

**24 CAR § 10-1201. Purpose, construction, and establishment of plan and trust.**

(a) The Arkansas Teacher Retirement System Benefit Restoration Plan and Trust is established effective upon final adoption by the Board of Trustees of the Arkansas Teacher Retirement System pursuant to authority granted by Arkansas Code § 24-7-305.

(b)(1) The purpose of the plan is solely to restore the part of a participant's retirement benefit that would otherwise have been payable by the Arkansas Teacher Retirement System except for the limitations of 26 U.S.C. § 415(b).

(2) The plan is intended to be a "qualified governmental excess benefit arrangement" within the meaning of 26 U.S.C. § 415(m)(3) and shall be interpreted and construed consistently with that intent.

(3) This plan is deemed a portion of the employers' qualified plan solely to the extent required under, and within the meaning of, 26 U.S.C. § 415(m)(3) and Arkansas Code § 24-7-305.

(c)(1)(A) The plan is an "exempt governmental deferred compensation plan" described in 26 U.S.C. § 3121(v)(3).

(B) 26 U.S.C. §§ 83, 402(b), 457(a), and 457(f)(1) do not apply to this plan.

(2) The system shall not hold any assets or income under this plan in trust for the exclusive benefit of participants or their beneficiaries.

(d) Whenever any actuarial present value or actuarial equivalency is to be determined under the plan to establish a benefit, it:

(1) Shall be based on reasonable actuarial assumptions approved by the board in its sole discretion; and

(2) Will be determined in a uniform manner for all similarly situated participants.

## **24 CAR § 10-1202. Definitions.**

(a) The definitions in this section are exclusive to the Arkansas Teacher Retirement System Benefit Restoration Plan and Trust unless stated otherwise.

(b) As used in this subpart:

- (1) "Actuary" means the actuary selected by the Board of Trustees of the Arkansas Teacher Retirement System from time to time;
- (2) "Administrator" means the Arkansas Teacher Retirement System and includes any person with whom the Arkansas Teacher Retirement System contracts to provide services to the plan;
- (3) "Beneficiary" means an individual receiving joint and survivor benefits from the Arkansas Teacher Retirement System;
- (4) "Benefit restoration" means the benefit determined in accordance with 24 CAR § 10-1204;
- (5) "Benefit Restoration Trust Fund" or "trust fund" means the Benefit Restoration Trust Fund established pursuant to 24 CAR § 10-1206 which fund constitutes a valid trust under the laws of this state;
- (6) "Employer" means any public school, other educational agency, or other eligible employer participating in the Arkansas Teacher Retirement System as provided under Arkansas Code § 24-7-202;
- (7) "Participant" means a retiree or beneficiary who is entitled to benefits under this plan;
- (8) "Plan" means the Arkansas Teacher Retirement System Benefit Restoration Plan and Trust established pursuant to Arkansas Code § 24-7-305;
- (9) "Plan year" means the twelve-calendar month period ending on December 31 of each year;
- (10) "Retiree" means a member of the Arkansas Teacher Retirement System who is receiving a retirement benefit from the Arkansas Teacher Retirement System;

(11) "Retirement benefit" means the amount of retirement income payable to a retiree, or the benefit payable to a beneficiary, without regard to any limitations on that retirement income or benefit under 26 U.S.C. § 415(b); and

(12) "Retirement fund" means the trust fund established pursuant to Acts 1937, No. 266, approved March 17, 1937.

#### **24 CAR § 10-1203. Participation.**

(a)(1) All retirees and beneficiaries of the Arkansas Teacher Retirement System are eligible to participate in the Arkansas Teacher Retirement System Benefit Restoration Plan and Trust if their retirement benefits from the system for a plan year are or have been since January 1, 2013, limited by 26 U.S.C. § 415(b).

(2) The Board of Trustees of the Arkansas Teacher Retirement System determine for each plan year which retirees and beneficiaries are eligible to participate in the plan.

(b)(1) Participation in the plan begins each plan year after a retiree or beneficiary has the benefit restoration in that plan year.

(2) Participation in the plan ends:

(A) For any portion of a plan year in which the retirement benefit of a retiree or beneficiary is not limited by 26 U.S.C. § 415(b); or

(B) When all benefit obligations under the plan to the retiree or beneficiary have been satisfied.

#### **24 CAR § 10-1204. Payment of benefits.**

(a)(1) A participant in the Arkansas Teacher Retirement System Benefit Restoration Plan and Trust shall receive a benefit equal to the amount of retirement income that would have been payable by the Arkansas Teacher Retirement System to, or with respect to, a participant, that could not be paid because of the application of the limitations on the participant's retirement income under 26 U.S.C. § 415(b).

(2) The benefit restoration under the plan shall be paid only if and to the extent the participant is receiving retirement benefits from the retirement fund.

(b)(1) The benefit restoration shall be paid at the same time and in the same manner as the retirement benefit payable under the system.

(2) The timing of the benefit restoration shall take into consideration the existence of monthly deductions from the retirement benefit.

(3) No election shall be directly or indirectly provided by the system at any time to the participant to defer compensation under this plan.

(c)(1) A participant's right to a restoration benefit shall be vested as of the participant's vesting under the retirement fund.

(2) Additionally, each member in the retirement fund who is receiving a retirement benefit under the retirement fund on the date of adoption of this plan shall be vested.

(3) A beneficiary's right to a restoration benefit shall be vested as of the date of the participant's death.

(d) Notwithstanding 24 CAR § 10-1203, if the retirement fund is terminated and employers are making no further contributions to the retirement fund, no further restoration benefits shall be payable after the date that the employers' contributions to the retirement fund cease unless the employers:

(1) Establish another plan to serve the same purpose; or

(2) Make other arrangements to pay benefit amounts that would have been payable had the plan continued to receive employers' contributions to fully fund the plan.

## **24 CAR § 10-1205. Contributions and funding.**

(a)(1) The Arkansas Teacher Retirement System Benefit Restoration Plan and Trust is and shall remain unfunded and the rights, if any, of any person to any benefits under the plan are limited to those specified in the plan.

(2) The plan constitutes a mere unsecured promise by the employers to make benefit payments in the future.

(b)(1) The Executive Director of the Arkansas Teacher Retirement System, using authority delegated by the Board of Trustees of the Arkansas Teacher Retirement

System, shall determine the amount necessary to pay the benefit restoration under the plan for each plan year.

(2) The Arkansas Teacher Retirement System shall provide an estimate of the benefit restoration on or before March 1 of each year, provided, however, in 2013, the plan administrator will provide an estimate of the benefit restoration within ten (10) days of the effective date of this subpart.

(c)(1) The required contribution will be the aggregate of the benefit restorations payable to all participants for the plan year and an amount determined by the executive director, through delegation, to be a necessary and reasonable expense of administering the plan.

(2)(A) The employers will contribute the amount determined to be necessary to pay the benefit restoration of the participants and administrative expenses of the plan, and these payments will be made before the employers' deposits are credited to the retirement fund.

(B) The employers' required contribution will be due at the same time as contributions to the retirement fund.

(C) Under no circumstances will the employers' contributions to fund the benefit restorations be credited to the retirement fund.

(3)(A) Any contributions not used to pay the benefit restoration for a current plan year, together with any income accruing to the trust fund, shall be used to pay the administrative expenses of the plan for the plan year.

(B) Any contributions not used to pay the benefit restoration for the current plan year that remain after paying administrative expenses of the plan for the plan year will be used to fund administrative expenses or benefits of participants in future plan years.

(d)(1) The system shall account separately for the amounts the executive director, using the authority delegated by the board, determines to be necessary to provide the benefit restoration under the plan for each participant.

(2) However, the separate accounting will not be deemed to set aside these amounts for the benefit of a participant.

- (e) Benefits under this plan will be paid from the trust fund.
- (f)(1) The consultants, independent auditors, attorneys, and actuaries performing services for the system may also perform services for this plan.
- (2) However, any fees attributable to services performed with respect to this plan will be payable solely from the trust fund.

#### **24 CAR § 10-1206. Trust fund.**

(a)(1) The Benefit Restoration Trust Fund is established pursuant to Arkansas Code § 24-7-305, separate from the retirement fund, to hold employers' contributions to the trust fund.

(2) The trust fund is maintained solely to provide benefits under a qualified governmental excess benefit arrangement within the meaning of 26 U.S.C § 415(m) and pay administrative expenses of this arrangement.

(b) Contributions to the trust fund shall be held separate and apart from the funds comprising the retirement fund and shall not be commingled with assets of the retirement fund and must be accounted for separately.

(c)(1) All assets held by the trust fund to assist in meeting the employers' obligations under the plan, including all amounts of employers' contributions made under the Arkansas Teacher Retirement System Benefit Restoration Plan and Trust, all property and rights acquired or purchased with these amounts, and all income attributable to these amounts shall be held separate and apart from other funds of the employers and shall be used exclusively for the uses and purposes of participants and general creditors as set forth in this plan.

(2) Participants do not have a preferred claim on, or any beneficial interest in, any assets of the trust fund.

(3) Any rights created under the plan are unsecured contractual rights of participants against the employers.

(4) Any assets held by the trust fund are subject to the claims of the employers' general creditors under federal and state law in the event of insolvency.

(d)(1) The trust fund is intended to be a grantor trust, of which the employers are the grantors, within the meaning of Subpart E, Part I, Subchapter J, Chapter 1, Subtitle A of the Internal Revenue Code of 1986 as defined by Arkansas Code § 24-7-202, and will be construed accordingly.

(2) This subsection does not create an irrevocable trust of any kind.

(e) Income accruing to the trust fund under the plan constitutes income derived from the exercise of an essential governmental function upon which the trust fund is exempt from tax under 26 U.S.C. §§ 115 and 415(m) – (l).

## **24 CAR § 10-1207. Administration.**

(a)(1) The Board of Trustees of the Arkansas Teacher Retirement System has the exclusive authority to control and manage the operation and administration of the Arkansas Teacher Retirement System Benefit Restoration Plan and Trust.

(2) The board has the same rights, duties, and responsibilities respecting the plan as it has with respect to the retirement fund.

(3) The administrator has the same duties and authority respecting the plan as the administrator has with respect to the retirement fund.

(b) The board has the power and authority, including without limitation discretion with respect to the exercise of that power and authority, necessary, advisable, desirable, or convenient to enable it to:

(1) Establish procedures to administer the plan in a manner that is not inconsistent with the plan and the Internal Revenue Code as defined by Arkansas Code § 24-7-202, and to amend or rescind these procedures;

(2) Determine, consistent with the plan, applicable law, rules, or regulations, all questions of law or fact that may arise as to eligibility for participation in the plan and eligibility for distribution of benefits from the plan, and the status of any person claiming benefits under the plan;

(3) Make payments from the trust fund to participants pursuant to 24 CAR § 10-1504;

(4) Contract with a third party to perform designated administrative services under this plan; and

(5) Construe and interpret the plan as to administrative issues and to correct any defect, supply any omission, or reconcile any inconsistency in the plan with respect to same, subject to and consistent with the Internal Revenue Code as defined by Arkansas Code § 24-7-202.

(c)(1) Any action by the board that is not found to be an abuse of discretion will be final, conclusive, and binding on all individuals affected thereby.

(2) The board may take any such action in such manner and to such extent as the board in its sole discretion may deem expedient, and the board will be the sole and final judge of such expediency.

(d)(1) The board may delegate any of its authority to the administrator with respect to the trust fund.

(2) The board has delegated certain authority as set forth herein to the Executive Director of the Arkansas Teacher Retirement System.

(e)(1) The board may obtain assistance and advice with regard to its responsibilities under the plan.

(2) If in doubt concerning the correctness of their action in making a payment of a benefit, the board may suspend payment until satisfied as to the correctness of the payment or the person to receive the payment.

(f) The administrator shall handle the day-to-day operation of the plan and may delegate certain functions to a third party as required.

#### **24 CAR § 10-1208. Plan amendments.**

The Board of Trustees of the Arkansas Teacher Retirement System, from time to time, may amend, suspend, or terminate any or all of the provisions of the Arkansas Teacher Retirement System Benefit Restoration Plan and Trust as may be necessary to:

(1) Comply with 26 U.S.C. § 415(m); and  
(2) Maintain the plan's or the retirement fund's qualified status under the Internal Revenue Code as defined by Arkansas Code § 24-7-202.

## **24 CAR § 10-1209. Nonassignability and exemption from taxation and execution.**

The interests of participants under the Arkansas Teacher Retirement System Benefit Restoration Plan and Trust:

- (1) Are exempt from any state, county, municipal, or local tax;
- (2) Are not subject to execution, garnishment, attachment, or any other process of law whatsoever; and
- (3) Are unassignable and nontransferable.

## **24 CAR § 10-1210. Miscellaneous.**

(a) The Board of Trustees of the Arkansas Teacher Retirement System, the employers, and the administrator, if any, do not guarantee that any particular federal or state income, payroll, or other tax consequence will occur because of participation in the Arkansas Teacher Retirement System Benefit Restoration Plan and Trust.

(b) The board may hold the assets of the plan uninvested as it deems advisable for making distributions under the plan.

(c) In resolving any conflict between provisions of the plan, and in resolving any other uncertainty as to the meaning or intention of any provision of the plan, the prevailing interpretation shall be the interpretation that:

(1) Causes the plan to constitute a qualified governmental excess benefit arrangement under 26 U.S.C. § 415(m) and the trust fund to be exempt from tax under 26 U.S.C. §§ 115 and 415(m);

(2) Causes the plan and the Arkansas Teacher Retirement System to comply with all applicable requirements of the Internal Revenue Code as defined by Arkansas Code § 24-7-202; and

(3) Causes the plan and the system to comply with all applicable laws of this state.

(d) Neither the establishment nor maintenance of the plan, nor any amendment to the plan, nor any act or omission under the plan or resulting from the operation of the plan shall be construed:

(1) As conferring upon any participant or any other person a right or claim against the board, trustees on the board, employers, or administrator, if any, except to the extent that the right or claim is specifically expressed and provided in the plan;

(2) As creating any responsibility or liability of the employers for the validity or effect of the plan;

(3) As a contract between the employers and any participant or other person;

(4) As being consideration for, or an inducement or condition of, employment of any participant or other person, or as affecting or restricting in any manner or to any extent whatsoever the rights or obligations of the employers or any participant or other person to continue or terminate the employment relationship at any time; or

(5) As giving any participant the right to be retained in any employer's service or to interfere with any employer's right to discharge any participant or other person at any time.

(e) Any benefit payment that should not have been made according to the terms of the plan and the benefits provided under the plan may be recovered as provided by law.

(f)(1) Any payment to any participant shall, to the extent of the payment, be in full satisfaction of the participant's claim for which the payment is being made.

(2) The board may condition the payment on the participant's delivery of a duly executed receipt and release in a form determined by the board.

(g)(1) The board, board trustees, administrator, if any, shall not incur any liability in acting upon any paper or document or electronic transmission believed by the board, board trustees, or administrator to be genuine or to be executed or sent by an authorized person.

(2) The plan shall hold harmless and indemnify the board, the board trustees, and the administrator, and the officers and employees thereof, from financial loss arising out of any claim, demand, suit, or judgment by reason of alleged negligence or other act by that board member, trustee, officer, or employee if:

(A) The board member, trustee, officer, or employee at the time of the alleged negligence or act was acting in the discharge of his or her duties and within the scope of his or her employment;

(B) The damages did not result from a willful and wrongful act of gross negligence of the board member, trustee, officer, or employee; and

(C) The board member, trustee, officer, or employee shall, within five (5) days of the time he or she is served with any summons, complaint, process, notice, demand, or pleading, deliver the original or a copy thereof to the administrator's legal advisor.

(3) The board may obtain insurance to provide coverage for any liabilities that may arise as described by this subpart.

(h) The plan does not directly or indirectly waive any sovereign immunity protection of the board, board trustees, administrator, or officers and employees thereof.

(i) The laws of Arkansas apply in determining the construction and validity of this plan.

(j)(1) The only party necessary to any accounting, litigation, or other proceedings relating to the plan is the administrator.

(2) The settlement or judgment in any case in which the administrator is duly served will be binding upon all affected participants in the plan, their beneficiaries, estates, and all persons claiming by, through, or under them.

(k) If any provision of the plan is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of the plan will continue to be fully effective.