

**TITLE 2 PUBLIC FINANCE**  
**CHAPTER 80 PUBLIC EMPLOYEES RETIREMENT**  
**PART 1600 DETERMINATION OF COMMUNITY INTEREST AND DIVISION OF RETIREMENT PENSIONS/CONTRIBUTIONS AT DIVORCE**

**2.80.1600.1 ISSUING AGENCY:** Public Employees Retirement Association, P. O. Box 2123, Santa Fe, New Mexico 87504-2123  
[10-15-97; 2.80.1600.1 NMAC - Rn, 2 NMAC 80.1600.1, 12-28-01]

**2.80.1600.2 SCOPE:** This rule affects members, former members, retirees, beneficiaries, and the association under the Public Employees Retirement Act. This rule also affects the spouses and ex-spouses of members, former members and retirees under the act.  
[10-15-97; 2.80.1600.2 NMAC - Rn, 2 NMAC 80.1600.2, 12-28-01]

**2.80.1600.3 STATUTORY AUTHORITY:** This rule is authorized by NMSA 1978, Sections 10-11-136, 10-11-130, and 10-11-116, as amended.  
[10-15-97; 2.80.1600.3 NMAC - Rn, 2 NMAC 80.1600.3, 12-28-01]

**2.80.1600.4 DURATION:** Permanent.  
[10-15-97; 2.80.1600.4 NMAC - Rn, 2 NMAC 80.1600.4, 12-28-01]

**2.80.1600.5 EFFECTIVE DATE:** December 15, 1995 unless a different date is cited at the end of a section.  
[10-15-97; 2.80.1600.5 NMAC - Rn, 2 NMAC 80.1600.5, 12-28-01]

**2.80.1600.6 OBJECTIVE:** The objective of this rule is to establish procedures for dividing the community interest in retirement pensions or contributions.  
[10-15-97; 2.80.1600.6 NMAC - Rn, 2 NMAC 80.1600.6, 12-28-01]

**2.80.1600.7 DEFINITIONS:** [Reserved]

**2.80.1600.8-9** [Reserved]

**2.80.1600.10 DIVORCE DECREE OR ORDER**

A. The following information must be contained in a court order which divides the community interest in PERA retirement pensions or contributions:

- (1) specific information identifying the parties, i.e., full names, addresses, social security numbers, retirement numbers if any;
- (2) a declaration that there is a community interest in a member's pension or member contributions;
- (3) the percentage or dollar amount of each party's interest in the gross pension as calculated at the time of retirement;
- (4) the percentage or dollar amount of each party's interest in member contributions;
- (5) a direct order to PERA restraining refund of member contributions except according to the provisions of the decree or order, if such a restraint is desired;
- (6) liability for and payment of federal and state income taxes;
- (7) a direct order to PERA to issue separate warrants to each party.

B. A separate account may not be created for a member's former spouse who has a court-determined interest in a member's account.

C. A model order containing provisions for the determination and division of the community interest in a PERA member's account shall be available on request from PERA's office of general counsel.

D. Payments made pursuant to such orders shall only be made when member contributions are refunded or a pension is payable in accordance with the provisions of the Public Employees Retirement Act. PERA shall not be obligated to administer pension benefits in accordance with such orders until the first of the month following written approval by the office of general counsel.

[10-15-97; 11-15-97; 2.80.1600.10 NMAC - Rn, 2 NMAC 80.1600.10, 12-28-01]

**2.80.1600.11-19** [Reserved]

**2.80.1600.20 CHANGE OF NAME OR ADDRESS:** Member files must contain current names and addresses for persons having a court-determined interest in member retirement accounts. Any person with such an interest must provide PERA with a written statement of change of name or address. If a warrant is returned as undeliverable because of incorrect name or address, the money due the person will accumulate in the fund until PERA is furnished with the correct information. No interest shall be paid on any monies so accumulated.

[10-15-97; 2.80.1600.20 NMAC - Rn, 2 NMAC 80.1600.20, 12-28-01]

**2.80.1600.21-29** [Reserved]

**2.80.1600.30 FORM OF PAYMENT**

A. When a retired member who has chosen either form of payment B or C with the retired member's spouse as the named survivor beneficiary is divorced, the retired member may either: 1) make no change in the form of payment and beneficiary; or 2) change the form of payment to form of payment A, which does not provide for a survivor beneficiary, if an appropriate court order so provides.

B. If the retired member elects to change from form of payment B or C to A, permission to make such an election must be included in a court order. PERA shall not be obligated to administer a change in form of payment in accordance with such an order until the first of the month following written approval by the office of general counsel.

C. A court order requiring an election of a particular form of payment at retirement shall be addressed to the non-retired member, and the member shall be responsible for executing the proper PERA forms and providing the documentation necessary to effectuate the election. A member who violates such an order may be in contempt of court.

[10-15-97; 11-15-97; 2.80.1600.30 NMAC - Rn, 2 NMAC 80.1600.30, 12-28-01; A, 9-30-03; A, 6-30-05]

**2.80.1600.31-39** [Reserved]

**2.80.1600.40 TAXES**

A. Each party must submit a completed W-4 form to PERA when applying for a retirement pension.

B. The member must submit a completed PERA termination notice/request for refund when applying for a refund of contributions.

[10-15-97; 2.80.1600.40 NMAC - Rn, 2 NMAC 80.1600.40, 12-28-01; A, 9-30-03]

**2.80.1600.41-49** [Reserved]

**2.80.1600.50 BENEFICIARY DESIGNATIONS:** An order requiring one or more beneficiary designations shall be addressed to the member, and the member shall be responsible for executing the proper PERA forms and providing the documentation necessary to effectuate the designation(s). A member who violates such a court order may be in contempt of court.

[11-15-97; 2.80.1600.50 NMAC - Rn, 2 NMAC 80.1600.50, 12-28-01]

**HISTORY of 2.80.1600 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 1600, Division of Retirement Benefits/Contributions at Divorce, filed on 10-21-88; PERA Rule 1600, Division of Retirement Benefits/Contributions at Divorce, filed on 7-10-90; PERA Rule 1600, Division of Retirement Benefits/Contributions at Divorce, filed on 7-1-91; PERA Rule 1600, Division of Retirement Benefits/Contributions at Divorce, filed on 7-18-91; PERA Rule 1600, Division of Retirement Pensions/Contributions at Divorce, filed on 7/1/93; PERA Rule 1600, Determination of Community Interest and Division of Retirement Pensions /Contributions at Divorce, filed on 11-1-94; PERA Rule 1600, Determination of Community Interest and Division of Retirement Pensions/Contributions at Divorce, filed on 12-1-95.