

This new regulation sets the procedure for appealing the APERS Executive Director's determinations to the APERS Board of Trustees. It imposes a thirty (30) day time within which to provide notices of such appeals to APERS and sets general ground rules for pre-hearing submissions and for the conduct of any resulting Board appeal hearing.

## **Proposed Regulation 105**

### **Appeals from the Executive Director's Determinations to the Board of Trustees**

Beginning with the adoption of this Regulation, the following procedures shall be followed in any administrative appeals to the Board of Trustees from the Executive Director's determinations:

A. Time for Appeal: Any appeal from a determination by the Executive Director to the Board of Trustees shall be made in writing and must be received by APERS no later than thirty (30) calendar days from the date upon which the appellant receives written notice of the Executive Director's determination or from the date that this regulation is adopted, whichever is later.

B. Pre-Hearing Submissions: Any party, including APERS's staff, to such an appeal to the Board of Trustees shall cause any documentary evidence that is to be used by that party at the appeal hearing and a list of proposed witnesses to be received by APERS no later than ten (10) business days before the date set for the Board appeal hearing. Copies of these materials shall be furnished to all parties at that time. Failure to submit documentary evidence and a list of witnesses in a timely fashion to APERS shall be a sufficient basis itself for such evidence to be excluded from consideration by the Board.

C. Conduct of the Hearing: In any appeal to the Board of Trustees, the presiding officer shall be the Chair of the Board or his or her designee or a hearing officer appointed by the Chair. The presiding officer shall determine all evidentiary objections.

**EMERGENCY CLAUSE**: It is hereby found and determined by the Board of Trustees that this Regulation should be effective immediately on an emergency basis pursuant to A.C.A. 25-15-204(b) because the existing lack of procedural rules governing administrative appeals from the Executive Director to the Board likely will substantially impair the prompt, just and speedy resolution of such appeals and constitutes an imminent peril to the public health, safety and welfare. Therefore, this regulation shall be effective immediately upon its adoption.

This new regulation details the requirements for a termination from employment to be effective for retirement benefit purposes. In compliance with the recent amendment to A.C.A. 24-4-520, it prohibits any pre-arranged return to employment during the 180 separation period mandated by the statute and provides that retirement benefits are forfeited until a retirant complies with the statute and this regulation.

**Board Regulation 220 -  
“Termination of Covered Employment Required for Retirement”**

When used in the context of ACA 24-4-520(a), “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 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. 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 180 day period mandated by A.C.A. 24-4-520(b)(1) shall be considered conclusive evidence 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. 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 be considered conclusive evidence that the member has not terminated covered employment.

Persons failing to terminate covered employment shall forfeit all APERS retirement benefits until the requirements of A.C.A. 24-4-520 and this regulation are met.

**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. Therefore, an emergency is hereby declared to exist and this Regulation shall be in full force and effect upon its adoption.

This new regulation sets the standards for establishing “dependency” of persons other than spouses for the purpose of selecting an Option B beneficiary under A.C.A. 24-4-606. It requires that the individual selected to have been claimed as a dependent on the member’s last year’s federal tax return.

### **Proposed Regulation 221**

#### **Proof Required for Establishing Dependency of a Non-Spouse for Purposes of Designating an Option B Beneficiary**

A member seeking to designate an adult aged forty (40) or older who is not that member’s spouse as an Option B beneficiary pursuant to A.C.A. 24-4-606(a)(4) shall establish the proposed beneficiary’s dependency by furnishing proof that the member claimed the proposed beneficiary as his or her “dependent” upon an annual federal tax return that was filed for the period ending at least one (1) year immediately preceding the first retirement annuity payment due date.

This new regulation provides for the purchase of service in the National Guard or in the Armed Forces Reserve in monthly increments.

### **Proposed Regulation 411**

#### **Purchase of Service Authorized by Section 2 of Act 295 of 2009**

A member seeking to purchase National Guard service or armed forces reserve service pursuant to section 2 of Act 295 of 2009 shall be permitted to purchase such service in monthly increments up to the maximum amount of credited service authorized by Act 295.

These new regulations incorporate the former provisions of the statutory District Judge Retirement System, A.C.A. 24-8-801, et seq., which were repealed by Act 654 of 2009. Pursuant to Section 7 of Act 654, APERS Board of Trustees has promulgated these regulations to incorporate the provisions of those statutes that were repealed by Act 177 of 2007 which were subject to the savings provision of A.C.A. 24-4-750(c)(2).

**DISTRICT JUDGE MEMBERS** (Reserved 601 through 699)

This new regulation adopts the provisions of former A.C.A. 24-8-801(a) and (b).

**601-Policy**

(a) It is declared to be the state's public policy that district judges and former municipal judges may retire or be retired when that course appears to be in the best interest of the official concerned and for the public welfare.

(b) Factors to be considered for retirement are:

- (1) Physical disability;
- (2) Advanced age; or
- (3) Other infirmities calculated to materially impair the conduct of judicial duties.

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This new regulation adopts the provisions of former A.C.A. 24-8-802.

**602-Definitions**

As used in these regulations:

(1) "Actual service" means service credit beginning January 1, 2005, in the former Arkansas District Judge Retirement System and service credit beginning July 1, 2007 in the Arkansas Public Employees Retirement System;

(2) "Average annual salary" means the average of the last three (3) years' salary ending with the most recent year;

(3) "Board" means the Board of Trustees of the Arkansas Public Employees' Retirement System after June 30, 2007 and means the Board of Trustees of the Arkansas District Judge Retirement System for the period beginning January 1, 2005 through June 30, 2007;

(4) "District judge" means:

(A) A district judge in office on December 31, 2004, who was covered under § 24-8-801 et seq.; or

(B) A district judge elected to office on or after January 1, 2005 through June 30, 2007;

(5) "Municipal judge retirement fund" means a local municipal judge and clerk retirement fund established by a local government under § 24-8-301 et seq., § 24-8-401 et seq., or § 24-8-501 et seq.;

(6) "Purchased service" means service credited for retirement purposes on or before December 31, 2004, in a municipal judge retirement fund;

(7) "System" means the Arkansas Public Employees' Retirement System; and

(8) "Total service" means the sum of actual service and purchased service.

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This new regulation adopts the provisions of former A.C.A. 24-8-806.

**603- Annual Actuarial Valuation and Monetary Distribution.**

(a) An actuarial valuation shall be made annually to determine if the division allocated to Arkansas District Judges Division of APERS is meeting the financial objectives of state-supported retirement systems.

(b) The provisions of this subchapter are contingent upon and shall only remain in effect if the disbursement of fine revenues continues under the law as it existed on July 16, 2003.

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This new regulation adopts the provisions of former A.C.A. 24-8-807.

**604-Membership Generally**

(a) If elected or appointed to office, all district judges shall participate in the Arkansas District Judge Retirement System beginning January 1, 2005 through **June 30, 2007** and shall participate in the Arkansas Public Employees' Retirement System thereafter.

(b) (1) A district judge who is covered by the Arkansas Public Employees' Retirement System on December 31, 2004, will continue to be covered by that system on January 1, 2005.

(2) The successor judge of that district court shall be covered by the Arkansas District Judge Retirement System for the period January 1, 2005 through June 30, 2007 and by Arkansas Public Employees' Retirement System thereafter.

(c) (1) Any former municipal judge who is eligible to receive a retirement benefit for service as municipal judge as provided by law before July 16, 2003, and any former municipal judge who is receiving a retirement benefit as provided by law for service as municipal judge shall participate during the period from January 1, 2005 through June 30, 2007 in the Arkansas District Judge Retirement System and have his or her benefits administered by this system during that period.

(2) Any former municipal judge who is eligible to receive a retirement benefit for service as municipal judge as provided by law before July 16, 2003, and any former municipal judge who is receiving a retirement benefit as provided by law for service as municipal judge shall participate in the Arkansas Public Employees' Retirement System beginning July 1, 2007 and have his or her benefits administered by this system thereafter.

(3) A surviving spouse of a municipal judge who is eligible to receive a survivor's benefit as provided by law on December 31, 2004, and any surviving spouse of a municipal judge who is receiving a retirement benefit as provided by law shall participate on and after January 1, 2005, in the Arkansas District Judge Retirement System and have his or her benefits administered by that system until June 30, 2007 and shall participate in the Arkansas Public Employees' Retirement System beginning July 1, 2007 and have his or her benefits administered by this system thereafter.

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This new regulation adopts the provisions of former A.C.A. 24-8-808.

**605-Contributions Members Refund**

(a) The contribution of each district judge member of the Arkansas District Judge Retirement System shall be five percent (5%) of each member's annual salary for service rendered on or after January 1, 2005.

(b) If a district judge ceases to be a member prior to qualifying for retirement benefits, the judge may be refunded all contributions paid by the judge into the system.

(c) (1) For purposes of deferring federal and state income tax and pursuant to the provisions of 26 U.S.C. § 414(h)(2), as adopted by § 26-51-414, the government entity that pays the salary of the judge shall pick up the member's contributions to the system as required by this section and that are payable on or after January 1, 2005.

(2) (A) Member contributions paid by the applicable government entity shall be paid from the same source of funds used for the payment of salary to a member.

(B) A deduction equal to the amount of the member's contribution paid by the employer shall be made from each member's salary.

(3) For all other purposes, member contributions paid by the applicable government entity shall be considered member contributions.

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This new regulation adopts the provisions of former A.C.A. 24-8-809.

**606-Contributions Government Entity**

(a) (1) As employer, the government entity that pays the salary of a district judge shall make contributions to the Arkansas Public Employees' Retirement System as a percent of the salary of the active district judge based on the most recent actuarial cost report.

(2) These contributions will begin January 1, 2005.

(b) (1) If any participating public employer fails to file the retirement report with the system by the date established by the Board of Trustees of the Arkansas District Judge Retirement System, the system shall impose a penalty of one hundred fifty dollars (\$150) for each time the report is late.

(2) A statement of the penalty shall be sent to the participating employer.

(3) If the penalty is not received by the last business day of the month in which the report was due, then the system shall cause the amount to be transferred from any moneys

due the participating public employer from the Treasurer of State as provided in § 19-5-106(a)(5).

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This new regulation adopts the provisions of former A.C.A. 24-8-810.

**607-Additional Funding for Retirement Benefits**

(a) The government entity that has established a local municipal judge's retirement fund shall be required to contribute an amount of money that represents the actuarially determined accrued liability for those judges and former judges who are covered by the local fund on December 31, 2004.

(b) The assets in the local municipal judge retirement fund, not to exceed the amount in subsection (a) of this section, shall have been paid to the Arkansas District Judge Retirement System on January 1, 2005.

(c) If the local municipal judge retirement fund does not have sufficient money available to pay the amount determined in subsection (a) of this section to the system on January 1, 2005, then the remaining amount of actuarially determined accrued liability shall be paid to the Arkansas District Judge Retirement System on or before December 31 each year after for up to the next thirty (30) years based on a thirty-year amortization period.

(d) (1) If the amount in the municipal judge retirement fund is greater than the actuarially determined amount of the liabilities to be transferred to the system, that excess may be retained by the sponsoring government entity for the sole purpose of paying the retirement benefits of district judges.

(2) If at any time in the future an obligation to fund the system no longer exists, then any excess shall be retained by the sponsoring government entity.

(e) (1) The accrued benefit used to determine the accrued liability under this section shall be determined by:

(A) Calculating the benefit that the judge would be eligible to receive on December 31, 2004, as provided by law before July 16, 2003, if the judge was eligible to begin receiving benefits on January 1, 2005; and

(B) Multiplying the amount in subdivision (e)(1)(A) of this section by the number of years of eligible service and then dividing by the greater of either the number of years of service needed to be eligible to retire or the current years of eligible service.

(2) The service years shall be determined under the law before July 16, 2003.

(f) The accrued benefit determined under subsection (e) of this section for any retiree or surviving spouse who is receiving benefits on December 31, 2004, shall be the amount that he or she is receiving or entitled to receive on that date.

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This new regulation adopts the provisions of former A.C.A. 24-8-811.

**608- Contributions — Cessation Upon Maximum Benefit Eligibility.**

When a district judge has sufficient service in the Arkansas District Judge Retirement System to qualify for the maximum benefit provided by this subchapter, no further contributions are required.

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This new regulation adopts the provisions of former A.C.A. 24-8-812.

**609- Actual Service Requirement**

(a) Benefits under this subchapter shall be based on actual service in the Arkansas District Judge Retirement System beginning January 1, 2005 and on actual service in the Arkansas Public Employees Retirement System beginning July 1, 2007.

(b) (1) Eligibility for benefits shall be based on actual service in the Arkansas District Judge Retirement System and on actual service in the Arkansas Public Employees Retirement System plus the equivalent service purchased from the Municipal Judge and Clerk Retirement System as of January 1, 2005.

(2) This regulation is not intended to decrease the benefits earned or increase the eligibility requirements for members who were participants in a local plan, as authorized by law, prior to January 1, 2005.

(3) The benefits earned and those eligibility requirements shall transfer to the Arkansas District Judge Retirement System and to the Arkansas Public Employees Retirement System following the abolishment of the Arkansas District Judge Retirement System.

(c) Any laws permitting the purchase of nonvested service or providing free credited service shall not apply.

(d) The provisions of §§ 24-2-501 and 24-2-502, concerning free and purchased credited service, shall not apply.

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This new regulation adopts the provisions of former A.C.A. 24-8-813.

**610- Eligibility for Benefits — Retirement Generally.**

Any district judge shall be eligible for a retirement benefit if the judge has served at least:

- (1) Twenty (20) years of total service upon reaching age fifty (50);
- (2) Sixteen (16) years of total service upon reaching age sixty (60); or
- (3) Eight (8) years of total service upon reaching age sixty-five (65).

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This new regulation adopts the provisions of former A.C.A. 24-8-814.

**611- Eligibility for Benefits — Early Retirement.**

(a) Any member of the Arkansas District Judge Division of the Arkansas Public Employees Retirement System who has eight (8) years or more of actual service in the system, including service in the former Arkansas District Judge Retirement System, may elect to retire and receive retirement benefits at any time after reaching age sixty-two (62) and before reaching age sixty-five (65).

(b) The retirement benefits of a member electing to retire before age sixty-five (65) with less than sixteen (16) years of actual service shall be reduced six percent (6%) for each full year and proportionately for any part of a year that the judge retires before reaching age sixty-five (65).

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This new regulation adopts the provisions of former A.C.A. 24-8-815.

**612- Eligibility for Benefits — Disability Retirement.**

(a) Any member of the Arkansas District Judge Division of the Arkansas Public Employees Retirement System who has served a minimum of five (5) consecutive years as a member of the system (including service in the former Arkansas District Judge Retirement System, if any), shall receive retirement benefits if any incapacitating disability as determined by the Board of Trustees of the Arkansas Public Employees Retirement System shall occur during any term for which the judge has been elected.

(b) (1) A judgment of disability shall not be granted by the board unless the board is reasonably assured of a judge's permanent physical or mental incapacity to perform the duties of the judicial office.

(2) The board shall act only upon proper certification of incapacity by two (2) or more physicians.

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This new regulation adopts the provisions of former A.C.A. 24-8-816.

**613- Retirement and Survivors' Benefits Generally.**

(a) The retirement benefits to be paid an eligible and qualified member or retiree under these regulations shall be the sum of subdivisions (1) and (2) of this subsection:

(1) Two and five-tenths percent (2.5%) of the average annual salary multiplied by the number of years of actual service; and

(2) The accrued benefit from the municipal judge retirement funds as of December 31, 2004, that was purchased and defined under Regulation 607.

(b) The benefit in subsection (a) of this section shall not exceed eighty percent (80%) of the average annual salary.

(c) (1) Survivors' benefits shall be fifty percent (50%) of the amount of the retirement benefits of an active district judge or a judge who has retired under the provisions of a local plan before January 1, 2005.

(2) Upon the death of an active district judge who has served at least three (3) years, the judge's survivors shall receive a sum equal to fifty percent (50%) of the retirement benefits provided in subsection (a) of this section.

(3) Survivors' benefits shall be payable as follows:

(A) If the deceased judge is survived by a spouse to whom the judge was married for not less than one (1) year and with whom the judge was living at the time of death and if the decedent is not survived by any minor child or children, then the spouse shall draw for life or until remarriage a sum equal to fifty percent (50%) of the benefits provided in subsection (a) of this section;

(B) (i) If the decedent is survived by both an eligible spouse and minor children, then one-half (1/2) of the survivors' benefits shall be paid to the spouse for life or until remarriage.

(ii) The other one-half (1/2) of the survivors' benefits shall be paid to the guardian of the minor children during the period of minority.

(iii) When all of the children cease to be minors, then the survivors' benefits paid to the minor children shall be paid to the spouse;

(C) If the deceased judge is not survived by an eligible spouse but is survived by minor children, then the survivors' benefits under subsection (a) of this section shall be payable to the guardian of the minor children during the period of minority; and

(D) If a surviving spouse who is receiving survivors' benefits under this section remarries and the benefits are discontinued and the surviving spouse again becomes unmarried, benefits provided in this section for the spouse shall be resumed.

(d) As used in this section, "average annual salary" means the average of the last three (3) years' salary ending with the most current year.

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This new regulation adopts the provisions of former A.C.A. 24-8-817.

**614- Eligibility for Benefits — Deferred Vested Retirement.**

(a) Any member of the Arkansas District Judge component of the Arkansas Public Employees Retirement System who has served a minimum of eight (8) years of service, including any service in the former Arkansas District Judge Retirement System, shall be eligible for a deferred vested retirement benefit.

(b) This deferred vested benefit is accrued under Regulation 613 and is payable beginning on the first of the month after the member has reached age sixty-five (65).

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This new regulation adopts the provisions of former A.C.A. 24-8-818.

**615- Restrictions on Benefits.**

(a) (1) These regulations are complementary.

(2) However, no person may take benefits under two (2) or more of these regulations at the same time.

(b) Retirement and survivors' benefits shall be measured by the average annual salary under § Regulation 613(d).

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This new regulation adopts the provisions of former A.C.A. 24-8-819.

**616- Redetermination of Benefits.**

(a) The provisions of this section shall apply only to benefits provided for members of the Arkansas District Judge Retirement System for service rendered between January 1, 2005 and July 1, 2007, and service rendered in the Arkansas Public Employees Retirement System thereafter.

(b) (1) Each July 1 the system shall redetermine the amount of each monthly benefit that has been payable by the system for at least twelve (12) full calendar months.

(2) The redetermined amount shall be payable for the following twelve (12) calendar months.

(c) The redetermined amount shall be the amount of benefit payable as of the immediately preceding July 1 increased by three percent (3%).

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This new regulation adopts the provisions of former A.C.A. 24-8-820.

**617- Limitation on Benefit Enhancement.**

(a) No enhancement of benefits under Regulation 613 shall be implemented if it would cause the Arkansas District Judge Retirement System's unfunded actuarial accrued liabilities to exceed a thirty-year amortization.

(b) No enhancement of benefits under Regulation 613 shall be implemented by the system if it has unfunded actuarial liabilities being amortized over a period exceeding thirty (30) years until the unfunded actuarial liability is reduced to a level less than the standards prescribed by § 24-1-101.

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This new regulation adopts the provisions of former A.C.A. 24-8-821.

**618-Reciprocal System.**

(a) The Arkansas District Judge Retirement System is a reciprocal system under 24-2-401 — §§ 24-2-404.

(b) There is no reciprocal service with the local municipal judge retirement systems before January 1, 2005.

(c) In establishing eligibility for a benefit from the system, the credited service under all

reciprocal systems shall be totaled, and the total credited service shall be used in determining eligibility for a system benefit.

(d) In determining the amount of a benefit from the system, only the credited service under the system and the benefit formula of the system shall be used.

(e) Whenever the system provides a benefit amount that is not dependent on length of credited service, the benefit amount shall be reduced to the proportion that system-credited service bears to total reciprocal system-credited service.

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This new regulation adopts the provisions of former A.C.A. 24-8-822.

**619- Termination Required for Retirement.**

(a) A member must terminate covered employment to be eligible for retirement.

(b) A member is not terminated from employment for retirement purposes if the person returns to a position that would otherwise be covered within one hundred eighty (180) days of the person's effective date of retirement.

(c) Persons failing to meet termination requirements shall forfeit their benefits until the requirements are met.

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This new regulation adopts the provisions of former A.C.A. 24-8-823.

**620- Benefit Provisions — Subjection of Annuity Rights to Process of Law.**

(a) (1) The right of a person to an annuity, to the return of accumulated contributions, the annuity itself, any annuity option, any other right accrued or accruing under the provisions of this subchapter, and all moneys belonging to a plan shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or any other process of law.

(2) The rights described in subdivision (a)(1) of this section shall not be assignable except when a qualified domestic relations order has been filed pursuant to § 9-18-101 et seq., or except as specifically provided in these regulations.

(b) An employer shall have the right of setoff for any claim arising from embezzlement by or fraud of a member, retirant, or beneficiary.

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This new regulation adopts the provisions of former A.C.A. 24-8-824.

**621- Adjustment of Erroneous Payments.**

(a) (1) If any change or error in the records of the Arkansas District Judge component of the Arkansas Public Employees Retirement System or any audit of a member's annuity calculations results in any person's receiving more or less than the person is entitled to receive had the records or the calculations been correct, the Board of Trustees of the Arkansas Public Employees Retirement System shall correct the error and adjust the payment in accordance with these regulations so that the actuarial equivalent of the benefit to which the person was correctly entitled is paid.

(2) However, no monthly adjustment of less than one dollar (\$1.00) shall be made.

(b) If an overpayment is determined, any subsequent payments shall be adjusted to the correct amount.

(c) If an underpayment is determined, regardless of the date of the determination, the system shall pay in a lump sum to the person the total of any underpayments made prior to the date of determination, and any subsequent payments shall be adjusted to the correct amount.

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This new regulation adopts the provisions of the former District Judges Retirement System's Board of Trustees regulations.

**622-Incorporation of the Arkansas District Judges Retirement System's Board Regulations**

The Arkansas District Judges Retirement System's Board Regulations are incorporated into these regulations by reference.

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This new regulation adopts explicitly provides that sovereign immunity is not waived.

**623-No Waiver of Sovereign Immunity.**

Nothing contained in these regulations shall be taken as a waiver of sovereign immunity.