

**TITLE 2 PUBLIC FINANCE**  
**CHAPTER 80 PUBLIC EMPLOYEES RETIREMENT**  
**PART 500 REMITTANCE OF CONTRIBUTIONS**

**2.80.500.1 ISSUING AGENCY:** Public Employees Retirement Association, P. O. Box 2123, Santa Fe, New Mexico 87504-2123  
[10-15-97; 2.80.500.1 NMAC - Rn, 2 NMAC 80.500.1, 12-28-01]

**2.80.500.2 SCOPE:** This rule affects affiliated public employers, their employees, the retirement board and the association under the Public Employees Retirement Act.  
[10-15-97; 2.80.500.2 NMAC - Rn, 2 NMAC 80.500.2, 12-28-01]

**2.80.500.3 STATUTORY AUTHORITY:** This rule is authorized by NMSA 1978, Sections 10-11-124 and 10-11-130, as amended.  
[10-15-97; 2.80.500.3 NMAC - Rn, 2 NMAC 80.500.3, 12-28-01]

**2.80.500.4 DURATION:** Permanent.  
[10-15-97; 2.80.500.4 NMAC - Rn, 2 NMAC 80.500.4, 12-28-01]  
2 NMAC 80.500.2, 12-28-01]

**2.80.500.3 STATUTORY AUTHORITY:** This rule is authorized by NMSA 1978, Sections 10-11-124 and 10-11-130, as amended.  
[10-15-97; 2.80.500.3 NMAC - Rn, 2 NMAC 80.500.3, 12-28-01]

**2.80.500.4 DURATION:** Permanent.  
[10-15-97; 2.80.500.4 NMAC - Rn, 2 NMAC 80.500.4, 12-28-01]

**2.80.500.5 EFFECTIVE DATE:** December 15, 1995 unless a different date is cited at the end of a section.  
[10-15-97; 2.80.500.5 NMAC - Rn, 2 NMAC 80.500.5, 12-28-01]

**2.80.500.6 OBJECTIVE:** The objective of this rule is to establish procedures and requirements for the remittance of contributions.  
[10-15-97; 2.80.500.6 NMAC - Rn, 2 NMAC 80.500.6, 12-28-01]

**2.80.500.7 DEFINITIONS:** [Reserved]  
[2.80.500.7 NMAC - Rn, 2 NMAC 80.500.7, 12-28-01]

**2.80.500.8 REMITTANCE OF CONTRIBUTIONS**

A. In accordance with the Public Employees Retirement Act each state agency or affiliated public employer shall be responsible for deducting the applicable contribution from the salary or wages paid to each member for each payroll period.

B. The employer shall transmit to PERA the member and employer contributions for every member in its employ for each pay period on or before the fifth working day following the payday applicable to the pay period. The contributions shall be accompanied by a transmittal report in a format designated by PERA, which shall clearly set forth the amount of employer and member contributions, and adjustments for prior pay periods if applicable, transmitted.

C. Except as provided in subsection H below, interest will be assessed on any remittance of employee and employer contributions not made by the due date of the remittance. The rate of interest shall be set annually by the board at a July meeting and shall be effective beginning the next succeeding January 1st. Any interest paid on unremitted contributions shall not be posted to the member's account or refunded to the member or the employer.

D. Except as provided in subsection H below, a penalty of fifty dollars (\$50) per day shall be assessed for any employee and employer contribution transmittal report that is untimely. For purposes of this subsection, "untimely" is defined as fifteen (15) days after the end of the month in which the transmittal report was due.

E. In the event the employer fails to make the necessary deductions, the employer shall be responsible to remit to PERA the total amount due for both the member and employer contributions plus interest as provided in subsection C above.

F. Pick-up of member contributions

(1) If an employer has adopted a resolution or executed a collective bargaining agreement pursuant to NMSA 1978, Section 10-11-5 which obligates the employer to pay up to 75% of the members' contributions, the resolution or collective bargaining agreement shall become effective on the first day of the first full pay period of the month following filing of the resolution or collective bargaining agreement with the retirement board. PERA may refuse for filing a resolution containing conditions or contingencies, or not prepared in compliance with requirements for such resolutions approved by the PERA board. "First full pay period" for purposes of adopting a new coverage plan shall mean the first pay period that ends within the month in which the new coverage plan becomes applicable to a member.

(2) Under the Internal Revenue Code Section 414(h), an employer can pick up 100% of member contributions, but only 75% of the contributions are additional salary.

(3) Member contributions picked-up by the employer under NMSA 1978, Section 10-11-125 are not considered compensation for purposes of Internal Revenue Code Section 415(c).

G. Current employer contributions may not be made by members except as authorized by law.

H. If an employer, for good cause, is unable to timely transmit employee and employer contributions or transmittal report, the employer shall notify PERA in writing at least twenty-four (24) hours prior to the due date, and may request waiver of the interest or penalty that would otherwise be assessed. The executive director may waive interest or penalty for up to thirty-one (31) calendar days. Interest shall thereafter be charged at the rate set in subsection C above.

I. Beginning January 1, 2009, to the extent required by Internal Revenue Code Section 414(u)(2), an individual receiving differential wage payments (as defined under Internal Revenue Code Section 3401(h)(2)) from an affiliated public employer shall be treated as employed by that employer and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under Internal Revenue Code Section 415(c). This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

[10-15-97; 11-15-97; 12-15-99; 2.80.500.8 NMAC - Rn & A, 2 NMAC 80.500.8, 12-28-01; A, 12-15-09; A, 12-30-13]

## **2.80.500.9 REMITTANCE OF CONTRIBUTIONS FOR RE-EMPLOYED RETIRED MEMBERS**

A. Each affiliated public employer shall be responsible for deducting applicable contributions from the salary or wages paid to each re-employed retired member for each payroll period. The affiliated public employer shall make employer contributions in the amount specified in the Public Employees Retirement Act until the subsequent employment is terminated. Retired member contributions shall be separately tracked, but shall not be posted to the retired member's account or refunded to the retired member or the employer upon termination of employment.

B. The employer shall transmit to PERA applicable employee and employer contributions for every retired member in its employ for each pay period on or before the fifth working day following the payday applicable to the pay period. The contributions shall be accompanied by a transmittal report in a format designated by PERA, which shall clearly set forth the amount of employer and retired member contributions, and adjustments for prior pay periods if applicable, transmitted.

C. Except as provided in subsection F below, interest will be assessed on any remittance of retired member and employer contributions not made by the due day of the remittance. The rate of interest shall be set annually by the board at a July meeting and shall be effective beginning the next succeeding January 1<sup>st</sup>. Any interest paid on unremitted contributions shall not be posted to the member's account or refunded to the member or the employer.

D. Except as provided in subsection F below, a penalty of fifty dollars (\$50) per day shall be assessed for any employee and employer contribution transmittal report that is untimely. For purposes of this subsection, "untimely" is defined as fifteen (15) days after the end of the month in which the transmittal report was due.

E. In the event the employer fails to make the necessary deductions, the employer shall be responsible to remit to PERA the total amount due for both the retired member and employer contributions plus interest as provided in subsection C above.

F. If an employer, for good cause, is unable to timely transmit retired member employee and employer contributions or transmittal report, the employer shall notify PERA in writing at least twenty-four (24) hours prior to the due date, and may request waiver of the interest or penalty that would otherwise be assessed. The executive director may waive interest or penalty for up to thirty-one (31) calendar days. Interest shall thereafter be charged at the rate set in subsection C above.

G. Notwithstanding the provisions of this section, no retired member employee or employer contributions shall be remitted in the case of the following re-employed retired members:

- (1) a retired member employed by the legislature for legislative session work who files an irrevocable exemption from membership within thirty (30) days of employment;
- (2) a retired member elected to serve a term as an elected official on or after July 1, 2009 who files an irrevocable exemption from membership with the association within thirty days of taking office; or
- (3) a retired member who has not been employed as an employee of an affiliated public employer or retained as an independent contractor by the affiliated public employer from which the retired member retired for at least twelve (12) consecutive months from the date of retirement to the commencement of employment or reemployment with an affiliated public employer.

[2.80.500.9 NMAC - N, 9-30-03; A, 8-31-04; A, 12-15-09; A, 9-30-10]

**HISTORY of 2.80.500 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under: Rule 500.00, Contributions, filed on 10-4-79; Rule 500.00, Contributions, filed on 6-29-81; PERA Rule 500.00, Remittance of Contributions, filed on 11-19-81; PERA Rule 500, Remittance of Contributions, filed on 7-1-87; PERA Rule 500, Remittance of Contributions, filed on 7-31-91; PERA Rule 500, Remittance of Contributions, filed on 7-1-93; PERA Rule 500, Remittance of Contributions, filed on 12-1-95.