

**NEW MEXICO  
ALTERNATIVE  
RETIREMENT PLAN**

**OPERATIONS MANUAL**

**AMENDED AND RESTATED  
JANUARY 1, 2016  
(updated 7/1/2021)**

## **POSITION STATEMENT**

Article II, Section 22, NMSA, 1978 compilation, as amended, passed by the 1991 New Mexico Legislature, and signed into law by Governor Bruce King, provides for the implementation of an Alternative Retirement Plan (ARP) in Sections 22-11-47 through 22-11-52. The ARP is designed for newly appointed employees who are faculty or professionals with the four-year Institutions of Higher Education (the "Institution"). House Bill 168 was enacted by the 1999 Legislature and signed by Governor Johnson to include Junior and Community Colleges in the ARP. While the plan is for specified employees of these Institutions, the administration of the program is placed with the Educational Retirement Board of New Mexico.

This Operations Manual, in conjunction with Sections 22-11-47 through 22-11-52 of the New Mexico Statutes, shall operate as the Plan document. It is intended that this Plan shall meet the requirements of Section 401(a) and Section 501(a) of the Internal Revenue Code as a "governmental plan", as defined in Internal Revenue Code section 414(d).

The Alternative Retirement Plan shall be offered as a recruitment tool to induce new additions to the faculties of these Institutions. The Plan shall be made available to new employees who are faculty or professionals as defined in Article 1 of this manual.

At the time a newly hired person who may participate in the Alternative Retirement Program is processed for employment by the various Institutions, that person shall receive from the Institution a full and complete explanation of the options available to them in the selection of the retirement plans, including the Educational Retirement Act.

After having been fully advised of the advantages and disadvantages of the various options, the employee shall execute the necessary documents to become a member under the Educational Retirement Act or a covered participant under the Alternative Retirement Plan.

## DEFINITIONS OF RELEVANT TERMS

The following terms when used herein shall have the following meaning. Capitalized terms are used throughout the text of the Operations Manual for terms defined by this and other sections.

Accumulation Account. "Accumulation Account" means the separate account established for each Participant to which will be credited all Plan Contributions, less expense charges and the earnings thereon.

Alternative Retirement Plan (ARP). "Alternative Retirement Plan" means the Plan provided for in Sections 22-11-47 through 22-11-52, NMSA, 1978 compilation, as amended.

Annual Additions. "Annual Additions" means the sum of the amounts credited to a Participant's Accumulation Account for the Limitation Year, including the contributions made by the Institution and the Participant.

Annuity Carrier. Firms chosen by the Educational Retirement Board to provide participants with Alternative Retirement Program investments and annuities.

Beneficiary. "Beneficiary" means the individual, institution, trustee or estate designated by the Participant to receive benefits.

Board. "Board" means the Educational Retirement Board of the State of New Mexico.

Code. "Code" means the Internal Revenue Service Code of 1986, as amended. Reference made to any specific section of the Code includes the section and any comparable section or sections of any future legislation that amends, supplements, or supersedes the section.

Code Section 401(a) Defined Contribution (Money Purchase) Retirement Plan. A "Code Section 401(a) Defined Contribution (Money Purchase) Retirement Plan" means a plan that provides a separate account for each Participant and benefits based solely on the amount of vested Plan Contributions to the Participant's Accumulation Account(s) and earnings thereon, and that meets the requirements of Code Section 401(a). All benefits under the Plan are fully funded and provided solely through the Funding Vehicles selected by the Participants; therefore, benefits are not subject to, nor covered by, federal plan termination insurance.

Director. "Director" means the Director of the Educational Retirement Board of New Mexico.

Effective Date. "Effective Date" means July 1, 1991, which is the Effective Date of the Plan.

Employment Date. "Employment Date" means the effective date of the appointment on which Salary/Wages begin for the Participant.

ERA. "ERA" means the Educational Retirement Act, administered by the Educational Retirement Board, as amended, enacted to assure a sustained program of retirement benefits for public school employees, college and university employees, and other employees of State Educational Institutions and Agencies.

Fund Sponsor/Annuity Carrier. "Fund Sponsor" means an insurance, variable annuity or investment company that provides Funding Vehicles available to Participants under this Plan as approved by the Board.

Funding Vehicle/Annuity Contract. "Funding Vehicle" means tax-deferred annuities, fixed or variable in nature or a combination thereof, issued for the purpose of funding accrued benefits under this Plan.

Institution. "Institution" means qualifying State Educational Institutions of Higher Learning as included in Section 22-11-2(v) as follows:

- (a) University of New Mexico
- (b) New Mexico State University
- (c) New Mexico Institute of Mining and Technology
- (d) New Mexico Highlands University
- (e) Western New Mexico University
- (f) Eastern New Mexico University
- (g) Central New Mexico Community College
- (h) Clovis Community College
- (i) Luna Community College
- (j) Mesalands Community College
- (k) New Mexico Junior College
- (l) Northern New Mexico College
- (m) San Juan College
- (n) Santa Fe Community College

Institution Plan Contributions: "Institution Plan Contributions" means contributions by the Institution under this Plan as required in Article III on Contributions.

Limitation Year. "Limitation Year" means calendar year.

Participant. "Participant" means an eligible employee of an Institution who becomes first employed on or after July 1, 1991, and who elects to participate in the Plan, except as provided for in Section B(3)(a) of Article 1 on Eligibility.

Participant Plan Contributions. "Participant Plan Contributions" means contributions by a Participant under this Plan, as required under Article III on Contributions. Participant Plan contributions are designated by the Institution as being made in lieu of contributions to ERA. Furthermore, the "pick-up" amounts cannot be received directly by Participants in accordance with Code Section 414(h)(2).

Plan. "Plan" means the Alternative Retirement Plan as defined in Section 2.2 of this Article.

Plan Contributions. "Plan Contributions" means contributions made by both the Institution and the Participant as defined in this Plan as required by Article IV on Plan Contributions. This Plan does not accept nondeductible employee contributions or provide for forfeitures.

Plan Entry Date. "Plan Entry Date" means the later of the Effective Date of the Plan or the Eligible Employee's Employment Date.

Plan Year. "Plan Year" means the Fiscal or Academic Year, which is the 12 consecutive month period beginning July 1 and ending on June 30.

Salary/Wages. "Salary/Wages" means the amount paid for employment or contracted services by the Institution to the Participant during the taxable year ending within the Plan Year which is required to be reported as wages on the Participant's Form W-2, and as consistent with ERA Rule 2.82.3.8 NMAC.

Years of Participation. "Years of Participation" means any year of service after participation in the Plan begins and during which Institution and Participant Plan Contributions are made.

## **ALTERNATIVE RETIREMENT PLAN MARKETING POLICY AND GUIDELINES**

The marketing objective is to provide eligible employees with a clear understanding of the Educational Retirement Act (ERA) and the Alternative Retirement Plan (ARP) through a fair and balanced presentation.

In order to assure that the eligible employees have all the information needed to make informed and unbiased decisions, they should be encouraged to review materials and/or talk to the ARP carriers and the Educational Retirement Board (the "Board").

Each eligible employee will be provided with a list of all authorized carriers and their representatives, in order to initiate contact with the carrier. ARP sales representatives will not make unsolicited contact with the participant.

Full and complete provision disclosure under the various investment vehicles as required by the National Association of Securities Dealers (NASD) and the Securities Exchange Commission (SEC) shall be made.

The registered representatives will work within the following marketing guidelines set forth by the Educational Retirement Board.

1. The Board has the authority over coordination of the ARP marketing effort of the approved Annuity Carrier. The contact is:

Director  
Educational Retirement Board  
701 Camino De Los Marquez  
Santa Fe, NM 87505  
(505) 827-8030

2. Each Institution will provide each eligible employee with the names of the Annuity Carriers and the name(s) of the contact person for each company, as well as information about ERA.

3. Eligible employees will receive information on the ARP through brochure distribution in Personnel Offices of the Institution, or at Institution sanctioned new employee orientation meetings. Authorized representatives of the Annuity Carriers may attend the orientation session only if specifically invited by the Institution. Otherwise, there is to be no unsolicited contact of Participants by the personnel of the Annuity Carrier.

4. Gifts or any other monetary award or gratuity with reference to performance under the ARP contract are strictly prohibited to Participants or to anyone else associated with the ARP.

5. This manual on the ARP is intended to govern only ARP products approved by the Board. However, when specifically requested by the Participant, the Annuity Carrier may make available other products outside the ARP to Participants in order to satisfy their requests.

6. The Board must approve all company sales literature concerning the ARP and explanatory materials before any such materials may be distributed to employees in any way. Review of presentation materials may be delegated to ERB staff or other agent of the Board. This is to include all sales material and video presentations. Approved literature will be included in one portfolio.

## I. ELIGIBILITY

In order to be eligible for the Alternative Retirement Plan, an employee must be a new employee hired on or after July 1, 1999 of one of the Institutions listed below:

A. Universities:

- (1) University of New Mexico
- (2) New Mexico State University
- (3) New Mexico Institute of Mining and Technology
- (4) New Mexico Highlands University
- (5) Western New Mexico University
- (6) Eastern New Mexico University

Community Colleges:

- (7) Central New Mexico Community College
- (8) Clovis Community College
- (9) Luna Community College
- (10) Mesalands Community College
- (11) New Mexico Junior College
- (12) Northern New Mexico College
- (13) San Juan College
- (14) Santa Fe Community College

B. In addition, in order to be eligible for the Alternative Retirement Plan, an employee must be an employee from one of the groups as set forth below:

(1) Faculty

Faculty means all instructional or research personnel who are classified as:

- (a) Instructors or Lecturers
- (b) Assistant Professors
- (c) Associate Professors
- (d) Professors (including Visiting Professors)
- (e) Research Professors (includes both Assistant and Associate Research Professors)

(2) Professionals

Professionals means:

- (a) President
- (b) Vice-President
- (c) Provost
- (d) Dean
- (e) Assistant or Associate Presidents, Vice-Presidents



- (f) Academic Department Chairs
- (g) Directors or Managers who report directly to a Vice-President, Provost, or a President
- (h) Medical Doctors
- (i) Intercollegiate Athletic Coaches
- (j) Senior Institutional Developers and Fundraisers (limited to employees whose responsibilities are solely in engineering or scientific research at the senior level position.)

(3) Any employee of an Institution working out-of-state under a research contract between the Institution and the United States Government may be a Participant.

National Scientific Balloon Facility/Physical Laboratory. All employees employed through New Mexico State University and the United States Government at the National Scientific Balloon Facility/Physical Laboratory located in Palestine, Texas, will automatically become an eligible employee regardless of his/her job classification for purposes of this Article.

(4) Temporary Employees - An otherwise eligible Participant with a predetermined termination date of less than one year is not eligible for participation in the ARP. However, temporary employees who subsequently become permanent employees during their temporary tenure or immediately following their temporary tenure shall be eligible to be participants beginning on the start date of their permanent employment status.

(5) Leased Employees – Leased Employees are not eligible for participation in the ARP. "Leased Employees" means individuals who are: (a) supplied to the Institution by or through employment, leasing or temporary service agencies; (b) classified by the Institution as temporary or leased personnel; and (c) who are paid by or through an agency or third party. Leased employees within the meaning of Code section 414(n) shall be considered employees solely for purposes of complying with any applicable Code requirements that require that they be treated as employees, but such leased employees shall not be treated as eligible employees for any other purpose and shall not be eligible to participate in the Plan or to accrue benefits of any kind while leased employees described in Code section 414(n).

C. Any employee who is eligible to become a participant may make an election to participate in the alternative retirement plan within the first ninety days of employment. This is intended to be a one-time irrevocable election made no later than the employee's first becoming eligible under the alternative retirement plan or any other 401(a), 403(b) or 457(b) plan or arrangement of his or her employer (whether or not such other plan or arrangement has terminated), to have contributions equal to the specified percentage in Article III of the employee's compensation (including no amount of compensation) made by the employer on the employee's behalf to the plan as described in Treas. Reg. § 1.401(k)-1(a)(3) and IRS Rev. Rul. 2006-43. Consequently, except for the case of temporary employees as discussed in section I(B) above, an employee who is currently or had previously been a regular member of the ERB defined benefit plan as an employee of one of the Institutions listed above in section I(A) is ineligible to participate in the alternative retirement plan. Any employment, except for employment as an

independent contractor, by any of the institutions listed above in section I(A) triggers this first time hire provision, regardless of that position's ARP eligibility. For example, if a member is hired by UNM for a non-ARP position, and then is hired for an ARP position at UNM or any of the other qualifying institutions, they are not eligible for ARP. If on the other hand, a member is hired by APS, a non-ARP employer and became a member of ERB and is subsequently hired by UNM in an ARP-eligible position, they would be eligible for ARP.

Any eligible employee who does not elect to become an ARP Participant within the first ninety days of employment shall become a regular member of the ERB if that employee is eligible to be a regular member. Such a member shall not later be eligible to elect to be an ARP participant, regardless of whether the employee subsequently is employed in another position that is eligible for participation in the alternative retirement plan.

If a participant leaves an ARP position for a non-ARP position, even at the same employer, the participant will become an ERB member and will not be able to rejoin ARP again regardless of when and where they are re-hired in an ARP position.

D. An employee cannot simultaneously be a participant in the ARP and a member in the ERB plan. If an employee is simultaneously eligible to be a participant in both an ARP position and a member in a non-ARP position, the employee shall remain a participant or member of the plan in which the employee was first a participant or member.

If an employee begins employment in an ARP position and a non-ARP position (more than .25 FTE) on the same day, the employee must choose whether they wish to participate in the ARP plan or become a member in the ERB defined benefit plan. If an employee chooses the ERB plan, the employee will not be eligible to join the ARP plan in the future.

If an employee is simultaneously employed in more than one ARP position and has elected the ARP, the employee shall be a participant in ARP through both positions. Applicable Employer and Employee contributions shall be made through each employer.

E. Transfers from one covered Institution to another do not constitute a break in service and the employee would not be classified as a new employee on or after July 1, 1991.

F. When an individual returns to employment covered by the Alternative Retirement Plan, he or she is not considered an eligible employee for purposes of this article. If an individual has been an ERA member at any time prior to July 1, 1991, he or she is not eligible for the ARP.

G. To the extent permitted by Section 22-11-47.D, NMSA, on July 1, 2009, any Participant who has made contributions to the Alternative Retirement Plan for a cumulative total of seven years or more shall have a one-time option of electing to become a regular member of the ERA. Thereafter, to the extent permitted by Section 22-11-47.D, NMSA, once a Participant has made contributions to the Alternative Retirement Plan for a cumulative total of seven years, such Participant shall have a one-time option of electing to become a regular member of the ERA. Participants electing to become regular members of the ERA shall exercise that option within

one hundred twenty days of the date of becoming eligible to elect to become a regular member. Any amounts on deposit in an employee's Alternative Retirement Plan account when a Participant becomes a regular member of the ERA shall remain on deposit with the contractor or carrier subject to the provisions of the Alternative Retirement Plan.

H. An ARP retiree who returns to work shall do so under either the provisions of ERB's Return to Work program or Return to Work Rule Exception in accordance with NMSA 1978, 22-11-25.1 and 2.82.5 NMAC.

I. The Board shall approve the positions at each qualifying state educational institution that are eligible for participation in the Alternative Retirement Plan.

## **II. FUND ADMINISTRATION**

### **A. ERB FUND ADMINISTRATION**

The Institution will remit to the Educational Retirement Board the following percentage of all ARP Participants' earnings, in accordance with the provisions of NMSA 1978, Section 22-11-49(B), on the same schedule and in the same manner that the contributions are made for members to ERB:

- (1) from July 1, 2021 through June 30, 2022, four and one-fourth percent (4.25%); and
- (2) on and after July 1, 2022, five and one-fourth percent (5.25%).

### **B. PARTICIPATION ACCUMULATION ACCOUNT**

The Institution will remit to the selected Annuity Carrier all Institution and Participant Plan Contributions to be made to the Participant's Accumulation Account. The mechanisms or methods that will be used for transmission will be agreed upon by both the Institution and the Annuity Carrier.

### III. CONTRIBUTIONS

Each Participant will contribute monthly to the Alternative Retirement Plan the same amount which he or she would be required to contribute to the ERB if he or she were a member of that system. Participant Plan Contributions may be made by a reduction of salary in accordance with the provisions of Section 22-11-49(C). The entirety of each Participant's Plan Contribution shall be remitted to the appropriate Annuity Carrier for application to the Participant's Accumulation Account(s).

Each Institution, as the employer of a Participant in the ARP, shall contribute on behalf of each Participant the same amount that the employer would be required to contribute to ERB if the Participant were a member of that retirement system.

An amount equal to the specified percentage in Article II(A) of the Participant's total earned Salary/Wages as defined in Section 22-11-49(B), as amended, shall be remitted to the Educational Retirement Board. This remittance is to reduce the past unfunded liability of the ERA. If this contribution percentage is reduced pursuant to Section 22-11-49(B), and the Institution is notified by the Board, the amount of reduction shall be remitted to the appropriate Annuity Carrier for application to the Participant's Accumulation Account. In establishing the Participant's total earned Salary/Wages as defined in Section 22-11-49(B), as amended, for purposes of Plan Contributions, salary or wages in excess of the limitations set forth in Section 401(a)(17) of the Code, as amended, shall be disregarded. The remainder of the Institution's Plan Contribution shall be remitted directly to the appropriate Carrier for allocation to the Participant's Accumulation Account(s). The limitation on compensation for eligible employees shall not be less than the amount allowed pursuant to the Educational Retirement Act in effect on July 1, 1993. For purposes of this Article III, an "eligible employee" means an individual who was a member of the ERA or a Participant in this ARP prior to the first plan year beginning after December 31, 1995.

Any remittance required to be made by the Institution to the Educational Retirement Board shall be made at the same time, and subject to the same requirements, that are followed when the Institution remits contributions for members of ERB.

#### A. EMPLOYER PICKUP

The Institution shall pick up the Participant Plan Contributions by this Article for all Salary/Wages earned on or after July 1, 1999, and the contributions so picked up shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Service Code, Section 414(h). All "pick-up" contributions shall satisfy the requirements of IRS Rev. Rul. 2006-43 and other applicable Internal Revenue Service guidance.

#### B. CONTRIBUTION ALLOCATIONS

A Participant may specify that a part or all of his or her Accumulation Account in one Contract may be transferred to another Contract of the same Carrier. There are no Plan allocation restrictions concerning the allocation of contributions within a Carrier. Each Carrier, however, does have restrictions that will govern these allocations.

The Participant may select one Carrier per Plan Year, and once per Plan Year a Participant may change Carriers for the allocation of future contributions. Accumulated contributions may be transferred to another Carrier subject to the rules and regulations of the Carriers governing these transfers. The election to change Carriers must be done no later than December 15, to be effective the following January 1. If the Participant fails to submit in writing an election to change Carriers by December 15, the Participant will continue his/her existing relationship with their Carrier.

#### C. INVESTMENT AND INVESTMENT EARNINGS

The Investments chosen by the Participant determine the earnings for investment and apply the earnings or losses to each Participant's Accumulation Account. Statements are provided to the Participant on a quarterly basis by the Carrier, which will reflect contributions and earnings thereon.

#### D. INTERNAL REVENUE CODE LIMITATIONS

Notwithstanding any other provision of this Alternative Retirement Plan, Plan Contributions shall not exceed the limitations on annual additions under Code section 415(c). For this purpose, compensation shall have the safe harbor definition set forth in 26 CFR 1.415(c)-2(d)(2).

#### E. VESTING

All Plan Contributions are 100 percent vested at all times.

F. CORRECTION OF CONTRIBUTIONS MADE BY MISTAKE. Contributions made because of a good faith mistake of fact can be returned to the employer if returned within one year of the date the contribution was made as permitted under Revenue Ruling 91-4 or other Internal Revenue Service Guidance.

## **IV. BENEFITS**

This Plan is a Defined Contribution Plan and the benefits available will vary according to the earnings or the fixed or variable annuity selected by the Participant and the guarantees available therefrom, if any, and for the length of time that the Participant has been contributing. There is no formula available for such a plan to determine retirement benefits as is available to Participants under ERB.

### **A. ESTIMATES**

The computation of retirement benefits under the Alternative Retirement Plan shall be obtained from the Carrier and shall not be provided by the Educational Retirement Board.

### **B. OPTIONS**

Participants in the Plan may select between various options provided by the Carrier. Estimates of these options must be obtained by the Participant directly from the Carrier, and not from the Educational Retirement Board. Since New Mexico is a "community property" state, the option selected by a Participant for the distribution of his/her retirement benefits, must be confirmed in writing by the Participant's spouse.

### **C. DEATH**

In the event that the Participant dies prior to commencement of retirement benefits, the full current value of the vested amount in the Accumulation Account is then payable to the Beneficiary under one of the options offered by the Carrier.

### **D. DISABILITY RETIREMENT**

When a person who is eligible for participation in the Plan shall retire because of disability, his retirement benefits shall be computed subject to the restrictions stipulated by the carrier. Disability is determined by the Institution.

### **E. BENEFICIARIES**

Any person who is entitled to coverage under this Plan may designate a Beneficiary in the manner prescribed by the Carrier selected by the Participant. In the event that no Beneficiary has been designated, then the distribution shall be made to the estate of the deceased.

### **F. REFUNDS/LOANS**

No refunds or loans will be allowed on Participant Plan Contributions or on Institutional Plan Contributions made on behalf of the Participant.

## G. TERMINATION OF MEMBERSHIP

The membership of any eligible member shall terminate upon the Participant terminating employment with the Institution for any cause.

## H. PAYMENT MECHANISMS

Following a bona fide termination of employment a covered Participant will be eligible to elect a distribution and may determine his or her options and the manner of payment from the list of those available from the selected Carrier. Distributions may be deferred by the Participant after a termination of employment, but no later than permissible under Section J.

The entire contractual relationship will be between the Participant and the Carrier. The Educational Retirement Board shall have no interest or responsibility in this process.

### (1) Lost, Stolen or Misplaced Checks

The retiree must notify the Carrier that an annuity check has been lost, misplaced or stolen. The Carrier will assist the Participant in such ways as might be appropriate, and the ultimate process to be used is entirely up to the Annuity Carrier and is not the responsibility or obligation of the Educational Retirement Board.

### (2) Exemptions

Carrier Contracts issued under the Alternative Retirement Plan and all rights thereto of a Participant in the Alternative Retirement Plan shall be exempt from state or municipal tax, shall be exempt from any levy and sale, garnishment, attachment, or any process whatsoever, and shall be unassignable except as specifically otherwise provided in the Carrier Contract.

## I. DIRECT ROLLOVERS

(1) General Rule. Notwithstanding any other provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Section I, a Distributee may elect, at the time and in the manner prescribed by the Educational Retirement Board, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover. Any attempt by a Distributee to elect to have an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan which is a Roth IRA shall be subject to the requirements contained in Code section 408A.

(2) Definitions. The following definitions shall apply for purposes of this Section I:

(a) "Eligible Rollover Distribution" means any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution shall not include (1) any distribution that is one of a series



of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated Beneficiary, or for a specified period of ten years or more, (2) any distribution to the extent such distribution is required under Code section 401(a)(9), and (3) the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities). A portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to (1) an individual retirement account or annuity described in Code section 408(a) or Code section 408(b); (2) for taxable years beginning after December 31, 2001 and before January 1, 2007; to a qualified trust which is part of a defined contribution plan that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible; or (3) for taxable years beginning after December 31, 2006, to a qualified trust or to an annuity contract described in Code section 403(b), if such trust or contract provides for separate accounting for amounts so transferred (including interest thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible. Effective for distributions after December 31, 2007, a portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because it is transferred to a Roth individual retirement account as described in Code section 408A(a).

(b) "Eligible Retirement Plan" means an individual retirement account described in Code section 408(a), an individual retirement annuity described in Code section 408(b), an annuity plan described in Code section 403(a), an annuity contract described in Code section 403(b), an eligible plan under Code section 457(b) which is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan, or a qualified trust described in Code section 401(a), that accepts the Distributee's Eligible Rollover Distribution. However, in the case of an Eligible Rollover Distribution to the surviving spouse, an Eligible Retirement Plan shall be an individual retirement account or individual retirement annuity. Effective for distributions after December 31, 2007, a Roth individual retirement account described in Code section 408A(a) shall be considered an Eligible Retirement Plan.

(c) "Distributee" includes a Participant or former Participant. In addition, the Participant or former Participant's surviving spouse and the Participant or former Participant's spouse or former spouse who is the alternate payee under a Qualified Domestic Relations Order shall be Distributees with regard to the interest of the spouse or former spouse.

(d) "Direct Rollover" means a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

(3) Non-Spouse Rollovers. Effective for Plan Years beginning on or after July 1, 2010, a non-spouse Beneficiary may elect to make a direct rollover to an inherited individual retirement account or annuity described in Code Section 408(a) or Code Section 408(b) that is established on behalf of the Beneficiary. Such rollover shall be made in a manner consistent with Code Section 402(c)(11) and any other applicable guidance.

#### J. REQUIRED MINIMUM DISTRIBUTIONS

Notwithstanding any provision of the ARP to the contrary, benefits will be distributed in accordance with Code section 401(a)(9) and the regulations thereunder, including the minimum incidental death benefit restrictions of Code section 401(a)(9)(G).

## **V. ADMINISTRATION OF THE PLAN**

### **A. FORMS**

The Alternative Retirement Plan shall use the forms approved for this system which will be provided for Participants by the Carrier.

### **B. PERSONNEL**

The Alternative Retirement Plan shall be administered by the Educational Retirement Board of New Mexico.

Inquiries are to be directed to:

Director  
Educational Retirement Board  
701 Camino De Los Marquez  
Santa Fe, New Mexico 87505  
(505) 827-8030

### **C. INTERNAL REVENUE CODE SELECTION**

The Educational Retirement Board has determined that this Plan shall be operated under the provisions of Section 401(a) of the Internal Revenue Code. The Plan is intended to satisfy section 401(a) of the Internal Revenue Code and to be a governmental plan within the meaning of section 414(d) of the Internal Revenue Code.

### **D. UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA)**

Notwithstanding any provision of the ARP to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Code. In addition, the survivors of any participant who dies on or after January 1, 2007 while performing qualified military service, are entitled to any additional benefits (other than contributions relating to the period of qualified military service, but including vesting service credit for such period and any ancillary life insurance or other survivor benefits) that would have been provided under the plan had the participant resumed employment on the day preceding the participant's death and then terminated employment on account of death.

### **E. EXCLUSIVE BENEFIT**

The assets of the Alternative Retirement Plan may not be diverted to or used for other than the exclusive benefit of the Participants or their Beneficiaries. Any contribution made by an Institution because of a mistake of fact must be returned to the Institution within one year of the contribution.

## **VI. REPORTING**

Each Institution will furnish the Educational Retirement Board with a Monthly Cash Report. Upon receipt of these reports, the staff of the Educational Retirement Board shall audit them in accordance with established procedures. Errors found will be reconciled and returned to the employing institution for resubmission.

The remittance required to be made by the Institution to ERB pursuant to Section 22-11-49(B) shall be made at the same time, and subject to the same requirements, under which the Institution remits contributions for members of ERB. The requirements dictate that contributions and their accompanying cash reports be made by the 15th of each month.

## **VII. BOARD ACTIONS**

### **A. RESPONSIBILITIES**

(1) The general administration and responsibility for the proper operation of the ARP and for making effective the provisions thereof are vested in the Educational Retirement Board of the State of New Mexico.

(2) Subject to the limitations hereof, the Board may establish rules and regulations for the administration of the ARP and for the transaction of business.

(3) The Board shall keep a record of all its proceedings under this Article, which will be in the form of a Manual of Operations that will be open to public inspection. At no time will individual Participant records be available to the public.

### **B. APPROVAL**

The contents of this manual and all interpretations hereunder shall be the exclusive responsibility of the Educational Retirement Board of the State of New Mexico.

### **C. LITIGATION**

When any member of the Educational Retirement Board shall receive notice that the system, the Alternative Retirement Plan, or any Board member, officer, employee or other staff member that litigation is under way or is threatened, the Director of the Educational Retirement Board shall immediately be notified of the potential litigation. The Director shall immediately notify all Board members.

No Board member, officer, employee or staff member shall take any action in any litigated matter unless specifically instructed to do so by the Educational Retirement Board or its Director.

### **D. AMENDMENTS**

Amendments to this manual shall be made when required by changes in the statutes, or when found to be appropriate by the Educational Retirement Board. All proposed amendments shall be reduced to writing and presented to the Educational Retirement Board prior to any meeting when they shall be considered. Final acceptance of the proposed amendment by the Board shall result in the publishing of appropriate changes to this manual.

Any potential change in Carriers must be done only after consultation with the Institution or their designated representative(s).

## E. LIABILITY

Benefits payable to Participants under the Alternative Retirement Plan are not obligations of the State of New Mexico or the Educational Retirement Board of the State of New Mexico. Such benefits and other rights of Alternative Retirement Plan Participants or their Beneficiaries are the liability and responsibility solely of the designated Carrier and shall be governed solely by the terms of the Contracts issued by such company or companies.