcement agency in SHARE Financials as State of New Mexico vendors. Some law enforcement agencies may be set up for manual warrants.

G. DPS shall disburse the monies to all requesting law enforcement agencies in accordance with their respective Notice of Intent to Disburse letters and any amendments thereto, on December 15 of the fiscal year in which the monies are projected to be disbursed by the law enforcement agencies to the eligible officers.

H. Upon receipt of the disbursement, the law enforcement agency shall place the monies in an interest bearing account. Interest earned will revert to DPS as set forth in this rule.

I. The law enforcement agency shall disburse the PRDD to the eligible officer no sooner than the date the officer attains eligibility and no later than 30 days following the date of eligibility, or the law enforcement agency's receipt of the disbursement from DPS, whichever occurs last.

J. The law enforcement agency shall disburse the monies attributable to the employer's tax liability to the appropriate taxing authority as required by law.

K. The law enforcement agency shall report the date of disbursement of the PRDD and the employer taxes on the same to the DPS through the portal within 30 days of disbursement.

L. Within 60 days after the end of the fiscal year in which PRDDs and the accompanying employer tax liability are disbursed and paid and no later than August 31, the law enforcement agency shall return to the DPS any monies disbursed for projected PRDDs and employer tax liability, which were not disbursed and paid as projected, together with any interest earned thereon, in the form of a check. The law enforcement agency returning the monies shall include with the check, a statement of all PRDDs made and employer tax liability paid for each officer, identified by the officer's full legal name, date of the disbursement and date of payment of the employer tax liability. The law enforcement agency shall also provide a statement of the full legal names of the officers projected to receive a retention differential disbursement, who did not receive a disbursement, the amount of the returned

PRDD, the amount of the returned employer tax liability and the reason the disbursement was not made. The law enforcement agency shall also include a statement of the interest that accrued on the funds while in the agency's custody, that is being returned to DPS.

[10.2.4.10 NMAC - N, 04/25/2023]

10.2.4.11 WAIVER OF REPORTING REQUIREMENT

A. Any agency requesting a waiver of all or a portion of the information that the law enforcement agency is required to report under Subsection A of 10.2.4.9 NMAC, shall file a written request for waiver no later than May 31 of the fiscal year the report is due. The request for waiver shall specify the section or sections of the rule for which waiver is sought and the reason therefor.

B. DPS will respond in writing to a request for waiver of the required reporting information within 30 days of its receipt of the request.

C. The agency's decision on a request for waiver is final.

[10.2.4.11 NMAC - N, 04/25/2023]

10.2.4.12 APPEAL PROCESS

A. There is no statutory right of appeal from DPS's decision on a Notice of Intent to Disburse letter or its denial of a request to waive the required reporting information.

B. A law enforcement agency aggrieved by a DPS decision may proceed by requesting an applicable writ as provided by law.

[10.2.4.12 NMAC - N, 04/25/2023]

HISTORY OF 10.2.4 NMAC:

10.2.4 NMAC - Law Enforcement Retention Fund Reporting, Monitoring and Administration, filed and effective on 5/5/2022 as an emergency rule, expired by operation of law.