

NEW MEXICO
PUBLIC EMPLOYEES RETIREMENT ASSOCIATION
RULES & ADMINISTRATION
PERA RULEMAKING HEARING

November 10, 2015

This rulemaking hearing of the Public Employees Retirement Board Rules & Administration Committee Rulemaking Hearing was called to order by Committee Chair Dan Esquibel at approximately 11:03 a.m. on the above-cited date in the PERA Building, Fabian Chavez, Jr. Board Room, 33 Plaza La Prensa, Santa Fe, New Mexico.

Roll was called by Executive Director Wayne Propst and a quorum was established as follows:

Members Present:

Dan Esquibel, Chair
Patty French, Vice Chair
Paula Fisher
John Reynolds

Member(s) Excused:

Dan Mayfield

Other Member(s) Present:

Loretta Naranjo Lopez
Roman Jimenez
Louis Martinez
Stewart Logan
Jackie Kohlasch

Staff Members Present:

Wayne Propst, Executive Director
Susan Pittard, Chief of Staff-General Counsel
Jonathan Grabel, Chief Investment Officer
Greg Trujillo, Deputy Director
Renada Peery-Galon, ASD Director
Natalie Cordova, Chief Financial Officer
Judy Olson, Executive Assistant
Karen Risku, Deputy General Counsel
Jude Perez, Deputy CIO
Joaquin Lujan, Portfolio Manager
Kristen Varela, Portfolio Manager

2. **APPROVAL OF AGENDA**

Mr. Reynolds moved to approve the agenda as presented. Ms. French seconded and the motion passed by [4-0] voice vote.

3. **APPROVAL OF CONSENT AGENDA**

Chair Esquibel said the minute were accurate and complete.

Mr. Reynolds moved to approve the consent agenda. Mr. Reynolds seconded and the motion passed by [4-0] voice vote.

4. **CURRENT BUSINESS**

A. **Action Item: Rulemaking Hearing**

Public Employees Retirement Rules

2.80.200 NMAC Organization and Operation of the Public Employees Retirement Board

2.80.2100 NMAC Member Contributions

Karen Risku, Deputy General Counsel, advised the committee that the PERA Board issued its notice of rulemaking August 27, 2015. Notice was filed with the State Records Center and published in the *New Mexico Register* on September 29, 2015. The notice was posted on the PERA website on October 1, 2015 and published in the *Albuquerque Journal* on September 29, 2015.

The changes have been reviewed by the Rules & Administration Committee.

Ms. Risku introduced the following exhibits:

Exhibit A Copy of published Notice of PERA Rulemaking (All publications)

Exhibit B *New Mexico Register* - publication

Exhibit C *Albuquerque Journal* - publication

Exhibit D PERA Website posting

Exhibit E August 11, 2015 memorandum summarizing proposed changes

Exhibit F Full Proposed Rules

Ms. Risku said there were no public comments received and she moved admission of the Exhibits A – F into the record. [*Attached as Exhibit 1*]

Chair Esquibel accepted the exhibits into the record.

General Counsel-Chief of Staff Pittard identified the rule changes as follows: Rule 2.80.200.50 will add a Deferred Compensation Committee to the list of the Board's existing standing committees.

Rule 2.80.200.60 will allow nominating petitions for both the retiree and member elections to utilize one of three identifiers in order to verify the nominating petition's validity. That will include date of birth, PERA ID as well as the existing identifier last

four digits of a social security number.

Regarding refunds, Ms. Pittard reviewed the following changes:
Rule 2.80.2100.8 the requirement for a membership application to be waived when membership can be established with reasonable certainty by staff.

Rule 2.80.2100.9 these changes address unclaimed contributions and will now track the same process used for unclaimed contributions within the active member accounts. If a deceased member account exists after reasonable efforts to contact the next of kin and after a period of two years and two formal letters to the deceased last known address, those monies will be reverted to the unclaimed property account. She said if someone should seek to claim that property after the two-year period they can do so. This will serve to clean out member accounts.

Deputy Director Trujillo said PERA subscribes to Berwyn's death database which can track by social security number through a number of avenues deceased members. He noted that LexisNexis has a death database and address look-up function that staff is investigating for use, although the cost is significant.

Ms. Pittard pointed out that the Deferred Compensation Plan Committee was recommended by the CIO as an ad hoc committee to ensure specific devotion to this plan. The purpose is to promote that the PERA Board is the fiduciary of the deferred compensation plan and to better message the plan to the membership. Ms. Naranjo Lopez questioned the necessity of separating the deferred compensation plan from the Investment Committee's purview.

Deputy Director Trujillo said 66,000 annual reports were mailed last month and he guesstimated 10 percent have been returned. If the mailing is returned with a new forwarding address staff will enter that in RIO and remail it. If it is returned as a bad address that will be noted within the system. Mailings are verified for bad addresses within the USPS database.

Deputy Director Trujillo advised the Committee that PERA is endeavoring to compile an email database of its membership. He confirmed that it is a PERA goal to conduct correspondence with the members active and retirees by an email address.

There was no one present from the public wishing to comment.

Mr. Reynolds moved to recommend the approval of Rules 2.80.2000 and 2.80.2100 as set out by staff. Ms. Fisher seconded and the motion passed by unanimous [4-0] voice vote.

B. Informational Item: Update on PERA Contract Attorneys

Chair Esquibel noted that the issue of contract attorneys was broached at the previous meeting. Ms. Pittard said the memo within the committee packet provides an update regarding the scopes of services for certain legal contractual services that the agency engages in on a fiscal year basis as well as on behalf of the investment division.

Those specialized legal services include Internal Revenue Code Cycle C filing and 401(a) tax qualified status, litigation and hearing officer services. A scope of work was provided for the administrative hearing officer, federal tax counsel, litigation counsel/disability benefits and general litigation counsel as well as and counsel for investment-related services.

Ms. Pittard pointed out that none of the contracts guarantees any particular volume of work.

A discussion regarding the hearing officer ensued and Ms. Pittard said once an appeal is received by PERA staff the paralegal in PERA's Office of General Counsel operates as the hearing appeals clerk. All information is forwarded to the hearing officer and strict deadlines are adhered to. The hearing officer schedules the hearing, handles all pre-trial discovery and makes decisions regarding exception reports and extensions of time. The current hearing officer and the standard contracts administered by PERA are paid on a governmental hourly rate.

Chair Esquibel requested that the next Rules & Administrative Committee agenda include information on a board attorney, to include scope of work and need, and for the Audit & Budget Committee to consider how that can achieved. Audit & Budget Chair Logan said he would have included on the December agenda.

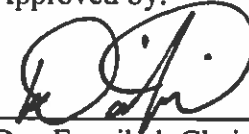
5. **OTHER BUSINESS**

None was offered.

6. **ADJOURNMENT**

Having completed the agenda and with no further business to come before the Committee, Chair Esquibel adjourned this meeting at approximately 11:40 a.m.

Approved by:



Dan Esquibel, Chair
Rules & Administration Committee

ATTEST:



Wayne Propst, Executive Director

Attached Exhibit(s)

Exhibit 1: Exhibits A-F regarding rulemaking

NOTICE OF P.E.R.A. RULEMAKING

The Public Employees Retirement Association ("PERA") will consider changes to its rules promulgated under the Public Employees Retirement Act. Changes are proposed for the following Rules:

Public Employees Retirement

2.80.200 NMAC Organization and Operation of the Public Employees Retirement Board
2.80.2100 NMAC Member Contributions

Copies of the draft rules are available for inspection in PERA's Office of General Counsel. Hard copies of the draft rules may be purchased for \$3.00. Written comments, inquiries or requests for copies should be directed to PERA's Office of General Counsel, P.O. Box 2123, Santa Fe, New Mexico, 87504-2123, (505) 476-9353 or 1-800-342-3422. Written comments or requests for copies may be submitted electronically to: LaurieAnn Trujillo at lauriea.trujillo@state.nm.us. To be considered, written comments, arguments, views or relevant data should be submitted by 5:00 p.m. on November 2, 2015. The PERA Board will review and consider all written comments addressing the proposed rule changes.

A formal rulemaking hearing will be held on November 10, 2015 at 9:00 a.m. in the Fabian Chavez Jr. Board Room of the PERA Building, 33 Plaza La Prensa, Santa Fe, New Mexico. Oral comments will be taken at the public hearing. Final action on the rules will occur at the November 2015 monthly meeting of the PERA Board which will be held in the Fabian Chavez Jr. Board Room of the PERA Building, 33 Plaza La Prensa, Santa Fe, New Mexico at a date and time specified in the Board's Public Meeting Notice.

Individuals with a disability who are in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing may contact Judy Olson at (505) 476-9305 or toll free at 1-800-342-3422 seven days prior to the hearing or as soon as possible.



NM Commission of Public Records

1205 Camino Carlos Rey
Santa Fe 87507 US
(505) 476-7913

Invoice

BILL TO
LaurieAnn Trujillo
PERA - Ofc. of General Counsel
PO Box 2123
Santa Fe, NM 87504-2123 USA

INVOICE #	DATE	TOTAL DUE	DUE DATE	ENCLOSED
1229	09/30/2015	\$25.00	09/30/2015	

ISSUE	PUBLICATION P.O. NUMBER
18	9/29/2015 36600-1660600073

DATE	ACTIVITY	QTY	RATE	AMOUNT
09/30/2015	Columnar Inch - N.M. Register, Vol. XXVI, Notice Notice of P.E.R.A. Rulemaking	10	2.50	25.00

I, Matt Ortiz, certify that the agency noted above has published legal notices or rules in the NEW MEXICO REGISTER, VOL. XXVI, and that payment has been assessed for said legal notice or publication, which appears on the publication date and issue number noted above.

BALANCE DUE

\$25.00

Affiant: Matt Ortiz Publisher New Mexico Register

Subscribed, sworn and acknowledged before me this 4 day of

*ok to pay
10/13/15
sig [unclear]*

October, 2015.
[Signature]
Notary Public



OFFICIAL SEAL
Amanda N. Lopez
NOTARY PUBLIC-STATE OF NEW MEXICO
My commission expires 5/5/2019

My Commission Expires 5/5/2019

OCT 18 '15 1:13

Ex. B

Albuquerque Publishing Company
 7777 Jefferson N.E. Albuquerque, New Mexico 87109
 P.O. Drawer J-T Albuquerque, New Mexico 87103
 (505) 823-7777

Account Number
 1012205
Ad Order Number
 0001238244

Ad Proof / Order Confirmation

N M PUBLIC EMPLOYEE RETIREMENT
 ASSN
 PO BOX 2123
 SANTA FE NM 87504

<u>Ordered By</u>	Laurie	<u>Customer Phone</u>	505-827-4702	<u>Pickup #</u>	
<u>Customer Email</u>		<u>PO Number</u>	cc	<u>Joint Ad #</u>	
<u>Ad Cost</u>	\$52.92	<u>Sales Rep</u>	dnoel		
<u>Tax Amount</u>	\$3.80	<u>Order Taken by:</u>	cwhite		
<u>Total Amount</u>	\$56.72	<u>Payment Method</u>	Credit Card - Visa 6710		
<u>Amount Due</u>	\$0.00	<u>Payment Amount</u>	\$56.72		

Product Albuquerque Journal
Ad Number 0001238244-01
Ad Type APC-Legals
Ad Size 10 X 84 Li
Color <NONE>
Run Dates 9/29/2015

Placement Legal Notices
Classification Government-0000
Sort Text NOTICEOFPERARULEMAKINGTHEPUB
 LICEMPLOYEESRETIREMENTASSOCIA

Affidavits
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**NOTICE OF P.E.R.A.
 RULEMAKING**

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Public Employees Retirement

280.200
 PERA Organization and Operation of the Public Employees Retirement Board

280.2100
 PERA Member Contributions

Copies of the draft rules are available for inspection in PERA's Office of General Counsel. Hard copies of the draft rules may be purchased for \$3.00. Written comments, inquiries or requests for copies should be directed to PERA's Office of General Counsel, P.O. Box 2123, Santa Fe, New Mexico, 87504-2123, (505) 823-7777.

Albuquerque Publishing Company
 7777 Jefferson N.E. Albuquerque, New Mexico 87109
 P.O. Drawer J-T Albuquerque, New Mexico 87103
 (505) 823-7777



**NOTICE OF P.E.R.A.
 RULEMAKING**

The Public Employees Retirement Association ("PERA") will consider changes to its rules promulgated under the Public Employees Retirement Act. Changes are proposed for the following Rules:

Public Employees Retirement

2.80.200
 NMAC Organization and Operation of the Public Employees Retirement Board

2.80.2100
 NMAC Member Contributions

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 Journal September 29, 2015

Ad Proof / Order Confirmation

Account Number

1012206

Ad Order Number

0001238244

N M PUBLIC EMPLOYEE RETIREMENT

PERA Website Posting

PERA Rulemaking

- The PERA Board will consider changes to the Public Employees Retirement rules during a rulemaking hearing on Tuesday, November 10, 2015. For further information, click on the following links:
 - [Notice of PERA Rulemaking](#)
 - [Proposed rules for November 10, 2015 hearing](#)

(Posted October 1, 2015)



PERA

Public Employees
Retirement Association
of New Mexico

INVESTED IN TOMORROW.

TO: Dan Esquibel, Chair
Patricia French, Vice-Chair
Rules and Administration Committee

FROM: Susan Pittard, General Counsel *spittard*

RE: PERA Rules

DATE: August 11, 2015

This memorandum provides a summary of the proposed regulation changes requested by the Rules and Administration Committee at its July 14, 2015 meeting. In addition, Staff recommends amending PERA regulations regarding refunds to accommodate alternative documentation of membership and unclaimed property to include residual contributions made to deceased member accounts.

1. Rule 2.80.200 Board Elections- Nominating Petitions

Current rules require that a valid signature for nominating petition purposes include the last four digits of the retiree or member social security number. Given that some PERA retirees and members are unwilling to sign nominating petitions if use of this identifier is required, Board members tasked Staff to identify another identifier that could be used during the nominating petition verification process.

The issue of providing adequate safeguards to ensure the validity of nominating signatures while at the same time encouraging greater election participation is a delicate balance. The need for Staff and the Election Committee to be able to identify nominating signatures within the RIO pension administration system to confirm their status under a specific voting group (state, municipal, county or retiree) and to preclude multiple signatures for the same candidate is critical to the integrity of the nominating petitions. An identifier is required to address the issues of common surnames, identical birth dates, illegible handwriting, etc.

Staff recommends amending the requirements for valid nominating signatures to allow the use of alternative identifiers. Internal discussions with both User Administration and Member Services staff identified alternative identifiers that will allow confidence in verifying nominating signatures. Staff recommends inclusion of birth date or PERA Identification Numbers as permissible identifiers for those retirees and members who are reticent to provide the last four digits of their social security numbers. It is important to note that the best identifier under the RIO system is a member's or retiree's social security number. Use of other identifiers, while not intended to limit validation, may have some unintended

Ex. E

consequences that may cause the disallowance of signatures if they cannot be validated without the last four digits of a social security number. For example, two signatures may have the same name, birth date and both be municipal employees. In an effort to avoid disallowing valid signatures, Staff recommends changing the mandatory language of the regulation to a permissive one to allow Staff and the Election Committee to validate signatures absent identifiers if they are able to so do with reasonable confidence.

2.80.200.60 ELECTION OF RETIRED BOARD MEMBERS

C. Nominating petitions shall be signed only by retired members under the Public Employees Retirement Act, Judicial Retirement Act or the Magistrate Retirement Act. To be eligible, a candidate must have a minimum of 50 nominations. ~~A valid nomination shall include a signature, a legible printing of the retiree's name, address and the last four digits of the retiree's social security number. A nomination that does not include all these elements shall not be counted. A valid nomination shall include a signature, a legible printing of the retiree's name, and one of the following: 1) the last four digits of the retiree's social security number, 2) the retiree's date of birth; or 3) the retiree's PERA Identification Number. A nomination that does not include at least one of these elements may not be counted.~~ A retired member may sign more than one nominating petition for different candidates. The five candidates with the highest number of nominations shall be included on the ballot and the other or others shall be eliminated. The names of the five retired members receiving the highest number of nominations shall be placed on the election ballot in descending order according to the number of signatures received. In case of a nominating tie, the election committee shall determine the names and order in which they are placed on the ballot by lottery or similar method.

2.80.200.70 ELECTION OF NON-RETIRED BOARD MEMBERS

(3) To be eligible, a candidate must have a minimum of 150 valid nominations of non-retired PERA members from the candidate's membership group on his or her nominating petition. ~~A valid nomination shall include a signature, a legible printing of the member's name, the member's current employer and the last four digits of the member's social security number. A nomination that does not include all these elements shall not be counted. A valid nomination shall include a signature, a legible printing of the member's name, the member's current employer and one of the following: 1) the last four digits of the member's social security number, 2) the member's date of birth; or the 3) member's PERA Identification Number. A nomination that does not include at least one of these elements may not be counted.~~ A member may sign more than one nominating petition for different candidates.

2. Rule 2.80.200 Board Elections- Committees

Staff recommends the addition of a Deferred Compensation Plan Committee that will allow the Board additional time to focus on this important benefit to our members and retirees. The Deferred Compensation Plan has over 18,000 participants and assets in excess of \$500 million. Under the Investment Division, the Plan has undertaken a Rebranding Initiative to: 1) increase awareness of and

participation in the Plan; and 2) clarify that the Plan is overseen under the fiduciary guidance of the PERA Board. An unintended consequence of having the Plan overseen by the Investment Division has been the inclusion of Plan-related discussion under the Investment Committee agendas, which are focus-driven to the needs of the defined benefit plan oversight. Staff suggests a separate standing committee, which is proposed to meet on alternating months to address 457(b) Plan specific items.

2.80.200.50 COMMITTEES

A. ~~The chair shall appoint no more than six (6) board members to each of the following standing committees: rules and administration, audit and budget, legislative, and investments.~~ The chair shall appoint no more than six (6) board members to each of the following standing committees: rules and administration, audit and budget, legislative, investments, and deferred compensation investment plan. The disability review committee shall have at least three (3) but no more than five (5) board members. The chair of the board shall appoint the chair of each committee. Though the board shall have standing committees, the board chair reserves the right to cancel any committee meeting and allow the entire board to discuss and act on matters that may be within the subject matter of standing committees.

(1) The rules and administration committee shall consider and recommend to the board new rules and amendments to or repeal of existing rules governing the organization and operation of the board and the association. Administrative matters requiring specific direction from the board may also be considered by the committee.

(2) The audit and budget committee shall provide policy assistance to the board and the executive director of PERA in fulfilling PERA's responsibilities for accounting, auditing, budgeting, and the quality and integrity of the financial reports of the association.

(3) The legislative committee shall consider and recommend to the board proposals for new statutes and amendments to or repeal of existing statutes. The committee shall also monitor the introduction and progress of proposed legislation affecting the board or association and report this information to the board.

(4) The disability review committee is described in Rule 2.80.1000.20.

(5) The investment committee shall review and monitor the administration of the investment policy adopted by the board.

(6) The deferred compensation committee shall review and monitor the administration of the deferred compensation plan investment policy adopted by the board.

3. 2.80.2100 Refunds

PERA's current rule requires that a membership application be on file with PERA before a member's refund may be processed. Staff has encountered difficulties processing refunds for members in certain instances where their prior employers have switched accounting or human resources software applications over the years and do not have hard copies of old membership applications. Staff can frequently confirm the member's prior employment through other means, including contribution accounting records. In order to better serve our members, staff recommends amending the rule as stated below to accommodate these other methods of documenting membership during the refund process.

2.80.2100.8 GENERAL PROVISIONS

- (5) No refund shall be permitted unless a membership application is on file with PERA. The requirement for a membership application may be waived, in PERA's discretion, when PERA can establish membership for the applicable time period through other documentation.

4. 2.80.2100 Unclaimed Contributions – Deceased Member Accounts

As a result of implementing a records retention and destruction policy, PERA records staff discovered over 1,000 deceased member accounts with account balances. These accounts are subject to an eight year retention period and are being audited and corrected if necessary. Staff recommends, however, that after two years all deceased member accounts be included in the PERA unclaimed property process so that these accounts may be closed, thereby ending the posting of interest on deceased member contributions. Detailed records of closed accounts and balances will be maintained so that refunds may be paid in the future if a deceased member's refund beneficiary or estate comes forward and provides the necessary documentation.

2.80.2100.9 UNCLAIMED CONTRIBUTIONS

A. A member's accumulated member contributions, plus interest, shall constitute unclaimed member contributions pursuant to NMSA 1978, Section 10-11-128 if the following conditions are met:

- (1) the member has applied for and received a refund of member contributions;
- (2) a balance of \$500 or less remains on the member's account;
- (3) PERA has sent a letter to the member's last known address on file with the association notifying the member that the funds are available for disbursement and received no response within sixty (60) days of the mailing.

B. A deceased member's accumulated member contributions, plus interest, shall constitute unclaimed member contributions pursuant to NMSA 1978, Section 10-11-128 if the following conditions are met:

- (1) PERA has received notification of the member's death through an authorized death notification provider or a certified copy of the member's death certificate;
- (2) a survivor pension benefit is not payable;
- (3) a balance of member contributions, plus interest, remains on the deceased member's account;
- (4) PERA has sent an initial letter to the deceased member's last known address on file with the association and to the address of the member's refund beneficiary or estate, if known, notifying the deceased member's refund beneficiary or estate that the funds are available for disbursement and if no response is received within sixty (60) days of mailing the initial letter, PERA has sent a final letter the following year to the deceased member's last known address on file with the association and to the address of the member's refund

beneficiary or estate, if known, notifying the deceased member's refund beneficiary or estate that the funds are available for disbursement.

(5) PERA has received no response within two (2) years of the date of the member's death.

~~(B)~~C. Unclaimed member contributions, plus interest, shall be credited to the income fund, and the member's account shall be closed.

~~(E)~~D. PERA shall perpetually maintain a list of members and the value of the accounts which were closed in accordance with this provision.

~~(D)~~E. No interest shall accrue on unclaimed member contributions which have been credited to the income fund.

~~(E)~~F. A member, beneficiary or estate of a member may at any time apply to receive a refund of unclaimed member contributions and interest accrued before the account was closed in accordance with the provisions of this rule.

~~(F)~~G. If a member whose account has been closed is subsequently employed by an affiliated public employer, the member's account shall be reopened effective the date of reemployment, and the account balance, accrued interest and service credit shall be restored to the amounts in effect at the time the account was closed.

This is an amendment to 2.80.200 NMAC, Sections 50, 60 and 70, effective 12/30/15:

TITLE 2 PUBLIC FINANCE
CHAPTER 80 PUBLIC EMPLOYEES RETIREMENT
PART 200 ORGANIZATION AND OPERATION OF THE PUBLIC EMPLOYEES RETIREMENT BOARD

2.80.200.1 ISSUING AGENCY: Public Employees Retirement Association, P. O. Box 2123, Santa Fe, New Mexico 87504-2123
[10-15-97; 2.80.200.1 NMAC - Rn, 2 NMAC 80.200.1, 12-28-00]

2.80.200.2 SCOPE: This rule affects the members, former members, retirees, beneficiaries, public employers, retirement board, and the association under the Public Employees Retirement Act.
[10-15-97; 2.80.200.2 NMAC - Rn, 2 NMAC 80.200.2, 12-28-00]

2.80.200.3 STATUTORY AUTHORITY: This rule is authorized by NMSA 1978, Sections 10-11-130, 10-11A-4, 10-12B-3, 10-12C-3, as amended.
[10-15-97; 2.80.200.3 NMAC - Rn, 2 NMAC 80.200.3, 12-28-00]

2.80.200.4 DURATION: Permanent.
[10-15-97; 2.80.200.4 NMAC - Rn, 2 NMAC 80.200.4, 12-28-00]

2.80.200.5 EFFECTIVE DATE: December 15, 1995 unless a different date is cited at the end of a section.
[10-15-97; 2.80.200.5 NMAC - Rn, 2 NMAC 80.200.5, 12-28-00]

2.80.200.6 OBJECTIVE: The objective of this rule is to establish procedures for the organization and operation of the retirement board.
[10-15-97; 2.80.200.6 NMAC - Rn, 2 NMAC 80.200.6, 12-28-00]

2.80.200.7 DEFINITIONS: [Reserved]
[2.80.200.7 NMAC - Rn, 2 NMAC 80.200.7, 12-28-00]

2.80.200.8 - 9 [Reserved]

2.80.200.10 RULES AND REGULATIONS:

A. Except as otherwise provided in the Public Employees Retirement Act and rules and regulations periodically adopted in accordance therewith, the board may provide for its organization, operation and procedures by vote of the board at any meeting of the board.

B. The board may promulgate rules and regulations for the administration of the Public Employees Retirement Act, Judicial Retirement Act, Magistrate Retirement Act, Volunteer Firefighters Retirement Act, and Deferred Compensation Act.

(1) Prior to the adoption, amendment or repeal of any rule, the board shall, at least thirty days prior to its proposed action:

(a) publish notice of its proposed action in a newspaper with a general statewide circulation; the notice shall:

(i) give the time and place of any public hearing and state the manner in which data, views or arguments may be submitted to the board by any interested person;

(ii) describe the substance of the proposed action, or state the subjects and issues involved;

(iii) include any additional matter required by any law, together with specific reference to the statutory authority under which the rule is proposed; and

(b) afford all interested persons reasonable opportunity to submit data, views or arguments orally or in writing; if the board finds that oral presentation is unnecessary or impracticable, it may require that presentation be made in writing; the board shall consider fully all written and oral submissions addressing the proposed rule; upon adoption of a rule contested at hearing or otherwise, the board shall issue a concise statement of its principal reasons for adoption of the rule; all persons heard or represented at any hearing, or

who submit any writing to be considered in connection with the proposed rule, shall promptly be given a copy of the rule, by mail or otherwise, if such persons so request in writing.

(2) If the board finds that immediate adoption, amendment or suspension of a rule is necessary for the preservation of the soundness of the fund or general welfare of the association, or if the board for good cause finds that observance of the requirements of notice and public hearing would be contrary to the interests of the association, the board may dispense with such requirements and adopt, amend or suspend the rule as an emergency. The board's finding and a brief statement of the reasons for its finding shall be incorporated in the emergency rule, amendment or suspension. No emergency rule, amendment or suspension shall remain in effect for longer than sixty days, unless notice shall be given within fifteen days of the adoption of the emergency rule and a hearing held as provided in this section within 90 days of the notice.

[10-15-97; 2.80.200.10 NMAC - Rn, 2 NMAC 80.200.10, 12-28-00]

2.80.200.11 ACTUARIAL ASSUMPTIONS AND USE OF TRUST FUND:

A. Whenever the amount of any benefit is to be determined on the basis of actuarial assumptions, the assumptions shall be specified by the board in a manner that precludes employer discretion.

B. No part of the corpus or income of the fund may be used for or diverted to a purpose other than the exclusive benefit of the members and their beneficiaries.

C. The board may not engage in a transaction prohibited by Section 503(b) of the Internal Revenue Code.

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

2.80.200.12 - 19 [Reserved]

2.80.200.20 OFFICERS:

A. At the first regular meeting of each calendar year, the board shall elect a chair and a vice-chair. The duties of the officers shall include the following.

(1) The chair shall preside at all regular and special meetings of the board.

(2) The vice-chair shall serve as chair in the absence of the chair.

B. In the absence of the chair and vice-chair, the board may elect a temporary chair to preside at a meeting from which both officers are absent.

[10-15-97; 12-15-99; 2.80.200.20 NMAC - Rn, 2 NMAC 80.200.20, 12-28-00]

2.80.200.21 BOARD TRAINING AND EDUCATION:

A. New board members shall attend a new board member orientation within two (2) months of being elected or appointed to office. New board member orientation shall be provided by PERA staff and shall include fiduciary responsibility, investing principles, an actuarial primer and an overview of the operations of the association.

B. Each board member shall annually certify his or her compliance with the statutory requirements of NMSA 1978, Section 10-11-133(F) on the form prescribed by the association on or before December 31st of each calendar year.

[2.80.200.21 NMAC - N, 9-30-10]

2.80.200.22 - 29 [Reserved]

2.80.200.30 VACANCY ON THE BOARD:

A. In the event any member of the PERA board retires from his or her job, resigns from the board or dies, except the ex-officio members of the board, that member shall be considered to have resigned from the board and the board shall, by resolution, declare that office vacant as of the date of the adoption of such resolution. Such resolution shall be adopted within 30 days after the board member's retirement, resignation or death. Members of the retirement board shall serve until their successors have qualified.

B. In the event any member of the PERA board, except the ex-officio members of the board, ceases employment with an affiliated public employer, and is not reemployed by an affiliated public employer from the same membership (state, county or non-county municipal) group from which that member was elected within thirty (30) days, that member shall be considered to have resigned from the board. For purposes of Section 80.200.30, the term "ceases employment" shall include leave without pay status that extends for more than twelve (12) weeks.

C. The resolution declaring the vacancy shall be publicized immediately in conjunction with a notice inviting eligible individuals to apply for appointment to the position within thirty (30) days of the publication of notice of vacancy. Publication shall be, at the minimum, by special notice to employees in the affected membership group through their employers. The board shall select the new member from among the interested persons who apply pursuant to the publication of the notice of vacancy. If no applications are received, the board shall entertain nominations by the members present.

D. Any vacancy of member, except ex-officio member, occurring on the board shall be filled by the remaining board members, even though a quorum not be present, at a regularly scheduled board meeting within 90 days after the adoption of the resolution declaring the vacancy. The member selected to fill the vacancy shall be selected from the membership group, whether state, county or non-county municipal or retired member, which experienced the vacancy. If a vacancy in the municipal membership group is that of a county member, the replacement member shall be a county employee. The selected member shall be appointed to serve for the remainder of the vacated term.

[10-15-97; 11-15-97; 2.80.200.30 NMAC - Rn & A, 2 NMAC 80.200.30, 12-28-00; A, 8-15-01; A, 12-28-01]

2.80.200.31 - 39 [Reserved]

2.80.200.40 BOARD MEETINGS:

A. The board shall hold regular meetings on the last Thursday of each month, unless otherwise established by resolution of the board. The board may establish by resolution a different meeting schedule for regular meetings of the board.

B. A majority of the board members shall constitute a quorum at any meeting of the board and each attending member, including the chair, shall be entitled to one vote on each issue.

C. No "proxy" votes shall be allowed.

[10-15-97; 11-15-97; 12-15-99; 2.80.200.40 NMAC - Rn, 2 NMAC 80.200.40, 12-28-00; A, 9-30-10]

2.80.200.41 - 49 [Reserved]

2.80.200.50 COMMITTEES:

A. ~~[The chair shall appoint no more than six (6) board members to each of the following standing committees: rules and administration, audit and budget, legislative, and investments.]~~ The chair shall appoint no more than six (6) board members to each of the following standing committees: rules and administration, audit and budget, legislative, investments, and deferred compensation investment plan. The disability review committee shall have at least three (3) but no more than five (5) board members. The chair of the board shall appoint the chair of each committee. Though the board shall have standing committees, the board chair reserves the right to cancel any committee meeting and allow the entire board to discuss and act on matters that may be within the subject matter of standing committees.

(1) The rules and administration committee shall consider and recommend to the board new rules and amendments to or repeal of existing rules governing the organization and operation of the board and the association. Administrative matters requiring specific direction from the board may also be considered by the committee.

(2) The audit and budget committee shall provide policy assistance to the board and the executive director of PERA in fulfilling PERA's responsibilities for accounting, auditing, budgeting, and the quality and integrity of the financial reports of the association.

(3) The legislative committee shall consider and recommend to the board proposals for new statutes and amendments to or repeal of existing statutes. The committee shall also monitor the introduction and progress of proposed legislation affecting the board or association and report this information to the board.

(4) The disability review committee is described in Rule 2.80.1000.20.

(5) The investment committee shall review and monitor the administration of the investment policy adopted by the board.

(6) The deferred compensation committee shall review and monitor the administration of the deferred compensation plan investment policy adopted by the board.

B. The chair, with the advice and consent of the board, shall appoint an election committee to consist of nine (9) members of the association: four (4) members from state departments, two (2) members from non-county municipal employers, one (1) member from a county employer, and two (2) retired members.

(1) The election committee shall serve until replaced by the chair, and shall receive no compensation other than that authorized by the Per Diem and Mileage Act.

(2) The duties of the election committee are described in Rule 2.80.200.60, 2.80.200.70 and 2.80.200.80.

C. From time to time, the board may authorize, and the chair may appoint, such ad hoc committees as the board finds necessary.

[10-15-97; 11-15-97; 12-15-99; 2.80.200.50 NMAC - Rn & A, 2 NMAC 80.200.50, 12-28-00; A, 9-30-10; A, 12-30-15]

2.80.200.51 - 59 [Reserved]

2.80.200.60 ELECTION OF RETIRED BOARD MEMBERS:

A. During the January monthly meeting, the retirement board shall adopt a resolution specifying when nominating petitions are due to be returned to PERA. These nominating petitions are due not earlier than six months prior and not later than one month prior to the election for the position of retired board member.

B. Any retired member who is receiving a disability or normal retirement pension under the Public Employees Retirement Act, Judicial Retirement Act or the Magistrate Retirement Act is eligible for election to a retired board member position.

C. Nominating petitions shall be signed only by retired members under the Public Employees Retirement Act, Judicial Retirement Act or the Magistrate Retirement Act. To be eligible, a candidate must have a minimum of 50 nominations. ~~[A valid nomination shall include a signature, a legible printing of the retiree's name, address and the last four digits of the retiree's social security number. A nomination that does not include all these elements shall not be counted.]~~ A valid nomination shall include a signature, legible printing of the retiree's name, and one of the following: 1) the last four digits of the retiree's social security number; 2) the retiree's date of birth; 3) the retiree's PERA Identification Number. A nomination that does not include at least one of these elements may not be counted. A retired member may sign more than one nominating petition for different candidates. The five candidates with the highest number of nominations shall be included on the ballot and the other or others shall be eliminated. The names of the five retired members receiving the highest number of nominations shall be placed on the election ballot in descending order according to the number of signatures received. In case of a nominating tie, the election committee shall determine the names and order in which they are placed on the ballot by lottery or similar method.

D. In the event any nominee is unable or unwilling to accept a nomination, that nominee's name shall be removed from the ballot and the resulting vacancy on the ballot shall not be filled. If the inability or unwillingness to accept a nomination occurs after the ballots have been printed the election committee shall treat all votes cast for that nominee as void.

E. If only one retiree is nominated for a retired board member position, the election shall be cancelled and that retiree shall automatically be declared the winner for the retired board member position pursuant to subsection 200.80.

F. Only retired members under the Public Employees Retirement Act, Judicial Retirement Act or the Magistrate Retirement Act shall be eligible to participate in the election of retired board members.

G. The campaign contribution limit of twenty-five dollars (\$25.00) contained in NMSA 1978, Section 10-11-130.1(B)(2000) shall apply to each four year term retired board member election.
[10-15-97; 11-15-97; 12-15-99; 2.80.200.60 NMAC - Rn & A, 2 NMAC 80.200.60, 12-28-00; A, 8-15-01; A, 6-30-05; A, 12-30-15]

2.80.200.61 - 69 [Reserved]

2.80.200.70 ELECTION OF NON-RETIRED BOARD MEMBERS:

A. During the January monthly meeting, the retirement board shall adopt a resolution specifying when nominating petitions are due to be returned to PERA. These nominating petitions are due not earlier than 6 months prior and not later than 1 month prior to the election for the position of non-retired board member.

(1) Candidates nominated for any non-retired board member position shall be vested members under the Public Employees Retirement Act, Judicial Retirement Act or the Magistrate Retirement Act.

(2) Only state members, including members under the Judicial Retirement Act or the Magistrate Retirement Act, may nominate candidates for state board member positions. Only county members may

nominate candidates for the county board member position. Only non-county municipal members may nominate candidates for the remaining municipal board member positions.

(3) To be eligible, a candidate must have a minimum of 150 valid nominations of non-retired PERA members from the candidate's membership group on his or her nominating petition. ~~[A valid nomination shall include a signature, a legible printing of the member's name, the member's current employer and the last four digits of the member's social security number. A nomination that does not include all these elements shall not be counted.]~~ A valid nomination shall include a signature, a legible printing of the member's name, the member's current employer and one of the following: 1) the last four digits of the member's social security number; 2) the member's date of birth; or 3) the member's PERA Identification Number. A nomination that does not include at least one of these elements may not be counted. A member may sign more than one nominating petition for different candidates.

(4) The five candidates with the highest number of nominations for each non-retired position shall be included on the ballot and the other or others shall be eliminated. The names of the five non-retired members receiving the highest number of nominations for a position shall be placed on the election ballot in descending order according to the number of signatures received. In case of a nominating tie, the election committee shall determine the names and order in which they are placed on the ballot by lottery or similar method.

(5) In the event any nominee is unable or unwilling to accept the nomination, his or her name shall be removed from the ballot and the vacancy on the ballot shall not be filled. If such a vacancy occurs after the ballots have been printed, the election committee shall treat all votes cast for that candidate as void.

(6) If only one member is nominated for a non-retired board member position, the election shall be cancelled and that member shall automatically be declared the winner for the non-retired board member position pursuant to subsection 200.80.

(7) All members of record of the membership group for which the election is held shall be eligible to receive a ballot as provided in subparagraph 8(a) below, except that only county members shall vote in elections for the county member position, and shall not be eligible to vote in elections for non-county municipal positions. The applicable membership group for any member who is no longer a currently employed, contributing employee of an affiliated public employer shall be determined as of the last date on which the member was a currently employed, contributing employee of an affiliated public employer.

(8) For purposes of the election of non-retired board members, "member of record" shall mean the following:

(a) all persons listed in PERA electronic membership history records as members, including members covered under the Public Employees Retirement Act, Judicial Retirement Act or the Magistrate Retirement Act, no more than 60 days prior to the date of mailing ballots; or

(b) all persons who have filed with PERA a valid application for membership form 60 days or more prior to the date of mailing ballots.

(c) While members of record shall qualify to receive a ballot, in the case of those new members listed in subparagraph 70.A(8)(b), a written request for a ballot must be made to PERA.

(9) For purposes of the election of non-retired board members:

(a) ballots shall be mailed to all non-county municipal members of record in the case of an election of a non-county municipal board position;

(b) ballots shall be mailed to all county municipal members of record in the case of an election of the county municipal board position; and

(c) ballots shall be mailed to all state members of record in the case of an election of a state board position.

B. The campaign contribution limit of twenty-five dollars (\$25.00) contained in NMSA 1978, Section 10-11-130.1(B)(2000) shall apply to each four year term non-retired board member election.

[10-15-97; 11-15-97; 12-15-99; 2.80.200.70 NMAC - Rn & A, 2 NMAC 80.200.70, 12-28-00; A, 8-15-01; A, 6-30-05; A, 12-30-15]

2.80.200.71 - 79 [Reserved]

2.80.200.80 **ELECTIONS:** The call of the annual meeting and secret election ballots shall be mailed at least thirty days prior to the annual meeting of the association. Ballots shall be held by the United States post office in a locked box until picked up by the election committee or an independent contractor hired by PERA to assist with the election. To be counted, ballots must be in the United States post office locked box by 12:00 noon on the date set by the association.

- A. Each ballot shall contain an affirmation of the member's eligibility to vote.
- B. Ballots shall be self-proving and shall be counted by the election committee or an independent contractor hired by PERA to assist with the election. The candidate receiving the greatest number of votes shall be declared the winner for each position. In the event of a tie, the election committee shall select by lottery or similar method the name of the winner. The election committee or an independent contractor hired by PERA to assist with the election shall report the results of the election to the membership at the annual meeting.
- C. Members whose ballots have not been delivered to them may request and receive another ballot if the original ballot is returned by the United States post office undelivered to PERA or an independent contractor hired by PERA to assist with the election prior to the close of the election. Members whose ballots have been mutilated or spoiled may request and receive another ballot when, prior to the close of the election, the original mailed ballot is returned by the member to PERA.
- D. If the election committee or an independent contractor hired by PERA to assist with the election recommends for good cause that the results of the election be invalidated, and the board adopts such recommendation, a new election shall be held as soon as possible thereafter and the annual meeting at which the election results are announced shall be continued until completion of the new election.
- E. Insignificant departures from the requirements set forth in these regulations pertaining to the conduct of elections shall not invalidate the election unless the results of the election are proven to have been substantially affected.
- F. A member shall be considered to be "qualified" for office pursuant to NMSA 1978, Section 10-11-130(D) when the board has accepted the election results and the newly-elected member has been sworn into office.

[10-15-97; 11-15-97; 12-15-99; 2.80.200.80 NMAC - Rn & A, 2 NMAC 80.200.80, 12-28-00]

2.80.200.81 - 89 [Reserved]

2.80.200.90 BUILDING AND LAND USE: Restrictions on building and land use shall be provided for by the executive director as needed subject to the advice and consent of the board.

[10-15-97, 11-15-97, 12-15-99; 2.80.200.90 NMAC - Rn, 2 NMAC 80.200.90, 12-28-00]

HISTORY of 2.80.200 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under: PERA 68-1, (Rule No. 2) Election of Board Members, filed on 7-8-68; PERA 69-1, (Rule No. 2) Election of Board Members, filed on 6-17-69; Rule 200.00, Organization and Operation of the Public Employees Retirement Board, filed on 10-4-79; PERA Rule 200.00 Organization and Operation of the Public Employees' Retirement Board, filed on 11-19-81; PERA Rule 200.00, Organization and Operation of the Public Employees' Retirement Board, filed on 7-1-87; PERA Rule 200, Organization and Operation of the Public Employees Retirement Board, filed on 10-21-88; PERA Rule 200, Organization and Operation of the Public Employees Retirement Board, filed on 7-1-91; PERA Rule 200, Organization and Operation of the Public Employees Retirement Board, filed on 7-1-93; PERA Rule 200, Organization and Operation of the Public Employees Retirement Board, filed on 11-1-94; PERA Rule 200, Organization and Operation of the Public Employees Retirement Board, filed on 12-1-95.

History of Repealed Material:

2 NMAC 80.200, Paragraph 60.5, 60.6, 60.7 - Repealed, 11-15-97.

2 NMAC 80.200, Paragraph 70.2.1, 70.2.2 - Repealed, 11-15-97.

2 NMAC 80.200, Paragraph 70.2, 70.2.3, 70.2.4, 70.2.5, 70.2.6, 70.2.7, 70.2.8 - Repealed, 12-15-99.

This is an amendment to 2.80.2100 NMAC, Sections 8 and 9, effective 12/30/15:

**TITLE 2 PUBLIC FINANCE
CHAPTER 80 PUBLIC EMPLOYEES RETIREMENT
PART 2100 MEMBER CONTRIBUTIONS**

2.80.2100.1 ISSUING AGENCY: Public Employees Retirement Association, P. O. Box 2123, Santa Fe, New Mexico 87504-2123
[10-15-97; 2.80.2100.1 NMAC - Rn, 2 NMAC 80.2100.1, 12-28-00]

2.80.2100.2 SCOPE: This rule affects the members, public employers, retirement board and the association under the Public Employees Retirement Act.
[10-15-97; 2.80.2100.2 NMAC - Rn, 2 NMAC 80.2100.2, 12-28-00]

2.80.2100.3 STATUTORY AUTHORITY: This rule is authorized by NMSA 1978, Sections 10-11-124, 10-11-129 and 10-11-130, as amended.
[10-15-97; 11-15-97; 2.80.2100.3 NMAC - Rn, 2 NMAC 80.2100.3, 12-28-00]

2.80.2100.4 DURATION: Permanent.
[10-15-97; 2.80.2100.4 NMAC - Rn, 2 NMAC 80.2100.4, 12-28-00]

2.80.2100.5 EFFECTIVE DATE: November 1, 1994 unless a different date is cited at the end of a section.
[10-15-97; 2.80.2100.5 NMAC - Rn & A, 2 NMAC 80.2100.5, 12-28-00]

2.80.2100.6 OBJECTIVE: The objectives of this rule are to establish standards and procedures for refunding member contributions and to identify federal obligations which may be satisfied out of benefits payable.
[10-15-97; 2.80.2100.6 NMAC - Rn, 2 NMAC 80.2100.6, 12-28-00]

2.80.2100.7 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.
[2.80.2100.7 NMAC - Rn, 2 NMAC 80.2100.7, 12-28-00; A, 12-15-09]

2.80.2100.8 GENERAL PROVISIONS

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

B. A member shall not receive a refund of contributions if the member terminates employment with one affiliated public employer and is thereafter employed by the same or another affiliated public employer within thirty (30) days of termination. The application for a refund of member contributions, if desired, must be filed prior to any subsequent employment. If the application for refund is not filed within this period of time, no refund shall be permitted until termination of all affiliated public employment.

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) If the member has been divorced, the member shall provide PERA with complete endorsed copies of all court documents 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 documents shall include the final decrees and marital property settlements for all marriages during the member's employment with an affiliated public employer. If the member's only divorce was prior to becoming a PERA 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 PERA member, then only the most recent final decree is required. The requirement for providing a copy of a final decree may be waived, in PERA's discretion, when PERA can establish through online court records that a divorce decree was entered on a specific date and no further documentation is deemed necessary to administer benefits. If the member's former spouse is entitled to a portion of a refund of member contributions pursuant to a court order entered under NMSA 1978, Section 10-11-136, 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 L of 2.80.2100.8 NMAC.

(4) The member's last affiliated public employer must certify to the termination of employment of the member before a refund may be made.

(5) No refund shall be permitted unless a membership application is on file with PERA. The requirement for a membership application may be waived, in PERA's discretion, when PERA can establish membership for the applicable time period through other documentation.

(6) 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 of each year at the rate of 2.0%.

E. A refund of member contributions includes interest on those contributions calculated through the last working day of the month prior to the date of refund.

F. A refund of member contributions shall not include the purchase cost received to buy permissive service credit pursuant to Section 10-11-7(H) NMSA 1978.

G. If a court order issued pursuant to Section 10-11-136 NMSA 1978 or Section 10-11-136.1 NMSA 1978 restraining, withholding, or dividing a refund of member contributions is received by PERA after a request for refund of contributions has been received but has not been paid, PERA will comply with the order.

H. Pursuant to Section 10-11-135, NMSA 1978, PERA retirement accounts are not subject to legal process under other state laws, except for division of a community interest in such accounts as provided in Section 10-11-136 NMSA 1978 or in enforcement of child support obligations as provided in Section 10-11-136.1 NMSA 1978. In the following instances, however, federal laws pre-empt the provisions of the Public Employees Retirement Act and PERA will honor the federal action if the account is in pay status, i.e. if the member has terminated employment and requested a refund of contributions, or if a pension is payable. If the federal action is applied against a refund of member contributions, non-tax deferred contributions shall be paid before tax-deferred contributions.

- (1) IRS notices of levy for unpaid taxes.
- (2) Orders by a U.S. bankruptcy court.
- (3) Orders of garnishment for fines or restitution by a federal court in a criminal case.

I. Members may designate only one refund beneficiary. Such designation shall be in writing in the form prescribed by PERA. 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.

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

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

L. 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; 12-15-99; 2.80.2100.8 NMAC - Rn & A, 2 NMAC 80.2100.8, 12-28-00; A, 12-28-01; A, 9-30-03; A, 6-30-05; A, 12-15-09; A/E, 7-01-12; A, 12-30-15]

2.80.2100.9 UNCLAIMED CONTRIBUTIONS

A. A member's accumulated member contributions, plus interest, shall constitute unclaimed member contributions pursuant to NMSA 1978, Section 10-11-128 if the following conditions are met:

- (1) the member has applied for and received a refund of member contributions;
- (2) a balance of \$500 or less remains on the member's account;
- (3) PERA has sent a letter to the member's last known address on file with the association

notifying the member that the funds are available for disbursement and received no response within sixty (60) days of the mailing.

B. A deceased member's accumulated member contributions, plus interest, shall constitute unclaimed member contributions, pursuant to NMSA 1978, Section 10-11-128 if the following conditions are met:

- (1) PERA has received notification of the member's death through an authorized death notification provider or a certified copy of the member's death certificate;
- (2) a survivor pension benefit is not payable;

- (3) a balance of member contributions, plus interest, remains in the deceased member's account;
- (4) PERA has sent an initial letter to the deceased member's last known address on file with the association and to the address of the member's refund beneficiary or estate, if known, notifying the deceased member's refund beneficiary or estate that the funds are available for disbursement and if no response is received within sixty (60) days of mailing the initial letter, PERA has sent a final letter the following year to the deceased member's last known address on file with the association and to the address of the member's refund beneficiary or estate, if known, notifying the deceased member's refund beneficiary or estate that the funds are available for disbursement.
- (5) PERA has received no response within two (2) years of the date of the member's death,
- [**] C. Unclaimed member contributions, plus interest, shall be credited to the income fund, and the member's account shall be closed.
- [G]D. PERA shall perpetually maintain a list of members and the value of the accounts which were closed in accordance with this provision.
- [D]E. No interest shall accrue on unclaimed member contributions which have been credited to the income fund.
- [E]F. A member, beneficiary or estate of a member may at any time apply to receive a refund of unclaimed member contributions and interest accrued before the account was closed in accordance with the provisions of this rule.
- [F]G. If a member whose account has been closed is subsequently employed by an affiliated public employer, the member's account shall be reopened effective the date of reemployment, and the account balance, accrued interest and service credit shall be restored to the amounts in effect at the time the account was closed. [2.80.2100.9 NMAC - N, 12-30-13; A, 12-30-15]

HISTORY of 2.80.2100 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under: PERA Rule 2100, Refund of Member Contributions, filed on 7-1-93; PERA Rule 2100, Member Contributions, filed on 11-1-94.

