

**Proposition:** Prop 11-11/12a

**Title:** A Resolution to Recommend Modification of the ERB proposed Rule 3 (V 2/7/12)

**Sponsors:** Larry Blank (Bus), Timothy Ketelaar (A&S), Stuart Munson-McGee (ACES), Cindy Murrell (CT/A&S), Richard Oliver (Bus), Chuck Kozel (H&SS), Nancy Baptiste (Education).

**Proposed  
Committee**

**Assignment:** EMERGENCY LEGISLATION **NOTE: THIS IS A DRAFT DOCUMENT SUBJECT TO FINAL EDITING**

**Assigned**

**Committee:** N/A

**Proposal:** This resolution recommends that the proposed Rule 3 of the New Mexico Educational Retirement Board (ERB) be modified to make clear that summer pay and supplemental income for teaching, research, and other work beyond a faculty member's nine-month contract should continue to be included in the calculation of contributions and benefits.

**Rationale:** Although the NMSU Faculty senate commends the efforts of the ERB in its efforts to better define member income that is subject to contributions and benefits, there are many faculty who work under 9-month contracts but regularly receive compensation during the summer months and, pursuant to university policy, are allowed to earn income up to the 12-month equivalent of their 9-month salary as approved by the employer. All income, including supplemental income, up to the 12-month equivalent income as approved by the employer should be included in the calculation of contributions and benefits. For example, if a regular faculty member is under a 9-month contract, then that person's "annual base pay" includes summer or supplemental pay and shall be included for the purposes of contributions to the fund and computation of the member's annual benefit, but not to exceed the approved 12-month equivalent as approved by the employer of the 9-month salary.

**Whereas,** the ERB has released proposed revisions to Rule 3 (2.82.3 NMAC), and will accept comments on those proposed changes until February 13, 2012;

**Whereas,** 2.82.3.8 B. of the proposed rule would exclude certain types of income for the purposes of contributions to the fund and computation of the member's annual benefit. These exclusions would include "pay supplements or salary supplements or other 'one-time' payments which do not increase an employee's annual base pay..." and this language may be interpreted as excluding summer pay or supplemental income for university faculty under a 9-month contract, who routinely receive summer pay or supplemental income for additional work performed beyond their 9-month faculty duties; and

**Whereas** section 4.70 of the NMSU POLICY MANUAL pertaining to **Supplemental Employment/Compensation** permits supplemental compensation subject to certain guidelines and constraints;

**Be it resolved that** the NMSU Faculty recommends that the proposed Rule 3 be modified to ensure that all faculty income up to the 12-month income approved by the employer be included in the salary for the purposes of contributions to the fund and computation of the member's annual benefit.

**Be it further resolved that** one possible modification to the rule to resolve this concern may be to define annual base pay as follows:

"Annual Base Pay" shall mean the 12-month full-time equivalent salary, and is not limited to the income under a 9-month contract, and would include pay supplements or salary supplements or other 'one-time' payments, but not to exceed a member's 12-month equivalent income as approved by the employer.

Information on submitting comments:

**Public Comment Period - ERB Rule 3**

**(Member and Administrative Unit Contributions) (2.82.3 NMAC)**

The Educational Retirement Board (the “Board”) is asking for comment on the attached draft revision to ERB Rule 3. The rule addresses member and local administrative unit contributions to the Educational Retirement Fund. Comments received on the rule will be evaluated to determine whether further changes should be recommended to the Board for consideration and adoption. The ERB looks forward to receiving your comments on the revised Rule 3. Comments should be e-mailed to [Rulechange3@nmerb.org](mailto:Rulechange3@nmerb.org) by close of business on February 13, 2012.