

**QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE**

DEPARTMENT/AGENCY Arkansas Teacher Retirement System
DIVISION Administration
DIVISION DIRECTOR George Hopkins
CONTACT PERSON Laura Gilson, General Counsel
ADDRESS 1400 West Third Street, Little Rock, AR 72201
PHONE NO. 501-682-1266 FAX NO. 501-682-6326 E-MAIL laurag@artrs.gov
NAME OF PRESENTER AT COMMITTEE MEETING George Hopkins
PRESENTER E-MAIL georgeh@artrs.gov

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Donna K. Davis
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
Room 315, State Capitol
Little Rock, AR 72201

1. What is the short title of this rule? Error Corrections and Collection of Overpayment (Rule 9-8)

2. What is the subject of the proposed rule? Rules regarding the correction of errors in a member's record or ATRS' record

3. Is this rule required to comply with a federal statute, rule, or regulation? Yes No
If yes, please provide the federal rule, regulation, and/or statute citation.

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes No
If yes, what is the effective date of the emergency rule? _____

When does the emergency rule expire? _____

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes No

5. Is this a new rule? Yes No

If yes, please provide a brief summary explaining the regulation.

Does this repeal an existing rule? Yes No

If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes No

If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule?

If codified, please give Arkansas Code citation.

§ 24-7-305(b)(1)

7. What is the purpose of this proposed rule? Why is it necessary?

To bring into compliance and make consistent with Acts 303 and 336 of 2013 and various minor changes for clarity.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).

www.artrs.gov

9. Will a public hearing be held on this proposed rule? Yes No

If yes, please complete the following:

Date: _____

Time: _____

Place: _____

10. When does the public comment period expire for permanent promulgation? (Must provide a date.) August 29, 2013

11. What is the proposed effective date of this proposed rule? (Must provide a date.) December 1, 2013

12. Do you expect this rule to be controversial? Yes No

If yes, please explain.

13. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

N/A

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Teacher Retirement System

DIVISION Administration

PERSON COMPLETING THIS STATEMENT Laura Gilson

TELEPHONE NO. 501-682-1266 **FAX NO.** 501-682-6326 **EMAIL:** laurag@artrs.gov

To comply with Act 1104 of 1995, please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Error Corrections and Collection of Overpayments (Rule 9-8)

1. Does this proposed, amended, or repealed rule have a financial impact? Yes No
2. Does this proposed, amended, or repealed rule affect small businesses? Yes No
If yes, please attach a copy of the economic impact statement required to be filed with the Arkansas Economic Development Commission under Arkansas Code § 25-15-301 et seq.

3. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain.

N/A

4. If the purpose of this rule is to implement a federal rule or regulation, please give the incremental cost for implementing the rule. Please indicate if the cost provided is the cost of the program.

Current Fiscal Year

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

Next Fiscal Year

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

5. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule? Identify the party subject to the proposed rule and explain how they are affected.

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

6. What is the total estimated cost by fiscal year to the agency to implement this rule? Is this the cost of the program or grant? Please explain.

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

Summary of Proposed Rule Change

for
Arkansas Teacher Retirement System

Rule 9-8 Error Corrections and Collection of Overpayments

This Rule change is needed to comply with Acts 303 and 336 of 2013. Act 303 defines a "manifest injustice". Act 336 allows ATRS to cancel service credit for which contributions are owed. Other changes were made to reference the section of Arkansas Code that deals with corrections of errors and to make minor nonsubstantive changes, such as the renumbering of paragraphs to be consistent with other Rules, or changing all references to the system to "ATRS". Specific changes as referenced by the Rule page number are listed as follows:

9-8-1 I.A.1. The added language references the section of Arkansas Code that deals with correction of errors. This section of the code discusses, among other issues, the "look back period" of 5 years, for which claims may be valid, and the consideration of "manifest injustice" beyond the look-back period.

9-8-1 I.A.2. Nonsubstantive change from "the System" to "ATRS"

9-8-1 I.A.4. The language was stricken to remove any overlap or potential conflict with Rule 13, which sets out the process and requirements for a member appeal; the added language refers to Rule 13, and allows benefits to continue until the matter is resolved. The second paragraph of 9-8-1 I.A.4 is stricken to remove any overlap or potential conflict with Rule 13, which sets out the process and requirements for a member appeal.

9-8-2 I.A.9 This language is added to reference the extraordinary remedy of "manifest injustice", which is defined in Act 303 and will be codified in the definition section of the Arkansas Code in § 24-7-202. There is also a separate ATRS Rule proposed regarding the process for claiming and evaluating "manifest injustice".

RULE 9-8
**ERROR CORRECTIONS AND COLLECTION OF
OVERPAYMENTS**

A.C.A. § 24-7-205

I. RULES

- A.4. If a change or error in the ~~System's~~ ATRS' records discovered during the ATRS look back period results in either an overpayment or underpayment to a benefit participant of the System to ATRS, the Board authorizes the ~~System~~ ATRS to correct the error in the records and to adjust the any benefit or adjust any other amount payable to the corrected amount and take all necessary action as the circumstances may require including the options allowed under A.C.A. § 24-7-205(b).
- 2B. If a benefit participant under a qualified domestic relations order pursuant to A.C.A. §§ 9-18-101—103, is paid any benefit or payment by the ~~System~~ ATRS to which the benefit participant is not entitled, and it is discovered during the ATRS look back period, then a receivable is created and the Board or its designee(s), may collect the amount due to the ~~System~~ ATRS as set forth in A.C.A. § 24-7-205.
- 3C. Before making an adjustment of benefits or pursuing any other collection action under Nos. 1 and 2 above, a notice shall be provided to the person who is the subject of the adjustment. The notice will state the amount determined to be a receivable and the reasons underlying the determination. The notice shall also suggest alternate methods for payment of the receivable.
- 4.D Appeals to dispute collections ~~may shall~~ be made ~~in writing to the Executive Director if made within 30 days of the date of the original notice to the member, former member, contributor, former contributor, retiree, beneficiary, or alternate payee~~ according to the procedures and requirements of ATRS Rule 13. During the appeal process, retirement benefits may continue to be paid.

~~The Executive Director's de novo review may be appealed to the Board of Trustees for a de novo review by the Board. The affected party must send notice in writing to the Executive Director that the Executive Director's decision is being appealed within 30 days of the date of the Executive Director's review. The Board will hear the appeal in a regularly scheduled Board meeting. During the appeal process, retirement benefits will continue to be paid.~~

- 5E. A determination, review, administrative action, cause of action, request to enforce, change or modify an obligation, duty, benefit calculation, designation, refund, contribution, service credit or other right arising under this section shall not be valid unless commenced within the look-back period unless ~~the system~~ ATRS determines that the justification to commence the process is due to intentional nondisclosure, fraud, misrepresentation, or criminal act.
- 6F. The board or its designee may also make adjustments to the employer, member, and ~~system~~ ATRS records beyond the look-back period if the board determines that the time limitation imposed by the look-back period will result in a manifest injustice in a specific case.
- 7G. The Board authorizes the Executive Director to waive interest on required contributions under Nos. 1 and 2 above in an amount not to exceed \$5,000. Any request to excuse an interest amount exceeding \$5,000 shall be submitted to the ATRS Board for review. The Executive Director shall report to the Board any amounts excused under this section.
- 8H. If required, a receivable under this section that is found by the Board or its designee to be uncollectible or for which adjustment or payment has been waived will be submitted to the Chief Fiscal Officer of the state for abatement pursuant to A.C.A. §§ 19-2-301 – 307.
- I. A determination by ATRS of a manifest injustice in a particular instance due to a technical error or error in judgment is always discretionary and governed by the provisions of Act 303 of 2013, codified as § 24-7-202(40).

Adopted: July 18, 2005
Amended: December 18, 2009
July 1, 2011 (Emergency)
Adopted: August 8, 2011
Effective: November 11, 2011
Approved by Board: July 26, 2013
Amended:
Effective:

RULE 9-8

ERROR CORRECTIONS AND COLLECTION OF OVERPAYMENTS

A.C.A. § 24-7-205

I. RULES

- A. If a change or error in ATRS' records discovered during the ATRS look back period results in either an overpayment or underpayment to ATRS, the Board authorizes ATRS to correct the error in the records and to adjust any benefit or adjust any other amount payable to the corrected amount and take all necessary action as the circumstances may require including the options allowed under A.C.A. § 24-7-205(b).
- B. If a benefit participant under a qualified domestic relations order pursuant to A.C.A. §§ 9-18-101—103, is paid any benefit or payment by ATRS to which the benefit participant is not entitled, and it is discovered during the ATRS look back period, then a receivable is created and the Board or its designee(s), may collect the amount due to ATRS as set forth in A.C.A. § 24-7-205.
- C. Before making an adjustment of benefits or pursuing any other collection action under Nos. 1 and 2 above, a notice shall be provided to the person who is the subject of the adjustment. The notice will state the amount determined to be a receivable and the reasons underlying the determination. The notice shall also suggest alternate methods for payment of the receivable.
- D. Appeals to dispute collections shall be made according to the procedures and requirements of ATRS Rule 13. During the appeal process, retirement benefits may continue to be paid.
- E. A determination, review, administrative action, cause of action, request to enforce, change or modify an obligation, duty, benefit calculation, designation, refund, contribution, service credit or other right arising under this section shall not be valid unless commenced within the look-back period unless ATRS determines that the justification to commence the process is due to intentional nondisclosure, fraud, misrepresentation, or criminal act.
- F. The board or its designee may also make adjustments to the employer, member, and ATRS records beyond the look-back period if the board determines that the time limitation imposed by the look-back period will result in a manifest injustice in a specific case.

- G. The Board authorizes the Executive Director to waive interest on required contributions under Nos. 1 and 2 above in an amount not to exceed \$5,000. Any request to excuse an interest amount exceeding \$5,000 shall be submitted to the ATRS Board for review. The Executive Director shall report to the Board any amounts excused under this section.
- H. If required, a receivable under this section that is found by the Board or its designee to be uncollectible or for which adjustment or payment has been waived will be submitted to the Chief Fiscal Officer of the state for abatement pursuant to A.C.A. §§ 19-2-301 – 307.
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