

TITLE 2 PUBLIC FINANCE
CHAPTER 84 MAGISTRATE RETIREMENT
PART 500 MEMBER CONTRIBUTIONS

2.84.500.1 ISSUING AGENCY: Public Employees Retirement Association, P. O. Box 2123, Santa Fe, New Mexico 87504-2123
[10-15-97; 2.84.500.1 NMAC - Rn, 2 NMAC 84.500.1, 12-28-00]

2.84.500.2 SCOPE: This rule affects the members former members, retirees, beneficiaries, public employers, the retirement board and the association under the Magistrate Retirement Act.
[10-15-97; 2.84.500.2 NMAC - Rn, 2 NMAC 84.500.2, 12-28-00; A, 9-30-03]

2.84.500.3 STATUTORY AUTHORITY: This rule is authorized by NMSA 1978, Sections 10-12C-3 and 10-12C-6, as amended.
[10-15-97; 2.84.500.3 NMAC - Rn, 2 NMAC 84.500.3, 12-28-00]

2.84.500.4 DURATION: Permanent.
[10-15-97; 2.84.500.4 NMAC - Rn, 2 NMAC 84.500.4, 12-28-00]

2.84.500.5 EFFECTIVE DATE: November 1, 1994, unless a different date is cited at the end of a section.
[10-15-97; 2.84.500.5 NMAC - Rn & A, 2 NMAC 84.500.5, 12-28-00]

2.84.500.6 OBJECTIVE: The objective of this rule is to establish procedures and requirements for the refund of contributions under the Magistrate Retirement Act.
[10-15-97; 2.84.500.6 NMAC - Rn, 2 NMAC 84.500.6, 12-28-00]

2.84.500.7 DEFINITIONS:

A. "Another qualified plan," for the purposes of the direct rollover provisions in Section 10-11-124 (C) NMSA 1978, means an eligible retirement plan, including:

- (1) an individual retirement account described in Internal Revenue Code Section 408(a);
- (2) an individual retirement annuity described in Internal Revenue Code Section 408(b);
- (3) a qualified trust described in Internal Revenue Code Section 401(a) that accepts the distributee's eligible rollover distribution,
- (4) an annuity plan described in Internal Revenue Code Section 403(a);
- (5) effective January 1, 2002, an annuity contract described in Internal Revenue Code Section 403(b);
- (6) effective January 1, 2002, a plan eligible under Internal Revenue Code Section 457(b) that is maintained by a state, political subdivision of a state or any agency or instrumentality of a state or political subdivision of a state that agrees to separately account for amounts transferred into the plan; or
- (7) effective January 1, 2008, a Roth IRA described in Internal Revenue Code Section 408A.

B. "Direct rollover" means a payment by the retirement system to the eligible retirement plan specified by the distributee.

C. "Distributee" means:

- (1) an employee or a former employee;
- (2) an employee's or former employee's surviving spouse;
- (3) an employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Internal Revenue Code Section 414(p);
- (4) effective January 1, 2007, a non-spouse beneficiary who is a designated beneficiary as defined by Internal Revenue Code Section 401(a)(9)(E); or
- (5) effective January 1, 2002, a surviving spouse, as defined by federal law, or a spouse or former spouse who is an alternate payee under a domestic relations order dividing PERA benefits, as defined in Internal Revenue Code Section 414(p).

D. "Eligible rollover distribution" means:

- (1) any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments, not less frequently than annually, made for the life, or the life expectancy, of the distributee or

the joint lives, or joint life expectancies, of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more;

(2) any distribution to the extent such distribution is required under Internal Revenue Code Section 401(a)(9);

(3) the portion of any distribution that is not includible in gross income; or

(4) any other distribution that is reasonably expected to total less than \$200 during the year.

[2.84.500.7 NMAC - Rn, 2 NMAC 84.500.7, 12-28-00; A, 12-15-09]

2.84.500.8 GENERAL PROVISIONS:

A. A member who leaves office for reasons other than retirement may request a refund of his or her total accumulated member contributions. Refunds shall include interest as provided in Subsection (D) of this section.

B. No partial refund of a member's contributions is permitted.

C. Requests for refunds of member contributions shall be made on forms provided by the association.

(1) The member or the member's legal representative, or the member's designated refund beneficiary or the beneficiary's legal representative, if the member is deceased, must complete and sign the request for refund.

(2) If the member is deceased, the applicant for refund must provide PERA with a copy of the member's death certificate. If the deceased member has no living beneficiary, then the personal representative of the estate must provide PERA with a copy of the letters of administration or order of appointment of personal representative, signed and filed in court; or must comply with NMSA 1978, Section 45-3-1201.

(3) The member's judicial agency must certify that the member has left office before a refund may be made.

(4) If the member has been divorced, the member shall provide the association with complete endorsed copies of all court documents the association deems 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 contributions. Such documentation shall include the final decrees and marital property settlements for all marriages during the member's employment as a magistrate. If the member's only divorce was prior to becoming a 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 member, then only the most recent final decree is required. If the member's former spouse is entitled to a portion of a refund of member contributions pursuant to a court order entered pursuant to NMSA 1978, Section 10-12C-7, as amended, the member's former spouse may request, on a form prescribed by the association, that his or her share of a refund of member contributions be transferred directly to another qualified plan as allowed by the Internal Revenue Code as specified under Subsection H of 2.84.500.8 NMAC.

(5) After tax employee contributions that are not includible in gross income may be directly refunded to the member.

D. Interest on member contributions shall be posted annually effective June 30 at the rate of two percent (2%)

E. Members may designate only one refund beneficiary. Such designation shall be in writing in the form prescribed by the association. If the refund beneficiary is other than a natural person, the member shall provide documentation as required by the association. The member shall be responsible for updating the beneficiary designation form with current information, including but not limited to the beneficiary's name and address. If a warrant for a refund to the most recent beneficiary on file with the association is returned as undeliverable because of incorrect name or address, the money will remain with the association until it is furnished with the correct information.

F. Forfeitures arising from severance of employment, death, or any other reason, must not be applied to increase the benefits any magistrate would otherwise receive under the plan. PERA shall make all reasonable efforts to refund contributions or to pay pensions as required by the plan.

G. The maximum annual contribution limits contained in Internal Revenue Code Section 415(c), as amended and adjusted, are incorporated herein by reference.

H. For distributions made on or after January 1, 1993, notwithstanding any contrary provision or retirement law that would otherwise limit a distributee's election under this rule, a distributee may elect, at the time and in the manner prescribed by the PERA, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(1) A non-spouse beneficiary may only rollover the distribution to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution and the account or annuity will be treated as an inherited individual retirement account or annuity.

(2) Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Internal Revenue Code Section 408(a) or (b), or to a qualified defined contribution plan described in Internal Revenue Code Section 401(a), or on or after January 1, 2007, to a qualified defined benefit plan described in Internal Revenue Code Section 401(a) or to an annuity contract described in Internal Revenue Code Section 403(b), that agrees to separately account for amounts so transferred, and earnings thereon, including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible.

[10-15-97; 11-15-97; 2.84.500.8 NMAC - Rn & A, 2 NMAC 84.500.8, 12-28-00; A, 12-28-01; A, 9-30-03; A, 12-15-09; A, 07-01-15]

HISTORY of 2.84.500 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 500.00, Disability Retirement, filed on 12-29-89;

MRA Rule 500, Refund of Member Contributions, filed on 7-1-92;

MRA Rule 500, Member Contributions, filed on 11-1-94.

History of Repealed Materials:

2 NMAC 84.500, Paragraph 8.5 - Repealed 11-15-97.