

**TITLE 2 PUBLIC FINANCE**  
**CHAPTER 81 RETIREE HEALTH CARE FUNDS**  
**PART 10 POST-1997 PARTICIPATING EMPLOYER/EMPLOYEE CONTRIBUTIONS RULE**

**2.81.10.1 ISSUING AGENCY:** NM Retiree Health Care Authority ("NMRHCA").  
[6-15-98; 2.81.10.1 NMAC - Rn, 2 NMAC 81.10.1, 01/01/2007]

**2.81.10.2 SCOPE:** Applies to employers who opt to become NMRHCA participating employers after December 31, 1997 and to their employees.  
[6-15-98; 2.81.10.2 NMAC - Rn, 2 NMAC 81.10.2, 01/01/2007]

**2.81.10.3 STATUTORY AUTHORITY:** This Rule is promulgated pursuant to the Retiree Health Care Act ("Act"), Sections 10-7C-1 et seq. NMSA 1978.  
[6-15-98; 2.81.10.3 NMAC - Rn, 2 NMAC 81.10.3, 01/01/2007]

**2.81.10.4 DURATION:** Permanent.  
[6-15-98; 2.81.10.4 NMAC - Rn, 2 NMAC 81.10.4, 01/01/2007]

**2.81.10.5 EFFECTIVE DATE:** June 15, 1998.  
[6-15-98; 2.81.10.5 NMAC - Rn, 2 NMAC 81.10.5, 01/01/2007]

**2.81.10.6 OBJECTIVE:** The objective of this rule is to define and establish processes for determining the NMRHCA contribution and fee amounts for employers who opt to become NMRHCA participating employers after December 31, 1997 and for determining the NMRHCA contribution levels of their employees.  
[6-15-98; 2.81.10.6 NMAC - Rn, 2 NMAC 81.10.6, 01/01/2007]

**2.81.10.7 DEFINITIONS:**

**A. "Eligible employer"** means either:

(1) a "**retirement system employer**" which means an institution of higher education, a school district or other entity participating in the public school insurance authority, a state agency, state court, magistrate court, municipality, county or public entity, each of which is affiliated under or covered by the Educational Retirement Act, the Public Employees Retirement Act, the Judicial Retirement Act, the Magistrate Retirement Act or the Public Employees Retirement Reciprocity Act; or

(2) an "**independent public employer**" which means a municipality, county or public entity which is not a retirement system employer.

**B. "Participating employer"** means an eligible employer who has satisfied the conditions for participating in the benefits of the Retiree Health Care Act, including the requirements of Subsection M of Section 10-7C-7 NMSA 1978 and Subsection D, E or G of Section 10-7C-9 NMSA 1978, as applicable.

**C. "Post-1997 participating employers"** are those eligible employers who opt to become NMRHCA participating employers after December 31, 1997.  
[6-15-98; 2.81.10.7 NMAC - Rn, 2 NMAC 81.10.7, 01/01/2007]

**2.81.10.8 SURPLUS-AMOUNT CONTRIBUTION:** Post-1997 participating employers must pay the applicable surplus-amount contribution for each NMRHCA fiscal year beginning with FY91 through the fiscal year in which the employer is accepted into the NMRHCA program.

**A.** The surplus-amount contribution for each of the NMRHCA's fiscal years since the inception of the NMRHCA (Paragraph (2) of Subsection C of 2.81.10.8 NMAC) is calculated by using either the retiree formula or the active employee formula. On a case by case basis, the formula which results in the greater contribution payment to the NMRHCA shall be used to set the surplus-amount contribution of each post-1997 participating employer.

(1) **Retiree formula:** Using this formula, the surplus-amount contribution equals the surplus amount added to the NMRHCA trust account at the end of the fiscal year after all bills were paid divided by the number of NMRHCA participating retirees during that fiscal year and then multiplied by the number of the post-1997 participating employer's eligible retirees in that fiscal year. **Retiree formula example:** Employer opted to become a NMRHCA participating employer in 1998. In fiscal year 91, the NMRHCA had an applicable surplus of \$9,247.756 and an average of 10,412 participating retirees which amounts to a FY91 surplus per participating retiree of \$888.18. Employer Apple had 30 employees in FY91 which multiplied by the \$888.18 FY 91

surplus/participating retiree equals a surplus-amount contribution of \$26,645.40. Employer Apple must also pay surplus-amount contribution for each fiscal year between 1990 and date that Employer Apple becomes a participating employer, which amounts to eight years.

(2) **Active employee formula:** Using this formula, the surplus-amount contribution equals the surplus amount added to the NMRHCA trust account at the end of the fiscal year after all bills were paid divided by the number of NMRHCA active employees during that fiscal year and then multiplied by the number of the post-1997 participating employer's active employees in that same fiscal year. **Active employee example:** Employer Orange opted to become a NMRHCA participating employer in 1998. In Fiscal Year 1991, the NMRHCA had an applicable surplus of \$9,247.756 and an average of 71,585 active employees which amounts to a surplus per active employee of \$129.19. Employer Orange had 200 employees in FY91 which multiplied by the \$129.19 FY91 surplus/employee equals a surplus-amount contribution of \$25,838.00. Employer Orange must also pay surplus-amount contributions for each fiscal year between 1990 and date that Employer Orange becomes a participating employer, which amounts to eight years.

**B. EXTENDED PAYMENTS AND INTEREST:** Post-1997 participating employers may either pay the entire surplus-amount contribution upon being accepted into the NMRHCA program or choose to pay the fee over an extended period of time. Post-1997 participating employers that elect to pay the surplus-amount contribution over time, shall have no more than 13 years to complete such payments. Interest in the amount of seven and one-half percent (7.5 %) per annum shall accrue and be charged on all surplus-amount contribution amounts not paid within 30 days of the employer's acceptance into the program, except that, on the basis of its unique equitable circumstances in having submitted its participation petition prior to January 1, 1998, and having been denied participation at that time solely due to its technical ineligibility, the middle Rio Grande conservancy district, notwithstanding the other provisions of this section, in paying its surplus-amount contribution over time, may pay interest at the rate of five percent (5 %) per annum. The NMRHCA will provide each employer with a payment schedule of monthly principal/interest payments.

(1) Example 1: Employer opted to become a participating employer in 1998, Employer Apple owes surplus-amount contributions for FY91 through FY98. Employer Apple opts to pay the fee over time and has 13 years to pay the total surplus-amount contribution at the interest rate of 7.5 % per annum, or at 5 % per annum in the case of the middle Rio Grande conservancy district. There would be no interest charges if Employer Apple paid the surplus-amount contribution in full within 30 days of being accepted into the NMRHCA program.

(2) Subject to approval by the NMRHCA board, a post-1997 participating employer, may petition to make interest-only payments for the first-year of the employer's NMRHCA participation. If employer's petition is approved, the employer will be required to begin making normal principal and interest payments at the end of the first year of NMRHCA participation.

**C.** The NMRHCA trust fund surplus amounts for past years (through FY97) are as follows:  
Fiscal Year 91 = \$888.18 per retiree (Paragraph (2) of Subsection C of 2.81.10.8 NMAC) \$129.19 per active employee.

Fiscal Year 92 = \$679.54 per retiree - \$102.19 per active employee.

Fiscal Year 93 = \$358.76 per retiree - \$ 56.73 per active employee.

Fiscal Year 94 = \$801.74 per retiree - \$137.41 per active employee.

Fiscal Year 95 = \$713.84 per retiree - \$132.82 per active employee.

Fiscal Year 96 = \$887.07 per retiree - \$174.64 per active employee.

Fiscal Year 97 = \$993.61 per retiree - \$213.07 per active employee.

(1) The annual surplus amounts shall be calculated by the NMRHCA annually and made public by July 30th of each year or as soon as possible.

(2) In calculating the trust fund surplus for fiscal year 91, all employer and employee contributions received prior to December 31, 1990 were not included.

**D.** The post-1997 participating employer can determine the percentage of the surplus-amount contributions and interest to be paid by its employees, provided that the employees' percentage does not exceed one-third of the total amount.

**E.** Notwithstanding and in lieu of Subsection A, post 2006 participating employers must pay the actuarial accrued liability associated with their participating retirees and active employees determined in accordance with the statements of the governmental accounting standards board (GASB).

(1) Such calculation shall be performed by the NMRHCA actuary utilizing the same methodology and assumptions as the last valuation performed for GASB reporting purposes, except that the discount rate shall be 7.75% regardless of the rate utilized by the actuary for other purposes.

(2) In addition, the post 2006 participating employer must pay a fee not to exceed \$10,000 at the time of petitioning for membership in NMRHCA for the purpose of defraying the cost of the actuarial valuation required to establish the amount due as the surplus amount calculation, and must provide all necessary participant data on active and retired employees necessary to perform the valuation.  
[6-15-98; A, 1-15-99; 2.81.10.8 NMAC - Rn & A, 2 NMAC 81.10.8, 01/01/2007]

**2.81.10.9 EMPLOYER/EMPLOYEE CONTRIBUTIONS (MADE IN ADDITION TO SURPLUS-AMOUNT CONTRIBUTIONS):** In addition to surplus-amount contributions, post-1997 participating employers are responsible for making employer/employee contributions in the amount determined by the NMRHCA board. Post-1997 participating employer/employee monthly contributions shall be the greater of the following:

**A.** employer contributions in the amount of one percent of each participating employee's annual salary and employee contributions in an amount equal to one-half of one percent of the each employee's salary; or

**B.** the average monthly employer/employee contribution per participating employee received by the NMRHCA during the previous fiscal year multiplied by the NMRHCA ratio of contributing employees vs. eligible retirees during the previous fiscal year multiplied by the post-1997 participating employer's current number of retirees; **example:** Employer Red has 10 retirees, the average monthly combined employer and employee contributions received by the NMRHCA per retiree for the previous fiscal year is \$35.00; the NMRHCA ratio of contributing employees vs. eligible retirees for the previous fiscal year is 5:1; Employer Red must make a monthly combined employer/employee contribution of \$175.00 (\$35.00 x 5) multiplied by the total number of Employer Red's retirees (10) for a total monthly combined contribution of \$1,750.00;

(1) the NMRHCA shall calculate its average monthly employer/employee contribution per retiree on an annual basis and make the amount public by July 30th of each year or as soon as possible;

(2) the NMRHCA shall calculate the current NMRHCA ratio of contributing employees vs. eligible retirees on an annual basis and make the ratio information public by July 30th of each year or as soon as possible;

(3) the number of each post-1997 participating employer's current retirees and employees shall be updated monthly;

(4) the post-1997 participating employer can determine the percentage of the combined employer/employees contribution to be paid by its employees, provided that the employees' percentage does not exceed one-third of the total amount.

[6-15-98; 2.81.10.9 NMAC - Rn, 2 NMAC 81.10.9, 01/01/2007]

**2.81.10.10 SURVIVING SPOUSE:** Surviving spouses are counted as eligible retirees for purposes of determining post-1997 participating employers' employee/eligible retiree ration.

[6-15-98; 2.81.10.10 NMAC - Rn, 2 NMAC 81.10.10, 01/01/2007]

**2.81.10.11 POST-1997 PARTICIPATING EMPLOYER/EMPLOYEES CONTRIBUTIONS START DATE:** Post-1997 participating employers shall begin making their surplus-amount contribution and their employer/employee contributions on the July 1 immediately following the board's acceptance of the employer as a NMRHCA participating employer.

[6-15-98; 2.81.10.11 NMAC - Rn, 2 NMAC 81.10.11, 01/01/2007]

**2.81.10.12 ESTIMATES AND ADJUSTMENTS OF SURPLUS-AMOUNT CONTRIBUTIONS AND EMPLOYER/EMPLOYEE CONTRIBUTIONS:** If complete statistics are not available at the time of calculating surplus-amount contributions and employer/employee contributions, the NMRHCA may use the available estimated figures to calculate the fees and contributions. When the complete statistics are provided to the NMRHCA, the NMRHCA shall promptly make any necessary adjustments to the surplus-amount contributions and employer/employee contributions.

[6-15-98; 2.81.10.12 NMAC - Rn, 2 NMAC 81.10.12, 01/01/2007]

**2.81.10.13 EMPLOYER'S OBLIGATION AND RIGHT TO AUDIT:** All post-1997 participating employers are obligated to cooperate fully with the NMRHCA in providing timely, complete and accurate information regarding employer's employees, retirees and dependents. The NMRHCA has the right to conduct a full audit of all participating employer's with respect to any and all information the NMRHCA deems necessary to administer the NMRHCA plans and programs.

[6-15-98; 2.81.10.13 NMAC - Rn, 2 NMAC 81.10.13, 01/01/2007]

**HISTORY OF 2.81.10 NMAC:**

**Pre-NMAC History:** None.

**History of Repealed Material:** [RESERVED]

**NMAC History:**

2 NMAC 81.10, Post-1997 Participating Employer/Employee Contributions Rule (filed 06/02/1998) was renumbered, reformatted, amended and replaced by 2.81.10 NMAC, effective 01/01/2007.