

## **Notice of Rulemaking**

Please take notice that the Board of Trustees of the Arkansas Public Employees Retirement System, 124 West Capitol Avenue, Suite 400, Little Rock, AR 72201 has voted to amend the following regulation:

**“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 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:

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 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."

**REGULATION 214** - 1997 - DROP PROVISIONS (amended May 1999, May 2001, Aug. 2003, Nov. 2010, May 2011 & November 2011) allows a member to select a combination of fiscal options when his or her DROP account is paid; requires when the monthly payment option is elected by the member, the payments conclude at the end of twenty-five (25) years; and details how APERS may keep an accrued DROP balance until a member completes his or her Arkansas Teacher Retirement System DROP term.

By unanimous vote, the APERS Board of Trustees hereby finds and determines that there exists peril to the public health, safety and welfare of Arkansas citizens who are members of APERS and want to select the most advantageous DROP distributions. This amendment will allow such individuals to have more options concerning the payment of DROP distributions.

Copies of this proposed amendment are available for inspection and copying during normal business hours, 7:30 a.m. to 4:30 p.m., at APERS's principal offices, 124 West Capitol Avenue, Suite 400, Little Rock, AR 72201 and written public comment concerning these regulations may be addressed to: Jessica Middleton, Arkansas Public Employees Retirement System, 124 West Capitol Avenue, Suite 400, Little Rock, AR 72201. The public hearing on these rules will held be Friday, September 8, 2017, at 10:00 a.m. in the fourth floor conference room in APERS's main offices, 124 West Capitol Avenue, Suite 400, Little Rock, AR 72201.