



DECEMBER 15, 2021

SUMMARY OF PROPOSED RULE AMENDMENT

ATRS RULE 6 – MEMBERSHIP RULES

I. PURPOSE

To amend ATRS Rule 6 – Membership Rules (Rule 6) in accordance with legislation enacted during the Regular Session, 2021, and to redraft current provisions for clarity and to correct nonsubstantive issues such as formatting, renumbering, grammar, and spelling as appropriate. The amendments to Rule 6 are necessary for the proper operation and administration of the Arkansas Teacher Retirement System.

II. BACKGROUND AND DISCUSSION

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

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

Rule 6 currently references sixty-five (65) years of age in lieu of using the term “normal retirement age” as “normal retirement age” in A.C.A. § 24-7-202(27) was previously defined to mean sixty-five (65) years of age. Acts 2021, No. 290 amended the definition of “normal retirement age” in A.C.A. § 24-7-202(27) to mean sixty-five (65) years of age if a member has at least five (5) years of actual service or at least sixty (60) years of age if a member has a combined total of thirty-eight (38) years or more of credited service in the Arkansas Teacher Retirement System, Teacher Deferred Retirement Option Plan, or reciprocal service in another eligible state retirement system. As such, Rule 6 is being amended to use the term “normal retirement age”, so that rules concerning the normal retirement age will apply to members who meet the definition of “normal retirement age” as amended by Acts 2021, No. 290.

Rule 6 currently provides that effective July 1, 2005, an active member who changes status from nonteacher to teacher under contract for one hundred eighty-one (181) days or more shall be a contributory member of the Arkansas Teacher Retirement System regardless of an earlier noncontributory election. Acts 2021, No. 443 amended the law to provide that effective July 1, 2021, an active member whose status changes from nonteacher to administrator or teacher under a contract for one hundred eighty-five (185) days or more shall become a contributory member regardless of an earlier election to be a noncontributory member. Rule 6 is being amended to reflect the amendment to the law in Acts 2021, No. 443.

Rule 6 currently provides that effective July 1, 2007, a new member of the Arkansas Teacher Retirement System who is under contract for one hundred eighty (180) days or less may elect to become a contributory member. Acts 2021, No. 443 amended the law to provide that effective July 1, 2021, a member under contract with a covered employer for one hundred eighty-five (185) days or more shall be a contributory



member. Additionally, Acts 2021, No. 443 amended the law to provide that a member under contract with a covered employer for less than one hundred eighty-five (185) days may make an irrevocable election to become a contributory member. Rule 6 is being amended to reflect the amendments to the law in Acts 2021, No. 443.

A.C.A. § 24-7-601(e) was amended by Acts 2021, No. 427 to clarify when reciprocal service earned from participation in an alternate retirement plan may be used to establish eligibility for a benefit from the Arkansas Teacher Retirement System. Rule 6 is being amended to address the clarification provided in Acts 2021, No. 427.

Rule 6 refers to "participating employer" when "employer" or "covered employer" as defined in A.C.A. § 24-7-202(17) is intended. Rule 6 is being amended to use the term "employer" or "covered employer" instead of "participating employer" as appropriate. Corresponding amendments were made in Acts 2021, No. 279 and Acts 2021, No. 279.

Rule 6 is being amended to redraft current provisions for clarity and correct nonsubstantive issues such as formatting, renumbering, grammar, and spelling as appropriate.

III. KEY POINTS

Rule 6 is being amended to:

- Substitute references to "sixty-five (65) years of age" with "normal retirement age" as appropriate;
- Provide that an active member whose status changes from nonteacher to administrator or teacher under a contract for one hundred eighty-five (185) days or more shall become a contributory member regardless of an earlier election to be a noncontributory member;
- Provide that a member under contract with a covered employer for one hundred eighty-five (185) days or more shall be a contributory member;
- Provide that a member under contract with a covered employer for less than one hundred eighty-five (185) days may make an irrevocable election to become a contributory member;
- Clarify when reciprocal service earned from participation in an alternate retirement plan may be used to establish eligibility for a benefit from the Arkansas Teacher Retirement System;
- Amend "participating employer" to "employer" or "covered employer" as appropriate;
- Amend or add language recommended through public comment that:
 - Changes the title of the proposed rule to "Membership and Employer Participation";
 - Changes "PSHE plan" to "Post-secondary higher education plan" or "PSHE plan";
 - Appropriately reflects the names of various entities listed in Ark. Code Ann. §§ 24-2-401(3)(F)(ii) and 24-2-401(4)(D)(ii) that were changed by Acts 201, No. 910;



-
- Addresses employer participation in the Arkansas Teacher Retirement System as permitted by Ark. Code Ann. § 24-7-202(19)(D);
 - Addresses the consideration of employer participation applications by the Board of Trustees of the Arkansas Teacher Retirement System;
 - Clarifies when the Executive Director of the Arkansas Teacher Retirement System is required to review an employer's participation in the Arkansas Teacher Retirement System;
 - Inserts "new" before "member" in Section (III)(b)(1)(A) of the proposed rule;
 - Inserts "next" before "July 1" in Section (III)(f)(1)(C) and Section (III)(f)(2)(C) of the proposed rule;
 - Changes "shall" to "may" in Section (V)(d)(4) of the proposed rule to align with Acts 2021, No. 221; and
 - Revises the Contributory and Noncontributory Service Chart by Year of Entry into System to clarify when a member with or without a contract may elect contributory status under the Arkansas Teacher Retirement System; and
- Redraft current provisions for clarity and correct nonsubstantive issues such as formatting, renumbering, grammar, and spelling as appropriate.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Teacher Retirement System

DIVISION _____

PERSON COMPLETING THIS STATEMENT Jennifer Liwo

TELEPHONE NO. (501) 682-1517

FAX NO. (501) 682-2359

EMAIL: jenniferl@artrs.gov

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

SHORT TITLE OF THIS RULE ATRS Rule 6 - Membership Rules

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

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

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

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

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

N/A

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

N/A

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

N/A

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

N/A

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

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

Current Fiscal Year

Next Fiscal Year

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

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

Total \$ 0.00

Total \$ 0.00

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

Current Fiscal Year

Next Fiscal Year

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

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

Total \$ 0.00

Total \$ 0.00

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

Current Fiscal Year

Next Fiscal Year

\$ _____

\$ _____

N/A

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

Current Fiscal Year

Next Fiscal Year

\$ _____

\$ _____

N/A

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

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

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



Public Comments
Proposed Rule 6 – Membership Rules

1. Page 1, Title.

- a. **ATRS Staff Comment:** Can we make the title of the rule “*Membership and Employer Participation*”?
- b. **Response:** Yes. This change has been made.

2. Page 2, Section (l)(f)(1)(B).

- a. **ATRS Staff Comment:** Do we have or need a control to make sure of Section (l)(f)(1)(B)?
- b. **Response:** The Arkansas Teacher Retirement System (ATRS) will implement procedures as necessary to verify that an organization meets the definition of “*organization*” as provided by the proposed rule.

3. Page 2, Section (l)(h).

- a. **ATRS Staff Comment:** As this is the first introduction to the acronym for post-secondary or higher education, for clarity should “*PSHE plan’ means*” be changed to “*Post-secondary higher education plan’ means*”?
- b. **Response:** ATRS does not have an objection to incorporating “*Post-secondary higher education plan*” into the definition of “*PSHE plan*”. The appropriate changes have been made.

4. Pages 2-3, Section (l)(i)(8)(B).

- a. **BLR Comment:** This rule appears to be premised on Ark. Code Ann. § 24-2-401(3)(F)(ii). If so, the statute now includes the names of the various entities that were changed during Transformation.
- b. **Response:** The appropriate changes have been made.

5. Pages 3-4, Section (l)(j)(2)(B).

- a. **BLR Comment:** This rule appears to be premised on Ark. Code Ann. § 24-2-401(4)(D)(ii). If so, the statute now includes the names of the various entities that were changed during Transformation.
- b. **Response:** The appropriate changes have been made.

6. Page 4, Section (l)(l).

- a. **BLR Comment:** This section appears to be premised on Ark. Code Ann. § 24-7-202(44)(A); however, the statute does not include the term “*teaching*” before the term “*licensure*” as the proposed rule does. Is there a reason for the difference in the rule?



- b. **Response:** “*Teaching*” was added before the term “*licensure*” for additional clarity regarding the type of licensure required. The proposed rule as written aligns with Ark. Code Ann. § 24-7-202(44)(A). No changes have been made.

7. Page 5, Section (II)(c).

- a. **ATRS Staff Comment:** Should “*executive director*” be capitalized?
- b. **Response:** No, this would not comply with the style format of the Code of Arkansas Rules. No changes have been made.

8. Page 5, Section (II)(c).

- a. **ATRS Staff Comment:** Is this employer participation like in Section (II)(c)?
- b. **Response:** Yes. For clarity, Section (II)(c) and Section (II)(g) have been reorganized. The changes can be found starting on page 7, Section (II)(f). Additionally, the following has been included: (1) a section concerning employer participation under Ark. Code Ann. § 24-7-202(19)(D) has been included; and (2) a rule addressing the consideration of employer participation applications by the Board of Trustees of the Arkansas Teacher Retirement System (Board).

9. Page 5, Section (II)(c)(1).

- a. **ATRS Staff Comment:** Should the time frame for when the executive director monitors employers that participate in ATRS be clarified?
- b. **Response:** Yes. The appropriate change has been made. This change can be found on page 7, Section (II)(f)(1)(A).

10. Page 8, Section (II)(f)(2)(C).

- a. **ATRS Staff Comment:** Should something regarding consultation with a tax attorney be included in this section?
- b. **Response:** No. ATRS will initiate contact with a tax attorney as is necessary and when appropriate. No changes have been made.

11. Page 12, Section (III)(a)(1).

- a. **ATRS Staff Comment:** When does a person first become a member of ATRS? Is it when the person first enrolls with ATRS, is first reported by his or her employer, or earns forty (40) days of service credit?
- b. **Response:** A person first becomes a member of ATRS when the person begins employment with a covered employer. No changes have been made.

12. Page 12, Section (III)(a)(3).

- a. **ATRS Staff Comment:** Is all service rendered before July 1, 1986, contributory service unless forfeited?
- b. **Response:** Yes. No changes have been made.

13. Page 12, Section (III)(b)(1)(A).

- a. **ATRS Staff Comment:** Should “new” be included before “member”?
- b. **Response:** No “new” should not be included before “member”. This change has been made.

14. Page 14, Section (III)(c).

- a. **ATRS Staff Comment:** Should Section (III)(c) specify that a noncontributory status will change to contributory status effective on the July 1 that follows when a noncontributory member enters into a contract of one hundred eighty-five (185) days or more?
- b. **Response:** No. The specification mentioned by the commentator is already included in Section (III)(b)(3). No changes have been made.

15. Page 16, Section (III)(f)(1)(C).

- a. **BLR Comment:** This section appears to be premised on current Section III.M., which contained a “next” before “July 1.” Is that no longer necessary to the rule?
- b. **Response:** “Next” should be inserted before “July 1”. This change has been made.

16. Page 16, Section (III)(f)(2)(C).

- a. **BLR Comment:** This section appears to be premised on current Section III.L., which contained a “next” before “July 1.” Is that no longer necessary to the rule?
- b. **Response:** “Next” should be inserted before “July 1”. This change has been made.

17. Page 18, Section (V)(b).

- a. **ATRS Staff Comment:** This section appears to provide that ATRS will credit service at a higher rate for a member who has less service credit with a reciprocal system. Is this intentional?
- b. **Response:** This section of the proposed rule is drafted to ensure that a member of ATRS does not receive credited service in excess of one (1) year in ATRS. No changes have been made.

18. Page 19, Section (V)(d)(4).

- a. **BLR Comment:** Should Act 221 of 2021 also be cited as one of the bases for changes to the rules as it looks like Section VI.d.4. might be premised on Ark. Code Ann. § 24-7-601(g)(3)(B), as amended by Act 221?
- b. **Response:** Yes. No changes have been made.

19. Page 19, Section (V)(d)(4).

- a. **ATRS Staff Comment:** As service credit could be waived and no contributions returned when all the member's salary was earned before his or her participation in another plan, should "*shall*" be changed to "*may*"?
- b. **Response:** Yes. In accordance with Acts 2021, No. 221, "*shall*" has been changed to "*may*".

20. Page 20, Section (V)(i).

- a. **ATRS Staff Comment:** Should Section (V)(i) be included in Rule 10 – T-DROP and Return to Service?
- b. **Response:** ATRS intends to continue reorganizing its rules and an appropriate relocation of Section (V)(i) will be made at a later time. No changes have been made.

21. Page 20, Section (V)(j).

- a. **ATRS Staff Comment:** Should this section be included in Rule 9 – Retirement and Benefits?
- b. **Response:** ATRS intends to continue reorganizing its rules and an appropriate relocation of Section (V)(j) will be made at a later time. No changes have been made.

22. Page 20, Section (V)(k).

- a. **ATRS Staff Comment:** Should this section be included in Rule 9 – Retirement and Benefits?
- b. **Response:** ATRS intends to continue reorganizing its rules and an appropriate relocation of Section (V)(k) will be made at a later time. No changes have been made.

23. Page 19, Section (V)(l).

- a. **ATRS Staff Comment:** Should this section be included in Rule 11 – Survivors and Domestic Relations Orders?
- b. **Response:** ATRS intends to continue reorganizing its rules and an appropriate relocation for Section (V)(l) will be made at a later time. No changes have been made.

24. Page 28, Service Chart by Year of Entry into System.

- a. **ATRS Staff Comment:** Should "*Contract one hundred eighty-five (185) days or more – Contributory*" only apply to new members or should it apply to all members?
- b. **Response:** "*Contract one hundred eighty-five (185) days or more – Contributory*" applies to all members. The chart has been revised for clarity.



25. Page 28, Service Chart by Year of Entry into System.

- a. **ATRS Staff Comment:** Should "*New*" be included for the last box concerning school district employees, year 2021-, or should "*New*" be revised to read "*A member with*"?
- b. **Response:** Both "*new*" and "*a member with*" are intended to be used. The chart has been revised for clarity.

- Yellow – Changes Made
- Green – Changes Not Made
- Revised language in mark-up is italicized.

MARK UP

ATRS Rule 6

MEMBERSHIP RULES ATRS RULE 6

MEMBERSHIP AND EMPLOYER PARTICIPATION

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

I. Definitions

~~A.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.~~ means:

1. An employee of a covered employer in one (1) of the following positions:

A. Public school superintendent, assistant superintendent, principal, or vice principal;

B. A higher education president, chancellor, or director;

C. A community college, vocational or technical school, or educational cooperative director, president, or vice president; or

2. An employee of an education-related agency participating in the Arkansas Teacher Retirement System (ATRS) who is an active member employed in a GS13 grade position, its equivalent, or above;

~~B. "Alternate Retirement Plans" refers to the retirement plan(s) of a public college or university, or the 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 Career Education (formerly the Division of Vocational and Technical Education) provided for under A.C.A. § 24-7-901 et seq.~~

~~G.b.~~ "Contributory service" is means service on which a member makes or made member contributions to ATRS. ~~;~~

~~D.c.~~ 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.~~ "Contributory election" means a member's written election to make member contributions to ATRS;

~~E.d.~~ "Noncontributory service" is means service on which a member does not make member contributions to the ATRS and for which the member accepts a reduced retirement annuity for the member's years of noncontributory service ~~for which the member does not contribute.~~ ~~;~~

MARK UP

F.e. "Nonteacher" means any a member that who is not a teacher or administrator~~;~~;

G.f. "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.~~

1. A private entity that:

A. Provides services for a public school district; and

B. Has employees who were previously employed by the public school district and members of ATRS; or

2. An educational nonprofit corporation licensed and regulated by the Division of Developmental Disabilities Services of the Department of Human Services;

H.g. "Preceding System" is means a previous reciprocal retirement system of record ~~as defined below;~~;

I.h. "Post-secondary higher education plan" or "PSHE plan" means a plan establishing the right of a new employee of a post-secondary or higher education employer to participate in ATRS on or after July 1, 2011;

i. "Reciprocal System" means:

1. ATRS operations as of June 30, 1957, and continued by statutes;

2. the The Arkansas State Highway Employees' Retirement System (ASHERS), established by A.C.A. Arkansas Code § 24-5-103;

3. the The Arkansas Public Employees' Retirement System (APERS) established by A.C.A. Arkansas Code § 24-4-103;

4. the The Arkansas State Police Retirement System (ASPRS) established by A.C.A. Arkansas Code § 24-6-203;

5. the The Arkansas Judicial Retirement System (AJRS) established by A.C.A. Arkansas Code § 24-8-201;

6. the The Arkansas District Judge Retirement System (ADJRS) established by A.C.A. Arkansas Code §§ 24-8-801 [repealed] – 24-8-824 [repealed];

7. the The Arkansas Local Police and Fire Retirement System (ALOPFI) provided for under A.C.A. Arkansas Code § 24-10-101; or

8. or an An alternate retirement plan for;

A. a A public college or university, or the Arkansas Division of Higher

MARK UP

~~Education provided for under A.C.A. Arkansas Code § 24-7-801 et seq.;~~ A college, university, or the Division of Higher Education provided for under Arkansas Code § 24-7-801 et seq.;

~~B. or for a A vocational-technical school or the Department of Career Education (formerly the Division of Vocational and Technical Education) provided for under A.C.A. § 24-7-901 et seq.; or A vocational-technical school or the Division of Career and Technical Education, the Adult Education Section of the Division of Workforce Services, the Division of Higher Education, and the Office of Skills Development provided for under Arkansas Code § 24-7-901 et seq.; or~~

~~C. and agencies~~ An agency that may be assigned the duties under the ~~agencies listed above~~ one (1) or more of the agencies listed in this ATRS Rule 6 I.i.1– 8 through a state reorganization or transformation plan~~;~~;

~~J.i.~~ "State Employer" means:

1. the A public employer whose employees are covered under the:

A. ATRS;

B. the Arkansas State Highway Employees' Retirement System ASHERS (A.C.A. Arkansas Code § 24-5-103);

C. the Arkansas Public Employees' Retirement System APERS (A.C.A. Arkansas Code § 24-4-103);

D. the Arkansas State Police Retirement System ASPRS (A.C.A. Arkansas Code § 24-6-203);

E. the Arkansas Judicial Retirement System AJRS (A.C.A. Arkansas Code § 24-8-201); or

F. or the Arkansas District Judge Retirement System ADJRS (A.C.A. Arkansas Code §§ 24-8-801[repealed] — 24-8-824 [repealed]); or

2. "State employer" also includes a A public employer that is:

A. a A college, university, or the Arkansas Division of Higher Education (A.C.A. Arkansas Code § 24-7-801 et seq.); A college, university, or the Division of Higher Education whose employees are covered by an alternate retirement plan provided for under Arkansas Code § 24-7-801 et seq.;

B. or a A vocational-technical school or the Department of Career Education (formerly the Division of Vocational and Technical Education (A.C.A. Arkansas Code § 24-7-901 et seq.) and or A vocational-technical school of the Division of Career and Technical Education, the Adult Education Section, and the Office of Skills

MARK UP

Development, whose employees are covered by an alternate retirement plan provided for under Arkansas Code § 24-7-901 et seq.; or

C. agencies An agency that may be assigned the duties under the agencies listed above of one (1) or more of the agencies listed in this ATRS Rule 6 I.J.1. and 2. through a state reorganization or transformation plan-;

K.k. "Succeeding System" is means the current reciprocal retirement system of record, following membership in a retirement system covered above that follows a person's membership in a preceding retirement system-; and

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

II. Membership and Employer Participation 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 ATRS. The elections shall be made prior to May 31 on a form provided by ATRS and shall be effective the following July 1 as provided by A.C.A. § 24-7-501(a)(2)(C).~~

B.a. Employee Membership in Another State Retirement System

~~1. 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. Excluding service as a member of the General Assembly, an employee who is eligible for membership in ATRS is ineligible for membership in another state retirement system while he or she is employed in a position covered by ATRS.~~

G.b. Erroneous Membership of Employees

1. Erroneous Enrollment Before January 1, 1979 – Employees

A. An employee who was erroneously enrolled in ATRS before January 1, 1979, shall continue to be a member of ATRS if the employee's contributions were not refunded before July 1, 1979.

B. The employee shall:

- i. Receive service credit for all paid membership service in ATRS and any free service creditable under Acts 1973, No. 427 as amended; and
- ii. Be entitled to reciprocal service credit as provided by Arkansas

MARK UP

Code §§ 24-7-401 — 24-7-408.

2. Erroneous Enrollment on or after January 1, 1979 – Employees

A. An employee who is erroneously enrolled in a state retirement system on or after January 1, 1979, may:

- i. Elect to remain a member of the system of record; or
- ii. Become a member of the eligible retirement system.

3. Correction of Erroneous Enrollment Occurring Before January 1, 1979 – ATRS Obligations

A. Effective July 1, 1979, ATRS shall not:

- i. Be required to correct the state retirement system membership of an employee who was erroneously enrolled in another state retirement system before January 1, 1979; and
- ii. Accept an employee who was erroneously enrolled in another state retirement system before January 1, 1979, as a member of ATRS unless the employee's contributions were refunded before July 1, 1979.

4. Correction of Erroneous Enrollment Occurring on or after January 1, 1979 – ATRS Obligations

A. If ATRS discovers that an employee is erroneously enrolled in a state retirement system on or after January 1, 1979, ATRS shall notify both the covered employer and employee that the:

- i. Employee is erroneously enrolled in the state retirement system; and
- ii. Error may be corrected as provided by Acts 1991, No. 13 or Arkansas Code § 24-2-302 et seq.

c. Employer Participation in ATRS — Generally

1. The ATRS Executive Director of ATRS (executive director) shall monitor, from time to time, employers that participate in ATRS to ensure that only employers that meet meeting both the federal and state requirements for participation and continued participation remain employers in ATRS.

2. If the Executive Director executive director determines that an employer no longer meets the requirements for continued participation in ATRS, the Executive Director executive director shall notify the Board of Trustees of the Arkansas Teachers Retirement System (Board) to allow appropriate review and action by the Board.

c. Employee Membership Eligibility — School Janitors, Bus Drivers, and Cafeteria

MARK UP

Workers Employed Before July 1, 1989

1. An employee shall continue to be a member of APERS if the employee:
 - A. Was employed before July 1, 1989, as a school janitor, bus driver, or cafeteria worker;
 - B. Was enrolled in APERS under the provision of Acts 1965, No. 63;
 - C. Was promoted to a position of school maintenance worker or supervisor, bus mechanic or transportation supervisor, or cafeteria manager, respectively; and
 - D. Remains employed in the position to which he or she was promoted.

d. Employee Membership Eligibility – Nonteaching Service Employees

1. Effective July 1, 2001, an employee whose nonteaching service began before July 1, 1989, and is covered or coverable by APERS may elect to be covered by ATRS.
2. An employee shall submit his or her election to be covered by ATRS before May 31 on a form provided by ATRS.
3. An employee's timely submitted election to be covered by ATRS is effective on July 1 of the following year. (Arkansas Code § 24-7-501(a)(2)(C))

e. Employee Membership Eligibility – College Plans

1. Employees of Nonmandatory Employers

- A. A member of ATRS who was employed by a nonmandatory employer before July 1, 2011, may continue to participate in ATRS instead of an alternative program offered by the nonmandatory employer if the member continues providing consistent service to the nonmandatory employer.
- B. A nonmandatory employer shall be considered a post-secondary or higher education employer (PSHE employer) if the nonmandatory employer enrolls a new eligible member with ATRS on or after July 1, 2011.
- C. If an eligible nonmandatory employer college elects to offer ATRS participation to its employees, the nonmandatory employer shall report information regularly to ATRS, on forms approved by ATRS, as required or permitted by the law applicable to ATRS.

2. Employees of PSHE Employers

- A. A PSHE employer may elect to offer ATRS participation to its employees by fulfilling the requirements of Arkansas Code § 24-7-

MARK UP

1605.

B. In addition to standard ATRS reporting forms, a PSHE Employer shall provide supplemental reports on any form required, approved, and adopted by the Board.

3. PSHE Employees Hired After July 1, 2011

A. The participation of new employees hired by a PSHE employer after July 1, 2011, is governed by Arkansas Code § 24-7-1601 et seq.

B. An employee of a PSHE employer who is hired after July 1, 2011, may participate in a PSHE plan if the employee:

- i. Is benefits-eligible as determined by the PSHE employer;
- ii. Is a vested member of ATRS at the time of initial employment;
- iii. Is not a vested member of ATRS, but meets the requirements of a less restrictive PSHE plan adopted by the specific PSHE employer; and
- iv. Signs an irrevocable PSHE plan participation form provided by ATRS

C. A PSHE plan employee shall remain a member of ATRS as long as he or she is employed by a PSHE employer.

D. A PSHE plan employee's election to participate in ATRS is irrevocable unless the PSHE plan employee obtains a termination refund from ATRS after his or her election to participate.

f. Employer Participation in ATRS

1. Executive Director Review of Employer Participation

A. This ATRS Rule 6 II.f.1. applies to an employer that participates in ATRS under the provisions of Arkansas Code § 24-7-202(D), (E), or (F).

B. Every five (5) years from the effective start date of an employer's participation in ATRS, the Executive Director of ATRS (executive director) shall review the employer's participation in ATRS to ensure that the employer meets both federal and state requirements for participation and continued participation in ATRS.

C. 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 of the Arkansas Teachers Retirement System (Board) to allow appropriate review and action by the Board.

2. Application for Employer Participation

MARK UP

A. An employer that would prefer to participate in and have its employees become members of ATRS may submit a written application to the executive director.

B. The application shall:

i. Specify a proposed effective date for participation in ATRS; and

ii. Include the following information and materials:

a. A certified copy of the articles of incorporation, bylaws, and other organizational documents of employer;

b. A copy of the employer's:

1. Most recent three (3) years' annual financial statements, including balance sheet, financial statements, and statement of cash flows; or

2. If the employer does not have audited financial statements, the year-end compilation reports or internal balance sheet and income statements for the employer;

c. A copy of the employer's most recent three (3) years' federal and state income tax returns;

d. A description of the employer's sources of funding, including the percentage of the funds that is provided by federal or state government and the type of government funding provided;

e. A description of how the employer's board of directors or board of trustees is selected and whether any governmental agency has input in the selection of the board members;

f. A description of the types of services provided by the employer; and

g. A description of each government agency that would be responsible for providing the types of services provided by the employer if the employer did not provide the services.

C. After ATRS reviews the employer's application and accompanying information and materials, ATRS shall

i. Determine whether an Internal Revenue Service ruling (IRS Ruling) should be requested concerning whether or not the participation of the employees of the employer jeopardizes

MARK UP

ATRS' status as a governmental plan; and

ii. Request any necessary additional information and statements from the employer if ATRS determines that an IRS Ruling should be requested.

D. The employer shall provide ATRS with any additional information and statements requested by ATRS in relation to the IRS Ruling.

E. The employer shall pay ATRS three thousand dollars (\$3,000) or the actual cost for fees and costs associated with obtaining the IRS Ruling if ATRS determines that an IRS Ruling should be requested.

F. The Board shall consider and vote on an application for employer participation.

i. When considering an application for employer participation, the Board:

a. Shall consider any relevant constitutional arguments brought to the attention of the executive director concerning the employer's application for employer participation;

b. Shall consider Rev. Rul. 89-49; and

c. May consider any other relevant rulings issued by the Internal Revenue Service or the Department of Labor.

3. Employer Participation — Education- Related Agency or Organization

A. Pursuant to Arkansas Code § 24-7-202(19)(D), an individual may be eligible to become a member of ATRS if the:

i. Individual is employed in a position with an education-related agency or organization;

ii. Individual's employment is related to:

a. Training public school employees or school board members;

b. Teaching public school students; or

c. Adult education programs;

iii. Individual's employment is unrelated to private schools;

iv. Individual is or has been a member of ATRS for a minimum of five (5) years; and

v. Individual elects to become or remain a member of ATRS.

B. A member described in this ATRS Rule 6.II.f.3 may become a member of ATRS if the:

MARK UP

i. Board determines, pursuant to rules adopted by the Board, that the participation of employees employed by the education-related agency or organization will not:

a. Impair ATRS' legal status, including:

1. ATRS' tax-qualified and governmental plan status under the Internal Revenue Code, 26 U.S.C. § 1 et seq.; and

2. ATRS' governmental plan status under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq.;

b. Subject ATRS to additional federal requirements;

c. Have a substantial adverse impact on ATRS' actuarial soundness; and

ii. Education-related agency or organization:

a. Elects to participate in ATRS;

b. Assumes responsibility for employer contributions;

c. Assumes responsibility for fees for obtaining IRS Rulings or Employee Retirement Income Security Act of 1974 opinions; and

d. Is approved as a covered employer by the Board according to rules adopted by the Board.

4. Employer Participation — Private Provider Employees

A. Pursuant to Arkansas Code § 24-7-202(19)(E), effective July 1, 1997, if a public school district privatizes any of its services, an individual who is or was employed by the public school district in one (1) or more of the privatized services and who is or has been a member of ATRS may elect to remain a member of ATRS if the:

i. Board determines, pursuant to rules adopted by the Board, that the participation of employees described in this ATRS Rule 6.II.f.4. will not:

a. Impair ATRS' legal status, including:

1. ATRS' tax-qualified and governmental plan status under the Internal Revenue Code, 26 U.S.C. § 1 et seq.; and

2. ATRS' governmental plan status under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq.;

MARK UP

- ii. Subject ATRS to additional federal requirements;
- iii. Have a substantial adverse impact on ATRS' actuarial soundness; and
- iv. Private provider assumes responsibility for:
 - a. Required employer contributions; and
 - b. Fees for obtaining IRS Rulings or Employee Retirement Income Security Act of 1974 opinions.

5. Employer Participation — Nonprofit Corporation Employees

A. Pursuant to Arkansas Code § 24-7-202(19)(F), effective July 1, 1997, an individual who meets the following requirements may be eligible to become a member of ATRS:

- i. The individual is employed in a position with an educational nonprofit corporation that is licensed and regulated by the Division of Developmental Disabilities Services of the Department of Human Services;
- ii. The individual's employment is related to:
 - a. Training public school employees or school board members;
 - b. Teaching public school students; or
 - c. Adult education programs; and
- iii. The individual's employment is unrelated to private schools.

B. A member described in this ATRS Rule 6.II.f.5 may become a member of ATRS if the:

- i. Board determines, pursuant to rules adopted by the Board, that the participation of employees employed by the educational nonprofit corporation will not:
 - a. Impair ATRS' legal status, including:
 - 1. ATRS' tax-qualified and governmental plan status under the Internal Revenue Code, 26 U.S.C. § 1 et seq.; and
 - 2. ATRS' governmental plan status under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq.;
 - b. Subject ATRS to additional federal requirements;
 - c. Have a substantial adverse impact on ATRS' actuarial soundness; and

MARK UP

ii. Nonprofit corporation:

- a. Elects to participate in ATRS;
- b. Assumes responsibility for employer contributions;
- c. Assumes responsibility for fees for obtaining IRS Rulings or Employee Retirement Income Security Act of 1974 opinions; and
- d. Is approved as a covered employer by the Board according to rules adopted by the Board.

III. ~~Contributory/Noncontributory Service Rules~~ Contributory Election

A.a. Contributory Election — Generally

~~A contributory member may not elect to become a non-contributory member.~~

1. The year in which a person becomes a member of ATRS shall determine whether or not the person is considered a contributory or noncontributory member of ATRS
2. A member's contributory status is irrevocable once the member becomes a contributory member of ATRS.
3. All service rendered before July 1, 1986, is contributory service.
4. A contributory member shall not elect to become a noncontributory member.
5. A contributory election is valid if the contributory election is:
 - A. Made on an election form provided by ATRS; and
 - B. Signed by both the member and the covered employer.
6. If a member makes a contributory election before the preparation of his or her first salary payment in the fiscal year, the contributory election is effective immediately.
7. If a member makes a contributory election after the preparation of his or her first salary payment in the fiscal year, the contributory election is effective July 1 of the next fiscal year.

~~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~~

MARK UP

~~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.~~

b. Contributory Election — Member Contracts

1. Members Not Under Contract

- A. A member who is not under contract may make a contributory election.

2. Members Under Contract

- A. A member under contract for one hundred eighty-five (185) days or more shall make contributions to ATRS.
- B. A member under contract for one hundred eighty-four (184) days or less may make a contributory election.

3. Contributory Elections Based on Status Change from Nonteacher to Teacher or Administrator Under Contract

- A. Regardless of a member's earlier noncontributory election, an active member whose status changes from nonteacher to teacher or administrator under contract for one hundred eighty-five days (185) or more shall make member contributions to ATRS.
- B. An active member's change from noncontributory status to contributory status due to the status change described in this ATRS Rule III.b.3.A is effective on the first day of the next fiscal year if the active member:
 - i. Changes status from nonteacher to teacher or administrator during a year in which the active member's service has already been reported as noncontributory; and
 - ii. Is under contract for one hundred eighty-five (185) days or more.

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:

MARK UP

1. Until June 30, 2007, new members who are not under contract will not 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.

c. Contributory Election - Noncontributory Members

1. A noncontributory member may make a contributory election.
- a.2. If the election is made If a noncontributory member makes a contributory election before the preparation of the first salary payment to the noncontributory member in the fiscal year, the contributory election will become is effective immediately.
3. If the election is a noncontributory member makes a contributory election after the preparation of the first payroll containing the first salary payment to the noncontributory member in the fiscal year, the contributory election shall become is effective July 1 of the next fiscal year.
- b.4. Any member's election to become contributory is irrevocable. All service rendered after the election is filed with ATRS shall be contributory. All service rendered after a contributory election is filed with ATRS shall be contributory.
5. A noncontributory member's contributory election that is filed with ATRS is irrevocable
- 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.

d. Contributory Election – Noncontributory Inactive Members and Rescinding Retirees

MARK UP

1. Previously Contributory Inactive Members

A. An inactive member shall make contributions on his or her full salary if the inactive member:

- i. Was contributory and earned a maximum salary of seven thousand eight hundred dollars (\$7,800); and
- ii. Returns to work on or after July 1, 1995.

2. Previously Noncontributory Inactive Members and Retirees

A. An inactive member or rescinding retiree may make a contributory election if the inactive member or rescinding retiree:

- i. Was noncontributory; and
- ii. Reenters ATRS after June 30, 2007.

B. If the inactive member or rescinding retiree does not make a contributory election, the inactive member or rescinding retiree shall be enrolled in the plan that he or she was enrolled in before reentering ATRS.

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.~~

e. Contributory Election – State Agency Employees

1. Full-time Employees

A. A full-time employee of a state agency covered by ATRS shall be contributory.

2. Part-time Employees

A. A part-time employee of a state agency covered by ATRS shall be noncontributory.

B. A part-time employee of a state agency covered by ATRS may make a contributory election.

~~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,~~

MARK UP

~~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.~~

f. Contributory Election – Employer Reporting Errors

1. Inactive Members

A. ATRS shall consider a member as noncontributory if the member:

- i. Was an inactive member who returned to covered employment as an active member after July 1, 1999;
- ii. Is reported incorrectly as noncontributory by his or her covered employer for his or her first year of service with the covered employer.

B. ATRS shall notify the covered employer of the member's contributory status.

C. Effective **the next** July 1, the member shall make contributions to ATRS.

2. New Members

A. ATRS shall consider a member as noncontributory for his or her first year of service with a covered employer if the member is a new member of ATRS and incorrectly reported as noncontributory by his or her covered employer for the first year.

B. ATRS shall notify the covered employer of the member's contributory status.

C. Effective **the next** July 1, the member shall make contributions to ATRS and the covered employer shall correctly report the member as contributory.

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~~

MARK UP

~~contributions were refunded prior to July 1, 1979.~~

- ~~C. If an employee was erroneously enrolled in 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.~~
- ~~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.~~

IV. Confidentiality of Member Accounts

- a. In compliance with the ATRS Code of Ethics, ATRS shall keep each member's salary, employment history, retirement account, and other personal data or other information compiled by ATRS for purposes of establishing and maintaining the member's retirement account confidential.
- b. Disclosure
1. All member information compiled by ATRS for the purpose of establishing and maintaining the member's retirement account shall not be disclosed to a third-party unless:
 - A. The member provides ATRS with his or her written consent; or
 - B. A valid legal process requires the disclosure of the member's information.
 2. Individual member records that are kept for the purpose of compiling information for a member's retirement or Social Security records shall not be open to the public under Arkansas Code § 24-4-1003.

MARK UP

V. Summary of Reciprocal Service Reciprocal Service Credit

a. Generally

1. A member who leaves a position covered by ATRS, becomes employed by a reciprocal system, and files a reciprocal service agreement shall become an inactive member of ATRS and may be eligible for an annuity benefit according to the annuity benefit formula in effect at the time of the member's effective retirement date.
2. Minimum benefits under Acts 1965, No. 488, Arkansas Code § 24-2-402(5)(E), as amended, for reciprocal service shall not apply unless a member has five (5) or more years of credited service in ATRS.
3. If ATRS is a member's preceding system, ATRS shall not pay annuity benefits to the member under reciprocity unless the member:
 - A. Attains the normal retirement age; or
 - B. Leaves his or her employment with his or her state employer.
4. If ATRS is a member's preceding system, the member, after attaining the normal retirement age, is eligible to apply for retirement benefits without leaving his or her employment with his or her last state employer.
5. The member's annuity benefit payments shall begin after the member attains the normal age of retirement or on the first day of the month following the month in which the member's application is filed, whichever occurs last.
6. ATRS shall only consider service credited to the member and salaries earned by the member before the member's effective retirement date to calculate the member's annuity benefit.

b. Reciprocal Service Credit – Calculation of Service Credit

1. If a member of ATRS has service credited during the same fiscal year with another reciprocal system and the combined service is greater than one (1) year of service credit, ATRS shall credit service as follows:
 - A. If credit by the reciprocal system is less than three (3) months, ATRS shall credit service for one (1) year;
 - B. If credit by the reciprocal system is three (3) or more months but less than six (6) months, ATRS shall credit service for three-fourths (3/4) year;
 - C. If credit by the reciprocal system is six (6) or more months but less than nine (9) months, ATRS shall credit service for one-half (1/2) year, and

MARK UP

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

c. Reciprocal Service Credit – Contributions and Repayments

1. While an employee participates in a reciprocal system, back contributions, additional contributions, and repayment of refund payments made to ATRS shall be made in accordance with the payment method provisions of ATRS Rule 8.
2. Employer pick-up is prohibited while the employee works for a noncovered ATRS employer.

d. Reciprocal Service Credit – Concurrent Service

1. Unless the reciprocal system is APERS or an alternate retirement plan, beginning July 1, 2013, ATRS shall allow a member who earns concurrent service in both ATRS and a reciprocal system to receive full service credit in ATRS without reduction of service credit due to the concurrent service.
2. ATRS shall not recognize concurrent service added to a member's credited service in ATRS that, for the purpose of vesting, retirement eligibility, or calculating final average salary, either:
 - A. Credits the member with more than one (1) year of credited service for a fiscal year; or
 - B. Combines salary earned in ATRS and a reciprocal system in a fiscal year.
3. A member may waive all or part of the concurrent service credited to him or her in ATRS and have the concurrent service credited to him or her under a reciprocal system if:
 - A. The member acknowledges that the waiver is a voluntary surrender of the member's concurrent service credit in ATRS;
 - B. The member acknowledges that the waiver cancels his or her concurrent service credit in ATRS; and
 - C. The member submits an ATRS approved concurrent service credit waiver form to ATRS. (Arkansas Code § 24-7-601).
4. If a member waives all or part of the concurrent service credited to him or her in ATRS and has the concurrent service credited to him or her under a reciprocal system, ATRS may refund the employer-accrued contributions and employee-accrued contributions.

e. Reciprocal Service Credit – Alternate Reciprocal Retirement System

1. A member of ATRS may establish reciprocal service credit from an

MARK UP

alternate retirement plan if he or she submits an appropriate, approved, and completed ATRS form concerning the reciprocal service credit to ATRS.

2. Distributions from an alternate retirement plan may prevent reciprocal service from being established if ATRS is unable to verify that the withdrawals were made without penalty under Internal Revenue Service guidelines concerning rollovers to eligible plans, withdrawals, that are not subject to early withdrawal, etc.

f. Reciprocal Service Credit – Active Members of APERS

1. From July 1, 1991, until December 31, 1991, an active member of APERS may establish reciprocity between APERS and ATRS and purchase out-of-state service rendered before January 1, 1978, in accordance with Arkansas Code §§ 24-7-601 and 24-7-603, if the active member:

- A. Was an active member of ATRS before January 1, 1978; and
- B. Became a member of APERS within thirty (30) days of leaving ATRS.

g. Reciprocal Service Credit – Arkansas Rehabilitation Services Employees

1. Effective July 1, 1993, for a ninety (90) day period, an employee of the Arkansas Rehabilitation Services may transfer his or her membership from APERS to ATRS under Acts 1993, No. 574.
2. An employee who transfers his or her membership from APERS to ATRS shall establish reciprocity between the two (2) systems and Acts 1977, No. 793 shall not apply to the employee.

h. Reciprocal Service Credit – Department of Human Services Employees

1. The law applicable to ATRS shall be used to determine the annuity benefits to which an employee is entitled for service provided before or after Acts 1977, No. 793 if the employee:
 - A. Was an employee of the Department of Human Services and became a member of APERS under the provisions of Acts 1977, No. 793, as amended; and
 - B. Left employment with the Department of Human Services and became employed in a position covered by ATRS.
2. A member meeting the description of this ATRS Rule 6 V.H.1. may establish reciprocity under Acts 1965, No. 488, as amended.

i. Reciprocal Service Credit – Member Entitlement to Deferred Annuity

1. If a member leaves state employment and their position is covered by any of the retirement systems listed above and enters the employ of

MARK UP

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. Pursuant to Arkansas Code § 24-4-401 et seq., a member is entitled to a deferred annuity benefit if the member:

A. Leaves his or her state employment in a position that is covered by one (1) of the reciprocal systems; and

B. Enters subsequent state employment in a position that is covered by another of the reciprocal systems.

A. Age and Service Retirement with Reciprocal Service Credit

I. Reciprocal Service Credit – Age and Service Retirement

1. Annuity Benefit Payments

A. If ATRS is the a member's preceding system, the member's annuity begins benefit payments shall begin after the member attains the normal age of retirement or on the first day of the month following the month in which the member's retirement application was filed, or after attainment of age 60 years, whichever is later.

B. However, should the member have If the member has combined service of at least 25 twenty-five (25) years, the age limitation normal retirement age requirement shall not apply.

C. 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. Deferred annuity benefit payments to the member shall not begin before the date on which the member leaves employment with his or her last state employer unless the member attains the normal retirement age.

2. Applying for Retirement Benefits Before Leaving Employment

A. If ATRS is the member's preceding system, the member is eligible to apply for retirement benefits without leaving the employ of the last state employer upon reaching age 65 employment with his or her last state employer upon attaining the normal retirement age.

B. The member's annuity will begin benefit payments shall begin after the member attains the normal retirement age or on the first day of the month following the month in which the member's retirement application was is filed, or after attainment of age 65, whichever is later.

C. Only service credited and salaries earned prior to the ATRS effective date of benefits will be used in the ATRS benefit calculation. ATRS shall use only service credited to the member

MARK UP

and salaries earned by the member before the member's effective retirement date to calculate the member's annuity benefit

B. Disability Retirement with Reciprocal Service Credit

k. Reciprocal Service Credit – Disability Retirement

1. A member is eligible to apply for disability retirement benefits under A.C.A. § 24-2-405 from each reciprocal system in which the member has credited service according to the rules for eligibility promulgated by that reciprocal system. (Arkansas Code § 24-2-405)
2. The member's annuity for disability retirement disability retirement benefits payable by the preceding reciprocal system shall
 - A. begin Begin the first day of the month following the month in which the member's disability retirement application was is filed with the preceding system. and
 - B. , but not prior to the date of leaving the employ of the last state employer Not begin before the date on which the member leaves employment with his or her last state employer.

l. Reciprocal Service Credit – Survivor Annuity Benefits

1. If survivor annuity benefits are payable by more than one (1) reciprocal system to an eligible survivor of a deceased member, a survivor who receives annuity benefit payments shall not receive, as a percentage of the deceased member's final salary or as a minimum dollar amount, more than the largest amount payable by a single reciprocal system.
2. ATRS shall prorate minimum benefits payable to a survivor with other reciprocal systems that have a minimum benefit provision in their plans.
3. Each reciprocal system shall pay a proportionate share of the minimum benefit based on the ratio of the member's service in that reciprocal system to the member's total service in all the reciprocal systems.
4. If the reciprocal system is an alternate retirement plan, survivor annuity benefits shall be contingent on whether the
 - A. Alternate retirement plan provides survivor annuity benefits; and
 - B. Member selected survivor annuity benefits as a benefit under the alternate retirement plan. (Arkansas Code § 24-2-402(5)).

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

MARK UP

~~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 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~~

MARK UP

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.⁴~~

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(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 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.~~

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~~

MARK UP

~~determines by adopting rules 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 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;~~
- ~~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.~~

MARK UP

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.~~
- ~~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.~~

MARK UP

~~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.~~

~~VI. Contributory/Non-Contributory~~ Contributory and Noncontributory Service Chart by Year of Entry into System

(Elections and Re-entry may affect Individual Member Service Status)

| All Members | | |
|---------------------------|-------------|---|
| 1937 - 1986 | All Members | Contributory |
| 1986 - 1991 | All Members | Contributory unless elect Non-Contributory <u>Noncontributory</u> |
| 1991 - 1999 | All Members | Non-Contributory <u>Noncontributory</u> unless elect Contributory |
| School District Employees | | |
| 1999 - 2007 | Active | One-time <u>One-time</u> election to be Contributory or Non-Contributory , <u>Noncontributory</u> , no election made by 7/1/2000, status on 6/30/2000 |
| | Inactive | One-time <u>One-time</u> election to be Contributory or Non-Contributory <u>Noncontributory</u> upon reentering system, no election then status <u>enrolled in the plan that he or she was enrolled in before reentering ATRS</u> |

MARK UP

| | | |
|---------------------------|---|---|
| | New | <p>Contract 181 <u>one hundred eighty-one (181)</u> days or more - Contributory</p> <p>-</p> <p>Contract 180 <u>one hundred eighty (180)</u> days or less - Non-Contributory, <u>Noncontributory</u>, may elect Contributory, election must be made one <u>(1)</u> year from hire date</p> <p>-</p> <p>No contract, member must be non-contributory <u>noncontributory</u></p> |
| 2005 - <u>2021</u> | Non-teacher <u>Nonteacher</u> to Teacher or Administrator | <p>Contract 181 <u>one hundred eighty-one (181)</u> days or more - Contributory. If position change happens during the year, election is effective first of next fiscal year</p> <p>-</p> <p>All Non-Contributory <u>Noncontributory</u> members may elect Contributory</p> |
| 2007 - <u>2021</u> | All Members | May elect Contributory |
| | New | <p>Contract 181 <u>one hundred eighty-one (181)</u> days or more - Contributory</p> <p>-</p> <p>Contract 180 days or less – Non-Contributory</p> <ul style="list-style-type: none"> • <u>Noncontributory, may elect Contributory</u> • <u>No contract — Noncontributory, may elect Contributory</u> |
| | Inactive | May elect Contributory |
| <u>2021</u> | <u>Nonteacher to Teacher or Administrator</u> | <p><u>Contract one hundred eighty-five (185) days or more - Contributory. If position change happens during the year, election is effective first of next fiscal year.</u></p> <p><u>All Noncontributory members may elect Contributory</u></p> |
| <u>2021 -</u> | <u>All Members</u> | <u>May elect Contributory</u> |
| | <u>A member with</u> | <u>Contract one hundred eighty-five (185) days or more - Contributory</u> |
| | <u>A member with</u> | <u>Contract one hundred eight-four (184) days or less - Noncontributory, may elect Contributory</u> |

MARK UP

| | | |
|-------------------------------|----------------------|--|
| | <u>New</u> | <u>No contract – Noncontributory, may elect Contributory unless already Contributory</u> |
| | <u>Inactive</u> | <u>May elect Contributory</u> |
| State Agency Employees | | |
| 1999 - 2007 | Full-Time Employment | Must be Contributory |
| | Part-Time Employment | Must be Non-Contributory <u>Noncontributory</u> |
| 2007 - | Full-Time Employment | Must be Contributory |
| | Part-Time Employment | Non-Contributory , <u>Noncontributory</u> , may elect to be Contributory |

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

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

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

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

HISTORY

| | | |
|------------|-------------------|-----------------------|
| Adopted: | August 11, 1998 | 6-10 |
| Amended: | June 15, 2004 | 6-1 |
| Amended: | July 18, 2005 | 6-1, 6-2, 6-10 |
| | April 26, 2007 | 6-1, 6-2, 6-11 |
| | July 1, 2011 | (Emergency) 6-1, 6-12 |
| Adopted: | August 8, 2011 | 6-1, 6-12 |
| Effective: | November 11, 2011 | 6-1, 6-12 |

MARK UP

| | | |
|--------------------|-------------------|-----------|
| Adopted by Board: | April 2, 2012 | 6-1 |
| Amended: | May 2, 2012 | 6-1 |
| Effective: | September 4, 2012 | 6-1 |
| Amended: | May 2, 2012 | 6-2 |
| Effective: | September 4, 2012 | 6-2 |
| Approved by Board: | July 26, 2013 | 6-2, 6-12 |
| Amended: | October 9, 2013 | 6-2, 6-12 |
| Effective: | November 8, 2013 | |
| Approved by Board: | February 5, 2018 | 6-2 |
| Effective: | February 16, 2018 | 6-2 |
| Effective: | May 28, 2020 | Rule 6 |