

ARKANSAS REGISTER

Proposed Rule Cover Sheet



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Name of Department _____

Agency or Division Name _____

Other Subdivision or Department, If Applicable _____

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Contact Person _____

Contact E-mail _____

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Name of Rule _____

Newspaper Name _____

Date of Publishing _____

Final Date for Public Comment _____

Location and Time of Public Meeting _____

Summary of Proposed Rule Change

Arkansas Teacher Retirement System Rule 6 - Membership Rules

SUBSTANTIVE CHANGES:

- ATRS reformed and reorganized seven (7) current ATRS rules into one rule for consistency and professionalism.
- Although technically a "new" rule because the original rule has been renumbered and renamed, the language of the new rule is almost entirely transcribed verbatim from existing language in current ATRS Rules 6-1, 6-1A, 6-1B, 6-2, 6-10, 6-11, and 6-12.
- For ease in identifying changes, language in the new rule that remains the same as the current rules is underlined and appears as blue font. Any language that is added or amended, or has been relocated from its original order in the existing rules, is underlined and italicized, and appears as black font.
- The existing rules 6-1, 6-1A, 6-1B, 6-2, 6-10, 6-11, and 6-12, are, therefore, proposed to be repealed, and replaced with the new consolidated ATRS Rule 6 – Membership Rules.
- Definition of "Administrator" added as necessitated under **Act 427 of 2019**.
- Explanatory sentence added to the beginning of Section III, regarding Service Rules
- Explanatory sentence added to the beginning of Section VII, regarding Privatized Employers and Nonprofit Corporations Rules
- References added in Section VII to highlight ATRS' federal requirements
- A chart added to illustrate in-service legislation in chronological order and replaces the narrative in the rule, consistent with **Act 297 of 2019**.

NON-SUBSTANTIVE CHANGES:

- Correct formatting issues, renumbering, grammar, and spelling, where appropriate.

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ATRS Rule 6

MEMBERSHIP RULES

A.C.A. §§ 24-2-202, 24-2-401 — 24-2-408, 24-7-202, 24-7-406,
24-7-501, 24-7-502, 24-7-1601 — 24-7-1607

I. Definitions

- A. "Administrator" shall mean a public school superintendent, assistant superintendent, principal, or vice-principal; a higher education president, chancellor or director; or a community college, vocational/technical or educational cooperative director, president, or vice president, who is employed by a participating employer OR any employee of an education related agency participating in ATRS that is employed in a position grade GS13 or above or its equivalent.
- B. "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.
- C. "Contributory service" is service on which a member makes or made member contributions to ATRS.
- D. A "contributory election" is a written election by a member to make member contributions to ATRS. To be valid, an election must be on an election form provided by ATRS and signed by both the member and the employer.
- E. "Noncontributory service" is service on which a member does not make member contributions to the ATRS and accepts a reduced retirement annuity for the years of service for which the member does not contribute.
- F. "Nonteacher" means any member that is not a teacher or administrator.
- G. "Organization" means (i) any private entity providing services for a public school district and whose employees were formerly employed by the school district and had been members of ATRS, and (ii) any educational nonprofit corporation licensed and regulated by the Division of Developmental Disabilities Services of the Department of Human Services.
- H. "Preceding System" is a previous reciprocal retirement system of record as defined above.
- I. "Reciprocal System" means ATRS operations as of June 30, 1957, and

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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.* and agencies that may be assigned the duties under the agencies listed above through a state reorganization or transformation plan.

J. "State Employer" means the public employer whose employees are covered under ATRS, 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.*) and agencies that may be assigned the duties under the agencies listed above through a state reorganization or transformation plan.

K. "Succeeding System" is the current reciprocal retirement system of record, following membership in a retirement system covered above.

L. "Teacher" means any person employed by a school for the purpose of giving instructions and whose employment requires state licensure.

II. Membership Rules

A. Effective July 1, 2001, those employees whose nonteaching service began before July 1, 1989, and whose nonteaching service is covered or coverable by the Arkansas Public Employees Retirement System may elect to be covered by the ATRS. The elections shall be made prior to May 31 on a form provided by ATRS and shall be effective the following July 1 as provided by A.C.A. § 24-7-501(a)(2)(C).

B. Employees who are eligible for membership in ATRS are ineligible for

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membership in another state retirement system while employed in a position covered by ATRS, excluding service in the Arkansas General Assembly.

- C. The ATRS Executive Director shall monitor, from time to time, employers that participate in ATRS to ensure that only employers that meet both the federal and state requirements for participation and continued participation remain employers in ATRS. If the Executive Director determines that an employer no longer meets the requirements for continued participation in ATRS, the Executive Director shall notify the Board of Trustees to allow appropriate review and action by the Board.

III. Contributory/Noncontributory Service Rules

- A. A contributory member may not elect to become a non-contributory member.
- B. Whether or not a member is considered contributory or non-contributory depends upon the year the member entered the system.
- C. All service rendered before July 1, 1986, is contributory service.
- D. All new members under contract for 181 or more days will make member contributions to ATRS.
- E. New members under contract for 180 days or less:
1. Until June 30, 2007, all new members under contract for 180 days or less will have one (1) year from their hire date to make an irrevocable election to make member contributions.
 2. Effective July 1, 2007, all new members under contract for 180 days or less may elect to become contributory members.
- F. Change from nonteacher to teacher under contract for 181 days or more:
1. Effective July 1, 2005, any active member whose status later changes from nonteacher status to teacher status under contract for 181 days or more shall make the member contributions regardless of an earlier election to be noncontributory.
 2. If the change of status from nonteacher to teacher occurs during a year in which service has already been reported as noncontributory, and the member is under contract for 181 days or more, the change to contributory will occur beginning with the next fiscal year.
- G. New members not under contract:
1. Until June 30, 2007, new members who are not under contract will not make member contributions.

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2. Effective July 1, 2007, all new members who are not under contract may elect to become contributory members.

H. Contributory member election:

1. Until June 30, 2007, active members who have previously elected to be noncontributory may make an irrevocable election to become contributory members.
 2. Effective July 1, 2007, any noncontributory member may elect to become a contributory member.
 - a. If the election is made before the preparation of the first salary payment to the member in the fiscal year, the election will become effective immediately. If the election is after the preparation of the first payroll containing the first salary payment to the member in the fiscal year, the election shall become effective July 1 of the next fiscal year.
 - b. Any member's election to become contributory is irrevocable. All service rendered after the election is filed with ATRS shall be contributory.
 - c. All active members, as of July 1, 1999, were required to make an irrevocable election to be contributory or noncontributory on or before June 30, 2000. An election to become contributory remains in effect for the remainder of the member's career. If no election was made by June 30, 2000, the member remained in the plan he/she was in as of that date.
- I. Noncontributory inactive members or noncontributory rescinding retirees who reenter ATRS after June 30, 2007, may elect to become contributory members. If no election is made, the member will be enrolled in the plan that he/she was in prior to reentry.
- J. Employees of state agencies:
1. Full-time employees of state agencies covered by ATRS shall be contributory.
 2. Part-time employees of state agencies covered by ATRS shall be noncontributory. Effective July 1, 2007, part-time employees of state agencies covered by ATRS may elect to become contributory.
- K. Inactive members who had been contributory on a maximum salary of \$7,800.00, return to work on or after July 1, 1995, and elect to become contributory will make contributions on their full salary.
- L. If a member enters ATRS and is reported incorrectly by the employer for

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the first year as a noncontributory member, ATRS will accept the member the first year as a noncontributory member. ATRS shall notify the employer of the member's contributory status. Effective the next July 1, the member shall make member contributions to ATRS.

- M. If an inactive member returns to covered employment as an active member after July 1, 1999, and is reported incorrectly by the employer as a noncontributory member for the first year, ATRS will accept the member the first year as a noncontributory member. ATRS shall notify the employer of the member's contributory status. Effective the next July 1, the member shall make member contributions to ATRS.

IV. Erroneous Membership Rules

- A. Employees erroneously enrolled in a state retirement system on or after January 1, 1979, may elect to remain a member of the system of record or may become a member of the eligible retirement system.
- B. After July 1, 1979, ATRS will make no further effort to correct the retirement system membership of persons who were erroneously enrolled in another state retirement system before January 1, 1979. ATRS will not accept as members persons who were erroneously enrolled in another state retirement system before January 1, 1979, unless that person's contributions were refunded prior to July 1, 1979.
- C. If an employee was erroneously enrolled in the ATRS before January 1, 1979, and if his/her contributions were not refunded prior to July 1, 1979, the employee shall continue to be a member of ATRS. The member shall receive service credit for all paid membership service in ATRS and any free service creditable under Act 427 of 1973 as amended. He shall also be entitled to reciprocal service credit as provided by § 24-7-401 through 408.
- D. If ATRS discovers that an employee became erroneously enrolled in a state retirement system on or after January 1, 1979, ATRS will notify both the employer and employee that the membership is erroneous and that it may be corrected as prescribed by Act 13 of 1991.
- E. If a person who is employed before July 1, 1989, as a school janitor, bus driver, or cafeteria worker is enrolled in the Arkansas Public Employees Retirement System under the provision of Act 63 of 1965, and later is promoted to a position of school maintenance worker or supervisor, bus mechanic or transportation supervisor, or cafeteria manager, respectively, the employee shall continue to be a member of the Arkansas Public Employees Retirement System as long as they are employed in one of these respective capacities.

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F. If ATRS discovers that an employee became erroneously enrolled in a state retirement system on and after January 1, 1979, ATRS will notify both the employer and employee that the membership is erroneous and that it should be corrected as prescribed by A.C.A. § 24-2-302 et seq.

V. Summary of Reciprocal Service

If a member leaves state employment and their 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 according to A.C.A. § 24-2-401 et seq.

A. Age and Service Retirement with Reciprocal Service Credit

1. If 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.
2. If 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.

B. Disability Retirement with Reciprocal Service Credit

1. A member is eligible to apply for disability benefits under A.C.A. § 24-2-405 from each reciprocal system in which the member has credited service according to rules for eligibility promulgated by that system.
2. 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.

VI. Reciprocal Service Rules

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

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for the benefit formula in effect at the time of retirement.

B.

1. Benefits will not be paid under reciprocity from 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.
2. If 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.

C. Benefits will not be paid to a member under reciprocity from ATRS as the preceding system earlier than age 60 unless the member has 25 or more years of combined service.

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 ATRS.

E. 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. 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)]

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 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.

G. If an ATRS member has service credited during the same fiscal year with

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another reciprocal system and the combined service is greater than one year of service credit, ATRS will credit service as follows:

1. If credit by the reciprocal system is less than three (3) months, ATRS will credit service for one (1.00) year.
2. 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.
3. 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.
4. 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.

H. While participating in a reciprocal system, back contributions, additional contributions, and repayment of refund payments made to ATRS shall be made according to payment methods contained in Rule 8 - Purchase Payment Rules, except employer pick-up is prohibited while working for a noncovered ATRS employer.¹

I. A member may elect to waive all or part of concurrent service credited to the member in ATRS and have the waived concurrent service credited under a reciprocal system by submitting their intention to ATRS on an ATRS approved form (A.C.A. § 24-7-601 (g)).

VII. Privatized Employers and Nonprofit Corporations Rules

A.C.A. § 24-2-202(17)(E)-(F) allows the employees of certain privatized employers performing services for public school districts and certain educational nonprofit corporations to become members of ATRS.

A. Effective July 1, 1997, under certain conditions, membership in ATRS shall include employment in an enterprise privatized by a public school district. If a public school district should privatize any of its services, any individual who is or was employed by the school district in one of those services and who is or has been a member of ATRS may elect to remain a member, provided the Board of Trustees determines by adopting rules and regulations that participation of these employees in ATRS will not in any way impair any legal status of ATRS, including, but not limited to, its status as a governmental plan, pursuant to the federal Internal Revenue Code and ERISA, or its tax-qualified status under the Internal Revenue Code; will not subject the plan to additional federal requirements and will not have a substantial adverse impact on the actuarial soundness of ATRS. In addition, the private provider must assume all responsibility for the required employer contributions and any fees for obtaining IRS rulings

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or ERISA opinions.

B. Effective July 1, 1997, under certain conditions, membership in ATRS shall include employment in positions with educational nonprofit corporations licensed and regulated by the *Division of Developmental Disabilities Services of the Department of Human Services*, provided the nonprofit corporation has elected to participate in ATRS, and the Board of Trustees determines by adopting rules and regulations that participation of these employees in ATRS will not in any way impair any legal status of ATRS, including, but not limited to, its status as a governmental plan, pursuant to the Internal Revenue Code and the Employee Retirement Income Security Act of 1974, or its tax-qualified status under the Internal Revenue Code; will not subject the plan to additional federal requirements; and will not have a substantial adverse impact on the actuarial soundness of ATRS. Such employment shall be related to the training of public school employees or school board members, teaching public school students, or in adult education programs. The employment shall not be related in any manner to private schools. Each educational nonprofit corporation shall be approved according to rules and regulations established by the Board of Trustees to be considered an employer, and such nonprofit corporation assumes all responsibility for the required employer contributions and any fees for obtaining IRS rulings or ERISA opinions.

C. Application for Membership.

Any organization that desires its employees to become members of ATRS shall make written application to the Executive Director of ATRS, specifying the proposed effective date for such participation.

D. Information Provided to ATRS.

Each application for membership shall contain the following information and materials:

1. A certified copy of the Articles of Incorporation, Bylaws, and other organizational documents of the organization;
2. A copy of the most recent three (3) years' annual financial statements, including balance sheet, financial statements, and statement of cash flows, or if such organization does not have audited financial statements, the year-end compilation reports or internal balance sheet and income statements for the organization;
3. A copy of the most recent three (3) years' federal and state income tax returns;
4. A description of the sources of funding of the organization, including the percentage of such funds provided by federal or state government

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and the type of such government funds;

5. A description of how the board of directors or board of trustees is selected, and whether any governmental agency has input in the selection of board members;

6. A description of the types of persons served by the organization, and which government agency or agencies would be responsible for providing such services if the organization did not do so.

E. Tax Ruling.

After counsel for ATRS has reviewed the above information provided to ATRS, such counsel shall determine whether a ruling should be requested from the Internal Revenue Service that the participation of the employees of the organization will not jeopardize the status of ATRS as a "governmental plan." If counsel determines that such a ruling should be requested, the organization shall provide any additional information and statements requested by counsel in connection with such ruling request.

F. Fees.

If counsel for ATRS determines that a ruling should be requested, the organization shall pay to ATRS not less than the sum of \$3,000.00 or the actual cost for the fees and costs associated with such ruling request.

VIII. Confidentiality of Member Accounts

A. In compliance with the ATRS Code of Ethics, ATRS shall keep all members' salary, employment history, retirement account, and other personal data or information compiled by ATRS for purposes of establishing and maintaining a member's retirement account confidential. Such information shall not be disclosed to any third party without the express written consent of the member or other valid legal process.

B. Individual member's records which are kept for the purpose of compiling information for the member's retirement or social security records shall not be open to the public under A.C.A. § 24-4-1003.

IX. College Plan Rules

A. Generally, 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 A.C.A. § 24-7-1601 et seq.

B. A post-secondary or higher education employer may elect to offer ATRS

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participation to its employees by fulfilling the requirements under A.C.A. § 24-7-1605.

- C. If an eligible non-mandatory employer college elects to offer ATRS participation to its employees, then the 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 post-secondary or higher education employer shall provide supplemental reports on any form approved and adopted by the ATRS Board as a required form.

1 From July 1, 1991, until December 31, 1991, an active member of the Arkansas Public Employees Retirement System who was an active member of ATRS prior to January 1, 1978, and who became a member of the Arkansas Public Employees Retirement System within thirty (30) days of departure from ATRS 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 Arkansas Public Employees Retirement System to ATRS 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.

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Contributory/Non-Contributory Service Chart by Year of Entry into System (Elections and Re-entry may affect Individual Member Service Status)

All Members		
1937 - 1986	All Members	Contributory
1986-1991	All Members	Contributory unless elect Non-Contributory
1991-1999	All Members	Non-contributory unless elect Contributory
School District Employees		
1999-2007	Active	One time election to be Contributory or Non-Contributory, no election made by 6/30/2000, status on 6/30/2000
	Inactive	One time election to be Contributory or Non-Contributory upon reentering system, no election then status
	New	Contract 181 days or more - Contributory
		Contract 180 days or less - Non-Contributory, may elect Contributory, election must be made one year from hire date
		No contract, member must be non-contributory
2005 -	Non-teacher to Teacher or Administrator	Contract 181 days or more - Contributory. If position change happens during the year, election is effective first of next fiscal year
		All Non-Contributory members may elect to be Contributory
2007 -	All Members	May elect Contributory
	New	Contract 181 days or more - Contributory
		Contract 180 days or less - Non-Contributory, may elect Contributory
		No contract - Non-Contributory, may elect Contributory
	Inactive	May elect Contributory
State Agency Employees		
1999 - 2007	Full-Time Employment	Must be Contributory
	Part-Time Employment	Must be Non-Contributory
2007 -	Full-Time Employment	Must be Contributory
	Part-Time Employment	Non-Contributory, may elect to be Contributory

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Once you are a contributory member of ATRS, your contributory status is irrevocable.

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

If a member enters ATRS and is reported incorrectly by an employer for the first year, ATRS will accept the election reported by the employer the first year. ATRS shall notify the employer of the member's correct status. Effective the next July 1, the member shall be reported with the correct status.

Inactive members who had been contributory on a maximum salary of \$7,800.00, return to work on or after July 1, 1995, and elect to become contributory will make contributions on their full salary.