

**24 CAR § 10-329. Employer Participation – Employers of early childhood workers.**

(a) A person who is employed as an early childhood worker may elect to become a member of the Arkansas Teacher Retirement System if:

(1)(A) The person is an employee of a childcare facility described in subdivision (a)(2) of this section and the person provides teaching, early childhood education, or supervision for one (1) or more children enrolled in the childcare facility.

(B) A person who elects to become a member of the system shall be a contributory member of the system and shall have his or her service credit computed in accordance with the laws and rules applicable to the system;

(2)(A) The childcare provider that employs the person:

(i) Is a childcare facility licensed and regulated under the Childcare Facility Licensing Act, Arkansas Code § 20-78-201 et seq.;

(ii) Is a childcare facility accredited by the Arkansas Department of Education as an appropriate early childhood program as defined under Arkansas Code § 6-45-103;

(iii)(a) Receives state or federal childcare funding from the Arkansas Department of Education under Arkansas Code § 6-87-101.

(b) A childcare provider that does not receive state or federal funding through the Arkansas Department of Education does not meet the requirements of subdivision (2)(A)(ii)(a) of this rule;

(iv) Elects to participate in the system;

(v) Assumes responsibility for employer contributions;

(vi) Assumes responsibility for fees for obtaining Internal Revenue Service rulings or Employee Retirement Income Security Act of 1974 opinions;

(vii) Is approved by the pass-through fiscal agent as eligible for participation in the system; and

(viii) Agrees to reasonably cooperate with the pass-through fiscal agent for the purpose of:

(a) Remitting all required contributions and reports to the system; and

(b)(1) Retaining all records pertaining to the participation of a childcare provider in the system and pertaining to an early childhood worker who is employed by the childcare provider and elects to participate in the system.

(2) Records retained in accordance with subdivision (a)(2)(A)(vii)(b)(1) of this section shall be retained for at least seven (7) years from the effective date of a childcare provider's participation in the system or as otherwise advised in writing by the system.

(B) A childcare provider with an active subsidy or grant agreement with the Arkansas Department of Education to provide childcare services to children may meet the requirements of subdivision (a)(2)(A)(iii) of this section even if the childcare provider does not currently have enrolled children whose childcare services are partially or wholly paid for through a subsidy or grant agreement with the Arkansas Department of Education.

(C)(i) A childcare provider shall not be eligible for participation or continued participation in the system if the childcare provider fails to meet the requirements of subdivision (a)(2)(A)(i), (ii), or (iii) of this section or, if applicable, has their subsidy or grant agreement with the Arkansas Department of Education terminated; or

(ii)(a) An early childhood worker who is employed by a childcare provider that is not eligible for participation or continued participation in the system shall cease to be an active member of the system.

(b) Subdivision (a)(2)(C)(ii)(a) of this section shall not prevent an early childhood worker from becoming an active member of the system again if the early childhood worker is later employed by a childcare provider that meets the requirements of subdivision (a)(2)(A)(i)-(iii) of this section and, if applicable, has an active subsidy or grant agreement with the Arkansas Department of Education.

(D) A childcare provider shall:

(i) become a covered employer at the time that an employee elects to become or remain a member of the system; and

(ii) Be considered a covered employer only for each employee who elects to become a member of the system; and

(3) The Board of Trustees of the Arkansas Teacher Retirement System:

(A) Approves a single nonprofit fiscal agent to act as a pass-through fiscal agent to facilitate the voluntary participation of an early childhood worker in the system; and

(B) Determines as a general matter that the participation of early childhood workers who meet the requirements of subdivision (a)(1)(A) of this section will not:

(i) Impair the system's tax-qualified and governmental plan status under the Internal Revenue Code, 26 U.S.C. § 1 et seq.;

(ii) Impair the system's governmental plan status under the Employee Retirement Income Security Act of 1974, 26 U.S.C. § 1001 et seq.;

(iii) Subject the system to additional federal requirements or otherwise impair any legal status of the system; or

(iv) Have a substantial adverse impact on the system's actuarial soundness.

(b) The Board may approve a pass-through fiscal agent that agrees to:

(1) Implement an application process for childcare providers that:

(A) Ensures the childcare provider meets the requirements of subdivision (a)(2)(A) of this section; and

(B) Requires the childcare provider to submit for review by the pass-through fiscal agent an application that includes the following information:

(i) A proposed effective date for participation in the system;

(ii) A certified copy of the articles of incorporation, bylaws, and other organization documents of the childcare provider;

(iii)(a) A copy of the childcare provider's:

(1) Most recent three (3) years' annual audited financial statements, including balance sheets, financial statements, and statements of cash flows; or

(2) if the childcare provider does not have audited financial statements, the year-end compilation reports or internal balance sheets and income statements for the childcare provider;

(iv) A copy of the childcare provider's most recent three (3) year's federal and state income tax returns;

(v) Certification that the childcare provider has an active subsidy or grant agreement with the Arkansas Department of Education;

(vi) A statement acknowledging that the childcare provider shall not be eligible for participation or continued participation in the system if their subsidy or grant agreement with the Arkansas Department of Education is terminated;

(vii) A description of how the childcare provider's board of directors or board of trustees, if any, is selected and whether any governmental agency has input in the selection of the board members; and

(viii) A description of the types of services provided by the childcare provider.

(2)(A) Assume responsibility for approving childcare providers as eligible for participation in the system.

(B) The board, in its sole discretion, may deny the participation of a childcare provider approved by the pass-through fiscal agent as eligible for participation in the system;

(3)(A) Assume responsibility for approving for participation in the system only those childcare providers that will not jeopardize:

(i) The system's tax-qualified and governmental plan status under the Internal Revenue Code, 26 U.S.C. § 1 et seq.;

(ii) The system's governmental plan status under the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001 et seq.; or

(iii) Subject the system to additional federal requirements.

(4) Assume responsibility for remitting contributions and submitting reports and any other documentation that the system requires an employer to provide to the system;

(5) Assume responsibility for verifying with the Arkansas Department of Education annually that each childcare provider approved for participation in the system is licensed, accredited, and has an active subsidy or grant agreement with the Arkansas Department of Education;

(6) Use reasonable and generally acceptable accounting standards to manage and account for contributions required from childcare providers;

(7) Upon the request of the system, submit to the system financial records pertaining to the management and accounting of contributions required from childcare providers;

(8)(A) Submit to the Executive Director of the Arkansas Teacher Retirement System reports providing concise explanations of the pass-through fiscal agent's determination finding a new or current childcare provider eligible for initial or continued participation in the system.

(B) Effective January 1, 2026, the reports required under subdivision (b)(8)(A) of this section shall be submitted at least on a quarterly basis or as otherwise directed by the executive director or his or her designee;

(9) Retain and reasonably ensure that a childcare provider retains all records pertaining to the participation of the childcare provider in the system for at least seven (7) years from the effective date of their participation in the system or as otherwise advised in writing by the system;

(10)(A) Retain and reasonably ensure that a childcare provider retains all records pertaining to an early childhood worker who is employed by the childcare provider and elects to participate in the system.

(B) Records retained in accordance with subdivision (b)(10)(A) of this section shall be retained for at least seven (7) years from the effective date of the childcare provider's participation in the system or as otherwise advised in writing by the system;

(11) Maintain a policy requiring any information pertaining to an early childhood worker who is employed by the childcare provider and who elects to participate in the

system to be treated as confidential information and subject to disclosure in a manner that aligns with the laws, rules, and policies applicable to the system;

(12)(A) Ensure that at least every five (5) years from the effective start date of a childcare provider's participation in the system, the pass-through fiscal agent shall review the childcare provider's participation in the system to ensure that the childcare provider meets both federal and state requirements, including the provisions of the Arkansas Code § 24-7-212 and this section, for participation and continued participation in the system.

(B) The pass-through fiscal agent shall comply with subdivision (b)(12)(A) of this section by at a minimum:

(i) Verifying, by attestation of the childcare provider or other reasonably reliable means, that the childcare provider meets the requirements of subdivision (a)(2)(A)(i)-(iii) of this section; and

(ii) Obtaining and reviewing the childcare provider's:

(a) Most recent three (3) years' annual audited financial statements, including balance sheets, financial statements, and statements of cash flows; or

(b) If the childcare provider does not have audited financial statements, the year-end compilation reports or internal balance sheets and income statements for the employer;

(13) Certify that during the past five (5) years there have been no actions, proceedings, or investigations pending against the pass-through fiscal agent that may reasonably be expected to have a material adverse impact on the pass-through fiscal agent or that has resulted in the pass-through fiscal agent or its agents, employees, subsidiaries or affiliates being convicted or found civilly liable for a breach of fiduciary duty or financial crimes; and

(14) Promptly notify the system of any future actions, proceeding, or investigation involving the pass-through fiscal agent that meets the description of subdivision (b)(13) of this section.



### Public Comments

#### Proposed Rule Amendment to 24 CAR § 10-329 – Employer Participation – Employers of Early Childhood Workers

##### **1. 24 CAR § 10-329**

- a. **Excel by Eight:** Clarify references to ADE throughout.
- b. **Response:** The proposed rule has been revised to clarify references to the Arkansas Department of Education throughout the rule.

##### **2. 24 CAR § 10-329**

- a. **Excel by Eight:** Replace “voucher or subsidy agreement” throughout with “subsidy or grant agreement”.
- b. **Response:** The proposed rule has been revised to replace “voucher or subsidy agreement” with “subsidy or grant agreement” throughout the rule.

##### **3. 24 CAR § 10-329**

- a. **Dustin Summey:** I am an ARTRS member with 19.5 contributory years in the system. I now work for Pediatrics Plus, which provides pediatric therapies and has multiple sites with developmental preschools that are licensed and funded in part through the state programs. However, I work in a role that does not provide teaching, education or supervision of children (I am referencing the current language in section (a)(1)(A) of the document posted on the ARTRS website as of 8/11/2025). I work in a management/operations capacity and have no direct interaction with kids. My interpretation of section (a)(1)(A) is that I won't qualify to participate in ARTRS through Pediatrics Plus due to my job role not having direct care of children. Can you please clarify? If my interpretation is correct, I respectfully request that the ARTRS Board and leadership reconsider the scope of the participation rule and broaden it to allow any employee of a qualified childcare facility to participate in ARTRS. This would be in line with how public school employees are allowed to participate in ARTRS even if they are in a maintenance, information technology, grant-writing, etc., position that does not



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involve direct instruction of students. I appreciate you taking time to read my email, provide clarity, and consider my request. Please let me know if my correspondence should be submitted through a different route in order to be formally considered during the public comment period. Many thanks!

- b. **Response:** Yes, ATRS agrees that the rule could be interpreted to mean that a person who is employed with a childcare provider in a management or operations position would not qualify to participate as a member of ATRS through their employment with the childcare provider. The question is whether or not Act 587 of 2025 allows a person who is employed with a childcare provider in a management or operations position to participate as a member of ATRS. If Act 587 of 2025 does not permit such persons to participate in ATRS, the law would need to be amended by the Legislature during their next regular legislative session.

4. **24 CAR § 10-329(a)(2)(A)(vi).**

- a. **BLR Comment:** 24 CAR § 10-329(a)(2)(A)(vi): Is a conjunction is missing between (vi) and (viii)?
- b. **Response:** No.

5. **24 CAR § 10-329(a)(2)(A)(viii).**

- a. **BLR Comment:** 24 CAR § 10-329(a)(2)(A)(viii): Should "(viii)" here be "(vi)" instead?
- b. **Response:** No, subdivision 24 CAR § 10-329(a)(2)(A)(vi) as approved by the ATRS Board on June 2, 2025, was unintentionally omitted. The proposed rule has been revised to include the omitted provision.



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**6. 24 CAR § 10-329(a)(2)(A)(viii)(a).**

- a. **BLR Comment:** 24 CAR § 10-329(a)(2)(A)(viii)(a)<sup>1</sup>: This subdivision states that the childcare employer shall retain all records “pertaining to the participation of the childcare provider in the system and all records pertaining to an early childhood worker who is employed by the childcare provider and who elects to participate in the system for at least seven (7) years from the effective date of the childcare provider's participation in the system or as otherwise advised in writing by the system.” Does the language “for at least seven (7) years” apply to the retainment of records or for how long the childcare provider has to participate in the system?
  
- b. **Response:** The seven (7) years pertains to the how long the records must be retained. The proposed rule has been revised for clarity on this issue.

**7. 24 CAR § 10-329(a)(2)(C)(i).**

- a. **BLR Comment:** Page 2, section (a)(2)(C)(i) -- is the “or” at the end of that subdivision correct, or should it be “and”?
  
- b. **Response:** Neither. The “or” at the end of the subdivision should be a period.

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<sup>1</sup> The citation to 24 CAR § 10-329(a)(2)(A)(viii)(a) in the comment is a typographical error.



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**8. 24 CAR § 10-329(a)(2)(C)(ii)(a) and (b).**

- a. **Excel by Eight:** Page 2, section (a)(2)(C)(ii)(a) & (b), consider changing “cease to be a member” to “cease to be an Active member”; or change “cease to be a member of the system” to “cease to accrue service credit in the system” or something similar. Even if a provider ceases to be eligible, their employees who earned service credit will continue to be members of the System, albeit in Inactive status. I don’t want to leave language that could be read to mean they lose any service credit they had previously earned.
  
- b. **Response:** The rule has been revised to change “a member” to “an active member”.

**9. 24 CAR § 10-329(b)(1)(A)(vi).**

- a. **BLR Comment:** 24 CAR § 10-329(b)(1)(A)(vi): Is a conjunction is missing between (vi) and (vii)?
  
- b. **Response:** No, subdivision 24 CAR § 10-329(b)(1)(A)(vii) as approved by the ATRS Board on June 2, 2025, was unintentionally omitted. The proposed rule has been revised to include the omitted provision and a conjunction between 24 CAR § 329(b)(10(A)(vii) and (viii).

**10. 24 CAR § 10-329(b)(5).**

- a. **Excel by Eight:** Page 4, section (b)(5), change “Assumes” to “Assume”
  
- b. **Response:** The rule has been revised to change “Assumes” to “Assume”.

**11. 24 CAR § 10-329(b)(10).**

- a. **BLR Comment:** This same language appears again in (b)(10). Does the language “for at least seven (7) years” apply to the retainment of records or for how long the childcare provider has to participate in the system?



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- b. **Response:** The seven (7) years pertains to the how long the records must be retained. The proposed rule has been revised for clarity on this issue.

**12. 24 CAR § 10-329(b)(12)(B).**

- a. **BLR Comment:** This subdivision cites to "subdivision (b)(11)(A) of this section", but I'm not seeing that subdivision in this section. Did the system mean a different subdivision here?
- b. **Response:** Yes, the intended subdivision is (b)(12)(A). The proposed rule has been revised to change "(b)(11)(A)" to "(b)(12)(A)".

**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY.**

**DEPARTMENT** Legal

**BOARD/COMMISSION** Arkansas Teacher Retirement System

**PERSON COMPLETING THIS STATEMENT** Jennifer

**TELEPHONE NO.** (501) 682-1517    **EMAIL** jenniferl@artrs.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents. Please attach additional pages, if necessary.

**TITLE OF THIS RULE** 24 CAR § 10-329 - Employer Participation – Employers of Early Childhood Workers

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 no, please explain:

(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 reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and

(d) whether the reason for adoption of the more costly rule is within the scope of the agency's statutory authority, and if so, how.

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**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_  
  
Total \$0.00 \_\_\_\_\_

**Next Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_  
  
Total \$0.00 \_\_\_\_\_

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

**Current Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_  
  
Total \$0.00 \_\_\_\_\_

**Next Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_  
  
Total \$0.00 \_\_\_\_\_

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

**Current Fiscal Year**

\$ 0.00 \_\_\_\_\_

N/A

**Next Fiscal Year**

\$ 0.00 \_\_\_\_\_

6. What is the total estimated cost by fiscal year to a state, county, or 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**

\$ 0.00 \_\_\_\_\_

N/A

**Next Fiscal Year**

\$ 0.00 \_\_\_\_\_

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.