

**TITLE 2 PUBLIC FINANCE**  
**CHAPTER 84 MAGISTRATE RETIREMENT**  
**PART 400 SERVICE CREDIT**

**2.84.400.1 ISSUING AGENCY:** Public Employees Retirement Association (PERA), P. O. Box 2123, Santa Fe, New Mexico 87504-2123.

[2.84.400.1 NMAC - Rp, 2.84.400.1 NMAC, 7/1/15]

**2.84.400.2 SCOPE:** This rule affects the members, retirees, beneficiaries, public employers, the retirement board and the association under the Magistrate Retirement Act (MRA).

[2.84.400.2 NMAC - Rp, 2.84.400.2 NMAC, 7/1/15]

**2.84.400.3 STATUTORY AUTHORITY:** This rule is authorized by Sections 10-12C-3 and 10-12C-5 NMSA 1978.

[2.84.400.3 NMAC - Rp, 2.84.400.3 NMAC, 7/1/15]

**2.84.400.4 DURATION:** Permanent.

[2.84.400.4 NMAC - Rp, 2.84.400.4 NMAC, 7/1/15]

**2.84.400.5 EFFECTIVE DATE:** July 1, 2015, unless a later date is cited at the end of a section.

[2.84.400.5 NMAC - Rp, 2.84.400.5 NMAC, 7/1/15]

**2.84.400.6 OBJECTIVE:** The objective of this rule is to establish standards and procedures for awarding and reinstating service credit under the Magistrate Retirement Act.

[2.84.400.6 NMAC - Rp, 2.84.400.6 NMAC, 7/1/15]

**2.84.400.7 DEFINITIONS:** [Reserved]

**2.84.400.8 GENERAL PROVISIONS:**

**A.** Members may receive one month of service credit for any calendar month in which the member becomes a member on or before the sixteenth day of that month, or for any calendar month in which the member leaves office on or after the fifteenth day of the month, provided that all other requirements for awarding service credit are met.

**B.** Service credit that was forfeited when a member left office and withdrew his or her accumulated member contributions may be reinstated by repayment of withdrawn member contributions, together with interest from the date of withdrawal to the date of repayment at the rate or rates set by the board under the following conditions:

(1) Service credit may be reinstated in one-year increments, beginning with the most recently forfeited service credit. A one-year increment is 12 consecutive, but not necessarily continuous, months of service credit. For the purpose of eligibility to retire only, less than one year of service credit may be purchased. After reinstatement of all 12-month "years" as defined herein, any remaining service credit that totals less than 12 months may be reinstated by payment in one lump sum as provided herein.

(2) All forfeited service credit may also be reinstated by repayment of the total amount of all member contributions withdrawn from each period of service together with interest from the date of withdrawal to the date of repayment at the rate set by the board.

(3) The rate or rates of interest for the purchase or reinstatement of service credit shall be set annually by the board at a July meeting and shall be effective beginning the next succeeding January 1.

(4) A former member who is employed by an employer covered under the Educational Retirement Act must provide evidence of current contributing membership in the educational retirement association; such evidence shall be either certification by the employer, in the form prescribed by the association, or certification by the educational retirement association (ERA).

(5) Payment for reinstated service credit must be received by the association prior to the member's effective date of retirement.

(6) Interest received to reinstate forfeited service credit under this subsection shall not be refunded to the member. The purchase cost received to reinstate forfeited service credit, which is determined to be

unnecessary to provide the maximum pension applicable to the member and which is purchased in reliance on information provided by PERA shall be refunded to the member.

**C.** Service credit that a member would have earned if the member had not elected to be excluded from membership prior to July 1, 2014 may be purchased under the following conditions:

- (1) the member first reinstates all previously withdrawn MRA service credit;
- (2) the member may purchase service credit in increments of not less than one year except where the total excluded service credit is less than one year;
- (3) the member pays the full cost as determined under Section 10-12C-5(F) NMSA 1978 within 60 days of the notification of that amount.

**D.** Military service credit is free in some cases and may be purchased in other cases as provided by statute.

(1) Where a member wishes to claim service credit pursuant to Section 10-12C-5 NMSA 1978 the association shall, upon the member's request, furnish that member a form of affidavit for completion and certification of such service. The affidavit shall be accompanied by documentary evidence of the member's entry and discharge from service in a uniformed service of the United States.

(2) The judicial agency shall certify in writing the date the member left office to enter a uniformed service of the United States. This requirement may be waived if PERA records contain sufficient documentation of the date of termination.

(3) The judicial agency shall certify in writing to the association the member's date of return to office within 30 days of reemployment. This requirement may be waived if PERA records contain sufficient documentation of the date of return, to office. Members who do not return, to office within 90 days following termination of the period of intervening service but who nevertheless claim reemployment rights under federal law shall provide to the association written certification from the judicial agency that the member is entitled to reemployment rights under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended.

(4) The affidavit, employer certifications, and documentary evidence of uniformed service shall be presented to the association for approval.

(5) Service credit for periods of intervening service in the uniformed services following voluntary enlistment, reenlistment or appointment, shall be awarded only upon compliance by the member and the judicial agency with the provisions of Section 10-12C-5 NMSA 1978, as amended, and the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended, including but not limited to the payment to the association of contributions required from the member and the employer.

(6) MRA members who are also members of the military service reserve components who reactivated pursuant to a federal call to duty, deployment or peacekeeping mission or other declared national emergency may receive free credit service subject to the conditions of this section. The member must provide a form DD 214 and other documentation as required by PERA to support an award of free service credit.

(7) Payment for military service credit must be received by the association prior to the member's effective date of retirement.

**E.** No installment payment contracts may be used for the purchase of any service credit. A member may purchase a total of five years of permissive service credit as allowed by the Magistrate Retirement Act in one lump-sum or in one-year increments.

**F.** A member may rollover funds from an Internal Revenue Code Section 457, 403(b), 401(k), IRA or another 401(a) qualified account to pay for forfeited or permissive service credit allowed by the Magistrate Retirement Act. The rollover of funds must be made by a trustee- to-trustee transfer and the account from which the funds come must be in the name of the member requesting the transfer.

[2.84.400.8 NMAC - Rp, 2.84.400.8 NMAC, 7/1/15]

**HISTORY of 2.84.400 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under:

MRA Rule 300.00, Credited Service, filed on 12-29-89;

MRA Rule 400, Service Credit, filed on 7-1-92.

**History of Repealed Material:**

2.84.400 NMAC, Magistrate Retirement - Service Credit, filed 12/28/2000, repealed 7/1/2015.