

# **ARKANSAS TEACHER RETIREMENT SYSTEM**

**March 9, 2020**

1400 West Third Street

**BOARD ROOM**

Little Rock, AR 72201

## **Board of Trustees Meeting**

**4:00 p.m.**

### **Trustees**

Danny Knight, Chair

Dr. Richard Abernathy, Vice Chair

Anita Bell

Lloyd Black

Kathy Clayton

Kelly Davis

Shawn Higginbotham

Bobby G. Lester

Chip Martin

Robin Nichols

Janet Watson

### **Ex Officio Trustees**

Candace A. Franks, State Bank Commissioner

Johnny Key, Education Commissioner

Honorable Andrea Lea, State Auditor

Honorable Dennis Milligan, State Treasurer

**AGENDA**  
**ARKANSAS TEACHER RETIREMENT SYSTEM**  
**BOARD OF TRUSTEES**

**March 9, 2020**

**4:00 p.m.**

**1400 West Third Street**  
**Little Rock, AR 72201**

- I. **\*Call to Order/Roll Call.** page 1.
  
- II. **\*Adoption of Agenda.** page 2.
  
- III. Executive Summary. *Clint Rhoden, Executive Director* (Attachment No. 1) page 4.
  
- IV. **\*Approval of Rules after Public Comment Period.** *Clint Rhoden, Executive Director*
  - A. Rule 6: Membership Rules.
    - 1. Public Comments. (Attachment No. 2) page 5.
    - 2. Markup. (Attachment No. 3) page 7.
  - B. Rule 7: Reporting and Eligibility.
    - 1. Public Comments. (Attachment No. 4) page 20.
    - 2. Markup. (Attachment No. 5) page 21.
  - C. Rule 8: Purchases and Refunds.
    - 1. Public Comments. (Attachment No. 6) page 31.
    - 2. Markup. (Attachment No. 7) page 32.
  - D. Rule 9: Retirement and Benefits.
    - 1. Public Comments. (Attachment No. 8) page 39.
    - 2. Markup. (Attachment No. 9) page 41.
  - E. Rule 10: T-DROP and Return to Service.
    - 1. Public Comments. (Attachment No. 10) page 55.
    - 2. Markup. (Attachment No. 11) page 56.
  - F. Rule 11: Survivors and Domestic Relations Orders.
    - 1. Public Comments. (Attachment No. 12) page 65.

\* Action Item

2020-03-06 14:33:44.253620

2. Markup. (Attachment No. 13) page 67.

V. Act 595 of 2019. *Clint Rhoden, Executive Director and Martha Miller, General Counsel*

A. Proposed Legislation. (Attachment No. 14) page 76.

VI. Other Business.

VII. **\*Adjourn.**

## EXECUTIVE SUMMARY

TO: Board of Trustees  
FROM: ATRS Staff  
RE: Executive Summary  
DATE: March 9, 2020

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- IV. Approval of Rules after Public Comment Period.** The proposed rules have completed the public comment period. The Bureau of Legislative Research (BLR) has submitted comments and suggestions for changes. ATRS staff has also suggested some internal changes to the proposed rules. ATRS staff proposes the rules be approved with the changes as suggested by BLR and ATRS staff. This is an action item.
- V. Manifest Injustice: Application of Act 595 of 2019.** Act 595 of 2019 modified the ATRS law to state that once a member has accrued a full year of service credit for a fiscal year, the annuity shall not begin earlier than on the July 1 after the fiscal year. The intent of the law was to have teachers maintain a presence in our Arkansas classrooms throughout the fiscal year with their students. Some of the unintended consequences of this law change will be discussed.
- VI. Other Business.**
- VII. Adjourn.**

## **Public Comments Regarding Proposed Rule 6 Membership Rules**

- (1) I.A. – Is there a reason that “an active member” was omitted before “employed in a position grade GS13 or above or its equivalent” as that phrase is used in Ark. Code Ann. § 24-7-202(5)(A)(ii), as amended by Act 427 of 2019, § 5?

STAFF RESPONSE: We are not aware of the reason the drafter omitted the phrase “an active member” in the definition of “Administrator”, and we agree that it should be re-inserted.

- (2) I.B. – Should the reference be to the “*Division of Higher Education*” as referenced in Ark. Code Ann. § 24-7-801(1), as recently codified, and should the reference be to the “Department of Career Education” rather than “Department of Workforce Education” as used in Ark. Code Ann. § 24-7-901(1), as recently codified?

STAFF RESPONSE: We agree that the names of state agencies should be changed to track recent codification.

- (3) I.H. – Should the term “above” be “below” as “reciprocal system” is now defined following “preceding system”?

STAFF RESPONSE: Yes, “above” should be changed to “below”.

- (4) I.I. – See question (2) above referencing agency names.

STAFF RESPONSE: We agree that the names of state agencies should be changed to track recent codification.

- (5) I.J. – See question (2) above referencing agency names.

STAFF RESPONSE: We agree that the names of state agencies should be changed to track recent codification.

- (6) III.I. – It appears that this section is premised upon the current Rule 6-1A, § 7.B. and the latter portion of § 7.A. Is the first, or former, portion of the current § 7.A no longer necessary?

STAFF RESPONSE: The portion of the current Rule 6 – 1A §7.A. is no longer necessary.

- (7) III.K. – It appears that this section is premised upon the current Rule 6-1A, § 9, but lacks the language “who received a refund of contributions.” Is that language no longer necessary?

STAFF RESPONSE: The portion of the current Rule 6 – 1A §9 (“who received a refund of contributions”) is no longer necessary.

(8) V. Intro – Does the reference to “above” refer to Section I. *Definitions*?

STAFF RESPONSE: Yes.

(9) VI.G.4 – Is a “than” missing before “twelve”?

STAFF RESPONSE: Yes, the word “than” should be inserted before “twelve”.

(10) VII. Intro – Should the citation be to Ark. Code Ann. § 24-7-202(18)(E)-(F)?

STAFF RESPONSE: Yes, the correct citation should be as noted above.

(11) VII.A. – In light of Act 315 of 2019, is there a reason that the term “regulations” was retained?

STAFF RESPONSE: We agree that the phrase “and regulations” should be deleted.

(12) VII.B. – See question (11) above referencing the term “regulations.”

STAFF RESPONSE: We agree that the phrase “and regulations” should be deleted.

(13) CHART, School District Employees, 1999-2007, Active – Should the date for “no election made by” be July 1, 2000, as in Ark. Code Ann. § 24-7-406(e)(1)(B)(i)(b), as recently codified and which provides “on or before July 1, 2000”?

STAFF RESPONSE: We agree that the date should be changed as noted above.

(14) CHART, School District Employees, 2007 -, Inactive – Does “May elect contributory” only apply “if previously noncontributory” per Ark. Code Ann. § 24-7-406(e)(2)(C), as recently codified?

STAFF RESPONSE: The phrase “if previously noncontributory” is not necessary since a member may be only either contributory or noncontributory. If a member decides to elect to become a contributory member, by implication the member’s current status is necessarily noncontributory.

(15) CHART, State Agency Employees – From where does the information for the State Agency Employees come?

STAFF RESPONSE: Act 907 of 1999.

# MARK UP

## 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.

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#### 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 *an active member* 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~~ *Division* 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~~ *Career* 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~~ *below*.

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I. "Reciprocal System" means ATRS operations as of 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~~ ~~Division~~ 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-~~ ~~Career~~ 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~~ ~~Division~~ of Higher Education (A.C.A. § 24-7-801 *et seq.*), or a vocational-technical school or the Department of ~~Workforce-~~ ~~Career~~ 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).

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

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make member contributions.

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.

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- L. If a member enters ATRS and is reported incorrectly by the employer for 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 than 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.<sup>1</sup>

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~~)(18)(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 or ERISA opinions.

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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 and the type of such government funds;

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

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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.

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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.

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

**All Members**

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<u>1937 - 1986</u>	<u>All Members</u>	<u>Contributory</u>
<u>1986-1991</u>	<u>All Members</u>	<u>Contributory unless elect Non-Contributory</u>
<u>1991-1999</u>	<u>All Members</u>	<u>Non-contributory unless elect Contributory</u>
<b><u>School District Employees</u></b>		
<u>1999-2007</u>	<u>Active</u>	<u>One time election to be Contributory or Non-Contributory, no election made by 7/1/2000, status on 6/30/2000</u>
-	<u>Inactive</u>	<u>One time election to be Contributory or Non-Contributory upon reentering system, no election then status</u>
-	<u>New</u>	<u>Contract 181 days or more - Contributory</u>
-		<u>Contract 180 days or less - Non-Contributory, may elect Contributory, election must be made one year from hire date</u>
-		<u>No contract, member must be non-contributory</u>
<u>2005 -</u>	<u>Non-teacher to Teacher or Administrator</u>	<u>Contract 181 days or more - Contributory. If position change happens during the year, election is effective first of next fiscal year</u>
-		<u>All Non-Contributory members may elect to be Contributory</u>
<u>2007 -</u>	<u>All Members</u>	<u>May elect Contributory</u>
-	<u>New</u>	<u>Contract 181 days or more - Contributory</u>
-		<u>Contract 180 days or less - Non-Contributory, may elect Contributory</u>
-		<u>No contract - Non-Contributory, may elect Contributory</u>
-	<u>Inactive</u>	<u>May elect Contributory</u>
<b><u>State Agency Employees</u></b>		
<u>1999 - 2007</u>	<u>Full-Time Employment</u>	<u>Must be Contributory</u>
-	<u>Part-Time Employment</u>	<u>Must be Non-Contributory</u>
<u>2007 -</u>	<u>Full-Time Employment</u>	<u>Must be Contributory</u>
-	<u>Part-Time Employment</u>	<u>Non-Contributory, may elect to be Contributory</u>

**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

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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.

## **Public Comments Regarding Proposed Rule 7 Reporting and Eligibility**

(1) II.J. – Should “no” be “not” preceding “begin earlier”?

STAFF RESPONSE: Yes, this should be corrected.

(2) V.C. – Should something be clarified? Is something missing from the mark-up or should “either” also be stricken through?

STAFF RESPONSE: Yes, this is a typographical error and the word “either” should be stricken.

(3) VI.H. – Should the term “additional” precede “funds appropriated” per the change to Ark. Code Ann. § 24-7-401(e)(7)(B) by Act 594, § 1?

STAFF RESPONSE: Yes, adding the word “additional” would mirror the language of the Code and should be added.

(4) I.B.4.b.ii. --- Should the phrase “and the member continues to work on-site for the employer” be removed?

STAFF RESPONSE: We believe that the phrase should be removed.

(5) I.B.6 intro --- Should the word “a” before “~~participating~~ ATRS” be changed to “an”?

STAFF RESPONSE: Yes.

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## ATRS Rule 7

### REPORTING AND ELIGIBILITY

A.C.A. §§ 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, 24-7-1303, 24-2-701

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#### I. Calculation of Final Average Salary

##### A. Definitions

1. "~~Participating~~ 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.
2. "Full service year" means employment by a covered employer for one hundred sixty (160) days or more in a fiscal year.
23. "~~Partial Year~~ service year" means service in a fiscal year that constitutes less than a full service year of credited service in a fiscal year 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.

##### B. Rules Salary Limitations

1. ~~For purposes of calculating a member's~~ To calculate final average salary, ATRS will include salary received during a fiscal year from all participating ATRS employers during a fiscal year.
2. ~~For purposes of determining if a salary year constitutes a full service year, the following shall be excluded from the limits under A.C.A. § 24-7-736:~~
  - a. ~~Any salary year which constitutes member service during two (2) or fewer quarters in a fiscal year; or~~
  - b. ~~Any salary year that constitutes less than one (1) year of service credit under the schedule set forth in ATRS Rule 7.II. Proof of Service Credit. 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

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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 ~~prior to the adoption of this Rule by the ATRS Board.~~

- a. Paid or unpaid accrued, unused sick leave shall not be credited as 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.

- a.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 offering by the The ATRS employer~~ employer's offer applies to two (2) or more ATRS members;

2. ~~The offering is proposed as an~~ The ATRS employer offers a voluntary early retirement incentive plan, staff reduction plan, or buyout plan ~~that is offered to ATRS members to either directly retire or separate employment from the ATRS employer~~ as a condition of participating in the plan;

3. ~~The offering is made in return for the voluntary decision of the ATRS member to participate~~ voluntarily participates in the program in return for the additional remuneration or salary.

- ii. This salary limitation does not apply if:

1. ~~It is an offering to one (1) ATRS member by the ATRS employer;~~ 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, ~~and the member continues to work on-site for the employer;~~ or

2. ~~It is part of a standing offer to all ATRS members at the time~~

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~~of retirement for the payment of annual time, sick time, or related retirement payment; 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.~~

~~3. It is a payment or bonus made to all members or specific categories of members that is not dependent or conditioned upon the member's separation from or retirement from the employer;~~

~~4. It is a payment made in the settlement of litigation or paid to avoid threat of litigation.~~

~~bc.~~ 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.

~~ed.~~ Any ATRS employer ~~offering of~~ who offers an early retirement plan, separation plan, or contract non-renewal plan, that ~~would result in remuneration being paid by the employer~~ pays remuneration that would be limited from treatment of salary by this Rule subject to the salary limitation shall notify ATRS of the plan prior to ~~payment of any remuneration that is subject to this salary limitation~~ any payment under such plan.

~~de.~~ ~~Upon~~ At the request of an ATRS employer, the ATRS staff shall review any potential plan or payment that could be subject to this salary limitation ~~in order to~~ and provide guidance as to whether the salary limitation would apply ~~to the remuneration paid by the proposed plan or payment.~~

~~ef.~~ 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 the statute or policy governing the treatment of a member's salary between~~ ATRS's calculation of final average salary and the participating ATRS employer's laws or policies relating to the compensation of final average salary and the calculating of a member's final average salary for benefits, ATRS's laws and rules shall control.

6. Effective July 1, 2018, ~~when calculating a member's final average salary,~~ ATRS shall calculate final average salary using the five (5) years in which the member received the highest salary from ~~a participating~~ an ATRS employer subject to the foregoing limitations.:

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- 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. ~~A one-time benchmark final average salary will be computed on service attained as of June 30, 2018. 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. The benchmark final average salary will be calculated using the three (3) years in which the member received the highest salary from a participating employer. This benchmark final average salary will be used at the time of retirement if it is higher than the five (5) year final average salary calculated above.~~
  8. 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 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, whichever applied, will be refunded as promptly as possible.

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## 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 year of service year.
- B. Members employed less than ~~one-fourth (1/4)~~ of forty (40) days during a fiscal year are not eligible for credit or benefits in ATRS for that fiscal year; provided however, ~~a contributory member's service days~~ beginning in the 2011-2012 fiscal year, a contributory member's service days are carried forward from previous fiscal years until at least ~~one-quarter year~~ forty (40) days of service ~~is obtained~~ are earned by the member. If ~~When~~ a contributory member obtains at least ~~a quarter year~~ 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~~

- ~~1. Actual~~ 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

- ~~2.D. All contracts~~ ATRS shall utilize the days specified in a contract between an ATRS employer and member ~~that specify the number of days worked by the member shall be used by ATRS to establish the number of days of service worked.~~

- E. If a member is employed in a position ~~that~~ 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. ~~For "full-day" members~~

- F. A member who is not employed in specialized support positions and who ~~do~~ 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

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~~fiscal quarter divided by four (4) will determine the number of days to arrive at the number of days to be credited.~~

~~G. ATRS employers have specialized support positions that include bus drivers, custodial workers, cafeteria workers, and similar positions for which a typical day of service by the member will be that may require less than eight (8) hours of work a day. Effective for the 2011-2012 fiscal year Beginning July 1, 2011, a member employed, without a contract specifying the number of days of service to be worked, in a specialized support position that has been certified to ATRS as a specialized support position shall receive a full day of service credit, even if the member works less than four (4) hours in a service day, 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.~~

~~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.~~

~~3. For purposes of days counted toward service credit, absences shall be counted as service if for paid leave including sick leave. However, for administrative leave, the member must be on call by the employer for the service to be counted.~~

~~4. ATRS shall not give service credit to a member until all required contributions and interest, if any, are remitted to ATRS.~~

~~5I. The participating ATRS employers shall certify proof of service on such forms and with any documentation required by ATRS.~~

~~6J. If a member is retiring with an effective date other than October 1, January 1, April 1, or July 1, service credited for the year in which a member retires shall not exceed one-fourth (1/4) year for each full calendar quarter worked during the fiscal year has accrued a full service year credit for a fiscal year and then retires, the member's annuity shall ~~be~~ not begin earlier than on the July 1 of the following fiscal year.~~

~~7K. In any case of question as to service credit of a member, the 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. After June 30, 1997, each Each employer will remit the member contributions by employer "pick up" from the salary earned by contributory~~

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members, and those member contributions ~~will then be treated as~~ are treated as employer contributions in determining tax treatment under the provision applicable provisions 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~~ both.

- B. ~~Member~~ The rate of member contributions shall be ~~is~~ set by the Board by 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. ~~If ATRS shall not collect an~~ underpayment of member contributions ~~of~~ for an amount less than \$25 twenty-five dollars (\$25.00) occurs, ATRS shall not collect the difference of this underpayment and ~~no adjustment to or adjust~~ member service credit will be made for such amount.
  - 2. ~~If ATRS will refund~~ an overpayment of member contributions of less than \$25 twenty-five dollars (\$25.00) occurs, a refund ~~will not be issued unless requested by~~ if the member requests.
  - 3. ~~Should~~ If an underpayment of member contributions ~~occur~~ occurs ~~as a result of a member's changing~~ 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 credit will not be credited until the ~~total amounts due are~~ underpayment is fully paid in full to ATRS.
  - 4. ~~Should~~ If an overpayment of member contributions ~~occur~~ 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 ~~and~~ with accrued interest ~~by a member,~~ the interest ~~owed by the member~~ 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 ~~shall be the rate established by the Board of Trustees of the Arkansas Teacher Retirement System prospectively for each~~ the following fiscal year.
- B. ATRS shall annually notify participating ATRS employers of the employer contribution rate established set by the Board ~~for the upcoming fiscal year~~.

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~~C. Participating employers shall pay ATRS employer contributions for eligible employees in accordance with these rules.~~

## 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 reports required by ATRS must~~ remit reports and required supporting documentation to ATRS electronically ~~be on ATRS-approved forms or electronic media~~ **either** ~~furnished by ATRS or approved by ATRS, and shall be accompanied by supporting documentation as determined by ATRS.~~
- D. An employer report or remittance ~~by an employer~~ 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 ~~\$150~~ 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 of ~~8%~~ eight percent (8%) shall be assessed with daily interest accrual until paid.
- G. 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:
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 ~~\$1,000~~ one thousand dollars (\$1000) per fiscal year. The Executive Director shall report to the Board any amounts ~~excused~~ waived under this section. Any request to waive employer penalties and interest exceeding ~~\$1,000~~ one thousand dollars (\$1000) per fiscal year shall be submitted to the ATRS Board for consideration.
- ~~I. Annual billings for underpayments of employee or employer contributions that result in a balance of \$25 or less may be written off by ATRS.~~

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## VI. Reporting Employer Contributions

- A. The employer contributions to be paid each fiscal year by ~~participating~~ 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 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 ~~participating~~ 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 ~~participating~~ 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 ~~participating~~ 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

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State for the purpose of paying ATRS employer contributions.

## **Public Comments Regarding Proposed Rule 8 Purchases and Refunds**

- (1) Punctuation and spacing corrections should be made in II.A., II.C., VI.A., and IX.D..

STAFF COMMENT: We agree.

- (2) IV.A. The word “periodically” is misspelled and should be corrected.

STAFF COMMENT: We agree.

- (3) Should VII.B.3. be revised to clarify that deduction of federal taxes are not due on funds that are rolled over to another qualified plan?

STAFF COMMENT: We agree. The phrase “after deduction and payment of federal taxes” has been moved to the end of the sentence so that it applies only if contributions are refunded directly to the member.

- (4) To clarify VIII.F., shouldn’t the word “in” be added last line before “ATRS”?

STAFF COMMENT: We agree.

- (5) To clarify IX.C.2., shouldn’t the phrase “in ATRS” be added after “five (5) or more years of actual service”?

STAFF COMMENT: We agree.

- (6) To clarify X.A and X.B., language has been added regarding how a member might acquire additional credited service and salary in cases of alleged wrongful termination.

STAFF COMMENT: We agree that additional language should be added.

# ATRS Rule 8

## PURCHASES AND REFUNDS

A.C.A §§ 24-7-406, 24-7-601, 24-7-602, 24-7-607, 24-7-711, 24-7-719, 24-7-735,  
24-1-107

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### I. Definitions

- A. "Back Contributions" means mandatory contributions payable for service and salary rendered in a covered position within the ATRS look-back period.
- B. "Private School Service" as defined in A.C.A. § 24-7-607, additionally, employment under the Head Start Programs will also be considered private school service and will have the same requirements for the issuance of teaching licenses by the Arkansas State Department of Education as determined by ATRS staff.

### II. Purchase of Service Credit/Repayment of Refunds - General

- A. ~~The Arkansas Code § 24-7-601 et seq. allows a member to purchase various types of service and credit that service to the member under certain circumstances. sets forth the service purchases available and the cost mechanism to be used in service purchases. The various types of service that can be purchased and the definitions for these are in the Arkansas Code. Unless greater explanation is required, the code's provisions are self-effecting without the need to be placed in the policy.~~
- B. Actuarial cost for purchase of service does not include adjustments to salary and service that are made in order to properly reflect the member's mandatory salary and service records. In addition, the actuarial cost of service does not apply to free military service credit that is established with ATRS.
- C. The actuarial cost for purchase of service shall use the member's highest salary year as the formula's "base year." The base year shall always be the member's highest salary year unless the highest salary year is more than 150% greater than the next highest salary year; In in that case event, the best two (2) salary years shall be added together and divided by two (2) to establish the base year for the formula.
- D. If a member does not have sufficient full service years to establish the base year for the purchase formula, then each partial year's service percentage shall be divided into each partial year's salary to establish a full year salary from the partial year salary to determine the base year for the formula.

- E. Salaries for actuarially purchased service shall not be used in the calculation of final average salary except for repaid refunds for mandatorily reported service within the refunded service.
- F. All actuarially purchased service shall be purchased as contributory.
- G. Members seeking to purchase service with ATRS shall use forms developed by ATRS staff to establish the service.
- H. ~~All service purchases must be accompanied by a service purchase commitment statement. Once the service purchase stated on the service purchase commitment statement is paid in full, the service purchase is final and may not be cancelled by the member.~~
- I. If an active member with an active purchase account dies, the member's spouse, ATRS beneficiary, or legal representative shall have up to six (6) months to pay the balance of the purchase account. If the purchase account is not paid in full within six (6) months of the date of death, the purchase account is cancelled and any payments shall be treated as part of the member's residual account balance. ATRS may extend the six (6) month period for good cause shown.

### **III. Special Provisions for the Repayment of Refunded Member Contributions**

- A. To be eligible to repay a refund, a person must be an active member of ATRS. ~~A person who has received a refund may reestablish active membership by completing forty (40) days or more after reemployment by an ATRS covered employer.~~
- B. A member must purchase the total credited service forfeited by the refund in order to purchase the refunded service.
- C. If a member has received more than one refund, repayment must be made in inverse order. The most recent refund account must be paid in full before a previous refund account can be purchased.

### **IV. Refunds of Member Contributions**

- A. ~~Should an overpayment of contributions of less than \$25.00 be reported from the local level, no ATRS will not refund of an overpayment of a member's or employer's contribution that is equal or less than the de minimus this amount remitted to ATRS will be made to the member, except upon the written request from the member. The total amount reported by the employing authority shall be credited to contributions. The board shall periodically- periodically set the de minimus amount by board resolution, which shall remain until adjusted by the board.~~
- B. On refunded contributions, the rate of interest compounded annually after the first year of contributions is credited as follows:

Service	Interest Rate
Before July 1, 1984	3%
For July 1, 1984 through June 30, 2009	6%
For July 1, 2010, through June 30, 2011	2%
For July 1, 2012, through June 30, 2017	1%
For July 1, 2017 and after	0.08%

- C. Payable interest shall be computed on each member's individual account on 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.
- D. The Board may by board resolution 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.
- E. Regular interest is not paid on contributions made in the year in which a refund is paid.
- F. ~~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 any member contributions that have been closed on the books of ATRS upon receipt of a properly completed refund application. Any amount due in If a second payment is required to complete the refund, the 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.~~
- G. The effective date of a refund is the date that ATRS first issues payment of a refund.

## V. Rollover Acceptance and Distribution

### A. Accepting Rollovers for Payment on ATRS Purchase Accounts

ATRS will accept participant rollover contributions and/or direct rollovers for the purchase of service credit from ~~qualified~~ retirement plans as set forth in the Arkansas Code.

### B. Rollover Eligibility of ATRS Distributions

The depository trustee ~~from the~~ qualified retirement plan shall certify to the System ATRS that the rollover deposit account is "qualified" and eligible to

receive rollover distributions prior to a distribution ~~being rolled over of a member's account monies~~. If the depository trustee cannot certify the eligibility status, ATRS will accept a certification from a currently licensed certified public accountant who has an active certified public accountant's license. The certification may not be made by a certified public accountant if the certified public accountant has an interest in the account as a member, spouse, or designated beneficiary.

## **VI. Purchase Payment Rules**

- A. ~~Prior to July 1, 2011, any service purchase commitment statement provided by a member to ATRS constitutes an agreement between ATRS and the member for ATRS to allow the member to complete the service purchase stated on the commitment form unless withdrawn or cancelled by the member. A purchase account established prior to July 1, 2011 must have an approved Purchase Account Commitment Statement on file with ATRS that details the member's payment plan. The Purchase Account Commitment Statement may be modified by agreement of ATRS and the member. Failure of a~~ A member who fails to complete the terms of the service purchase agreement authorizes ATRS to cancel the agreement. ~~However, a service purchase commitment may be modified in terms of Modifications of the Purchase Account Commitment Statement may include types of payment, duration, and the a decrease of the service being purchased, consistent with ATRS law and policy. , except the The service being purchased under a Purchase Account Commitment Statement cannot be increased and any decrease must otherwise be in compliance with ATRS law and policy.~~
- B. An agreement to complete payment of purchase account shall exist upon acceptance tender of the initial payment to ATRS.

## **VII. Cancellation of Purchase Service Accounts**

- A. An established purchase account may be cancelled if the request is submitted in writing by the member and approved by ATRS. The amount of payments to date will be returned to the member without interest unless the payment of interest is statutorily mandated. ~~Purchase account payments through employer pick-up cannot be cancelled until (a) the number of payments on IPA is completed, (b) the member terminates employment, or (c) the member retires.~~
- B. The cancelled purchase account may be refunded under certain conditions:
1. Accounts paid only with after-tax contributions can be returned to the member.
  2. Accounts paid only with employer pick-up contributions cannot be

returned to the member unless the member terminates employment or retires.

3. Accounts paid only with rollover/transfer contributions, ~~after deduction and payment of federal taxes,~~ may be rolled to another qualified plan or refunded to the member ~~minus federal taxes,~~ after deduction and payment of federal taxes.

~~4. Accounts paid with a combination of after-tax and rollover/transfer may be refunded.~~

C. Purchase account payments made through employer pick-up (Irrevocable Payroll Authorization) cannot be canceled until:

1. The number of payments on the Irrevocable Payroll Authorization is completed; or

2. The member terminates employment; or

3. The member retires.

D. A purchase account that has been paid in full upon the tender of a final payment cannot be canceled.

## **VIII. Free Military Service**

A member of ATRS who entered the Armed Forces of the United States between July 1, 1937, and June 30, 1973, or during a period that a federal military draft is in effect, may establish that military active duty service as service in ATRS without cost, provided the following conditions are met:

A. Service Established active duty service must be based upon the service required for the initial enlistment. Reenlistment or voluntary extension of the initial enlistment is not considered compulsory and shall not be allowed as service credit.

B. Military service credit shall not exceed five (5) years, and the years to be credited shall be those chronologically closest to the teaching ATRS-covered employer service.

C. ~~Crediting of ATRS will credit~~ military service ~~will require upon~~ the completion of Form M-1, provided by ATRS, and official military documents listing the entry and discharge dates of the first enlistment or induction.

D. The member must have received an honorable discharge.

E. All military service credited prior to July 1, 1986, is contributory service.

F. Military service credit may be established at any time after becoming a member of ATRS but official crediting shall be effective upon completion of five (5) years of actual service in ATRS, excluding military service

credit.

## **IX. Purchase of Federal Retirement Service**

- A. An active member shall be eligible to purchase federal retirement service credit under the following conditions:
1. Federal retirement service eligible for credit purchase is limited to service for which no benefit is payable from the federal retirement system in which he or she had previously been a member.
  2. Federal retirement service credit purchased shall be limited to ten (10) years.
- B. The cost to purchase federal retirement service credit is actuarial cost determined by ATRS.
- C. The federal retirement service will become credited service in ATRS when:
1. The member payments have been paid in full; and
  2. The member has established five (5) or more years of actual service in ATRS exclusive of federal retirement service.
- D. Should a member cease to be an active member before the federal retirement service has been established as ATRS credited service, the member payments contributed, together with regular interest shall be refundable, ~~together with regular interest; however, due to IRS regulations, purchase~~ Purchase account payments made through employer pick-up are subject to the restrictions as stated in this rule and applicable IRC code or regulations.
- E. To be eligible to establish one (1) year of federal retirement service credit, a minimum of one hundred sixty (160) days must have been worked by the member. Fractional years of federal service may be purchased in accordance with A.C.A. §§ 24-7-601 and 24-1-107. A month of federal service shall be considered as twenty (20) days.
- F. Certification of federal retirement service must be submitted to ATRS on a form provided by ATRS.
- G. All federal retirement service credit shall be counted as contributory service.
- H. Purchased federal retirement ~~credited~~ service shall be credited to the fiscal year in which it was rendered.
- ~~I. ATRS will accept participant rollover contributions and/or direct rollovers of distributions for the purchase of service credit under certain circumstances under this rule.~~

**X. Service Credit Accrual Contract Buyouts, Settlements, and Court Ordered Payments**

A. ~~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 member.~~ Unless service or salary is purchased for service the member would have received if the member had not been terminated, a member may only accrue service credit for actual, on-site work for a covered employer for any period of time represented in a contract buyout, settlement, or court ordered payment. Such purchased service or salary will be purchased at actuarial cost for service and salary the member would have earned had the member not been terminated. However, if the member is not subject to either a contract buyout, settlement, 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 to the member 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. ATRS shall not adjust a benefit or benefit calculation member's service history for a member until the covered employer or benefit participant member provides a copy of the court order or settlement, or a certified copy of the contract buyout, to ATRS, and the full cost to purchase has been received.~~

**XI. 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.~~

## **Public Comments Regarding Proposed Rule 9 Retirement and Benefits**

- (1) I.A. – Is the “ATRS” following “member of the Arkansas Public Employees Retirement” necessary?

STAFF COMMENT: This appears to be a typographical error and “ATRS” should be deleted.

- (2) VI.D. – The proposed rule makes reference to “Act 808 employee contributions.” Is that correct?

STAFF COMMENT: Yes, that is correct.

- (3) VI.F. – The proposed rule states that for Act 808 employees who elect to transfer to APERS, ATRS will pay the monthly benefits. Is that correct or would it be APERS that would pay the monthly benefits?

STAFF COMMENT: We agree that APERS should be identified as the paying system instead of ATRS.

- (4) VII.D.2 – This section appears to be premised upon Ark. Code Ann. § 24-7-704(a)(4) (B). If that is the case, is there a reason that the qualifying language for the member indirectly employed was not included to make clear the parameters of the precluded employment?

STAFF COMMENT: We assume that the drafter’s intent was to paraphrase the language of the Code rather than simply repeat the language. We suggest that the proposed language be modified to cite to the specific section of the Code in question.

- (5) VIII. Intro – Will the reference to “policy 9-4” be accurate if the proposed changes to Rule 9 are adopted?

STAFF COMMENT: We agree that “Policy 9-4” will no longer be accurate. Appropriate reference should be “Rule 9.VII.H. above”.

- (6) X.A. – Is the term “of” missing after “copy”?

STAFF COMMENT: Yes, we agree that the word “of” should be added after “copy”.

- (7) I.A. On line three “ATRS” is followed by “(ATRS)”. Shouldn’t the first “ATRS” be deleted?

STAFF COMMENT: Yes, this appears to be a typographical error that should be corrected.

(8) III.E. For clarity, the word “retiree” should be added in the first line before “member” so that the beginning phrase reads: “If the marriage of the *retiree* member...”

STAFF COMMENT: Yes, we agree.

(9) VI.G. For clarity, “that amount” should be changed to “it’s pro-rata portion”.

STAFF COMMENT: Yes, we agree

## ATRS Rule 9

### RETIREMENT AND BENEFITS

A.C.A. §§ 24-7-202, 24-7-205, 24-7-502, 24-7-701 — 24-7-707, 24-7-709, 24-7-710, 24-7-727, 24-4-732, Act 808 of 1987

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#### I. Definitions

- A. "Act 808 Employee" means an employee of a state agency who, on April 8, 1987, was an active member of the Arkansas Teacher Retirement ~~ATRS~~ (ATRS) and qualified to retire before January 1, 1988, under the Early Retirement Incentive Law of 1987 (Act 187 of 1987), could elect to become a member of the Arkansas Public Employees Retirement ~~ATRS~~ (APERS) and have their credited service in ATRS transferred to APERS.
- B. "Annuity options" means the member's election at retirement of an annuity that shall be paid throughout the retiree's lifetime in accordance with A.C.A. § 24-7-706.
- C. "Effective Retirement Date" means, for purposes of ATRS retirement benefits, the 1st day of the month in which the member requests to receive retirement benefits and for which the member has submitted a timely retirement application.
- D. "Marriage dissolution" means a final decree of divorce, separate maintenance, or annulment duly executed by a court of competent jurisdiction and filed of record in the Office of the Ex Officio Recorder.
- E. "Medical committee" means the committee of three (3) physicians appointed by the Board under A.C.A. § 24-7-303 for the purpose of evaluating disability retirement applications.
- F. "Option beneficiary" means a person(s) nominated by the member, in writing at retirement, who, if eligible, will receive annuity payments under the annuity option selected by the member after the member's death.
- G. "Person" for purposes of Rule 9 means an individual, corporation, partnership or other legal entity.
- H. "Participating employer" means an employer who participates in ATRS whose employees are eligible for membership under A.C.A. § 24-7-501, A.C.A. § 24-7-202, or other applicable law.
- I. "Residue" means the member's accumulated contributions, including regular interest standing in the member's credit at the time of his/her retirement.
- J. "Residue beneficiary" means a person(s) nominated by the member to

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receive the residue, if any, under A.C.A. § 24-7-709.

K. "Receivable" means monies due to ATRS from a member, former member, participating employer, contributor, retiree, beneficiary, or alternate payee under a qualified domestic relations order as a result of an overpayment of any payment or benefit by ATRS.

L. "Retiree" means a retired member who is receiving an annuity from the ATRS.

### **II. Age And Service Retirement Eligibility**

A. If eligible, an active or inactive member who attains age sixty (60) and has five (5) or more years of actual and reciprocal service credit may voluntarily retire upon written application filed with ATRS.

B. If eligible, an active or inactive member who has not reached age sixty (60) and has twenty-five (25) or more years of actual and reciprocal service credit, including purchased or free credited service, may voluntarily retire upon written application filed with the ATRS.

C. In order to be eligible, a member must comply with the following requirements:

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

### **III. Benefits**

#### A. Benefits Formula

The retirement benefits payable shall be the total number of contributory years of credited service, multiplied by a factor between 1.75% and 2.15% of the final average salary as set by the board, plus the total number of noncontributory years of credited service multiplied by a factor between 5% and 1.39% of the final average salary, as set by the board. The board shall modify the factor for credited service as necessary to maintain actuarial soundness. (A.C.A. § 24-7-705).

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

1. If a member meets all eligibility requirements for retirement and is approved for retirement, annuity benefits shall be effective the month

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proposed by the member in their application. 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. 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.

*2. If a member has accrued a full year of service credit equal or greater to one hundred and sixty (160) days in a fiscal year, the member's retirement date shall not begin earlier than July 1 of the subsequent fiscal year.*

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

The Board by resolution may reverse a compound cost of living adjustment as needed to maintain the actuarial soundness of the ATRS. A reversal may be phased in as the Board determines appropriate.

### D. Last Benefit Payment Upon Death

Benefits are payable through the month in which the *retiree's* death occurs.

### E. Change of Marital Status

If the marriage of the *retiree* member legally ends for any reason, the member may choose to cancel the designation of the former spouse as the designated beneficiary. If the member so chooses, the member must file a change of option beneficiary on an ATRS approved form, and any change in the benefit amount shall become effective the month after receipt by ATRS of the approved form.

IV. 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.

V. In addition to a complete retirement application, the following documents are mandatory documents and shall be submitted to ATRS within six (6) months of the effective date of retirement unless an extension is granted by ATRS:

#### A. Member elects a straight life annuity:

1. Proof of member's birthdate from a birth certificate or other authenticating documents.
2. Proof of member's taxpayer identification number from a Social Security card or other authenticating documents.

B. Member elects Option A or Option B benefit with Spouse as the beneficiary:

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1. Proof of member's birthdate from a birth certificate or other authenticating documents.
  2. Proof of member's taxpayer identification number from a Social Security card or other authenticating documents.
  3. Proof of spouse's birthdate from a birth certificate or other authenticating documents.
  4. Proof of spouse's taxpayer identification number from a Social Security card or other authenticating documents.
  5. 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.
- C. Member elects Option A or Option B benefit with incompetent child as the beneficiary:
1. Proof of member's birthdate from a birth certificate or other authenticating documents.
  2. Proof of member's taxpayer identification number from a Social Security card or other authenticating documents.
  3. Adequate proof of the existence of a guardianship due to the incapacity of the member's child 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.
  4. Proof of child's taxpayer identification number from a Social Security card or other authenticating documents.
- D. Member elects Option C annuity:
1. Proof of member's birthdate from a birth certificate or other authenticating documents.
  2. Proof of member's taxpayer identification number from a Social Security card or other authenticating documents.
- E. If the member elects an alternative residual beneficiary or beneficiaries in lieu of their spouse, the member shall submit the names of the alternative residual beneficiary or beneficiaries along with the alternative residual beneficiary's or beneficiaries' birthdate from a birth certificate or other authenticating document approved by ATRS, on a form provided and approved by ATRS. The selection of an alternative residual beneficiary or beneficiaries allows the member's residue from T-DROP and/or the member's contributions to be paid in a lump sum to the alternative residual beneficiary or beneficiaries and a monthly retirement annuity shall not be

paid.

F. 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 the application shall have 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.

#### VI. State Employee Transfers to APERS (Act 808) Rules

A. The Act 808 employee will make the election to transfer to APERS on a form furnished by ATRS.

B. The transfer from the ATRS to APERS will become effective on the date of retirement.

C. ATRS will certify to APERS a record of the Act 808 employee's service credit in ATRS.

D. At the time of retirement, if the Act 808 employee is a non-contributory member of ATRS, he will retire under the non-contributory provisions of Act 187 of 1987 and shall be entitled to a refund of Act 808 employee contributions made since January 1, 1978, to ATRS.

E. At the time of retirement, if the Act 808 employee was a contributory member of ATRS, he will retire under the contributory provisions of Act 187 of 1987.

F. For any Act 808 employee who elects to transfer to APERS, ~~that ATRS-APERS~~ will pay the monthly benefits.

G. APERS will certify monthly to ATRS the amount of monthly benefits paid and ATRS will transfer ~~that amount-it's pro-rata portion~~ to APERS.

H. Upon receipt of a death certificate from APERS for a *retiree* who chose straight life annuity and has a balance remaining in his account, ATRS will transfer the remaining balance in the *retiree's* account to APERS for refunding to the designated beneficiary or beneficiaries.

#### VII. Disability Retirement Rules

A.

*1. If the member is eligible under A.C.A. § 24-7-704 and these Rules, and the Medical Committee determines a disability exists for the member, then disability retirement benefits shall commence 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.*

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2. If the member is still employed by an ATRS covered employer at the time the member files the application for disability retirement, then, once approved, the disability retirement will commence the month following the last day of covered employment.

B.

1. Termination of active membership for disability retirement benefits shall be the last date of any employer payment to the member due to the end of the employee/employer relationship.
2. 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.

C.

1. The following criteria and deadlines, applied to the individual member circumstances, affect eligibility for continued disability payments for a member who has been approved by ATRS for disability retirement, based upon the date of the first ATRS disability retirement check. The deadlines may be extended under the provisions of this Rule and A.C.A. § 24-7-704.
  - a. If the first disability retirement check to the member is dated before July 1, 2015, and the member is under fifty-seven (57) years before July 1, 2015, the member shall submit to ATRS a Social Security Administration (SSA) determination letter dated before July 1, 2018, that finds that the member is disabled. In the absence of a SSA determination letter, the member's disability retirement payments will cease on June 30, 2018.
  - b. If the first disability retirement check to the member is dated July 1, 2015, or after, and the member is under fifty-seven (57) years on the date of the first disability retirement check, member shall submit to ATRS a Social Security Administration (SSA) determination letter dated within thirty-six (36) months from the date of the first disability retirement check that finds that the member is disabled. In the absence of a SSA determination letter, the member's disability retirement payments will cease thirty-six (36) months from the date of the first disability retirement check. For example:
    - Date of 1st ATRS disability retirement check: January 2017, then
    - Social Security Administration determination letter finding dated

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by: December 2019; or

- Date of last disability retirement check if no SSA determination letter: December 2019

2. ATRS will grant an extension to the above deadlines if the member can provide documentation to ATRS that:
  - a. The SSA disability claim was properly filed and remained active for at least twenty-four (24) months prior to the deadline above; and
  - b. An active SSA disability claim is still under review by the SSA with no voluntary dismissal or withdrawal.
3. Once the member who is receiving disability retirement reaches sixty (60) years of age, the member thereafter will receive regular retirement benefits as if voluntarily retired under A.C.A. § 24-7-701 and no Social Security Administration determination letter is required.
4. A member may apply for an additional review of a disability claim within three (3) months of disability benefits ceasing due to a denial letter and finding by the Social Security Administration that the member is not disabled. The member's disability claim review will follow the procedure set forth in A.C.A. § 24-7-704.

D.

1. A member under the age of sixty (60) may be employed by an ATRS covered employer and also receive ATRS disability retirement if the member performs less than eighty (80) days of actual service during a fiscal year.
2. A member shall not receive disability retirement if the member indirectly performs work for an ATRS covered employer, ~~such as employment as a independent contractor, or for a corporation, or partnership. See A.C.A. § 24-7-704 as described in A.C.A. §24-7-704(a)(4)(B).~~
3. If a member is approved for disability retirement but continues to work either directly or indirectly for the covered employer, the member shall terminate employment with the covered employer or indirect employer by the proposed disability retirement effective date, or, if the member is finalizing work for the employer, then the employee may terminate employment up to two (2) full calendar months after the Medical Committee meets.
4. If the member does not terminate employment under these Rules and the termination requirement under A.C.A. § 24-7-502, the application is rescinded and the member can reapply.

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5. After receiving an ATRS disability retirement a member may choose to return to regular employment with an ATRS covered employer and relinquish their disability retirement. In this instance, the member would no longer receive disability retirement and would be an active member and shall comply with A.C.A. § 24-7-738 (Act 549 of 2017).
- E. 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.
- F. If the member dies after the disability application is received by ATRS but before disability retirement is approved, then ATRS shall consider the member to have died in "active" service and survivor benefits under A.C.A. § 24-7-710 shall be paid, unless the member has designated an alternative residual beneficiary or beneficiaries.
- G. The annuity formula for computing disability retirement benefits is the same as for voluntary age and service retirement.
- H.
1. For all disability retirement applications approved by the Medical Committee after May 31, 2011, 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. A.C.A. § 24-7-706(a)(3).
  2. If a disability retiree designates an Option A or Option B spouse beneficiary, and the disability retiree dies before reaching age sixty (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(b).
  3. If a disability retiree designates an Option A or Option B incapacitated child beneficiary, and the disability retiree dies before reaching age sixty (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 sixty (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).
- I. Disability *retirees* who are disapproved for further disability annuities due to a medical examination reviewed by the Medical Committee shall be removed from ATRS' *retiree* payroll the earlier of six months following the review date or the first of the month following the return to covered

employment.

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.

### **VIII. Annuity Options and Disposition of Residue After Retirement Rules**

Before the date the first benefit payment of an annuity becomes due, a member retiring with age ~~or~~; service, ~~or disability~~ may elect an option to receive an annuity payable as provided in one of the following. (Disability retirement option rights are ~~modified as set forth in policy 9-4 Rule 9.VII.H. above~~):

**A. Option 1:** A straight life annuity payable monthly for the life of the retiree. Upon the retiree's death, if the retiree has not received payments equal to the residue amount, the residue remaining, if any, shall be paid to the residue beneficiary. If no residue beneficiaries survive the retiree, the residue will be paid to the retiree's estate.

#### **B. Effect of Option 1 Retiree's Death within the First Year of Retirement**

If an Option 1 retiree dies within one year of retirement, and his or her spouse qualifies for Option A benefits, the spouse may elect to cancel the Option 1 annuity in effect and elect Option A (100% survivor annuity) at that time.

The election shall become effective the first day of the month following receipt of the election form by ATRS. If the spouse elects Option A, the residue, if any, will not be paid until the Option A beneficiary's death.

#### **C. Persons Eligible as Option A or Option B Beneficiaries at the Time of Retirement**

In order to be nominated as an Option A or B beneficiary, the person must be one of the following:

1. The retiree's spouse (if the retiree has been married to the spouse for at least one (1) year prior to the first annuity payment being paid to the retiree);
2. A dependent child (regardless of age) who has been ruled physically or mentally incapacitated by a court of competent jurisdiction.

#### **D. Eligibility of a Spouse to Become an Option A or Option B Beneficiary after a Member's Retirement**

If a member was married to his or her spouse for less than one (1) year upon his or her effective retirement date or the member marries after his or her effective retirement date, then the member may elect to cover the spouse after being married for one (1) year. Upon meeting the one (1)

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year marriage requirement, the member shall have six (6) months to file an election to cover his or her spouse under either Option A or Option B. The written election must be filed on a form approved by ATRS.

### **E. Emancipation of Incapacitated Child Option Beneficiary**

If an incapacitated child, who has been adjudged physically or mentally incapacitated by a court of competent jurisdiction, is nominated as an Option A or Option B beneficiary, and a court has determined that the incapacity issue no longer indicates incapacitation, or the incapacitated person is emancipated through marriage or dies, then the member may request ATRS to remove the incapacitated child from the member's account. Proof of the court's decision shall be by a copy of the court order, proof of emancipation shall be by a copy of the child's marriage license, or proof of death shall be by the death certificate.

Once proof is provided, the member may elect to return to Option 1 at that time, or if the member is married, the member shall have six months to designate the member's spouse as the member's option beneficiary. The election shall become effective the first day of the month following receipt of the election form by ATRS.

### **F. Residue Paid Upon Death of Option Annuitant**

If after a retiree dies, an option annuity becomes payable, but the option beneficiary dies prior to the retiree and the option beneficiary receiving annuity payments equal to the residue amount, the residue, if any, shall be paid to member's residue beneficiary. If no residue beneficiary is nominated or survives upon the death of the option beneficiary, the residue remaining, if any, shall be paid to the last surviving option beneficiary's estate.

### **G. Final Benefit Check**

Benefits are payable through the month in which the last option beneficiary's death occurs. If the option beneficiary dies prior to receiving the last check, ATRS will pay the final check in the normal manner paid prior to death. If payment of the final check in the normal course becomes impossible, the final option beneficiary's annuity check will be returned to the ATRS.

### **H. Eligible Residue Beneficiaries**

Any "person" as defined in this policy is eligible to be designated by the member to receive the residue, if any, payable upon the member's death including individuals, trusts, estates, corporations, and other legally recognized entities.

## **IX. Error Corrections and Collection of Overpayments Rules**

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- A. If a change or error in ATRS' records discovered during the ATRS look back period results in either an overpayment or underpayment to ATRS, the Board authorizes ATRS to correct the error in the records and to adjust 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).
- B. 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 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 ATRS as set forth in A.C.A. § 24-7-205.
- C. Before making an adjustment of benefits or pursuing any other collection action, 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.
- D. Appeals to dispute collections shall be made according to the procedures and requirements of ATRS Rule 13. During the appeal process, retirement benefits may continue to be paid.
- E. Actions that affect rights on benefits cannot be corrected or adjusted further than a 5 year "look back" period unless a manifest injustice has occurred or an exception exists under A.C.A. § 24-7-205.
- F. The board or its designee may also make adjustments to the employer, member, and ATRS records beyond the look-back period if the board determines that the time limitation imposed by the lookback period will result in a manifest injustice in a specific case. See Rule 17 – Manifest Injustice.
- G. The Board authorizes the Executive Director to waive interest on required contributions 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.
- H. 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 in A.C.A. § 24-7-205.

**X. Retirement Application Rules**

- A. A copy of the ATRS retirement application can be downloaded from the ATRS website or requested from ATRS.
- B. In order for a retirement application to be timely filed, there is a three (3) month "window" to apply for retirement benefits.  
For active members currently employed, the window for filing your retirement application is:
  - 1. No sooner than four (4) months prior to your Effective Retirement Date; and,
  - 2. No later than one (1) month before your Effective Retirement Date.
- C. For an inactive, vested, immediately eligible-to-retire member, retirement benefits are payable the month after the retirement application is received.
- D. *The procedure for handling received retirement applications is as follows:*
  - 1. If a retirement application is received by ATRS before the three (3) month window begins for the member's anticipated Effective Retirement Date, the application is not timely filed, and ATRS will reject the application and notify the member of the dates that their retirement application can be filed timely and the procedure to do so.
  - 2. If a retirement application is received after the three (3) month window ends for the member's anticipated Effective Retirement Date, the retirement application is not timely filed and the member will receive a new Effective Retirement Date beginning on the 1st day of the next month.
- E. This Rule does not apply to an application for disability retirement or survivor benefits.

MARK-UP

The following table shows examples of the "windows" for filing a retirement application:

<u>EXAMPLE OF RETIREMENT FILING DATES</u>			
<u>Effective Date of Retirement</u>	<u>Retirement Application Must be Filed In:</u>	<u>Last Date of Employment</u>	<u>First Retirement Check</u>
<u>January 1</u>	<u>September, October or November</u>	<u>December 31</u>	<u>End of January</u>
<u>February 1</u>	<u>October, November or December</u>	<u>January 31</u>	<u>End of February</u>
<u>March 1</u>	<u>November, December or January</u>	<u>Feb 28/29 (Leap year)</u>	<u>End of March</u>
<u>April 1</u>	<u>December, January or February</u>	<u>March 31</u>	<u>End of April</u>
<u>May 1</u>	<u>January, February or March</u>	<u>April 30</u>	<u>End of May</u>
<u>June 1</u>	<u>February, March or April</u>	<u>May 31</u>	<u>End of June</u>
<u>July 1</u>	<u>March, April or May</u>	<u>June 30</u>	<u>End of July</u>
<u>August 1</u>	<u>April, May or June</u>	<u>July 31</u>	<u>End of August</u>
<u>September 1</u>	<u>May, June or July</u>	<u>August 31</u>	<u>End of September</u>
<u>October 1</u>	<u>June, July or August</u>	<u>September 30</u>	<u>End of October</u>
<u>November 1</u>	<u>July, August or September</u>	<u>October 31</u>	<u>End of November</u>
<u>December 1</u>	<u>August, September or October</u>	<u>November 30</u>	<u>End of December</u>

MARK-UP

[The following table is the only "window" for filing a T-DROP application:](#)

<a href="#">Effective Date of Retirement</a>	<a href="#">Retirement Application Must be Filed In:</a>
<a href="#">July 1</a>	<a href="#">March, April or May</a>

**Public Comments Regarding  
Proposed Rule 10 T-DROP and Return to Service**

- (1) For clarity, punctuation and grammar errors should be corrected in II. Title, III., IV.A., IV.E.

STAFF COMMENT: We agree.

- (2) An additional sentence should be added at the end of II.D. to emphasize that, although no employee contributions are required on salary paid to a retiree who has returned to work, employer contributions are still required.

STAFF COMMENT: We agree.

- (3) II.E. should be made more specific about what part of Rule 9 (Rule 9.VII.) outlines return-to-work rules applicable to disability retirees.

STAFF COMMENT: We agree.

**MARK UP**  
**ATRS Rule 10**  
**T-DROP AND RETURN TO SERVICE**

A.C.A. §§ 24-7-502, 24-7-708

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**I. Definitions**

- 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 twenty-eight (28) years of service with an ATRS or reciprocal employer but less than thirty (30) years of credited service in ATRS including combined service with a reciprocal system, and participates in T-DROP under the requirements of A.C.A. § 24-7-1314 and any Board rules promulgated for early participants is authorized by the Board for early participation in the plan.
- 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.
- D. "Participant" means a member who elects to participate in T-DROP under A.C.A. § 24-7-1301 et seq.
- E. "Participating 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.
- F. "Plan deposits" means the deposits made to each participant's T-DROP account pursuant to A.C.A. § 24-7-1306.
- G. "Plan interest" means the rate per annum, as the Board shall set prior to the beginning of the fiscal year and applies to subsequent years unless modified by the Board, that is credited in each participant's T-DROP account. The Board shall determine the plan interest rate based upon A.C.A. § 24-7-1307(c). All T-DROP participants that have not retired shall receive plan interest at the end of each fiscal year.
- H. "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:
  - 1. The member participated in T-DROP for ten (10) years by receiving deposits, interest, or both; and
  - 2. The member has not retired.

## MARK UP

- I. "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

- J. "Retiree" means a member receiving an ATRS retirement annuity.
- K. "Salary" is defined by A.C.A. § 24-7-202, provided that nonmandatory compensation that is taxable by the IRS is not salary for ATRS purposes.
- L. "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.
- M. "T-DROP Cash Balance Account interest" means the interest rate per annum applicable to a participant's T-DROP Cash Balance Account, compounded monthly 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.
- N. "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.

### II. Employment of an ATRS Retiree by ~~a Participating~~ an ATRS Employer

- A. Upon acceptance of employment with ~~a participating~~ an ATRS employer, the retiree and the ATRS employer must report to ATRS the retiree's employment ~~of the retiree~~ on the forms and reports as required by the System ATRS.
- B. ~~Employers~~ ATRS employers will regularly report all employed retirees who are ~~employed by a participating employer~~ on the retirement reports filed by ~~employers~~ as required by ATRS.
- C. Effective July 1, 2009, no earnings limitation shall apply to retirees who become employed with ~~participating~~ ATRS employers.
- D. ~~When a~~ A retiree becomes employed by ~~a participating~~ an ATRS employer ~~the retiree~~ shall not accrue additional service credit, and no member contributions shall be withheld or paid to ATRS. Employer contributions, however, shall be paid to ATRS on the salary earned by a retiree who returns to work for an ATRS employer.

## MARK UP

E For the return-to-work rules applicable to disability retirees receiving benefits under A.C.A. § 24-7-704, see Rule 9.VII (Disability Retirement).

III. The ATRS Board of Trustees has the authority under A.C.A. § 24-7-1301 to promulgate rules, including the adoption of an interest rate, by resolution of the Board, for the administration of a deferred retirement option plan (T-DROP) for eligible members, ~~called the T-DROP.~~

### IV. T-DROP Participation and Account Credit

A. 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~~ an ATRS employer. By continuing covered employment, the participant defers receipt of retirement benefits until a later date.

B. A member shall have at least thirty (30) years of credit in ATRS to participate in T-DROP, or, to become an early participant in T-DROP, at least twenty-eight (28) years but less than thirty (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 T-DROP interest rate shall be set by the Board prior to the beginning of each fiscal year at the same meeting that the plan interest rate is set. The Post 10-year T-DROP interest rate will be credited to the participant's T-DROP account on June 30th of each year, or through the date of retirement, whichever occurs first.

F. The Post 10-year 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.

### V. Rules

#### A. T-DROP Benefit Generally

1. 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.

2. The participant's T-DROP benefit may be reduced as set forth in these Rules and under A.C.A. § 24-7-1301 et seq.

3. The T-DROP deposit shall not include the additional benefit, also

## MARK UP

known as the "monthly benefit stipend" provided in A.C.A. § 24-7-713.

- B. Plan deposits shall be a percentage of the T-DROP benefit, as follows:
- ~~1. 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. If a plan participant has at least thirty (30) years of credited service in ATRS, including combined service with a reciprocal system, the plan deposit is the participant's plan benefit as calculated at the entry into T-DROP, and then reduced by one percent (1%) for each year of credited service, including fractions of a year.~~
  - ~~2. 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. For early participants, the plan deposit is the early participant's plan benefit as calculated at the entry into T-DROP, and then reduced by one percent (1%) for each year of credited service, including fractions of a year, and further reduced by at least an additional one-half percent (.5%), but no more than one percent (1%), of the initially reduced plan deposit, for each month of credited service under thirty (30) years.~~
  - ~~3. Beginning July 1, 2001, when a participant whose effective date in the T-DROP is before September 1, 2003, reaches normal retirement age, the plan deposits shall be 100% with no reduction.~~
  - ~~4. For a participant whose effective date in the 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 based upon the reduction established at the time the participant entered T-DROP.~~
  - ~~5. For a participant whose effective date in the T-DROP is September 1, 2003, or after, and who reaches normal retirement age but does not retire, the plan deposits shall continue as reduced based upon the reduction established at the time the participant entered T-DROP.~~
- C. A participant shall elect an annuity option provided in A.C.A. § 24-7-706 at the time the participant separates from service and is granted a monthly retirement benefit or files for retirement upon reaching normal retirement age.
- D. T-DROP Participation Limits
1. A member's participation in T-DROP shall not exceed ten (10)

## MARK UP

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.

2. 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 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.
- E. The annuity upon which plan deposits are calculated shall receive the cost-of-living increase provided for in A.C.A. § 24-7-713 or § 24-7-727. The annuity plus the cost-of-living increase is reduced or adjusted under this Rule.
- F. If a participant elects to 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.
- G. 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.
- H. If a participant earns service credit of one hundred sixty (160) days or greater within a fiscal year and the participant does not terminate employment, retire, or die during the fiscal year, or the ATRS employer does not terminate the employer/employee relationship, then ATRS will allow crediting of twelve (12) monthly T-DROP deposits per fiscal year.
- I. Part time employment while participating in the T-DROP plan:
  1. In the first or fourth quarter of the fiscal year, five (5) or more days of service credit shall be required to credit the participant's account with three (3) monthly deposits for that particular quarter. If a 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.
  2. In the second or third quarters of the fiscal year, fifteen (15) or more days of service credit shall be required to credit the participant's account with three (3) monthly deposits for that particular quarter. If a 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.

### VI. Ceasing T-DROP and Distribution Options

## MARK UP

- A. T-DROP monthly deposits automatically cease when:
1. The participant separates from service and is granted a monthly retirement benefit from ATRS or a reciprocal plan; or
  2. The participant reaches normal retirement age and retires without separation from service, or
  3. The participant separates from covered employment but does not apply for monthly retirement benefits; or
  4. The participant dies.
- B. Any lump-sum distribution of a participant's T-DROP account balance is eligible to be rolled over into the member's qualifying retirement plan. The ATRS shall only roll over the T-DROP lump sum balance into one qualifying plan.
- C. A participant may direct that all or a part of their 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.
- D. 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.
- E. 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 ATRS employer payroll without obtaining sufficient service credit for monthly deposits, the member shall remain eligible for annual interest.
- F. Effect of Uniformed Service on T-DROP
1. If a 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 ATRS employer. The ATRS 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.

## **MARK UP**

2. 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.

### **VII. Death of a T-DROP Participant Prior to Retirement**

- A. In the event a 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.
- B. Unless otherwise directed to an alternative residual beneficiary or beneficiaries by the member, 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. If an alternative residual beneficiary or beneficiaries are chosen, then the residue is paid as a lump sum, and no monthly annuity is paid.
- C. 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.

### **VIII. DROP Participation Under Reciprocal Systems**

- A. 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.
- B. 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.
- C. 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.

# MARK UP

## IX. T-DROP Cash Balance Account (CBA)

- A. At the time that a participant may elect to receive a lump-sum distribution of all of their T-DROP account balance, the participant may instead elect to defer all or a part of their T-DROP account and direct that such amount be held in a T-DROP Cash Balance Account (CBA) for the participant. If a participant chooses to defer only part of the T-DROP distribution into a T-DROP Cash Balance Account, the remainder of the T-DROP distribution shall be annuitized with ATRS according to the distribution options set out under A.C.A. § 24-7-1308.
- B. After the T-DROP Cash Balance Account has been established on the ATRS' accounting system, a participant with a T-DROP Cash Balance Account balance may withdraw funds from the account six (6) times per quarter on such forms as ATRS may issue. ATRS may allow the participant to obtain additional withdrawals in a quarter with Executive Director approval. A participant may also request a recurring monthly distribution of a set amount until the CBA balance is depleted or the request is terminated by the participant. Minimum distributions will be made sufficient to satisfy legal requirements under Ark. Code Ann. § 24-7-730 and the Internal Revenue Code.
- C. A T-DROP Cash Balance Account shall be credited monthly with T-DROP Cash Balance Account interest, beginning the month after the account is established, and debited for all withdrawals and distributions.
- D. T-DROP Cash Balance Account Interest Schedule
  1. The initial interest rates for 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 establishing a T-DROP Cash Balance Account and:

For the first fiscal year of participation: 2.50% interest.

For two (2) fiscal years: 2.75% interest.

For three (3) fiscal years: 3.00% interest.

For four (4) fiscal years: 3.25% interest.

For five (5) fiscal years: 3.50% interest.

For six (6) or more fiscal years: 4.00% interest.
  2. These interest rates are minimum interest rates that apply to T-DROP Cash Balance Accounts that are established while these rates are in

## MARK UP

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.

- E. The T-DROP Cash Balance Account Interest rates payable on T-DROP Cash Balance Accounts established on or after July 1, 2012, shall remain in effect unless the ATRS Board of Trustees adopts a different schedule with lower interest rates 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 lower 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.
- F. When adjusting and setting rates for interest on a T-DROP Cash Balance Account, the Board may consider the current market conditions, competing financial offerings to members, the bank rate for certificates of deposits, the status of ATRS' returns on investments, and the current state of T-DROP Cash Balance Account participation. The Board may periodically authorize by resolution a special ad hoc incentive payment for the Cash Balance Accounts if the Board determines that payment is likely to retain existing T-DROP Cash Balance Account holders and increase future participation in T-DROP Cash Balance Accounts. The ad hoc increase may be set as a single amount to be applied to all Cash Balance Accounts or may be computed as a graduated amount based upon the length of time the Cash Balance Account has been in existence.
- G. 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.

## **Public Comments Regarding Proposed Rule 11 Survivors and Domestic Relations Orders**

- (1) I.C. – Should the reference be to “lump-sum death beneficiaries” in accord with I.B.?

STAFF COMMENT: Yes, the word “death” should be added.

- (2) IV.B.2. – Is the System comfortable that “without interruption” has the same meaning as “stays continuously enrolled” as used in Ark. Code Ann. § 24-7-710(c)(2)(B)(i), as amended by Act 210 of 2019, § 1?

STAFF COMMENT: Yes, ATRS uses these phrases interchangeably.

- (3) V.D. – What was the rationale for changing “shall” as used in current Rule 11-1, IV.D., to “may”?

STAFF COMMENT: We are not aware of the drafter’s rationale for changing “shall” to “may”. As ATRS currently administers the payment of survivor benefits, the results will be the same whether the word is “shall” or “may”.

- (4) VIII.B. – Was there a reason that the rewrite of current rule 11-5. II. omits the binding nature of any communication addressed to the last filed address, per Ark. Code Ann. § 24-7-734(a)(2)?

STAFF COMMENT: We are not aware of the reason the drafter omitted the language in question, but believe that it should added back to this provision.

- (5) VII.C. The word “a” should be added in the first line before “QDRO”.

STAFF COMMENT: We agree.

- (6) VII.C.7. Should the phrase “includes only service credit earned by the member during the marriage.” be deleted?

STAFF COMMENT: Yes, this phrase is not a legal requirement, is misleading, and should be deleted.

- (7) VI.A.1. and VI.A.3. should be deleted because the Board has determined how to calculate the lump-sum death benefit by resolution.

STAFF COMMENT: We agree. This language is redundant and would be confusing if the Board changes the calculation in the future. Paragraphs 1. And 3. should be deleted and remaining paragraphs should be re-numbered accordingly.

(8) VII.E. should be deleted because it contains an error: Lump-sum death benefits will be paid to eligible beneficiaries regardless of whether the member has filed an ATRS beneficiary form.

STAFF COMMENT: We agree. The remaining paragraphs should be re-numbered as appropriate.

# ATRS Rule 11

## SURVIVORS AND DOMESTIC RELATIONS

### ORDERS

A.C.A. §§ 24-7-710, 24-7-713, 24-7-720, 24-7-734, 9-18-101 — 9-18-103

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#### I. Definitions

- A. "Alternate payee" means a spouse, former spouse, child, or other dependent of a member under Arkansas law.
- B. "Lump-sum death 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.
- C. "Lump-sum death benefit" means a monetary amount set by the Board, and paid by ATRS to lump-sum death beneficiaries as provided for under A.C.A. § 24-7-720.
- D. "QDRO" means a court order that meets the definition of a "Qualified Domestic Relations Order" under A.C.A. § 9-18-101.

#### II. Survivors General

- A. 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. ATRS considers a member to be active for the purpose of qualifying for survivor benefits under A.C.A. § 24-7-710 if:
  - 1. 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; or
  - 2. 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.

#### III. Spousal Benefits or Alternative Residual Beneficiaries

- A. Unless the member directs an alternative residual beneficiary or beneficiaries by written form approved by ATRS, the benefits provided for in A.C.A. § 24-7-710, 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.

B. Waiver of Spousal Annuity

1. 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 ATRS a waiver of any rights to the spousal annuity.
2. If the surviving spouse files a waiver of the spousal annuity, then the spouse may receive the member's accumulated contributions plus interest, if any, in a lump-sum distribution.

C. Spousal Annuity Generally

1. The spousal annuity is payable for the spouse's lifetime, regardless of remarriage, pursuant to A.C.A. § 24-7-710.
2. The spouse may defer receipt of the annuity, if applicable, under the deferred retirements provisions of A.C.A. § 24-7-707.

D. Alternative Residual Beneficiaries Generally

1. A member may select one or more alternative beneficiaries to receive a lump sum payment of the member's residue in lieu of the member's surviving spouse (called "alternative residual beneficiary or beneficiaries"), documented on forms provided and approved by ATRS, and no spousal benefit or other monthly benefits shall be paid.
2. If the member is a participant in T-DROP and chooses an alternative residual beneficiary or beneficiaries in lieu of the surviving spouse, and the member dies before retiring, then the designated alternative residual beneficiary or beneficiaries shall receive the T-DROP deposits as a lump sum and no spousal benefit or other monthly benefit shall be paid.

E. A member may change an alternative residual beneficiary or beneficiaries designation and revert to a spousal annuity designation by documenting the change on a form provided and approved by ATRS.

**IV. Dependent Children Benefits**

A. A surviving dependent child of the qualifying member may receive an annuity under A.C.A. § 24-7-710.

B. "Child of a member" as defined under A.C.A. § 24-7-202, is considered a dependent child for purposes of receiving a survivor annuity under § 24-7-710 from ATRS, if:

1. The child is younger than eighteen (18) years of age; or
2. The child is younger than twenty-three (23) years of age and has been a full time student without interruption since reaching age eighteen

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(18) consistent with § 24-7-710(c)(2); or

3. The child is adjudged physically or mentally incapacitated by a court of competent jurisdiction.

C. To be considered a full-time student, the dependent child shall carry twelve (12) semester hours or eight (8) trimester hours in college, four (4) hours per day in a secondary or postsecondary school, or engage full-time in a curriculum or field of study based upon verifiable indices from an accredited institution. After the dependent child reaches eighteen (18) years of age, the dependent child may self-report their Certification of Attendance to ATRS, in the absence of a parent or legal guardian.

D. For a dependent child who is not a full-time student to continue receiving benefits after reaching eighteen (18) years of age, a doctor shall certify that the child is temporarily physically or mentally incapacitated to attend school for the current 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.

E. A child who is adjudged physically or mentally incapacitated by a court of competent jurisdiction and for whom a guardian has been appointed shall continue to be eligible to receive a dependent child annuity as long as the incapacity exists, regardless of age. A.C.A. § 24-7-710.

F. A dependent child annuity is established according to the formula set out in A.C.A. §24-7-710. The dependent child annuity remains at its initial monthly amount, adjusted by an annual COLA increase, as may be designated by the board. If more than one dependent child in a member's family receives an annuity, each child's annuity remains at its initial monthly amount and is not readjusted when the member's other dependent children's annuities terminate.

G. A deposit account designated to receive a survivor annuity payment for the benefit of a child under age eighteen (18) shall conform with the Arkansas Uniform Transfers to Minors Act or with a court order in a guardianship proceeding for the benefit of the ward. Each survivor annuity payment is made as a separate payment to the eligible child in the appropriate deposit account, and shall not be co-mingled with payments to other family members.

H. The total salary that the member would have received in the fiscal year in which the member died, or the member's highest member salary in another fiscal year, whichever is higher, will be used to calculate a dependent child survivor benefit.

## **V. General Rules Regarding Survivor Annuities**

A. Survivors are required to produce sufficient proof of eligibility under these

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provisions prior to receiving benefit payments.

- B. 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.VIII below).
- 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, alternative residual beneficiary designation, or to the beneficiaries as selected by the member.
- D. If the member dies after the disability application is received by ATRS but before disability retirement is approved, then ATRS shall consider the member to have died in "active" service and survivor benefits under A.C.A. § 24-7-710 may be paid if no alternative residual beneficiary or beneficiaries designation has been made by the member.
- E. Salary payments made after the death of a member that were earned prior to death are subject to 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 ATRS and are not subject to contributions.
- F. 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 any other reciprocal systems that have a minimum benefit provision. 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.
- G. 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.

### VI. Lump Sum Death Benefit Rules

- A. The amount of the lump-sum death benefit may be set pursuant to rules adopted by the board in an amount up to ten thousand dollars (\$10,000) per member. The board may adjust the amount of the lump-sum death benefit each year and, as actuarially appropriate, prorate the amount of the lump-sum benefit based on the ratio of the member's contributory and noncontributory service credit.

~~1. 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~~

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~~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.~~

12. The lump-sum death benefit will be paid as a single amount 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 death benefit will be paid to the member's estate.

~~3. 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.~~

24. Under 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 ATRS. After June 30, 2009, the lump-sum death benefit shall not be eligible for a direct rollover.

B. Only members who are active or retired at the time of their death 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.

C. 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.

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

~~E. In order for a lump-sum death benefit to be paid, the member must complete and sign an ATRS approved lump-sum death beneficiary form and clearly designate an eligible lump-sum death beneficiary.~~

EF. The completed lump-sum death beneficiary form must be received by ATRS prior to the member's death to be effective.

FG. The member's most recently executed and filed lump-sum death beneficiary form supersedes all prior lump-sum death beneficiary forms that may have been filed by the member.

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- GH. If the member is eligible for the lump-sum death benefit at their death, the lump-sum death 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.
- HI. Lump-sum death 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 ATRS. The document must authorize the agent to transact retirement plan business on behalf of the member, and specifically authorize the agent to change beneficiary designations.
- IJ. ATRS will not accept a lump-sum death 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).
- JK. A lump-sum death beneficiary may waive his or her rights to payment of the lump-sum death 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).
- KL. A lump-sum death beneficiary may not assign payment of a lump-sum death benefit to another person or entity.
- LM. ATRS reserves the right to deduct from the lump-sum death benefit any amounts owed to ATRS by the member under A.C.A. § 24-7-205.
- MN. ATRS reserves the right to collect any overpayments or other amounts owed to ATRS by the lump-sum death beneficiary(s).
- NO. ATRS shall comply with all applicable laws relating to the distribution of the lump-sum death benefit including federal and state tax laws and the Uniform Transfer to Minors Act.

### VII. Qualified Domestic Relations Orders (QDRO) for ATRS Members

- A. *A QDRO is a court order that assigns a portion of a member's retirement benefit to be paid to an alternate payee (the divorced spouse) upon the member's retirement or upon a refund of the member's contributions.*
- B. Under A.C.A. § 9-18-103(b), ATRS adopted a model QDRO to be utilized by its members when dividing an ATRS retirement benefit. A QDRO issued by a court must substantially follow the form and content of the ATRS model QDRO.
- C. ATRS shall accept a QDRO issued by a circuit court of the State of Arkansas or other court of competent jurisdiction regarding a member, subject to the following:

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1. Benefits to the alternate payee shall begin when the member retires or when the member ceases employment with a covered employer and receives a refund of contributions.
2. ATRS shall:
  - a. Promptly notify the member and the alternate payee upon receipt of a QDRO, and
  - b. Within a reasonable time after receipt of the QDRO, determine whether the QDRO complies with ATRS's model QDRO and ATRS laws and regulations.
3. A member or alternate payee may file a QDRO with ATRS prior to the member's retirement or termination of covered employment, but the alternate payee's portion is held in the member's account until payable under paragraph VII.C.1 above.
4. A QDRO shall not require ATRS to:
  - a. Provide an alternate payee any type or form of benefit or option not otherwise available to the member;
  - b. Provide the alternate payee actuarial benefits not available to the member; or
  - c. Pay any benefits to an alternate payee that are required to be paid to another alternate payee under an existing QDRO.
5. If alternate payee dies prior to the receipt of benefits under the QDRO, any amount or benefit that would be due to the alternate payee reverts to the member.
6. If the member dies prior to retirement, the alternate payee shall receive the same portion of the member's contributions, if any, as was assigned by the QDRO. In no case shall the alternate payee receive monthly annuity benefits from ATRS if the member has not received his/her retirement annuity at the time of his/her death.
7. ATRS computes the alternate payee's monthly annuity benefit under a QDRO on the benefit formula in effect at the time of the member's retirement and includes only service credit earned by the member during the marriage.
8. If the QDRO assigns a marital portion or other part of a member's interest in his/her T-DROP plan deposits and interest, the benefits in the T-DROP account shall be computed as a separate calculation under the provisions in the model order.
9. ATRS shall have the right to make any necessary correction to the monthly benefit amount paid under a QDRO and to recover from either

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- the member or the alternate payee any overpayments due to ATRS.
10. If the alternate payee fails at any time to notify ATRS of a change of mailing address, ATRS shall not be required to make restitution for payments not made prior to receipt of a change of address.
  11. Any benefit enhancements enacted by the Legislature or the Board of Trustees after entry of a QDRO shall not be assigned to the alternate payee but shall inure to the sole benefit of the member.
  12. ATRS shall not accept a QDRO for a member who does not have five (5) years of actual service with ATRS at the time the QDRO is issued by a court.
  13. If ATRS determines that the alternate payee's monthly benefits are less than twenty dollars (\$20.00), ATRS shall pay the member the total benefit due and the member shall be responsible for paying the alternate payee their portion under the QDRO.
  14. QDRO shall not require ATRS to provide any benefit that is an actuarial cost to ATRS and is not otherwise contemplated in the ATRS' law and rules.
  15. No provision in this rule or in a QDRO accepted by ATRS shall require ATRS to violate any plan qualification requirement in IRS Code § 401(a) or otherwise affect the ATRS requirement to operate as a governmental plan under IRS Code § 414(d).

### VIII. Lost Payees Rules

- A. Each member of ATRS, as well as each beneficiary of a deceased member, is responsible for filing with ATRS in writing a current post office address and each change of post office address of the member or beneficiary.
- B. Any communication addressed to a member or beneficiary at the ~~The~~ last filed address, 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 the official address for ATRS communications to the member or beneficiary, and shall be binding on the member or beneficiary for all purposes of ATRS. Under A.C.A. § 24-7-734, ATRS has no obligation to determine the current address for any member or beneficiary.
- C. Member payments in the possession of ATRS are excluded from the definition of property under the Arkansas Unclaimed Property Act (A.C.A. § 18-28-201 et seq.). A.C.A. § 24-7-734 supersedes any conflict with the Arkansas Unclaimed Property Act.

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SECTION 1. Arkansas Code § 24-7-702(e), concerning the Arkansas Teacher Retirement System, is amended to read as follows:

(e) If a member has accrued a full year of service credit for a fiscal year, the annuity shall not begin earlier than on the July 1 after the fiscal year unless an exception has been granted by the system.

OR

SECTION 1. Arkansas Code § 24-7-702(e), concerning the Arkansas Teacher Retirement System, is amended to read as follows:

(e) If a ~~member~~ teacher has accrued a full year of service credit for a fiscal year, the annuity shall not begin earlier than on the July 1 after the fiscal year unless normal retirement age has been attained and the teacher remains in their current covered employment, or an exception has been granted by the system.