

LEGAL SUMMARIES AND PUBLIC COMMENTS
Arkansas Teacher Retirement

- ATRS Rule 6: Membership Rules
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ARKANSAS TEACHER RETIREMENT SYSTEM

SUBJECT: ATRS Rule 6: Membership Rules

DESCRIPTION: The Arkansas Teacher Retirement System proposes changes to its Rule 6: Membership Rules. The proposed amendments include the following substantive changes:

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- The existing rules 6-1, 6-1A, 6-1B, 6-2, 6-10, 6-11, and 6-12, are, therefore, proposed to be repealed, and replaced with the new consolidated ATRS Rule 6 - Membership Rules.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

Non-substantive changes include:

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

Changes made after the public comment period include:

- Inserted phrase “as active member” in definition of “Administrator” to conform to statutory language.
- Corrected names of state agencies to track recent codification.
- Removed references to “and regulations” in light of Act 315 of 2019.
- Corrected numbering, grammar, and typographical errors where appropriate.
- Corrected date on the Chart for School District Employees, 1999-2007, Active, to July 1, 2000, to conform to statutory language.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on March 6, 2020. No public comments were received.

Rebecca Miller-Rice, an attorney with the Bureau of Legislative Research, asked the following questions:

(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? **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? **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”? **RESPONSE:** Yes, “above” should be changed to “below.”

(4) I.I. – See question (2) above referencing agency names. **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. **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? **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? **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*? **RESPONSE:** Yes.

(9) VI.G.4 – Is a “than” missing before “twelve”? **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)? **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? **RESPONSE:** We agree that the phrase “and regulations” should be deleted.

(12) VII.B. – See question (11) above referencing the term “regulations.” **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”? **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? **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? **RESPONSE:** Act 907 of 1999.

The proposed effective date is June 1, 2020.

FINANCIAL IMPACT: The agency states that the amended rule has no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 24-7-305(b)(1), the Board of Trustees of the Arkansas Teacher Retirement System shall promulgate rules as it deems necessary from time to time in the transaction of its business and in administering the Arkansas Teacher Retirement System. The proposed changes include those made in light of Act 297 of 2019, sponsored by Senator Eddie Cheatham, which amended the law concerning member contributions under the Arkansas Teacher Retirement System; and Act 427 of 2019, sponsored by Representative John Maddox, which made technical corrections to Title 24 of the Arkansas Code concerning retirement and pensions under the Arkansas Teacher Retirement System.

ARKANSAS TEACHER RETIREMENT SYSTEM

SUBJECT: ATRS Rule 7: Reporting and Eligibility

DESCRIPTION: The Arkansas Teacher Retirement System proposes changes to its Rule 7: Reporting and Eligibility. The proposed amendments include the following substantive changes:

- Definition of “Full service year” added.
- Amends the language to reflect changes enacted under Acts 427, 594 and 595 of 2019 that the calculation of “final average salary” will exclude partial service years.
- Clarifies when sick leave, payments for claims of wrongful termination, or payments under an early retirement plan or contract non-renewal can be used as “salary” in the calculation of “final average salary” per Act 427 of 2019.
- Clarifies that “final average salary” is set annually by the Board for the highest three, up to five, years of service, within standards of actuarial appropriateness per Act 427 of 2019.
- Clarifies Proof of Service Credit as based on number of days or hours worked, and the days specified in a contract between an ATRS employer and member, including those employed in specialized support positions.
- Adds that additional employer contributions will be paid from additional funds appropriated per Act 594 of 2019. See Section VI.H.

Non-substantive changes include:

- Corrects formatting issues, renumbering, grammar, and spelling, where appropriate.
- Amends language for consistent use of defined terms, i.e., use “final average salary” instead of “final average compensation” per Act 595 of 2019.
- Significant rewrite of sentences for ease of understanding.

Changes made after the public comment period include:

- Inserted the word “additional” before “funds appropriated” to conform to Act 594 of 2019.
- Corrected typographical errors where appropriate.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on March 6, 2020. No public comments were received. The System provided the following summary of comments received from System staff and its responses thereto:

Martha Miller, ATRS

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

Agency Response: We believe that the phrase should be removed.

Kevin Odom, ATRS

Comment: I.B.6 intro – Should the word “a” before “~~participating~~ ATRS” be changed to “an”?

Agency Response: Yes.

Rebecca Miller-Rice, an attorney with the Bureau of Legislative Research, asked the following questions:

(1) ILJ. – Should “no” be “not” preceding “begin earlier”? **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? **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? **RESPONSE:** Yes, adding the word “additional” would mirror the language of the Code and should be added.

The proposed effective date is June 1, 2020.

FINANCIAL IMPACT: The agency states that the amended rule has no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 24-7-305(b)(1), the Board of Trustees of the Arkansas Teacher Retirement System shall promulgate rules as it deems necessary from time to time in the transaction of its business and in administering the Arkansas Teacher Retirement System. The proposed changes include those made in light of Act 427 of 2019, sponsored by Representative John Maddox, which made technical corrections to Title 24 of the Arkansas Code concerning retirement and pensions under the Arkansas Teacher Retirement System; Act 594 of 2019, sponsored by Representative Les Warren, which amended the law concerning fund contributions and fund rates under the Arkansas Teacher Retirement System; and Act 595 of 2019, also sponsored by Representative Maddox, which amended the law concerning credited service and voluntary retirement under the Arkansas Teacher Retirement System.

ARKANSAS TEACHER RETIREMENT SYSTEM

SUBJECT: ATRS Rule 8: Purchases and Refunds

DESCRIPTION: The Arkansas Teacher Retirement System proposes changes to its Rule 8: Purchases and Refunds. The proposed amendments include the following substantive changes:

- Allows for overpayments of “de minimus” amounts (\$25.00 under current Board resolution) to be credited to the member’s account and not refunded, unless requested by the member.

Non-substantive changes include:

- Corrects formatting issues, renumbering, grammar, and spelling, where appropriate.
- Amends language for consistent use of defined terms.
- Significant rewrite of some sentences for ease of understanding.

Changes made after the public comment period include:

- Corrects spelling, punctuation, and spacing where appropriate.
- Corrects placement of the phrase “after deduction and payment of federal taxes” to clarify that rollover payments are not affected.
- Language added to clarify purchases related to resolution of claims of wrongful termination.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on March 6, 2020. The System provided the following summary of all comments received and its responses thereto:

Various Parties

Comment: Punctuation and spacing corrections should be made in II.A., II.C., VI.A., and IX.D..

Agency Response: We agree.

Martha Miller, ATRS

Comment: IV.A. The word “periodically” is misspelled and should be corrected.

Agency Response: We agree.

Comment: 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?

Agency Response: 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.

Comment: To clarify VIII.F., shouldn’t the word “in” be added last line before “ATRS”?

Agency Response: We agree.

Comment: To clarify IX.C.2., shouldn't the phrase "in ATRS" be added after "five (5) or more years of actual service"?

Agency Response: We agree.

Comment: 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.

Agency Response: We agree that additional language should be added.

The proposed effective date is June 1, 2020.

FINANCIAL IMPACT: The agency states that the amended rule has no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 24-7-305(b)(1), the Board of Trustees of the Arkansas Teacher Retirement System shall promulgate rules as it deems necessary from time to time in the transaction of its business and in administering the Arkansas Teacher Retirement System.

ARKANSAS TEACHER RETIREMENT SYSTEM

SUBJECT: ATRS Rule 9: Retirement and Benefits

DESCRIPTION: The Arkansas Teacher Retirement System proposes changes to its Rule 9: Retirement and Benefits. The proposed amendments include the following substantive changes:

- ATRS reformatted and reorganized seven (7) current ATRS rules into one rule for consistency and professionalism, and added language where necessary to incorporate changes from the 2019 General Assembly Acts.
- Although technically a “new” rule because the original rule has been renumbered and renamed, the language of the new rule is substantially transcribed verbatim from existing language in current ATRS Rules 9-01, 9-02, 9-03, 9-04, 9-07, 9-08, and 9-09.
- For ease in identifying changes, language in the new rule that remains the same as the current rules is underlined and appears as blue font. Any language that is added or amended, or has been relocated from its original order in the existing rules, is underlined and italicized, and appears as black font.
- Reflects language of Act 595 of 2019, which allowed that if a member has accrued a full year of service credit for a fiscal year, the member’s retirement benefit will not begin before July 1 of the subsequent fiscal year.
- Reflects language of Act 209 of 2019 to allow that an ATRS disability retiree may work for a covered employer and still receive disability retirement if employed less than eighty (80) days, and removed the “waiver” requirement.
- Adds definition of “808 Employee” for clarity in the rule, to delineate employees affected by the Early Retirement Incentive Law of 1987 (Act 808 of 1987), which refers to a particular group of employees who may elect to have credited service in ATRS transferred to APERS.

Non-substantive changes include:

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

Changes made after the public comment period include:

- Corrects typographical errors.
- Clarifies paying agency and cost-sharing of payments to Act 808 employees who elect to transfer to APERS.
- Clarifies that a member may not draw ATRS disability and work indirectly for an ATRS covered employer.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on March 6, 2020. No public comments were received. The System provided the following summary of comments received from System staff and its responses thereto:

Clementine Infante, ATRS

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

Agency Response: Yes, this appears to be a typographical error that should be corrected.

Martha Miller, ATRS

Comment: 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. . . .”

Agency Response: Yes, we agree.

Comment: VI.G. – For clarity, “that amount” should be changed to “it’s pro-rata portion.”

Agency Response: Yes, we agree.

Rebecca Miller-Rice, an attorney with the Bureau of Legislative Research, asked the following questions:

(1) I.A. – Is the “ATRS” following “member of the Arkansas Public Employees Retirement” necessary? **RESPONSE:** 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? **RESPONSE:** 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? **RESPONSE:** 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? **RESPONSE:** 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? **RESPONSE:** 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”? **RESPONSE:** Yes, we agree that the word “of” should be added after “copy.”

The proposed effective date is June 1, 2020.

FINANCIAL IMPACT: The agency states that the amended rule has no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 24-7-305(b)(1), the Board of Trustees of the Arkansas Teacher Retirement System shall promulgate rules as it deems necessary from time to time in the transaction of its business and in administering the Arkansas Teacher Retirement System. The proposed changes include those made in light of Act 209 of 2019, sponsored by Representative Michelle Gray, which amended the law concerning the rehiring of disability retirees of the Arkansas Teacher Retirement System, and Act 595 of 2019, sponsored by Representative John Maddox, which amended the law concerning credited service and voluntary retirement under the Arkansas Teacher Retirement System.

ARKANSAS TEACHER RETIREMENT SYSTEM

SUBJECT: ATRS Rule 10: T-DROP and Return to Service

DESCRIPTION: The Arkansas Teacher Retirement System proposes changes to its Rule 10: T-Drop and Return to Service. The proposed amendments include the following substantive changes:

- Changed language regarding plan deposits consistent with Act 296 of 2019 to clarify the calculation of plan deposits for T-DROP and early participants.
- Amended definition of “Early participant” consistent with Act 296 of 2019, which repealed A.C.A. § 24-7-1314 and moved the language regarding early participants into § 24-7-1306.

Act 296 of 2019 did not affect the benefits of T-DROP and early participants.

Non-substantive changes include:

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

Changes made after the public comment period include:

- Corrected punctuation, grammar, and numbering where appropriate.
- Clarified that employer contributions are still required for working retirees who return to work for a covered employer even though employee contributions are no longer required.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on March 6, 2020. No public comments were received. The System provided the following summary of comments received from System staff and its responses thereto:

Martha Miller, ATRS

Comment: For clarity, punctuation and grammar errors should be corrected in II. Title, III., IV.A., IV.E.

Agency Response: We agree.

Comment: 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.

Agency Response: We agree.

Otis Willis, ATRS

Comment: 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.

Agency Response: We agree.

The proposed effective date is June 1, 2020.

FINANCIAL IMPACT: The agency states that the amended rule has no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 24-7-305(b)(1), the Board of Trustees of the Arkansas Teacher Retirement System shall promulgate rules as it deems necessary from time to time in the transaction of its business and in administering the Arkansas Teacher Retirement System. The proposed changes include those made in light of Act 296 of 2019, sponsored by Senator Eddie Cheatham, which amended the law concerning deposits in the Teacher Deferred Retirement Option Plan and repealed certain provisions concerning the Teacher Deferred Retirement Option Plan.

ARKANSAS TEACHER RETIREMENT SYSTEM

SUBJECT: ATRS Rule 11: Survivors and Domestic Relations Orders

DESCRIPTION: The Arkansas Teacher Retirement System proposes changes to its Rule 11: Survivors and Domestic Relations Orders. The proposed amendments include the following substantive changes:

- ATRS reformatted and reorganized four (4) current ATRS rules into one rule for consistency and professionalism.
- Although technically a “new” rule because the original rule has been renumbered and renamed, the language of the new rule remains the same as in current ATRS Rules 11-01, 11-02, 11-03 and 11-05, and incorporates necessary changes under Acts 210 and 427 of 2019.
- For ease in identifying changes, language in the new rule that remains the same as the current rules is underlined and appears as blue font. Any language that is added or amended, or has been relocated from its original order in the existing rules, is underlined and italicized, and appears as black font. Grammatical changes for ease of understanding are not italicized since they do not change the meaning or effect of the rule.
- The existing rules 11-01, 11-02, 11-03 and 11-05, are proposed to be repealed and replaced with the new consolidated ATRS Rule 11 – Survivors and Domestic Relations Orders.
- Act 210 of 2019 allowed a deceased member’s dependent child to receive benefits until 23 years of age if the child remains in school, and the rule is amended to reflect that change. *See* Rule 11 IV. Dependent Children Benefits.
- Act 427 of 2019 defines “final average salary” as the highest salaries earned by a member in a state fiscal year, and the language in the rule is changed to reflect the definition. *See* Rule 11 IV.H.
- Clarifies that a deceased member’s spouse will receive the member’s accumulated contributions, *plus interest*, if they waive their spousal annuity. *See* Rule 11 III.B.2.

Non-substantive changes include:

- Grammatical changes for ease of understanding and consistency, renumbering for consolidated rule where appropriate, and correction of formatting issues and typographical errors.

Changes made after the public comment period include:

- Corrects grammar, numbering, and typographical errors.
- Deletes language regarding calculation of the amount of lump-sum death benefits as this is set by Board resolution.
- Deletes language that payment of a lump-sum death benefit is dependent upon a member’s submission of an ATRS approved lump-sum death beneficiary form since the requirement has no basis in law.

- Deletes language that payments to alternate payee under a Qualified Domestic Relations Order (QDRO) are calculated only on service credit earned during the marriage since this requirement has no basis in law.
- Restores language regarding lost payees and the binding nature of communication addressed to the last filed address in a member's record.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on March 6, 2020. No public comments were received. The System provided the following summary of comments received from System staff and its responses thereto:

Martha Miller, ATRS

Comment: VII.C. – The word “a” should be added in the first line before “QDRO.”

Agency Response: We agree.

Comment: VII.C.7. – Should the phrase “includes only service credit earned by the member during the marriage” be deleted?

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

Comment: 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.

Agency Response: 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.

Comment: 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.

Agency Response: We agree. The remaining paragraphs should be re-numbered as appropriate.

Rebecca Miller-Rice, an attorney with the Bureau of Legislative Research, asked the following questions:

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

RESPONSE: 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? **RESPONSE:** 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”? **RESPONSE:** 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)? **RESPONSE:** We are not aware of the reason the drafter omitted the language in question, but believe that it should be added back to this provision.

The proposed effective date is June 1, 2020.

FINANCIAL IMPACT: The agency states that the amended rule has no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 24-7-305(b)(1), the Board of Trustees of the Arkansas Teacher Retirement System shall promulgate rules as it deems necessary from time to time in the transaction of its business and in administering the Arkansas Teacher Retirement System. The proposed changes include those made in light of Act 210 of 2019, sponsored by Representative Stu Smith, which amended the law concerning eligibility for a dependent child annuity under the Arkansas Teacher Retirement System, and Act 427 of 2019, sponsored by Representative John Maddox, which made technical corrections to Title 24 of the Arkansas Code concerning retirement and pensions under the Arkansas Teacher Retirement System.