

TITLE 2 PUBLIC FINANCE
CHAPTER 82 EDUCATIONAL RETIREMENT
PART 12 QUALIFIED EXCESS BENEFIT ARRANGEMENT

2.82.12.1 ISSUING AGENCY: Educational Retirement Board P.O. Box 26129 Santa Fe, New Mexico 87502-0129
[2.82.12.1 NMAC - N, 4-15-2002]

2.82.12.2 SCOPE: This rule applies to employees hired before July 1, 1999, who are not receiving retirement benefits pursuant to Section 22-11-30 or disability benefits pursuant to Section 22-11-37 as of that date, and whose benefits are limited by section 415(b) of the Internal Revenue Code. The preceding sentence shall apply to an employee who is rehired on or after July 1, 1999, if such employee was originally hired before July 1, 1999.
[2.82.12.2 NMAC - N, 4-15-2002]

2.82.12.3 STATUTORY AUTHORITY: The Educational Retirement Act, Section 22-11-1 to 22-11-53, NMSA 1978.
[2.82.12.3 NMAC - N, 4-15-2002]

2.82.12.4 DURATION: Permanent
[2.82.12.4 NMAC - N, 4-15-2002]

2.82.12.5 EFFECTIVE DATE: April 15, 2002, unless a later date is cited as the end of a section.
[2.82.12.5 NMAC - N, 4-15-2002]

2.82.12.6 OBJECTIVE: Establish a “qualified excess benefit arrangement” within the meaning of section 415(m) of the Internal Revenue Code.
[2.82.12.6 NMAC - N, 4-15-2002]

2.82.12.7 DEFINITIONS:

- A. “Excess Benefit” means the monthly actuarial equivalent of the difference between the Unrestricted Benefit and the Maximum Benefit.
 - B. “Maximum Benefit” means the monthly actuarial equivalent of the maximum benefit permitted by section 415(b) of the Internal Revenue Code to be paid to a member or a beneficiary of the member during any Limitation Year,
 - C. “Limitation Year” means the calendar year.
 - D. “Unrestricted Benefit” means the maximum monthly retirement benefit payable to a member during any Limitation Year under Section 22-11-30 or 22-11-37, as applicable, determined without regard to the application of section 415(b) of the Internal Revenue Code.
- [2.82.12.7 NMAC - N, 4-15-2002]

2.82.12.8 ELIGIBILITY: A member shall be considered eligible for Excess Benefits if the following conditions are met:

- A. He or she shall have been hired before July 1, 1999.
- B. He or she shall have elected (i) the retirement benefit as provided in Section 22-11-30 or an optional benefit pursuant to Section 22-11-29, or (ii) a disability benefit pursuant to Section 22-11-37.
- C. He or she shall not have commenced receiving retirement or disability benefits as of July 1, 1999.
- D. The amount of his or her retirement benefit or disability is limited by the application of section 415(b) of the Internal Revenue Code.
- E. He or she shall not have elected to participate in an alternative retirement plan established pursuant to Section 22-11-47.

[2.82.12.8 NMAC - N, 4-15-2002]

2.82.12.9 APPLICATIONS: A member or a member’s beneficiary who applies to the Director for benefits shall be automatically deemed to have also applied for an Excess Benefit.

[2.82.12.9 NMAC - N, 4-15-2002]

2.82.12.10 COMPUTATION, COMMENCEMENT AND FORM OF EXCESS BENEFIT

A. A member who is receiving retirement benefits in accordance with Section 22-11-29 or 22-11-30 or disability benefits in accordance with Section 22-11-37, or a beneficiary who is receiving survivor benefits following the death of the member, shall be entitled to receive an Excess Benefit for any month in which he or she receives a monthly retirement or survivor benefit.

B. Any Excess Benefit payable to a member or a beneficiary shall be paid at such time or times and in such a form to the member or the member's beneficiary as the retirement benefit under Section 22-11-29 or 22-11-30 or the disability benefit under Section 22-11-37 is paid. The member or beneficiary shall have the right to receive as a portion of his or her first payment hereunder an amount equal to the sum of the Excess Benefit otherwise payable to him or her since July 1, 1999, had this arrangement been in effect as of July 1, 1999.

[2.82.12.10 NMAC - N, 4-15-2002]

2.82.12.11 SOURCE OF PAYMENTS:

A. The ERB shall pay all benefits arising under the qualified excess benefit arrangement and all costs, charges, and expenses related thereto, but only to the extent that ERB has sufficient funds as derived from contributions made pursuant to Sections 22-11-21 and 22-11-21.1, and except for those costs normally borne by other agencies or offices of the State of New Mexico or its political subdivisions.

B. The ERB may establish a grantor trust within the meaning of sections 671 through 678 of the Internal Revenue Code to pay benefits arising hereunder. In that event, benefits hereunder shall be paid from such trust to the extent permitted under the terms of the trust.

[2.82.12.11 NMAC - N, 4-15-2002]

2.82.12.12 NON-ASSIGNABILITY OF BENEFITS: Except as specifically provided in the Educational Retirement Act and Subsection B and C of Section 22-11-42, benefits under the qualified excess benefit arrangement shall not be assignable in either law or in equity or be subject to execution, levy, attachment, garnishment, guarantee fund or similar assessment or any other legal process.

[2.82.12.12 NMAC - N, 4-15-2002]

2.82.12.13 AMENDMENT AND TERMINATION: The ERB may amend or terminate this qualified excess benefit arrangement at any time.

[2.82.12.13 NMAC - N, 4-15-2002]