

# ARKANSAS REGISTER

## Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



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For Office  
Use Only:

Effective Date \_\_\_\_\_ Code Number \_\_\_\_\_

Name of Agency Arkansas Public Employees' Retirement System

Department n/a

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Laura Gilson

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Contact Person

E-mail Address

Date

### CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted  
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Signature

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Executive Director, Arkansas Public Employees' Retirement System

Title

December 5, 2019

Date

Official Rules of  
The Board of Trustees of the  
Arkansas Public Employees Retirement System

Last revised November 2019



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# Administration

## **101 – 1957 (5) – Disclosure Of Information** (as amended in 1987 and May 1998)

Disclosure of information from PERS records and meetings shall be open to the public as provided by A.C.A. 25-19-101, A.C.A. 21-12-203, and other applicable law. The Executive Director shall seek the advice of the Attorney General when necessary regarding release of information as provided herein. No information on a member's record will be given to any individual or agency except under the following conditions:

1. The individual member may request information on his or her own account by coming to our office in person or by requesting such information in writing.
2. Any person other than the member may receive information on the individual member's account by furnishing the Retirement System with a signed, notarized statement from such individual member asking that such information be given to the named third party.

## **102 – 1995 (8) – Expense Reimbursement for Members of the Board of Trustees**

In accordance with Act 1211 of 1995 the Board of Trustees does hereby authorize expense reimbursement for board members to attend all regular and special Meetings of the Board and its Committees. Such reimbursement shall not exceed the rate established for state employees by state travel regulations. APERS' Board members shall not be paid a stipend.

The APERS Board of Trustees does hereby delegate to the APERS' Executive Director the approval of all Board of Trustee travel other than travel to attend regular and special meetings of the Board and its Committees.

## **103 – 1997 (5) – Employer Contribution Rates** (as amended October 2017)

In accordance with the provisions of A.C.A. 24-2-701 the Board of Trustees will establish the employer contribution rate for both the state and local divisions to take effect on July 1st of each year.

## **104 – 1997 (5) – Employer Reporting - Time and Frequency of Employer and Employee Contributions and the monthly Report of Service and Earnings** (as amended October 2017)

In accordance with 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 reporting via COMPASS –ESS (Employer Self Service) and received by APERS within 5 (five) business days after the payroll processing date.

Remittances received within 5 (five) business days after the payroll processing date shall not be considered delinquent. The retirement report of service and earnings, by electronic media, shall be submitted for receipt by APERS on or before the fifth business day following payroll processing.



## **105 – 2010 (8) – Appeals from the Executive Director’s Determinations to the Board of Trustees**

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

1. 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 rule is adopted, whichever is later.
2. 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.
3. 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 rule 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 rule shall be effective immediately upon its adoption.

## **106 – 2011 (7) – Employer Contributions for Rehired Retirees**

In compliance with Act 558 of 2011, when any employer covered by this system hires an APERS retiree into any position, that employer shall make the same employer contributions on behalf of the rehired retiree as it would have been required to make for a regular member holding the position in question. However, nothing in this rule shall be taken or interpreted as authorizing or permitting the rehired retiree to obtain additional retirement credit in the System as a result of these employer contributions.

## 107 - 2017 (8) - 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.

# Benefits

## **201 – 1957 (5) – Age of Members - How Established** (as amended 1969, 1994 , May 2011, October 2017, and June 2019)

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,
2. Baptismal or other church records issued before age 5,
3. U.S. Census Report issued 1920 or before,
4. Social Security document other than application for Social Security Number that states age or date of birth recognized by SSA,
5. A valid United States passport, or
6. A valid Arkansas Enhanced Security Driver License.

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.

## **202 – 1957 (5) – Beneficiary - How Changed** (as amended May 1998)

A member of the Arkansas Public Employees Retirement System can only change beneficiary by use of the form designated by the Board of Trustees to be used for such purposes.

### **203 – 1957 (5) – Disability Retirement** (as amended November 2012)

Disability retirement for a member of PERS can be approved in one of two ways:

Before a member can be approved for disability retirement from PERS, he/she must first apply and be approved by either Social Security or by the Federal Railroad Retirement Board for disability benefits. If a member is approved for disability payments, then the member shall furnish proof to PERS of such approval and the member, who is otherwise eligible under State retirement law, will automatically be approved for PERS benefits retroactive to the date that benefits would have become payable under law.

Should the member not be approved for Social Security or for Railroad Retirement disability payments, the member, after having been denied Social Security or Railroad Retirement through the Administrative Law Judge appeal level, may appeal directly to the Board of Trustees. The member shall furnish physician (s) statements and other medical documentation, obtained at the member's expense, to the APERS Medical Review Board (MRB) for evaluation. The MRB shall be composed of physicians approved by the Board. The results of the MRB evaluation shall be presented to the Board for final consideration.

Members applying under Act 868 of 1999 shall submit copies of physician (s) statements and other medical documentation, obtained at the member's expense, to the MRB for evaluation. The results of the MRB evaluation will be presented to the Board of Trustees for final consideration.

After retirement on disability, the member will be reviewed by Social Security or Railroad Retirement if receiving benefits from either agency, and the member will have to furnish APERS with a copy of the Social Security or Railroad Retirement findings.

In those instances where a disability retiree is working, determination as to whether remuneration is substantially gainful, as referenced A.C.A. 24-3-208, shall be based on guidelines used by the Social Security Administration for the SSDI program.

### **204 – 1985 (2) – Computation of Benefits for Members with Concurrent Service in APERS** (as amended May 2001)

In accordance with the authority provided in ACA 24-4-105(b)(1) and 24-4-521, the APERS Board of Trustees has determined that benefits for members with concurrent service within APERS, where a portion of the service is credited at more than one-for-one (i.e., elected or public safety), shall be computed as follows: A benefit will be calculated separately for service that results in public safety and/or elected credit based on the credited service and final average salary for the entirety of that service. A benefit will then be computed for all regular service based on the regular service and final average salary for that service. The benefit computed for each type of service will be added together to obtain the total benefit.

### **205 – 1986 (10) – Physical or Mental Incompetency**

For the purpose of approving a death-in-service benefit, a dependent child above the age of 18 will be considered mentally or physically incompetent by one of the following methods:

1. Proof that the dependent has been deemed physically or mentally incompetent by an Arkansas Court of Jurisdiction.
2. Verification by the Social Security Administration that the dependent is receiving disability benefits on the deceased member's social security account and that the benefits became effective at the time of the member's death.

If neither of the above can be obtained, the dependent may appeal to the Board of Trustees by the following method:

1. The dependent will furnish to the Arkansas Public Employees Retirement System a description of the physical or mental impairment and a list of all physicians seen for diagnosis or treatment.
2. The Board of Trustees will designate another physician by whom the dependent will be examined at the System's expense.
3. A written statement from the examining physician will be the basis for the decision of the Board of Trustees on incompetency of the dependent.

The Board may require verification of continuing incompetency, or re-examination.

### **206 – 1991 (5) – Termination of Employment for Retirement Purposes**

(Repealed November 1999)

### **207 - 1992 (2) – Cancellation of Retirement**

A member may cancel his retirement if he notifies the System in writing prior to the effective date of retirement; or, if after the effective date, he may cancel by notifying the System in writing and returning the benefit payment on or before the fifteenth (15th) calendar day of the month for which he received his first benefit payment.

## **208 – 1993 (5) – Qualified Domestic Relations Orders** (as amended 1994)

In accordance with Act 1143 of 1993, the Arkansas Public Employees Retirement System will comply with Qualified Domestic Relations Orders (QDROs) issued by Chancery Courts in the state of Arkansas that meet the following conditions:

1. The QDRO is issued in accordance with all provisions of the model QDRO adopted by the APERS Board of Trustees and approved by the Arkansas Legislative Council.
2. The QDRO, as specified in Section 1. (3) (c) of Act 1143, does not require APERS to provide any type or form of benefit, or pay options not otherwise available under the Plan, does not require the Plan to provide increased benefits, and does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined to be a Qualified Domestic Relations Order.
3. The QDRO is issued on or after the effective date of Act 1143 of 1993.
4. The System will review QDROs for compliance with this rule and notify appropriate parties of its findings.

In those instances where the alternate payee selects alternative B. under Section III.

(DURATION OF PAYMENTS TO ALTERNATE PAYEE) of the model QDRO, the actuary will use the following guidelines in computing an equivalent benefit to be paid for the alternate payee's lifetime:

1. The interest rate will be the valuation rate.
2. The mortality table will be the "50/50 table."
3. The age used in the computation shall be the attained age at the last birth date prior to the effective date of the QDRO.

## **209 – 1993 (8) – Crediting Reciprocal Service During the Same Fiscal Year**

If a member has reciprocal service during the same fiscal year with both the Teacher Retirement System and the Public Employees Retirement System, and if, under the two systems' standard methods of crediting service, the combined service amounts to more than one full year of actual service, then credit shall be reduced in a manner that is most advantageous to the member (determined jointly by APERS and ATRS) so that in any given fiscal year, actual service shall not exceed one year.

## **210 – 1994 (2) – Public Safety Credit** (as amended May 2001 & 2011)

Public Safety Credit will be granted only to those positions delineated in A.C.A. 24-4-101(34), and in the instance of police officers, only to those officers whose primary duty is law enforcement and who are certified law enforcement officers. The police chief, in the case of a municipality, or the sheriff, in the case of a county, must certify in writing to APERS that the officer's primary duty is law enforcement. In addition, the officer must be certified by the Law Enforcement Training Academy as a "Certified Law Enforcement Officer," or be grandfathered in as of January 1, 1978.

Public Safety credit will not be granted to civilian or temporary employees of a police department. Public Safety credit will not be granted to a municipal police officer or county deputy sheriff whose primary duty is jailer, radio dispatcher, bailiff, or probation officer. However, an officer assigned to administrative duties may still be considered public safety if he/she meets the specific requirements of Act 1616 of 2001.

In accordance with Act 485 of 1997, the term "public safety member" shall not include a member whose employment as a police officer or fire fighter occurred on or after July 1, 1997. If a person who is employed in a "public safety member" position prior to July 1, 1997 changes covered employers, he/she shall be entitled to public safety credit for any subsequent employment in a qualifying police officer or fire fighter position covered by APERS that occurs on or after July 1, 1997. However, if there is a break in service for a period exceeding 6 consecutive months, he/she shall not be entitled to further public safety credit.

For those civilian firefighters of the State Military Department who only became "public safety members" pursuant to Act 978 of 2011, the employer contribution rate shall be an additional twelve per cent (12%) of the affected individual's gross salary in addition to the normal employer contribution rate for the affected individual's position.

## **211 – 1995 (8) – Changes in Final Average Salary Affecting Benefit Computation**

If earnings reported after the date of retirement are not equal to those certified by the employer, the benefit amount will not be adjusted if the resulting increase or decrease would be \$3.00 or less over a 12 month period.

## **212 – 1995 (8) – Compliance with Benefit Limits Imposed by Section 415 of the Internal Revenue Code** (as amended May 1998)

The following guidelines for complying with qualified plan benefit limitations imposed by IRC Section 415 shall be followed in accordance with Act 739 of 1995.

1. Total employer financed straight life annuity payments to any retired member in any calendar year shall not exceed the dollar limit specified in IRC 415.
2. In any calendar year in which the total straight-life annuity payments otherwise payable would exceed the amount permitted under IRC Section 415, the actual amount paid shall be reduced by such dollar difference.



3. A retiree whose benefits are reduced in accordance with IRC Section 415 limitations in any calendar year will be retested in subsequent years in accordance with the following objectives:
  - a. Assurance that APERS will remain in compliance with IRC Section 415; and,
  - b. The smallest acceptable cumulative adjustments are made to the benefits paid to any retired member.

### **213 – 1996 (2) – Five Year Vesting**

In accordance with Act 1356 of 1995, Five Year Vesting becomes effective July 1, 1997. This provision is not retroactive. In order to vest under this provision, a person must be a member of the System on July 1, 1997 and have been a member for not less than 90 consecutive calendar days prior to July 1, 1997 with five or more years of service. If a person is a former member on July 1, 1997 with five years but less than ten years of service, that person must return to covered employment for period of not less than 90 consecutive calendar days after July 1, 1997. If a person is a former member on July 1, 1997 with less than five years of service, that previous service will be counted toward five year vesting provided the person returns to covered employment for a period of not less than 90 consecutive calendar days, and the previous service has not been refunded.

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

#### 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

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.

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.

#### 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 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.

**215 – 1997 (5) – Spouse's Acknowledgment of Benefit Selection** (as amended October 2017)

If a member applying for retirement selects a Straight Life Benefit, then the member shall be required to furnish the spouse's acknowledgment 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.

## **216 – 1999 (2) – Direct Deposit**

Persons first receiving monthly benefits from APERS on or after October 1, 1999 shall be required to participate in the electronic direct deposit program. Persons receiving monthly benefits before October 1, 1999 shall enroll in the electronic direct deposit program on or before April 1, 2000. Waivers may be granted to those persons who certify in writing that they do not have a savings or checking account.

## **217 – 1999 (11) – Final Average Salary** (Repealed May 2001)

## **218 - 2001 (5) – Partial Annuity Withdrawal**

In accordance with Act 357 of 2001, only years and months of service will be utilized to determine the amount of eligible service in the calculation of the PAW. The actuarial reduction to be used in computing a PAW benefit, as provided by Act 357 of 2001, shall be a 50/50 gender blend of the 1983 Group Annuity Mortality Table with interest at 8% and 3% annual compounded post-retirement benefit increases.

Any service purchased after a member becomes eligible for an unreduced benefit will not be included in the number of months of PAW eligibility.

The date a member purchases service and becomes eligible for an unreduced benefit, determines the date the member is eligible for the PAW. Any service rendered in APERS after this date, is eligible for PAW.

Reciprocal and credited service will be utilized to determine the date a member was eligible for an unreduced benefit. However, only actual APERS service after the date eligible for an unreduced benefit will be used in the calculation of the number of eligible PAW months. The exception is Rehab members as defined in 24-2-302. Rehab members service in ATRS will be used in the monthly benefit amount and in determining the number of months eligible for the PAW.

## **219 – 2005 (5) – Establishing Retirement Eligibility**

Pursuant to Act 2084 of 2005, it is established that twenty-eight (28) years of actual service are required for a member to be eligible for an unreduced benefit prior to age sixty-five (65) when utilizing the contributory provisions of A.C.A. 24-4-1101 et seq.

## **220 – 2009 (8) – Termination of Covered Employment Required for Retirement**

(as amended January 2011 and October 2017)

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 rule. 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 rule 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 never covered by this retirement system should be free to pursue said endeavors without unnecessary restriction.

## **221 – 2009 (8) – 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.

## **222 2017 (10) - 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 COLAs 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.

# Membership

## **301 – 1957 (5) – Prior Service** (as amended 1994)

Verification of Service (including wages paid and number of hours worked) for the purpose of determining eligibility for free prior service; purchase of service; or delinquent service, may be established in the following ways:

1. Certification by the payroll or personnel officer or person otherwise responsible for payroll and personnel matters of the department or Agency wherein the work was performed. Acceptable for both hours worked and wages.
2. Certification by the Department or immediate supervisor under whom the employee actually worked. Acceptable for hours worked only.
3. Any documentary proof in the possession of the individual. May be acceptable for hours and/or wages depending on nature of proof. Acceptability will be determined by System.
4. Notarized statements by two co-workers. Acceptable for hours worked only.

## **302 – 1959 (5) – County Employees' Representative**

The County Clerks shall be and are hereby designated as the county employees' representative for the transaction of all business with the State Board of Trustees. All business with county officials and employees shall be channeled through the county clerk's office.

## **303 – 1965 (7) – Requirement for Membership in System** (as amended May 2001)

In accordance with A.C.A. 24-4-101(17), the Board has "final power" to determine who is eligible for participation in the System. Accordingly, all persons appearing on any covered employer's payroll (regular, temporary, or extra help) shall become members of the Retirement System as a condition of employment except as follows:

1. Persons employed for a period of less than 90 consecutive calendar days shall be excluded from membership.
2. Persons who are employed for a period of more than 90 consecutive calendar days, but who do not qualify as full time employees, shall be excluded from membership. A person shall be considered a full time employee if the person works at least 80 hours per month during a period of 90 consecutive calendar days. The 80-hour requirement shall not apply to school division employees. A school division employee shall be considered qualified if that person works at least one half of the time required by a full time person employed in the position during a period of 90 consecutive calendar days.
3. Persons whose rate of pay does not constitute employment that is substantially gainful shall be excluded from membership. For purposes of this rule, "rate of pay" is equal to monthly earnings reported to the System divided by the hours worked during the report month. A rate of pay of less than the federal minimum wage for the year in question shall not be considered substantially gainful.

**304 – 1990 (1) – Membership Eligibility for Policemen and Firemen** (as amended May 2001)

A Municipality which begins participation in this System after July 1, 1981 cannot enroll policemen or firemen in this System. Those positions are covered by the provisions of Act 364 of 1981, which established the Local Police and Fire Retirement System (LOPFI). Municipalities that were participating in APERS as of July 1, 1981 and who were reporting police and firemen to APERS must continue to report police and firemen to APERS. However, any municipal police department whose employees are covered by APERS on July 1, 1997 is authorized by Act 1541 of 2001 to transfer those employees hired after July 1, 1997 to the LOPFI. Such action must be taken by the governing body of the municipality in accordance with provisions of Act 1541.

**305 – 1991 (11) – Wages for Deputy Tax Collectors** (as amended November 1995)

Fees paid to county deputy tax collectors for the collection of delinquent taxes and fees paid to deputy sheriffs in lieu of a salary shall be considered wages for retirement purposes. Service credit will be granted for any month in which the deputy tax collector or deputy sheriff works at least 80 hours, provided the deputy tax collector or deputy sheriff is hired with the intent of working at least 90 days.

**306 – 1995 (5) – Participation in APERS Under the Provisions of Act 398 and Act 1292**  
(as amended May 1997)

In accordance with Acts 398 and 1292 of 1995, when the majority of employees of an entity covered by this Act elect to participate in APERS, the governing body of such entity shall certify such vote to the Executive Director of APERS within 10 days after the vote by the employees. The effective date of coverage shall be either the first day of the calendar month next following receipt by the Executive Director of the election or the July 1st next following the receipt, as determined by the vote.

**307 – 1997 (5) – Participation in APERS Under Provisions of Act 76 of 1997** (as amended May 2001)

In accordance with Act 76 of 1997, if the Intergovernmental Juvenile Detention Council of the 10th Judicial District elects, by a majority vote of the Council, to participate in APERS, the Council shall certify such vote to the Executive Director of APERS within 10 days after the vote. The effective date of coverage shall be the later of July 1, 1997 or the first day of the calendar month next following receipt of the election results by the Executive Director.

Interest on prior service purchases shall be “regular interest” as defined by the Board in Rule 408.

**308 – 1997 (11) – Enrollment in APERS by Colleges and Universities** (as amended May, 2001)

Arkansas Code of 1987 Annotated 24-7-1002 requires certain employees of state universities, colleges, and community colleges to be enrolled in the Arkansas Public Employees Retirement System (APERS), rather than the Arkansas Teacher Retirement System (ATRS) or the College Alternate Plan. Beginning November 20, 1997, those individuals first employed by the various colleges, universities, or community colleges in pay grade 17 and below shall become members of APERS. All members of APERS who are promoted to a position grade 18 and above will automatically become a member of ATRS or the College Alternate Plan unless they choose to remain in APERS. Notwithstanding the rule in effect November 20, 1997, any employee first hired by a state college or university (other than an institution in the U of A System) after the effective date of Act 765 of 2001 may choose to participate in APERS, ATRS, or an alternate plan as offered by the college or university.

### **309 – 1999 (5) – Local Government Unit Participation**

In accordance with Act 865 of 1999, Rehabilitation Service Corporations that have acquired the status of a corporation authorized by Act 880 of 1999, and other Local Units of Government as specifically defined in various sections of the Arkansas Code, may elect to participate in APERS. Provided, however, an entity shall not be allowed to participate if such participation would jeopardize the tax-qualified status of the Plan under the Internal Revenue Code. Said election must be made by a majority vote of the governing body of each entity, or if there is no governing body, the election shall be made by the executive head of the entity. The entity shall certify the results of the election to the Executive Director of APERS within 10 days after the vote. Requests for participation shall be presented to the APERS Board for final approval. In the event the Board determines there are qualification issues that must be resolved before final approval, the Board shall request a review by the System's actuary, the Attorney General's Office, or other sources as are needed. Pending review for IRS compliance, the effective date of coverage shall be the first day of the calendar month next following receipt of the certification or the July 1st next following the receipt, as determined by the election.

Employers electing to participate under this Rule shall be placed in the Local Government Division and the employer contribution rate shall be the rate for that Division.

Subject to the limitations contained in Section 415 of the Internal Revenue Code, prior service may be purchased by persons employed by these participating entities in accordance with the standard purchase provisions as follows:

1. The person is a participating employee covered under the System at the time of the purchase; and
2. The purchase does not jeopardize the tax-qualified status of the Plan; and
3. The person furnishes proof, in a form required by the System, of the service and compensation received, and
4. The person pays, or causes to be paid, all employee contributions at the rate and on the compensation that would have been paid had he/she been a member during that time, all employer contributions based on the employer normal cost from the most recently completed regular annual actuarial valuation and the compensation that would have been paid had he/she been a member during that time, and regular interest (as defined by Rule 408) on the employee and employer contributions. The interest shall be computed from the date the service was rendered to the date the payment is received by the System. The person may purchase all of the service or any portion thereof in multiples of one (1) year; and
5. The payment of funds shall be made in one (1) lump sum.

### **310 – 1999 (5) – Termination of Other Employer Participating Retirement Plans**

(as amended May 2001)

In accordance with Act 884 of 1999, effective July 1, 1999, employers participating in APERS may not establish another state authorized retirement plan which requires employer contributions. Before a participating employer may establish another state authorized retirement plan for its employees, the employer shall submit a copy of the proposed plan and the State law(s) authorizing its creation to the APERS Board of Trustees for a determination of compliance with Act 884. The Board will provide a Determination Letter to the employer. If it is determined by the Board, after consultation with any needed sources, that the proposed plan is not permitted under Act 884, APERS shall notify the employer that the plan may not be established.

In accordance with Act 1299 of 2001, any participating employer that has established another state authorized retirement plan before July 1, 1999 may continue to enroll new employees in that plan or successor plans.

### **311 – 2005 (5) – Election of Contributory Provisions of Act 2084 of 2005**

All non-contributory members electing to participate in the new contributory program shall commence contribution of five percent (5%) of salary with the first payroll processing period of the ensuing effective calendar month.

Members of APERS who are called to active military duty prior to July 1, 2005 shall, upon their return to covered employment, have six (6) months within which to opt into the new contributory program.

Notwithstanding the provisions of A.C.A. 24-4-1101(c), a non-contributory member who terminates service after December 31, 2005, but returns to covered employment in less than six (6) months, shall have the option to become contributory at the hire date.

### **312 – 2011 (5) – Contributions Required of New County and Elected Officials Who Are Elected for the First Time after July 1, 2001**

In compliance with Act 563 of 2011, any county or municipal elected official who (1) has never served in an elected position covered by this system; (2) who is elected or appointed to office on or after July 1, 2011; and (3) who is entitled to receive enhanced service credit under A.C.A. 24-4-521(b)(5), shall contribute 2.5% of his or her gross salary for the additional service credit that exceeds the regular rate of service credit in order to be entitled to any service credit whatsoever accruing as a result of serving in the elected office. Any such official who requests a refund of these contributions shall forfeit all service credit for the period represented by the refund.

# Purchase, Refund, Repayment, Other Service

## **401 – 1957 (10) – Proof of Military Service** (as amended 1987)

Any member of PERS claiming military service shall submit

1. Proof of PERS covered employment immediately prior to going into military service.
2. Proof of military service in the form of a DD-214 or equivalent document.
3. Proof of rehire by an agency subject to this Act's statutory provisions within six years subsequent to discharge from military service.

Any member of PERS desiring to purchase military service must provide proof of military service in the form of a DD-214 or equivalent document.

## **402 – 1986 (10) – Repayment of Refunded Contributions**

Repayment of refunded contributions by a member to re-establish forfeited service must be made in the Retirement System one-year increments, subject to the following conditions:

1. Service credit will be restored to the member's retirement account as each year's full payment is received by the System.
2. Full payment must be made before a member, or his survivor, makes application for monthly benefits. The interest applied to such purchases shall equal the actuarially assumed rate of return during the period of original service.
3. A person not a member of the System, but who is a member of another retirement system and eligible for Reciprocal Agreement coverage (Act 488 of 1965, as amended), will be considered a member for the purpose of repurchasing service credit under this Rule.

## **403 – 1991 (5) – Purchase of Military Service Credit**

Military service credit eligible for purchase under A.C.A. 24-2-502 shall include active duty and active duty for training; provided, however, active duty for training shall not include summer camp, weekend drills, or other duty with a duration of less than 30 consecutive days.

## **404 – 1991 (11) – Contributions For Military Service Credit**

In those instances where federal law requires that a member receive credit in the Retirement System for service and earnings that the member would have received had the member not been called to active military duty, the employer shall be required to pay the employer contributions that would have been due for the earnings to be credited.

#### **405 – 1995 (5) – Purchase of Service Credit for Time Lost Due to Workers Compensation Injury**

(as amended May 1998)

In accordance with the provisions listed below, an active member of APERS may purchase time lost due to a worker's compensation injury.

1. The Member makes a written request to the System to purchase the service.
2. The Member provides documentation from the employer and the Worker's Compensation Commission that time was lost due to a worker's compensation injury. Documentation must include a statement by the employer of the exact amount of time lost by month.
3. The Executive Director determines that there is sufficient documentation and that all other requirements of A.C.A. 24-4-516 have been met.
4. The Member pays or causes to be paid in a lump sum the cost of the purchase as determined by the System in accordance A.C.A. 24-4-516.

#### **406 – 1995 (5) – Purchase of Service Credit for State Service Under a Federal Grant**

(as amended May 1998)

In accordance with the provisions listed below, a person who is or was a member of APERS may purchase credit for state service under a federal grant.

1. The Member makes a written request to the System to purchase the service.
2. The Member provides documentation from the state agency receiving the service and the appropriate federal agency of the time of the service and the amount the person was paid by month.
3. The Executive Director determines that there is sufficient documentation and that all other requirements of A.C.A. 24-4-517 have been met.
4. The Member pays or causes to be paid in a lump sum the cost of the purchase as determined by the System in accordance with A.C.A. 24-4-517 The Member may purchase all of the service, subject to the maximum stated in the Act, or any portion thereof in multiples of one year.

#### **407 – 1996 (2) – Direct Transfer of Eligible Rollover Distributions**

As permitted by IRS Regulations issued October 19, 1995. APERS will accept eligible rollover distributions from tax qualified retirement plans under the following conditions:

1. The proceeds from the rollover distribution must be used to purchase eligible service credit in APERS or to repay a refund and thereby reestablish forfeited service.
2. If the former plan is a defined contribution plan, that plan must permit such rollover.
3. The exact source of all funds involved in the rollover must be identified by the former plan. That is, after tax employee contributions, pre-taxed contributions and source (employee or employer), or earnings on contributions.

**408 – 1997 (5) – Regular Interest** (as amended May 2001, November 2014)

In accordance with A.C.A. 24-4-101 (38), the rate of interest to be charged for all provisions of Chapter 4 of Title 24 where reference is made to “regular interest” shall be the actuarially assumed rate of return as adopted by the board of trustees from time to time. Unless otherwise directed by the board of trustees, the change in the level of “regular interest” shall become effective on the first day of the calendar year. Any commitment already in active payment status at that time, wherein APERS has received at least one installment payment, shall remain at the rate previously established by the board.

**409 – 2005 (5) – Purchase of Out-Of-State or Federal Service Credit**

Pursuant to Act 2021 of 2005, permissible purchases of out-of-state public employment shall include service that, had it been performed in Arkansas would typically be covered by other state public retirement systems, such as teacher, law enforcement and judiciary time. Such purchases shall be irrevocable once completed.

Establishment of out-of-state service purchases must be documented through the submission of a completed APERS form certified by the former out-of-state employer.

Pursuant to Act 2091 of 2005, permissible purchases of federal public employment must have adequate documentation of actual employment; service as a contractor, or other activity not otherwise covered for federal retirement benefits is not eligible for purchase. Federal service purchases must be documented through the submission of a completed APERS form certified by the former federal employer.

Out-of-state or federal service purchases will be strictly credited as actual service in APERS.

**410 – 2005 (5) – Purchase of AR National Guard or Armed Forces Reserve Service Credit**

Under the provisions of Act 1027 of 2005, APERS members are eligible to purchase one year of service credit for time served in the Arkansas National Guard or Armed Forces Reserve. The member shall receive one (1) year of purchased service credit for five (5) years of compensated service in the Arkansas National Guard or in the Armed Forces Reserve.

Members are eligible to purchase one year of service in a lump sum payment. However, each calculation will be based on the most recent data (i.e. salary, employer rate) and the interest will continue to accrue.

A copy of the Form DD-214 or other authorized military document will be utilized to document active duty (IADT, AD). All other National Guard service (Inactive duty training (IDT), Annual Training (AT) and Active Duty for Training (ADT)) must be documented with a copy of NGB Form 23 or other authorized military document.

Annual salary will be defined as “fiscal year salary” that is reported from July of one year to June of the next year. Likewise full year will be defined as “fiscal year” which is from July of one year to June of the next year.

Interest used in the calculation of said purchases, in compliance with A.C.A. 24-2-502, will be at the rate of six percent (6%). When the final average of the three (3) highest annual salaries earned at the time of



purchase are utilized, interest will be calculated from the end of the most recent year of credited service to the date of payment of full.

Purchased service in the Arkansas National Guard or Armed Forces Reserve can't overlap purchased or free military service.

**411 – 2009 (5) – 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.

# Investments

**501 – 1985 (12) – Investment Policy** (as amended May 2010, August 2014)

## Arkansas Public Employees Retirement System Investment Policy

### I. Statement of Purpose

The assets of the Arkansas Public Employees Retirement System (APERS) shall be invested as determined from time to time by the APERS Board. This statement sets forth the investment objectives of APERS and the investment policies to be followed in carrying out those objectives.

Investment of the APERS' funds shall be made for the exclusive benefit of the participants and beneficiaries of the System. The purposes of investing APERS' funds are to provide benefits to participants and their beneficiaries and to defray the necessary expenses associated with investing APERS' funds and administering the System.

### II. Background (history)

The Arkansas Public Employees Retirement System was established by the General Assembly in 1957 and is governed by a nine member Board of Trustees. From its inception until 1985, the investment of the trust fund was governed by Arkansas Statutes that provided for a permissible list of investments. However, Act 412 of 1985 repealed the permissible investment list and enacted the prudent investor rule. Act 412 of 1985 also allows the establishment of a custodial bank relationship. Act 412 of 1985 states that the System shall seek to invest at least five percent, but not more than ten percent of the System's portfolio in Arkansas related investments, but only when consistent with the fiduciary requirements of the trustees. Act 302 of 1989 allows the System to employ Multiple Discretionary Money Managers as appropriate. Act 1194 of 1997 revises and updates the investment policies and rules, including the prudent investor rule.

### III. Statutory Authority

The primary statutory authority for the investment activities of APERS is found in Sections 24-2-601 through 24-2-619 of the Arkansas Code, as amended. Trustees shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. Trustees who have special skills or expertise, have a duty to use those special skills or expertise (24-2-611). The prudent investor rule shall be applied by each party serving in a fiduciary capacity for APERS.

#### IV. Investment Objectives

The investment objectives shall be: (1) the protection of the APERS' Fund so that such assets are preserved for providing benefits to participants and their beneficiaries; and (2) to maximize total return - either in the form of income or capital appreciation or both - consistent with prudent risk taking on the amounts available to provide such benefits. For this purpose, short-term fluctuations in value shall be considered secondary to long-term investment results. The long-term return objective for the APERS' Fund shall be to achieve a real rate of return of 4.0%. This is the return over the rate of inflation (as measured by the Consumer Price Index). This objective is not to be a goal from year to year, but is intended as a long-term guideline to those involved in investing the Trust's assets. The investments of the APERS' Fund shall be so diversified as to minimize the risk of large losses, unless under particular circumstances it is clearly prudent not to do so. Investments will be further diversified by hiring an appropriate number of managers whose investment styles are varied enough to provide a balance to the overall risk of the Fund.

#### V. Asset Allocation (by major categories)

To avoid extreme exposure to investment risk, the following percentages represent the minimum and maximum portion at market of the portfolio that may be invested by types:

Market Value Exposure		
Asset Class	Target	Range
Domestic Equity	37%	32% - 42%
International Equity	24%	19% - 29%
Domestic Fixed Income	18%	13% - 23%
Diversified Strategies	5%	0% - 10%
Real Assets	16%	11% -21%

The Board of Trustees shall review its asset allocation at least annually to determine if the asset allocation is consistent with the level of risk and volatility acceptable to the Fund.

Should actual asset class percentages fall outside the target ranges, the Fund will rebalance to the target percentages. The re-balancing will necessitate the movement of funds from style to style. This re-balancing will occur at least annually unless circumstances dictate that it be done more frequently. Within these broader asset classes, the Trustees shall establish commitment levels to various investment styles, as the dynamics of the Plan's financial needs dictate.

## VI. Portfolio Guidelines

Through selecting, timing and weighting investments, the Fund's objective is to maximize the total return of the account assets, through price appreciation and/or yield, consistent with the level of risk taken. In determining the appropriate risk posture for the Fund, consideration should be given to the overall risk characteristics of the Fund, and the extent to which components of the Fund are diversified. Additionally, the Board of Trustees establishes the following specific guidelines:

1. Securities may not be purchased on margin.
2. The System may establish a Securities Lending Program subject to restrictions established by the Board.
3. Each investment manager will be required to invest within the specific guidelines and parameters set by the Board of Trustees.
4. APERS recognizes a legal responsibility to seek to invest in the Arkansas economy, while realizing its primary, legal, and fiduciary commitment is to beneficiaries of the retirement system, under the prudent investor rule.
5. It is the intent of APERS to include qualified minority (African-American, Hispanic-American, American Indian, Asian-American, or Pacific Islander-American), female, and disabled owned business enterprises in the Fund's investment manager selection process. The inclusion of the above managers in the selection process will be recorded and periodically reviewed by APERS staff and presented to the Board as requested. This process is intended to ensure all investment managers are given equitable consideration in the manager selection process in keeping with the fiduciary obligations of the APERS Board for the beneficiaries and annuitants of the System.

## VII. Custodianship of Securities

Securities may be held by the State Treasurer or, under the authority granted by Arkansas Code 24-2-606, APERS may establish an arrangement with a financial institution, as specified by this Code, for the custodianship of its securities subject to the approval of the Board of a Request for Proposal as well as a proposed contract.

## VIII. Roles and Responsibilities

### Custodian Bank

The custodian bank shall, by nominee agreement, hold any and all securities for the beneficial interest of the APERS fund. Custodial activities will include, but are not limited to, the purchase, registration, and sale of stocks, bonds, notes, and other securities, as well as the collection of any income. In order to maximize the Fund's return, no money should be allowed to remain idle. Dividends, interest, proceeds from sales, new contributions and all other moneys are to be invested or reinvested promptly.

### Administrative Staff

The Administrative Staff, at the direction of the, Board of Trustees, executes all investment transactions for any assets managed in- house. In addition, they are responsible for communicating with the investment professionals the information necessary to fulfill contractual obligations. The Administrative Staff also communicates decisions of the Board of Trustees to investment managers, custodian bank, actuary, and consultant.

### Board of Trustees

The Board of Trustees shall review the total investment program. The Board shall approve the investment policy and provide overall direction to the administrative staff in the execution of the investment policy. The Board of Trustees shall review and approve or disapprove investment recommendations not governed by Investment Policy prior to their execution. The Board shall also review and approve investment policy changes, deletions, or additions. The Board shall review and approve or disapprove any contracts of a financial nature, when performed by other than APERS' staff persons, such as, although not limited to, those for investment counselors, custodial arrangements, option programs, and security lending.

## IX. Total Fund Performance Measurement Standards

1. The Fund's overall annualized total return (price change plus income) should exceed the return available from a policy of "rolling over" 90-day Treasury Bills (as a proxy for the inflation rate) by at least 4.0% percentage points per year measured over a period of 10 years.
2. The Total Fund should rank in the upper 50th percentile compared to the results of other similarly managed public fund portfolios measured over a five-year period.
3. The Fund's annualized total return over rolling five year periods should, after manager's fees, exceed the return of the following Target Indices as established by the Board.

## X. Proxy Voting

The Board has directed that the individual investment managers will be responsible for voting proxies in the best interest of APERS. Each investment counselor is responsible for maintaining records of how each proxy is voted. A written report of proxy voting will be provided to the Board within 30 days from the end of each quarter. In general, each investment counselor is expected to vote for improvements in corporate governance, for the alignment interests of corporate management with shareholder interests, and for equal access to the management proxy card. A detailed explanation will be given for each instance where the proxy is voted against these concepts or against management.

## XI. Review of Investment Process

1. On a timely basis, but not less than twice a year, the Board will review actual investment results achieved by each manager (with a perspective toward a three to five-year time horizon or a peak-to-peak or trough-to-trough market cycle) to determine whether
  - a. The investment managers performed in adherence to the investment philosophy and policy guidelines set forth herein.
  - b. The investment managers performed satisfactorily when compared with
    - i. The objectives set.
    - ii. Other similarly managed funds.
2. In addition to reviewing each investment manager's results, the Board will re-evaluate, from time to time, its progress in achieving the total fund, equity, fixed-income, and international equity segments objectives previously outlined.
3. The periodic re-evaluation also will involve an evaluation of the continued appropriateness of
  - a. The manager structure;
  - b. The allocation of assets among the managers; and
  - c. The investment objectives for the Fund's assets.
4. The Board may appoint investment consultants to assist in the ongoing evaluation process. The consultants selected by the Board are expected to be familiar with the investment practices of other similar retirement plans and will be responsible for suggesting appropriate changes in the Fund's investment program over time.

# District Judge Members

## 601 – 2009 (5) – 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.

## 602 – 2009 (5) – Definitions

As used in these rules

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.

### **603 – 2009 (5) – Annual Actuarial Valuation and Monetary Distributions**

(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.

### **604 – 2009 (5) – 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.



### **605 – 2009 (5) – 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.

### **606 – 2009 (5) – 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).

## 607 – 2009 (5) – Additional Funding 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.

### **608 – 2009 (5) – 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.

### **609 – 2009 (5) – 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 rule 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.

### **610 – 2009 (5) – 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).

### **611 – 2009 (5) – 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).

## **612 – 2009 (5) – 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.

## **613 – 2009 (5) – Retirement and Survivor's Benefits Generally**

(a) The retirement benefits to be paid an eligible and qualified member or retiree under these rules 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 Rule 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 (½) of the survivors' benefits shall be paid to the spouse for life or until remarriage.

(ii) The other one-half (½) 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.

#### **614 – 2009 (5) – 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 Rule 613 and is payable beginning on the first of the month after the member has reached age sixty-five (65).

#### **615 – 2009 (5) – Restrictions on Benefits**

(a) (1) These rules are complementary.

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

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

#### **616 – 2009 (5) – 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%).

### **617 – 2009 (5) – Limitation on Benefit Enhancement**

(a) No enhancement of benefits under Rule 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 Rule 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.

### **618 – 2009 (5) – 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.

### **619 – 2009 (5) – 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.

### **620 – 2009 (5) – Benefit Provisions – Subjection of Annuity Right 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 rules.

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

#### **621 – 2009 (5) – 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 rules 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.

#### **622 – 2009 (5) – Incorporation of the Arkansas District Judges Retirement System's Board Rules**

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

#### **623 – 2009 (5) – No Waiver of Sovereign Immunity**

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