

ARKANSAS TEACHER RETIREMENT SYSTEM

February 5, 2024

1400 West Third Street

BOARD ROOM

Little Rock, AR 72201

Operations Committee Meeting

10:00 a.m.

Members

Bobby Lester, Chair

Dr. Mike Hernandez, Vice Chair

Kelsey Bailey

Anita Bell

Danny Knight

Jeff Stubblefield

Jacob Oliva, Secretary, Dept. of Education

Honorable Dennis Milligan, State Auditor

AGENDA
ARKANSAS TEACHER RETIREMENT SYSTEM
OPERATIONS COMMITTEE

February 5, 2024
10:00 a.m.
1400 West Third Street
Little Rock, AR 72201

- I. ***Call to Order/Roll Call.** page 1.
- II. ***Adoption of Agenda.** page 2.
- III. Executive Summary. (Attachment No. 1) page 4.
- IV. ***Approval of December 4, 2023, Minutes.** (Attachment No. 2) page 6.
- V. Open Forum for Potential Rule or Law Changes by Committee Members and Board Members in Attendance. *Bobby Lester, Operations Committee Chair*
 - A. Open Forum.
- VI. ***Rules Promulgation Status Update.** *Mark White, Executive Director and Jennifer Liwo, General Counsel*
 - A. ***Rule 5-1: Investment Introduction.** (Attachment No. 3) page 9.
 - B. ***Rule 5-2: Standard Care.** (Attachment No. 4) page 10.
 - C. ***Rule 5-3: Asset Allocation.** (Attachment No. 5) page 11.
 - D. ***Rule 5-4: Investment Goals.** (Attachment No. 6) page 12.
 - E. ***Rule 5-6: Investment Consultants.** (Attachment No. 7) page 13.
 - F. ***Rule 5-7: Investment Managers.** (Attachment No. 8) page 14.
 - G. ***Rule 5-8: Soft Dollars.** (Attachment No. 9) page 15.
 - H. ***Rule 0-1: ATRS Rule of Organization and Operation.** (Attachment No. 10) page 16.
 - I. ***Rule 4: Election of Board of Trustees.** (Attachment No. 11) page 23.
 - J. ***Rule 6: Membership and Employer Participation.** (Attachment No. 12) page 42.

* Action Item

2024-02-01 10:45:52.987743

- K. ***Rule 7: Service Credit, Contributions, Reporting, and Final Average Salary.** (Attachment No. 13) page 79.
- L. ***Rule 8: Free Service Credit, Purchasable Service Credit, and Purchase Accounts.** (Attachment No. 14) page 103.
- M. ***Rule 9: Retirement and Benefits.** (Attachment No. 15) page 131.
- N. ***Rule 10: Return to Service and Teacher Deferred Retirement Option Plan.** (Attachment No. 16) page 174.
- O. ***Rule 11: Survivors and Domestic Relations Orders.** (Attachment No. 17) page 196.
- P. ***Rule 12-1: Protection of "Qualified Trust" Status of ATRS Under Internal Revenue Code 401(a).** (Attachment No. 18) page 234.
- Q. ***Rule 13-1: Administration Adjudications: Staff Determinations and Appeals.** (Attachment No. 19) page 237.
- R. ***Rule 14-1: Retirement Fund Asset Accounts.** (Attachment No. 20) page 259.
- S. ***Rule 15-1: Benefit Restoration Plan and Trust.** (Attachment No. 21) page 261.
- T. ***Rule 16: Cash and Savings Help (CASH) Program.** (Attachment No. 22) page 278.
- U. ***Rule 17-1: Manifest Injustice.** (Attachment No. 23) page 284.

VII. ***Update to ATRS Board Policy 4 Statement of Investment Policy.** *Mark White, Executive Director and Jennifer Liwo, General Counsel* (Attachment No. 24) page 302.

VIII. Other Business.

IX. ***Adjourn.**

Committee Members:

- Bobby Lester, Chair
- Dr. Mike Hernandez, Vice Chair
- Kelsey Bailey
- Anita Bell
- Danny Knight
- Jeff Stubblefield
- Jacob Oliva, Secretary, Dept. of Education
- Honorable Dennis Milligan, State Auditor

* Action Item

EXECUTIVE SUMMARY

TO: Operations Committee
FROM: ATRS Staff
RE: Executive Summary
DATE: February 5, 2024

V. Open Forum for Potential Rule or Law Changes by Committee Members and Board Members in Attendance. *Bobby Lester, Operations Committee Chair*

A. Open Forum.

This is a standard part of the Committee agenda to allow Committee Members and Board Members in attendance to address topics and issues for consideration.

VI. *Rules Promulgation Status Update. *Mark White, Executive Director and Jennifer Liwo, General Counsel*

The public comment period for the proposed rule changes ended on January 22, 2024. ATRS received public comments and made changes and corrections to address the comments. ATRS staff recommends that the Board approve the rules as revised. With the approval of the Board, staff will submit a request to BLR for the rules to be placed on the agendas of the Joint Committee on Public Retirement and Social Security Programs and the Legislative Council's Administrative Rules Subcommittee. This is an action item.

- A. *Rule 5-1: Investment Introduction.** [page 9.](#)
- B. *Rule 5-2: Standard Care.** [page 10.](#)
- C. *Rule 5-3: Asset Allocation.** [page 11.](#)
- D. *Rule 5-4: Investment Goals.** [page 12.](#)
- E. *Rule 5-6: Investment Consultants.** [page 13.](#)
- F. *Rule 5-7: Investment Managers.** [page 14.](#)
- G. *Rule 5-8: Soft Dollars.** [page 15.](#)
- H. *Rule 0-1: ATRS Rule of Organization and Operation.** [page 16.](#)
- I. *Rule 4: Election of Board of Trustees.** [page 23.](#)
- J. *Rule 6: Membership and Employer Participation.** [page 42.](#)
- K. *Rule 7: Service Credit, Contributions, Reporting, and Final Average Salary.** [page 79.](#)
- L. *Rule 8: Free Service Credit, Purchasable Service Credit, and**

Purchase Accounts. [page 103.](#)

- M. *Rule 9: Retirement and Benefits.** [page 131.](#)
- N. *Rule 10: Return to Service and Teacher Deferred Retirement Option Plan.** [page 174.](#)
- O. *Rule 11: Survivors and Domestic Relations Orders.** [page 196.](#)
- P. *Rule 12-1: Protection of "Qualified Trust" Status of ATRS Under Internal Revenue Code 401(a).** [page 234.](#)
- Q. *Rule 13-1: Administration Adjudications: Staff Determinations and Appeals.** [page 237.](#)
- R. *Rule 14-1: Retirement Fund Asset Accounts.** [page 259.](#)
- S. *Rule 15-1: Benefit Restoration Plan and Trust.** [page 261.](#)
- T. *Rule 16: Cash and Savings Help (CASH) Program.** [page 278.](#)
- U. *Rule 17-1: Manifest Injustice.** [page 284.](#)

VII. *Update to ATRS Board Policy 4 Statement of Investment Policy. *Mark White, Executive Director and Jennifer Liwo, General Counsel* [page 302.](#)

The proposed changes to Board Policy 4 revise the total equity and fixed income asset allocation ranges as recommended by the System's investment consultants. This is an action item.

VIII. Other Business.

**MINUTES
ARKANSAS TEACHER RETIREMENT SYSTEM
OPERATIONS COMMITTEE MEETING**

**Monday, December 4, 2023
10:00 a.m.
1400 West Third Street
Little Rock, AR 72201**

ATTENDEES

Operations Committee Members Present

Bobby Lester, Chair
Dr. Mike Hernandez, Vice Chair
Kelsey Bailey
Anita Bell
Danny Knight
Jeff Stubblefield
Jason Brady, designee for Hon. Dennis Milligan
Kelly Griffin, designee for Jacob Oliva

Board Members Present

Susan Ford
Shawn Higginbotham
Michael Johnson
Chip Martin
Larry Walther, State Treasurer

Reporters Present

Mike Wickline, AR Dem. Gazette

ATRS Staff Present

Mark White, Executive Director
Rod Graves, Deputy Director
Sarah Linam, Deputy Director–Member Services
Tammy Porter, Board Secretary
Curtis Carter, Chief Financial Officer
Dena Dixson, Internal Audit/Risk Mgmt.
Braeden Duke, Software Support Analyst
Clementine Infante, Staff Attorney
Mike Lauro, Information Systems Manager*
Jennifer Liwo, General Counsel
Manju, Director, Assoc. Director of IT
Whitney Sommers, Administrative Analyst
Brenda West, Internal Audit/Risk Mgmt.
Misty Yant, Manager, Accounting Reporting*

Guest Present

PJ Kelly, Aon Hewitt Investment Consulting
Jack Dowd, Aon Hewitt Investment Consulting
Eric Munson, State Treasurer's office
Chris Caldwell, AR Div. of Legislative Audit
Gar Chung, FIN News*
Liz.Bury*

**via ZOOM*

- I. **Call to Order/Roll Call.** Mr. Bobby Lester, Chair, called the Operations Committee meeting to order at 10:03 a.m. All members were present.
- II. **Adoption of Agenda.**

Mr. Brady *moved for adoption* of the Agenda. Mr. Knight *seconded* the *motion* and the Committee *unanimously approved the motion*.

III. Executive Summary. The Executive Summary was provided for reference with no questions or expansions on the written summary.

IV. Approval of September 25, 2023, Minutes.

Mr. Knight *moved to approve* the Minutes of the Operations Committee meeting of September 25, 2023. Mr. Brady *seconded the motion*, and the Committee *unanimously approved the motion*.

V. Open Forum for Potential Rule and Law Changes by Committee Members and Board Members Present.

A. Open Forum. None.

VI. Rule Promulgation Status Update. Mark White, Executive Director and Jennifer Liwo, General Counsel presented the Committee with Rules to be promulgated.

- A. Rule 0-1 - ATRS Rules of Organization and Operation.
- B. Rule 4 - Election of Board of Trustees.
- C. Rule 6 - Membership and Employer Participation.
- D. Rule 7 - Service Credit, Contributions, Reporting, and Final Average Salary.
- E. Rule 8 - Free Service Credit, Purchasable Service Credit, and Purchase Accounts.
- F. Rule 9 - Retirement and Benefits.
- G. Rule 10 - Return to Service and Teacher Deferred Retirement Option Plan.
- H. Rule 11 - Survivors and Domestic Relations Order.
- I. Rule 12-1 - Protection of "Qualified Trust" Status of ATRS Under Internal Revenue Code 401(a)
- J. Rule 13-1 - Administration Adjudications: Staff Determinations and Appeals.
- K. Rule 14-1 - Retirement Fund Asset Accounts.
- L. Rule 15-1 - Benefit Restoration Plan and Trust.
- M. Rule 16 - Cash and Savings Help (CASH) Program.
- N. Rule 17-1 - Manifest Injustice - Repealed and included in Amended Rule 13.

Mr. Brady *moved to approve* all changes to the Rules as presented to the Board. Mr. Stubblefield *seconded the motion* and the Committee *unanimously approved the motion*.

VII. Other business: None – Correct Roll Call - Record Reflect Kelsey Bailey

VIII. Adjourn.

Mr. Brady *moved to adjourn* the Operations Committee Meeting. Mr. Stubblefield *seconded the motion*, and the Committee *unanimously approved the motion*.

Meeting adjourned at 10:26 a.m.

Mark White, Executive Director

Bobby Lester, Chair

Tammy Porter, Board Secretary

Date Approved

INVESTMENT INTRODUCTION

A.C.A. § 24-2-613

This investment rule has been prepared within the context of applicable Arkansas laws and is intended to allow for sufficient flexibility in the investment process to capture opportunities, yet ensure that both prudence and care are maintained in the execution of the investment program. While safety of principal is given primary consideration, the Board may take appropriate levels of risk to earn higher levels of investment return.

The Board has arrived at this policy through careful study of the rates of return and risks associated with various investment strategies in relation to the current and projected liabilities of the ATRS System. This rule has been chosen as the most appropriate for achieving the financial objectives of the System.

The Board has adopted a long-term investment horizon so that the chances and duration of investment losses are carefully weighed against the long-term potential for appreciation of assets. The assets of the System will be invested in a manner that provides the safeguards and diversity to which a prudent investor would adhere. All transactions undertaken on behalf of the System will be in the sole interest of its members.

The System shall manage those assets not specifically allocated to investment managers. Notwithstanding the provisions of this investment rule, the Board may direct a specific investment activity and shall be fully responsible for any such action.

Adopted: October 7, 2003

STANDARD OF CARE

Prudent Investor Rule set forth in A.C.A. §§ 24-2-610-619 as amended by
Act 151 of 2004

~~The standard of care for the Board and Executive Director of the assets of the ATRS System is: When investing and reinvesting trust assets and in acquiring, retaining, managing, and disposing of investments of the trust assets, the reasonable care, skill, and caution exercised by a prudent investor should be used after considering the purposes, terms, distribution requirements, and other circumstances of the trust.~~

~~Investment and management decisions respecting individual assets shall be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust. The investments of the trust shall be diversified unless the trustees reasonably determine that, because of special circumstances, the purposes of the trust are better served without diversifying. The trust assets shall be invested and managed solely in the interest of the members and benefit recipients of the trust.~~

~~Investment and management functions may be delegated to an agent that a prudent trustee of comparable skills could properly delegate under the circumstances. When making such delegation, trustees shall establish the scope and terms of the delegation, consistent with the purposes and terms of the trust, and shall monitor the agent's performance and compliance with the terms of the delegation. In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.~~

~~The standard of care set forth herein shall be applied by each party serving in a fiduciary capacity for the trust.~~

~~**Adopted:** October 7, 2003~~

ASSET ALLOCATION

A.C.A. § 24-2-410

~~The Board of Trustees is responsible for the prudent investment of funds and to maintain a proper allocation of the System's investment assets. The Board of Trustees, in conjunction with its advisors, shall set and adjust the System's asset allocation ranges as necessary to provide an optimal allocation to obtain its target returns.~~

REBALANCING

~~The asset allocation ranges established by the Board represent the Board's judgment of a portfolio mix that provides the greatest risk/return value. Allowing the portfolio to exceed the Board limits strays from the financial discipline, which the Board believes will—over time—provide the appropriate risk-adjusted return to the Retirement System.~~

~~The Executive Director is responsible to rebalance among the allowable asset classes and individual portfolios at such time that any of the asset classes falls outside of the designated range. The Executive Director will monitor the asset values by classification and for each investment manager on a monthly basis, based on month-end data provided by the custodian bank. The Executive Director shall submit a report to the Board detailing the movement of funds necessary to carry out that rebalancing at the next scheduled meeting following the completion of such transactions.~~

~~Whenever the minimum or maximum range on any major asset class has been exceeded, a transfer of funds will occur so as to bring the actual allocation within the prescribed range. Since many alternative, timberland, and real estate investments are not liquid and valuations may be estimates or appraisals and may be time-lagged, the Executive Director shall use best efforts to use commitments, capital calls, capital contributions, and distributions to rebalance such investments.~~

~~Normal plan cash flows should be used to the extent possible to rebalance. Interest, dividends, and plan contributions should be used to the extent possible to fund asset classes that are below their target. Withdrawals should be made from asset classes that are above their target.~~

Adopted: ~~October 7, 2003~~

Amended: ~~February 11, 2008~~

~~RULE 5-4~~ **~~INVESTMENT GOALS~~**

~~A.C.A. §§ 24-2-610-619~~

~~The overall goal is to achieve, over a period of years, the greatest rate of return for ATRS by balancing risk at a prudent investor level to grow and preserve capital sufficient to pay benefits to members.~~

~~The Board may adopt or amend by motion or resolution at any board meeting the ATRS investment policies, investment procedures, and investment asset allocation targets consistent with the Board's fiduciary obligations under the prudent investor rule. ATRS sets performance goals that are approved by the Board after considering recommendations by the General Consultant and ATRS staff.~~

~~**Adopted:** October 7, 2003~~

~~**Approved by Board:** October 5, 2015~~

~~**Amended:** February 1, 2016~~

~~**Effective:** February 10, 2016~~

~~RULE 5-6~~ **~~INVESTMENT CONSULTANTS~~**

~~A.C.A. § 24-7-303 and §§ 24-2-610-619~~

~~To achieve the overall goal of ATRS as it pertains to investments, one or more investment consultants may be retained by the Board.~~

~~The scope of duties, together with the terms and conditions of engagement, of any investment consultant will be set forth in a contract approved by the Board.~~

~~Unless otherwise provided by contract, the investment consultants will:~~

- ~~▪ Assist the board in developing investment policy and making modifications thereto based on broad economic conditions and statutory changes.~~
- ~~▪ Provide general economic information and information on the market environment.~~
- ~~▪ Be responsible for the development and articulation of investment strategy, which will be a topic in quarterly reports to the Board.~~
- ~~▪ Assist the Board and Executive Director in the selection and supervision of investment managers.~~
- ~~▪ Provide recommendations on asset allocation, portfolio structure, retention, or removal of investment managers and various other topics that better equip the Board to make investment decisions for the Retirement System.~~
- ~~▪ Monitor and report periodically to the Board on the performance of the investments, the performance of the investment managers, any material changes within the investment management firms employed by the Board, and such other matters that are called for by this investment policy.~~

~~**Adopted:** October 7, 2003~~

~~**Approved by Board:** October 5, 2015~~

~~**Amended:** February 1, 2016~~

~~**Effective:** February 10, 2016~~

~~INVESTMENT MANAGERS~~

~~A.C.A. § 24-7-303 and §§ 24-2-610-619~~

~~Investment managers may be employed pursuant to procedures established by the Executive Director with advice from the Investment Consultant and as approved by the Board.~~

~~Investment managers will be given discretion to execute transactions on behalf of the System within the parameters set forth in their respective investment strategies.~~

~~The assets of the System allocated to the investment managers shall be diligently managed, which may include selling investments and realizing losses, if such action is considered advantageous to longer term return maximization.~~

~~Investment managers shall file with the Investment Consultant such reports and information as may be requested, and they may be requested to report in person to the Board.~~

~~**Adopted:** October 7, 2003~~

SOFT DOLLARS

A.C.A. ~~§ 24-7-303 and §§ 24-2-610~~

~~“Soft dollars” or “soft commissions” include any third-party or broker services an investment manager receives in addition to execution, whether these arrangements are explicit or implicit.~~

~~Commissions paid by investment managers for the purchase of equity securities are ATRS System assets and must be used for the sole benefit of the System members. Whenever possible, investment managers should seek to execute trades at the lowest possible commission rate but not to the detriment of best execution, which can result in a higher cost to the System.~~

~~So that the Board may fulfill its obligation to ensure that System assets are being used appropriately, equity investment managers shall provide a comprehensive quarterly report to the Investment Consultant on brokerage activity, commissions, services, and such other information as may be requested by the Investment Consultant or the Board. The Investment Consultant shall provide a periodic report to the Board summarizing such equity investment managers’ reports and highlighting any questionable or problem areas.~~

~~**Adopted:** October 7, 2003~~

ATRS Rule 1
Rules of Organization and Operation

§ 1-101. Information for Public Guidance.

(a)(1) This rule provides general rules for the organization and operation of the Arkansas Teacher Retirement System.

(2) Additional and more specific information on the policies, rules, and regulations of the system may be found under the Administration tab on the system's website at <https://www.artrs.gov/administration>, or obtained by contacting the office of the Executive Director of the Arkansas Teacher Retirement System at 501-682-1517.

(b) The system is located at 1400 West Third Street, Little Rock, AR 72201.

(c) A member of the public may obtain information about the system and make submissions or requests to the system by:

(1) Visiting the system's website (www.artrs.gov);

(2) E-mailing the system at info@artrs.gov;

(3) Phoning the system at 501-682-1517; or

(4) Sending a fax to the system at [501-682-2359](tel:501-682-2359).

(d)(1) Visits to the system may be made between the business hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except on holidays.

(2) Appointments are not required, but are encouraged.

(e)(1) The system maintains a list of persons holding certain responsibilities for handling FOIA requests and requests by the public, so that the public may obtain information about the system or make submissions or requests.

(2) This list is available to the public.

(3) The names, mailing addresses, telephone numbers, and electronic addresses can be obtained from the system office or the system's website.

(f) The system's policies, rules and regulations, and official forms may be obtained from the system's office or from the system's website, if operational.

§ 1-102. Description of the Arkansas Teacher Retirement System.

(a) The Arkansas Teacher Retirement System is a cost-sharing multiple-employer, defined benefit pension plan established on March 17, 1937, by authority of the Arkansas General Assembly under Arkansas Code § 24-7-101 et seq.

(b) The system is operated as a qualified trust under 26 U.S.C. § 401(a) of the Internal Revenue Code.

(c) The system is a component unit of the State of Arkansas.

(d) The General Assembly is responsible for setting benefits and contributions and amending plan provisions.

(e)(1) Ultimate authority, general administration and responsibility for the proper operation of the system, and for making effective the provisions of Arkansas Code § 24-7-201 et seq. are vested in the fifteen-member Board of Trustees of the Arkansas Teacher Retirement System.

(2) Eleven (11) members are elected and four (4) members serve as ex officio members by virtue of their [positions](#) in state government.

(3) The board appoints the Executive Director of the Arkansas Teacher Retirement System who serves as the chief executive officer of the system.

(f) The board promulgates rules as it deems necessary in the transaction of its business and in administering the system.

(g) For administrative purposes, the Executive Director may organize the system in a manner that he or she determines is most efficient for the operation of the system.

§ 1-103. Organization and Operation of the Board of Trustees of the Arkansas Teacher Retirement System.

(a) The officers of the Board of Trustees of the Arkansas Teacher Retirement System are the chair and vice chair.

(b) The election of officers is held in odd numbered years at the first regular meeting of the board after the beginning of the fiscal year.

(c) The officers perform the duties prescribed by Robert's Rules of Order and the law, rules, and policies applicable to the Arkansas Teacher Retirement System.

(d)(1) The business of the system is conducted in public meeting pursuant to Robert's Rules of Order.

(2) All meetings are conducted in conformity with the Arkansas Freedom of Information Act, § 25-19-101 et seq.

(3) Regular meetings are held at least quarterly.

(4) Special meetings may be held on the call of the chair or as scheduled by action of the board in a regular meeting.

(5) A quorum for the transaction of business is a majority of the number of voting members of the board.

(e)(1) The board may create standing and ad hoc committees the membership of which is determined by the chair.

(2) A quorum for the transaction of committee business is a majority of the number of voting members of the committee.

(f)(1) The Executive Director of the Arkansas Teacher Retirement System prepares the agenda for regular and special meetings of the board.

(2) The agenda is distributed to the board and made available to the public in advance of the meeting.

(3) The agenda may be amended by appropriate motion.

(h)(1) Trustees, members, and other individuals who wish to have a matter placed as additional item on an agenda for a regular meeting of the board should submit a request to the executive director to have the matter placed on the agenda.

(2) The request should be submitted to the executive director before the regular meeting of the board at which the matter will be included as an agenda item.

§ 1-104. Rulemaking.

(a) The Board of Trustees of the Arkansas Teacher Retirement System is authorized by the legislature to promulgate rules.

(b) The Arkansas Teacher Retirement System follows the requirements of the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq., and in particular Arkansas Code §§ 25-15-203 and 25-15-204.

(c) The system is required to abide by Arkansas Code §10-3-309, which establishes a method for continuing legislative review and approval of agency rules.

(d)(1) The board or the system's staff may request the initiation of the rulemaking process, which includes adopting a new rule or amending or repealing an existing rule.

(2) Persons outside the system may petition for the issuance, amendment, or repeal of any rule.

(3) However, staff of the system shall not proceed with the rulemaking process for a rule unless the rule is approved by the board.

Authority: Arkansas Code § 25-15-201 et seq.

History

<u>Adopted:</u>	<u>December 6, 2005</u>	
<u>Amended:</u>	<u>April 26, 2007</u>	
<u>Adopted by Board:</u>	<u>February 6, 2012</u>	
<u>Amended:</u>	<u>April 18, 2012</u>	
<u>Effective:</u>	<u>May 29, 2012</u>	
<u>Effective:</u>	<u>TBD</u>	<u>Rule 1</u>

~~ATRS RULES OF ORGANIZATION AND OPERATION~~

~~A.C.A. §§ 25-15-203 and 25-15-703~~

~~I. INFORMATION FOR PUBLIC GUIDANCE~~

~~The Arkansas Teacher Retirement System (“ATRS”) is located at 1400 West Third Street, Little Rock, AR 72201. Questions about ATRS may be addressed by visiting the ATRS website (www.artrs.gov), emailing ATRS at info@artrs.gov; phoning ATRS at 1-800-666-2877 or 501-682-1517; or sending a fax to ATRS at 1-800-682-2663. Visits may be made to the ATRS office between 8:00 a.m. and 4:30 p.m. Monday through Friday, except on holidays. Appointments are not required but are suggested.~~

~~ATRS makes available a list of persons holding certain responsibilities for handling FOIA requests and requests by the public so that the public may obtain information about ATRS or make submissions or requests. The names, mailing addresses, telephone numbers, and electronic addresses can be obtained from the ATRS office or website.~~

~~The ATRS policies, rules and regulations, and official forms may be obtained from the ATRS office or from the ATRS website.~~

~~2. DESCRIPTION OF THE ARKANSAS TEACHER RETIREMENT SYSTEM~~

~~The Arkansas Teacher Retirement System (“ATRS”) is a cost-sharing multipleemployer, defined benefit pension plan established on March 17, 1937, by authority of the Arkansas General Assembly under Act 266 of 1937 (Ark. Code Ann. § 24-7-101 *et seq.*). ATRS is operated as a “qualified trust” under section 401(a) of the Internal Revenue Code. ATRS is a component unit of the State of Arkansas.~~

~~The General Assembly is responsible for setting benefits and contributions and amending plan provisions.~~

~~Ultimate authority, general administration and responsibility for the proper operation of ATRS, and for making effective the provisions of A.C.A. §§ 24-7-201 *et seq.* are vested in the fifteen-member Board of Trustees. Eleven members are elected, and four members serve as ex officio members by virtue of their elected~~

~~positions in state government. The Board appoints the executive director of ATRS who serves as its chief executive officer.~~

~~The Board of Trustees promulgates rules as it deems necessary from time to time in the transaction of its business and in administering the Arkansas Teacher Retirement System~~

~~For administrative purposes, the agency is comprised of several divisions: Administration, Membership Services, Data Processing, Investments, and Fiscal Affairs.~~

~~3. ORGANIZATION AND OPERATION OF THE ATRS BOARD OF TRUSTEES~~

~~The officers of the ATRS Board of Trustees are a chair and vice chair. Election of officers is held in the odd numbered years at the first regular meeting after the beginning of the fiscal year. These officers perform the duties prescribed by applicable law, this rule, and *Robert's Rules of Order*.~~

~~The business of ATRS is conducted in public meeting pursuant to *Robert's Rules of Order*. All meetings are conducted in conformity with the Arkansas Freedom of Information Act. Regular meetings are held at least quarterly. Special meetings may be held on the call of the chair or as scheduled by action of the Board in a regular meeting.~~

~~A quorum for the transaction of business is a majority of the number of voting members of the Board.~~

~~The ATRS Board of Trustees may create standing and ad hoc committees whose membership is determined by the chair of the Board. A quorum for the transaction of committee business is a majority of the number of voting members of the committee.~~

~~The Executive Director prepares the agenda for regular and special meetings. The agenda is distributed to Board members and made available to the public in advance of the meeting. The agenda may be amended by appropriate motion.~~

~~Trustees, members, and other individuals wishing to have additional items considered for the agenda should submit a request to the Executive Director prior to a regularly scheduled meeting.~~

~~4. RULEMAKING~~

~~The ATRS Board has been authorized by the Legislature to promulgate rules. ATRS follows the procedural requirements of the Arkansas Administrative Procedure Act, in particular A.C.A. § 25-15-203 and A.C.A. § 25-15-204. Additionally, ATRS is required to abide by the provisions of A.C.A. §10-3-309.~~

~~The process of adopting a new rule or amending or repealing an existing rule (hereinafter referred to as “rulemaking”) may be initiated by request of the Board or the ATRS staff. Additionally, persons outside the agency may petition for the issuance, amendment, or repeal of any rule.~~

~~ATRS will give public notice of proposed rulemaking to be published pursuant to A.C.A. § 25-15-204. The notice will set any written comment period and will specify the time, date, and place of a public hearing, if any.~~

~~Before finalizing language of a proposed new rule or an amendment to, or repeal of, an existing rule, ATRS will receive public input through written comments and/or oral submissions. ATRS will designate in the public notice the format and timing of public comment.~~

~~A public hearing may be held; if so, it will provide affected persons and other members of the public a reasonable opportunity for presentation of evidence, arguments, and oral statements within reasonable conditions and limitations imposed by the agency to avoid duplication, irrelevant comments, unnecessary delay, or disruption of the proceedings.~~

~~Thirty days before the public comment period ends, ATRS will file with the Bureau of Legislative Research the text of the proposed rule or amendment, as well as a financial impact statement and a Bureau of Legislative Research questionnaire as provided by A.C.A. § 10-3-309. In addition, a copy of the public notice, the text of the proposed rule or amendment, and a summary will be filed with the Secretary of State. Also, a copy of the public notice and the text of the proposed rule or amendment will be published on the ATRS website, if available.~~

~~Generally proposed rules or amendments will be reviewed by the appropriate committee of the ATRS Board of Trustees for recommendation prior to submission to the full Board for consideration and final action.~~

~~ATRS will not finalize language of the rule or decide whether to adopt a rule until the period for public comment has expired.~~

~~After the ATRS Board formally adopts a new rule or amends a current rule or repeals an existing rule, and after the rule change has been reviewed by the Legislative Council, ATRS staff will file final copies of the rule with the Secretary of State, the Arkansas State Library, and the Bureau of Legislative Research, or as otherwise provided by A.C.A. § 25-15-204(d).~~

~~Proof of filing a copy of the rule, amendment, or repeal with the Secretary of State, the Arkansas State Library, and the Bureau of Legislative Research will be kept in a file maintained by the Executive Director’s office.~~

Notice of the rule change will be posted on the agency website, if available, and rules will be made available to interested persons.

5. EMERGENCY RULEMAKING

Upon receipt of a written statement requesting emergency rulemaking or other evidence to support an assertion that an emergency exists, ATRS will make an independent judgment whether the circumstances and facts constitute an imminent peril to the public health, safety, or welfare requiring adoption of the rule with fewer than 30 days notice. If it is determined that the circumstances warrant emergency rulemaking, a written determination setting out the reasons for the finding that an emergency exists will be made. Upon making this finding, the ATRS Board may proceed to adopt the rule without any prior notice or hearing, or it may determine to provide an abbreviated notice and hearing.

The emergency rule will be effective immediately upon filing, or at a stated time less than thirty (30) days thereafter, if ATRS finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. ATRS will file with the rule its written findings justifying the determination that emergency rulemaking is appropriate and, if applicable, the basis for the effective date of the emergency rule being less than ten days after the filing of the rule pursuant to A.C.A. § 25-15-204(e).

6. APPEALS

An ATRS member, beneficiary, survivor, retiree, or employer may request a staff determination letter from an ATRS staff member responsible for staff decisions relating to the member's, beneficiary's, survivor's retiree's or employer's issues. If the member disagrees with the staff determination letter, then the member may seek a review by the executive director using the procedures set forth in Section 13 of the ATRS rules. The executive director's decision upon review may be appealed to the ATRS Board of Trustees using the procedures set forth in Section 13 of the ATRS rules. A description of the appeals process may be obtained by contacting ATRS or from the ATRS website.

NOTE: These are general rules for the organization and operation of the system. Additional and more specific information is provided in the Policies, Rules and Regulations of ATRS, which may be found on the ATRS website (www.arts.gov under "Publications") or which may be obtained by contacting the Executive Director's office at 501-682-1517 or 1-800-666-2877).

Adopted: _____ December 6, 2005

Amended: _____ April 26, 2007

Adopted by Board: February 6, 2012

Amended: _____ April 18, 2012

Effective: _____ May 29, 2012

ATRS Rule 4
Election of Board of Trustees of the Arkansas Teacher Retirement System

§ 4-101. General rules for candidacy and voting in trustee elections – Definitions.

(a) An undefined term in the rules of the Arkansas Teacher Retirement System shall have the same meaning as provided in Arkansas Code § 24-7-202.

(b) As used in this rule:

(1) “Active member” for the purposes of eligibility for the active member trustee position and voting, means:

(A) An active member as defined in Arkansas Code § 24-7-202; or

(B) A member who:

(i) Participates in T-DROP;

(ii) Is employed by a covered employer; and

(iii) Receives T-DROP plan deposits;

(2) “Administrator” for the purposes of eligibility for the administrator trustee position and voting for an administrator trustee position means a person who has a current administrator’s license and is either:

(A) An employee of a covered employer who is employed in one (1) of the following positions:

(i) Public school superintendent, assistant superintendent, principal, or vice-principal;

(ii) Higher education president, chancellor, or director; or

(iii) Director, president, or vice-president of a community college, vocational or technical school, or educational cooperative; or

(B) An employee who is:

(i) An employee of an education-related agency participating in the system;

(ii) An active member of the system through his or her employment with the education-related agency; and

(iii) Employed in a GS13 grade position, its equivalent, or above;

(3) “Licensure” for the purposes of eligibility for the licensed trustee position or voting for the licensed trustee position means a person who is not an administrator and is employed either in:

(A) A position requiring a state teaching license; or

(B) An education institution GS09-GS12 grade position of its equivalent;

and:

(4) “Nonlicensed” for the purposes of eligibility for the nonlicensed trustee position and voting for the nonlicensed trustee position means a person who is:

(A) Employed in a position with a covered employer that does not require a state teaching license;

(B) Employed in a position with an education-related agency in a position that:

(i) Does not require a state teaching license; and

(ii) Is no higher than a GS08 grade position or its equivalent; and

(C) Not an administrator as that term is defined in Arkansas Code § 24-7-202 and this rule.

§ 4-102. Membership and Authority of the Board of Trustees of the Arkansas Teacher Retirement System.

- (a) The general administration and proper operation of the Arkansas Teacher Retirement System is vested in the Board of Trustees of the Arkansas Teacher Retirement System. The board shall consist of eleven (11) elected members and four (4) ex officio members.
- (b) In accordance with Arkansas Code § 24-7-301, the board shall adopt rules and regulations for the election of a trustee and a vacancy on the board.

§ 4-103. Candidacy and voting in trustee elections — Generally.

- (a) A candidate who is employed in more than one (1) position with a covered employer shall have his or her eligibility determined based on his or her primary position for which he or she receives the greater percentage of covered salary.
- (b)(1) Only members of the Arkansas Teacher Retirement System shall vote in a trustee election.
- (2) Guardians, attorneys-in-fact, or others shall not vote on behalf of a member.
- (c)(1) An employee of the system shall not be elected or appointed to the board.
- (3) An employee of the system shall not be a candidate for election or appointment to the board.

§ 4-104. Qualifications and voter eligibility for elected trustee positions — Active Member Trustee Positions one through four.

- (a) The Arkansas congressional district boundaries as defined on the first day of the fiscal year in which an election for an active member trustee position occurs shall be used to determine:
- (1) Whether a person is qualified to become a candidate for an active member trustee position; and
- (2) The eligibility of a member to vote in an election for an active member trustee position.
- (b) There shall be four (4) active member trustees each of whom shall represent one (1) of the four (4) congressional districts in Arkansas.
- (c) A person is qualified to become a candidate for an active member trustee position if the person is:
- (1) An active member with at least five (5) years of actual service credit in the Arkansas Teacher Retirement System;
- (2) Employed by a covered employer located in the congressional district for which he or she is seeking election; and
- (3) Employed in a position requiring state teaching licensure or the equivalent under this rule.
- (d) A member is eligible to vote in an election for an active member trustee if the member is:
- (1) An active member, regardless of credited service;
- (2) Employed by a covered employer located in the congressional district for which the active member trustee election is being held; and

(3) Otherwise eligible to be a candidate under this rule.

§ 4-105. Qualifications and voter eligibility for elected trustee positions — Active Administrator Trustee Positions five through six.

(a) There shall be two (2) active member trustees each of whom shall be employed as an administrator as defined in this rule.

(b) A person is qualified to become a candidate for an active administrator trustee position if the person is:

(1) An active member with at least five (5) years of actual service credit in the Arkansas Teacher Retirement System; and

(2)(A) Employed in a position requiring an administrator's license.

(B)(i) As provided in Arkansas Code § 24-7-301, at least one (1) of the administrators serving as an active administrator trustee shall be employed by a covered employer as a school superintendent or educational cooperative director;

(ii) If there is an open administrator active member trustee position and the other filled administrator active member trustee position is held by a person who is not a superintendent or an educational cooperative director, a candidate for the open administrator active member trustee position shall be a superintendent or an educational cooperative director and the notice of election shall state that a candidate for the open administrator active member trustee position is required to be a superintendent or an educational cooperative director.

(c) A member is eligible to vote in an election for an active administrator trustee position if the member is:

(1) An active member, regardless of the amount of credited service that the member has in the system; and

(2) Employed as a licensed administrator in a position requiring and administrator's license.

§ 4-106. Qualifications and voter eligibility for elected trustee positions — Nonlicensed trustee position seven.

(a) A person is qualified to become a candidate for the nonlicensed trustee position if the person is:

(1) An active member with at least five (5) years of actual service credit in the Arkansas Teacher Retirement System; and

(2) Employed in a position that does not require state licensure.

(b) A member is eligible to vote in an election for the nonlicensed trustee position if the member is:

(1) An active member, regardless of the amount of credited service that the member has in the system; and

(2) Employed by a covered employer in a nonlicensed position.

§ 4-107. Qualifications and voter eligibility for elected trustee positions — Minority trustee position eight.

(a) There shall be one (1) member trustee of a minority racial ethnic group.

(b) A person is qualified to become a candidate for the minority trustee position if the person is a member of a minority racial or ethnic group and either a retired member or an

active member with at least five (5) years of actual service credit in the Arkansas Teacher Retirement System.

(c) A member is eligible to vote in an election for the minority trustee position if the member is a retired member or an active member, regardless of the amount of credited service that the member has in the system.

§ 4-108. Qualifications and voter eligibility for elected trustee positions — At-large retired member trustee positions nine through eleven.

(a) There shall be three (3) retired member trustees who shall be retirees as defined by Arkansas Code § 24-7-202.

(b) A person is qualified to become a candidate for a retired member trustee position if the person is a retiree and a resident of the State of Arkansas.

(c) A member is eligible to vote in an election for a retired member trustee position if the member is a retiree, regardless of his or her present employment status or residency.

§ 4-109. Elected trustee nominations — Scheduling and notice of election.

(a) The Arkansas Teacher Retirement System may publish electronically any public notice required by this rule.

(b)(1) During December in a year in which an elected trustee position is subject to a regular or special election, the Arkansas Teacher Retirement System shall publish public notice of the upcoming trustee position election in a statewide newspaper for at least five (5) consecutive days.

(2) The notice will also be sent to each person or group that requests notice of a trustee vacancy.

(3) The notice shall also be posted on the system's website from December until the closing of the nomination period.

§ 4-110. Elected trustee nominations — Candidate petitions and verification of member signatures.

(a)(1) For all elected positions, a candidate must submit a petition signed legibly by at least twenty-five (25) system members who are eligible to vote for the trustee position for which the member is seeking nomination.

(2) The petition shall include the last four (4) digits of each signatory's Social Security number for verification of the member's eligibility to vote for the position.

(3)(A) The original petitions shall be submitted to the Executive Director of the Arkansas Teacher Retirement System no later than January 10.

(B) Actual delivery shall be made by January 10, regardless of postmark date or other methods used to attempt delivery.

(C) Upon receipt of a petition, the Arkansas Teacher Retirement System shall confirm receipt of the petition and verify the eligibility of the candidate for the trustee position.

(D) The system shall verify the signature of each member who signs the petition as an eligible voter.

(b) The system shall:

(1) Notify each candidate who submits a petition of whether or not his or her petition has been accepted; and

(2) Provide each candidate who submits a petition with a list of other candidates who were certified to participate in the election for the trustee position for which the candidate sought nomination.

§ 4-111. Elected trustee nominations — Ballots.

(a) Before ballots are mailed, the Arkansas Teacher Retirement System or its designee shall conduct a random drawing for ballot positions.

(b) At least two (2) independent witnesses shall witness and certify the drawing of the ballot positions.

(c) The system shall notify each candidate who was certified to participate in election for the trustee position of the order in which the candidate will be listed on the ballot.

§ 4-112. Elected trustee nominations — Campaign materials.

(a) Upon request of a candidate who is certified to participate in the election for the trustee position, the Arkansas Teacher Retirement System shall provide a list of mailing addresses of all eligible voters for the distribution of a candidate's campaign materials.

(b) The candidate's message shall not contain information that:

(1) Would constitute defamation of another candidate; or

(2) Claims or appears to claim the endorsement of the system or the Board of the Arkansas Teacher Retirement System.

(c) Campaign materials shall be mailed by the election vendor from the election vendor's place of business.

(d) All postage for campaign materials shall be paid for by the candidate distributing the campaign materials.

§ 4-113. Trustee elections.

(a) The Arkansas Teacher Retirement System shall employ an independent election vendor to conduct the trustee elections.

(b)(1) The system shall publish ballots and submit the published ballots to the election vendor to be mailed by March 15 to the address of record of each member who is eligible to vote in the election.

(2)(A) A completed ballot shall be counted if it is received by the election vendor on or before April 15, regardless of postmark date or other methods used to attempt delivery.

(B) Only ballots that are correctly completed shall be counted.

(c) If any position receives only one (1) nomination and the position is uncontested, the Board of Trustees of the Arkansas Teacher Retirement System, at its next regular or special meeting, may certify the nomination and declare the candidate duly elected as a trustee before the trustee's term begins.

(d) The election vendor shall certify the results for positions not subject to a runoff election to the system by April 20.

(e)(1) A run-off election shall be held between the two (2) candidates who receive the highest number of votes for a trustee position if:

(A) The election vendor certifies the outcome of the trustee election; and

(B) A single candidate does not receive at least fifty percent (50%) of the votes cast by eligible voters.

(2) The election vendor shall mail run-off ballots to each member who is eligible to vote in the election on or before May 1.

(3) Completed ballots for a run-off election that are received by the election vendor after June 1 shall not be counted.

(4) The election vendor shall certify the results of a run-off election to the system by June 5.

(f)(1) A candidate included on a ballot may challenge to the election vendor's certified results for an elected trustee position by submitting a written challenge to the Executive Director of the Arkansas Teacher Retirement System within five (5) calendar days of the date on which the election results are certified by the election vendor.

(2)(A) A written challenge to the election vendor's certified results for an election shall not be considered if it is submitted more than (5) calendar days after the date on which the election results are certified to the system by the election vendor.

(B) After a written challenge to a certified election result is received by the system, the board shall hold a special meeting to consider the challenge.

(C) The Executive Director of the Arkansas Teacher Retirement System shall issue a recommendation to the board along with the administrative record concerning the certified election results of the position being challenged.

(3) If a candidate challenges the election results, the election process shall be suspended for the same number of days that the resolution of the challenge requires and the remaining election schedule shall be adjusted accordingly.

(g) Upon completion of an election, all elected trustee terms, except for special elections, shall begin on July 1 following the election.

(h) For any fixed date in the election schedule that falls on a holiday or a weekend, the official date shall become the next business day.

§ 4-114. Unexpired terms of elected trustees.

(a) The Arkansas Teacher Retirement System staff shall notify the Board of Trustees of the Arkansas Teacher Retirement System of a resignation or vacancy by other cause in a trustee position as soon as possible after staff has knowledge of the resignation or vacancy.

(b) The board shall take appropriate action authorized by law to fill the vacancy.

(c)(1) The board by majority vote may appoint a trustee until the next system election.

(2) The appointment of a trustee shall be effective as of the date on which the trustee is appointed by the board.

(d)(1) A special election to fill a trustee position caused by resignation or vacancy by other cause shall be scheduled and held if the board by majority vote determines that the vacancy should be filled by a special election.

(2) If an elected trustee position is declared vacant by the board and the board determines that the vacancy should be filled by a special election, the system shall:

(A) Publish notice that a special election will be held; and

(B)(i) Announce the schedule for the special election.

(ii) The schedule for the special election shall include the following:

(a) The date the vacancy occurred and position being vacated;

(b) The time period for circulating petitions for nominating

signatures;

- (c) The deadline for filing petitions with the system;
- (d) The date the system will verify the validity of petitions;
- (e) The date ballots will be sent to eligible voters;
- (f) The election date; and
- (g) The date the term shall begin.

(3) The system may publish public notices related to a special election in accordance with the rules governing a regular election of the system.

§ 4-115. Elected and appointed trustee terms.

(a)(1) The term of office of each elected trustee shall be six (6) years unless the trustee is elected in a special election.

(2) Each trustee shall continue to serve as trustee until the expiration of his or her term unless he or she resigns or is otherwise ineligible to continue serving as a trustee under this rule.

(3) In a year in which a six-year term of a trustee expires, the trustee position shall be filled under the regular election schedule provided in this rule.

(b) A trustee who is elected in a special election shall serve for the remainder of the six-year term of the vacating trustee.

(c)(1) A trustee who is appointed to the Board of Trustees of the Arkansas Teacher Retirement System shall serve until the next election of the Arkansas Teacher Retirement System that is held to fill the trustee position to which the trustee was appointed.

(2) The term of office of the person who is elected to fill the trustee position to which a trustee was appointed shall be six (6) years.

§ 4-116. Elected trustee vacancies.

(a) An active member trustee shall be ineligible to serve if he or she:

(1) Becomes inactive;

(2) Retires; or

(3) Changes his or her employment category during his or her term of office and the employment category is a requirement of the trustee position.

(b) A retiree member trustee shall be ineligible to serve after becoming an active member.

(c)(1) A trustee vacancy may occur if a trustee is absent from meetings.

(2) The Board of the Arkansas Teacher Retirement System or its designee shall notify the trustee after the trustee's second consecutive absence.

(3) The board by resolution shall vote to declare a position vacant if:

(A)(i) A trustee has three (3) consecutive unexcused absences from regular meetings of the board.

(ii) An absence that is excused by a majority of the members of the board shall not be counted towards a vacancy.

(iii) Attendance on either day of a two-day meeting of the board is sufficient to meet the attendance requirement for the two-day meeting of the board;

(B) A trustee becomes ineligible to serve on the board due to a change in status under Arkansas Code § 24-7-302 that results in the trustee being absent from three

(3) consecutive regular meetings of the board before the expiration of the trustee's term;
or

(C) A trustee resigns or dies.

(d)(1) If the board by resolution declares a vacancy as provided under this rule, the board may vote to hold a special election to fill an unexpired term using the board's procedures to fill unexpired terms for elected trustees.

(2) If the board does not declare a vacancy by resolution under this rule, the vacancy shall be filled during the next regular system election held after the expiration of the vacating trustee's term.

Authority: Arkansas Code §§ 24-7-301, 24-7-302, and 24-7-305

History

<u>Approved:</u>	<u>May 10, 2000</u>	<u>4-2</u>
<u>Amended:</u>	<u>April 26, 2007</u>	<u>4-1</u>
	<u>February 11, 2008</u>	<u>4-1,4-2</u>
	<u>December 18, 2009</u>	<u>4-1,4-2</u>
	<u>July 1, 2011</u>	<u>4-2 (Emergency)</u>
<u>Adopted:</u>	<u>August 8, 2011</u>	<u>4-2</u>
<u>Effective:</u>	<u>November 11, 2011</u>	<u>4-2</u>
<u>Approved by Board:</u>	<u>October 5, 2015</u>	<u>4-1</u>
<u>Amended:</u>	<u>February 1, 2016</u>	<u>4-1</u>
<u>Effective:</u>	<u>February 10, 2016</u>	<u>4-1</u>
<u>Effective:</u>	<u>August 5, 2019</u>	<u>Rule 4</u>
<u>Effective:</u>	<u>May 20, 2022</u>	<u>Rule4</u>
<u>Effective:</u>	<u>TBD</u>	<u>Rule 4</u>

ATRS RULE 4
ELECTION OF BOARD OF TRUSTEES
Arkansas Code §§ 24-7-301, 24-7-302, and 24-7-305

I. Definitions⁴

a. ~~“Active member” for the purposes of eligibility for an active member trustee position and voting for an active member trustee position means:~~

1. ~~An active member as defined in Arkansas Code § 24-7-202; or~~

2. ~~A member who:~~

A. ~~Participates in the Teacher Deferred Retirement Option Plan (T-DROP);~~

B. ~~Is employed by a covered employer; and~~

C. ~~Receives T-DROP plan deposits;~~

b. ~~“Administrator” for the purposes of eligibility for an administrator trustee position and voting for an administrator trustee position means a person who:~~

1. ~~Has a current administrator’s license; and~~

2. ~~Is either:~~

A. ~~An employee of a covered employer who is employed in one (1) of the following positions:~~

i. ~~Public school superintendent, assistant superintendent, principal, or vice principal;~~

ii. ~~Higher education president, chancellor, or director; or~~

iii. ~~Director, president, or vice president of a community college, vocational or technical school, or educational cooperative; or B. A~~

~~classified or unclassified employee who is:~~

i. ~~An employee of an education-related agency that participates in ATRS; and ii. Employed in a GS13 grade position, its equivalent, or above.~~

⁴ A term that is not defined in these ATRS Rules shall have the same meaning as provided in Arkansas Code § 247-202.

- c. ~~“Licensure” for the purposes of eligibility for a licensed trustee position or voting for a licensed trustee position means a person who is:~~
 - 1. ~~Not an administrator; and~~
 - 2. ~~Either employed in:~~
 - A. ~~A position requiring state teaching licensure; or~~
 - B. ~~An education institution GS09-GS12 grade position or its equivalent; and~~
- d. ~~“Nonlicensed” for the purposes of eligibility for a nonlicensed trustee position and voting for a nonlicensed trustee position means a person who is:~~
 - 1. ~~Employed in a position with a covered employer that does not require state teaching licensure;~~
 - 2. ~~Employed in a position with an education-related agency in a position that:~~
 - A. ~~Does not require state teaching licensure; and~~
 - B. ~~Is no higher than a GS08 grade position or its equivalent; and~~
 - 3. ~~Not an administrator as that term is defined in Arkansas Code § 24-7-202 and this ATRS Rule 4.~~

II. ~~Board of Trustees of the Arkansas Teacher Retirement System~~

- a. ~~The general administration and proper operation of the Arkansas Teacher Retirement System (ATRS) is vested in the Board of Trustees of the Arkansas Teacher Retirement System (Board).~~
- b. ~~The Board shall consist of eleven (11) elected members and four (4) ex officio members.~~
- c. ~~Pursuant to Arkansas Code § 24-7-301, the Board shall adopt rules and regulations regarding the election of a trustee and a vacancy on the Board.~~

III. ~~Candidacy and Voting in Trustee Elections — Generally~~

- a. ~~Candidates~~
 - 1. ~~If a candidate for a trustee position on the Board is employed in more than one (1) position with a covered employer, the candidate’s eligibility shall be determined based on the candidate’s primary position for which the candidate receives the greater percentage of covered salary.~~
- b. ~~Eligibility to Vote~~
 - 1. ~~Only members of ATRS shall vote in a trustee election.~~

- ~~2. Guardians, attorneys-in-fact, or others shall not vote on behalf of a member.~~
- ~~3. An employee working for ATRS is ineligible to be:
 - ~~A. Elected to the Board;~~
 - ~~B. Appointed to the Board; or~~
 - ~~C. A candidate for election or appointment to the Board.~~~~

~~IV. Qualifications and Voter Eligibility for Elected Trustee Positions~~

~~a. Active Member Trustee Positions 1-4 — Congressional Districts~~

~~1. Generally~~

- ~~A. The Arkansas congressional district boundaries as defined on the first day of the fiscal year in which an election for an active member trustee position occurs shall be used to determine:
 - ~~i. Whether a person is qualified to become a candidate for an active member trustee position; and~~
 - ~~ii. The eligibility of a member to vote in an election for active member trustee position.~~~~
- ~~B. There shall be four (4) active member trustees.~~
- ~~C. Each active member trustee shall represent one (1) of the four (4) congressional districts in Arkansas.~~

~~2. Qualifications for Candidacy~~

- ~~A. A person is qualified to become a candidate for active member trustee positions 1-4 if he or she is:
 - ~~i. An active member with a minimum of five (5) years of actual service;~~
 - ~~ii. Employed by a covered employer located in the congressional district for which he or she is seeking election; and~~
 - ~~iii. Employed in a position requiring state teaching licensure or the equivalent under this ATRS Rule 4.~~~~

~~3. Eligibility to Vote~~

- ~~A. A member is eligible to vote in an election for active member trustee positions 1-4 if he or she is:
 - ~~i. An active member, regardless of credited service;~~
 - ~~ii. Employed by a covered employer located in the respective congressional districts; and~~~~

~~iii. Otherwise eligible to be a candidate under this ATRS Rule 4.~~

~~b. Active Administrator Trustee Positions 5-6~~

~~1. Generally~~

~~A. There shall be two (2) active member trustee each of whom shall be employed as an administrator as defined in this ATRS Rule 4.~~

~~2. Qualifications for Candidacy~~

~~A. A person is qualified to become a candidate for active administrator trustee positions 5-6 if he or she is:~~

~~i. An active member with a minimum of five (5) years of actual service; and~~

~~ii. Employed in a position requiring an administrator's license.~~

~~a. Pursuant to Arkansas § 24-7-301, at least one (1) of the administrators serving as an active administrator trustee shall be employed by a covered employer as a school superintendent or an educational cooperative director.~~

~~b. If there is an open administrator active member trustee position and the other administrator active member trustee position is held by a person who is not a superintendent or an educational cooperative director, a candidate for the open administrator active member trustee position shall be a superintendent or an educational cooperative director and the notice of election shall state that a candidate for the open administrator active member trustee position is required to be a superintendent or an educational cooperative director.~~

~~3. Eligibility to Vote~~

~~A. A member is eligible to vote in an election for administrator active member trustee positions 5-6 if he or she is:~~

~~i. An active member, regardless of credited service; and~~

~~ii. Employed as a licensed administrator in a position requiring an administrator's license~~

~~c. Nonlicensed Trustee Position 7~~

~~1. Qualifications for Candidacy~~

~~A. A person is qualified to become a candidate for nonlicensed trustee position 7 if he or she is:~~

- ~~i. An active member with a minimum of five (5) years of actual service; and~~
- ~~ii. Employed in a position not requiring state licensure.~~

~~2. Eligibility to Vote~~

~~A. A member is eligible to vote in an election for nonlicensed trustee position 7 if he or she is:~~

- ~~i. An active member, regardless of credited service; and~~
- ~~ii. Employed by a covered employer in a nonlicensed position.~~

~~d. Minority Trustee Position 8~~

~~1. Generally~~

~~A. There shall be one (1) member trustee of a minority racial ethnic group.~~

~~2. Qualifications for Candidacy~~

~~A. A person is qualified to become a candidate for minority trustee position 8~~

~~if he or she is:~~

- ~~i. An active or retiree member with a minimum of five (5) years of actual service; and~~
- ~~ii. A member of a minority racial or ethnic group.~~

~~3. Eligibility to Vote~~

~~A. A member is eligible to vote in an election for minority trustee position 8 if he or she is:~~

- ~~i. An active member, regardless of credited service; or~~
- ~~ii. Retiree.~~

~~e. Retired Member Trustee (At-Large) Positions 9-11~~

~~1. Generally~~

~~A. There shall be three (3) retired member trustees who shall be retirees as defined under Arkansas Code § 24-7-202.~~

~~2. Qualifications for Candidacy~~

~~A. A person is qualified to become a candidate for retired member trustee positions 9-11 if he or she is a:~~

- ~~i. Retiree; and~~
- ~~ii. Resident of the State of Arkansas.~~

~~3. Eligibility to Vote~~

~~A. A retiree, regardless of present employment status or residency is eligible to vote in an election for retired member trustee positions 9-11.~~

~~V. Rules on Elected Trustee Nominations~~

~~a. Scheduling and Notice of Regular Election~~

- ~~1. ATRS may publish electronically a public notice required by this ATRS Rule 4.~~
- ~~2. During December in a year in which an elected trustee position is subject to election or a special election is required to fill a vacancy, ATRS shall publish public notice of an upcoming trustee position election in a statewide newspaper for at least five (5) consecutive days.~~
- ~~3. The notice shall be sent to each person of group that requests notice of a trustee vacancy.~~
- ~~4. The notice shall be posted on ATRS' website from December until the closing of the nomination period.~~

~~b. Candidate Petitions and Verification of Member Signatures~~

- ~~1. For all elected positions, a candidate shall submit a petition signed legibly by at least twenty five (25) ATRS members who are eligible to vote for the trustee position for which the candidate is seeking nomination.~~
- ~~2. The petition shall include the last four (4) digits of each signatory's Social Security number for verification of the member's eligibility to vote for the position.~~
- ~~3. The original petitions for nomination shall be submitted to the ATRS Executive Director no later than January 10.~~
- ~~4. Actual delivery of the original petitions for nomination shall be made by January 10, regardless of postmark date or other methods to attempt delivery.~~
- ~~5. Upon receipt of a petition, ATRS shall confirm receipt of the petition and shall verify the eligibility of the candidate for the trustee position under Arkansas Code § 24-7-301.~~
- ~~6. ATRS shall verify each signature of each member who signs the petition as an eligible voter.~~
- ~~7. ATRS shall:~~
 - ~~a. Notify each candidate who submits a petition for nomination if his or her petition is accepted; and~~
 - ~~b. Provide the candidate with a list of other members who were certified to participate in the election for the trustee position for which the nomination is sought.~~

~~c. Ballots~~

- ~~1. ATRS or its designee shall conduct a random drawing for a ballot position before ballots are mailed.~~
- ~~2. At least two (2) independent witnesses shall be present to certify the drawing of the ballot position.~~
- ~~3. ATRS shall notify each candidate of the order in which the candidate will be listed on the ballot.~~

~~d. Campaign Materials~~

- ~~1. A candidate's message shall not include information that:
 - ~~A. Would constitute defamation of another candidate; or~~
 - ~~B. Claims or appears to claim the endorsement of ATRS or the Board.~~~~
- ~~2. At the request of a candidate, ATRS shall provide a list of the mailing addresses of each eligible voter to the election vendor for the distribution of the candidate's campaign materials.~~
- ~~3. Campaign materials shall be mailed by the election vendor from the election vendor's place of business.~~
- ~~4. All postage for campaign materials shall be paid for by the candidate distributing the campaign materials.~~

~~VI Rules on Trustee Elections~~

~~a. Election Vendor~~

- ~~1. ATRS shall employ an independent election vendor to conduct the trustee elections.~~

~~b. Ballots~~

- ~~1. ATRS shall publish ballots and submit the published ballots to the election vendor by March 15 for mailing to the address of record for each member who is eligible to vote in the election.~~
- ~~2. A completed ballot shall be counted if it is received by the election vendor on or before April 15.~~
- ~~3. The election vendor shall count only ballots that are correctly completed.~~

~~c. Uncontested Elections~~

- ~~1. If any position receives only one (1) nomination and the position is uncontested, the Board at its next regular or special meeting may certify the~~

~~nomination and declare the candidate duly elected as a trustee before the trustee's term begins.~~

~~d. Run-off Elections~~

- ~~1. The election vendor shall certify to ATRS, by April 20, the election results for a position that is not subject to a run-off election.~~
- ~~2. A run-off election shall be held between the two (2) candidates who receive the highest number of votes for a trustee position if:
 - ~~A. The election vendor certifies the outcome of the trustee election; and~~
 - ~~B. A single candidate does not receive at least fifty percent (50%) of the votes cast by eligible voters.~~~~
- ~~3. The election vendor shall mail run-off ballots to each member who is eligible to vote in the election on or before May 1.~~
- ~~4. Completed ballots for a run-off election that are received by the election vendor after June 1 shall not be counted.~~
- ~~5. The election vendor shall certify the results of a run-off election to ATRS by June 5~~

~~e. Election Result Challenge~~

- ~~1. A candidate who is included on the ballot may challenge the election vendor's certified results for an elected trustee position by submitting a written challenge to the ATRS Executive Director within five (5) calendar days of the date on which the election results are certified by the election vendor.~~
- ~~2. A written challenge to the election vendor's certified results for an election shall not be considered if it is submitted more than (5) calendar days after the date on which the election results are certified by the election vendor.~~
- ~~3. If a candidate challenges the election results, the election process shall be suspended for the same number of days that the resolution of the challenge requires, and the remaining election schedule shall be adjusted accordingly.~~
- ~~4. After a written challenge to a certified election result is received by ATRS, the Board shall hold a special meeting to consider the challenge.~~
- ~~5. The ATRS Executive Director shall issue an ATRS recommendation to the Board along with the administrative record relating to the certified election results of the position being challenged.~~

~~f. Election Schedule — Official Dates~~

1. ~~For any fixed date in the election schedule that falls on a holiday or a weekend, the official date shall become the next business day.~~

~~g. Beginning of Elected Trustee Terms~~

1. ~~Upon completion of an election, all elected trustee terms, except for special elections, shall begin on July 1 following the election.~~

~~VII. Board Procedures to Fill Unexpired Terms for Elected Trustees~~

~~a. Notice~~

~~ATRS staff shall notify the Board of a resignation or vacancy by other cause in a trustee position as soon as possible after ATRS staff has knowledge of the resignation or vacancy by other cause.~~

~~b. Board Action Upon Receiving Vacancy Notice~~

1. ~~The Board shall take appropriate action authorized by law to fill the vacancy.~~
2. ~~The Board, by majority vote, may appoint a trustee until the next ATRS election.~~

~~c. Scheduling and Notice of Special Election~~

1. ~~A special election to fill a trustee position caused by resignation or vacancy by other cause shall be scheduled and held if the Board, by majority vote, determines that the vacancy should be filled by a special election.~~
2. ~~If an elected trustee position is declared vacant by the Board and the Board determines that the vacancy should be filled by a special election, ATRS shall:~~
 - A. ~~Publish notice that a special election shall be held; and~~
 - B. ~~Announce the schedule for the special election.~~
3. ~~The schedule for the special election shall include the following:~~
 - A. ~~The date the vacancy occurred and position being vacated;~~
 - B. ~~The time period for circulating petitions for nominating signatures;~~
 - C. ~~The deadline for filing petitions with ATRS;~~
 - D. ~~The date ATRS will verify the validity of petitions;~~
 - E. ~~The date ballots will be sent to eligible voters;~~
 - F. ~~The election date; and~~
 - G. ~~The date the term shall begin.~~

4. ~~ATRS may follow or use as a guideline the rules concerning the publishing of public notice in this ATRS Rule 4 VII for publishing notice during a special election.~~

~~VIII. Term of Elected Trustee Office and Vacancies~~

~~a. Duration of Term~~

1. ~~The term of office of each elected trustee shall be six (6) years unless the trustee is elected in a special election.~~
2. ~~A trustee who is elected in a special election shall serve for the remainder of the six-year term of the vacating trustee.~~
3. ~~A trustee who is appointed to the Board shall serve until the next system election that is held to fill the trustee position to which the trustee was appointed.~~
4. ~~Each trustee shall continue to serve as trustee until his or her term expires unless he or she resigns or is otherwise ineligible under this ATRS Rule 4.~~
5. ~~In a year in which a six-year term of a trustee expires, the position shall be filled under the regular election schedule in this rule.~~

~~IX. Rules on Elected Trustee Vacancies~~

~~a. Ineligibility of Active Member Trustee~~

1. ~~An active member trustee shall be ineligible to serve if he or she:~~
 - A. ~~Becomes inactive;~~
 - B. ~~Retires; or~~
 - C. ~~Changes his or her employment category during his or her term of office and the employment category is a requirement of the trustee position.~~

~~b. Ineligibility of Retiree Member Trustee~~

1. ~~A retiree member trustee shall be ineligible to serve after becoming an active member.~~

~~d. Trustee Absence from Board Meetings~~

1. ~~A trustee vacancy may occur if a trustee is absent from meetings.~~
2. ~~The Board or its designee shall notify the trustee after the trustee's second consecutive absence.~~
3. ~~The Board shall vote to declare, by resolution, a position vacant if:~~
 - A. ~~A trustee has three (3) consecutive unexcused absences from regular meetings of the Board.~~

- i. ~~An absence that is excused by a majority of the members of the Board shall not be counted towards a vacancy.~~
- ii. ~~Attendance on either day of a two-day meeting of the Board is sufficient to meet the attendance requirement for the two-day meeting of the Board;~~
- B. ~~A trustee becomes ineligible to serve on the Board due to a change in status under Arkansas Code § 24-7-302 that results in the trustee being absent from three (3) consecutive regular meetings of the Board before the expiration of the trustee's term; or C. A trustee resigns or dies.~~
- 4. ~~If the Board declares a vacancy by resolution as provided under this ATRS Rule 4 IX, the Board may vote to hold a special election to fill an unexpired term using the Board's procedures to fill unexpired terms for elected trustees.~~
- 5. ~~If the Board does not certify a vacancy by resolution under this ATRS Rule 4 IX, the vacancy shall be filled, using approved election procedures for the position, during the next annual ATRS election held after the expiration of the elected trustee's term.~~

HISTORY

Approved:	May 10, 2000	4-2
Amended:	April 26, 2007	4-1
	February 11, 2008	4-1, 4-2
	December 18, 2009	4-1, 4-2
	July 1, 2011	4-2 (Emergency)
Adopted:	August 8, 2011	4-2
Effective:	November 11, 2011	4-2
Approved by Board:	October 5, 2015	4-1
Amended:	February 1, 2016	4-1
Effective:	February 10, 2016	4-1
Effective:	August 5, 2019-May	Rule 4
Effective:	20, 2022	Rule 4



Public Comments

Proposed Rule 6 – Membership and Employer Participation

1. Page 5, § 6-108(c)(2).

- a. **ATRS Staff Comment:** Should § 6-108(c)(2) read “**A new employee of a PSHE**” instead of “**An employee of a PSHE employer**”?
- b. **Response:** Yes. This recommend change aligns with Ark. Code Ann. § 24-7-1605(a)(2). The rule has been amended.

2. Page 9, § 6-116(b)(3).

- a. **BLR Comment:** In this section, which concerns member contracts for contributory election, is there a meaningful difference between the terms “prorate” and “adjust”, with respect to determining the number of contracted days a member is credited for?
- b. **Response:** Yes. “Adjust” will allow ATRS to appropriately change the number of contracted days used to determine contributory or noncontributory status without being limited to only using a proration method. No changes to the rule have been made based on this comment.

ATRS Rule 6

Membership and Employer Participation

§ 6-101. Definitions.

As used in this rule:

(1) "Administrator" means:

(A) An employee of a covered employer who is employed in one (1) of the following positions:

(i) Public school superintendent, assistant superintendent, principal, or vice-principal;

(ii) Higher education president, chancellor, or director; or

(iii) Director, president, or vice-president of a community college, vocational or technical school, or educational cooperative; or

(B) An employee who is:

(i) An employee of an education-related agency participating in the Arkansas Teacher Retirement System;

(ii) An active member of the system through his or her employment with the education-related agency; and

(iii) Employed in a GS13 grade position, its equivalent, or above;

(2) "Contributory service" means service on which a member makes or made member contributions to the Arkansas Teacher Retirement System;

(3) "Contributory election" means a member's written election to make member contributions to the Arkansas Teacher Retirement System;

(4) "Noncontributory service" means service on which a member does not make member contributions to the Arkansas Teacher Retirement System and for which the member accepts a reduced retirement annuity for the member's years of noncontributory service;

(5) "Nonteacher" means a member who is not employed as a teacher or administrator;

(6) "Organization" means:

(A) A private entity that:

(i) Provides services to a public school district; and

(ii) Has employees who were previously employed by the public-school district and members of ATRS; or

(B) An educational nonprofit corporation licensed and regulated by the Division of Developmental Disabilities Services of the Department of Human Services;

(7) "Preceding system" means a previous reciprocal retirement system of record;

(8) "Post-secondary higher education plan" or "PSHE plan" means a plan establishing the right of a new employee of a post-secondary or higher education employer to participate in the Arkansas Teacher Retirement System on or after July 1, 2011;

(9) "Reciprocal system" means:

(A) The Arkansas Teacher Retirement System operations as of June 30, 1957, and continued by statutes;

(B) The Arkansas State Highway Employees' Retirement System,

established by Arkansas Code § 24-5-103;

(C) The Arkansas Public Employees' Retirement System established by Arkansas Code § 24-4-103;

(D) The Arkansas State Police Retirement System established by Arkansas Code § 24-6-203;

(E) The Arkansas Judicial Retirement System established by Arkansas Code § 24-8-201;

(F) The Arkansas District Judge Retirement System established by Arkansas Code §§ 24-8-801[repealed] 24-8-824 [repealed];

(G) The Arkansas Local Police and Fire Retirement System provided for under Arkansas Code § 24-10-101; or

(H) An alternate retirement plan **as defined by Arkansas Code § 24-7-202** or an alternate retirement plan for an agency that, through a state reorganization or transformation plan, may be assigned the duties under one (1) or more of the agencies listed in § 6-101(a)(9)(A)-(H);

(10) "State employer" means:

(A) A public employer whose employees are covered under the:

(i) Arkansas Teacher Retirement System;

(ii) Arkansas State Highway Employees' Retirement System (Arkansas Code § 24-5-103);

(iii) Arkansas Public Employees' Retirement System (Arkansas Code § 24-4-103);

(iv) Arkansas State Police Retirement System (Arkansas Code § 24-6-203);

(v) Arkansas Judicial Retirement System (Arkansas Code § 24-8-201); or

(vi) Arkansas District Judge Retirement System (Arkansas Code §§ 24-8-801[repealed] — 24-8-824 [repealed]); or

(B) A public employer that **has an alternate retirement plan as defined by Arkansas Code § 24-7-202**; or

(C) A public employer that is an agency that, through a state reorganization or transformation plan, may be assigned the duties of one (1) or more of the agencies listed in this § 6-101(a)(9)(A)-(B);

(11) "Succeeding system" means the current reciprocal retirement system of record that follows a person's membership in a preceding retirement system; and

(12) "Teacher" means a person employed by a school for the purpose of giving instruction and whose employment requires state teaching licensure.

§ 6-102. Confidentiality of member accounts.

(a) As provided by the Arkansas Teacher Retirement System's Code of Ethics, the system shall keep each member's salary, employment history, retirement account, and other personal data or other information compiled by the system for purposes of establishing and maintaining the member's retirement account confidential.

(b) All member information compiled by the system for the purpose of establishing and maintaining the member's retirement account shall not be disclosed to a third-party unless:

- (1) The member provides the system with his or her written consent;
 - (2) A valid legal process requires the disclosure of the member's information;
 - (3) Disclosure is necessary for the proper operation and administration of the system and a confidentiality agreement authorizing the disclosure has been executed by the system and the person or entity that will receive the information; or
 - (4) Disclosure of the member's information is authorized by statute.
- (c) Individual member records that are kept for the purpose of compiling information for a member's retirement or Social Security records shall not be open to the public under Arkansas Code § 24-4-1003.

§ 6-103. Submission deadlines.

- (a) Unless otherwise provided by the law, rules, or policy applicable to the Arkansas Teacher Retirement System, any application, form, or other document that is required to be submitted to the system by a specified deadline shall be accepted as timely submitted if the application, form, or other document is e-mailed, faxed, or has a postmark that is on or before the submission deadline.
- (b) If a deadline to submit an application, form, or other document to the system falls on a Saturday, Sunday, or Arkansas State Holiday, the deadline shall be extended to the next business day immediately following the Saturday, Sunday, or Arkansas State Holiday.

§ 6-104. Employee membership in another state retirement system.

Excluding service as a member of the General Assembly, an employee who is eligible for membership in the Arkansas Teacher Retirement System is ineligible for membership in another state retirement system while he or she is employed in a position covered by the Arkansas Teacher Retirement System.

§ 6-105. Erroneous employee membership enrollment.

(a)(1) An employee who was erroneously enrolled in the Arkansas Teacher Retirement before January 1, 1979, shall continue to be a member of the Arkansas Teacher Retirement System if the employee's contributions were not refunded before July 1, 1979.

(2) The employee shall:

(A) Receive service credit for all paid membership service in the Arkansas Teacher Retirement System and any free service creditable under Acts 1973, No. 427 as amended; and

(B) Be entitled to reciprocal service credit as provided by Arkansas Code §§ 24-7-401 — 24-7-408.

(b) Effective July 1, 1979, the Arkansas Teacher Retirement System shall not:

(1) Be required to correct the state retirement system membership of an employee who was erroneously enrolled in another state retirement system before January 1, 1979; and

(2) Accept an employee who was erroneously enrolled in another state retirement system before January 1, 1979, as a member of the Arkansas Teacher Retirement System unless the employee's contributions were refunded before July 1, 1979.

(c)(1) An employee who is erroneously enrolled in a state retirement system on or after January 1, 1979, may elect to remain a member of the system of record or become a member of the eligible retirement system.

(2) If the Arkansas Teacher Retirement System discovers that an employee is erroneously enrolled in another state retirement system on or after January 1, 1979, the Arkansas Teacher Retirement System shall notify both the state employer and employee that the:

(A) Employee is erroneously enrolled in the state retirement system; and

(B) Error may be corrected as provided by Acts 1991, No. 13 or Arkansas Code § 24-2-302 et seq.

§ 6-106. Membership eligibility — Janitors, bus drivers, and cafeteria workers.

An employee shall continue to be a member of the Arkansas Public Employees' Retirement System if the employee:

(1) Was employed before July 1, 1989, as a school janitor, bus driver, or cafeteria worker;

(2) Was enrolled in the Arkansas Public Employees Retirement System under the provision of Acts 1965, No. 63;

(3) Was promoted to a position of school maintenance worker or supervisor, bus mechanic or transportation supervisor, or cafeteria manager, respectively; and

(4) Remains employed in the position to which he or she was promoted.

§ 6-107. Membership eligibility — Nonteaching service employees.

(a) Effective July 1, 2001, an employee whose nonteaching service began before July 1, 1989, and is covered or coverable by the Arkansas Public Employees' Retirement System may elect to be covered by the Arkansas Teacher Retirement System.

(b) An employee shall submit his or her election to be covered by the Arkansas Teacher Retirement System before May 31 on a form provided by the Arkansas Teacher Retirement System.

(c) In accordance with Arkansas Code § 24-7-501, an employee's timely submitted election to be covered by the Arkansas Teacher Retirement System is effective on July 1 of the following year.

§ 6-108. Membership eligibility — College plans.

(a)(1) A member of the Arkansas Teacher Retirement System who was employed by a nonmandatory employer before July 1, 2011, may continue to participate in the system instead of an alternative program offered by the nonmandatory employer if the member continues providing consistent service to the nonmandatory employer.

(2) A nonmandatory employer shall be considered a post-secondary or higher education employer or PSHE employer if the nonmandatory employer enrolls a new eligible member with the system on or after July 1, 2011.

(3) If an eligible nonmandatory employer college elects to offer participation in the Arkansas Teacher Retirement System to its employees, the nonmandatory employer shall report information regularly to the system, on forms approved by the system, as required or permitted by the law applicable to the system.

(b)(1) A PSHE employer may elect to offer participation in the Arkansas Teacher

Retirement System to its employees by fulfilling the requirements of Arkansas Code § 24-7-1605.

(2) In addition to completing and submitting the standard reporting forms required by the system, a PSHE Employer shall provide supplemental reports on any form required, approved, and adopted by the Board of Trustees of the Arkansas Teacher Retirement System.

(c)(1) The participation of new employees hired by a PSHE employer after July 1, 2011, is governed by Arkansas Code § 24-7-1601 et seq.

(2) A new employee of a PSHE employer who is hired after July 1, 2011, may participate in a PSHE plan if:

(A) The employee is benefits-eligible as determined by the PSHE employer;

(B) The employee is either:

(i) A vested member of the system at the time of initial employment;

or

(ii) A non-vested member of the system who meets the requirements of a less restrictive PSHE plan adopted by the specific PSHE employer; and

(C) The employee signs an irrevocable PSHE plan participation form provided by the system.

(3) A PSHE plan employee shall remain a member of the system as long as he or she is employed by a PSHE employer.

(4) A PSHE plan employee's election to participate in the system is irrevocable unless the PSHE plan employee obtains a termination refund from the system after his or her election to participate.

§ 6-109. Employer participation — Review of employer participation.

(a) This section applies to an employer that participates in the Arkansas Teacher Retirement System as provided under Arkansas Code § 24-7-202.

(b) Every five (5) years from the effective start date of an employer's participation in the system, the Executive Director of the Arkansas Teacher Retirement System shall review the employer's participation in the system to ensure that the employer meets both federal and state requirements for participation and continued participation in the system.

(c) The executive director's determination concerning whether or not an employer meets the requirements for continued participation in the system shall be presented to the Board of Trustees of the Arkansas Teacher Retirement System for review and appropriate action by the board.

§ 6-110. Employer participation — Application for participation.

(a) An employer that would prefer to participate in and have its employees become members of the Arkansas Teacher Retirement System may submit a written application to the Executive Director of the Arkansas Teacher Retirement System.

(b) An employer's application for participation in the system shall:

(1) Specify a proposed effective date for participation in the system; and

(2) Include the following information and materials:

(A) A certified copy of the articles of incorporation, bylaws, and other organizational documents of employer;

(B) A copy of the employer's:

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

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

(C) A copy of the employer's most recent three (3) years' federal and state income tax returns;

(D) A description of the employer's sources of funding, including the percentage of the funds that is provided by the federal or state government and the type of government funding provided;

(E) A description of how the employer's board of directors or board of trustees is selected and whether any governmental agency has input in the selection of the board members;

(F) A description of the types of services provided by the employer; and

(G) A description of each government agency that would be responsible for providing the types of services provided by the employer if the employer did not provide the services.

(c)(1) After the system reviews the employer's application and accompanying information and materials, the system shall:

(A) Determine whether an Internal Revenue Service ruling or IRS Ruling should be requested concerning whether or not the participation of the employees of the employer jeopardizes the system's status as a governmental plan; and

(B) Request any necessary additional information and statements from the employer if the system determines that an IRS Ruling should be requested.

(2) The employer shall provide the system with any additional information and statements requested by system in relation to the IRS Ruling.

(3) The employer shall pay the system three thousand dollars (\$3,000) or the actual cost for fees and costs associated with obtaining the IRS Ruling if the system determines that an IRS Ruling should be requested.

(d)(1) The Board of the Arkansas Teacher Retirement System shall consider and vote on an application for employer participation or continued participation.

(2) When considering an application for employer participation, the board:

(A) Shall consider any relevant constitutional arguments brought to the attention of the executive director concerning the employer's application for employer participation;

(B) Shall consider Rev. Rul. 89-49; and

(C) May consider any other relevant rulings issued by the Internal Revenue Service or the Department of Labor.

§ 6-111. Employer participation — Education-related agencies or organizations.

(a) A person who is employed by an education-related agency or organization is eligible to become a member of the Arkansas Teacher Retirement System if:

(1) The following applies to the person:

(A) The person is employed in a position with an education-related agency or organization;

(2) The person's employment is related to:

- (A) Training public school employees or school board members;
- (B) Teaching public school students; or
- (C) Adult education programs;
- (3) The person's employment is unrelated to private schools;
- (4) The person is or has been a member of the system for a minimum of five (5) years; and
- (5) The person elects to become or remain a member of the system;
- (2) The Board of the Arkansas Teacher Retirement System determines that the participation of the employees employed by the education-related agency or organization will not:
 - (A) Impair the system's legal status, including:
 - (i) The system's tax-qualified and governmental plan status under the Internal Revenue Code, 26 U.S.C. § 1 et seq.; and
 - (ii) The system's governmental plan status under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq.;
 - (iii) Subject the system to additional federal requirements;
 - (iv) Have a substantial adverse impact on the system's actuarial soundness; and
 - (3) The education-related agency or organization:
 - (A) Elects to participate in the system;
 - (B) Assumes responsibility for employer contributions;
 - (C) Assumes responsibility for fees for obtaining IRS Rulings or Employee Retirement Income Security Act of 1974 opinions; and
 - (D) Is approved as a covered employer by the board.
- (b) An education-related agency or organization shall:
 - (1) Become a covered employer at the time that an employee elects to become or remain a member of the system; and
 - (2) Be considered a covered employer only for each employee who elects to become or remain a member of the system.

§ 6-112. Employer participation — Private providers.

Effective July 1, 1997, if a public school district privatizes any of its services, a person who is or was employed by the public school district in one (1) or more of the privatized services and who is or has been a member of the Arkansas Teacher Retirement System may elect to remain a member of the system if the:

- (1) The Board of the Arkansas Teacher Retirement System determines that the participation of employees hired by the private provider will not:
 - (A) Impair the system's legal status, including:
 - (i) The system's tax-qualified and governmental plan status under the Internal Revenue Code, 26 U.S.C. § 1 et seq.; and
 - (ii) The system's governmental plan status under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq.;
 - (B) Subject the system to additional federal requirements; or
 - (C) Have a substantial adverse impact on the system's actuarial soundness;
- and
- (2) Private provider assumes responsibility for:

(A) Required employer contributions; and
(B) Fees for obtaining IRS Rulings or Employee Retirement Income Security Act of 1974 opinions.

§ 6-113. Employer participation — Educational nonprofit corporations.

Effective July 1, 1997, a person who is employed by a nonprofit corporation is eligible to become a member of the Arkansas Teacher Retirement System if:

(1) The following applies:

(A) The person is employed in a position with an educational nonprofit corporation that is licensed and regulated by the Division of Developmental Disabilities Services of the Department of Human Services;

(B) The person's employment is related to:

(i) Training public school employees or school board members;
Teaching public school students; or

(ii) Adult education programs; and

(C) The person's employment is unrelated to private schools;

(2) The Board of the Arkansas Teacher Retirement System determines that the participation of employees employed by the educational nonprofit corporation will not:

(A) Impair the system's legal status, including:

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

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

(B) Subject the system to additional federal requirements; or

(C) Have a substantial adverse impact on the system's actuarial soundness;

and

(3) Nonprofit corporation:

(A) Elects to participate in the system;

(B) Assumes responsibility for employer contributions;

(C) Assumes responsibility for fees for obtaining IRS Rulings or Employee Retirement Income Security Act of 1974 opinions; and

(D) Is approved as a covered employer by the board.

§ 6-114. Contributory election.

(a)(1) A person's initial status as a contributory or noncontributory member of the Arkansas Teacher Retirement System shall be determined by the law in effect at the time the person became a member of the system.

(2) All service rendered before July 1, 1986, is contributory service.

(b)(1) A member's contributory status is irrevocable once the member becomes a contributory member of the system.

(2) A contributory member shall not elect to become a noncontributory member.

(c) A contributory election is valid if the contributory election is:

(1) Made on an election form provided by the system; and

(2) Signed by both the member and the covered employer.

(d)(1) If a member makes a contributory election before the preparation of his or her first salary payment in the fiscal year, the contributory election is effective immediately.

(2) If a member makes a contributory election after the preparation of his or her first salary payment in the fiscal year, the contributory election is effective July 1 of the next fiscal year.

§ 6-115. Contributory election — Noncontributory members.

(a)(1) A noncontributory member may make a contributory election.

(2) If a noncontributory member makes a contributory election before the preparation of the first salary payment to the noncontributory member in the fiscal year, the contributory election is effective immediately.

(3) If a noncontributory member makes a contributory election after the preparation of the first payroll containing the first salary payment to the noncontributory member in the fiscal year, the contributory election is effective July 1 of the next fiscal year.

(4) All service rendered after a contributory election is filed with the Arkansas Teacher Retirement System shall be contributory.

(5) A noncontributory member's contributory election that is filed with the system is irrevocable.

(b) An inactive member shall make contributions on his or her full salary if the inactive member:

(1) Was contributory and earned a maximum salary of seven thousand eight hundred dollars (\$7,800); and

(2) Returns to work on or after July 1, 1995.

(c)(1) An inactive member or rescinding retiree may make a contributory election if the inactive member or rescinding retiree:

(A) Was noncontributory; and

(B) Reenters the Arkansas Teacher Retirement System after June 30, 2007.

(2) If the inactive member or rescinding retiree does not make a contributory election, the inactive member or rescinding retiree shall be enrolled in the plan that he or she was enrolled in before reentering the system.

§ 6-116. Contributory election — Member contracts.

(a) A member who is not under contract may make a contributory election.

(b)(1) A member under contract for one hundred eighty-five (185) days or more shall make contributions to the Arkansas Teacher Retirement System.

(2) A member under contract for one hundred eighty-four (184) days or less may make a contributory election.

(3) If a member enters into a contract with a covered employer after the fiscal year starts, the system may prorate or adjust the number of contracted days to appropriately determine whether the member should be classified as a contributory member or a noncontributory member who may make an election to become a contributory member of the system.

(c)(1) Regardless of a member's earlier noncontributory election, an active member whose status changes from nonteacher to teacher or administrator under contract for one hundred eighty-five days (185) or more shall make member contributions to the system.

(2) An active member's change of status from noncontributory to contributory due to his or her status change from nonteacher to teacher or administrator is effective on the

first day of the next fiscal year if the active member:

(A) Changes status from nonteacher to teacher or administrator during a year in which the active member's service has already been reported as noncontributory; and

(B) Is under contract for one hundred eighty-five (185) days or more.

§ 6-117. Contributory election — State agency employees.

(a) A full-time employee of a state agency covered by the Arkansas Teacher Retirement System shall be contributory.

(b)(1) A part-time employee of a state agency covered by the system shall be noncontributory.

(2) A part-time employee of a state agency covered by the system may make a contributory election.

§ 6-118. Contributory election — Employer reporting errors.

(a)(1) A member shall be considered to be noncontributory for the first year of service with a covered employer if the member:

(A) Was an inactive member who returned to covered employment as an active member after July 1, 1999; and

(B) Is reported incorrectly as noncontributory by his or her covered employer for his or her first year of service with the covered employer.

(2) The Arkansas Teacher Retirement System shall notify the covered employer of the member's contributory status.

(3) The member shall begin making contributions to the system effective the next July 1 following the member's first year of service with the covered employer.

(b)(1) A member shall be considered to be noncontributory for his or her first year of service with a covered employer if the member is a new member of the system and incorrectly reported as noncontributory by his or her covered employer for the first year.

(2) The system shall notify the covered employer of the member's contributory status.

(3) The member shall begin making contributions to the system effective the next July 1 following the member's first year of service with the covered employer and the covered employer shall correctly report the member as contributory.

§ 6-119. Reciprocal service credit.

(a) A member who leaves a position covered by the Arkansas Teacher Retirement System, becomes employed by a reciprocal system, and files a reciprocal service agreement shall become an inactive member of the Arkansas Teacher Retirement System and may be eligible for an annuity benefit according to the annuity benefit formula in effect at the time of the member's effective retirement date.

(b) Minimum benefits under Acts 1965, No. 488, Arkansas Code § 24-2402(5)(E), as amended, for reciprocal service shall not apply unless a member has five (5) or more years of credited service in the Arkansas Teacher Retirement System.

(c)(1) If the Arkansas Teacher Retirement System is a member's preceding system, the Arkansas Teacher Retirement System shall not pay annuity benefits to the member under reciprocity unless the member:

(A) Attains the normal retirement age; or

(B) Leaves his or her employment with his or her state employer.

(2) If the Arkansas Teacher Retirement System is a member's preceding system, the member, after attaining the normal retirement age, is eligible to apply for retirement benefits without leaving his or her employment with his or her last state employer.

(3) The member's annuity benefit payments shall begin after the member attains the normal age of retirement or on the first day of the month following the month in which the member's application is filed, whichever occurs last.

(4) The Arkansas Teacher Retirement System shall only consider service credited to the member and salaries earned by the member before the member's effective retirement date to calculate the member's annuity benefit.

§ 6-120. Reciprocal service credit — Calculation of service credit.

If a member of the Arkansas Teacher Retirement System has service credited during the same fiscal year with another reciprocal system and the combined service is greater than one (1) year of service credit, the Arkansas Teacher Retirement System shall credit service as follows:

(1) If credit by the reciprocal system is less than three (3) months, the Arkansas Teacher Retirement System shall credit service for one (1) year;

(2) If credit by the reciprocal system is three (3) or more months but less than six (6) months, the Arkansas Teacher Retirement System shall credit service for three-fourths (3/4) year;

(3) If credit by the reciprocal system is six (6) or more months but less than nine (9) months, the Arkansas Teacher Retirement System shall credit service for one-half (1/2) year; and

(4) If credit by the reciprocal system is for nine (9) months but less than twelve (12) months, the Arkansas Teacher Retirement System shall credit service for one-fourth (1/4) year.

§ 6-121. Reciprocal service credit — Contributions and repayments.

(a) While an employee participates in a reciprocal system, back contributions, additional contributions, and repayment of refund payments made to the Arkansas Teacher Retirement System shall be made in accordance with the payment method provisions of ATRS Rule 8.

(b) Employer pick-up is prohibited while the employee works for an employer that is not a covered employer of the Arkansas Teacher Retirement System.

§ 6-122. Reciprocal service credit — Concurrent service.

(a) Unless the reciprocal system is the Arkansas Public Employees' Retirement System or an alternate retirement plan, beginning July 1, 2013, the Arkansas Teacher Retirement System shall allow a member who earns concurrent service in both the Arkansas Teacher Retirement System and a reciprocal system to receive full service credit in the Arkansas Teacher Retirement System without reduction of service credit due to the concurrent service.

(b) The Arkansas Teacher Retirement System shall not recognize concurrent service added to a member's credited service in the Arkansas Teacher Retirement System that,

for the purpose of vesting, retirement eligibility, or calculating final average salary, either:

(1) Credits the member with more than one (1) year of credited service for a fiscal year; or

(2) Combines salary earned in the Arkansas Teacher Retirement System and a reciprocal system in a fiscal year.

(c)(1) A member may waive all or part of the concurrent service credited to him or her in the Arkansas Teacher Retirement System and have the concurrent service credited to him or her under a reciprocal system if:

(A) The member acknowledges that the waiver is a voluntary surrender of the member's concurrent service credit in the Arkansas Teacher Retirement System;

(B) The member acknowledges that the waiver cancels his or her concurrent service credit in the Arkansas Teacher Retirement System; and

(C) The member submits to the Arkansas Teacher Retirement System a concurrent service credit waiver form approved by the Arkansas Teacher Retirement System.

(2) If a member waives all or part of the concurrent service credited to him or her in the Arkansas Teacher Retirement System and has the concurrent service credited to him or her under a reciprocal system, the Arkansas Teacher Retirement System may refund the employer-accrued contributions and employee-accrued contributions.

§ 6-123. Reciprocal service credit — Alternate retirement plans.

(a) A member of the Arkansas Teacher Retirement System may establish reciprocal service credit from an alternate retirement plan if he or she completes and submits a request to establish the reciprocal service credit on a form approved by the Arkansas Teacher Retirement System.

(b) Distributions from an alternate retirement plan may prevent reciprocal service from being established if the Arkansas Teacher Retirement System is unable to verify that the withdrawals were made without penalty under Internal Revenue Service guidelines concerning rollovers to eligible plans, withdrawals, that are not subject to early withdrawal, etc.

§ 6-124. Reciprocal service credit — Arkansas Public Employees' Retirement System.

From July 1, 1991, until December 31, 1991, an active member of the Arkansas Public Employees' Retirement System may establish reciprocity between the Arkansas Public Employees' Retirement System and the Arkansas Teacher Retirement System and purchase out-of-state service rendered before January 1, 1978, in accordance with Arkansas Code §§ 24-7-601 and 24-7-603, if the active member:

(1) Was an active member of the Arkansas Teacher Retirement System before January 1, 1978; and

(2) Became a member of the Arkansas Public Employees' Retirement System within thirty (30) days of leaving the Arkansas Teacher Retirement System.

§ 6-125. Reciprocal service credit — Arkansas Rehabilitation Services.

(a) Effective July 1, 1993, for a ninety (90) day period, an employee of the Arkansas Rehabilitation Services may transfer his or her membership from the Arkansas Public

Employees' Retirement System to the Arkansas Teacher Retirement System under Acts 1993, No. 574.

(b) An employee who transfers his or her membership from the Arkansas Public Employees' Retirement System to the Arkansas Teacher Retirement System shall establish reciprocity between the two (2) systems and Acts 1977, No. 793 shall not apply to the employee.

§ 6-126. Reciprocal service credit — Department of Human Services.

(a) The law applicable to the Arkansas Teacher Retirement System shall be used to determine the annuity benefits to which an employee is entitled for service provided before or after Acts 1977, No. 793 if the employee:

(1) Was an employee of the Department of Human Services and became a member of the Arkansas Public Employees' Retirement System under the provisions of Acts 1977, No. 793, as amended; and

(2) Left employment with the Department of Human Services and became employed in a position covered by the Arkansas Teacher Retirement System.

(b) A member meeting the description of § 6-125(a) may establish reciprocity under Acts 1965, No. 488, as amended.

§ 6-127. Reciprocal service credit — Effective date of benefits.

(a)(1) If the Arkansas Teacher Retirement System is a member's preceding system, the member's annuity benefit payments shall begin after the member attains the normal age of retirement or on the first day of the month following the month in which the member's retirement application was filed, whichever is later.

(2) If the member has combined service of at least twenty-five (25) years, the normal retirement age requirement shall not apply.

(3)(A) Deferred annuity benefit payments to the member shall not begin before the date on which the member leaves employment with his or her last state employer unless the member attains the normal retirement age.

(B) A member is entitled to a deferred annuity benefit if the member:

(i) Leaves his or her state employment in a position that is covered by one (1) of the reciprocal systems; and

(ii) Enters subsequent state employment in a position that is covered by another of the reciprocal systems.

(b)(1) If the Arkansas Teacher Retirement System is the member's preceding system, the member is eligible to apply for retirement benefits without leaving employment with his or her last state employer upon attaining the normal retirement age.

(2) The member's annuity benefit payments shall begin after the member attains the normal retirement age or on the first day of the month following the month in which the member's retirement application is filed, whichever is later.

(3) The Arkansas Teacher Retirement System shall use only service credited to the member and salaries earned by the member before the member's effective retirement date to calculate the member's annuity benefit.

(c)(1) A member is eligible to apply for disability retirement benefits from each reciprocal system in which the member has credited service according to the rules for eligibility promulgated by that reciprocal system.

(2) The member’s disability retirement benefits payable by the preceding reciprocal system shall:

(A) Begin the first day of the month following the month in which the member’s disability retirement application is filed with the preceding system; and

(B) Not begin before the date on which the member leaves employment with his or her last state employer.

§ 6-128. Reciprocal service credit — Survivor annuity benefits.

(a) If survivor annuity benefits are payable by more than one (1) reciprocal system to an eligible survivor of a deceased member, a survivor who receives annuity benefit payments shall not receive, as a percentage of the deceased member’s final salary or as a minimum dollar amount, more than the largest amount payable by a single reciprocal system.

(b)(1) The Arkansas Teacher Retirement System shall prorate minimum benefits payable to a survivor with other reciprocal systems that have a minimum benefit provision in their plans.

(2) Each reciprocal system shall pay a proportionate share of the minimum benefit based on the ratio of the member’s service in that reciprocal system to the member’s total service in all the reciprocal systems.

(c) If the reciprocal system is an alternate retirement plan, survivor annuity benefits shall be contingent on whether the:

(1) Alternate retirement plan provides survivor annuity benefits; and

(2) Member selected survivor annuity benefits as a benefit under the alternate retirement plan.

Contributory and Noncontributory Service Chart by Year of Entry into System

(Elections and Re-entry may affect Individual Member Service Status)

<u>All Members</u>		
<u>1937 - 1986</u>	<u>All Members</u>	<u>Contributory</u>
<u>1986 - 1991</u>	<u>All Members</u>	<u>Contributory unless elect Noncontributory</u>
<u>1991 - 1999</u>	<u>All Members</u>	<u>Noncontributory unless elect Contributory</u>
<u>School District Employees</u>		
<u>1999 - 2007</u>	<u>Active</u>	<u>One-time election to be Contributory or Noncontributory, no election made by 7/1/2000, status on 6/30/2000</u>

	<u>Inactive</u>	<u>One-time election to be Contributory or Noncontributory upon reentering system, no election then enrolled in the plan that he or she was enrolled in before reentering ATRS</u>
	<u>New</u>	<u>Contract one hundred eighty-one (181) days or more - Contributory</u> - <u>Contract one hundred eighty (180) days or less - Noncontributory, may elect Contributory, election must be made one (1) year from hire date</u> - <u>No contract, member must be noncontributory</u>
<u>2005 - 2021</u>	<u>Nonteacher to Teacher or Administrator</u>	<u>Contract one hundred eighty-one (181) days or more - Contributory. If position change happens during the year, election is effective first of next fiscal year</u> - <u>All Noncontributory members may elect Contributory</u>
<u>2007 - 2021</u>	<u>All Members</u>	<u>May elect Contributory</u>
	<u>New</u>	<u>Contract one hundred eighty-one (181) days or more - Contributory</u> - <u>Contract 180 days or less –</u> • <u>Noncontributory, may elect Contributory</u> • <u>No contract — Noncontributory, may elect Contributory</u>
	<u>Inactive</u>	<u>May elect Contributory</u>
<u>2021</u>	<u>Nonteacher to Teacher or Administrator</u>	<u>Contract one hundred eighty-five (185) days or more - Contributory. If position change happens during the year, election is effective first of next fiscal year.</u> <u>All Noncontributory members may elect Contributory</u>
<u>2021 -</u>	<u>All Members</u>	<u>May elect Contributory</u>

	<u>A member with</u>	<u>Contract one hundred eighty-five (185) days or more - Contributory</u>
	<u>A member with</u>	<u>Contract one hundred eight-four (184) days or less - Noncontributory, may elect Contributory</u>
	<u>New</u>	<u>No contract – Noncontributory, may elect Contributory unless already Contributory</u>
	<u>Inactive</u>	<u>May elect Contributory</u>
<u>State Agency Employees</u>		
<u>1999 - 2007</u>	<u>Full-Time Employment</u>	<u>Must be Contributory</u>
	<u>Part-Time Employment</u>	<u>Must be Noncontributory</u>
<u>2007 -</u>	<u>Full-Time Employment</u>	<u>Must be Contributory</u>
	<u>Part-Time Employment</u>	<u>Noncontributory, may elect to be Contributory</u>

Authority: Arkansas Code §§ 24-2-202, 24-2-401 — 24-2-408, 24-7-202, 24-7-406, 24-7-501, 24-7-502, and 24-7-1601 — 24-7-1607.

History

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ATRS RULE 6
MEMBERSHIP AND EMPLOYER PARTICIPATION

~~Arkansas Code §§ 24-2-202, 24-2-401 — 24-2-408, 24-7-202, 24-7-406,
24-7-501, 24-7-502, and 24-7-1601 — 24-7-1607~~

I. Definitions

- a. ~~"Administrator" means:~~
1. ~~An employee of a covered employer in one (1) of the following positions:~~
 - A. ~~Public school superintendent, assistant superintendent, principal, or vice principal;~~
 - B. ~~A higher education president, chancellor, or director;~~
 - C. ~~A community college, vocational or technical school, or educational cooperative director, president, or vice president; or~~
 2. ~~An employee of an education-related agency participating in the Arkansas Teacher Retirement System (ATRS) who is an active member employed in a GS13 grade position, its equivalent, or above;~~
- b. ~~"Contributory service" means service on which a member makes or made member contributions to ATRS;~~
- c. ~~"Contributory election" means a member's written election to make member contributions to ATRS;~~
- d. ~~"Noncontributory service" means service on which a member does not make member contributions to ATRS and for which the member accepts a reduced retirement annuity for the member's years of noncontributory service;~~
- e. ~~"Nonteacher" means a member who is not a teacher or administrator;~~
- f. ~~"Organization" means:~~
1. ~~A private entity that:~~
 - A. ~~Provides services for a public school district; and~~
 - B. ~~Has employees who were previously employed by the public school district and members of ATRS; or~~
 2. ~~An educational nonprofit corporation licensed and regulated by the Division of Developmental Disabilities Services of the Department of Human Services;~~
- g. ~~"Preceding System" means a previous reciprocal retirement system of record;~~
- h. ~~"Post-secondary higher education plan" or "PSHE plan" means a plan establishing the right of a new employee of a post-secondary or higher education employer to participate in ATRS on or after July 1, 2011;~~
- i. ~~"Reciprocal System" means:~~

- ~~1. ATRS operations as of June 30, 1957, and continued by statutes;~~
 - ~~2. The Arkansas State Highway Employees' Retirement System (ASHERS), established by Arkansas Code § 24-5-103;~~
 - ~~3. The Arkansas Public Employees' Retirement System (APERS) established by Arkansas Code § 24-4-103;~~
 - ~~4. The Arkansas State Police Retirement System (ASPRS) established by Arkansas Code § 24-6-203;~~
 - ~~5. The Arkansas Judicial Retirement System (AJRS) established by Arkansas Code § 24-8-201;~~
 - ~~6. The Arkansas District Judge Retirement System (ADJRS) established by Arkansas Code §§ 24-8-801[repealed] 24-8-824 [repealed];~~
 - ~~7. The Arkansas Local Police and Fire Retirement System (ALOPFI) provided for under Arkansas Code § 24-10-101; or~~
 - ~~8. An alternate retirement plan for:

 - ~~A. A college, university, or the Division of Higher Education provided for under Arkansas Code § 24-7-801 et seq.;~~
 - ~~B. A vocational technical school or the Division of Career and Technical Education, the Adult Education Section of the Division of Workforce Services, the Division of Higher Education, and the Office of Skills Development provided for under Arkansas Code § 24-7-901 et seq.; or~~
 - ~~C. An agency that may be assigned the duties under one (1) or more of the agencies listed in this ATRS Rule 6 I.i.1-8 through a state reorganization or transformation plan;~~~~
- ~~j. "State Employer" means:~~
- ~~1. A public employer whose employees are covered under the:

 - ~~A. ATRS;~~
 - ~~B. ASHERS (Arkansas Code § 24-5-103);~~
 - ~~C. APERS (Arkansas Code § 24-4-103);~~
 - ~~D. ASPRS (Arkansas Code § 24-6-203);~~
 - ~~E. AJRS (Arkansas Code § 24-8-201); or~~
 - ~~F. ADJRS (Arkansas Code §§ 24-8-801[repealed]—24-8-824 [repealed]);~~

~~or~~~~
 - ~~2. A public employer that is:

 - ~~A. A college, university, or the Division of Higher Education whose employees are covered by an alternate retirement plan provided for under Arkansas Code § 24-7-801 et seq.;~~
 - ~~B. A vocational technical school of the Division of Career and Technical Education, the Adult Education Section, and the Office of Skills~~~~

~~Development, whose employees are covered by an alternate retirement plan provided for under Arkansas Code § 24-7-901 et seq.; or~~

~~G. An agency that may be assigned the duties of one (1) or more of the agencies listed in this ATRS Rule 6 I.j.1. and 2. through a state reorganization or transformation plan;~~

~~k. "Succeeding System" means the current reciprocal retirement system of record that follows a person's membership in a preceding retirement system; and~~

~~l. "Teacher" means a person employed by a school for the purpose of giving instruction and whose employment requires state teaching licensure.~~

II. Membership and Employer Participation Rules

~~a. Employee Membership in Another State Retirement System~~

~~1. Excluding service as a member of the General Assembly, an employee who is eligible for membership in ATRS is ineligible for membership in another state retirement system while he or she is employed in a position covered by ATRS.~~

~~b. Erroneous Membership of Employees~~

~~1. Erroneous Enrollment Before January 1, 1979 — Employees~~

~~A. An employee who was erroneously enrolled in ATRS before January 1, 1979, shall continue to be a member of ATRS if the employee's contributions were not refunded before July 1, 1979. B. The employee shall:~~

~~i. Receive service credit for all paid membership service in ATRS and any free service creditable under Acts 1973, No. 427 as amended; and~~

~~ii. Be entitled to reciprocal service credit as provided by Arkansas Code §§ 24-7-401 — 24-7-408.~~

~~2. Erroneous Enrollment on or after January 1, 1979 — Employees~~

~~A. An employee who is erroneously enrolled in a state retirement system on or after January 1, 1979, may:~~

~~i. Elect to remain a member of the system of record; or~~

~~ii. Become a member of the eligible retirement system.~~

~~3. Correction of Erroneous Enrollment Occurring Before January 1, 1979 — ATRS Obligations~~

~~A. Effective July 1, 1979, ATRS shall not:~~

~~i. Be required to correct the state retirement system membership of an employee who was erroneously enrolled in another state retirement system before January 1, 1979; and~~

~~ii. Accept an employee who was erroneously enrolled in another state retirement system before January 1, 1979, as a member of ATRS~~

~~unless the employee's contributions were refunded before July 1, 1979.~~

~~4. Correction of Erroneous Enrollment Occurring on or after January 1, 1979—
ATRS Obligations~~

~~A. If ATRS discovers that an employee is erroneously enrolled in a state retirement system on or after January 1, 1979, ATRS shall notify both the covered employer and employee that the:~~

~~i. Employee is erroneously enrolled in the state retirement system;
and~~

~~ii. Error may be corrected as provided by Acts 1991, No. 13 or
Arkansas Code § 24-2-302 et seq.~~

~~c. Employee Membership Eligibility— School Janitors, Bus Drivers, and
Cafeteria Workers Employed Before July 1, 1989~~

~~1. An employee shall continue to be a member of APERS if the employee:~~

~~A. Was employed before July 1, 1989, as a school janitor, bus driver, or
cafeteria worker;~~

~~B. Was enrolled in APERS under the provision of Acts 1965, No. 63;~~

~~C. Was promoted to a position of school maintenance worker or supervisor,
bus mechanic or transportation supervisor, or cafeteria manager,
respectively; and~~

~~D. Remains employed in the position to which he or she was promoted.~~

~~d. Employee Membership Eligibility— Nonteaching Service Employees~~

~~1. Effective July 1, 2001, an employee whose nonteaching service began before
July 1, 1989, and is covered or coverable by APERS may elect to be covered
by ATRS.~~

~~2. An employee shall submit his or her election to be covered by ATRS before
May 31 on a form provided by ATRS.~~

~~3. An employee's timely submitted election to be covered by ATRS is effective
on July 1 of the following year. (Arkansas Code § 24-7-501(a)(2)(C))~~

~~e. Employee Membership Eligibility— College Plans~~

~~1. Employees of Nonmandatory Employers~~

~~A. A member of ATRS who was employed by a nonmandatory employer
before July 1, 2011, may continue to participate in ATRS instead of an
alternative program offered by the nonmandatory employer if the member
continues providing consistent service to the nonmandatory employer.~~

~~B. A nonmandatory employer shall be considered a post-secondary or higher
education employer (PSHE employer) if the nonmandatory employer
enrolls a new eligible member with ATRS on or after July 1, 2011.~~

~~C. If an eligible nonmandatory employer college elects to offer ATRS participation to its employees, the nonmandatory employer shall report information regularly to ATRS, on forms approved by ATRS, as required or permitted by the law applicable to ATRS.~~

~~2. Employees of PSHE Employers~~

~~A. A PSHE employer may elect to offer ATRS participation to its employees by fulfilling the requirements of Arkansas Code § 24-7-1605.~~

~~B. In addition to standard ATRS reporting forms, a PSHE Employer shall provide supplemental reports on any form required, approved, and adopted by the Board.~~

~~3. PSHE Employees Hired After July 1, 2011~~

~~A. The participation of new employees hired by a PSHE employer after July 1, 2011, is governed by Arkansas Code § 24-7-1601 et seq.~~

~~B. An employee of a PSHE employer who is hired after July 1, 2011, may participate in a PSHE plan if the employee:~~

~~i. Is benefits-eligible as determined by the PSHE employer;~~

~~ii. Is a vested member of ATRS at the time of initial employment;~~

~~iii. Is not a vested member of ATRS, but meets the requirements of a less restrictive PSHE plan adopted by the specific PSHE employer; and~~

~~iv. Signs an irrevocable PSHE plan participation form provided by ATRS~~

~~C. A PSHE plan employee shall remain a member of ATRS as long as he or she is employed by a PSHE employer.~~

~~D. A PSHE plan employee's election to participate in ATRS is irrevocable unless the PSHE plan employee obtains a termination refund from ATRS after his or her election to participate.~~

~~f. Employer Participation in ATRS~~

~~1. Executive Director Review of Employer Participation~~

~~A. This ATRS Rule 6 II.f.1. applies to an employer that participates in ATRS under the provisions of Arkansas Code § 24-7-202(D), (E), or (F).~~

~~B. Every five (5) years from the effective start date of an employer's participation in ATRS, the Executive Director of ATRS (executive director) shall review the employer's participation in ATRS to ensure that the employer meets both federal and state requirements for participation and continued participation in ATRS.~~

~~C. If the executive director determines that an employer no longer meets the requirements for continued participation in ATRS, the executive director shall notify the Board of Trustees of the Arkansas Teachers Retirement System (Board) to allow appropriate review and action by the Board.~~

~~2. Application for Employer Participation~~

~~A. An employer that would prefer to participate in and have its employees become members of ATRS may submit a written application to the executive director.~~

~~B. The application shall:~~

- ~~i. Specify a proposed effective date for participation in ATRS; and~~
- ~~ii. Include the following information and materials:~~
 - ~~a. A certified copy of the articles of incorporation, bylaws, and other organizational documents of employer;~~
 - ~~b. A copy of the employer's:~~
 - ~~1. Most recent three (3) years' annual financial statements, including balance sheet, financial statements, and statement of cash flows; or~~
 - ~~2. If the employer does not have audited financial statements, the year-end compilation reports or internal balance sheet and income statements for the employer;~~
 - ~~c. A copy of the employer's most recent three (3) years' federal and state income tax returns;~~
 - ~~d. A description of the employer's sources of funding, including the percentage of the funds that is provided by federal or state government and the type of government funding provided;~~
 - ~~e. A description of how the employer's board of directors or board of trustees is selected and whether any governmental agency has input in the selection of the board members;~~
 - ~~f. A description of the types of services provided by the employer; and~~
 - ~~g. A description of each government agency that would be responsible for providing the types of services provided by the employer if the employer did not provide the services.~~

~~C. After ATRS reviews the employer's application and accompanying information and materials, ATRS shall:~~

- ~~i. Determine whether an Internal Revenue Service ruling (IRS Ruling) should be requested concerning whether or not the participation of the employees of the employer jeopardizes ATRS' status as a governmental plan; and~~
- ~~ii. Request any necessary additional information and statements from the employer if ATRS determines that an IRS Ruling should be requested.~~

- ~~D. The employer shall provide ATRS with any additional information and statements requested by ATRS in relation to the IRS Ruling.~~
- ~~E. The employer shall pay ATRS three thousand dollars (\$3,000) or the actual cost for fees and costs associated with obtaining the IRS Ruling if ATRS determines that an IRS Ruling should be requested.~~
- ~~F. The Board shall consider and vote on an application for employer participation.

 - ~~i. When considering an application for employer participation, the Board:

 - ~~a. Shall consider any relevant constitutional arguments brought to the attention of the executive director concerning the employer's application for employer participation;~~
 - ~~b. Shall consider Rev. Rul. 89-49; and~~
 - ~~c. May consider any other relevant rulings issued by the Internal Revenue Service or the Department of Labor.~~~~~~

~~3. Employer Participation — Education Related Agency or Organization~~

- ~~A. Pursuant to Arkansas Code § 24-7-202(19)(D), an individual may be eligible to become a member of ATRS if the:

 - ~~i. Individual is employed in a position with an education-related agency or organization;~~
 - ~~ii. Individual's employment is related to:

 - ~~a. Training public school employees or school board members;~~
 - ~~b. Teaching public school students; or~~
 - ~~c. Adult education programs;~~~~
 - ~~iii. Individual's employment is unrelated to private schools;~~
 - ~~iv. Individual is or has been a member of ATRS for a minimum of five (5) years; and~~
 - ~~v. Individual elects to become or remain a member of ATRS.~~~~
- ~~B. A member described in this ATRS Rule 6.II.f.3 may become a member of ATRS if the:

 - ~~i. Board determines, pursuant to rules adopted by the Board, that the participation of employees employed by the education-related agency or organization will not:

 - ~~a. Impair ATRS' legal status, including:

 - ~~1. ATRS' tax-qualified and governmental plan status under the Internal Revenue Code, 26 U.S.C. § 1 et seq.; and~~~~~~~~

~~2. ATRS' governmental plan status under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq.;~~

~~b. Subject ATRS to additional federal requirements;~~

~~c. Have a substantial adverse impact on ATRS' actuarial soundness; and~~

~~ii. Education-related agency or organization:~~

~~a. Elects to participate in ATRS;~~

~~b. Assumes responsibility for employer contributions;~~

~~c. Assumes responsibility for fees for obtaining IRS Rulings or Employee Retirement Income Security Act of 1974 opinions; and~~

~~d. Is approved as a covered employer by the Board according to rules adopted by the Board.~~

~~4. Employer Participation — Private Provider Employees~~

~~A. Pursuant to Arkansas Code § 24-7-202(19)(E), effective July 1, 1997, if a public school district privatizes any of its services, an individual who is or was employed by the public school district in one (1) or more of the privatized services and who is or has been a member of ATRS may elect to remain a member of ATRS if the:~~

~~i. Board determines, pursuant to rules adopted by the Board, that the participation of employees described in this ATRS Rule 6.II.f.4. will not:~~

~~a. Impair ATRS' legal status, including:~~

~~1. ATRS' tax-qualified and governmental plan status under the Internal Revenue Code, 26 U.S.C. § 1 et seq.; and~~

~~2. ATRS' governmental plan status under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq.;~~

~~ii. Subject ATRS to additional federal requirements;~~

~~iii. Have a substantial adverse impact on ATRS' actuarial soundness; and~~

~~iv. Private provider assumes responsibility for:~~

~~a. Required employer contributions; and~~

~~b. Fees for obtaining IRS Rulings or Employee Retirement Income Security Act of 1974 opinions.~~

~~5. Employer Participation — Nonprofit Corporation Employees~~

~~A. Pursuant to Arkansas Code § 24-7-202(19)(F), effective July 1, 1997, an individual who meets the following requirements may be eligible to become a member of ATRS:~~

~~i. The individual is employed in a position with an educational nonprofit corporation that is licensed and regulated by the Division of Developmental Disabilities Services of the Department of Human Services; ii. The individual's employment is related to:~~

~~a. Training public school employees or school board members;~~

~~b. Teaching public school students; or~~

~~c. Adult education programs; and~~

~~iii. The individual's employment is unrelated to private schools.~~

~~B. A member described in this ATRS Rule 6.II.f.5 may become a member of ATRS if the:~~

~~i. Board determines, pursuant to rules adopted by the Board, that the participation of employees employed by the educational nonprofit corporation will not:~~

~~a. Impair ATRS' legal status, including:~~

~~1. ATRS' tax-qualified and governmental plan status under the Internal Revenue Code, 26 U.S.C. § 1 et seq.; and~~

~~2. ATRS' governmental plan status under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq.;~~

~~b. Subject ATRS to additional federal requirements;~~

~~c. Have a substantial adverse impact on ATRS' actuarial soundness; and~~

~~ii. Nonprofit corporation:~~

~~a. Elects to participate in ATRS;~~

~~b. Assumes responsibility for employer contributions;~~

~~c. Assumes responsibility for fees for obtaining IRS Rulings or~~

~~Employee Retirement Income Security Act of 1974 opinions; and~~

~~d. Is approved as a covered employer by the Board according to rules adopted by the Board.~~

III. Contributory Election

a. Contributory Election — Generally

- ~~1. The year in which a person becomes a member of ATRS shall determine whether or not the person is considered a contributory or noncontributory member of ATRS.~~
 - ~~2. A member's contributory status is irrevocable once the member becomes a contributory member of ATRS.~~
 - ~~3. All service rendered before July 1, 1986, is contributory service.~~
 - ~~4. A contributory member shall not elect to become a noncontributory member.~~
 - ~~5. A contributory election is valid if the contributory election is:

 - ~~A. Made on an election form provided by ATRS; and~~
 - ~~B. Signed by both the member and the covered employer.~~~~
 - ~~6. If a member makes a contributory election before the preparation of his or her first salary payment in the fiscal year, the contributory election is effective immediately.~~
 - ~~7. If a member makes a contributory election after the preparation of his or her first salary payment in the fiscal year, the contributory election is effective July 1 of the next fiscal year.~~
- ~~b. Contributory Election — Member Contracts~~
- ~~1. Members Not Under Contract

 - ~~A. A member who is not under contract may make a contributory election.~~~~
 - ~~2. Members Under Contract

 - ~~A. A member under contract for one hundred eighty-five (185) days or more shall make contributions to ATRS.~~
 - ~~B. A member under contract for one hundred eighty-four (184) days or less may make a contributory election.~~~~
 - ~~3. Contributory Elections Based on Status Change from Nonteacher to Teacher or Administrator Under Contract

 - ~~A. Regardless of a member's earlier noncontributory election, an active member whose status changes from nonteacher to teacher or administrator under contract for one hundred eighty-five days (185) or more shall make member contributions to ATRS.~~
 - ~~B. An active member's change from noncontributory status to contributory status due to the status change described in this ATRS Rule III.b.3.A is effective on the first day of the next fiscal year if the active member:

 - ~~i. Changes status from nonteacher to teacher or administrator during a year in which the active member's service has already been reported as noncontributory; and~~
 - ~~ii. Is under contract for one hundred eighty-five (185) days or more.~~~~~~
- ~~c. Contributory Election — Noncontributory Members~~

- ~~1. A noncontributory member may make a contributory election.~~
 - ~~2. If a noncontributory member makes a contributory election before the preparation of the first salary payment to the noncontributory member in the fiscal year, the contributory election is effective immediately.~~
 - ~~3. If a noncontributory member makes a contributory election after the preparation of the first payroll containing the first salary payment to the noncontributory member in the fiscal year, the contributory election is effective July 1 of the next fiscal year.~~
 - ~~4. All service rendered after a contributory election is filed with ATRS shall be contributory.~~
 - ~~5. A noncontributory member's contributory election that is filed with ATRS is irrevocable.~~
- ~~d. Contributory Election — Noncontributory Inactive Members and Rescinding Retirees~~
- ~~1. Previously Contributory Inactive Members~~
 - ~~A. An inactive member shall make contributions on his or her full salary if the inactive member:

 - ~~i. Was contributory and earned a maximum salary of seven thousand eight hundred dollars (\$7,800); and~~
 - ~~ii. Returns to work on or after July 1, 1995.~~~~
 - ~~2. Previously Noncontributory Inactive Members and Retirees~~
 - ~~A. An inactive member or rescinding retiree may make a contributory election if the inactive member or rescinding retiree:

 - ~~i. Was noncontributory; and~~
 - ~~ii. Reenters ATRS after June 30, 2007.~~~~
 - ~~B. If the inactive member or rescinding retiree does not make a contributory election, the inactive member or rescinding retiree shall be enrolled in the plan that he or she was enrolled in before reentering ATRS.~~
- ~~e. Contributory Election — State Agency Employees~~
- ~~1. Full-time Employees~~
 - ~~A. A full-time employee of a state agency covered by ATRS shall be contributory.~~
 - ~~2. Part-time Employees~~
 - ~~A. A part-time employee of a state agency covered by ATRS shall be noncontributory.~~
 - ~~B. A part-time employee of a state agency covered by ATRS may make a contributory election.~~

~~f. Contributory Election—Employer Reporting Errors~~

~~1. Inactive Members~~

- ~~A. ATRS shall consider a member as noncontributory if the member:~~
- ~~i. Was an inactive member who returned to covered employment as an active member after July 1, 1999;~~
 - ~~ii. Is reported incorrectly as noncontributory by his or her covered employer for his or her first year of service with the covered employer.~~

~~B. ATRS shall notify the covered employer of the member's contributory status.~~

~~C. Effective the next July 1, the member shall make contributions to ATRS.~~

~~2. New Members~~

~~A. ATRS shall consider a member as noncontributory for his or her first year of service with a covered employer if the member is a new member of ATRS and incorrectly reported as noncontributory by his or her covered employer for the first year.~~

~~B. ATRS shall notify the covered employer of the member's contributory status.~~

~~C. Effective the next July 1, the member shall make contributions to ATRS and the covered employer shall correctly report the member as contributory.~~

IV. Confidentiality of Member Accounts

~~a. In compliance with the ATRS Code of Ethics, ATRS shall keep each member's salary, employment history, retirement account, and other personal data or other information compiled by ATRS for purposes of establishing and maintaining the member's retirement account confidential.~~

~~b. Disclosure~~

~~1. All member information compiled by ATRS for the purpose of establishing and maintaining the member's retirement account shall not be disclosed to a third-party unless:~~

~~A. The member provides ATRS with his or her written consent; or~~

~~B. A valid legal process requires the disclosure of the member's information.~~

~~2. Individual member records that are kept for the purpose of compiling information for a member's retirement or Social Security records shall not be open to the public under Arkansas Code § 24-4-1003.~~

V. Reciprocal Service Credit

~~a. Generally~~

- ~~1. A member who leaves a position covered by ATRS, becomes employed by a reciprocal system, and files a reciprocal service agreement shall become an inactive member of ATRS and may be eligible for an annuity benefit according to the annuity benefit formula in effect at the time of the member's effective retirement date.~~
 - ~~2. Minimum benefits under Acts 1965, No. 488, Arkansas Code § 24-2402(5)(E), as amended, for reciprocal service shall not apply unless a member has five (5) or more years of credited service in ATRS.~~
 - ~~3. If ATRS is a member's preceding system, ATRS shall not pay annuity benefits to the member under reciprocity unless the member:

 - ~~A. Attains the normal retirement age; or~~
 - ~~B. Leaves his or her employment with his or her state employer.~~~~
 - ~~4. If ATRS is a member's preceding system, the member, after attaining the normal retirement age, is eligible to apply for retirement benefits without leaving his or her employment with his or her last state employer.~~
 - ~~5. The member's annuity benefit payments shall begin after the member attains the normal age of retirement or on the first day of the month following the month in which the member's application is filed, whichever occurs last.~~
 - ~~6. ATRS shall only consider service credited to the member and salaries earned by the member before the member's effective retirement date to calculate the member's annuity benefit.~~
- ~~b. Reciprocal Service Credit—Calculation of Service Credit~~
- ~~1. If a member of ATRS has service credited during the same fiscal year with another reciprocal system and the combined service is greater than one (1) year of service credit, ATRS shall credit service as follows:

 - ~~A. If credit by the reciprocal system is less than three (3) months, ATRS shall credit service for one (1) year;~~
 - ~~B. If credit by the reciprocal system is three (3) or more months but less than six (6) months, ATRS shall credit service for three-fourths (3/4) year;~~
 - ~~C. If credit by the reciprocal system is six (6) or more months but less than nine (9) months, ATRS shall credit service for one-half (1/2) year; and~~
 - ~~D. If credit by the reciprocal system is for nine (9) months but less than twelve (12) months, ATRS shall credit service for one-fourth (1/4) year.~~~~
- ~~c. Reciprocal Service Credit—Contributions and Repayments~~
- ~~1. While an employee participates in a reciprocal system, back contributions, additional contributions, and repayment of refund payments made to ATRS shall be made in accordance with the payment method provisions of ATRS Rule 8.~~

2. ~~Employer pick-up is prohibited while the employee works for a noncovered ATRS employer.~~

~~d. Reciprocal Service Credit— Concurrent Service~~

1. ~~Unless the reciprocal system is APERS or an alternate retirement plan, beginning July 1, 2013, ATRS shall allow a member who earns concurrent service in both ATRS and a reciprocal system to receive full service credit in ATRS without reduction of service credit due to the concurrent service.~~
2. ~~ATRS shall not recognize concurrent service added to a member's credited service in ATRS that, for the purpose of vesting, retirement eligibility, or calculating final average salary, either:~~
 - A. ~~Credits the member with more than one (1) year of credited service for a fiscal year; or~~
 - B. ~~Combines salary earned in ATRS and a reciprocal system in a fiscal year.~~
3. ~~A member may waive all or part of the concurrent service credited to him or her in ATRS and have the concurrent service credited to him or her under a reciprocal system if:~~
 - A. ~~The member acknowledges that the waiver is a voluntary surrender of the member's concurrent service credit in ATRS;~~
 - B. ~~The member acknowledges that the waiver cancels his or her concurrent service credit in ATRS; and~~
 - C. ~~The member submits an ATRS approved concurrent service credit waiver form to ATRS. (Arkansas Code § 24-7-601).~~
4. ~~If a member waives all or part of the concurrent service credited to him or her in ATRS and has the concurrent service credited to him or her under a reciprocal system, ATRS may refund the employer-accrued contributions and employee-accrued contributions.~~

~~e. Reciprocal Service Credit— Alternate Reciprocal Retirement System~~

1. ~~A member of ATRS may establish reciprocal service credit from an alternate retirement plan if he or she submits an appropriate, approved, and completed ATRS form concerning the reciprocal service credit to ATRS.~~
2. ~~Distributions from an alternate retirement plan may prevent reciprocal service from being established if ATRS is unable to verify that the withdrawals were made without penalty under Internal Revenue Service guidelines concerning rollovers to eligible plans, withdrawals, that are not subject to early withdrawal, etc.~~

~~f. Reciprocal Service Credit— Active Members of APERS~~

1. ~~From July 1, 1991, until December 31, 1991, an active member of APERS may establish reciprocity between APERS and ATRS and purchase out-of-state service rendered before January 1, 1978, in accordance with Arkansas Code §§ 24-7-601 and 24-7-603, if the active member:~~

- A. ~~Was an active member of ATRS before January 1, 1978; and~~
 - B. ~~Became a member of APERS within thirty (30) days of leaving ATRS.~~
- g. ~~Reciprocal Service Credit—Arkansas Rehabilitation Services Employees~~
- 1. ~~Effective July 1, 1993, for a ninety (90) day period, an employee of the Arkansas Rehabilitation Services may transfer his or her membership from APERS to ATRS under Acts 1993, No. 574.~~
 - 2. ~~An employee who transfers his or her membership from APERS to ATRS shall establish reciprocity between the two (2) systems and Acts 1977, No. 793 shall not apply to the employee.~~
- h. ~~Reciprocal Service Credit—Department of Human Services Employees~~
- 1. ~~The law applicable to ATRS shall be used to determine the annuity benefits to which an employee is entitled for service provided before or after Acts 1977, No. 793 if the employee:~~
 - A. ~~Was an employee of the Department of Human Services and became a member of APERS under the provisions of Acts 1977, No. 793, as amended; and~~
 - B. ~~Left employment with the Department of Human Services and became employed in a position covered by ATRS.~~
 - 2. ~~A member meeting the description of this ATRS Rule 6 V.H.1. may establish reciprocity under Acts 1965, No. 488, as amended.~~
- i. ~~Reciprocal Service Credit—Member Entitlement to Deferred Annuity~~
- 1. ~~Pursuant to Arkansas Code § 24-4-401 et seq., a member is entitled to a deferred annuity benefit if the member:~~
 - A. ~~Leaves his or her state employment in a position that is covered by one (1) of the reciprocal systems; and~~
 - B. ~~Enters subsequent state employment in a position that is covered by another of the reciprocal systems.~~
- j. ~~Reciprocal Service Credit—Age and Service Retirement~~
- 1. ~~Annuity Benefit Payments~~
 - A. ~~If ATRS is a member's preceding system, the member's annuity benefit payments shall begin after the member attains the normal age of retirement or on the first day of the month following the month in which the member's retirement application was filed, whichever is later.~~
 - B. ~~If the member has combined service of at least twenty-five (25) years, the normal retirement age requirement shall not apply.~~
 - C. ~~Deferred annuity benefit payments to the member shall not begin before the date on which the member leaves employment with his or her last state employer unless the member attains the normal retirement age.~~

~~2. Applying for Retirement Benefits Before Leaving Employment~~

- ~~A. If ATRS is member's preceding system, the member is eligible to apply for retirement benefits without leaving employment with his or her last state employer upon attaining the normal retirement age.~~
- ~~B. The member's annuity benefit payments shall begin after the member attains the normal retirement age or on the first day of the month following the month in which the member's retirement application is filed, whichever is later.~~
- ~~C. ATRS shall use only service credited to the member and salaries earned by the member before the member's effective retirement date to calculate the member's annuity benefit.~~

~~k. Reciprocal Service Credit — Disability Retirement~~

- ~~1. A member is eligible to apply for disability retirement benefits from each reciprocal system in which the member has credited service according to the rules for eligibility promulgated by that reciprocal system. (Arkansas Code § 24-2-405)~~
- ~~2. The member's disability retirement benefits payable by the preceding reciprocal system shall:
 - ~~A. Begin the first day of the month following the month in which the member's disability retirement application is filed with the preceding system; and~~
 - ~~B. Not begin before the date on which the member leaves employment with his or her last state employer.~~~~

~~l. Reciprocal Service Credit — Survivor Annuity Benefits~~

- ~~1. If survivor annuity benefits are payable by more than one (1) reciprocal system to an eligible survivor of a deceased member, a survivor who receives annuity benefit payments shall not receive, as a percentage of the deceased member's final salary or as a minimum dollar amount, more than the largest amount payable by a single reciprocal system.~~
- ~~2. ATRS shall prorate minimum benefits payable to a survivor with other reciprocal systems that have a minimum benefit provision in their plans.~~
- ~~3. Each reciprocal system shall pay a proportionate share of the minimum benefit based on the ratio of the member's service in that reciprocal system to the member's total service in all the reciprocal systems.~~
- ~~4. If the reciprocal system is an alternate retirement plan, survivor annuity benefits shall be contingent on whether the:
 - ~~A. Alternate retirement plan provides survivor annuity benefits; and~~
 - ~~B. Member selected survivor annuity benefits as a benefit under the alternate retirement plan. (Arkansas Code § 24-2-402(5)).~~~~

VI. Contributory and Noncontributory Service Chart by Year of Entry into System

(Elections and Re-entry may affect Individual Member Service Status)

All Members		
1937 - 1986	All Members	Contributory
1986 - 1991	All Members	Contributory unless elect Noncontributory
1991 - 1999	All Members	Noncontributory unless elect Contributory
School District Employees		
1999 - 2007	Active	One-time election to be Contributory or Noncontributory, no election made by 7/1/2000, status on 6/30/2000
	Inactive	One-time election to be Contributory or Noncontributory upon reentering system, no election then enrolled in the plan that he or she was enrolled in before reentering ATRS
	New	Contract one hundred eighty-one (181) days or more - Contributory - Contract one hundred eighty (180) days or less - Noncontributory, may elect Contributory, election must be made one (1) year from hire date - No contract, member must be noncontributory
2005 - 2021	Nonteacher to Teacher or Administrator	Contract one hundred eighty-one (181) days or more - Contributory. If position change happens during the year, election is effective first of next fiscal year - All Noncontributory members may elect Contributory
	All Members	May elect Contributory

2007 – 2021	New	Contract one hundred eighty-one (181) days or more – Contributory - Contract 180 days or less – <ul style="list-style-type: none"> • Noncontributory, may elect Contributory • No contract – Noncontributory, may elect Contributory
	Inactive	May elect Contributory
2021	Nonteacher to Teacher or Administrator	Contract one hundred eighty-five (185) days or more – Contributory. If position change happens during the year, election is effective first of next fiscal year. All Noncontributory members may elect Contributory
2021 –	All Members	May elect Contributory
	A member with	Contract one hundred eighty-five (185) days or more – Contributory Contract one hundred eight four (184) days or less – Noncontributory, may elect Contributory
	A member with	
	New	No contract – Noncontributory, may elect Contributory unless already Contributory
	Inactive	May elect Contributory
State Agency Employees		
1999 – 2007	Full-Time Employment	Must be Contributory
	Part-Time Employment	Must be Noncontributory
2007 –	Full-Time Employment	Must be Contributory
	Part-Time Employment	Noncontributory, may elect to be Contributory

HISTORY

Adopted:	August 11, 1998	6-10
Amended:	June 15, 2004	6-1
Amended:	July 18, 2005	6-1, 6-2, 6-10
	April 26, 2007	6-1, 6-2, 6-11
	July 1, 2011	(Emergency) 6-1, 6-12
Adopted:	August 8, 2011	6-1, 6-12
Effective:	November 11, 2011	6-1, 6-12
Adopted by Board:	April 2, 2012	6-1
Amended:	May 2, 2012	6-1
Effective:	September 4, 2012	6-1
Amended:	May 2, 2012	6-2
Effective:	September 4, 2012	6-2
Approved by Board:	July 26, 2013	6-2, 6-12
Amended:	October 9, 2013	6-2, 6-12
Effective:	November 8, 2013	
Approved by Board:	February 5, 2018	6-2
Effective:	February 16, 2018	6-2
Effective:	May 28, 2020	Rule 6
Effective:	May 20, 2022	Rule 6



Public Comments

Proposed Rule 7 – Service Credit, Contributions, Reporting, and Final Average Salary

1. Page 1, § 7-101(3).

- a. **BLR Comment:** Section 7-101 – The definition for “covered employer” appears to track the definition found in Arkansas Code Annotated § 24-7-506(a)(1)(A). Is there a reason why the proposed rule does not also set out what the definition of a covered employer does not include, as is done in Ark. Code Ann. § 24-7-506(a)(1)(B), as amended by Act 64 of 2023, § 1?
- b. **Response:** No. The rule has been amended to incorporate what entities are not covered employers as it relates to outsourcing.

2. Page 2, § 7-102(d)(3).

- a. **ATRS Staff Comment:** Should disability retirement be added to following, “*The system shall not permit a member to use unearned future service credit or nonqualified service credit purchased through a contract buyout settlement agreement with a school district to retire under age and service retirement before the member’s employment contract with the school district would naturally have terminated.*”?
- b. **Response:** Yes. The rule has been amended to add disability retirement.

ATRS Rule 7 Service Credit, Contributions, and Reporting

§ 7-101. Definitions.

As used in this rule:

(1) "Actual service" means service rendered in a position covered by the Arkansas Teacher Retirement System, not including purchased service credit, free service credit, or reciprocal service;

(2) "Credited service" means service that is credited as service by the system;

(3) "Covered employer" as it relates to outsourcing means a public school, public educational agency, or other eligible employer participating in the system, but does not include a nonmandatory employer or a PSHE employer as defined in Arkansas Code § 24-7-1602 or a covered employer that reports through the Arkansas Administrative Statewide Information System;

(4) "Embedded Employee" means a person who:

(A) Provides an outsourced service on the premises of a covered employer;

(B) Is employed and paid by an outsource contractor; and

(C) Is not employed by:

(i) A covered employer listed under Arkansas Code § 24-7-202; or

(ii) An employer that offers the system as an optional retirement plan

as of the date of outsourcing;

(5) "Full service year" means employment with a covered employer for one hundred sixty (160) days or more in a fiscal year;

(6) "Participating employer" means a covered employer that outsources and opts for the embedded employees of all of the covered employer's outsource contractors to become members of the system;

(7) "Service" means employment rendered as an employee;

(8) "Specialized support position" means a position that:

(A) Requires less than eight (8) working hours per day, including without limitation the positions of bus driver, custodial worker, and cafeteria worker; and

(B) A covered employer certifies as a specialized support position to the system;

(9) "Surcharge employer" means a covered employer that outsources and pays a surcharge to the system; and

(10) "Youth participant" means a person:

(A) Who is:

(i) Enrolled in a secondary public school as a student; and

(ii) Employed through his or her participation in a summer work program for a period between the first day of June and the last day of August; and

(B) Whose compensation is disbursed by a covered employer as part of an agreement between the covered employer and an administrator of the summer work program that designates the covered employer as a passthrough fiscal agent.

§ 7-102. Service credit.

(a) The Board of the Arkansas Teacher Retirement System shall determine the:

(1) Number of years and corresponding fractions for service that may be credited to a member; and

(2) Amount of service to be credited to a member.

(b)(1) A member shall earn one (1) year of credited service if the member completes a full service year.

(2) A member shall not earn more than one (1) year of credited service in a fiscal year.

(3) The Arkansas Teacher Retirement System shall certify proof of a member's service on forms and with documentation required by the system.

(c)(1) Unless otherwise provided by law, paid or unpaid accrued, unused sick leave shall not be credited as service in the system.

(2) If a member dies during active service on or after July 1, 2013, the member's unused catastrophic leave and unused donated leave shall not be credited as service.

(d)(1) A member shall not accumulate service credit in the system during the time that payments under a contract buyout agreement, settlement, claim, judgment, arbitration award, decree, or court-ordered payment are paid to the member by a covered employer unless the member continues to work on-site for the covered employer.

(2) A member shall not receive service credit or additional salary from the system under a settlement agreement or court order unless purchased at actuarial cost.

(3) The system shall not permit a member to use unearned future service credit or nonqualified service credit purchased through a contract buyout settlement agreement with a school district to retire under age and service retirement or disability retirement before the member's employment contract with the school district would naturally have terminated.

(e) Actual service credited to a member with service after July 1, 1971, shall be as follows:

<u>Number of Days Worked in a Fiscal Year</u>	<u>Service Credit Earned</u>
<u>1 –39</u>	<u>None</u>
<u>40-79</u>	<u>0.25 year</u>
<u>80-119</u>	<u>0.50 year</u>
<u>120-159</u>	<u>0.75 year</u>
<u>160 days or over</u>	<u>1.00 year</u>

(f) Unless otherwise provided by the law or rules applicable to the system, a member who is employed for less than forty (40) days during a fiscal year is ineligible for credited service or retirement benefits for that fiscal year.

(g)(1) Beginning in the 2011-2012 fiscal year, a contributory member's service days shall be carried forward from previous fiscal years until at least forty (40) days of service are earned by the member.

(2) Service days shall not be carried forward for a contributory member if the

member earns at least forty (40) days of service in a fiscal year by using regular service days, accumulated service days, or both regular service and accumulated service days.
(h) A member who is employed full-time or employed in a position for which a regular or typical work day includes at least eight (8) working hours shall earn one (1) day of credited service if the member works for at least four (4) hours of the eight-hour working day.
(i)(1) Beginning July 1, 2011, a member employed in a specialized support position shall earn one (1) day of credited service for each day of service provided by the member if the:

(A) Specialized support position is certified as a specialized support position to the system by the covered employer at the time the covered employer first reports the employment of the member to the system; and

(B) Covered employer reasonably determines that the member performed the regular and usual service expected of an employee in that position during the work day.

(2)(A) A member who is employed in a specialized support position and does not have a contract specifying the number of service days shall earn one (1) day of service credit for each day of service provided by the member if the:

(i) Specialized support position is certified as a specialized support position to the system by the covered employer at the time the covered employer first reports the employment of the member to the system; and

(ii) Covered employer reasonably determines that the member performed the regular and usual service expected of an employee in that position during the days worked by the member.

(B) A member described in this § 7-102(g)(2) of this rule shall earn one (1) day of credited service for each day of service provided by the member regardless of whether the member works for less than four (4) hours on a work day.

(3) The credited service earned by a member who is employed in a nonspecialized support position and does not work for at least four (4) hours each working day shall be calculated by totaling the number of hours worked by the member in a fiscal quarter and then dividing the totaled number of hours worked by four (4).

§ 7-103. Member and employer contributions.

(a)(1) The Board of Trustees of the Arkansas Teacher Retirement System shall annually set member and employer contribution rates for the following fiscal year.

(2) The Arkansas Teacher Retirement System shall notify annually each covered employer of the contribution rates set by the board.

(3)(A) The board shall not set the member contribution rate at less than six percent (6%).

(B) The board may increase the member contribution rate to maintain actuarial soundness.

(4)(A) A member's and covered employer's contributions are due monthly, regardless of the member's concurrent membership status.

(B) A contributory member shall contribute the percentage of his or her salary that is set by the board.

(b)(1) A covered employer shall remit member contributions by pick-up from the salary earned by each member.

(2) Member contributions shall be treated as employer contributions under the applicable provisions of the Income Tax Act of 1929, Arkansas Code § 26-51-101 et seq. and the Internal Revenue Code.

(3) A covered employer may remit a member's contributions by implementing a:

(A) Reduction in the cash salary of the member;

(B) Setoff against the member's future salary increases; or

(C) Both a reduction in the cash salary of the member and a setoff against the member's future salary increases.

(c)(1) A covered employer's employer contributions shall be the sum of the current employer contribution rate set by the board for the fiscal year multiplied by the total gross salaries of all the covered employer's employees.

(2) A public school employer shall pay up to fourteen percent (14%) of the employer contribution rate.

(3) Up to fifteen percent (15%) of any additional employer contributions required from a public school employer shall be paid from additional funds appropriated by the state for the purpose of paying employer contributions to the system.

(d)(1) A covered employer shall pay employer contributions **monthly** for all employees of the covered employer for whom the Department of Education does not pay employer contributions.

(2) The employer contribution rate shall be the current state contribution percent multiplied by the total covered salaries of the covered employer's employees in the fiscal year.

(3)(A) In accordance with rules established by the board and the department's appropriations act, the department shall pay employer contributions due for eligible employees of covered employers, including without limitation the following:

(i) State agencies as allowed under the Transformation and Efficiencies Act, Acts 2019, No. 910;

(ii) Cooperative Education Services Areas;

(iii) Vocational Centers;

(iv) Arkansas Easter Seals; and

(v) A school operated by the Corrections School System.

(B) The department shall pay the employer contributions for eligible employees of covered employers from the Public School Fund.

(C) At the close of each quarterly report, ATRS shall report the amount of employer contributions due from the department.

(D) The employer contributions due from the department shall be based on the salaries of the eligible employees reported to ATRS by each covered employer.

(e) The board shall annually notify each participating employer of the employer contribution rate established by the board for the upcoming fiscal year.

(f) A surcharge employer's employer contributions shall be a monthly surcharge applied on the total salaries paid to all the surcharge employer's embedded employees on an aggregate basis as provided under Arkansas Code § 24-7-506(c).

§ 7-104. Member and employer contributions — Overpayments, underpayments, and refunds.

(a) A conflict in a member's service history due to concurrent service shall be resolved at the end of the fiscal year and the Arkansas Teacher Retirement System shall issue refunds as appropriate.

(b)(1) The system shall return overpayments of employee contributions and employer contributions resulting from erroneous contribution submissions or incorrect reporting of Salary Option 2 member salaries (first seven thousand eight hundred dollars (\$7,800)) to the appropriate covered employer.

(2)(A) The system shall send written notification to a member or covered employer, as appropriate, of a contribution overpayment that is less than the de minimis amount that may be refunded.

(B) The de minimis amount shall be periodically set by the Board of Trustees of the Arkansas Teacher Retirement System and shall remain the same amount until adjusted by the board.

(C)(i) A contribution overpayment that is less than the de minimis amount shall not be refunded to the covered employer unless the covered employer submits a written request for a refund to the system within fourteen (14) days of receiving the written notice of the contribution overpayment from the system.

(ii) If a covered employer does not submit a written request for a refund within fourteen (14) days of receiving the written notice of the contribution overpayment from the system, the amount of the contribution overpayment shall be forfeited to the trust assets of the system.

(D)(i) A contribution overpayment that is less than the de minimis amount shall not be refunded to the member unless the member submits a written request for a refund to the system within fourteen (14) days of receiving the written notice of the contribution overpayment from the system.

(ii) If the member does not submit a written request for a refund within fourteen (14) days of receiving the written notice of the contribution overpayment from the system, the amount of the contribution overpayment shall be forfeited to the trust assets of the system.

(3) The total amount of contributions reported by the covered employer shall be credited to contributions.

(c)(1) For refunded contributions, the rate of regular interest compounded annually after the first year of contributions shall be credited as follows:

<u>Service</u>	<u>Regular Interest Rate</u>
<u>Before July 1, 1984</u>	<u>3%</u>
<u>For July 1, 1984 through June 30, 2009</u>	<u>6%</u>
<u>For July 1, 2010, through June 30, 2011</u>	<u>2%</u>
<u>For July 1, 2012, through June 30, 2017</u>	<u>1%</u>
<u>For July 1, 2017 and after</u>	<u>0.08%</u>

(2) Payable regular interest shall be computed:

(A) On each member's individual account on June 30; and

(B) By multiplying the balance in the member's individual account as of July 1, including contributions and regular interest credit from previous years, plus one-half (1/2) of the contributions for the year ending June 30 by the annual applicable regular interest percentage rate.

(3) The board by resolution, may change the regular interest rate on refunded contributions for subsequent years by stating the new regular interest rate, the date that the new regular interest rate is effective, and any other features necessary for implementing the regular interest rate.

(4) Regular interest shall not be paid on contributions made in the year in which a refund of contributions is paid to a member.

(5) The system shall issue a refund for a member's contributions that are closed on the system's books after receiving the member's properly completed refund application.

(6) If a second refund payment is required to complete the refund of contributions, the second payment shall be made when all quarters of service the member works are closed on the system's books.

(7) A rollover payment shall be made in one (1) payment when all quarters of service the member works are closed on the system's books.

(8) A refund is effective on the date on which the system first issues a payment of the refund.

(d) The system shall not collect a contribution underpayment of less than the de minimis amount from a covered employer.

§ 7-105. Employer reports — Submission requirements.

(a) A covered employer shall submit:

(1) Reports and supporting documentation required by the Arkansas Teacher Retirement System on a monthly and quarterly basis; and

(2) Reports and supporting documentation electronically to the system on forms approved by the system.

(b)(1) At the request of the system, a covered employer shall provide the system with a memorandum of understanding, partnership agreement, or another similar document related to the covered employer's actions as a passthrough fiscal agent for a youth participant in a summer work program.

(2) A covered employer shall provide the system with all documents related to the agreement designating the covered employer as a pass-through fiscal agent before disbursing compensation to a youth participant.

(3) A covered employer that acts as a pass-through fiscal agent shall not report a youth participant as an employee for system purposes.

(c)(1) A covered employer that uses a twenty-six-week payroll system shall report an employee's salary, contributions, and actual working days through the current fiscal year ending June 30 if the employee is a member of the system and retiring.

(2) If an employee is a member of the system and retiring effective July 1, a covered employer shall not:

(A) Withhold contributions on a salary earned by the member after the close of payroll for the current fiscal year; and

(B) Report any salary paid to the member or actual working days performed

by the member after the close of payroll for the current fiscal year.

(3) The system shall refund employee contributions and employer contributions remitted to the system from a salary paid to the employee after the end of the current fiscal year or payroll period for the current fiscal year.

(d) A covered employer may submit a request to the system for a determination on whether a service or position is subject to the provisions of Arkansas Code § 24-7-506.

(e)(1) A surcharge employer shall submit a surcharge report monthly to the system with all other reports required by the system.

(2) A participating employer shall submit a contribution report monthly to the system with all other reports required by the system.

(f) Beginning on July 1, 2022, a covered employer shall:

(1) Electronically report employee contributions and employer contributions made by the covered employer through the system portal; and

(2) Pay employee contributions and employer contributions through electronic transfer.

§ 7-106. Employer reports — Reporting deadline and penalties.

(a) A report and supporting documentation submitted by a covered employer shall not be considered untimely if the report and supporting documentation are received by Arkansas Teacher Retirement System on the tenth (10th) day of the month in which the report and supporting documentation are due.

(b)(1) A one hundred fifty dollar (\$150) late fee shall be assessed on a covered employer for each occurrence in which a report and supporting documentation is untimely submitted to the system.

(2) In their discretionary authority, the Board of Trustees of the Arkansas Teacher Retirement System or the Executive Director of the Arkansas Teacher Retirement System may waive any late fees assessed against a covered employer for their untimely submission of a report and supporting documentation to the system if the requirements of Arkansas Code § 24-7-411(c) are met.

(c)(1) If a covered employer does not remit member or employer contributions, including surcharge contributions, by the monthly due date, the system shall assess an interest penalty equal to the system's actuarially assumed rate of return on investments and daily interest accrual against the covered employer until the member or employer contributions, whichever is applicable, are paid.

(2)(A) In their discretionary authority, the board or the executive director may waive any interest penalty assessed against a covered employer if the requirements of Arkansas Code § 24-7-411(c) are met.

(B) One (1) or more interest penalties assessed against a covered employer shall not be waived if the amount of the interest penalties assessed against the covered employer will exceed one thousand dollars (\$1,000) for the fiscal year.

(C) A covered employer may submit an interest penalty waiver request for one (1) or more interest penalties exceeding one thousand dollars (\$1,000) for the fiscal year to the board.

(4) The executive director shall report each interest penalty waived under this rule to the board.

(d)(1) The system may certify the names of each covered employer that fails to timely report and remit member or employer contributions, including surcharge contributions, to the Chief Fiscal Officer of the State.

(2) After receiving the certification from the system, the Chief Fiscal Officer of the State may direct a transfer of funds on deposit in the State Treasury for the payment of delinquent member or employer contributions and an assessed interest penalty.

§ 7-107. Employer reports — Payments after member’s death.

(a)(1) A salary earned by a member before the member’s death and paid after the member’s death is subject to deductions by the Arkansas Teacher Retirement System and the member’s covered employer shall report the member’s total salary and days of service in the covered employer’s quarterly report.

(2) Gratuitous payments made by a covered employer to a member after the death of the member shall not be:

- (A) Considered the salary of the member;
- (B) Subject to contribution requirements; and
- (C) Included in the covered employer’s quarterly report to the system.

Authority: Arkansas Code §§ 24-2-701, 24-7-103, 24-7-202, 24-7-401, 24-7-406, 24-7-411, 24-7-601 — 24-7-611, 24-7-705, 24-7-708, and 24-7-1303.

History

<u>Amended:</u>	<u>August 11, 1998</u>	<u>7-1, 7-3</u>
<u>Amended:</u>	<u>June 17, 2003</u>	<u>7-4</u>
<u>Amended:</u>	<u>April 6, 2004</u>	<u>7-4</u>
<u>Reaffirmed:</u>	<u>June 15, 2004</u>	<u>7-4</u>
<u>Amended:</u>	<u>July 18, 2005</u>	<u>7-1, 7-2, 7-3, 7-4</u>
<u>Amended:</u>	<u>April 26, 2007</u>	<u>7-4</u>
<u>Amended:</u>	<u>February 11, 2008</u>	<u>7-3, 7-4</u>
<u>Amended:</u>	<u>June 16, 2009</u>	<u>7-1, 7-2 (Emergency)</u>
<u>Amended:</u>	<u>October 5, 2009</u>	<u>7-1, 7-2 (Permanent)</u>
<u>Amended:</u>	<u>December 18, 2009</u>	<u>7-3, 7-4</u>
<u>Amended:</u>	<u>July 1, 2011</u>	<u>7-1, 7-2 (Emergency)</u>
<u>Adopted:</u>	<u>August 8, 2011</u>	<u>7-1, 7-2</u>
<u>Effective:</u>	<u>November 11, 2011</u>	<u>7-1, 7-2</u>
<u>Board Approved:</u>	<u>February 6, 2012</u>	<u>7-2, 7-4</u>
<u>Amended:</u>	<u>April 2, 2012</u>	<u>7-2 (Emergency)</u>
<u>Amended:</u>	<u>April 18, 2012</u>	<u>7-4</u>
<u>Effective:</u>	<u>May 29, 2012</u>	<u>7-2, 7-4</u>
<u>Approved by Board:</u>	<u>July 26, 2013</u>	<u>7-1, 7-3</u>
<u>Amended:</u>	<u>October 9, 2013</u>	<u>7-1, 7-3</u>
<u>Effective</u>	<u>November 8, 2013</u>	<u>7-1, 7-3</u>
<u>Approved by Board:</u>	<u>January 8, 2014</u>	<u>7-1</u>
<u>Amended:</u>	<u>February 17, 2014</u>	<u>7-1</u>

<u>Effective:</u>	<u>March 18, 2014</u>	<u>7-1</u>
<u>Effective:</u>	<u>August 5m 2019</u>	<u>Rule 7</u>
<u>Effective:</u>	<u>May 28, 2020</u>	<u>Rule 7</u>
<u>Effective:</u>	<u>May 20, 2022</u>	<u>Rule 7</u>
<u>Effective:</u>	<u>TBD</u>	<u>Rule 7</u>

ATRS RULE 7
SERVICE CREDIT, CONTRIBUTIONS, REPORTING, AND FINAL AVERAGE
SALARY

Arkansas Code §§ ~~24-2-701, 24-7-103, 24-7-202, 24-7-401, 24-7-406, 24-7-411,~~
~~24-7-601 — 24-7-611, 24-7-705, 24-7-708, 24-7-736, and 24-7-1303~~

I. Definitions

- a. ~~“Actual service” means service rendered in a position covered by the Arkansas Teacher Retirement System (ATRS), not including purchased service credit, free service credit, or reciprocal service;~~
- b. ~~“Credited service” means service that is creditable as service by ATRS;~~
- c. ~~“Covered employer” as it relates to outsourcing means a public school, public educational agency, or other eligible employer participating in ATRS;~~
- d. ~~“Eligible employee” for the purpose of salary or compensation limitations concerning the calculation of a final average salary means a person who was a member of ATRS before the first plan year beginning after December 31, 1995;~~
- e. ~~“Embedded Employee” means a person who:~~
 - 1. ~~Provides an outsourced service on the premises of a covered employer; and~~
 - 2. ~~Is employed and paid by an outsource contractor;~~
 - 3. ~~Is not employed by:~~
 - A. ~~A covered employer listed under Arkansas Code § 24-7-202; or~~
 - B. ~~An employer that offers ATRS as optional retirement plan as of the date of outsourcing;~~
- f. ~~“Full service year” means employment by with a covered employer for one hundred sixty (160) days or more in a fiscal year;~~
- g. ~~“Partial service year” means employment with a covered employer for less than one hundred sixty (160) days in a fiscal year;~~
- h. ~~“Participating employer” means a covered employer that outsources and opts for the embedded employees of all of the covered employer’s outsource contractors to become members of ATRS;~~
- i. ~~“Service” means employment rendered as an employee;~~
- j. ~~“Specialized support position” means a position requiring less than eight (8) working hours per day, including without limitation the positions of bus driver, custodial worker, and cafeteria worker;~~
- k. ~~“Surcharge employer” means a covered employer that outsources and pays a surcharge to ATRS in lieu of opting for the embedded employees of outsource contractors to accrue credited service in ATRS; and~~

~~I. "Youth participant" means an individual:~~

~~1. Who is:~~

~~A. Enrolled in a secondary public school as a student; and~~

~~B. Employed through his or her participation in a summer work program for a period between the first day of June and the last day of August; and~~

~~2. Whose compensation is disbursed by a covered employer as part of an agreement between the covered employer and an administrator of the summer work program that designates the covered employer as a passthrough fiscal agent.~~

II. Service Credit

~~a. Generally~~

~~1. The Board of the Arkansas Teacher Retirement System (Board) shall determine the:~~

~~A. Number of years and corresponding fractions for service that may be credited to a member; and~~

~~B. Amount of service to be credited to a member.~~

~~2. A member shall earn one (1) year of credited service if the member completes a full service year.~~

~~3. A member shall not earn more than one (1) year of credited service in a fiscal year.~~

~~4. ATRS shall certify proof of a member's service on forms and with documentation required by ATRS.~~

~~b. Unused Leave~~

~~1. Unless otherwise provided by law, paid or unpaid accrued, unused sick leave shall not be credited as service in ATRS.~~

~~2. If a member dies during active service on or after July 1, 2013, the member's unused catastrophic leave and unused donated leave shall not be credited as service.~~

~~c. Contract Buyouts, Settlements, Claims, Awards, and Court-Ordered Payments~~

~~1. A member shall not accumulate service credit in ATRS during the time that payments under a contract buyout agreement, settlement, claim, judgment, arbitration award, decree, or court-ordered payment are paid to the member by a covered employer unless the member continues to work on-site for the covered employer.~~

~~2. A member shall not receive service credit or additional salary from ATRS under a settlement agreement or court order unless purchased at actuarial cost.~~

~~d. Service Provided After July 1, 1971~~

- ~~1. Actual service credited to a member with service after July 1, 1971, shall be as follows:~~

Number of Days Worked in a Fiscal Year	Service Credit Earned
1-39	None
40-79	0.25 year
80-119	0.50 year
120-159	0.75 year
160 days or over	1.00 year

~~e. Members Employed for Less Than Forty (40) Days~~

- ~~1. Unless otherwise provided by the law applicable to ATRS or the ATRS Rules, a member who is employed for less than forty (40) days during a fiscal year is ineligible for credited service or retirement benefits for that fiscal year.~~

~~f. Rollover Service Days~~

- ~~1. Beginning in the 2011-2012 fiscal year, a contributory member's service days shall be carried forward from previous fiscal years until at least forty (40) days of service are earned by the member.~~
- ~~2. Service days shall not be carried forward for a contributory member if the member earns at least forty (40) days of service in a fiscal year by using regular service days, accumulated service days, or both regular service and accumulated service days.~~

~~g. Full-Time Employees~~

- ~~1. A member who is employed full-time or employed in a position for which a regular or typical work day includes at least eight (8) working hours shall earn one (1) day of credited service if the member works for at least four (4) hours of the eight-hour working day.~~

~~h. Employees in Specialized Support Positions~~

~~1. Employment with Less Than Eight-Hour Working Days~~

- ~~A. Beginning July 1, 2011, a member employed in a specialized support position shall earn one (1) day of credited service if the:~~

~~i. Specialized support position is certified as a specialized support position to ATRS; and~~

- ~~ii. Covered employer reasonably determines that the member performed the regular and usual service expected of an employee in that position during the work day.~~

~~2. Employment with Unspecified Contractual Work Days~~

~~A. A member who is employed in a specialized support position and does not have a contractual obligation to work a specified number of days shall earn one (1) day of credited service for each day of service provided by the member.~~

~~B. A member described in this ATRS Rule 7 II.h.2.A shall earn one (1) day of credited service for each day of service provided by the member regardless of whether the member works for less than four (4) hours on a work day.~~

~~i. Employees in Non-Specialized Support Positions~~

~~1. The credited service earned by a member who is employed in a nonspecialized support position and does not work for at least four (4) hours each working day shall be calculated by dividing the total number of hours worked by the member in a fiscal quarter by four (4).~~

III. Member and Employer Contributions

~~a. Contributions — Generally~~

~~1. The Board shall annually set member and employer contribution rates for the following fiscal year.~~

~~2. ATRS shall notify annually each covered employer of the contribution rates set by the Board.~~

~~3. A member's and covered employer's contributions are due monthly, regardless of the member's concurrent membership status.~~

~~b. Member Contributions~~

~~1. Authority of the Board~~

~~A. The Board shall not set the member contribution rate at less than six percent (6%).~~

~~B. The Board may increase the member contribution rate to maintain actuarial soundness.~~

~~2. Contribution Rate~~

~~A. A contributory member shall contribute the percentage of his or her salary that is set by the Board.~~

~~B. A member's contribution is due monthly, regardless of the member's concurrent membership status.~~

~~3. Remittance of Member Contributions by Covered Employer~~

~~A. A covered employer shall remit member contributions by pick-up from the salary earned by each member.~~

~~B. Member contributions shall be treated as employer contributions under the applicable provisions of the Internal Revenue Code and the Income Tax Act of 1929, Arkansas Code § 26-51-101 et seq.~~

- C. ~~A covered employer may remit a member's contributions by implementing a:
 - i. ~~Reduction in the cash salary of the member;~~
 - ii. ~~Setoff against the member's future salary increases;~~
 - iii. ~~Both a reduction in the cash salary of the member and a setoff against the member's future salary increases.~~~~

~~c. Employer Contributions — Public School Employers and Covered Employers~~

~~1. Covered Employers and Public School Employers~~

- A. ~~A covered employer's employer contributions shall be the sum of the current employer contribution rate set by the Board for the fiscal year multiplied by the total gross salaries of all the covered employer's employees.~~
- B. ~~A public school employer shall pay up to fourteen percent (14%) of the employer contribution rate.~~
- C. ~~Up to fifteen percent (15%) of any additional employer contributions required from a public school employer shall be paid from additional funds appropriated by the state for the purpose of paying employer contributions to ATRS.~~

~~2. Employer Contributions Not Paid by the Department of Education~~

- A. ~~A covered employer shall pay annually, for its employees, employer contributions that are not required to be paid by the Department of Education.~~
- B. ~~The employer contribution rate shall be the current state contribution percent multiplied by the total covered salaries of the covered employer's employees in the fiscal year.~~

~~3. Employer Contributions Paid by the Department of Education~~

- A. ~~In accordance with rules established by the Board and the Department of Education's appropriations act, the Department of Education shall pay employer contributions due for eligible employees of covered employers, including without limitation the following:
 - i. ~~State agencies as allowed under the Transformation and Efficiencies Act, Acts 2019, No. 910;~~
 - ii. ~~Cooperative Education Services Areas;~~
 - iii. ~~Vocational Centers;~~
 - iv. ~~Arkansas Easter Seals; and~~
 - v. ~~A school operated by the Corrections School System.~~~~
- B. ~~The Department of Education shall pay the employer contributions for eligible employees of covered employers from the Public School Fund.~~

~~C. At the close of each quarterly report, ATRS shall report the amount of employer contributions due from the Department of Education.~~

~~D. The employer contributions due from the Department of Education shall be based on the salaries of the eligible employees reported to ATRS by each covered employer.~~

~~d. Employer Contributions — Participating Employers~~

~~1. The Board shall annually notify each participating employer of the employer contribution rate established by the Board for the upcoming fiscal year.~~

~~e. Employer Contributions — Surcharge Employers 1. A surcharge employer's employer contributions shall be a monthly surcharge on the total salaries paid to all the surcharge employer's embedded employees on an aggregate basis as provided under Arkansas Code § 24-7506(c).~~

IV. Employer Reports

~~a. Generally~~

~~1. A covered employer shall submit:~~

~~A. Reports and supporting documentation required by ATRS on a monthly and quarterly basis; and~~

~~B. Reports and supporting documentation electronically to ATRS on forms approved by ATRS.~~

~~b. Covered Employers~~

~~1. Youth Participant — Summer Work Programs~~

~~A. At the request of ATRS, a covered employer shall provide ATRS with a memorandum of understanding, partnership agreement, or another similar document related to the covered employer's actions as a passthrough fiscal agent for a youth participant in a summer work program.~~

~~B. A covered employer shall provide ATRS with all documents related to the agreement designating the covered employer as a pass-through fiscal agent before disbursing compensation to a youth participant.~~

~~C. A covered employer that acts as a pass-through fiscal agent shall not report a youth participant as an employee for ATRS purposes.~~

~~2. Twenty-Six (26) Week Payroll~~

~~A. A covered employer that uses a twenty-six week payroll system shall report an employee's salary, contributions, and actual working days through the current fiscal year ending June 30 if the employee is a member of ATRS and retiring.~~

~~B. If an employee is a member of ATRS and retiring effective July 1, a covered employer shall not:~~

~~i. Withhold contributions on a salary earned by the member after the close of payroll for the current fiscal year; and~~

- ii. ~~Report any salary paid to the member or actual working days performed by the member after the close of payroll for the current fiscal year.~~
 - C. ~~ATRS shall refund employee contributions and employer contributions remitted to ATRS from a salary paid to the employee after the end of the current fiscal year or payroll period for the current fiscal year.~~
 - e. ~~Surcharge Employers and Participating Employers~~
 - 1. ~~Generally~~
 - A. ~~A covered employer may submit a request to ATRS for a determination on whether a service or position is subject to the provisions of Arkansas Code § 24-7-506.~~
 - 2. ~~Surcharge Employers~~
 - A. ~~A surcharge employer shall submit a surcharge report monthly to ATRS with all other reports required by ATRS.~~
 - 3. ~~Participating Employers~~
 - A. ~~A participating employer shall submit a contribution report monthly to ATRS with all other reports required by ATRS.~~
 - d. ~~Employer Submission of Reports~~
 - 1. ~~Electronic Submission of Reports~~
 - A. ~~Beginning on July 1, 2022, a covered employer shall:~~
 - i. ~~Electronically report employee contributions and employer contributions made by the covered employer through the ATRS portal; and~~
 - ii. ~~Pay employee contributions and employer contributions through electronic transfer.~~
 - 2. ~~Electronic Submission of Reports — Waiver~~
 - A. ~~A covered employer shall submit a written request for a temporary waiver to the Board by July 1, 2022, if the covered employer is unable to:~~
 - i. ~~Electronically report employee contributions or employer contributions; or~~
 - ii. ~~Pay employee contributions or employer contributions through electronic transfer.~~
 - B. ~~A request for a temporary waiver shall include a timeline for when the employer will be able to comply with submitting reports electronically and paying employee contributions or employer contributions through electronic transfer.~~
 - 3. ~~Deadline for Submission of Reports~~

~~A. A report and supporting documentation submitted by a covered employer shall not be considered untimely if:~~

~~i. The report and supporting documentation are received by ATRS on the tenth (10th) day of the month in which the report and supporting documentation are due; or~~

~~ii. In the case of a covered employer that obtains a waiver as provided under this ATRS Rule 7 IV.d.2. or is unable to electronically submit a report and supporting documentation, the report and supporting documentation are mailed and postmarked by the fourteenth (14th) day of the month.~~

~~a. If the fourteenth (14th) day of the month falls on a Saturday, Sunday, or holiday, the postmarked date shall be the next business day.~~

~~4. Failure to Submit Report or Remit Contributions and Penalties~~

~~A. Late Fee for Untimely Reports~~

~~i. A one hundred fifty dollar (\$150) late fee shall be assessed on a covered employer for each occurrence in which a report and supporting documentation is untimely submitted to ATRS.~~

~~B. Interest Penalty~~

~~i. If a covered employer does not remit member or employer contributions, including surcharge contributions, by the monthly due date, ATRS shall assess an interest penalty equal to ATRS' actuarially assumed rate of return on investments and daily interest accrual against the covered employer until the member or employer contributions, whichever is applicable, are paid.~~

~~ii. The Board or its designee, in its discretionary authority, may waive an interest penalty assessed against a covered employer if:~~

~~a. The delinquency is not a result of the covered employer's nondisclosure, fraud, or other misrepresentation; and~~

~~b. Based on the facts and circumstances, payment of the penalty interest would be unduly penal, burdensome, or manifestly unjust.~~

~~iii. The Board shall not instruct the Executive Director of ATRS (executive director) to waive one (1) or more interest penalties assessed against a covered employer if the amount will exceed one thousand dollars (\$1,000) for the fiscal year.~~

~~iv. A covered employer may submit an interest penalty waiver request for one (1) or more interest penalties exceeding one thousand dollars (\$1,000) for the fiscal year to the Board.~~

~~v. The executive director shall report each interest penalty waived under this ATRS Rule 7 IV.d.4.B to the Board.~~

~~5. Report to Chief Fiscal Officer of the State~~

- ~~A. ATRS may certify the names of each covered employer that fails to timely report and remit member or employer contributions, including surcharge contributions, to the Chief Fiscal Officer of the State.~~
- ~~B. After receiving the certification from ATRS, the Chief Fiscal Officer of the State may direct a transfer of funds on deposit in the State Treasury for the payment of delinquent member or employer contributions and an assessed interest penalty. (Arkansas Code § 19-5-106)~~

~~6. Refunds~~

~~A. Service History Conflicts~~

- ~~i. A conflict in a member's service history due to concurrent service shall be resolved at the end of the fiscal year and ATRS shall issue refunds as appropriate.~~

~~B. Overpayments and Underpayments~~

- ~~i. ATRS shall return overpayments of employee contributions and employer contributions resulting from erroneous contribution submissions or incorrect reporting of Salary Option 2 member salaries (first seven thousand eight hundred dollars (\$7,800)) to the appropriate covered employer.~~
- ~~ii. Contribution Overpayments~~
 - ~~a. ATRS shall send written notification to a covered employer of a contribution overpayment that is less than the de minimis amount that may be refunded.~~
 - ~~b. A contribution overpayment that is less than the de minimis amount shall not be refunded to the appropriate covered employer unless the covered employer submits a written request for a refund to ATRS within fourteen (14) days of receiving the written notice of the contribution overpayment from ATRS.~~
 - ~~c. If a covered employer does not submit a written request for a refund within fourteen (14) days of receiving the written notice of the contribution overpayment from ATRS, the amount of the contribution overpayment shall be forfeited to the trust assets of ATRS.~~

~~iii. Contribution Underpayments~~

- ~~a. ATRS shall not collect a contribution underpayment of less than the de minimis amount from a covered employer.~~

V. Final Average Salary

a. Salary Limitations

1. Authority of the Board
 - A. The Board may adopt rules to modify the definition of salary for the purpose of calculating ATRS retirement benefits. (Arkansas Code § 24-7202)
2. Salary—Multiple Covered Employers
 - A. ATRS shall include the salary received from each of a member's covered employers when calculating the member's final average salary.
3. Internal Revenue Code § 401(a)(17)
 - A. Regardless of any provision in a state statute, rule, or regulation to the contrary, remuneration, salary, or other compensation that exceeds the limitations set forth provided in the Internal Revenue Code of 1986, 26 U.S.C. § 401(a)(17), as it existed on January 1, 2011, shall not be used for the purposes of calculating the final average salary on which ATRS benefits are based.
 - B. The limitation on remuneration, salary, or compensation for an eligible employee shall not be less than the amount that was allowed to be considered by ATRS as in effect on July 1, 1993.
4. Excluded Remuneration, Salary, or Compensation
 - A. ATRS shall not consider remuneration, salary, or compensation paid by a covered employer to a member as a salary earned by the member if the:
 - i. Remuneration, salary, or compensation is paid as an incentive payment, bonus, separation payment, additional salary, or special payment in consideration for the member's agreement to retire, terminate employment, or not renew a contract with the covered employer;
 - ii. Offer described in this ATRS Rule 7 V.a.4.A.i. is extended by the covered employer to two (2) or more members;
 - iii. Remuneration, salary, or compensation is not offered as an additional salary or payment for the purchase of service credit that is part of a separation agreement resulting from the resolution of a claim of wrongful termination;
 - iv. Remuneration, salary, or compensation is not payment for accumulated, unused sick leave that:
 - a. Accrued in the years immediately preceding the member's termination of covered employment; and
 - b. Were in excess of the number of sick days that the covered employer allowed the member to carry forward;

- v. ~~Covered employer offers a voluntary early retirement incentive plan, staff reduction plan, or buyout plan that would require the member as a participant of the plan to retire or terminate his or her employment with the covered employer; and~~
 - vi. ~~Member voluntarily participates in the plan in exchange for the remuneration, salary, or compensation offered by the covered employer.~~
- B. ~~A covered employer shall not withhold a member's contributions or pay employer contributions from a remuneration, salary, or compensation paid to a member if the remuneration, salary, or compensation is subject to a salary limitation as provided by this ATRS Rule 7.~~
- C. ~~A covered employer that offers an early retirement plan, separation, plan, or contract nonrenewal plan and intends to pay remuneration, salary, or compensation that is subject to a salary limitation as provided by this ATRS Rule 7 shall notify ATRS before making a payment under the plan.~~
- D. ~~At the request of a covered employer, ATRS shall:~~
- i. ~~Review a potential plan or payment that may be subject to a salary limitation as provided by this ATRS RULE 7; and~~
 - ii. ~~Provide guidance to the covered employer concerning the applicability of the salary limitation to the plan or payment.~~
- E. ~~A covered employer may appeal ATRS' decision concerning the applicability of a salary limitation to a plan or payment to the Board using ATRS' appeal procedures provided in ATRS Rule 13.~~
5. ~~Conflict of Laws~~
- A. ~~The law applicable to ATRS and the ATRS Rules shall be controlling if a conflict exists between ATRS' calculation of final average salary and a covered employer's laws or policies concerning the compensation of final average salary.~~
- b. ~~Service Years Included in Computation of Final Average Salary~~
- 1. ~~Unused Leave~~
 - A. ~~If a member dies during active service on or after July 1, 2013, the member's paid or unpaid accrued, unused sick leave, shall be credited as service in the fiscal year of the member's death for the purpose of determining the member's retirement eligibility, final average salary, and eligibility for other ATRS benefits.~~
 - 2. ~~Full Service and Partial Service Years~~
 - A. ~~A partial service year shall be excluded from the calculation of a member's final average salary unless the:~~
 - i. ~~Partial service year is higher than a full service year; or~~
 - ii. ~~Member has less than the required number of years to calculate a~~

final average salary.

3. ~~Number of Service Years Used to Calculate Final Average Salary~~
 - A. ~~The Board shall set annually the applicable number of years to be used in computing final average salary for retirement benefits at not less three (3) years and not more than five (5) years.~~
 - B. ~~Unless otherwise provided by law applicable to ATRS or the ATRS Rules, effective July 1, 2018, ATRS shall calculate a member's final average salary using the five (5) years in which the member received the highest salary from a covered employer.~~
 - C. ~~Members with Insufficient Credited Service or Full Service Years~~
 - i. ~~If a member has less than the minimum number of years of credited service that would be used to calculate a final average salary, the member's final average salary shall be the total salary paid to the member for his or her years of credited service divided by the member's total credited years of service.~~
 - ii. ~~If a member does not have full service years for the total years of service used in the calculation of final average salary, the Board may establish by rule a fair base salary for a member's final average salary for purposes of comparing the member's highest salary years.~~
 - D. ~~Active Members with Three (3) Full Service Years as of July 1, 2018~~
 - i. ~~For an active member who has three (3) or more full service years as of July 1, 2018, ATRS shall:~~
 - a. ~~Treat the active member as if he or she was retiring or entering the Teacher Deferred Retirement Option Plan (TDROP) as of June 30, 2018; and~~
 - b. ~~Determine the benchmark final average salary using the highest salary from the member's three (3) full service years through fiscal year 2018.~~
 - ii. ~~A final average salary calculation using three (3) full service years shall be the benchmark comparison for a five-year final average salary calculation to which the active member may be entitled.~~
 - iii. ~~ATRS shall calculate the active member's final average salary using the five (5) years in which the active member received the highest salary from a covered employer if at the time of the active member's retirement using a five-year calculation of the final average salary is higher than using a three-year calculation.~~
 - E. ~~Inactive Members Who May Have Three (3) Full Service Years of July 1, 2018~~
 - i. ~~ATRS shall not use a benchmark final average salary for an inactive member unless the inactive member provides ATRS with~~

appropriate documentation showing that the inactive member was active in a reciprocal system or alternate retirement plan during the 2018 fiscal year.

F. Members with Reciprocal Service Credit

- i. For a member with reciprocal service credit, ATRS shall use the highest final average salary calculated, at the time of the member's retirement, by ATRS or a reciprocal system in which the member has at least two (2) years of service credit pursuant to Arkansas Code § 24-2-402.

HISTORY

Amended:	August 11, 1998	7-1, 7-3
Amended:	June 17, 2003	7-4
Amended:	April 6, 2004	7-4
Reaffirmed:	June 15, 2004	7-4
Amended:	July 18, 2005	7-1, 7-2, 7-3, 7-4
Amended:	April 26, 2007	7-4
Amended:	February 11, 2008	7-3, 7-4
Amended:	June 16, 2009	7-1, 7-2 (Emergency)
Amended:	October 5, 2009	7-1, 7-2 (Permanent)
Amended:	December 18, 2009	7-3, 7-4
Amended:	July 1, 2011	7-1, 7-2 (Emergency)
Adopted:	August 8, 2011	7-1, 7-2
Effective:	November 11, 2011	7-1, 7-2
Board Approved:	February 6, 2012	7-2, 7-4
Amended:	April 2, 2012	7-2 (Emergency)
Amended:	April 18, 2012	7-4
Effective:	May 29, 2012	7-2, 7-4
Approved by Board:	July 26, 2013	7-1, 7-3
Amended:	October 9, 2013	7-1, 7-3
Effective:	November 8, 2013	7-1, 7-3
Approved by Board:	January 8, 2014	7-1
Amended:	February 17, 2014	7-1
Effective:	March 18, 2014	7-1
Effective:	August 5, 2019	Rule 7

~~Effective: May 28, 2020 Rule 7~~

~~Effective: May 20, 2022 Rule 7~~



Public Comments

Proposed Rule 8 – Free Service Credit, Purchasable Service Credit, and Purchase Accounts

1. Page 1, § 8-101(8).

- a. **BLR Comment:** Section 8-101(8) – Under the definition for “Qualified service”, should the reference to the United States Code be to Title 26, as opposed to Title 46, as it appears in Ark. Code Ann. § 24-7-202 and Act 125 of 2023?
- b. **Response:** Yes. The rule has been amended to change “46” to “26”.

2. Page 3, § 8-104.

- a. **ATRS Staff Comment:** Should the rules state that members may receive concurrent service for National Guard service purchases?
- b. **Response:** Yes. This comment aligns with Ark. Code Ann. § 24-7-610(e). The rule has been amended.

3. Page 5, § 8-107.

- a. **ATRS Staff Comment:** Should the rules concerning the purchase of overseas service credit also state that a fraction of a year can be credited in accordance with Ark. Code Ann. § 24-7-601?
- b. **Response:** Yes. This comment aligns with Ark. Code Ann. § 24-7-604(b)(3)(B). The rule has been amended.

4. Page 10, § 8-113(f).

- a. **ATRS Staff Comment:** Should disability retirement be added to following, “*The system shall not permit a member to use unearned future service credit or nonqualified service credit purchased through a contract buyout settlement agreement with a school district to retire under age and service retirement before the member’s employment contract with the school district would naturally have terminated.*”?
- b. **Response:** Yes. The rule has been amended to add disability retirement.

ATRS Rule 8
Free Service Credit, Purchasable Service Credit, and Purchase
Accounts

§ 8-101. Definitions.

As used in this rule:

(1) "Armed forces reserve" means one (1) of the reserve components of the United States Armed Forces;

(2) "Domestic federal service" means service rendered as a teacher or administrator in a school or similar institution located on a military base or installation that is administered by the United States Department of Defense;

(3) "Gap year" means a period of time:

(A) In which a member was an inactive member and either:

(i) Unemployed; or

(ii) Did not provide qualified service; and

(B) For which the Arkansas Teacher Retirement System may grant the member permissive service credit;

(4) "Out-of-state service" means service performed in a state other than Arkansas and in a position that would have been covered by the Arkansas Teacher Retirement System if the service had been actual service performed in Arkansas and covered by the system;

(5) "Overseas service" means service in:

(A) An American-related overseas school that is sponsored and approved by either the United States Department of State or the United States Department of Defense; or

(B) The Peace Corps or AmeriCorps VISTA, Volunteers in Service to America;

(6) "Permissive service credit" means service:

(A) That is credited under the system for the purpose of calculating a member's benefit;

(B) That has not previously been credited under the system; and

(C) For which a member contributes or pays the amount necessary to fund the benefit attributable to the service as required by the system;

(7) "Private school service" means:

(A) Service rendered in a private school, or agency that would have been covered by the system if the:

(i) Service had been rendered in a public school; or

(ii) Private school or agency;

(B) Has positions that would require the issuance of a teaching license in a public school based on a determination by the system; or

(C) Is recognized as a private education-related entity by resolution adopted by the Board of Trustees of the Arkansas Teacher Retirement System;

(8) "Qualified service" means the service described in 26 U.S.C. § 415(n)(3)(C)(i)-(iv), as it existed on January 1, 2023; and

(9) "Uniformed Services of the United States" means service in the:

- (A) United States Armed Forces;
- (B) Army National Guard;
- (C) Air National Guard when engaged in active duty for training, state active duty, inactive duty training, or full-time National Guard duty;
- (D) United States Commissioned Corps of the Public Health Service; and
- (E) Any other category of persons designated by the President of the United States in time of war or emergency.

§ 8-102. Free service credit - Military service.

(a)(1) A person may establish free military service credit with the Arkansas Teacher Retirement System at any time after becoming a member.

(2) Free military service credit established with the system is effective after the member completes five (5) years of actual service in the system, excluding military service credit.

(b) A member who by draft or voluntary enlistment entered the United States Armed Forces during a period that a federal military draft was in effect and obtained a refund of contributions from the system may establish free military service credit with the system if the member:

(1) Is honorably discharged from the United States Armed Forces; and

(2) Before retirement, repays the system the actuarial equivalent of the member's refunded service.

(c) A member who by draft or voluntary enlistment entered the United States Armed Forces during any period that a federal military draft was in effect and becomes an active member after an honorable discharge from the United States Armed Forces is eligible to establish free military service credit with the system, regardless of whether or not the member has five (5) or more years of credited service in the system at the time of the member's reemployment.

(d) A member who is first employed after serving in the United States Armed Forces during a period of time in which the military draft was in effect is eligible to establish free military service credit with the system if the member:

(1) Completes five (5) or more years of actual service in the system; and

(2) Receives an honorable discharge.

(d) The system shall provide a member with free military service credit after the member:

(1) Applies to establish free military service credit with the system by submitting a completed application form approved by the system; and

(2) Submits official military documentation listing the entry and discharge dates of the member's first enlistment or induction into the United States Armed Forces.

(e)(1) Free military service credited to a member before July 1, 1986, shall be considered contributory service.

(2) Free military service shall be credited to a member's account on a prorated basis if the member has both contributory and noncontributory service.

(f) Military service credited to a member shall not exceed five (5) years unless the member is entitled to service credit for service in the uniformed services of the United States.

(g) Military service shall be credited in order of the years that are chronologically closest to the member's service with a covered employer.

(h) A member shall not receive military service credit for military service years resulting

from the member's reenlistment or voluntary extension of his or her initial enlistment.

§ 8-103. Purchasable service credit — Military service.

(a) A member shall receive service credit for service in the United States Armed Forces that cannot be credited to the member under Arkansas Code § 24-7-602(a) if the member pays the Arkansas Teacher Retirement System the actuarial equivalent for the service credit.

(b)(1) Effective December 12, 1994, a member shall be treated as not having incurred a break in service with a covered employer if the member:

(A) Leaves employment with a school to voluntarily or involuntarily serve in the uniformed services of the United States; and

(B) Returns to employment with a school.

(2) A member described in § 8-103(b)(1) of this rule shall accrue benefits for the time he or she served in the uniformed services of the United States if:

(A) The member pays the employee contributions as provided in Arkansas Code § 24-7-406; and

(B) Employer contributions are paid for the time the member served in the uniformed services of the United States.

(c) A member's absence from his or her employment with a school due to his or her service in the uniformed services of the United States shall not exceed five (5) years.

(d) At the member's request, a member's payment for United States Armed Forces service credit shall be refunded by the system if the:

(1) Member ceased to be an active member before the United States Armed Forces service credit is established as credited service in the system; or

(2) United States Armed Forces service credit is not otherwise used to establish the member's eligibility for retirement under the system.

§ 8-104. Purchasable service credit — National Guard and armed forces reserve.

(a) A member may purchase up to five (5) years of service for his or her service in the National Guard or armed forces reserve.

(b) A member shall receive credit for service in the National Guard or armed forces reserve if the member:

(1) Applies to the Board of Trustees of the Arkansas Teacher Retirement System to purchase National Guard or armed forces reserve service credit by submitting a completed application form approved by the Arkansas Teacher Retirement System;

(2) Provides the system with satisfactory proof of his or her service in the National Guard or armed forces reserve;

(3) Pays the system, in full, the actuarial equivalent of the member's benefits for each year of National Guard or armed forces reserve service credit being purchased; and

(4) Has established at least five (5) years of actual service with the system, excluding National Guard or armed forces reserve service.

(c) The system shall not credit a member with more than five (5) years of service for service in the National Guard or armed forces reserve.

(d) Purchased National Guard or armed forces reserve service credit shall be credited to the year in which the member rendered the service even if the member has concurrent service with a covered employer.

(e) At the member's request, a member's payment for National Guard or armed forces reserve service credit shall be refunded by the system if the:

(1) Member ceased to be an active member before the National Guard or armed forces reserve service credit is established as credited service in the system; or

(2) National Guard or armed forces reserve service credit is not otherwise used to establish the member's eligibility for retirement under the system.

§ 8-105. Purchasable service credit — Domestic federal service.

(a) Beginning January 1, 2003, a member may purchase up to ten (10) years of domestic federal service that shall be credited if:

(1) The member:

(A) Has contributions left on deposit with another system and the domestic federal service credit being purchased is limited to service for which another system similar in purpose to the Arkansas Teacher Retirement System, except for Social Security, could not pay a benefit;

(B) Pays the system, in full, the actuarial equivalent of benefits for each year of domestic federal service credit being purchased; and

(C) Has established at least five (5) years of actual service, excluding federal domestic service; and

(2) All other requirements set by rules adopted by the Board of Trustees of the Arkansas Teacher Retirement System are met.

(b) A member may purchase a fraction of a year of domestic federal service that shall be credited if the:

(1) Member has at least one-fourth (1/4) of a year of domestic federal service in a fiscal year; and

(2) Fraction of a year of domestic federal service can be credited in accordance with Arkansas Code § 24-7-601.

(c) At the member's request, a member's payment for domestic federal service credit shall be refunded by the system if the:

(1) Member ceased to be an active member before the domestic federal service credit is established as credited service in the system; or

(2) Domestic federal service credit is not otherwise used to establish the member's eligibility for retirement under the system.

§ 8-106. Purchasable service credit — Out-of-state service.

(a)(1) Out-of-state service purchased before July 1, 1987, shall be credited as service in accordance with the law in effect before July 1, 1987.

(2) A member may purchase up to fifteen (15) years of out-of-state service if the out-of-state service is purchased on and after July 1, 1987.

(b) Out-of-state service shall be credited if:

(1) The member:

(A) Has contributions left on deposit with another system and the out-of-state service credit being purchased is limited to service for which another system similar in purpose to the Arkansas Teacher Retirement System, except for Social Security, could not pay a benefit;

(B) Pays the system, in full, the actuarial equivalent of benefits for each year

of out-of-state service credit being purchased; and

(C) Has established at least five (5) years of actual service, excluding out-of-state service; and

(2) All other requirements set by rules adopted by the Board of Trustees of the Arkansas Teacher Retirement System are met.

(c) A member may purchase a fraction of a year of out-of-state service that shall be credited if the:

(1) Member has at least one-fourth (1/4) of a year of out-of-state service in a fiscal year; and

(2) Fraction of a year of out-of-state service can be credited in accordance with Arkansas Code § 24-7-601.

(d) At the member's request, a member's payment for out-of-state service credit shall be refunded by the system if the:

(1) Member ceased to be an active member before the out-of-state service credit is established as credited service in the system; or

(2) Out-of-state service credit is not otherwise used to establish the member's eligibility for retirement under the system.

§ 8-107. Purchasable service credit — Overseas service.

(a) A member may purchase service credit for service in an overseas school if:

(1) The member:

(A) Has at least five (5) years of service in a position covered by the Arkansas Teacher Retirement System; and

(B) Performs the minimum days of service at the overseas school required for a fiscal year of service credit;

(2) The overseas service credit is limited to service for which another system similar in purpose to the system, except Social Security, could not pay a benefit; and

(3) The actuarial equivalent of the member's benefits is paid to the system.

(b) The system shall not credit a member with more than ten (10) years of overseas service credit.

(c) A member may be credited with fractions of years of service as provided by Arkansas Code § 24-7-601.

(c) At the member's request, a member's payment for overseas service credit shall be refunded by the system if the:

(1) Member ceased to be an active member before the overseas service credit is established as credited service in the system; or

(2) Overseas service credit is not otherwise used to establish the member's eligibility for retirement under the system.

§ 8-108. Purchasable service credit — General Assembly.

(a) A member of the Senate or House of Representatives of the General Assembly who is a member of the Arkansas Teacher Retirement System shall receive credited service and salary in the system for his or her full contract salary if the:

(1) School district requires the member's salary to be reduced during the member's attendance at:

(A) Regular or extraordinary sessions of the General Assembly; or

(B) Interim meetings of regular or special committees of the General Assembly;

(2) Member applies for General Assembly service credit by submitting to the system a completed application form approved by the system;

(3) Member pays the system the necessary member contributions; and

(4) Required employer contributions are paid to the system for the amount of the salary reduction during periods of the member's attendance at regular or extraordinary sessions of the General Assembly or sessions of legislative committees.

(b) A member of the Senate or House of Representatives who currently serves in the General Assembly or has served in the legislative committees for any year that is within five (5) years of July 6, 1977, shall receive credited service and salary for his or her full contract if the:

(1) Member applies for General Assembly service credit by submitting to the system a completed application form approved by the system;

(2) Member pays the employee contributions; and

(3) Required employer contributions are paid from the Public School Fund to the system for the portion of the contractual period in which the member's salary was reduced during the member's legislative service.

(c) A member of the Senate or House of Representatives of the General Assembly who is an employee and member of the system shall receive credited service and salary for his or her full contract salary if:

(1) Either the member or school district decides it is in the best interest of the member to take a leave of absence for up to one (1) full calendar year at a time in order for the member to attend his or her duties as a member of the General Assembly; and

(2) Both the required employee and employer contributions are paid to the system for the amount of the member's contract salary during periods in which the member attended sessions of the General Assembly or legislative committees.

(d) At the member's request, a member's payment for General Assembly service credit shall be refunded by the system if the:

(1) Member ceased to be an active member before the General Assembly service credit is established as credited service in the system; or

(2) General Assembly service credit is not otherwise used to establish the member's eligibility for retirement under the system.

§ 8-109. Purchasable service credit — Advanced degree service.

(a) A member who is a public school teacher or administrator and takes a leave of absence from a school in order to obtain an advanced degree at an institution of higher learning or to fulfill the requirements of a scholarship or grant shall receive credited service for the time of the member's actual enrollment in the institution if the member:

(1) Applies for advanced degree service credit by submitting to the system a completed application form approved by the Arkansas Teacher Retirement System; and

(2) Pays the actuarial equivalent of the member's benefits to the system for each year of service credit being purchased.

(b) At the member's request, a member's payment for advanced degree service credit shall be refunded by the system if the:

(1) Member ceased to be an active member before the advanced degree service

credit is established as credited service in the system; or

(2) Advanced degree service credit is not otherwise used to establish the member's eligibility for retirement under the system.

§ 8-110. Purchasable service credit — Private school service.

(a) Employment with a Head Start program shall be considered private school service.

(b)(1) A member may purchase up to fifteen (15) years of private school service to be credited as certified service if:

(A) The member:

(i) Has contributions left on deposit with another system and the private school service credit being purchased is limited to service for which another system similar in purpose to the Arkansas Teacher Retirement System, except for Social Security, could not pay a benefit;

(ii) Pays the system, in full, the actuarial equivalent of benefits for each year of private school service credit being purchased; and

(iii) Has established at least five (5) years of actual service, excluding private school service; and

(B) All other requirements set by rules adopted by the Board of Trustees of the Arkansas Teacher Retirement System are met.

(2) At the member's request, a member's payment for certified private school service credit shall be refunded by the system if the:

(A) Member ceased to be an active member before the certified private school service credit is established as credited service in the system; or

(B) Certified private school service credit is not otherwise used to establish the member's eligibility for retirement under the system.

(c)(1) A member may purchase up to five (5) years of noncertified private school service that shall be credited as noncertified service if:

(A) The member:

(i) Applies for noncertified private school service credit by submitting to the system a completed application form approved by the system;

(ii) Has contributions left on deposit with another system and the noncertified service credit being purchased is limited to service for which another state-supported pension system or system similar in purpose to the system could not pay a benefit;

Pays the system, in full, the actuarial equivalent of benefits for each year of service credit being purchased; and

(iii) Has established at least five (5) years of actual service; and

(B) All other requirements set by rules adopted by the board are met.

(2) At the member's request, a member's payment for noncertified private school service credit shall be refunded by the system if the:

(A) Member ceased to be an active member before the noncertified private school service credit is established as credited service in the system; or

(B) Noncertified private school service credit is not otherwise used to establish the member's eligibility for retirement under the system.

(d)(1) A member may purchase up to five (5) years of private education-related entity private school service that shall be credited as noncertified service if:

(A) The member:

(i) Applies for private education-related entity private school service by submitting to the system a completed application approved by the system;

(ii) Has contributions left on deposit with another system and the private education-related entity private school service credit being purchased is limited to service for which another state-supported pension system or system similar in purpose to the system could not pay a benefit;

(iii) Pays the system, in full, the actuarial equivalent of benefits for each year of service credit being purchased;

(iv) Has established at least five (5) years of actual service; and

(B) All other requirements set by rules adopted by the Board are met.

(2) At the member's request, a member's payment for private education-related entity private school service credit shall be refunded by the system if the:

(A) Member ceased to be an active member before the private education-related entity private school service is established as credited service in the system; or

(B) Private education-related entity private school service credit is not otherwise used to establish the member's eligibility for retirement under the system.

(e) A member may purchase a fraction of a year of private school service that shall be credited if the:

(1) Member has at least one-fourth (1/4) of a year of private school service in a fiscal year; and

(2) Fraction of a year of private school service can be credited in accordance with Arkansas Code § 24-7-601.

§ 8-111. Purchasable service credit — Federal retirement service.

(a) An active member may purchase up to ten (10) years of federal retirement service that shall be credited if the:

(1) Federal retirement service being purchased is limited to service for which the federal retirement system could not pay a benefit to the member;

(2) Member applies for federal retirement service by submitting to the Arkansas Teacher Retirement System a completed application form approved by the system;

(3) Member provides certification of his or her federal retirement service to the system on a form approved by the system;

(3) Member pays the system, in full, the actuarial equivalent of benefits for each year of service credit being purchased; and

(4) Member has established at least five (5) years of actual service, excluding federal retirement service.

(b)(1) A member shall complete at least one hundred sixty (160) working days before the member may establish one (1) year of federal retirement service credit.

(2) One (1) month of federal service shall be considered twenty (20) days of service.

(c) A member may purchase a fraction of a year of federal retirement service that shall be credited if the:

(1) Member has at least one-fourth (1/4) of a year of federal retirement service in a fiscal year; and

(2) Fraction of a year of federal retirement service can be credited in accordance

with Arkansas Code § 24-7-601.

(d) Federal retirement service credit shall be considered contributory service.

(e) Purchased federal retirement service shall be credited to the fiscal year in which the service was rendered.

(f) If a member is not an active member before establishing federal retirement service with the system, the member's contribution payments and regular interest shall be refunded.

(g) At the member's request, a member's payment for federal retirement service credit shall be refunded by the system if the:

(1) Member ceased to be an active member before the federal retirement service is established as credited service in the system; or

(2) Federal retirement service credit is not otherwise used to establish the member's eligibility for retirement under the system.

(h) Purchase account payments made through employer pick-up are subject to restrictions specified in this rule, regulations, and the Internal Revenue Code.

§ 8-112. Purchasable service credit — Gap year service.

(a) A member may purchase permissive service credit for one (1) or more consecutive or nonconsecutive gap years if:

(1) The member:

(A) Has five (5) years of actual service in the system;

(B) Has left his or her position as a classroom teacher immediately before each nonconsecutive gap year or the initial gap year of consecutive gap years;

(C) Returns to his or her position as a classroom teacher after one (1) or more gap years;

(D) Accrues at least one-half (1/2) year of service credit after returning to his or her position as a classroom teacher;

(E) Was inactive during the gap year or gap years; and

(F) Is ineligible to receive free service credit for each gap year under another provision of the law applicable to the system; and

(2) Each gap year amounts to an entire fiscal year.

(b)(1) A member shall not:

(A) Be permitted to purchase permissive service credit unless the total gap year service for which permissive service credit is being purchased amounts to one (1) fiscal year;

(B) Purchase more than five (5) years of permissive service credit; or

(C) Purchase one (1) or more gap years after the member retires from the system.

(2) A member's purchased permissive service credit shall be credited in accordance with Arkansas Code § 24-7-601.

(c)(1) A member shall purchase permissive service credit for one (1) or more gap years at the actuarial cost.

(2) At the member's request, a member's payment for permissive service credit shall be refunded by the system if the:

(A) Member ceased to be an active member before the permissive service is established as credited service in the system; or

(B) Permissive service credit is not otherwise used to establish the member's eligibility for retirement under the system.

§ 8-113. Purchasable service credit — Contact Buyouts, Settlements, and Court Ordered Payments.

(a)(1) A member shall only earn service credit for actual, on-site work performed for a covered employer for the period specified in a contract buyout, settlement, or court ordered payment unless the member purchases service or salary that would have been received by the member if the member had been successful in his or her legal claim.

(2)(A) If a member is on call with a covered employer and not subject to either a contract buyout, settlement, or court ordered payment, the salary paid to the member as a regular employee shall be credited to the member.

(B) On call credit shall not be added to a member's salary with another covered employer.

(c) The Arkansas Teacher Retirement System shall not adjust a member's service history until the:

(1) Member or the member's covered employer provides a copy of the settlement, a file-marked court order, or a certified copy of the contract buyout to the system; and

(2)(A) Actuarial cost to purchase the service has been paid in full to the system.

(B) A member shall purchase service or salary at the actuarial cost for service and salary that the member would have earned if the member had not been terminated.

(d)(1) Service credit purchased under a settlement agreement or court order shall offset service credit that is earned through covered employment with another covered employer during the same period of time covered by the service credit purchased under the settlement agreement or court order.

(2) Service credit purchased under a settlement agreement or court order shall not be applied in a manner that allows a member to earn more than one (1) year of service credit in a fiscal year.

(e)(1) The system shall credit a member with additional salary credit purchased through a settlement agreement or court order only if the:

(A) Additional salary being purchased is being paid to the member in order to resolve a claim of wrongful termination or employment discrimination that culminated in a settlement agreement or court order; and

(B) Additional salary is salary that the member would have been paid but for the employment discrimination.

(2) Only qualifying additional salary credit purchased through a contract buyout may be used in the final average salary calculation.

(f) The system shall not permit a member to use unearned future service credit or nonqualified service credit purchased through a contract buyout settlement agreement with a school district to retire under age and service retirement or disability retirement before the member's employment contract with the school district would naturally have terminated.

§ 8-114. Cost of purchased service.

(a) A member shall purchase service using forms approved by the Arkansas Teacher Retirement System.

(b)(1) A member who purchases service shall receive credit for the purchased service if the actuarial equivalent of both the employee and employer contributions, as calculated by the system, are paid to the system.

(2) Service purchased at the actuarial cost shall be contributory.

(3) The requirement for service to be purchased at the actuarial cost shall not apply to free military service credit established with the system.

(c) The actuarial cost for service to be purchased shall not include adjustments to salary and service that are made in order to properly reflect the member's mandatory salary and service record.

(d) A salary earned for service purchased at the actuarial cost:

(1) Shall not be used to calculate a member's final average salary; and

(2) May be used to determine repaid refunds for service that is required to be reported within the refunded service.

(e)(1) A member's highest salary shall be used as the base year when calculating the actuarial cost for service being purchased by the member.

(2) A member's base year shall be the member's highest salary year unless the highest salary year is more than one hundred fifty percent (150%) greater than the next highest salary year.

(3) If a member's highest salary year is more than one hundred fifty percent (150%) greater than the next highest salary year, the highest two (2) salary years shall be added together and divided by two (2) to determine the base year to be used for calculating the actuarial cost for service being purchased.

(4) If a member does not have enough full service years to determine a base year for the purchase formula, a full year salary shall be used to determine the base year.

(5) A full year salary shall be calculated by dividing each partial year's service percentage into each partial year's salary.

§ 8-115. Purchase accounts.

(a) Purchase account payments shall be applied to the member's account on the date the payment is received by the system.

(b)(1) The system shall accept participant rollover contributions and direct rollovers for the purchase of service credit from a qualified retirement plan.

(2) A depository trustee from a qualified retirement plan shall certify to the system that the rollover deposit account is qualified and eligible to receive rollover distributions before a distribution of a member's account monies.

(3)(A) If the depository trustee is unable to certify the rollover deposit account as qualified and eligible to receive rollover distributions, the system shall accept a certification from a public accountant who has an active certified public accountant's license.

(B) The system shall not accept a certification from a public accountant that certifies a rollover deposit account as qualified and eligible to receive rollover distributions if the public accountant has an interest in the rollover deposit account as a member, spouse, or designated beneficiary.

(c)(1) If a member with an active purchase account dies, the member's spouse, beneficiary, or legal representative shall have up to six (6) months from the member's date of death to pay the balance of the purchase account unless the deadline is extended by the Executive Director of the Arkansas Teacher Retirement System for good cause.

(2) If the member's purchase account is not paid in full within six (6) months of the member's date of death, the purchase account shall be closed and payments made towards the purchase account shall be considered as part of the member's residual account balance.

(d)(1) A purchase account that is paid in full after a final payment has been tendered shall not be cancelled.

(2) A member's purchase account may be cancelled if:

(A) The member submits a written cancellation request to the system; and

(B)(i) The system approves the cancellation request.

(ii) The system may approve a cancellation request and refund a member's purchase account if the purchase account:

(a) Is an account that has been paid only with after-tax contributions;

(b) Is an account that has been paid only with employer pick-up contributions and one (1) of the following applies:

(1) All payments on the irrevocable payroll authorization have been completed;

(2) The member terminates employment with the employer; or

(3) The member retires; or

(c) Is an account that has been paid only with rollover or transfer contributions and the rollover or transfer contributions may be rolled over or transferred to another qualified plan or refunded to the member after the deduction and payment of federal taxes.

(iii)(a) If a member's cancellation request is approved, the system shall refund the balance of the member's purchase account without interest to the member.

(b) The system shall refund interest to a member if a refund of interest is statutorily mandated under Arkansas Code § 24-7-612 or another applicable provision of the Arkansas Code.

§ 8-116. Purchase of refunded service.

(a) A member shall not purchase refunded service unless he or she purchases the total credited service forfeited by a refund.

(b)(1) A repayment of refunded contributions shall be made in inverse order if the member has received more than one (1) refund of contributions.

(2) The most recent refund account shall be paid in full before a member may purchase a previous refund account.

Authority: Arkansas Code §§ 24-1-107, 24-7-406, 24-7-601, 24-7-602, 24-7-607, 24-7-711, 24-7-719, and 24-7-735.

History

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<u>Effective:</u>	<u>TBD</u>	<u>Rule 8</u>

ATRS RULE 8
FREE SERVICE CREDIT, PURCHASABLE SERVICE CREDIT, AND
PURCHASE ACCOUNTS

Arkansas Code §§ 24-1-107, 24-7-406, 24-7-601, 24-7-602, 24-7-607, 24-7-711,
24-7-719, and 24-7-735

I.—Definitions

- a. ~~“Armed forces reserve” means one (1) of the reserve components of the United States Armed Forces;~~
- b. ~~“Domestic federal service” means service rendered as a teacher or administrator in a school or similar institution located on a military base or installation that is administered by the United States Department of Defense;~~
- c. ~~“Out-of-state service” means service performed in a state other than Arkansas and in a position that would have been covered by the Arkansas Teacher Retirement System (ATRS) if the service had been actual service performed in Arkansas and covered by ATRS;~~
- d. ~~“Overseas service” means service in:~~
 - 1. ~~An American-related overseas school that is sponsored and approved by either the United States Department of State or the United States Department of Defense; or~~
 - 2. ~~The Peace Corps or AmeriCorps VISTA, Volunteers in Service to America;~~
- e. ~~“Private school service” means:~~
 - 1. ~~Service rendered in a private school, or agency that would have been covered by ATRS if the:~~
 - A. ~~Service had been rendered in a public school; and~~
 - B. ~~Private school or agency:~~
 - i. ~~Has positions that would require the issuance of a teaching license in a public school based on a determination by ATRS; or~~
 - ii. ~~Is recognized as a private education-related entity by resolution adopted by the Board of Trustees of the Arkansas Teacher Retirement System (Board); and~~
- f. ~~“Uniformed Services of the United States” means service in the:~~
 - 1. ~~United States Armed Forces;~~
 - 2. ~~Army National Guard;~~
 - 3. ~~Air National Guard when engaged in active duty for training, state active duty, inactive duty training, or full-time National Guard duty;~~

- ~~4. United States Commissioned Corps of the Public Health Service; and~~
- ~~5. Any other category of persons designated by the President of the United States in time of war or emergency.~~

~~II. Free Service Credit~~

~~a. Military Service Credit~~

~~1. Generally~~

- ~~A. A person may establish military service credit with ATRS at any time after becoming a member.~~
- ~~B. Military service credit established with ATRS is effective after the member completes five (5) years of actual service in ATRS, excluding military service credit.~~
- ~~C. ATRS shall provide a member with military service credit after the member:
 - ~~i. Completes and submits Form M-1 to ATRS; and~~
 - ~~ii. Submits official military documentation listing the entry and discharge dates of the member's first enlistment or induction into the United States Armed Forces.~~~~
- ~~D. Military service credited to a member before July 1, 1986, shall be considered contributory service.~~
- ~~E. Military service credited to a member shall not exceed five (5) years unless the member is entitled to service credit for service in the uniformed services of the United States. (Arkansas Code § 24-7-602(c)).~~
- ~~F. Military service shall be credited in order of the years that are chronologically closest to the member's service with a covered employer.~~
- ~~G. A member shall not receive military service credit for military service years resulting from the member's reenlistment or voluntary extension of his or her initial enlistment.~~
- ~~H. Free military service shall be credited to a member's account on a prorated basis if the member has both contributory and noncontributory service.~~

~~2. Federal Military Draft~~

~~A. New Members~~

- ~~i. A member who is first employed after serving in the United States Armed Forces during a period of time in which the military draft was in effect is eligible to receive free military service credit if the member:~~
- ~~ii. Completes five (5) or more years of actual service in ATRS; and~~
- ~~iii. Receives an honorable discharge.~~

~~B. Active Members~~

- ~~i. An active member who enters the United States Armed Forces during any period that a federal military draft was in effect and who becomes an active member after an honorable discharge from the United States Armed Forces may receive free military service credit regardless of whether the member has five (5) or more years of credited service at the time of his or her reemployment.~~
- ~~ii. An active member who enters the United States Armed Forces during a period that a federal military draft was in effect and obtains a refund of member contributions from ATRS may receive free military service credit if the member:
 - ~~a. Receives an honorable discharge from the United States Armed Forces; and~~
 - ~~b. Repays the actuarial equivalent of the member's refunded service to ATRS before retiring.~~~~

III. Purchasable Service Credit

~~a. Military Service Credit~~

~~1. Service in the United States Armed Forces~~

- ~~A. A member shall receive service credit for service in the United States Armed Forces that cannot be credited to the member under Arkansas Code § 24-7-602(a) if the member pays ATRS the actuarial equivalent for the service credit.~~

~~2. Service in the Uniformed Services of the United States~~

- ~~A. Effective December 12, 1994, a member shall be treated as not having incurred a break in service with a covered employer if the member:
 - ~~i. Leaves employment with a school to voluntarily or involuntarily serve in the uniformed services of the United States; and~~
 - ~~ii. Returns to employment with a school.~~~~
- ~~B. A member's absence from his or her employment with a school due to his or her service in the uniformed services of the United States shall not exceed five (5) years.~~
- ~~C. A member described in this ATRS Rule 8 III.a.2.A shall accrue benefits for the time he or she served in the uniformed services of the United States if:
 - ~~i. The member pays the employee contributions as provided in Arkansas Code § 24-7-406; and~~
 - ~~ii. Employer contributions are paid for the time the member served in the uniformed services of the United States.~~~~

~~b. Service in National Guard and Armed Forces~~

- ~~1. A member may purchase up to five (5) years of service for his or her service in the National Guard or armed forces reserve.~~
 - ~~2. A member shall receive credit for service in the National Guard or armed forces reserve if the member:

 - ~~A. Submits an application for National Guard or armed forces reserve service credit to the Board;~~
 - ~~B. Provides ATRS with satisfactory proof of his or her service in the National Guard or armed forces reserve;~~
 - ~~C. Pays ATRS, in full, the actuarial equivalent of the member's benefits for each year of National Guard or armed forces reserve service credit being purchased; and~~
 - ~~D. Has established at least five (5) years of actual service with ATRS, excluding National Guard or armed forces reserve service.~~~~
 - ~~3. ATRS shall not credit a member with more than five (5) years of service for service in the National Guard or armed forces reserve.~~
- ~~c. Domestic Federal Service~~
- ~~1. Beginning January 1, 2003, a member may purchase up to ten (10) years of domestic federal service that shall be credited if:

 - ~~i. The member:

 - ~~i. Has contributions left on deposit with another system and the domestic federal service credit being purchased is limited to service for which another system similar in purpose to ATRS, except for Social Security, could not pay a benefit;~~
 - ~~ii. Pays ATRS, in full, the actuarial equivalent of benefits for each year of domestic federal service credit being purchased; and~~
 - ~~iii. Has established at least five (5) years of actual service, excluding federal domestic service; and~~~~
 - ~~ii. All other requirements set by rules adopted by the Board are met.~~~~
 - ~~2. A member may purchase a fraction of a year of domestic federal service that shall be credited if the:

 - ~~A. Member has at least one-fourth (1/4) of a year of domestic federal service in a fiscal year; and~~
 - ~~B. Fraction of a year of domestic federal service can be credited in accordance with Arkansas Code § 24-7-601.~~~~
- ~~d. Out-of-State Service~~
- ~~1. Out-of-State Service — Purchased Before July 1, 1987

 - ~~A. Out-of-state service purchased before July 1, 1987, shall be credited as service in accordance with the law in effect before July 1, 1987.~~~~
 - ~~2. Out-of-State Service — Purchased on and after July 1, 1987~~

~~A. A member may purchase up to fifteen (15) years of out-of-state service.~~

~~B. Out-of-state service shall be credited if:~~

~~i. The member:~~

~~a. Has contributions left on deposit with another system and the out-of-state service credit being purchased is limited to service for which another system similar in purpose to ATRS, except for Social Security, could not pay a benefit;~~

~~b. Pays ATRS, in full, the actuarial equivalent of benefits for each year of out-of-state service credit being purchased; and~~

~~c. Has established at least five (5) years of actual service, excluding out-of-state service; and~~

~~ii. All other requirements set by rules adopted by the Board are met.~~

~~C. A member may purchase a fraction of a year of out-of-state service that shall be credited if the:~~

~~i. Member has at least one-fourth (1/4) of a year of out-of-state service in a fiscal year; and~~

~~ii. Fraction of a year of out-of-state service can be credited in accordance with Arkansas Code § 24-7-601.~~

~~e. Overseas Service~~

~~1. A member may purchase service credit for service in an overseas school if:~~

~~A. The member:~~

~~i. Has at least five (5) years of service in a position covered by ATRS; and~~

~~ii. Performs the minimum days of service at the overseas school required for a fiscal year of service credit;~~

~~B. The overseas service credit is limited to service for which another system similar in purpose to ATRS, except Social Security, could not pay a benefit; and~~

~~C. The actuarial equivalent of the member's benefits is paid to ATRS~~

~~2. ATRS shall not credit a member with more than ten (10) years of overseas service credit.~~

~~f. Service in the General Assembly~~

~~1. A member of the Senate or House of Representatives of the General Assembly who is a member of ATRS shall receive credited service and salary in ATRS for his or her full contract salary if the:~~

~~A. School district requires the member's salary to be reduced during the member's attendance at:~~

- i. ~~Regular or extraordinary sessions of the General Assembly; or~~
 - ii. ~~Interim meetings of regular or special committees of the General Assembly;~~
 - B. ~~Member submits an application for General Assembly service credit to ATRS;~~
 - C. ~~Member pays ATRS the necessary member contributions; and~~
 - D. ~~Required employer contributions are paid to ATRS for the amount of the salary reduction during periods of the member's attendance at regular or extraordinary sessions of the General Assembly or sessions of legislative committees.~~
- 2. ~~A member of the Senate or House of Representatives who currently serves in the General Assembly or has served in the legislative committees for any year that is within five (5) years of July 6, 1977, shall receive credited service and salary for his or her full contract if the:~~
 - A. ~~Member submits an application for General Assembly service credit to ATRS and pays the employee contributions; and~~
 - B. ~~Required employer contributions are paid from the Public School Fund to ATRS for the portion of the contractual period in which the member's salary was reduced during the member's legislative service.~~
- 3. ~~A member of the Senate or House of Representatives of the General Assembly who is an employee and member of ATRS shall receive credited service and salary for his or her full contract salary if:~~
 - A. ~~Either the member or school district decides it is in the best interest of the member to take a leave of absence for up to one (1) full calendar year at a time in order for the member to attend his or her duties as a member of the General Assembly; and~~
 - B. ~~Both the required employee and employer contributions are paid to ATRS for the amount of the member's contract salary during periods in which the member attended sessions of the General Assembly or legislative committees.~~
- g. ~~Advanced Degree Service~~
 - 1. ~~Beginning June 28, 1985, a member who is a public school teacher or administrator and takes a leave of absence from a school in order to obtain an advanced degree at an institution of higher learning or to fulfill the requirements of a scholarship or grant shall receive credited service for the time of the member's actual enrollment in the institution if the member:~~
 - A. ~~Submits an application for the advanced degree service credit to ATRS; and~~
 - B. ~~Pays the actuarial equivalent of the member's benefits to the system for each year of service credit being purchased.~~

~~h. Private School Service~~

~~1. Head Start Programs~~

~~A. Employment with a Head Start program shall be considered private school service.~~

~~2. Certified Private School Service Credit~~

~~A. A member may purchase up to fifteen (15) years of private school service to be credited as certified service if:~~

~~i. The member:~~

- ~~a. Has contributions left on deposit with another system and the private school service credit being purchased is limited to service for which another system similar in purpose to ATRS, except for Social Security, could not pay a benefit;~~
- ~~b. Pays ATRS, in full, the actuarial equivalent of benefits for each year of private school service credit being purchased; and~~
- ~~c. Has established at least five (5) years of actual service, excluding private school service; and~~

~~ii. All other requirements set by rules adopted by the Board are met.~~

~~2. Noncertified Private School Service Credit~~

~~A. A member may purchase up to five (5) years of noncertified private school service that shall be credited as noncertified service if:~~

~~i. The member:~~

- ~~a. Submits an application to purchase noncertified private school service to ATRS;~~
- ~~b. Has contributions left on deposit with another system and the noncertified service credit being purchased is limited to service for which another state-supported pension system or system similar in purpose to ATRS could not pay a benefit;~~
- ~~c. Pays ATRS, in full, the actuarial equivalent of benefits for each year of service credit being purchased; and~~
- ~~d. Has established at least five (5) years of actual service; and~~

~~ii. All other requirements set by rules adopted by the Board are met.~~

~~B. A member may purchase a fraction of a year of private school service that shall be credited if the:~~

- ~~i. Member has at least one-fourth (1/4) of a year of private school service in a fiscal year; and~~
- ~~ii. Fraction of a year of private school service can be credited in accordance with Arkansas Code § 24-7-601.~~

~~3. Private Education-Related Entity Private School Service~~

~~A. A member may purchase up to five (5) years of private education-related entity private school service that shall be credited as noncertified service if:~~

~~i. The member:~~

- ~~a. Submits an application to purchase private education-related entity private school service to ATRS;~~
- ~~b. Has contributions left on deposit with another system and the private education-related entity private school service credit being purchased is limited to service for which another statesupported pension system or system similar in purpose to ATRS could not pay a benefit;~~
- ~~c. Pays ATRS, in full, the actuarial equivalent of benefits for each year of service credit being purchased;~~
- ~~d. Has established at least five (5) years of actual service; and~~

~~ii. All other requirements set by rules adopted by the Board are met.~~

~~—— i. Federal Retirement Service~~

~~1. An active member may purchase up to ten (10) years of federal retirement service that shall be credited if the:~~

- ~~A. Federal retirement service being purchased is limited to service for which the federal retirement system could not pay a benefit to the member;~~
- ~~B. Member submits an application to purchase federal retirement service to ATRS;~~
- ~~C. Member provides certification of his or her federal retirement service to ATRS on a form approved by ATRS;~~
- ~~D. Member pays ATRS, in full, the actuarial equivalent of benefits for each year of service credit being purchased; and~~
- ~~E. Member has established at least five (5) years of actual service, excluding federal retirement service.~~

~~2. A member shall complete at least one hundred sixty (160) working days before the member may establish one (1) year of federal retirement service credit.~~

~~3. One (1) month of federal service shall be considered twenty (20) days of service.~~

~~4. A member may purchase a fraction of a year of federal retirement service that shall be credited if the:~~

- ~~A. Member has at least one-fourth (1/4) of a year of federal retirement service in a fiscal year; and~~

~~B. Fraction of a year of federal retirement service can be credited in accordance with Arkansas Code § 24-7-601.~~

~~5. Federal retirement service credit shall be considered contributory service.~~

~~6. Purchased federal retirement service shall be credited to the fiscal year in which the service was rendered.~~

~~7. If a member is not an active member before establishing federal retirement service with ATRS, the member's contribution payments and regular interest shall be refunded.~~

~~8. Purchase account payments made through employer pick-up are subject to restrictions specified in this ATRS Rule 8, regulations, and the Internal Revenue Code.~~

IV. ~~Cost of Service and Purchase Accounts~~

~~a. Generally~~

~~1. A member shall purchase service using ATRS approved forms.~~

~~2. A member who purchases service shall receive credit for the purchased service if the actuarial equivalent of both the employee and employer contributions, as calculated by ATRS, are paid to ATRS.~~

~~3. The requirement for service to be purchased at the actuarial cost shall not apply to free military service credit established with ATRS.~~

~~4. A salary earned for service purchased at the actuarial cost:~~

~~A. Shall not be used to calculate a member's final average salary; and~~

~~B. May be used to determine repaid refunds for service that is required to be reported within the refunded service.~~

~~b. Contact Buyouts, Settlements, and Court Ordered Payments~~

~~1. A member shall only earn service credit for actual, on-site work performed for a covered employer for the period specified in a contract buyout, settlement, or court ordered payment unless the member purchases service or salary that would have been received by the member if the member had been successful in his or her legal claim.~~

~~2. A member shall purchase service or salary at the actuarial cost for service and salary that the member would have earned if the member had not been terminated.~~

~~3. If a member is on call with a covered employer and not subject to either a contract buyout, settlement, or court ordered payment, the salary paid to the member as a regular employee shall be credited to the member.~~

~~4. On call credit shall not be added to a member's salary with another covered employer.~~

~~5. ATRS shall not adjust a member's service history until the:~~

~~A. Member or the member's covered employer provides a copy of the settlement, a file-marked court order, or a certified copy of the contract buyout to ATRS; and~~

~~B. Actuarial cost to purchase the service has been paid in full to ATRS.~~

~~c. Actuarial Cost of Service — Purchase Formula~~

~~1. A member's highest salary shall be used as the base year when calculating the actuarial cost for service being purchased by the member.~~

~~2. A member's base year shall be the member's highest salary year unless the highest salary year is more than one hundred fifty percent (150%) greater than the next highest salary year.~~

~~3. If a member's highest salary year is more than one hundred fifty percent (150%) greater than the next highest salary year, the highest two (2) salary years shall be added together and divided by two (2) to determine the base year to be used for calculating the actuarial cost for service being purchased.~~

~~4. If a member does not have enough full service years to determine a base year for the purchase formula, a full year salary shall be used to determine the base year.~~

~~5. A full year salary shall be calculated by dividing each partial year's service percentage into each partial year's salary.~~

~~6. The actuarial cost for service to be purchased shall not include adjustments to salary and service that are made in order to properly reflect the member's mandatory salary and service record.~~

~~7. Service purchased at the actuarial cost shall be contributory.~~

~~d. Purchase Accounts~~

~~1. Purchase Account Commitment Statement~~

~~A. A purchase account established before July 1, 2011, shall have an approved Purchase Account Commitment Statement (PACS) on file with ATRS detailing the member's payment plan.~~

~~B. A PACS may be modified with the agreement of the member and ATRS.~~

~~C. A modification of a PACS may include changes to the type of payment, the duration of the service purchase agreement, and a decrease of the service purchased policy.~~

~~D. The service purchased under a PACS shall not be increased.~~

~~E. ATRS shall cancel a service purchase agreement with a member if the member fails to comply with the terms of the agreement.~~

~~F. Purchase account payments shall be applied to the member's account on the date the payment is received by ATRS.~~

~~2. Rollover Payments~~

- ~~A. ATRS shall accept participant rollover contributions and direct rollovers for the purchase of service credit from a qualified retirement plan.~~
- ~~B. A depository trustee from a qualified retirement plan shall certify to ATRS that the rollover deposit account is qualified and eligible to receive rollover distributions before a distribution of a member's account monies.~~
- ~~C. If the depository trustee is unable to certify the rollover deposit account as qualified and eligible to receive rollover distributions, ATRS shall accept a certification from a public accountant who has an active certified public accountant's license.~~
- ~~D. A public accountant shall not certify a rollover deposit account as qualified and eligible to receive rollover distributions if the public accountant has an interest in the rollover deposit account as a member, spouse, or designated beneficiary.~~

~~3. Deceased Member~~

- ~~A. If a member with an active purchase account dies, the member's spouse, beneficiary, or legal representative shall have up to six (6) months from the member's date of death to pay the balance of the purchase account unless the deadline is extended by ATRS for good cause.~~
- ~~B. If the member's purchase account is not paid in full within six (6) months of the member's date of death, the purchase account shall be closed and payments made towards the purchase account shall be considered as part of the member's residual account balance.~~

~~4. Cancellation of Purchase Accounts~~

- ~~A. A purchase account that is paid in full after a final payment has been tendered shall not be cancelled.~~
- ~~B. A member's purchase account may be cancelled if:

 - ~~i. The member submits a written cancellation request to ATRS; and~~
 - ~~ii. ATRS approves the cancellation request.~~~~
- ~~C. ATRS may approve a cancellation request and refund a member's purchase account if the purchase account:

 - ~~i. Is an account that has been paid only with after tax contributions;~~
 - ~~ii. Is an account that has been paid only with employer pick-up contributions and one (1) of the following applies:

 - ~~a. All payments on the irrevocable payroll authorization have been completed;~~
 - ~~b. The member terminates employment with the employer; or~~
 - ~~c. The member retires; or~~~~
 - ~~iii. Is an account that has been paid only with rollover or transfer contributions and the rollover or transfer contributions may be rolled~~~~

~~over or transferred to another qualified plan or refunded to the member after the deduction and payment of federal taxes.~~

~~D. If a member's cancellation request is approved by ATRS, ATRS shall refund the balance of the member's purchase account without interest to the member.~~

~~E. ATRS shall refund interest to a member if a refund of interest is statutorily mandated under Arkansas Code § 24-7-612 or another applicable provision of the Arkansas Code.~~

V. Refunds

~~a. Purchase of Refunded Service~~

- ~~1. A member shall not purchase refunded service unless he or she purchases the total credited service forfeited by a refund.~~
- ~~2. A repayment of refunded contributions shall be made in inverse order if the member has received more than one (1) refund of contributions.~~
- ~~3. The most recent refund account shall be paid in full before a member may purchase a previous refund account.~~

~~b. Refund of Member and Employer Contributions~~

~~1. Overpayments~~

~~A. ATRS shall send written notification to a member or covered employer, as appropriate, of a contribution overpayment that is less than the de minimis amount that may be refunded.~~

~~B. ATRS shall not refund an overpayment of the member's contributions that is equal to or less than the de minimis amount unless the member submits a written request for a refund to ATRS within fourteen (14) days of receiving the written notice of the contribution overpayment from ATRS.~~

~~C. ATRS shall not refund an overpayment of employee contributions and employer contributions paid by the covered employer that is equal to or less than the de minimis amount unless the covered employer submits a written request for a refund to ATRS within fourteen (14) days of receiving the written notice of the contribution overpayment from ATRS.~~

~~D. If the member or covered employer does not submit a written request for a refund within fourteen (14) days of receiving the written notice of the contribution overpayment from ATRS, the amount of the contribution overpayment shall be forfeited to the trust assets of ATRS.~~

- ~~2. The total amount reported by the covered employer shall be credited to contributions.~~
- ~~3. The de minimis amount shall be periodically set by the Board, by board resolution, and shall remain the same amount until adjusted by the Board.~~
- ~~4. For refunded contributions, the rate of regular interest compounded annually after the first year of contributions shall be credited as follows:~~

Service	Regular Interest Rate
Before July 1, 1984	3%
For July 1, 1984 through June 30, 2009	6%
For July 1, 2010, through June 30, 2011	2%
For July 1, 2012, through June 30, 2017	1%
For July 1, 2017 and after	0.08%

5. ~~Payable regular interest shall be computed:~~
 - A. ~~On each member's individual account on June 30; and~~
 - B. ~~By multiplying the balance in the member's individual account as of July 1, including contributions and regular interest credit from previous years, plus one-half (1/2) of the contributions for the year ending June 30 by the annual applicable regular interest percentage rate.~~
6. ~~The Board, by board resolution, may change the regular interest rate on refunded contributions for subsequent years by stating the new regular interest rate, the date that the new regular interest rate is effective, and any other features necessary for implementing the regular interest rate.~~
7. ~~Regular interest shall not be paid on contributions made in the year in which a refund of contributions is paid to a member.~~
8. ~~ATRS shall issue a refund for a member's contributions that are closed on ATRS' books after receiving the member's properly completed refund application.~~
9. ~~If a second refund payment is required to complete the refund of contributions, the second payment shall be made when all quarters of service the member works are closed on ATRS' books.~~
10. ~~A rollover payment shall be made in one (1) payment when all quarters of service the member works are closed on ATRS' books.~~
11. ~~A refund is effective on the date on which ATRS first issues a payment of the refund.~~

HISTORY

Adopted:	February 3, 2004	8-4
Adopted:	June 15, 2004	8-1, 8-4, 8-5, 8-6
Amended:	July 18, 2005	8-2
Amended:	April 26, 2007	8-1, 8-4, 8-7
Adopted:	February 11, 2008	8-19
	October 6, 2008	8-7
	February 1, 2010	8-2 under emergency rules.
	June 7, 2010	8-2 Permanent

	July 1, 2011	8-1, 8-2, 8-4, 8-7, 8-19, 8-20 (Emergency)
Adopted:	August 8, 2011	8-1, 8-2, 8-4, 8-7, 8-19, 8-20
Effective:	November 11, 2011	8-1, 8-2, 8-4, 8-7, 8-19, 8-20
Approved by Board:	February 6, 2012	8-1, 8-2, 8-5, 8-6
Amended:	April 2, 2012	8-2 (Emergency)
Amended:	April 18, 2012	8-1, 8-5, 8-6
Effective:	May 29, 2012	8-1, 8-2, 8-5, 8-6
Approved by Board:	July 26, 2013	8-20
Amended:	October 9, 2013	8-20
Effective:	November 8, 2013	8-20
Approved by Board:	October 5, 2015	8-1, 8-7
Amended:	February 1, 2016	8-1, 8-7
Effective:	February 10, 2016	8-1, 8-7
Effective:	August 5, 2019	Rule 8
Effective:	May 28, 2020	Rule 8
Effective:	May 20, 2022	Rule 8

Public Comments
Proposed Rule 9 – Retirement and Benefits

1. Page 1, § 9-101(11).

- a. **ATRS Staff Comment:** Can the definition of “medical committee” be amended at this time to include medical professionals other than physicians?
- b. **Response:** Ark. Code Ann. § 24- 7-303(f) requires three (3) physicians to be appointed to the medical committee. As such, it would be more appropriate to pursue a legislative change before amending the definition of “medical committee” in this rule. No changes to the rule have been made.

2. Page 6, § 9-106.

- a. **BLR Comment:** Section 9-106(a) of the proposed rule, which concerns the submission of additional documents in support of age and service retirement applications, provides that a member shall submit a completed application and additional documents by the end of the sixth full calendar month “immediately following the member’s effective retirement date”. Ark. Code Ann. § 24-7-701(a)(1)(B), which concerns voluntary retirement under the Arkansas Teacher Retirement System, requires a member to submit a complete retirement application by the end of the sixth full calendar month immediately following “the effective date of benefits”, including all additional documentation required by the system. Is there a meaningful difference between the terms “effective retirement date” and “effective date of benefits”, for the purposes of the proposed rule?
- b. **Response:** No, the effective retirement date and the effective date of benefits are the same. No changes to the rule have been made.

3. Page 18, § 9-113(g)(4).

- a. **BLR Comment:** Section 9-113(g)(4) of the proposed rule, which concerns residue beneficiaries, appears to track Ark. Code Ann. § 24-7-709, which concerns disposition of retiree contributions and residue. The agency has indicated that this statutory provision was incorrectly amended by Act 107 of 2023, with respect to the payment of residue when all designated beneficiaries predecease the retiree. Can the agency expound on how it elected to amend this provision of the proposed rule, in light of Act 107?
- b. **Response:** ATRS has elected to include this provision under § 9-113(g)(4)(C) by providing, “If all residue beneficiaries predecease the retiree, the residue shall be paid to either the retiree’s estate or the estate of the most recently deceased designated beneficiary.” This revision will allow ATRS to comply with Ark. Code Ann. § 24-7-709(a)(3) and Ark. Code Ann. § 24-7-709(a)(4), which is the codification of Act 107.

ATRS Rule 9 Retirement and Benefits

§ 9-101. Definitions.

As used in this rule:

(1) "Act 808 Employee" means an employee of a state agency who:

(A) On April 8, 1987, was an active member of the Arkansas Teacher Retirement System;

(B) Qualified to retire before January 1, 1988, under the Early Retirement Incentive Law of 1987 (Acts 1987, No. 187); and

(C) Could elect to become a member of the Arkansas Public Employees' Retirement System and have his or her credited service in the Arkansas Teacher Retirement System transferred to the Arkansas Public Employees' Retirement System;

(2) "Annuity options" means one (1) or more options that:

(A) Concern how an annuity benefit shall be paid, in accordance with Arkansas Code § 24-7-706, to a member for his or her lifetime after the member's retirement; and

(B) Are available for a member's election at the time of the member's retirement;

(3) "Application" for the purposes of retirement eligibility means an application form and any other documents required by the Arkansas Teacher Retirement System to establish a member's eligibility to retire;

(4) "Covered employer" or "employer" means an employer who participates in the Arkansas Teacher Retirement System and whose employees are eligible for membership in the Arkansas Teacher Retirement System;

(5) "Dependent child" means a child of a member or retiree who:

(A) Is a minor; or

(C) Has been adjudged physically or mentally incapacitated by a court of competent jurisdiction;

(6) "Effective retirement date" means the first day of the month in which a member requests to receive retirement benefits and for which the member submits a timely retirement application;

(7) "Eligible employee" for the purposes of salary or compensation limitations concerning the calculation of a final average salary means a person who was a member of the Arkansas Teacher Retirement System before the first plan year beginning after December 31, 1995;

(8) "Full service year" means employment with a covered employer for one hundred sixty (160) days or more in a fiscal year;

(9) "Incapacitated child" means a child who has been adjudged physically or mentally incapacitated by a court of competent jurisdiction;

(10) "Marriage dissolution" means a final decree of divorce, separate maintenance, or annulment executed by a court of competent jurisdiction and filed of record in the Office of the Ex Officio Recorder;

(11) "Medical committee" means the committee of three (3) physicians appointed by the Board of Trustees of the Arkansas Teacher Retirement System for the purpose of

evaluating disability retirement applications;

(12) "Option beneficiary" means a person who:

(A) A member nominates by written designation, before or after the member's retirement, to receive annuity payments after the member's death in accordance with the annuity option selected by the member; and

(B) If eligible, shall receive annuity payments after the member's death in accordance with the annuity option selected by the member;

(13) "Partial service year" means employment with a covered employer for less than one hundred sixty (160) days in a fiscal year;

(14) "Person" means an individual, trust, estate, corporation, partnership, or other legal entity;

(15) "Residue" means a member's accumulated contributions, including regular interest standing in the member's credit at the time of his or her retirement;

(16) "Residue beneficiary" means a person who a member nominates by written designation to receive the member's residue, if any, under Arkansas Code § 247-709;

(17) "Receivable" means monies due to the Arkansas Teacher Retirement System from a member, former member, covered employer, contributor, retiree, beneficiary, or alternate payee under a qualified domestic relations order or QDRO as a result of an overpayment of any payment or benefit by the Arkansas Teacher Retirement System;

(18) "Retiree" means a retired member who receives an annuity from the Arkansas Teacher Retirement System;

(19) "Service" means employment rendered as an employee.

§ 9-102. State employee transfers to the Arkansas Public Employees' Retirement System.

(a) An Act 808 employee shall make the election to transfer to the Arkansas Public Employees' Retirement System on a form approved by the Arkansas Teacher Retirement System.

(b) The transfer from the Arkansas Teacher Retirement System to the Arkansas Public Employees' Retirement System shall be effective on the employee's effective date of retirement.

(c) The Arkansas Teacher Retirement System shall certify to the Arkansas Public Employees' Retirement System a record of the Act 808 employee's service credit in the Arkansas Teacher Retirement System.

(d)(1) If an Act 808 employee is a non-contributory member of the Arkansas Teacher Retirement System at the time of his or her retirement, the Act 808 employee shall retire under the non-contributory provisions of Acts 1987, No. 187 and shall be entitled to a refund of his or her Act 808 employee contributions made since January 1, 1978, to the Arkansas Teacher Retirement System.

(2) If an Act 808 employee was a contributory member of the Arkansas Teacher Retirement System at the time of his or her retirement, the Act 808 employee shall retire under the contributory provisions of Acts 1987, No. 187.

(e)(1) The Arkansas Public Employees' Retirement System shall pay the monthly benefits of an Act 808 employee who elects to transfer to the Arkansas Public Employees' Retirement System.

(2) The Arkansas Public Employees' Retirement System shall certify monthly to

the Arkansas Teacher Retirement System the amount of monthly benefits paid and the Arkansas Teacher Retirement System shall transfer its pro-rata portion to the Arkansas Public Employees' Retirement System.

(f) Upon receipt of a death certificate from the Arkansas Public Employees' Retirement System for a retiree who chose a straight life annuity and has a balance remaining in his or her account, the Arkansas Teacher Retirement System shall transfer the remaining balance in the retiree's account to the Arkansas Public Employees' Retirement System for refunding to the retiree's designated beneficiary.

§ 9-103. Retirement eligibility.

To be eligible for age and service retirement or disability retirement under the Arkansas Teacher Retirement System, a member shall:

(1) Satisfy the credited service requirements under one of the retirement statutes, Arkansas Code §§ 24-7-701—707;

(2) Be credited with all required covered employer and member contributions in the member's deposit account, with no amounts owed to the system;

(3) Pay all amounts owed to the system for underpayments, overpayments, or purchase service accounts; and

(4) Terminate employment with each of his or her covered employers or reach the normal retirement age.

§ 9-104. Age and service retirement — Effective retirement date.

(a) For a member who is inactive, vested, and immediately eligible to retire, retirement benefits shall be payable the month after the Arkansas Teacher Retirement System receives the member's application for age and service retirement.

(b)(1) If a member meets all eligibility requirements for age and service retirement and is approved for retirement, annuity benefits shall be effective on the month proposed in the member's application.

(2) If the member does not file an application at least one (1) calendar month before the proposed effective retirement date, then the proposed retirement effective date in the member's application shall not be used, and the member's effective retirement date shall be the following month.

(c) 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 effective retirement date shall not be before July 1 of the subsequent fiscal year.

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

(A) Has attained the normal retirement age and is not separating from employment;

or

(B) Is not licensed or otherwise certified as a classroom teacher and vacating a classroom.

(e)(1) A member who attains the normal retirement age may:

(A) Apply for retirement benefits without terminating employment; and

(B) Begin drawing retirement benefits.

(2) The retirement benefits of a member who attains the normal retirement age shall not be affected if the member applies for and draws retirement benefits.

§ 9-105. Age and service retirement — Application.

(a) A copy of the age and service retirement application may be downloaded from the system's website or requested from the system.

(b)(1) 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 by filing a written application with the Arkansas Teacher Retirement System.

(2) 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 by filing a written application with the system.

(c)(1) In order for a retirement application to be timely filed, there is a three-month "window" to apply for retirement benefits.

(2) An active member who is currently employed by a covered employer shall file his or her retirement application:

(A) No sooner than four (4) months before the active member's effective retirement date; and

(B) No later than one (1) month before the active member's effective retirement date.

(d)(1) The system's procedure for handling a retirement application received by the system from a member shall include the following:

(A) If a retirement application is received by the system before the three-month window begins for the member's anticipated effective retirement date, the system shall:

(i) Consider the retirement application untimely;

(ii) Reject the retirement application;

(iii) Notify the member of one (1) or more dates on which the member may timely file a retirement application; and

(iv) Notify the member of the procedure to use in order to timely file a retirement application.

(2) If a retirement application is received after the three-month window ends for the member's anticipated effective retirement date, the system shall:

(i) Consider the retirement application untimely; and

(ii) Provide the member with a new effective retirement date that begins on the first day of the month following the member's previously anticipated effective retirement date.

(e) Section 9-105(d) and (e) of this rule do not apply to a disability retirement application or an application for survivor benefits.

(f) 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>

(g) The following table is the only window for filing a Teacher Deferred Retirement Option Participation 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>

§ 9-106. Age and service retirement — Additional documents.

(a) Unless an extension is granted by the Executive Director of the Arkansas Teacher Retirement System, in addition to a completed application for retirement, a member shall submit the following additional documents to the Arkansas Teacher Retirement System by the end of the sixth full calendar month immediately following the member's effective retirement date:

(1) For members who elect a straight life annuity:

(A) Proof of the member's birthdate from a birth certificate or other authenticating documents; and

(B) Proof of the member's taxpayer identification number from a Social Security card or other authenticating documents.

(2) For members who elect an Option A or Option B annuity and designate their spouse as the beneficiary:

(A) Proof of the member's birthdate from a birth certificate or other authenticating documents;

(B) Proof of the member's taxpayer identification number from a Social Security card or other authenticating documents;

(C) Proof of the spouse's birthdate from a birth certificate or other authenticating documents;

(D) Proof of the spouse's taxpayer identification number from a Social Security card or other authenticating documents; and

(E) Proof of the 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.

(3) For members who elect an Option A or Option B annuity and designate a dependent child as their beneficiary:

(A) Proof of the member's birthdate from a birth certificate or other authenticating documents;

(B) Proof of the member's taxpayer identification number from a Social Security card or other authenticating documents;

(C)(i) Proof of guardianship

(ii) Adequate proof of the existence of a guardianship due to the incapacity of the member's dependent child that preexists the member's official retirement date.

(iii) Authenticating documents may include the order appointing guardianship of the person, letters of guardianship, or other adequate proof of the existence of the guardianship;

(D) Proof of the dependent child's birthdate from a birth certificate or other authenticating documents; and

(E) Proof of the dependent child's taxpayer identification number from a Social Security card or other authenticating documents.

(4) For members who elect an Option C annuity:

(A) Proof of the member's birthdate from a birth certificate or other authenticating documents; and

(B) Proof of the member's taxpayer identification number from a Social Security card or other authenticating documents.

(b)(1) Unless an extension is granted by the executive director, a member shall submit by the end of the sixth full calendar month immediately following the member's effective retirement date all additional documents required by the system in order to begin issuing benefit payments to the member.

(2) If all additional documents required by the system are not submitted by the deadline or any extension granted by the executive director, the member's retirement application shall be void and without effect.

§ 9-107. Disability retirement — Application.

(a)(1) A member shall submit a completed application for disability retirement and all accompanying documentation required by the Arkansas Teacher Retirement System by the end of the sixth full calendar month immediately following the date of the member's disability retirement application.

(2) If a member does not submit all accompanying documentation by the end of the sixth full calendar month immediately following the date of the member's disability retirement application, the system shall:

(A) Submit the disability retirement application to the medical committee for review as complete; or

(B) Withdraw the application at the request of the member unless an extension is granted by the Executive Director of the Arkansas Teacher Retirement System.

(b)(1) Disability retirement benefits shall begin on the first of the month in which a member files a disability retirement application with the system if the:

(A) Member is eligible for disability retirement;

(B) Member is no longer employed by a covered employer at the time he or she files the disability retirement application; and

(C) Medical committee determines that the member has a disability.

(2) If the member is still employed by a covered employer at the time the member files the disability retirement application, then, once approved by the medical committee and then the Board of Trustees of the Arkansas Teacher Retirement System, the member's disability retirement shall begin on the first of the month following the last day of the member's covered employment.

(c) If a member's initial application for disability retirement is denied and the member elects and qualifies for age and service retirement, the member's effective retirement date shall be determined by the date the member's initial disability retirement application is filed.

(d)(1) A member may request a second review of his or her initial disability retirement application if the:

(A) Member's initial disability retirement application is denied; and

(B) Member submits additional medical documentation for the medical committee's consideration.

(2) A member may only request a second review one (1) time.

(3) If a member requests a second review, unless an extension is granted by the executive director, the member has until the end of the sixth full calendar month immediately following the date of the written notice of the medical committee's denial of the member's initial application for disability retirement to submit additional medical

documentation.

(4)(A) If a member's initial disability retirement application is denied after the second review, the member may file another subsequent disability retirement application and submit additional information for consideration if the member is active and eligible for disability retirement.

(B) If a member's initial disability retirement application is denied and the member is ineligible to apply for disability retirement benefits or is inactive, the member may apply for **age and service retirement** if the member meets the requirements **age and service retirement**.

(e) If a member dies after the disability application is received by the system, but before his or her disability retirement application is approved, then the:

(A) Member shall be considered as having died in active service; and

(B) Survivor benefits under Arkansas Code § 24-7-710 shall be paid, unless the member designated one (1) or more alternative residual beneficiaries.

(f)(1) If a disability retirement application is approved by the medical committee after May 31, 2011, the board shall allow the member to designate an Option A or Option B beneficiary at the time of retirement.

(2) An Option C beneficiary shall not be designated by a member who applies for disability retirement or a disability retiree.

(g)(1) The same rules that apply to an active member's surviving spouse under Arkansas Code § 24-7-710(b) shall apply to a disability retiree's surviving spouse if the disability retiree:

(A) Designates his or her spouse as Option A or Option B beneficiary at the time of retirement; and

(B) Dies before reaching sixty (60) years of age.

(2) The same rules that apply to a surviving spouse of an active member under Arkansas Code § 24-7-710(b) shall apply to the surviving spouse of a disability retiree if the disability retiree:

(A) Dies after disability retirement benefit payments to the disability retiree begin;

(B) Does not designate his or her spouse as an Option A or Option B beneficiary; and

(C) Does not designate a residue beneficiary.

(3) The same rules that apply to a surviving spouse of an active member under Arkansas Code § 24-7-710(b)(1)(B) shall apply to the surviving spouse of a disability retiree if the disability retiree:

(A) Dies after disability retirement benefit payments to the disability retiree began;

(B) Does not designate his or her spouse as an Option A or Option B beneficiary; and

(C) Designates his or her spouse as a residue beneficiary.

(4) The same procedures used under Arkansas Code § 24-7-710 that are used to determine when an active member's surviving spouse is entitled to begin receiving benefit payments shall be used to determine when benefit payments shall begin for a residue beneficiary who is the surviving spouse of a disability retiree and elects an Option A – 100% Survivor Annuity

(5) If a disability retiree designates his or her dependent child as an Option A or Option B beneficiary, and the disability retiree dies before reaching age sixty (60), then:

(A) The same rules that apply under Arkansas Code § 24-7-710(c) to an active member's surviving child shall apply to the disability retiree's Option A or Option B dependent child beneficiary until the date on which the disability retiree would have turned sixty (60) years of age; and

(B) On the date on which the disability retiree would have turned sixty (60) years of age, the Option A or Option B dependent child beneficiary shall receive the greater of the surviving child annuity under Arkansas Code § 24-7-710(c) or the Option A spouse annuity under Arkansas Code § 24-7-710(b).

§ 9-108. Disability retirement — Disability review.

(a) A deadline imposed by this rule may be extended as provided by this rule and Arkansas Code § 24-7-704.

(b)(1) A retiree shall submit to the Arkansas Teacher Retirement System a Social Security Administration (SSA) determination letter that finds the retiree disabled within thirty-six (36) months from:

(A) July 1, 2015, if the retiree's effective retirement date is before July 1, 2015; or

(B) The retiree's effective retirement date if the effective date of retirement is on or after July 1, 2015.

(2) A retiree may apply to the system for an extension of the thirty-six-month deadline if:

(A) The retiree demonstrates through an administrative or judicial confirmation of an active SSA claim that the claim is:

(i) Still under review; and

(ii) Part of a continuous claim without voluntary dismissal or withdrawal; and

(iii) The SSA disability claim was filed and remained active for at least twenty-four (24) months before the thirty-six-month deadline.

(c) The system shall suspend disability retirement benefit payments to a retiree if the retiree does not:

(1) Provide the system with a SSA determination letter finding the retiree disabled within the thirty-six-month deadline;

(2) Receive an extension of the thirty-six-month deadline to provide the system with a SSA determination letter finding the retiree disabled; or

(3) Apply to the medical committee for a review **by the end of the third full calendar month immediately following the system's suspension of** disability retirement benefit payments to the retiree due to the retiree's failure to provide a SSA determination letter finding the retiree disabled.

(d)(1) A retiree who attempts and is unable to receive a SSA determination letter finding the retiree disabled may apply for a review by the medical committee **if the member submits either an unfavorable SSA determination letter finding that the retiree is not disabled or documentation showing that the retiree applied for SSA benefits before the thirty-six-month deadline to submit a favorable SSA determination letter finding the retiree disabled expired.**

(2) A retiree may apply for a review by the medical committee:

(A) No earlier than **three (3) full calendar months** before the date on which the retiree's disability retirement benefit payment would otherwise be suspended; and

(B) No later **than by then end of the third full calendar month immediately following the system's suspension of** disability retirement benefit payments to the retiree.

(3) A review performed by the medical committee shall follow the standards and procedures in Arkansas Code § 24-7-704(a)(1)(E).

(4)(A) After a disability review is held due to the SSA finding that a member is not disabled, the medical committee's recommendations shall be submitted to the Board of Trustees of the Arkansas Teacher Retirement System for a final order.

(B) If a member is denied further disability benefits after a disability review by the medical committee, the member may:

(i) Offer additional medical information within thirty (30) days of the date of the disability review; and

(ii) Request that the board return the matter to the medical committee for reconsideration.

(C)(i) Disability retirement benefit payments to a member shall resume in the month immediately following the board's entry of an order finding the member eligible to receive disability retirement benefits if the board had previously entered an order finding the member ineligible to receive disability retirement benefits.

(ii) If the board enters an order finding a member eligible to receive disability retirement benefits, the member shall not be entitled to retroactive backpay of disability retirement benefits if the:

(a) Board had previously entered an order finding the member ineligible to receive disability retirement benefits;

(b) Member did not submit a favorable SSA determination letter within thirty-six (36) months of his or her effective date of disability retirement; and

(c) Member submits a favorable SSA determination letter after the board entered the order finding the member ineligible to receive disability retirement benefits.

(e) A member's option to request a second review of his or her initial disability retirement application does not apply to a retiree who seeks a disability review due to his or her inability to obtain a SSA determination letter finding him or her disabled.

(f) A retiree shall begin receiving regular retirement benefits as if the retiree voluntarily retired and a SSA determination letter shall not be required if the retiree

(1) Attains fifty-seven (57) years of age in the month the retiree's disability retirement benefits become effective; or

(2) Attains sixty (60) years of age.

§ 9-109. Disability retirement — Employment after disability retirement.

(a) A member's disability retirement is effective from the date the member files a disability retirement application with the Arkansas Teacher Retirement System and terminates employment with each of his or her covered employers.

(b)(1) A member is considered active if the member is using earned sick leave, Family Medical Leave Act leave, annual leave, and catastrophic leave.

(2) Worker's compensation, which may or may not include the use of leave granted

by an employer, shall not:

(A) Be considered leave by which a member is considered active; and

(B) Extend the date of active membership.

(c)(1) A member shall not receive disability retirement benefit payments if the member indirectly performs work for a covered employer as described in [Arkansas Code § 24-7-502](#).

(2) If a member is approved for disability retirement and continues to work either directly or indirectly for a covered employer, the member shall:

(A) Terminate direct or indirect employment with the covered employer by the proposed disability effective retirement date; or

(B) If the member is finalizing work for the covered employer, terminate employment no later than two (2) full calendar months after the medical committee's final decision.

(3) If the member does not terminate employment in accordance with the ATRS Rules and [Arkansas Code § 24-7-502](#), the member's disability retirement application shall be considered rescinded and the member may reapply for disability retirement if eligible.

(d)(1) A retiree under the age of sixty (60) may be employed by a covered employer and also receive disability retirement benefit payments if the retiree performs less than eighty (80) days of actual service during a fiscal year.

(2)(A) After receiving approval for disability retirement under the system, a retiree may choose to return to covered employment and relinquish his or her disability retirement.

(B) If a retiree chooses to return to covered employment, the member shall:

(i) Not receive disability retirement benefit payments;

(ii) Be considered an active member; and

(iii) Comply with [Arkansas Code § 24-7-738](#) (Acts 2017, No. 549).

(3) A retiree shall become an active member and his or her disability retirement shall be immediately terminated if:

(A) The retiree notifies the system in writing of his or her intent to perform more than eighty (80) days of actual service during a fiscal year; or

(B) The system receives written notification of the retiree's intent to perform more than eighty (80) days of actual service during a fiscal year through a termination and status sheet, membership data form, or any other reasonably reliable documentation.

(e) A disability retiree shall not be permitted to transfer his or her disability retiree status to that of an age and service retiree.

§ 9-110. Benefit formula and Compound Cost of Living Adjustment.

(a) The annuity formula for computing disability retirement benefits shall be the same annuity formula used to compute age and service retirement benefits.

(b)(1) The retirement benefits payable to a retiree shall be the total number of contributory years of credited service, multiplied by a factor that is not less than one and seventy-five hundredths percent (1.75%) and not more than two and fifteen hundredths percent (2.15%) of the final average salary as set by the Board of Trustees of the Arkansas Teacher Retirement System, plus the total number of noncontributory years of credited service multiplied by a factor that is not less than five-tenths percent (0.5%) and not more than one and thirty-ninth hundredths percent (1.39%) of the final average salary, as set

by the Board of Trustees of the Arkansas Teacher Retirement System.

(2) The board shall modify the standard multipliers for credited service of ten (10) years as necessary to maintain actuarial soundness.

(c)(1) The board by resolution may reverse a compound cost of living adjustment as needed to maintain the actuarial soundness of the system.

(3) A reversal may be phased in as the board determines appropriate.

(d)(1) If a covered employer reports additional salary for a member and the additional salary does not cause the member's annual benefit to increase or decrease by more than the de minimis amount, then the member's contributions on the additional salary shall be transferred from the member's deposit account to the employer accumulation account without making any change to the member's annual benefit.

(2) If the additional salary does increase or decrease the member's annual benefit by more than the de minimis amount, then the member's annual benefit shall be recalculated.

§ 9-111. Final average salary — Salary limitations.

(a) The Board of Trustees of the Arkansas Teacher Retirement System may adopt rules to modify the definition of salary for the purpose of calculating retirement benefits available under the Arkansas Teacher Retirement System.

(b) The system shall include the salary received from each of a member's covered employers when calculating the member's final average salary.

(c)(1) Regardless of any provision in a state statute, rule, or regulation to the contrary, remuneration, salary, or other compensation that exceeds the limitations set forth provided in the Internal Revenue Code of 1986, 26 U.S.C. § 401(a)(17), as it existed on January 1, 2011, shall not be used for the purposes of calculating the final average salary on which benefits available under the system are based.

(2) The limitation on remuneration, salary, or compensation for an eligible employee shall not be less than the amount that was allowed to be considered by the Arkansas Teacher Retirement System as in effect on July 1, 1993.

(d)(1) A salary earned by a member before the member's death and paid after the member's death is subject to deductions by the system and the member's covered employer shall report the member's total salary and days of service in the covered employer's quarterly report.

(2) Gratuitous payments made by a covered employer to a member after the death of the member shall not be:

(A) Considered the salary of the member;

(B) Subject to contribution requirements; and

(C) Included in the covered employer's quarterly report to the system.

(e) The system shall not consider remuneration, salary, or compensation paid by a covered employer to a member as a salary earned by the member if the:

(1) Remuneration, salary, or compensation is paid as an incentive payment, bonus, separation payment, additional salary, or special payment in consideration for the member's agreement to retire, terminate employment, or not renew a contract with the covered employer;

(2) Offer described in § 9-111(d)(1) of this rule is extended by the covered employer to two (2) or more members;

(3) Remuneration, salary, or compensation is not offered as an additional salary or payment for the purchase of service credit that is part of a separation agreement resulting from the resolution of a claim of wrongful termination;

(4) Remuneration, salary, or compensation is not payment for accumulated, unused sick leave that:

(A) Accrued in the years immediately preceding the member's termination of covered employment; and

(B) Were in excess of the number of sick days that the covered employer allowed the member to carry forward;

(5) Covered employer offers a voluntary early retirement incentive plan, staff reduction plan, or buyout plan that would require the member as a participant of the plan to retire or terminate his or her employment with the covered employer; and

(6) Member voluntarily participates in the plan in exchange for the remuneration, salary, or compensation offered by the covered employer.

(f)(1) A covered employer shall not withhold a member's contributions or pay employer contributions from a remuneration, salary, or compensation paid to a member if the remuneration, salary, or compensation is subject to a salary limitation as provided by this rule.

(2) A covered employer that offers an early retirement plan, separation, plan, or contract nonrenewal plan and intends to pay remuneration, salary, or compensation that is subject to a salary limitation as provided by this rule shall notify the system before making a payment under the plan.

(g)(1) At the request of a covered employer, the system shall:

(A) Review a potential plan or payment that may be subject to a salary limitation as provided by this rule; and

(B) Provide written guidance to the covered employer concerning the applicability of the salary limitation to the plan or payment.

(2) The system's written determination on the applicability of a salary limitation to a plan or payment shall be treated as a staff determination letter, which may be appealed by the covered employer using the procedures in ATRS Rule 13-1.

(3) The law, rules, and policies applicable to the system shall be controlling if a conflict exists between the system's calculation of final average salary and a covered employer's laws, rules, or policies concerning the compensation of final average salary.

§ 9-112. Final average salary — Service years.

(a) If a member dies during active service on or after July 1, 2013, the member's paid or unpaid accrued, unused sick leave, shall be credited as service in the fiscal year of the member's death for the purpose of determining the member's retirement eligibility, final average salary, and eligibility for other benefits under the Arkansas Teacher Retirement System.

(b)(1) A partial service year shall be excluded from the calculation of a member's final average salary unless the:

(A) Partial service year is higher than a full service year; or

(B) Member has less than the required number of years to calculate a final average salary.

(2) Anti-spiking calculations shall not be applied to a partial service year or a fiscal

year immediately following a partial service year.

(c)(1) The Board of the Arkansas Teacher Retirement System shall set annually the applicable number of years to be used in computing final average salary for retirement benefits at not less three (3) years and not more than five (5) years.

(2) Unless otherwise provided by law, rules, or policies applicable to the Arkansas Teacher Retirement System, effective July 1, 2018, the Arkansas Teacher Retirement System shall calculate a member's final average salary using the five (5) years in which the member received the highest salary from a covered employer.

(d)(1) If a member has less than the minimum number of years of credited service that would be used to calculate a final average salary, the member's final average salary shall be the total salary paid to the member for his or her years of credited service divided by the member's total credited years of service.

(2) If a member does not have full service years for the total years of service used in the calculation of final average salary, the board may establish by rule a fair base salary for a member's final average salary for purposes of comparing the member's highest salary years.

(e)(1) For an active member who has three (3) or more full service years as of July 1, 2018, the Arkansas Teacher Retirement System shall:

(A) Treat the active member as if he or she was retiring or entering the Teacher Deferred Retirement Option Plan as of June 30, 2018; and

(B) Determine the benchmark final average salary using the highest salary from the member's three (3) full service years through fiscal year 2018.

(2) A final average salary calculation using three (3) full service years shall be the benchmark comparison for a five-year final average salary calculation to which the active member may be entitled.

(3) The Arkansas Teacher Retirement System shall calculate the active member's final average salary using the five (5) years in which the active member received the highest salary from a covered employer if at the time of the active member's retirement using a five-year calculation of the final average salary is higher than using a three-year calculation.

(4) The Arkansas Teacher Retirement System shall not use a benchmark final average salary for an inactive member unless the inactive member provides the Arkansas Teacher Retirement System with appropriate documentation showing that the inactive member was active in a reciprocal system or alternate retirement plan during the 2018 fiscal year.

(f) For a member with reciprocal service credit, the Arkansas Teacher Retirement System shall use the highest final average salary calculated, at the time of the member's retirement, by the Arkansas Teacher Retirement System or a reciprocal system in which the member has at least two (2) years of service credit pursuant to Arkansas Code § 24-2-402.

§ 9-113. Annuity options.

(a) Before the date the first benefit payment of an annuity becomes due, a member retiring with age or service may elect one (1) of the following annuity options:

(1) Option 1 – straight life annuity, which is a straight life annuity payable monthly for the life of the retiree.

(2)(A) Option 2 – reduced straight life annuity with option beneficiaries, under which a retiree shall receive the actuarial equivalent of his or her straight life annuity in a reduced annuity payable for the retiree’s lifetime.

(B) Under Option 2, at the time of his or her retirement, a member may designate one (1) or more beneficiaries to receive one (1) of the following annuity options:

(i)(a) Option A – one hundred percent (100%) survivor annuity. Upon the death of the retiree, the retiree’s reduced annuity shall be continued and paid throughout the life of the retiree’s designated beneficiary.

(b) A member’s eligible spouse, one (1) or more of the member’s children who qualify as a dependent child, or both may be designated as an Option A beneficiary.

(c) If both a spouse and one (1) dependent child are designated as Option A beneficiaries, the retiree’s reduced annuity shall be paid in equal shares to the spouse and the dependent child.

(d) If both a spouse and more than one (1) dependent child are designated as Option A beneficiaries, the spouse shall receive fifty percent (50%) of the retiree’s reduced annuity and the remaining fifty percent (50%) shall be paid in equal shares to the dependent children.

(e) If more than one (1) dependent child is designated as an Option A beneficiary and a spouse is not designated as an Option A beneficiary, the retiree’s reduced annuity shall be paid in equal shares to each dependent child.

(f) A dependent child’s portion of the annuity shall not revert to the spouse or any other dependent children if the dependent child becomes ineligible to continue receiving annuity payments or predeceases the spouse or any other dependent children.

(g) A spouse’s portion of the annuity shall not revert to any dependent child if the spouse becomes ineligible to continue receiving annuity payments or predeceases one (1) or more dependent children.

(ii)(a) Option B – fifty percent (50%) survivor annuity. Upon the death of the retiree, one-half (1/2) of the retiree’s reduced annuity shall be continued and paid throughout the life of the retiree’s designated beneficiary.

(b) A member’s eligible spouse, one (1) or more of the member’s children who qualify as a dependent child, or both may be designated as an Option B beneficiary.

(c) If both a spouse and one (1) dependent child are designated as Option B beneficiaries, one-half (1/2) of the retiree’s reduced annuity shall be paid in equal shares to the spouse and the dependent child.

(d) If both a spouse and more than one (1) dependent child are designated as Option B beneficiaries, the spouse shall receive fifty percent (50%) of one-half (1/2) of the retiree’s reduced annuity and the remaining fifty percent (50%) of one-half (1/2) of the retiree’s reduced annuity shall be paid in equal shares to the dependent children.

(e) If more than one (1) dependent child is designated as an Option A beneficiary and a spouse is not designated as an Option B beneficiary, one-half (1/2) of the retiree’s reduced annuity shall be paid in equal shares to each dependent child.

(f) A dependent child's portion of the annuity shall not revert to the spouse or any other dependent children if the dependent child becomes ineligible to continue receiving annuity payments or predeceases the spouse or any other dependent children.

(g) A spouse's portion of the annuity shall not revert to any dependent child if the spouse becomes ineligible to continue receiving annuity payments or predeceases one (1) or more dependent children.

(C)(i) Option C – annuity for ten (10) years certain and life thereafter. The retiree shall receive a reduced annuity payable throughout the retiree's life.

(ii) If the retiree dies before receiving one hundred twenty (120) monthly annuity payments, the payments shall be continued for the remainder of the period of one hundred twenty (120) months and paid to one (1) or more of the retiree's designated beneficiaries in equal shares.

(iii) A member may designate one (1) or more beneficiaries under Option C.

(b) The following persons are eligible to be designated as an Option A or Option B beneficiary:

(1) The retiree's spouse if the retiree and his or her spouse have been married to each other for at least one (1) year before the first annuity benefit payment to the retiree;

(2) A retiree's dependent child who has been adjudged physically or mentally incapacitated by a court of competent jurisdiction, regardless of the age of the dependent child.

(c) If an Option 1 retiree dies within one (1) 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, one hundred percent (100%) survivor annuity, at that time.

(1) The election shall be effective the first day of the month following receipt of the election form from the Arkansas Teacher Retirement System.

(2) If the spouse elects Option A benefits, the residue, if any, shall not be paid until the Option A beneficiary's death.

(3) A spouse who is eligible to elect Option A benefits may elect to receive a lump-sum distribution of the retiree's residue in lieu of the spousal annuity if the spouse waives his or her right to the spousal annuity and the retiree did not designate one (1) or more dependent children as a beneficiary.

(d)(1) After his or her retirement, a retiree may designate his or her spouse as an Option A or Option B beneficiary if the retiree:

(A) Has been married to his or her spouse for one (1) year; and

(B) Either:

(i) Was married to his or her spouse for less than one (1) year upon his or her effective retirement date; or

(ii) Marries his or her spouse after his or her effective retirement date.

(2)(A) Upon meeting the one-year marriage requirement, the retiree shall have six (6) months to file a written nomination designating his or her spouse as either an Option A or Option B beneficiary.

(B) The designation shall be filed on a form approved by the system.

(e) After a retiree's effective retirement date, the retiree may designate an Option A or Option B dependent child beneficiary if the:

(1) Retiree previously designated his or her spouse as the Option A or Option B beneficiary;

(2) Spouse designated as the retiree's Option A or Option B beneficiary predeceases the retiree; and

(3) Dependent child has been adjudged physically or mentally incapacitated by a court of competent jurisdiction.

(f)(1) A member may request that the system remove an incapacitated child as his or her Option A or Option B beneficiary if:

(A) The member designated the incapacitated child as his or her Option A or Option B dependent child beneficiary; and

(B) One (1) of the following applies:

(i) A court finds that the incapacitated child is no longer incapacitated;

(ii) The incapacitated child is emancipated through marriage; or

(iii) The incapacitated child dies.

(2) The following forms of proof shall be submitted, as appropriate, with the member's request to remove an incapacitated child as his or her Option A or Option B:

(A) A file-marked copy of the court's order finding that the incapacitated child is no longer incapacitated;

(B) A copy of the incapacitated child's marriage license or equivalent, marriage license recording document, or other legally acceptable proof of the existence of the marriage; or

(C) A copy of the incapacitated child's death certificate.

(3) Once the proof required to remove an incapacitated child as the member's Option A or Option B beneficiary is submitted to the system, the member may:

(A) Elect to return to an Option 1; or

(B)(i) If the member is married, designate his or her spouse as the Option A or Option B beneficiary within six (6) months of the date on which the system receives the proof required under this rule.

(ii) The member's election shall be effective on the first day of the month following the date on which the system receives the election form.

(g)(1) A member may designate any person as a residue beneficiary.

(2) A retiree's residue, if any, shall be paid to the retiree's residue beneficiary if the:

(A) Retiree dies before receiving annuity benefit payments equal to the residue amount; and

(B) Option beneficiary dies before receiving annuity benefit payments equal to the residue amount.

(3) If a residue beneficiary is not nominated or does not survive the death of the option beneficiary, the residue shall be paid to the retiree's estate.

(4) (A) If a residue beneficiary survives the death of the retiree and the option beneficiary, but dies before payment of the residue can be issued by the system, the residue shall be paid to the residue beneficiary's estate.

(B) If more than one (1) residue beneficiary survives the death of the retiree and option beneficiary, but all the residue beneficiaries die before payment of the residue can be issued by the system, the residue shall be paid to the estate of the most recently deceased residue beneficiary.

(C) If all residue beneficiaries predecease the retiree, the residue shall be paid to either the retiree's estate or the estate of the most recently deceased designated beneficiary.

§ 9-114. Change of marital status.

(a)(1) If the marital status of a retiree changes due to the death of the retiree's spouse or a marriage dissolution, the retiree may choose to:

(A) Cancel his or her designation of the former spouse as a beneficiary; or

(B) Designate a dependent child as a replacement beneficiary if the:

(i) Retiree previously designated the former spouse as his or her Option A or Option B beneficiary; and

(ii) Former spouse predeceases the retiree.

(2) If the retiree chooses to cancel the designation of his or her former spouse as his or her Option A or Option B beneficiary or chooses to designate a dependent child as a replacement Option A or Option B beneficiary, the retiree shall file with the Arkansas Teacher Retirement System a change of option beneficiary on a form approved by the system, and any change in the benefit amount shall become effective the month after the system receives the approved form.

(b)(1) If a member designates one (1) or more alternative residual beneficiaries in lieu of his or her spouse, the member shall submit the names of each alternative residue beneficiary to the system on a form approved by the system.

(2) If a member designates one (1) or more alternative residue beneficiaries in lieu of his or her spouse, each alternative residue beneficiary shall receive an appropriate lump-sum payment of the greater of either:

(A) The member's residue from the Teacher Deferred Retirement Option Plan (T-DROP); or

(B) The member's contributions.

§ 9-115. Final benefit check.

(a)(1)(A) In the case of a retiree, benefits are payable through the month in which the retiree's death occurs.

(B) If a final benefit payment is not delivered in the normal course of business, the benefit payment shall be sent in the following order until delivered:

(i) To the member's residue beneficiary, if any;

(ii) To the member's lump-sum death beneficiary, if any;

(iii) To the member's estate' if any; or

(iv) To the trust assets of the Arkansas Teacher Retirement System.

(2)(A) In the case of an option beneficiary, benefits are payable through the month in which the last option beneficiary's death occurs.

(B)(i) If an option beneficiary dies before receiving the last check, the Arkansas Teacher Retirement System shall pay the final check in the normal manner paid before death.

(ii) If payment of the final check in the normal course becomes impossible, the final option beneficiary's annuity check shall be returned the system.

(b) The Board of the Arkansas Teacher Retirement System shall direct a benefit payment amount forfeited to the trust assets of the system if the:

(1) Benefit payment cannot be made five (5) years after the benefit payment is due because the location of the member or the identity and location of the member's beneficiary or personal representative cannot be ascertained by mailing the benefit payment to the last known address of the member, beneficiary, or personal representative in ATRS' records; and

(2) Neither the member, beneficiary, or personal representative submitted paperwork or forms approved by the system updating his or her location or last known address to the system before the expiration of five (5) years from when the benefit payment is due.

§ 9-116. Correction of errors and collection of overpayments.

(a)(1) If a change or error in the records of the Arkansas Teacher Retirement System is discovered during the look-back period and results in either an overpayment or underpayment to the system, the Board of Trustees of the Arkansas Teacher Retirement System shall authorize the system's staff to:

(A) Correct the error in the records;

(B) Adjust a benefit or any other amount payable to the corrected amount as far as practice able; and

(C) Take all necessary and appropriate action, including without limitation the options allowed under Arkansas Code § 24-7-205(b).

(2)(A) The board or its designee may adjust the records of the system, a covered employer, and a member beyond the look-back period if the board determines that the time limitation imposed by the look-back period will result in a manifest injustice in a specific case.

(B) Before making an adjustment of benefits that causes a reduction of the benefits or pursuing any other collection action, the system shall provide notice to the person who is the subject of the adjustment and the notice shall:

(i) State the amount determined to be a receivable;

(ii) State the reasons underlying the determination;

(iii) Describe the process for disputing an adjustment of benefits; and

(iv) Suggest alternate methods for payment of the receivable.

(b)(1) The manifest injustice process shall not be used to address a change, omission, or error in the records of the system that may be corrected within the look-back period.

(2) The manifest injustice process may be used to correct a change, omission, or error in the records of the system discovered after the look-back period if the board determines that the time limitation imposed by the look-back period would cause a manifest injustice.

(c) If a member is subject to a qualified domestic relations order and is paid a benefit or payment by the system to which the member is not entitled, and it is discovered during the look-back period, then a receivable is created and the board or its designee, may collect the amount due to the system.

(d)(1) Appeals to dispute collections shall be made according to the procedures in ATRS Rule 13.

(2) During the appeal process, retirement benefits may continue to be paid.
Correction and Adjustment Limitations

(3) Actions that affect benefit rights shall not be corrected or adjusted further than

a five-year look-back period unless a manifest injustice has occurred or an exception exists under Arkansas Code § 24-7-205(c).

(4) A determination by the system of a manifest injustice in a particular instance due to a technical error or error in judgment is discretionary and governed by Arkansas Code § 24-7-205.

(e)(1) The Executive Director of the Arkansas Teacher Retirement System may waive interest on required contributions in an amount not to exceed \$5,000.

(2) A request to excuse an interest amount exceeding \$5,000 shall be submitted to the board for review.

(3) The executive director shall report any amounts excused under § 9-116 of this rule to the board.

(f)(1) The executive director may approve the correction of a change, omission, or error in the records of the system and implement a resolution that has a direct financial impact to the system of up to five thousand dollars (\$5,000) without obtaining board approval.

(2) Board approval shall be required to implement a resolution that has a direct financial impact to the system in excess of five thousand dollars (\$5,000).

(g) If required, a receivable under § 9-116 of this rule that is found by the board or its designee to be uncollectible or for which adjustment or payment has been waived shall be submitted to the Chief Fiscal Officer of the State for abatement pursuant to Arkansas Code §§ 19-2-301 — 19-2-307.

Authority: Arkansas Code §§ 24-7-202, 24-7-205, 24-7-502, 24-7-701 — 24-7-707, 24-7-709, 24-7-710, 24-7-727, 24-7-732, 24-7-734, and Acts 1987, No. 808.

History

<u>Effective:</u>	<u>July 2, 2002</u>	<u>9-3</u>
<u>Amended:</u>	<u>June 15, 2004</u>	<u>9-2, 9-4, 9-7</u>
<u>Amended:</u>	<u>July 18, 2005</u>	<u>9-4, 9-8</u>
<u>Amended:</u>	<u>February 7, 2006</u>	<u>9-2, 9-7</u>
<u>Amended:</u>	<u>April 26, 2007</u>	<u>9-2, 9-7</u>
<u>Amended:</u>	<u>June 19, 2007</u>	<u>9-4</u>
<u>Amended:</u>	<u>June 16, 2009</u>	<u>(Emergency) 9-2</u>
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<u>Effective:</u>	<u>TBD</u>	<u>Rule 9</u>

ATRS RULE 9
RETIREMENT AND BENEFITS

Arkansas Code §§ ~~24-7-202, 24-7-205, 24-7-502, 24-7-701 — 24-7-707, 24-7709, 24-7-710, 24-7-727, 24-4-732, 24-7-734, and Acts 1987, No. 808~~

I. Definitions

- a. ~~"Act 808 Employee" means an employee of a state agency who:~~
 - 1. ~~On April 8, 1987, was an active member of the Arkansas Teacher Retirement System (ATRS);~~
 - 2. ~~Qualified to retire before January 1, 1988, under the Early Retirement Incentive Law of 1987 (Acts 1987, No. 187); and~~
 - 3. ~~Could elect to become a member of the Arkansas Public Employees Retirement System (APERS) and have his or her credited service in ATRS transferred to APERS;~~

- b. ~~"Annuity options" means one (1) or more options that:~~
 - 1. ~~Concern how an annuity benefit shall be paid, in accordance with Arkansas Code § 24-7-706, to a member for his or her lifetime after the member's retirement; and~~
 - 2. ~~Are available for a member's election at the time of the member's retirement;~~

- c. ~~"Application" for the purposes of retirement eligibility means an application form and any other documents required by ATRS to establish a member's eligibility to retire;~~

- d. ~~"Covered employer" or "employer" means an employer who participates in ATRS and whose employees are eligible for membership under Arkansas Code §§ 247-202, 24-7-501, or other applicable law;~~

- e. ~~"Dependent child" means a child of a member or retiree who:~~
 - 1. ~~Is a minor;~~
 - 2. ~~Is between eighteen (18) and twenty-three (23) years of age and continuously enrolled as a full-time student at an accredited secondary school, college, or university; or~~
 - 3. ~~Has been adjudged physically or mentally incapacitated by a court of competent jurisdiction;~~

- f. ~~"Effective retirement date" means, for purposes of ATRS' retirement benefits, the first day of the month in which a member requests to receive retirement benefits and for which the member submits a timely retirement application;~~

- g. ~~"Incapacitated child" means a child who has been adjudged physically or mentally incapacitated by a court of competent jurisdiction;~~
- h. ~~"Marriage dissolution" means a final decree of divorce, separate maintenance, or annulment executed by a court of competent jurisdiction and filed of record in the Office of the Ex Officio Recorder;~~
- i. ~~"Medical committee" means the committee of three (3) physicians appointed by the Board of Trustees of the Arkansas Teacher Retirement System (Board) under Arkansas Code § 24-7-303 for the purpose of evaluating disability retirement applications;~~
- j. ~~"Option beneficiary" means a person who: 1. A member nominates by written designation, before or after the member's retirement, to receive annuity payments after the member's death in accordance with the annuity option selected by the member; and~~
 - 2. ~~If eligible, shall receive annuity payments after the member's death in accordance with the annuity option selected by the member;~~
- k. ~~"Person" means an individual, trust, estate, corporation, partnership, or other legal entity;~~
- l. ~~"Residue" means a member's accumulated contributions, including regular interest standing in the member's credit at the time of his or her retirement;~~ m. ~~"Residue beneficiary" means a person who a member nominates by written designation to receive the member's residue, if any, under Arkansas Code § 247-709;~~
- n. ~~"Receivable" means monies due to ATRS from a member, former member, covered employer, contributor, retiree, beneficiary, or alternate payee under a qualified domestic relations order (QDRO) as a result of an overpayment of any payment or benefit by ATRS; and~~
- o. ~~"Retiree" means a retired member who receives an annuity from 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 by filing a written application 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 by filing a written application with ATRS.~~
- c. ~~To be eligible for retirement, a member shall:~~
 - 1. ~~Satisfy the credited service requirements under one of ATRS' retirement statutes, Arkansas Code §§ 24-7-701—707;~~

- ~~2. Be credited with all required covered 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 each of his or her covered employers or reach the normal retirement age.~~

III. Benefits

a. Benefits Formula

- ~~1. The retirement benefits payable to a retiree shall be the total number of contributory years of credited service, multiplied by a factor between one and seventy-five hundredths percent (1.75%) and two and fifteen hundredths percent (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 five-tenths percent (0.5%) and one and thirty-ninth hundredths percent (1.39%) of the final average salary, as set by the Board.~~
- ~~2. The Board shall modify the standard multipliers for credited service of ten (10) years as necessary to maintain actuarial soundness. (Arkansas Code § 24-7705).~~

b. B. Effective Date of Retirement (Arkansas Code § 24-7-701)

- ~~1. If a member meets all eligibility requirements for retirement and is approved for retirement, annuity benefits shall be effective on the month proposed in the member's application.~~
- ~~2. If the member does not file an application at least one (1) calendar month before the proposed effective retirement date, then the proposed retirement effective date in the member's application shall not be used, and the member's effective retirement date shall be the following month.~~
- ~~3. 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 effective retirement date shall not be before July 1 of the subsequent fiscal year.~~
- ~~4. If a member has accrued a full year of service credit equal or greater to one hundred sixty (160) days in a fiscal year, the member's retirement date shall not begin earlier than July 1 of the subsequent fiscal year. year unless the member:
 - ~~A. Has attained the normal retirement age and is not separating from employment; or~~
 - ~~B. Is not licensed or otherwise certified as a classroom teacher and vacating a classroom.~~~~

c. Normal Retirement Age

- ~~1. A member who attains the normal retirement age may:~~

- A. ~~Apply for retirement benefits without terminating employment; and~~
 - B. ~~Begin drawing retirement benefits.~~
2. ~~The retirement benefits of a member who attains the normal retirement age shall not be affected if the member applies for and draws retirement benefits.~~
- d. ~~Compound Cost of Living Adjustment (Arkansas Code § 24-7-727)~~
- 1. ~~The Board may, by resolution, reverse a compound cost of living adjustment as needed to maintain the actuarial soundness of ATRS.~~
 - 2. ~~A reversal may be phased in as the Board determines appropriate.~~
- e. ~~Change of Marital Status (Arkansas Code § 24-7-706)~~
- 1. ~~If the marital status of a retiree changes due to the death of the retiree's spouse or a marriage dissolution, the retiree may choose to:~~
 - A. ~~Cancel his or her designation of the former spouse as a beneficiary; or~~
 - B. ~~Designate a dependent child as a replacement beneficiary if the:~~
 - i. ~~Retiree previously designated the former spouse as his or her Option A or Option B beneficiary; and~~
 - ii. ~~Former spouse predeceases the retiree.~~
 - 2. ~~If the retiree chooses to cancel the designation of his or her former spouse as his or her Option A or Option B beneficiary or chooses to designate a dependent child as a replacement Option A or Option B beneficiary, the retiree shall file with ATRS a change of option beneficiary on an ATRS approved form, and any change in the benefit amount shall become effective the month after ATRS receives the approved form.~~
- f. ~~Alternative Residue Beneficiary Designation~~
- 1. ~~If a member designates one (1) or more alternative residual beneficiaries in lieu of his or her spouse, the member shall submit the names of each alternative residue beneficiary on ATRS approved form to ATRS.~~
 - 2. ~~If a member designates one (1) or more alternative residue beneficiaries in lieu of his or her spouse, each alternative residue beneficiary shall receive an appropriate lump-sum payment of the greater of either:~~
 - A. ~~The member's residue from the Teacher Deferred Retirement Option Plan (T-DROP); or~~
 - B. ~~The member's contributions.~~
- g. ~~Final Benefit Payments and Lost Payees (Arkansas Code § 24-7-734)~~
- 1. ~~Benefits are payable through the month in which the retiree's death occurs.~~
 - 2. ~~If a final benefit payment is not delivered in the normal course of business, the benefit payment shall be sent in the following order until delivered:~~

- A. ~~To the member's residue beneficiary, if any;~~
 - B. ~~To the member's lump-sum death beneficiary, if any;~~
 - C. ~~To the member's estate' if any; or~~
 - D. ~~To the trust assets of ATRS.~~
3. ~~The Board shall direct a benefit payment amount forfeited to the trust assets of ATRS if the:~~
- A. ~~Benefit payment cannot be made five (5) years after the benefit payment is due because the location of the member or the identity and location of the member's beneficiary or personal representative cannot be ascertained by mailing the benefit payment to the last known address of the member, beneficiary, or personal representative in ATRS' records; and~~
 - B. ~~Neither the member, beneficiary, or personal representative submitted paperwork or forms approved by ATRS updating his or her location or last known address to ATRS before the expiration of five (5) years from when the benefit payment is due.~~

~~IV—Retirement Application and Other Documents~~

~~a.—Generally~~

- 1. ~~A copy of the ATRS retirement application may be downloaded from the ATRS website or requested from ATRS.~~
- 2. ~~For a member who is inactive, vested, and immediately eligible to retire, retirement benefits shall be payable the month after ATRS receives the member's retirement application.~~

~~b.—Time Period for Filing Retirement Application~~

- 1. ~~In order for a retirement application to be timely filed, there is a three-month "window" to apply for retirement benefits.~~
- 2. ~~An active member who is currently employed by a covered employer shall file his or her retirement application:~~
 - A. ~~No sooner than four (4) months before the active member's effective retirement date; and~~
 - B. ~~No later than one (1) month before the active member's effective retirement date.~~

~~3.—Procedure for Handling Received Retirement Applications~~

- A. ~~ATRS' procedure for handling a retirement application received by ATRS shall be as follows:~~
 - i. ~~If a retirement application is received by ATRS before the threemonth window begins for the member's anticipated effective retirement date, ATRS shall:~~

- a. ~~Consider the retirement application untimely;~~
 - b. ~~Reject the retirement application;~~
 - c. ~~Notify the member of one (1) or more dates on which the member may timely file a retirement application; and~~
 - d. ~~Notify the member of the procedure to use in order to timely file a retirement application.~~
- ii. ~~If a retirement application is received after the three-month window ends for the member's anticipated effective retirement date, ATRS shall:~~
- a. ~~Consider the retirement application untimely; and~~
 - b. ~~Provide the member with a new effective retirement date that begins on the first day of the month following the member's previously anticipated effective retirement date.~~
4. ~~This ATRS Rule 9 IV.b. does not apply to a disability retirement application or an application for survivor benefits.~~
5. ~~The following table shows examples of the windows for filing a retirement application:~~

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

September 1	May, June or July	August 31	End of September
October 1	June, July or August	September 30	End of October
November 1	July, August or September	October 31	End of November
December 1	August, September or October	November 30	End of December

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

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

~~c. Retirement Application and Other Documents Required by ATRS~~

~~1. In addition to a complete retirement application, the following documents required by ATRS in order to begin making benefit payments 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:~~

- ~~i. Proof of member's birthdate from a birth certificate or other authenticating documents.; and~~
- ~~ii. 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:~~

- ~~i. Proof of the member's birthdate from a birth certificate or other authenticating documents.;~~
- ~~ii. Proof of the member's taxpayer identification number from a Social Security card or other authenticating documents.;~~ ~~iii. Proof of the spouse's birthdate from a birth certificate or other authenticating documents.;~~
- ~~iv. Proof of the spouse's taxpayer identification number from a Social Security card or other authenticating documents.;~~ and
- ~~v. Proof of the 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 a dependent child as the beneficiary:~~

- ~~i. Proof of the member's birthdate from a birth certificate or other authenticating documents;~~
 - ~~ii. Proof of the member's taxpayer identification number from a Social Security card or other authenticating documents;~~ ~~iii. Proof of Guardianship~~
 - ~~A. Adequate proof of the existence of a guardianship due to the incapacity of the member's dependent child that preexists the member's official retirement date.~~
 - ~~B. Authenticating documents may include the order appointing guardianship of the person, letters of guardianship, or other adequate proof of the existence of the guardianship;~~
 - ~~iv. Proof of the dependent child's birthdate from a birth certificate or other authenticating documents; and~~
 - ~~v. Proof of the dependent child's taxpayer identification number from a Social Security card or other authenticating documents.~~ ~~D. Member elects Option C annuity:~~
 - ~~i. Proof of the member's birthdate from a birth certificate or other authenticating documents; and~~
 - ~~ii. Proof of the member's taxpayer identification number from a Social Security card or other authenticating documents.~~
- ~~d. Submission Deadlines — Age and Service Retirement and Early Retirement Applications — Additional Documents~~
- ~~1. If a member files an age and service retirement application or early retirement application, all additional documents required by ATRS in order to begin making benefit payments shall be submitted within six (6) calendar months after the member's effective retirement date unless an extension is granted by ATRS.~~
 - ~~2. If all additional documents required by ATRS are not submitted by the sixmonth deadline or any extension granted by ATRS, the retirement application shall be void and without effect.~~

~~V. State Employee Transfers to APERS (Act 808) Rules~~

- ~~a. An Act 808 employee shall make the election to transfer to APERS on a form approved by ATRS.~~
- ~~b. The transfer from ATRS to APERS shall be effective on the employee's effective date of retirement.~~
- ~~c. ATRS shall certify to APERS a record of the Act 808 employee's service credit in ATRS.~~
- ~~d. If an Act 808 employee is a non-contributory member of ATRS at the time of his or her retirement, the Act 808 employee shall retire under the non-contributory~~

~~provisions of Acts 1987, No. 187 and shall be entitled to a refund of his or her Act 808 employee contributions made since January 1, 1978, to ATRS.~~

- ~~e. If an Act 808 employee was a contributory member of ATRS at the time of his or her retirement, the Act 808 employee shall retire under the contributory provisions of Acts 1987, No. 187.~~
- ~~f. APERS shall pay the monthly benefits of an Act 808 employee who elects to transfer to APERS.~~
- ~~g. APERS shall certify monthly to ATRS the amount of monthly benefits paid and ATRS shall transfer its pro-rata portion 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 or her account, ATRS shall transfer the remaining balance in the retiree's account to APERS for refunding to the retiree's designated beneficiary.~~

VI. Disability Retirement Rules

- ~~a. Submission Deadlines and Commencement of Disability Retirement Benefit Payments~~
 - ~~1. A member has six (6) calendar months from the date of the member's disability retirement application to submit a completed application and all accompanying documentation required by ATRS.~~
 - ~~2. If a member does not submit all accompanying documentation required by ATRS within the six-month deadline, ATRS shall:~~
 - ~~i. Submit the disability retirement application to the medical committee for review as complete; or~~
 - ~~ii. Withdraw the application at the request of the member unless an extension is granted by ATRS.~~
 - ~~3. Disability retirement benefits shall begin on the first of the month in which a member files a disability retirement application with ATRS if the:~~
 - ~~A. Member is eligible for disability retirement under Arkansas Code § 24-7704 and the ATRS Rules;~~
 - ~~B. Member is no longer employed by a covered employer at the time he or she files the disability retirement application; and~~
 - ~~C. Medical committee determines that the member has a disability.~~
 - ~~4. If the member is still employed a covered employer at the time the member files the disability retirement application, then, once approved by the medical committee and then the Board, the disability retirement shall begin on the first of the month following the last day of the member's covered employment.~~
- ~~b. Effective Retirement Date and Employment After Disability Retirement~~
 - ~~1. Effective Retirement Date~~

~~a. A member's disability retirement is effective from the date the member files a disability retirement application with ATRS and terminates employment with each of his or her covered employers.~~

~~2. Leave~~

~~A. A member is considered active if the member is using earned sick leave, Family Medical Leave Act (FMLA) leave, annual leave, and catastrophic leave.~~

~~B. Worker's compensation, which may or may not include the use of leave granted by an employer, shall not:~~

~~i. Be considered leave by which a member is considered active; and~~

~~ii. Extend the date of active membership.~~

~~3. Direct or Indirect Employment~~

~~A. A member shall not receive disability retirement benefit payments if the member indirectly performs work for an ATRS covered employer as described in Arkansas Code § 24-7-704(a)(4)(B).~~

~~B. If a member is approved for disability retirement and continues to work either directly or indirectly for a covered employer, the member shall:~~

~~i. Terminate direct or indirect employment with the covered employer by the proposed disability effective retirement date; or~~

~~ii. If the member is finalizing work for the covered employer, terminate employment no later than two (2) full calendar months after the medical committee's final decision.~~

~~C. If the member does not terminate employment under the ATRS Rules and the termination requirement under Arkansas Code § 24-7-502, the member's disability retirement application shall be considered rescinded and the member may reapply if eligible.~~

~~4. Continued Employment Under Age Sixty (60)~~

~~A. A retiree under the age of sixty (60) may be employed by an ATRS covered employer and also receive ATRS disability retirement benefit payments if the retiree performs less than eighty (80) days of actual service during a fiscal year.~~

~~5. Return to Employment~~

~~A. After receiving ATRS approval for disability retirement a retiree may choose to return to covered employment with an ATRS covered employer and relinquish his or her disability retirement.~~

~~B. If a retiree chooses to return to covered employment, the member shall:~~

~~i. Not receive disability retirement benefit payments;~~

~~ii. Be considered an active member; and~~

~~iii. Comply with Arkansas Code § 24-7-738 (Acts 2017, No. 549).~~

~~C. A retiree shall become an active member and his or her disability retirement shall be immediately terminated if:~~

~~i. The retiree notifies ATRS in writing of his or her intent to perform more than eighty (80) days of actual service during a fiscal year; or~~

~~ii. ATRS receives written notification of the retiree's intent to perform more than eighty (80) days of actual service during a fiscal year through a termination and status sheet, membership data form, or any other reasonably reliable documentation.~~

~~c. Social Security Determination Letter~~

~~1. Deadlines—Generally~~

~~A. A deadline imposed by this ATRS Rule 9 VI may be extended as provided by this ATRS Rule 9 and Arkansas Code § 24-7-704.~~

~~2. Thirty-Six-Month Deadline~~

~~A. A retiree shall submit to ATRS a Social Security Administration (SSA) determination letter that finds the retiree disabled within thirty-six (36) months from:~~

~~i. July 1, 2015, if the retiree's effective retirement date is before July 1, 2015; or~~

~~ii. The retiree's effective retirement date if the effective date of retirement is on or after July 1, 2015.~~

~~B. A retiree may apply for an extension of the thirty-six-month deadline to submit the SSA determination letter to ATRS if:~~

~~i. The retiree demonstrates through an administrative or judicial confirmation of an active SSA claim that the claim is:~~

~~a. Still under review; and~~

~~b. Part of a continuous claim without voluntary dismissal or withdrawal; and~~

~~ii. The SSA disability claim was filed and remained active for at least twenty-four (24) months before the thirty-six-month deadline.~~

~~3. Suspension of Disability Retirement Benefit Payments~~

~~A. ATRS shall suspend disability retirement benefit payments to a retiree if the retiree does not:~~

~~i. Provide ATRS with a SSA determination letter finding the retiree disabled within the thirty-six-month deadline;~~

~~ii. Receive an extension of the thirty-six-month deadline to provide~~

~~ATRS with a SSA determination letter finding the retiree disabled; or
iii. Apply to the medical committee for a review within three (3) months
of ATRS suspending disability retirement benefit payments to the retiree
due to the retiree's failure to provide ATRS with a SSA determination
letter finding the retiree disabled.~~

~~4. Inability to Obtain SSA Determination Letter — Medical Committee Review~~

~~A. A retiree who attempts and is unable to receive a SSA determination
letter finding the retiree disabled may apply for a review by the medical
committee.~~

~~B. A retiree may apply for a review by the medical committee:~~

~~i. No earlier than three (3) months before the date on which the
retiree's disability retirement benefit payment would otherwise be
suspended; and~~

~~ii. No later than three (3) months after disability retirement benefit
payments to the retiree is suspended.~~

~~C. A review performed by the medical committee shall follow the standards
and procedures in Arkansas Code § 24-7-704(a)(1)(E).~~

~~D. A member's option to request a second review as provided by Arkansas
Code § 24-7-704(a)(1)(H) shall not apply to a retiree who seeks disability
review under Arkansas Code § 24-7-704(b)(3)(D).~~

~~5. Denial of Disability Review~~

~~1. After a disability review is held due to the SSA finding that a member is
not disabled, the medical committee's recommendations shall be
submitted to the Board for a final order.~~

~~2. If a member is denied further disability benefits after a disability review by
the medical committee, the member may:~~

~~i. Offer additional medical information within thirty (30) days of the
date of the disability review; and~~

~~ii. Request that the Board return the matter to the medical committee
for reconsideration.~~

~~6. SSA Determination Letter No Longer Required~~

~~A. A retiree shall begin receiving regular retirement benefits as if the retiree
voluntarily retired and a SSA determination letter shall not be required if
the retiree~~

~~i. Attains fifty-seven (57) years of age in the month the retiree's
disability retirement benefits become effective; or~~

~~ii. Attains sixty (60) years of age.~~

~~d. Denial of Disability Retirement~~

- ~~1. If a member's initial application for disability retirement is denied and the member elects and qualifies for voluntary retirement, the member's effective retirement date shall be determined by the date the member's initial disability retirement application is filed.~~
 - ~~2. A member may request a second review if the member's initial disability retirement application is denied and the member submits additional medical documentation for the medical committee's consideration.~~
 - ~~3. A member may only request a second review one (1) time.~~
 - ~~4. If a member requests a second review, unless an extension is granted by ATRS, the member has six (6) calendar months from the date of the letter notifying the member of the denial of his or her initial disability retirement application to submit additional medical documentation.~~
 - ~~5. If a member's initial disability retirement application is denied after the second review, the member may file another subsequent disability retirement application and submit additional information for consideration if the member is active and eligible for disability retirement under Arkansas Code § 24-7-704.~~
 - ~~6. If a member's initial disability retirement application is denied and the member is ineligible to apply for disability retirement benefits under Arkansas Code § 24-7-704 or is inactive, the member may apply for age and service retirement or early voluntary retirement if the member meets the requirements for age and service retirement or early voluntary retirement.~~
- ~~e. Member Death Before Determination on Disability Retirement Application~~
- ~~1. If the member dies after the disability application is received by ATRS, but before his or her disability retirement application is approved, then the: A. Member shall be considered as having died in active service; and~~
 - ~~B. Survivor benefits under Arkansas Code § 24-7-710 shall be paid, unless the member designated one (1) or more alternative residual beneficiaries.~~
- ~~f. Disability Retirement Benefit Formula~~
- ~~1. The annuity formula for computing disability retirement benefits is shall be the same annuity formula used to compute voluntary age and service retirement benefits.~~
- ~~g. Beneficiary Designation After Approval of Disability Retirement~~
- ~~1. If a disability retirement application is approved by the medical committee after May 31, 2011, the Board shall allow the member to designate an Option A or Option B beneficiary at the time of retirement.~~
 - ~~2. An Option C beneficiary shall not be designated by a member who applies for disability retirement or a disability retiree. (Arkansas Code § 24-7-706(a)(3))~~
 - ~~3. The same rules that apply to an active member's surviving spouse under Arkansas Code § 24-7-710(b) shall apply to a disability retiree's surviving spouse if the disability retiree:~~

- ~~A. Designates his or her spouse as Option A or Option B beneficiary at the time of retirement; and~~
- ~~B. Dies before reaching sixty (60) years of age.~~
- ~~4. The same rules that apply to a surviving spouse of an active member under Arkansas Code § 24-7-710(b) shall apply to the surviving spouse of a disability retiree if the disability retiree:~~
 - ~~A. Dies after disability retirement benefit payments to the disability retiree begin;~~
 - ~~B. Does not designate his or her spouse as an Option A or Option B beneficiary; and~~
 - ~~C. Does not designate a residue beneficiary.~~
- ~~5. The same rules that apply to a surviving spouse of an active member under Arkansas Code § 24-7-710(b)(1)(B) shall apply to the surviving spouse of a disability retiree if the disability retiree:~~
 - ~~A. Dies after disability retirement benefit payments to the disability retiree began;~~
 - ~~B. Does not designate his or her spouse as an Option A or Option B beneficiary; and~~
 - ~~C. Designates his or her spouse as a residue beneficiary.~~
- ~~6. If a disability retiree designates his or her dependent child as an Option A or Option B beneficiary, and the disability retiree dies before reaching age sixty (60), then:~~
 - ~~A. The same rules that apply under Arkansas Code § 24-7-710(c) to an active member's surviving child shall apply to the disability retiree's Option A or Option B dependent child beneficiary until the date on which the disability retiree would have turned sixty (60) years of age; and~~
 - ~~B. On the date on which the disability retiree would have turned sixty (60) years of age, the Option A or Option B dependent child beneficiary shall receive the greater of the surviving child annuity under Arkansas Code § 24-7-710(c) or the Option A spouse annuity under Arkansas Code § 24-7-710(b).~~

~~VII. Annuity Options and Disposition of Residue After Retirement Rules~~

~~a. Option Annuity Election~~

- ~~1. Before the date the first benefit payment of an annuity becomes due, a member retiring with age or service may elect one (1) of the following annuity options:~~
 - ~~A. **Option 1** — Straight Life Annuity~~
 - ~~B. A straight life annuity payable monthly for the life of the retiree. Option 2~~
 - ~~— Reduced Straight Life Annuity with Option Beneficiaries~~

- ~~i. A retiree shall receive the actuarial equivalent of the retiree's straight life annuity in a reduced annuity payable throughout the retiree's life.~~
- ~~ii. A member may designate a beneficiary to receive one (1) of the following annuity options:~~
 - ~~a. Option A — One hundred percent (100%) Survivor Annuity
 - ~~1. Upon the death of the retiree, the retiree's reduced annuity shall be continued and paid throughout the life of the retiree's designated beneficiary.~~
 - ~~2. A member may designate one (1) beneficiary under Option~~
 - ~~A.~~~~
 - ~~b. Option B — 50% Survivor Annuity
 - ~~1. Upon the death of the retiree, one-half (1/2) of the retiree's reduced annuity shall be continued and paid throughout the life of the retiree's designated beneficiary.~~
 - ~~2. A member may designate one (1) beneficiary under Option~~
 - ~~B.~~~~
 - ~~c. Option C — Annuity for Ten (10) Years Certain and Life Thereafter
 - ~~1. The retiree shall receive a reduced annuity payable throughout the retiree's life.~~
 - ~~2. If the retiree dies before receiving one hundred twenty (120) monthly annuity payments, the payments shall be continued for the remainder of the period of one hundred twenty (120) months and paid to one (1) or more of the retiree's designated beneficiaries in equal shares.~~
 - ~~3. A member may designate one (1) or more beneficiaries under Option C.~~~~

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

- ~~1. If an Option 1 retiree dies within one (1) 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, one hundred percent (100%) survivor annuity, at that time.~~
- ~~2. The election shall be effective the first day of the month following receipt of the election form by ATRS.~~
- ~~3. If the spouse elects Option A, the residue, if any, shall 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~~

- ~~1. The following persons are eligible to be nominated by written designation as an Option A or Option B beneficiary:
 - ~~A. The retiree's spouse if the retiree and his or her spouse have been married to each other for at least one (1) year before the first annuity benefit payment to the retiree;~~
 - ~~B. A retiree's dependent child who has been adjudged physically or mentally incapacitated by a court of competent jurisdiction, regardless of the age of the dependent child.~~~~

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

- ~~1. After his or her retirement, a retiree may designate his or her spouse as an Option A or Option B beneficiary if the retiree:
 - ~~A. Has been married to his or her spouse for one (1) year; and~~
 - ~~B. Either:
 - ~~i. Was married to his or her spouse for less than one (1) year upon his or her effective retirement date; or~~
 - ~~ii. Marries his or her spouse after his or her effective retirement date.~~~~~~
- ~~2. Upon meeting the one-year marriage requirement, the retiree shall have six (6) months to file a written nomination designating his or her spouse as either an Option A or Option B beneficiary.~~
- ~~3. The designation shall be filed on a form approved by ATRS.~~

~~e. Eligibility of a Dependent Child to Become an Option A or Option B Beneficiary after a Member's Retirement~~

- ~~1. After a retiree's effective retirement date, the retiree may designate an Option A or Option B dependent child beneficiary if the:
 - ~~A. Retiree previously designated his or her spouse as the Option A or Option B beneficiary;~~
 - ~~B. Spouse designated as the retiree's Option A or Option B beneficiary predeceases the retiree; and~~
 - ~~C. Dependent child has been adjudged physically or mentally incapacitated by a court of competent jurisdiction.~~~~

~~f. Emancipation of Incapacitated Child Option Beneficiary~~

- ~~1. A member may request that ATRS remove an incapacitated child as his or her Option A or Option B beneficiary if:~~

~~A. The member designated the incapacitated child as his or her Option A or Option B dependent child beneficiary; and B. One (1) of the following applies:~~

- ~~i. A court finds that the incapacitated child is no longer incapacitated;~~
- ~~ii. The incapacitated child is emancipated through marriage; or~~
- ~~iii. The incapacitated child dies.~~

~~2. The following forms of proof shall be submitted, as appropriate, with the member's request to remove an incapacitated child as his or her Option A or Option B:~~

- ~~A. A file-marked copy of the court's order finding that the incapacitated child is no longer incapacitated;~~
- ~~B. A copy of the incapacitated child's marriage license or equivalent, marriage license recording document, or other legally acceptable proof of the existence of the marriage; or~~
- ~~C. A copy of the incapacitated child's death certificate.~~

~~3. Once the proof required to remove an incapacitated child as the member's Option A or Option B beneficiary is submitted to ATRS, the member may:~~

- ~~A. Elect to return to an Option 1; or~~
- ~~B. If the member is married, designate his or her spouse as the Option A or Option B beneficiary within six (6) months of the date on which ATRS receives the proof required under this ATRS Rule 9 VII.f.2.~~
- ~~C. The member's election shall be effective on the first day of the month following the date on which ATRS receives the election form.~~

~~g. **Residue Paid Upon Death of Option Annuitant**~~

- ~~1. A member may designate any person as a residue beneficiary.~~
- ~~2. A retiree's residue, if any, shall be paid to the retiree's residue beneficiary if the:
 - ~~A. Retiree dies before receiving annuity benefit payments equal to the residue amount; and~~
 - ~~B. Option beneficiary dies before receiving annuity benefit payments equal to the residue amount.~~~~
- ~~3. If a residue beneficiary is not nominated or does not survive the death of the option beneficiary, the residue remaining, if any, shall be paid to the retiree's estate.~~

~~h. **Final Benefit Check**~~

- ~~1. Benefits are payable through the month in which the last option beneficiary's death occurs.~~

- ~~2. If the option beneficiary dies before receiving the last check, ATRS shall pay the final check in the normal manner paid before death.~~
- ~~3. If payment of the final check in the normal course becomes impossible, the final option beneficiary's annuity check shall be returned to ATRS.~~

~~VIII. Error Corrections and Collection of Overpayments Rules~~

~~a. Payment Errors~~

- ~~1. If a change or error in ATRS' records discovered during the look-back period results in either an overpayment or underpayment to ATRS, the Board shall authorize ATRS to:
 - ~~A. Correct the error in the records;~~
 - ~~B. Adjust a benefit or any other amount payable to the corrected amount as far as practicable; and~~
 - ~~C. Take all necessary and appropriate action, including the options allowed under Arkansas Code § 24-7-205(b).~~~~
- ~~2. The Board or its designee may adjust the records of ATRS, a covered employer, and a member beyond the look-back period if the Board determines that the time limitation imposed by the look-back period will result in a manifest injustice in a specific case.¹~~

~~b. Benefit Participant Under QDRO~~

- ~~1. If a benefit participant under a QDRO pursuant to Arkansas Code §§ 9-18101—103, is paid any benefit or payment by ATRS to which the benefit participant is not entitled, and it is discovered during the look-back period, then a receivable is created and the Board or its designee, may collect the amount due to ATRS as provided by Arkansas Code § 24-7-205.~~

~~c. Notice of Benefit Adjustment~~

- ~~1. Before making an adjustment of benefits that causes a reduction of the benefits or pursuing any other collection action, ATRS shall provide notice to the person who is the subject of the adjustment.~~
- ~~2. The notice shall:
 - ~~A. State the amount determined to be a receivable;~~
 - ~~B. State the reasons underlying the determination;~~
 - ~~C. Describe the process for disputing an adjustment of benefits; and~~
 - ~~D. Suggest alternate methods for payment of the receivable.~~~~

~~d. Dispute and Appeal of Collections~~

¹ See ATRS Rule 17 – Manifest Injustice.

- ~~1. Appeals to dispute collections shall be made according to the procedures and requirements of ATRS Rule 13.~~
 - ~~2. During the appeal process, retirement benefits may continue to be paid.~~
- e. ~~Correction and Adjustment Limitations~~
- ~~1. Actions that affect benefit rights shall not be corrected or adjusted further than a five-year look-back period unless a manifest injustice has occurred or an exception exists under Arkansas Code § 24-7-205(c).~~
 - ~~2. A determination by ATRS of a manifest injustice in a particular instance due to a technical error or error in judgment is discretionary and governed by Arkansas Code § 24-7-205.~~
- f. ~~Waiver of Interest on Contributions~~
- ~~1. The Board authorizes the Executive Director of ATRS (executive director) to waive interest on required contributions in an amount not to exceed \$5,000.~~
 - ~~2. A request to excuse an interest amount exceeding \$5,000 shall be submitted to the Board for review.~~
 - ~~3. The executive director shall report any amounts excused under this section to the Board.~~
- g. ~~Uncollectible or Waived Receivables~~
- ~~1. If required, a receivable under this this ATRS Rule 9 VIII that is found by the Board or its designee to be uncollectible or for which adjustment or payment has been waived shall be submitted to the Chief Fiscal Officer of the State for abatement pursuant to Arkansas Code §§ 19-2-301 — 19-2-307.~~

~~HISTORY~~

Effective:	July 2, 2002	9-3
Amended:	June 15, 2004	9-2, 9-4, 9-7
Amended:	July 18, 2005	9-4, 9-8
Amended:	February 7, 2006	9-2, 9-7
Amended:	April 26, 2007	9-2, 9-7
Amended:	June 19, 2007	9-4
Amended:	June 16, 2009	(Emergency) 9-2
Amended:	October 5, 2009	(Permanent) 9-2
Adopted:	December 18, 2009	9-1, 9-4, 9-8
Amended:	July 1, 2011	(Emergency) 9-1, (Emergency) 9-2, 9-4, (Emergency) 9-7, (Emergency) 9-8
Adopted:	August 8, 2011	9-1, 9-2, 9-4, 9-7, 9-8

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~~Approved by Board: February 6, 2012 9-4, 9-7~~
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~~Amended: October 9, 2013 9-2, 9-4, 9-8~~
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~~Approved by Board: October 5, 2015 9-2, 9-4~~
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~~Approved by Board: February 5, 2018 9-2, 9-4, 9-8, 9-9~~
~~Effective: February 16, 2018 9-2, 9-4, 9-8, 9-9~~
~~Effective: May 28, 2020 Rule 9~~
~~Effective: May 20, 2022 Rule 9~~



Public Comments

Proposed Rule 10 – Return to Service and Teacher Deferred Retirement Option Plan

1. Generally.

- a. **ATRS Staff Comment:** Should additional rules concerning T-DROP deposits for uncompleted quarters be included?
- b. **Response:** Yes. Pages four (4)-(5), § 10-105(b)(3) has been amended to include rules clarifying T-DROP deposits for uncompleted quarters.

ATRS Rule 10
Return to Service and Teacher Deferred Retirement Option Plan

§ 10-101. Definitions.

As used in this rule:

- (1) "CBA" means Cash Balance Account;
- (2) "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;
- (3) "Plan participant" means a member who elects to participate in the Teacher Deferred Retirement Option Plan;
- (4) "Plan deposit" means a deposit made to each plan participant's Teacher Deferred Retirement Plan account;
- (5) "Plan interest" means one (1) or more interest rates per annum that are adopted by the Board of Trustees of the Arkansas Teacher Retirement System by the end of the first quarter of the fiscal year in which the interest rate shall apply in order for the appropriate interest to be credited to each plan participant's Teacher Deferred Retirement Option Plan account in the years following the board's adoption of the interest rate;
- (6) "Post 10-year T-DROP interest" means a rate per annum that is compounded annually and adopted by the board by the end of the first quarter of the fiscal year in which the interest rate shall apply in order for the interest to be credited on June 30 to the T-DROP account of a plan participant who has not retired and whose participation in T-DROP has ended;
- (7) "Quarter" means one-fourth (1/4) of a fiscal year as follows:
 - (A) 1st Quarter: July 1 through September 30;
 - (B) 2nd Quarter: October 1 through December 31;
 - (C) 3rd Quarter January 1 through March 31; and
 - (D) 4th Quarter: April 1 through June 30;
- (8) "Retiree" means a member receiving a retirement annuity from the Arkansas Teacher Retirement System;
- (9) "Salary" means the same as defined in Arkansas Code § 24-7-202 and does not include nonmandatory compensation that is taxable by the IRS;
- (10) "T-DROP" means the same as defined in Arkansas Code § 24-7-202;
- (11) "T-DROP Cash Balance Account" means a financial account established for a plan participant who elects to defer distribution of his or her Teacher Deferred Retirement Option Plan account balance at the time that he or she is eligible to receive a lump-sum distribution of the Teacher Deferred Retirement Option Plan account balance;
- (12) "T-DROP Cash Balance Account interest" means the interest rate per annum applicable to a plan participant's T-DROP Cash Balance Account, and compounded monthly into a plan participant's T-DROP Cash Balance Account; and
- (13) "Uniformed Services of the United States" means service in the:
 - (A) United States Armed Forces;
 - (B) Army National Guard;
 - (C) Air National Guard when engaged in active duty for training, state active duty, inactive duty training, or full-time National Guard duty;
 - (D) United States Commissioned Corps of the Public Health Service; and

(E) Any other category of persons designated by the President of the United States in time of war or emergency.

§ 10-102. Return to service.

(a) Unless otherwise provided by the Office of Personnel Management's Policy No. 65, effective July 1, 2009, a retiree who terminates employment under Arkansas Code § 24-7-502 or reaches the normal retirement age may:

(1) Accept employment with a covered employer; and

(2) Continue to receive a monthly retirement annuity without a limitation of his or her retirement annuity.

(b)(1) Both a retiree who returns to service with a covered employer and the covered employer who employs the retiree shall report the retiree's employment to the Arkansas Teacher Retirement System using forms and reports required by the system.

(2) A retiree who receives monthly retirement benefits and is employed by a covered employer shall not:

(A) Pay member contributions;

(B) Be responsible for employer contributions; or

(C) Accrue additional service credit.

(3) A covered employer that employs a retiree shall pay employer contributions on the salary paid to the retiree in an amount equal to the employer contribution rate applicable to an active member.

§ 10-103. Teacher Deferred Retirement Option Plan — Participation.

(a) In lieu of terminating employment and voluntarily retiring:

(1) An active member with at least thirty (30) years of service credit may elect to participate in TDROP and continue to work for a covered employer; and

(2) An active member with at least twenty-eight (28) years of service credit may elect to participate early in T-DROP and continue to work for a covered employer.

(b) The service credit of a plan participant shall be determined using the same rules that apply for determining the service credit of an active member.

(c) On call availability shall not be used for:

(1) T-DROP service credit requirements; or

(2) Monthly plan deposits to a plan participant's T-DROP account.

(d) An active member who elects to participate in T-DROP and continues his or her covered employment defers the receipt of retirement benefits.

(e)(1) Service credit in the Arkansas Teacher Retirement System, a reciprocal system, or a combination of service credit in the Arkansas Teacher Retirement System and the reciprocal system may be counted to meet the minimum service credit requirements for participation under T-DROP and the reciprocal system's deferred retirement option plan if the reciprocal system offers members of the reciprocal system a deferred retirement option plan.

(2) A retirement benefit payable by a reciprocal system shall be determined according to the law, rules, and regulations applicable to the reciprocal system.

(3)(A) The final average salary of a plan participant with reciprocal service credit shall be the highest final average salary calculated by the Arkansas Teacher Retirement System or a reciprocal system in which the plan participant has at least two (2) years of

service credit.

(B) Each reciprocal system shall calculate final average salary in accordance with the law applicable to the reciprocal system.

(C) A salary earned as a member of the Arkansas Judicial Retirement System or an alternate retirement plan shall not be used to calculate final average salary.

(f)(1) A reciprocal system shall credit a deferred retirement option plan account with plan deposits and plan interest according to the deferred retirement option program applicable

(2) The Arkansas Teacher Retirement System shall not pay a monthly plan deposit into a plan participant's T-DROP account for more than ten (10) consecutive years from the date on which the plan participant enters T-DROP.

§ 10-104. Teacher Deferred Retirement Option Plan — Benefits.

(a)(1) A plan participant shall elect an annuity option provided in Arkansas Code § 24-7-706 at the time the plan participant separates from service and either:

(A) Applies for retirement upon reaching the normal retirement age; or

(B) Is granted a monthly retirement benefit.

(2) Upon electing to retire, if a plan participant elects to cash out or annuitize his or her T-DROP account balance, the plan participant shall not be permitted to reenroll in T-DROP after his or her T-DROP account is distributed unless the plan participant cancels his or her election under Arkansas Code § 24-7-1302.

(b) A cost-of-living increase under Arkansas Code §§ 24-7-713 or 24-7-727 shall be applied to the T-DROP benefit that is used to calculate the plan deposit.

(2) A T-DROP benefit and the cost-of-living increase may be modified as provide by this rule and the law applicable to the Arkansas Teacher Retirement System.

(c) A plan participant's T-DROP benefit shall:

(1) Be the monthly straight life annuity benefit that the plan participant would have received if he or she voluntarily retired; and

(2) Not include a monthly benefit stipend otherwise provided under Arkansas Code § 24-7-713.

§ 10-105. Teacher Deferred Retirement Option Plan — Plan deposits.

(a)(1) During participation in T-DROP, the Arkansas Teacher Retirement System shall credit a plan participant's T-DROP account with plan deposits and plan interest.

(2) A plan participant's T-DROP plan deposit may be reduced as provided by the law and rules applicable to the system.

(3)(A) The system shall provide each plan participant with an annual statement of the plan participant's T-DROP account.

(B) The statement of plan deposits and plan interest shall not be final until the annual accounting has been reconciled for part-time plan participants.

(b) A plan participant's plan deposit shall be determined as follows:

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

(2) If a plan participant enters T-DROP early, the plan participant's plan deposit shall be the plan participant's T-DROP benefit, as calculated at the plan participant's entry into T-DROP, reduced by:

(A) One percent (1%) for each year of credited service, including fractions of a year; and

(B) 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)(1) A plan participant's T-DROP account shall be credited with twelve (12) monthly plan deposits per fiscal year if the:

(A) Plan participant earns at least one hundred sixty (160) days of service credit in a fiscal year and does not terminate employment, retire, or die during the fiscal year; or

(B) Plan participant's covered employer does not terminate the employer-employee relationship.

(3)(A) If a plan participant earns less than one hundred sixty (160) days of service credit in a fiscal year, the plan deposit shall be made in accordance with the part-time employment schedule as follows:

(i) If a plan participant earns at least fifteen (15) days of service credit in the first or fourth quarter of the fiscal year, the plan participant's T-DROP account shall be credited with three (3) monthly plan deposits for the quarter;

(ii) If a plan participant earns less than fifteen (15) days of service credit in the first or fourth quarter of the fiscal year, the plan participant's T-DROP shall not be credited with a plan deposit for the three (3) months of that quarter;

(iii) If a plan participant earns at least twenty-five (25) days of service credit in the second or third quarter of the fiscal year, the plan participant's T-DROP account shall be credited with three (3) monthly plan deposits for the quarter; and

(iv) If a plan participant earns less than twenty-five (25) days of service credit in the second or third quarter of the fiscal year, the plan participant's T-DROP shall not be credited with a plan deposit for the three (3) months of that quarter.

(B) If plan participant is required to work at least fifteen (15) days in a quarter in order for the plan participant to receive all three (3) monthly deposits and the plan participant does not complete the quarter due to the termination of the employee-employer relationship, the plan deposit shall be as follows:

(i) The plan participant shall receive one (1) monthly deposit if the plan participant works:

(a) At least one (1) day and terminates employment in the first month of the uncompleted quarter; or

(b) Between one (1) and five (5) days and terminates employment in any of the three (3) months of the uncompleted quarter;

(ii) The plan participant shall receive two (2) monthly deposits if the plan participant works:

(a) At least six (6) days and terminates employment in the second month of the uncompleted quarter; or

(b) Between six (6) and ten (10) days and terminates employment in the second or third month of the uncompleted quarter; and

(iii) The plan participant shall receive three (3) monthly deposits if the plan participant works at least eleven (11) days and terminates employment in the third month of the uncompleted quarter.

(C) If a plan participant is required to work at least twenty-five (25) days in a quarter in order for the plan participant to receive all three (3) monthly deposits and the plan participant does not complete the quarter due to the termination of the employee-employer relationship, the plan deposit shall be as follows:

(i) The plan participant shall receive one (1) monthly deposit if he or she works:

(a) At least one (1) day and terminates employment in the first month of the uncompleted quarter; or

(b) Between one (1) and eight (8) days and terminates employment in any of the three (3) months of the uncompleted quarter;

(ii) The plan participant shall receive two (2) monthly deposits if the plan participant works:

(a) At least nine (9) days and terminates employment in the second month of the uncompleted quarter; or

(b) Between nine (9) and sixteen (16) days and terminates employment in the second or third month of the uncompleted quarter; and

(iii) The plan participant shall receive three (3) monthly deposits if the plan participant works at least seventeen (17) days and terminates employment in the third month of the uncompleted quarter.

§ 10-106. Teacher Deferred Retirement Option Plan — Plan interest.

(a)(1) A plan participant who has not retired shall receive plan interest at the end of each fiscal year.

(2) The plan interest rate shall be based on a:

(A) Fixed interest rate that is adopted by the Board of Trustees of the Arkansas Teacher Retirement System by the end of the first quarter of the fiscal year in which the interest rate shall apply; or

(B) Variable interest rate formula that is based on investment returns and other factors adopted by the board by the end of the first quarter of the fiscal year in which the interest rate shall apply.

(3) The board shall adopt a plan interest rate by the end of the first quarter of the fiscal year in which the plan interest shall apply if a variable interest rate formula is used.

(b)(1) If a plan participant continues covered employment after ten (10) consecutive years from the date of his or her entry into T-DROP, the plan participant's T-DROP account shall be credited with a post-ten-year T-DROP interest rate.

(2) The board shall set the post-10-year T-DROP interest rate:

(A) By the end of the first quarter of the fiscal year in which the interest rate shall apply; and

(B) At the same meeting in which the plan interest rate is set.

(3) The post-10-year T-DROP interest rate shall be credited to a plan participant's T-DROP account on June 30 of each year, or through the date of retirement, whichever occurs first.

(4) The post-10-year T-DROP interest rate for T-DROP shall be determined by the

board and adopted by the by the end of the first quarter of the fiscal year in which the interest rate shall apply.

(c) In addition to the interest rate for the fiscal year, the board may adopt an incentive rate during the fiscal year if investment returns justify an incentive rate for the fiscal year.

§ 10-107. Teacher Deferred Retirement Option Plan — Suspension or cessation of plan deposits and plan interest.

(a) Monthly plan deposits to a plan participant's T-DROP account shall stop if the plan participant:

(1) Separates from service with a covered employer and is granted a monthly retirement benefit from either the Arkansas Teacher Retirement System or a reciprocal plan;

(2) Reaches normal retirement age and retires without separating from covered employment;

(3) Separates from covered employment and does not apply for retirement benefits; or

(4) Dies.

(b)(1) If a plan participant separates from covered employment and does not apply for retirement benefits, monthly plan deposits into the plan participant's T-DROP account shall be suspended beginning on the month in which the plan participant separates from covered employment.

(2) The plan participant's T-DROP account shall not be credited with a plan deposit for the duration of the plan participant's separation from covered employment.

(3) Monthly plan deposits into a plan participant's T-DROP account shall resume if the plan participant returns to covered employment before the end of the plan period.

(c) If a plan participant applies for retirement, the retirement benefits shall be paid according to the plan participant's T-DROP account balance:

(1) At the time of the plan participant's separation from covered employment; or

(2) In the month before the effective date of the plan participant's retirement benefits after the plan participant reaches the normal retirement age.

(d) A plan participant shall remain eligible for annual plan interest to be credited to his or her T-DROP account if the member:

(1) Does not separate from covered employment; and

(2) Remains on the covered employer's payroll without earning sufficient service credit for monthly plan deposits.

§ 10-108. Teacher Deferred Retirement Option Plan — Uniformed Services of the United States.

(a) A plan participant shall be treated as not having incurred a break in service with a covered employer if the plan participant leaves covered employment to voluntarily or involuntarily serve in the uniformed services of the United States and later returns to covered employment.

(b) A covered employer shall certify to the Arkansas Teacher Retirement System that reemployment of the plan participant complies with § 4312 of the Uniformed Services Employment and Reemployment Act of 1994 (USERA).

§ 10-109. Teacher Deferred Retirement Option Plan — Internal Revenue Code.

(a) The operation of T-DROP shall comply with § 415 and other applicable sections of the Internal Revenue Code, 26 U.S.C. § 1 et seq.

(b) Any provision concerning the operation of T-DROP that conflicts with § 415 and other applicable sections of the Internal Revenue Code, 26 U.S.C. § 1 et seq. is invalid.

§ 10-110. Teacher Deferred Retirement Option Plan — Distribution election.

A member's T-DROP distribution election shall be irrevocable if the member submits his or her T-DROP distribution election on a form approved by the Arkansas Teacher Retirement System and the system accepts the form submitted by the member.

§ 10-111. Teacher Deferred Retirement Option Plan — Rollover of account balance.

(a) A lump-sum distribution of a plan participant's T-DROP account balance may be rolled over into the plan participant's qualifying retirement plan.

(b) The Arkansas Teacher Retirement System shall rollover the T-DROP account lump-sum balance into only one (1) qualifying retirement plan.

§ 10-112. T-DROP Cash Balance Account Program — Internal Revenue Code.

(a)(1) In lieu of electing a lump-sum distribution of his or her T-DROP account balance, a plan participant may elect to transfer all or a part of his or her T-DROP account balance into a CBA.

(2) If a plan participant elects to have only a part of his or her T-DROP account balance transferred into a CBA, the remaining balance of the T-DROP account shall be annuitized under the Arkansas Teacher Retirement System or paid as a lump-sum distribution.

(3) A CBA shall be credited monthly with T-DROP Cash Balance Account interest and debited monthly for withdrawals and distributions beginning on the month immediately following the establishment of the CBA.

(b) A CBA established on or after July 1, 2021, shall be credited with T-DROP Cash Balance Account interest as follows:

<u>T-DROP Cash Balance Account Program</u> <u>Years of Participation</u>	<u>Interest Rate</u>
<u>First fiscal year of participation</u>	<u>Two and one-half percent (2.5%)</u>
<u>Two (2) fiscal years of participation</u>	<u>Two and seventy-five hundredths percent</u> <u>(2.75%)</u>
<u>Three (3) fiscal years of participation</u>	<u>Three percent</u> <u>(3.00%)</u>

<u>Four (4) fiscal years of participation</u>	<u>Three and twenty-five hundredths percent</u> <u>(3.25%)</u>
<u>Five (5) fiscal years of participation</u>	<u>Three and one-half percent</u> <u>(3.50%)</u>
<u>Six (6) or more fiscal years of participation</u>	<u>Four percent</u> <u>(4.00%)</u>

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

(1) Increase the T-DROP Cash Account Balance interest rate for future fiscal years and on an ad hoc basis;

(2) Consider current market conditions, competing financial offerings to plan participants, bank rates for certificates of deposits, the status of the Arkansas Teacher Retirement System's return on investments, and the current state of participation in the T-DROP Cash Balance Account program when determining the T-DROP Cash Balance Account interest rate;

(3) By resolution periodically authorize a special ad hoc incentive payment for CBAs if the board determines that payment of the special ad hoc incentive is likely to encourage continued participation and increase future participation in the T-DROP Cash Balance Account program; and

(4) By resolution adopt a new T-DROP Cash Balance Account Interest Schedule (Schedule) for future CBAs.

(d) An ad hoc increase may be:

(1) Set as a single amount to be applied to each CBA; or

(2) Computed as a graduated amount based on the length of time the CBA has existed.

(e)(1) The T-DROP Cash Balance Account interest rate shall remain in effect until the board adopts a new Schedule with lower interest rates for future CBA accounts established by the end of the first quarter of the fiscal year in which the interest rate shall apply.

(2) A CBA established before the effective date of a board resolution adopting a new Schedule for future CBAs shall not be subject to the provisions of the new Schedule.

(f) If a plan participant dies with a CBA balance, the CBA balance shall be paid as provided under Arkansas Code § 24-7-1310.

(g)(1) If a plan participant's CBA has a balance, a plan participant may withdraw funds from his or her CBA up to six (6) times per quarter by using forms approved by the system.

(2) A plan participant may make more than six (6) withdrawals in a quarter with the approval of the Executive Director of the Arkansas Teacher Retirement System.

(3) A plan participant may request a recurring monthly distribution of a set amount from his or her CBA until the CBA balance is depleted or the plan participant withdraws his or her request.

(4)(A) Minimum distributions made to a plan participant shall comply with Arkansas

Code § 24-7-730 and the Internal Revenue Code, 26 U.S.C. § 1 et seq.

(B) A retiree who attains the required minimum distribution age and does not cease to be active in the system shall not have required minimum distributions deducted from his or her CBA if the retiree:

(i) Either is a rehired retiree or has continued to work for a covered employer without a break in service; and

(ii) The retiree's covered employer reports the retiree to the system and pays employer contributions for the retiree.

Authority: Arkansas Code §§ 24-7-502, 24-7-708, and 24-7-1301 et seq.

History

<u>Approved:</u>	<u>June 13, 1995</u>	<u>10-3</u>
<u>Amended:</u>	<u>June 30, 1997</u>	<u>10-3</u>
<u>Amended:</u>	<u>June 17, 2003</u>	<u>10-3</u>
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<u>Amended:</u>	<u>February 15, 2005</u>	<u>10-3</u>
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<u>Amended:</u>	<u>October 4, 2005</u>	<u>10-2</u>
<u>Amended:</u>	<u>December 6, 2005</u>	<u>10-2</u>
<u>Amended:</u>	<u>April 26, 2007</u>	<u>10-3</u>
<u>Amended:</u>	<u>June 19, 2007</u>	<u>10-2</u>
<u>Amended:</u>	<u>February 11, 2008</u>	<u>10-2</u>
<u>Amended:</u>	<u>June 16, 2009</u>	<u>10-2 (Emergency)</u>
<u>Amended:</u>	<u>October 5, 2009</u>	<u>10-2 (Permanent)</u>
<u>Amended:</u>	<u>February 1, 2010</u>	<u>10-3 under emergency rules</u>
<u>Amended:</u>	<u>June 7, 2010</u>	<u>10-3 Permanent</u>
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<u>Effective:</u>	<u>November 11, 2011</u>	<u>10-3</u>
<u>Approved by Board:</u>	<u>February 6, 2012</u>	<u>10-3</u>
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<u>Approved by Board:</u>	<u>December 1, 2014</u>	<u>10-3</u>
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<u>Approved by Board:</u>	<u>October 5, 2015</u>	<u>10-3</u>
<u>Amended:</u>	<u>February 1, 2016</u>	<u>10-3</u>
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Effective:	<u>February 16, 2018</u>	<u>10-3</u>
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Effective:	<u>TBD</u>	<u>Rule 10</u>

ATRS RULE 10
RETURN TO SERVICE AND TEACHER DEFERRED RETIREMENT OPTION
PLAN

~~Arkansas Code §§ 24-7-502, 24-7-708, and 24-7-1301 et seq.~~

I. Definitions

- a. ~~"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;~~
- b. ~~"Plan participant" means a member who elects to participate in the Teacher Deferred Retirement Option Plan (T-DROP) under Arkansas Code § 24-7-1301 et seq.;~~
- c. ~~"Plan deposit" means a deposit made to each plan participant's T-DROP account pursuant to Arkansas Code § 24-7-1306;~~
- d. ~~"Plan interest" means one (1) or more interest rates per annum that are adopted by the Board of Trustees of the Arkansas Teacher Retirement System (Board) by the end of the first quarter of the fiscal year in which the interest rate shall apply in order for the appropriate interest to be credited to each plan participant's TDROP account in subsequent years following the Board's adoption of the interest rate;~~
- e. ~~"Post 10-year T-DROP interest" means a rate per annum that is compounded annually and adopted by the Board by the end of the first quarter of the fiscal year in which the interest rate shall apply in order for the interest to be credited on June 30 to the T-DROP account of a plan participant who has not retired and whose participation in T-DROP has ended;~~
- f. ~~"Quarter" means one-fourth (1/4) of a fiscal year as follows:~~
 - 1. ~~1st Quarter: July 1 through September 30;~~
 - 2. ~~2nd Quarter: October 1 through December 31;~~
 - 3. ~~3rd Quarter: January 1 through March 31; and~~
 - 4. ~~4th Quarter: April 1 through June 30;~~
- g. ~~"Retiree" means a member receiving a retirement annuity from the Arkansas Teacher Retirement System (ATRS);~~
- h. ~~"Salary" means the same as defined in Arkansas Code § 24-7-202 and does not include nonmandatory compensation that is taxable by the IRS;~~
- i. ~~"T-DROP Cash Balance Account" means a financial account established for a plan participant who elects to defer distribution of his or her T-DROP account balance at the time that he or she is eligible to receive a lump-sum distribution of the T-DROP account balance;~~
- j. ~~"T-DROP Cash Balance Account interest" means the interest rate per annum applicable to a plan participant's T-DROP Cash Balance Account, and~~

~~compounded monthly into a plan participant's T-DROP Cash Balance Account;
and~~

- k. ~~“Uniformed Services of the United States” means service in the:~~
- ~~1. United States Armed Forces;~~
 - ~~2. Army National Guard;~~
 - ~~3. Air National Guard when engaged in active duty for training, state active duty, inactive duty training, or full-time National Guard duty;~~
 - ~~4. United States Commissioned Corps of the Public Health Service; and~~
 - ~~5. Any other category of persons designated by the President of the United States in time of war or emergency.~~

II. ~~Return to Service~~¹

- a. ~~Unless otherwise provided by the Office of Personnel Management's Policy No. 65, effective July 1, 2009, a retiree who terminates employment under Arkansas Code § 24-7-502 or reaches the normal retirement age may:~~
- ~~1. Accept employment with a covered employer; and~~
 - ~~2. Continue to receive a monthly retirement annuity without a limitation of his or her retirement annuity.~~
- b. ~~A retiree who returns to service with a covered employer and a covered employer who employs a retiree shall report the retiree's employment to ATRS using forms and reports required by ATRS.~~
- c. ~~A retiree who receives monthly retirement benefits and is employed by a covered employer shall not:~~
- ~~1. Pay member contributions;~~
 - ~~2. Be responsible for employer contributions; or~~
 - ~~3. Accrue additional service credit.~~
- d. ~~A covered employer that employs a retiree shall pay employer contributions on the salary paid to the retiree in an amount equal to the employer contribution rate applicable to an active member.~~

III. ~~Teacher Deferred Retirement Option Plan (T-DROP)~~

- a. ~~Participation—Generally~~
- ~~1. In lieu of terminating employment and voluntarily retiring, an active member with at least thirty (30) years of service credit may elect to participate in TDRDP and continue to work for a covered employer.~~

¹ Rules concerning a disability retiree's return to service are included in ATRS Rule 9.

2. ~~An active member with at least twenty-eight (28) years of service credit may elect to participate early in T-DROP and continue to work for a covered employer.~~
 3. ~~The service credit of a plan participant shall be determined using the same rules that apply for determining the service credit of an active member.~~
 4. ~~On call availability shall not be used for:~~
 - A. ~~T-DROP service credit requirements; or~~
 - B. ~~Monthly plan deposits to a plan participant's T-DROP account.~~
 5. ~~An active member who elects to participate in T-DROP and continues his or her covered employment defers the receipt of retirement benefits.~~
- b. ~~Participation — Reciprocal Systems~~
1. ~~Service credit in ATRS, a reciprocal system, or a combination of service credit in ATRS and the reciprocal system may be counted to meet the minimum service credit requirements for participation under T-DROP and the reciprocal system's deferred retirement option plan if the reciprocal system offers members of the reciprocal system a deferred retirement option plan.~~
 2. ~~A retirement benefit payable by a reciprocal system shall be determined according to the law, rules, and regulations applicable to the reciprocal system.~~
 3. ~~The final average salary of a plan participant with reciprocal service credit shall be the highest final average salary calculated by ATRS or a reciprocal system in which the plan participant has at least two (2) years of service credit. (Arkansas Code § 24-2-402)~~
 4. ~~Each reciprocal system shall calculate final average salary in accordance with the law applicable to the reciprocal system.~~
 5. ~~A salary earned as a member of the Arkansas Judicial Retirement System or an alternate retirement plan shall not be used to calculate final average salary.~~
 6. ~~A reciprocal system shall credit a deferred retirement option plan account with plan deposits and plan interest according to the deferred retirement option program applicable to the reciprocal system.~~
- c. ~~Limits on Participation~~
1. ~~ATRS shall not pay a monthly plan deposit into a plan participant's T-DROP account for more than ten (10) consecutive years from the date on which the plan participant enters T-DROP.~~
- d. ~~D. T-DROP Benefits~~
1. ~~A plan participant shall elect an annuity option provided in Arkansas Code § 24-7-706 at the time the plan participant:~~
 - A. ~~Separates from service; and~~

- B. Either:
 - i. Applies for retirement upon reaching the normal retirement age; or
 - ii. Is granted a monthly retirement benefit.
- 2. A plan participant's T-DROP plan deposit may be reduced as provided by the ATRS Rules and Arkansas Code § 24-7-1301 et seq.
- 3. A plan participant's T-DROP benefit shall:
 - A. Be the monthly straight life annuity benefit that the plan participant would have received if he or she voluntarily retired; and
 - B. Not include a monthly benefit stipend otherwise provided under Arkansas Code § 24-7-713.
- e. Plan Interest and Plan Deposits
 - 1. Generally
 - A. During participation in T-DROP, ATRS shall credit the T-DROP account of plan participant with plan deposits and plan interest.
 - 2. Plan Deposits
 - A. Determination of Plan Deposit
 - i. A plan participant's plan deposit shall be determined as follows:
 - a. 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 shall be the plan participant's TDROP benefit, as calculated at the plan participant's entry into T-DROP, reduced by one percent (1%) for each year of credited service, including fractions of a year.
 - ii. If a plan participant enters T-DROP early, the plan participant's plan deposit shall be the plan participant's T-DROP benefit, as calculated at the plan participant's entry into T-DROP, reduced by:
 - a. One percent (1%) for each year of credited service, including fractions of a year; and
 - b. 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.
 - B. Crediting Plan Deposit
 - i. A plan participant's T-DROP account shall be credited with twelve (12) monthly plan deposits per fiscal year if the:
 - a. Plan participant earns at least one hundred sixty (160) days of service credit in a fiscal year and does not terminate employment, retire, or die during the fiscal year; or

- b. ~~Plan participant's covered employer does not terminate the employer-employee relationship.~~
- ii. ~~If a plan participant earns less than one hundred sixty (160) days of service credit in a fiscal year, the plan deposit shall be made in accordance with the part-time employment schedule as follows:~~
 - a. ~~If a plan participant earns at least fifteen (15) days of service credit in the first or fourth quarter of the fiscal year, the plan participant's T-DROP account shall be credited with three (3) monthly plan deposits for the quarter.~~
 - b. ~~If a plan participant earns less than fifteen (15) days of service credit in the first or fourth quarter of the fiscal year, the plan participant's T-DROP shall not be credited with a plan deposit for the three (3) months of that quarter.~~
 - c. ~~If a plan participant earns at least twenty five (25) days of service credit in the second or third quarter of the fiscal year, the plan participant's T-DROP account shall be credited with three (3) monthly plan deposits for the quarter.~~
 - d. ~~If a plan participant earns less than twenty five (25) days of service credit in the second or third quarter of the fiscal year, the plan participant's T-DROP shall not be credited with a plan deposit for the three (3) months of that quarter.~~

~~C. Cost-of-Living Increase~~

- i. ~~A cost-of-living increase under Arkansas Code §§ 24-7-713 or 247-727 shall be applied to the T-DROP benefit that is used to calculate the plan deposit.~~
- ii. ~~A T-DROP benefit and the cost-of-living increase may be modified as provided by this ATRS Rule 10 and law applicable to ATRS.~~

~~D. Election to Cash-Out or Annuitize~~

- i. ~~Upon electing to retire, if a plan participant elects to cash out or annuitize his or her T-DROP account balance, the plan participant shall not be permitted to reenroll in T-DROP after his or her T-DROP account is distributed unless the plan participant cancels his or her election under Arkansas Code § 24-7-1302.~~

~~E. Annual Statement~~

- i. ~~ATRS shall provide each plan participant with an annual statement of the plan participant's T-DROP account.~~
- ii. ~~The statement of plan deposits and plan interest shall not be final until the annual accounting has been reconciled for part-time plan participants.~~

3. Interest Rates

A. ~~Plan Interest~~

- ~~i. A plan participant who has not retired shall receive plan interest at the end of each fiscal year.~~
- ~~ii. The plan interest rate shall be based on a:
 - ~~a. Fixed interest rate that is adopted by the Board by the end of the first quarter of the fiscal year in which the interest rate shall apply; or~~
 - ~~b. Variable interest rate formula that is based on investment returns and other factors adopted by the Board by the end of the first quarter of the fiscal year in which the interest rate shall apply.~~~~
- ~~iii. The Board shall adopt a plan interest rate by the end of the first quarter of the fiscal year in which the plan interest shall apply if a variable interest rate formula is used.~~

B. ~~Post-10-Year T-DROP Interest~~

- ~~i. If a plan participant continues covered employment after ten (10) consecutive years from the date of his or her entry into T-DROP, the plan participant's T-DROP account shall be credited with a post-tenyear T-DROP interest rate.~~
- ~~ii. The Board shall set the post-10-year T-DROP interest rate:
 - ~~a. By the end of the first quarter of the fiscal year in which the interest rate shall apply; and~~
 - ~~b. At the same meeting in which the plan interest rate is set.~~~~
- ~~iii. The post-10-year T-DROP interest rate shall be credited to a plan participant's T-DROP account on June 30 of each year, or through the date of retirement, whichever occurs first.~~
- ~~iv. The post-10-year T-DROP interest rate for T-DROP shall be determined by the Board and adopted by the by the end of the first quarter of the fiscal year in which the interest rate shall apply.~~

C. ~~Incentive Rate~~

- ~~i. In addition to the interest rate for the fiscal year, the Board may adopt an incentive rate during the fiscal year if investment returns justify an incentive rate for the fiscal year.~~

4. ~~Suspension or Cessation of Plan Deposits and Benefit Distributions~~

- A. ~~Monthly plan deposits to a plan participant's T-DROP account shall stop if the plan participant:
 - ~~i. Separates from service and is granted a monthly retirement benefit from ATRS or a reciprocal plan;~~~~

- ii. ~~Reaches normal retirement age and retires without separating from covered employment;~~
- iii. ~~Separates from covered employment and does not apply for retirement benefits; or~~
- iv. ~~Dies.~~

B. Separation from Covered Employment without Applying for Retirement Benefits

- i. ~~If a plan participant separates from covered employment and does not apply for retirement benefits, monthly plan deposits into the plan participant's T-DROP account shall be suspended beginning on the month in which the plan participant separates from covered employment.~~
- ii. ~~The plan participant's T-DROP account shall not be credited with a plan deposit for the duration of the plan participant's separation from covered employment.~~
- iii. ~~Monthly plan deposits into a plan participant's T-DROP account shall resume if the plan participant returns to covered employment before the end of the plan period.~~
- iv. ~~If a plan participant applies for retirement, the retirement benefits shall be paid according to the plan participant's T-DROP account balance:
 - a. ~~At the time of the plan participant's separation from covered employment; or~~
 - b. ~~In the month before the effective date of the plan participant's retirement benefits after the plan participant reaches the normal retirement age.~~~~
- v. ~~A plan participant shall remain eligible for annual plan interest to be credited to his or her T-DROP account if the member:
 - a. ~~Does not separate from covered employment; and~~
 - b. ~~Remains on the covered employer's payroll without earning sufficient service credit for monthly plan deposits.~~~~

C. Plan Participant's in Uniformed Services of United States

- i. ~~A plan participant shall be treated as not having incurred a break in service with a covered employer if the plan participant leaves covered employment to voluntarily or involuntarily serve in the uniformed services of the United States and later returns to covered employment.~~
- ii. ~~A covered employer shall certify to ATRS that reemployment of the plan participant complies with § 4312 of the Uniformed Services Employment and Reemployment Act of 1994 (USERA).~~

- f. ~~Compliance — Section 415 of the Internal Revenue Code~~
1. ~~The operation of T-DROP shall comply with U.S.C. § 415 and other applicable sections of the Internal Revenue Code, 26 U.S.C. § 1 et seq.~~
 2. ~~Any provision concerning the operation of T-DROP that conflicts with § 415 and other applicable sections of the Internal Revenue Code, 26 U.S.C. § 1 et seq. is invalid.~~
- g. ~~T-DROP Account Balance — Rollover~~
1. ~~A lump-sum distribution of a plan participant's T-DROP account balance may be rolled over into the plan participant's qualifying retirement plan.~~
 2. ~~ATRS shall rollover the T-DROP account lump-sum balance into only one (1) qualifying plan.~~
- h. ~~T-DROP Cash Balance Account Program~~
1. ~~Election Option~~
 - A. ~~In lieu of electing a lump-sum distribution of his or her T-DROP account balance, a plan participant may elect to transfer all or a part of his or her T-DROP account balance into a Cash Balance Account (CBA).~~
 - B. ~~If a plan participant elects to have only a part of his or her T-DROP account balance transferred into a CBA, the remaining balance of the TDROP account shall be annuitized under ATRS or paid as a lump-sum distribution.~~
 - C. ~~A CBA shall be credited monthly with T-DROP Cash Balance Account interest and debited monthly for withdrawals and distributions beginning on the month immediately following the establishment of the CBA.~~
 2. ~~T-DROP Cash Balance Account Interest Schedule~~
 - A. ~~A CBA established on or after July 1, 2012, shall be credited with TDROP Cash Balance Account interest as follows:~~

T-DROP Cash Balance Account Program Years of Participation	Interest Rate
First fiscal year of participation	Two and one-half percent (2.5%)
Two (2) fiscal years of participation	Two and seventy-five hundredths percent (2.75%)
Three (3) fiscal years of participation	Three percent (3.00%)

Four (4) fiscal years of participation	Three and twenty-five hundredths percent (3.25%)
Five (5) fiscal years of participation	Three and one-half percent (3.50%)
Six (6) or more fiscal years of participation	Four percent (4.00%)

B. ~~The Board may:~~

- i. ~~Increase the T-DROP Cash Account Balance interest rate for future fiscal years and on an ad hoc basis;~~

~~ii. Consider current market conditions, competing financial offerings to plan participants, bank rates for certificates of deposits, the status of ATRS' return on investments, and the current state of participation in the T-DROP Cash Balance Account program when determining the T-DROP Cash Balance Account interest rate; iii. Periodically authorize, by board resolution, a special ad hoc incentive payment for CBAs if the Board determines that payment of the special ad hoc incentive is likely to encourage continued participation and increase future participation in the T-DROP Cash Balance Account program; and iv. Adopt, by board resolution, a new T-DROP Cash Balance Account Interest Schedule (Schedule) for future CBAs. C. An ad hoc increase may be:~~

- ~~i. Set as a single amount to be applied to each CBA; or
ii. Computed as a graduated amount based on the length of time the CBA has existed.~~

~~D. The T-DROP Cash Balance Account interest rate shall remain in effect until the Board adopts a new Schedule with lower interest rates for future CBA accounts established by the end of the first quarter of the fiscal year in which the interest rate shall apply.~~

~~E. A CBA established before the effective date of a board resolution adopting a new Schedule for future CBAs shall not be subject to the provisions of the new Schedule.~~

~~F. If a plan participant dies with a CBA balance, the CBA balance shall be paid as provided under Arkansas Code § 24-7-1310.~~

~~3. Withdrawals~~

~~A. If a plan participant's CBA has a balance, a plan participant may withdraw funds from his or her CBA up to six (6) times per quarter by using forms approved by ATRS.~~

- B. A plan participant may make more than six (6) withdrawals in a quarter with the approval of the Executive Director of ATRS.
- C. A plan participant may request a recurring monthly distribution of a set amount from his or her CBA until the CBA balance is depleted or the plan participant withdraws his or her request.
- D. Minimum distributions made to a plan participant shall comply with Arkansas Code § 24-7-730 and the Internal Revenue Code, 26 U.S.C. § 1 et seq.

HISTORY

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Public Comments

Proposed Rule 11 – Survivors and Domestic Relations Orders

1. Page 1, § 11-101(3).

- a. **ATRS Staff Comment:** Should the definition of “immediately eligible” read “for the purpose of survivor annuity benefits means a survivor of an active member who at the time of his or her death **is eligible for voluntary or early voluntary retirement** and could have retired from the system” instead of “for the purposes of survivor annuity benefits means a survivor of an active member who at the time of his or her death **attained the normal retirement age** and could have retired from the system” the definition of “immediately eligible” ?
- b. **Response:** This recommend change aligns with Ark. Code Ann. § 24-7-710((b)(1)(C)(i). The rule has been amended to read “for the purpose of survivor annuity benefits means a survivor of an active member who at the time of his or her death **would have been eligible to receive benefits** and could have retired from the system”.

2. Page 4, § 11-104(c)(2).

- a. **ATRS Staff Comment:** Regarding § 11-104(c)(2), do the current spouse and deceased member have to be married for a certain period of time?
- b. **Response:** Yes. This rule is intended to align with Ark. Code Ann. § 24-7-710(a)(2)(B), which requires a surviving spouse to have been married to the member for at least two (2) years immediately preceding the member’s death in order to be eligible for a survivor annuity. The rule has been amended to clarify that the current spouse must be eligible to receive survivor annuity benefits, which would require the current spouse to have been married to the member for at least two (2) years immediately preceding the member’s death.

3. Page 4, § 11-104(c)(2).

- a. **ATRS Staff Comment:** Should “*lump-sum death benefit*” read “*beneficiary designation form*”?
- b. **Response:** The rule has been amended to read, “*A member who remarries and desires to maintain his or her former spouse’s designation as the member’s alternative residue beneficiary shall file with the system a **residue beneficiary designation form** that:*”

4. Page 5, § 11-106(a)(2)(A).

- a. **BLR Comment:** Section 11-106 of the proposed rule, which concerns dependent children, states that a qualifying member’s child shall be eligible to qualify as a dependent child or maintain his or her status as a dependent child if the qualifying member was the *legal parent* of the child at the time of the qualifying member’s death (emphasis added). This requirement is not found in Ark. Code Ann. § 24-7-710, which is also cited in the rule. What is the agency’s reasoning for adding the requirement that a member be the legal parent of the child?
- b. **Response:** ATRS staff and members have questioned whether a child must be the biological child of a member in order to be eligible for dependent child survivor benefits. Adding “legal parent” is intended to clarify that a child will be considered the child of a member if the child would legally have been considered the child of the member at the time of the member’s death. This change clarifies that adopted children of a member may also be eligible for dependent child survivor benefits.
- c. **BLR Comment:** With respect to the provision cited above, the term “legal parent” does not appear to be defined in the proposed rule. How does the agency define “legal parent” for the purposes of this rule?
- d. **Response:** ATRS defines “legal parent” for the purposes of the rule as the biological father or mother of a child or the adoptive mother or father of a child. A definition for “legal parent” has been added to the rules on page 1.

5. Page 6, § 11-106(b)(2)(B).

- a. **BLR Comment:** Should this subsection refer to a “deferred enrollment”?
- b. **Response:** Yes. The rule has been amended to refer to “deferred enrollment”.

6. Page 6, § 11-107(a).

- a. **ATRS Staff Comment:** Should nine (9) hours in graduate school be included?
- b. **Response:** No, § 11-107(a) provides that a dependent child may be considered a full-time student if he or she is engaged full-time in a curriculum or field of study based upon verifiable indices from an accredited institution. This provision covers nine (9) hours in graduate school. No changes to the rule have been made.

7. Page 12, § 11-120(b)(2)(C).

- a. **BLR Comment:** Section 11-120(b)(2)(C), which concerns the system’s acceptance of Qualified Domestic Relations Orders (QDRO), states that the system shall accept a QDRO issued by a circuit court of the State of Arkansas or other court of competent jurisdiction regarding a member and an alternate payee if the QDRO complies with the Arkansas Code, the system’s rules, the system’s model qualified domestic relations order, and other applicable laws. This appears to be premised upon Ark. Code Ann. § 9-18-103(b)(2)(B)(ii), which only provides that a state-supported retirement system is not required to comply with a qualified domestic relations order that does not substantially follow the uniform legal form approved by the Legislative Council. Is there a reason why the proposed rule’s language is different, and more restrictive, than the language provided in the Arkansas Code?

Response: ATRS does not consider the proposed rule to be different or more restrictive than language provided by Ark. Code Ann. § 9-18-103(b)(2)(B)(ii). The proposed rule is premised on Ark. Code Ann. § 9-18-101 et seq. and not Ark. Code Ann. § 9-18-103(b)(2)(B)(ii) alone. The proposed rule requiring the System to accept a qualified domestic

relations order that complies with the System’s rules, the System’s model qualified domestic relations order, and other applicable laws aligns with Ark. Code Ann. § 9-18-101 et seq. In relevant part, Ark. Code Ann. § 9-18-101(4) defines “qualified domestic relations order” as a domestic relations order “[w]hich does not require the retirement plan to provide any type or form of benefit, or pay options not otherwise available under the plan”. The System’s rules address benefits and pay options available under ATRS. Additionally, other state or federal laws may impact benefits and pay options available under a retirement plan. Furthermore, ATRS’ model qualified domestic relations order (“ATRS-model QDRO”), which was approved by Legislative Council, was drafted by ATRS staff to ensure that only benefits and pay options available under ATRS were included. Finally, as the proposed rule merely states when ATRS will accept a qualified domestic relations order and does not prohibit ATRS from accepting or complying with a qualified domestic relations order that does not substantially comply with the ATRS-model QDRO, the proposed rule complies with and is not more restrictive than Ark. Code Ann. § 9-18-103(b)(2)(B)(ii).

- b. **BLR Comment:** With respect to the provision cited above, who would make the determination that a QDRO issued by a circuit court of the State of Arkansas or other court of competent jurisdiction fails to comply with the Arkansas Code, the System’s rules or other applicable laws?

Response: For the limited purpose of determining whether ATRS will accept or comply with a qualified domestic relations order, as provided by § 11-120(b)(2)(A) on page 12, upon receiving a qualified domestic relations order, ATRS will determine whether the qualified domestic relations order complies with the Arkansas Code, the System’s rules, the ATRS-model QDRO, and other applicable laws.

ATRS Rule 11 Survivors and Domestic Relations Orders

§ 11-101. Definitions.

As used in this rule:

(1) "Alternate payee" means a spouse, former spouse, child, or other dependent of a member under Arkansas law;

(2) "Application" for the purposes of retirement eligibility means an application form and any other documents required by the Arkansas Teacher Retirement System to establish a member's eligibility to retire;

(3) "Immediately eligible" for the purpose of survivor annuity benefits means a survivor of an active member who at the time of his or her death would have been eligible to receive benefits and could have retired from the system;

(4) "Legal parent" means the biological father or mother of a child or the adoptive father or mother of a child;

(5) "Lump-sum death beneficiary" means one (1) or more persons or entities designated in writing by the member to receive payment of the lump-sum death benefit under Arkansas Code § 24-7-720;

(6) "Lump-sum death benefit" means a monetary amount set by the Board of Trustees of the Arkansas Teacher Retirement System, and paid by the system to one (1) or more lump-sum death beneficiaries; and

(7) "QDRO" means a court order that:

(A) Meets the definition of a qualified domestic relations order under Arkansas Code § 9-18-101; or

(B) Assigns a portion of a member's retirement benefit to an alternate payee upon the member's retirement or a refund of the member's contributions at the request of the member;

(8) "Qualifying member" means:

(A) For the purposes of eligibility for a lump-sum death benefit, a member or retiree to whom one (1) of the following categories apply:

(i) The member:

(a) Is deceased;

(b) Was an active member of the system before July 1, 2007;

and

(c) Has five (5) or more years of actual service, including actual service for the year immediately preceding his or her death;

(ii) The member:

(a) Is deceased;

(b) Was an active member of the system on or after July 1, 2007; and

(c) Has ten (10) or more years of actual service, including actual service for the year immediately preceding his or her death; or

(iii) The retiree:

(a) Dies before July 1, 2007; and

(b) Has accrued five (5) or more years of actual service,

including actual service, for the year immediately preceding his or her death; or

(iv) The retiree:

(a) Dies on or after July 1, 2007; and

(b) Has accrued ten (10) or more years of actual service, including actual service for the year immediately preceding his or her death; or

(B) For the purpose of an eligible survivor qualifying for survivor annuity benefits under Arkansas Code § 24-7-710, a member who:

(i) Is an active member;

(ii) Has at least five (5) years of actual service and reciprocal service, including credited service for the year immediately preceding his or her death; and

(iii) Is active as provided in Arkansas Code § 24-7-710(f) and this

rule.

§ 11-101. Survivors.

(a) The law in effect on the date of a qualifying member's death shall determine the:

(1) Eligibility of a qualifying member's spouse or child to receive survivor annuity benefits;

(2) Amount of the survivor annuity benefits to be received by an eligible survivor;

(3) The time at which an eligible survivor may begin receiving survivor annuity benefit payments; and

(4) Member's effective retirement date.

(b)(1) The Arkansas Teacher Retirement System shall send each survivor who is identified by the qualifying member to the system and who may be eligible for a survivor annuity benefit written notice of his or her potential eligibility at the survivor's last address on file with the system.

(2) Survivor annuity benefits shall not be paid to the survivor of a qualifying member until the survivor provides the system with sufficient proof of his or her eligibility to receive survivor annuity benefit payments.

§ 11-102. Survivors — Qualifying members.

(a) A member shall be considered active for the purpose of an eligible survivor qualifying for survivor annuity benefits under Arkansas Code § 24-7-710 if:

(1) The member has at least:

(A) Ten (10) days of service credit in each prior quarter of the fiscal year from the time the fiscal year began or the member was employed by a covered employer, whichever occurs last; and

(B) One (1) quarter with ten (10) days of service; or

(2) Either of the following apply to the member:

(A) The member has earned at least ten (10) days of service credit in the quarter of the member's death and in each quarter before the member's death, collectively; or

(B) Less than ten (10) working days have elapsed in the quarter of the member's death.

(b) A member shall also be considered active for an additional fiscal year following the last fiscal year in which the member renders actual service to a covered employer and obtains at least one-fourth (1/4) of a year of service credit.

§ 11-103. Survivors — Surviving spouse.

(a) An eligible survivor of a qualifying member may receive survivor annuity benefits after the death of the qualifying member.

(b) Unless a qualifying member designates one (1) or more alternative residue beneficiaries by written form approved by the Arkansas Teacher Retirement System, the survivor annuity benefits provided for in Arkansas Code § 24-7-710 shall be paid to the spouse of the qualifying member if the spouse:

(1) Survives the qualifying member; and

(2) Was married to the qualifying member for at least two (2) years immediately before the qualifying member's death.

(c)(1) A surviving spouse who is eligible to receive surviving spouse annuity benefits may file a waiver of his or her right to the surviving spouse annuity benefits with the system if, at the time of the qualifying member's death, the qualifying member does not have children who are eligible to receive dependent child survivor annuity benefits.

(2) If the surviving spouse files a waiver of his or her right to receive surviving spouse annuity benefits, then the surviving spouse may receive the qualifying member's accumulated contributions plus interest, if any, in a lump-sum distribution.

(d)(1) Pursuant to Arkansas Code § 24-7-710, surviving spouse annuity benefits are payable for the surviving spouse's lifetime, regardless of the remarriage of the surviving spouse.

(2) The surviving spouse may defer receipt of the surviving spouse annuity benefits, if applicable, under the deferred retirement provisions of Arkansas Code § 24-7-707.

(3) A surviving spouse shall submit the following documents to the system before a surviving spouse annuity benefit payment is issued to the surviving spouse:

(A) Proof of the qualifying member's death and date of death from the qualifying member's death certificate or another legally acceptable document;

(B) Proof of the surviving spouse's taxpayer identification number from a Social Security card or another authenticating document;

(C) Proof of the surviving spouse's date of birth from a birth certificate or another authenticating document; and

(D) Proof of the marriage between the qualifying member and surviving spouse from a marriage license or equivalent, marriage license recording document, or other legally acceptable proof of the existence of the marriage.

(4) A surviving spouse who is immediately eligible to receive a monthly survivor annuity benefit after the death of the qualifying member shall receive monthly survivor annuity benefits:

(A) Beginning the month after the death of the qualifying member if the survivor application is filed **by the end of the sixth full calendar month following the date** of the qualifying member's death; or

(B) Beginning the month in which the survivor application is filed with the system if at the time of the qualifying member's death the qualifying member:

(i) Accumulated at least twenty-five (25) years of credited service and

was eligible to receive a voluntary retirement or early retirement annuity; or

(ii) Reached sixty (60) years of age and was eligible to receive a deferred retirement annuity.

(5) A surviving spouse who is not immediately eligible to receive a monthly survivor annuity benefit shall receive monthly survivor annuity benefits beginning the later of either the:

(A) Month following the date on which the qualifying member would have been eligible to receive retirement benefits had the qualifying member survived; or

(B) Date on which a survivor application is filed with the system.

§ 11-104. Survivors — Alternative residue beneficiary.

(a) A member may change his or her alternative residue beneficiary designation and designate his or her spouse as a residue beneficiary under Arkansas Code § 24-7-710 by documenting the change on a form provided and approved by the Arkansas Teacher Retirement System.

(b)(1) A qualifying member may designate one (1) or more alternative beneficiaries, also known as alternative residue beneficiaries, to receive a lump-sum payment of the qualifying member's residue in lieu of the qualifying member's surviving spouse by using a beneficiary form provided and approved by the system.

(2) A surviving spouse annuity benefit or any other type of monthly benefit shall not be paid to a qualifying member's surviving spouse if the qualifying member designates one (1) or more alternative residue beneficiaries to receive a lump-sum payment of the qualifying member's residue in lieu of the qualifying member's surviving spouse.

(3) A surviving spouse may elect Option A — 100% Survivor Annuity benefits if:

(A) The qualifying member:

(i) Designates only the surviving spouse as the primary residue beneficiary; and

(ii) Does not designate an alternative residue beneficiary as the primary residue beneficiary; or

(B)(i) The surviving spouse is ineligible for an annuity solely as a result of the qualifying member designating an alternative residue beneficiary and the alternative residue beneficiary waives his or her right to the residue.

(ii) An alternative residue beneficiary's waiver of his or her right to the residue is not required if the qualifying member does not have a residue with a payable balance.

(c)(1) A member's designation of his or her former spouse as the member's alternative residue beneficiary shall not be honored by the system with regard to the former spouse if the:

(A) Member remarries;

(B) Member's current spouse would be eligible to receive survivor annuity benefits but for the member's former spouse's designation as the member's alternative residue beneficiary; and

(C) System receives proof of the member's remarriage in the manner required by the system before payment of the residue is issued to the former spouse.

(2) A member who remarries and desires to maintain his or her former spouse's designation as the member's alternative residue beneficiary shall file with the system a

residue beneficiary designation form that:

(A) Designates his or her former spouse as the member's alternative residue beneficiary; and

(B) Has a signature date of the member that is on or after the date of the member's remarriage.

(3) The system shall not be obligated to recoup or reimburse a member's current spouse for any residue amount paid to the member's former spouse in accordance with a law, rule, or policy applicable to the system.

§ 11-105. Survivors — T-DROP plan participant.

(a)(1) A participant in the Teacher Deferred Retirement Option Plan may designate one (1) or more alternative residue beneficiaries to receive a lump-sum payment of his or her T-DROP benefits in lieu of his or her surviving spouse.

(2) A T-DROP plan benefit, surviving spouse annuity benefit, or any other type of monthly benefit shall not be paid to a plan participant's surviving spouse if the plan participant designates one (1) or more alternative residue beneficiaries to receive a lump-sum payment of his or her T-DROP benefits in lieu of his or her surviving spouse.

(3) A surviving spouse may elect Option A — 100% Survivor Annuity benefits if:

(A) The plan participant:

(i) Designates only the surviving spouse as the primary residue beneficiary; and

(ii) Does not designate an alternative residue beneficiary as the primary residue beneficiary; or

(B)(i) The surviving spouse is ineligible for an annuity solely as a result of the plan participant designating an alternative residue beneficiary and the alternative residue beneficiary waives his or her right to the residue.

(ii) An alternative residue beneficiary's waiver of his or right to the residue is not required if the plan participant does not have a residue with a payable balance.

(b) A plan participant's T-DROP residue that otherwise would have been paid pursuant to Arkansas Code § 24-7-709 shall be calculated as the greater of either of the following:

(1) The accumulated contributions and regular interest credited to the retirement reserve account as of the member's effective retirement date reduced by the total amount of regular annuities paid, further reduced by amounts received from the T-DROP account in the form of a lump-sum or annuity benefit payments; or

(2) The T-DROP account as of the member's effective retirement date reduced by amounts received from the T-DROP account in the form of a lump-sum or annuity benefit payments.

§ 11-106. Survivors — Dependent children.

(a)(1) A child of a qualifying member is eligible to receive a survivor annuity benefit under Arkansas Code § 24-7-710 if the child qualifies as a dependent child.

(2) A qualifying member's child shall be eligible to qualify as a dependent child or maintain his or her status as a dependent child if:

(A) The qualifying member was the legal parent of the child at the time of the qualifying member's death; and

(B) The child meets all other requirements to qualify as a dependent child or maintain his or her status as a dependent child.

(b)(1) A child of a qualifying member qualifies as a dependent child if the child is:

(A) Is younger than eighteen (18) years of age; or

(B) Is at least eighteen (18) years of age and not older than twenty-two (22) years of age and continuously enrolled as a full-time student in an accredited secondary school, college, university, or vocational-technical school; or

(C) Has been adjudged physically or mentally incapacitated by a court of competent jurisdiction.

(2) A dependent child who enrolls in an accredited college, university, or vocational-technical school shall remain eligible to receive a dependent child annuity during his or her period of deferred enrollment if the dependent child:

(A) Is not older than twenty-two (22) years of age; and

(B) Submits proof of his or her deferred enrollment to the Arkansas Teacher Retirement System in the manner required by the system.

(c) A qualifying member's dependent child shall not be eligible to qualify as a dependent child again and shall have his or her dependent child annuity terminated by the system if the dependent child dies or ceases to qualify as a dependent child of the qualifying member.

§ 11-107. Survivors — Dependent children — Full-time students.

(a) To be considered a full-time student, a dependent child shall:

(1) Take twelve (12) semester hours or eight (8) trimester hours in college;

(2) Take four (4) hours per day in a secondary or postsecondary school; or

(3) Engage full-time in a curriculum or field of study based upon verifiable indices from an accredited institution.

(b) After a dependent child reaches eighteen (18) years of age, in the absence of a parent or legal guardian, the dependent child may self-report his or her Certification of Attendance to the Arkansas Teacher Retirement System.

(c)(1) A qualifying member's child who is at least eighteen (18) years of age and not older than twenty-two (22) years of age and not a full-time student may continue to qualify as a dependent child and receive a survivor annuity benefit if a doctor certifies that the child is temporarily physically or mentally incapacitated and unable to attend school as a full-time student for the current semester or term due to the temporary physical or mental incapacitation.

(2) If a doctor does not certify the child as temporarily physically or mentally incapacitated and unable to attend school as a full-time student for the current semester or term due to the temporary physical or mental incapacitation and the child does not attend school as a full-time student in the following semester, the child shall no longer qualify as a dependent child and shall be ineligible to receive survivor annuity benefits.

§ 11-108. Survivors — Dependent children — Active military duty or training.

(a) A dependent child who qualifies under Arkansas Code § 24-7-710(c)(2)(B)(i) to receive survivor annuity benefit payments may have his or her payments temporarily suspended if he or she:

(1) Is called to active military duty or active military training; and

(2) Submits a copy of his or her military orders to the Arkansas Teacher Retirement System.

(b)(1) Survivor annuity benefit payments to a dependent child shall be temporarily suspended for the duration of the dependent child's participation in active military duty or active military training.

(2) Survivor annuity benefit payments to the dependent child shall be reinstated if the dependent child:

(A) Is at least eighteen (18) years of age and not older than twenty-two (22) years of age;

(B) Immediately re-enrolls as a full-time student at an accredited secondary school, college, university, or vocational-technical school upon his or her return from active military duty or active military training; and

(C) Submits documentation of his or her re-enrollment as a full-time student to the system.

§ 11-109. Survivors — Dependent children — Incapacitated child.

A qualifying member's child who qualifies as a dependent child because he or she has been adjudged physically or mentally incapacitated by a court of competent jurisdiction and for whom a guardian has been appointed shall continue to be eligible to receive a dependent child survivor annuity benefit as long as the incapacity exists, regardless of the age of the child.

§ 11-110. Survivors — Dependent children — Return to work retirees.

(a) A dependent child annuity shall be payable to a surviving child of a retiree who dies after returning to work if the child qualifies as a dependent child and is eligible for a dependent child annuity under the law and rules applicable to the Arkansas Teacher Retirement System.

(b) The same rules applicable to the surviving child of qualifying member shall apply to the surviving child of a retiree who dies after returning to work.

§ 11-111. Survivors — Dependent children — Calculation and payment of survivor annuity.

(a) The amount of the survivor annuity benefit payable to a dependent child shall be the amount provided in Arkansas Code § 24-7-710.

(b) The highest of the following shall be used to calculate a dependent child's survivor annuity benefit:

(1) The total salary that the qualifying member would have received in the fiscal year in which the qualifying member died; or

(2) The qualifying member's highest salary in another fiscal year.

(c) The dependent child survivor annuity shall remain at the initial monthly amount, adjusted by an annual cost-of-living adjustment increase, as may be designated by the Board of Trustees of the Arkansas Teacher Retirement System.

(d) If more than one (1) dependent child of a qualifying member receives survivor annuity benefits, each dependent child's survivor annuity benefit shall:

(1) Remain at the initial monthly amount; and

(2) Not be readjusted if the survivor annuity benefit payments to one (1) or more

of the dependent children terminates.

(e) A dependent child shall receive monthly survivor annuity benefits:

(1) Beginning the month after the qualifying member's death if the survivor application is filed with the Arkansas Teacher Retirement System **by the end of the sixth full calendar month following** the qualifying member's death; or

(2) If a survivor application is not filed with the system **by the end of the sixth full calendar month following** the qualifying member's death, beginning the month in which the survivor application is filed with the system.

(f) A dependent child shall submit the following documents to the system before a survivor annuity benefit payment is issued to the dependent child:

(1) Proof of the qualifying member's death and date of death from the qualifying member's death certificate or another legally acceptable document;

(2) Proof of the dependent child's taxpayer identification number from a Social Security card or another authenticating documents;

(3) Proof that the dependent child is a child of the qualifying member from the dependent child's birth certificate or another legally acceptable document;

(4) Proof of the dependent child's date of birth from a birth certificate or another authenticating document;

(5) If applicable, a file-marked court order finding the dependent child physically or mentally incapacitated; and

(6) If applicable, proof of enrollment as a full-time student from an **accredited secondary school, college, university, or vocational-technical school.**

(g)(1) A deposit account designated to receive a survivor annuity benefit payment for the benefit of a dependent child who is under eighteen (18) years of age shall conform with:

(A) The Arkansas Uniform Transfers to Minors Act, Arkansas Code § 9-26201 et seq.; or

(B) A court order in a guardianship proceeding for the benefit of the dependent child.

(2) Each survivor annuity benefit payment is shall:

(A) Be made as a separate payment to the eligible dependent child in the appropriate deposit account; and

(B) Not be co-mingled with payments to other family members.

§ 11-112. Survivors — Disability retirees.

(a) If a member receives final approval for disability retirement and dies before receiving the first disability retirement benefit payment, the member's disability retirement benefits shall be paid to one (1) or more option beneficiaries, alternative residue beneficiaries, or other beneficiaries designated by the member.

(b) If a member's disability retirement application is received by the Arkansas Teacher Retirement System and the member dies before his or her disability application is approved, the member shall be considered to have died in active service and survivor annuity benefits under Arkansas Code § 24-7-710 may be paid if the member has not designated an alternative residue beneficiary.

§ 11-113. Survivors — Annuity benefits payable by reciprocal systems.

(a) If survivor annuity benefits are payable by more than one (1) reciprocal system to one

(1) or more eligible survivors of a deceased qualifying member, the survivors shall not receive, as a percentage of the qualifying member's final pay or as a minimum dollar amount, more than the largest amount payable by a single, reciprocal system.

(b)(1) The Arkansas Teacher Retirement System shall prorate minimum benefits payable with any other reciprocal system that has a minimum benefit provision.

(2)(A) A reciprocal system shall pay the reciprocal system's proportionate share of the minimum benefit amount.

(B) A reciprocal system's proportionate share of the minimum benefit amount shall be based on the ratio of the qualifying member's service in the reciprocal system to the qualifying member's total service in all other reciprocal systems.

(c) When a member elects to transfer from the Arkansas Teacher Retirement System to the Arkansas Public Employees' Retirement System under the provisions of Acts 1977, No. 793, the Arkansas Public Employees' Retirement System's law shall govern the survivors' eligibility for a payment of residue or survivor annuity benefits upon the member's death.

§ 11-114. Survivors — Lump-sum death benefit — Qualification.

(a) A member of the system who is active, retired, or a T-DROP plan participant and accrues the required amount of actual service at the time of his or her death may qualify for a lump-sum death benefit.

(b) For the purposes of eligibility for a lump-sum death benefit, a member shall be considered active for an additional fiscal year following the last fiscal year in which the member renders actual service to a covered employer and obtains at least a quarter (1/4) of a year of service credit.

§ 11-115. Survivors — Lump-sum death benefit — Amount and tax exemption.

(a)(1) The amount of the lump-sum death benefit may be set by a resolution or rules adopted by the Board of Trustees of the Arkansas Teacher Retirement System in an amount of up to ten thousand dollars (\$10,000) per member.

(2) The board may adjust the amount of the lump-sum death benefit each year and, as actuarially appropriate, prorate the amount of the lump-sum benefit based on the ratio of the member's contributory and noncontributory service credit.

(b)(1) Upon a qualifying member's death, the maximum lump-sum death benefit that the qualifying member qualifies to receive in accordance with the law, rules, and resolutions of the board applicable to the system shall be paid in equal shares to each person designated as a beneficiary by the qualifying member in the manner required by the system.

(2) If the qualifying member fails to designate a beneficiary or all the designated beneficiaries predecease the qualifying member, the lump-sum death benefit shall be paid to the qualifying member's estate.

(c)(1) Pursuant to Acts 2009, No. 1323, a lump-sum death benefit distribution made after June 30, 2009, shall be tax exempt, and no federal or state income tax shall be withheld by the Arkansas Teacher Retirement System.

(2) After June 30, 2009, a lump-sum death benefit shall not be eligible for a direct rollover.

§ 11-116. Survivors — Lump-sum death benefit — Beneficiary designations and authorized agents.

(a)(1) A member may designate one (1) or more natural persons, a duly formed legal entity, including a corporation, trust, partnership, or other legal entity, as his or her lump-sum death benefit beneficiary.

(2) If a member designates a funeral home as his or her lump-sum death benefit beneficiary and the member is qualifying member who may receive a lump-sum death benefit at the time of his or her death, the Arkansas Teacher Retirement System shall not be obligated to do any of the following:

(A) Issue payment to the funeral home in an amount that exceeds the:

(i) Lump-sum death benefit amount that the member qualifies to receive in accordance with the laws, rules, and resolutions of the Board of Trustees of the Arkansas Teacher Retirement System; or

(ii) Share of the lump-sum death benefit amount that the funeral home would be entitled to receive if the member designates more than one (1) lump-sum death benefit beneficiary;

(B) Reimburse any person or entity for any amount received by the funeral home that exceeds the cost of the member's funeral service; or

(C) Recoup or assist any person or entity in recouping any amount received by the funeral home that exceeds the cost of the member's funeral service.

(3)(A) A member's designation of his or her former spouse as the member's lump-sum death benefit beneficiary shall not be honored by the system with regard to the former spouse if the:

(i) Member remarries; and

(ii) System receives proof of the member's remarriage in the manner required by the system before payment of the lump-sum death benefit is issued to the former spouse.

(B) A member who remarries and desires to maintain his or her former spouse's designation as the member's lump-sum death benefit beneficiary shall file with the system a lump-sum death benefit beneficiary designation form that:

(i) Designates his or her former spouse as the member's lump-sum death benefit beneficiary; and

(ii) Has a signature date of the member that is on or after the date of the member's remarriage.

(C) The system shall not be obligated to recoup or reimburse a member's current spouse for any lump-sum death benefit amount paid to the member's former spouse in accordance with this rule.

(b)(1) A completed lump-sum death benefit beneficiary form shall not be considered effective if the form is received by the Arkansas Teacher Retirement System after the member's death.

(2) A member's most recently completed, executed, and filed lump-sum death benefit beneficiary form shall supersede all previous lump-sum death benefit beneficiary forms completed, executed, and filed by the member.

(c)(1) A lump-sum death benefit beneficiary form that is signed by a member's authorized agent, including an attorney-in-fact, agent under a power of attorney, or any other legally recognized agent, shall not be processed until the document appointing the member's

authorized agent is filed with and accepted by the system.

(2) Only a document that appoints and authorizes the member's authorized agent to transact retirement plan business on behalf of the member shall be effective for the system's purposes.

(3) Only a document that specifically authorizes a member's authorized agent to change the member's beneficiary designations shall be effective to allow the authorized agent to change a beneficiary designation on the member's behalf with the system.

(d) A lump-sum death benefit beneficiary form signed by a guardian of the member's estate or another court-appointed conservator shall not be effective to allow the guardian or court-appointed conservator to change a beneficiary designation on the member's behalf with the system unless there is an accompanying court order specifically authorizing the guardian or court-appointed conservator to change a beneficiary designation on the member's behalf.

§ 11-117. Survivors — Lump-sum death benefit — Distribution, waiver, and assignment.

(a) A designated beneficiary shall submit the following forms and documents to the Arkansas Teacher Retirement System before a lump-sum death benefit payment is issued to the designated beneficiary:

(1) A written application on a form approved by the system; and

(2) The qualifying member's death certificate or other acceptable proof of the qualifying member's death.

(b) A lump-sum death benefit payment shall be made within a reasonable time to a qualifying member's designated beneficiary after the death of the qualifying member.

(c)(1) A designated beneficiary of a lump-sum death benefit may waive his or her right to receiving a payment of the lump-sum death benefit by submitting a waiver of his or her right to the lump-sum death benefit on a form that is acceptable to the system.

(2) If a designated beneficiary waives his or her right to the payment of a lump-sum death benefit, the system shall pay all or the balance of the lump-sum death benefit, whichever is applicable, to any other remaining designated beneficiaries.

(d) A designated beneficiary shall not assign his or her right to a payment of a lump-sum death benefit to another person or entity.

§ 11-118. Survivors — Lump-sum death benefit — Overpayments.

(a) The Arkansas Teacher Retirement System may deduct and reserves the right to deduct from a qualifying member's lump-sum death benefit any amount owed to the system by the qualifying member under Arkansas Code § 24-7-205.

(b) The system may collect and reserves the right to collect any overpayment or other amount owed to the system by a designated beneficiary.

§ 11-119. Survivors — Lump-sum death benefit — Transfers to minors.

The Arkansas Teacher Retirement System shall comply with all applicable laws relating to the distribution of a lumpsum death benefit including the Arkansas Uniform Transfers to Minors Act, Arkansas Code § 9-26-201 et seq.

§ 11-120. Qualified domestic relations order.

(a) The model qualified domestic relations order adopted by the Arkansas Teacher Retirement System pursuant to Arkansas Code § 9-18-103(b) shall be used by a member if a court intends to divide the member's retirement benefits or contributions between the member and an alternate payee.

(b)(1) The system shall promptly notify a member and the alternate payee upon receiving a QDRO.

(2)(A) Upon receiving a QDRO, the system shall determine within a reasonable time after receiving the QDRO whether the QDRO complies with the Arkansas Code, the system's rules, the system's model qualified domestic relations order, and other applicable laws.

(B) The system shall notify the member and the alternate payee in writing if the system determines that a QDRO submitted by the member or alternate payee does not comply with the Arkansas Code, the system's rules, the system's model qualified domestic relations order, or other applicable laws.

(C) The system shall accept a QDRO issued by a circuit court of the State of Arkansas or other court of competent jurisdiction regarding a member and an alternate payee if the QDRO complies with the Arkansas Code, the system's rules, the system's model qualified domestic relations order, and other applicable laws.

§ 11-121. Qualified domestic relations order — Limitations.

(a) A QDRO shall not require the Arkansas Teacher Retirement System to:

(1) Provide an alternate payee with any type or form of benefit or option not otherwise available to the member;

(2) Provide an alternate payee actuarial benefits not available to the member;

(3) Pay any benefits to an alternate payee that are required to be paid to another alternate payee under an existing QDRO;

(4) Provide any benefit that is an actuarial cost to the system and is not otherwise contemplated in the law and rules applicable to the system; or

(5) Violate any plan qualification requirement in the Internal Revenue Code, 26 U.S.C. § 401(a), or otherwise affect the system's requirement to operate as a governmental plan under the Internal Revenue Code, 26 U.S.C. § 414(d).

(b) The system shall not accept a QDRO for a member who does not have five (5) years of actual service with the system at the time the QDRO is issued by a court.

(c) No provision in the system's rules or in a QDRO accepted by the system shall require the system to violate any plan qualification requirement in the Internal Revenue Code, 26 U.S.C. § 401(a), or otherwise affect the system's requirement to operate as a governmental plan under the Internal Revenue Code, 26 U.S.C. § 414(d).

§ 11-122. Qualified domestic relations order — Computation of benefit payments.

(a)(1) The Arkansas Teacher Retirement System shall compute an alternate payee's monthly annuity benefit under a QDRO **accepted by the system by** using the benefit formula in effect at the time of the member's retirement.

(2) When computing an alternate payee's monthly retirement annuity benefit under a QDRO accepted by the system, the system shall include only service credit earned by the member during the marriage.

(b) If the QDRO issued by the circuit court assigns a marital portion or other part of a

member's interest in his or her T-DROP plan deposits and interest, the benefits in the member's T-DROP account shall be computed as a separate calculation as provided by the model qualified domestic relations order adopted by the system.

§ 11-123. Qualified domestic relations order — Eligibility to receive benefits.

(a) The member or the alternate payee may file a QDRO with the Arkansas Teacher Retirement System before the member's retirement or termination of covered employment.

(b)(1) An alternate payee is eligible to receive benefit payments if the member retires or terminates employment with a covered employer and receives a refund of contributions.

(2) The alternate payee's portion of the member's retirement benefits or contributions shall be held in the member's account until the alternate payee is eligible to receive benefit payments under this rule.

(c) A benefit enhancement enacted by the General Assembly or the Board of Trustees of the Arkansas Teacher Retirement System after entry of a QDRO shall inure to the benefit of the member and shall not be assigned to the alternate payee.

§ 11-124. Qualified domestic relations order — Enrollment of alternate payee.

(a)(1) The alternate payee shall notify the Arkansas Teacher Retirement System of a change of his or her mailing address and verify annually his or her address with the system beginning one (1) year from the date of the letter notifying the alternate payee of the system's acceptance of the QDRO.

(2) If an alternate payee's address changes from the address provided on the QDRO accepted by the system or the address provided by the alternate payee during the system's enrollment of the alternate payee, the system shall not be obligated to determine the current post office address or any other address of the alternate payee.

(b) If the alternate payee is eligible to receive benefit payments and has not completed and submitted an enrollment form or all other required documents to the system, the following shall apply:

(1) The system shall notify the member in writing that the alternate payee has not completed and submitted an enrollment form or all other documents required in order for the system to issue a payment to the alternate payee;

(2) The system shall pay the alternate payee's portion of the member's retirement benefits or contributions to the member;

(3) The member shall hold as constructive trustee the alternate payee's portion of the member's retirement benefits or contributions upon receiving the alternate payee's portion of the member's retirement benefits or contributions; and

(4) The member shall be responsible for verifying with the system the amount of the alternate payee's portion of the member's retirement benefits or contributions to be held by the member as constructive trustee.

(c) If an alternate payee is eligible to receive benefit payments, the system shall:

(1) Not hold the alternate payee's portion of the member's retirement benefits or contributions in the member's account;

(2) Pay the alternate payee's portion of the member's retirement benefits or

contributions when payment is due to the:

(A) Alternate payee if the alternate payee has completed and submitted to the system an enrollment form and all other documents required by the system in order to issue the payment; or

(B) Member to be held by the member as constructive trustee.

(d)(1) The system shall pay the member the total retirement benefit if the system determines that the alternate payee's monthly retirement benefit is less than twenty dollars (\$20.00).

(2) The member shall be responsible for paying the alternate payee his or her portion of benefits if the system determines that the alternate payee's monthly retirement benefit is less than twenty dollars (\$20.00).

§ 11-125. Qualified domestic relations order — Benefit payments — Overpayments.

(a) The Arkansas Teacher Retirement System shall have the right to:

(1) Make any necessary correction to the monthly annuity benefit paid under a QDRO [accepted by the system](#); and

(2) Recover any overpayments owed to the system from either the member or the alternate payee.

(b)(1) If an amount that should not have been distributed to the member or alternate payee under the QDRO [accepted by the system](#) is received by the member or alternate payee, the member or alternate payee shall:

(A) Be responsible for holding the amount as a constructive trustee; and

(B) Notify the system immediately that he or she received the amount.

(c) The system shall not make restitution for:

(1) A payment that is issued to the alternate payee before the system receives notice of the alternate payee's change of address;

(2) A distributed amount that:

(A) The alternate payee is entitled to receive under the terms of a QDRO [accepted by the system](#); and

(B) Is received by the member as constructive trustee;

(3) A distributed amount that:

(A) The member is entitled to receive under the terms of a QDRO [accepted by the system](#); and

(B) Is received by the alternate payee as constructive trustee; or

(4) An amount that was distributed before the system receives a court order voiding the QDRO [accepted by the system](#).

§ 11-126. Qualified domestic relations order — Benefit payments — Death of member or alternate payee.

(a)(1) Any benefit that would be due to the alternate payee under [a QDRO accepted by the Arkansas Teacher Retirement System](#) shall revert back to the member if the alternate payee dies before receiving the [first benefit payment issued to him or her by the system](#).

(2) [An alternate payee's portion of benefits payable to him or her under a QDRO accepted by the system shall not revert back to the member if the alternate payee dies after receiving the first benefit payment issued to him or her by the system.](#)

(b)(1) If a member dies before retirement [and a survivor annuity is not payable](#), the

alternate payee shall receive the same portion of the member's contributions, if any, as was assigned by the QDRO accepted by the system.

(2) The alternate payee shall not receive monthly retirement annuity benefits from the system if the member has not received his or her retirement annuity at the time of his or her death.

(c) If a member dies after retiring from the system, the alternate payee shall not be entitled to continue receiving his or her portion of benefits and the system shall cease paying the alternate payee his or her portion of benefits in the month immediately following the member's date of death.

§ 11-127. Qualified domestic relations order — Cancellation of retirement — Order voiding qualified domestic relations order.

(a)(1) If a member cancels his or her retirement, the Arkansas Teacher Retirement System may recoup any benefits paid to an alternate payee from the member, the alternate payee, or both the member and the alternate payee.

(2) If a member cancels his or her retirement, the system may recoup benefits paid to an alternate payee regardless of whether a court enters an order voiding the QDRO approved by system.

(b)(1) If a member does not cancel his or her retirement, the system shall not be required to:

(A) Reimburse the member for benefits that were paid to an alternate payee before an order voiding the QDRO approved by the system was entered by a court; or

(B) Recoup for the member any benefits that were paid to an alternate payee before an order voiding the QDRO approved by the system was entered by a court

(2) If a court enters an order voiding a QDRO approved by the system, the alternate payee's portion of benefits shall revert back to the member as of the date on which the court entered the order voiding the QDRO approved by the system.

§ 11-128. Lost payees and benefit forfeitures.

(a)(1) Each member and beneficiary of a deceased member is responsible for filing and shall file his or her respective current post office address and any subsequent change of address with the Arkansas Teacher Retirement System.

(2) Communication addressed to a member or beneficiary at the post office address last filed with the system, or, if no post office address has been filed with the system, the last post office address indicated on the records of the employer of the member or the beneficiary shall be:

(A) The official post office address used for the system's communication to the member or beneficiary; and

(B) Binding on the member or beneficiary for all system purposes.

(b) The system shall not be obligated to determine the current post office address or any other address for a member or beneficiary.

(c)(1) Member payments in the possession of the system shall be excluded from the definition of property as provided in the Unclaimed Property Act, Arkansas Code § 18-28-201 et seq.

(2) Arkansas Code § 24-7-734 supersedes any conflict with the Unclaimed Property Act, Arkansas Code § 18-28-201 et seq.

Authority: Arkansas Code §§ 9-18-101 — 9-18-103, 24-7-710, 24-7-713, 24-7-720, and 24-7-734

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~~ATRS RULE 11~~

~~SURVIVORS AND DOMESTIC RELATIONS ORDERS~~

~~Arkansas Code §§ 9-18-101 — 9-18-103, 24-7-710, 24-7-713, 24-7-720, and 24-7-734~~

I. Definitions

- a. ~~"Alternate payee" means a spouse, former spouse, child, or other dependent of a member under Arkansas law;~~
- b. ~~"Application" for the purposes of retirement eligibility means an application form and any other documents required by the Arkansas Teacher Retirement System (ATRS) to establish a member's eligibility to retire;~~
- c. ~~"Immediately eligible" for the purpose of survivor annuity benefits means a survivor of an active member who at the time of his or her death attained the normal retirement age and could have retired;~~
- d. ~~"Lump-sum death beneficiary" means one (1) or more persons or entities designated in writing by the member to receive payment of the lump-sum death benefit under Arkansas Code § 24-7-720;~~
- e. ~~"Lump-sum death benefit" means a monetary amount set by the Board of Trustees of the Arkansas Teacher Retirement System (Board), and paid by ATRS to one (1) or more lump-sum death beneficiaries as provided for under Arkansas Code § 24-7-720; and~~
- f. ~~"QDRO" means a court order that:~~
 1. ~~Meets the definition of a qualified domestic relations order under Arkansas Code § 9-18-101; or~~
 2. ~~Assigns a portion of a member's retirement benefit to the member's divorced spouse or an alternate payee upon the member's retirement or a refund of the member's contributions at the request of the member;~~
- g. ~~"Qualifying member" means:~~
 1. ~~For the purposes of eligibility for a lump-sum death benefit under Arkansas Code § 24-7-720, a member or retiree to whom one (1) of the following categories apply: A. The member:~~
 - i. ~~Is deceased;~~
 - ii. ~~Was an active member of ATRS before July 1, 2007; and~~
 - iii. ~~Has five (5) or more years of actual service, including actual service for the year immediately preceding his or her death;~~

~~B. The member:~~

- ~~i. Is deceased;~~
 - ~~ii. Was an active member of ATRS on or after July 1, 2007;~~
- ~~and~~
- ~~iii. Has ten (10) or more years of actual service; or C. The~~

~~retiree:~~

- ~~i. Dies before July 1, 2007; and~~
- ~~ii. Has accrued five (5) or more years of actual service, including actual service, for the year immediately preceding his or her death; or D. The retiree:~~

- ~~i. Dies on or after July 1, 2007; and~~
 - ~~ii. Has accrued ten (10) or more years of actual service, including actual service for the year immediately preceding his or her death;~~
- ~~or~~

~~2. For the purpose of an eligible survivor qualifying for survivor annuity benefits under Arkansas Code § 24-7-710, a member who:~~

- ~~A. Is an active member as defined in Arkansas Code § 24-7-202(2);~~
- ~~B. Has at least five (5) years of actual service and reciprocal service, including credited service for the year immediately preceding his or her death; and~~
- ~~C. Is active as provided in Arkansas Code § 24-7-710(f) and this ATRS Rule 11 II.a.~~

II. Survivors—Generally

~~a. Survivor Annuity Benefits—Member Qualification~~

~~1. A member shall be considered active for the purpose of an eligible survivor qualifying for survivor annuity benefits under Arkansas Code § 24-7-710 if: A.~~

~~The member has at least:~~

- ~~i. Ten (10) days of service credit in each prior quarter of the fiscal year from the time the fiscal year began or the member was employed by a covered employer, whichever occurs last; and~~
- ~~ii. One (1) quarter with ten (10) days of service; or B. Either of the following apply to the member:~~
 - ~~i. The member has earned at least ten (10) days of service credit in the quarter of the member's death and in each quarter before the member's death, collectively; or~~

- ii. ~~Less than ten (10) working days have elapsed in the quarter of the member's death.~~
 - 2. ~~A member shall also be considered active for an additional fiscal year following the last fiscal year in which the member renders actual service to a covered employer and obtains at least one-fourth (1/4) of a year of service credit.~~
- b. ~~Survivor Annuity Benefit—Applicable Law~~
 - 1. ~~The law in effect on the date of the qualifying member's death shall determine the:~~
 - A. ~~Eligibility of a qualifying member's spouse or child to receive survivor annuity benefits;~~
 - B. ~~Amount of the survivor annuity benefits to be received by an eligible survivor; and~~
 - C. ~~The time at which an eligible survivor may begin receiving survivor annuity benefit payments.~~
- c. ~~Survivor Annuity Benefit - Eligibility - Generally~~
 - 1. ~~An eligible survivor of a qualifying member may receive survivor annuity benefits after the death of the qualifying member.~~

III. ~~Spousal Benefits or Alternative Residual Beneficiaries~~

- a. ~~Eligibility for Surviving Spouse Annuity~~
 - 1. ~~Unless a qualifying member designates one (1) or more alternative residue beneficiaries by written form approved by ATRS, the survivor annuity benefits provided for in Arkansas Code § 24-7-710 shall be paid to the spouse of the qualifying member if the spouse:~~
 - A. ~~Survives the qualifying member; and~~
 - B. ~~Was married to the qualifying member for at least two (2) years immediately before the qualifying member's death.~~
- b. ~~Waiver of Surviving Spouse Annuity~~
 - 1. ~~A surviving spouse who is eligible to receive surviving spouse annuity benefits may file a waiver of his or her right to the surviving spouse annuity benefits with ATRS if, at the time of the qualifying member's death, the qualifying member does not have children who are eligible to receive dependent child survivor annuity benefits.~~
 - 2. ~~If the surviving spouse files a waiver of his or her right to receive surviving spouse annuity benefits, then the surviving spouse may receive the qualifying member's accumulated contributions plus interest, if any, in a lump-sum distribution.~~

c. ~~Payment of Surviving Spouse Annuity~~

- ~~1. Pursuant to Arkansas Code § 24-7-710, surviving spouse annuity is benefits are payable for the surviving spouse's lifetime, regardless of the remarriage of the surviving spouse.~~
- ~~2. The surviving spouse may defer receipt of the surviving spouse annuity benefits, if applicable, under the deferred retirement provisions of Arkansas Code § 24-7-707.~~
- ~~3. A surviving spouse shall submit the following documents to ATRS before a surviving spouse annuity benefit payment is issued to the surviving spouse:
 - ~~A. Proof of the qualifying member's death and date of death from the qualifying member's death certificate or another legally acceptable document;~~
 - ~~B. Proof of the surviving spouse's taxpayer identification number from a Social Security card or another authenticating document;~~
 - ~~C. Proof of the surviving spouse's date of birth from a birth certificate or another authenticating document; and~~
 - ~~D. Proof of the marriage between the qualifying member and surviving spouse from a marriage license or equivalent, marriage license recording document, or other legally acceptable proof of the existence of the marriage.~~~~
- ~~4. A surviving spouse who is immediately eligible to receive a monthly survivor annuity benefit after the death of the qualifying member shall receive monthly survivor annuity benefits:
 - ~~A. Beginning the month after the death of the qualifying member if the survivor application is filed with ATRS within three (3) months of the qualifying member's death; or~~
 - ~~B. Beginning the month in which the survivor application is filed with ATRS if at the time of the qualifying member's death the qualifying member:
 - ~~i. Accumulated at least twenty-five (25) years of credited service and was eligible to receive a voluntary retirement or early retirement annuity; or~~
 - ~~ii. Reached sixty (60) years of age and was eligible to receive a deferred retirement annuity.~~~~~~
- ~~5. A surviving spouse who is not immediately eligible to receive a monthly survivor annuity benefit shall receive monthly survivor annuity benefits beginning the later of either the:
 - ~~A. Month following the date on which the qualifying member would have been eligible to receive retirement benefits had the qualifying member survived; or~~~~

~~B. Date on which a survivor application is filed with ATRS.~~

~~d. Alternative Residual Beneficiaries~~

~~1. Generally~~

~~A. A member may change his or her alternative residue beneficiary designation and designate his or her spouse as a residue beneficiary under Arkansas Code § 24-7-710 by documenting the change on a form provided and approved by ATRS.~~

~~2. Qualifying Member~~

~~A. A qualifying member may designate one (1) or more alternative beneficiaries, also known as alternative residue beneficiaries, to receive a lump-sum payment of the qualifying member's residue in lieu of the qualifying member's surviving spouse by using a beneficiary form provided and approved by ATRS.~~

~~B. A surviving spouse annuity benefit or any other type of monthly benefit shall not be paid to a qualifying member's surviving spouse if the qualifying member designates one (1) or more alternative beneficiaries to receive a lump-sum payment of the qualifying member's residue in lieu of the qualifying member's surviving spouse.~~

~~C. A surviving spouse may elect Option A — 100% Survivor Annuity benefits if the qualifying member:~~

- ~~i. Designates only the surviving spouse as the primary residue beneficiary; and~~
- ~~ii. Does not designate an alternative residue beneficiary as the primary residue beneficiary.~~

~~3. T-DROP Plan Participant~~

~~A. A Teacher Deferred Retirement Option Plan (T-DROP) participant (plan participant) may designate one (1) or more alternative residue beneficiaries to receive a lump-sum payment of his or her T-DROP benefits in lieu of his or her surviving spouse.~~

~~B. A T-DROP plan benefit, surviving spouse annuity benefit, or any other type of monthly benefit shall not be paid to a plan participant's surviving spouse if the plan participant designates one (1) or more alternative residue beneficiaries to receive a lump-sum payment of his or her T-DROP benefits in lieu of his or her surviving spouse.~~

~~C. A surviving spouse may elect Option A — 100% Survivor Annuity benefits if the plan participant:~~

- ~~i. Designates only the surviving spouse as the primary residue beneficiary; and~~
- ~~ii. Does not designate an alternative residue beneficiary as the primary residue beneficiary.~~

- D. ~~A plan participant's T-DROP residue that otherwise would have been paid pursuant to Arkansas Code § 24-7-709 shall be calculated as the greater of either of the following:~~
 - i. ~~The accumulated contributions and regular interest credited to the retirement reserve account as of the member's effective retirement date reduced by the total amount of regular annuities paid, further reduced by amounts received from the T-DROP account in the form of a lump-sum or annuity benefit payments; or~~
 - ii. ~~The T-DROP account as of the member's effective retirement date reduced by amounts received from the T-DROP account in the form of a lump-sum or annuity benefit payments.~~

IV. ~~Dependent Children Benefits~~

- a. ~~A child of a qualifying member is eligible to receive a survivor annuity benefit under Arkansas Code § 24-7-710 if the child qualifies as a dependent child.~~
- b. ~~A child of a qualifying member qualifies as a dependent child if the child is:~~
 - 1. ~~Is younger than eighteen (18) years of age; or~~
 - 2. ~~Is between eighteen (18) years of age and twenty-three (23) years of age and continuously enrolled as a full-time student at an accredited secondary school, college, or university; or~~
 - 3. ~~Has been adjudged physically or mentally incapacitated by a court of competent jurisdiction.~~
- c. ~~Dependent Child— Full-time Student~~
 - 1. ~~To be considered a full-time student, the dependent child shall:~~
 - A. ~~Take twelve (12) semester hours or eight (8) trimester hours in college;~~
 - B. ~~Take four (4) hours per day in a secondary or postsecondary school; or~~
 - C. ~~Engage full-time in a curriculum or field of study based upon verifiable indices from an accredited institution.~~
 - 2. ~~After a dependent child reaches eighteen (18) years of age, in the absence of a parent or legal guardian, the dependent child may self-report his or her Certification of Attendance to ATRS.~~
 - 3. ~~Temporary Physical or Mental Incapacitation~~
 - A. ~~A qualifying member's child who is between eighteen (18) years of age and twenty-three (23) years of age and not a full-time student may continue to qualify as a dependent child and receive a survivor annuity benefit if a doctor certifies that the child is temporarily physically or mentally incapacitated to attend school for the current semester or term.~~
 - B. ~~If a doctor does not certify the child as temporarily physically or mentally incapacitated to attend school for the following semester or term and the~~

~~child does not attend school as a full-time student in the following semester, the child shall no longer qualify as a dependent child and shall be ineligible to receive survivor annuity benefits.~~

~~4. Active Military Duty or Training~~

- ~~A. A dependent child who qualifies under Arkansas Code § 24-7-710(c)(2)(B)(i) to receive survivor annuity benefit payments may have his or her payments temporarily suspended if he or she:~~
- ~~B. Is called to active military duty or active military training; and~~
- ~~C. Submits a copy of his or her military orders to the ATRS.~~
- ~~D. Survivor annuity benefit payments to the dependent child shall be suspended for the duration of the dependent child's participation in active military duty or active military training.~~
- ~~E. Survivor annuity benefit payments to the dependent child shall resume if the dependent child:~~
 - ~~i. Is between eighteen (18) and twenty-three (23) years of age;~~
 - ~~ii. Immediately re-enrolls as a full-time student upon his or her return from active military duty or active military training; and~~
 - ~~iii. Submits documentation of his or her re-enrollment as a full-time student to ATRS.~~

~~d. Dependent Child—Incapacitated Child~~

- ~~1. A qualifying member's child who qualifies as a dependent child because he or she has been adjudged physically or mentally incapacitated by a court of competent jurisdiction and for whom a guardian has been appointed shall continue to be eligible to receive a dependent child survivor annuity benefit as long as the incapacity exists, regardless of the age of the child. Arkansas Code § 24-7-710.~~

~~e. Dependent Child—Calculation and Payment of Survivor Annuity~~

- ~~1. The amount of the survivor annuity benefit payable to a dependent child shall be the amount provided in Arkansas Code § 24-7-710.~~
- ~~2. The highest of the following shall be used to calculate a dependent child's survivor annuity benefit:~~
 - ~~A. The total salary that the qualifying member would have received in the fiscal year in which the qualifying member died; or~~
 - ~~B. The qualifying member's highest salary in another fiscal year.~~
- ~~3. The dependent child survivor annuity shall remain at the initial monthly amount, adjusted by an annual cost-of-living adjustment increase, as may be designated by the Board.~~

4. ~~If more than one (1) dependent child of a qualifying member receives survivor annuity benefits, each dependent child's survivor annuity benefit shall:
 - A. ~~Remain at the initial monthly amount; and~~
 - B. ~~Not be readjusted if the survivor annuity benefit payments to one (1) or more of the dependent children terminates.~~~~

5. ~~A dependent child shall receive monthly survivor annuity benefits:
 - A. ~~Beginning the month after the qualifying member's death if the survivor application is filed with ATRS within three (3) months of the qualifying member's death; or~~
 - B. ~~If a survivor application is not filed with ATRS within three (3) months of the qualifying member's death, beginning the month in which the survivor application is filed with ATRS.~~~~

6. ~~A dependent child shall submit the following documents to ATRS before a survivor annuity benefit payment is issued to the dependent child:
 - A. ~~Proof of the qualifying member's death and date of death from the qualifying member's death certificate or another legally acceptable document;~~
 - B. ~~Proof of the dependent child's taxpayer identification number from a Social Security card or another authenticating documents;~~
 - C. ~~Proof that the dependent child is a child of the qualifying member from the dependent child's birth certificate or another legally acceptable document;~~
 - D. ~~Proof of the dependent child's date of birth from a birth certificate or another authenticating document;~~
 - E. ~~If applicable, a file-marked court order finding the dependent child physically or mentally incapacitated; and~~
 - F. ~~If applicable, proof of enrollment as a full-time student from an accredited secondary school, college, or university.~~~~

7. ~~A deposit account designated to receive a survivor annuity benefit payment for the benefit of a dependent child who is under eighteen (18) years of age shall conform with:
 - A. ~~The Arkansas Uniform Transfers to Minors Act, Arkansas Code § 9-26201 et seq.; or~~
 - B. ~~A court order in a guardianship proceeding for the benefit of the dependent child.~~~~

8. Each survivor annuity benefit payment is shall:
 - A. Be made as a separate payment to the eligible dependent child in the appropriate deposit account; and
 - B. Not be co-mingled with payments to other family members.

V. General Rules Regarding Survivor Annuities Annuity Benefits

- a. Survivor annuity benefits shall not be paid to the survivor of a qualifying member until the survivor provides ATRS with sufficient proof of his or her eligibility to receive survivor annuity benefit payments.
- b. ATRS shall send each survivor who is identified by the qualifying member to ATRS and who may be eligible for a survivor annuity benefit written notice of his or her potential eligibility at the survivor's last address on file with ATRS.¹
- c. If a member receives final approval for disability retirement and dies before receiving the first disability retirement benefit payment, the member's disability retirement benefits shall be paid to one (1) or more option, alternative residual, or other beneficiaries designated by the member.
- d. If a member's disability retirement application is received by ATRS and the member dies before his or her disability application is approved, the member shall be considered to have died in active service and survivor annuity benefits under Arkansas Code § 24-7-710 may be paid if the member has not designated an alternative residual beneficiary.
- e. Payments After Death of Member
 1. A salary earned by a member before the member's death and paid after the member's death is subject to ATRS deductions and the member's covered employer shall report the member's total salary and days of service in the covered employer's quarterly report.
 2. Gratuitous payments made by a covered employer to a member after the death of the member shall not be:
 - A. Considered the salary of the member;
 - B. Subject to contribution requirements; and
 - C. Included in the covered employer's quarterly report to ATRS
- f. Survivor Annuity Benefits Payable by One (1) or More Reciprocal Systems
 1. If survivor annuity benefits are payable by more than one (1) reciprocal system to one (1) or more eligible survivors of a deceased qualifying member, the survivors shall not receive, as a percentage of the qualifying member's final pay or as a minimum dollar amount, more than the largest amount payable by a single, reciprocal system.

¹ (See also ATRS Rule 11.VIII below).

2. ~~ATRS shall prorate minimum benefits payable with any other reciprocal system that has a minimum benefit provision.~~
 3. ~~A reciprocal system shall pay the reciprocal system's proportionate share of the minimum benefit amount.~~
 4. ~~A reciprocal system's proportionate share of the minimum benefit amount shall be based on the ratio of the qualifying member's service in the reciprocal system to the qualifying member's total service in all other reciprocal systems.~~
- g. ~~When a member elects to transfer from ATRS to APERS under the provisions of Acts 1977, No. 793, APERS' law shall govern the survivors' eligibility for a payment of residue or survivor annuity benefits upon the member's death.~~

VI. Lump-Sum Death Benefit Rules

- a. **Lump-Sum Death Benefits — Member Qualification**
 1. ~~A member who is active or retired and accrues the required amount of actual service at the time of his or her death may qualify for a lump-sum death benefit.~~
 2. ~~For the purposes of eligibility for a lump-sum death benefit under Arkansas Code § 24-7-720, a member shall be considered active for an additional fiscal year following the last fiscal year in which the member renders actual service to a covered employer and obtains at least a quarter (1/4) of a year of service credit.~~
- b. **Lump-Sum Death Benefit — Amount**
 1. ~~The amount of the lump-sum death benefit may be set pursuant to rules adopted by the Board in an amount of up to ten thousand dollars (\$10,000) per member.~~
 2. ~~The Board may adjust the amount of the lump-sum death benefit each year and, as actuarially appropriate, prorate the amount of the lump-sum benefit based on the ratio of the member's contributory and noncontributory service credit.~~
 3. ~~A lump-sum death benefit shall be paid as a single amount to the beneficiary designated by the qualifying member.~~
 4. ~~If the qualifying member fails to designate a beneficiary or a designated beneficiary does not survive the qualifying member, the lump-sum death benefit shall be paid to the qualifying member's estate.~~
- c. **Lump-Sum Death Benefit — Tax Exemption**
 1. ~~Pursuant to Acts 2009, No. 1323, a lump-sum death benefit distribution made after June 30, 2009, shall be tax exempt, and no federal or state income tax shall be withheld by ATRS.~~

2. ~~After June 30, 2009, a lump-sum death benefit shall not be eligible for a direct rollover.~~
- d. ~~Lump-Sum Death Benefit—Beneficiary Designations and Authorized Agents~~
1. ~~A member may designate one (1) or more natural persons, a duly formed legal entity, including a corporation, trust, partnership, or other legal entity, as his or her lump-sum death benefit beneficiary.~~
 2. ~~A completed lump-sum death benefit beneficiary form shall not be considered effective if the form is received by ATRS after the member's death.~~
 3. ~~A member's most recently completed, executed, and filed lump-sum death benefit beneficiary form shall supersede all previous lump-sum death benefit beneficiary forms completed, executed, and filed by the member.~~
4. ~~Authorized Agent and Guardian—Authority to Designate Beneficiary~~
- ~~A. Attorney-in-Fact and Power of Attorney~~
- i. ~~A lump-sum death benefit beneficiary form that is signed by a member's authorized agent, including an attorney-in-fact, agent under a power of attorney, or any other legally recognized agent, shall not be processed until the document appointing the member's authorized agent is filed with and accepted by ATRS.~~
 - ii. ~~Only a document that appoints and authorizes the member's authorized agent to transact retirement plan business on behalf of the member shall be effective for ATRS purposes.~~
 - iii. ~~Only a document that specifically authorizes a member's authorized agent to change the member's beneficiary designations shall be effective to allow the authorized agent to change a beneficiary designation on the member's behalf with ATRS.~~
- ~~B. Guardians and Court-Appointed Conservators~~
- i. ~~A lump-sum death benefit beneficiary form signed by a guardian of the member's estate or another court-appointed conservator shall not be effective to allow the guardian or court-appointed conservator to change a beneficiary designation on the member's behalf with ATRS unless there is an accompanying court order specifically authorizing the guardian or court-appointed conservator to change a beneficiary designation on the member's behalf.~~
- e. ~~Lump-Sum Death Benefit—Distribution, Waiver, and Assignment~~
1. ~~A designated beneficiary shall submit the following forms and documents to ATRS before a lump-sum death benefit payment is issued to the designated beneficiary:~~
 - A. ~~A written application on a form approved by ATRS; and~~

- B. ~~The qualifying member's death certificate or other acceptable proof of the qualifying member's death.~~
- 2. ~~A lump-sum death benefit payment shall be made within a reasonable time to a qualifying member's designated beneficiary after the death of the qualifying member.~~
- 3. ~~A designated beneficiary of a lump-sum death benefit may waive his or her right to receiving a payment of the lump-sum death benefit by submitting a waiver of his or her right to the lump-sum death benefit on a form that is acceptable to ATRS.~~
- 4. ~~If a designated beneficiary waives his or her right to the payment of a lumpsum death benefit, ATRS shall pay all or the balance of the lump-sum death benefit, whichever is applicable, to any other remaining designated beneficiaries.~~
- 5. ~~A designated beneficiary shall not assign his or her right to a payment of a lump-sum death benefit to another person or entity.~~
- f. ~~Lump-Sum Death Benefit — Overpayments~~
 - 1. ~~ATRS reserves the right to deduct from a qualifying member's lump-sum death benefit any amount owed to ATRS by the qualifying member under Arkansas Code § 24-7-205.~~
 - 2. ~~ATRS reserves the right to collect any overpayment or other amount owed to ATRS by a designated beneficiary.~~
- g. ~~Lump-Sum Death Benefit — Compliance~~

~~ATRS shall comply with all applicable laws relating to the distribution of a lumpsum death benefit including the Arkansas Uniform Transfers to Minors Act, Arkansas Code § 9-26-201 et seq.~~

VII. ~~Qualified Domestic Relations Orders (QDRO) for ATRS Members~~

- a. ~~QDRO — Adopted by ATRS~~
 - 1. ~~The model QDRO adopted by ATRS pursuant to Arkansas Code § 9-18-103(b) shall be used by a member if a court intends to divide the member's retirement benefits or contributions between the member and an alternate payee.~~
- b. ~~QDRO Issued by Court~~
 - 1. ~~ATRS shall accept a QDRO issued by a circuit court of the State of Arkansas or other court of competent jurisdiction regarding a member and an alternate payee, subject to the following:~~
 - A. ~~The alternate payee is eligible to receive benefit payments if the member:~~
 - i. ~~Retires; or~~

- ii. Terminates employment with a covered employer and receives a refund of contributions. B. ATRS shall:
 - i. Promptly notify the member and the alternate payee upon receiving a QDRO; and
 - ii. Determine within a reasonable time after receiving the QDRO whether the QDRO complies with the Arkansas Code, ATRS Rules, ATRS' model QDRO, and other applicable laws.
- C. The member or the alternate payee may file a QDRO with ATRS before the member's retirement or termination of covered employment. D. A QDRO shall not require ATRS to:
 - i. Provide the alternate payee with any type or form of benefit or option not otherwise available to the member;
 - ii. Provide the alternate payee actuarial benefits not available to the member; or
 - iii. Pay any benefits to the alternate payee that are required to be paid to another alternate payee under an existing QDRO.
- E. Any benefit that would be due to the alternate payee under the QDRO shall revert back to the member if the alternate payee dies before receiving the benefit.
- F. If the member dies before retirement, the alternate payee shall receive the same portion of the member's contributions, if any, as was assigned by the QDRO.
- G. The alternate payee shall not receive monthly retirement annuity benefits from ATRS if the member has not received his or her retirement annuity at the time of his or her death.
- H. ATRS shall compute the alternate payee's monthly retirement annuity benefit under a QDRO on using the benefit formula in effect at the time of the member's retirement and shall include only service credit earned by the member during the marriage.
- I. If the QDRO issued by the circuit court assigns a marital portion or other part of the member's interest in his or her T-DROP plan deposits and interest, the benefits in the member's T-DROP account shall be computed as a separate calculation as provided by ATRS' model QDRO. J. ATRS shall have the right to:
 - i. Make any necessary correction to the monthly retirement benefit paid under a the QDRO; and
 - ii. Recover any overpayments owed to ATRS from either the member or the alternate payee. K. The alternate payee shall:

- i. ~~Notify ATRS of a change of the alternate payee's mailing address; and~~
 - ii. ~~Verify annually his or her address with ATRS beginning one (1) year from the date of the letter notifying the alternate payee of ATRS' acceptance of the QDRO.~~
- L. ~~The alternate payee's portion of the member's retirement benefits or contributions shall be held in the member's account until the alternate payee is eligible to receive benefit payments under this ATRS Rule 11 VII b.1.A.~~
- M. ~~If the alternate payee is eligible to receive benefit payments, ATRS shall:~~
 - i. ~~Not hold the alternate payee's portion of the member's retirement benefits or contributions in the member's account;~~ ii. ~~Pay the alternate payee's portion of the member's retirement benefits or contributions when payment is due to the:~~
 - a. ~~Alternate payee if the alternate payee has completed and submitted to ATRS an enrollment form and all other documents required by ATRS in order to issue the payment; or~~
 - b. ~~Member to be held by the member as constructive trustee.~~
- N. ~~If the alternate payee is eligible to receive benefit payments and has not completed and submitted an enrollment form or all other required documents to ATRS, the following shall apply:~~
 - i. ~~ATRS shall notify the member in writing that the alternate payee has not completed and submitted an enrollment form or all other documents required in order for ATRS to issue a payment to the alternate payee;~~
 - ii. ~~ATRS shall pay the alternate payee's portion of the member's retirement benefits or contributions to the member;~~
 - iii. ~~The member shall hold as constructive trustee the alternate payee's portion of the member's retirement benefits or contributions upon receiving the alternate payee's portion of the member's retirement benefits or contributions; and~~
 - iv. ~~The member shall be responsible for verifying with ATRS the amount of the alternate payee's portion of the member's retirement benefits or contributions to be held by the member as constructive trustee.~~
- O. ~~If an amount that should not have been distributed to the member or alternate payee under the QDRO is received by the member or alternate payee, the member or alternate payee shall:~~

- i. ~~Be responsible for holding the amount as a constructive trustee; and~~
 - ii. ~~Notify ATRS immediately that he or she received the amount. P.~~
~~ATRS shall not make restitution for:~~
 - i. ~~A payment that is issued to the alternate payee before ATRS receives notice of the alternate payee's change of address;~~
 - ii. ~~A distributed amount that:~~
 - a. ~~The alternate payee is entitled to receive under the terms of a QDRO; and~~
 - b. ~~Is received by the member as constructive trustee; or~~
 - iii. ~~A distributed amount that:~~
 - a. ~~The member is entitled to receive under the terms of a QDRO; and~~
 - b. ~~Is received by the alternate payee as constructive trustee.~~
- Q. ~~A benefit enhancement enacted by the General Assembly or the Board after entry of the QDRO shall inure to the benefit of the member and shall not be assigned to the alternate payee.~~
- R. ~~ATRS shall not accept a QDRO for a member who does not have five (5) years of actual service with ATRS at the time the QDRO is issued by a court.~~
- S. ~~ATRS shall pay the member the total retirement benefit if ATRS determines that the alternate payee's monthly retirement benefit is less than twenty dollars (\$20.00).~~
- T. ~~The member shall be responsible for paying the alternate payee his or her portion under the QDRO if ATRS determines that the alternate payee's monthly retirement benefit is less than twenty dollars (\$20.00).~~
- U. ~~The QDRO issued by the circuit court shall not require ATRS to provide any benefit that is an actuarial cost to ATRS and is not otherwise contemplated in the law and rules applicable to ATRS.~~
- V. ~~No provision in this ATRS Rule 11 or in a QDRO accepted by ATRS shall require ATRS to violate any plan qualification requirement in the Internal Revenue Code, 26 U.S.C. § 401(a), or otherwise affect ATRS' requirement to operate as a governmental plan under the Internal Revenue Code, 26 U.S.C. § 414(d).~~

VIII. ~~Lost Payees Rules~~

- a. ~~A member or beneficiary of a deceased member, whichever is appropriate, is responsible for filing a current post office address and any subsequent change of address with ATRS.~~

- b. ~~Communication addressed to a member or beneficiary at the last post office address last filed with ATRS, or, if no post office address has been filed with ATRS, the last post office address indicated on the records of the employer of the member or the beneficiary shall be:~~
- ~~1. The official post office address for ATRS communication to the member or beneficiary; and~~
 - ~~2. Binding on the member or beneficiary for all ATRS purposes.~~
 - ~~3. ATRS shall have no obligation to determine the current post office address or any other address for a member or beneficiary. (Arkansas Code § 24-7-734)~~
- c. ~~Unclaimed Property Act~~
- ~~1. Member payments in the possession of ATRS shall be excluded from the definition of property as provided in the Unclaimed Property Act, Arkansas Code § 18-28-201 et seq.~~
 - ~~2. Arkansas Code § 24-7-734 supersedes any conflict with the Unclaimed Property Act, Arkansas Code § 18-28-201 et seq.~~

HISTORY

Adopted:	August 10, 1993	11-3
Amended:	March 6, 1996	11-3
Amended:	February 10, 1998	11-3
Amended:	May 5, 1998	11-3
Amended:	October 7, 2003	11-3
Amended:	June 15, 2004	11-1, 11-2
Adopted:	July 18, 2005	11-5
Amended:	February 7, 2006	11-1, 11-2
Amended:	April 26, 2007	11-1, 11-2
Amended:	October 6, 2008	11-3
Amended:	June 16, 2009	(Emergency) 11-2
Amended:	October 5, 2009	(Permanent) 11-2
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Amended:	July 1, 2011	(Emergency) 11-1, (Emergency) 11-2
Adopted:	August 8, 2011	11-1, 11-2
Effective:	November 11, 2011	11-1, 11-2
Approved by Board:	August 6, 2012	11-1

Amended:	October 13, 2012	11-1
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ATRS Rule 12

Protection of “Qualified Trust” Status of the Arkansas Teacher Retirement System under Internal Revenue Code § 401(a)

§ 12-101. Definition.

(a) As used in this rule, “Internal Revenue Code” means the same as defined in Arkansas Code § 24-7-202.

(b) The definition of “Internal Revenue Code” shall apply to the policies, rules, and regulations of the Arkansas Teacher Retirement System.

§ 12-102. Compliance with federal law.

(a) The Executive Director of the Arkansas Teacher Retirement System is authorized and directed to:

(1) Operate the Arkansas Teacher Retirement System in accordance with the requirements of the Internal Revenue Code and applicable United States Treasury regulations as may be necessary for the system to maintain its status and continue being operated as a qualified trust under 26 U.S.C. § 401(a); and

(2) Interpret Arkansas Code §§ 24-7-101 et seq., and the policies, rules, and regulations of the system in a manner that is consistent with the requirements of the Internal Revenue Code and applicable United States Treasury regulations as may be necessary for the system to maintain its status and continue being operated as a qualified trust under 26 U.S.C. § 401(a).

(b)(1) The policies, rules, and regulations promulgated by the Board of Trustees of the Arkansas Teacher Retirement System shall be consistent with the requirements of the Internal Revenue Code and applicable United States Treasury regulations.

(2) Any policy, rule, or regulation found to be in conflict with an applicable provision of the Internal Revenue Code are void.

(3) In accordance with Arkansas Code § 24-7-305, the board by resolution may modify or eliminate a rule of the system if a requirement under the Internal Revenue Code becomes unnecessary, immaterial, or obsolete to the maintenance of the system’s status as a qualified trust.

Authority: Arkansas Code §§ 24-7-101 et seq., 24-7-202, and 24-7-305,

History

<u>Adopted:</u>	<u>July 18, 2005</u>	
<u>Approved by Board:</u>	<u>July 26, 2013</u>	
<u>Amended:</u>	<u>October 9, 2013</u>	
<u>Effective:</u>	<u>November 8, 2013</u>	
<u>Effective:</u>	<u>TBD</u>	

~~**RULE 12-1**~~
~~**PROTECTION OF “QUALIFIED TRUST” STATUS**~~
~~**OF ATRS UNDER**~~
~~**INTERNAL REVENUE CODE § 401(a)**~~

~~A.C.A. § 24-7-202(16)~~
~~Act 71 of 2005~~

DEFINITION

~~**Internal Revenue Code** or **Code**, as used in these policies, rules, and regulations, means the federal Internal Revenue Code of 1986, as amended, as it existed on January 1, 2013.~~

RULES (A.C.A. § 24-7-210)

- ~~1. The Executive Director of the Arkansas Teacher Retirement System is authorized and directed to operate ATRS and interpret any provisions of A.C.A. §§ 24-7-101 *et seq.* and these policies, rules, and regulations consistent with the requirements under the federal Internal Revenue Code and applicable United States Treasury regulations necessary to permit ATRS to be operated as a “qualified trust” under section 401(a) of the Code.~~
- ~~2. Policies, rules, and regulations promulgated by the Board shall be consistent with these directions.~~
- ~~3. Any policies, rules, or regulations found to be in conflict with an applicable provision of the Code are void.~~
- ~~4. The Board may modify or eliminate an ATRS Rule by resolution at any Board meeting if a Code requirement becomes unnecessary, immaterial, or obsolete to the maintenance of ATRS qualified trust status, for the purposes under Act 109 of 2013.~~

Adopted: ~~July 18, 2005~~
Approved by Board: ~~July 26, 2013~~
Amended: ~~October 9, 2013~~
Effective: ~~November 8, 2013~~

~~12-1-1~~

ATRS Rule 13
Administrative Adjudications and Informal Resolutions: Staff
Determinations and Manifest Injustice Referrals

§ 13-101. Definitions.

As used in this rule:

(1) "Manifest injustice" has the same meaning as provided in Arkansas Code § 24-7-202; and

(2) "Member" for the purposes of the staff determination and appeal process means any member of the Arkansas Teacher Retirement System as defined in Arkansas Code § 24-7-202 and includes:

(A) A beneficiary of a member;

(B) A retiree of the system;

(C) A guardian, an administrator, or an executor of a member, retiree, or beneficiary; or

(D) A public school.

§ 13-102. Staff determinations — Scope and purpose.

(a) This rule governs the practice and procedures of the Arkansas Teacher Retirement System concerning the adjudication of a claim that concerns any retirement plan or program administered by the system and arises as a result of a determination made by the staff or administration of the system.

(b)(1) The system's staff is responsible for administering the accounts of members of the system and may make determinations based on the law and rules applicable to the system that may be adverse to a member's claim.

(2) This rule outlines the procedure for a member to appeal the determination of the system's staff or administration concerning a claim of the member.

(c)(1) The rules concerning the staff determination and appeal process should be read in conjunction with the Arkansas Administrative Procedures Act, § 25-15-201 et seq.

(2) To the extent that the rules concerning the staff determination and appeal process conflict with the Arkansas Administrative Procedures Act, the terms and provisions of the Arkansas Administrative Procedures Act shall supersede the rules concerning the staff determination appeal process and control.

(d) The rules concerning the staff determination and appeal process do not apply to claims or causes of action that the system or the Board of Trustees of the Arkansas Teacher Retirement System may have against a member or any other person or entity, regardless of the origin or nature of the claim.

§ 13-103. Staff determinations — Extension of deadlines.

(a)(1) The Board of Trustees of the Arkansas Teacher Retirement System and the Executive Director of the Arkansas Teacher Retirement System may extend any deadline applicable to a member's appeal upon a showing of good cause unless a Hearing Officer has been assigned.

(2) Only the board may extend a deadline after the deadline has passed.

(3) If a hearing officer has been assigned, until the completion of the hearing, only

the hearing office may extend a deadline applicable to a member's appeal upon a showing of good cause.

(b) When compliance with the rules concerning the staff determination and appeal process is based on delivery having occurred, delivery shall be considered to have occurred on the earlier of either the:

(1) Date of the postmark, if posted with the United States Postal Service;

(2) Date of actual delivery by one of the following methods:

(A) Hand delivery;

(B) Electronic transmission; or

(C) Delivery service other than USPS.

§ 13-104. Staff determinations — Informal resolutions.

(a)(1) A member's claim may be resolved informally through correspondence or conference between the member and the staff of the Arkansas Teacher Retirement System.

(2) All reasonable efforts shall be made to informally resolve a member's claim with the member.

(b)(1) The executive director may implement a resolution of a member's claim that has a direct impact to the system of up to five thousand dollars (\$5,000).

(2) Board approval shall be required to implement a resolution that has a direct financial impact to the system in excess of five thousand dollars (\$5,000).

(c)(1) The system's staff and the member are strongly encouraged to engage in a good faith attempt to resolve claims informally based upon the proper application of the law, rules, and policies applicable to the system and to the specific facts of the member's claim.

(2) A member's claim shall not be resolved in a manner that contravenes the law, rules, and policies applicable to the system.

(d) If a claim is not resolved informally and a staff determination letter adverse to the member's claim is issued to the member, the member may request a review of the staff determination by the Executive Director of the Arkansas Teacher Retirement System.

(e) The manifest injustice referral process shall not be used with regard to a member if the manifest injustice referral concerns the same questions of the law and fact that are at issue in a claim concerning the member that is resolved through the staff determination and appeals process.

§ 13-105. Staff determinations — Notice of adverse determination.

(a)(1) If the staff of the Arkansas Teacher Retirement System make a determination that is adverse to a member's claim, the system shall send a staff determination letter to the member if the claim involves:

(A) An ambiguity in the interpretation of the specific facts of the member's claim that would impact the manner in which the law, rules, or policy applicable to the system are applied to the member's claim;

(B) An ambiguity in the interpretation of the law, rules, or policy applicable to the system; or

(C) An ambiguity concerning the proper application of the law, rules, or policy applicable to the system to the specific facts of the member's claim.

(2) A staff determination letter shall not be issued to a member unless the staff determination letter has been reviewed and approved by an attorney for the system.

(b) A staff determination letter that is issued to a member shall:

(1) Advise the member of the determination and the reasons for the determination;
and

(2) Advise the member of the procedure for requesting a review of the staff determination by the Executive Director of the Arkansas Teacher Retirement System;

(3) Advise the member of the deadline to request a review by the executive director; and

(4) Not include findings of fact and conclusions of law, separately stated.

(c) The written determination of system staff concerning an overpayment collection dispute or the applicability of a salary limitation to a plan or payment shall be treated as a staff determination letter.

(d) A staff determination letter is not and shall not be construed as a final decision or order of the system that may be appealed under the Arkansas Administrative Procedures Act, § 25-15-201 et seq.

(e) The system shall consider a member's claim as closed if the member does not request a review of the staff determination by the executive director within thirty (30) calendar days of the date of the staff determination letter.

§ 13-106. Staff determinations — Review by executive director.

(a)(1) A member shall submit a request for a review of a staff determination by the Executive Director of the Arkansas Teacher Retirement System in writing.

(2) A member shall not be required to resubmit any documents or information with his or her request for a review.

(b)(1) Unless an extension is granted by the Board of Trustees of the Arkansas Teacher Retirement System or the executive director, a member shall not be permitted to request a review of a staff determination by the executive director unless the member's request is received by the Arkansas Teacher Retirement System within thirty (30) calendar days of the date of the staff determination letter.

(2) If the last day to request a review of a staff determination by the executive director falls on an official state holiday or weekend, the member shall have until the next business day to request a review.

(c)(1) The executive director shall promptly send a letter to the member acknowledging the member's request for a review.

(2)(A) The member may submit for review by the executive director any additional relevant documents or information not previously submitted by the member to the system.

(B) The member shall submit the additional documents and information to the executive director within thirty-five (35) calendar days of the date of the executive director's acknowledgement letter.

(d)(1) Upon receiving a member's request for a review of a staff determination, the executive director shall independently review the facts and the law, rules, and policy applicable to the member's claim.

(2) The executive director shall consider the staff determination as well as any relevant documents and information provided by the member.

(3) The executive director may affirm, reverse, or modify the staff determination

before a final determination on the member's claim is made by the board.

(e)(1) The executive director shall send a review determination letter to the member within ninety (90) calendar days from the date on which the member's request for a review was received by the system.

(2) A review determination letter shall:

(A) Advise the member of the determination and the applicable law, rules, and policy used by the executive director to reach his or her determination;

(B) Advise the member of the procedure for appealing the review determination letter to the board;

(C) Advise the member of the deadline to appeal the review determination letter to the board; and

(D) Not include findings of fact and conclusions of law, separately stated.

(f) A review determination letter is not and shall not be construed as a final decision or order of the system that may be appealed under the Arkansas Administrative Procedures Act, § 25-15-201 et seq.

(g) The system shall consider a member's claim as closed if the member does not appeal the executive director's review determination within thirty (30) calendar days of the date of the review determination letter.

§ 13-107. Staff determinations — Appeals — Initiation of appeal to the Board of Trustees of the Arkansas Teacher Retirement System.

(a) A review determination of the Executive Director of the Arkansas Teacher Retirement System may be appealed by the member to the Board of Trustees of the Arkansas Teacher Retirement System.

(b)(1) A member shall appeal a review determination of the executive director in writing by filing a signed notice of appeal with the Arkansas Teacher Retirement System in the manner required by the system.

(2) A member shall file his or her signed notice of appeal with the system within thirty (30) calendar days of the date of the review determination letter.

(c) A member shall address and deliver his or her signed notice of appeal to the Board of Trustees of the Arkansas Teacher Retirement System, Member Appeals, ATTN: Legal Department, 1400 West Third Street, Little Rock, Arkansas, 72201.

§ 13-108. Staff determinations — Appeals — Assignment of hearing officer.

(a)(1) All member appeals of a review determination shall be assigned to a hearing officer.

(2) The executive director or his or her designee shall appoint a hearing officer from a list of qualified individuals approved by the executive director.

(3) The hearing officer shall conduct an administrative hearing, recommend factual and legal determinations, and prepare a proposed order for the board that includes findings of fact and conclusions of law, separately stated.

(b)(1) Following appointment, the hearing officer shall issue a written scheduling order to the member, executive director, and legal counsel for the system.

(2) The scheduling order shall contain include all information required under the Arkansas Administrative Procedures Act, § 25-19-201 et seq.

(3) The hearing officer, at his or her discretion, may include in the scheduling order reasonable deadlines for the submission and exchange of exhibits, witness lists, and

related materials before the hearing, including without limitation, any requested proposed findings of fact and conclusions of law.

(4) The hearing officer may continue any scheduled matter at his or her discretion for good cause shown by any party or counsel of record.

(c) Unless otherwise ordered, hearings shall be held at the Arkansas Teacher Retirement System, 1400 West Third Street, Little Rock, Arkansas 72201.

§ 13-109. Staff determinations — Appeals — Filing documents.

(a) Following the appointment of a hearing officer, all correspondence, documents, requests, submissions, filings and other documents relating to an appeal shall be mailed or hand delivered to the Arkansas Teacher Retirement System, Member Appeals, ATTN: Legal Department, 1400 West Third Street, Little Rock, Arkansas, 72201.

(b) Any party submitting or filing a document relating to an appeal shall simultaneously deliver a copy of the filing or document to the opposing party or, if applicable, opposing counsel.

(c) The Arkansas Teacher Retirement System shall be the responsible for ensuring that:

(1) Copies of all correspondence, documents, requests, submissions, filings, and other documents relating to an appeal are provided in a timely manner to the hearing officer; and

(2) A complete record of each appellate proceeding before a hearing officer and the Board of Trustees of the Arkansas Teacher Retirement System is prepared and maintained in a single, centralized location.

§ 13-110. Staff determinations — Appeals — Hearings.

(a) The hearing is an administrative hearing before the hearing officer and is not a hearing before the Board of Trustees of the Arkansas Teacher Retirement System.

(b)(1) All hearings shall be conducted according to [the rules concerning the staff determination appeal process](#) and the corresponding procedural provisions of the Arkansas Administrative Procedures Act, § 25-15-201 et seq.

(2) The hearing shall be informal and the formal rules of evidence shall not apply.

(3) In conducting a hearing, the hearing officer shall not be bound by the formal rules of evidence, and no informality in any proceedings or in the manner of taking of testimony shall invalidate any order or decision of the board.

(c) A member shall at all times have the right to counsel, provided that such counsel:

(1) Is duly licensed to practice law in the State of Arkansas; or

(2) Has been granted permission to appear *pro hac vice* by the hearing officer.

(d)(1) All hearings shall be conducted in an orderly manner.

(2) The hearing officer shall have the authority to maintain the decorum of the hearing and may clear the hearing room of witnesses who are not under examination.

(e) If a member fails to appear at the hearing, the member waives his or her right to present evidence and arguments to the hearing officer and the hearing officer may proceed with the hearing and prepare a proposed order for the board's consideration based on the evidence presented.

(f) The hearing officer shall have the authority to administer oaths and affirmations.

(g)(1) Each party shall be entitled to examine and cross-examine witnesses, present evidence, make arguments, and generally participate in the conduct of the proceeding.

(2) The hearing officer may question a witness during any portion of the direct or cross-examination of the witness.

(3)(A) Before giving testimony, each witness shall swear or affirm that the testimony about to be given shall be the truth, the whole truth, and nothing but the truth.

(B) All testimony considered by the hearing officer, except for matters officially noticed or entered by stipulation, shall be sworn testimony.

(h)(1) The hearing officer may admit into the record any evidence that in his or her judgment:

(A) Has a reasonable degree of probative value and trustworthiness; or

(B) Is of a type or nature commonly relied upon by reasonably prudent people in the conduct of their affairs.

(2) The hearing officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(3) Objections to evidentiary offers may be made and shall be noted of record.

(4) Documents received into evidence by the hearing officer shall be marked and filed as part of the record.

(i) Following the close of evidentiary submissions and witness testimony, the hearing officer may in his or her discretion allow summations and closing arguments by the parties.

(j)(1) The Arkansas Teacher Retirement System shall arrange for a court reporter to attend and record all hearings.

(2)(A) The system shall pay the cost for preparing a transcript of the hearing.

(B) Upon receiving the hearing transcript, the system shall promptly forward a copy of the transcript to the hearing officer and the member or, if applicable, the member's counsel.

§ 13-111. Staff determinations — Appeals — Post-hearing briefs.

(a)(1) Upon the completion of the hearing, the hearing officer may allow the parties to submit post-hearing briefs to be included as part of the record on appeal.

(2) The decision on whether or not to allow the submission of post-hearing briefs is within the sole discretion of the hearing officer.

(3) A hearing officer's decision to not allow post-hearing briefs shall have no effect on the validity of any order or decision issued by the Board of Trustees of the Arkansas Teacher Retirement System.

(b) If a hearing officer grants the member or the Arkansas Teacher Retirement System an opportunity to submit a post-hearing brief, the hearing officer shall provide the opposing party an opportunity to submit a response.

(c) The hearing officer shall have discretion to set reasonable deadlines for the parties to submit post-hearing briefs and responses, provided that the parties shall be allowed a minimum of fourteen (14) calendar days from the date of receipt of the hearing transcript before any initial post-hearing brief shall be due for filing.

§ 13-112. Staff determinations — Appeals — Proposed orders.

(a) After the hearing officer receives all evidence, arguments, and, if applicable, post-hearing briefs, the record before the hearing officer shall be officially closed.

(b)(1) After the record before the hearing officer is closed and the hearing officer has

considered all of the evidence, the hearing officer shall, as soon as practical, prepare a proposed order to be delivered to the Board of Trustees of the Arkansas Teacher Retirement System.

(2) The proposed order shall include:

(A) Findings of fact based exclusively on the evidence and testimony in the record of the hearing;

(B) Conclusions of law **that shall be separately stated from the findings of fact;** and

(C) A recommendation to the board.

(3)(A) The hearing officer shall provide the proposed order to the board via e-mail and via United States mail addressed to the Arkansas Teacher Retirement System, Member Appeals, ATTN: Legal Department, 1400 West Third Street, Little Rock, Arkansas, 72201.

(B) Upon receiving the proposed order, the system shall mail a copy of the proposed order to the member and, if applicable, the member's counsel via Certified, First Class, United States mail, with a copy to the Executive Director of the Arkansas Teacher Retirement System.

§ 13-113. Staff determinations — Appeals — Objections to proposed orders.

(a)(1) The member shall have the right to file a written statement of objections outlining any objections, exceptions, and arguments that the member determines should be considered by the Board of Trustees of the Arkansas Teacher Retirement System during the board's evaluation of the hearing officer's proposed order.

(2) A member shall not be permitted to introduce additional evidence or testimony in his or her statement of objections.

(b) A member's written statement of objections shall be delivered to the Arkansas Teacher Retirement System within twenty-one (21) calendar days of the member's receipt of the hearing officer's proposed order.

(c)(1) Counsel for the system may prepare a written response to any written statement of objections filed by the member.

(2) A copy of any response by the system shall be provided to the board and the member and, if applicable, the member's counsel, before the board meeting at which the hearing officer's proposed order is scheduled to be considered by the board.

§ 13-114. Staff determinations — Appeals — Consideration of proposed orders by the Board of Trustees of the Arkansas Teacher Retirement System.

(a) The Board of Trustees of the Arkansas Teacher Retirement System shall render a final determination on the hearing officer's proposed order.

(b)(1) The board's consideration of the hearing officer's proposed order shall be scheduled within a reasonable time to be heard, at a regular meeting of the board after the issuance of the proposed order.

(2) The board may call an emergency meeting to consider the hearing officer's proposed order if the situation warrants.

(3) The Arkansas Teacher Retirement System shall notify the member and, if applicable, the member's counsel in writing of the date, time, and location of the board meeting at which the board intends to consider the hearing officer's proposed order.

(c)(1) Before rendering a decision on the hearing officer's proposed order, the board may request that the member and, if applicable, the member's counsel make a brief statement to the board concerning facts and any arguments that the member wishes to present and respond to any questions from the board.

(2) The board's consideration of a brief statement and any responses to questions made by the member or, if applicable, the member's counsel shall not require the board to conduct another hearing and shall be based on the hearing previously conducted before the hearing officer.

(2) The chairman of the board shall have the final authority to set the amount of time any party may have to make a statement to the board.

(d)(1) Failure of a member to appear at the meeting of the board without prior notification shall result in the member waiving his or her right to be heard by the board.

(2)(A) A member may petition the board for another opportunity to address the board.

(B) The board may grant a member's petition for another opportunity to address the board if the board determines that the member's absence was for good cause.

(e)(1) After the board's consideration of the hearing officer's proposed order, the board shall either accept or reject all or part of the hearing officer's proposed order.

(2) The board may either accept the proposed order, reject the proposed order, or accept the proposed order as modified by the board.

(3) If the board rejects the proposed order or accepts the proposed order as modified by the board, the board may:

(A) Prepare its own written findings of fact and conclusions of law, **separately state**, and issue its own order based upon those findings and conclusions;

(B) Consider manifest injustice as a basis for any remedy; or

(C) Remand the matter in whole or in part to the hearing officer for reconsideration of additional findings of fact or conclusions of law or both additional findings of fact and conclusions of law.

(f) A quorum of votes of the board is necessary to approve any motion, resolution, or order under the board's consideration.

(g)(1) Following the board's decision on the hearing officer's proposed order, the board shall prepare a written final order on the member's appeal.

(2) The board's final order shall include findings of fact and conclusions of law, separately stated, that were relied upon by the board in formulating the final order.

(3) **The board's final order shall be a final decision or order of the system that may be appealed under the Arkansas Administrative Procedures Act, § 25-15-201 et seq.**

(4) A copy of the board's final order, including the board's findings of fact and conclusions of law, **separately stated**, shall be delivered by the Executive Director of the Arkansas Teacher Retirement System to the member and, if applicable, the member's counsel via Certified, First Class, United States.

§ 13-115. Staff determinations — Appeals — Settlement authority.

(a) **With the member's written consent or, if applicable, the written consent of the member's counsel, the Executive Director the Arkansas Teacher Retirement System may suspend his or her review of a member's claim being considered under the rules**

concerning the staff determination and appeal process if the member's claim may be more expediently resolved using the manifest injustice process.

(b) The executive director may settle any claim in a manner mutually agreeable to the Arkansas Teacher Retirement System and the member at any time before the Board of Trustees of the Arkansas Teacher Retirement System issues its final order on the member's appeal.

(c) In settling any claim, the executive director shall not exceed the authority previously granted to him or her by the board.

(d) The executive director shall report any settlement that occurs after the hearing officer issues a proposed order to the board.

§ 13-116. Staff determinations — Appeals — Rights of members under the Arkansas Administrative Procedures Act.

(a) A member who receives an adverse final order from the Board of Trustees of the Arkansas Teacher Retirement System retains certain rights under the Arkansas Administrative Procedures Act, § 25-15-201 et seq.

(b)(1) A member may file a petition for judicial review under the Arkansas Administrative Procedures Act, § 25-15-201 et seq.

(2) A petition for judicial review of a final or of the board shall be filed by the member within thirty (30) days after service of the board's final order on the member.

(3) A member shall file the petition for judicial review in Pulaski County Circuit Court or the circuit court of any county in which the member resides or does business.

§ 13-117. Staff determinations — Appeals — Ex parte communications.

(a) The Arkansas Administrative Procedures Act, § 25-15-201 et seq., prohibits direct or indirect communications between the members and staff of the Arkansas Teacher Retirement System and a hearing officer or a member of the Board of Trustees of the Arkansas Teacher Retirement System concerning any issue of fact or law at issue in a member's appeal unless there has been notice providing all parties with an opportunity to participate in the communication.

(b) A hearing officer and a member of the board shall not consider any ex-parte or off-the-record evidence or statements made to them by the member or a staff member of the system in connection with a pending appeal.

(c) This section does not preclude communications by and between the hearing officer, system staff, and the board concerning minor scheduling and procedural matters necessary to timely and efficiently process and handle member appeals under the rules concerning the staff determination and appeal process.

§ 13-118. Manifest injustice.

(a) The Board of Trustees of the Arkansas Teacher Retirement System may waive or modify the impact of a rule, provision, or law applicable to the Arkansas Teacher Retirement System that does not violate a federal law or jeopardize the tax qualified status of the system in order to prevent a manifest injustice to a member, benefit participant, covered employer, or the system.

(b)(1) The process of declaring a manifest injustice is a rare and extraordinary remedy that shall not be used as a routine method of addressing error, oversight, or simple

mistake.

(2) As an extraordinary remedy, manifest injustice shall be cautiously and carefully used to prevent unfairness, to preserve the integrity of the system, and to avoid or correct unduly harsh or unconscionable outcomes.

(c) In determining whether or not a manifest injustice exists, the system may consider:

(1) The degree of fault of the system, benefit participant, or employer;

(2) An ambiguity in the interpretation of the circumstances, rule, or law;

(3) The cost to the system of correcting the error that is far outweighed by the benefit afforded to the system, benefit participant, or employer;

(4) Whether or not an expedited decision is in the public interest;

(5) The fundamental fairness of a remedy in a particular situation; and

(6) Whether or not the status quo would result in an unconscionable outcome.

(d)(1) The manifest injustice process shall not be used to address a change, omission, or error in the records of the system that may be corrected within the look-back period.

(2) The manifest injustice process may be used to correct a change, omission, or error in the records of the system discovered after the look-back period if the board determines that the time limitation imposed by the look-back period would cause a manifest injustice.

§ 13-119. Manifest injustice — Referrals.

(a) A manifest injustice referral shall be made to the Executive Director of the Arkansas Teacher Retirement System.

(b)(1) The following persons or entities may submit a manifest injustice referral to the executive director:

(A) A member of the Board of Trustees of the Arkansas Teacher Retirement System;

(B) A staff member of the system, including without limitation the executive director;

(C) A benefit participant as defined by Arkansas Code § 24-7-202;

(D) A covered employer; or

(E) A guardian, fiduciary, or other interested party.

(2) A member of the Manifest Injustice Committee shall not be permitted to make a manifest injustice referral to the executive director.

(c)(1) The Arkansas Teacher Retirement System shall create and maintain a record of each manifest injustice referral submitted to the executive director and the resolution of the manifest injustice referral.

(2) The executive director shall submit all manifest injustice referrals to the committee.

(3) Each referral shall be given a number and a year designation by the committee.

§ 13-120. Manifest injustice — Authority of executive director.

(a) With the member's written consent or, if applicable, the written consent of the member's counsel, the Executive Director the Arkansas Teacher Retirement System may suspend his or her review of a member's claim being considered under the rules concerning the staff determination and appeal process if the member's claim may be

more expediently resolved using the manifest injustice process.

(b)(1) The executive director is authorized to implement a resolution of a manifest injustice after a determination is made that a manifest injustice exists using the rules concerning the manifest injustice process.

(2)(A) The executive director may implement a resolution of a manifest injustice of up to **five thousand dollars (\$5,000)** of direct financial impact to the Arkansas Teacher Retirement System.

(B) The executive director shall provide the chair of the Board of Trustees of the Arkansas Teacher Retirement System with written notice of a manifest injustice determination and the proposed resolution before implementing the resolution if a resolution has a direct financial impact on the system in an amount exceeding five thousand dollars (\$5,000).

(c)(1) The executive director shall not waive a deadline that may apply in the law or rules applicable to the system.

(2) Only the Board of Trustees of the Arkansas Teacher Retirement System may waive a deadline.

(d)(1) The executive director shall provide a report to the board at least biannually that:

(A) Outlines the facts and circumstances of each manifest injustice referral;

(B) Describes findings and recommendations of the manifest injustice committee; and

(C) Provides and explains the resolution of the manifest injustice referral if a manifest injustice is found.

(2) The names of members or other information that is not material to the findings shall not be required in the report to the board.

§ 13-121. Manifest injustice — Manifest Injustice Committee.

(a) The Arkansas Teacher Retirement System's General Counsel and two (2) members of senior management designated by the Executive Director shall be the sole members of the Manifest Injustice Committee.

(b)(1) The committee shall review all manifest injustice referrals and shall meet on a reasonable schedule or as needed to review manifest injustice referrals.

(2) If a committee member has a conflict or otherwise cannot review or act on a manifest injustice referral due to absence, sickness, or work load, the committee member may appoint a representative from his or her supervised staff to review or act on the manifest injustice referral on the committee member's behalf.

(3) A majority vote of the committee shall constitute a recommendation on a manifest injustice referral.

(c)(1) The committee may request that a party to the manifest injustice referral provide information or input concerning the manifest injustice referral.

(2) A party to the manifest injustice referral is not required to provide any information or input requested by the committee.

(d)(1) The committee shall make a recommendation on the existence of a manifest injustice to the Executive Director of the Arkansas Teacher Retirement System based upon the committee's review of the manifest injustice referral.

(2) If the committee finds that a manifest injustice exists, then the committee shall propose and include in its recommendation a resolution of the manifest injustice.

§ 13-122. Manifest injustice — Review of recommendation.

(a)(1) The Executive Director of the Arkansas Teacher Retirement System shall review the manifest injustice referral and the Manifest Injustice Committee's basis for the recommendation.

(2)(A) The executive director may request that a party to the manifest injustice referral provide information or input concerning the manifest injustice referral.

(B) A party to the manifest injustice referral is not required to provide any information or input requested by the executive director.

(b)(1) The executive director may either accept the committee's recommendation or return the manifest injustice referral to the committee for further consideration if the executive director disagrees with the committee's recommendation.

(2)(A) The manifest injustice referral shall be considered reviewed and closed if the committee recommends that a manifest injustice exists and the executive director accepts the recommendation.

(B) If the committee recommends that a manifest injustice exists and the executive director accepts the recommendation, the executive director may either adopt the resolution suggested by the committee or an alternative resolution that the executive director is authorized to implement.

(C) A committee's recommendation that is accepted by the executive director and finds that a manifest injustice exists is not appealable under the rules concerning the staff determination appeal process or the Arkansas Administrative Procedures Act, § 25-15-201 et seq.

(3)(A) The manifest injustice referral shall be considered reviewed and closed if the committee recommends that a manifest injustice does not exist, the executive director accepts the recommendation, and the recommendation is not appealed to the Board of Trustees of the Arkansas Teacher Retirement System using the rules concerning the staff determination appeal process.

(B)(i) A committee's recommendation that is accepted by the executive director and finds that a manifest injustice does not exist may be appealed to the board using the rules concerning the staff determination appeal process if the manifest injustice referral involves:

(a) An ambiguity in the interpretation of the specific facts of the member's claim that would impact the manner in which the law, rules, or policy applicable to the system are applied to the member's claim;

(b) An ambiguity in the interpretation of the law, rules, or policy applicable to the system; or

(c) An ambiguity concerning the proper application of the law, rules, or policy applicable to the system to the specific facts of the member's claim.

(ii) A board member or staff member of the system shall not be permitted to appeal a committee's recommendation that is accepted by the executive director.

(iii) A committee's written recommendation shall not be considered a final decision or order of the system that may be appealed under the Arkansas Administrative Procedures Act, § 25-15-201 et seq.

(4)(A) If a manifest injustice referral is returned to the committee by the executive director, the manifest injustice committee shall reconsider the manifest injustice referral

and take into consideration any addition information provided by the executive director.

(B) The committee may maintain or amend its original recommendation after reconsidering a manifest injustice referral that is returned by the executive director.

(C)(i) If the committee maintains its original recommendation and the executive director does not accept the recommendation, the executive director may include the manifest injustice referral as an action item on the agenda of the board's next scheduled meeting for consideration and resolution by board.

(ii) If the manifest injustice referral was submitted by a person or entity who is not a board or staff member of the Arkansas Teacher Retirement System, the system shall send the person or entity written notice that:

(a) Provides the time and date on which the board intends to consider the manifest injustice referral;

(b) Advises the person or entity that the person or entity may present arguments to the board concerning the manifest injustice referral;

(c) Advises the person or entity that the system will send the person or entity a written final order of the board after the board meeting; and

(d) Advises that the board's final order shall be a final decision or order of the system that may be appealed by the person or entity under the Arkansas Administrative Procedures Act, § 25-15-201 et seq.

(D) If the board finds that a manifest injustice does exist, the board may implement a resolution suggested by the system's staff or an alternative resolution.

(E) A final order of the board concerning a manifest injustice referral shall be considered the final decision or order of the system that may be appealed under the Arkansas Administrative Procedures Act, § 25-15-201 et seq.

Authority: Arkansas Code §§ 24-7-202, 24-7-205, and 25-15-201 — 24-15-219.

History

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<u>Effective:</u>	<u>TBD</u>	<u>Rule 13-1</u>

~~RULE 13-1~~

~~ADMINISTRATION ADJUDICATIONS: STAFF DETERMINATIONS AND APPEALS~~

~~A.C.A. §§ 25-15-201 to 219~~

~~I. Scope and Purpose~~

~~A. The purpose of this rule is to govern practice and procedure before ATRS and the Board of Trustees ("Board") involving any issue or claim ("claim(s)") arising as a result of any administrative decision or staff determination of ATRS relating to any retirement plan or program administered by ATRS. ATRS staff is responsible for administering ATRS members' accounts. Sometimes, the staff will make a determination based on ATRS rules and the rule of law that may be adverse to a member's claim. This rule outlines the procedure for a member to appeal a decision of ATRS.~~

~~B. This rule applies to any claim of a member. For purposes of this rule, "member" includes any member of ATRS as defined in A.C.A. § 24-7-702, as well as any beneficiary of a member; any retiree of ATRS; any guardian, administrator, or executor of a member, retiree, or beneficiary; or any public school (all such categories of persons shall be referred to within this rule as the "member").~~

~~C. This rule should be read in conjunction with the Arkansas Administrative Procedures Act. See A.C.A. §§ 25-15-201 -219 (the "APA"). To the extent any term or provision of this rule conflicts with any term or provision of the APA, the terms and provisions of the APA shall supersede this rule and control. This rule does not apply to claims or causes of action that ATRS or the Board may have against a member or any other person or entity, regardless of the origin or nature of the claim.~~

~~D. The Board and the ATRS Executive Director have the power to extend any deadline applicable to a member's appeal upon a showing of good cause, except when a Hearing Officer has been assigned, in which case such power shall rest with the Hearing Officer until the completion of the hearing.~~

~~E. When compliance with this Rule is based on "delivery", delivery is the earlier of either the date of the postmark, if posted with the United States Postal Service, or the date of actual delivery by one of the following methods:~~

- i. ~~Hand delivery; ii. Electronic transmission; or iii. Delivery service other than USPS.~~

II. ~~Informal Resolution Encouraged~~

~~Claims by a member are usually settled by mutual agreement through correspondence or informal conference between the member and the staff of ATRS. The staff and the member are strongly encouraged to engage in a good faith attempt to mutually resolve claims based upon proper application of the laws, statutes, and rules which govern the operation and administration of ATRS plans and programs to the specific facts of the member's claim.~~

III. ~~Staff Determinations~~

A. ~~If the staff makes a determination that is adverse to a member's claim, ATRS shall issue a Staff Determination Letter to the member. The letter shall detail the reasons for the decision. The member may disagree with the staff determination based upon a factual dispute or a dispute regarding the application of the rules and law. All reasonable efforts will be made to informally resolve the issue with the member. For claims that are not resolved informally, a member may appeal the staff determination to the Executive Director.~~

B. ~~The decision stated in the Staff Determination Letter issued in accordance with this rule will become a final administrative decision and final agency action on the thirty-first (31st) day following the date of the Staff Determination Letter unless the member requests a timely Executive Director review.~~

IV. ~~Executive Director Review~~

A. ~~The member may request a review of the staff determination by the Executive Director no later than close of business thirty (30) calendar days after the date of the Staff Determination Letter. If the last day to file the request falls on an official state holiday or weekend, then the request must be delivered to the Executive Director no later than close of business on the next business day. The Executive Director will promptly acknowledge the member's request for review.~~

B. ~~The member shall not be required to resubmit any documents or information with the written request for Executive Director review. If the member believes that the Executive Director should review any relevant documents or information not previously submitted to ATRS, the member may submit such information to the Executive Director. Any additional information must be delivered to the~~

~~Executive Director within thirty-five (35) calendar days of the date of Executive Director's acknowledgment letter.~~

- ~~C. The Executive Director will conduct an independent review of the facts and the law, taking into consideration the staff determination as well as any relevant information provided by the member. After the review period, which may vary in length according to the facts of the member's claim, the Executive Director will issue an Executive Director Review Determination Letter to the member on the claim.~~
- ~~D. The Executive Director may affirm, reverse, or modify the staff determination at any time prior to the final determination of the Board. The Executive Director shall provide to the member the applicable statutes and rules used in reaching the decision and a summary of the factual basis and legal conclusions for the Executive Director's decision. Unless the member initiates a timely appeal of the Executive Director's decision in accordance with this rule, the decision of the Executive Director will become a final administrative decision and final agency action on the 31st day following the date of the Executive Director Review Determination Letter.~~

~~V. Appeals to the Board~~

~~A. Any decision of the Executive Director regarding a staff determination may be appealed to the Board. In order to initiate an appeal, the member must deliver to the address below a signed written Notice of Appeal to the Board within thirty (30) calendar days of the date of the Executive Director Review Determination Letter. The Notice of Appeal may be in the form of a letter addressed to:~~

~~**ATRS Board of Trustees
Member Appeals
ATTN: Legal Department
1400 West Third Street
Little Rock, Arkansas 72201**~~

- ~~B. All appeals from an Executive Director decision to the Board will be assigned to a Hearing Officer, who will conduct an administrative hearing, recommend factual and legal determinations, and prepare a proposed order to the Board that includes findings of fact and conclusions of law. The Executive Director or his designee shall appoint the Hearing Officer from a list of qualified individuals approved by the Executive Director.~~
- ~~C. Following appointment, the Hearing Officer shall issue a written scheduling order to the member, the Executive Director of ATRS, and the legal counsel of ATRS.~~

The scheduling order shall contain all information required under the Arkansas Administrative Procedures Act. (See A.C.A. § 25-15-208.) The Hearing Officer, at his or her discretion, may include in the scheduling order reasonable deadlines for the submission and exchange of exhibits, witness lists, and related materials prior to the hearing, including but not limited to, any requested proposed findings of fact and conclusions of law. Unless otherwise ordered, hearings shall be held at the offices of ATRS, 1400 West Third Street, Little Rock, Arkansas 72201.

D. The Hearing Officer may continue any scheduled matter at his or her discretion for good cause shown by any party or counsel of record.

VI. Filing of Documents

A. Following the appointment of a Hearing Officer, all correspondence, documents, requests, submissions, or filings of any type relating to an appeal shall be mailed or hand delivered to:

**Arkansas Teacher Retirement System
Legal Department 1400 West Third Street
Little Rock, Arkansas 72201**

B. Any party submitting or filing a document relating to an appeal shall simultaneously deliver a copy of the filing or document to the opposing party (or opposing counsel, if applicable). It shall be the responsibility of ATRS to ensure: (a) that copies of all correspondence, documents, requests, submissions, and filings relating to an appeal are provided in a timely manner to the Hearing Officer; and (b) that a complete record of each appellate proceeding before a Hearing Officer and the Board is prepared and maintained in a single, centralized location.

VII. Hearings

A. The hearing is an administrative hearing before the Hearing Officer, and is not a hearing before the Board. Hearings will be conducted according to this rule and the corresponding procedural provisions of the Arkansas Administrative Procedures Act (See A.C.A. § 25-15-213). The member shall at all times have the right to counsel, provided that such counsel: (a) is duly licensed to practice law in the State of Arkansas; or (b) has been granted permission to appear *pro hac vice* by the Hearing Officer. All hearings shall be conducted in an orderly manner. The Hearing Officer shall have the authority to maintain the decorum of the hearing and may clear the hearing room of witnesses not under examination.

B. If the member fails to appear at the hearing, the member waives his or her right to present evidence and argument to the Hearing Officer, and the Hearing Officer

may proceed with the hearing and prepare a proposed order to the Board based on the evidence presented.

~~C. The Hearing Officer shall have the authority to administer oaths and affirmations. Each party shall be entitled to examine and cross-examine witnesses, present evidence, make arguments, and generally participate in the conduct of the proceeding. The Hearing Officer may question a witness during any portion of the direct or cross-examination of such witness. All testimony to be considered by the Hearing Officer, except matters officially noticed or entered by stipulation, shall be sworn testimony. Before giving testimony, each person shall swear or affirm that the testimony about to be given shall be the truth, the whole truth and nothing but the truth.~~

~~D. The hearing shall be informal and formal rules of evidence shall not apply. In conducting a hearing, the Hearing Officer shall not be bound by the formal rules of evidence, and no informality in any proceedings or in the manner of taking of testimony shall invalidate any order or decision of the Board. The Hearing Officer may admit into the record any evidence that in the judgment of the Hearing Officer:~~

- ~~i. Has a reasonable degree of probative value and trustworthiness; or~~
- ~~ii. Is of a type or nature commonly relied upon by reasonably prudent people in the conduct of their affairs. The Hearing Officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious. Objections to evidentiary offers may be made and shall be noted of record.~~
- ~~iii. Following the close of evidentiary submissions and witness testimony, the Hearing Officer may in his or her discretion allow summations and closing arguments by the parties.~~

~~E. ATRS shall arrange for a court reporter to attend and record all hearings. Documents received into evidence by the Hearing Officer shall be marked and filed as part of the record. ATRS shall be responsible for payment of the cost of the preparation of the transcript. Upon receipt of the transcript of the hearing, ATRS shall promptly forward a copy of the transcript to the Hearing Officer and the member (or counsel for the member, if applicable).~~

VIII. Post-hearing Briefs

~~A. Upon the completion of the hearing, the Hearing Officer may allow the parties to submit post-hearing briefs to be included as part of the record on appeal. The decision whether to allow the submission of post-hearing briefs is committed to the sole discretion of the Hearing Officer. A decision by the Hearing Officer to~~

not allow post-hearing briefs shall have no effect on the validity of any order or decision issued by the Board.

- B. If the Hearing Officer grants the member or ATRS an opportunity to submit a post-hearing brief, the Hearing Officer shall provide the opposing party an opportunity to submit a response. The Hearing Officer shall have discretion to set reasonable deadlines for the parties to submit post-hearing briefs and responses, provided that the parties shall be allowed a minimum of fourteen (14) calendar days from the date of receipt of the transcript of the hearing before any initial post-hearing brief shall be due for filing.

IX. Proposed Orders

Once the Hearing Officer receives all evidence, arguments, and post-hearing briefs (if any), the record before the Hearing Officer shall be officially closed. Once the record is closed and after considering all of the evidence, the Hearing Officer shall, as soon as practical, prepare a proposed order to be delivered to the Board of Trustees. The proposed order shall include findings of fact based exclusively on the evidence and testimony in the record of the hearing, conclusions of law, and a recommendation to the Board of Trustees. The Hearing Officer shall provide the proposed order to the Board at ATRS via facsimile and United States mail at the address listed in Section VI of this rule. Upon receipt of the proposed order, ATRS shall mail a copy of the proposed order to the member (and his or her counsel, if applicable) via Certified, First Class, United States mail, with a copy to the Executive Director.

X. Written Objections to Proposed Order

The member shall have the right to file a written statement of objections outlining any objections, exceptions, and/or arguments that the member desires the Board to consider in its evaluation of the Hearing Officer's proposed order. Any statement of objections by the member must be delivered to ATRS within twenty-one (21) calendar days of receipt of the Hearing Officer's proposed order. The member may not introduce additional evidence or testimony in the statement of objections. Counsel for ATRS may prepare a written response to any statement of objections filed by the member. A copy of any response by ATRS shall be provided to the member and the Board prior to the Board meeting at which the Hearing Officer's proposed order on the member's appeal is scheduled to be considered by the Board.

~~XI. Board Consideration of Proposed Order~~

~~A. The Board will make a final determination on the Hearing Officer's proposed order. The Board's consideration of the Hearing Officer's proposed order will be scheduled within a reasonable time to be heard, at a regular Board meeting after the issuance of the proposed order. The Board may call an emergency meeting to consider the Hearing Officer's proposed order if the situation warrants. ATRS shall notify the member or the member's counsel in writing of the date, time, and location of the Board Meeting.~~

~~B. Before rendering a decision on the Hearing Officer's proposed order, the Board may request that the member (and his or her attorney, if applicable) make a brief statement to the Board concerning the facts and any arguments the member wishes to present and respond to any questions from the Board. The Board's consideration of the matter will not require the Board to conduct another hearing, and will be based on the hearing previously conducted before the Hearing Officer. The Chairman of the Board will have final authority to set the amount of time any party may have to make a statement to the Board.~~

~~C. Failure of the member to appear at the meeting of the Board without prior notification will result in the member waiving his or her right to be heard by the Board. The member may petition the Board for another opportunity to address the Board, and, if the Board determines that the member's absence was for good cause, it may grant the petition.~~

~~D. After consideration by the Board of the Hearing Officer's proposed order, the Board has the final authority to accept or reject all or part of the Hearing Officer's proposed order. The Board may:~~

- ~~i. Accept the Proposed Order; ii. Reject the proposed order; or iii.~~

~~Accept the Proposed Order as modified by the Board.~~

~~E. If the Board elects to reject the Proposed Order or accept the Proposed Order as modified, the Board may:~~

- ~~i. Make its own Findings of Fact and Conclusions of Law and issue its own Order based upon those findings and conclusions and may consider manifest injustice as a basis for any remedy; or~~

- ~~ii. Remand the matter in whole or in part to the Hearing Officer for reconsideration or for additional findings of fact and/or additional conclusions of law.~~

F. ~~As in all matters before the Board, a quorum of votes is necessary to approve any motion, resolution, or order under consideration.~~

G. ~~Following a decision of the Board with respect to the Hearing Officer's proposed order, the Board shall cause to be prepared a written final order on the member's appeal. The Board's final order shall include separate findings of fact and conclusions of law relied upon by the Board in formulating the final order. A copy of the Board's final order (including the Board's findings of fact and conclusions of law) will be delivered via Certified, First Class, United States mail to the member (and any counsel) by the Executive Director.~~

~~XII. Authority to Settle~~

~~At any time prior to the issuance by the Board of a final order, the Executive Director is authorized to settle any claim in a manner mutually agreeable to ATRS and the member. In settling any claim, the Executive Director shall not exceed the authority previously granted to him or her by the Board. The Executive Director shall report to the Board any settlement that occurs after the Hearing Officer issues a proposed order.~~

~~XIII. Appeals Under the APA~~

~~Any member receiving an adverse ruling from the Board retains certain rights under the Arkansas Administrative Procedures Act (See A.C.A. §§ 25-15-201 to -219.) The member may file a petition for judicial review. Any petition for judicial review of a final Board administrative decision shall be filed in Pulaski County Circuit Court. See A.C.A. § 25-15-212 and § 24-7-211. Such action must be filed within thirty (30) days after service upon the member of the Board's final order. See *id.*~~

~~XIV. Communications With the Hearing Officer and Board of Trustees~~

A. ~~The Arkansas Administrative Procedures Act prohibits direct or indirect communications by the members and employees of ATRS with a Hearing Officer or the Board in connection with any issue of fact or law regarding an appeal, except upon notice that provides an opportunity for all parties to participate. Hearing Officers and the members of the Board will not consider any "ex parte" or "off-the-record" evidence or statements made to them by the member or any employee of ATRS in connection with a pending appeal.~~

B. ~~This Section does not preclude communications by and between the Hearing Officer, ATRS Staff, and/or the Board concerning minor scheduling and procedural matters necessary to the timely and efficient processing and handling of appeals under these rules.~~

~~Approved: February 1, 2010 (Emergency)
June 7, 2010 Permanent~~

~~Approved by Board: July 26, 2013~~

~~Amended: October 9, 2013~~

~~Effective: November 8, 2013~~

~~FINAL Approval by Board: February 5, 2018~~

~~Effective: February 16, 2018~~

ATRS Rule 14
Retirement Fund Asset Accounts

§ 14-101. Retirement fund asset accounts.

(a) In accordance with Arkansas Code § 24-7-405, the Board of Trustees of the Arkansas Teacher Retirement establishes the following accounts to manage the Arkansas Teacher Retirement System's fund assets and liabilities:

(1) The Members' Deposit Account is the account in which members' contributions, interest, purchases of service, refunds, transfers, and other related activity are reported in accordance with current accounting processes and procedures used by the system's fiscal department;

(2) The Employer Accumulation Account is the account in which employers' contributions and transfers are reported in accordance with current accounting processes and procedures used by the system's fiscal department;

(3) The Retirement Reserve Account is the account into which transfers for the payment of benefits to retirees and beneficiaries are reported in accordance with current accounting processes and procedures used by the system's fiscal department;

(4) The Income-Expense Account is the account in which all investment income is reported and from which interest credits and other expenses of the board are reported for the administration and operation of the system in accordance with current accounting processes and procedures used by the system's fiscal department; and

(5) The Teacher Deferred Retirement Option Plan Account is the account in which T-DROP participants' T-DROP account activity is reported in accordance with current accounting processes and procedures used by the system's fiscal department.

(b) The accounts established by the board may have subaccounts as deemed necessary by the system's staff to further classify and manage the assets of the system.

Authority: Arkansas Code § 24-7-405

History

<u>Adopted:</u>	<u>July 1, 2011</u>	<u>(Emergency)</u>
<u>Adopted:</u>	<u>August 8, 2011</u>	
<u>Effective:</u>	<u>November 11, 2011</u>	
<u>Effective:</u>	<u>TBD</u>	<u>Rule 14.1</u>

~~Retirement Fund Asset Accounts~~

~~A.C.A. § 24-7-405~~

1. ~~The Board of Trustees of the Arkansas Teacher Retirement System in accordance with A.C.A. § 24-7-405 establishes the following accounts to manage the system's fund assets and liabilities:~~
 - A. ~~The Members' Deposit Account is the account in which members' contributions, interest, purchases of service, refunds, transfers and other related activity are reported in accordance with current accounting processes and procedures used by the Arkansas Teacher Retirement System's fiscal department;~~
 - B. ~~The Employer Accumulation Account is the account in which employers' contributions and transfers are reported in accordance with current accounting processes and procedures used by the Arkansas Teacher Retirement System's fiscal department;~~
 - C. ~~The Retirement Reserve Account is the account into which transfers for the payment of benefits to retirants and beneficiaries are reported in accordance with current accounting processes and procedures used by the Arkansas Teacher Retirement System's fiscal department;~~
 - D. ~~The Income-Expense Account is the account in which all investment income is reported and from which interest credits and other expenses of the Board of Trustees are reported for the administration and operation of the system in accordance with current accounting processes and procedures used by the Arkansas Teacher Retirement System's fiscal department; and~~
 - E. ~~The Teacher Deferred Retirement Option Plan Account is the account in which T-DROP participants' T-DROP account activity is reported in accordance with current accounting processes and procedures used by the Arkansas Teacher Retirement System's fiscal department.~~
2. ~~The accounts established by the Board of Trustees may have subaccounts as deemed necessary by staff to further classify and manage the assets of the system.~~

Adopted: July 1, 2011 (Emergency)

Adopted: ~~August 8, 2011~~

Effective: ~~November 11, 2011~~

14-1-1

ATRS Rule 15
Benefit Restoration Plan and Trust

§ 15-101. 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 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) The plan is an "exempt governmental deferred compensation plan" described in 26 U.S.C. § 3121(v)(3). 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 shall be based on reasonable actuarial assumptions approved by the board in its sole discretion, and will be determined in a uniform manner for all similarly situated participants.

§ 15-102. Definitions.

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

(b) As used in this rule:

(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 system contracts to provide services to the plan;

(3) "Beneficiary" means an individual receiving joint and survivor benefits from the system;

(4) "Benefit restoration" means the benefit determined in accordance with § 15-1-104 of this rule;

(5) "Benefit Restoration Trust Fund" or "trust fund" means the Benefit Restoration Trust Fund established pursuant to § 15-1-106 of this rule 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 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 system who is receiving a retirement benefit from the 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.

§ 15-103. 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 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 when all benefit obligations under the plan to the retiree or beneficiary have been satisfied.

§ 15-104. 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) 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 the § 15-1-103 of this rule, 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 establish another plan to serve the same purpose or to 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.

§ 15-105. 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 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 rule.

(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.

(E) 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.

§ 15-106. 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 as defined by Arkansas Code § 24-7-202, and will be construed accordingly.

(2) Section 15-1-106(d) of this rule 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. §§ 415(m)-(l) and 115.

§ 15-107. 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 § 15-1-104;

(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.

(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.

§ 15-108. 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 comply with 26 U.S.C. § 415(m) and to maintain the plan's or the retirement fund's qualified status under the Internal Revenue Code as defined by Arkansas Code § 24-7-202.

§ 15-109. Nonassignability and exemption from taxation and execution.

The interests of participants under the Arkansas Teacher Retirement System Benefit Restoration Plan and Trust are exempt from any state, county, municipal or local tax, and are not subject to execution, garnishment, attachment, or any other process of law whatsoever, and are unassignable and nontransferable.

§ 15-109. 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 or 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 rule.

(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.

Authority: Arkansas Code § 24-7-305.

History

<u>Approved by Board:</u>	<u>July 26, 2013</u>	
<u>Adopted:</u>	<u>October 9, 2013</u>	
<u>Effective:</u>	<u>November 8, 2013</u>	
<u>Effective:</u>	<u>TBD</u>	

~~RULE 15-1~~
~~BENEFIT RESTORATION PLAN AND TRUST~~

~~A.C.A. § 24-7-305~~

~~I. ESTABLISHMENT OF PLAN AND TRUST~~

~~A. Establishment Of Plan and Trust. The Arkansas Teacher Retirement System Benefit Restoration Plan and Trust (“this Plan”) is established effective upon final adoption by the Board pursuant to authority granted by Ark. Code Ann. §24-7-305.~~

~~B. Purpose.~~

~~i. The purpose of this 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 (“ATRS”) except for the limitations of Code Section 415(b). This Plan is intended to be a “qualified governmental excess benefit arrangement” within the meaning of Code Section 415(m)(3) and must be interpreted and construed consistently with that intent. This Plan is deemed a portion of the Employers’ qualified plan solely to the extent required under, and within the meaning of, Code Section 415(m)(3) and Ark. Code Ann. §24-7-305.~~

~~ii. This Plan is an “exempt governmental deferred compensation plan” described in Code Section 3121(v)(3). Code Sections 83, 402(b), 457(a) and 457(f)(1) do not apply to this Plan. ATRS will not hold any assets or income under this Plan in trust for the exclusive benefit of participants or their beneficiaries.~~

~~II. DEFINITIONS AND CONSTRUCTIONS~~

~~A. Definitions. Definitions are exclusive to this plan unless stated otherwise. When a word or phrase is capitalized herein, it has the same meaning as defined below:~~

~~i. **Actuary** means the actuary selected by the Board from time to time.~~

- ii. ~~**Administrator** means ATRS and includes any person with whom ATRS contracts to provide services to the Plan.~~
- iii. ~~**ATRS** means the Arkansas Teacher Retirement System.~~
- iv. ~~**Beneficiary** means an individual receiving joint and survivor benefits from ATRS.~~
- v. ~~**Benefit Restoration** means the benefit determined in accordance with Section 4.01 of this Plan.~~
- vi. ~~**Board** means the Board of Trustees of ATRS.~~
- vii. ~~**Code** means the Internal Revenue Code as is defined under Ark. Code Ann. §24-7-202.~~
- viii. ~~**Employer** means any public school, other educational agency, or other eligible employer participating in ATRS as provided under Ark. Code Ann. §24-7-202(13).~~
- ix. ~~**Participant** means a Retiree or Beneficiary who is entitled to benefits under this Plan.~~
- x. ~~**Plan** means the Arkansas Teacher Retirement System Benefit Restoration Plan and Trust established pursuant to Ark. Code Ann. §24-7-305.~~
- xi. ~~**Plan Year** means the twelve calendar month period ending on December 31 of each year.~~
- xii. ~~**Retiree** means a member of ATRS who is receiving a Retirement Benefit from ATRS.~~
- xiii. ~~**Retirement Administrator** means ATRS.~~
- xiv. ~~**Retirement Benefit** means the amount of retirement income payable to a Retiree of ATRS, or the benefit payable to a Beneficiary, without regard to any limitations on that retirement income or benefit under Code Section 415(b).~~
- xv. ~~**Retirement Fund** means the trust fund established pursuant to Act 266 of 1937, approved March 17, 1937.~~

xvi. ~~State~~ means the State of Arkansas.

xvii. ~~Trust Fund~~ means the trust fund established pursuant to Section 6.1, below, which fund constitutes a valid trust under the law of the State.

xviii. ~~Trustees~~ mean the members of the Board.

~~B. Construction.~~

i. ~~Words used in this Plan in the masculine gender include the feminine gender where appropriate, and words used in this Plan in the singular or plural include the plural or singular where appropriate.~~

ii. ~~Whenever any actuarial present value or actuarial equivalency is to be determined under the Plan to establish a benefit, it will be based on reasonable actuarial assumptions approved by the Board in its sole discretion, and will be determined in a uniform manner for all similarly situated Participants.~~

~~III. PARTICIPATION~~

~~All Retirees and Beneficiaries of ATRS are eligible to participate in this Plan if their Retirement Benefits from ATRS for a Plan Year are or have been since January 1, 2013, limited by Code Section 415(b). The Board determines for each Plan Year which Retirees and Beneficiaries are eligible to participate in the Plan. Participation in the Plan begins each Plan Year once a Retiree or Beneficiary has a Benefit Restoration in that Plan Year. Participation in the Plan ends for any portion of a Plan Year in which the Retirement Benefit of a Retiree or Beneficiary is not limited by Code Section 415(b) or when all benefit obligations under the Plan to the Retiree or Beneficiary have been satisfied.~~

~~IV. PAYMENT OF BENEFITS~~

A. ~~Benefit Amount. A Participant in the Plan will receive a benefit equal to the amount of retirement income that would have been payable to, or with respect to, a Participant by ATRS that could not be paid because of the application of the limitations on his retirement income under Code Section 415(b). A Benefit Restoration under the Plan will be paid only if and to the extent the Participant is receiving Retirement Benefits from the Retirement Fund.~~

- ~~B. Time for Payment: Form of Benefit. The Benefit Restoration will be paid at the same time and in the same manner as the Retirement Benefit payable under ATRS, and the timing of the Benefit Restoration must take into account the existence of monthly deductions from the Retirement Benefit. No election is provided at any time to the Participant, directly or indirectly, to defer compensation under this Plan.~~
- ~~C. Vesting. A Participant's right to a Restoration Benefit shall be vested as of the Participant's vesting under the Retirement Fund. Additionally, each member in the Retirement Fund receiving a Retirement Benefit under the Retirement Fund on the date of adoption of this Plan shall be vested. A Beneficiary's right to a Restoration Benefit shall be vested as of the date of the Participant's death. Notwithstanding the foregoing, 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 establish another plan to serve the same purpose or to 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.~~

~~V. CONTRIBUTIONS AND FUNDING~~

- ~~A. Funding. The Plan is, and will remain, unfunded and the rights, if any, of any person to any benefits under the Plan are limited to those specified in the Plan. The Plan constitutes a mere unsecured promise by the Employers to make benefit payments in the future.~~
- ~~B. Contributions.~~
- ~~i. The Executive Director, using authority delegated by the Board will determine the amount necessary to pay the Benefit Restoration under the Plan for each Plan Year. The Retirement Administrator will 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 rule. 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. 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. The Employers' required contribution will be due at the same time as contributions to the Retirement Fund. Under no circumstances will the Employers' contributions to fund the Benefit Restorations be credited to the Retirement Fund. Any contributions not used to pay the Benefit Restoration for a current Plan Year, together with any income accruing to the Trust Fund, will be used to pay the administrative expenses of the Plan for the Plan Year. 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.~~

~~ii. ATRS will 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. But, this separate accounting will not be deemed to set aside these amounts for the benefit of a Participant. Benefits under this Plan will be paid from the Trust Fund.~~

~~iii. The consultants, independent auditors, attorneys, and actuaries performing services for ATRS may also perform services for this Plan; but, any fees attributable to services performed with respect to this Plan will be payable solely from the Trust Fund.~~

VI. TRUST FUND

~~A. Establishment of Trust Fund. A "Benefit Restoration Trust Fund" (the "Trust Fund") is established pursuant to Ark. Code Ann. §24-7-305, separate from the Retirement Fund, to hold Employers' Contributions to this Trust Fund. Contributions to this Trust Fund will be held separate and apart from the funds comprising the Retirement Fund and will not be commingled with assets of the Retirement Fund, and must be accounted for separately.~~

~~B. Trust Fund Purpose. The Trust Fund is maintained solely to provide benefits under a qualified governmental excess benefit arrangement within the meaning of Code Section 415(m) and pay administrative expenses of this arrangement.~~

~~C. Trust Fund Assets. 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 Plan, all property and rights acquired or purchased with these amounts and all income attributable to~~

~~these amounts, will be held separate and apart from other funds of the Employers and will be used exclusively for the uses and purposes of Participants and general creditors as set forth in this Plan. Participants have no preferred claim on, or any beneficial interest in, any assets of the Trust Fund. Any rights created under the Plan are unsecured contractual rights of Participants against the Employers. 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. Grantor Trust. 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 Code, and will be construed accordingly. This provision will not be construed to create an irrevocable trust of any kind.~~

~~E. Trust Fund Income. Income accruing to the Trust Fund under the Plan constitutes income derived from the exercise of an essential governmental function upon which the Trust is exempt from tax under Code Section 115, as well as Code Section 415(m)(1).~~

~~VII. ADMINISTRATION~~

~~A. Administrative Authority. The Board has the exclusive authority to control and manage the operation and administration of the Plan. The Board has the same rights, duties and responsibilities respecting the Plan as it has with respect to the Retirement Fund. The Administrator has the same duties and authority respecting the Plan as the Administrator has with respect to the Retirement Fund.~~

~~i. The Board has the power and authority (including discretion with respect to the exercise of that power and authority) necessary, advisable, desirable or convenient to enable it:~~

~~a. to establish procedures to administer the Plan not inconsistent with the Plan and the Code, and to amend or rescind these procedures;~~

~~b. to 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;~~

~~c. to make payments from the Trust Fund to Participants pursuant to Article IV of the Plan;~~

~~d. contract with a third party to perform designated administrative services under this Plan;~~

~~e. to 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 Code.~~

~~ii. 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. 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.~~

~~iii. The Board may delegate any of its authority to the Administrator with respect to the Trust Fund. The Board has delegated certain authority as set forth herein, to the Executive Director.~~

~~B. Advice. The Board may obtain assistance and advice with regard to its responsibilities under the Plan.~~

~~C. Payment of Benefits. 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.~~

~~D. Delegation by Administrator. The Administrator will handle the day-to-day operation of the Plan and may delegate certain functions to a third party as required.~~

~~VIII. PLAN AMENDMENTS~~

~~The Board, from time to time, may amend, suspend, or terminate any or all of the provisions of this Plan as may be necessary to comply with Code Section 415(m) and to maintain the Plan's or the Retirement Fund's qualified status under the Code.~~

~~IX. NONASSIGNABILITY AND EXEMPTION FROM TAXATION AND EXECUTION~~

~~The interests of Participants under this Plan are exempt from any state, county, municipal or local tax, and are not subject to execution, garnishment, attachment, or any other process of law whatsoever, and are unassignable and nontransferable.~~

~~X. MISCELLANEOUS~~

- ~~A. Federal and State Taxes. The Board, 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 this Plan.~~
- ~~B. Investment. The Board may hold the assets of the Plan uninvested as it deems advisable for making distributions under the Plan.~~
- ~~C. Conflicts. 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 will be the one that (i) causes the Plan to constitute a qualified governmental excess benefit arrangement under the provisions of Code Section 415(m) and the Trust Fund to be exempt from tax under Code Sections 115 and 415(m), (ii) causes the Plan and ATRS to comply with all applicable requirements of the Code, and (iii) causes the Plan and ATRS to comply with all applicable State laws.~~
- ~~D. Limitation on Rights. Neither the establishment or 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) may be construed:~~
- ~~i. as conferring upon any Participant or any other person a right or claim against the Board, Trustees, Employers, or Administrator, if any, except to the extent that the right or claim is specifically expressed and provided in the Plan;~~
 - ~~ii. as creating any responsibility or liability of the Employers for the validity or effect of the Plan;~~
 - ~~iii. as a contract between the Employers and any Participant or other person;~~
 - ~~iv. 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~~

~~v. 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. Erroneous Payments. Any benefit payment that should not have been made, according to the terms of the Plan and the benefits provided hereunder, may be recovered as provided by law.~~

~~F. Release. Any payment to any Participant will, to the extent thereof, be in full satisfaction of the Participant's claim being paid thereby, and the Board may condition the payment on the delivery by the Participant of the duly executed receipt and release in a form determined by the Board.~~

~~G. Liability.~~

~~i. The Board, Trustees, or Administrator, if any, will not incur any liability in acting upon any paper or document or electronic transmission believed by the Board, Trustees, or Administrator to be genuine or to be executed or sent by an authorized person.~~

~~ii. The Plan will hold harmless and indemnify the Board, the 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, provided that the board member, trustee, officer or employee at the time of the alleged negligence or act was acting in the discharge of his duties and within the scope of his employment and that the damages did not result from a willful and wrongful act of gross negligence of the board member, trustee, officer or employee, and provided further that the board member, trustee, officer or employee will, within five days of the time he is served with any summons, complaint, process, notice, demand or pleading, deliver the original or a copy thereof to the Administrator's legal advisor.~~

~~iii. The Board may obtain insurance to provide coverage for any liabilities that may arise as described by this Section.~~

~~iv. This Plan does not directly or indirectly waive any sovereign immunity protection of the Board, the Trustees, the Administrator, and the officers and employees thereof.~~

- ~~H. — Governing Laws. The laws of Arkansas apply in determining the construction and validity of this Plan.~~
- ~~I. — Necessary Parties to Disputes. The only party necessary to any accounting, litigation or other proceedings relating to the Plan is the Administrator. 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 upon all persons claiming by, through or under them.~~
- ~~J. — Severability. 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.~~

~~**Approved by Board:** July 26, 2013
Adopted: October 9, 2013
Effective: November 8, 2013~~

ATRS Rule 16 Cash and Savings Help Program

§ 16-101. Definitions.

As used in this rule:

(1) "CASH Program" has the same meaning as "buyout plan" as defined in Arkansas Code § 24-7-505; and

(2) "CASH Program payment" means the one-time lump-sum cash payment made to a member who elects to participate in the CASH Program.

§ 16-102. CASH Program.

(a) The Board of the Arkansas Teacher Retirement System by resolution shall establish and approve the category of members who are eligible to participate in the CASH Program, the CASH Program offering period, and the formula to be used during a CASH Program offering period.

(b)(1) In accordance with Arkansas Code § 24-7-505, this rule, and applicable resolutions of the board, the Arkansas Teacher Retirement System shall determine if a member is qualified to receive a CASH Program payment.

(2) Only qualifying members may receive a CASH Program payment.

(3) Any erroneous delivery of a CASH Program election form by the system to a member shall not establish the member's right to a CASH Program payment.

§ 16-103. CASH Program payment.

(a) The tender of a CASH Program payment by the Arkansas Teacher Retirement System to a member who elects to participate in the CASH Program shall:

(1) Cancel the member's membership in the system;

(2) Extinguish any credited service the member has accumulated in the system;

and

(3) Extinguish the member's right to any future retirement benefit that the member would have received from the system based on the member's service.

(b)(1) The opportunity for a CASH Program payment shall be available in accordance with the provisions of Arkansas Code § 24-7-505 and this rule and only for a specific and temporary period of time to a specific category of members.

(2) The Board of the Arkansas Teacher Retirement System may determine the category of members of the system to whom a CASH Program payment may be offered.

(c)(1) The CASH Program payment shall be calculated under a formula that is:

(A) Unique to the category of members to whom the CASH Program payment is available; and

(B) Applicable for the offering period exclusively.

(2)(A) Th system shall not be obligated to extend a CASH Program payment offer or to make a future or similar CASH Program payment offer.

(B) The terms, rules, and rights for any CASH Program payment offer under a specific offering period shall not apply to a subsequent CASH Program payment offering.

(d) A CASH Program payment shall be tendered only for actual service credit that a member has in the system and shall not be tendered for reciprocal service credit that a member has in the system.

(e)(1) A CASH Program payment may be:

(A) Made by check and may be mailed to a member's address; or

(B)(i) At the member's direction, directly rolled over into a qualifying retirement plan under Arkansas Code § 24-7-719.

(ii) The system shall roll over a CASH Program payment into only one (1) qualifying retirement plan.

(2)(A) The system shall make reasonable efforts to contact all members who are eligible to participate in the CASH Program.

(B) However, the system shall not be obligated to:

(i) Contact a member to verify the accuracy of the member's last address of record on file with the system;

(ii) Confirm a member's receipt of a CASH Program offer;

(iii) Confirm a member's receipt of a CASH Program election form;

or

(iv) Confirm that the system has received a CASH Program election form submitted by a member.

§ 16-104. CASH Program — Offering period.

(a) The Board of the Arkansas Trustee Retirement System shall set the dates for any CASH Program offering period.

(b)(1) After the board sets a specific CASH Program offering period, only members who submit an election to participate in the CASH Program to the Arkansas Teacher Retirement System shall qualify to receive a CASH Program payment that is available during the CASH Program offering period set by the board.

(2) However, a member shall not qualify to receive a CASH Program payment that is available during a CASH Program offering period set by the board if the member submits his or her election to participate in the CASH Program after the CASH Program offering period deadline.

(c) The board by resolution may re-offer a previously expired CASH Program or may extend the duration of a current CASH Program offering period.

§ 16-105. CASH Program — Election form.

(a)(1) The CASH Program election form shall be made available to members using the Arkansas Teacher Retirement System's standard procedures.

(2) The system shall not be responsible for confirming the member's receipt of a CASH Program election form, regardless of the manner in which the member requested to be provided with the CASH Program election form.

(3) The member shall be solely responsible for obtaining and submitting to the system a CASH Program election form as required under this rule.

(b)(1) A member's election to participate in the CASH Program shall be submitted to the Arkansas Teacher Retirement System on a form approved by the system before the applicable CASH Program offering period deadline.

(2) A CASH Program election form is invalid and shall not be accepted by the system if it:

(A) Has not been completed in its entirety by the member or as required by this rule;

(B) Is postmarked after the CASH Program offering period deadline;

(C) Is submitted by facsimile and has a date-stamp that is after the CASH Program offering period deadline; or

(D) Is sent as an attachment to an e-mail and the e-mail is sent after the CASH Program offering deadline.

(c) A CASH Program election form shall include the following:

(1) The member's signature and the date on which the member signed the election form; and

(2) The member's signed statement that he or she understands that:

(A) The purpose and scope of the CASH Program and that the CASH Program election form cannot be withdrawn by the member after the Arkansas Teacher Retirement System tenders the CASH Program payment to the member; and

(B) A member who participates in the CASH Program plan shall receive a one-time lump-sum payment from the system that, upon the system's tender of payment, cancels the member's interest in any retirement benefit and all future rights in the system.

Authority: Arkansas Code §§ 24-7-505 and 24-7-707

Resolutions

<u>2017-18</u>	<u>May 10, 2017</u>	<u>Expand to include contributory service.</u>
<u>2018-35</u>	<u>October 1, 2018</u>	<u>Create offer period for FY2019</u>
<u>2019-30</u>	<u>June 3, 2019</u>	<u>Create offer period for FY 2020</u>

History

<u>Approved by Board:</u>	<u>July 26, 2013</u>	
<u>Adopted:</u>	<u>October 9, 2013</u>	
<u>Effective:</u>	<u>November 8, 2013</u>	
<u>Effective:</u>	<u>August 5, 2019</u>	
<u>Effective:</u>	<u>TDB</u>	<u>Rule 16</u>

~~ATRS Rule 16~~

~~CASH AND SAVINGS HELP (CASH) PROGRAM~~

~~A.C.A. §§ 24-7-505, 24-7-707~~

~~I. Purpose and Scope~~

- ~~A. The purpose of this rule is to allow members an opportunity to receive a one-time lump-sum cash payment in exchange for terminating their membership in ATRS. The benefit offering under this rule shall be known as the "CASH Program". The one-time lump-sum cash payment shall be known as "CASH Program payment". The tender of the CASH Program payment by ATRS extinguishes any service credit or future retirement benefit from ATRS to the member that would have been based upon the member's service, and for all purposes "buys out" the membership, the retirement benefit rights, and all future rights in the system of the member.~~
- ~~B. The opportunity for a CASH Program payment is available only under this rule and only for a specific and temporary period of time to a specific category of members. The CASH Program payment is calculated under a formula that is unique to that category of members and is applicable for the offering period exclusively.~~
- ~~C. ATRS is under no obligation to extend the offer or to make a future, similar offer. Terms, rules and rights for any CASH Program under a specific offering period do not apply to a subsequent CASH Program offering.~~
- ~~D. This CASH Program is only applicable to ATRS members for their ATRS service. Reciprocal service shall not be eligible for the CASH Program.~~
- ~~E. The ATRS Board may target a CASH Program offering to a certain category of members within ATRS.~~
- ~~F. A CASH Program payment may be made to a member by a check mailed to the member's address. A CASH Program payment may also be directly rolled over into a qualifying retirement plan under § 24-7-719, at the direction of the member. ATRS shall only roll over the CASH Program payment into one qualifying plan.~~
- ~~G. CASH Offering Period~~
 - ~~1. The Board shall set the dates for any offering period. To qualify for the CASH Program payment in a specific offering period, the member shall deliver the CASH Program Election Form to ATRS before the end of the offering period.~~

2. A CASH Program Election Form that is postmarked after the offering period deadline is invalid. If sent by facsimile, the date stamp shall be before the offering period deadline. If sent as an attachment to an email, the email shall be sent before the offering period deadline.
 3. The Board may re-offer a previously expired buyout plan or may extend the duration of a current offering through a resolution adopted by the Board at a meeting of the Board.
- H. While ATRS may make reasonable efforts to contact members eligible for the CASH Program, ATRS is under no duty to contact members, to verify the accuracy of the addresses, or to confirm receipt of the offer by the member, to confirm receipt of the election form by members, or to confirm receipt by ATRS of the CASH Program Election Form from members.

II. ~~CASH Program Election Form~~

- A. ~~To participate in the CASH Program, a member shall submit a CASH Program Election Form to ATRS during the offering period. The CASH Program Election Form shall be completed in its entirety by the member in order to be accepted as a valid CASH Program Election Form.~~ B. ~~The CASH Program Election Form shall include the following:~~
1. ~~A statement, signed by the member, that the member understands the purpose and scope of the CASH Program, and once ATRS tenders payment of CASH Program payment, the CASH Program Election Form may not be withdrawn.~~
 2. ~~A member who participates in the CASH Program plan shall receive a one-time lump sum payment from ATRS that cancels the member's interest in any retirement benefit and all future rights in ATRS effective upon tender of payment by ATRS.~~
 3. ~~The signature of the member; and~~
 4. ~~The date signed.~~
- C. ~~The CASH Program Election Form shall be made available to members using standard ATRS procedures.~~
- D. ~~ATRS is not required to accept any CASH Program Election Form that is not received during the offering period in the manner prescribed in this rule.~~
- E. ~~ATRS is not responsible for the member's receipt of a CASH Program Election Form, regardless of the manner in which it is requested.~~
- F. ~~The member is exclusively responsible for obtaining and submitting the CASH Program Election Form as required under this rule.~~
- G. ~~ATRS shall determine if the member is qualified to receive a CASH~~

~~Program payment. Only qualifying members may receive the CASH Program payment and any erroneous delivery of a CASH Program Election Form by ATRS to a member does not establish a right to payment.~~

~~III. CASH Program Offering~~

~~The applicable members, offering period, and CASH Program formula for a particular CASH Program offering will be established and approved by the Board through a properly adopted resolution.~~

HISTORY

~~Approved by Board: July 26, 2013
Adopted: October 9, 2013
Effective: November 8, 2013
Effective: August 5, 2019~~

RESOLUTIONS

2017-18	May 10, 2017	Expand to include contributory service.
2018-35	October 1, 2018	Create offer period for FY 2019.
2019-30	June 3, 2019	Create offer period for FY 2020.

ATRS Rule 13
Administrative Adjudications and Informal Resolutions: Staff
Determinations and Manifest Injustice Referrals

§ 13-101. Definitions.

As used in this rule:

(1) "Manifest injustice" has the same meaning as provided in Arkansas Code § 24-7-202; and

(2) "Member" for the purposes of the staff determination and appeal process means any member of the Arkansas Teacher Retirement System as defined in Arkansas Code § 24-7-202 and includes:

(A) A beneficiary of a member;

(B) A retiree of the system;

(C) A guardian, an administrator, or an executor of a member, retiree, or beneficiary; or

(D) A public school.

§ 13-102. Staff determinations — Scope and purpose.

(a) This rule governs the practice and procedures of the Arkansas Teacher Retirement System concerning the adjudication of a claim that concerns any retirement plan or program administered by the system and arises as a result of a determination made by the staff or administration of the system.

(b)(1) The system's staff is responsible for administering the accounts of members of the system and may make determinations based on the law and rules applicable to the system that may be adverse to a member's claim.

(2) This rule outlines the procedure for a member to appeal the determination of the system's staff or administration concerning a claim of the member.

(c)(1) The rules concerning the staff determination and appeal process should be read in conjunction with the Arkansas Administrative Procedures Act, § 25-15-201 et seq.

(2) To the extent that the rules concerning the staff determination and appeal process conflict with the Arkansas Administrative Procedures Act, the terms and provisions of the Arkansas Administrative Procedures Act shall supersede the rules concerning the staff determination appeal process and control.

(d) The rules concerning the staff determination and appeal process do not apply to claims or causes of action that the system or the Board of Trustees of the Arkansas Teacher Retirement System may have against a member or any other person or entity, regardless of the origin or nature of the claim.

§ 13-103. Staff determinations — Extension of deadlines.

(a)(1) The Board of Trustees of the Arkansas Teacher Retirement System and the Executive Director of the Arkansas Teacher Retirement System may extend any deadline applicable to a member's appeal upon a showing of good cause unless a Hearing Officer has been assigned.

(2) Only the board may extend a deadline after the deadline has passed.

(3) If a hearing officer has been assigned, until the completion of the hearing, only

the hearing office may extend a deadline applicable to a member's appeal upon a showing of good cause.

(b) When compliance with the rules concerning the staff determination and appeal process is based on delivery having occurred, delivery shall be considered to have occurred on the earlier of either the:

(1) Date of the postmark, if posted with the United States Postal Service;

(2) Date of actual delivery by one of the following methods:

(A) Hand delivery;

(B) Electronic transmission; or

(C) Delivery service other than USPS.

§ 13-104. Staff determinations — Informal resolutions.

(a)(1) A member's claim may be resolved informally through correspondence or conference between the member and the staff of the Arkansas Teacher Retirement System.

(2) All reasonable efforts shall be made to informally resolve a member's claim with the member.

(b)(1) The executive director may implement a resolution of a member's claim that has a direct impact to the system of up to five thousand dollars (\$5,000).

(2) Board approval shall be required to implement a resolution that has a direct financial impact to the system in excess of five thousand dollars (\$5,000).

(c)(1) The system's staff and the member are strongly encouraged to engage in a good faith attempt to resolve claims informally based upon the proper application of the law, rules, and policies applicable to the system and to the specific facts of the member's claim.

(2) A member's claim shall not be resolved in a manner that contravenes the law, rules, and policies applicable to the system.

(d) If a claim is not resolved informally and a staff determination letter adverse to the member's claim is issued to the member, the member may request a review of the staff determination by the Executive Director of the Arkansas Teacher Retirement System.

(e) The manifest injustice referral process shall not be used with regard to a member if the manifest injustice referral concerns the same questions of the law and fact that are at issue in a claim concerning the member that is resolved through the staff determination and appeals process.

§ 13-105. Staff determinations — Notice of adverse determination.

(a)(1) If the staff of the Arkansas Teacher Retirement System make a determination that is adverse to a member's claim, the system shall send a staff determination letter to the member if the claim involves:

(A) An ambiguity in the interpretation of the specific facts of the member's claim that would impact the manner in which the law, rules, or policy applicable to the system are applied to the member's claim;

(B) An ambiguity in the interpretation of the law, rules, or policy applicable to the system; or

(C) An ambiguity concerning the proper application of the law, rules, or policy applicable to the system to the specific facts of the member's claim.

(2) A staff determination letter shall not be issued to a member unless the staff determination letter has been reviewed and approved by an attorney for the system.

(b) A staff determination letter that is issued to a member shall:

(1) Advise the member of the determination and the reasons for the determination;
and

(2) Advise the member of the procedure for requesting a review of the staff determination by the Executive Director of the Arkansas Teacher Retirement System;

(3) Advise the member of the deadline to request a review by the executive director; and

(4) Not include findings of fact and conclusions of law, separately stated.

(c) The written determination of system staff concerning an overpayment collection dispute or the applicability of a salary limitation to a plan or payment shall be treated as a staff determination letter.

(d) A staff determination letter is not and shall not be construed as a final decision or order of the system that may be appealed under the Arkansas Administrative Procedures Act, § 25-15-201 et seq.

(e) The system shall consider a member's claim as closed if the member does not request a review of the staff determination by the executive director within thirty (30) calendar days of the date of the staff determination letter.

§ 13-106. Staff determinations — Review by executive director.

(a)(1) A member shall submit a request for a review of a staff determination by the Executive Director of the Arkansas Teacher Retirement System in writing.

(2) A member shall not be required to resubmit any documents or information with his or her request for a review.

(b)(1) Unless an extension is granted by the Board of Trustees of the Arkansas Teacher Retirement System or the executive director, a member shall not be permitted to request a review of a staff determination by the executive director unless the member's request is received by the Arkansas Teacher Retirement System within thirty (30) calendar days of the date of the staff determination letter.

(2) If the last day to request a review of a staff determination by the executive director falls on an official state holiday or weekend, the member shall have until the next business day to request a review.

(c)(1) The executive director shall promptly send a letter to the member acknowledging the member's request for a review.

(2)(A) The member may submit for review by the executive director any additional relevant documents or information not previously submitted by the member to the system.

(B) The member shall submit the additional documents and information to the executive director within thirty-five (35) calendar days of the date of the executive director's acknowledgement letter.

(d)(1) Upon receiving a member's request for a review of a staff determination, the executive director shall independently review the facts and the law, rules, and policy applicable to the member's claim.

(2) The executive director shall consider the staff determination as well as any relevant documents and information provided by the member.

(3) The executive director may affirm, reverse, or modify the staff determination

before a final determination on the member's claim is made by the board.

(e)(1) The executive director shall send a review determination letter to the member within ninety (90) calendar days from the date on which the member's request for a review was received by the system.

(2) A review determination letter shall:

(A) Advise the member of the determination and the applicable law, rules, and policy used by the executive director to reach his or her determination;

(B) Advise the member of the procedure for appealing the review determination letter to the board;

(C) Advise the member of the deadline to appeal the review determination letter to the board; and

(D) Not include findings of fact and conclusions of law, separately stated.

(f) A review determination letter is not and shall not be construed as a final decision or order of the system that may be appealed under the Arkansas Administrative Procedures Act, § 25-15-201 et seq.

(g) The system shall consider a member's claim as closed if the member does not appeal the executive director's review determination within thirty (30) calendar days of the date of the review determination letter.

§ 13-107. Staff determinations — Appeals — Initiation of appeal to the Board of Trustees of the Arkansas Teacher Retirement System.

(a) A review determination of the Executive Director of the Arkansas Teacher Retirement System may be appealed by the member to the Board of Trustees of the Arkansas Teacher Retirement System.

(b)(1) A member shall appeal a review determination of the executive director in writing by filing a signed notice of appeal with the Arkansas Teacher Retirement System in the manner required by the system.

(2) A member shall file his or her signed notice of appeal with the system within thirty (30) calendar days of the date of the review determination letter.

(c) A member shall address and deliver his or her signed notice of appeal to the Board of Trustees of the Arkansas Teacher Retirement System, Member Appeals, ATTN: Legal Department, 1400 West Third Street, Little Rock, Arkansas, 72201.

§ 13-108. Staff determinations — Appeals — Assignment of hearing officer.

(a)(1) All member appeals of a review determination shall be assigned to a hearing officer.

(2) The executive director or his or her designee shall appoint a hearing officer from a list of qualified individuals approved by the executive director.

(3) The hearing officer shall conduct an administrative hearing, recommend factual and legal determinations, and prepare a proposed order for the board that includes findings of fact and conclusions of law, **separately stated**.

(b)(1) Following appointment, the hearing officer shall issue a written scheduling order to the member, executive director, and legal counsel for the system.

(2) The scheduling order shall contain include all information required under the Arkansas Administrative Procedures Act, § 25-19-201 et seq.

(3) The hearing officer, at his or her discretion, may include in the scheduling order reasonable deadlines for the submission and exchange of exhibits, witness lists, and

related materials before the hearing, including without limitation, any requested proposed findings of fact and conclusions of law.

(4) The hearing officer may continue any scheduled matter at his or her discretion for good cause shown by any party or counsel of record.

(c) Unless otherwise ordered, hearings shall be held at the Arkansas Teacher Retirement System, 1400 West Third Street, Little Rock, Arkansas 72201.

§ 13-109. Staff determinations — Appeals — Filing documents.

(a) Following the appointment of a hearing officer, all correspondence, documents, requests, submissions, filings and other documents relating to an appeal shall be mailed or hand delivered to the Arkansas Teacher Retirement System, Member Appeals, ATTN: Legal Department, 1400 West Third Street, Little Rock, Arkansas, 72201.

(b) Any party submitting or filing a document relating to an appeal shall simultaneously deliver a copy of the filing or document to the opposing party or, if applicable, opposing counsel.

(c) The Arkansas Teacher Retirement System shall be the responsible for ensuring that:

(1) Copies of all correspondence, documents, requests, submissions, filings, and other documents relating to an appeal are provided in a timely manner to the hearing officer; and

(2) A complete record of each appellate proceeding before a hearing officer and the Board of Trustees of the Arkansas Teacher Retirement System is prepared and maintained in a single, centralized location.

§ 13-110. Staff determinations — Appeals — Hearings.

(a) The hearing is an administrative hearing before the hearing officer and is not a hearing before the Board of Trustees of the Arkansas Teacher Retirement System.

(b)(1) All hearings shall be conducted according to [the rules concerning the staff determination appeal process](#) and the corresponding procedural provisions of the Arkansas Administrative Procedures Act, § 25-15-201 et seq.

(2) The hearing shall be informal and the formal rules of evidence shall not apply.

(3) In conducting a hearing, the hearing officer shall not be bound by the formal rules of evidence, and no informality in any proceedings or in the manner of taking of testimony shall invalidate any order or decision of the board.

(c) A member shall at all times have the right to counsel, provided that such counsel:

(1) Is duly licensed to practice law in the State of Arkansas; or

(2) Has been granted permission to appear *pro hac vice* by the hearing officer.

(d)(1) All hearings shall be conducted in an orderly manner.

(2) The hearing officer shall have the authority to maintain the decorum of the hearing and may clear the hearing room of witnesses who are not under examination.

(e) If a member fails to appear at the hearing, the member waives his or her right to present evidence and arguments to the hearing officer and the hearing officer may proceed with the hearing and prepare a proposed order for the board's consideration based on the evidence presented.

(f) The hearing officer shall have the authority to administer oaths and affirmations.

(g)(1) Each party shall be entitled to examine and cross-examine witnesses, present evidence, make arguments, and generally participate in the conduct of the proceeding.

(2) The hearing officer may question a witness during any portion of the direct or cross-examination of the witness.

(3)(A) Before giving testimony, each witness shall swear or affirm that the testimony about to be given shall be the truth, the whole truth, and nothing but the truth.

(B) All testimony considered by the hearing officer, except for matters officially noticed or entered by stipulation, shall be sworn testimony.

(h)(1) The hearing officer may admit into the record any evidence that in his or her judgment:

(A) Has a reasonable degree of probative value and trustworthiness; or

(B) Is of a type or nature commonly relied upon by reasonably prudent people in the conduct of their affairs.

(2) The hearing officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(3) Objections to evidentiary offers may be made and shall be noted of record.

(4) Documents received into evidence by the hearing officer shall be marked and filed as part of the record.

(i) Following the close of evidentiary submissions and witness testimony, the hearing officer may in his or her discretion allow summations and closing arguments by the parties.

(j)(1) The Arkansas Teacher Retirement System shall arrange for a court reporter to attend and record all hearings.

(2)(A) The system shall pay the cost for preparing a transcript of the hearing.

(B) Upon receiving the hearing transcript, the system shall promptly forward a copy of the transcript to the hearing officer and the member or, if applicable, the member's counsel.

§ 13-111. Staff determinations — Appeals — Post-hearing briefs.

(a)(1) Upon the completion of the hearing, the hearing officer may allow the parties to submit post-hearing briefs to be included as part of the record on appeal.

(2) The decision on whether or not to allow the submission of post-hearing briefs is within the sole discretion of the hearing officer.

(3) A hearing officer's decision to not allow post-hearing briefs shall have no effect on the validity of any order or decision issued by the Board of Trustees of the Arkansas Teacher Retirement System.

(b) If a hearing officer grants the member or the Arkansas Teacher Retirement System an opportunity to submit a post-hearing brief, the hearing officer shall provide the opposing party an opportunity to submit a response.

(c) The hearing officer shall have discretion to set reasonable deadlines for the parties to submit post-hearing briefs and responses, provided that the parties shall be allowed a minimum of fourteen (14) calendar days from the date of receipt of the hearing transcript before any initial post-hearing brief shall be due for filing.

§ 13-112. Staff determinations — Appeals — Proposed orders.

(a) After the hearing officer receives all evidence, arguments, and, if applicable, post-hearing briefs, the record before the hearing officer shall be officially closed.

(b)(1) After the record before the hearing officer is closed and the hearing officer has

considered all of the evidence, the hearing officer shall, as soon as practical, prepare a proposed order to be delivered to the Board of Trustees of the Arkansas Teacher Retirement System.

(2) The proposed order shall include:

(A) Findings of fact based exclusively on the evidence and testimony in the record of the hearing;

(B) Conclusions of law **that shall be separately stated from the findings of fact;** and

(C) A recommendation to the board.

(3)(A) The hearing officer shall provide the proposed order to the board via e-mail and via United States mail addressed to the Arkansas Teacher Retirement System, Member Appeals, ATTN: Legal Department, 1400 West Third Street, Little Rock, Arkansas, 72201.

(B) Upon receiving the proposed order, the system shall mail a copy of the proposed order to the member and, if applicable, the member's counsel via Certified, First Class, United States mail, with a copy to the Executive Director of the Arkansas Teacher Retirement System.

§ 13-113. Staff determinations — Appeals — Objections to proposed orders.

(a)(1) The member shall have the right to file a written statement of objections outlining any objections, exceptions, and arguments that the member determines should be considered by the Board of Trustees of the Arkansas Teacher Retirement System during the board's evaluation of the hearing officer's proposed order.

(2) A member shall not be permitted to introduce additional evidence or testimony in his or her statement of objections.

(b) A member's written statement of objections shall be delivered to the Arkansas Teacher Retirement System within twenty-one (21) calendar days of the member's receipt of the hearing officer's proposed order.

(c)(1) Counsel for the system may prepare a written response to any written statement of objections filed by the member.

(2) A copy of any response by the system shall be provided to the board and the member and, if applicable, the member's counsel, before the board meeting at which the hearing officer's proposed order is scheduled to be considered by the board.

§ 13-114. Staff determinations — Appeals — Consideration of proposed orders by the Board of Trustees of the Arkansas Teacher Retirement System.

(a) The Board of Trustees of the Arkansas Teacher Retirement System shall render a final determination on the hearing officer's proposed order.

(b)(1) The board's consideration of the hearing officer's proposed order shall be scheduled within a reasonable time to be heard, at a regular meeting of the board after the issuance of the proposed order.

(2) The board may call an emergency meeting to consider the hearing officer's proposed order if the situation warrants.

(3) The Arkansas Teacher Retirement System shall notify the member and, if applicable, the member's counsel in writing of the date, time, and location of the board meeting at which the board intends to consider the hearing officer's proposed order.

(c)(1) Before rendering a decision on the hearing officer's proposed order, the board may request that the member and, if applicable, the member's counsel make a brief statement to the board concerning facts and any arguments that the member wishes to present and respond to any questions from the board.

(2) The board's consideration of a brief statement and any responses to questions made by the member or, if applicable, the member's counsel shall not require the board to conduct another hearing and shall be based on the hearing previously conducted before the hearing officer.

(2) The chairman of the board shall have the final authority to set the amount of time any party may have to make a statement to the board.

(d)(1) Failure of a member to appear at the meeting of the board without prior notification shall result in the member waiving his or her right to be heard by the board.

(2)(A) A member may petition the board for another opportunity to address the board.

(B) The board may grant a member's petition for another opportunity to address the board if the board determines that the member's absence was for good cause.

(e)(1) After the board's consideration of the hearing officer's proposed order, the board shall either accept or reject all or part of the hearing officer's proposed order.

(2) The board may either accept the proposed order, reject the proposed order, or accept the proposed order as modified by the board.

(3) If the board rejects the proposed order or accepts the proposed order as modified by the board, the board may:

(A) Prepare its own written findings of fact and conclusions of law, **separately state**, and issue its own order based upon those findings and conclusions;

(B) Consider manifest injustice as a basis for any remedy; or

(C) Remand the matter in whole or in part to the hearing officer for reconsideration of additional findings of fact or conclusions of law or both additional findings of fact and conclusions of law.

(f) A quorum of votes of the board is necessary to approve any motion, resolution, or order under the board's consideration.

(g)(1) Following the board's decision on the hearing officer's proposed order, the board shall prepare a written final order on the member's appeal.

(2) The board's final order shall include findings of fact and conclusions of law, separately stated, that were relied upon by the board in formulating the final order.

(3) **The board's final order shall be a final decision or order of the system that may be appealed under the Arkansas Administrative Procedures Act, § 25-15-201 et seq.**

(4) A copy of the board's final order, including the board's findings of fact and conclusions of law, **separately stated**, shall be delivered by the Executive Director of the Arkansas Teacher Retirement System to the member and, if applicable, the member's counsel via Certified, First Class, United States.

§ 13-115. Staff determinations — Appeals — Settlement authority.

(a) **With the member's written consent or, if applicable, the written consent of the member's counsel, the Executive Director the Arkansas Teacher Retirement System may suspend his or her review of a member's claim being considered under the rules**

concerning the staff determination and appeal process if the member's claim may be more expediently resolved using the manifest injustice process.

(b) The executive director may settle any claim in a manner mutually agreeable to the Arkansas Teacher Retirement System and the member at any time before the Board of Trustees of the Arkansas Teacher Retirement System issues its final order on the member's appeal.

(c) In settling any claim, the executive director shall not exceed the authority previously granted to him or her by the board.

(d) The executive director shall report any settlement that occurs after the hearing officer issues a proposed order to the board.

§ 13-116. Staff determinations — Appeals — Rights of members under the Arkansas Administrative Procedures Act.

(a) A member who receives an adverse final order from the Board of Trustees of the Arkansas Teacher Retirement System retains certain rights under the Arkansas Administrative Procedures Act, § 25-15-201 et seq.

(b)(1) A member may file a petition for judicial review under the Arkansas Administrative Procedures Act, § 25-15-201 et seq.

(2) A petition for judicial review of a final or of the board shall be filed by the member within thirty (30) days after service of the board's final order on the member.

(3) A member shall file the petition for judicial review in Pulaski County Circuit Court or the circuit court of any county in which the member resides or does business.

§ 13-117. Staff determinations — Appeals — Ex parte communications.

(a) The Arkansas Administrative Procedures Act, § 25-15-201 et seq., prohibits direct or indirect communications between the members and staff of the Arkansas Teacher Retirement System and a hearing officer or a member of the Board of Trustees of the Arkansas Teacher Retirement System concerning any issue of fact or law at issue in a member's appeal unless there has been notice providing all parties with an opportunity to participate in the communication.

(b) A hearing officer and a member of the board shall not consider any ex-parte or off-the-record evidence or statements made to them by the member or a staff member of the system in connection with a pending appeal.

(c) This section does not preclude communications by and between the hearing officer, system staff, and the board concerning minor scheduling and procedural matters necessary to timely and efficiently process and handle member appeals under the rules concerning the staff determination and appeal process.

§ 13-118. Manifest injustice.

(a) The Board of Trustees of the Arkansas Teacher Retirement System may waive or modify the impact of a rule, provision, or law applicable to the Arkansas Teacher Retirement System that does not violate a federal law or jeopardize the tax qualified status of the system in order to prevent a manifest injustice to a member, benefit participant, covered employer, or the system.

(b)(1) The process of declaring a manifest injustice is a rare and extraordinary remedy that shall not be used as a routine method of addressing error, oversight, or simple

mistake.

(2) As an extraordinary remedy, manifest injustice shall be cautiously and carefully used to prevent unfairness, to preserve the integrity of the system, and to avoid or correct unduly harsh or unconscionable outcomes.

(c) In determining whether or not a manifest injustice exists, the system may consider:

(1) The degree of fault of the system, benefit participant, or employer;

(2) An ambiguity in the interpretation of the circumstances, rule, or law;

(3) The cost to the system of correcting the error that is far outweighed by the benefit afforded to the system, benefit participant, or employer;

(4) Whether or not an expedited decision is in the public interest;

(5) The fundamental fairness of a remedy in a particular situation; and

(6) Whether or not the status quo would result in an unconscionable outcome.

(d)(1) The manifest injustice process shall not be used to address a change, omission, or error in the records of the system that may be corrected within the look-back period.

(2) The manifest injustice process may be used to correct a change, omission, or error in the records of the system discovered after the look-back period if the board determines that the time limitation imposed by the look-back period would cause a manifest injustice.

§ 13-119. Manifest injustice — Referrals.

(a) A manifest injustice referral shall be made to the Executive Director of the Arkansas Teacher Retirement System.

(b)(1) The following persons or entities may submit a manifest injustice referral to the executive director:

(A) A member of the Board of Trustees of the Arkansas Teacher Retirement System;

(B) A staff member of the system, including without limitation the executive director;

(C) A benefit participant as defined by Arkansas Code § 24-7-202;

(D) A covered employer; or

(E) A guardian, fiduciary, or other interested party.

(2) A member of the Manifest Injustice Committee shall not be permitted to make a manifest injustice referral to the executive director.

(c)(1) The Arkansas Teacher Retirement System shall create and maintain a record of each manifest injustice referral submitted to the executive director and the resolution of the manifest injustice referral.

(2) The executive director shall submit all manifest injustice referrals to the committee.

(3) Each referral shall be given a number and a year designation by the committee.

§ 13-120. Manifest injustice — Authority of executive director.

(a) With the member's written consent or, if applicable, the written consent of the member's counsel, the Executive Director the Arkansas Teacher Retirement System may suspend his or her review of a member's claim being considered under the rules concerning the staff determination and appeal process if the member's claim may be

more expediently resolved using the manifest injustice process.

(b)(1) The executive director is authorized to implement a resolution of a manifest injustice after a determination is made that a manifest injustice exists using the rules concerning the manifest injustice process.

(2)(A) The executive director may implement a resolution of a manifest injustice of up to **five thousand dollars (\$5,000)** of direct financial impact to the Arkansas Teacher Retirement System.

(B) The executive director shall provide the chair of the Board of Trustees of the Arkansas Teacher Retirement System with written notice of a manifest injustice determination and the proposed resolution before implementing the resolution if a resolution has a direct financial impact on the system in an amount exceeding five thousand dollars (\$5,000).

(c)(1) The executive director shall not waive a deadline that may apply in the law or rules applicable to the system.

(2) Only the Board of Trustees of the Arkansas Teacher Retirement System may waive a deadline.

(d)(1) The executive director shall provide a report to the board at least biannually that:

(A) Outlines the facts and circumstances of each manifest injustice referral;

(B) Describes findings and recommendations of the manifest injustice committee; and

(C) Provides and explains the resolution of the manifest injustice referral if a manifest injustice is found.

(2) The names of members or other information that is not material to the findings shall not be required in the report to the board.

§ 13-121. Manifest injustice — Manifest Injustice Committee.

(a) The Arkansas Teacher Retirement System's General Counsel and two (2) members of senior management designated by the Executive Director shall be the sole members of the Manifest Injustice Committee.

(b)(1) The committee shall review all manifest injustice referrals and shall meet on a reasonable schedule or as needed to review manifest injustice referrals.

(2) If a committee member has a conflict or otherwise cannot review or act on a manifest injustice referral due to absence, sickness, or work load, the committee member may appoint a representative from his or her supervised staff to review or act on the manifest injustice referral on the committee member's behalf.

(3) A majority vote of the committee shall constitute a recommendation on a manifest injustice referral.

(c)(1) The committee may request that a party to the manifest injustice referral provide information or input concerning the manifest injustice referral.

(2) A party to the manifest injustice referral is not required to provide any information or input requested by the committee.

(d)(1) The committee shall make a recommendation on the existence of a manifest injustice to the Executive Director of the Arkansas Teacher Retirement System based upon the committee's review of the manifest injustice referral.

(2) If the committee finds that a manifest injustice exists, then the committee shall propose and include in its recommendation a resolution of the manifest injustice.

§ 13-122. Manifest injustice — Review of recommendation.

(a)(1) The Executive Director of the Arkansas Teacher Retirement System shall review the manifest injustice referral and the Manifest Injustice Committee's basis for the recommendation.

(2)(A) The executive director may request that a party to the manifest injustice referral provide information or input concerning the manifest injustice referral.

(B) A party to the manifest injustice referral is not required to provide any information or input requested by the executive director.

(b)(1) The executive director may either accept the committee's recommendation or return the manifest injustice referral to the committee for further consideration if the executive director disagrees with the committee's recommendation.

(2)(A) The manifest injustice referral shall be considered reviewed and closed if the committee recommends that a manifest injustice exists and the executive director accepts the recommendation.

(B) If the committee recommends that a manifest injustice exists and the executive director accepts the recommendation, the executive director may either adopt the resolution suggested by the committee or an alternative resolution that the executive director is authorized to implement.

(C) A committee's recommendation that is accepted by the executive director and finds that a manifest injustice exists is not appealable under the rules concerning the staff determination appeal process or the Arkansas Administrative Procedures Act, § 25-15-201 et seq.

(3)(A) The manifest injustice referral shall be considered reviewed and closed if the committee recommends that a manifest injustice does not exist, the executive director accepts the recommendation, and the recommendation is not appealed to the Board of Trustees of the Arkansas Teacher Retirement System using the rules concerning the staff determination appeal process.

(B)(i) A committee's recommendation that is accepted by the executive director and finds that a manifest injustice does not exist may be appealed to the board using the rules concerning the staff determination appeal process if the manifest injustice referral involves:

(a) An ambiguity in the interpretation of the specific facts of the member's claim that would impact the manner in which the law, rules, or policy applicable to the system are applied to the member's claim;

(b) An ambiguity in the interpretation of the law, rules, or policy applicable to the system; or

(c) An ambiguity concerning the proper application of the law, rules, or policy applicable to the system to the specific facts of the member's claim.

(ii) A board member or staff member of the system shall not be permitted to appeal a committee's recommendation that is accepted by the executive director.

(iii) A committee's written recommendation shall not be considered a final decision or order of the system that may be appealed under the Arkansas Administrative Procedures Act, § 25-15-201 et seq.

(4)(A) If a manifest injustice referral is returned to the committee by the executive director, the manifest injustice committee shall reconsider the manifest injustice referral

and take into consideration any addition information provided by the executive director.

(B) The committee may maintain or amend its original recommendation after reconsidering a manifest injustice referral that is returned by the executive director.

(C)(i) If the committee maintains its original recommendation and the executive director does not accept the recommendation, the executive director may include the manifest injustice referral as an action item on the agenda of the board's next scheduled meeting for consideration and resolution by board.

(ii) If the manifest injustice referral was submitted by a person or entity who is not a board or staff member of the Arkansas Teacher Retirement System, the system shall send the person or entity written notice that:

(a) Provides the time and date on which the board intends to consider the manifest injustice referral;

(b) Advises the person or entity that the person or entity may present arguments to the board concerning the manifest injustice referral;

(c) Advises the person or entity that the system will send the person or entity a written final order of the board after the board meeting; and

(d) Advises that the board's final order shall be a final decision or order of the system that may be appealed by the person or entity under the Arkansas Administrative Procedures Act, § 25-15-201 et seq.

(D) If the board finds that a manifest injustice does exist, the board may implement a resolution suggested by the system's staff or an alternative resolution.

(E) A final order of the board concerning a manifest injustice referral shall be considered the final decision or order of the system that may be appealed under the Arkansas Administrative Procedures Act, § 25-15-201 et seq.

Authority: Arkansas Code §§ 24-7-202, 24-7-205, and 25-15-201 — 24-15-219.

History

<u>Approved:</u>	<u>February 1, 2010</u>	<u>(Emergency), 13-1</u>
<u>Approved:</u>	<u>June 7, 2010</u>	<u>Permanent, 13-1</u>
<u>Approved by Board:</u>	<u>July 26, 2013</u>	<u>13-1, 17-1</u>
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<u>Effective:</u>	<u>TBD</u>	<u>Rule 13-1</u>

~~RULE 17-1~~

~~MANIFEST INJUSTICE~~

~~I. BACKGROUND AND PURPOSE.~~

~~The 89th General Assembly provided the ATRS Board the extraordinary remedy of waiving any rule, provision, or law that does not violate a federal law or rule in order to prevent a manifest injustice to a member, benefit participant, ATRS employer, or ATRS. Act 303 of 2013 grants that authority to the Board, and is codified at A.C.A. § 24-7-205 as follows:~~

~~"(e) The board or its designee may waive or modify the impact of a rule, provision, or law that does not violate federal law or jeopardize the taxqualified status of the system to correct or prevent a **manifest injustice** (emphasis added) that would affect the system, benefit participant, or employer in a particular instance."~~

~~The definition of manifest injustice can be found at Ark. Code. Ann 24-7202(40)(A) as follows:~~

~~"(40)(A) "Manifest injustice" means an obvious unfairness that has a direct and observable unconscionable effect that will occur as a result of a technical error or error of judgment, when the error made by the system, a benefit participant, or employer, and the disparity of outcome to the parties, when taken together and supported by clear and convincing evidence, show a great harm to the integrity of the system as a whole, the benefit participant, or an employer, unless the system is afforded the discretion to resolve the matter in a fair manner.~~

~~(B) In determining manifest injustice the system may consider:~~

- ~~(i) The degree of fault of the system, benefit participant, or employer;~~
- ~~(ii) An ambiguity in the interpretation of the circumstances, rule, or law;~~
- ~~(iii) The cost to the system of correcting the error that is far outweighed by the benefit afforded to the system, benefit participant, or employer;~~

- (iv) Whether or not an expedited decision is in the public interest;*
- (v) The fundamental fairness of a remedy in a particular situation; and*
- (vi) Whether or not the status quo would result in an unconscionable outcome."*

II. GENERAL

The process of declaring a manifest injustice is a rare and extraordinary remedy that shall not be used as a routine method of addressing error, oversight, or simple mistake. As an extraordinary remedy, manifest injustice shall be cautiously and carefully used to prevent unfairness, to preserve the integrity of ATRS, and to avoid or correct unduly harsh or unconscionable outcomes.

III. DELEGATION TO ATRS EXECUTIVE DIRECTOR.

- A. The ATRS Executive Director is hereby given authority to implement a resolution of a manifest injustice once a determination is made that a manifest injustice exists using the review process set forth herein. The Executive Director may implement a resolution of a manifest injustice of up to \$10,000 of direct financial impact to ATRS. The Executive Director is specifically prohibited from waiving any deadlines that may apply in the ATRS Rules or law. Any waiver of a deadline is exclusively a Board remedy and not a remedy available to the ATRS Executive Director. Provided however, if any resolution that has a direct financial impact of more than \$5,000, then ATRS Executive Director shall provide the Chair of the ATRS Board of Trustees written notice about the manifest injustice determination and proposed resolution prior to implementing the resolution.
- B. The Executive Director is specifically prohibited from waiving any deadline that may apply in the ATRS Rules or law. A waiver of a deadline is exclusively a Board remedy and not a remedy available to the Executive Director.
- C. The Executive Director shall provide a report to the Board at least biannually that outlines the facts and circumstances of each manifest injustice referral, sets forth the findings and recommendations of the Manifest Injustice Committee, and sets forth and explains the resolution of the manifest injustice, if a manifest injustice is found. Members' names or other information that is not material to the findings shall not be required in the report to the Board.

IV. ~~MANIFEST INJUSTICE COMMITTEE.~~

- A. ~~The ATRS General Counsel, Assistant Director of Fiscal Affairs, and Member Services Administrator shall act as a 3-person Manifest Injustice Committee (the "Committee") to review all manifest injustice referrals.~~
- i. ~~The Committee will meet on a reasonable schedule or as needed to review any referral.~~
 - ii. ~~A majority vote of the Committee shall constitute a recommendation on the referral.~~
 - iii. ~~The Committee shall make an initial recommendation to the Executive Director based upon its review of the referral regarding whether or not a manifest injustice exists. If a manifest injustice exists, then the Committee shall propose a resolution of the manifest injustice to the Executive Director.~~
- B. ~~If the Committee determines that no manifest injustice exists in a referral, then the Executive Director shall review the referral and the Committee's basis for the recommendation. The Executive Director may either accept the recommendation or return the referral to the Committee for further consideration.~~
- i. ~~If the Executive Director accepts the recommendation from the Committee, the discretionary review is officially ended and the matter is to be considered officially closed.~~
 - ii. ~~If the referral is returned to the Committee, the Committee shall consider the matter again in light of any additional information provided by the Executive Director. If the Committee's recommendation remains that no manifest injustice exists, the matter shall be considered officially closed, unless referred to the Board.~~
- C. ~~If the Committee determines that a manifest injustice does exist, then the Executive Director may implement the resolution suggested by the Committee or adopt an alternate resolution that falls within the Executive Director's delegated authority.~~
- D. ~~If the Executive Director disagrees with the Committee's determination that a manifest injustice exists, then the Executive Director may return the referral~~

~~for further consideration. If the Committee maintains the determination that a manifest injustice exists after the return of the referral, and the Executive Director continues to disagree, then the Executive Director may place the item on the Board agenda for the Board to consider and resolve, with input from both the Committee and Executive Director concerning the referral.~~

- ~~E. If a member of the Committee has a conflict or otherwise cannot act on a manifest injustice referral due to absence, sickness, or work load, a Committee member may appoint a representative from their Staff for a committee meeting.~~
- ~~F. A party may not administratively appeal a determination of a referral of manifest injustice, regardless of whether the determination occurs from the Executive Director's decision or through the Board's decision.~~

~~V. The Executive Director may suspend an Executive Director Review if a manifest injustice determination might resolve the issue within the Executive Director review. The Executive Director review shall not be suspended absent the consent of the affected party/parties in the Executive Director review.~~

~~VI. REFERRALS.~~

~~A. A referral of a potential or alleged manifest injustice may be made to the Executive Director by any:~~

- ~~i. ATRS Trustee; ii. ATRS Staff member, including the Executive Director; iii. Benefit Participant; iv. Beneficiary;~~
- ~~v. ATRS covered Employer; or vi. Other interested party such as guardian or fiduciary.~~

~~B. A referral shall be made to the Executive Director in order to create and preserve an appropriate record with ATRS.~~

- ~~i. Each referral shall be given a number and a year designation. For _____ example: "2013-MI-1, 2013-MI-2, 2013-MI-3" and so forth.~~

- ~~ii. The Executive Director shall submit all referrals to the Committee.~~

- ~~VII. The Committee or the Executive Director may request that a party to a manifest injustice referral provide information or input concerning the referral. A party is not required to provide information.~~
- ~~VIII. A Board decision on a manifest injustice referral is a final discretionary decision and is not subject to further review.~~

~~Approved by Board: July 26, 2013~~

~~Adopted: October 9, 2013~~

~~Effective: November 8, 2013~~

ATRS Board Policy 4

STATEMENT OF INVESTMENT POLICY

A.C.A. § 24-7-305

I. Board - Investment Policies and Procedures

A. Statement of Investment Policy

1. This Investment Policy has been prepared within the context of applicable Arkansas laws and is intended to allow for sufficient flexibility in the investment process to capture opportunities, yet ensure that both prudence and care are maintained in the execution of the investment program. While safety of principal is given primary consideration, the Arkansas Teacher Retirement System Board of Trustees (“Board”) may take appropriate levels of risk to earn higher levels of investment return.
2. The Board has arrived at this policy through careful study of the rates of return and risks associated with various investment strategies in relation to the current and projected liabilities of the Arkansas Teacher Retirement System (“the System”). This policy has been chosen as the most appropriate for achieving the financial objectives of the System. The policy will be reviewed periodically as circumstances dictate.
3. The Board has adopted a long-term investment horizon so that the chances and duration of investment losses are carefully weighed against the long-term potential for appreciation of assets. The assets of the System will be invested in a manner that provides the safeguards and diversity to which a prudent investor would adhere. All transactions undertaken on behalf of the System will be in the sole interest of the System’s plan beneficiaries.
4. To achieve the overall investment goal of the System, one or more investment consultants may be retained by the Board as investment advisors. The scope of duties, together with the terms and conditions of engagement, of any investment consultant will be set forth in a contract approved by the Board. Throughout this document, investment advisors are referred to as investment consultants.
5. The System shall manage those assets not specifically allocated to investment managers. No investment shall be made without an investment consultant's recommendation. The System shall not approve any material changes in any direct investment without first receiving written advice or a written recommendation from a third-party investment consultant and, if needed, outside legal counsel, and,

without thereafter receiving written approval by the Investment Committee and Board.

B. Divestment of Direct Holdings Held with Certain Financial Services Providers

1. The System shall divest from all direct holdings that it has with a financial services provider included on the list published on the Treasurer of State's website under § 25-1-1002. Divestment shall occur as soon as practicable, but no later than three hundred sixty-five (365) calendar days after the financial services provider's inclusion on the list published on the Treasurer of State's website.
2. However, in order to prevent financial harm to the System and to ensure that the System's fiduciary duty is met, the System shall not divest from an investment that it has with a financial services provider included on the list published on the Treasurer of State's website under § 25-1-1002 if the investment is locked into a maturity date and an early divestment would result in a financial penalty and cause a negative financial impact to the System.

C. Investments in Countries of Concern

1. In order to comply with Arkansas Code § 25-1-1201 et seq. and also to ensure that System funds are not invested in the development of technologies and products that may threaten the national security of the United States, the System shall not directly hold any equity interest or debt financing interest in any entity that is:
 - a. Owned in whole or with a majority ownership by the government of the People's Republic of China; or
 - b. Subject to any investment restrictions imposed by the United States Department of the Treasury because the entity is located in a country of concern and is engaged in activities that may contribute to a threat to the national security of the United States.
2. For any prohibited investment held by the System as of the adoption of this section, the Executive Director, in cooperation with the investment consultant and other necessary parties, shall divest the System of any excluded holdings as soon as divestment is practicable and would not result in a financial penalty or cause a material negative impact to the System.

D. Standard of Care

1. When investing and reinvesting trust assets and in acquiring, retaining, managing and disposing of investments of the trust assets, there shall be exercised the reasonable care, skill, and caution that a prudent investor would use after considering the purposes, terms, distribution requirements, and other circumstances of the trust. Investment and management decisions respecting individual assets shall be evaluated not in isolation, but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust. The investments of the trust shall be diversified unless the Board reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying. The trust assets shall be invested and managed solely in the interest of the members and benefit recipients of the trust. The trust assets shall be invested in a manner to only incur costs that are appropriate and reasonable in relation to the assets and purposes of the investment. Compliance with the standard of care is determined in light of facts and circumstances at the time of action, not in hindsight.
2. Investment and management functions may be delegated to an investment agent that a prudent trustee of comparable skills could properly delegate under the circumstances. When making such delegation, the Board shall establish the scope and terms of the delegation, consistent with the purposes and terms of the trust, and shall monitor the investment agent performance and compliance with the terms of the delegation. In performing a delegated function, an investment agent owes a duty to the System and the trust to exercise reasonable care to comply with the terms of the delegation. The assets of the System allocated to the investment managers shall be diligently managed, which may include selling investments and realizing losses, if such action is considered advantageous to longer-term return maximization. In addition, the Executive Director may delegate certain duties to the System's investment staff without relieving the Executive Director from the ultimate responsibility.
3. Each party serving in a fiduciary capacity for the trust shall discharge his or her duties solely in the pecuniary interest of the participants and beneficiaries and in compliance with Arkansas Code § 24-2-801 et seq. A fiduciary's evaluation of an investment, or evaluation or exercise of any right appurtenant to an investment, shall take into account only pecuniary factors.
4. Each party serving in a fiduciary capacity for the trust shall apply the standard of care set forth herein.

E. Asset Allocation

- The Board is responsible for the prudent investment of funds and to maintain a proper allocation of the System's investment assets. The Board, in conjunction with its investment consultants, shall set and adjust the System's asset allocation ranges as necessary to provide an optimal allocation to obtain its target returns. The general investment consultant shall notify the Executive Director and the Board when an asset liability modeling study should be undertaken. It shall be the goal of the System to maintain the following asset allocation targets and ranges:

Asset Category	Minimum*	Target	Maximum*
Total Equity	48.0% <u>43.0%</u>	53.0% <u>48.0%</u>	58.0% <u>53.0%</u> * *
Fixed Income	13.0% <u>17.0%</u>	15.0% <u>20.0%</u>	17.0% <u>23.0%</u>
Opportunistic/Alternatives	N/A	5.0%	N/A
Real Assets***	N/A	15.0%	N/A
Private Equity	N/A	12.0%	N/A
Cash Equivalents	0.0%	0.0%	5.0%

* Due to the illiquid nature of opportunistic/alternatives, real assets, and private equity, it is not prudent to set rebalancing ranges for these asset classes.

**Additional allocations to total equity may be made beyond the maximum range to serve as a placeholder for unfunded and uncommitted opportunistic/alternatives, real assets, and private equity.

***Real assets includes real estate, timber, agriculture, and infrastructure.

F. Rebalancing

- The asset allocation ranges established by the Board represent the Board's judgment of a portfolio mix that provides the greatest risk/return value. Allowing the portfolio to exceed the Board limits strays from the financial discipline, which the Board believes will - over time - provide the appropriate risk-adjusted return to the System.
- The Executive Director is responsible for rebalancing the allowable asset classes and the individual portfolios if any of the asset classes falls outside of the designated range. The general investment consultant shall provide guidance and advice to the Executive Director to best achieve the rebalancing.

3. Rebalancing among individual investment manager portfolios within asset classes may also be necessary to ensure the appropriate level of diversification is achieved by investment style, market capitalization or risk levels (see total asset class guidelines) and/or to take advantage of market conditions, fund manager expertise, opportunities, or other circumstances that could be beneficial to ATRS.
4. The Executive Director may rebalance across all equity managers, all equity holdings, all fixed income managers, and all fixed income holdings. A Board approved transition manager may be used for rebalancing. Rebalancing including the use of a Board approved transition manager, as needed, may be initiated by the Executive Director after recommendation from the appropriate investment consultant and positive notice to the Board Chair. The Executive Director and general investment consultant will monitor the asset values by classification for each asset manager on a monthly basis, based on month-end data provided by the custodial bank. The Executive Director and general investment consultant shall regularly inform the Board on the rebalancing pacing and strategy.
5. Whenever the minimum or maximum range of total equity or fixed income has been exceeded, a transfer of funds or other appropriate action will occur to bring the actual allocation within the prescribed range within a time frame determined to be prudent by the Executive Director in consultation with the general investment consultant.
6. Normal plan cash flows should be used to the extent possible to rebalance. Interest, dividends, and plan contributions should be used to the extent possible to fund asset classes that are below their target. Withdrawals should be made from asset classes that are above their target.

G. Investment Manager Selection

1. The System may hire and retain individual investment managers to implement the System's investment strategy.
2. Arkansas Code § 24-2-610 et seq. requires ATRS to always operate under the prudent investor rule. The prudent investor rule requires all investment decisions to be made based on the experience of management, rates of return, appropriate risk, reasonable cost, and all other relevant factors that should be used by prudent investors.
3. It is the policy of the Board to include, whenever appropriate, qualified minority-owned and women-owned business enterprises in the System's investment manager selection process and to objectively evaluate all qualified investment manager candidates regardless of race, gender or disability.

4. The Board will evaluate all qualified investment manager candidates with emphasis on demonstrated professional performance, organizational depth, institutional investment management capability, and reasonableness of fee structure regardless of the amount of investment assets under management or the age of the investment management firm.
5. The Board shall only hire and retain professional consultants that do not use discriminatory practices in the creation and maintenance of their investment manager databases and will require the investment consultants to affirm their use of non-discriminatory practices when recommending investment manager candidates to the Board.
6. The Board shall only hire and retain investment managers and professional consultants that agree to provide services to the System in a manner that complies with Arkansas Code § 24-2-601 et seq., 24-2-801 et seq., 25-1-1001 et seq., and 25-1-1201 et seq.

H. Goals

1. Recognizing the purpose of the System is to remain actuarially sound and pay member benefits, the overall investment goal is to achieve, over a period of years, the greatest rate of return for the System with due consideration given to preserving capital and its purchasing power, and to maintain an appropriate level of risk consistent with the obligations of a prudent investor. The return of the System should exceed, net of fees, a policy benchmark comprised of the respective asset class benchmarks weighted by the asset class policy targets over a full market cycle (approximately five years). During periods of transition to and from nonmarketable and illiquid asset classes such as private equity and real assets, actual allocations may be used over extended periods to reflect these changes in the policy targets. Periodic performance reports will provide a detailed description of the policy benchmark composition over time.
2. The System's actuary sets an expected return based on the Board's policy decisions. Market cycles may result in the System earning a return materially above or below the actuarial rate of return for extended periods of time. Therefore, the actuarial rate of return will not be used for performance comparison purposes.

I. Total Equity

1. The total equity exposure of the portfolio shall be well diversified with broad exposures to small, mid, and large capitalization companies and growth and value style sectors across U.S. and non-U.S. markets.

2. The goal for total equity shall be to achieve a total rate of return that will exceed, net of all fees and costs, the return of the aggregate global equity market as measured by the Morgan Stanley Capital International (MSCI) All Country World Index (ACWI) Investable Market Index (IMI) over a full market cycle (approximately five years). Because the total equity portfolio was previously segregated into domestic and global equity components, the total equity portfolio has a bias to domestic equity relative to the MSCI ACWI IMI. Therefore, to ensure appropriate performance measurement, the benchmark for total equity will be appropriately weighted between the Dow Jones U.S. Total Stock Market Index and the MSCI ACWI IMI Index to reflect the current domestic / global asset mix until the domestic allocation is in line with the global opportunity set as defined by the MSCI ACWI IMI. The manager structure of the total equity portfolio should resemble the weighted average of their respective benchmarks and avoid any material biases due to a concentration of managers or management styles. To achieve this goal, the Board may employ various actively managed and passive mandates. The structure of the equity component will be analyzed annually to ensure proper diversification is achieved.

J. Fixed Income

1. The manager structure of the aggregate fixed income portfolio's risk exposure should resemble the aggregate domestic fixed income market as measured by the Barclays U.S. Universal Bond Index. To help achieve this goal, the Board will employ investment managers that invest assets in a broad array of sectors (government, mortgage backed, credits, asset backed, and commercial mortgage backed bonds), maturities, and credit qualities so that the overall portfolio structure is not materially different from that of the domestic and global fixed income markets. To provide a broad base of low-cost diversification and readily available liquidity, the Board may allocate a portion of the fixed income assets to a passive investment portfolio that approximates the return of the broad fixed income market.
2. The goal for fixed income investments shall be to achieve a total rate of return that will exceed, net of all costs and fees, the return of the Barclays U.S. Universal Bond Index over a full market cycle (approximately five years).

K. Opportunistic/Alternative Investments

1. The Opportunistic/Alternatives asset class may include investments in direct hedge funds, hedge fund of funds, commodities, currency mandates, and other alternative strategies that are not closely correlated or related to the traditional asset classes (fixed income,

equities, private equity, and real assets). Unique investments that do not fit within the other asset class categories may also be included in the Opportunistic/Alternative category at the Board's discretion. Because this category may include illiquid investments made through closed end investment partnerships, it may take a period of time to reach and maintain the target allocation of 5%. Assets will be invested in the total equity asset class when the opportunity/alternative allocation is below its long-term target of 5%. The benchmark for the category will be a weighted average of the benchmarks of the underlying strategies.

2. The goal of the credit, global macro, and other liquid alternative investments shall be to achieve a total rate of return that will exceed, net of all fees and costs, the return of the appropriate institutional quality hedge fund index over a full market cycle (approximately five years). Appropriate benchmarks will be determined as investments are added to the portfolio.

L. Real Assets

1. The Real Asset category may include real estate, timber, agriculture, and infrastructure. While no fixed targets are set, the following general parameters have been identified:
 - 10% Real Estate
 - 2% Timber
 - 1% Agriculture
 - 2% Infrastructure

The total target of the asset class will be 15%. Because this category may include illiquid investments made through closed end investment partnerships, it will take a period of time to reach these targets. Assets will be invested in the total equity asset class until the total target is attained.

The System may initiate investments in real estate as governed by the Real Asset Statement of Investment Policy. The System's goal for real estate is to not materially exceed the System's approved target asset allocation for total real estate investments as determined by the Board at the beginning of each fiscal year. Should the real estate target asset allocation be exceeded, the Executive Director, working with the Real Estate Consultant, shall develop a pacing and strategy plan to address the over allocation.

ATRS' Real Estate portfolio is benchmarked on a net of fee basis against the NCREIF Fund Index Open-end Diversified Core Equity

Index ("NFIODCE"). Once ATRS' Real Estate portfolio reaches its full target allocation for a five-year period, it is expected to meet or exceed the NFIODCE over rolling five-year periods.

The System may initiate direct ownership in timberland or indirect investments in fund of funds, partnerships, corporations, or real estate investment trusts ("REITs") investing in investment grade properties of like kind.

2. The goal of the timberland investments shall be to achieve a total rate of return that will exceed, net of all fees and costs, the return of the NCREIF Timberland Property Index ("NTPI") over a five-year rolling period. The Consumer Price Index plus 300 basis points will be used as a secondary measurement to gauge the timber portfolio's performance compared to the opportunity cost of investing in timber.

The goal of the agriculture investments shall be to achieve a total rate of return that will exceed, net of all fees and costs, the return of the NCREIF Farmland Index ("NFI") over a five-year rolling period. The Consumer Price Index plus 300 basis points will be used as a secondary measurement to gauge the agriculture portfolio's performance compared to the opportunity cost of investing in agriculture.

The goal of the infrastructure investments shall be to achieve a total rate of return that will exceed, net of all fees and costs, the return of the Consumer Price Index (CPI) plus 5 percentage points over a full market cycle (approximately ten years). The Consumer Price Index plus 5 percentage points will be used as the benchmark to reflect the opportunity cost of investing in infrastructure. Similar infrastructure programs of institutional investors will also be used as a secondary benchmark to the extent such data is made available.

The ATRS Total Real Asset Benchmark is weighted by the allocations based on Net Asset Values across the various sub-categories, and thus defined as Real Estate benchmark, Timber benchmark, Agriculture benchmark and Infrastructure benchmark. The net of fee return for ATRS' Total Real Asset Portfolio is expected to meet or exceed the Total Real Asset Benchmark over rolling five year periods.

K. Private Equity

1. The System may initiate investments in private equity as governed by the Private Equity Statement of Investment Policy. Private equity investments may include domestic and foreign private equity partnerships, venture capital, and mezzanine financing partnerships that are intended to diversify the assets and reduce the likelihood of material losses in any individual investment classification. The

investment consultant responsible for private equity shall advise the Executive Director and Board on the Private Equity Statement of Investment Policy and the structure of private equity investments best suited for the System.

2. The System's goal for private equity investments is to achieve a total rate of return that will exceed, net of all costs and fees, the return of the public equity markets, as measured by the Dow Jones U.S. Total Stock Market Index, plus a liquidity premium of 2 percentage points per year over a full market cycle for private equity (approximately ten years).

L. Cash Equivalents

1. The System may hold direct ownership in short-term investments or may permit or require managers to hold cash or cash equivalents to meet liquidity needs of the investment manager or of the System.
2. The System's cash management goal shall be to preserve capital and maintain liquidity.

M. Arkansas-Related Investments

1. The System may initiate Arkansas-related mortgage loans, promissory notes, direct real estate investments, or purchase insured certificates of deposit or short-term securities of Arkansas financial institutions to meet the goals of the mandated requirements. Arkansas-related investments are categorized according to the appropriate asset class for each investment. In addition, Arkansas related investments include, but are not limited to, investments managed by an Arkansas related manager, Arkansas related investments held by other fund managers, Arkansas timberland, partnerships based in Arkansas, and partnerships holding Arkansas properties.

N. Commingled or Mutual Funds

1. If a commingled fund or mutual fund is utilized, the portfolio will be governed by the prospectus or similar document for the fund. In those cases, the System will utilize the prudent investor rule and advice of the investment consultant in selecting and evaluating funds initially and in monitoring them on an on-going basis.

O. Derivatives

1. Derivatives may be used to reduce the risk in a portfolio and provide desired market and security level positions as an alternative to purchasing cash securities. Excessive leverage shall not be created through the use of derivatives in a manner that substantially increases the System's portfolio risk. Each investment manager's derivative

usage shall be specified in the investment management agreement or specific guidelines.

2. The use of futures and options shall be matched by cash or cash equivalent securities, and all short futures positions shall be matched by equivalent long security positions, unless otherwise stated in the investment manager guidelines or authorizing fund documents.

P. Loaning of Securities

1. The lending agent will evaluate the credit-worthiness of potential borrowers of securities, and will loan securities only to financially sound borrowers. The lending agent will maintain a diversified list of such borrowers in order to mitigate the counterparty risk that is inherent in securities lending.
2. Collateral levels should be based on the nature of the loaned security and will generally be between 102% and 105% of the market value of the borrowed security. Marking to market will be performed every business day subject to de minimis rules of change in value, and borrowers will be required to deliver additional assets as necessary to maintain overcollateralization of securities loans.

Q. Securities Lending Reinvestment Guidelines

1. The cash collateral portfolio will be managed on an amortized cost basis (maintain a \$1 net asset value) and have investment guidelines that are 2a-7-like in nature (money market fund guidelines) to ensure that only a moderate amount of risk is taken on the reinvestment of the cash collateral. This will control the amount of credit and duration risk that can be taken by the short duration fixed income manager, which will help to mitigate losses due to insufficient collateral relative to the amount on loan. In addition, guidelines for the cash collateral portfolio will be created in conjunction with the lending strategy and with input from the securities lending agent.
2. The collateral pool should also maintain a reasonable level of overnight liquidity in order to allow for the smooth recall of securities over time.

R. Investment Manager Reporting

1. The System will require all investment managers, managing partners, and general partners to provide on at least a quarterly and an annual basis, reporting appropriate for the investment.

S. Roles

1. The Executive Director and investment consultant are jointly responsible for the initial selection of investment managers and any increase or decrease in an investment manager's funding. The

Executive Director and investment consultant are jointly responsible for monitoring existing investment managers on performance, stability, and compliance. The Executive Director and investment consultant may also recommend termination of an investment manager when circumstances justify termination. Reasons for termination include, but are not limited to, relative performance, relative stability, costs, strategic allocation of assets, or other relevant factors that a prudent investor would use.

T. Proxies

1. All shares held directly or indirectly by or on behalf of the System shall be voted on solely in the pecuniary interest of the System's plan beneficiaries, in compliance with Arkansas Code § 24-2-801 et seq.
2. Unless an economically practicable alternative is unavailable, the System shall not: (A) Follow the recommendations of a proxy advisory firm or other service provider unless the firm or service provider has a practice of and provides a written commitment to adhere to the practice of following proxy voting guidelines that are consistent with the System's obligation to act based only on pecuniary factors, or (B) Entrust the System's plan assets to a fiduciary unless the fiduciary has a practice of and provides a written commitment to adhere to the practice of following guideline when engaging with portfolio companies and voting shares or proxies that match the obligation of the System's obligation to act based only on pecuniary factors.
3. The System authorizes the investment manager to vote all proxies related to stocks in which it invests the System's assets. The System requires the investment manager to vote all proxies in a manner that complies with Arkansas Code § 24-2-801 et seq. The System requires the investment manager to cast votes solely in the best interest of plan beneficiaries.

U. Soft Dollars

1. Commissions paid by investment managers for the purchase of equity securities are System assets and must be used for the sole benefit of the System members. Whenever possible, investment managers should seek to execute trades at the lowest possible commission rate but not to the detriment of best execution, which can result in a higher cost to the System. So that the Board may fulfill its obligation to ensure that System assets are being used appropriately, relevant equity investment managers shall provide periodic reports to the general investment consultant on brokerage activity, commissions, services, and such other information as may be requested by the investment

consultant or Board. The investment consultant shall provide a periodic report to the Board summarizing such equity investment managers' reports and highlighting any questionable or problem areas.

HISTORY

Amended: October 4, 2010

Amended: February 7, 2011

Amended: June 3, 2013

Amended: October 7, 2013

Amended: February 17, 2014

Amended: June 1, 2015

Amended: April 21, 2016

Amended: November 13, 2017

Amended: April 1, 2019

Amended: February 3, 2020 as Board Policy 4

Amended: December 7, 2020

Amended: June 7, 2021

Amended: September 25, 2023

Amended: February 5, 2024