

TITLE 2 PUBLIC FINANCE
CHAPTER 80 PUBLIC EMPLOYEES RETIREMENT
PART 1100 RETIRED MEMBERS

2.80.1100.1 ISSUING AGENCY: Public Employees Retirement Association, P. O. Box 2123, Santa Fe, New Mexico 87504-2123
[10-15-97; 2.80.1100.1 NMAC - Rn, 2 NMAC 80.1100.1, 12-28-00]

2.80.1100.2 SCOPE: This rule affects retirees, beneficiaries, affiliated public employers and the association under the Public Employees Retirement Act.
[10-15-97; 2.80.1100.2 NMAC - Rn, 2 NMAC 80.1100.2, 12-28-00]

2.80.1100.3 STATUTORY AUTHORITY: This rule is authorized by NMSA 1978, Sections 10-11-8, 10-11-118, 10-11-118.1, 10-11-119, and 10-11-130, as amended.
[10-15-97; 2.80.1100.3 NMAC - Rn, 2 NMAC 80.1100.3, 12-28-00]

2.80.1100.4 DURATION: Permanent.
[10-15-97; 2.80.1100.4 NMAC - Rn, 2 NMAC 80.1100.4, 12-28-00]

2.80.1100.5 EFFECTIVE DATE: December 15, 1995 unless a different date is cited at the end of a section.
[10-15-97; 2.80.1100.5 NMAC - Rn & A, 2 NMAC 80.1100.5, 12-28-00]

2.80.1100.6 OBJECTIVE: The objective of this rule is to establish standards and procedures for the payment, suspension and reinstatement of pensions of retired members; to establish notification and reporting requirements for post-retirement employment; and to establish conditions for retired members who work for affiliated public employers as independent contractors.
[10-15-97; 2.80.1100.6 NMAC - Rn, 2 NMAC 80.1100.6, 12-28-00; A, 9-30-03; A, 8-31-04]

2.80.1100.7 DEFINITIONS: [Reserved]
[2.80.1100.7 NMAC - Rn, 2 NMAC 80.1100.7, 12-28-00]

2.80.1100.8-9 [Reserved]

2.80.1100.10 PAYMENT OF PENSION: Pension payments will be processed or mailed monthly, not later than the last day of the month for which they are paid.

A. A retired member may have the pension warrant mailed directly to any location specified in writing by the retired member; provided, however, that after December 31, 1998, the provisions of 2.80.700.10.B(5) NMAC shall apply. Arrangements providing for electronic transfer of pension payments to the retiree's banking institution are permitted so long as the retired member's right to receipt of the funds is not altered except as ordered by a court of competent jurisdiction.

B. In the event a retired member is incapacitated or unable to sign his or her pension warrant, proof that a guardian has been appointed for the retired member, or proof of appointment of a conservator for the estate, or a copy of a durable power of attorney for a third party shall be filed with PERA.
[10-15-97; 11-15-97; 2.80.1100.10 NMAC - Rn & A, 2 NMAC 80.1100.10, 12-28-00]

2.80.1100.11 POST-RETIREMENT SELECTION OF NEW BENEFICIARY OR CHANGE TO FORM OF PAYMENT A:

A. To exercise his or her one-time irrevocable option to change the beneficiary designated at retirement to another survivor beneficiary under the same form of payment or to have future payments made under form of payment A pursuant to NMSA 1978, Section 10-11-116 (D), the retired member shall submit the request in writing to PERA, including a statement that the beneficiary designated at retirement is still living.

B. If the retired member requests a beneficiary change, he or she shall provide a copy of the new beneficiary's certificate of birth with the written request.

C. If the retired member was married at the time of retirement and is still married to the same person at the time of the request, he or she shall provide a new signed notarized statement of consent by the member's spouse to the new beneficiary or to the election of form of payment A.

D. If the retired member has been divorced, he or she 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 benefits. 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.

E. A retired member who was divorced prior to retirement and named his or her former spouse as survivor beneficiary may exercise his one-time irrevocable option to deselect his or her former spouse as survivor beneficiary in accordance with NMSA 1978, Section 10-11-116 (E) provided that there is no court order requiring the election of a specific form of payment or designation of a specific survivor pension beneficiary.

F. PERA shall provide the retired member with a new benefit estimate and an agreement for selection of new beneficiary or change to form of payment A after retirement in the form required by PERA within a reasonable time of receipt of the written request and required information and documents.

G. If the signed notarized agreement is received at PERA by the ninth day of the month, the requested change shall be effective for the pension payment for that month. Agreements received after the ninth day of the month shall be effective for the following month's pension payment.
[2.80.1100.11 NMAC - N, 9-30-10; A, 12-30-13; A, 12-30-13]

2.80.1100.12-19 [Reserved]

2.80.1100.20 POST-RETIREMENT EMPLOYMENT:

A. When a retired member is subsequently employed by an affiliated public employer, the retired member shall notify PERA immediately on the form prescribed by the association of the hire date, position and salary of the subsequently employed retired member.

B. If a retired member returns to work and his or her pension is suspended pursuant to NMSA 1978, Section 10-11-8, the retired member will be required to repay PERA any pension amounts erroneously paid after commencement of employment or reemployment, plus interest at the rate set by the board for collecting overpayments. If erroneously paid pension payments have not been repaid when the subsequent employment is terminated and the retired member has applied for reinstatement of the pension, the erroneously paid amount must be repaid in full before the pension may be reinstated, or the subsequently employed retired member must make arrangements acceptable to PERA for the erroneously paid amount to be withheld from the reinstated pension until fully repaid.

[10-15-97; 11-15-97; 2.80.1100.20 NMAC - Rn & A, 2 NMAC 80.1100.20, 12-28-00; A, 12-28-01; A, 9-30-03; A, 8-31-04; A, 12-15-09; A, 9-30-10]

2.80.1100.21-29 [Reserved]

2.80.1100.30 SUSPENSION OF PENSION:

A. A previously retired member who is subsequently employed by an affiliated public employer and whose pension is suspended pursuant to NMSA 1978, Section 10-11-8 (C) shall not become a member. The previously retired member will be eligible to reinstate his or her pension upon termination of the subsequent employment under the following conditions:

(1) the member files an application for reinstatement of pension in the form required by PERA; and
(2) the member's pension, under form of payment A, shall not be less than the amount of the previous pension under form of payment A; and

(3) reinstatement of the pension does not constitute the member's latest retirement for purposes of cost-of-living adjustment eligibility pursuant to NMSA 1978, Section 10-11-118 (C).

B. A previously retired member who is subsequently employed by an affiliated public employer and whose pension is suspended upon one of the following grounds shall become a member:

(1) he or she has 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 within twelve consecutive months from the date of retirement to the commencement of employment or reemployment with an affiliated public employer; or

(2) he or she makes an election pursuant to NMSA 1978, Section 10-11-8 (F).

C. A previously retired member who has subsequently become a member will be eligible re-retire at the termination of the subsequent employment period under the following conditions:

(1) The member files an application for retirement in accordance with the provisions of 2.80.700.10 NMAC.

(2) The recalculated pension, under form of payment A, shall not be less than the amount of the suspended pension under form of payment A.

(3) If the re-retiring member acquires three or more years of service credit during the subsequent employment with an affiliated public employer, the following provisions apply:

(a) the re-retiring member may re-retire under the coverage plan applicable at the time of re-retirement;

(b) the pension payment shall be made employing the form of payment selected by the re-retiring member upon the member's application for re-retirement; and

(c) the re-retiring member may designate any person as survivor beneficiary, subject to the provisions of NMSA 1978, Section 10-11-116.

[10-15-97; 2.80.1100.30 NMAC - Rn, 2 NMAC 80.1100.30, 12-28-00; A, 9-30-03; A, 8-31-04; A, 9-30-10; A, 12-30-13]

2.80.1100.31-39 [Reserved]

2.80.1100.40 INDEPENDENT CONTRACTORS: A retired member who intends to render services to an affiliated public employer as an independent contractor shall submit the contract to the association at least fifteen (15) working days prior to the effective date of the contract. If a retired member contracts to perform work for any affiliated public employer, the following conditions shall apply:

A. PERA shall evaluate the contract to determine whether, under the terms of the contract, the retired member is an "employee" or an "independent contractor". To make this determination, PERA shall refer to the common-law control test guidelines as expressed in the Social Security Handbook published by the U.S. department of health and human services, as revised and amended. If PERA determines that the retired member is actually an "employee" rather than an "independent contractor" under the terms of the contract, the provisions of NMSA 1978, Section 10-11-8 and 2.80.1100.20 NMAC, will be applicable to the retired member. If the retired member disagrees with PERA's determination, the retired member may appeal PERA's decision pursuant to 2.80.1500 NMAC.

B. Renewals, amendments or modifications of a previously approved post-retirement contract shall also be submitted to PERA for evaluation fifteen (15) working days prior to their effective date. The provisions of this section will apply to such renewals, amendments or modifications.

[10-15-97; 11-15-97; 2.80.1100.40 NMAC - Rn & A, 2 NMAC 80.1100.40, 12-28-00; A, 9-30-03]

2.80.1100.41-49 [Reserved]

2.80.1100.50 [Reserved]

[2.80.1100.50 NMAC - N, 8-31-04; Repealed, 9-30-10]

HISTORY of 2.80.1100 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under: Rule 1100.00, Annuitants, filed on 10-4-79; PERA Rule 1100.00, Annuitants, filed on 11-19-81; PERA Rule 1100.00, Retired Members, filed on 7-1-87; PERA Rule 1100, Retired Members, filed on 7-1-93; PERA Rule 1100, Retired Members, filed on 11-1-94; PERA Rule 1100, Retired Members, filed on 12-1-95.