

DEPARTMENT OF TRANSFORMATION AND SHARED SERVICES, EMPLOYEE BENEFITS DIVISION

SUBJECT: Rules Governing Voluntary Products

DESCRIPTION: Act 533 of 2023 transferred the implementation and day-to-day management of voluntary products for eligible state employees from the Department of Transformation and Shared Services, Employee Benefits Division (“EBD”) to the Arkansas State Employees Association, Inc. (“ARSEA”). The Act requires ARSEA to develop and administer a cafeteria plan for voluntary products for eligible state employees with all contracts being acquired by sealed, competitive bid. Ark. Code Ann. § 21-5-905 authorizes EBD to promulgate rules to administer Act 533 of 2023.

The rules require ARSEA to provide EBD with a report on the competitive bid process, including the procedure followed and selection process. ARSEA shall present all new contracts and amendments to the State Board of Finance and Employee Benefits Oversight Subcommittee of the Arkansas Legislative Council. Any material changes shall also be reported.

To ensure continuity of services to eligible state employees, ARSEA and EBD shall meet quarterly and coordinate on issues regarding billing, employee management, record keeping, and information sharing. Any disputes between ARSEA and EBD shall be brought to the State Board of Finance. These matters shall not be subject to the Administrative Procedure Act, Ark. Code Ann. § 25-15-201 et seq.

ARSEA shall submit semiannual report to the Employee Benefits Oversight Subcommittee of the Arkansas Legislative Council with a summary of the voluntary products offered, including the contract, pricing, number of participants, and a financial analysis for each offering including premiums and additional expenses and fees, if any.

Changes made as a result of the public comment period:

- Non substantive change made to Section 4.01 – Removed code reference to avoid confusion with similar defined term.

PUBLIC COMMENT: A public hearing was held on this rule on February 13, 2024. The public comment period expired on March 4, 2024. The agency provided the following public comment summary:

Comments Sent by Email

Commenter’s Name: Derrick Smith, Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C. on behalf of American Fidelity Assurance Company

COMMENT: We are submitting this letter on behalf of our client, American Fidelity Assurance Company (“American Fidelity”). American Fidelity appreciates the

opportunity to provide comments regarding the Department of Transformation and Shared Services Employee Benefits Divisions Rules Governing Voluntary Products (“Proposed Rule”). American Fidelity is an Oklahoma insurance company that has worked with school districts for over 60 years. In Arkansas, American Fidelity works with school districts to provide life and supplemental benefits products. American Fidelity is concerned that the Proposed Rule could be read to apply to voluntary products provided to employees of public schools in addition to state employees. In that regard, American Fidelity requests that the Proposed Rule be revised to clearly state that it is only applicable to voluntary products offered to state employees. Under Arkansas law, the Director of the Employee Benefits Division (“EBD”) has administrative responsibility for developing, implementing, and maintaining cafeteria plans on behalf of state employees. Historically, the Arkansas State Employees Association has administered the cafeteria plan for voluntary products on behalf of state employees. In 2023, the Arkansas General Assembly memorialized this historical practice by requiring the Arkansas State Employees Association to develop and administer a cafeteria plan for voluntary products on behalf of eligible state employees or contract with a designee to develop and administer a cafeteria plan for voluntary products on behalf of eligible state employees. Notably, however, Act 533 also made clear that the Director’s historical authority to supervise the implementation and day-to-day management of employee benefits for state and public school employees did not extend to voluntary products or insurance procured by independent school districts for public school employees.

According to the Proposed Rule, its purpose is to implement Ark. Code Ann. § 21-5-905 regarding the administration of voluntary products on behalf of state employees. Although the EBD Director has indicated in public comments that the Proposed Rule is intended to only be applicable to voluntary products provided to state employees and is not intended to impact voluntary products marketed to public school employees, our principal concern is that the language of the Proposed Rule is not as clear. Specifically, section 4.1 of the Proposed Rule states: All state employees who are eligible under Ark. Code Ann. § 21-5-901 shall be offered the opportunity to participate in a cafeteria plan for voluntary products during their new hire eligibility period and during open enrollment. Under § 21-5-901, an “eligible employee” is defined to mean “full time employees of governmental entities.” “Governmental entities” are subsequently defined to include “any agency of the state, any city, any county, any school district, or any other political subdivision of the state.” By referencing § 21-5-901, the Proposed Rule as currently written could be read to include employees of school districts. American Fidelity respectfully requests that the Proposed Rule be revised to clarify its singular applicability to voluntary products sold to state employees. Specifically, American Fidelity proposes that the title of the Proposed Rule, as well as Sections 1.01, 2.0, and 4.0, be revised to clearly state its applicability to voluntary products sold to state employees. American Fidelity also proposes that the statutory reference in Section 4.1 be changed to Ark. Code Ann. § 21-5-904 as that is the statute the Proposed Rule is intended to implement. A redline of the Proposed Rule with the suggested revisions is included for reference. Because these suggested revisions are consistent with the stated purposes of the Proposed Rule, we believe that the Department may make these revisions without a new public comment period. According to the Administrative Procedures Act (“APA”),

an agency is to fully consider all written and oral submission respecting a proposed rule before finalizing the language of the proposed rule and filing it with the Arkansas Secretary of State and Arkansas Legislative Council. The APA clearly contemplates that a proposed rule may be revised during the promulgation process without requiring an additional public comment period. An Arkansas Attorney General's Opinion has expressly adopted the view that "the mere fact that proposed regulations are modified during the public comment period does not automatically require an additional 'notice and public comment period' prior to the final adoption of the regulation." The opinion further states: It has been stated that informed changes and distinctions are the very *raison d'être* of the notice-and-comment period. This principle is recognized in Act 406 of 1997 which amended § 25-15-204(a)(2) by adding the phrase "the agency shall fully consider all written and oral submissions respecting the proposed rule before finalizing the language of the proposed rule." Further, it has been recognized that if a final rule could not differ from a proposed rule without a new round of notice and comment, it would result in the absurdity that in rule making under the APA the agency could learn from comments on its proposals only at the peril of starting a new procedural round of commentary. See Annotation, What Constitutes Adequate Notice of Federal Agency Rule as against Objection that Rule Adopted Differed in Substance from that Published as Proposed in Notice, 96 A.L.R. Fed. 411 (1990); *Tenn. Env'tl. Council v. Solid Waste Disposal Control Bd.*, 852 S.W.2d 893 (Tenn. Ct. App. 1992) (unreasonable and inefficient to require an agency to publish the exact text of a proposed rule in order to obtain public reaction thereto and then require a republication and rehearing for every alteration made before final adoption). Although no Arkansas case law has addressed the issue, federal courts have generally cited two tests when considering whether a final rule is so different from a proposed rule that a new notice and comment period is required. A new notice and comment period is not required if: 1. The final rule is in character with the original scheme and was a logical outgrowth of the notice and comments stemming from the proposed rule, or 2. the notice fairly apprised interested persons of the subject and the issues that would be considered so that those persons had an opportunity to comment. While no Arkansas case law has considered these tests, no fewer than nine Arkansas state agencies have adopted rules of procedure (with Arkansas General Assembly's review) that adopt these tests. Clearly, Arkansas permits an agency to make some modifications to a proposed rule during the public comment period without requiring an additional notice and public comment period. In this instance, although the satisfaction of one test is sufficient, both tests for concluding that an additional public comment period is not required have been met. First, the proposed modifications do not change the publicly stated character of the rule to regulate the provision of voluntary products to state employees. The proposed modifications merely clarify that the rule only regulates the provision of voluntary products to state employees and does not regulate the provision of voluntary products to public school employees. Second, the notice described a proposed rule applicable to voluntary products. Any state or public school employee purchasing a voluntary product and any entity marketing such products was sufficiently notified of the items to be considered.

**Per the agency, footnotes were removed in this document for ease of reading.*

RESPONSE: Comment considered; non-substantive change made to remove reference to definition in Ark. Code Ann. § 21-5-901.

Commenter's Name: Derrick Smith, Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C. on behalf of USABLE Life

COMMENT: We are submitting this letter on behalf of our client, USABLE Life. USABLE Life appreciates the opportunity to provide comments regarding the Department of Transformation and Shared Services Employee Benefits Divisions Rules Governing Voluntary Products ("Proposed Rules"). USABLE Life is an Arkansas domestic life and health insurer based in Little Rock, Arkansas and is the 20th largest life insurer in the United States. USABLE Life is ranked in the top 10 of the supplemental, life, and disability in the markets that it serves. USABLE Life does not currently provide group voluntary products to Arkansas state employees. Therefore, USABLE Life does not have any comments regarding the Proposed Rule's application to state employees. However, USABLE Life does provide voluntary group products to independent school districts throughout the State of Arkansas. As such, USABLE Life is primarily concerned with the potential applicability of the Proposed Rule to voluntary group products provided to employees of public school employees. In that regard, USABLE Life requests that the Proposed Rule clearly state that it is only applicable to voluntary products offered to state employees. Under Arkansas law, the Director of the Employee Benefits Division ("EBD") has administrative responsibility for developing, implementing, and maintaining cafeteria plans on behalf of state employees.¹ Historically, the Arkansas State Employees Association has administered the cafeteria plan for voluntary products on behalf of state employees. In 2023, the Arkansas General Assembly memorialized this historical practice by requiring the Arkansas State Employees Association to develop and administer a cafeteria plan for voluntary products on behalf of eligible state employees or contract with a designee to develop and administer a cafeteria plan for voluntary products on behalf of eligible state employees. Notably, however, Act 533 also made clear that the Director's historical authority to supervise the implementation and day-to-day management of employee benefits for state and public school employees did not extend to voluntary products or insurance procured by independent school districts for public school employees. According to the Proposed Rule, its purpose is to implement Ark. Code Ann. § 21-5-905 regarding the administration of voluntary products on behalf of state employees. Although the EBD Director has indicated in public comments that the Proposed Rule is intended to only be applicable to voluntary products provided to state employees and is not intended to impact voluntary products marketed to public school employees, our principal concern is that the language of the Proposed Rule is not as clear. Specifically, section 4.1 of the Proposed Rule states: All state employees who are eligible under Ark. Code Ann. § 21-5-901 shall be offered the opportunity to participate in a cafeteria plan for voluntary products during their new hire eligibility period and during open enrollment. Under § 21-5-901, an "eligible employee" is defined to mean "full time employees of governmental entities." "Governmental entities" are subsequently defined to include "any agency of the state, any city, any county, any school district, or any other political subdivision of the state." By referencing § 21-5-901, the Proposed Rule as currently written could be read to include employees of school districts. USABLE Life

respectfully requests that the Proposed Rule be revised to clarify its singular applicability to voluntary products sold to state employees. Specifically, US Able Life proposes that the title of the Proposed Rule, as well as Sections 1.01, 2.0, and 4.0, be revised to clearly state its applicability to voluntary products sold to state employees. US Able Life also proposes that Section 4.1 be amended to explicitly exclude public school employees. A redline of the Proposed Rule with the suggested revisions is included for reference. Because these suggested revisions are consistent with the stated purposes of the Proposed Rule, we believe that the Department may make these revisions without a new public comment period. According to the Administrative Procedures Act (“APA”), an agency is to fully consider all written and oral submission respecting a proposed rule before finalizing the language of the proposed rule and filing it with the Arkansas Secretary of State and Arkansas Legislative Council. The APA clearly contemplates that a proposed rule may be revised during the promulgation process without requiring an additional public comment period. An Arkansas Attorney General’s Opinion has expressly adopted the view that “the mere fact that proposed regulations are modified during the public comment period does not automatically require an additional ‘notice and public comment period’ prior to the final adoption of the regulation.” The opinion further states: It has been stated that informed changes and distinctions are the very *raison d’être* of the notice-and-comment period. See Rybachek, *supra*. This principle is recognized in Act 406 of 1997 which amended § 25-15-204(a)(2) by adding the phrase “the agency shall fully consider all written and oral submissions respecting the proposed rule before finalizing the language of the proposed rule.” Further, it has been recognized that if a final rule could not differ from a proposed rule without a new round of notice and comment, it would result in the absurdity that in rule making under the APA the agency could learn from comments on its proposals only at the peril of starting a new procedural round of commentary. See Annotation, What Constitutes Adequate Notice of Federal Agency Rule as against Objection that Rule Adopted Differed in Substance from that Published as Proposed in Notice, 96 A.L.R. Fed. 411 (1990); *Tenn. Env’tl. Council v. Solid Waste Disposal Control Bd.*, 852 S.W.2d 893 (Tenn. Ct. App. 1992) (unreasonable and inefficient to require an agency to publish the exact text of a proposed rule in order to obtain public reaction thereto and then require a republication and rehearing for every alteration made before final adoption) Although no Arkansas case law has addressed the issue, federal courts have generally cited two tests when considering whether a final rule is so different from a proposed rule that a new notice and comment period is required. A new notice and comment period is not required if: 1. the final rule is in character with the original scheme and was a logical outgrowth of the notice and comments stemming from the proposed rule, or 2. the notice fairly apprised interested persons of the subject and the issues that would be considered so that those persons had an opportunity to comment. While no Arkansas case law has considered these tests, no fewer than nine Arkansas state agencies have adopted rules of procedure (with Arkansas General Assembly’s review) that adopt these tests.

Clearly, Arkansas permits an agency to make some modifications to a proposed rule during the public comment period without requiring an additional notice and public comment period. In this instance, although the satisfaction of one test is sufficient, both tests for concluding that an additional public comment period is not required have been

met. First, the proposed modifications do not change the publicly stated character of the rule to regulate the provision of voluntary products to state employees. The proposed modifications merely clarify that the rule only regulates the provision of voluntary products to state employees and does not regulate the provision of voluntary products to public school employees. Second, the notice described a proposed rule applicable to voluntary products. Any state or public school employee purchasing a voluntary product and any entity marketing such products was sufficiently notified of the items to be considered.

**Per the agency, footnotes were removed in this document for ease of reading.*

RESPONSE: Comment considered; non-substantive change made to remove reference to definition in Ark. Code Ann. § 21-5-901.

Commenter's Name: John Starline – JTS Commenting on Behalf of Educational Benefits, Inc. (EBi)

COMMENT: Thank you for the opportunity to provide comments on the Department of Transformation and Shared Services Employee Benefits Divisions Rules Governing Voluntary Products (“Proposed Rules”). I am commenting on behalf of Educational Benefits, Inc. (“EBi”), an independently owned brokerage service based in Little Rock, Arkansas. The company has more than 40 years’ experience providing custom voluntary benefit solutions to educators, and we serve 151 school districts throughout the state. We provide flexible spending account administration, cafeteria plan documentation, enrollment solutions, and state of the art technology platform without any cost to our public-school clients. We can provide these services because we have invested in a team of over 200 employees, most of whom reside in the State of Arkansas.

According to the Proposed Rule, its purpose is to implement Ark . Code Ann. § 21-5-905 regarding the administration of voluntary products. The Director of the Employee Benefits Division (“EBD”) has publicly stated the Proposed Rule is intended to only apply to voluntary products provided to state employees and is not intended to impact voluntary products for public school employees. However, EBi is concerned that the language of the Proposed Rule does not make this distinction clear. Section 4.01 of the Proposed Rule states:

All state employees who are eligible under Ark. Code Ann. § 21-5-901 shall be offered the opportunity to participate in a cafeteria plan for voluntary products during their new hire eligibility period and during open enrollment.

“Eligible employee” is defined in § 21-5-901 as “full-time employees of governmental entities. That subchapter goes on to define “governmental entities” as “any agency of the state, any city, any county, any school district, or any other political subdivision of the state.” Therefore, as written, the Proposed Rule’s reference to § 21-5-901 could be read to include employees of school districts.

EBi respectfully requests that the Proposed Rule be revised to make clear that it only applies to voluntary products sold to state employees. Attached are proposed revisions for your consideration. EBi proposes that the title of the Proposed Rule, along with Sections 1.01, 2.0, and 4.02 be revised to clearly state the rule applies only to the voluntary products sold to state employees. EBi also proposes amending Section 4.01 to explicitly exclude public school employees. These revisions remain consistent with the stated purpose of the Proposed Rule, and therefore, we believe that the changes may be made without requiring a new public comment period. The Administrative Procedures Act (“APA”) clearly allows changes within the rulemaking process, since it instructs agencies to “fully consider” comments before finalizing language of a proposed rule. Furthermore, an Arkansas Attorney General’s Opinion states, “The mere fact that proposed regulations are modified during the public comment period does not automatically require an additional ‘notice and comment period’ prior to the final adoption of the regulation.” Merely clarifying the language of the proposed rule would not change the character or purpose of the rule, and would not require an additional public comment period. We appreciate your consideration of these comments. We are happy to discuss further, if helpful.

**Per the agency, footnotes were removed in this document for ease of reading.*

RESPONSE: Comment considered; non-substantive change made to remove reference to definition in Ark. Code Ann. § 21-5-901.

Comments Made During Public Hearing

Commenter’s Name: Derrick Smith, Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C. on behalf of American Fidelity Assurance Company

COMMENT: I’ve authorized to speak on their behalf. First, let me thank you for the opportunity to make some public comments. On as proposed rules governing voluntary products and I will supplement the comments with the written suggestions before the deadline is submitted. Those American Fidelity is an Oklahoma insurance company that’s been working with school districts for over 60 years. In Arkansas, American Fidelity Works with school districts to provide life and supplemental benefits products, and it’s in that regard that American Fidelity had its initial concerns in reviewing the draft. The concern is primarily assuring that the voluntary products that will be subject to this rule are limited to those voluntary products sold to state employees only and does not implicate a voluntary product sold to school district employees. I think when the statute or when the bill was passed, that is the genesis of this rule, the bill took steps in a couple of instances to to make sure that it’s clear that the voluntary products that are subject work that are the reason for this rule are offered to state employees only and not products sold to public school employees procured by school districts. The reason? The primary reason that this bill raised some concern is the reference in section 4.01 to all state employees who are eligible under our code section 21-5-901. That provision of the code doesn’t really define state employees. It defines eligible employees who are employees of governmental entities, and the definition of governmental entities in that section speaks to

employees of any agency of the state, any city, any county, any school district or any other political subdivision of the state. So with this reference, we think that there could be some confusion in viewing the rule of that it applies to public school employees as well. We think that the rule can be clarified simply by adding references throughout the draft rule, clearly stating its applicability to voluntary products sold to state employees. For instance, couple of words could be added to sections 1.01, 2.0 and 4.0 as well as an amendment to that statutory reference. Because we think these suggestions are consistent with the underlying statutes as well as the publicly stated purposes of the rule, but we do not believe these revisions are the type that are substantive and would require notice or a review and could be filed with the legislature.

RESPONSE: Comment considered; non-substantive change made to remove reference to definition in Ark. Code Ann. § 21-5-901.

Commenter's Name: Julie Marshall, executive vice president for USABLE Life

COMMENT: I have been for several years. For those of you who don't know, USABLE, we're an Arkansas insurance company. We're domiciled here. Our headquarters is out on Chenal Parkway. And we've provided insurance coverage here in Arkansas to the public school employees for about 40 years.

And so we are an in state employer and we've been designated as one of the best places to work in Arkansas since 2016. So we're very proud of our company, our heritage more so is how we have provided benefits to the public school employees for so many years. And although EBD has provided major medical coverage for public school employees, Independent School districts, the public schools have for a long time arranged for their own voluntary products. It's I can remember it for 40 years, so it's probably a lot longer than that. But they have had that right. And that was even further clarified in state law in 2015 that declare that schools could do that could choose their benefits. As the rate stands today, or as the rules stand today. We don't have any concern about the state employees. It's into the clarification of what are public school employees allowed to do?

And while we've heard many people say that the proposed rule is intended to apply to voluntary product, so to state employees. It's not intended to apply to voluntary products sold to public school employees. Still little ambiguous. And so that's, that's where we ask for clarification and we don't believe any clarification would be substantive. We're just asking for that clarification and then 4.01, as Mr. Smith referenced. It talks about all state employees. And so what we would ask and we will put this in writing. Follow up from our I think our CEO will sign our letter, but it's to some language that makes it clear that this doesn't refer to the public school employees, but rather the state employees. So we appreciate the time to make the comments. And we will follow the process and would like clarification.

RESPONSE: Comment considered; non-substantive change made to remove reference to definition in Ark. Code Ann. § 21-5-901.

Commenter's Name: John Starline – JTS Commenting on Behalf of Educational Benefits, Inc. (EBi)

COMMENT: There are two insurance companies present. We're a broker in the school market. We have been in the school market for 40 years. We currently represent the majority of the school districts in the state. And with those school districts, we provide technology platforms to manage eligibility. We do the enrollments with our own enrollers we provide products on a very much competitively bid basis every single year. And we compete against not only insurance carriers but also other brokers in our markets, which bring the pricing to bear very competitively competitive pricing to save our employees and school districts a lot of money. In fact, over the years since, we have been in this business and gone out and bid these products with both carriers in front of us. But other carriers, we've saved millions of dollars for the school district employees and our efforts to be. At this point, at this juncture, I'm here to talk about. The bill that's been passed to Act 533 was House Bill 1160, I believe, and in that bill, we clarified, or at least my understanding was there was clarification in reference to code section 6-17-1115. That code section clearly established that public school employees are independent and make an independent. As to who their insurance brokers are, the reason I'm here, the bill itself as written. I believe can be interpreted to – to exclude public school employees and only include – include state employees. The problem that I aspire see is this is not the first time I've been here. This is about the 4th time that I've been here to try to clarify some of the ambiguities. The broker that was selected 10 years ago to take over the state benefits, and whoever is the followed after that affiliates, whatever it may be, there seems to be a continuous ambiguity as to who is supposed to be doing state employees and who's done public school employees. And that's when 6-17-1115 came and clarified. That and that is referenced in Acts 533 four different times. To clarify that. And so I think at this point what we want to do is to avoid any more ambiguity – make this clear and simple so that the school districts know what they what they have the right to do and the state employees have their rights too. So at this point, the first thing is I want to say, Director Wallace, we want to appreciate you for referencing the fact that this specifically doesn't include school employees in your in your video conference. So recognizing that fact, we just want to make sure that it's clear that that is the intent and that is what we're going to do. And I think that in all things. Trying to make that or effectuate that as best as we can. If we could put in some – some language as – as Derek said, and as Julie said, I believe it's in four.

I'm a recovering attorney, not a practicing attorney. I don't really know all of those things, but what I do know is just a little clarification. If it's not substantive. To not include it. I don't see where it would be a substantive change to include it to where you specifically included that we exclude public school employees and let them have their own right to make their independent choice to go to their own providers, to procure their benefits at a better price.

RESPONSE: Comment considered; non-substantive change made to remove reference to definition in Ark. Code Ann. § 21-5-901.

Commenter's Name: Sharon Chuculate, Arkansas Association of Educational Administrators

COMMENT: It's gonna sound like we're beating a dead horse, but I'm just here to say that there is some confusion amongst our public school administrators. 21-5-901 does include public schools as the governmental entity, and I think that there is some concern that districts would lose their lot to choose their provider.

And I understand from conversations, again with EBD and Director Wallace, it's absolutely not intended to address public school employees, but we feel like even if you excluded under ACH, 21-5-901 and 4.01, that might make it a little more clear to the public schools.

Now say that within the law, and that is our comment.

RESPONSE: Comment considered; non-substantive change made to remove reference to definition in Ark. Code Ann. § 21-5-901.

Lacey Johnson, an attorney with the Bureau of Legislative Research, asked the following question and received the following response:

Q. The rules provide that disputes between ARSEA and EBD shall be exempt from the Administrative Procedure Act. Is there statutory authority for this exemption, or does it come from somewhere else? **RESPONSE:** No, there is nothing in the law regarding disputes at all which is why we wanted to add something about dispute resolution into the rule. But we did not want it to become a full administrative hearing on disputes which is why that language was added.

The proposed effective date is June 1, 2024.

FINANCIAL IMPACT: The agency indicated that this rule has no financial impact.

LEGAL AUTHORIZATION: "The Employee Benefits Division shall promulgate rules to administer" Title 21, Chapter 5, Subchapter 9 of the Arkansas Code, regarding cafeteria plans. Ark. Code Ann. § 21-5-905.

This rule implements Act 533 of 2023. The Act, sponsored by Representative Jeff Wardlaw, regulated compensation and benefits of public officers and employees, defined voluntary products, clarified supervision of voluntary products offered to participants in the State and Public Life and Health Insurance Program, and amended the administration of cafeteria plans for certain public officers and employees. Uncodified language in the Act required the Employee Benefits Division to promulgate rules necessary to implement the Act and provided that the final rule shall be filed with the Secretary of State for adoption on or before January 1, 2024. *See Act 533, § 12.*

RECEIVED

Revised May 2023

JAN 31 2024

BLR QUESTIONNAIRE FOR FILING PROPOSED RULES WITH
THE ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT _____
 BOARD/COMMISSION _____
 BOARD/COMMISSION DIRECTOR _____
 CONTACT PERSON _____
 ADDRESS _____
 PHONE NO. _____ EMAIL _____
 NAME OF PRESENTER(S) AT SUBCOMMITTEE MEETING _____
 PRESENTER EMAIL(S) _____

INSTRUCTIONS

In order to file a proposed rule for legislative review and approval, please submit this Legislative Questionnaire and Financial Impact Statement, and attach (1) a summary of the rule, describing what the rule does, the rule changes being proposed, and the reason for those changes; (2) both a markup and clean copy of the rule; and (3) all documents required by the Questionnaire.

If the rule is being filed for permanent promulgation, please email these items to the attention of Rebecca Miller-Rice, miller-ricer@blr.arkansas.gov, for submission to the Administrative Rules Subcommittee.

If the rule is being filed for emergency promulgation, please email these items to the attention of Director Marty Garrity, garritym@blr.arkansas.gov, for submission to the Executive Subcommittee.

Please answer each question completely using layman terms.

1. What is the official title of this rule?

2. What is the subject of the proposed rule? _____
3. Is this rule being filed under the emergency provisions of the Arkansas Administrative Procedure Act? Yes No

If yes, please attach the statement required by Ark. Code Ann. § 25-15-204(c)(1).

If yes, will this emergency rule be promulgated under the permanent provisions of the Arkansas Administrative Procedure Act? Yes No

4. Is this rule being filed for permanent promulgation? Yes No

If yes, was this rule previously reviewed and approved under the emergency provisions of the Arkansas Administrative Procedure Act? Yes No

If yes, what was the effective date of the emergency rule? _____

On what date does the emergency rule expire? _____

5. Is this rule required to comply with a *federal* statute, rule, or regulation? Yes No

If yes, please provide the federal statute, rule, and/or regulation citation.

6. Is this rule required to comply with a *state* statute or rule? Yes No

If yes, please provide the state statute and/or rule citation.

7. Are two (2) rules being repealed in accord with Executive Order 23-02? Yes No

If yes, please list the rules being repealed.

If no, please explain.

8. Is this a new rule? Yes No

Does this repeal an existing rule? Yes No

If yes, the proposed repeal should be designated by strikethrough. If it is being replaced with a new rule, please attach both the proposed rule to be repealed and the replacement rule.

Is this an amendment to an existing rule? Yes No

If yes, all changes should be indicated by strikethrough and underline. In addition, please be sure to label the markup copy clearly as the markup.

9. What is the state law that grants the agency its rulemaking authority for the proposed rule, outside of the Arkansas Administrative Procedure Act? Please provide the specific Arkansas Code citation(s), including subsection(s).

10. Is the proposed rule the result of any recent legislation by the Arkansas General Assembly?
Yes No

If yes, please provide the year of the act(s) and act number(s).

11. What is the reason for this proposed rule? Why is it necessary?

12. Please provide the web address by which the proposed rule can be accessed by the public as provided in Ark. Code Ann. § 25-19-108(b)(1).

13. Will a public hearing be held on this proposed rule? Yes No

If yes, please complete the following:

Date: _____

Time: _____

Place: _____

Please be sure to advise Bureau Staff if this information changes for any reason.

14. On what date does the public comment period expire for the permanent promulgation of the rule? Please provide the specific date. _____

15. What is the proposed effective date for this rule? _____

16. Please attach (1) a copy of the notice required under Ark. Code Ann. § 25-15-204(a)(1) and (2) proof of the publication of that notice.

17. Please attach proof of filing the rule with the Secretary of State, as required by Ark. Code Ann. § 25-15-204(e)(1)(A).

18. Please give the names of persons, groups, or organizations that you anticipate will comment on these rules. Please also provide their position (for or against), if known.

19. Is the rule expected to be controversial? Yes No

If yes, please explain.

RECEIVED

JAN 31 2024
BLR

Revised May 2023

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT _____
BOARD/COMMISSION _____
PERSON COMPLETING THIS STATEMENT _____
TELEPHONE NO. _____ EMAIL _____

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents. Please attach additional pages, if necessary.

TITLE OF THIS RULE _____

1. Does this proposed, amended, or repealed rule have a financial impact?
Yes No

2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
Yes No

3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

If no, please explain:

(a) how the additional benefits of the more costly rule justify its additional cost;

(b) the reason for adoption of the more costly rule;

(c) whether the reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and

(d) whether the reason for adoption of the more costly rule is within the scope of the agency's statutory authority, and if so, how.

4. If the purpose of this rule is to implement a *federal* rule or regulation, please state the following:
 - (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

5. What is the total estimated cost by fiscal year to any private individual, private entity, or private business subject to the proposed, amended, or repealed rule? Please identify those subject to the rule, and explain how they are affected.

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

6. What is the total estimated cost by fiscal year to a state, county, or municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes No

If yes, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

RECEIVED

MARCH 15 2024

BLR

DEPARTMENT OF TRANSFORMATION AND SHARED SERVICES
EMPLOYEE BENEFITS DIVISIONS RULES GOVERNING
VOLUNTARY PRODUCTS

Effective: _____

1.0 AUTHORITY

- 1.01 These rules shall be known as the Department of Transformation and Shared Services Employee Benefits Division Rules Governing Voluntary Products.
- 1.02 These rules are promulgated pursuant to Ark. Code Ann. § 21-5-905 and Ark. Code Ann. § 25-15-201 et seq.

2.0 PURPOSE

The purpose of these rules is to implement Ark. Code Ann. § 21-5-904 regarding the administration of voluntary products.

3.0 DEFINITIONS

- 3.01 EBD means the Department of Transformation and Shared Services, Employee Benefits Division.
- 3.02 Voluntary Products means any individual or group policy and other employee benefits that are wholly paid for by the employee, including without limitation those policies and benefits provided by the Arkansas State Employees Association, Inc., or a designee of the Arkansas State Employees Association, Inc., that develops and administers a cafeteria plan under Ark. Code Ann. § 21-5-405(d).

4.0 VOLUNTARY PRODUCTS OFFERINGS

- 4.01 All state employees ~~who are eligible under Ark. Code Ann. § 21-5-901~~ shall be offered the opportunity to participate in a cafeteria plan for Voluntary Products during their new hire eligibility period and during the annual open enrollment.
- 4.02 The Arkansas State Employees Association, Inc., shall offer education and information to each employee regarding the available Voluntary Products annually during open enrollment and to new hires throughout the year.

5.0 VOLUNTARY PRODUCTS CONTRACTS

- 5.01 The Arkansas State Employees Association, Inc., shall develop and administer a cafeteria plan for Voluntary Products on behalf of eligible state employees.
- 5.02 All Voluntary Products shall be contracted through a competitive sealed bidding process.

- 5.02.1 The Arkansas State Employees Association, Inc., shall ensure the selection of Voluntary Products offer the best combination of benefits and pricing available.
- 5.02.2 The Arkansas State Employees Association, Inc., shall provide EBD a report of all competitive bids including the procedures followed and selection process.
- 5.02.3 No Voluntary Product contract, including amendments and extensions, shall exceed seven (7) years without being competitively rebid.
- 5.03 The Arkansas State Employees Association, Inc., shall present all new contracts and amendments to existing contracts for Voluntary Products to the State Board of Finance and the Employee Benefits Oversight Subcommittee of the Arkansas Legislative Council.
- 5.04 Any material changes to Voluntary Products contracts shall be reported to the State Board of Finance and the Employee Benefits Oversight Subcommittee of the Arkansas Legislative Council.

6.0 COORDINATION WITH THE EMPLOYEE BENEFITS DIVISION

- 6.01 To ensure continuity of service to state employees, the Arkansas State Employees Association, Inc., shall coordinate with the EBD on issues regarding, but not limited to billing, employee management, record keeping, and information sharing.
- 6.02 The Arkansas State Employees Association, Inc., shall meet with the EBD quarterly.
- 6.03 The State Board of Finance shall resolve any disputes between the Arkansas State Employees Association, Inc. and EBD regarding voluntary products. These disputes shall be exempt from the Administrative Procedures Act, Ark. Code Ann. § 25-15-201 et seq.

7.0 SEMI-ANNUAL REPORTING

- 7.01 The Arkansas State Employees Association, Inc., shall submit to the Employee Benefits Oversight Subcommittee of the Arkansas Legislative Council a semi-annual report that includes:
 - 7.01.1 A summary of the Voluntary Products offerings, including the contract, pricing, and number of participants for each offering; and
 - 7.01.2 A financial analysis report for each offering, including premiums paid by state employees and additional fees and expenses, if any.