

TITLE 2 PUBLIC FINANCE
CHAPTER 85 DEFERRED COMPENSATION
PART 100 GENERAL PROVISIONS

2.85.100.1 ISSUING AGENCY: Public Employees Retirement Association
[10-15-97; 2.85.100.1 NMAC - Rn, 2 NMAC 85-100.1, 12-28-00]

2.85.100.2 SCOPE: This rule affects participants and the deferred compensation third party administrator under the Deferred Compensation Act.
[10-15-97; 2.85.100.2 NMAC - Rn, 2 NMAC 85-100.2, 12-28-00; A, 1-31-02]

2.85.100.3 STATUTORY AUTHORITY: This rule is authorized by NMSA 1978, Section 10-7A-11.
[10-15-97; 2.85.100.3 NMAC - Rn, 2 NMAC 85-100.3, 12-28-00]

2.85.100.4 DURATION: Permanent.
[10-15-97; 2.85.100.4 NMAC - Rn, 2 NMAC 85-100.4, 12-28-00]

2.85.100.5 EFFECTIVE DATE: December 29, 1989 unless a different date is cited at the end of a section.
[10-15-97; 2.85.100.5 NMAC - Rn, 2 NMAC 85-100.5, 12-28-00]

2.85.100.6 OBJECTIVE: The objective of this rule is to establish standards and procedures for handling withdrawal applications for financial hardship.
[10-15-97; 2.85.100.6 NMAC - Rn, 2 NMAC 85-100.6, 12-28-00]

2.85.100.7 DEFINITIONS: [Reserved]
[2.85.100.7 NMAC - Rn, 2 NMAC 85-100.7, 12-28-00]

2.85.100.8 GENERAL PROVISIONS

A. Unforeseeable emergency withdrawal applications. The deferred compensation third party administrator shall handle the processing of unforeseeable emergency withdrawal applications including, but not limited to:

- (1) sending out withdrawal applications;
- (2) answering questions on the process and rules;
- (3) reviewing applications for completeness and compliance;
- (4) making decisions concerning whether or not withdrawal applications are approved;
- (5) sending appropriate notices to participants (approved or denied);
- (6) sending detailed denial letters explaining specific reason(s) why application was denied and

instructions for reapplication and notice of the right to appeal, if any.

B. Appeals. Appeals of denials of applications for unforeseeable emergency withdrawals, if any, shall be handled by the deferred compensation third party administrator. The deferred compensation third party administrator shall also maintain files on approvals/denials and provide regular reports to the board on unforeseeable emergency activity.

C. Unforeseeable emergency. In the event of an unforeseeable emergency, a participant may request that benefits be paid to him or her immediately, provided, however, that payment of any such benefits after the elected or mandatory commencement date shall be subject to any limitations specified by an investment carrier. Such request shall be filed with the third party administrator. If the third party administrator determines that the application for unforeseeable emergency meets the standards of the internal revenue service guidelines and the plan document, payment will be made within twenty-four (24) hours of such approval. Benefits to be paid shall not exceed the lesser of (i) the amount reasonably needed to satisfy the emergency need, which may include any amounts necessary to pay any federal, state, or local taxes, or (ii) an amount which, together with any prior distribution or withdrawal, does not exceed the value of the participant's plan benefit determined as of the most recent valuation date. An amount will not be considered to be reasonably needed to meet the financial need created by an unforeseeable emergency to the extent that such need is or may be relieved:

- (1) through reimbursement or compensation by insurance or otherwise;

(2) by liquidation of the participant's assets, to the extent the liquidation of such assets would not itself cause financial hardship; or

(3) by cessation of deferrals under the plan.

D. Matters not constituting unforeseeable emergencies. Divorce or foreseeable personal expenditures normally budgetable, such as a down payment on a home, the purchase of an automobile, college or other educational expenses, etc., will not constitute an unforeseeable emergency.

[10-15-97; 2.85.100.8 NMAC - Rn, 2 NMAC 85.100.8, 12-28-00; A, 8-15-01; A, 1-31-02; A, 9-30-03]

2.85.100.9 ADOPTION OF PLAN: In accordance with the Deferred Compensation Act, the board shall adopt and amend a deferred compensation plan. The plan shall comply with the requirements of Internal Revenue Code Section 457, as amended, and may be amended to include provisions that allow for trustee-to-trustee transfers and rollovers into and out of the plan.

[2.85.100.9 NMAC - N, 12-28-01]

HISTORY of 2.85.100 NMAC:

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

DC Rule 100, Financial Hardship, filed on 12-29-89.