

Summary of Proposed Rule Change

for
Arkansas Teacher Retirement System

Rule 6-2 Reciprocity

This Rule change is needed to comply with Acts 555 and 966 of 2013. Act 555 specifies that if a member has service credit in a reciprocal system that is less than the number of years of service credit required in ATRS' formula for the calculation of final average salary, then ATRS shall obtain the salary and service credit information from the reciprocal system and use the combined salary and service credit information to calculate the member's final average salary as if the salary and service credit had all been earned in ATRS. Act 555 becomes effective July 1, 2014. Act 966, for its purpose in amending this Rule, ended the minimum monthly benefit beginning July 1, 2013. There are also changes to remove language that merely restate the law, and instead directly reference the portion of Arkansas Code that authorizes reciprocal service credits. The paragraphs are renumbered to conform to a consistent numbering system utilized throughout the ATRS Rules. Specific changes as referenced by the Rule page number are listed as follows:

- 6-2-1 Non-substantive renumbering, that occurs throughout the Rule.
- 6-2-2 II. Stricken language is to avoid duplication of Arkansas Code language; direct reference to the Arkansas Code section that authorizes reciprocal service credits.
- 6-2-3 Stricken language is to avoid duplication of Arkansas Code language and obsolete language under Act 966.
- 6-2-4 Non-substantive renumbering and use of "ATRS" for consistency in the Rules.
- 6-2-5 Stricken language is obsolete language under Act 966.

RULE 6-2

RECIPROCITY

A.C.A. §§ 24-2-401-408 as amended by Act 1022 of 2005 and,
Acts 97 and 297 of 2007, and Act 555 of 2013

I. DEFINITIONS

1. **A. Reciprocal System** means the Arkansas Teacher Retirement System in operation June 30, 1957, and continued by statutes; the Arkansas State Highway Employees' Retirement System, established by A.C.A. § 24-5-103; the Arkansas Public Employees' Retirement System established by A.C.A. § 24-4-103; the Arkansas State Police Retirement System established by A.C.A. § 24-6-203; the Arkansas Judicial Retirement System established by A.C.A. § 24-8-201; the Arkansas District Judge Retirement System established by A.C.A. §§ 24-8-801--824; the Arkansas Local Police and Fire Retirement System provided for under A.C.A. § 24-10-101; or an alternate retirement plan for a public college or university, or the Arkansas Department of Higher Education provided for under A.C.A. § 24-7-801 *et seq.*, or for a vocational-technical school or the Department of Workforce Education (formerly the Division of Vocational and Technical Education) provided for under A.C.A. § 24-7-901 *et seq.*
2. **B. State Employer** means the public employer whose employees are covered under the Arkansas Teacher Retirement System, the Arkansas State Highway Employees' Retirement System (A.C.A. § 24-5-103), the Arkansas Public Employees' Retirement System (A.C.A. § 24-4-103), the Arkansas State Police Retirement System (A.C.A. § 24-6-203), the Arkansas Judicial Retirement System (A.C.A. § 24-8-201), or the Arkansas District Judge Retirement System (A.C.A. §§ 24-8-801—824). "State employer" also includes a public employer that is a college, university, or the Arkansas Department of Higher Education (A.C.A. § 24-7-801 *et seq.*), or a vocational-technical school or the Department of Workforce Education (formerly the Division of Vocational and Technical Education (A.C.A. § 24-7-901 *et seq.*).
3. **C. Alternate Retirement Plans** refers to the retirement plan(s) of a public college or university, or the Department of Higher Education provided for under A.C.A. § 24-7-801 *et seq.*, or for a vocational-technical school or the Department of Workforce Education (formerly the Division of Vocational and Technical Education) provided for under A.C.A. § 24-7-901 *et seq.*
4. **D. Preceding System** is a previous retirement system of record as defined above.
5. **E. Succeeding System** is the current retirement system of record, following membership in a retirement system covered above.

II. SUMMARY OF RECIPROCAL SERVICE

If a member leaves the employ of a state employer whose position is covered by any of the retirement systems listed above and enters the employ of another state employer whose position is covered by any of these retirement systems, the member shall be entitled to a deferred annuity payable from the preceding system subject to the following conditions: according to A. C. A. § 24-2-401 et seq.

4A. Age and Service Retirement with Reciprocal Service Credit

- ~~A. The member has credited service acquired in the employ of the preceding state employer.~~
- ~~B. The member does not withdraw his or her contributions, or if the contributions are withdrawn, the member repays the amount withdrawn, plus interest while an active member of a reciprocal system.~~
- ~~C. The member qualifies for age and service retirement in the succeeding reciprocal system through combined credited service with the preceding and succeeding reciprocal systems to meet the minimum service requirements of the succeeding system. This would also qualify the member for benefits in the preceding system.~~
- ~~D. The member's deferred annuity payable by the preceding reciprocal system shall be determined by the annuity formula in effect at the time of retirement in the preceding system.~~
- ~~Ei. If the Teacher Retirement System ATRS is the preceding system, the member's annuity begins the first day of the month following the month the application was filed or after attainment of age 60 years, whichever is later. However, should the member have combined service of at least 25 years, the age limitation shall not apply. The deferred annuity shall not begin prior to the date of leaving the employ of the last state employer unless the member reaches age 65.~~
- ~~Fii. If the Teacher Retirement System ATRS is the preceding system, the member is eligible to apply for benefits without leaving the employ of the last state employer upon reaching age 65. The member's annuity will begin the first day of the month following the month the application was filed or after attainment of age 65, whichever is later. Only service credited and salaries earned prior to the ATRS effective date of benefits will be used in the ATRS benefit calculation.~~

2B Disability Retirement with Reciprocal Service Credit

- ~~Aj. If the member has five (5) or more years of combined actual and reciprocal service in two (2) or more reciprocal systems, he or she A member is eligible to apply for disability benefits under A.C.A. § 24-2-405~~

from each reciprocal system in which he or she has credited service according to rules for eligibility promulgated by that system.

~~B. Eligibility for disability benefits is determined under the rules and regulations of each respective system.~~

~~C. The member shall be eligible for a refund of accumulated contributions plus interest, if any, from any reciprocal system in which he or she does not qualify for disability benefits. Such refund shall not alter eligibility for benefits from any other reciprocal system.~~

~~Dii. The member's annuity for disability retirement payable by the preceding reciprocal system shall begin the first day of the month following the month the application was filed with the preceding system, but not prior to the date of leaving the employ of the last state employer.~~

III. RULES

4. ~~A.~~ A member who leaves a position covered by the Teacher Retirement System, becomes employed by a reciprocal system, and files a reciprocal service agreement becomes an inactive member and may become eligible for the benefit formula in effect at the time of retirement.

~~2. The final average compensation used in computing benefits shall be that of the reciprocal system furnishing the highest final average salary at the time of retirement. To determine the final average salary, only service credit and salaries earned in a system will be used, even if the service does not total three years. Salaries earned from employers participating in the Arkansas Judicial Retirement System, the Arkansas District Judge Retirement System, and alternate retirement plans shall not be used in computing final average compensation.~~

~~3. The provisions of paragraph 2 above shall not be applicable to a member who elects to contribute on a maximum salary of \$7,800.00 unless he or she changes to full salary and pays the difference between 6% of \$7,800.00 and 6% of full salary retroactive to July 1, 1969. Should a member who is making contributions on the first \$7,800.00 of the total annual salary receive a refund of contributions and subsequently return to an ATRS covered employer as a noncontributory member, the member shall be considered on full salary for reporting purposes. If the member wishes to repay any refunds, he or she must pay the additional contributions due to change to full salary.~~

~~A member whose salary for reporting purposes is \$7,800.00 and who has not received a refund may elect to change effective July 1, 1986, to the noncontributory plan and from that date be considered on full salary for reporting purposes. Additional employer contributions for that period shall not be due from the member. However, if a member elects to make this change, he or she must pay the additional employee and employer~~

~~contributions plus interest~~ due on any service reported between July 1, 1969, and June 30, 1986. (Interest will be calculated to July 1, 1986.)

4. AB. i Benefits will not be paid under reciprocity from the ~~Teacher Retirement System~~ ATRS as the preceding system until the member has ceased to be in the employ of a state employer unless the member reaches age 65.
 - ii. If the ~~Teacher Retirement System~~ ATRS is the preceding system, the member is eligible to apply for benefits without leaving the employ of the last state employer upon reaching age 65. The member's annuity will begin the first day of the month following the month the application was filed or after attainment of age 65, whichever is later. Only service credited and salaries earned prior to the ATRS effective date of benefits will be used in the ATRS benefit calculation.
5. C. Benefits will not be paid under reciprocity from the ~~Teacher Retirement System~~ ATRS as the preceding system earlier than age 60 unless the member has 25 or more years of combined service.
6. D. No minimum benefits apply under Act 488 of 1965 [A.C.A. § 24-2-402(5)(E)], as amended, for reciprocal service unless the member has five (5) or more years of credited service in the ~~Teacher Retirement System~~ ATRS.
7. E. If the survivor benefits are payable by more than one reciprocal system to eligible survivors of a deceased member, the survivors shall not receive more, as a percentage of the deceased member's final pay or as a minimum dollar amount than the largest amount payable by a single reciprocal system. The ~~Teacher Retirement System~~ ATRS will prorate minimum benefits payable with other reciprocal systems that have a minimum benefit provision in their plans. Each reciprocal system shall pay a proportionate share of the minimum amount based on the ratio of service in that system to the total service in all reciprocal systems. If the reciprocal system is an alternate retirement plan, survivor benefits shall be contingent upon provisions of that benefit having been provided by the alternate retirement plan and having been selected by the member as a benefit. [A.C.A § 24-2-402 (5)]
8. F. If an employee of the Department of Human Services who becomes a member of the Public Employees Retirement System under the provisions of Act 793 of 1977, as amended, leaves employment with the Department of Human Services and becomes employed in another position covered by the ~~Teacher Retirement System~~ ATRS, the benefits for service, both before and after any service under Act 793, shall be subject to the benefit provisions of the Teacher Retirement law. Such member shall be eligible to establish reciprocity under the provisions of Act 488 of 1965 as amended.

9. G. If an ATRS member has service credited during the same fiscal year with another reciprocal system and the combined service is greater than one year of service credit, ATRS will credit service as follows:

Ai. If credit by the reciprocal system is less than three (3) months, ATRS will credit service for one (1.00) year.

Bii. If credit by the reciprocal system is three (3) or more months but less than six (6) months, ATRS will credit service for three-fourths (3/4) year.

Ciii. If credit by the reciprocal system is six (6) or more months but less than nine (9) months, ATRS will credit service for one-half (1/2) year.

Div. If credit by the reciprocal system is for nine (9) months but less twelve (12) months, ATRS will credit service for one-fourth (1/4) year.

- ~~10 A member who has established reciprocity with ATRS and has at least five (5) years of actual service will be eligible for the greatest minimum retirement benefit as provided by A.C.A. § 24-7-705(b)(2). See Rule No. 9-1 [Age and Service (Voluntary) Retirement] for minimum benefit guidelines.~~

~~—In addition to the minimum benefit amount, a member who meets eligibility requirements shall receive benefits applicable under A.C.A. § 24-7-713.~~

- 44 H. While participating in a reciprocal system, back contributions, additional contributions, and repayment of refund payments made to ATRS shall be made according to rules pertaining to the minimum payments and payment methods contained in Rule No. 8-5 (Purchase Payment Rules), except employer pick-up is prohibited while working for a noncovered ATRS employer.¹

Amended: July 18, 2005

April 26, 2007

Approved by Board: July 26, 2013

Amended:

Effective:

¹ From July 1, 1991, until December 31, 1991, an active member of the Public Employees Retirement System who was an active member of the Teacher Retirement System prior to January 1, 1978, and who became a member of the Public Employees Retirement System within thirty (30) days of departure from the Teacher Retirement System may establish reciprocity between the two systems and purchase out-of-state service rendered prior to January 1, 1978, in accordance with the provisions and conditions contained in A.C.A. § 24-7-601 and § 24-7-603. Effective July 1, 1993, for a ninety (90) day period, employees of the Arkansas Rehabilitation Services may transfer from the Public Employees Retirement System to the Teacher Retirement System under Act 574 of 1993. Any employee making the change will establish reciprocity between the two systems, and Act 793 of 1977 shall no longer apply.

Summary of Proposed Rule Change

for
Arkansas Teacher Retirement System

Rule 6-12 College Plan

This Rule change is needed to comply with Acts 607 and 337 of 2013. Act 607 allows a new employee of a college without ATRS service credit to become a member of ATRS and provides a special one-time program to allow some employees that were prohibited from being members of ATRS to purchase service credit. Act 337 strikes obsolete language and is consistent with the changes in Act 607. Specific changes as referenced by the Rule page number are listed as follows:

6-12-1 A. The underlined language restates the "grandfather" language that is stricken and provides for membership in ATRS by clarifying that continued service to a college is also eligible for ATRS membership; Reference to the Arkansas Code section that is amended by Act 607.

6-12-1 B. The underlined language specifically references the Arkansas Code section that affects college employees.

6-12-1 C. All wording changes are for clarity and do not substantively affect the meaning of the paragraph.

RULE 6-12 **College Plan**

A.C.A. §§ 24-7-1601 through 24-7-1607

A. Generally, ~~all current college employees who are also ATRS members are grandfathered in to participation to ATRS.~~ an ATRS member who became employed by a non-mandatory employer prior to July 1, 2011, may continue to participate in ATRS instead of an alternative program offered by the non-mandatory employer if the ATRS member continues providing consistent service to the non-mandatory employer. For new employees after July 1, 2011, participation is governed by the Arkansas Code A.C.A. § 24-7-1601 et seq.

B. A PSHE employer may elect to offer ATRS participation to its employees by fulfilling the requirements under A.C.A. § 24-7-1605.

C. If a an eligible non-mandatory employer college elects to ~~be a PSHE employer~~ offer ATRS participation to its employees, then the college employer must regularly report information to ATRS on forms developed by ATRS as allowed by ATRS law. In addition to standard ATRS reporting forms, a PSHE employer shall provide supplemental reports on any form approved and adopted by the ATRS Board as a required form.

Adopted: July 1, 2011 (Emergency)

Adopted: August 8, 2011

Effective: November 11, 2011

Adopted by Board: July 26, 2013

Amended:

Effective:

Summary of Proposed Rule Change

for
Arkansas Teacher Retirement System

Rule 7-1 Calculation of Final Average Salary

This Rule change is needed to comply with Acts 521, 555, and 720 of 2013. Act 521 narrows the definition of salary to wages earned. Act 555, as discussed above, deals with the calculation of final average salary that involves salary from a reciprocal system. Act 720 allows a member's current year's salary to be used in the calculation of final average salary. Specific changes as referenced by the Rule page number are listed as follows:

7-1-1 Language is stricken to avoid conflict with the Arkansas Code, which defines salary and final average salary under § 24-7-202 and 24-7-736. The paragraphs are renumbered to conform to a consistent numbering system utilized throughout the ATRS Rules.

7-1-2 Language is stricken to avoid conflict with § 24-7-736, that describes the calculation of final average salary. Underlined language adds that specific Code reference. The paragraphs are renumbered to conform to a consistent numbering system utilized throughout the ATRS Rules.

7-1-3 IV. 6. Stricken language is slightly inconsistent and repetitive with the language of § 24-7-736(e), which allows "the system", as opposed to "the Board" to settle any dispute concerning the employee's salary.

RULE 7-1

CALCULATION OF FINAL AVERAGE SALARY

A.C.A. § 24-7-202, A.C.A. § 24-7-602, and A.C.A. § 24-7-705, and
A.C.A. § 24-7-736

(SEE ALSO POLICY NOS. 7-3 AND 7-4.)

I. DEFINITIONS

1. ~~Salary means the remuneration paid to a member by an ATRS participating employer on which the employer withholds federal income tax. This includes all salary "picked up" by the employer including employee contributions to a qualified retirement plan, deferred compensation plan, or cafeteria plan. For remuneration paid other than in cash, salary is the amount reported to the Internal Revenue Service for income tax purposes.~~
2. ~~Final Average Salary means the average of the salaries paid to a member by a participating employer during the fiscal year ending June 30 used in calculating a member's retirement annuity under A.C.A. § 24-7-705.~~
3. A. Participating Employer means an employer who participates in the Arkansas Teacher Retirement System whose employees are eligible for membership under A.C.A. § 24-7-501 or other applicable law.
4. B. Partial Year Service Year means service in a fiscal year that constitutes less than a full year of service due to less than the required service days at an ATRS employer due to a reduction in service credit caused by an adjustment in ATRS service credit because reciprocal service credit occurs in the same fiscal year, due to a member retiring prior to the end of a fiscal year, or due to any other law or policy that provides a member less than a full year of service in a fiscal year.

II. REGULATIONS

1. ~~The Board of Trustees may set the number of years used in calculating a member's final average salary at no less than three (3) years or more than five (5) years.~~
2. A. For purposes of calculating a member's final average salary, the System ATRS will include salary received from all participating employers during a fiscal year.
3. ~~When calculating final average salary, the following limits shall apply:~~

~~A. A.~~ The System shall rank the member's highest salary years from lowest to highest. The lowest salary year shall be considered the initial base year. Except for the base year, the highest salary years shall be reduced to the extent either exceeds 120% of the prior year's salary, subject to the limitations in ACA § 24-7-202(27)(c).

~~B.~~ If a salary year used in calculating final average salary does not constitute salary for a full service year due to the partial year salary being greater than the full service year salary that would otherwise be applied in the final average salary calculation, then the reduction, if any, provided for in 3(A) above shall apply.

~~BC.~~ However, if a salary year used in calculating final average salary does not constitute salary for a full service year due to the member not having enough full service years for the final average salary calculation, then, the next highest salary year shall not be reduced although it may exceed the compared salary by 120% or more the next highest or highest year.

4 ~~B.~~ For purposes of determining if a salary year constitutes a full service year, the following shall be excluded from the limits under No. 3 above A.C.A. § 24-7-736:

~~Aj.~~ Any salary year which constitutes member service during two (2) or fewer quarters in a fiscal year; or

~~Bij.~~ Any salary year that constitutes less than one (1) year of service credit under the schedule set forth in ATRS Policy No. 7-2.

~~5.~~ If a member is retiring with a retirement effective date other than October 1, January 1, April 1, or July 1, no salary paid to a member for the last year worked shall be counted in calculating a member's final average salary.

~~6—C.~~ Regardless of any provision in statute or regulation to the contrary, salary or other compensation paid which exceeds 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 under the System 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.

7—~~D.~~ If a conflict exists between the statute or policy governing the treatment of a member's salary between the participating employer's laws or policies relating to compensation and the calculating of a member's final average salary for benefits, the System's laws and regulations shall control.

IV. RULES (Amended by Act 146 of 2005, and Act 1325 of 2009).

4A. Effective April 1, 1998, when calculating a member's final average salary, the System shall calculate final average salary using the three (3) years in which the member received the highest salary from a participating employer subject to the foregoing limitations.

2B. The final average salary used for members with reciprocal service shall be the highest salary years credited by either the ATRS participating employer or the reciprocal system under ACA A.C.A. § 24-7-402.

3C. For members 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~~ ATRS 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.

4D. For members who are retiring and who are employed by employers using a fiscal year ending June 30, employers should report to the ~~System~~ ATRS the salary contributions, and actual days worked through the current fiscal years ending June 30. Contributions should not be withheld on any salary earned after the end of the current fiscal year, no should any salary or days of service be reported for that period.

5E. For retiring members, employee contributions remitted on salary paid after the end of the current fiscal year or current year payroll period, whichever applied, will be refunded as promptly as possible.

~~6. In case of any dispute concerning a member's final average salary, the Board shall have the authority to decide the dispute.~~

Amended: August 11, 1998

July 18, 2005

June 16, 2009 (Emergency)

October 5, 2009 (Permanent)

July 1, 2011 (Emergency)

Adopted: August 8, 2011

Effective: November 11, 2011

Approved by Board: July 26, 2013

Amended:

Effective:

Summary of Proposed Rule Change

for
Arkansas Teacher Retirement System

Rule 7-3 Employee (Member) Contributions

This Rule change is needed to comply with Acts 602 and 336 of 2013. Act 602 allows the Board to set the contribution rate for employees. Act 336 allows ATRS to cancel service credit for which contributions are owed. In that instance, the member can choose to pay the balance due ATRS and receive credit for service, or cancel the service credit. This rule change regards the correction of errors in reporting and remitting member contributions, either made by the system or by the school, and to make the collection of overpayments and underpayments consistent throughout the Rules, by allowing the Board to set a "de minimis" amount for which collection or adjustment is not necessary. This is a common bookkeeping practice. If the Board chooses not to set a de minimis amount, the amount that will be considered de minimis is already set in the Rule. Specific changes as referenced by the Rule page number are listed as follows:

7-3-1 I. 2. Language is amended to be consistent with the authority granted under Act 602.

7-3-1 I. 3. This language helps ATRS balance the books if the amounts owed would cost the system more to collect than the balance owed to the member, and vice-versa. This is called a "de minimis amount", and can be set by the Board, or the amounts currently in the Rule can be used.

7-3-2 I. D. Language added reflecting the de minimus amount; Language stricken and "erroneous reporting" added to clarify meaning of the Rule, which applies to any error or omission in reporting contributions.

RULE 7-3

EMPLOYEE (MEMBER) CONTRIBUTIONS

A.C.A. §§ 24-7-406, 411

I RULES (amended by Acts 465 and 468 of 2009)

4A. After June 30, 1997, each employer will remit the member contributions by employer "pick up" from the salary earned by contributory members, and those contributions will then be treated as employer contributions in determining tax treatment under the provision of the federal Internal Revenue Code and the Arkansas Income Tax Act. The employer may pay these contributions by a reduction in the cash salary of the member, or by a setoff against future salary increases, or by a combination of a reduction in salary and a setoff against future salary increases.

2B. Member contributions shall be 6% of member salaries for the fiscal year for all contributory members except for members who participate in the System under the \$7,800 salary election set by the Board by Resolution.

3C. Overpayments or underpayments of member contributions shall be handled pursuant to the following: If ATRS determines that an error results in overpayment or an underpayment to ATRS, ATRS may seek collection or refund the amount to the member, as appropriate. However, the Board may set by Resolution a "de minimis amount" of underpayment or overpayment upon which collection or refund is not required. Until the Board adopts a de minimis amount, the following amounts are considered de minimis:

Ai. If an underpayment of member contributions of less than \$25.00 occurs, ~~the System~~ ATRS shall not collect the difference of this underpayment and no adjustment to member service credit will be made.

Bii. If an overpayment of member contributions of less than \$25 occurs, a refund will not be issued unless requested by the member.

Ciii. Should an **underpayment** of member contributions greater than the de minimis amount occur as a result of ~~a member's changing status from noncontributory to contributory erroneous reporting~~, the member must remit to the System ATRS the contributions due based on gross salary earned retroactive to the beginning of that fiscal year. Service credit will not be credited to the member's account until the total amounts due contributions are paid in full.

Div. Should an **overpayment** of member contributions greater than the de minimis amount ceiling occur as a result of ~~changing status from contributory to noncontributory~~ erroneous reporting, the System ATRS will refund the overpayment of member contributions to the employer.

4D. If the System ATRS is owed member contributions and interest by a member, the interest owed by the member may be waived by the Board or its designee under ATRS Rule No. 9-8 (Error Corrections and Collection of Overpayments).

Amended: August 11, 1998
July 18, 2005
February 11, 2008
December 18, 2009

Approved by the Board: July 26, 2013

Amended:

Effective:

Summary of Proposed Rule Change

for

Arkansas Teacher Retirement System

Rule 7-4 Reporting Employee and Employer Contributions

This Rule change is needed to comply with Act 448 of 2013. Act 448 aids ATRS in the collection of owed contributions from delinquent employer by allowing a deduction of the amount owed from the operating funds designated to that employer through the Department of Education and by providing for an additional penalty on the employer for submitting a late report to ATRS. Currently, an employer can be penalized \$150 for a late report. The additional penalty is \$500 for a report that is more than 1 month late. Other changes include a reorganization of the Rule, that may include a strikethrough of some language that is ultimately resurrected as underlined language in a different place in the Rule. Nonsubstantive changes for consistency and clarity are included as well. Specific changes as referenced by the Rule page number are listed as follows:

7-4-1 I. A. This language is stricken because it replicates the language in § 24-7-401(c)(1).

7-4-1 II (4 through 6). This language change is needed to comply with Act 448.

Paragraphs 4 and 5 are stricken because their content is covered in § 24-7-411(b)(1) and (2), and paragraph 6 is stricken because of the changes to the penalty rate in Act 448 from 6% to 8%.

7-4-2. II. D. Formerly paragraph 7, this language references Arkansas Code § 24-7-411, that deals with compelling payment from a delinquent employer.

7-4-2 (A and B). These paragraphs are stricken because it replicates the language found in § 24-7-411(c).

7-4-2 II. E. This renumbered paragraph, formerly paragraph 8, is to comply with the Board's authority under § 24-7-411(c) to designate authority to waive penalties and interest.

7-4-2 II. F. The changes in subparagraphs 1 through 3 authorize the Board to set a "de minimis" amount for which collection or adjustment is not necessary. This is a common

bookkeeping practice. If the Board chooses not to set a de minimis amount, the amount that will be considered de minimis is already set in the Rule.

7-4-2 II. G. This language is relocated and restated verbatim (except for changing "the System" to "ATRS") from the current Rule language found in 7-4-3 paragraph 2.

7-4-3 II. H. This language is necessary to reflect the changes in Act 448 and otherwise substantially restates and relocates the current Rule language found in 7-4-3 paragraph 3.

7-4-3 II. I. This language is relocated and restated verbatim from the current Rule language found in 7-4-4 paragraph 4.

7-4-3 II. J. This language substantially restates and relocates the current Rule language found in 7-4-4 paragraph 5, and includes the use of the "de minimis" language.

7-4-3 II. K. This language substantially restates and relocates the current Rule language found in 7-4-4 paragraph 7.

7-4-3 III 2 through 7. This stricken language, that begins with stricken paragraph 2 on page 7-4-3, and ends with paragraph 7 on page 7-4-4, has been relocated and substantially restated, sometimes verbatim, and placed in paragraphs beginning with 7-4-2 G, and ending with 7-4-3 K. Any changes in the relocated rule language that do not copy the original Rule language in its entirety was made for clarity and consistency, and to comply with Act 448.

RULE 7-4 **REPORTING EMPLOYEE AND EMPLOYER CONTRIBUTIONS**

A.C.A. §§ 24-7-401, 411, 708, 1303 and A.C.A. § 24-2-701

I. **RULES FOR THE EMPLOYER CONTRIBUTION RATE**

(A.C.A. § 24-7-401 as amended by Act 468 of 2009 and A.C.A. § 24-2-701)

4.A. The employer contribution rate shall be the rate established by the Board of Trustees of the Arkansas Teacher Retirement System prospectively for each year pursuant to A.C.A. § 24-2-701 and A.C.A. § 24-7-401.

~~2. The Arkansas Teacher Retirement System shall annually notify participating employers of the employer contribution rate established by the Board for the upcoming fiscal year.~~

~~3B. Pursuant to A.C.A. § 24-7-103, participating employers shall pay the Teacher Retirement employer contributions for eligible employees in accordance with these rules and regulations.~~

II. **RULES FOR EMPLOYEE AND EMPLOYER REMITTANCES AND REPORTS** (A.C.A. §§ 24-7-401, 411)

4.A. Remittances of employee and employer contributions are due monthly.

2.B. Employer reports required by the System ATRS are due on a monthly and quarterly basis.

3.C. The employer reports required by the System ATRS must be remitted on forms or electronic media either furnished by the Teacher Retirement System or approved by the System ATRS, and shall be accompanied by supporting documentation as determined by the System ATRS.

4. An employer report or remittance by an employer shall not be delinquent if received by the System on the 15th day of the month in which it is due or postmarked by the 14th day of the month. If the 14th falls on Saturday, Sunday, or a holiday, the postmarked date is extended to the next business day.

~~5. A \$150.00 late report penalty will be assessed on any required employer report not received by its due date.~~

6. ~~If an employer fails to remit employee or employer contributions by the date due under No. 4 above, an interest penalty of 6% shall be assessed with daily interest accrual until paid.~~

7D. The Board or its designee may, but is not required, to waive penalties and interest due from an employer if ~~in its discretion it finds:~~ in accordance with A.C.A. § 24-7-411(c).

A. ~~The delinquency was not the result of the employer's nondisclosure, fraud, or other misrepresentation; and~~

B. ~~Based on the facts and circumstances, the required payment of the penalties and/or interest would be unduly penal, burdensome, or manifestly unjust.~~

8E. The Board designates the Executive Director, in his or her discretion, to waive penalties and interest from an employer in an amount ~~not to exceed \$1,000 per fiscal year.~~ The Executive Director shall report to the Board any amounts excused under this section. ~~Any request to waive employer penalties and interest exceeding \$1,000 per fiscal year shall be submitted to the ATRS Board for consideration.~~ The Executive Director may refer unusually large amounts or repetitive violations to the Board for its consideration and action.

9F. i. The Board may set by Resolution a de minimis amount for an underpayment or an overpayment on an annual billing statement of employee or employer contributions. ATRS is not obligated to collect the de minimis amount and that amount may be written off by ATRS.

ii. Until the Board sets a de minimis amount, Annual annual billings for underpayments or overpayments of employee or employer contributions that result in a balance of \$1025.00 or less are considered de minimis and may be written off by the system ATRS.

iii. Outstanding balances that have been billed by ATRS and are \$25.00 or less shall be treated as de minimis and shall not be collected.

G. The Department of Education shall pay from the Public School Fund, in accordance with rules established by the Board, the ATRS employer contributions due for eligible employees of Cooperative Education Services Areas, Vocational Centers, Arkansas Easter Seals, and the school operated by the Department of Correction. ATRS shall certify to the Department of Education at the close of each quarterly report the amount of employer contributions due. The amount will be based on the employers' reported salaries.

H. ATRS may certify to the state's Chief Fiscal Officer the names of participating employers who are delinquent in reporting and remitting contributions under this policy. Upon notification, the Chief Fiscal Officer may direct a transfer of funds on deposit in the State Treasurer's Office for any delinquent employer payments plus the eight percent (8%) interest penalty to ATRS. (A.C.A. § 19-5-106)

I. Supplemental salary payment reports for previous years will be accompanied by the employer contributions due.

J. ATRS shall return to participating employers overpaid contribution amounts due to erroneous submission of payments or incorrect reporting of Salary Option 2 (first \$7,800.00) member salaries. If an overpayment of a contribution amount is considered de minimis, the refund will not be issued to the employer unless requested in writing by the employer.

K. For retiring members who are paid according to the state's 26-week payroll schedule, employers shall report the salary, contributions, and actual days worked through the state's fiscal year payroll schedule and for the termination date of employment. Contributions shall not be withheld on any salary earned after the close of the current year's payroll, nor shall any salary or days of service be reported for that period of time.

III. RULES FOR REPORTING EMPLOYER CONTRIBUTIONS FOR ACTIVE MEMBERS (A.C.A. §§ 24-7-401, 411)

4.A. The active employer contributions to be paid each fiscal year by participating employers shall be the current employer contribution rate multiplied by the active employees' total salaries.

2. The Department of Education shall pay from the Public School Fund, in accordance with rules established by the Board, the ATRS employer contributions due for eligible employees of Cooperative Education Services Areas, Vocational Centers, Arkansas Easter Seals, and the school operated by the Department of Correction. ATRS shall certify to the Department of Education at the close of each quarterly report the amount of employer contributions due. The amount will be based on the employers' reported salaries.

3. The System may certify to the state's Chief Fiscal Officer the names of participating employers who are delinquent in reporting and remitting contributions under this policy. Upon notification, the Chief Fiscal Officer may direct a transfer of funds on deposit in the State Treasurer's Office for any delinquent employer payments plus the six percent (6%) interest penalty to the System. (A.C.A. § 19-5-106)

~~4. Supplemental salary payment reports for previous years will be accompanied by the employer contributions due.~~

~~5. The Arkansas Teacher Retirement System shall return to participating employers overpaid contribution amounts due to erroneous submission of payments or incorrect reporting of Salary Option 2 (first \$7,800.00) member salaries. If an overpayment of a contribution amount is less than \$25.00, the refund will not be issued to the employer unless requested in writing by the employer.~~

~~6. The Arkansas Teacher Retirement System shall not collect from participating employers an underpayment of employer contribution amount if less than \$25.00.~~

~~7. For members retiring and who are employed by agencies or other institutions that use the state's 26-week payroll schedule, employers should adhere to and report the salary, contributions, and actual days worked through the state's fiscal year payroll schedule and for the termination date of employment. 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.~~

IV. RULES FOR REPORTING EMPLOYER CONTRIBUTIONS FOR T-DROP MEMBERS (A.C.A. § 24-7-401, 1303 as amended by Act 743 of 2009 and A.C.A. § 24-2-701)

~~1.A.~~ The T-DROP employer contributions shall be the employer contribution rate multiplied by the total T-DROP participant's salaries.

~~2.B.~~ Effective July 1, 2009, the employer contribution rate for T-DROP participants shall be the percentage rate established by the Board pursuant to A.C.A. § 24-7-401 for the fiscal year.

V. RULES FOR REPORTING EMPLOYER CONTRIBUTIONS FOR RETIREES (A.C.A. § 24-7-708 as amended by Act 743 of 2009)

~~1.A.~~ The retiree contribution rate shall be the employer contribution rate multiplied by the total retirees' salaries employed by participating employers for that fiscal year.

2.B. Effective July 1, 2009, the employer contribution rate shall be the percentage rate established by the Board pursuant to A.C.A. § 24-7-401 for the fiscal year.

Amended: June 17, 2003
April 6, 2004
Reaffirmed: June 15, 2004
Amended: July 18, 2005
April 26, 2007
February 11, 2008
December 18, 2009
Approved by Board: February 6, 2012
Amended: April 18, 2012
Effective: May 29, 2012
Approved by Board: July 26, 2013
Amended:
Effective:

Summary of Proposed Rule Change

for
Arkansas Teacher Retirement System

Rule 8-2 Refund of Member Contributions

This Rule change is needed to comply with Acts 140 and 336 of 2013. Act 140 is a "technical corrections" Act that in part, amended the portion of Arkansas Code that pertains to refunds of member contributions. The language in the Act was simply to clarify the effect that a refund of member contributions has on the status of a member, which of course is to cancel all membership rights and beneficiary designations in ATRS. Act 336 allows ATRS to return to the member, at the member's election, any contributions for which service credit is cancelled due to a balance owed to ATRS. Specific changes as referenced by the Rule page number are listed as follows:

- 8-2-1 I. A. The amended language in this Rule is to remain consistent with the use of the term "de minimus" in other ATRS Rules; Use of the word "employer" is inserted for consistency with the Rules and the Arkansas Code and to replace synonymic terms.
- 8-2-1 I. B. This change is necessary to reflect the language in Act 336 regarding the finality of refunded contributions in ending a member's membership in ATRS.
- 8-2-1 I. C. This subparagraph is added to explain the effect of a partial refund of contributions, as required under Act 336.

RULE 8-2
REFUNDS OF MEMBER CONTRIBUTIONS
A.C.A. § 24-7-711

I. RULES

4A. Should an overpayment of contributions of equal to or less than \$25.00 the de minimis amount (See Rule 7-4-2 (F)) be reported from the local-level employer, no refund of this amount will be made to the member, except upon the written request from the member. The total amount reported by the employing authority employer shall be credited to contributions.

2B. ~~On refunded contributions, the~~ The interest rate for all interest on a refunded contribution that cancels all service credit and membership in ATRS that is credited before June 30, 1984, is 3%, compounded annually, after the first year of contributions. The rate of interest rate credited on June 30, 1984, through June 30, 2009, is 6%, compounded annually, after the first year of contributions. The rate of interest rate credited for June 30, 2010, through June 30, 2011, is 2%, compounded annually after the first year of contributions. Beginning June 30, 2012, the interest rate shall be 1% compounded annually after the first year's contributions. Payable interest shall be computed on each member's individual account as of June 30 each year by multiplying the balance in the member's individual account as of July 1 (including all contributions and interest credit from previous years) plus one-half (1/2) of the contributions for the year ending on June 30 by the annual applicable interest percentage rate.

C. If a member's contribution is partially refunded and does not cancel all service credit and membership in ATRS, then the refunded contributions for the affected fiscal years shall not include interest.

3D. The Board may change the interest rate on refunded contributions for future years by Resolution stating the new interest rate, the date that the new interest rate will become effective, and any other features of the interest rate's implementation.

4E. Regular interest is not paid on contributions made in the year in which a refund is paid.

5F. As of July 1, 2012, ATRS no longer requires a hardship in order to pay a refund in no more than two payments on a direct payment to the member. Upon receipt of a properly completed refund application, ATRS will issue a refund for all member contributions that have been closed on the books of ATRS. Any amount due in a second payment will be made when all quarters of service the

member worked are closed on the books of ATRS. Rollovers will be made in one payment when all quarters of service worked have been closed on the books of ATRS.

6G. The effective date of a refund is the date that ATRS first issues payment if a refund.

Amended: July 18, 2005
February 1, 2010 under emergency rules.
June 7, 2010 Permanent
July 1, 2011 (Emergency)
Adopted: August 8, 2011
Effective: November 11, 2011
Approved by Board: February 6, 2012
Amended: April 2, 2012 (Emergency)
Effective: May 29, 2012
Approved by Board: July 26, 2013
Amended:
Effective:

Summary of Proposed Rule Change

for
Arkansas Teacher Retirement System

Rule 8-20 Contract Buyouts/other Court ordered payments

This Rule change is needed to comply with Act 521 of 2013. Act 521 clarified the calculation of service credit and benefits paid to a member under a court order, contract buyout, or settlement agreement. (The Act will be codified in the definition of "salary" under § 24-7-202). The changes were made to insure the Rule language was consistent with the language under Act 521. A separate paragraph "II" was also added to require that a "certified" copy of the settlement or court order is provided to ATRS before ATRS makes an adjustment in the member's record.

RULE 8-20

CONTRACT BUYOUTS OR OTHER COURT- ORDERED PAYMENTS

A.C.A. § 24-7-735

I. SERVICE CREDIT ACCRUAL

A. Effectively immediately, in For contract buyouts and settlements or court ordered payments to a member, service credit is only allowed to accrue for actual on-site work for the covered employer by the employee-member. However, if the member is not subject to either a contract buyout or court ordered payment, salary paid to the member as a regular employee, as if the member were providing services, shall be credited for salary and service purposes if the member is on call to the employer; however, such on call credit may not be stacked with salary at another ATRS employer.

B. In order to accrue service credit during a period of time that is redressed in a contract buyout or other court-ordered payment of salary, or salary and benefits, the member shall perform on-site work for the covered employer.

II. ADJUSTMENT OF BENEFIT

ATRS shall not adjust a benefit or benefit calculation for a member until the covered employer or benefit participant provides a certified copy of the court-order payment or settlement to ATRS, or if a contract buyout, a certified copy of the contract buyout.

Adopted: July 1, 2011 (Emergency)
 Adopted: August 8, 2011
 Effective: November 11, 2011
Approved by Board: July 26, 2013
Amended:
Effective:

Summary of Proposed Rule Change

for
Arkansas Teacher Retirement System

Rule 9-2 Age and Service (Voluntary) Retirement

This Rule change is needed to comply with Acts 336 and 966 of 2013. Act 336 allows ATRS to return to the member, at the member's election, any contributions for which service credit is cancelled due to a balance owed to ATRS. Act 966 gives the Board authority to adjust the benefit formula within a range of percentages and ended the minimum monthly benefit beginning July 1, 2013. Most of the stricken language is necessary to comply with Act 966's repeal of the monthly minimum benefit. Other changes are nonsubstantive, such as paragraph renumbering, and are made for clarity and consistency. Specific changes as referenced by the Rule page number are listed as follows:

9-2-1 I. All changes in these paragraphs are nonsubstantive.

9-2-1 II. A. This date change is necessary since the Board has already set the multiplier through June 30, 2014.

9-2-1 II. B. The deletions and additions to this paragraph reference the "de minimis" amount, consistent with the use of that term in other ATRS Rules. The use of the term "adjusted", instead of "additional" corrects the language of the Rule to the original intent of the Rule that the reported salary of a member could go up or down. The term "additional" limits the discrepancy to increases in salary only, which is clearly not the full purpose of the Rule.

9-2-2 C. This paragraph is necessary to affect the provisions of Act 966, which allows the Board to adjust the benefit formula for service in ATRS.

9-2-2 B. This former paragraph B is stricken entirely to comply with Act 966, which repealed the minimum benefits.

RULE 9-2

AGE AND SERVICE (VOLUNTARY) RETIREMENT

A.C.A. § 24-7-502, A.C.A. §§ 24-7-701—707, and A.C.A. § 24-7-202 (unless otherwise noted)

REGULATIONS

4I. RETIREMENT ELIGIBILITY

If eligible, any active or inactive member who attains age 60 and has five (5) or more years of actual and reciprocal service credit may voluntarily retire upon written application filed with the System ATRS. In order to be eligible, a member must comply with the following requirements:

- A. Satisfy the credited service requirements under one of the System's ATRS' retirement statutes, A.C.A. §§ 24-7-701—707,
- B. Be credited with all required employer and member contributions in the member's deposit account with no amounts owed to the System ATRS,
- C. Pay all amounts owed to the System ATRS for underpayments or purchase service accounts; and
- D. Terminate employment with all participating employers or have reached age 65 or older.

2II. BENEFITS FORMULA

A. Benefits Formula

- A. The retirement benefits payable for service through June 30, 2014, shall be the total number of contributory years of credited service multiplied by 2.15% of the final average salary, plus the total number of noncontributory years of credited service multiplied by 1.39% of the final average salary.
- B. If an employer reports additional an adjusted salary for a member, but the result does not increase or decrease the annual benefits by \$25.00 or more a de minimus amount, as may be set by the Board by Resolution, the contributions will be transferred from the member's deposit account to the employer accumulation account without making any change in the member's benefit. If the additional adjusted salary does increase or

decrease the retiree's annual benefit by \$25.00 beyond de minimus amount ceiling, the retirement benefits will be recalculated, and necessary changes will be made in the member's benefit. Until a de minimis amount is set by the Board, \$25.00 or less is considered the de minimis amount.

C. For service rendered after June 30, 2014, the Board may adjust the benefit formula for contributory and non-contributory service as appropriate under A.C.A. § 24-7-705.

~~B. Minimum Retirement Benefits (A.C.A. § 24-7-707 and A.C.A. § 24-7-713)~~

~~A member who retires under A.C.A. § 24-7-701 shall receive no less than the following benefits:~~

- ~~i. A member who has at least ten (10) years of contributory credited service with ATRS will receive not less than \$1,800 per year; or~~
- ~~ii. A member who has at least five (5) years of contributory credited service with ATRS will receive not less than \$1,200 per year; or~~
- ~~iii. A member who has at least ten (10) years of noncontributory credited service with ATRS will receive not less than \$1,128 per year; or~~
- ~~iv. A member who has at least five (5) years of noncontributory credited service with ATRS will receive not less than \$768 per year; or~~
- ~~v. A member who has a mixture of contributory and noncontributory credited service greater than ten (10) years but less than the minimum credited years listed above will receive a prorated amount between \$1,128 and \$1,800 per year according to the relationship between the member's noncontributory and contributory credited service and total credited service; or~~
- ~~vi. A member who has a mixture of contributory and noncontributory credited service greater than five (5) years but less than the minimum credited years listed above will receive a prorated amount between \$768 and \$1,200 per year according to the relationship between the member's noncontributory and contributory credited service and total credited service.~~

~~In addition to the minimum benefit amount, a member who meets eligibility requirements shall receive benefits applicable under A.C.A. § 24-7-713.~~

CD. Effective Date of Retirement Benefits (A.C.A. § 24-7-701)

- i. If a member meets all eligibility requirements for retirement and is approved for retirement, annuity benefits shall be effective the month proposed by the member. If the member does not file an application at least one calendar month prior to the proposed effective retirement date, then that proposed retirement effective date cannot be used, and the member's effective retirement date shall be the following month.
- ii. 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 retirement effective date shall not be prior to July 1 of the subsequent fiscal year.

DE. Compound Cost of Living Adjustment (A.C.A. § 24-7-727)

- i. In the years that the Board elects to compound the COLA, the simple COLA shall not be payable. In a year the Board elects not to compound the COLA, the simple COLA under A.C.A. § 24-7-713 shall be given.

EF. Last Benefit Payment Upon Death

- i. Benefits are payable through the month in which the retirant's death occurs.

III. RULES

4A. A member age 65 or older may apply for retirement benefits without terminating employment and may begin drawing benefits with no effect on the member's retirement benefit.

2B. In addition to a complete retirement application, the following documents are mandatory documents and shall be submitted to ATRS within six months of the effective date of retirement unless an extension is granted by ATRS:

- Ai. Member elects a straight life annuity:
 - 4a. Proof of member's birthdate from a birth certificate or other authenticating documents.
 - 2b. Proof of member's tax payer identification number from a Social Security card or other authenticating documents.
- B.ii. Member elects Option A or Option B benefit with Spouse as the beneficiary:

- 4a. Proof of member's birthdate from a birth certificate or other authenticating documents.
- 2b. Proof of member's tax payer identification number from a Social Security card or other authenticating documents.
- 3c. Proof of spouse's birthdate from a birth certificate or other authenticating documents.
- 4d. Proof of spouse's tax payer identification number from a Social Security card or other authenticating documents.
- 5e. Proof of 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.

Ciii. Member elects Option A or Option B benefit with incompetent child as the beneficiary:

- 4a. Proof of member's birthdate from a birth certificate or other authenticating documents.
- 2b. Proof of member's tax payer identification number from a Social Security card or other authenticating documents.
- 3c. Adequate proof of the existence of a guardianship of the member's child due to incapacity that preexists the member's official retirement date. Authenticating documents may include the order appointing guardianship of the person, letters of guardianship or other adequate proof of the existence of the guardianship due to the incapacity of the member's child.
- 4d. Proof of child's tax payer identification number from a Social Security card or other authenticating documents.

Div. Member elects Option C annuity:

- 4a. Proof of member's birthdate from a birth certificate or other authenticating documents.
- 2b. Proof of member's tax payer identification number from a Social Security card or other authenticating documents.

- C. The failure to submit a complete retirement application and any mandatory documents within a six-month period from the member's effective retirement date plus any extension granted by ATRS shall result in the retirement application being voided and of no effect. This rule on required documents applies to all retirement applications including retirement based upon age retirement, service retirement, early retirement, and disability retirement.

Amended: June 15, 2004
February 7, 2006
April 26, 2007
June 16, 2009 (Emergency)
October 5, 2009 (Permanent)
July 1, 2011 (Emergency)

Adopted: August 8, 2011

Effective: November 11, 2011

Approved by Board: July 26, 2013

Amended:

Effective:

Summary of Proposed Rule Change

for

Arkansas Teacher Retirement System

Rule 9-4 Disability

This Rule change is needed to comply with Act 493 of 2013. Act 493 mandates that if a member is eligible for voluntary retirement and suffers a disability, they will be retired as a voluntary retiree, and not as a disability retiree. Changes were also made throughout the Rule to avoid duplication with the language of the law, and help clarify that a member must terminate employment to receive disability benefits. Numbering changes are consistent with the style of numbering throughout the Rules. Specific changes as referenced by the Rule page number are listed as follows:

9-4-1 I. A.1. The stricken language was moved to paragraph B. 2. below. The new language relates the payment of the disability back to the month of the written application, if the member is ultimately determined to be disabled.

9-4-1 I. A.2 . The added language is nonsubstantive and intended for consistency and clarity. The stricken language is moved to the following paragraph and reworded.

9-4-1 I. A.3. This new paragraph is a rewording of the language stricken in the previous paragraph A.2. and clarifies what constitutes "active" status for purposes of disability retirement.

9-4-1 I. B. 1. The first sentence is stricken because the content and the same meaning are covered in the previous paragraph A.1. The new language is added to explain that a member cannot go back to work for the same employer as an independent contractor and draw disability from ATRS.

9-4-2 I. B.2. This language addresses the situation where a member is finishing up work for the employer before retiring under disability. This language was previously in 9-4-1 A.1. above.

9-4-2 I. B.3. This subparagraph was added to reference the Arkansas Code section that defines "termination" and to allow for a reapplication, consistent with disability retirement law under § 24-7-704.

9-4-2 I. C. Nonsubstantive change that clarifies language.

9-4-2 I. D. Strikes superfluous language; all other changes are nonsubstantive for consistency throughout the Rules.

9-4-3. I. H. The language in the paragraph was stricken, but the content moved to B.3.above.

RULE 9-4

DISABILITY RETIREMENT

A.C.A. § 24-7-704

I. RULES (as amended by Acts 468 and 743 of 2009)

- A Disability retirement benefits shall commence the first day of the calendar month following the date the member is found to be disabled by the Medical Committee or up to two (2) full calendar months after the Medical Committee meets if the member is wrapping up final work for which the member is paid the month the member files a written application with ATRS if at the time the member files the application the member is no longer employed by an ATRS-covered employer, if the member is otherwise eligible under A.C.A. § 24-7-704 and these Rules, and if after the Medical Committee determines a disability exists for the member.
- B. Termination of active membership for disability retirement benefits shall be the last date of any employer payment to the member due to the employment end of the employee/employer relationship. Paid sick leave, Family Medical Leave Act (FMLA) leave, if granted for the disability applicant, and other medical leave granted by the employer shall extend the date of active membership; however, service credit paid sick leave from the covered employer.
- C. The member is considered active if they are using earned sick leave, Family Medical Leave Act (FMLA) leave, annual leave and catastrophic leave. Worker's compensation, which may or may not include the use of leave granted by the employer, is not considered leave by which a member is considered active, nor does it extend the date of active membership.
- B.D.
- i. If a disability is determined to exist by the Medical Committee, disability retirement benefits shall commence on the date of the member's termination of active membership. Termination of active membership means when all employer payments to the member have ceased due to the end of the employee/employer relationship. A member cannot simultaneously be employed by an ATRS-covered employer and receive ATRS disability retirement. A.C.A. § 24-7-701 also prohibits a member from receiving disability retirement if the member performs work for an ATRS covered employer as an independent contractor in certain circumstances.

- 4ii. If a member is approved for disability retirement but continues to work for the covered employer (directly or indirectly), he/she must terminate employment with the covered employer or indirect employer by the proposed disability retirement effective date or up to two (2) full calendar months after the Medical Committee meets if the member is wrapping up final work for which the member is paid to receive disability retirement.
- 2iii If the member does not terminate employment under the Rules and A.C.A. § 24-7-502, the application is rescinded and the member can reapply.

GE. If the application for disability retirement benefits is denied and the member elects and otherwise qualifies for voluntary retirement, the effective date for retirement shall be determined by the date the disability retirement application is filed.

DE. ~~If an active member dies after applying for disability retirement, the following will apply:~~

4. ~~If the member dies after the disability application is received by the System ATRS but before disability retirement is approved, then the System ATRS shall consider the member to have died in "active" service and survivor benefits under A.C.A. § 24-7-710 shall be paid.~~

EG. The annuity formula for computing disability retirement benefits is the same as for voluntary age and service retirement.

FH.

1. For all disability retirement applications approved by the Medical Committee after May 31, 2011, in accordance with rule making authority granted to the ATRS Board under A.C.A. § 24-7-706(v), the Board shall allow a disability retiree at the time of retirement to designate an Option A or Option B beneficiary. Option C beneficiaries shall not be available to disability retirees.

- 4ii If a disability retiree designates an Option A or Option B spouse beneficiary, and the disability retiree dies before reaching age 60, then the same rules that apply to active member option beneficiaries shall apply to the disability Option A and Option B beneficiaries under A.C.A. § 24-7-710(a)(C).

- 2iii If a disability retiree designates an Option A or Option B incapacitated child beneficiary, and the disability retiree dies before reaching age 60, then the same rules that apply to an active member surviving child shall apply to the disability Option A or

Option B beneficiary under A.C.A. § 24-7-710(c) until the disability retiree would have turned age 60, then the Option A or Option B incapacitated child beneficiary shall receive the greater of the surviving child annuity under A.C.A. § 24-7-710(c) or the Option A spouse annuity under A.C.A. § 24-7-710(a).

~~G.~~ Disability retirants who are disapproved for further disability annuities due to a medical examination reviewed by the Medical Committee shall be removed from the System's ATRS' retirant payroll the earlier of six months following the review date or the first of the month following the return to covered employment.

~~H.~~ If a member is approved for disability retirement but continues to work, he/she must terminate employment by the proposed disability retirement effective date. If covered employment is not terminated after receiving notice of the proposed effective date, disability retirement will be cancelled, the member will be considered active, and is eligible to reapply for disability retirement as long as the member is otherwise qualified to apply for disability retirement.

~~I.~~ ~~J.~~ If a member applies for disability retirement and is disapproved, he/she has the right to file a new disability application submitting additional information for review as long as the member remains active.

Amended: June 15, 2004
July 18, 2005
June 19, 2007
December 18, 2009
July 1, 2011
Adopted: August 8, 2011
Effective: November 11, 2011
Approved by Board: February 6, 2012
Amended: April 18, 2012
Effective: May 29, 2012
Approved by Board: July 26, 2013
Amended:
Effective:

Summary of Proposed Rule Change

for
Arkansas Teacher Retirement System

Rule 9-8 Error Corrections and Collection of Overpayments

This Rule change is needed to comply with Acts 303 and 336 of 2013. Act 303 defines a "manifest injustice". Act 336 allows ATRS to cancel service credit for which contributions are owed. Other changes were made to reference the section of Arkansas Code that deals with corrections of errors and to make minor nonsubstantive changes, such as the renumbering of paragraphs to be consistent with other Rules, or changing all references to the system to "ATRS". Specific changes as referenced by the Rule page number are listed as follows:

9-8-1 I.A.1. The added language references the section of Arkansas Code that deals with correction of errors. This section of the code discusses, among other issues, the "look back period" of 5 years, for which claims may be valid, and the consideration of "manifest injustice" beyond the look-back period.

9-8-1 I.A.2. Nonsubstantive change from "the System" to "ATRS"

9-8-1 I.A.4. The language was stricken to remove any overlap or potential conflict with Rule 13, which sets out the process and requirements for a member appeal; the added language refers to Rule 13, and allows benefits to continue until the matter is resolved. The second paragraph of 9-8-1 I.A.4 is stricken to remove any overlap or potential conflict with Rule 13, which sets out the process and requirements for a member appeal.

9-8-2 I.A.9 This language is added to reference the extraordinary remedy of "manifest injustice", which is defined in Act 303 and will be codified in the definition section of the Arkansas Code in § 24-7-202. There is also a separate ATRS Rule proposed regarding the process for claiming and evaluating "manifest injustice".

RULE 9-8

ERROR CORRECTIONS AND COLLECTION OF OVERPAYMENTS

A.C.A. § 24-7-205

I. RULES

- A.4. If a change or error in the ~~System's~~ ATRS' records discovered during the ATRS look back period results in either an overpayment or underpayment to a benefit participant of the ~~System~~ to ATRS, the Board authorizes the ~~System~~ ATRS to correct the error in the records and to adjust the any benefit or adjust any other amount payable to the corrected amount and take all necessary action as the circumstances may require including the options allowed under A.C.A. § 24-7-205(b).
- 2B. If a benefit participant under a qualified domestic relations order pursuant to A.C.A. §§ 9-18-101—103, is paid any benefit or payment by the ~~System~~ ATRS to which the benefit participant is not entitled, and it is discovered during the ATRS look back period, then a receivable is created and the Board or its designee(s), may collect the amount due to the ~~System~~ ATRS as set forth in A.C.A. § 24-7-205.
- 3C. Before making an adjustment of benefits or pursuing any other collection action under Nos. 1 and 2 above, a notice shall be provided to the person who is the subject of the adjustment. The notice will state the amount determined to be a receivable and the reasons underlying the determination. The notice shall also suggest alternate methods for payment of the receivable.
- 4.D. Appeals to dispute collections may shall be made in writing to the ~~Executive Director~~ if made within 30 days of the date of the original notice to the member, former member, contributor, former contributor, retiree, beneficiary, or alternate payee according to the procedures and requirements of ATRS Rule 13. During the appeal process, retirement benefits may continue to be paid.

~~The Executive Director's de novo review may be appealed to the Board of Trustees for a de novo review by the Board. The affected party must send notice in writing to the Executive Director that the Executive Director's decision is being appealed within 30 days of the date of the Executive Director's review. The Board will hear the appeal in a regularly scheduled Board meeting. During the appeal process, retirement benefits will continue to be paid.~~

- 5E. A determination, review, administrative action, cause of action, request to enforce, change or modify an obligation, duty, benefit calculation, designation, refund, contribution, service credit or other right arising under this section shall not be valid unless commenced within the look-back period unless the ~~system~~ ATRS determines that the justification to commence the process is due to intentional nondisclosure, fraud, misrepresentation, or criminal act.
- 6E. The board or its designee may also make adjustments to the employer, member, and ~~system~~ ATRS records 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.
- 7G. The Board authorizes the Executive Director to waive interest on required contributions under Nos. 1 and 2 above in an amount not to exceed \$5,000. Any request to excuse an interest amount exceeding \$5,000 shall be submitted to the ATRS Board for review. The Executive Director shall report to the Board any amounts excused under this section.
- 8H. If required, a receivable under this section that is found by the Board or its designee to be uncollectible or for which adjustment or payment has been waived will be submitted to the Chief Fiscal Officer of the state for abatement pursuant to A.C.A. §§ 19-2-301 – 307.
- I. A determination by ATRS of a manifest injustice in a particular instance due to a technical error or error in judgment is always discretionary and governed by the provisions of Act 303 of 2013, codified as § 24-7-202(40).

Adopted: July 18, 2005
Amended: December 18, 2009
 July 1, 2011 (Emergency)
Adopted: August 8, 2011
Effective: November 11, 2011
Approved by Board: July 26, 2013
Amended:
Effective:

Summary of Proposed Rule Change

for
Arkansas Teacher Retirement System

Rule 10-2 Employment of an ATRS Retiree by a Participating Employer

This Rule change is needed to comply with Acts 140 and 521 of 2013. Both Acts 140 (which is a "technical corrections" Act) and 521 modified or clarified the definition of salary. Other changes to this Rule include renumbering paragraphs to be consistent with the numbering system used in other Rules and eliminated language made obsolete by previously repealed law. Specific changes as referenced by the Rule page number are listed as follows:

10-2-1 I.A. Language stricken and replaced with language consistent with Acts 140 and 521, and a reference is made to the definition section of the Arkansas Code that defines "salary" for ATRS.

10-2-1 II C. (4). Deletes language that is duplicative of language in § 24-7-708(d)(1).

10-2-1 II D (5). Deletes language that is obsolete and was repealed under Act 224 of 2011; other changes to the section are nonsubstantive.

RULE 10-2 **EMPLOYMENT OF AN ATRS RETIREE BY A PARTICIPATING EMPLOYER**

A.C.A. § 24-7-202, A.C.A. § 24-7-502, and A.C.A. § 24-7-708

I. DEFINITIONS

A.1. **Salary** means remuneration paid from a participating employer to an ATRS member on which the employer withholds federal income taxes including pretax contributions to a qualified retirement plan is defined by A.C.A. § 24-7-202(27), provided that non-mandatory compensation that is taxable by the IRS is not salary for ATRS purposes.

B.2. **Normal retirement age** means sixty-five (65) years of age.

C.3. **Participating employer** means an employer who participates in the Arkansas Teacher Retirement System whose employees are eligible for membership under A.C.A. § 24-7-501 or other applicable law.

D.4. **Retiree** means a member receiving an ATRS retirement annuity.

E.5. **Retires** means that a member ceases to be active and is eligible to receive an ATRS annuity.

II. REGULATIONS

A.1. Upon acceptance of employment with a participating employer, the retiree and employer must report to ATRS the employment of the retiree on the forms and reports as required by the System.

B.2. Employers will report all retirees who are employed by a participating employer on the retirement reports filed by employers.

C.3. Effective July 1, 2009, no earnings limitation shall apply to retirees who become employed with participating employers.

4. ~~Effective July 1, 2009, a participating employer employing an ATRS retiree shall remit the employer contribution rate for salaries paid to all retirees at the rate in effect for active members for the fiscal year.~~

D.5. When a retiree becomes employed by a participating employer and ~~does not rescind his/her retirement,~~ the retiree shall not accrue additional service

credit, and no member contributions should shall be withheld or paid to the System ATRS.

E6. For the return to work rules applicable to disability retirees receiving benefits under A.C.A. § 24-7-704, see Policy No. 9-4 (Disability Retirement).

Amended: June 15, 2004
July 18, 2005
October 4, 2005
December 6, 2005
June 19, 2007
February 11, 2008
June 16, 2009 (Emergency)
October 5, 2009 (Permanent)

Approved by Board: July 26, 2013

Amended:

Effective:

Summary of Proposed Rule Change

for
Arkansas Teacher Retirement System

Rule 10-3 Teachers Deferred Retirement Option Plan (T-DROP)

This Rule change is needed to comply with Act 605 of 2013. Act 605 treats the percentage of plan benefit for contributory, noncontributory and reciprocal service equally. Changes to the Rule were also made to provide consistency with the law on T-DROP, found at § 24-7-1301 et seq. Other changes delete repetition of the language in the law, and make nonsubstantive change for consistency within the ATRS Rules. "10-year Plus T-Drop" is now referred to as "Post 10-year T-DROP", which is a more accurate and descriptive term, and the term that ATRS has been using to administer the program. Specific changes as referenced by the Rule page number are listed as follows:

10-3-1 I. Language added to cite authority for the administration of T-DROP.

10-3-1 II. Definitions that are found in Arkansas Code § 24-7-202 were removed to avoid repetition and prevent inconsistency.

10-3-1 II. 2. "Early participant" is defined in the Arkansas Code under § 24-7-1314, which covers T-DROP, but not defined in the general definition section of the law. It is restated here to promote an understanding of the Rule in certain sections that distinguish between a participant of T-DROP, and an "early" participant. Specific reference is made to the code section to avoid confusion.

10-3-1 II. 4. This change removes superfluous and duplicative language from the definition of "participant".

10-3-2 II. 7. This language was previously located under the definition 10-3-2 II. 13 below under the title "10-year plus T-DROP", and is restated in its entirety, its new location alphabetically placed.

10-3-2 II. 9. The definition of T-DROP is already in the Arkansas Code § 24-7-202 and was stricken to avoid repetition and prevent inconsistency.

10-3-2 II. 10. Nonsubstantive changes for consistency within the Rules.

10-3-2 II. 13. Language stricken, but relocated and restated in its entirety under 10-3-2 II.7 above.

10-3-3 III. B. This language is added to provide clarity within this section and to distinguish between early participants and regular participants in T-DROP.

10-3-3 IV. Paragraphs 1 through 4 are stricken because the language substantially repeats the language in § 24-7-1302, and is therefore repetitive and unnecessary.

10-3-4 IV 1. B. Language is added to specifically reference the Arkansas Code regarding T-DROP.

10-3-4 IV 1. C. Language is added to provide a context to the referenced Arkansas Code cite, and to distinguish the monthly stipend benefit from other ATRS retirement benefits.

10-3-4 IV 2. A. This former paragraph 6 includes the changes necessitated under Act 605, which treats the percentage of plan benefit for contributory, noncontributory and reciprocal service equally.

10-3-4 IV 2. B. This stricken language is necessitated under Act 605, which treats the percentage of plan benefit for contributory, noncontributory and reciprocal service equally.

10-3-4 IV. 2. B. iii. This new "B" (previously "C") adds language to subparagraph iii based upon the reduction mandated in § 24-7-1306.

10-3-5 IV. 2. B. iv. Clarifies the language by adding "but does not retire"; other changes reference the reduction found under § 24-7-1306.

10-3-5 IV. (7). This strikes language found in § 24-7-1314(b) to avoid confusion or potential inconsistency.

10-3-5 IV. New paragraphs 3 through 5. Nonsubstantive changes to sentences and renumbering of paragraphs as appropriate to reflect deletions of previous paragraphs.

10-3-5 IV. 6. Changes reflect distribution options available under § 24-7-1308, and references the withdrawal option under § 24-7-1302(c).

10-3-5 IV. 8. Nonsubstantive change of sentence for clarity.

10-3-7 V. 5. The sentence is added to reflect the account interest that the Board is authorized to make under § 24-7-1307.

10-3-7 VI. 1. Stricken language and change is nonsubstantive and made for clarity.

10-3-8 VII. 4. This subparagraph is stricken to avoid duplication of the law because the provisions of § 24-2-402(8) already account for coordination with reciprocal systems.

10-3-8 VIII. 1 Nonsubstantive changes to paragraph are made for clarity and understanding; the reference to the Arkansas Code § 24-7-1308 regarding distribution options is added, and the percentages are stricken because they are stated in the Arkansas Code section referenced.

RULE 10-3

TEACHER DEFERRED RETIREMENT OPTION PLAN (T-DROP)

A.C.A. §§ 24-7-1301 - 1316

I. The ATRS Board of Trustees has the authority under A.C.A. § 24-7-1301(c) to promulgate rules for the administration of a deferred retirement option plan for eligible members, called the T-DROP.

II. **DEFINITIONS**

1. ~~ATRS~~ means the Arkansas Teacher Retirement System.
2. ~~Board~~ means the Board of Trustees of the Arkansas Teacher Retirement System.
3. ~~A.~~ **DROP** means a deferred retirement option plan enacted by the General Assembly and administered under ATRS or a reciprocal system.
- B. **Early participant** means a member who has at least 28 years of service with an ATRS or reciprocal employer but less than 30 years, and participates in T-DROP under the requirements of A.C.A. § 24-7-1314 and any Board rules promulgated for early participants.
4. ~~C.~~ **Fiscal Year** means the operating year for the State of Arkansas that begins on July 1 of each calendar year and ends on June 30 of the next calendar year.
5. ~~D.~~ **Participant** means a member who elects to participate in T-DROP under A.C.A. § 24-7-1301 et seq. by authorizing ATRS to make plan deposits, plan interest, or 10-year plus T-DROP interest into a member's T-DROP account.
6. ~~E.~~ **Plan deposits** means the deposits made to each participant's T-DROP account pursuant to A.C.A. § 24-7-1306.
7. ~~F.~~ **Plan interest** means the rate per annum, compounded annually on June 30, as the Board shall set and adopt at the end of each fiscal year, credited annually in each T-DROP participant's T-DROP account. The interest rate shall be 2% less than the System's ATRS' average rate of return with a maximum of 6% and minimum of 2%. The Board will determine the interest rate for the following fiscal year based upon the rate of return for the immediately preceding twelve-month period ending March 31 prior to the start of such fiscal year. The initial calculation of this rate shall begin March 31, 2005, for interest to be credited in the 2005-2006 fiscal year.

G. **Post 10-year T-DROP interest** means the rate per annum, compounded annually, as the Board shall set and adopt at the end of each fiscal year, credited on June 30 to the balance of the T-DROP participant's account that meets the following criteria:

- i. The member participated in T-DROP for ten (10) years and continued employment with an ATRS covered employer; and
- ii. The member has not retired.

8H. **Quarter** means one-fourth (1/4) of a fiscal year. The four (4) quarters applicable in this rule are:

- 1st Quarter: July 1 through September 30
- 2nd Quarter: October 1 through December 31
- 3rd Quarter: January 1 through March 31
- 4th Quarter: April 1 through June 30

9. ~~T-DROP~~ means the Teacher Deferred Retirement Option Plan established by ATRS under Act 1096 of 1995.

10.I. **T-DROP Cash Balance Account** means the financial account set up for a participant who elects to defer distribution of his or her T-DROP account at a time that he or she is eligible to receive a lump-sum distribution of the T-DROP balance.

14J. **T-DROP Cash Balance Account Interest** means the interest rate per annum applicable to a member's participant's T-DROP Cash Balance Account, compounded annually and credited on June 30 into a participant's T-DROP Cash Balance Account. The interest rates payable on the T-DROP Cash Balance Accounts are set forth in this rule in subsection 4 of the section titled "**T-DROP CASH BALANCE ACCOUNT**". The annual T-DROP Cash Balance Account interest rate shall be applied to T-DROP Cash Balance Accounts that have been held for at least one (1) fiscal year by the System ATRS.

42K. **T-DROP Service Credit** shall be determined using the same rules that apply for service credit for an active member with the exception that "on call" availability shall not be used for T-DROP service credit requirements.

13. ~~10-year plus T-DROP interest~~ means the rate per annum, compounded annually, as the Board shall set and adopt at the end of each fiscal year, credited on June 30 into a member's T-DROP account that meets the following criteria:

- ~~A. The member participated in T-DROP for ten (10) years and continued employment with an ATRS covered employer; and~~
- ~~B. The member has not retired.~~

III. T-DROP PARTICIPATION and ACCOUNT CREDIT

- A. ~~Effective July 1, 1995, in~~ In lieu of terminating employment and retiring under A.C.A. § 24-7-701, an active member of ATRS may elect to participate in T-DROP and continue to work for a covered employer. By continuing covered employment, the participant defers receipt of retirement benefits until a later date.
- B. A member shall have at least 30 years of credit in ATRS to participate in T-DROP, or, to become an early participant in T-DROP, at least 28 years but less than 30.
- C. During participation in T-DROP, ATRS shall credit each participant's T-DROP account with plan deposits and plan interest.
- D. The plan interest rate determined by majority vote of the Board is final and binding upon ATRS and shall not be adjusted based on any revised rate of return reported after that date.
- E. The Post 10-year-plus T-DROP interest rate shall be set by the Board at same meeting that the plan interest rate is set. The 10-year plus T-DROP interest rate is limited to a maximum of six percent (6%) and a minimum of four percent (4%). The Post 10-year-plus T-DROP interest rate will be credited to the participant's T-DROP account on June 30th of each year.
- F. The initial Post 10-year-plus T-DROP interest rate for 2010 is set at four percent (4%) and will be credited to the participant's T-DROP account on June 30, 2010. The Post 10-year-plus T-DROP interest rate shall be set prospectively by the Board prior to the beginning of each fiscal year and that interest rate shall be credited to the participant's T-DROP account June 30th of the following year.
- G. The Post 10-year-plus T-DROP interest rate for each year determined by majority vote of the Board is final and binding upon the ATRS and shall not be adjusted based on any revised rate of return reported after that date.

IV. RULES

- ~~1. To participate in the T-DROP, the member shall have twenty-eight (28) or more years of ATRS service credit. For reciprocal service, refer to the section~~

in this rule titled "~~DROP PARTICPATION UNDER RECIPROCAL SYSTEMS~~".

2. ~~To participate in the T-DROP, the member shall make the election on an application form approved by ATRS.~~
 3. ~~Upon review of the member's application, ATRS shall determine if the member meets the eligibility requirements specified in A.C.A. § 24-7-1302, and approve or disapprove the application.~~
 4. ~~If the member meets the eligibility requirements, the member's T-DROP participation will begin the July 1 after the application is approved.~~
- 5A i. The participant's T-DROP benefit will be the monthly straight life annuity benefit to which the member would have been entitled had the member retired under A.C.A. § 24-7-701.
- ii. ~~The participant's T-Drop T-DROP benefit may be reduced under the conditions of No. 7 below as set in these Rules and under A.C.A. § 24-7-1301 et seq.~~
- iii. ~~The T-DROP deposit shall not include the benefits additional benefit, also known as the "monthly benefit stipend" provided in A.C.A. § 24-7-713(b) (stipend).~~
- 6B. Plan deposits shall be a percentage of the T-DROP benefit, as follows:
- Ai. ~~One hundred percent (100%) reduced by the product of one percent (1.0%) multiplied by the number of years of contributory and noncontributory service credit, including reciprocal service, and fractions thereof, plus,~~
- B. ~~One hundred percent (100%) reduced by the product of six-tenths percent (0.6%) multiplied by the number of years of noncontributory service credit and fractions thereof.~~
- C. ii. ~~In the event a For a participant whose effective date in the T-DROP is before September 1, 2003, and who has more than thirty (30) years of service, the years of service above thirty (30) years shall be reduced by one-half of one percent (0.5%) for contributory years and three-tenths of one percent (0.3%) for noncontributory years.~~
- iii. Beginning July 1, 2001, when a participant whose effective date in the T-Drop T-DROP is before September 1, 2003, reaches normal retirement age, the plan deposits shall be 100% with no reduction.
- iv. For a participant whose effective date in the T-Drop T-DROP is

September 1, 2003, or after and who has more than thirty (30) years of service, the plan deposits for the years of service above thirty (30) years shall be reduced under Nos. 6A and 6B based upon the reduction established at the time the participant entered T-DROP.

- v. For a participant whose effective date in the T-Drop T-DROP is September 1, 2003, or after, and the plan deposits for a participant who reaches normal retirement age but does not retire, the plan deposits shall continue as reduced under Nos. 6A and 6B based upon the reduction established at the time the participant entered T-DROP.

~~7. A participant's plan deposit will incur an additional reduction of 0.5% for each month the member lacks having thirty (30) years of credited service.~~

~~8C.~~ A participant ~~may~~ shall elect an annuity option provided in A.C.A. § 24-7-706. ~~The election shall be made at the time the participant separates from service and is granted a monthly retirement benefit or files for retirement upon reaching normal retirement age.~~

~~9D.~~ A. A member's participation in T-DROP shall not exceed ten (10) consecutive calendar years for accruing plan deposits; however, the Board is authorized under A.C.A. § 24-7-1307 to provide for a separate deposit, called the Post 10-year T-DROP interest.

B. If a participant continues covered employment after completing ten (10) years in T-DROP, the T-DROP account will be credited with Post 10-year plus T-DROP interest as set by the Board. Benefits payable at retirement will be based on the account balance the month before the participant begins drawing retirement benefits.

~~10E.~~ The annuity upon which plan deposits are calculated shall receive the cost-of-living increase provided for in A.C.A. § 24-7-713(a) or § 24-7-727. The annuity plus the cost-of-living increase is reduced or adjusted under the procedure described in No. 6 above this Rule.

~~11F.~~ If a T-DROP participant elects to retire and ATRS distributes the T-DROP account to the participant cash out or annuitize their T-DROP account balance upon election to retire, once the T-DROP account is distributed to the member, the participant shall not be allowed to reenroll in T-DROP, unless the member cancels their election under A.C.A. § 24-7-1302(c).

~~12G.~~ As soon as possible after the end of each fiscal year, ATRS shall furnish the participant an annual statement of the participant's T-DROP account. The statement of T-DROP deposits and interest will not be final until the annual accounting has been reconciled for part-time T-DROP participants.

~~13H.~~ If a participant earns service credit Service Credit of 160 days or greater within a fiscal year ~~while in T-DROP participation without termination,~~

retirement, or death and the participant does not terminate employment, retire, or die during the fiscal year, or the employer does not terminate the employer/employee relationship, then ATRS will allow crediting of twelve (12) monthly T-DROP deposits per fiscal year.

44i. Part time employment while participating in the T-DROP plan:

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

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

V. CEASING T-DROP AND DISTRIBUTION OPTIONS

4A. Participation in T-DROP ceases when:

- ai. The participant separates from service and is granted a monthly retirement benefit from ATRS or a reciprocal plan; or
- bii. The participant reaches normal retirement age and retires without separation from service, or
- eiii. The participant separates from covered employment but does not apply for monthly retirement benefits; or
- div. The participant dies.

2B. Any lump-sum distribution of a participant's T-DROP account balance is eligible to be rolled over into a qualifying retirement plan. The ATRS shall only roll over the T-DROP lump sum balance into one qualifying plan.

3C. A participant may direct that all or a part of his or her lump-sum distribution as set forth in Ark. Code Ann. § 24-7-1308 continue to be held by ATRS in a T-DROP Cash Balance Account described in this rule in the section titled "T-DROP CASH BALANCE ACCOUNT".

- 4D. The T-DROP is intended to operate in accordance with Section 415 and other applicable sections of the IRS Code. Any provision of the T-DROP that conflicts with an applicable provision of the IRS Code is invalid.
- 5E. If a participant separates from covered employment but does not apply for monthly retirement benefits, the T-DROP monthly deposit shall cease the month of separation from service. No deposits will be credited to the participant's account for the duration of the separation. Upon returning to covered employment, the monthly deposits will resume. Upon application for retirement, benefits will be paid according to the account balance at the time of separation from service or the month prior to the effective date of benefits after reaching normal retirement age. Provided however, if a member has not separated from covered employment and remains on an employer payroll without obtaining sufficient service credit for monthly deposits, the member shall remain eligible for annual interest.
- 6E. If a T-DROP participant leaves ATRS-covered employment to serve, on a voluntary or involuntary basis, in the uniformed services of the United States and returns to ATRS-covered employment, the member shall be treated as not having incurred a break in service with the employer. The employer shall certify to the ATRS that reemployment was in accordance with the requirements set forth in Section 4312 of P.L. 103-353, the Uniformed Services Employment and Reemployment Act (USERA) of 1994.

Under this subsection, uniformed services of the United States are limited to the armed forces, the Army, and the Air National Guard when engaged in active duty for training, inactive duty training, full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or emergency.

VI. DEATH OF A T-DROP PARTICIPANT PRIOR TO RETIREMENT

- 4A. In the event a T-DROP participant dies while still in T-DROP, the benefits payable from the T-DROP account shall be determined according to A.C.A. § 24-7-710.
- 2B. A T-DROP participant's surviving spouse may choose to receive the T-DROP benefit in a lump sum. If the spouse elects a lump-sum payment of the T-DROP balance, then the survivor annuities payable under A.C.A. § 24-7-710 shall be calculated on the service credit and salary earned by the member prior to participating in T-DROP.
- 3C. For the purposes of A.C.A. § 24-7-709 related to disposition of residue, any amount received from the T-DROP account, either in the form of a lump sum or annuity payments, shall be considered to be annuity payments received by

the member or his or her designated beneficiary and shall act to reduce or eliminate the disposition of residue payable under A.C.A. § 24-7-1310(c).

VII. DROP PARTICIPATION UNDER RECIPROCAL SYSTEMS

- 4A. If a reciprocal system offers a DROP for its members, then service credit in ATRS, a reciprocal system, or the combination of service credit in the systems may be counted to meet the minimum service credit requirements for participation under each system's DROP.
- 2B. The benefit payable by the reciprocal system shall be based on the DROP provisions of each system. The final average salary used to determine plan deposits shall be that of the reciprocal system which furnishes the highest final average salary at the time of retirement. Each reciprocal system shall use the method of computing final average salary stipulated by its law. Salaries earned in the Arkansas Judicial Retirement System and alternate retirement plans shall not be used in computing final average salary.
- 3C. Plan deposits and plan interest credited to the DROP account will be paid under the deferred retirement option program in effect for that reciprocal system.
4. ~~ATRS shall promulgate rules and regulations to coordinate its benefits with any reciprocal system providing a DROP.~~

VIII. T-DROP CASH BALANCE ACCOUNT

- 4A. At the time that a T-DROP participant may elect to receive a lump-sum distribution of the participant's all of his or her T-DROP account balance, the participant may instead elect to defer all or a part of his or her T-DROP account and direct that such amount be held in a T-DROP Cash Balance Account for the participant. If a ~~member~~ participant chooses to defer only part of the T-DROP distribution into a T-DROP Cash Balance Account, the ~~member's only other option is to annuitize the remainder of the T-DROP distribution~~ shall be annuitized with ATRS on a 25%, 50%, or 75% basis according to the distribution options set out under A.C.A. § 24-7-1308.
- 2B. After the first full quarter of T-DROP Cash Balance Account participation, a participant with a T-DROP Cash Balance Account balance may withdraw funds from the account one time per quarter on such forms as the ~~System~~ ATRS may issue. ~~The system ATRS may allow a member the participant to~~ obtain an additional withdrawal in a quarter for a manifest emergency. As provided in Ark. Code Ann. §24-7-730, required minimum distributions will be made sufficient to satisfy legal requirements, including Internal Revenue Code §401(a)(9).

3C. A T-DROP Cash Balance Account that has been held at least one (1) full fiscal year by the System ATRS shall be credited annually on June 30 with T-DROP Cash Balance Account interest (computed on a weighted-average basis) and debited for all withdrawals and distributions.

4D. The initial interest rates for ~~T-DROP~~ participants electing to enter the T-DROP Cash Balance Account program are set forth in this subsection. Members establishing a T-DROP Cash Balance Account on or after July 1, 2012, shall receive interest on their T-DROP Cash Balance Account according to the following schedule:

After one (1) complete fiscal year:	2.00% interest.
After two (2) complete fiscal years:	2.25% interest.
After three (3) complete fiscal years:	2.50% interest.
After four (4) complete fiscal years:	2.75% interest.
After five (5) complete fiscal years:	3.00% interest.
After six (6) complete fiscal years:	3.25% interest.
After seven (7) complete fiscal years:	3.50% interest.
After eight (8) or more complete fiscal years:	4.00% interest.

These interest rates are minimum interest rates that apply to T-DROP Cash Balance Accounts that are established while these rates are in effect. The T-DROP Cash Balance Account interest may be increased by the ATRS Board of Trustees on a forward-looking and Ad Hoc basis.

5E. The interest rates set forth in subsection 4 above and payable on T-DROP Cash Balance Accounts established on or after July 1, 2012, shall remain at the initial rate set for July 1, 2012, T-DROP Cash Balance Account entrants unless the ATRS Board of Trustees adopts a different interest rate schedule to be used for future entrants to the T-DROP Cash Balance Account at least one (1) year prior to the beginning of a fiscal year in which the new interest rates shall apply. The ATRS Board of Trustees may adopt an interest rate schedule for new entrants by Resolution, setting forth the new interest rate schedule for the T-DROP Cash Balance Account. T-DROP Cash Balance Accounts existing prior to the effective date of the Resolution shall be unaffected by the new interest rate schedule.

6E. Based upon interest rates and financial market conditions, the ATRS Board of Trustees may approve Ad Hoc interest rate increases for ~~T-DROP~~ participants in the T-DROP Cash Balance Account for a subsequent fiscal year through Resolution adopted by the ATRS Board of Trustees.

7G. If a participant dies with a T-DROP Cash Balance Account, the account balance shall be paid as provided under Ark. Code Ann. § 24-7-1310.

Approved: June 13, 1995

Amended: July 30, 1997

June 17, 2003
February 15, 2005
July 18, 2005
April 26, 2007
February 1, 2010 under emergency rules.
June 7, 2010 Permanent
July 1, 2011 (Emergency)
Adopted: August 8, 2011
Effective: November 11, 2011
Approved by Board: February 6, 2012
Amended: April 2, 2012 (Emergency)
Effective: May 29, 2012
Approved by Board: July 26, 2013
Amended:
Effective:

Summary of Proposed Rule Change

for

Arkansas Teacher Retirement System

Rule 11-1 Survivor Benefits

This Rule change is needed to comply with Acts 140, 174, and 571 of 2013. Act 140 is a "technical corrections" Act that in part, amended the portion of Arkansas Code that affect the payment of a survivor benefit. Act 174 allows ATRS to pay survivor benefits directly to persons who have legal custody of the child who is the beneficiary. Act 571 allows an eligible survivor to receive benefits as early as the month after the member's death if the application is filed within three months of the member's death. Other changes strike language that is duplicative of Arkansas Code language, and specific Arkansas Code cites are included in its place. Renumbering of paragraphs is made to be consistent with the numbering system utilized throughout the Rules. Specific changes as referenced by the Rule page number are listed as follows:

11-1-1 I. Language is changed to reference the Arkansas Code § 24-7-710, regarding Survivor Benefits.

11-1-1 I. A. The new language simplifies and restates the stricken language for clarity.

11-1-1 I. B. Language is changed to reference the Arkansas Code § 24-7-710, regarding Survivor Benefits.

11-1-1 II. A. Language is changed to reference the Arkansas Code section and to restate the stricken language in clearer terms.

11-1-2 II. C i. The stricken language in the old "i" is inconsistent with § 24-7-710(b)(1)(C).

11-1-2 II. C ii. The stricken language in the old "ii" is covered under § 24-7-710(b)(1)(B).

11-1-2 II. C iii. The stricken language in the old "iii" is covered under § 24-7-710(b)(1)(D).

11-1-2 III A. Stricken language is to comply with Act 571, and the added language is changed to reference the requirements in § 24-7-710 and Act 571 and to avoid duplication or possible confusion with the language in the law.

11-1-3 III C. Language is changed to reference the Arkansas Code section that defines "child", and to reword the remaining paragraphs for clarity. Additionally, the Rule requires proof of attendance at a school in order to continue receiving benefits beyond age 18.

11-1-4 III E. This change was made to comply with Act 174, that references payment of a benefit to a legal guardian.

11-1-4 IV. B. This change was made to comply with Act 140, which lists the order in which a final payment to a beneficiary is sent, until delivered.

11-1-5 IV. E. The additional language references the calculation of final average salary (which uses the member's 3 highest years of salary) to clarify the meaning of the paragraph.

11-1-5 IV. F. The second paragraph of "F" is deleted to avoid confusion or potential conflict because it substantially replicates the language in Arkansas Code § 24-7-710(g).

RULE 11-1

SURVIVOR BENEFITS

A.C.A. §§ 24-7-710, 713

I. RULES AND REGULATIONS (as amended by Act 1324 of 2009) GENERAL: **See A.C.A § 24-7-710 for Survivor Benefit Rules.**

A. If an active member with five (5) or more years of actual and reciprocal service, including credited service for the year immediately preceding his or her death, dies while in active service before retirement, survivor benefits as provided in A.C.A. § 24-7-710, plus the monthly stipend under A.C.A. § 24-7-713, shall be paid to the following qualifying dependents. Benefits may be provided to dependents of qualifying members after the death of the member. To qualify, a member must have five (5) years of actual service and be an active member at the time of death.

B. A member shall also be considered ATRS considers a member to be active for the purpose of qualifying for survivor benefits under A.C.A. § 24-7-710(g) and if:

- (1) i. The member has at least 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 an ATRS employer, whichever occurs last, provided however, the member must have at least one quarter with ten (10) days of service; and or
- (2) ii. The member has at least ten (10) days of service in the quarter of the member's death, or, ten (10) working days have not elapsed in the quarter of the member's death.

1. SPOUSE II. SPOUSAL BENEFITS

A. The member's surviving spouse, who The benefits provided for in A.C.A. § 24-7-710, plus the monthly stipend under A.C.A. § 24-7-713 shall be paid to the spouse of the qualifying member if the spouse survives the member and was married to the member for at least two (2) years immediately prior to the member's death, shall receive a surviving spouse benefit.

B. i. If at the time of the member's death there are no dependent children eligible to receive a dependent child annuity, a surviving spouse who qualifies to receive a surviving spouse annuity may file with the System ATRS a waiver of any rights to the spouse spousal annuity.

- ii. If the surviving spouse files a waiver of the spouse spousal annuity, then the deceased member's residue beneficiary(ies) will receive a single distribution of the member's residue amount, if any.
- C. i. ~~The spouse spousal annuity shall begin under the following schedule: is payable for the spouse's lifetime, regardless of remarriage, pursuant to A.C.A. § 24-7-710(b).~~
- i. ~~If the member was not eligible for early, regular, or deferred retirement at the time of his/her death, the spouse annuity will begin the date the member would have been eligible to receive retirement benefits and is payable for the spouse's lifetime, regardless of remarriage.~~
 - ii. ~~However, if the member had either satisfied the age and service requirements provided in A.C.A. §§ 24-7-701 or 702 or attained age sixty (60) and was eligible for deferred retirement under A.C.A. § 24-7-707, then the spouse annuity commences the month following the member's death and is payable for the spouse's lifetime, regardless of remarriage.~~
 - ii. iii. ~~If the surviving spouse is eligible to receive the survivor annuity upon the member's death but would receive a reduction due to the member being less than 60 years of age, the The spouse may defer receipt of the annuity until the member would have been entitled to an unreduced benefit at age 60 if applicable, under the deferred retirements provisions of A.C.A. § 24-7-707.~~

2.III. DEPENDENT CHILDREN BENEFITS

- A. ~~Effective July 1, 2011, upon the death of an active member, the dependent children shall each receive a surviving child annuity upon the member's death. The surviving child annuity shall be equal to 20% of the member's highest salary year in covered employment. If the member's highest salary year occurs in the year the member died, the System shall calculate the dependent child annuity(ies) on the basis of the full year of salary. Each child's annuity shall begin the month following the member's death and be payable until the annuity terminates Surviving dependent children of the member shall receive an annuity under A.C.A. § 24-7-710 and a cost of living adjustment.~~

~~Surviving children will receive a COLA the July 1 following the annuity commencement date if he/she has received at least 12 monthly benefit payments prior to the COLA implementation date. The cost of living adjustment shall be simple unless the Board elects to compound the COLA for that period as may be designated by the Board.~~

- B. ~~However, if a member has more than three (3) dependent children eligible under this section, then the aggregate annuity payable shall not exceed 60% of the member's highest salary year and shall be divided equally among the surviving dependent children. There are certain additional limitations on the amount of annuity payable to a dependent child if the member has multiple dependents. A.C.A. § 24-7-710(c).~~
- C. ~~i. A member's "child" eligible to receive a child annuity is a "child" under any of the following:~~
- ~~i. A natural child of the member; or~~
 - ~~ii. A child that has been made a child of the member by adoption or other court action prior to the member's death. "Child" is defined under A.C.A. § 24-7-202(9), and for purposes of receiving an annuity from ATRS, the child must be a dependent child in accordance with § 24-7-710. While a surviving dependent child's benefits normally cease once the child reaches eighteen (18) years of age, there are circumstances where the child may continue to receive benefits. These include:~~
- D. ~~A child identified as a dependent will remain eligible to receive a survivor annuity until he/she is no longer a dependent. A child is no longer dependent if he/she reaches the age of 18.~~
- E. ~~A child will continue to be eligible for a child survivor annuity after reaching age 18 if the child continues consecutively, without interruption as a full-time student at an accredited secondary school, postsecondary school such as a vocational technical school, college, or university. In any event, a dependent child annuity will terminate when the child reaches age 23.~~
- ~~i.a. A full-time student. A full-time student is defined as one carrying 12 semester hours or 8 trimester hours in college, four (4) hours per day in a secondary or postsecondary school, or other verifiable indices from an accredited institution that the dependent child is engaged in full time curriculum or field of study. Certification of attendance in an accredited school may be reported by the dependent child in the absence of a parent or legal guardian after the dependent child reaches age 18.~~
 - ~~ii.b. If For a child who is receiving a dependent child annuity is age 18 or older but becomes who is temporarily physically or mentally incapacitated, the Board may continue paying benefits upon receipt of a doctor's certification that the child is temporarily physically or mentally incapacitated; and is unable to attend school for the period of one semester or term. At the beginning of the next semester or term, if~~

the child does not reenter school full-time, the dependent child annuity will terminate.

~~iii. Certification of attendance in an accredited school may be reported by the dependent child in the absence of a parent or legal guardian after the dependent child reaches age 18.~~

~~F. c. A deceased member's dependent child who is dependent due to having been adjudged physically or mentally incapacitated by a court or legal tribunal of competent jurisdiction. Such a child continues to be eligible to receive a dependent child annuity as long as the incapacity exists, regardless of age. A.C.A. § 24-7-710(c).~~

~~GD. A dependent child annuity shall not be adjusted from remains at its initial monthly amount, adjusted only by a COLA increase, and is not readjusted when the member's other dependent child or children's annuities terminate except for COLAs.~~

~~H.E. A dependent child annuity will be is paid as a separate payments payment to each child monthly, rather than one lump-sum check payable to the spouse or custodian. Deposit accounts designated to receive survivor annuity payments to a child under age 18 must qualify as custodial accounts in accordance shall conform with the Arkansas Uniform Transfers to Minors Act or court order in a guardianship.~~

3IV. GENERAL RULES REGARDING SURVIVOR ANNUITIES

- A. Survivors are required to produce sufficient proof of eligibility under these provisions prior to receiving benefit payments.
- ~~B. If at the time of an active member's death, a surviving spouse is listed on the death certificate, the System will search for the surviving spouse for up to one year. If after one year, ATRS has not located or been contacted by the surviving spouse, ATRS will refund the member's residue amount, if any, to the member's remaining residue beneficiaries surviving the member. ATRS will notify survivors who may be eligible for a survivor's benefit at the last address on file at ATRS. (See also ATRS Rule 11-5 Lost Payees).~~
- C. If the member dies before receipt of the first disability retirement check but after receiving final approval for disability retirement, the benefits will be paid under the disability retirement option selected by the member.
- D. If the member dies after the disability application is received by the System ATRS but before disability retirement is approved, then the System ATRS

shall consider the member to have died in "active" service and survivor benefits under A.C.A. § 24-7-710 shall be paid.

- E. For the purposes of determining child survivor benefits, the member's salary shall be the salary that the member would have received in the fiscal year in which he/she died had the member lived through the end of the fiscal year, if the member's high salary occurred in the year the member died.
- F. Salary payments made after the death of a member that were earned prior to death are subject to System ATRS deductions and shall be reported in total salary and days of service in the employer's quarterly report. Payments made by an employer after the death of an active member that are made as a mere gratuity and were not earned by the member shall not be included in the member's salary reported to ~~the System ATRS~~ and are not subject to contributions.

~~For purposes of survivor benefits, a member will be considered active for an additional fiscal year following the last fiscal year that actual service was rendered to a covered employer.~~
- G. If survivor benefits are payable by more than one reciprocal system to eligible survivors of a deceased member, the survivors shall not receive more as a percentage of the deceased member's final pay or as a minimum dollar amount than the largest amount payable by a single, reciprocal system. ~~The System ATRS~~ will prorate minimum benefits payable with any other reciprocal systems that have a minimum benefit provision in its plan. Each reciprocal system shall pay only its proportionate share of the minimum amount based on the ratio of service in its system to the total service in all reciprocal systems.
- H. When the member elects to transfer from ATRS to APERS under the provisions of Act 793 of 1977, APERS' law governs the survivors' eligibility for a payment of residue or survivor benefits upon the member's death

Amended: June 15, 2004
February 7, 2006
April 26, 2007
December 18, 2009
July 1, 2011 (Emergency)

Adopted: August 8, 2011
Effective: November 11, 2011
Approved by Board: August 6, 2012
Amended: October 13, 2012
Effective: March 6, 2013
Approved by Board July 26, 2013
Amended:
Effective:

Summary of Proposed Rule Change

for
Arkansas Teacher Retirement System

Rule 11-2 Lump-Sum Death Benefit

This Rule change is needed to comply with Act 140 of 2013. Act 140 is a "technical corrections" Act that in part, amended the Arkansas Code section that deals with the ATRS lump sum benefit, also known as a one-time death benefit, which is payable to a member's designated beneficiary upon the member's death. The Act removed unnecessary language, clarified the language, and made minor grammatical changes. The Rule changes reference the law that covers lump-sum benefit, found at § 24-7-720. The other changes are largely the removal of language that is substantially similar or identical in the law, and nonsubstantive changes that are made for clarity and consistency. Specific changes as referenced by the Rule page number are listed as follows:

11-2-1 I. B. A definition is added to reference the applicable Arkansas Code section on lump-sum benefits.

11-2-1 and 11-2-2 (1 through 4). These stricken paragraphs are found and covered explicitly in § 24-7-720, so the language was removed to avoid confusion and duplication of the law.

11-2-2 II. A. i. This new language sets the lump-sum death benefit, as authorized under § 24-7-720(c).

11-2-2 II. A. ii. This new language is consistent with other ATRS' Rules for distribution of a member's benefits or residue, such as under ATRS Rule 9-7-1 and the distribution of payment order listed under Act 140 for Lost Payees.

11-2-3 (2). This language is stricken and the same content is provided for under 11.2.2 II.A. i. above.

RULE 11-2

LUMP-SUM DEATH BENEFIT

A.C.A. § 24-7-720

I. DEFINITIONS

- A1.** **Lump-sum beneficiary** means the person(s) or entity(s) designated in writing by the member to receive payment of the lump-sum death benefit under A.C.A. § 24-7-720.
- B.** **Lump-sum death benefit** means a monetary amount set by the Board, and paid by ATRS to lump-sum beneficiaries as provided for under A.C.A. § 24-7-720.

REGULATIONS

~~1. Lump-sum Death Benefit Paid on or before July 1, 2007 (Act 296 of 2007)~~

- ~~— Before July 1, 2007, upon the death of an active or retired member with five (5) or more years of actual service, the System shall pay a benefit in the amount of \$10,000 for contributory members, \$6,667 for noncontributory members, or a prorated amount at a ratio of 3:2 based upon the member's contributory and noncontributory service credit. The payment will be paid as a lump sum to the beneficiary designated by the member. If the member failed to designate a beneficiary or a designated beneficiary did not survive, the lump-sum benefit will be paid to the following persons in statutory succession: spouse, then children, then parents, then the member's estate.~~

~~2. Lump-sum Death Benefit Paid after July 1, 2007 (Acts 1022 and 296 of 2007)~~

- ~~— On or after July 1, 2007, upon the death of an active or retired member with ten (10) or more years of actual service, the System shall pay a benefit in the amount of \$10,000 for contributory members, \$6,667 for noncontributory members or a prorated amount at a ratio of 3:2 based upon the member's contributory and noncontributory service credit. The benefit will be paid as a lump sum to the beneficiary designated by the member. If the member failed to designate a beneficiary or a designated beneficiary did not survive, the lump-sum benefit will be paid the member's estate.~~

~~3. Lump-sum Death Benefit Paid on or after July 1, 2009 (Act 1323 of 2009)~~

~~On or after July 1, 2009, upon the death of an active or retired member with 10 or more years of actual service, the System shall pay a benefit in the amount of \$10,000 for contributory members, \$6,667 for noncontributory members, or a prorated amount at a ratio of 3:2 based upon the member's contributory and noncontributory service credit. The benefit will be paid as a lump sum to the beneficiary designated by the member. If the member failed to designate a beneficiary or a beneficiary did not survive, then the benefit will be paid to the member's estate.~~

~~4. Lump-sum Death Benefit Payable on or after July 1, 2009, for Retired Members (Act 1323 of 2009)~~

~~— On or after July 1, 2009, upon the death of a retired member with five (5) or more years of actual service, the System shall pay a benefit in the amount of \$10,000 for contributory members, \$6,667 for noncontributory members, or a prorated amount at a ratio of 3:2 based upon the member's contributory and noncontributory service if the member retired on or before July 1, 2007. The benefit will be paid as a lump sum to the beneficiary designated by the member. If the member failed to designate a beneficiary or no designated beneficiary survives, then the benefit will be paid to the member's estate.~~

~~— If a retired member died between July 1, 2007, and July 1, 2009, and was eligible for the lump-sum benefit under Section 4, with more than five (5) but less than ten (10) years of actual service at his or her death, the System will notify the beneficiary(s) of eligibility at the last known address. If the beneficiary(s) fails to make application for the lump-sum benefit after written notice is provided, ATRS is not obligated to search for the beneficiary(s). ATRS will distribute the lump sum upon receipt of a valid claim by the beneficiary under A.C.A. § 24-7-734.~~

II. RULES

A1. The amount of the lump-sum death benefit may be set pursuant to the rules and regulations adopted by the Board of Trustees in an amount *up to* \$10,000 per member. The Board of Trustees may adjust the amount of the lump-sum 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.

- i. The amount of the lump-sum death benefit has been set by the Board of Trustees at \$10,000 for eligible contributory members and eligible members who have a combination of contributory and non-contributory with at least fifteen (15)

years of contributory service. For eligible noncontributory members the amount of the lump sum death benefit has been set at \$6,667, or a prorated amount at a ratio of 3:2 based upon the eligible member's contributory and noncontributory service credit.

- ii. The benefit will be paid as a lump sum to the beneficiary designated by the eligible member. If the eligible member failed to designate a beneficiary or a designated beneficiary did not survive, the lump-sum benefit will be paid to the member's estate.
- iii. However, on or after July 1, 2011, if a member has accrued a minimum of fifteen (15) years of actual, contributory service, but has also accrued noncontributory service, the member is eligible for his or her survivors to receive the maximum lump sum death benefit as determined by the board.
- iv. To effectuate the legislative intent of Act 1323 of 2009, all lump-sum death benefit distributions made after June 30, 2009, shall be tax exempt, and no federal or state income tax shall be withheld by the System ATRS. After June 30, 2009, the lump-sum death benefit ~~will~~ shall not be eligible for a direct rollover.

~~2. The Board of Trustees may, as actuarially appropriate, prorate the amount of the lump-sum benefit based on the ratio of the member's contributory and noncontributory service credit.~~

B3. A member must be classified as either *active* or *retired* at the time of his or her death to qualify for the lump-sum death benefit. Inactive members shall not be entitled to a lump-sum death benefit. A member is considered active for an additional fiscal year following the last fiscal year that the member renders at least one-fourth (1/4) year of actual service to a covered employer, credited as the total days of service.

C4. A member must have accrued the required amount of actual service at the time of his or her death to qualify for the lump-sum death benefit.

D5. A member may nominate any natural person(s) or duly formed legal entity as his or her lump-sum beneficiary including a corporation, trust, partnership, or other recognized legal entity.

- E6. To nominate a lump-sum death beneficiary, a member must designate an eligible beneficiary on an ATRS approved form and sign the form.
- F7. To be effective, the completed lump-sum beneficiary form must be received by ATRS prior to the member's death.
- G8. A lump-sum beneficiary form, which is properly executed and filed with ATRS, supersedes all prior designations filed by the member for the lump-sum benefit.
- H9. If the member is eligible for the lump-sum death benefit at his or her death, the lump-sum benefit payment shall be made within a reasonable amount of time to the member's proper beneficiary upon receipt of a written application, acceptable proof of the beneficiary's identification, and proof of the member's death.
- I10. Lump-sum beneficiary forms signed by a member's agent (such as an attorney-in-fact under a power of attorney) will not be processed until the document appointing the agent is filed with and accepted by the ~~System~~ ATRS. The authorizing document must contain authorization for the agent related to retirement plan transactions or the change of beneficiaries in order to authorize the agent to change the member's lump-sum beneficiary(s).
- J11. ATRS will not accept a beneficiary form signed by a guardian of the member's estate or other court-appointed conservator without an accompanying court order authorizing the guardian's designation of beneficiary(s).
- K12. A lump-sum beneficiary may waive his or her rights to payment of the lump-sum benefit by submitting a waiver and relinquishment form acceptable to ATRS. Upon receipt of a valid waiver, ATRS will pay the remaining eligible beneficiary(s).
- L13. A lump-sum beneficiary may not assign payment of a lump-sum death benefit to another person or entity.
- M14. ATRS reserves the right to deduct from the lump-sum benefit any amounts owed to ATRS by the member under A.C.A. § 24-7-205.
- N15. ATRS reserves the right to collect any overpayments or other amounts owed to ATRS by the lump-sum beneficiary(s).
- O16. ATRS shall comply with all applicable laws relating to the

distribution of the lump-sum benefit including federal and state tax laws and the Uniform Transfer to Minors Act.

Amended: June 15, 2004
February 7, 2006
April 26, 2007
June 16, 2009 (Emergency)
October 5, 2009 (Permanent)
July 1, 2011 (Emergency)
Adopted: August 8, 2011
Effective: November 11, 2011
Approved by Board: July 26, 2013
Amended:
Effective:

Summary of Proposed Rule Change

for
Arkansas Teacher Retirement System

Rule 11-5 Lost Payees

This Rule change is needed to comply with Acts 86 and 140 of 2013. Act 86 excluded distributable funds held by ATRS from the definition of "property" under the Arkansas Unclaimed Property Act. This allows ATRS to distribute a member's funds according to rules promulgated by ATRS. Act 140 is a "technical corrections" Act that in part, modified the section of the Arkansas Code that deals with Lost Payees, that is, persons who are owed money from ATRS but for whom ATRS has an incorrect mailing address or other contact information. The Act lists the order in which a final payment to a member is sent, until delivered. Changes are also made that are nonsubstantive, including renumbering and reference to "ATRS" instead of "the System" for consistency throughout the Rules. Specific changes as referenced by the Rule page number are listed as follows:

11-5-1 II. (3). Stricken paragraph 3 is necessary to comply with Act 140 and is already covered explicitly in § 24-7-734 (b)(1) and substantially replicates the language as well. The language was removed to prevent repetition and potential conflict with the Arkansas Code language.

11-5-1 II. (4). Stricken paragraph 4 is necessary to comply with Act 140 and is already covered explicitly in § 24-7-734(c) and substantially replicates the language as well. The language was removed to prevent repetition and potential conflict with the Arkansas Code language.

11-5-1 III. A sentence was added to this paragraph to reference the changes made under Act 86, and to reference the appropriate Arkansas Code section. Act 86 clarified that ATRS funds that may be owed to a benefit participant are distributable according to the laws and Rules of ATRS, and not the Arkansas Unclaimed Property Act.

RULE 11-5 **LOST PAYEES**

A.C.A. § 24-7-734

Act 385 of 2005

Act 140 of 2013

- I.1. Each member of the ~~Teacher Retirement System~~ ATRS, as well as each beneficiary of a deceased member, is responsible for filing with the Board of the ~~Teacher Retirement System~~ ATRS from time to time in writing the post office address and each change of post office address of the member or beneficiary.

- II.2. Any communication addressed to a member or beneficiary at the last address filed with the Board or the ~~System~~ ATRS or, if no address has been filed, the last address indicated on the records of the employer of the member or the beneficiary shall be binding on the member or beneficiary for all purposes of ATRS. Neither the Board nor the ~~System~~ ATRS is obligated to search for or ascertain the whereabouts of any member or beneficiary.

- ~~3. If the Teacher Retirement System is unable within five (5) years after payment of a benefit is due to locate a member, beneficiary, or personal representative by mailing to the last known address, and neither the member, the beneficiary, nor the personal representative has made written claim therefor supplying a current address before the expiration of five years, the amount shall be forfeited to the trust assets of the Arkansas Teacher Retirement System.~~

- ~~4. The amount of the benefit, however, shall be reinstated if the member, beneficiary, or personal representative makes a valid claim upon presentation of proper identification.~~

- III.3. If any provision of A.C.A. § 24-7-734, as amended by Act 385 of 2005, conflicts with a provision of the Arkansas Unclaimed Property Act (A.C.A. § 18-28-201 et seq.) the provision in A.C.A. § 24-7-734 supersedes the conflicting provision of the Arkansas Unclaimed Property Act. Furthermore, beginning July 1, 2013, distributable funds in the possession of ATRS are excluded from the definition of property under the Arkansas Unclaimed Property Act pursuant to A.C.A. § 18-28-201(13)(B)(iii).

Adopted: July 18, 2005

Approved by Board: July 26, 2013

Amended:

Effective:

Summary of Proposed Rule Change

for
Arkansas Teacher Retirement System

Rule 12-1 Protection of Qualified Trust under IRS Code

This Rule change is needed to comply with Acts 109 and 140 of 2013. Act 109 authorizes the Board to issue Rules or modify a Rule by Resolution at a Board meeting to comply and align with IRS rules. Act 140 is a "technical corrections" Act that in part, updated the IRS Code, as amended until January 1, 2013. Other changes are nonsubstantive and made for consistency within the Rules. Specific changes as referenced by the Rule page number are listed as follows:

12-1-1. Definition. Change necessitated by Act 140 to reflect the most current amended IRS Code.

12-1-1. 4. New subparagraph language added to reflect the authorization in Act 109.

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, 2005~~ 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 the Teacher Retirement System 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 the system 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:

Effective:

Summary of Proposed Rule Change

for

Arkansas Teacher Retirement System

Rule 13-1 Administration Adjudications

This Rule change is needed to comply with Acts 45 and 303 of 2013. Act 45 specifies that an appeal of a final administrative decision by the Board can be made by filing a complaint in Pulaski County Circuit Court. Act 303 allows a unique and equitable remedy for "manifest injustice", a rare and highly unusual remedy not previously available under the process contained in this Rule. Other changes were made to improve clarity and consistency throughout the Rule, for instance, using the words "serve" and "issue" when stating a deadline, terms that are legally identifiable and defensible. There are also references to the extremely rare remedy of Manifest Injustice, and renumbering of the paragraphs for consistency within the ATRS Rules. Specific changes as referenced by the Rule page number are listed as follows:

13-1-1 I. B. The stricken language is moved to the following paragraph "C". The additional language provides consistency with language throughout the Rule (use of the word "issue") regarding the date from which to begin calculating any deadline. An additional change was made to allow the Board and the Hearing Officer flexibility to extend a deadline in an appeal for good cause.

13-1-1 I. C. The new language is actually the stricken language from paragraph "B" above.

13-1-2 III. A. The additional language provides consistency with language throughout the Rule (use of the word "issue") regarding the date from which to begin calculating any deadline.

13-1-2 IV. A. Again, to be consistent with other changes in this Rule, use of the word "issue" regarding the date from which to begin calculating any deadline.

13-1-6 X. A. Again, to be consistent with other changes in this Rule, use of the word "issued" regarding the date from which to begin calculating any deadline.

13-1-6 XI. A. This language change gives the Board some flexibility in setting the date for consideration of a Hearing Officer proposed order.

13-1-7 XI. D. This additional language conforms to the remedies available under Act 303 for a consideration of a manifest injustice.

13-1-8 XIII. This additional language complies with Act 45, which mandates that appeals from a final ATRS Board decisions shall be filed in Pulaski County.

RULE 13-1
ADMINISTRATION ADJUDICATIONS:
STAFF DETERMINATIONS AND APPEALS

A.C.A. §§ 25-15-201 to 219

SECTION 13.01: 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. "Member" includes any member of ATRS; 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"). ~~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.~~ A document or decision shall be considered to be "issued" on the day the document is sent to the member. 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.
- C. This rule should be read in conjunction with the Arkansas Administrative Procedures Act. See A.C.A. §§ 25-15-201 to -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.

~~SECTION 13.02:~~ II. Informal Resolution Encouraged

- A. 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.

~~SECTION 13.03:~~ III. Staff Determinations

- A. If the staff makes a determination that is adverse to a member's claim, ~~the member will receive a staff determination letter from ATRS detailing the reason for the decision.~~ 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 resolve the issue with the member informally. For claims that are not resolved informally, a member can appeal the staff determination to the Executive Director.
- B. Unless the member institutes a timely Executive Director review of the decision stated in the staff determination letter in accordance with Section 13.04 below, the decision of the staff will become a final administrative adjudication on the 31st day following the date of issuance of the staff determination letter.

~~SECTION 13.04:~~ IV. Executive Director Review

- A. Within thirty (30) days of the date of a staff determination letter, the member may request an Executive Director review of the staff decision. To commence an Executive Director review, the member shall only be required to ~~send~~ serve a written request ~~to on~~ the Executive Director requesting the review. Once the Executive Director receives the member's written request, the Executive Director will ~~send~~ issue a letter to the member acknowledging the his or her request.
- 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 ~~submitted to~~ served on 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. 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 institutes a timely appeal of the Executive Director's decision in accordance with Section 13.05 below, the decision of the Executive Director will become a final administrative adjudication on the 31st day following the date of issuance of the Executive Director review determination letter.

SECTION 13.05: 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 commence an appeal, the member must ~~submit~~serve a written Notice of Appeal ~~to~~on the Board within thirty (30) days of the date of issuance 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, make a factual and legal determination of the claim, 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. 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.

~~SECTION 13.06:~~ 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
Fax: (501) 682-6326**

- B. Any party submitting or filing a document relating to an appeal shall simultaneously serve a copy of the filing or document upon 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.

~~SECTION 13.07:~~ VII. Hearings

- A. Hearings will be conducted according to this rule and the corresponding procedural provisions of the Arkansas Administrative Procedures Act (*See Ark Code Ann. § 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. 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.

C. 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:

~~(a)~~i. has a reasonable degree of probative value and trustworthiness; or

~~(b)~~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.

~~(c)~~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.

D. 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).

SECTION 13.08: VIII. Posthearing Briefs

A. Upon the completion of the hearing, the Hearing Officer may allow the parties to submit posthearing briefs to be included as part of the record on appeal. The decision whether to allow the submission of posthearing briefs is committed to the sole discretion of the Hearing Officer. A decision by the Hearing Officer to not allow posthearing 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 posthearing briefs and responses, provided that the parties shall be allowed a minimum of fourteen (14)

days from the date of receipt of the transcript of the hearing before any initial posthearing brief shall be due for filing.

SECTION 13.09: IX. Proposed Orders

- A. Once the Hearing Officer receives all evidence, arguments, and posthearing briefs (if any), the record before the Hearing Officer shall be officially closed. Once the record is closed, 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 13.06 of this rule. Upon receipt of the proposed order, ATRS shall ~~serve~~mail a copy of the proposed order ~~upon~~to the member (and his or her counsel, if applicable) via Certified, First Class, United States mail, with a copy to the Executive Director.

SECTION 13.10: X. Written Objections to Proposed Order

- A. Within twenty (21) days of receipt of the Hearing Officer's 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 must be filed with ATRS in accordance with Section 13.06 of this rule. 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 filed by counsel for ATRS ~~will be provided to the member~~ shall be issued at least ten (10) days prior to the time the member's appeal is scheduled for consideration by the Board. The member may waive the ten (10) day limit if it would delay scheduling the matter before the Board.

SECTION 13.11: 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 the next~~ 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. 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 a rehearing if the Board determines that the member's absence was for good cause.
- C. 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:
- (a)i. accept the Proposed Order;
 - (b)ii. reject the proposed order; or
 - (c)iii. accept the Proposed Order as modified by the Board.
- D. If the Board elects to reject the Proposed Order or accept the Proposed Order as modified, the Board may:
- (a)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
 - (b)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.
- E. 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 Board. 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.
- F. As in all matters before the Board, a quorum of votes are 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.

~~SECTION 13.12:~~ XII. Authority to Settle

- A. 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.

~~SECTION 13.13:~~ XIII. Appeals Under the APA

- A. 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.*

~~SECTION 13.14:~~ 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:

Effective:

Summary of Proposed Rule Change

for
Arkansas Teacher Retirement System

Rule 15-1 Benefit Restoration Plan and Trust

This is a new rule authorized by Act 109 of 2013. Act 109 provides that ATRS should take action to minimize the impact of IRS regulations where those regulations have become obsolete or inapplicable, and for ATRS to take necessary action to pay all benefits earned by members. The benefit restoration plan trust is available to ensure that ATRS has an authorized method of paying all benefits due to a member while still protecting the tax qualified status of ATRS.

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)(l).

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:

Effective:

Summary of Proposed Rule Change

for
Arkansas Teacher Retirement System

Rule 16-1 Cash and Savings Help Program for Members

This rule is authorized under Act 606 of 2013. This rule limits the first offering of a buyout to inactive, vested members who have exclusively noncontributory service. This recommendation is made after comparing the available funds and the financial benefit to ATRS within the inactive vested members while taking into consideration the additional staff loads that the program will place on benefits and counseling staff, reporting staff, and payroll staff. The inactive vested members include over 7,000 exclusively noncontributory members. A formula was developed to determine the present value of each member's benefit

16-1
CASH AND SAVINGS HELP PROGRAM
FOR MEMBERS

A.C.A. § 24-7-505 & A. C. A. § 24-7-707(a)(1)

I. This plan is called the "Cash and Savings Help Program (CASH Program)."

II. **AUTHORITY**

This rule is promulgated under the authority granted in Act 606 of 2013.

III. **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 nor shall the member combine reciprocal service with ATRS service in order to qualify 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. i. 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.

ii. 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 e-mail, the email shall be sent before the offering period deadline.

iii. 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.

IV. THE 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:

i. 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.

- ii. 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.
- iii. The signature of the member ; and
- iv. The date.
- 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.

THE 2013 CASH PROGRAM FOR INACTIVE, VESTED, EXCLUSIVELY NONCONTRIBUTORY MEMBERS

V. APPLICABLE TO VESTED, NONCONTRIBUTORY MEMBERS ONLY

- A. This offering is limited to vested, exclusively non-contributory members that are inactive. The CASH Program payment, once the CASH Program Election Form is properly submitted to ATRS, will be paid within a reasonable time or rolled out to another administrator at the direction of the member. The acceptance of a CASH Program payment by the member does not make the member a retiree.

B. This offering is limited to members of ARTS who:

- i. Have vested, exclusively noncontributory service credited in ATRS; and
- ii. Are currently inactive and have remained inactive for at least one (1) year after the last fiscal year that the member rendered actual service to a covered employer, but not retired, during the offering period set forth in the Rule, and whose membership in ATRS is exclusively noncontributory.

VI. THE OFFERING PERIOD

The offering period for this CASH Program opportunity begins upon the effective date of these Rules and ends June 30, 2014, unless extended by the Board through a properly adopted resolution.

VII. THE CASH PROGRAM FORMULA

A. Final Average Salary is defined under A.C.A. § 24-7-202(15) and calculated using the formula set in A.C.A. § 24-7-736.

B. The member's age shall be determined on the date the CASH Program Election Form is received by ATRS.

C. The CASH Program Payment is calculated on the following formula:

Step 1: (Final Average Salary) x (Years and partial years of Non-contributory Service) x (ATRS Non-contributory multiplier of .0139%) + (\$900.00 if the member has more than 10 years of Service) = Assumed Annual Benefit

Step 2: Assumed Annual Benefit ÷ 12 = Assumed Monthly Benefit Amount.

Step 3: Assumed Monthly Benefit Amount x Applicable Accrued Liability Factor for the Member as listed in the Accrued Liability Factor Table = Assumed Current Value.

Step 4: Assumed Current Value x 30% (.30) = CASH Program payment.

VIII. ACCRUED LIABILITY FACTOR TABLE

Sample Attained Ages	Accrued Liability Factor	Sample Attained Ages	Accrued Liability Factor
20	6.97	60	156.92
21	7.53	61	154.09
22	8.13	62	151.18
23	8.79	63	148.18
24	9.49	64	145.12
25	10.25	65	141.98
26	11.07	66	138.76
27	11.96	67	135.50
28	12.92	68	132.15
29	13.96	69	128.70
30	15.08	70	125.17
31	16.29	71	121.55
32	17.60	72	117.85
33	19.01	73	114.07
34	20.54	74	110.20
35	22.19	75	106.28
36	23.98	76	102.30
37	25.91	77	98.25
38	28.00	78	94.21
39	30.26	79	90.17
40	32.70	80	86.13
41	35.33	81	82.11
42	38.19	82	78.14
43	41.27	83	74.24
44	44.61	84	70.37
45	48.21	85	66.60
46	52.11	86	62.92
47	56.33	87	59.38
48	60.90	88	56.07
49	65.83	89	52.97
50	71.18	90	50.09
51	76.95		
52	83.21		
53	89.99		
54	97.35		
55	105.31		
56	113.97		
57	123.39		
58	133.63		
59	144.78		

Approved by Board: July 26, 2013

Adopted:

Effective:

Summary of Proposed Rule Change

for
Arkansas Teacher Retirement System

Rule 17-1 Manifest Injustice

This is a new rule authorized under Act 303 of 2013. "Manifest Injustice" is an equitable remedy used in rare and special circumstances where a traditional remedy is unavailable. This rule sets up a process for the referral and review of a claim of "manifest injustice" by a member, a benefit participant, or an employer.

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 tax-qualified 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 24-7-202(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:

Effective: