

December 20, 2023

Executive Summary
Proposed Rule Amendment
ATRS Rule 6 – Membership and Employer Participation

I. Purpose

The Arkansas Teacher Retirement System (“ATRS” or “System”) requests the review and approval of proposed amendments to ATRS Rule 6 – Membership and Employer Participation (“Rule 6”).

On December 4, 2023, the Board of Trustees of the Arkansas Teacher Retirement System (“Board”) voted to proceed with the promulgation process for Rule 6.

II. Authority

A.C.A. § 24-7-301 provides that the Board is responsible for the general administration and proper operation of the 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 the authority to promulgate rules as it deems necessary from time to time in the transaction of its business and in administering the System.

A.C.A. § 25-15-216(b)(3) requires ATRS to promulgate rules pursuant to the provisions of each act identified by the Bureau of Legislative Research or by the System as requiring the promulgation of one (1) or more rules. Acts 2023, No. 52 and 107 were identified by the System as requiring the promulgation of a rule or rules.

III. Amendments

Rule 6 has been amended as follows:

- Redrafted for clarity and to address issues such as formatting, renumbering, grammar, and spelling;
- Redrafted to further align with the Code of Arkansas Rules style format;
- The authority for this rule has been moved to the end of the document;
- Acts 2023, No. 107, amended certain sections of the Arkansas Code applicable to ATRS to refer back to the definition of “alternate retirement plan” under A.C.A. § 24-7-202. The rule has been amended to conform the definitions of “reciprocal system” and “state employer” with the legislative change (*See mark-up, page 2, § 6-101(9)(H) and § 6-101(10)(B)*);

- Amended to provide that member information may also be disclosed if the disclosure is authorized by statute or necessary for the proper operation and administration of the System and a confidentiality agreement authorizing the disclosure has been executed by ATRS and the person or entity that will receive the information (*See mark-up, page 3, § 6-102(b)(3) and (4)*);
- Amended to provide that the Executive Director’s determination concerning the continued participation of a permissible employer must be reviewed by the Board (*See mark-up, page 5, § 6-109(c)*);
- Amended to clarify that audited financial statements are required unless otherwise provided by the rule (*See mark-up, page 6, § 6-110(b)(2)(B)(i)*);
- Amended to clarify that the Board is required to consider and vote on permissible employer applications for continued participation in ATRS (*See mark-up, page 6, § 6-110(d)(1)*);
- Acts 2023, No. 107, amended the law to clarify when an education-related agency of organization becomes a covered employer of ATRS. The act also amended the law to clarify when an education-related agency or organization will be considered a covered employer for an employee. The rule has been amended to incorporate these legislative changes (*See mark-up, page 7, § 6-111(b)*);
- Acts 2023, No. 52, amended the law to permit ATRS to prorate the number of contract days in order to determine whether a member should be classified as contributory or noncontributory. The rule has also been amended to incorporate this legislative change. **The previous proposed amendment that would have permitted ATRS to appropriately adjust the number of contract days in order to determine whether a member should be classified as contributory or noncontributory has been removed** (*See mark-up, page 9, § 6-116(b)(3)*);
- Amended to clarify that in the case of inactive member who returns to covered employment after July 1, 1999, and is incorrectly reported as noncontributory, the member must begin making contributions to the System on the next July 1 following the member’s first year of service with the covered employer (*See mark-up, page 10, § 6-118(a)(3)*);
- Amended to clarify that in the case of a new member of the System who is incorrectly reported as noncontributory, the member must begin making contributions to the System on the next July 1 following the member’s first year of service with the covered employer (*See mark-up, page 10, § 6-118(b)(3)*);
- In the context of education-related agencies, revised definition of “Administrator” to clarify that the employee must be an active member of the System through his or her employment with an education-related agency that is participating in the System (*See mark-up, page 1, § 6-101(1)(B)*);
- Revised definition of “nonteacher” to clarify that a nonteacher is a member who is not employed as a teacher or administrator (*See mark-up, page 1, § 6-101(5)*);

- New section added to adopt IRS mailbox rule and to clarify that deadlines will be extended to the next business day if the deadline falls on a Saturday, Sunday, or Arkansas State Holiday (*See mark-up, page 3, § 6-103*);
- As previously written, the rule required the employee to be both a vested member and non-vested member of ATRS at the same time in order to be eligible to participate in a PSHE plan. The rule has been amended to correct this error (*See mark-up, page 5, § 6-108(c)(2)(B)*);
- Amended to clarify that a person’s initial status as a contributory or noncontributory member of ATRS will be determined by the law in effect at the time the person became a member of the System (*See mark-up, page 8, § 6-114(a)(1)*); and
- Amended to clarify that only a new employee of a PSHE is eligible for membership in ATRS (*See mark-up, page 5, § 6-108(c)(2)*).

IV. Recommendation

The System recommends that the proposed amendments to Rule 6 be approved as proposed.

Mark-Up Color Code

- Blue – Non-substantive changes by ATRS staff.
- Green – Substantive changes by ATRS staff.
- Red – Required legislative changes.
- Brown – Non-substantive changes where the rule was transferred from one rule to another.
- Yellow highlight – Changes to the rule based on public comments.
- Green highlight – Changes to the rule based on comments from the Joint Committee on Public Retirement and Social Security Programs.

MARK UP

ATRS Rule 6 Membership and Employer Participation

§ 6-101. Definitions.

As used in this rule:

(1) "Administrator" means:

(A) An employee of a covered employer who is employed in one (1) of the following positions:

(i) Public school superintendent, assistant superintendent, principal, or vice-principal;

(ii) Higher education president, chancellor, or director; or

(iii) Director, president, or vice-president of a community college, vocational or technical school, or educational cooperative; or

(B) An employee who is:

(i) An employee of an education-related agency participating in the Arkansas Teacher Retirement System;

(ii) An active member of the system through his or her employment with the education-related agency; and

(iii) Employed in a GS13 grade position, its equivalent, or above;

(2) "Contributory service" means service on which a member makes or made member contributions to the Arkansas Teacher Retirement System;

(3) "Contributory election" means a member's written election to make member contributions to the Arkansas Teacher Retirement System;

(4) "Noncontributory service" means service on which a member does not make member contributions to the Arkansas Teacher Retirement System and for which the member accepts a reduced retirement annuity for the member's years of noncontributory service;

(5) "Nonteacher" means a member who is not employed as a teacher or administrator;

(6) "Organization" means:

(A) A private entity that:

(i) Provides services to a public school district; and

(ii) Has employees who were previously employed by the public-school district and members of ATRS; or

(B) An educational nonprofit corporation licensed and regulated by the Division of Developmental Disabilities Services of the Department of Human Services;

(7) "Preceding system" means a previous reciprocal retirement system of record;

(8) "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 the Arkansas Teacher Retirement System on or after July 1, 2011;

(9) "Reciprocal system" means:

(A) The Arkansas Teacher Retirement System operations as of June 30, 1957, and continued by statutes;

(B) The Arkansas State Highway Employees' Retirement System,

MARK UP

established by Arkansas Code § 24-5-103;

(C) The Arkansas Public Employees' Retirement System established by Arkansas Code § 24-4-103;

(D) The Arkansas State Police Retirement System established by Arkansas Code § 24-6-203;

(E) The Arkansas Judicial Retirement System established by Arkansas Code § 24-8-201;

(F) The Arkansas District Judge Retirement System established by Arkansas Code §§ 24-8-801[repealed] 24-8-824 [repealed];

(G) The Arkansas Local Police and Fire Retirement System provided for under Arkansas Code § 24-10-101; or

(H) An alternate retirement plan **as defined by Arkansas Code § 24-7-202** or an alternate retirement plan for an agency that, through a state reorganization or transformation plan, may be assigned the duties under one (1) or more of the agencies listed in § 6-101(a)(9)(A)-(H);

(10) "State employer" means:

(A) A public employer whose employees are covered under the:

(i) Arkansas Teacher Retirement System;

(ii) Arkansas State Highway Employees' Retirement System (Arkansas Code § 24-5-103);

(iii) Arkansas Public Employees' Retirement System (Arkansas Code § 24-4-103);

(iv) Arkansas State Police Retirement System (Arkansas Code § 24-6-203);

(v) Arkansas Judicial Retirement System (Arkansas Code § 24-8-201); or

(vi) Arkansas District Judge Retirement System (Arkansas Code §§ 24-8-801[repealed] — 24-8-824 [repealed]); or

(B) A public employer that **has an alternate retirement plan as defined by Arkansas Code § 24-7-202**; or

(C) A public employer that is an agency that, through a state reorganization or transformation plan, may be assigned the duties of one (1) or more of the agencies listed in this § 6-101(a)(9)(A)-(B);

(11) "Succeeding system" means the current reciprocal retirement system of record that follows a person's membership in a preceding retirement system; and

(12) "Teacher" means a person employed by a school for the purpose of giving instruction and whose employment requires state teaching licensure.

§ 6-102. Confidentiality of member accounts.

(a) As provided by the Arkansas Teacher Retirement System's Code of Ethics, the system shall keep each member's salary, employment history, retirement account, and other personal data or other information compiled by the system for purposes of establishing and maintaining the member's retirement account confidential.

(b) All member information compiled by the system for the purpose of establishing and maintaining the member's retirement account shall not be disclosed to a third-party unless:

MARK UP

- (1) The member provides the system with his or her written consent;
 - (2) A valid legal process requires the disclosure of the member's information;
 - (3) Disclosure is necessary for the proper operation and administration of the system and a confidentiality agreement authorizing the disclosure has been executed by the system and the person or entity that will receive the information; or
 - (4) Disclosure of the member's information is authorized by statute.
- (c) 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.

§ 6-103. Submission deadlines.

- (a) Unless otherwise provided by the law, rules, or policy applicable to the Arkansas Teacher Retirement System, any application, form, or other document that is required to be submitted to the system by a specified deadline shall be accepted as timely submitted if the application, form, or other document is e-mailed, faxed, or has a postmark that is on or before the submission deadline.
- (b) If a deadline to submit an application, form, or other document to the system falls on a Saturday, Sunday, or Arkansas State Holiday, the deadline shall be extended to the next business day immediately following the Saturday, Sunday, or Arkansas State Holiday.

§ 6-104. Employee membership in another state retirement system.

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

§ 6-105. Erroneous employee membership enrollment.

- (a)(1) An employee who was erroneously enrolled in the Arkansas Teacher Retirement before January 1, 1979, shall continue to be a member of the Arkansas Teacher Retirement System if the employee's contributions were not refunded before July 1, 1979.
- (2) The employee shall:
 - (A) Receive service credit for all paid membership service in the Arkansas Teacher Retirement System and any free service creditable under Acts 1973, No. 427 as amended; and
 - (B) Be entitled to reciprocal service credit as provided by Arkansas Code §§ 24-7-401 — 24-7-408.
- (b) Effective July 1, 1979, the Arkansas Teacher Retirement System shall not:
 - (1) 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
 - (2) Accept an employee who was erroneously enrolled in another state retirement system before January 1, 1979, as a member of the Arkansas Teacher Retirement System unless the employee's contributions were refunded before July 1, 1979.

MARK UP

(c)(1) An employee who is 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 become a member of the eligible retirement system.

(2) If the Arkansas Teacher Retirement System discovers that an employee is erroneously enrolled in another state retirement system on or after January 1, 1979, the Arkansas Teacher Retirement System shall notify both the state employer and employee that the:

(A) Employee is erroneously enrolled in the state retirement system; and

(B) Error may be corrected as provided by Acts 1991, No. 13 or Arkansas Code § 24-2-302 et seq.

§ 6-106. Membership eligibility — Janitors, bus drivers, and cafeteria workers.

An employee shall continue to be a member of the Arkansas Public Employees' Retirement System if the employee:

(1) Was employed before July 1, 1989, as a school janitor, bus driver, or cafeteria worker;

(2) Was enrolled in the Arkansas Public Employees Retirement System under the provision of Acts 1965, No. 63;

(3) Was promoted to a position of school maintenance worker or supervisor, bus mechanic or transportation supervisor, or cafeteria manager, respectively; and

(4) Remains employed in the position to which he or she was promoted.

§ 6-107. Membership eligibility — Nonteaching service employees.

(a) Effective July 1, 2001, an employee whose nonteaching service began before July 1, 1989, and is covered or coverable by the Arkansas Public Employees' Retirement System may elect to be covered by the Arkansas Teacher Retirement System.

(b) An employee shall submit his or her election to be covered by the Arkansas Teacher Retirement System before May 31 on a form provided by the Arkansas Teacher Retirement System.

(c) In accordance with Arkansas Code § 24-7-501, an employee's timely submitted election to be covered by the Arkansas Teacher Retirement System is effective on July 1 of the following year.

§ 6-108. Membership eligibility — College plans.

(a)(1) A member of the Arkansas Teacher Retirement System who was employed by a nonmandatory employer before July 1, 2011, may continue to participate in the system instead of an alternative program offered by the nonmandatory employer if the member continues providing consistent service to the nonmandatory employer.

(2) A nonmandatory employer shall be considered a post-secondary or higher education employer or PSHE employer if the nonmandatory employer enrolls a new eligible member with the system on or after July 1, 2011.

(3) If an eligible nonmandatory employer college elects to offer participation in the Arkansas Teacher Retirement System to its employees, the nonmandatory employer shall report information regularly to the system, on forms approved by the system, as required or permitted by the law applicable to the system.

(b)(1) A PSHE employer may elect to offer participation in the Arkansas Teacher

MARK UP

Retirement System to its employees by fulfilling the requirements of Arkansas Code § 24-7-1605.

(2) In addition to completing and submitting the standard reporting forms required by the system, a PSHE Employer shall provide supplemental reports on any form required, approved, and adopted by the Board of Trustees of the Arkansas Teacher Retirement System.

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

(2) A new employee of a PSHE employer who is hired after July 1, 2011, may participate in a PSHE plan if:

(A) The employee is benefits-eligible as determined by the PSHE employer;

(B) The employee is either:

(i) A vested member of the system at the time of initial employment;

or

(ii) A non-vested member of the system who meets the requirements of a less restrictive PSHE plan adopted by the specific PSHE employer; and

(C) The employee signs an irrevocable PSHE plan participation form provided by the system.

(3) A PSHE plan employee shall remain a member of the system as long as he or she is employed by a PSHE employer.

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

§ 6-109. Employer participation — Review of employer participation.

(a) This section applies to an employer that participates in the Arkansas Teacher Retirement System as provided under Arkansas Code § 24-7-202.

(b) Every five (5) years from the effective start date of an employer's participation in the system, the Executive Director of the Arkansas Teacher Retirement System shall review the employer's participation in the system to ensure that the employer meets both federal and state requirements for participation and continued participation in the system.

(c) The executive director's determination concerning whether or not an employer meets the requirements for continued participation in the system shall be presented to the Board of Trustees of the Arkansas Teacher Retirement System for review and appropriate action by the board.

§ 6-110. Employer participation — Application for participation.

(a) An employer that would prefer to participate in and have its employees become members of the Arkansas Teacher Retirement System may submit a written application to the Executive Director of the Arkansas Teacher Retirement System.

(b) An employer's application for participation in the system shall:

(1) Specify a proposed effective date for participation in the system; and

(2) 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:

MARK UP

(i) Most recent three (3) years' annual audited financial statements, including balance sheets, financial statements, and statements of cash flows; or

(ii) 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 the 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)(1) After the system reviews the employer's application and accompanying information and materials, the system shall:

(A) Determine whether an Internal Revenue Service ruling or IRS Ruling should be requested concerning whether or not the participation of the employees of the employer jeopardizes the system's status as a governmental plan; and

(B) Request any necessary additional information and statements from the employer if the system determines that an IRS Ruling should be requested.

(2) The employer shall provide the system with any additional information and statements requested by system in relation to the IRS Ruling.

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

(d)(1) The Board of the Arkansas Teacher Retirement System shall consider and vote on an application for employer participation or continued participation.

(2) 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.

§ 6-111. Employer participation — Education-related agencies or organizations.

(a) A person who is employed by an education-related agency or organization is eligible to become a member of the Arkansas Teacher Retirement System if:

(1) The following applies to the person:

(A) The person is employed in a position with an education-related agency or organization;

(2) The person's employment is related to:

MARK UP

- (A) Training public school employees or school board members;
 - (B) Teaching public school students; or
 - (C) Adult education programs;
 - (3) The person's employment is unrelated to private schools;
 - (4) The person is or has been a member of the system for a minimum of five (5) years; and
 - (5) The person elects to become or remain a member of the system;
- (2) The Board of the Arkansas Teacher Retirement System determines that the participation of the employees employed by the education-related agency or organization will not:
- (A) Impair the system's legal status, including:
 - (i) The system's tax-qualified and governmental plan status under the Internal Revenue Code, 26 U.S.C. § 1 et seq.; and
 - (ii) The system's governmental plan status under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq.;
 - (iii) Subject the system to additional federal requirements;
 - (iv) Have a substantial adverse impact on the system's actuarial soundness; and
 - (3) The education-related agency or organization:
 - (A) Elects to participate in the system;
 - (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.
- (b) An education-related agency or organization shall:
- (1) Become a covered employer at the time that an employee elects to become or remain a member of the system; and
 - (2) Be considered a covered employer only for each employee who elects to become or remain a member of the system.

§ 6-112. Employer participation — Private providers.

Effective July 1, 1997, if a public school district privatizes any of its services, a person 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 the Arkansas Teacher Retirement System may elect to remain a member of the system if the:

- (1) The Board of the Arkansas Teacher Retirement System determines that the participation of employees hired by the private provider will not:
 - (A) Impair the system's legal status, including:
 - (i) The system's tax-qualified and governmental plan status under the Internal Revenue Code, 26 U.S.C. § 1 et seq.; and
 - (ii) The system's governmental plan status under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq.;
 - (B) Subject the system to additional federal requirements; or
 - (C) Have a substantial adverse impact on the system's actuarial soundness;
- and
- (2) Private provider assumes responsibility for:

MARK UP

(A) Required employer contributions; and
(B) Fees for obtaining IRS Rulings or Employee Retirement Income Security Act of 1974 opinions.

§ 6-113. Employer participation — Educational nonprofit corporations.

Effective July 1, 1997, a person who is employed by a nonprofit corporation is eligible to become a member of the Arkansas Teacher Retirement System if:

(1) The following applies:

(A) The person 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;

(B) The person's employment is related to:

(i) Training public school employees or school board members;
Teaching public school students; or

(ii) Adult education programs; and

(C) The person's employment is unrelated to private schools;

(2) The Board of the Arkansas Teacher Retirement System determines that the participation of employees employed by the educational nonprofit corporation will not:

(A) Impair the system's legal status, including:

(i) The system's tax-qualified and governmental plan status under the Internal Revenue Code, 26 U.S.C. § 1 et seq.; and

(ii) The system's governmental plan status under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq.;

(B) Subject the system to additional federal requirements; or

(C) Have a substantial adverse impact on the system's actuarial soundness;

and

(3) Nonprofit corporation:

(A) Elects to participate in the system;

(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.

§ 6-114. Contributory election.

(a)(1) A person's initial status as a contributory or noncontributory member of the Arkansas Teacher Retirement System shall be determined by the law in effect at the time the person became a member of the system.

(2) All service rendered before July 1, 1986, is contributory service.

(b)(1) A member's contributory status is irrevocable once the member becomes a contributory member of the system.

(2) A contributory member shall not elect to become a noncontributory member.

(c) A contributory election is valid if the contributory election is:

(1) Made on an election form provided by the system; and

(2) Signed by both the member and the covered employer.

(d)(1) 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.

MARK UP

(2) 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.

§ 6-115. Contributory election — Noncontributory members.

(a)(1) A noncontributory member may make a contributory election.

(2) 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 is effective immediately.

(3) If 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 is effective July 1 of the next fiscal year.

(4) All service rendered after a contributory election is filed with the Arkansas Teacher Retirement System shall be contributory.

(5) A noncontributory member's contributory election that is filed with the system is irrevocable.

(b) An inactive member shall make contributions on his or her full salary if the inactive member:

(1) Was contributory and earned a maximum salary of seven thousand eight hundred dollars (\$7,800); and

(2) Returns to work on or after July 1, 1995.

(c)(1) An inactive member or rescinding retiree may make a contributory election if the inactive member or rescinding retiree:

(A) Was noncontributory; and

(B) Reenters the Arkansas Teacher Retirement System after June 30, 2007.

(2) 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 the system.

§ 6-116. Contributory election — Member contracts.

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

(b)(1) A member under contract for one hundred eighty-five (185) days or more shall make contributions to the Arkansas Teacher Retirement System.

(2) A member under contract for one hundred eighty-four (184) days or less may make a contributory election.

(3) If a member enters into a contract with a covered employer after the fiscal year starts, the system may prorate the number of contracted days to determine whether the member should be classified as a contributory member or a noncontributory member who may make an election to become a contributory member of the system.

(c)(1) 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 the system.

(2) An active member's change of status from noncontributory to contributory due to his or her status change from nonteacher to teacher or administrator is effective on the first day of the next fiscal year if the active member:

MARK UP

(A) 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

(B) Is under contract for one hundred eighty-five (185) days or more.

§ 6-117. Contributory election — State agency employees.

(a) A full-time employee of a state agency covered by the Arkansas Teacher Retirement System shall be contributory.

(b)(1) A part-time employee of a state agency covered by the system shall be noncontributory.

(2) A part-time employee of a state agency covered by the system may make a contributory election.

§ 6-118. Contributory election — Employer reporting errors.

(a)(1) A member shall be considered to be noncontributory for the first year of service with a covered employer if the member:

(A) Was an inactive member who returned to covered employment as an active member after July 1, 1999; and

(B) Is reported incorrectly as noncontributory by his or her covered employer for his or her first year of service with the covered employer.

(2) The Arkansas Teacher Retirement System shall notify the covered employer of the member's contributory status.

(3) The member shall begin making contributions to the system effective the next July 1 following the member's first year of service with the covered employer.

(b)(1) A member shall be considered to be noncontributory for his or her first year of service with a covered employer if the member is a new member of the system and incorrectly reported as noncontributory by his or her covered employer for the first year.

(2) The system shall notify the covered employer of the member's contributory status.

(3) The member shall begin making contributions to the system effective the next July 1 following the member's first year of service with the covered employer and the covered employer shall correctly report the member as contributory.

§ 6-119. Reciprocal service credit.

(a) A member who leaves a position covered by the Arkansas Teacher Retirement System, becomes employed by a reciprocal system, and files a reciprocal service agreement shall become an inactive member of the Arkansas Teacher Retirement System 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.

(b) Minimum benefits under Acts 1965, No. 488, Arkansas Code § 24-2402(5)(E), as amended, for reciprocal service shall not apply unless a member has five (5) or more years of credited service in the Arkansas Teacher Retirement System.

(c)(1) If the Arkansas Teacher Retirement System is a member's preceding system, the Arkansas Teacher Retirement System shall not pay annuity benefits to the member under reciprocity unless the member:

(A) Attains the normal retirement age; or

MARK UP

(B) Leaves his or her employment with his or her state employer.

(2) If the Arkansas Teacher Retirement System 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.

(3) 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.

(4) The Arkansas Teacher Retirement System 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.

§ 6-120. Reciprocal service credit — Calculation of service credit.

If a member of the Arkansas Teacher Retirement System 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, the Arkansas Teacher Retirement System shall credit service as follows:

(1) If credit by the reciprocal system is less than three (3) months, the Arkansas Teacher Retirement System shall credit service for one (1) year;

(2) If credit by the reciprocal system is three (3) or more months but less than six (6) months, the Arkansas Teacher Retirement System shall 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, the Arkansas Teacher Retirement System shall credit service for one-half (1/2) year; and

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

§ 6-121. Reciprocal service credit — Contributions and repayments.

(a) While an employee participates in a reciprocal system, back contributions, additional contributions, and repayment of refund payments made to the Arkansas Teacher Retirement System shall be made in accordance with the payment method provisions of ATRS Rule 8.

(b) Employer pick-up is prohibited while the employee works for an employer that is not a covered employer of the Arkansas Teacher Retirement System.

§ 6-122. Reciprocal service credit — Concurrent service.

(a) Unless the reciprocal system is the Arkansas Public Employees' Retirement System or an alternate retirement plan, beginning July 1, 2013, the Arkansas Teacher Retirement System shall allow a member who earns concurrent service in both the Arkansas Teacher Retirement System and a reciprocal system to receive full service credit in the Arkansas Teacher Retirement System without reduction of service credit due to the concurrent service.

(b) The Arkansas Teacher Retirement System shall not recognize concurrent service added to a member's credited service in the Arkansas Teacher Retirement System that, for the purpose of vesting, retirement eligibility, or calculating final average salary, either:

MARK UP

(1) Credits the member with more than one (1) year of credited service for a fiscal year; or

(2) Combines salary earned in the Arkansas Teacher Retirement System and a reciprocal system in a fiscal year.

(c)(1) A member may waive all or part of the concurrent service credited to him or her in the Arkansas Teacher Retirement System 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 the Arkansas Teacher Retirement System;

(B) The member acknowledges that the waiver cancels his or her concurrent service credit in the Arkansas Teacher Retirement System; and

(C) The member submits to the Arkansas Teacher Retirement System a concurrent service credit waiver form approved by the Arkansas Teacher Retirement System.

(2) If a member waives all or part of the concurrent service credited to him or her in the Arkansas Teacher Retirement System and has the concurrent service credited to him or her under a reciprocal system, the Arkansas Teacher Retirement System may refund the employer-accrued contributions and employee-accrued contributions.

§ 6-123. Reciprocal service credit — Alternate retirement plans.

(a) A member of the Arkansas Teacher Retirement System may establish reciprocal service credit from an alternate retirement plan if he or she completes and submits a request to establish the reciprocal service credit on a form approved by the Arkansas Teacher Retirement System.

(b) Distributions from an alternate retirement plan may prevent reciprocal service from being established if the Arkansas Teacher Retirement System 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.

§ 6-124. Reciprocal service credit — Arkansas Public Employees' Retirement System.

From July 1, 1991, until December 31, 1991, an active member of the Arkansas Public Employees' Retirement System may establish reciprocity between the Arkansas Public Employees' Retirement System and the Arkansas Teacher Retirement System 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:

(1) Was an active member of the Arkansas Teacher Retirement System before January 1, 1978; and

(2) Became a member of the Arkansas Public Employees' Retirement System within thirty (30) days of leaving the Arkansas Teacher Retirement System.

§ 6-125. Reciprocal service credit — Arkansas Rehabilitation Services.

(a) Effective July 1, 1993, for a ninety (90) day period, an employee of the Arkansas Rehabilitation Services may transfer his or her membership from the Arkansas Public Employees' Retirement System to the Arkansas Teacher Retirement System under Acts

MARK UP

1993, No. 574.

(b) An employee who transfers his or her membership from the Arkansas Public Employees' Retirement System to the Arkansas Teacher Retirement System shall establish reciprocity between the two (2) systems and Acts 1977, No. 793 shall not apply to the employee.

§ 6-126. Reciprocal service credit — Department of Human Services.

(a) The law applicable to the Arkansas Teacher Retirement System 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:

(1) Was an employee of the Department of Human Services and became a member of the Arkansas Public Employees' Retirement System under the provisions of Acts 1977, No. 793, as amended; and

(2) Left employment with the Department of Human Services and became employed in a position covered by the Arkansas Teacher Retirement System.

(b) A member meeting the description of § 6-125(a) may establish reciprocity under Acts 1965, No. 488, as amended.

§ 6-127. Reciprocal service credit — Effective date of benefits.

(a)(1) If the Arkansas Teacher Retirement System is a member's preceding system, 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 retirement application was filed, whichever is later.

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

(3)(A) 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.

(B) A member is entitled to a deferred annuity benefit if the member:

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

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

(b)(1) If the Arkansas Teacher Retirement System is the member's preceding system, the member is eligible to apply for retirement benefits without leaving employment with his or her last state employer upon attaining the normal retirement age.

(2) The member's annuity 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 is filed, whichever is later.

(3) The Arkansas Teacher Retirement System shall use only 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.

(c)(1) A member is eligible to apply for disability retirement benefits from each reciprocal system in which the member has credited service according to the rules for eligibility promulgated by that reciprocal system.

(2) The member's disability retirement benefits payable by the preceding reciprocal

MARK UP

system shall:

(A) Begin the first day of the month following the month in which the member's disability retirement application is filed with the preceding system; and

(B) Not begin before the date on which the member leaves employment with his or her last state employer.

§ 6-128. Reciprocal service credit — Survivor annuity benefits.

(a) 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.

(b)(1) The Arkansas Teacher Retirement System shall prorate minimum benefits payable to a survivor with other reciprocal systems that have a minimum benefit provision in their plans.

(2) 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.

(c) If the reciprocal system is an alternate retirement plan, survivor annuity benefits shall be contingent on whether the:

(1) Alternate retirement plan provides survivor annuity benefits; and

(2) Member selected survivor annuity benefits as a benefit under the alternate retirement plan.

Contributory and Noncontributory Service Chart by Year of Entry into System

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

<u>All Members</u>		
<u>1937 - 1986</u>	<u>All Members</u>	<u>Contributory</u>
<u>1986 - 1991</u>	<u>All Members</u>	<u>Contributory unless elect Noncontributory</u>
<u>1991 - 1999</u>	<u>All Members</u>	<u>Noncontributory unless elect Contributory</u>
<u>School District Employees</u>		
<u>1999 - 2007</u>	<u>Active</u>	<u>One-time election to be Contributory or Noncontributory, no election made by 7/1/2000, status on 6/30/2000</u>

MARK UP

	<u>Inactive</u>	<u>One-time election to be Contributory or Noncontributory upon reentering system, no election then enrolled in the plan that he or she was enrolled in before reentering ATRS</u>
	<u>New</u>	<u>Contract one hundred eighty-one (181) days or more - Contributory</u> - <u>Contract one hundred eighty (180) days or less - Noncontributory, may elect Contributory, election must be made one (1) year from hire date</u> - <u>No contract, member must be noncontributory</u>
<u>2005 - 2021</u>	<u>Nonteacher to Teacher or Administrator</u>	<u>Contract one hundred eighty-one (181) days or more - Contributory. If position change happens during the year, election is effective first of next fiscal year</u> - <u>All Noncontributory members may elect Contributory</u>
<u>2007 - 2021</u>	<u>All Members</u>	<u>May elect Contributory</u>
	<u>New</u>	<u>Contract one hundred eighty-one (181) days or more - Contributory</u> - <u>Contract 180 days or less –</u> • <u>Noncontributory, may elect Contributory</u> • <u>No contract — Noncontributory, may elect Contributory</u>
	<u>Inactive</u>	<u>May elect Contributory</u>
<u>2021</u>	<u>Nonteacher to Teacher or Administrator</u>	<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> <u>All Noncontributory members may elect Contributory</u>
<u>2021 -</u>	<u>All Members</u>	<u>May elect Contributory</u>

MARK UP

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

Authority: 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.

History

<u>Adopted:</u>	<u>August 11, 1998</u>	<u>6-10</u>
<u>Amended:</u>	<u>June 15, 2004</u>	<u>6-1</u>
<u>Amended:</u>	<u>July 18, 2005</u>	<u>6-1, 6-2, 6-10</u>
	<u>April 26, 2007</u>	<u>6-1, 6-2, 6-11</u>
	<u>July 1, 2011</u>	<u>(Emergency) 6-1, 6-12</u>
<u>Adopted:</u>	<u>August 8, 2011</u>	<u>6-1, 6-12</u>
<u>Effective:</u>	<u>November 11, 2011</u>	<u>6-1, 6-12</u>
<u>Adopted by Board:</u>	<u>April 2, 2012</u>	<u>6-1</u>
<u>Amended:</u>	<u>May 2, 2012</u>	<u>6-1</u>
<u>Effective:</u>	<u>September 4, 2012</u>	<u>6-1</u>
<u>Amended:</u>	<u>May 2, 2012</u>	<u>6-2</u>

MARK UP

<u>Effective:</u>	<u>September 4, 2012</u>	<u>6-2</u>
<u>Approved by Board:</u>	<u>July 26, 2013</u>	<u>6-2, 6-12</u>
<u>Amended:</u>	<u>October 9, 2013</u>	<u>6-2, 6-12</u>
<u>Effective:</u>	<u>November 8, 2013</u>	
<u>Approved by Board:</u>	<u>February 5, 2018</u>	<u>6-2</u>
<u>Effective:</u>	<u>February 16, 2018</u>	<u>6-2</u>
<u>Effective:</u>	<u>May 28, 2020</u>	<u>Rule 6</u>
<u>Effective:</u>	<u>May 20, 2022</u>	<u>Rule 6</u>
<u>Effective:</u>	<u>TBD</u>	<u>Rule 6</u>

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT Legal
BOARD/COMMISSION Arkansas Teacher Retirement System
PERSON COMPLETING THIS STATEMENT Jennifer Liwo
TELEPHONE NO. (501) 682-1517 **EMAIL** jenniferl@artrs.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents. Please attach additional pages, if necessary.

TITLE OF THIS RULE Rule 6: Membership and Employer Participation

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 no, please explain:

(a) how the additional benefits of the more costly rule justify its additional cost;

(b) the reason for adoption of the more costly rule;

(c) whether the reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and

(d) whether the reason for adoption of the more costly rule is within the scope of the agency's statutory authority, and if so, how.

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? *n/a*

Current Fiscal Year

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

Total \$0.00 _____

Next Fiscal Year

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

Total \$0.00 _____

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

Current Fiscal Year

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

Total \$0.00 _____

Next Fiscal Year

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

Total \$0.00 _____

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

Current Fiscal Year

\$ 0.00 _____

n/a

Next Fiscal Year

\$ 0.00 _____

6. What is the total estimated cost by fiscal year to a state, county, or 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

\$ 0.00 _____

n/a

Next Fiscal Year

\$ 0.00 _____

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes No

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

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



Public Comments

Proposed Rule 6 – Membership and Employer Participation

1. Page 5, § 6-108(c)(2).

- a. **ATRS Staff Comment:** Should § 6-108(c)(2) read “**A new employee of a PSHE**” instead of “**An employee of a PSHE employer**”?
- b. **Response:** Yes. This recommend change aligns with Ark. Code Ann. § 24-7-1605(a)(2). The rule has been amended.

2. Page 9, § 6-116(b)(3).

- a. **BLR Comment:** In this section, which concerns member contracts for contributory election, is there a meaningful difference between the terms “prorate” and “adjust”, with respect to determining the number of contracted days a member is credited for?
- b. **Response:** Yes. “Adjust” will allow ATRS to appropriately change the number of contracted days used to determine contributory or noncontributory status without being limited to only using a proration method. No changes to the rule have been made based on this comment.