

ARKANSAS REGISTER



Proposed Rule Cover Sheet

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~~ATRS Rule 7~~

~~REPORTING AND ELIGIBILITY~~ ATRS RULE 7

SERVICE CREDIT, CONTRIBUTIONS, REPORTING, AND FINAL AVERAGE SALARY

~~A.C.A. Arkansas Code §§ 24-2-701, 24-7-103, 24-7-202, 24-7-401, 24-7-406, 24-7-411, 24-7-601 — 24-7-611, 24-7-705, 24-7-708, 24-7-736, and 24-7-1303,~~ 24-2-701

~~I. Calculation of Final Average Salary~~

I. Definitions

~~A. Definitions~~

- ~~1. "ATRS 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.~~
- a. "Actual service" means service rendered in a position covered by the Arkansas Teacher Retirement System (ATRS), not including purchased service credit, free service credit, or reciprocal service;
- b. "Credited service" means service that is creditable as service by ATRS;
- c. "Covered employer" as it relates to outsourcing means a public school, public educational agency, or other eligible employer participating in ATRS;
- d. "Eligible employee" for the purpose of salary or compensation limitations concerning the calculation of a final average salary means a person who was a member of ATRS before the first plan year beginning after December 31, 1995;
- e. "Embedded Employee" means a person who:
 1. Provides an outsourced service on the premises of a covered employer; and
 2. Is employed and paid by an outsource contractor;
 3. Is not employed by:
 - A. A covered employer listed under Arkansas Code § 24-7-202; or
 - B. An employer that offers ATRS as optional retirement plan as of the date of outsourcing;
- f. ~~2.~~ "Full service year" means employment by with a covered employer for one hundred sixty (160) days or more in a fiscal year;
- g. ~~3.~~ "Partial service year" means ~~less than a full service year of credited service~~ employment with a covered employer for less than one hundred sixty (160) days in a fiscal year;

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- h. "Participating employer" means a covered employer that outsources and opts for the embedded employees of all of the covered employer's outsource contractors to become members of ATRS;
- i. "Service" means employment rendered as an employee;
- j. "Specialized support position" means a position requiring less than eight (8) working hours per day, including without limitation the positions of bus driver, custodial worker, and cafeteria worker;
- k. "Surcharge employer" means a covered employer that outsources and pays a surcharge to ATRS in lieu of opting for the embedded employees of outsource contractors to accrue credited service in ATRS; and
- l. "Youth participant" means an individual:
 - 1. Who is:
 - A. Enrolled in a secondary public school as a student; and
 - B. Employed through his or her participation in a summer work program for a period between the first day of June and the last day of August; and
 - 2. Whose compensation is disbursed by a covered employer as part of an agreement between the covered employer and an administrator of the summer work program that designates the covered employer as a pass-through fiscal agent.

B. Salary Limitations

- ~~1. To calculate final average salary, ATRS will include salary received during a fiscal year from all ATRS employers.~~
- ~~2. Partial service years are excluded from the calculation of final average salary unless the partial service year is higher than a full service year, or if the member has less than the required numbers of years to calculate a final average salary.~~
- ~~3. Regardless of any provision in a State statute, rule, 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 ATRS in effect on July 1, 1993. For this purpose, an "eligible employee" is an individual who was a member of ATRS before the first plan year beginning after December 31, 1995.~~
- ~~4. Certain remuneration paid by an ATRS employer to ATRS members shall not be treated as salary in the calculation of ATRS benefits although it would otherwise meet the definition of salary.~~
 - ~~a. Paid or unpaid accrued, unused sick leave shall not be credited as~~

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~~service unless the member dies while an active member, in which case it shall be credited as service in the fiscal year of the member's death.~~

~~b. Any remuneration or salary paid as an incentive payment, bonus, separation payment, additional salary or a special payment made in return for or in consideration of an ATRS member's agreement to separate from the ATRS employer, retire, or not renew the member's contract with the ATRS employer shall not be treated as salary by ATRS.~~

~~i. This salary limitation applies if:~~

- ~~1. The ATRS employer's offer applies to two (2) or more ATRS members;~~
- ~~2. The ATRS employer offers a voluntary early retirement incentive plan, staff reduction plan, or buyout plan to ATRS members to retire or separate employment from the ATRS employer as a condition of participating in the plan;~~
- ~~3. The ATRS member voluntarily participates in the program in return for the additional remuneration or salary.~~

~~ii. This salary limitation does not apply if:~~

- ~~1. It is payment to purchase service credit or additional salary as a part of a separation agreement and as a result of the resolution of a claim of wrongful termination; or~~
- ~~2. It is payment made for accumulated, unused sick leave in excess of the number of sick days that a member's employer allows them to carry forward, and that are accrued during years immediately prior to termination of covered employment.~~

~~c. ATRS employers shall not withhold member contributions or pay employer contributions from the remuneration paid that is subject to the salary limitation established by this Rule.~~

~~d. Any ATRS employer who offers an early retirement plan, separation plan, or contract non-renewal plan, that pays remuneration subject to the salary limitation shall notify ATRS prior to any payment under such plan.~~

~~e. At the request of an ATRS employer, ATRS shall review any potential plan or payment that could be subject to this salary limitation and provide guidance as to whether the salary limitation would apply.~~

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- ~~f. Any decision by ATRS staff on a particular plan or payment may be appealed to the ATRS Board using the ATRS appeal procedure as set forth in Rule 13.~~
- ~~5. If a conflict exists between ATRS's calculation of final average salary and the ATRS employer's laws or policies relating to the compensation of final average salary ATRS's laws and rules shall control.~~
- ~~6. Effective July 1, 2018, ATRS shall calculate final average salary using the five (5) years in which the member received the highest salary from an ATRS employer subject to the foregoing limitations.~~
 - ~~a. For active members as of July 1, 2018 who have three (3) or more full service years, ATRS shall determine the benchmark final average salary using the highest salary from a member's three (3) separate full service years through fiscal year 2018, as if the member were retiring or entering T-DROP as of June 30, 2018.~~
 - ~~b. If, at the time of actual retirement, a five (5) year calculation of the final average salary of a member who qualifies for the three (3) year calculation is higher, the five (5) year calculation will be used.~~
 - ~~c. The three (3) year final average salary calculation above is a permanent benchmark for comparison to a five (5) year average salary calculation.~~
- ~~7. The benchmark final average salary is not provided to inactive ATRS members unless proof is provided to ATRS indicating the member was active in a reciprocal or alternative system in fiscal year 2018.~~
- ~~8. The final average salary for members with reciprocal service shall be the highest salary years credited by either the ATRS employer or the reciprocal system under A.C.A. § 24-2-402.~~
- ~~9. 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 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.~~
- ~~10. For members who are retiring and who are employed by employers using a fiscal year ending June 30, employers should report to 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, nor should any salary or days of service be reported for that period.~~
- ~~11. For retiring members, employee contributions remitted on salary paid after the end of the current fiscal year or current year payroll period,~~

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~~whichever applied, will be refunded as promptly as possible.~~

II. Proof of Service Credit

~~A. The Board shall determine the number of years and fractions thereof for paid service credited to members of ATRS. No fewer than one hundred sixty (160) days of employee service in a fiscal year (ending June 30) shall be credited as a full service year.~~

~~B. Members employed less than forty (40) days during a fiscal year are not eligible for credit or benefits in ATRS for that fiscal year; however, beginning in the 2011-2012 fiscal year, a contributory member's service days are carried forward from previous fiscal years until at least forty (40) days of service are earned by the member. When a contributory member obtains at least forty (40) days of service in a fiscal year, whether using regular service days or accumulated service days, or both, the member begins the next fiscal year with no days of service carried forward.~~

~~C. For members with service after July 1, 1971, actual service credited to a member's account shall be determined in accordance with the following table:~~

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

~~D. ATRS shall utilize the days specified in a contract between an ATRS employer and member to establish days of service worked.~~

~~E. If a member is employed in a position for which a regular and typical work day includes eight (8) hours or more of work time (full day position), then at least four (4) hours of work in a day shall be required for a "day" of service.~~

~~F. A member who is not employed in specialized support positions and who does not work four (4) hours or more a day will earn service credit by dividing by four (4) the total number of hours worked in a fiscal quarter to arrive at to be credited the number of days~~

~~G. ATRS employers have specialized support positions that include bus drivers, custodial workers, cafeteria workers, and similar positions that may require less than eight (8) hours of work a day. Beginning July 1, 2011, a member employed in a specialized support position that has been certified to ATRS as a specialized support position shall receive a full day of service credit if the ATRS employer reasonably determines that the member performed the regular and usual service expected of a member in that position during the service day.~~

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H. ~~A specialized support employee who is employed without a contract specifying the numbers of days of serviced shall be credited a full service day for each day worked, regardless whether the member works fewer than four (4) hours during the day.~~

I. ~~ATRS employers shall certify proof of service on forms and with documentation required by ATRS.~~

J. ~~If a member has accrued a full service year credit for a fiscal year and then retires, the member's annuity shall not begin earlier than on the July 1 of the following fiscal year.~~

K. ~~The Board of Trustees has the final authority to decide the amount of service creditable to a member for any particular circumstance.~~

III. Employee (Member) Contributions

A. ~~Each employer will remit the member contributions by employer "pick up" from the salary earned by contributory members, and those member contributions are treated as employer contributions under the applicable provisions of the 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, by a setoff against future salary increases, or by a combination of both.~~

B. ~~The rate of member contributions is set by Board resolution.~~

C. ~~Overpayments or underpayments of member contributions in an amount determined by the Board to be "de minimus" shall be pursuant to the following:~~

1. ~~ATRS shall not collect an underpayment of member contributions for an amount less than twenty-five dollars (\$25.00) or adjust member service credit for such amount.~~

2. ~~ATRS will refund an overpayment of member contributions of less than twenty-five dollars (\$25.00) if the member requests.~~

3. ~~If an underpayment of member contributions occurs because the member changed status from noncontributory to contributory, the member must remit to ATRS the contributions due based on gross salary earned retroactive to the beginning of that fiscal year. Service will not be credited until the underpayment is fully paid to ATRS.~~

4. ~~If an overpayment of member contributions occurs as a result of erroneous reporting, ATRS will refund the overpayment of member contributions to the employer, subject to the de minimus amount.~~

D. ~~If ATRS is owed member contributions with accrued interest, the interest may be waived by the Board or its designee under ATRS Rules.~~

IV. Employer Contribution Rate

A. ~~The Board shall annually set the employer contribution rate for the following fiscal year.~~

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~~B. ATRS shall annually notify ATRS employers of the employer contribution rate set by the Board.~~

~~V. Employee and Employer Remittances and Reports~~

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

~~B. Employer reports required by ATRS are due on a monthly and quarterly basis.~~

~~C. The employer must remit reports and required supporting documentation to ATRS electronically on ATRS approved forms~~

~~D. An employer report or remittance shall not be delinquent if received by ATRS 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.~~

~~E. A one hundred and fifty dollar (\$150) late report penalty will be assessed on any required employer report not received by its due date.~~

~~F. If an employer fails to remit employee or employer contributions by the date due above, an interest penalty shall be assessed with daily interest accrual until paid.~~

~~G. The Board or its designee may waive penalties and interest due from an employer if in its discretion it finds:~~

~~1. The delinquency was not the result of the employer's nondisclosure, fraud, or other misrepresentation; and~~

~~2. Based on the facts and circumstances, the required payment of the penalties and/or interest would be unduly penal, burdensome, or manifestly unjust.~~

~~H. The Board designates the Executive Director to waive penalties and interest from an employer in an amount not to exceed one thousand dollars (\$1000) per fiscal year. The Executive Director shall report to the Board any amounts waived under this section. Any request to waive employer penalties and interest exceeding one thousand dollars (\$1000) per fiscal year shall be submitted to the ATRS Board for consideration.~~

~~VI. Reporting Employer Contributions~~

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

~~B. 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 certain State agencies as allowed under the Transformation and Efficiencies Act of 2019, and 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~~

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~~each quarterly report the amount of employer contributions due. The amount will be based on the employers' reported salaries.~~

~~C. ATRS may certify to the state's Chief Fiscal Officer the names of ATRS employers who are delinquent in reporting and remitting contributions under this rule. 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)~~

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

~~E. The Arkansas Teacher Retirement System shall return to ATRS employers overpaid contribution amounts due to erroneous submission of payments or incorrect reporting of Salary Option 2 (first \$7,800) member salaries. If an overpayment of a contribution amount is less than \$25, the refund will not be issued to the employer unless requested in writing by the employer.~~

~~F. The Arkansas Teacher Retirement System shall not collect from ATRS employers an underpayment of employer contribution amount if less than \$25.~~

~~G. 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.~~

~~H. A public school employer shall pay any additional employer contributions above fourteen percent (14%) from additional funds appropriated by the State for the purpose of paying ATRS employer contributions.~~

II. Service Credit

a. Generally

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

A. Number of years and corresponding fractions for service that may be credited to a member; and

B. Amount of service to be credited to a member.

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

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

4. ATRS shall certify proof of a member's service on forms and with documentation required by ATRS.

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b. Unused Leave

1. Unless otherwise provided by law, paid or unpaid accrued, unused sick leave shall not be credited as service in ATRS.
2. If a member dies during active service on or after July 1, 2013, the member's unused catastrophic leave and unused donated leave shall not be credited as service.

c. Contract Buyouts, Settlements, Claims, Awards, and Court-Ordered Payments

1. A member shall not accumulate service credit in ATRS during the time that payments under a contract buyout agreement, settlement, claim, judgment, arbitration award, decree, or court-ordered payment are paid to the member by a covered employer unless the member continues to work on-site for the covered employer.
2. A member shall not receive service credit or additional salary from ATRS under a settlement agreement or court order unless purchased at actuarial cost.

d. Service Provided After July 1, 1971

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

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

e. Members Employed for Less Than Forty (40) Days

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

f. Rollover Service Days

1. Beginning in the 2011-2012 fiscal year, a contributory member's service days shall be carried forward from previous fiscal years until at least forty (40) days of service are earned by the member.
2. Service days shall not be carried forward for a contributory member if

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the member earns at least forty (40) days of service in a fiscal year by using regular service days, accumulated service days, or both regular service and accumulated service days.

g. Full-Time Employees

1. A member who is employed full-time or employed in a position for which a regular or typical work day includes at least eight (8) working hours shall earn one (1) day of credited service if the member works for at least four (4) hours of the eight-hour working day.

h. Employees in Specialized Support Positions

1. Employment with Less Than Eight-Hour Working Days

A. Beginning July 1, 2011, a member employed in a specialized support position shall earn one (1) day of credited service if the:

- i. Specialized support position is certified as a specialized support position to ATRS; and
- ii. Covered employer reasonably determines that the member performed the regular and usual service expected of an employee in that position during the work day.

2. Employment with Unspecified Contractual Work Days

A. A member who is employed in a specialized support position and does not have a contractual obligation to work a specified number of days shall earn one (1) day of credited service for each day of service provided by the member.

B. A member described in this ATRS Rule 7 II.h.2.A shall earn one (1) day of credited service for each day of service provided by the member regardless of whether the member works for less than four (4) hours on a work day.

i. Employees in Non-Specialized Support Positions

1. The credited service earned by a member who is employed in a non-specialized support position and does not work for at least four (4) hours each working day shall be calculated by dividing the total number of hours worked by the member in a fiscal quarter by four (4).

III. Member and Employer Contributions

a. Contributions — Generally

1. The Board shall annually set member and employer contribution rates for the following fiscal year.
2. ATRS shall notify annually each covered employer of the contribution rates set by the Board.
3. A member's and covered employer's contributions are due monthly.

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regardless of the member's concurrent membership status.

b. Member Contributions

1. Authority of the Board

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

B. The Board may increase the member contribution rate to maintain actuarial soundness.

2. Contribution Rate

A. A contributory member shall contribute the percentage of his or her salary that is set by the Board.

B. A member's contribution is due monthly, regardless of the member's concurrent membership status.

3. Remittance of Member Contributions by Covered Employer

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

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

C. A covered employer may remit a member's contributions by implementing a:

i. Reduction in the cash salary of the member;

ii. Setoff against the member's future salary increases; or

iii. Both a reduction in the cash salary of the member and a setoff against the member's future salary increases.

c. Employer Contributions — Public School Employers and Covered Employers

1. Covered Employers and Public School Employers

A. A covered employer's employer contributions shall be the sum of the current employer contribution rate set by the Board for the fiscal year multiplied by the total gross salaries of all the covered employer's employees.

B. A public school employer shall pay up to fourteen percent (14%) of the employer contribution rate.

C. Up to fifteen percent (15%) of any additional employer contributions required from a public school employer shall be paid from additional funds appropriated by the state for the purpose of paying employer contributions to ATRS.

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2. Employer Contributions Not Paid by the Department of Education

- A. A covered employer shall pay annually, for its employees, employer contributions that are not required to be paid by the Department of Education.
- B. The employer contribution rate shall be the current state contribution percent multiplied by the total covered salaries of the covered employer's employees in the fiscal year.

3. Employer Contributions Paid by the Department of Education

- A. In accordance with rules established by the Board and the Department of Education's appropriations act, the Department of Education shall pay employer contributions due for eligible employees of covered employers, including without limitation the following:
 - i. State agencies as allowed under the Transformation and Efficiencies Act, Acts 2019, No. 910;
 - ii. Cooperative Education Services Areas;
 - iii. Vocational Centers;
 - iv. Arkansas Easter Seals; and
 - v. A school operated by the Corrections School System.
- B. The Department of Education shall pay the employer contributions for eligible employees of covered employers from the Public School Fund.
- C. At the close of each quarterly report, ATRS shall report the amount of employer contributions due from the Department of Education.
- D. The employer contributions due from the Department of Education shall be based on the salaries of the eligible employees reported to ATRS by each covered employer.

d. Employer Contributions — Participating Employers

- 1. The Board shall annually notify each participating employer of the employer contribution rate established by the Board for the upcoming fiscal year.

e. Employer Contributions — Surcharge Employers

- 1. A surcharge employer's employer contributions shall be a monthly surcharge on the total salaries paid to all the surcharge employer's embedded employees on an aggregate basis as provided under Arkansas Code § 24-7-506(c).

IV. Employer Reports

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a. Generally

1. A covered employer shall submit:

- A. A supplemental salary payment report for previous years with employer contributions that are due;
- B. Reports and supporting documentation required by ATRS on a monthly and quarterly basis; and
- C. Reports and supporting documentation electronically to ATRS on forms approved by ATRS.

b. Covered Employers

1. Youth Participant — Summer Work Programs

- A. At the request of ATRS, a covered employer shall provide ATRS with a memorandum of understanding, partnership agreement, or another similar document related to the covered employer's actions as a pass-through fiscal agent for a youth participant in a summer work program.
- B. A covered employer shall provide ATRS with all documents related to the agreement designating the covered employer as a pass-through fiscal agent before disbursing compensation to a youth participant.
- C. A covered employer that acts as a pass-through fiscal agent shall not report a youth participant as an employee for ATRS purposes.

2. Twenty-Six (26) Week Payroll

- A. A covered employer that uses a twenty-six-week payroll system shall report an employee's salary, contributions, and actual working days through the current fiscal year ending June 30 if the employee is a member of ATRS and retiring.
- B. If an employee is a member of ATRS and retiring effective July 1, a covered employer shall not:
 - i. Withhold contributions on a salary earned by the member after the close of payroll for the current fiscal year; and
 - ii. Report any salary paid to the member or actual working days performed by the member after the close of payroll for the current fiscal year.
- C. ATRS shall refund employee contributions remitted to ATRS from a salary paid to the employee after the end of the current fiscal year or payroll period for the current fiscal year.

c. Surcharge Employers and Participating Employers

1. Generally

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A. A covered employer may submit a request to ATRS for a determination on whether a service or position is subject to the provisions of Arkansas Code § 24-7-506.

2. Surcharge Employers

A. A surcharge employer shall submit a surcharge report monthly to ATRS with all other reports required by ATRS.

3. Participating Employers

A. A participating employer shall submit a contribution report monthly to ATRS with all other reports required by ATRS.

d. Deadline for Submission of Reports

1. A report and supporting documentation submitted by a covered employer shall not be considered untimely if the report and supporting documentation are:

A. Received by ATRS on the tenth (10th) day of the month in which the report and supporting documentation are due; or

B. Mailed and postmarked by the fourteenth (14th) day of the month.

i. If the fourteenth (14th) day of the month falls on a Saturday, Sunday, or holiday, the postmarked date shall be the next business day.

2. Failure to Submit Report or Remit Contributions and Penalties

A. Late Fee for Untimely Reports

i. A one hundred and fifty dollar (\$150) late fee shall be assessed on a covered employer for each occurrence in which a report and supporting documentation is untimely submitted to ATRS.

B. Interest Penalty

i. If a covered employer does not remit member or employer contributions, including surcharge contributions, by the monthly due date, ATRS shall assess an interest penalty equal to ATRS' actuarially assumed rate of seven and one-half percent (7.5%) return on investments and daily interest accrual against the covered employer until the member or employer contributions, whichever is applicable, are paid.

ii. The Board or its designee, in its discretionary authority, may waive an interest penalty assessed against a covered employer if:

a. The delinquency is not a result of the covered employer's nondisclosure, fraud, or other

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misrepresentation; and

b. Based on the facts and circumstances, payment of the penalty interest would be unduly penal, burdensome, or manifestly unjust.

iii. The Board shall not instruct the Executive Director of ATRS (executive director) to waive one (1) or more interest penalties assessed against a covered employer if the amount will exceed one thousand dollars (\$1,000) for the fiscal year.

iv. A covered employer may submit an interest penalty waiver request for one (1) or more interest penalties exceeding one thousand dollars (\$1,000) for the fiscal year to the Board.

v. The executive director shall report each interest penalty waived under this ATRS Rule 7 IV.d.2.B to the Board.

3. Report to Chief Fiscal Officer of the State

A. ATRS may certify the names of each covered employer that fails to timely report and remit member or employer contributions, including surcharge contributions, to the Chief Fiscal Officer of the State.

B. After receiving the certification from ATRS, the Chief Fiscal Officer of the State may direct a transfer of funds on deposit in the State Treasury for the payment of delinquent member or employer contributions and an assessed interest penalty. (Arkansas Code § 19-5-106)

4. Refunds

A. Service History Conflicts

i. A conflict in a member's service history due to concurrent service shall be resolved at the end of the fiscal year and ATRS shall issue refunds as appropriate.

B. Overpayments and Underpayments

i. ATRS shall return contribution overpayments resulting from erroneous contribution submissions or incorrect reporting of Salary Option 2 member salaries (first seven thousand eight hundred dollars (\$7,800)) to the appropriate covered employer.

ii. A contribution overpayment that is less than the de minimis amount of twenty-five dollars (\$25) shall not be refunded to the appropriate covered employer unless the covered employer submits a written request for the refund to ATRS.

iii. ATRS shall not collect a contribution underpayment of less than the de minimis amount of twenty-five dollars (\$25) from a covered employer.

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V. Final Average Salary

a. Salary Limitations

1. Authority of the Board

A. The Board may adopt rules to modify the definition of salary for the purpose of calculating ATRS retirement benefits. (Arkansas Code § 24-7-202)

2. Salary – Multiple Covered Employers

A. ATRS shall include the salary received from each of a member's covered employers when calculating the member's final average salary.

3. Internal Revenue Code § 401(a)(17)

A. Regardless of any provision in a state statute, rule, or regulation to the contrary, remuneration, salary, or other compensation that exceeds the limitations set forth provided in the Internal Revenue Code of 1986, 26 U.S.C. § 401(a)(17), as it existed on January 1, 2011, shall not be used for the purposes of calculating the final average salary on which ATRS benefits are based.

B. The limitation on remuneration, salary, or compensation for an eligible employee shall not be less than the amount that was allowed to be considered by ATRS as in effect on July 1, 1993.

4. Excluded Remuneration, Salary, or Compensation

A. ATRS shall not consider remuneration, salary, or compensation paid by a covered employer to a member as a salary earned by the member if the:

i. Remuneration, salary, or compensation is paid as an incentive payment, bonus, separation payment, additional salary, or special payment in consideration for the member's agreement to retire, terminate employment, or not renew a contract with the covered employer;

ii. Offer described in this ATRS Rule 7 V.a.4.A.i. is extended by the covered employer to two (2) or more members;

iii. Remuneration, salary, or compensation is not offered as an additional salary or payment for the purchase of service credit that is part of a separation agreement resulting from the resolution of a claim of wrongful termination;

iv. Remuneration, salary, or compensation is not payment for accumulated, unused sick leave that:

a. Accrued in the years immediately preceding the member's termination of covered employment; and

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- b. Were in excess of the number of sick days that the covered employer allowed the member to carry forward;
 - v. Covered employer offers a voluntary early retirement incentive plan, staff reduction plan, or buyout plan that would require the member as a participant of the plan to retire or terminate his or her employment with the covered employer; and
 - vi. Member voluntarily participates in the plan in exchange for the remuneration, salary, or compensation offered by the covered employer.
 - B. A covered employer shall not withhold a member's contributions or pay employer contributions from a remuneration, salary, or compensation paid to a member if the remuneration, salary, or compensation is subject to a salary limitation as provided by this ATRS Rule 7.
 - C. A covered employer that offers an early retirement plan, separation, plan, or contract nonrenewal plan and intends to pay remuneration, salary, or compensation that is subject to a salary limitation as provided by this ATRS Rule 7 shall notify ATRS before making a payment under the plan.
 - D. At the request of a covered employer, ATRS shall:
 - i. Review a potential plan or payment that may be subject to a salary limitation as provided by this ATRS RULE 7; and
 - ii. Provide guidance to the covered employer concerning the applicability of the salary limitation to the plan or payment.
 - E. A covered employer may appeal ATRS' decision concerning the applicability of a salary limitation to a plan or payment to the Board using ATRS' appeal procedures provided in ATRS Rule 13.

5. Conflict of Laws

- A. The law applicable to ATRS and the ATRS Rules shall be controlling if a conflict exists between ATRS' calculation of final average salary and a covered employer's laws or policies concerning the compensation of final average salary.
- b. Service Years Included in Computation of Final Average Salary
 - 1. Unused Leave
 - A. If a member dies during active service on or after July 1, 2013, the member's paid or unpaid accrued, unused sick leave, shall be credited as service in the fiscal year of the member's death for the purpose of determining the member's retirement eligibility, final average salary, and eligibility for other ATRS benefits.

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2. Full Service and Partial Service Years

A. A partial service year shall be excluded from the calculation of a member's final average salary unless the:

- i. Partial service year is higher than a full service year; or
- ii. Member has less than the required number of years to calculate a final average salary.

3. Number of Service Years Used to Calculate Final Average Salary

A. The Board shall set annually the applicable number of years to be used in computing final average salary for retirement benefits at not less three (3) years and not more than five (5) years.

B. Unless otherwise provided by law applicable to ATRS or the ATRS Rules, effective July 1, 2018, ATRS shall calculate a member's final average salary using the five (5) years in which the member received the highest salary from a covered employer.

C. Members with Insufficient Credited Service or Full Service Years

- i. If a member has less than the minimum number of years of credited service that would be used to calculate a final average salary, the member's final average salary shall be the total salary paid to the member for his or her years of credited service divided by the member's total credited years of service.
- ii. If a member does not have full service years for the total years of service used in the calculation of final average salary, the Board may establish by rule a fair base year for a member's final average salary for purposes of comparing the member's highest salary years.

D. Active Members with Three (3) Full Service Years as of July 1, 2018

- i. For an active member who has three (3) or more full service years as of July 1, 2018, ATRS shall:
 - a. Treat the active member as if he or she was retiring or entering the Teacher Deferred Retirement Option Plan (T-DROP) as of June 30, 2018; and
 - b. Determine the benchmark final average salary using the highest salary from the member's three (3) full service years through fiscal year 2018.
- ii. A final average salary calculation using three (3) full service years shall be the benchmark comparison for a five-year final average salary calculation to which the active member may be entitled.

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- iii. ATRS shall calculate the active member's final average salary using the five (5) years in which the active member received the highest salary from a covered employer if at the time of the active member's retirement using a five-year calculation of the final average salary is higher than using a three-year calculation.

E. Inactive Members Who May Have Three (3) Full Service Years of July 1, 2018

- i. ATRS shall not use a benchmark final average salary for an inactive member unless the inactive member provides ATRS with appropriate documentation showing that the inactive member was active in a reciprocal system or alternate retirement plan during the 2018 fiscal year.

F. Members with Reciprocal Service Credit

- i. For a member with reciprocal service credit, ATRS shall use the highest final average salary calculated, at the time of the member's retirement, by ATRS or a reciprocal system in which the member has at least two (2) years of service credit pursuant to Arkansas Code § 24-2-402.

HISTORY

Amended:	August 11, 1998	7-1, 7-3
Amended:	June 17, 2003	7-4
Amended:	April 6, 2004	7-4
Reaffirmed:	June 15, 2004	7-4
Amended:	July 18, 2005	7-1, 7-2, 7-3, 7-4
Amended:	April 26, 2007	7-4
Amended:	February 11, 2008	7-3, 7-4
Amended:	June 16, 2009	7-1, 7-2 (Emergency)
Amended:	October 5, 2009	7-1, 7-2 (Permanent)
Amended:	December 18, 2009	7-3, 7-4
Amended:	July 1, 2011	7-1, 7-2 (Emergency)
Adopted:	August 8, 2011	7-1, 7-2
Effective:	November 11, 2011	7-1, 7-2
Board Approved:	February 6, 2012	7-2, 7-4
Amended:	April 2, 2012	7-2 (Emergency)
Amended:	April 18, 2012	7-4
Effective:	May 29, 2012	7-2, 7-4
Approved by Board:	July 26, 2013	7-1, 7-3

MARK UP

Amended:	October 9, 2013	7-1, 7-3
Effective:	November 8, 2013	7-1, 7-3
Approved by Board:	January 8, 2014	7-1
Amended:	February 17, 2014	7-1
Effective:	March 18, 2014	7-1
Effective:	August 5, 2019	Rule 7
Effective:	May 28, 2020	

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Teacher Retirement System

DIVISION _____

PERSON COMPLETING THIS STATEMENT Jennifer Liwo

TELEPHONE NO. (501) 682-1517

FAX NO. (501) 682-2359

EMAIL: jenniferl@artrs.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two (2) copies with the Questionnaire and proposed rules.

SHORT TITLE OF THIS RULE ATRS Rule 7 - Reporting and Eligibility

1. Does this proposed, amended, or repealed rule have a financial impact? Yes ☐ No ☒

2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
Yes ☒ No ☐

3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes ☒ No ☐

If an agency is proposing a more costly rule, please state the following:

- a) How the additional benefits of the more costly rule justify its additional cost;

N/A

- b) The reason for adoption of the more costly rule;

N/A

- c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and

N/A

- d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.

N/A

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total \$ 0.00

Total \$ 0.00

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

Current Fiscal Year

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total \$ 0.00

Total \$ 0.00

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

Current Fiscal Year

Next Fiscal Year

\$ _____

\$ _____

N/A

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

Next Fiscal Year

\$ _____

\$ _____

N/A

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?
Yes ☐ No ☐

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.



DECEMBER 15, 2021

SUMMARY OF PROPOSED RULE AMENDMENT

ATRS RULE 7 – REPORTING AND ELIGIBILITY

I. PURPOSE

To amend ATRS Rule 7 – Reporting and Eligibility (Rule 7) in accordance with legislation enacted during the Regular Session, 2021, and to redraft current provisions for clarity and to correct nonsubstantive issues such as formatting, renumbering, grammar, and spelling as appropriate. The amendments to Rule 7 are necessary for the proper operation and administration of the Arkansas Teacher Retirement System.

II. BACKGROUND AND DISCUSSION

A.C.A. § 24-7-301 provides that the Board of Trustees of the Arkansas Teacher Retirement System is responsible for the general administration and proper operation of the Arkansas Teacher Retirement System and for implementing the Arkansas Teacher Retirement System Act, A.C.A. § 24-7-201 et seq.

A.C.A. § 24-7-305(b) gives the Board of Trustees of the Arkansas Teacher Retirement System the authority to promulgate rules as it deems necessary from time to time in the transaction of its business and in administering the Arkansas Teacher Retirement System. Acts 2021, No. 595 requires the Arkansas Teacher Retirement System to promulgate rules pursuant to the provisions of each act identified by the Bureau of Legislative Research as requiring the promulgation of one (1) or more rules.

Rule 7 currently provides that if an employer fails to remit employee or employer contributions by the fifteenth (15th) day of the month in which it is due, the employer shall be assessed an interest penalty of eight percent (8%) with daily interest until the contributions are paid. Acts 2021, No. 220 amended the law to provide that an actuarially assumed rate of return on investments of the Arkansas Teacher Retirement System Fund, in the form of interest applied on an annual basis to the moneys due, shall be assessed against an employer who fails to remit employee or employer contributions by the due date established by the Board of Trustees of the Arkansas Teacher Retirement System. Rule 7 is being amended to reflect the amendment to the law in Acts 2021, No. 220.

Rule 7 currently provides that the final average salary for members with reciprocal service shall be the highest salary years credited to the member by either an employer covered under the Arkansas Teacher Retirement System or a reciprocal system pursuant to A.C.A. § 24-2-402. Acts 2021, No. 221 amended the law to provide that the final average salary for a member with reciprocal service shall be the final average salary of the Arkansas Teacher Retirement System or a reciprocal system in which the member has at least two (2) years of service credit, whichever furnishes the highest final average salary at the time of the member's retirement. Rule 7 is being amended to reflect the amendment to the law in Acts 2021, No. 221.

Acts 2021, No. 691 amended the definition of "employee" in A.C.A. § 24-7-202(16) to provide that "employee" under the Arkansas Teacher Retirement System does not include a participant in a summer work program whose compensation is disbursed by a covered employer through an agreement with an administrator of a summer work program to serve as a pass-through fiscal agent if the participant is: (1) enrolled in a secondary public school as a student, (2) employed for a period between the first day of June



and the last day of August; and (3) participating in a program in which the covered employer is acting as a pass-through fiscal agent. Additionally, Acts 2021, No. 691 added a new provision of the law addressing the obligations of a covered employer in relation to the Arkansas Teacher Retirement System and youth participants in a summer work program. Rule 7 is being amended to reflect the amendment to and new provisions of law in Acts 2021, No 691.

Rule 7 is being amended to redraft current provisions for clarity and correct nonsubstantive issues such as formatting, renumbering, grammar, and spelling as appropriate.

III. KEY POINTS

Rule 7 is being amended to:

- Provide that an actuarially assumed rate of return on investments of the Arkansas Teacher Retirement System Fund, in the form of interest applied on an annual basis to the moneys due, shall be assessed against an employer who fails to remit employee or employer contributions by the due date established by the Board of Trustees of the Arkansas Teacher Retirement System;
- Provide that the final average salary for members with reciprocal service shall be the final average salary of either the Arkansas Teacher Retirement System or a reciprocal system in which the member has at least two (2) years of service credit, whichever furnishes the highest final average salary at the time of the member's retirement;
- Define "youth participant" and address the responsibilities of a covered employer in relation to the Arkansas Teacher Retirement System and youth participants in a summer work program; and
- Redraft current provisions for clarity and correct nonsubstantive issues such as formatting, renumbering, grammar, and spelling as appropriate.