



**JULIE M. CABE**, Deputy Director  
1400 West Third, Little Rock, AR 72201  
Phone (501) 682-1836  
Website - <http://www.atrs.state.ar.us>

June 20, 2005

Ms. Donna K. Davis  
Subcommittee on Administrative Rules and Regulations  
Arkansas Legislative Council  
Bureau of Legislative Research  
Room 315, State Capitol  
Little Rock, AR 72201

Re: Revisions to Revised Rules Filed June 3, 2005

Dear Ms. Davis:

Enclosed please find two revised copies of each of the following ATRS' proposed rules amendments which were originally filed with you on June 3, 2005:

To partially implement Act 146 of 2005                      Rule 7-1-1

To partially implement Act 385 of 2005                      Rule 6-1-1-A

I am also enclosing two copies of the revised summaries reflecting the changes which were made due to ATRS' staff suggestions, not due to public comment.

We would appreciate your postponing item "i" on the July 5 meeting agenda (Conditions Under Which A Retirant May Return to Covered Service Other Than By Rescinding Retirement (10-2-1) until the August meeting. We need to have further discussions with officials of the Department of Education to coordinate our proposed rules with their proposed rules.

Thank you very much.

Sincerely,

Julie M. Cabe  
Deputy Director

Encl.

C: [register@sosmail.state.ar.us](mailto:register@sosmail.state.ar.us) by e-mail

**CONTRIBUTORY/NONCONTRIBUTORY SERVICE**  
(A.C.A. § 24-7-406)

**DEFINITIONS**

1. "Contributory service" is service on which a member makes or made member contributions to the Teacher Retirement System.
2. A "contributory election" is a written election by a member to make member contributions to the Teacher Retirement System. To be valid, an election must be on a special election form provided by the System and signed by both the member and the employer.
4. ~~3.~~ **"Noncontributory service"** is service on which a member ~~has elected not to~~ **does not** make member contributions to the Teacher Retirement System and ~~to~~ **accepts** a reduced retirement annuity for the years of service on which he/she does not contribute.
2. ~~4.~~ A **"noncontributory election"** is a written election by a member ~~to stop making~~ not to make member contributions. To be valid, an election must be on a special election form provided by the System and signed by both the member and the employer.
5. "Nonteacher" means any employee except a teacher.
6. "Teacher" means any person employed by a school for the purpose of giving instructions and whose employment requires state certification.

**POLICIES** (Amended by Act 907 of 1999; Acts 23 and 47 of the 2<sup>nd</sup> Extraordinary Session of 2003; and Act 385 of 2005)

1. All service rendered before July 1, 1986, is contributory service. Active members do not become eligible for a refund of contributions by signing a noncontributory election form.
2. Effective July 1, 1999, all new members under contract for 181 or more days will make member contributions to the Teacher Retirement System. (Acts 81 and 907 of 1999)
3. Effective July 1, 1999, All all new members under contract for 180 days or less will have one (1) year from their hire date to make an irrevocable election to make member contributions.
4. A. Effective July 1, 2005, any active member whose status later changes from nonteacher status to teacher status under contract for 181 days or more shall

make the member contributions regardless of an earlier election to be noncontributory.

B. If the change of status from nonteacher to teacher occurs during a year in which service has already been reported as noncontributory, the change to contributory will occur beginning with the next fiscal year.

4. 5. Effective July 1, 1999, ~~New~~ new members who are not under contract will not make member contributions.
5. 6. A. All ~~current~~ active members, as of July 1, 1999, were required to ~~will~~ make an irrevocable election to be contributory or noncontributory on or before June 30, 2000. This An election to become contributory ~~will~~ remains in effect for the remainder of the member's career. If no election ~~is~~ was made by June 30, 2000, the member ~~will~~ remained in the plan he/she was in as of that date.

B. ~~Effective July 1, 2005 i.~~ To be effective July 1, 2005, and each July 1 thereafter, Acts 23 and 47 of the 2<sup>nd</sup> Extraordinary Session of 2003 as amended by Act 385 of 2005 (A.C.A. § 24-7-406(f)(5) provide that, subject to a determination by the Board under Policy No. 6Biii below, active members who have previously elected to eliminate member contributions may make an irrevocable election to make future ~~member~~ contributions to the Retirement System.

i. If the election is made before the preparation of the first salary payment to the member in the fiscal year, the election will become effective immediately. If the election is after the preparation of the first payroll containing the first salary payment to the member in the fiscal year, the election shall become effective July 1 of the next fiscal year.

ii. A.C.A. § 24-7-406(f)(C) further provides that if the Board determines that a member's contributions may not be treated as employer contributions under the Internal Revenue Code or Income Tax Act of 1929, § 26-51-101 et seq., the Board may exclude such member's participation under this Policy No. 6B.

iii. ~~Because a final favorable ruling was not received from the Internal Revenue Service in sufficient time for implementation of this subsection on July 1, 2005, implementation will be delayed until July 1, 2006.~~

6. ~~7.~~ All former, active members who ~~re~~-enter the System after June 30, 1999, must make an election within one year of his reentry. If no election is made, the member will be enrolled in the plan that he/she was in prior to reentry.

7-~~8.~~ For purposes of administration of Act 907 of 1999, full-time employees of state agencies covered by the Teacher Retirement System will be classified

the same as members contracted for 181 days or more and will make member contributions. (See Policy No. 2 above.)

~~8-9.~~ For purposes of Act 907 of 1999, part-time employees of state agencies covered by the Teacher Retirement System will be classified as new members who are not under contract and will not make member contributions. (See Policy No. 5 above.)

9. 10. Any former active member who had been contributing on a maximum salary of \$7,800.00, who returns to work on or after July 1, 1995, and who elects to make member contributions to the System will contribute on his/her full salary.

~~10. The Deputy Director will make the final decision in accepting election forms where the member made an apparent error by sending the wrong form or when forms are received after the deadline through no fault of the member.~~

11. ~~For the first year~~ If a member enters the System, ~~who~~ and is reported incorrectly by the employer for the first year as a noncontributory member, the System will accept the member the first year as a noncontributory member. The System shall notify the employer of the member's contributory status. Effective the next July 1, the member shall make member contributions to the System. (Amended August 13, 2002.)

12. ~~For the first year~~ If a former member returns to the System as an active member after July 1, 1999, ~~who~~ and is reported incorrectly by the employer as a noncontributory member for the first year, the System will accept the member the first year as a noncontributory member. The System shall notify the employer of the member's contributory status. Effective the next July 1, the member shall make member contributions to the System. (Amended August 13, 2002.)

**SALARY DETERMINATION FOR RETIREMENT SYSTEM PURPOSES**  
**(SEE ALSO POLICY NOS. 7-3-1 AND 7-4-1.)**

**DEFINITIONS** (Amended by Acts 460, 542, and 638 of 1995 and Act 146 of 2005.)

1. **"Salary"** means the remuneration paid an employee in a position or positions covered by the System and on which the employer withholds federal income tax. It includes remuneration received from all covered employers during a school fiscal year; however, compensation in excess of the limitations set forth in Section 401(a)(17) of the Internal Revenue Code shall be disregarded. The limitation on compensation for "eligible employees" shall not be less than the amount allowed to be taken into account under the System as in effect on July 1, 1993. For this purpose, an "eligible employee" is an individual who was a member of the System before the first plan year beginning after December 31, 1995. ~~When a member retires, however, the current year's salary used in the computation of retirement benefits shall not exceed one hundred ten percent (110%) of the previous year's salary, unless the increase is a direct result of a promotion, change in position, incremental increases provided in the school district salary schedule, or an increase in school revenues.~~
2. **"Covered Salary"** means, effective July 1, 2003, the portion or all of an employee's salary that is covered by the System employees' regular and federal salaries for the current fiscal year plus supplemental salary payments received for the previous fiscal year(s), plus adjustments agreed upon by both the employer and the Teacher Retirement System. For each member who first became a member before July 1, 1971, the covered salary for each year after June 30, 1969, is the first \$7,800.00 of this the member's total annual salary for all covered employment (Salary Option 2) unless he/she has elected to make contributions to the System on his full salary. For each member who first became a member after June 30, 1971, or who has elected to make contributions on full salary, the covered salary is his or her full salary for all covered employment (Salary Option 1). If, however, a member making contributions only on the first \$7,800.00 of his total annual salary (Salary Option 2) receives a refund of his contributions and subsequently returns to covered service as a noncontributory member, he or she shall be considered on full salary for reporting purposes (Salary Option 1). ~~Should the member wish to repay any refunds that include contributory service, he must pay the additional contributions due to change to full salary. Any former active member who returns to covered employment on or after July 1, 1995, and who elects to make contributions to the System shall contribute on his full salary.~~

3. A. **"Final Average Salary"** means the average of the annual salaries paid during the three (3) years of credited service producing the highest annual average, subject to the provisions in Nos. 3B and 3C below.

B. In computing retirement benefits, no salary paid in one (1) of the years that is utilized in the computation of the member's final average salary shall exceed one hundred ten percent (110%) of the salary earned in the year preceding that year used in the computation, unless the increase is a direct result of a promotion, change in position, incremental increases provided in the school district salary schedule, or an increase in school revenues.

C. i. Effective August 12, 2005, Act 1288 of 2005 amended A.C.A. § 21-4-503 to allow state-supported institutions of higher education to compensate classified employees for unused sick leave upon retirement or death; however, compensation for accumulated unused sick leave shall not be used by Teacher Retirement System in calculating final average salary under A.C.A. §24-7-202(14). Exceptions will be made for classified employees of those institutions which allowed such compensation prior to August 12, 2005.

ii. Effective August 12, 2005, Act 971 of 2005 (A.C.A. § 21-4-505) authorizes state-supported two-year colleges to provide compensation to their employees (not limited to classified) for unused sick leave upon retirement or death. It also provided that the compensation for accumulated unused sick leave shall not be used by Teacher Retirement System in calculating final average salary under A.C.A. § 24-7-202(14). Exceptions will be made for employees of those two-year colleges which allowed such compensation prior to August 12, 2005.

3.4. **"Covered Employer"** means each employer for whom a member renders service in a covered position.

#### **POLICIES** (Amended by Acts 460 and 638 of 1995; Act 11 of 1999)

1. In determining "salary," employer pick-up contributions, cafeteria plans as defined in A.C.A. §21-5-901, and employee contributions to tax-sheltered annuities shall be included; however, a member may establish salary earned under a purchase service contract with a covered employer by paying employee and employer contributions plus interest.
2. Money in lieu of remuneration and used by an employer to purchase a qualified tax-sheltered annuity or a life insurance policy for an employee shall be considered as salary for System purposes.
3. An employee who is receiving remuneration under both a regular contract and a purchased contract or under both a regular contract and a contract won

through litigation shall have only the greater of the two amounts considered as "salary" for System purposes.

4. Should an employee make a charitable donation or return any part of his or her salary to his the employer, the amount of his recurring remuneration otherwise usable as "salary" shall be reduced by such amount or amounts to arrive at his "salary" for System purposes.

~~5. "Final average salary" means the average of the annual salaries paid during the three (3) years of credited service producing the highest annual average, subject to the provisions in Policy No. 1 above.~~

- ~~6~~ 5. The System will not knowingly accept contributions that have been withheld from payments that do not meet the criteria for salary in Policy Nos. 1-3 above. In case of doubt, the facts will be determined, and the Board will decide whether or not payments reported as salary can be accepted as salary for retirement purposes. Contributions based on payments that are not salary for retirement purposes will be refunded as promptly as possible.

- ~~7.~~ 6. If a member is making contributions to the System on a covered salary of \$7,800.00 rather than his full salary, 6% of his/her pay for each pay period must be withheld until withholding amounts to 6% of \$7,800.00 (\$468.00). Withholding of this amount shall not be spread over a longer time than it takes to withhold 6% of \$7,800.00.

7. A member who left covered employment before July 1, 1985, and who had annual compensation of \$7,800 or less, shall upon return to covered employment, have full salary considered for retirement purposes.

8. If an eligible employee of a government entity, as defined in Act 810 of 1987, (A.C.A. § 21-5-901—904) elects to participate in a cafeteria plan that meets the requirements of the Federal Internal Revenue Code, the amount that such employee's salary is reduced pursuant to a salary reduction agreement, as defined in Act 810 of 1987, shall continue to be included as compensation for the purpose of computing retirement benefits. Employees participating in the contributory plan will pay 6% of the total salary earned before such reductions are made, and employers will report the total salary earned before reductions.

9. Each employer shall deduct the member contributions from the salary of each contributory member on each payroll from the date of entrance into the System until retirement and the employer shall remit the contributions to the System; however, compensation in excess of the limitations set forth in Section 401(a)(17) of the Internal Revenue Code shall be disregarded. The limitation on compensation for "eligible employees" shall not be less than the amount ~~that was allowed to be taken into account under by~~ the System as in effect ~~effective~~ on July 1, 1993. For this purpose, an "eligible employee" is an individual who was a member of the System before the first plan year beginning after December 31, 1995.

10. In case of any dispute concerning an employee's salary for System purposes, the System shall have the power to settle the dispute.
11. For persons who are retiring and who are employed in agencies or other institutions that use the state 26-week payroll, employers should report to Teacher Retirement the salary, contributions, and actual days worked through the current year payroll period. Contributions should not be withheld on any salary earned after the close of the current year's payroll, nor should any salary or days of service be reported for that period of time.

**Amended:** August 11, 1998