

Rule Summary

Rule 103 Employer Contribution Rates permits the Arkansas Public Employees Retirement System Board of Trustees to set the employer rate for both state and local subdivisions.

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REGULATION 103 - 1997 - EMPLOYER CONTRIBUTION RATES (as amended in May 2001)

In accordance with the provisions of A.C.A. 24-2-701 the Board of Trustees will establish State employer and School ~~the~~ employer contribution rates rate for both the state and local divisions to take effect on July 1st of each year. ~~The employer contribution rate for Municipal, County, and other non-state employers, will take effect on January 1st of each year.~~

Rule Summary

Rule 104 Employer Reporting permits employers to remit payment to the Arkansas Employees Retirement System for benefits and report credit earned by its employees by electronic means.

Mark Up

REGULATION 104 - 1997 - EMPLOYER REPORTING - TIME AND FREQUENCY OF EMPLOYER AND EMPLOYEE CONTRIBUTIONS AND THE MONTHLY REPORT OF SERVICE AND EARNINGS:

In accordance with ~~Act 299 of 1997~~ **Act 91 of 2015** (A.C.A. 24-4-202), the Board hereby adopts the following requirements for employer remittances and reporting. Employer and employee contributions shall be remitted **electronically** with appropriate **electronic forms** ~~furnished by APERS reporting via COMPASS -ESS (Employer Self Service)~~ and received by APERS within ~~10 calendar~~ **5 (five) business** days after the payroll ~~period ending~~ **processing** date.

Remittances ~~post marked within 9 calendar~~ **received within 5 (five) business** days after the payroll ~~period ending~~ **processing** date shall not be considered delinquent. The ~~monthly~~ retirement report of service and earnings, ~~either in paper form or~~ by electronic media, shall be submitted for receipt by APERS on or before the ~~tenth calendar~~ **fifth business** day of the ~~month next following the report month~~ **following payroll processing**. ~~If the reports are submitted by mail, either in paper form, tape, or disk, such reports will not be considered delinquent if postmarked by the ninth calendar day.~~

Rule Summary

Rule 201 Age of Members – How Established enumerates the documents that may be used to establish a member's age if he or she was born on or after July 1,2011.

Mark Up

REGULATION 201 – 1957 – AGE OF MEMBERS - HOW ESTABLISHED (as amended in 1969, 1994 and May 2011)

Effective with retirements commencing on or after July 1, 2011, proof of age must be provided by the member directly to APERS before a benefit can be paid. Employer certification of a member's age will not be accepted. One of any of the following documents shall be accepted as proof of age:

1. Birth Certificate. ~~issued at date of birth.~~
2. ~~Birth Certificate issued at any date before age 5 when certified by the appropriate~~
~~—administering agency.~~
3. Baptismal or other church records issued before age 5.
4. U.S. Census Report issued 1920 or before.
5. Social Security document other than application for Social Security Number that states age or date of birth recognized by SSA.
6. A valid United States passport.

For the following, any combination of two that agree:

1. Marriage license.
2. Insurance policy issued at least 10 years prior to current date.
3. Family Bible.
4. Military Discharge.
5. Child's birth certificate.
6. Application for Social Security Number.
7. Birth certificate issued at date when person was older than age 5 when certified by the appropriate administering agency.

Rule Summary

Rule 214 DROP provisions governs when a member is eligible for the Deferred Retirement Option Plan ("DROP"), how DROP payments are made, the interest paid on a DROP account, and how the death of a participant in DROP or a retiree should be treated by the system.

Mark Up

REGULATION 214 - 1997 - DROP PROVISIONS (amended May 1999, May 2001, Aug. 2003, Nov. 2010, May 2011 & November 2011)

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 regulations.

DROP PAYMENT METHODS:

Member may elect a lump sum or ~~lifetime monthly~~ 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 ~~for life~~, the monthly amount shall remain constant for the ~~life of the member~~ **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:

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.

~~PROHIBITION AGAINST RETURNING TO COVERED EMPLOYMENT:~~

~~In compliance with section 9 of Act 38 of 2011, on or after February 16, 2011, a member whose participation in the DROP ceases for any reason (other than cancelling that participation under Regulation 207), shall not be eligible for reemployment in any position covered by the plans identified in A.C.A. 24-2-401(3), except as provided for in A.C.A. 24-4-520. Notwithstanding the foregoing, a~~ **A** member whose DROP participation has ceased shall not be prohibited from thereafter seeking and taking a publically-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:

- a. A DROP participant who is called to active duty will provide APERS with a copy of his/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.
- b. 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".

c. 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.

Maximum Participation Period:

a. 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.

b. 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/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.

c. 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:

1. The monthly DROP accrual will cease on the seventh anniversary of the member's beginning DROP date and no additional interest will be paid;

2. 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:

a. 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.

b. 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.

c. 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.

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:

- a. 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;
- 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 Form 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;
- e. pay the member's monthly retirement annuity to the member upon his/her filing a completed retirement application and in compliance with applicable deadlines.

Procedures Applicable to DROP/Active Duty Issues:

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

c. 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.

d. Upon appeal, the review by the board shall be confined to the record considered by the Executive Director; provided, however:

1. 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;

2. 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.

e. The Board may affirm or reverse the Executive Director's decision or remand the case for further proceedings.

Rule Summary

Rule 215 requires that notice be given to a locatable spouse of a member that elects a straight life benefit and that the notice be retained in the member's file.

Mark Up

REGULATION 215 - 1997 - SPOUSE'S ACKNOWLEDGEMENT OF BENEFIT SELECTION

If a member applying for retirement selects a Straight Life Benefit, then the member shall be required to furnish the spouse's acknowledgement of that selection on a form provided by the System. An application shall not be denied because a spouse refuses to sign the form. **However, a proof of notice to the spouse of this benefit selection shall be placed in the member's file.**

Rule Summary

Rule 220 Termination of Covered Employment Required for Retirement outlines the procedure for a member to properly terminate employment to obtain retirement benefits.

Mark-up

REGULATION 220 - 2009- TERMINATION OF COVERED EMPLOYMENT REQUIRED FOR RETIREMENT (as amended in January 2011)

When used in the context of ACA 24-4-520, "terminate covered employment," shall mean that the employee/employer relationship has been brought to an end and no longer exists in any form, currently or prospectively, between the APERS member and the APERS covered employer. In the case of elected public officials, in addition to the foregoing, they shall have complied with state-law requirements for vacating their office.

Any retiring elected official shall execute an affidavit, along with the local official responsible for certifying that the public office has been vacated, stipulating compliance with this regulation. This affidavit shall be filed with the System at least thirty (30) calendar days prior to the effective date of retirement.

In compliance with ACA 24-4-520(b)(1), when a member who does not have service credit under A.C.A. 24-4-521 at a rate of two (2) or more years credited service for each year of actual service (Act 774) terminates for retirement purposes, they are not eligible to return to employment in any position or capacity with an APERS covered employer within one hundred eighty (180) days of the person's effective date of retirement, unless said position is covered by another retirement system or is an elected position that has never been covered by APERS. When a member who does have service credit under A.C.A. 24-4-521 at a rate of two (2) or more years credited service for each year of actual service terminates for retirement purposes, they are not eligible to return to employment in any position or capacity with an APERS covered employer within one year from the person's effective date of retirement, unless said position is covered by another retirement system or is an elected position that has never been covered by APERS. Any prearranged agreement that the member will return to work for any participating employer in any capacity, full-time or part-time (including as a leased employee) before the expiration of the period mandated by A.C.A. 24-4-520(b)(1) shall create a rebuttable presumption that the member has not terminated covered employment.

When a member terminates in compliance with ACA 24-4-520(b)(2) and (3), they are not eligible to return to employment in any position or capacity with an APERS covered employer sooner than thirty (30) days from the commencement of his or her retirement, unless said position is covered by another retirement system or is an elected position that has never been covered by APERS. Any prearranged agreement that the member will return to work for any participating employer in any capacity, full-time or part-time (including as a leased employee) before the expiration of the 30 day period mandated by A.C.A. 24-4-520(b)(2) or (b)(3) shall create a rebuttable presumption that the member has not terminated covered employment.

Persons failing to terminate covered employment shall forfeit all APERS retirement benefits to the System until the requirements of A.C.A. 24-4-520 and this regulation are met. Failure to meet termination requirements shall not operate to revoke a members' retirement election. However, those individuals returning to employment in a position covered by another retirement

system or having been elected to an office covered by this retirement system should be free to pursue said endeavors without unnecessary restriction.

Emergency. ~~It is found and determined by the APERS Board of Trustees that there may be members who have not terminated their employment properly yet are drawing retirement benefits. This Regulation is essential to the sound operation of this retirement system and delayed implementation of it could work irreparable harm upon the system's proper administration.~~ **However, those individuals returning to employment in a position covered by another retirement system or having been elected to an office never covered by this retirement system should be free to pursue said endeavors without unnecessary restriction. Therefore, an emergency is hereby declared to exist and this Regulation shall be in full force and effect as of January 12, 2011.**

Rule Summary

Rule 222 Recoupment of Overpayments outlines how the Arkansas Public Employees Retirement System may recoup an overpayment of benefits.

REGULATION 222 2017 - RECOUPMENT OF OVERPAYMENTS

RETIREE RECEIVABLES

When APERS determines that it has overpaid a retiree for whatever reason, the retiree is to be notified by letter as soon as reasonably practicable. The next month's annuity payment shall be for the corrected amount. The retiree shall be given the following options:

- 1) Repayment in one lump sum.
- 2) Repayment of a specific dollar amount over a number of months, the amount dependent on the amount of the overpayment in relation to the size of the monthly benefit.
- 3) Reduction of future monthly annuity payments in equal pro rata amounts until the overpayment is fully recouped.

In the event that the retiree disputes the fact of an overpayment, he or she shall first have the appeal considered by the Executive Director. If the Executive Director's decision is unsatisfactory, the retiree shall have the right to an appeal before the APERS Board of Trustees. Contributions to the account shall be increased for COLA's and Ad Hoc increases granted to retirees.

DECEASED RETIREE RECEIVABLES

Upon learning of the death of a retiree, APERS shall immediately cancel all future payments. Where possible, APERS shall contact the bank receiving the deceased retiree's direct deposit of benefits and ask for a return of the last payment.

With Surviving Beneficiary – The designated beneficiary shall be notified as soon as reasonably practicable by letter of the overpayment. The Survivor shall be given the following options:

- 1) Return the annuity payment(s) made after the death of the retiree in a lump sum prior to receipt of any Survivor benefits.
- 2) Reduction of the Survivor's monthly benefit by a specific dollar amount over a number of months until the overpayment is fully recouped.

This recoupment process shall comply with the procedures and principles used by the Social Security Administration which mandate recoupment balanced with consideration of the financial impact upon the surviving beneficiary.

With No Surviving Beneficiary – APERS shall send notice of overpayment to the estate of the deceased retiree. Duplicate notices of overpayment shall be sent every thirty days for a maximum of 90 days until response is received.

In the event that no response is received, APERS shall evaluate the receivable for possible abatement at the next fiscal year-end, following the Department of Finance and Administrations rules for Outlawed Warrants.

If APERS has reasonable cause to believe that the overpayment is due to criminal malfeasance, the agency shall notify the Prosecuting Attorney of the county where the deceased retiree last resided.

Rule Summary

The Arkansas Public Employees Retirement System (“APERS”) Regulation 223 permits any retirant or member of APERS to ask questions concerning the applicability of any rule, statute, or other order of the APERS Board of Directors (“the Board”). The retiree or member must submit a written petition for a declaratory order to the Executive Director of APERS.

Mark Up

REGULATION 223 - 2017- DECLARATORY ORDERS

A. Purpose and Use of Declaratory Orders

To the extent any retirant or member of the Arkansas Public Employees Retirement System ("APERS") has questions concerning the applicability of any rule, statute, or other order of the APERS Board of Directors ("the Board"), the retiree or member submit a written petition for a declaratory order to the Executive Director of APERS.

A declaratory order is a means of resolving a controversy or answering questions concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory order may be used only to resolve questions as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory order is not the appropriate means for determining the conduct of another person or for obtaining a policy statement of general applicability from the Board. A petition or declaratory order must describe the potential impact of statutes, rules, or orders upon the petitioner's interests.

B. The Petition

The process to obtain a declaratory order is begun by filing with the Executive Director of APERS a petition that provides the following information:

1. The caption shall read: Petition for Declaratory Order Before the Arkansas State Employees Retirement System Board of Trustees.
2. The name, address, telephone number, and facsimile number of the petitioner.
3. The name, address, telephone number, and facsimile number of the attorney of the petitioner.
4. The statutory provision(s), the Board rule(s), or the Board order(s) on which the declaratory order is sought.
5. A description of how the statutes, rules, or orders may substantially affect the petitioner and the petitioner's particular set of circumstances, and the question or issue or which petitioner seeks a declaratory order.
6. The signature of the petitioner or petitioner's attorney.
7. The date.
8. Request for hearing, if desired.

C. Board Disposition

1. If the facts or circumstances provided in the petition are insufficient in detail to enable the Board to render a declaratory order, the Board has the authority to request supplemental information from the petitioner. If the supplemental information is insufficient or is not provided, the Board may so state and is authorized to not render a declaratory order based upon what the Board considers insufficient detail. The timeframes outlined in this rule shall reset on the date the Executive Director receives the supplemental information.

2. The Board may hold a hearing to consider a petition for declaratory statement. If a hearing is held, it shall be conducted in accordance with A.C.A. §25-15-208, §25-15-213 and the Board's rules for adjudicatory hearings.

3. The Board may rely on the statements of fact set out in the petition without taking any position with regard to the validity of the facts. Within ninety (90) days of the filing of the petition, the Board will render a final order denying the petition or issuing a declaratory order.

4. The Board may reconsider, withdraw, or amend a prior order upon its own motion. Written notice of the motion shall be mailed to the original petitioner at the last known address of the petitioner.