

**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, 33 Plaza La Prensa, Santa Fe, NM, 87507  
[2.80.900.1 NMAC – Rp, 2.80.900.1, 10/10/2023]

**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.  
[2.80.900.2 NMAC – Rp, 2.80.900.2, 10/10/2023]

**2.80.900.3 STATUTORY AUTHORITY:** This rule is authorized by Sections 10-11-14.5, 10-11-130 NMSA 1978, as amended.  
[2.80.900.3 NMAC – Rp, 2.80.900.3, 10/10/2023]

**2.80.900.4 DURATION:** Permanent.  
[2.80.900.4 NMAC – Rp, 2.80.900.4, 10/10/2023]

**2.80.900.5 EFFECTIVE DATE:** October 10, 2023, unless a different date is cited at the end of a section.  
[2.80.900.5 NMAC – Rp, 2.80.900.5, 10/10/2023]

**2.80.900.6 OBJECTIVE:** The objective of this rule is to establish procedures for payment of pre-retirement survivor pensions.  
[2.80.900.6 NMAC – Rp, 2.80.900.6, 10/10/2023]

**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 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.

[2.80.900.8 NMAC – Rp, 2.80.900.8, 10/10/2023]

**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 10/4/1979; PERA Rule 900.00, Death Benefit Documents, filed on 11-19-81; PERA Rule 900.00, Death Benefit Documents, filed on 7/1/1987; PERA Rule

900.00, Survivor Pension Benefits, filed on 12-29-89; PERA Rule 900, Pre-Retirement Survivor Pensions, filed on 7/1/1993; PERA Rule 900, Pre-Retirement Survivor Pensions, filed on 12/1/1995.

**Other History of 2.80.900 NMAC:**

2.80.900 NMAC, Pre-Retirement Survivor Pensions, filed 12/15/1995 and renumbered 12/28/2001.

2.80.900 NMAC, Pre-Retirement Survivor Pensions, filed 12/28/2001 was repealed, and replaced with 2.80.900 NMAC, Pre-Retirement Survivor Pensions, effective 10/10/2023.