



INVESTED IN TOMORROW.

Rules & Administration Committee Meeting

PERA Building • Senator Fabian Chavez, Jr. Board Room
33 Plaza La Prensa • Santa Fe, NM 87507

Tuesday, June 13, 2023

following SmartSave Committee

Committee Members

Paula Fisher, *Chair*

Diana Rosales-Ortiz, *Vice Chair*

Valerie Barela

Francis Page

Shirley Ragin

AGENDA

1. Call to Order

2. Roll Call

3. Approval of Agenda

4. New Business

A. 2023 PERA Rulemaking

1. Board Memo Regarding Rule Changes
2. Approval of Proposed Rulemaking Schedule
3. Approval of Notice of Proposed Rulemaking
4. Proposed Rule Changes
 - a. 2.80.1000 - Disability Rule
 - b. 2.80.700 - Supplemental Needs Trust
 - c. 2.80.900 - Supplemental Needs Trust
 - d. 2.83.700 - Supplemental Needs Trust
 - e. 2.83.800 - Supplemental Needs Trust
 - f. 2.84.700 - Supplemental Needs Trust
 - g. 2.84.800 - Supplemental Needs Trust
 - h. 2.80.700 - IRS Required Beginning Dates
 - i. 2.83.700 - IRS Required Beginning Dates
 - j. 2.84.700 - IRS Required Beginning Dates

Action

Action

Action

Paula Fisher, Rules &
Administration Chair;
Anthony Montoya,
General Counsel;
Geraldine Gardunno,
Assistant General Counsel;
Misty Schoeppner,
Deputy General Counsel

5. Adjournment

Any person with a disability who is 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 or meeting, please contact Trish Winter at 505-795-0712 or patriciab.winter@pera.nm.gov at least one week prior to the meeting, 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.



INVESTED IN TOMORROW.

TO: Paula Fisher, Rules and Administration Committee Chair
Diana Rosales Ortiz, Rules and Administration Committee Vice Chair
Claudia Armijo
Greg Trujillo, Executive Director

FROM: Anthony Montoya, General Counsel
Geraldine Garduno, Assistant General Counsel

RE: PERA Proposed Rule Changes 2023-Disability Rule 2.80.1000 NMAC;
Supplemental Needs Trusts as Beneficiaries Rules 2.80.700, 2.80.900, 2.83.700,
2.83.800, 2.84.700, 2.84.800; Required Beginning Date for Distributions Rules
2.80.700, 2.83.700, 2.84.700.

DATE: June 9, 2023

This memo outlines Staff's recommendation for its proposed amendments to Rule 2.80.1000, PERA's Disability Retirement Benefits Rule concerning the disability application and reevaluation process, to Rules 2.80.700, 2.80.900 2.83.700, 2.83.800, 2.84.700 and 2.84.800 regarding the required forms submitted for beneficiaries and 2.80.700, 2.83.700, 2.84.700 to ensure compliance with current Internal Revenue Code requirements concerning the age a member must begin to take distributions from their retirement. Included with this memo is Staff's proposed schedule for the rulemaking, a copy of the proposed Notice of PERA Rulemaking, and the proposed amendments to the rules with additions underlined and deletions in strikethrough.

Disability Rule 2.80.1000

The proposed amendments would facilitate the disability application process for PERA members in two ways, by allowing a Certified Nurse Practitioner or Physician's Assistant to complete an examining physician's statement and by allowing more time for applicants to obtain additional medical records requested by the Doctor's Review Committee. The goal is to maintain a rigorous review process for disability applicants while also addressing the current issues with access to health care in New Mexico.

Rule 2.80.1000.30 (A) (2) would be amended to state:

Member's examining physician's statement for disability retirement benefits. If the application is for disability retirement based on physical incapacity, the examining physician must be a medical doctor (M.D.), doctor of Osteopathic Medicine (D.O.), certified nurse practitioner (CNP) or a physician's assistant (PA). An M.D., D.O. or CNP must be licensed in the state in which he or she practices. If the application is for disability retirement based on mental incapacity, the examining physician must be either a psychologist (Ph.D.) certified in the state in which he or she practices, ~~[or]~~ a psychiatrist (M.D.), or certified nurse practitioner (CNP) licensed in the state in which he or she practices. If the application is for disability retirement based on both physical and mental incapacity, reports must be made for each kind of incapacity. The examining physician's statements shall be based on an examination of the member not more than 3 months prior to the date of submitting the application.

This proposed rule change would authorize CNPs and PAs to complete an examining physician's statement and reflects the increase in the number of New Mexicans who utilize CNPs or PAs as their primary care provider due to a shortage of physicians. In New Mexico, Certified Nurse Practitioners and Certified Nurse Psychiatrists are independently licensed and may prescribe medications and provide primary care. See NMSA 1978, Section 61-3-23.2(B). Although not independently licensed in New Mexico, a PA is a medical support specialist who assesses, diagnoses and provides care for patients. They have training to treat illnesses under the supervision of a doctor and often are the primary care providers for their patients.

Rule 2.80.1000.30 (B) would be amended to state:

If information requested by members of the committee is not provided by the disability applicant within ~~[60]~~ (120) days of the written request, the application, if otherwise complete, will be considered by the committee in the absence of the requested information and the applicant's failure to provide the requested information may be considered by the committee in its consideration of the application.

Disability applicants are increasingly being denied due to an inability to schedule required appointments to obtain the information requested by the Doctor's Review Committee within the timeframe of the rule (currently 60 days). The rule has been administratively extended to 90 days but many applicants are still unable to obtain the required appointments or information. This rule would be amended to allow an additional 60 days for members to provide the information, for a total of 120 days from the date of the request.

As it relates to the reevaluation process, Rule 2.80.1000.50 (C) (1) would be amended to state:

- (1)** Examining physician's statement for continuation of disability retirement pension. If disability retirement was granted based on mental incapacity, the examining physician must be either a psychologist (Ph.D.) certified in the state in which he or she practices, ~~[or]~~ a psychiatrist (M.D.), or a certified

nurse practitioner (CNP) licensed in the state in which he or she practices. If the disability retirement was granted based on both physical and mental incapacity, reports must be made for each kind of incapacity by the appropriate health care professionals. The examining physician's statements shall be based on an examination of the disability retired member not more than three months prior to the date of consideration of the re-evaluation;

The changes above are to make the rule consistent with the changes to part (A) (2).

Supplemental Needs Trust Rules 2.80.700, 2.80.900, 2.83.700, 2.83.800, 2.84.700 and 2.84.800

The proposed amendments are in response to the passage of House Bill 304 during the 2023 New Mexico Legislative Session. This legislation allows members to name a supplemental needs trust as a survivor or refund beneficiary. PERA rules currently require a survivor beneficiary to submit numerous forms of documentation that would not be relevant or applicable to a trust. This proposed rule change requires alternative documents to be provided relating to the formation and purpose of a trust to allow PERA to administer the newly effective law.

Rule 2.80.700.10 (B) would be amended to state:

B. The retiring member shall furnish the following documents to PERA:

- (1) Proof of age of the member and any designated beneficiary or beneficiaries or the proof of age for a beneficiary to a supplemental needs trust. Acceptable documents are a birth certificate, a baptismal certificate, a religious record of birth established before age 5 years, a current passport, a current New Mexico driver's license or a current New Mexico motor vehicle division issued identification card, or any two of the following documents showing the date of birth of the member or designated beneficiary or beneficiaries:
 - (a) copy of a life or automobile insurance policy;
 - (b) current voter registration or voter identification record;
 - (c) tribal census record;
 - (d) childhood immunization record made prior to age eighteen (18) years;
 - (e) military record, including a valid United States active-duty, retiree or reservist military identification card;
 - (f) birth certificate of child showing age of parent;
 - (g) physician's or midwife's record of birth;
 - (h) immigration record;
 - (i) naturalization record;
 - (j) social security records.
- (2) For any designated beneficiary to be identified as a spouse, a copy of a marriage certificate, other proof of marital status acceptable in a court of law or any two of the following documents showing marital status:
 - (a) financial institution or bank records;

(b) joint real estate deeds or mortgages;

(c) insurance policies.

(3) For any designated beneficiary to be identified as a supplemental needs trust, a copy of the documents related to the formation of the trust and an affidavit from the trustee that the trust is formed as a supplemental needs trust as authorized by the federal Social Security Act. Additional information may be required by the association to ascertain the purpose and function of the trust to ensure compliance with the PERA Act.

This proposed rule change would maintain the requirement that proof of age is submitted for a beneficiary to a supplemental needs trust. This would allow PERA to complete an actuarial assumption regarding benefits. The change would also require that documents be submitted relating to the formation and purpose of the trust to ensure it fits within the narrow definition that has been added to the Public Employees Retirement Act.

2.80.900.8 (B) would be amended to state:

B. The completed application shall be returned to PERA with the following documents:

(1) A certified copy of the death certificate or other proof of death acceptable in a court of law.

(2) Copy of marriage license or other proof of marital status acceptable in a court of law if the application is for a surviving spouse.

(3) Affidavit of surviving spouse that he or she and the deceased member were married at the time of death and stating whether there are any surviving minor children of the deceased member.

(4) Proof of age of the surviving spouse, surviving minor children or other designated beneficiary or the proof of age for a beneficiary to a supplemental needs trust. Acceptable documents for proof of age shall be a birth certificate, a baptismal certificate, a copy of a life insurance policy, a certified copy of a voter registration issued over ten (10) years prior, or proof of age meeting a standard at least equivalent to that applied by the social security administration.

(5) Documents required under the Probate Code for payments to a minor if the application is on behalf of eligible surviving children.

(6) Affidavit that the applicant or beneficiary of a special needs trust is unmarried if the applicant is a child of the deceased member or a supplemental needs trust formed for the benefit of a child of the deceased member.

(7) Copies of social security cards for all prospective payees.

(8) If the member has been divorced, the applicant shall provide PERA with complete endorsed copies of all court documents the association deems necessary to ascertain the marital status of the member at the time of death and

whether any ex-spouse of the member is entitled to any portion of any benefits payable. 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.

(9) a copy of the documents related to the formation of the supplemental needs trust, an affidavit from the trustee that the trust is formed as a supplemental needs trust as authorized by the federal Social Security Act and any additional information requested by the association if the application is on behalf of a supplemental needs trust.

This proposed rule change mirrors the change to 2.80.700 to allow PERA to obtain the relevant documents for a supplemental needs trusts to process a pre-retirement survivor pension. These rule changes are primarily technical changes to conform rule and the administration of these rules to statute.

In addition to the changes to the Public Employees Retirement Act, the legislation created identical changes to both the Judicial Retirement Act and the Magistrate Retirement Act. Due to these statutory changes, corresponding changes that are nearly identical are proposed to both acts to correspond with the changes to the Public Employees Retirement Act. These changes would be made to Rules 2.83.700.10 (B), Rule 2.83.800.10 (B), 2.84.700.10 (B) and Rule 2.84.800.8 (B)

Required Beginning Date Rules 2.80.700, 2.83.700 and 2.84.700

Recent legislative changes at the federal level to the Internal Revenue Code were enacted that altered the age at which a member of a qualified pension plan is required to take a distribution from their retirement. The current rule is no longer in compliance with that federal requirement. For the next decade that age will be seventy-three years of age, at which time it will automatically increase to seventy-five years of age. Rather than place specific ages within the rule, it is proposed to include a reference to the federal definition for "required beginning date" to ensure continued compliance.

Rule 2.80.700.20 (A), (B) and (C) would be amended to state:

The maximum annual benefit limits contained in Internal Revenue Code Section 415(b), as amended and adjusted, are incorporated herein by reference. Notwithstanding any other provision of the PERA Act and regulations, all benefits paid from the PERA trust fund shall be distributed in accordance with the requirements of Internal Revenue Code Section 401(a)(9) and the regulations under that section. In order to meet these requirements, the trust fund must be administered in accordance with the following provisions:

- A. The entire interest of the member shall:
- (1) be completely distributed to the member not later than the required beginning date ~~[defined in subsection (B) below]~~, or
 - (2) shall be distributed, beginning not later than the required beginning date, in accordance with internal revenue service regulations, over a period not extending beyond the life expectancy of such member or the life expectancy of such member and a designated beneficiary.
- ~~[B. Distribution of a member's benefit must begin by the "required beginning date," which is defined as the later of the:~~
- ~~(1) April 1 of the calendar year following the calendar year in which the member attains the age of seventy and one-half (70½), or~~
 - ~~(2) April 1 of the calendar year after the calendar year in which the member retires.]~~
- B. For the purposes of this section, "required beginning date" shall be defined in the same manner as the term "required beginning date" is defined in the Internal Revenue Code Section 401(a)(9) and the regulations under that section.
- C. The life expectancy of the member or the member's ~~[spouse]~~ beneficiary may not be recalculated after the benefits commence.

Corresponding changes identical to those shown above are proposed for Judicial Retirement and Magistrate Retirement. These changes would be made to Rule 2.83.700.20 (A), (B) and (C) and Rule 2.84.700.20 (A), (B) and (C).

PROPOSED RULEMAKING TIMELINE-DISABILITY CHANGES

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| Draft rule amendments | June 2023 |
| Memo to Rules and Administration Committee (RAC) | June 9, 2023 |
| Agenda for RAC Posted | June 9, 2023 |
| RAC meeting | June 13, 2023 |
| Memo to Board re rule amendments | July 7, 2023 |
| Agenda for Board meeting posted | July 7, 2023 |
| Draft rule amendments presented at Board meeting | July 13, 2023 |
| Board action taken by vote on initiating rulemaking | July 13, 2023 |
| Final draft of rule amendments | July 13, 2023 |
| Proposed rule and notice of rulemaking submitted to NM Register | July 20, 2023 |
| Proposed rule and notice of rulemaking published in NM Register | July 31, 2023 |
| Proposed rule and notice of rulemaking *also posted on agency website, sunshine portal, PERA offices, and as otherwise required | July 31, 2023 |
| Public comment period | Starts on July 31, 2023 |
| Posting of written comments | Starts on July 31, 2023 |
| Public hearing held by RAC | September 12, 2023 |
| Close of rulemaking record | On September 12, 2023 |
| Compile rulemaking record | After September 12, 2023 |
| Concise explanatory statement and final rule docs prepared | After September 12, 2023 |
| Agenda for Board meeting posted | September 22, 2023 |
| Board adopts, amends or rejects proposed rule | September 28, 2023 |
| Concise explanatory statement provided to public | September 28, 2023 |

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| Transmit rule to the State Records Center and Archives | On September 28, 2023 |
| Submission due date for publication in NM Register | September 28, 2023 |
| Final regulation published; rule effective date of publication | October 10, 2023 |

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 2.80.1000 “Disability Retirement Benefits”;
2. Rule 2.80.700 “Normal Retirement”; and,
3. Rule 2.80.900 “Pre-Retirement Survivor Pensions”
4. Rule 2.83.700 “Retirement”
5. Rule 2.83.800 “Survivor Pension”
6. Rule 2.84.700 “Retirement”
7. Rule 2.84.800 “Survivor Pension”

Rule 1000 would be amended to allow a Certified Nurse Practitioner or Physician’s Assistant to complete an examining physician’s statement and to allow more time for applicants to obtain additional medical records requested by the disability review committee.

Rules 700, 800, and 900 would be amended to allow members to name a supplemental needs trust as a survivor beneficiary in response to the passage of House Bill 304 during the 2023 New Mexico legislative session and to ensure compliance with recent federal changes to the Internal Revenue Code which altered the age that a member of a qualified pension plan is required to take a distribution from their retirement. Each rule would be reformatted as necessary.

A formal rulemaking hearing will be held on September 12, 2023, at 9:00 a.m. in the Fabian Chavez Jr. Board Room of the PERA Building, 33 Plaza La Prensa, Santa Fe, New Mexico, 87507. 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 September 2023 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. The purpose of the rulemaking hearing is to obtain public input on the proposed amendment 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 rules change to the disability rule is to maintain a rigorous review process for disability applicants while addressing the current issues with access to health care in New Mexico. The purpose of the proposed rule change to the retirement rule is to align the rule with the requirements of House Bill 304 and allow members to name a supplemental needs trust as a survivor beneficiary and to identify the documents required by PERA for the same.

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 Geraldine Garduno at PERA’s Office of General Counsel, 33 Plaza La Prensa, Santa Fe, N.M., 87507, or geraldine.garduno@pera.nm.gov or 505-476-9351. Written comments should be submitted by the close of business on September 12, 2023. 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/about/rule-proposal/>.

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 Patricia Winter at 505-795-0712 or patriciab.winter@pera.nm.gov 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 1000 DISABILITY RETIREMENT BENEFITS

2.80.1000.1 ISSUING AGENCY: Public Employees Retirement Association, P. O. Box 2123, Santa Fe, New Mexico 87504-2123

[10/15/1997; 2.80.1000.1 NMAC - Rn, 2 NMAC 80.1000.1, 12/28/2000]

2.80.1000.2 SCOPE: This rule affects the members, disability retirees, beneficiaries, affiliated public employers, the retirement board and the association under the Public Employees Retirement Act.

[10/15/1997; 2.80.1000.2 NMAC - Rn, 2 NMAC 80.1000.2, 12/28/2000; A, 9/30/2003]

2.80.1000.3 STATUTORY AUTHORITY: Sections 10-11-10.1 and 10-11-130 NMSA 1978.

[10/15/1997; 2.80.1000.3 NMAC - Rn, 2 NMAC 80.1000.3, 12/28/2000]

2.80.1000.4 DURATION: Permanent.

[10/15/1997; 2.80.1000.4 NMAC - Rn, 2 NMAC 80.1000.4, 12/28/2000]

2.80.1000.5 EFFECTIVE DATE: December 15, 1995, unless a different date is cited at the end of a section.

[10/15/1997; 2.80.1000.5 NMAC - Rn & A, 2 NMAC 80.1000.5, 12/28/2000]

2.80.1000.6 OBJECTIVE: The objectives of this rule are to define terms used in the disability retirement provision of the PERA Act; to set forth with particularity the membership of the committee; to clarify the compensation applicable to various members of the committee; to set forth procedures for initial disability retirement applications and for reevaluation of retirees' continued eligibility for disability payments; to provide a procedure for trial employment; and to provide for notice to retirees of pension reclassifications. The intent of the board in promulgating these rules is to encourage continued employment of members while providing protection in cases of disability. Vocational rehabilitation is strongly recommended in every case possible.

[10/15/1997; 2.80.1000.6 NMAC - Rn, 2 NMAC 80.1000.6, 12/28/2000]

2.80.1000.7 DEFINITIONS: For purposes of disability retirement the following definitions shall apply:

A. "Commensurate" employment means that the applicant is able to engage in some profitable employment or enterprise in the state of New Mexico, which approximates to a substantial degree the applicant's pre-injury compensation but is not necessarily equal to the applicant's pre-injury employment.

B. "Course of the member's performance of duty" means place or activity for which the employer's business requires the presence of the employee, but shall not include travel or time on the way to assume the duties of employment or travel or time leaving such duties, except when the employee is temporarily assigned to a destination other than his or her normal work station or is within the "special errand" rule, in which case such time will be considered to be in the course of employment. Mere presence on the employer's premises while coming to or going from the job shall not establish this element unless the member has also assumed or is performing job duties.

C. "Currently employed, contributing employee of an affiliated public employer," in the case of an applicant for duty disability benefits, means the employment and contribution status on the date the disability was incurred.

D. "Likely to be permanent" means that the weight of the medical evidence presented indicates that the applicant has either reached maximum medical improvement and the disability will probably last at least until the applicant reaches the age at which he or she will become eligible for normal retirement or that the medical information supports a determination of permanent disability, even though maximum medical improvement has not been reached.

E. "Solely and exclusively" means the member's work is so substantial a factor of the disability that the disability would not have occurred at the time without it and a pre-existing condition is not a significant contributing factor material to the disability.

F. "Totally incapacitated" means inability, as a result of either sudden injury or illness or the cumulative long-term effects of injury or illness, to work the member's regular work week.

[10/15/1997; 1/15/1999; 2.80.1000.7 NMAC - Rn, 2.80.1000.7 NMAC, 12/28/2000; A, 8/15/2001; A, 9/30/2003; A, 9/30/2010]

2.80.1000.8-19 [RESERVED]

2.80.1000.20 DISABILITY REVIEW COMMITTEE:

A. The disability review committee shall consist of at least one physician licensed in New Mexico and at least three, but not more than five members of the board; the physician need not be either a board member or association member, but may be either or both. The committee may also engage a psychologist (Ph.D.) or a psychiatrist (M.D.) licensed in New Mexico to serve on an as-needed basis to evaluate and advise the committee regarding applications for disability retirement based in whole or in part on mental incapacity.

B. The executive director or designated representative shall act as secretary for the committee.

C. Compensation: Members of the committee shall receive no compensation other than that authorized by the Per Diem and Mileage Act, except that physicians, psychiatrists or psychologists who are not board or association members and are engaged by the board to serve on the committee may be compensated at the rate established by the board.

[10/15/1997; 11-15-97; 2.80.1000.20 NMAC - Rn, 2 NMAC 80.1000.20, 12/28/2000; A, 8/15/2001]

2.80.1000.21-29 [RESERVED]

2.80.1000.30 INITIAL APPLICATION PROCEDURE:

A. Application. The association shall provide application forms for members to use in complying with these provisions. No member shall be deemed an applicant for disability retirement until the member or his or her representative or employer has completed and filed the disability application package, including all the forms required in order to process the application. The following forms shall be required in order to process the application:

(1) Employer's report of disability (not applicable to members who are not currently employed contributing members). If the employer refuses to provide the report, the committee may take whatever steps it deems necessary to obtain the required information.

(2) Member's examining physician's statement for disability retirement benefits. If the application is for disability retirement based on physical incapacity, the examining physician must be a medical doctor (M.D.), doctor of osteopathic medicine (D.O.), certified nurse practitioner (CNP), or a physician's assistant (PA). An M.D., D.O., or CNP must be licensed in the state in which he or she practices. If the application is for disability retirement based on mental incapacity, the examining physician must be either a psychologist (Ph.D.) certified in the state in which he or she practices, ~~a~~ a psychiatrist (M.D.), or certified nurse practitioner (CNP) licensed in the state in which he or she practices. If the application is for disability retirement based on both physical and mental incapacity, reports must be made for each kind of incapacity. The examining physician's statements shall be based on an examination of the member not more than 3 months prior to the date of submitting the application.

(3) Employer's first report of injury, if any.

(4) A list of all health care practitioners consulted who have examined or treated the member regarding the disability and all records, reports, narratives, evaluations, diagnoses, prognoses or notes discussing, establishing, evaluating or measuring the disability. Such records shall include, but not be limited to, one or more reports, evaluations, analyses or narratives made within 90 days of application.

(5) Copies of any and all vocational rehabilitation reports and work performance evaluation reports made since the disability was incurred.

(6) Release of medical information to PERA on a form signed by the applicant or his or her legal representative.

(7) Any other information requested by members of the committee.

B. If information requested by members of the committee is not provided by the disability applicant within ~~[60]~~ 120 days of the written request, the application, if otherwise complete, will be considered by the committee in the absence of the requested information and the applicant's failure to provide the requested information may be considered by the committee in its consideration of the application.

C. Notification: The applicant shall be given notice of every meeting at which his or her application is to be considered. Such notice shall be in writing and mailed not less than five days prior to such disability review committee meeting, unless the applicant waives, in writing, the notification requirement in order to expedite any action on his or her application.

D. Meetings: The committee shall hold its regular meetings at designated times at the PERA building, Santa Fe, New Mexico. A majority of the committee members, at least one of whom must be a physician, shall constitute a quorum. No action may be taken by the committee in the absence of a quorum.

(1) Confidentiality: Meetings of the committee shall not be open to the public in order to preserve the confidentiality of medical records pursuant to Section 14-2-1 NMSA 1978. The applicant and the applicant's guest(s) or representative may be present to hear discussion and to address the committee during consideration of his or her application.

(2) Testimony and oral statements or arguments made by an applicant or his or her representative shall be tape recorded.

E. Release of medical reports: Copies of medical reports may be given to the applicant or his or her representative, provided a release of information form is signed by the applicant or his or her legal representative.

F. Examination: Upon receipt and consideration of the completed disability retirement forms required in 30.A above, the committee may notify the applicant in writing if further examination is necessary, and if so, the type of examination and information necessary to document the disability application. If, after the applicant has been notified in writing, the applicant fails without good cause to report to an examining physician within 90 days, his or her application for disability retirement benefits shall become void.

G. The committee shall determine whether the applicant meets the requirements for disability retirement, and approve or deny the application. The applicant shall be notified by letter of the committee's action within 10 working days of its meeting. If the application is approved, the type (duty or non-duty) of the retirement pension and the effective date shall be submitted to the board for ratification at the next regular meeting following the effective date of retirement.

H. If the application for disability retirement is approved, the member, unless excluded from coverage by the federal social security administration, shall apply for federal disability benefits within 30 calendar days of approval of the application for disability retirement. A copy of the federal social security administration application shall be submitted to PERA.

I. If an application for disability retirement benefits is approved and the member does not terminate employment within 45 calendar days, a new application must be filed and approved by the committee before a disability retirement pension can be paid.

J. If an application for disability retirement benefits is denied, and the applicant either fails to appeal or appeals and the denial is upheld on appeal, the applicant may re-apply and present new medical evidence in support of a new application for disability retirement benefits based on the same disorder one year after the date of the initial denial. The applicant may not re-apply for disability benefits for the same medical condition without new medical evidence made within 90 days of the re-application.

[10/15/1997; 11/15/1997; 1/15/1999; 12-15-99; 2.80.1000.30 NMAC - Rn, 2 NMAC 80.1000.30, 12/28/2000; A, 8/15/2001; A, 9/30/2003]

2.80.1000.31-39 [RESERVED]

2.80.1000.40 APPEAL: If the committee denies disability retirement benefits, the applicant may appeal the action. Any appeals under this section shall be conducted according to Section 10-11-120 NMSA 1978 and 2.80.1500 NMAC. An applicant's withdrawal or refund of contributions at any time before or during the pendency of an appeal causes the forfeiture of service credit and shall result in the automatic dismissal of the appeal and the issuance of a notice of dismissal.

[10/15/1997; 2.80.1000.40 NMAC - Rn, 2 NMAC 80.1000.40, 12/28/2000; A, 9/30/2010]

2.80.1000.41-49 [RESERVED]

2.80.1000.50 CONTINUATION PROCEDURE:

A. At the end of the first year that a disability retirement pension is paid, the disability retired member's condition shall be reevaluated to determine eligibility for continuation of payment of a disability retirement pension.

B. The disability retired member must submit a copy of the application for benefits with the federal social security administration and written evidence of payment of federal disability benefits in the following form: 1) a copy of a warrant for federal disability benefits; or 2) a letter from the federal social security administration confirming that the disability retired member is receiving federal disability benefits.

C. If the disability retired member has not applied for federal disability benefits, has applied and has not received a written final determination, or has received federal social security disability for a different condition than presented in the application for PERA disability, the committee shall determine the disability retired member's eligibility for continuation of payment of a state disability retirement pension. The following forms and information are required for re-evaluation for continuation of disability retirement benefits:

(1) Examining physician's statement for continuation of disability retirement pension. If disability retirement was granted based on mental incapacity, the examining physician must be either a psychologist (Ph.D.) certified in the state in which he or she practices, ~~or~~ a psychiatrist (M.D.), or a certified nurse practitioner (CNP) licensed in the state in which he or she practices. If the disability retirement was granted based on both physical and mental incapacity, reports must be made for each kind of incapacity by the appropriate health care professionals. The examining physician's statements shall be based on an examination of the disability retired member not more than three months prior to the date of consideration of the re-evaluation;

(2) Disability retired member's statement for continuation of disability retirement pension;

(3) A list of all health care practitioners consulted who have examined or treated the disability retired member regarding the disability;

(4) Copies of any and all vocational rehabilitation reports and work performance evaluation reports made since the disability was incurred. At re-evaluation for continuation of disability retirement benefits, at least one vocational rehabilitation report by a vocational rehabilitation evaluator approved by PERA must be submitted to the committee. In addition to any other vocational rehabilitation reports, if the disability retired member was referred by PERA to the division of vocational rehabilitation ("DVR") at the time of initial approval of disability retirement benefits, a report from DVR must be submitted at re-evaluation.

(5) Any other information requested by the committee.

D. Disability retired members whose examination reports are under consideration by the committee have the right to be heard by and to present any pertinent evidence which they may have to the committee. They may also review any and all evidence that the committee may have which pertains to their case.

E. Appeals of denial of continuation of disability retirement pensions by members who are not covered by or who are not eligible to apply for federal disability benefits shall be conducted according to Section 10-11-120 NMSA 1978, and 2.80.1500 NMAC.

F. If the disability retired member fails to appeal as provided herein the committee's decision becomes final.

G. If continuation of disability retirement benefits is denied, and the applicant either fails to appeal or appeals and the denial is upheld on appeal, the applicant may not re-apply for disability retirement benefits based on the same condition(s) for at least one year after the initial denial of continuation of disability retirement benefits. [10/15/1997; 1/15/1999; 2.80.1000.50 NMAC - Rn, 2 NMAC 80.1000.50, 12/28/2000; A, 9/30/2003]

2.80.1000.51-59 [RESERVED]

2.80.1000.60 TRIAL EMPLOYMENT:

A. A disability retired member who desires to return to employment for a trial period of not more than 120 calendar days shall first request, in writing, approval from the association not less than 30 days before the first day of work. The request for approval shall contain the following information:

- (1) name, address, and telephone number of the proposed employer;
- (2) job title;
- (3) salary;
- (4) trial employment start date.

B. If the disability retired member successfully completes a trial period of employment with an affiliated public employer, the disability retired member shall be reinstated as a PERA member and resume contributions to PERA.

[10/15/1997; 1/15/1999; 2.80.1000.60 NMAC - Rn, 2 NMAC 80.1000.60, 12/28/2000]

2.80.1000.61-69 [RESERVED]

2.80.1000.70 EARNINGS FROM EMPLOYMENT:

A. Except for trial employment, a disability retired member who desires to return to employment by an employer covered by any state system shall comply with the applicable rule regarding post-retirement

employment, Subsection G of 2.80.700.10 NMAC for PERA retirees, 2.84.1100.20 NMAC for magistrate retirees or 2.83.1100.20 NMAC for judicial retirees.

B. If the amount earned from any employment, except for trial employment, is \$15,000 or more, disability benefits shall be suspended immediately and any amounts paid after that limit is reached must be reimbursed by the retiree to PERA.

C. PERA shall require all disability retired members to provide a statement of earnings from any employment during the preceding calendar year. Such statement of earnings shall include the internal revenue service tax return or other proof of earnings, acceptable to PERA, if an IRS tax return does not exist.
[10/15/1997; 1/15/1999; 2.80.1000.70 NMAC - Rn & A, 2 NMAC 80.1000.70, 12/28/2000; A, 12/15/2009]

2.80.1000.71-79 [RESERVED]

2.80.1000.80 PENSION RECLASSIFICATION: When a disability retired member reaches the combined age and years of service that qualifies a member for normal retirement benefits under the coverage plan under which the disability retired member was last employed before receiving disability retirement benefits, PERA shall reclassify that person's pension from disability to normal retirement. The disability retired member shall be notified in writing by PERA of this action within 30 days of reclassification.

[10/15/1997, 1/15/1999; 2.80.1000.80 NMAC - Rn, 2 NMAC 80.1000.80, 12/28/2000]

HISTORY of 2.80.1000 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under: Rule 1000.00, Disability Benefits, filed on 10/4/1979; PERA Rule 1000.00, Disability Benefits, filed on 11/19/1881; PERA Rule 1000.00, Disability Benefits, filed on 11/23/1982; PERA Rule 1000.00, Disability Benefits, filed on 7/1/1987; PERA Rule 1000, Disability Benefits, filed on 10/21/1988; PERA Rule 1000, Disability Benefits, filed on 7/10/1990; PERA Rule 1000, Disability Benefits, filed on 7/1/1991; PERA Rule 1000, Disability Retirement Benefits, filed on 7/1/1993; PERA Rule 1000, Disability Retirement Benefits, filed on 12/1/1995.

History of Repealed Material:

2 NMAC 80.1000, Paragraph 60.2 - Repealed 1/15/1999

TITLE 2 PUBLIC FINANCE
CHAPTER 80 PUBLIC EMPLOYEES RETIREMENT
PART 700 NORMAL RETIREMENT

2.80.700.1 ISSUING AGENCY: Public Employees Retirement Association, P. O. Box 2123, Santa Fe, New Mexico 87504-2123
[10-15-97; 2.80.700.1 NMAC - Rn, 2 NMAC 80.700.1, 12-28-00]

2.80.700.2 SCOPE: This rule affects the members, retirees, beneficiaries, affiliated public employers, and the association under the Public Employees Retirement Act.
[10-15-97; 2.80.700.2 NMAC - Rn, 2 NMAC 80.700.2, 12-28-00]

2.80.700.3 STATUTORY AUTHORITY: This rule is authorized by NMSA 1978, Sections 10-11-8, 10-11-116, 10-11-130, 10-11-136, as amended.
[10-15-97; 2.80.700.3 NMAC - Rn, 2 NMAC 80.700.3, 12-28-00]

2.80.700.4 DURATION: Permanent.
[10-15-97; 2.80.700.4 NMAC - Rn, 2 NMAC 80.700.4, 12-28-00]

2.80.700.5 EFFECTIVE DATE: November 1, 1994 unless a different date is cited at the end of a section.
[10-15-97; 2.80.700.5 NMAC - Rn, 2 NMAC 80.700.5, 12-28-00]

2.80.700.6 OBJECTIVE: The objective of this rule is to establish procedures for normal retirement.
[10-15-97; 11-15-97; 2.80.700.6 NMAC - Rn; 2 NMAC 80.700.6, 12-28-00]

2.80.700.7 DEFINITIONS: [Reserved]
[2.80.700.7 NMAC - Rn, 2 NMAC 80.700.7, 12-28-00]

2.80.700.8-9 [Reserved]

2.80.700.10 PROCEDURE FOR RETIREMENT

A.

(1) The member shall request an application for retirement from PERA. To insure that the member may retire on the date the member has chosen, the completed application should be returned to PERA, with the required documents described in subsection B below, at least 60 days prior to the selected date of retirement. The completed application and all supporting documentation must be filed with PERA no later than the close of business on the last working day of the month prior to the selected date of retirement. Any changes to an application for retirement that has already been submitted to PERA, including, but not limited to, retirement date, designation of survivor beneficiary or form of payment option, must be in writing and filed with PERA no later than the close of business on the last working day of the month prior to the selected date of retirement.

(2) PERA shall furnish the member an estimate of retirement pension payable under form of payment A within a reasonable time of receipt of the properly completed application and required documents. If the member also desires an estimate of retirement pension payable under forms of payment B, C and D, the member shall request such an estimate in writing.

(3) When the application is filed, PERA shall furnish the member's last affiliated public employer with an employer's certification of earnings form to be completed and returned to PERA. The final calculation of pension cannot be processed until PERA receives the properly completed employer's certification form.

(4) PERA will furnish the member a final calculation of retirement pension based on the information provided by the affiliated public employer.

(5) The completed application form must either include or be accompanied by a signed notarized statement of consent by the member's spouse to the form of payment and beneficiary elected by the member or an affidavit that the member is not married. An affidavit naming all former spouses must also accompany the final application form. If a married member does not provide spousal consent, the member shall execute an affidavit that:

- (a) states why the member has been unable to obtain spousal consent;
- (b) provides the most recent contact information for the member's spouse; and

(c) acknowledges that the member understands that because he or she is married and has not provided spousal consent, the PERA Act provides that the member will be retired under form of payment C with his or her spouse named as survivor beneficiary.

(6) The application shall be considered to be "filed" when PERA receives the completed application as evidenced by a writing on the application indicating the date of receipt by PERA.

(7) Retirement will be effective on the first day of the month following: a) the filing with PERA of the completed, signed application with all required documentation; b) the member's qualifying for retirement based on service and age; and c) the member's termination of covered employment with all employers covered by any state system or the educational retirement system.

(8) The retirement of the member shall be submitted to the board for ratification at the next regular meeting following the effective date of retirement.

B. The retiring member shall furnish the following documents to PERA:

(1) Proof of age of the member and any designated beneficiary or beneficiaries or the proof of age for a beneficiary to a supplemental needs trust. Acceptable documents are a birth certificate, a baptismal certificate, a religious record of birth established before age 5 years, a current passport, a current New Mexico driver's license or a current New Mexico motor vehicle division issued identification card, or any two of the following documents showing the date of birth of the member or designated beneficiary or beneficiaries:

- (a) copy of a life or automobile insurance policy;
- (b) current voter registration or voter identification record;
- (c) tribal census record;
- (d) childhood immunization record made prior to age eighteen (18) years;
- (e) military record, including a valid United States active-duty, retiree or reservist military identification card;

- (f) birth certificate of child showing age of parent;
- (g) physician's or midwife's record of birth;
- (h) immigration record;
- (i) naturalization record;
- (j) social security records.

(2) For any designated beneficiary to be identified as a spouse, a copy of a marriage certificate, other proof of marital status acceptable in a court of law or any two of the following documents showing marital status:

- (a) financial institution or bank records;
- (b) joint real estate deeds or mortgages;
- (c) insurance policies.

(3) For any designated beneficiary to be identified as a supplemental needs trust, a copy of the documents related to the formation of the trust and an affidavit from the trustee that the trust is formed as a supplemental needs trust as authorized by the federal Social Security Act. Additional information may be required by the association to ascertain the purpose and function of the trust to ensure compliance with the PERA Act.

~~[(3)]~~ (4) 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 benefits. 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.

~~[(4)]~~ (5) Any member with an effective retirement date on or after January 1, 2014 shall provide authorization to the association for the electronic transfer of pension payments to the retiree's banking institution. Such authorization shall be executed, in writing, in the form prescribed by the association.

C. No adjustments to the pension based on failure to claim free service credit may be made after the first pension payment.

D. The pension of a member who has earned service credit under more than one (1) coverage plan with different pension factors shall be calculated pursuant to Section 10-11-8(I), NMSA 1978. If a member has earned service credit under one (1) coverage plan on or before July 1, 2013 and under one (1) or more coverage plans after July 1, 2013 with different pension factors, each pension factor shall be used to calculate the member's pension. The coverage plan from which the member was last employed shall govern the age and service

requirements for retirement. Permissive service credit purchased pursuant to Section 10-11-7(H), NMSA 1978 cannot be used to determine final average salary, pension factor or pension maximum for pension calculation purposes.

E. Upon meeting the membership requirements in 2.80.400 NMAC, a member shall combine concurrent salaries received from two affiliated public employers. In the case of concurrent full-time and part-time employment or full-time and elected official service, service credit shall be earned only for the full-time employment. In the case of two part-time employments, service credit shall be earned only for the employment which has the lowest pension factor and pension maximum. In the case of concurrent employment, termination from all affiliated public employers is required before retirement. No combining of concurrent salary may occur for employees who are on extended annual or sick leave until retirement.

F. In addition to any other vesting provided by state law, a member's normal retirement benefit is non-forfeitable when the member reaches normal retirement age, which is:

(1) age sixty-five (65), with five (5) or more years of credited service, whichever is later, for individuals who were members on June 30, 2013;

(2) age sixty-five (65), with eight (8) or more years of credited service, whichever is later, for individuals who became general plan members on or after July 1, 2013; and

(3) age sixty (60), with six (6) or more years of credited service, whichever is later, for individuals who became public safety plan members on or after July 1, 2013.

G. In addition to any other vesting provided by state law, a member is also vested in his or her accrued benefits when the member reaches such lesser age and specified years of credited service as provided under the plan in which he or she is a member at the time of retirement or was last a member. If there is a termination of the PERA retirement system, or if employer contributions to the PERA fund are completely discontinued, the rights of each affected member to the benefits accrued at the date of termination or discontinuance, to the extent then funded, are non-forfeitable.

[10-15-97; 11-15-97; 1-15-99; 12-15-99; 2.80.700.10 NMAC - Rn & A, 2 NMAC 80.700.10, 12-28-00; A, 8-15-01; A, 12-28-01; A, 9-30-03; A, 8-31-04; A, 6-30-05; A, 12-15-09; A, 9-30-10; A, 12-30-13]

2.80.700.11-19 [Reserved]

2.80.700.20 BENEFIT PAYMENT: The maximum annual benefit limits contained in Internal Revenue Code Section 415(b), as amended and adjusted, are incorporated herein by reference. Notwithstanding any other provision of the PERA Act and regulations, all benefits paid from the PERA trust fund shall be distributed in accordance with the requirements of Internal Revenue Code Section 401(a)(9) and the regulations under that section. In order to meet these requirements, the trust fund must be administered in accordance with the following provisions:

A. The entire interest of the member shall:

(1) be completely distributed to the member not later than the required beginning date [~~defined in subsection (B) below~~], or

(2) shall be distributed, beginning not later than the required beginning date, in accordance with internal revenue service regulations, over a period not extending beyond the life expectancy of such member or the life expectancy of such member and a designated beneficiary.

~~[B. Distribution of a member's benefit must begin by the "required beginning date," which is defined as the later of the:~~

~~(1) April 1 of the calendar year following the calendar year in which the member attains the age of seventy and one half (70½), or~~

~~(2) April 1 of the calendar year after the calendar year in which the member retires.]~~

B. For the purposes of this section, "required beginning date" shall be defined in the same manner as the term "required beginning date" is defined in the Internal Revenue Code Section 401(a)(9) and the regulations under that section.

C. The life expectancy of the member or the member's [~~spouse~~] beneficiary may not be recalculated after the benefits commence.

D. If a member dies before the distribution of the member's benefits has begun, distribution to beneficiaries must begin no later than December 31 of the calendar year immediately following the calendar year in which the member died.

E. The amounts payable to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirements of the Internal Revenue Code Section 401(a)(9)(G) and regulations

thereunder. PERA shall adjust the percentage of the member's pension payable to a non-spouse survivor beneficiary who is more than ten (10) years younger than the member at the time of the member's retirement as required by 26 C.F.R. Section 1.401(a)(9)-6.

[2.80.700.20 NMAC - N, 12-28-00; A, 8-15-01; A, 12-30-13]

2.80.700.21-29 [Reserved]

2.80.700.30 ANNUAL COMPENSATION: Notwithstanding any provision of the PERA Act and regulations, the annual compensation of each member that is taken into account under the plan, including for benefit calculation purposes, for any year does not exceed the limit specified in Internal Revenue Code Section 401(a)(17).

[2.80.700.30 NMAC - N, 12-28-00]

HISTORY of 2.80.700 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under: Rule 700.00, Retirement Benefits, filed on 10-4-79; Rule 800.00, Deferred Retirement Benefits, filed on 10-4-79; PERA Rule 700.00, Retirement Benefit Applications and Overpayments, filed on 11-19-81; PERA Rule 800.00, Deferred Retirement Benefits, filed on 11-19-81; PERA Rule 700, Retirement Benefit Applications, Retirement Dates and Overpayments, filed on 7-1-87; PERA Rule 800.00, Deferred Retirement Benefits, filed on 7-1-87; PERA Rule 700, Normal and Deferred Retirement, filed on 12-29-89; PERA Rule 700, Normal and Deferred Retirement, filed on 7-1-91; PERA Rule 700, Normal and Deferred Retirement, filed on 7-1-92; PERA Rule 700, Normal and Deferred Retirement, filed on 7-1-93; PERA Rule 700, Normal and Deferred Retirement, filed 11-1-94.

History of Repealed Material:

2 NMAC 80.700.30 - Repealed, 11-15-97

TITLE 2 PUBLIC FINANCE
CHAPTER 80 PUBLIC EMPLOYEES RETIREMENT
PART 900 PRE-RETIREMENT SURVIVOR PENSIONS

2.80.900.1 ISSUING AGENCY: Public Employees Retirement Association, P. O. Box 2123, Santa Fe, New Mexico 87504-2123
[10-15-97; 2.80.900.1 NMAC - Rn, 2 NMAC 80.900.1, 12-28-01]

2.80.900.2 SCOPE: This rule affects beneficiaries of deceased PERA members, the retirement board and the association under the Public Employees Retirement Act.
[10-15-97; 2.80.900.2 NMAC - Rn, 2 NMAC 80.900.2, 12-28-01]

2.80.900.3 STATUTORY AUTHORITY: This rule is authorized by NMSA 1978, Sections 10-11-14.5, 10-11-130, as amended.
[10-15-97; 2.80.900.3 NMAC - Rn, 2 NMAC 80.900.3, 12-28-01]

2.80.900.4 DURATION: Permanent.
[10-15-97; 2.80.900.4 NMAC - Rn, 2 NMAC 80.900.4, 12-28-01]

2.80.900.5 EFFECTIVE DATE: December 15, 1995 unless a different date is cited at the end of a section.
[10-15-97; 2.80.900.5 NMAC - Rn, 2 NMAC 80.900.5, 12-28-01]

2.80.900.6 OBJECTIVE: The objective of this rule is to establish procedures for payment of pre-retirement survivor pensions.
[10-15-97; 2.80.900.6 NMAC - Rn, 2 NMAC 80.900.6, 12-28-01; A, 9-30-03]

2.80.900.7 DEFINITIONS: [Reserved]

2.80.900.8 PRE-RETIREMENT SURVIVOR PENSIONS: The procedure for payment of a pre-retirement survivor pension is:

A. Applicants for pre-retirement survivor pensions shall notify PERA of the death of the member and complete an application for benefits.

B. The completed application shall be returned to PERA with the following documents:

- (1) A certified copy of the death certificate or other proof of death acceptable in a court of law.
- (2) Copy of marriage license or other proof of marital status acceptable in a court of law if the application is for a surviving spouse.
- (3) Affidavit of surviving spouse that he or she and the deceased member were married at the time of death and stating whether there are any surviving minor children of the deceased member.
- (4) Proof of age of the surviving spouse, surviving minor children or other designated beneficiary or the proof of age for a beneficiary to a supplemental needs trust. Acceptable documents for proof of age shall be a birth certificate, a baptismal certificate, a copy of a life insurance policy, a certified copy of a voter registration issued over ten (10) years prior, or proof of age meeting a standard at least equivalent to that applied by the social security administration.
- (5) Documents required under the Probate Code for payments to a minor if the application is on behalf of eligible surviving children.
- (6) Affidavit that the applicant or beneficiary of a special needs trust is unmarried if the applicant is a child of the deceased member or a supplemental needs trust formed for the benefit of a child of the deceased member.
- (7) Copies of social security cards for all prospective payees.
- (8) If the member has been divorced, the applicant shall provide PERA with complete endorsed copies of all court documents the association deems necessary to ascertain the marital status of the member at the time of death and whether any ex-spouse of the member is entitled to any portion of any benefits payable. 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.

(9) a copy of the documents related to the formation of the supplemental needs trust, an affidavit from the trustee that the trust is formed as a supplemental needs trust as authorized by the federal Social Security Act and any additional information requested by the association if the application is on behalf of a supplemental needs trust.

C. When the application and accompanying documentation as required in Subsection B of 2.80.900.8 NMAC above are filed, PERA will determine whether a pension is payable. The application shall be considered to be "filed" when PERA receives the completed application as evidenced by a writing on the application indicating the date of receipt by PERA. PERA will calculate the pension payable and begin paying the pension effective the first day of the month following the date of the member's death. The amount of survivor pension shall be submitted to the board for ratification at the next regular meeting following the date of the first payment of survivor pension to the applicant.

D. Duty death.

(1) If the application is for a survivor pension resulting from duty death, the application shall be accompanied by documentation supporting the claim, in addition to the documentation required in Subsection B of 2.80.900.8 NMAC above. Documentation may include but is not limited to the following:

- (a) a certified copy of the death certificate or other proof of death acceptable in a court of law;
- (b) employer's report of accident;
- (c) determination of duty death by another agency such as workers compensation administration or social security administration although such a determination does not necessarily prove the death was a duty death for PERA purposes;

- (d) autopsy report;
- (e) attending physician's narrative report containing the conclusion of duty death and stating the basis therefor;

- (f) any other information requested by the association.

(2) The burden of proof of duty death is on the applicant.

- (a) "Solely and exclusively" means the member's work is so substantial a factor of the death that the death would not have occurred at the time without it.

- (b) "Course of the member's performance of duty" means place or activity for which the employer's business required the presence of the employee, but shall not include travel or time on the way to assume the duties of employment or travel or time leaving such duties, except when the employee is temporarily assigned to a destination other than his or her normal work station or is within the "special errand" rule in which case such time will be considered in the course of employment.

(3) The board hereby authorizes the director of member services to determine whether the death was the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's performance of duty with an affiliated public employer. Such determination shall be presented to the board for ratification at the next regular meeting of the board. The board may remove the matter from the consent calendar and substitute its own determination for that of the director of member services, or it may assign the matter to an administrative hearing officer for determination.

E. Military death. Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service, as defined in Chapter 43 of Title 38, United States Code, to the extent required by Internal Revenue Code Section 401(a)(37), survivors of such member are entitled to any additional benefits that the plan would provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed. In any event, a deceased member's period of qualified military service must be counted for vesting purposes.

[10-15-97; 11-15-97; 2.80.900.8 NMAC - Rn, 2 NMAC 80.900.8, 12-28-01; A, 9-30-03; A, 12-15-09; A, 12-30-13]

HISTORY of 2.80.900 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under: Rule 900.00, Death Benefits, filed on 10-4-79; PERA Rule 900.00, Death Benefit Documents, filed on 11-19-81; PERA Rule 900.00, Death Benefit Documents, filed on 7-1-87; PERA Rule 900.00, Survivor Pension Benefits, filed on 12-29-89; PERA Rule 900, Pre-Retirement Survivor Pensions, filed on 7-1-93; PERA Rule 900, Pre-Retirement Survivor Pensions, filed on 12-1-95.

TITLE 2 PUBLIC FINANCE
CHAPTER 83 JUDICIAL RETIREMENT
PART 700 RETIREMENT

2.83.700.1 ISSUING AGENCY: Public Employees Retirement Association, P. O. Box 2123, Santa Fe, New Mexico 87504-2123
[10-15-97; 2.83.700.1 NMAC - Rn, 2 NMAC 83.700.1, 12-28-00]

2.83.700.2 SCOPE: This rule affects retirees, beneficiaries, judicial agencies and the association under the Judicial Retirement Act.
[10-15-97; 2.83.700.2 NMAC - Rn, 2 NMAC 83.700.2, 12-28-00]

2.83.700.3 STATUTORY AUTHORITY: This rule is authorized by Sections 10-12B-3 and 10-12B-8 NMSA 1978.
[10-15-97; 2.83.700.3 NMAC - Rn, 2 NMAC 83.700.3, 12-28-00]

2.83.700.4 DURATION: Permanent.
[10-15-97; 2.83.700.4 NMAC - Rn, 2 NMAC 83.700.4, 12-28-00]

2.83.700.5 EFFECTIVE DATE: November 1, 1994, unless a different date is cited at the end of a section.
[10-15-97; 2.83.700.5 NMAC - Rn & A, 2 NMAC 83.700.5, 12-28-00]

2.83.700.6 OBJECTIVE: The objective of this rule is to establish standards and procedures for the payment, of pensions of retired members.
[10-15-97; 2.83.700.6 NMAC - Rn, 2 NMAC 83.700.6, 12-28-00]

2.83.700.7 DEFINITIONS: [Reserved]
[2.83.700.7 NMAC - Rn, 2 NMAC 83.700.7, 12-28-00]

2.83.700.8 - 2.83.700.9 [Reserved]

2.83.700.10 PROCEDURE FOR RETIREMENT:

A. Application.

(1) The member shall request an application for retirement from PERA. To insure that the member may retire on the date the member has chosen, the completed application should be returned to PERA, with the required documents described in Subsection B below, at least 60 days prior to the selected date of retirement. The completed application and all supporting documentation must be filed with PERA no later than the close of business on the last working day of the month prior to the selected date of retirement.

(2) PERA shall furnish the member an estimate of retirement pension payable within a reasonable time of receipt of the properly completed application and required documents.

(3) When the application is filed, PERA shall furnish the member's last judicial agency with an employer's certification of earnings form to be completed and returned to PERA. The final calculation of pension cannot be processed until PERA receives the properly completed employer's certification form.

(4) PERA will furnish the member a final calculation of retirement pension based on the information provided by the judicial agency.

(5) The completed application form must either include or be accompanied by a signed notarized statement of consent by the member's spouse to the survivor beneficiary elected by the member or an affidavit that the member is not married. An affidavit naming all former spouses must also accompany the final application form.

(6) Retirement will be effective on the first day of the month following: a) the filing with PERA of the completed, signed application with all required documentation; b) the member's qualifying for retirement based on service credit and age; and c) the member's leaving office. An application will be deemed to be "filed" when received by PERA as evidenced by a writing on the application indicating the date of receipt by PERA.

(7) The retirement of the judge shall be submitted to the board for ratification at the next regular meeting following the effective date of retirement.

B. Documentation: The retiring member shall furnish the following documents to PERA:

(1) Proof of age of the member and any designated beneficiary or beneficiaries or the proof of age for a beneficiary to a supplemental needs trust. Acceptable documents are a birth certificate, a baptismal certificate, or religious record of birth established before age 5 years, or any two of the following documents showing the date of birth of the member or designated beneficiary or beneficiaries:

- (a) copy of a life insurance policy;
- (b) certified copy of voter registration issued over ten years prior;
- (c) tribal census record;
- (d) childhood immunization record made prior to age eighteen (18) years;
- (e) military record;
- (f) birth certificate of child showing age of parent;
- (g) physician's or midwife's record of birth;
- (h) passport;
- (i) immigration record;
- (j) naturalization record.

(2) A copy of a marriage certificate or other proof of marital status acceptable in a court of law for any designated survivor beneficiary to be identified as a spouse.

(3) For any designated beneficiary to be identified as a supplemental needs trust, a copy of the documents related to the formation of the trust and an affidavit from the trustee that the trust is formed as a supplemental needs trust as authorized by the federal Social Security Act. Additional information may be required by the association to ascertain the purpose and function of the trust to ensure compliance with the Judicial Retirement Act.

~~[(3)]~~ (4) Complete endorsed copies of all court documents the association deems necessary to ascertain the current marital status of the member and whether any ex-spouse of the member is entitled to any portion of the member's benefits. Such documents shall include the final decrees and marital property settlements for all marriages during the member's employment as a judge or justice. If the member's only divorce was prior to becoming a member, then the final divorce decree is required, but no marital property settlement is required. If the member was divorced more than once before becoming a member, then only the most recent final decree is required.

~~[(4)]~~ (5) Any member with an effective retirement date on or after January 1, 2014 shall provide authorization to the association for the electronic transfer of pension payments to the retiree's banking institution. Such authorization shall be executed, in writing, in the form prescribed by the association.

C. No adjustments to the pension based on failure to claim free or any other service credit may be made after the first pension payment.

D. Under the provisions of NMSA 1978, Section 10-12B-12, the Public Employees Retirement Reciprocity Act applies to members covered under the Judicial Retirement Act early retirement.

E. In addition to any other vesting provided by state law, a judge's normal retirement benefit is non-forfeitable when the judge reaches normal retirement age, which is age sixty-five (65), with five (5) or more years of credited service, whichever is later for an individual who initially became a judge prior to July 1, 2014 and age sixty-five (65) with eight (8) or more years of credited service whichever is later for an individual who initially became a judge on or after July 1, 2014. A judge is also vested in his or her accrued benefits when the judge reaches such lesser age and specified years of credited service as provided under the plan. If there is a termination of the judicial retirement system, or if employer contributions to the judicial retirement plan are completely discontinued, the rights of each affected member to the benefits accrued at the date of termination or discontinuance, to the extent then funded, are non-forfeitable.

[10-15-97; 11-15-97; 2.83.700.10 NMAC - Rn & A, 2 NMAC 83.700.10, 12-28-00, A, 12-28-01; A, 12-30-13; A, 07-01-15]

2.83.700.11 DISABILITY RETIREMENT: A judge who becomes disabled prior to retirement can make application for benefits in accordance with 2.80.1000 NMAC.

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

2.83.700.12 - 2.83.700.19 [Reserved]

2.83.700.20 BENEFIT PAYMENT: The maximum annual benefit limits contained in Internal Revenue Code Section 415(b), as amended and adjusted, are incorporated herein by reference. Notwithstanding any other provision of the Judicial Retirement Act and regulations, all benefits paid from the Judicial Retirement trust fund shall be distributed in accordance with the requirements of Internal Revenue Code Section 401(a)(9) and the

regulations under that section. In order to meet these requirements, the trust fund must be administered in accordance with the following provisions:

A. The entire interest of the judge shall:

(1) be completely distributed to the judge not later than the required beginning date [as defined in subsection (B) below], or

(2) shall be distributed, beginning not later than the required beginning date, in accordance with internal revenue service regulations, over a period not extending beyond the life expectancy of such judge or the life expectancy of such judge and a designated beneficiary.

~~B. Distribution of a judge's benefit must begin by the "required beginning date," which is defined as the later of the:~~

~~(1) April 1 of the calendar year following the calendar year in which the judge attains the age of seventy and one half (70½), or~~

~~(2) April 1 of the calendar year after the calendar year in which the judge retires.]~~

B. For the purposes of this section, "required beginning date" shall be defined in the same manner as the term "required beginning date" is defined pursuant to the Internal Revenue Code Section 401(a)(9) and the regulations under that section.

C. The life expectancy of the judge or the judge's ~~[spouse]~~ beneficiary may not be recalculated after the benefits commence.

D. If a judge dies before the distribution of the judge's benefits has begun, distribution to beneficiaries must begin no later than December 31 of the calendar year immediately following the calendar year in which the judge died.

E. The amounts payable to a judge's beneficiary may not exceed the maximum determined under the incidental death benefit requirements of the Internal Revenue Code Section 401(a)(9)(G) and regulations thereunder. PERA shall adjust the percentage of the judge's pension payable to a non-spouse survivor beneficiary who is more than ten (10) years younger than the judge at the time of the judge's retirement as required by 26 C.F.R. Section 1.401(a)(9)-6.

[10-15-97; R, 11-15-97; 2.83.700.20 NMAC - Rn & A, 2 NMAC 83.700.20, 12-28-00; A, 12-28-01; A, 12-30-13]

2.83.700.21 - 2.83.700.29 [Reserved]

2.83.700.30 ANNUAL COMPENSATION: Notwithstanding any provision of the of the Judicial Retirement Act and regulations, the annual compensation of each judge that is taken into account under the plan, including for benefit calculation purposes, for any year does not exceed the limit specified in Internal Revenue Code Section 401(a)(17).

[2.83.700.30 NMAC - N, 12-28-00]

HISTORY of 2.83.700 NMAC:

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

JRA Rule 700, Retirement, filed on 7-1-92;

JRA Rule 700, Retirement, filed on 11-1-94.

History of Repealed Material:

2 NMAC 83.700, Paragraph 10.1.5 - Repealed, 11-15-97.

2 NMAC 83.700.20 - Repealed, 11-15-97.

TITLE 2 PUBLIC FINANCE
CHAPTER 83 JUDICIAL RETIREMENT
PART 800 SURVIVOR PENSION

2.83.800.1 ISSUING AGENCY: Public Employees Retirement Association, P. O. Box 2123, Santa Fe, New Mexico 87504-2123
[10-15-97; 2.83.800.1 NMAC - Rn, 2 NMAC 83.800.1, 12-28-01]

2.83.800.2 SCOPE: This rule affects members, former members, retirees, beneficiaries, and the association under the Judicial Retirement Act.
[10-15-97; 2.83.800.2 NMAC - Rn, 2 NMAC 83.800.2, 12-28-01]

2.83.800.3 STATUTORY AUTHORITY: This rule is authorized by NMSA 1978, Sections 10-12B-3 and 10-12B-14.
[10-15-97; 2.83.800.3 NMAC - Rn, 2 NMAC 83.800.3, 12-28-01]

2.83.800.4 DURATION: Permanent.
[10-15-97; 2.83.800.4 NMAC - Rn, 2 NMAC 83.800.4, 12-28-01]

2.83.800.5 EFFECTIVE DATE: November 1, 1994 unless a different date is cited at the end of a section.
[10-15-97; 2.83.800.5 NMAC - Rn, 2 NMAC 83.800.5, 12-28-01]

2.83.800.6 OBJECTIVE: The objective of this rule is to establish the procedure for the payment of a survivor pension under the Judicial Retirement Act.
[10-15-97; 2.83.800.6 NMAC - Rn, 2 NMAC 83.800.6, 12-28-01]

2.83.800.7 DEFINITIONS: [Reserved]

2.83.800.8-9 [Reserved]

2.83.800.10 PROCEDURE: The procedure for payment of a survivor pension is:

- A. Applicants for pre-retirement survivor pensions shall notify PERA of the death of the member and complete an application for benefits.
- B. The completed application shall be returned to PERA along with the following documents:
 - (1) A certified copy of the death certificate or other proof of death acceptable in a court of law.
 - (2) If the application is for a surviving spouse: copy of the marriage license or other proof of marital status acceptable in a court of law, and an affidavit of the surviving spouse that he or she and the deceased member were married at the time of death and stating whether there are any surviving minor children of the deceased.
 - (3) Proof of age of the surviving spouse, surviving minor children or other designated beneficiary or the proof of age for a beneficiary to a supplemental needs trust. Acceptable documents for proof of age shall be a birth certificate, a baptismal certificate, a copy of a life insurance policy, a certified copy of a voter registration issued over ten (10) years prior, or proof of age meeting a standard at least equivalent to that applied by the social security administration.
 - (4) Documents required under the Probate Code for payments to a minor if the application is on behalf of minor and dependent children.
 - (5) Affidavit that the applicant or beneficiary of a special needs trust is not married or otherwise emancipated if the applicant is a child of the deceased member or a supplemental needs trust formed for the benefit of a child of the deceased member.
 - (6) Copies of social security cards for all prospective payees.
 - (7) If the member has been divorced, the applicant shall provide PERA with complete endorsed copies of all court documents the association deems necessary to ascertain the marital status of the member at the time of death and whether any ex-spouse of the member is entitled to any portion of any benefits payable. Such documents shall include the final decrees and marital property settlements for all marriages during the member's covered employment as a judge or justice. If the member's only divorce was prior to becoming a member, then the final divorce decree is required, but no marital property settlement is required. If the member was divorced more than once before becoming a member, then only the most recent final decree is required.

(8) a copy of the documents related to the formation of the supplemental needs trust, an affidavit from the trustee that the trust is formed as a supplemental needs trust as authorized by the federal Social Security Act and any additional information requested by the association if the application is on behalf of a supplemental needs trust.

C. The application shall be considered to be "filed" when PERA receives the completed application as evidenced by a writing on the application indicating the date of receipt by PERA. Upon filing of the application, and accompanying documentation as required in subsection B above, PERA will calculate the pension payable and begin paying the pension effective the first day of the month following the date of the death resulting in the pension. The amount of survivor pension shall be submitted to the board for ratification at the next regular meeting following the date of the first payment of survivor pension to the applicant.

D. Military death. Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service, as defined in Chapter 43 of Title 38, United States Code, to the extent required by Internal Revenue Code Section 401(a)(37), survivors of such member are entitled to any additional benefits that the plan would provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed. In any event, a deceased member's period of qualified military service must be counted for vesting purposes.
[10-15-97; 11-15-97; 2.83.800.10 NMAC - Rn, 2 NMAC 83.800.10, 12-28-01; A, 12-15-09; A, 12-30-13]

HISTORY of 2.83.800 NMAC:

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

JRA Rule 800, Survivor Pension, filed on 7-1-92;

JRA Rule 800, Survivor Pension, filed on 11-1-94.

TITLE 2 PUBLIC FINANCE
CHAPTER 84 MAGISTRATE RETIREMENT
PART 700 RETIREMENT

2.84.700.1 ISSUING AGENCY: Public Employees Retirement Association, P. O. Box 2123, Santa Fe, New Mexico 87504-2123
[10-15-97; 2.84.700.1 NMAC - Rn, 2 NMAC 84.700.1, 12-28-00]

2.84.700.2 SCOPE: This rule affects the members, former members, retirees, beneficiaries, public employers, the retirement board and the association under the Magistrate Retirement Act.
[10-15-97; 2.84.700.2 NMAC - Rn, 2 NMAC 84.700.2, 12-28-00; A, 9-30-03]

2.84.700.3 STATUTORY AUTHORITY: This rule is authorized by NMSA 1978, Sections 10-12C-3, 10-12C-8, and 10-12C-9, as amended.
[10-15-97; 2.84.700.3 NMAC - Rn, 2 NMAC 84.700.3, 12-28-00]

2.84.700.4 DURATION: Permanent.
[10-15-97; 2.84.700.4 NMAC - Rn, 2 NMAC 84.700.4, 12-28-00]

2.84.700.5 EFFECTIVE DATE: November 1, 1994 unless a different date is cited as the end of a section.
[10-15-97; 2.84.700.5 NMAC - Rn & A, 2 NMAC 84.700.5, 12-28-00]

2.84.700.6 OBJECTIVE: The objective of this rule is to establish standards and procedures for the payment, of pensions of retired members.
[10-15-97; 2.84.700.6 NMAC - Rn, 2 NMAC 84.700.6, 12-28-00]

2.84.700.7 DEFINITIONS: [Reserved]
[2.84.700.7 NMAC - Rn, 2 NMAC 84.700.7, 12-28-00]

2.84.700.8-9 [Reserved]

2.84.700.10 PROCEDURE FOR RETIREMENT:

A. Application.

(1) The member shall request an application for retirement from PERA. To insure that the member may retire on the date the member has chosen, the completed application should be returned to PERA, with the required documents described in subsection B below, at least 60 days prior to the selected date of retirement. The completed application and all supporting documentation must be filed with PERA no later than the close of business on the last working day of the month prior to the selected date of retirement.

(2) PERA shall furnish the member an estimate of retirement pension payable within a reasonable time of receipt of the properly completed application and required documents.

(3) When the application is filed, PERA shall furnish the member's last judicial agency with an employer's certification of earnings form to be completed and returned to PERA. The final calculation of pension cannot be processed until PERA receives the properly completed employer's certification form.

(4) PERA will furnish the member a final calculation of retirement pension based on the information provided by the judicial agency.

(5) The completed application form must either include or be accompanied by a signed notarized statement of consent by the member's spouse to the survivor beneficiary elected by the member or an affidavit that the member is not married. An affidavit naming all former spouses must also accompany the final application form.

(6) Retirement will be effective on the first day of the month following: a) the filing with PERA of the completed, signed application with all required documentation; b) the member's qualifying for retirement based on service credit and age; and c) the member's leaving office. An application will be deemed to be "filed" when received by PERA as evidenced by a writing on the application indicating the date of receipt by PERA.

(7) The retirement of the member shall be submitted to the board for ratification at the next regular meeting following the effective date of retirement.

B. Documentation: The retiring member shall furnish the following documents to PERA:

(1) Proof of age of the member and any designated beneficiary or beneficiaries or the proof of age for a beneficiary to a supplemental needs trust. Acceptable documents are a birth certificate, a baptismal certificate, or religious record of birth established before age 5 years, or any two of the following documents showing the date of birth of the member or designated beneficiary or beneficiaries:

- (a) copy of a life insurance policy;
- (b) certified copy of voter registration issued over ten years prior;
- (c) tribal census record;
- (d) childhood immunization record made prior to age eighteen (18) years;
- (e) military record;
- (f) birth certificate of child showing age of parent;
- (g) physician's or midwife's record of birth;
- (h) passport;
- (i) immigration record;
- (j) naturalization record.

(2) A copy of a marriage certificate or other proof of marital status acceptable in a court of law for any designated survivor beneficiary to be identified as a spouse.

(3) For any designated beneficiary to be identified as a supplemental needs trust, a copy of the documents related to the formation of the trust and an affidavit from the trustee that the trust is formed as a supplemental needs trust as authorized by the federal Social Security Act. Additional information may be required by the association to ascertain the purpose and function of the trust to ensure compliance with the Magistrate Retirement Act.

~~[(3)]~~ (4) Complete endorsed copies of all court documents the association deems necessary to ascertain the current marital status of the member and whether any ex-spouse of the member is entitled to any portion of the member's benefits. Such documents shall include the final decrees and marital property settlements for all marriages during the member's employment as a magistrate. If the member's only divorce was prior to becoming a member, then the final decree is required, but no marital property settlement is required. If the member was divorced more than once prior to becoming a member, then only the most recent final decree is required.

~~[(4)]~~ (5) Any member with an effective retirement date on or after January 1, 2014 shall provide authorization to the association for the electronic transfer of pension payments to the retiree's banking institution. Such authorization shall be executed, in writing, in the form prescribed by the association.

C. No adjustments to the pension based on failure to claim free service credit may be made after the first pension payment.

D. In addition to any other vesting provided by state law, a magistrate's normal retirement benefit is non-forfeitable when the magistrate reaches normal retirement age, which is age sixty-five (65), with five (5) or more years of credited service, whichever is later for an individual who was a member on June 30, 2014 and age sixty-five (65) with eight (8) or more years of credited service, whichever is later for an individual who initially became a member on or after July 1, 2014. A magistrate is also vested in his or her accrued benefits when the magistrate reaches such lesser age and specified years of credited service as provided under the plan. If there is a termination of the magistrate retirement system, or if employer contributions to the magistrate retirement plan are completely discontinued, the rights of each affected member to the benefits accrued at the date of termination or discontinuance, to the extent then funded, are non-forfeitable.

[10-15-97; 11-15-97; 2.84.700.10 NMAC - Rn & A, 2 NMAC 84.700.10, 12-28-00; A, 12-28-01; A, 12-30-13; A, 07-01-15]

2.84.700.11 DISABILITY RETIREMENT: A magistrate who becomes disabled prior to retirement can make application for benefits in accordance with 2.80.1000 NMAC.

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

2.84.700.12-19 [Reserved]

2.84.700.20 BENEFIT PAYMENT: The maximum annual benefit limits contained in Internal Revenue Code Section 415(b), as amended and adjusted, are incorporated herein by reference. Notwithstanding any other provision of the Magistrate Retirement Act and regulations, all benefits paid from the magistrate retirement trust fund shall be distributed in accordance with the requirements of Internal Revenue Code section 401(a)(9) and the

regulations under that section. In order to meet these requirements, the trust fund must be administered in accordance with the following provisions:

A. The entire interest of the magistrate shall:

(1) be completely distributed to the magistrate not later than the required beginning date [as defined in Subsection (B) below], or

(2) shall be distributed, beginning not later than the required beginning date, in accordance with internal revenue service regulations, over a period not extending beyond the life expectancy of such magistrate or the life expectancy of such magistrate and a designated beneficiary.

~~B. Distribution of a magistrate's benefit must begin by the "required beginning date," which is defined as the later of the:~~

~~(1) April 1 of the calendar year following the calendar year in which the magistrate attains the age of seventy and one half (70½), or~~

~~(2) April 1 of the calendar year after the calendar year in which the magistrate retires.]~~

B. For the purposes of this section, "required beginning date" shall be defined in the same manner as the term "required beginning date" is defined pursuant to the Internal Revenue Code Section 401(a)(9) and the regulations under that section.

C. The life expectancy of the magistrate or the magistrate's [spouse] beneficiary may not be recalculated after the benefits commence.

D. If a magistrate dies before the distribution of the magistrate's benefits has begun, distribution to beneficiaries must begin no later than December 31 of the calendar year immediately following the calendar year in which the magistrate died.

E. The amounts payable to a magistrate's beneficiary may not exceed the maximum determined under the incidental death benefit requirements of the Internal Revenue Code Section 401(a)(9)(G) and regulations thereunder. PERA shall adjust the percentage of the magistrate's pension payable to a non-spouse survivor beneficiary who is more than ten (10) years younger than the magistrate at the time of the magistrate's retirement as required by 26 C.F.R. Section 1.401(a)(9)-6.

[10-15-97; 11-15-97; 2.84.700.20 NMAC - N, 12-28-00; A, 12-28-01; A, 12-30-13]

2.84.700.21-29 [Reserved]

2.84.700.30 ANNUAL COMPENSATION: Notwithstanding any provision of the of the Magistrate Retirement Act and regulations, the annual compensation of each magistrate that is taken into account under the plan, including for benefit calculation purposes, for any year does not exceed the limit specified in Internal Revenue Code Section 401(a)(17).

[2.84.700.30 NMAC - N, 12-28-00]

HISTORY of 2.84.700 NMAC:

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

MRA Rule 400.00, Normal and Deferred Retirement, filed on 12-29-89;

MRA Rule 700, Retirement, filed on 7-1-92;

MRA Rule 700, Retirement, filed on 11-1-94.

History of Repealed Materials:

2 NMAC 84.700, Paragraph 10.1.5 - Repealed 11-15-97.

2 NMAC 84.700.20 - Repealed, 11-15-97.

TITLE 2 PUBLIC FINANCE
CHAPTER 84 MAGISTRATE RETIREMENT
PART 800 SURVIVOR PENSION

2.84.800.1 ISSUING AGENCY: Public Employees Retirement Association, P. O. Box 2123, Santa Fe, New Mexico 87504-2123
[10-15-97; 2.84.800.1 NMAC - Rn, 2 NMAC 84.800.1, 12-28-01]

2.84.800.2 SCOPE: This rule affects the members, former members, retirees, beneficiaries, public employers, retirement board and the association under the Magistrate Retirement Act.
[10-15-97; 2.84.800.2 NMAC - Rn, 2 NMAC 84.800.2, 12-28-01; A, 9-30-03]

2.84.800.3 STATUTORY AUTHORITY: This rule is authorized by NMSA 1978, Sections 10-12C-3 and 10-12C-13, as amended.
[10-15-97; 2.84.800.3 NMAC - Rn, 2 NMAC 84.800.3, 12-28-01]

2.84.800.4 DURATION: Permanent.
[10-15-97; 2.84.800.4 NMAC - Rn, 2 NMAC 84.800.4, 12-28-01]

2.84.800.5 EFFECTIVE DATE: November 1, 1994 unless a different date is cited at the end of a section.
[10-15-97; 2.84.800.5 NMAC - Rn, 2 NMAC 84.800.5, 12-28-01]

2.84.800.6 OBJECTIVE: The objective of this rule is to establish the procedure for the payment of a survivor pension under the Magistrate Retirement Act.
[10-15-97; 2.84.800.6 NMAC - Rn, 2 NMAC 84.800.6, 12-28-01]

2.84.800.7 DEFINITIONS: [Reserved]

2.84.800.8 PROCEDURE: The procedure for payment of a survivor pension is:

- A. Applicants for pre-retirement survivor pensions shall notify PERA of the death of the member and complete an application for benefits.
- B. The completed application shall be returned to PERA along with the following documents:
 - (1) A certified copy of the death certificate or other proof of death acceptable in a court of law;
 - (2) If the application is for a surviving spouse: copy of the marriage license or other proof of marital status acceptable in a court of law, and an affidavit of the surviving spouse that he or she and the deceased member were married at the time of death and stating whether there are any surviving minor children of the deceased;
 - (3) Proof of age of the surviving spouse, surviving minor children or other designated beneficiary or the proof of age for a beneficiary to a supplemental needs trust. Acceptable documents for proof of age shall be a birth certificate, a baptismal certificate, a copy of a life insurance policy, a certified copy of a voter registration issued over ten (10) years prior, or proof of age meeting a standard at least equivalent to that applied by the social security administration.
 - (4) Documents required under the Probate Code for payments to a minor if the application is on behalf of minor and dependent children.
 - (5) Affidavit that the applicant or beneficiary of a special needs trust is not married or otherwise emancipated if the applicant is a child of the deceased member or a supplemental needs trust formed for the benefit of a child of the deceased member.
 - (6) Copies of social security cards for all prospective payees.
 - (7) If the member has been divorced, the applicant shall provide PERA with complete endorsed copies of all court documents the association deems necessary to ascertain the marital status of the member at the time of death and whether any ex-spouse of the member is entitled to any portion of any benefits payable. Such documents shall include the final decrees and marital property settlements of all marriages during the member's covered employment as a magistrate. If the member's only divorce was prior to becoming a member, then the final divorce decree is required, but no marital property settlement is required. If the member was divorced more than once before becoming a member, then only the most recent final decree is required.
 - (8) a copy of the documents related to the formation of the supplemental needs trust, an affidavit from the trustee that the trust is formed as a supplemental needs trust as authorized by the federal Social Security

Act and any additional information requested by the association if the application is on behalf of a supplemental needs trust.

C. The application shall be considered to be "filed" when PERA receives the completed application as evidenced by a writing on the application indicating the date of receipt by PERA. Upon filing of the application, and accompanying documentation as required in subsection B above, PERA will calculate the pension payable and begin paying the pension effective the first day of the month following the date of the death resulting in the pension. The amount of the survivor pension shall be submitted to the board for ratification at the next regular meeting following the date of the first payment of survivor pension to the applicant.

D. Military death. Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service, as defined in Chapter 43 of Title 38, United States Code, to the extent required by Internal Revenue Code Section 401(a)(37), survivors of such member are entitled to any additional benefits that the plan would provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed. In any event, a deceased member's period of qualified military service must be counted for vesting purposes.

[10-15-97; 11-15-97; 2.84.800.8 NMAC - Rn, 2 NMAC 84.800.8, 12-28-01; A, 12-15-09; A, 12-30-13]

HISTORY of 2.84.800 NMAC:

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

MRA Rule 600.00, Survivors Benefits, filed on 12-29-89;

MRA Rule 800, Survivor Pension, filed on 7-1-92;

MRA Rule 800, Survivor Pension, filed on 11-1-94.