

Revised May 2023

## QUESTIONNAIRE FOR FILING PROPOSED RULES WITH THE ARKANSAS LEGISLATIVE COUNCIL

**DEPARTMENT**

**BOARD/COMMISSION** Arkansas Public Employees' Retirement System

**BOARD/COMMISSION DIRECTOR** Amy Fecher

**CONTACT PERSON** Laura Gilson

**ADDRESS** 124 W. Capitol, Suite 400

**PHONE NO.** (501) 682-7853

**EMAIL** laura.gilson@arkansas.gov

**NAME OF PRESENTER(S) AT SUBCOMMITTEE MEETING**

Amy Fecher, Laura Gilson

**PRESENTER EMAIL(S)** amy.fecher@arkansas.gov; laura.gilson@arkansas.gov

### 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](mailto: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](mailto: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?  
Rule 24 CAR § 1-213. DROP provisions
2. What is the subject of the proposed rule? Deferred retirement option plan
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.

Ark. Code Ann. § 24-4-606 was amended by Act 247 of 2023 to standardize a six-month marriage period for a member to select a spousal option beneficiary, whether pre- or post- retirement. Section (i) of APERS Rule 24 CAR § 1-213 should be amended to remove the reference to a one-year marriage period for a member to select a spousal option beneficiary under Ark. Code Ann. § 24-4-606.

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.

This is an amendment to an existing rule, not a new rule.

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).

§ 24-4-105(b)(1)

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).

Act 247 of 2023

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

To replace language in the existing rule which references a one-year marriage period with the six-month marriage period enacted under Act 247 of 2023

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).

apers.org

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. 09/06/2023

15. What is the proposed effective date for this rule? Ten (10) days after filing rule with the Secretary of State

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.

none

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

If yes, please explain.

**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY.**

**DEPARTMENT** \_\_\_\_\_  
**BOARD/COMMISSION** Arkansas Public Employees' Retirement System  
**PERSON COMPLETING THIS STATEMENT** Laura Gilson  
**TELEPHONE NO.** (501) 682-7853 **EMAIL** laura.gilson@arkansas.gov

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** Rule 24 CAR § 1-213. DROP provisions

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 <sup>0</sup> \_\_\_\_\_  
 Federal Funds <sup>0</sup> \_\_\_\_\_  
 Cash Funds <sup>0</sup> \_\_\_\_\_  
 Special Revenue <sup>0</sup> \_\_\_\_\_  
 Other (Identify) <sup>0</sup> \_\_\_\_\_

Total \$ 0.00 \_\_\_\_\_

**Next Fiscal Year**

General Revenue <sup>0</sup> \_\_\_\_\_  
 Federal Funds <sup>0</sup> \_\_\_\_\_  
 Cash Funds <sup>0</sup> \_\_\_\_\_  
 Special Revenue <sup>0</sup> \_\_\_\_\_  
 Other (Identify) <sup>0</sup> \_\_\_\_\_

Total \$ 0.00 \_\_\_\_\_

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**

\$ 0.00 \_\_\_\_\_

**Next Fiscal Year**

\$ 0.00 \_\_\_\_\_

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**

\$ 0.00 \_\_\_\_\_

**Next Fiscal Year**

\$ 0.00 \_\_\_\_\_

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.

## **Proposed Rule Regarding DROP Provisions for APERS Members**

**PURPOSE:** The Arkansas Public Employees' Retirement System (APERS) seeks to amend APERS Rule 24 CAR § 1-213, the Deferred Retirement Option Plan (DROP) Rule for compliance with Act 247 of 2023.

**BACKGROUND:** Pursuant to Ark. Code Ann. § 24-4-105(b)(1), the APERS Board has the authority to make all rules necessary to administer the Arkansas Public Employees' Retirement System. Act 247 of 2023 amended Ark. Code Ann. § 24-4-606 to standardize a six-month marriage period for a member to select a spousal option beneficiary, whether pre- or post-retirement.

**KEY POINTS:** The proposed amendment to the Rule complies with Act 247 of 2023 by removing a reference in the Rule that would contradict that Act.

**DISCUSSION:** Section (i) of the current DROP rule addresses the administration of benefits when a DROP participant dies while serving on active duty. In that section of the current rule, there is a reference to a one-year marriage period requirement for a spouse to be eligible for survivor benefits. The proposed amendment to Section (i) of APERS Rule 24 CAR § 1-213 removes the reference to a one-year marriage period, which will now align with Act 247 of 2023. No other change in the DROP rule has been made.

**RECOMMENDATION:** APERS recommends that the proposed amendment to APERS Rule 24 CAR § 1-213 be approved for compliance with Act 247 of 2023.



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## **24 CAR § 1-213. DROP provisions.**

### **(a) Contributions to DROP account.**

(1)(A) For a member who has thirty (30) or more years of actual service, the contribution shall:

(i) Be seventy-five percent (75%) of the member's computed benefit after election of a straight life or option benefit, as required by Subchapter 8 of Chapter 3 of Title 24 of the Arkansas Code; and

(ii) Include the temporary annuity, if applicable.

(B) For a member who has twenty-eight (28) years but less than thirty (30) years of actual service, the contribution shall be seventy-five percent (75%) reduced by five-tenths percent (0.5%) for each month that the DROP election precedes the date the member would complete thirty (30) years of actual service.

(2) Contributions to the account shall be increased for COLAs and ad hoc increases granted to retirees.

### **(b) Interest on the DROP account.**

(1) Interest shall be credited monthly and compounded annually to the date of actual retirement.

(2) The Board of Trustees of the Arkansas Public Employees' Retirement System:

(A) Shall reevaluate the DROP interest rate annually at its regular February meeting; and

(B) May modify it by a simple majority vote without promulgating additional rules.

### **(c) DROP payment methods.**

(1) The member may elect a lump sum or an annuity that concludes at the completion of twenty-five (25) years.

(2)(A) The member may select a combination of lump sum, rollover, and annuity, never to exceed the total amount of the DROP accrual.

(B) If the member elects a lump sum, the member may request that the lump sum be transferred to another qualified plan in a trustee-to-trustee transfer.

(C)(i) If the member elects a monthly annuity, the monthly amount shall remain constant for the twenty-five-year term.

(ii) That is, COLAs and ad hoc increases will not be added to this monthly annuity and the balance in the account will not earn interest after the effective date of retirement.

### **(d) Death of a DROP participant.**

(1) In the event a DROP participant dies during the period of participation, the benefit payable from the Arkansas Public Employees' Retirement System shall be determined as though the participant had separated from service and been found eligible for monthly benefits by the board on the day prior to the death, with death following immediately thereafter (per Acts 1997, No. 1052).

(2) The balance in the DROP account shall be paid to the designated beneficiary

# MARK-UP

or to the member's estate if no designated beneficiary survives or is named.

**(e) Death of a retiree receiving a monthly annuity from DROP.**

(1) Upon the death of a retiree who was receiving a monthly annuity from the DROP:

(A) The DROP annuity will be treated as if it had been a straight life benefit; and

(B) The undistributed remaining balance in the DROP account, if any, will be paid to the designated beneficiary.

(2) The regular monthly retirement benefit will be treated according to the election made by the retiree at his or her entry into the DROP.

**(f) Failure to terminate covered employment within the maximum allowable time from DROP entry.**

(1) If a DROP participant fails to terminate employment within ten (10) years of entry into the DROP, the participant shall forfeit the balance in the DROP account.

(2)(A) The participant's employer shall be required to pay all contributions, with interest, that would have been paid on behalf of the member had he or she not participated in the DROP.

(B) The employer will acknowledge this requirement on the member's application for participation in the DROP.

(3)(A) However, a DROP participant also enrolled in the Arkansas Teacher Retirement System T-DROP due to reciprocal service credit shall be permitted to keep the accrued balance on account with the Arkansas Public Employees' Retirement System until completion of the term of the Arkansas Teacher Retirement System T-DROP.

(B) No interest shall be paid on such balances.

(C) COLAs will continue to be paid.

**(g) Review of provisions.**

(1)(A) The provisions of the DROP program will be reviewed periodically, as determined to be necessary by the Board.

(B), The contribution and interest rate provisions may be adjusted prospectively as the board considers such action to be actuarially appropriate.

(2) A member whose DROP participation has ceased shall not be prohibited from thereafter seeking and taking a publicly-elected office that otherwise is covered under the Arkansas Public Employees' Retirement System but that member shall not be eligible to rejoin the Arkansas Public Employees' Retirement System.

**(h) DROP provisions for members called to active duty.**

**(1) Generally.**

(A)(i) A DROP participant who is called to active duty will provide the Arkansas Public Employees' Retirement System with a copy of his or her orders that will be maintained in the member's file.

(ii) A copy of the orders will be utilized to verify the date that the member is called to active duty.

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(B)(i) The employer will continue to report the DROP participant on the monthly DROP report.

(ii) The employer representative will indicate that the member is on military leave.

(C) When the member is released from active duty, he or she will submit a copy of the DD214 Form or other appropriate documents to the Arkansas Public Employees' Retirement System to verify that the member has returned to covered employment, been released from active duty, or both.

## **(2) Maximum participation period.**

(A) A DROP participant who is on active duty shall continue to receive his or her monthly DROP payment (which includes any benefit enhancements awarded to eligible retirees) until the maximum allowable time in the DROP has occurred or the member requests retirement and distribution of his or her DROP account, whichever occurs first.

(B)(i) If the member has participated in the DROP for at least five (5) years, he or she must:

(a) Complete a retirement application packet and DROP distribution form or forms prior to his or her departure from active duty; and

(b) Deliver the completed forms to the Arkansas Public Employees' Retirement System office along with a copy of his or her orders.

(ii) The retirement application and DROP distribution forms will be held and processed on the effective date indicated unless he or she returns to covered employment within the maximum allowable DROP term.

(C) Should the DROP member not deliver a retirement application packet and DROP distribution form or forms to the Arkansas Public Employees' Retirement System and the maximum allowable time in the DROP expires prior to the member returning to covered employment, requesting retirement, or both:

(i) The monthly DROP accrual will cease after reaching the maximum allowable time in the DROP and no additional interest will be paid;

(ii) The monthly retirement benefit will not become effective until the member files a completed retirement application and complies with applicable deadlines; and

(iii) The DROP account balance shall be distributed upon the member's filing of the required DROP distribution form or forms.

## **(i) Death while on active duty.**

(1) In the event a DROP participant on active duty dies during the period of DROP participation, the benefit payable from the Arkansas Public Employees' Retirement System shall be determined as though the participant had separated from service and been found eligible for monthly benefits on the day prior to his or her death, with death following immediately thereafter.

(2)(A) If survivor benefits are payable in accordance with Arkansas Code § 24-4-606, the surviving spouse ~~(who has been married to the participant for at least one (1) year),~~

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dependent children, or dependent parents will receive monthly benefits.

(B) The spousal benefit will be computed as if the member had elected Option B75.

(3)(A) The balance in the participant's DROP account will be adjusted to reflect a balance as if the member had chosen Option B75 upon entering the DROP.

(B) The DROP balance will then be paid to the designated beneficiaries.

**(j) Becoming eligible for DROP participation while on active duty.**

(1)(A) If a member becomes eligible to participate in the DROP while on active duty, he or she will be placed in the plan retroactive to the date of initial eligibility providing the application is received within one (1) month of the member returning to covered employment.

(B) Such participation will also be contingent upon the necessary employee, if applicable, and employer contributions being made to the Arkansas Public Employees' Retirement System for the period of active duty prior to the employee entering the DROP.

**(k) Reemployment.**

(1) After release from active duty, should a DROP member fail to apply for reemployment or fail to accept reemployment pursuant to the provisions of 38 U.S.C. § 4312, as amended, the employer shall promptly notify the Arkansas Public Employees' Retirement System.

(2) After notice to the member and opportunity for hearing, should the Arkansas Public Employees' Retirement System determine that the member failed to apply for or accept reemployment as provided above, the Arkansas Public Employees' Retirement System shall:

(A) Determine that the member's retirement application and DROP distribution form required under Maximum Participation Period, subdivision (h)(2)(C)(ii) of this section are void as of the date of the member's release from active duty;

(B) Terminate payments of the deferred benefit into the member's DROP account;

(C) Deduct any payments of the deferred benefit into the member's DROP account after date of the member's release from active duty and interest thereon and pay said amount of the deferred benefit without interest thereon to the member as accumulated monthly annuity payments upon the member's filing a completed retirement application and DROP distribution forms in compliance with applicable deadlines;

(D) Not pay interest on the member's DROP account after the date of the member's release from active duty and hold said account balance pending the member's filing of the DROP distribution forms; and

(E) Pay the member's monthly retirement annuity to the member upon his or her filing a completed retirement application and in compliance with applicable deadlines.

**(l) Procedures applicable to DROP — Active duty issues.**

(1) The Executive Director of the Arkansas Public Employees' Retirement System shall:

# MARK-UP

(A) Determine all issues of interpretation or implementation of this rule in regard to DROP members and active military duty; and

(B) Conduct any hearings provided for herein or required by other law.

(2)(A) If the member is not satisfied with the executive director's decision on matters that were not decided in conjunction with a hearing, the member may request that the issue be presented to the board.

(B) The board shall:

(i) Review the:

(a) Member's request for review;

(b) Record considered by the executive director; and

(c) Executive director's decision;

(ii) Afford the member the opportunity to:

(a) Present additional information or documentation; and

(b) Appear before the board; and

(iii) Determine whether to:

(a) Affirm or modify the executive director's decision; or

(b) Return the case to the executive director for further

consideration.

(3)(A) A member who was a party to a hearing by the executive director concerning DROP and active military duty and who is not satisfied with the executive director's decision may file an appeal to the board.

(B) The member shall file notice of appeal in writing, stating the grounds therefore, with the executive director on or before thirty (30) days following the date of record of the executive director's decision.

(C) The executive director's written decision shall be mailed to the member by certified mail, return receipt requested, restricted delivery to the member's last known address of record.

(4) Upon appeal, the review by the board shall be confined to the record considered by the executive director, provided, however:

(A)(i) The member may apply to present additional evidence and should the board find that the evidence is material and that there were good reasons for failure to present it in the proceeding before the executive director, the board may order that the additional evidence be taken before the executive director upon any conditions that may be just.

(ii) The executive director:

(a) May modify the findings and decision by reason of the additional evidence; and

(b) Shall file that evidence and any modification, new findings, or decisions with the board; and

(B)(i) Should the member assert any alleged irregularity in procedure before the executive director not shown in the record, the board:

# MARK-UP

(a) May hear testimony on that issue; or  
(b) In its discretion may remand the matter to the executive director to conduct further proceedings on the record on the member's allegation of procedural irregularity.

(ii) After any further proceeding by the executive director regarding any procedural irregularity, the executive director:

(a) May modify the findings and decision by reason of the additional evidence; and

(b) Shall file that evidence and any modifications, new findings, or decisions with the board.

(iii) The member may request the opportunity to make an oral presentation to the board.

(5) The board may affirm or reverse the executive director's decision or remand the case for further proceedings.

**(m) Separation from employment — Popularly-elected official.**

(1)(A) In accord with Acts 2019, No. 624, a member who participates in the Arkansas Public Employees' Retirement System Deferred Retirement Option Plan (DROP) is not required to separate from service at the end of the maximum allowable time in the DROP participation following entry into the DROP if it would prevent that member from taking or holding office as a popularly-elected official.

(B) That member will not forfeit their DROP balance if they separate from service as provided under Arkansas Code § 24-4-520 after that member leaves elected office.

(2)(A) The DROP balance of a popularly-elected official who does not separate service after the maximum allowable time in the DROP and pursuant to Acts 2019, No. 624, shall remain with the Arkansas Public Employees' Retirement System until he or she separates from service.

(B) At that time, the member's DROP balance shall be distributed according to the Arkansas Public Employees' Retirement System rules regarding distribution.

(C) That DROP balance shall not accrue interest while being held by the Arkansas Public Employees' Retirement System pursuant to this part.

(3) A member who does not separate service after the maximum allowable time in the DROP and pursuant to Act 624 of 2019 shall have his or her monthly Arkansas Public Employees' Retirement System retirement annuity benefit paid to begin when the member separates from service as provided under Arkansas Code § 24-4-520.

(4) The employer of the popularly-elected official shall continue to make the same employer contributions on behalf of the popularly-elected official as it would have been required to make for a rehired retiree.

**Authority.** Arkansas Code § 24-4-105.

**Codification Notes.** This section as promulgated prior to codification into the Code of Arkansas

# MARK-UP

Rules 2024 provided as follows:

"214– 1997 (5) – DROP Provisions (as amended May 1999, May 2001, August 2003, November 2010, May 2011, November 2011, October 2017, and December 2019)"

"COLA" means cost of living adjustment.

"DROP" means deferred retirement option plan.

"T-DROP" means teacher deferred retirement option plan.

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## **24 CAR § 1-213. DROP provisions.**

### **(a) Contributions to DROP account.**

(1)(A) For a member who has thirty (30) or more years of actual service, the contribution shall:

(i) Be seventy-five percent (75%) of the member's computed benefit after election of a straight life or option benefit, as required by Subchapter 8 of Chapter 3 of Title 24 of the Arkansas Code; and

(ii) Include the temporary annuity, if applicable.

(B) For a member who has twenty-eight (28) years but less than thirty (30) years of actual service, the contribution shall be seventy-five percent (75%) reduced by five-tenths percent (0.5%) for each month that the DROP election precedes the date the member would complete thirty (30) years of actual service.

(2) Contributions to the account shall be increased for COLAs and ad hoc increases granted to retirees.

### **(b) Interest on the DROP account.**

(1) Interest shall be credited monthly and compounded annually to the date of actual retirement.

(2) The Board of Trustees of the Arkansas Public Employees' Retirement System:

(A) Shall reevaluate the DROP interest rate annually at its regular February meeting; and

(B) May modify it by a simple majority vote without promulgating additional rules.

### **(c) DROP payment methods.**

(1) The member may elect a lump sum or an annuity that concludes at the completion of twenty-five (25) years.

(2)(A) The member may select a combination of lump sum, rollover, and annuity, never to exceed the total amount of the DROP accrual.

(B) If the member elects a lump sum, the member may request that the lump sum be transferred to another qualified plan in a trustee-to-trustee transfer.

(C)(i) If the member elects a monthly annuity, the monthly amount shall remain constant for the twenty-five-year term.

(ii) That is, COLAs and ad hoc increases will not be added to this monthly annuity and the balance in the account will not earn interest after the effective date of retirement.

### **(d) Death of a DROP participant.**

(1) In the event a DROP participant dies during the period of participation, the benefit payable from the Arkansas Public Employees' Retirement System shall be determined as though the participant had separated from service and been found eligible for monthly benefits by the board on the day prior to the death, with death following immediately thereafter (per Acts 1997, No. 1052).

(2) The balance in the DROP account shall be paid to the designated beneficiary



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or to the member's estate if no designated beneficiary survives or is named.

**(e) Death of a retiree receiving a monthly annuity from DROP.**

(1) Upon the death of a retiree who was receiving a monthly annuity from the DROP:

(A) The DROP annuity will be treated as if it had been a straight life benefit; and

(B) The undistributed remaining balance in the DROP account, if any, will be paid to the designated beneficiary.

(2) The regular monthly retirement benefit will be treated according to the election made by the retiree at his or her entry into the DROP.

**(f) Failure to terminate covered employment within the maximum allowable time from DROP entry.**

(1) If a DROP participant fails to terminate employment within ten (10) years of entry into the DROP, the participant shall forfeit the balance in the DROP account.

(2)(A) The participant's employer shall be required to pay all contributions, with interest, that would have been paid on behalf of the member had he or she not participated in the DROP.

(B) The employer will acknowledge this requirement on the member's application for participation in the DROP.

(3)(A) However, a DROP participant also enrolled in the Arkansas Teacher Retirement System T-DROP due to reciprocal service credit shall be permitted to keep the accrued balance on account with the Arkansas Public Employees' Retirement System until completion of the term of the Arkansas Teacher Retirement System T-DROP.

(B) No interest shall be paid on such balances.

(C) COLAs will continue to be paid.

**(g) Review of provisions.**

(1)(A) The provisions of the DROP program will be reviewed periodically, as determined to be necessary by the Board.

(B), The contribution and interest rate provisions may be adjusted prospectively as the board considers such action to be actuarially appropriate.

(2) A member whose DROP participation has ceased shall not be prohibited from thereafter seeking and taking a publicly-elected office that otherwise is covered under the Arkansas Public Employees' Retirement System but that member shall not be eligible to rejoin the Arkansas Public Employees' Retirement System.

**(h) DROP provisions for members called to active duty.**

**(1) Generally.**

(A)(i) A DROP participant who is called to active duty will provide the Arkansas Public Employees' Retirement System with a copy of his or her orders that will be maintained in the member's file.

(ii) A copy of the orders will be utilized to verify the date that the member is called to active duty.

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(B)(i) The employer will continue to report the DROP participant on the monthly DROP report.

(ii) The employer representative will indicate that the member is on military leave.

(C) When the member is released from active duty, he or she will submit a copy of the DD214 Form or other appropriate documents to the Arkansas Public Employees' Retirement System to verify that the member has returned to covered employment, been released from active duty, or both.

## **(2) Maximum participation period.**

(A) A DROP participant who is on active duty shall continue to receive his or her monthly DROP payment (which includes any benefit enhancements awarded to eligible retirees) until the maximum allowable time in the DROP has occurred or the member requests retirement and distribution of his or her DROP account, whichever occurs first.

(B)(i) If the member has participated in the DROP for at least five (5) years, he or she must:

(a) Complete a retirement application packet and DROP distribution form or forms prior to his or her departure from active duty; and

(b) Deliver the completed forms to the Arkansas Public Employees' Retirement System office along with a copy of his or her orders.

(ii) The retirement application and DROP distribution forms will be held and processed on the effective date indicated unless he or she returns to covered employment within the maximum allowable DROP term.

(C) Should the DROP member not deliver a retirement application packet and DROP distribution form or forms to the Arkansas Public Employees' Retirement System and the maximum allowable time in the DROP expires prior to the member returning to covered employment, requesting retirement, or both:

(i) The monthly DROP accrual will cease after reaching the maximum allowable time in the DROP and no additional interest will be paid;

(ii) The monthly retirement benefit will not become effective until the member files a completed retirement application and complies with applicable deadlines; and

(iii) The DROP account balance shall be distributed upon the member's filing of the required DROP distribution form or forms.

## **(i) Death while on active duty.**

(1) In the event a DROP participant on active duty dies during the period of DROP participation, the benefit payable from the Arkansas Public Employees' Retirement System shall be determined as though the participant had separated from service and been found eligible for monthly benefits on the day prior to his or her death, with death following immediately thereafter.

(2)(A) If survivor benefits are payable in accordance with Arkansas Code § 24-4-606, the surviving spouse, dependent children, or dependent parents will receive monthly

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benefits.

(B) The spousal benefit will be computed as if the member had elected Option B75.

(3)(A) The balance in the participant's DROP account will be adjusted to reflect a balance as if the member had chosen Option B75 upon entering the DROP.

(B) The DROP balance will then be paid to the designated beneficiaries.

**(j) Becoming eligible for DROP participation while on active duty.**

(1)(A) If a member becomes eligible to participate in the DROP while on active duty, he or she will be placed in the plan retroactive to the date of initial eligibility providing the application is received within one (1) month of the member returning to covered employment.

(B) Such participation will also be contingent upon the necessary employee, if applicable, and employer contributions being made to the Arkansas Public Employees' Retirement System for the period of active duty prior to the employee entering the DROP.

**(k) Reemployment.**

(1) After release from active duty, should a DROP member fail to apply for reemployment or fail to accept reemployment pursuant to the provisions of 38 U.S.C. § 4312, as amended, the employer shall promptly notify the Arkansas Public Employees' Retirement System.

(2) After notice to the member and opportunity for hearing, should the Arkansas Public Employees' Retirement System determine that the member failed to apply for or accept reemployment as provided above, the Arkansas Public Employees' Retirement System shall:

(A) Determine that the member's retirement application and DROP distribution form required under Maximum Participation Period, subdivision (h)(2)(C)(ii) of this section are void as of the date of the member's release from active duty;

(B) Terminate payments of the deferred benefit into the member's DROP account;

(C) Deduct any payments of the deferred benefit into the member's DROP account after date of the member's release from active duty and interest thereon and pay said amount of the deferred benefit without interest thereon to the member as accumulated monthly annuity payments upon the member's filing a completed retirement application and DROP distribution forms in compliance with applicable deadlines;

(D) Not pay interest on the member's DROP account after the date of the member's release from active duty and hold said account balance pending the member's filing of the DROP distribution forms; and

(E) Pay the member's monthly retirement annuity to the member upon his or her filing a completed retirement application and in compliance with applicable deadlines.

**(l) Procedures applicable to DROP — Active duty issues.**

(1) The Executive Director of the Arkansas Public Employees' Retirement System shall:

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(A) Determine all issues of interpretation or implementation of this rule in regard to DROP members and active military duty; and

(B) Conduct any hearings provided for herein or required by other law.

(2)(A) If the member is not satisfied with the executive director's decision on matters that were not decided in conjunction with a hearing, the member may request that the issue be presented to the board.

(B) The board shall:

(i) Review the:

(a) Member's request for review;

(b) Record considered by the executive director; and

(c) Executive director's decision;

(ii) Afford the member the opportunity to:

(a) Present additional information or documentation; and

(b) Appear before the board; and

(iii) Determine whether to:

(a) Affirm or modify the executive director's decision; or

(b) Return the case to the executive director for further

consideration.

(3)(A) A member who was a party to a hearing by the executive director concerning DROP and active military duty and who is not satisfied with the executive director's decision may file an appeal to the board.

(B) The member shall file notice of appeal in writing, stating the grounds therefore, with the executive director on or before thirty (30) days following the date of record of the executive director's decision.

(C) The executive director's written decision shall be mailed to the member by certified mail, return receipt requested, restricted delivery to the member's last known address of record.

(4) Upon appeal, the review by the board shall be confined to the record considered by the executive director, provided, however:

(A)(i) The member may apply to present additional evidence and should the board find that the evidence is material and that there were good reasons for failure to present it in the proceeding before the executive director, the board may order that the additional evidence be taken before the executive director upon any conditions that may be just.

(ii) The executive director:

(a) May modify the findings and decision by reason of the additional evidence; and

(b) Shall file that evidence and any modification, new findings, or decisions with the board; and

(B)(i) Should the member assert any alleged irregularity in procedure before the executive director not shown in the record, the board:

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(a) May hear testimony on that issue; or  
(b) In its discretion may remand the matter to the executive director to conduct further proceedings on the record on the member's allegation of procedural irregularity.

(ii) After any further proceeding by the executive director regarding any procedural irregularity, the executive director:

(a) May modify the findings and decision by reason of the additional evidence; and

(b) Shall file that evidence and any modifications, new findings, or decisions with the board.

(iii) The member may request the opportunity to make an oral presentation to the board.

(5) The board may affirm or reverse the executive director's decision or remand the case for further proceedings.

**(m) Separation from employment — Popularly-elected official.**

(1)(A) In accord with Acts 2019, No. 624, a member who participates in the Arkansas Public Employees' Retirement System Deferred Retirement Option Plan (DROP) is not required to separate from service at the end of the maximum allowable time in the DROP participation following entry into the DROP if it would prevent that member from taking or holding office as a popularly-elected official.

(B) That member will not forfeit their DROP balance if they separate from service as provided under Arkansas Code § 24-4-520 after that member leaves elected office.

(2)(A) The DROP balance of a popularly-elected official who does not separate service after the maximum allowable time in the DROP and pursuant to Acts 2019, No. 624, shall remain with the Arkansas Public Employees' Retirement System until he or she separates from service.

(B) At that time, the member's DROP balance shall be distributed according to the Arkansas Public Employees' Retirement System rules regarding distribution.

(C) That DROP balance shall not accrue interest while being held by the Arkansas Public Employees' Retirement System pursuant to this part.

(3) A member who does not separate service after the maximum allowable time in the DROP and pursuant to Act 624 of 2019 shall have his or her monthly Arkansas Public Employees' Retirement System retirement annuity benefit paid to begin when the member separates from service as provided under Arkansas Code § 24-4-520.

(4) The employer of the popularly-elected official shall continue to make the same employer contributions on behalf of the popularly-elected official as it would have been required to make for a rehired retiree.

**Authority.** Arkansas Code § 24-4-105.

**Codification Notes.** This section as promulgated prior to codification into the Code of Arkansas

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Rules 2024 provided as follows:

"214– 1997 (5) – DROP Provisions (as amended May 1999, May 2001, August 2003, November 2010, May 2011, November 2011, October 2017, and December 2019)"

"COLA" means cost of living adjustment.

"DROP" means deferred retirement option plan.

"T-DROP" means teacher deferred retirement option plan.

**Public Notice of Intended Board Action:**

Please take notice that the Board of Trustees of the Arkansas Public Employees Retirement System (APERS), 124 West Capitol Avenue, Suite 400, Little Rock, AR 72201 has voted to amend APERS Board Rule "24 CAR § 1-213. Drop provisions" to comply with Act 247 of 2023.

Copies of this proposed amendment are available for inspection and copying during normal business hours, 8:00 a.m. to 4:30 p.m., at APERS's principal offices, 124 West Capitol Avenue, Suite 400, Little Rock, AR 72201. A mark-up of the rule and a summary of the proposed amendment are also available on the APERS website, <https://www.apers.org>, and on the Arkansas Secretary of State's website, <https://www.sos.arkansas.gov>.

Written public comment concerning the proposed amendment may be submitted to APERS within **thirty (30) days** of the first publication of this notice. Public comments should be addressed to Laura Gilson, Arkansas Public Employees' Retirement System, 124 West Capitol Avenue, Suite 400, Little Rock, AR 72201. If required under Ark. Code Ann. § 25-15-204(a)(2)(B), a public hearing on these rules will be held on September 11, 2023, at 9:00 a.m. in the fourth floor conference room in APERS's main offices, 124 West Capitol Avenue, Suite 400, Little Rock, AR 72201.

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## Proposed Rule Cover Sheet



Secretary of State  
John Thurston  
500 Woodlane Street, Suite 026  
Little Rock, Arkansas 72201-1094  
(501) 682-5070  
[www.sos.arkansas.gov](http://www.sos.arkansas.gov)



Name of Department Arkansas Public Employees' Retirement System (APERS)

Agency or Division Name APERS

Other Subdivision or Department, If Applicable \_\_\_\_\_

Previous Agency Name, If Applicable \_\_\_\_\_

Contact Person Richmond Giles

Contact E-mail richmond.giles@arkansas.gov

Contact Phone 501-682-5436

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Location and Time of Public Meeting September 11, 2023 at 9:00 a.m.