

Summary of Proposed Rule Regarding DROP Provisions for Members

APERS Rule 214

PURPOSE: The Arkansas Public Employees' Retirement System (APERS) seeks to amend APERS Rule 214, which is the Deferred Retirement Option Plan (DROP) Rule to:

- (1) Comply with Act 518 of 2021, which increases from 7 years to 10 years the maximum number of allowable years for a member's participation in the DROP; and
- (2) Amend the style of the rule in its entirety to be consistent with BLR Code style (and BLR's rule codification efforts); and
- (3) Make non-substantive corrections for grammatical purposes.

SUBSTANTIVE CHANGES: To comply with Act 518 of 2021, which increases from 7 years to 10 years the maximum number of allowable years for a member's participation in the DROP. No other change in DROP provisions have been made other than increasing the maximum allowable participation time in the DROP from 7 to 10 years, consistent with Act 518 of 2021.

NON-SUBSTANTIVE CHANGES: Amend the style of the rule in its entirety to be consistent with BLR Code style (and BLR's rule codification efforts). By amending the style, APERS has also made non-substantive grammatical corrections. The amended rule will also have a new rule number consistent with BLR's draft codification efforts and is titled "24 CAR § 1-213. DROP provisions"

QUESTIONNAIRE
FOR FILING PROPOSED RULES WITH THE
ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY Arkansas Public Employees' Retirement System
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DIVISION DIRECTOR Laura Gilson
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INSTRUCTIONS

- A. Please make copies of this form for future use.
B. Please answer each question completely using layman terms. You may use additional sheets if necessary.
C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this
D. Rule" below.
E. Submit two (2) copies of the Questionnaire and Financial Impact Statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Jessica C. Sutton
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

1. What is the short title of this rule? 24 CAR § 1-213. DROP provisions
2. What is the subject of the proposed rule? Deferred Retirement Option Plan (DROP)
3. Is this rule required to comply with a federal statute, rule, or regulation? Yes ☒ No ☐

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

APERS must follow its plan provisions found in Arkansas law to comply with its governmental plan status under I.R.C. § 401(a). Accordingly, the impetus for this rule change is Act 518 of 2021.

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?

Yes ☐ No ☒

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

When does the emergency rule expire? N/A

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes ☐ No ☐

5. Is this a new rule? Yes ☐ No ☒ If yes, please provide a brief summary explaining the rule.

Does this repeal an existing rule? Yes ☐ No ☒ If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes ☒ No ☐ If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."

Act 518 of 2021 raised the maximum number of allowable years of participation in the APERS DROP from 7 years to 10 years. Additionally, APERS has restyled this rule to be consistent with code style recommended by BLR and made non substantive grammatical corrections.

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation.

Act 518 of 2021; Ark. Code Ann. § 24-4-802(c)(1).

Ark. Code Ann. § 24-4-105(b)(1) [APERS Board general rulemaking authority]

7. What is the purpose of this proposed rule? Why is it necessary?

To comply with Act 518 of 2021, which increases from 7 years to 10 years the maximum number of allowable years of participation in the DROP .

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).

www.apers.org

9. Will a public hearing be held on this proposed rule? Yes ☐ No ☒ If yes, please complete the following:

Date: _____

Time: _____

Place: _____

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

02/11/2021

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

04/14/2021

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. _____

13. Please provide proof of filing the rule with the Secretary of State as required pursuant to Ark. Code Ann. § 25-15-204(e). _____

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

None

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Public Employees' Retirement System

DIVISION Legal

PERSON COMPLETING THIS STATEMENT Laura Gilson

TELEPHONE NO. (501) 682-7853

FAX NO.

EMAIL: laura.gilson@arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two (2) copies with the Questionnaire and proposed rules.

SHORT TITLE OF THIS 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 an agency is proposing a more costly rule, please state the following:

- 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 more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and

- d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.

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

Next Fiscal Year

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

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

Total \$ 0.00

Total \$ 0.00

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

Current Fiscal Year

Next Fiscal Year

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

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

Total \$ 0.00

Total \$ 0.00

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

Current Fiscal Year

Next Fiscal Year

\$ _____

\$ _____

None

6. What is the total estimated cost by fiscal year to state, county, and 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

\$ _____

\$ _____

None

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.

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~~214—1997 (5) DROP Provisions~~

~~(as amended May 1999, May 2001, August 2003, November 2010,
May 2011, November 2011, October 2017, and December 2019)~~

Contributions to Drop Account

~~For a member who has 30 or more years of actual service, the contribution shall be 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 including the temporary annuity, if applicable. For a member who has 28 years but less than 30 years of actual service, the contribution shall 75% reduced by 0.5% for each month that the DROP election precedes the date the member would complete 30 years of actual service.~~

~~Contributions to the account shall be increased for COLA's and ad hoc increases granted to retirees.~~

Interest on the Drop Account

~~Interest shall be credited on a monthly basis compounded annually to the date of actual retirement. The Board shall reevaluate the DROP interest rate annually at its regular February meeting and may modify it by a simple majority vote without promulgating additional rules.~~

Drop Payment Methods

~~Member may elect a lump sum or an annuity that concludes at the completion of twenty-five (25) years. The member may select a combination of lump sum, rollover and annuity, never to exceed the total amount of the DROP accrual. 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. If the member elects a monthly annuity, the monthly amount shall remain constant for the 25 year term. That is, COLA's 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.~~
Death of a Drop Participant

~~In the event a DROP participant dies during the period of participation, the benefit payable from APERS 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 Act 1052). The balance in the DROP account shall be paid to the designated beneficiary.~~

Death of a Retiree Receiving a Monthly Annuity From Drop

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~~Upon the death of a retiree who was receiving a monthly annuity from the DROP, the DROP annuity will be treated as if it had been a straight life benefit, and the undistributed remaining balance in the DROP account, if any, will be paid to the designated beneficiary. The regular monthly retirement benefit will be treated according to the election made by the retiree at his/her entry into the DROP.~~

~~Failure to Terminate Covered Employment Within Seven Years of Drop Entry~~

~~If a DROP participant fails to terminate employment within seven years of entry into the DROP, the participant shall forfeit the balance in the DROP account. 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/she not participated in the DROP. The employer will acknowledge this requirement on the member's application for participation in the DROP. However, a DROP participant also enrolled in the ATRS T DROP due to reciprocal service credit shall be permitted to keep the accrued balance on account with APERS until completion of the term of the ATRS T DROP. No interest shall be paid on such balances. COLAs will continue to be paid.~~

~~Review of Provisions~~

~~The provisions of the DROP program will be reviewed at three year intervals, or more frequently if necessary. Based on the actuary's review, the contribution and interest rate provisions may be adjusted prospectively as the Board of Trustees considers such action to be actuarially appropriate.~~

~~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 APERS but that member shall not be eligible to rejoin this system.~~

~~Deferred Retirement Option Plan (Drop) Provisions For Members Called To Active Duty~~

~~Generally:~~

- ~~1. A DROP participant who is called to active duty will provide APERS with a copy of his or her Orders that will be maintained in the member's file. A copy of the Orders will be utilized to verify the date that the member is called to active duty.~~
- ~~2. The employer will continue to report the DROP participant on the monthly DROP report. The Agency representative will indicate that the member is on "Military Leave".~~
- ~~3. When the member is released from active duty, he/she will submit a copy of the DD214 Form or other appropriate documents to APERS to verify that the member has returned to covered employment and/or been released from active duty.~~

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Maximum Participation Period:

1. A DROP participant who is on active duty shall continue to receive his/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/her DROP account, whichever occurs first.
2. If the member has participated in the DROP for at least five (5) years, he/she must complete a retirement application packet and DROP Distribution Form(s) prior to his or her departure for active duty and deliver the completed forms to the APERS Office along with a copy of his/her Orders. The retirement application and DROP Distribution Forms will be held and processed on the effective date indicated unless he/she returns to covered employment within the seven year DROP term.
3. Should the DROP member not deliver a retirement application packet and DROP Distribution Form(s) to APERS and the maximum period of DROP participation (7 years) expires prior to the member returning to covered employment and/or requesting retirement:
 - a. The monthly DROP accrual will cease on the seventh anniversary of the member's beginning DROP date and no additional interest will be paid;
 - b. The monthly retirement benefit will not become effective until the member files a completed retirement application and complies with applicable deadlines; and the DROP account balance shall be distributed upon the member's filing of the required DROP Distribution Form(s).

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 APERS shall be determined as though the participant had separated from service and been found eligible for monthly benefits on the day prior to his/her death, with death following immediately thereafter.
2. If survivor benefits are payable in accordance with A.C.A. 24-4-606, the surviving spouse (who has been married to the participant for at least one year), dependent children or dependent parents will receive monthly benefits. The spousal benefit will be computed as if the member had elected Option B75.
3. 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. The DROP balance will then be paid to the designated beneficiaries.

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Becoming Eligible For DROP Participation While On Active Duty:

If a member becomes eligible to participate in the DROP while on active duty, he/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. Such participation will also be contingent upon the necessary employee (if applicable) and employer contributions being made to the System for the period of active duty prior to the employee entering the DROP.

Reemployment:

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 APERS. After notice to the member and opportunity for hearing, should APERS determine that the member failed to apply for or accept reemployment as provided above, APERS shall

1. determine that the member's retirement application and DROP distribution form required under Maximum Participation Period, subparagraph b are void as of the date of the member's release from active duty;
2. terminate payments of the deferred benefit into the member's DROP account;
3. 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 Form in compliance with applicable deadlines;
4. 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;
5. 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.

Procedures Applicable to DROP/Active Duty Issues:

1. The Executive Director shall determine all issues of interpretation or implementation of this rule in regard to DROP members and active military duty and shall conduct any hearings provided for herein or required by other law.
2. 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

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the issue be presented to the Board. The Board shall review the member's request for review, the record considered by the Executive Director and the Executive Director's decision, shall afford the member the opportunity to present additional information or documentation and to appear before the Board, and determine whether to affirm or modify the Executive Director's decision or to return the case to the Executive Director for further consideration.

3. A member who was a party to a hearing by the Executive Director concerning DROP/active duty issues and who is not satisfied with the Executive Director's decision, may file an appeal to the Board. 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. 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. 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. The Executive Director may modify the findings and decision by reason of the additional evidence and shall file that evidence and any modification, new findings or decisions with the Board;

- b. Should the member assert any alleged irregularity in procedure before the Executive Director not shown in the record, the Board may hear testimony on that issue or 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; after any further proceeding by the Executive Director regarding any procedural irregularity, the Executive Director may modify the findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the Board. 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.

Separation from Employment - Popularly Elected Official

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~~In accord with Act 624 of 2019, a member who participates in the Deferred Retirement Option Plan (DROP) is not required to separate from service at the end of seven (7) years following entry into the DROP if it would prevent that member from taking or holding office as a popularly elected official. That member will not forfeit their DROP balance if they separate from service as provided under § 24-4-520 after that member leaves elected office.~~

~~The DROP balance of a popularly elected official who does not separate service after seven (7) years of participation pursuant to Act 624 of 2019 shall remain with APERS until they separate from service. At that time, the member's DROP balance shall be distributed according to APERS Rules regarding distribution. That DROP balance shall not accrue interest while being held by APERS pursuant to this rule.~~

~~A member who does not separate service after seven (7) years of DROP participation pursuant to Act 624 of 2019 shall have their monthly APERS retirement annuity benefit paid to begin when the member separates from service as provided under § 24-4-520.~~

~~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.~~

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.

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(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 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.

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(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.

(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 for 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

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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), 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

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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.

(1) Procedures applicable to DROP — Active duty issues.

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

(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

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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:

(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.

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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 for 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:

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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.

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