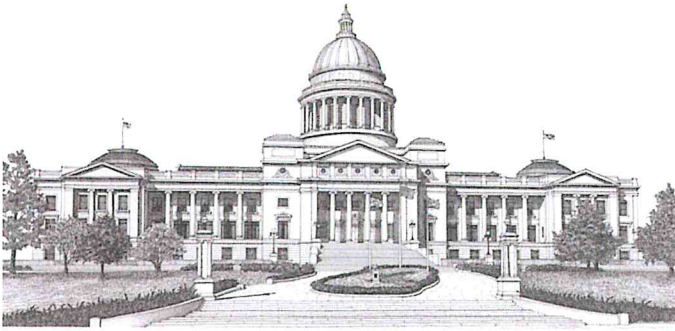


ARKANSAS REGISTER

Transmittal Sheet

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



Secretary of State

John Thurston

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For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency ARKANSAS TEACHER RETIREMENT SYSTEM

Department ADMINISTRATION

Contact Clint Rhoden E-mail clintr@artsr.gov Phone 501-588-4367

Statutory Authority for Promulgating Rules A.C.A. §24-7-305

Rule Title: Rule 10: T-DROP AND RETURN TO SERVICE

Intended Effective Date
(Check One)

☐ Emergency (ACA 25-15-204)

☒ 10 Days After Filing (ACA 25-15-204)

☐ Other _____
(Must be more than 10 days after filing date.)

Legal Notice Published

Final Date for Public Comment

Reviewed by Legislative Council

Adopted by State Agency

Date

02-06-2020

03-06-2020

05-14-2020

05-15-2020

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Tammy Porter

tammyp@artsr.gov

05-18-2020

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

501-588-4367

clintr@artsr.gov

Phone Number

E-mail Address

EXECUTIVE DIRECTOR

Title

MAY 18, 2020

Date

ATRS Rule 10

T-DROP AND RETURN TO SERVICE

A.C.A. §§ 24-7-502, 24-7-708

I. Definitions

- A. "DROP" means a deferred retirement option plan enacted by the General Assembly and administered under ATRS or a reciprocal system.
- B. "Early participant" means a member who has at least twenty-eight (28) years but less than thirty (30) years of credited service in ATRS including combined service with a reciprocal system, and is authorized by the Board for early participation in the plan.
- C. "Fiscal year" means the operating year for the State of Arkansas that begins on July 1 of each calendar year and ends on June 30 of the next calendar year.
- D. "Participant" means a member who elects to participate in T-DROP under A.C.A. § 24-7-1301 et seq.
- E. "ATRS Employer" means an employer who participates in the Arkansas Teacher Retirement System whose employees are eligible for membership under A.C.A. § 24-7-501 or other applicable law.
- F. "Plan deposits" means the deposits made to each participant's T-DROP account pursuant to A.C.A. § 24-7-1306.
- G. "Plan interest" means the rate per annum, as the Board shall set prior to the beginning of the fiscal year and applies to subsequent years unless modified by the Board, that is credited in each participant's T-DROP account. The Board shall determine the plan interest rate based upon A.C.A. § 24-7-1307(c). All T-DROP participants that have not retired shall receive plan interest at the end of each fiscal year.
- H. "Post 10-year T-DROP interest" means the rate per annum, compounded annually, as the Board shall set and adopt at the end of each fiscal year, credited on June 30 to the balance of the T-DROP participant's account that meets the following criteria:
 - 1. The member participated in T-DROP for ten (10) years by receiving deposits, interest, or both; and
 - 2. The member has not retired.
- I. "Quarter" means one-fourth (1/4) of a fiscal year. The four (4) quarters applicable in this rule are:

1st Quarter: July 1 through September 30

2nd Quarter: October 1 through December 31

3rd Quarter January 1 through March 31

4th Quarter: April 1 through June 30

- J. "Retiree" means a member receiving an ATRS retirement annuity.
- K. "Salary" is defined by A.C.A. § 24-7-202, provided that nonmandatory compensation that is taxable by the IRS is not salary for ATRS purposes.
- L. "T-DROP Cash Balance Account" means the financial account set up for a participant who elects to defer distribution of his or her T-DROP account at a time that he or she is eligible to receive a lump-sum distribution of the T-DROP balance.
- M. "T-DROP Cash Balance Account interest" means the interest rate per annum applicable to a participant's T-DROP Cash Balance Account, compounded monthly into a participant's T-DROP Cash Balance Account. The interest rates payable on the T-DROP Cash Balance Accounts are set forth in this Rule.
- N. "T-DROP Service Credit" shall be determined using the same rules that apply for service credit for an active member with the exception that "on call" availability shall not be used for T-DROP service credit requirements.

II. Employment of an ATRS Retiree by an ATRS Employer

- A. Upon acceptance of employment with an ATRS employer, the retiree and the ATRS employer must report to ATRS the retiree's employment on the forms and reports as required by ATRS.
- B. ATRS employers will regularly report all employed retirees on retirement reports as required by ATRS.
- C. Effective July 1, 2009, no earnings limitation shall apply to retirees employed with ATRS employers.
- D. A retiree employed by an ATRS employer shall not accrue additional service credit, and no member contributions shall be withheld or paid to ATRS. Employer contributions, however, shall be paid to ATRS on the salary earned by a retiree who returns to work for an ATRS employer.
- E. For the return-to-work rules applicable to disability retirees receiving benefits under A.C.A. § 24-7-704, see Rule 9.VII (Disability Retirement).

- III. The ATRS Board of Trustees has the authority under A.C.A. § 24-7-1301 to promulgate rules, including the adoption of an interest rate, by resolution of the Board, for the administration of a deferred retirement option plan (T-DROP) for

eligible members.

IV. T-DROP Participation and Account Credit

- A. In lieu of terminating employment and retiring under A.C.A. § 24-7-701, an active member of ATRS may elect to participate in T-DROP and continue to work for an ATRS employer. By continuing covered employment, the participant defers receipt of retirement benefits until a later date.
- B. A member shall have at least thirty (30) years of credit in ATRS to participate in T-DROP, or, to become an early participant in T-DROP, at least twenty-eight (28) years but less than thirty (30).
- C. During participation in T-DROP, ATRS shall credit each participant's T-DROP account with plan deposits and plan interest.
- D. The plan interest rate determined by majority vote of the Board is final and binding upon ATRS and shall not be adjusted based on any revised rate of return reported after that date.
- E. The Post 10-year T-DROP interest rate shall be set by the Board prior to the beginning of each fiscal year at the same meeting that the plan interest rate is set. The Post 10-year T-DROP interest rate will be credited to the participant's T-DROP account on June 30th of each year, or through the date of retirement, whichever occurs first.
- F. The Post 10-year T-DROP interest rate for each year determined by majority vote of the Board is final and binding upon the ATRS and shall not be adjusted based on any revised rate of return reported after that date.

V. Rules

- A. T-DROP Benefit Generally
 - 1. The participant's T-DROP benefit will be the monthly straight life annuity benefit to which the member would have been entitled had the member retired under A.C.A. § 24-7-701.
 - 2. The participant's T-DROP benefit may be reduced as set forth in these Rules and under A.C.A. § 24-7-1301 et seq.
 - 3. The T-DROP deposit shall not include the additional benefit, also known as the "monthly benefit stipend" provided in A.C.A. § 24-7-713.
- B. Plan deposits shall be a percentage of the T-DROP benefit, as follows:

If a plan participant has at least thirty (30) years of credited service in ATRS, including combined service with a reciprocal system, the plan deposit is the participant's plan benefit as calculated at the entry into T-DROP, and then reduced by one percent (1%) for each year of credited service, including fractions of a year.

For early participants, the plan deposit is the early participant's plan benefit as calculated at the entry into T-DROP, and then reduced by one percent (1%) for each year of credited service, including fractions of a year, and further reduced by at least an additional one-half percent (.5%), but no more than one percent (1%), of the initially reduced plan deposit, for each month of credited service under thirty (30) years.

- C. A participant shall elect an annuity option provided in A.C.A. § 24-7-706 at the time the participant separates from service and is granted a monthly retirement benefit or files for retirement upon reaching normal retirement age.
- D. T-DROP Participation Limits
 - 1. A member's participation in T-DROP shall not exceed ten (10) consecutive calendar years for accruing plan deposits; however, the Board is authorized under A.C.A. § 24-7-1307 to provide for a separate deposit, called the Post 10-year T-DROP interest.
 - 2. If a participant continues covered employment after completing ten (10) years in T-DROP, the T-DROP account will be credited with Post 10-year T-DROP interest as set by the Board. Benefits payable at retirement will be based on the account balance the month before the participant begins drawing retirement benefits.
- E. The annuity upon which plan deposits are calculated shall receive the cost-of-living increase provided for in A.C.A. § 24-7-713 or § 24-7-727. The annuity plus the cost-of-living increase is reduced or adjusted under this Rule.
- F. If a participant elects to cash out or annuitize their T-DROP account balance upon election to retire, once the T-DROP account is distributed to the member, the participant shall not be allowed to reenroll in T-DROP, unless the member cancels their election under A.C.A. § 24-7-1302.
- G. As soon as possible after the end of each fiscal year, ATRS shall furnish the participant an annual statement of the participant's T-DROP account. The statement of T-DROP deposits and interest will not be final until the annual accounting has been reconciled for part-time T-DROP participants.
- H. If a participant earns service credit of one hundred sixty (160) days or greater within a fiscal year and the participant does not terminate employment, retire, or die during the fiscal year, or the ATRS employer does not terminate the employer/employee relationship, then ATRS will allow crediting of twelve (12) monthly T-DROP deposits per fiscal year.
- I. Part time employment while participating in the T-DROP plan:
 - 1. In the first or fourth quarter of the fiscal year, five (5) or more days of

service credit shall be required to credit the participant's account with three (3) monthly deposits for that particular quarter. If a participant receives less than five (5) days of service credit in either the first or fourth quarter of the fiscal year, then no T-DROP deposits shall be made in the three months for that particular quarter.

2. In the second or third quarters of the fiscal year, fifteen (15) or more days of service credit shall be required to credit the participant's account with three (3) monthly deposits for that particular quarter. If a participant receives less than fifteen (15) days of service credit in either the second or third quarter of the fiscal year, then no T-DROP deposits shall be made in the three months for that particular quarter.

VI. Ceasing T-DROP and Distribution Options

- A. T-DROP monthly deposits automatically cease when:
 1. The participant separates from service and is granted a monthly retirement benefit from ATRS or a reciprocal plan; or
 2. The participant reaches normal retirement age and retires without separation from service, or
 3. The participant separates from covered employment but does not apply for monthly retirement benefits; or
 4. The participant dies.
- B. Any lump-sum distribution of a participant's T-DROP account balance is eligible to be rolled over into the member's qualifying retirement plan. The ATRS shall only roll over the T-DROP lump sum balance into one qualifying plan.
- C. A participant may direct that all or a part of their lump-sum distribution as set forth in Ark. Code Ann. § 24-7-1308 continue to be held by ATRS in a T-DROP Cash Balance Account described in this rule.
- D. T-DROP is intended to operate in accordance with Section 415 and other applicable sections of the IRS Code. Any provision of the T-DROP that conflicts with an applicable provision of the IRS Code is invalid.
- E. If a participant separates from covered employment but does not apply for monthly retirement benefits, the T-DROP monthly deposit shall cease the month of separation from service. No deposits will be credited to the participant's account for the duration of the separation. Upon returning to covered employment, the monthly deposits will resume. Upon application for retirement, benefits will be paid according to the account balance at the time of separation from service or the month prior to the effective date of benefits after reaching normal retirement age. Provided however, if a

member has not separated from covered employment and remains on an ATRS employer payroll without obtaining sufficient service credit for monthly deposits, the member shall remain eligible for annual interest.

F. Effect of Uniformed Service on T-DROP

1. If a participant leaves ATRS covered employment to serve, on a voluntary or involuntary basis, in the uniformed services of the United States and returns to ATRS covered employment, the member shall be treated as not having incurred a break in service with the ATRS employer. The ATRS employer shall certify to the ATRS that reemployment was in accordance with the requirements set forth in Section 4312 of P.L.103-353, the Uniformed Services Employment and Reemployment Act (USERA) of 1994.
2. Under this subsection, uniformed services of the United States are limited to the armed forces, the Army, and the Air National Guard when engaged in active duty for training, inactive duty training, full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or emergency.

VII. Death of a T-DROP Participant Prior to Retirement

- A. In the event a participant dies while still in T-DROP, the benefits payable from the T-DROP account shall be determined according to A.C.A. § 24-7-710.
- B. Unless otherwise directed to an alternative residual beneficiary or beneficiaries by the member, a T-DROP participant's surviving spouse may choose to receive the T-DROP benefit in a lump sum. If the spouse elects a lump-sum payment of the T-DROP balance, then the survivor annuities payable under A.C.A. § 24-7-710 shall be calculated on the service credit and salary earned by the member prior to participating in T-DROP. If an alternative residual beneficiary or beneficiaries are chosen, then the residue is paid as a lump sum, and no monthly annuity is paid.
- C. For the purposes of A.C.A. § 24-7-709 related to disposition of residue, any amount received from the T-DROP account, either in the form of a lump sum or annuity payments, shall be considered to be annuity payments received by the member or his or her designated beneficiary and shall act to reduce or eliminate the disposition of residue payable under A.C.A. § 24-7-1310.

VIII. DROP Participation Under Reciprocal Systems

- A. If a reciprocal system offers a DROP for its members, then service credit in ATRS, a reciprocal system, or the combination of service credit in the

systems may be counted to meet the minimum service credit requirements for participation under each system's DROP.

- B. The benefit payable by the reciprocal system shall be based on the DROP provisions of each system. The final average salary used to determine plan deposits shall be that of the reciprocal system which furnishes the highest final average salary at the time of retirement. Each reciprocal system shall use the method of computing final average salary stipulated by its law. Salaries earned in the Arkansas Judicial Retirement System and alternate retirement plans shall not be used in computing final average salary.
- C. Plan deposits and plan interest credited to the DROP account will be paid under the deferred retirement option program in effect for that reciprocal system.

IX. T-DROP Cash Balance Account (CBA)

- A. At the time that a participant may elect to receive a lump-sum distribution of all of their T-DROP account balance, the participant may instead elect to defer all or a part of their T-DROP account and direct that such amount be held in a T-DROP Cash Balance Account (CBA) for the participant. If a participant chooses to defer only part of the T-DROP distribution into a T-DROP Cash Balance Account, the remainder of the T-DROP distribution shall be annuitized with ATRS according to the distribution options set out under A.C.A. § 24-7-1308.
- B. After the T-DROP Cash Balance Account has been established on the ATRS' accounting system, a participant with a T-DROP Cash Balance Account balance may withdraw funds from the account six (6) times per quarter on such forms as ATRS may issue. ATRS may allow the participant to obtain additional withdrawals in a quarter with Executive Director approval. A participant may also request a recurring monthly distribution of a set amount until the CBA balance is depleted or the request is terminated by the participant. Minimum distributions will be made sufficient to satisfy legal requirements under Ark. Code Ann. § 24-7-730 and the Internal Revenue Code.
- C. A T-DROP Cash Balance Account shall be credited monthly with T-DROP Cash Balance Account interest, beginning the month after the account is established, and debited for all withdrawals and distributions.
- D. T-DROP Cash Balance Account Interest Schedule
 - 1. The initial interest rates for participants electing to enter the T-DROP Cash Balance Account program are set forth in this subsection. Members establishing a T-DROP Cash Balance Account on or after July 1, 2012, shall receive interest on their T-DROP Cash Balance Account according to the following schedule:

After establishing a T-DROP Cash Balance Account and:

For the first fiscal year of participation: 2.50% interest.

For two (2) fiscal years: 2.75% interest.

For three (3) fiscal years: 3.00% interest.

For four (4) fiscal years: 3.25% interest.

For five (5) fiscal years: 3.50% interest.

For six (6) or more fiscal years: 4.00% interest.

2. These interest rates are minimum interest rates that apply to T-DROP Cash Balance Accounts that are established while these rates are in effect. The T-DROP Cash Balance Account interest may be increased by the ATRS Board of Trustees on a forward-looking and Ad Hoc basis.
- E. The T-DROP Cash Balance Account Interest rates payable on T-DROP Cash Balance Accounts established on or after July 1, 2012, shall remain in effect unless the ATRS Board of Trustees adopts a different schedule with lower interest rates to be used for future entrants to the T-DROP Cash Balance Account at least one (1) year prior to the beginning of a fiscal year in which the lower interest rates shall apply. The ATRS Board of Trustees may adopt an interest rate schedule for new entrants by Resolution, setting forth the new interest rate schedule for the T-DROP Cash Balance Account. T-DROP Cash Balance Accounts existing prior to the effective date of the Resolution shall be unaffected by the new interest rate schedule.
- F. When adjusting and setting rates for interest on a T-DROP Cash Balance Account, the Board may consider the current market conditions, competing financial offerings to members, the bank rate for certificates of deposits, the status of ATRS' returns on investments, and the current state of T-DROP Cash Balance Account participation. The Board may periodically authorize by resolution a special ad hoc incentive payment for the Cash Balance Accounts if the Board determines that payment is likely to retain existing T-DROP Cash Balance Account holders and increase future participation in T-DROP Cash Balance Accounts. The ad hoc increase may be set as a single amount to be applied to all Cash Balance Accounts or may be computed as a graduated amount based upon the length of time the Cash Balance Account has been in existence.
- G. If a participant dies with a T-DROP Cash Balance Account, the account balance shall be paid as provided under Ark. Code Ann. § 24-7-1310.

**Summary of Proposed Rule Change
REVISED 3/13/2020**

**Arkansas Teacher Retirement System
Rule 10 – T-DROP and Return to Service**

SUBSTANTIVE CHANGES:

- Changed language regarding plan deposits consistent with **Act 296 of 2019** to clarify the calculation of plan deposits for T-DROP and early participants
- Amended definition of "Early participant" consistent with **Act 296 of 2019**, which repealed A.C.A. § 24-7-1314 and moved the language regarding early participants into § 24-7-1306
- **Act 296 of 2019** did not affect the benefits of T-DROP and early participants

NON-SUBSTANTIVE CHANGES:

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

CHANGES AS A RESULT OF PUBLIC COMMENTS:

- Correct punctuation, grammar, and numbering where appropriate.
- Clarify that employer contributions are still required for working retirees who return to work for a covered employer even though employee contributions are no longer required.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT ARKANSAS TEACHER RETIREMENT SYSTEM

DIVISION ADMINISTRATION

PERSON COMPLETING THIS STATEMENT _____

TELEPHONE NO. (501) 682-3332 FAX NO. (501) 682-2359 EMAIL: _____

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two (2) copies with the Questionnaire and proposed rules.

SHORT TITLE OF THIS RULE

ATRS Rule 10: T-DROP and Return to Service

1. Does this proposed, amended, or repealed rule have a financial impact? Yes ☐ No ☒

2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
Yes ☒ No ☐

3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes ☒ No ☐

If an agency is proposing a more costly rule, please state the following:

- a) How the additional benefits of the more costly rule justify its additional cost;

- b) The reason for adoption of the more costly rule;

- c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and

- d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total \$ 0.00

Total \$ 0.00

b) What is the additional cost of the state rule?

Current Fiscal Year

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total \$ 0.00

Total \$ 0.00

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

\$ _____

\$ _____

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6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

Next Fiscal Year

\$ _____

\$ _____

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7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?
Yes ☐ No ☒

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.