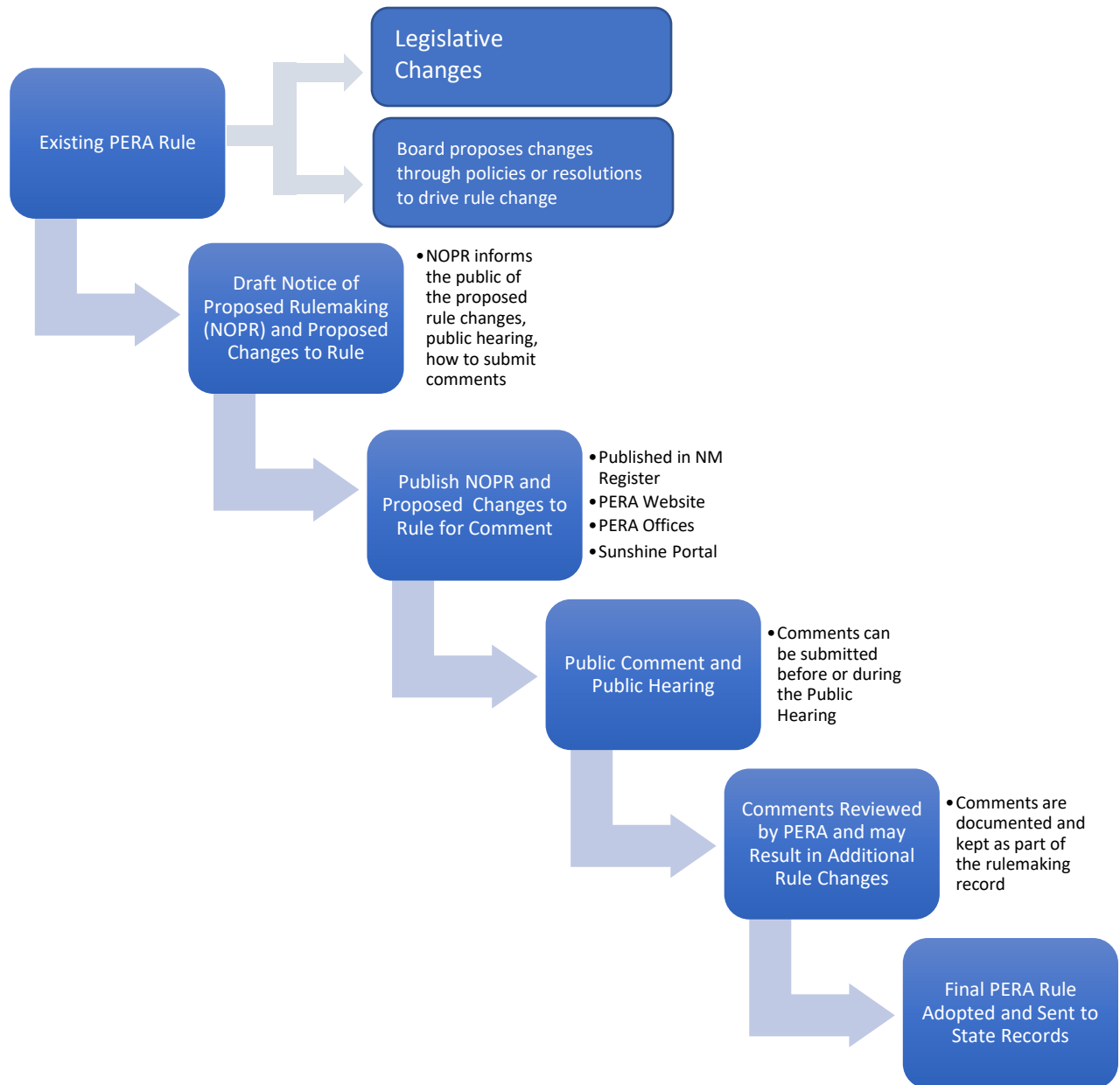


PERA RULEMAKING PROCESS



NOTICE OF PERA RULEMAKING

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

1. Rule 2.80.100.7 “GENERAL PROVISIONS” -Definitions Paragraph (M), Paragraph (Q)

Rule 100 would add definitions for “Adult probation and parole officer member” and “Juvenile probation and parole officer member”. The proposed changes would revise the definition of salary for purposes of inclusion of certain overtime paid for public safety members consistent with the Fair Labor Standards Act. The rule would be reformatted as necessary.

2. Rule 2.80.200.50 “COMMITTEES”-Standing Governance Committee

The proposed changes would create a standing Governance Committee of the PERA Board and require that committee members adhere to the New Mexico Governmental Conduct Act. The rule would be reformatted as necessary.

3. Rule 2.80.200.80 NMAC “ELECTIONS”- Electronic Signatures on Nominating Petitions

The proposed changes would allow use of electronic signatures and electronic submission of nominating petitions. The rule would be reformatted as necessary.

4. Rule 2.80.1800 “EXECUTIVE DIRECTOR”-General Provisions

The proposed changes would clarify the authority of the Executive Director. The rule would also require that the Executive Director adhere to the New Mexico Governmental Conduct Act. The rule would be reformatted as necessary.

5. Rule 2.80.2100 “MEMBER CONTRIBUTIONS”-1099s For Representatives of Deceased Members

The proposed changes would allow for representatives of a deceased PERA member, upon submitting a notarized affidavit, to receive a Form 1099-R for the limited purpose of filing taxes for the deceased member. The rule would be reformatted as necessary.

A formal rulemaking hearing will be held on November 9, 2021, at 9:00 a.m. in the Fabian Chavez Jr. Board Room of the PERA Building, 33 Plaza La Prensa, Santa Fe, New Mexico. The rulemaking hearing will also be accessible through Zoom. The Zoom access link will be published on PERA’s website listed below prior to the hearing. Oral comments will be taken at the public hearing. Final action on the rules will occur at the November 2021 monthly meeting of the PERA Board which may 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. The purpose of the rulemaking hearing is to obtain public input on the proposed amendments to the above-referenced rules. The public hearing allows members of the public an opportunity to submit data, testimony, and arguments on the proposed rule changes.

The purpose of the proposed rule changes is to conform with amendments made to the PERA Act in the 2021 legislative session and to facilitate PERA’s administrative duties.

The authority for the proposed rule changes is NMSA 1978, Section 10-11-130 of the PERA Act and Rule 20.80.200.10 NMAC, which authorize the adoption and promulgation of rules and regulations necessary to carry out the purposes of the PERA Act.

Copies of the draft rules are available in PERA’s Office of General Counsel. Written comments, inquiries or requests for copies should be directed to Laura Archuleta at PERA’s Office of General Counsel, P.O. Box 2123, Santa Fe, New Mexico, 87504-2123, (505) 476-9306 or laurae.archuleta2@state.nm.us or 1-

800-342-3422. Written comments should be submitted by the close of business on November 9, 2021. The full text of the proposed rule changes, as well as the Zoom access link for the public hearing, can be found here: <https://www.nmpera.org/>.

Any person with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Trish Winter at 505-476-9305 or patriciab.winter@state.nm.us at least one week prior to the public hearing, or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact Ms. Winter if a summary or other type of accessible format is needed.

TITLE 2 PUBLIC FINANCE
CHAPTER 80 PUBLIC EMPLOYEES RETIREMENT
PART 100 GENERAL PROVISIONS

2.80.100.1 ISSUING AGENCY: Public Employees Retirement Association, [~~P. O. Box 2123~~] 33 Plaza La Prensa, Santa Fe, New Mexico 8750[~~4-2123~~]7
[10/15/1997; 2.80.100.1 NMAC - Rn, 2 NMAC 80.100.1, 12/28/2000; A, XX/XX/XXXX]

2.80.100.2 SCOPE: This rule affects the members, former members, retirees, beneficiaries, public employers, retirement board, and the association under the Public Employees Retirement Act.
[10/15/1997; 2.80.100.2 NMAC - Rn, 2 NMAC 80.100.2, 12/28/2000]

2.80.100.3 STATUTORY AUTHORITY: This rule is authorized by Sections 10-11-2 and 10-11-130 NMSA 1978, as amended.
[10/15/1997; 2.80.100.3 NMAC - Rn, 2 NMAC 80.100.3, 12/28/2000]

2.80.100.4 DURATION: Permanent.
[10/15/1997; 2.80.100.4 NMAC - Rn, 2 NMAC 80.100.4, 12/28/2000]

2.80.100.5 EFFECTIVE DATE: December 15, 1995 unless a different date is cited at the end of a section.
[10/15/1997; 2.80.100.5 NMAC - Rn & A, 2 NMAC 80.100.5, 12/28/2000]

2.80.100.6 OBJECTIVE: The objective of Part 100 of Chapter 80 is to define terms used in the Public Employees Retirement Act and its rules and regulations.
[10/15/1997; 2.80.100.6 NMAC - Rn, 2 NMAC 80.100.6, 12/28/2000]

2.80.100.7 DEFINITIONS: As used in the Public Employees Retirement Act:

A. “Accumulated member contributions” means amounts deducted from the salary of a member and credited to the member’s individual account, together with interest if any, credited to that account; it also includes repaid withdrawn contributions not including interest paid thereon, or amounts paid to purchase service credit as allowed under the PERA Act.

B. “Active duty” for purposes of acquiring service credit under Section 10-11-7 NMSA 1978, as amended, for periods of active duty with uniformed service of the United States, means full-time duty in the active uniformed service of the United States, including full-time training duty, annual training duty, and attendance while in the active military service, at a school designated as a service school by law or by the secretary of the military department concerned. “Active duty” does not include full-time national guard duty, which is training or other duty performed by a member of the air or army national guard of a state or territory, for which the member is entitled to pay from the United States or for which the member has waived pay from the United States. “Active duty” includes duty in the full-time military service reserve components activated pursuant to a federal call to duty, deployment for a peacekeeping mission or other declared national emergency.

C. “Adult correctional officer member” means a person who is an adult correctional officer or an adult correctional officer specialist employed by the corrections department or its successor agency.

D. “Adult probation and parole officer member” means a person who is an adult probation and parole officer employed by the corrections department or its successor agency.

~~[D.]~~ **E. “Another retirement program”** means retirement plans established by the Judicial Retirement Act, Magistrate Retirement Act, and the Educational Retirement Act.

~~[E.]~~ **F. “Elected official”** means a person elected to a public office by registered voters, who is paid a salary; “elected official” includes a person who is appointed to fill an unexpired term of an elected public office, who is paid a salary.

~~[F.]~~ **G. “Filed”** means that PERA has received the complete document as evidenced by a writing on the document indicating the date of receipt by PERA.

~~[G.]~~ **H. “Fire member”** means any member who is employed as a firefighter by an affiliated public employer, is paid a salary and has taken the oath prescribed for firefighters. The term shall not include volunteer firefighters or any civilian employees of a fire department.

~~[H.]~~ **L. “Juvenile correctional officer member”** means a member who is employed as a juvenile correctional officer by the children, youth and families department or its successor agency, but does not include any member who is a “police member” or a “fire member”.

~~[I.]~~ **J. “Juvenile probation and parole officer member”** means a person who is a juvenile probation and parole officer employed by the children, youth and families department or its successor agency.

~~[J.]~~ **K. “Leave office”** means an elected official’s successor has been duly elected or appointed and qualified for office, or upon the date of death of an elected official.

~~[K.]~~ **L. “Legal representative”** means “personal representative” as defined in the Probate Code of New Mexico which includes executor, administrator, successor personal representative, special administrator and persons who perform substantially the same functions under the law governing their status, or an attorney or a person acting pursuant to a power of attorney for a member, retired member or beneficiary.

~~[L.]~~ **M. “Municipal detention officer”** means a member who is employed by an affiliated public employer other than the state who has inmate custodial responsibilities at a facility used for the confinement of persons charged or convicted of a violation of a law or ordinance. “Municipal detention officer” includes both juvenile and adult municipal detention officers.

~~[M.]~~ **N. “Permissive service credit”** means service credit recognized by the retirement system for purposes of calculating a member’s retirement benefit, which is available only by making a voluntary additional contribution which does not exceed the amount necessary to fund the benefit attributable to such service credit.

~~[N.]~~ **O. “Police member”** means any member who is employed as a police officer by an affiliated public employer, who is paid a salary, and who has taken the oath prescribed for police officers. The term shall not include volunteers, juvenile correctional officer members, or employees who do not perform primarily police functions including, but not limited to jailers, cooks, matrons, radio operators, meter checkers, pound employees, crossing guards, police judges, park conservation officers, and game wardens. A member who is employed by an affiliated public employer as a police officer and as a non-police officer employee shall be regarded as a police member if more than fifty percent of the member’s total salary is paid as a police officer.

~~[O.]~~ **P. “Private retirement program”** for the purpose of exclusion from membership under Paragraph (5) of Subsection B of Section 10-11-3 NMSA 1978, means a retirement program of the affiliated public employer which meets the internal revenue service minimum standards regarding benefits as outlined in 26 C.F.R. Section 31.3121(b) (7)F of the Employment Tax Regulations and IRS Rev. Proc. 91-40.

~~[P.]~~ **Q. “Reenlistment”** as used in Paragraph (3) of Subsection A of Section 10-11-6 NMSA 1978, means enlistment or voluntary entry into one of the armed services as either enlisted personnel or as a commissioned officer.

~~[Q.]~~ **R. “Retired member”** means a person who is being paid a normal, deferred or disability pension on account of that person’s membership in the association. “Retired member” shall not include any persons receiving a pre-retirement survivor pension, post-retirement survivor pension, or reciprocity retirement pension where the payer system is not PERA, or any other person unless specifically included by definition as a “retired member”.

~~[R.]~~ **S. “Salary”** means the base salary or wages paid a member, including longevity pay, for personal services rendered to an affiliated public employer. “Salary” includes a member’s fixed, periodical compensation from full or part time employment; shift differentials; and wages paid while absent from work on account of vacation, holiday, injury or illness, which means payment made by continuing the member on the regular payroll. “Salary” includes incentive pay that is not temporary and becomes part of member’s base salary. “Salary” also includes temporary promotions, temporary salary increases, but no other temporary differentials. “Salary” shall not include overtime pay, unless the overtime payment is required for a regular scheduled tour of duty as set forth in Section 207 (k) of Title 29 of the United States code and is made on the regular payroll for the period represented by the payment. “Salary” for overtime pay required for a regular tour of duty does not include on-call or special events duty, or other duty performed by a member on a voluntary or ad hoc basis, which is temporary and does not become part of the member’s base salary. “Salary” shall not include allowances for housing, clothing, equipment or travel, payments for unused sick leave, unless the unused sick leave payment is made through continuation of the member on the regular payroll for the period represented by that payment. “Salary” also ~~does~~ shall not include lump sum payments which are not part of the member’s fixed periodical compensation, such as lump sum annual and sick leave or occasional payments to elected officials for attending meetings, allowances for any purpose, employer contributions to a private retirement program, or other fringe benefits, even if they are paid to or for a member on a regular basis, and any other form of remuneration not specifically designated by law as included in salary for Public Employees Retirement Act purposes.

~~[S.]~~ **T. “State legislator member”** means a person who is currently serving or who has served as a state legislator or lieutenant governor and who has elected to participate in a state legislator member coverage plan. A

former legislator or former lieutenant governor may be a “state legislator member” whether or not currently receiving a pension under a state legislator member coverage plan.

[F] U. “**State system**” means a retirement program provided for in the Public Employees Retirement Act, Magistrate Retirement Act, or Judicial Retirement Act.

[H] V. “**Terminate employment**” means that a member has a complete break in service and an absolute cessation of employment with all affiliated public employers, including employment as an elected official, as evidenced by a personnel action form or other equivalent document, and the member is not reemployed by an affiliated public employer for 30 days; or upon the date of death of a member.

[10/15/1997; 11/15/1997; 1/15/1999; 12/15/1999; 2.80.100.7 NMAC - Rn & A, 2 NMAC 80.100.7, 12/28/2000; A, 12/28/2001; A, 9/30/2003; A, 6/30/2005; A, 12/15/2009; A, 12/30/2013; A, XX/XX/XXXX]

HISTORY of 2.80.100 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under: Rule 100.00, Definitions, filed 10-4-79; PERA Rule 100.00, Definitions, filed 11/19/1981; PERA Rule 100, Definitions and Preamble, filed 7/1/1987; PERA Rule 100, Definitions and Preamble, filed 7/1/1991; PERA Rule 100, Definitions and Preamble, filed 11/27/1991; PERA Rule 100, Definitions and Preamble, filed 7/1/1992; PERA Rule 100, Definitions, filed 7/1/1993; PERA Rule 100, Definitions, filed 12/1/1995.

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 (PERA), 33 Plaza La Prensa, Santa Fe, New Mexico 87507
[2.80.200.1 NMAC - Rp, 2.80.200.1 NMAC, 12/30/2015]

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.
[2.80.200.2 NMAC - Rp, 2.80.200.2 NMAC, 12/30/2015]

2.80.200.3 STATUTORY AUTHORITY: This rule is authorized by Sections 10-11-130, 10-11A-4, 10-12B-3, 10-12C-3 NMSA 1978, as amended.
[2.80.200.3 NMAC - Rp, 2.80.200.3 NMAC, 12/30/2015]

2.80.200.4 DURATION: Permanent.
[2.80.200.4 NMAC - Rp, 2.80.200.4 NMAC, 12/30/2015]

2.80.200.5 EFFECTIVE DATE: December 30, 2015, unless a different date is cited at the end of a section.
[2.80.200.5 NMAC - Rp, 2.80.200.5 NMAC, 12/30/2015]

2.80.200.6 OBJECTIVE: The objective of this rule is to establish procedures for the organization and operation of the retirement board.
[2.80.200.6 NMAC - Rp, 2.80.200.6 NMAC, 12/30/2015]

2.80.200.7 DEFINITIONS: [RESERVED]

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 30 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 60 days, unless notice shall be given within 15 days of the adoption of the emergency rule and a hearing held as provided in this section within 90 days of the notice.
[2.80.200.10 NMAC - Rp, 2.80.200.10 NMAC, 12/30/2015]

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 - Rp, 2.80.200.11 NMAC, 12/30/2015]

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.
[2.80.200.20 NMAC - Rp, 2.80.200.20 NMAC, 12/30/2015]

2.80.200.21 BOARD TRAINING AND EDUCATION:

A. New board members shall attend a new board member orientation within two 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 Subsection F of Section 10-11-133 NMSA 1978 on the form prescribed by the association on or before December 31st of each calendar year.
[2.80.200.21 NMAC - Rp, 2.80.200.21 NMAC, 12/30/2015]

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 30 days, that member shall be considered to have resigned from the board. For purposes of 2.80.200.30 NMAC, the term "ceases employment" shall include leave without pay status that extends for more than 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 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.

[2.80.200.30 NMAC - Rp, 2.80.200.30 NMAC, 12/30/2015]

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.

[2.80.200.40 NMAC - Rp, 2.80.200.40 NMAC, 12/30/2015]

2.80.200.41 - 49 [RESERVED]

2.80.200.50 COMMITTEES:

A. The chair shall appoint no more than six board members to each of the following standing committees: rules and administration, audit and budget, legislative, investments, ~~and~~ deferred compensation, investment plan, and governance. The disability review committee shall have at least three but no more than five 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 2.80.1000.20 NMAC.

(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.

(7) The governance committee shall develop, review and monitor compliance with the board's policies and procedures, code of conduct, and board complaint procedure and recommend to the board proposed board disciplinary actions.

B. The chair, with the advice and consent of the board, ~~shall~~ may appoint an election committee to consist of nine members of the association: four members from state departments, two members from non-county municipal employers, one member from a county employer and two 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 2.80.200.60, 2.80.200.70 and 2.80.200.80 NMAC.

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

D. Board members appointed to committees shall adhere to the standards set forth in and be subject to the enforcement provisions of the New Mexico Governmental Conduct Act.
[2.80.200.50 NMAC - Rp, 2.80.200.50 NMAC, 12/30/2015; A, XX/XX/XXXX]

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 or an independent contractor hired by PERA to assist with the election. 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. The resolution shall also specify whether the method of voting shall include mailed paper ballots, online electronic ballots or other method approved by the board.

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, 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. For purposes of this subsection, "signature" shall include an electronic signature, in any digital format, from a single identifiable e-mail address. 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 2.80.200.80 NMAC.

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 \$25.00 contained in Subsection B of Section 10-11-130.1 NMSA 1978 (2000) shall apply to each four year term retired board member election.
[2.80.200.60 NMAC - Rp, 2.80.200.60 NMAC, 12/30/2015; A, 3/14/2017; A, XX/XX/XXXX]

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 or an independent contractor hired by PERA to assist with the election. 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 non-retired board member. The resolution shall also specify whether the method of voting shall include mailed paper ballots, online electronic ballots or other method approved by the board.

(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 one of the following:

- (a) the last four digits of the member's social security number;
- (b) the member's date of birth; or
- (c) the member's PERA identification number.

A nomination that does not include at least one of these elements may not be counted. For purposes of this subsection, "signature" shall include an electronic signature, in any digital format, from a single identifiable e-mail address. 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 2.80.200.80 NMAC.

(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 (a) of Paragraph (8) 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;

(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 (b) of Paragraph (8) of Subsection A of 2.80.200.70 NMAC, 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 \$25.00 contained in Subsection B of Section 10-11-130.1 NMSA 1978 (2000) shall apply to each four year term non-retired board member election. [2.80.200.70 NMAC - Rp, 2.80.200.70 NMAC, 12/30/2015; A, 3/14/2017; A, XX/XX/XXXX]

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 30 days prior to the annual meeting of the association. Mailed ballots shall be returned to a designated United States

post office locked box and picked up by the election committee or an independent contractor hired by PERA to assist with the election. To be counted, ballots must be returned to the designated United States post office locked box by 12:00 noon on the date set by the association. The call of the annual meeting and secret election ballots may also be made available at least 30 days prior to the annual meeting of the association online via a secure website maintained by an independent contractor hired by PERA to assist with the election or by another method specified in the resolution adopted by the board each January. To be counted, online ballots or votes cast by another approved method must be received by 12:00 noon on the date set by the association. An independent contractor hired by PERA to assist with the election shall assign unique identifiers to members to prevent voting more than one ballot per eligible member.

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 or an independent contractor hired by PERA to assist with the election. In addition, PERA or an independent contractor hired by PERA to assist with the election may assign unique identifiers to members and issue replacement ballots using procedures to prevent voting more than one ballot per eligible member.

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 Subsection D of Section 10-11-130 NMSA 1978 when the board has accepted the election results and the newly-elected member has been sworn into office.

[2.80.200.80 NMAC - Rp, 2.80.200.80 NMAC, 12/30/2015; A, 3/14/2017]

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.

[2.80.200.90 NMAC - Rp, 2.80.200.90 NMAC, 12/30/2015]

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 7/8/1968; PERA 69-1, (Rule No. 2) Election of Board Members, filed on 6/17/1969; Rule 200.00, Organization and Operation of the Public Employees Retirement Board, filed on 10/4/1979; PERA Rule 200.00 Organization and Operation of the Public Employees' Retirement Board, filed on 11/19/1981; PERA Rule 200.00, Organization and Operation of the Public Employees' Retirement Board, filed on 7/1/1987; PERA Rule 200, Organization and Operation of the Public Employees Retirement Board, filed on 10/21/1988; PERA Rule 200, Organization and Operation of the Public Employees Retirement Board, filed on 7/1/1991; PERA Rule 200, Organization and Operation of the Public Employees Retirement Board, filed on 7/1/1993; PERA Rule 200, Organization and Operation of the Public Employees Retirement Board, filed on 11/1/1994; PERA Rule 200, Organization and Operation of the Public Employees Retirement Board, filed on 12/1/1995.

History of Repealed Material:

2 NMAC 80.200, Paragraph 60.5, 60.6, 60.7 - Repealed, 11/15/1997.

2 NMAC 80.200, Paragraph 70.2.1, 70.2.2 - Repealed, 11/15/1997.

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, 12/15/1999.

2.80.200 NMAC, Organization and Operation of the Public Employees Retirement Board, filed 12/28/2000 - Repealed effective 12/30/2015.

TITLE 2 PUBLIC FINANCE
CHAPTER 80 PUBLIC EMPLOYEES RETIREMENT
PART 1800 EXECUTIVE DIRECTOR

2.80.1800.1 ISSUING AGENCY: Public Employees Retirement Association, [~~P. O. Box 2123~~] 33 Plaza La Prensa, Santa Fe, New Mexico 87504-2123
[10/15/1997; 2.80.1800.1 NMAC - Rn, 2 NMAC 80.1800.1, 12/28/2001; A, XX/XX/XXXX]

2.80.1800.2 SCOPE: This rule applies to the retirement board and the executive director under the Public Employees Retirement Act. This rule affects the members, former members, retirees, beneficiaries, public employers and the association under the Public Employees Retirement Act.
[10/15/1997; 11/15/1997; 2.80.1800.2 NMAC - Rn, 2 NMAC 80.1800.2, 12/28/2001]

2.80.1800.3 STATUTORY AUTHORITY: This rule is authorized by Section 10-11-130, 10-11-131 NMSA 1978, as amended.
[10/15/1997; 2.80.1800.3 NMAC - Rn, 2 NMAC 80.1800.3, 12/28/2001]

2.80.1800.4 DURATION: Permanent.
[10/15/1997; 2.80.1800.4 NMAC - Rn, 2 NMAC 80.1800.4, 12/28/2001]

2.80.1800.5 EFFECTIVE DATE: July 1, 1993 unless a different date is cited at the end of a section.
[10/15/1997; 2.80.1800.5 NMAC - Rn, 2 NMAC 80.1800.5, 12/28/2001]

2.80.1800.6 OBJECTIVE: The objective of this rule is to clarify the authority of the executive director, and to provide for an annual evaluation of the executive director by the retirement board.
[10/15/1997; 11/15/1997; 2.80.1800.6 NMAC - Rn, 2 NMAC 80.1800.6, 12/28/2001]

2.80.1800.7 DEFINITIONS: [RESERVED]

2.80.1800.8 GENERAL PROVISIONS

A. The board, at a regular meeting, shall employ an executive director who shall serve at the pleasure of the board and at a salary set by the board. The executive director shall be the chief administrative officer of the board and of the association and serve as a fiduciary to the retirement fund. He or she shall attest to official actions of the board when required [~~and shall serve at the pleasure of the board~~].

B. The executive director is authorized to approve duly executed applications for affiliation by public employers, and applications for normal, disability and survivor pensions in order to insure timely processing of retirement pensions. In cases of disability retirement applications, approval by the disability review committee is necessary prior to approval by the executive director. All approvals by the executive director for pensions must be submitted for ratification by the board at its next regular meeting.

C. The executive director is authorized to perform any acts required of the board pursuant to a proper delegation of authority and rules and policies and procedures adopted by the board.

D. The board shall conduct an annual written evaluation of the executive director by the anniversary date of the appointment of the executive director.

E. The executive director shall adhere to the standards set forth in and be subject to the enforcement provisions of the New Mexico Governmental Conduct Act.

[10/15/1997; 11/15/1997; 2.80.1800.8 NMAC - Rn, 2 NMAC 80.1800.8, 12/28/2001; A, XX/XX/XXXX]

2.80.1800.9 CONDUCT OF BUSINESS

A. The business affairs of the board shall be conducted by the executive director within the authority outlined by the public employees retirement act and rules and policies and procedures adopted by the board.

B. On behalf of the board, the executive director is authorized to execute vouchers, delegate others to execute vouchers, buy and sell, or assign, or otherwise acquire or dispose of stocks, bonds, notes, or other securities held by the board, and execute such other documents as may be necessary to the administration of the public employees retirement act.

C. The executive director shall obtain the board's approval before requesting a formal opinion interpreting the law from the attorney general. The director may, however, obtain advice, either oral or written, from the attorney general as the need may arise.

D. The executive director is authorized to decide whether the association will seek lead plaintiff status in securities class action lawsuits in order to ensure a timely decision is made in accordance with applicable deadlines set out by the court. The executive director shall promptly apprise the board chair of such decisions. All such decisions shall be presented at the next board meeting and the board may ratify or reject the executive director's decision. If the board rejects the executive director's decision, the association shall seek to remove itself from lead plaintiff status.

E. The executive director may recommend and propose repeal, replacement, amendments, or new rules for action by the board. Any such recommendation shall be provided to each board member with the agenda for the meeting at which the recommendation will be considered, within a reasonable time, prior to being considered by the board.

[2.80.1800.9 NMAC – N, XX/XX/XXXX]

2.80.1800.10 ADMINISTRATIVE BUDGETS:

A. The executive director shall prepare budgets and requests for appropriations, which shall be considered and approved by the board prior to submission to the department of finance and administration or legislature.

B. The executive director shall annually prepare an organizational chart coincident with the adoption of the budget. This chart shall include a description of all positions required for the operation of the association, and the executive director shall be responsible for staffing these positions. This responsibility shall include the authority for the employment, promotion, demotion and dismissal of all employees.

[2.80.1800.10 NMAC – N, XX/XX/XXXX]

2.80.1800.11 ACTUARY:

The executive director shall contract with an actuarial firm to be engaged for the purpose of performing routine actuarial services and annual actuarial valuations to be provided for in a contract to be approved by the board, subject to compliance with the procurement code rules and procedures.

[2.80.1800.11 NMAC – N, XX/XX/XXXX]

HISTORY of 2.80.1800 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 1800.0, Executive Secretary, filed on 10/21/1988; PERA Rule 1800, Executive Secretary, filed on 7/1/1993.

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

2.80.2100.1 ISSUING AGENCY: Public Employees Retirement Association (PERA), 33 Plaza La Prensa, Santa Fe, New Mexico 87507
[2.80.2100.1 NMAC - Rp, 2.80.2100.1 NMAC, 12/30/2015]

2.80.2100.2 SCOPE: This rule affects the members, public employers, retirement board and the association under the Public Employees Retirement Act.
[2.80.2100.2 NMAC - Rp, 2.80.2100.2 NMAC, 12/30/2015]

2.80.2100.3 STATUTORY AUTHORITY: This rule is authorized by Sections 10-11-124, 10-11-129 and 10-11-130 NMSA 1978, as amended.
[2.80.2100.3 NMAC - Rp, 2.80.2100.3 NMAC, 12/30/2015]

2.80.2100.4 DURATION: Permanent.
[2.80.2100.4 NMAC - Rp, 2.80.2100.4 NMAC, 12/30/2015]

2.80.2100.5 EFFECTIVE DATE: December 30, 2015, unless a different date is cited at the end of a section.
[2.80.2100.5 NMAC - Rp, 2.80.2100.5 NMAC, 12/30/2015]

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.
[2.80.2100.6 NMAC - Rp, 2.80.2100.6 NMAC, 12/30/2015]

2.80.2100.7 DEFINITIONS:

A. "Another qualified plan" for the purposes of the direct rollover provisions in Subsection C of Section 10-11-124 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 10 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 two hundred dollars (\$200) during the year.

[2.80.2100.7 NMAC - Rp, 2.80.2100.7 NMAC, 12/30/2015]

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 Section 45-3-1201 NMSA 1978.

(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 Section 10-11-136 NMSA 1978,, 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 Subsection H of Section 10-11-7 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 United States 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.

[2.80.2100.8 NMAC - Rp, 2.80.2100.8 NMAC, 12/30/2015]

2.80.2100.9 UNCLAIMED CONTRIBUTIONS:

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

- (1) the member has applied for and received a refund of member contributions;
- (2) a balance of five hundred dollars (\$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 60 days of the mailing.

B. A deceased member's accumulated member contributions, plus interest, shall constitute unclaimed member contributions, pursuant to Section 10-11-128 NMSA 1978, 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 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 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.

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

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

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.

G. For the limited purpose of receiving a form 1099 to file taxes for a deceased member, PERA will accept a notarized affidavit from the member's surviving representative. The affidavit shall include the deceased member's social security number, an identification of the relationship between the deceased member and surviving representative, and an affirmation that the request for the form 1099 is for the purpose of settling the affairs or filing taxes for the deceased member.

[~~G.~~ H. 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 - Rp, 2.80.2100.9 NMAC, 12/30/2015; A, XX/XX/XXXX]

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 7/1/1993; PERA Rule 2100, Member Contributions, filed on 11/1/1994.

History of Repealed Material:

2.80.2100 NMAC, Member Contributions, filed 12-28-2000 - Repealed effective 12/30/2015.