

ARKANSAS REGISTER

Proposed Rule Cover Sheet



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Summary of Proposed Rule Change

Arkansas Teacher Retirement System Rule 9 – Retirement and Benefits

SUBSTANTIVE CHANGES:

- ATRS reformed and reorganized seven (7) current ATRS rules into one rule for consistency and professionalism, and added language where necessary to incorporate changes from the 2019 General Assembly Acts
- Although technically a "new" rule because the original rule has been renumbered and renamed, the language of the new rule is substantially transcribed verbatim from existing language in current ATRS Rules 9-01, 9-02, 9-03, 9-04, 9-07, 9-08, and 9-09
- For ease in identifying changes, language in the new rule that remains the same as the current rules is underlined and **appears as blue font**. Any language that is *added or amended, or has been relocated from its original order in the existing rules, is underlined and italicized, and appears as black font*
- Reflects language of **Act 595 of 2019**, which allowed that if a member has accrued a full year of service credit for a fiscal year, the member's retirement benefit will not begin before July 1 of the subsequent fiscal year
- Reflects language of **Act 209 of 2019** to allow that an ATRS disability retiree may work for a covered employer and still receive disability retirement if employed less than eighty (80) days, and removed the "waiver" requirement.
- Adds definition of "808 Employee" for clarity in the rule, to delineate employees affected by the Early Retirement Incentive Law of 1987 (Act 808 of 1987), which refers to a particular group of employees who may elect to have credited service in ATRS transferred to APERS

NON-SUBSTANTIVE CHANGES:

- Correct formatting issues, renumbering, grammar, and spelling, where appropriate

ATRS Rule 9

RETIREMENT AND BENEFITS

A.C.A. §§ 24-7-202, 24-7-205, 24-7-502, 24-7-701 — 24-7-707, 24-7-709,
24-7-710, 24-7-727, 24-4-732, Act 808 of 1987

I. Definitions

- A. "Act 808 Employee" means an employee of a state agency who, on April 8, 1987, was an active member of the Arkansas Teacher Retirement ATRS (ATRS) and qualified to retire before January 1, 1988, under the Early Retirement Incentive Law of 1987 (Act 187 of 1987), could elect to become a member of the Arkansas Public Employees Retirement ATRS (APERS) and have their credited service in ATRS transferred to APERS.
- B. "Annuity options" means the member's election at retirement of an annuity that shall be paid throughout the retiree's lifetime in accordance with A.C.A. § 24-7-706.
- C. "Effective Retirement Date" means, for purposes of ATRS retirement benefits, the 1st day of the month in which the member requests to receive retirement benefits and for which the member has submitted a timely retirement application.
- D. "Marriage dissolution" means a final decree of divorce, separate maintenance, or annulment duly executed by a court of competent jurisdiction and filed of record in the Office of the Ex Officio Recorder.
- E. "Medical committee" means the committee of three (3) physicians appointed by the Board under A.C.A. § 24-7-303 for the purpose of evaluating disability retirement applications.
- F. "Option beneficiary" means a person(s) nominated by the member, in writing at retirement, who, if eligible, will receive annuity payments under the annuity option selected by the member after the member's death.
- G. "Person" for purposes of Rule 9 means an individual, corporation, partnership or other legal entity.
- H. "Participating employer" means an employer who participates in ATRS whose employees are eligible for membership under A.C.A. § 24-7-501, A.C.A. § 24-7-202, or other applicable law.
- I. "Residue" means the member's accumulated contributions, including regular interest standing in the member's credit at the time of his/her retirement.
- J. "Residue beneficiary" means a person(s) nominated by the member to

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receive the residue, if any, under A.C.A. § 24-7-709.

K. "Receivable" means monies due to ATRS from a member, former member, participating employer, contributor, retiree, beneficiary, or alternate payee under a qualified domestic relations order as a result of an overpayment of any payment or benefit by ATRS.

L. "Retiree" means a retired member who is receiving an annuity from the ATRS.

II. Age And Service Retirement Eligibility

A. If eligible, an active or inactive member who attains age sixty (60) and has five (5) or more years of actual and reciprocal service credit may voluntarily retire upon written application filed with ATRS.

B. If eligible, an active or inactive member who has not reached age sixty (60) and has twenty-five (25) or more years of actual and reciprocal service credit, including purchased or free credited service, may voluntarily retire upon written application filed with the ATRS.

C. In order to be eligible, a member must comply with the following requirements:

1. Satisfy the credited service requirements under one of the ATRS' retirement statutes, A.C.A. §§ 24-7-701—707;
2. Be credited with all required employer and member contributions in the member's deposit account, with no amounts owed to ATRS;
3. Pay all amounts owed to ATRS for underpayments or purchase service accounts; and
4. Terminate employment with all participating employers, or have reached age sixty-five (65) or older.

III. Benefits

A. Benefits Formula

The retirement benefits payable shall be the total number of contributory years of credited service, multiplied by a factor between 1.75% and 2.15% of the final average salary as set by the board, plus the total number of noncontributory years of credited service multiplied by a factor between .5% and 1.39% of the final average salary, as set by the board. The board shall modify the factor for credited service as necessary to maintain actuarial soundness. (A.C.A. § 24-7-705).

B. Effective Date of Retirement Benefits (A.C.A. § 24-7-701)

1. If a member meets all eligibility requirements for retirement and is approved for retirement, annuity benefits shall be effective the month

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proposed by the member in their application. If the member does not file an application at least one calendar month prior to the proposed effective retirement date, then that proposed retirement effective date cannot be used, and the member's effective retirement date shall be the following month. If a member has signed an employment contract for the fiscal year and has been paid in full without providing service for the full period of the employment contract, the member's retirement effective date shall not be prior to July 1 of the subsequent fiscal year.

2. If a member has accrued a full year of service credit equal or greater to one hundred and sixty (160) days in a fiscal year, the member's retirement date shall not begin earlier than July 1 of the subsequent fiscal year.

C. Compound Cost of Living Adjustment (A.C.A. § 24-7-727)

The Board by resolution may reverse a compound cost of living adjustment as needed to maintain the actuarial soundness of the ATRS. A reversal may be phased in as the Board determines appropriate.

D. Last Benefit Payment Upon Death

Benefits are payable through the month in which the retiree's death occurs.

E. Change of Marital Status

If the marriage of the member legally ends for any reason, the member may choose to cancel the designation of the former spouse as the designated beneficiary. If the member so chooses, the member must file a change of option beneficiary on an ATRS approved form, and any change in the benefit amount shall become effective the month after receipt by ATRS of the approved form.

IV. A member age 65 or older may apply for retirement benefits without terminating employment and may begin drawing benefits with no effect on the member's retirement benefit.

V. In addition to a complete retirement application, the following documents are mandatory documents and shall be submitted to ATRS within six (6) months of the effective date of retirement unless an extension is granted by ATRS:

A. Member elects a straight life annuity:

1. Proof of member's birthdate from a birth certificate or other authenticating documents.
2. Proof of member's taxpayer identification number from a Social Security card or other authenticating documents.

B. Member elects Option A or Option B benefit with Spouse as the beneficiary:

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1. Proof of member's birthdate from a birth certificate or other authenticating documents.
2. Proof of member's taxpayer identification number from a Social Security card or other authenticating documents.
3. Proof of spouse's birthdate from a birth certificate or other authenticating documents.
4. Proof of spouse's taxpayer identification number from a Social Security card or other authenticating documents.
5. Proof of marriage between the member and spouse from a marriage license or equivalent, marriage license recording document, or other legally acceptable proof of the existence of the marriage.

C. Member elects Option A or Option B benefit with incompetent child as the beneficiary:

1. Proof of member's birthdate from a birth certificate or other authenticating documents.
2. Proof of member's taxpayer identification number from a Social Security card or other authenticating documents.
3. Adequate proof of the existence of a guardianship due to the incapacity of the member's child that preexists the member's official retirement date. Authenticating documents may include the order appointing guardianship of the person, letters of guardianship, or other adequate proof of the existence of the guardianship.
4. Proof of child's taxpayer identification number from a Social Security card or other authenticating documents.

D. Member elects Option C annuity:

1. Proof of member's birthdate from a birth certificate or other authenticating documents.
2. Proof of member's taxpayer identification number from a Social Security card or other authenticating documents.

E. If the member elects an alternative residual beneficiary or beneficiaries in lieu of their spouse, the member shall submit the names of the alternative residual beneficiary or beneficiaries along with the alternative residual beneficiary's or beneficiaries' birthdate from a birth certificate or other authenticating document approved by ATRS, on a form provided and approved by ATRS. The selection of an alternative residual beneficiary or beneficiaries allows the member's residue from T-DROP and/or the member's contributions to be paid in a lump sum to the alternative residual beneficiary or beneficiaries and a monthly retirement annuity shall not be

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paid.

- F. The failure to submit a complete retirement application and any mandatory documents within a six-month period from the member's effective retirement date plus any extension granted by ATRS shall result in the retirement application being voided and the application shall have no effect. This rule on required documents applies to all retirement applications including retirement based upon age retirement, service retirement, early retirement, and disability retirement.

VI. State Employee Transfers to APERS (Act 808) Rules

- A. The Act 808 employee will make the election to transfer to APERS on a form furnished by ATRS.
- B. The transfer from the ATRS to APERS will become effective on the date of retirement.
- C. ATRS will certify to APERS a record of the Act 808 employee's service credit in ATRS.
- D. At the time of retirement, if the Act 808 employee is a non-contributory member of ATRS, he will retire under the non-contributory provisions of Act 187 of 1987 and shall be entitled to a refund of Act 808 employee contributions made since January 1, 1978, to ATRS.
- E. At the time of retirement, if the Act 808 employee was a contributory member of ATRS, he will retire under the contributory provisions of Act 187 of 1987.
- F. For any Act 808 employee who elects to transfer to APERS, that ATRS will pay the monthly benefits.
- G. APERS will certify monthly to ATRS the amount of monthly benefits paid and ATRS will transfer that amount to APERS.
- H. Upon receipt of a death certificate from APERS for a retiree who chose straight life annuity and has a balance remaining in his account, ATRS will transfer the remaining balance in the retiree's account to APERS for refunding to the designated beneficiary or beneficiaries.

VII. Disability Retirement Rules

A.

1. If the member is eligible under A.C.A. § 24-7-704 and these Rules, and the Medical Committee determines a disability exists for the member, then disability retirement benefits shall commence the month the member files a written application with ATRS if at the time the member files the application the member is no longer employed by an ATRS covered employer.

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2. If the member is still employed by an ATRS covered employer at the time the member files the application for disability retirement, then, once approved, the disability retirement will commence the month following the last day of covered employment.

B.

1. Termination of active membership for disability retirement benefits shall be the last date of any employer payment to the member due to the end of the employee/employer relationship.
2. The member is considered active if they are using earned sick leave, Family Medical Leave Act (FMLA) leave, annual leave, and catastrophic leave. Worker's compensation, which may or may not include the use of leave granted by the employer, is not considered leave by which a member is considered active, nor does it extend the date of active membership.

C.

1. The following criteria and deadlines, applied to the individual member circumstances, affect eligibility for continued disability payments for a member who has been approved by ATRS for disability retirement, based upon the date of the first ATRS disability retirement check. The deadlines may be extended under the provisions of this Rule and A.C.A. § 24-7-704.
 - a. If the first disability retirement check to the member is dated before July 1, 2015, and the member is under fifty-seven (57) years before July 1, 2015, the member shall submit to ATRS a Social Security Administration (SSA) determination letter dated before July 1, 2018, that finds that the member is disabled. In the absence of a SSA determination letter, the member's disability retirement payments will cease on June 30, 2018.
 - b. If the first disability retirement check to the member is dated July 1, 2015, or after, and the member is under fifty-seven (57) years on the date of the first disability retirement check, member shall submit to ATRS a Social Security Administration (SSA) determination letter dated within thirty-six (36) months from the date of the first disability retirement check that finds that the member is disabled. In the absence of a SSA determination letter, the member's disability retirement payments will cease thirty-six (36) months from the date of the first disability retirement check. For example:
 - Date of 1st ATRS disability retirement check: January 2017, then
 - Social Security Administration determination letter finding dated

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by: December 2019; or

- Date of last disability retirement check if no SSA determination letter: December 2019

2. ATRS will grant an extension to the above deadlines if the member can provide documentation to ATRS that:
 - a. The SSA disability claim was properly filed and remained active for at least twenty-four (24) months prior to the deadline above; and
 - b. An active SSA disability claim is still under review by the SSA with no voluntary dismissal or withdrawal.
3. Once the member who is receiving disability retirement reaches sixty (60) years of age, the member thereafter will receive regular retirement benefits as if voluntarily retired under A.C.A. § 24-7-701 and no Social Security Administration determination letter is required.
4. A member may apply for an additional review of a disability claim within three (3) months of disability benefits ceasing due to a denial letter and finding by the Social Security Administration that the member is not disabled. The member's disability claim review will follow the procedure set forth in A.C.A. § 24-7-704.

D.

1. A member under the age of sixty (60) may be employed by an ATRS covered employer and also receive ATRS disability retirement if the member performs less than eighty (80) days of actual service during a fiscal year.
2. A member shall not receive disability retirement if the member indirectly performs work for an ATRS covered employer, such as employment as a independent contractor, or for a corporation, or partnership. See A.C.A. § 24-7-704.
3. If a member is approved for disability retirement but continues to work either directly or indirectly for the covered employer, the member shall terminate employment with the covered employer or indirect employer by the proposed disability retirement effective date, or, if the member is finalizing work for the employer, then the employee may terminate employment up to two (2) full calendar months after the Medical Committee meets.
4. If the member does not terminate employment under these Rules and the termination requirement under A.C.A. § 24-7-502, the application is rescinded and the member can reapply.
5. After receiving an ATRS disability retirement a member may choose to

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return to regular employment with an ATRS covered employer and relinquish their disability retirement. In this instance, the member would no longer receive disability retirement and would be an active member and shall comply with A.C.A. § 24-7-738 (Act 549 of 2017).

- E. If the application for disability retirement benefits is denied and the member elects and otherwise qualifies for voluntary retirement, the effective date for retirement shall be determined by the date the disability retirement application is filed.
- F. If the member dies after the disability application is received by ATRS but before disability retirement is approved, then ATRS shall consider the member to have died in "active" service and survivor benefits under A.C.A. § 24-7-710 shall be paid, unless the member has designated an alternative residual beneficiary or beneficiaries.
- G. The annuity formula for computing disability retirement benefits is the same as for voluntary age and service retirement.
- H.
1. For all disability retirement applications approved by the Medical Committee after May 31, 2011, the Board shall allow a disability retiree at the time of retirement to designate an Option A or Option B beneficiary. Option C beneficiaries shall not be available to disability retirees. A.C.A. § 24-7-706(a)(3).
 2. If a disability retiree designates an Option A or Option B spouse beneficiary, and the disability retiree dies before reaching age sixty (60), then the same rules that apply to active member option beneficiaries shall apply to the disability Option A and Option B beneficiaries under A.C.A. § 24-7-710(b).
 3. If a disability retiree designates an Option A or Option B incapacitated child beneficiary, and the disability retiree dies before reaching age sixty (60), then the same rules that apply to an active member surviving child shall apply to the disability Option A or Option B beneficiary under A.C.A. § 24-7-710(c) until the disability retiree would have turned age sixty (60), then the Option A or Option B incapacitated child beneficiary shall receive the greater of the surviving child annuity under A.C.A. § 24-7-710(c) or the Option A spouse annuity under A.C.A. § 24-7-710(a).
- I. Disability retirees who are disapproved for further disability annuities due to a medical examination reviewed by the Medical Committee shall be removed from ATRS' retiree payroll the earlier of six months following the review date or the first of the month following the return to covered employment.

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- J. If a member applies for disability retirement and is disapproved, he/she has the right to file a new disability application submitting additional information for review as long as the member remains active.

VIII. Annuity Options and Disposition of Residue After Retirement Rules

Before the date the first benefit payment of an annuity becomes due, a member retiring with age, service, or disability may elect an option to receive an annuity payable as provided in one of the following (Disability retirement option rights are modified as set forth in policy 9-4):

- A. **Option 1:** A straight life annuity payable monthly for the life of the retiree. Upon the retiree's death, if the retiree has not received payments equal to the residue amount, the residue remaining, if any, shall be paid to the residue beneficiary. If no residue beneficiaries survive the retiree, the residue will be paid to the retiree's estate.

B. Effect of Option 1 Retiree's Death within the First Year of Retirement

If an Option 1 retiree dies within one year of retirement, and his or her spouse qualifies for Option A benefits, the spouse may elect to cancel the Option 1 annuity in effect and elect Option A (100% survivor annuity) at that time.

The election shall become effective the first day of the month following receipt of the election form by ATRS. If the spouse elects Option A, the residue, if any, will not be paid until the Option A beneficiary's death.

C. Persons Eligible as Option A or Option B Beneficiaries at the Time of Retirement

In order to be nominated as an Option A or B beneficiary, the person must be one of the following:

1. The retiree's spouse (if the retiree has been married to the spouse for at least one (1) year prior to the first annuity payment being paid to the retiree);
2. A dependent child (regardless of age) who has been ruled physically or mentally incapacitated by a court of competent jurisdiction.

D. Eligibility of a Spouse to Become an Option A or Option B Beneficiary after a Member's Retirement

If a member was married to his or her spouse for less than one (1) year upon his or her effective retirement date or the member marries after his or her effective retirement date, then the member may elect to cover the spouse after being married for one (1) year. Upon meeting the one (1) year marriage requirement, the member shall have six (6) months to file an election to cover his or her spouse under either Option A or Option B.

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The written election must be filed on a form approved by ATRS.

E. Emancipation of Incapacitated Child Option Beneficiary

If an incapacitated child, who has been adjudged physically or mentally incapacitated by a court of competent jurisdiction, is nominated as an Option A or Option B beneficiary, and a court has determined that the incapacity issue no longer indicates incapacitation, or the incapacitated person is emancipated through marriage or dies, then the member may request ATRS to remove the incapacitated child from the member's account. Proof of the court's decision shall be by a copy of the court order, proof of emancipation shall be by a copy of the child's marriage license, or proof of death shall be by the death certificate.

Once proof is provided, the member may elect to return to Option 1 at that time, or if the member is married, the member shall have six months to designate the member's spouse as the member's option beneficiary. The election shall become effective the first day of the month following receipt of the election form by ATRS.

F. Residue Paid Upon Death of Option Annuitant

If after a retiree dies, an option annuity becomes payable, but the option beneficiary dies prior to the retiree and the option beneficiary receiving annuity payments equal to the residue amount, the residue, if any, shall be paid to member's residue beneficiary. If no residue beneficiary is nominated or survives upon the death of the option beneficiary, the residue remaining, if any, shall be paid to the last surviving option beneficiary's estate.

G. Final Benefit Check

Benefits are payable through the month in which the last option beneficiary's death occurs. If the option beneficiary dies prior to receiving the last check, ATRS will pay the final check in the normal manner paid prior to death. If payment of the final check in the normal course becomes impossible, the final option beneficiary's annuity check will be returned to the ATRS.

H. Eligible Residue Beneficiaries

Any "person" as defined in this policy is eligible to be designated by the member to receive the residue, if any, payable upon the member's death including individuals, trusts, estates, corporations, and other legally recognized entities.

IX. Error Corrections and Collection of Overpayments Rules

A. If a change or error in ATRS' records discovered during the ATRS look back period results in either an overpayment or underpayment to ATRS,

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the Board authorizes ATRS to correct the error in the records and to adjust any benefit or adjust any other amount payable to the corrected amount and take all necessary action as the circumstances may require, including the options allowed under A.C.A. § 24-7-205(b).

- B. If a benefit participant under a qualified domestic relations order pursuant to A.C.A. §§ 9-18-101—103, is paid any benefit or payment by ATRS to which the benefit participant is not entitled, and it is discovered during the ATRS look back period, then a receivable is created and the Board or its designee(s), may collect the amount due to ATRS as set forth in A.C.A. § 24-7-205.
- C. Before making an adjustment of benefits or pursuing any other collection action, a notice shall be provided to the person who is the subject of the adjustment. The notice will state the amount determined to be a receivable and the reasons underlying the determination. The notice shall also suggest alternate methods for payment of the receivable.
- D. Appeals to dispute collections shall be made according to the procedures and requirements of ATRS Rule 13. During the appeal process, retirement benefits may continue to be paid.
- E. Actions that affect rights on benefits cannot be corrected or adjusted further than a 5 year "look back" period unless a manifest injustice has occurred or an exception exists under A.C.A. § 24-7-205.
- F. The board or its designee may also make adjustments to the employer, member, and ATRS records beyond the look-back period if the board determines that the time limitation imposed by the lookback period will result in a manifest injustice in a specific case. See Rule 17 – Manifest Injustice.
- G. The Board authorizes the Executive Director to waive interest on required contributions in an amount not to exceed \$5,000. Any request to excuse an interest amount exceeding \$5,000 shall be submitted to the ATRS Board for review. The Executive Director shall report to the Board any amounts excused under this section.
- H. If required, a receivable under this section that is found by the Board or its designee to be uncollectible or for which adjustment or payment has been waived will be submitted to the Chief Fiscal Officer of the state for abatement pursuant to A.C.A. §§ 19-2-301--307.
- I. A determination by ATRS of a manifest injustice in a particular instance due to a technical error or error in judgment is always discretionary and governed by the provisions in A.C.A. § 24-7-205.

X. Retirement Application Rules

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- A. A copy the ATRS retirement application can be downloaded from the ATRS website or requested from ATRS.
- B. In order for a retirement application to be timely filed, there is a three (3) month "window" to apply for retirement benefits.
For active members currently employed, the window for filing your retirement application is:
 - 1. No sooner than four (4) months prior to your Effective Retirement Date; and,
 - 2. No later than one (1) month before your Effective Retirement Date.
- C. For an inactive, vested, immediately eligible-to- retire member, retirement benefits are payable the month after the retirement application is received.
- D. The procedure for handling received retirement applications is as follows:
 - 1. If a retirement application is received by ATRS before the three (3) month window begins for the member's anticipated Effective Retirement Date, the application is not timely filed, and ATRS will reject the application and notify the member of the dates that their retirement application can be filed timely and the procedure to do so.
 - 2. If a retirement application is received after the three (3) month window ends for the member's anticipated Effective Retirement Date, the retirement application is not timely filed and the member will receive a new Effective Retirement Date beginning on the 1st day of the next month.
- E. This Rule does not apply to an application for disability retirement or survivor benefits.

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The following table shows examples of the "windows" for filing a retirement application:

<u>EXAMPLE OF RETIREMENT FILING DATES</u>			
<u>Effective Date of Retirement</u>	<u>Retirement Application Must be Filed In:</u>	<u>Last Date of Employment</u>	<u>First Retirement Check</u>
<u>January 1</u>	<u>September, October or November</u>	<u>December 31</u>	<u>End of January</u>
<u>February 1</u>	<u>October, November or December</u>	<u>January 31</u>	<u>End of February</u>
<u>March 1</u>	<u>November, December or January</u>	<u>Feb 28/29 (Leap year)</u>	<u>End of March</u>
<u>April 1</u>	<u>December, January or February</u>	<u>March 31</u>	<u>End of April</u>
<u>May 1</u>	<u>January, February or March</u>	<u>April 30</u>	<u>End of May</u>
<u>June 1</u>	<u>February, March or April</u>	<u>May 31</u>	<u>End of June</u>
<u>July 1</u>	<u>March, April or May</u>	<u>June 30</u>	<u>End of July</u>
<u>August 1</u>	<u>April, May or June</u>	<u>July 31</u>	<u>End of August</u>
<u>September 1</u>	<u>May, June or July</u>	<u>August 31</u>	<u>End of September</u>
<u>October 1</u>	<u>June, July or August</u>	<u>September 30</u>	<u>End of October</u>
<u>November 1</u>	<u>July, August or September</u>	<u>October 31</u>	<u>End of November</u>
<u>December 1</u>	<u>August, September or October</u>	<u>November 30</u>	<u>End of December</u>

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The following table is the only "window" for filing a T-DROP application:

<u>Effective Date of Retirement</u>	<u>Retirement Application Must be Filed In:</u>
<u>July 1</u>	<u>March, April or May</u>