

**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? Calculation of Final Average Salary (Rule 7-1)

2. What is the subject of the proposed rule? States Rules for the calculation of final average salary for use in retirement benefits

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If yes, a copy of the repealed rule is to be included with your completed questionnaire.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.
§ 24-7-601(a), § 24-7-305(b)(1)

7. What is the purpose of this proposed rule? Why is it necessary?
To bring it into compliance as to be consistent with Acts 521, 555, and 720 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 Calculation of Final Average Salary (Rule 7-1)

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 7-1 Calculation of Final Average Salary

This Rule change is needed to comply with Acts 521, 555, and 720 of 2013. Act 521 narrows the definition of salary to wages earned. Act 555, as discussed above, deals with the calculation of final average salary that involves salary from a reciprocal system. Act 720 allows a member's current year's salary to be used in the calculation of final average salary. Specific changes as referenced by the Rule page number are listed as follows:

7-1-1 Language is stricken to avoid conflict with the Arkansas Code, which defines salary and final average salary under § 24-7-202 and 24-7-736. The paragraphs are renumbered to conform to a consistent numbering system utilized throughout the ATRS Rules.

7-1-2 Language is stricken to avoid conflict with § 24-7-736, that describes the calculation of final average salary. Underlined language adds that specific Code reference. The paragraphs are renumbered to conform to a consistent numbering system utilized throughout the ATRS Rules.

7-1-3 IV. 6. Stricken language is slightly inconsistent and repetitive with the language of § 24-7-736(e), which allows "the system", as opposed to "the Board" to settle any dispute concerning the employee's salary.

RULE 7-1

CALCULATION OF FINAL AVERAGE SALARY

A.C.A. § 24-7-202, A.C.A. § 24-7-602, and A.C.A. § 24-7-705, and
A.C.A. § 24-7-736

(SEE ALSO POLICY NOS. 7-3 AND 7-4.)

I. DEFINITIONS

- ~~1. **Salary** means the remuneration paid to a member by an ATRS participating employer on which the employer withholds federal income tax. This includes all salary "picked up" by the employer including employee contributions to a qualified retirement plan, deferred compensation plan, or cafeteria plan. For remuneration paid other than in cash, salary is the amount reported to the Internal Revenue Service for income tax purposes.~~
- ~~2. **Final Average Salary** means the average of the salaries paid to a member by a participating employer during the fiscal year ending June 30 used in calculating a member's retirement annuity under A.C.A. § 24-7-705.~~
- 3 **A. Participating Employer** means an employer who participates in the Arkansas Teacher Retirement System whose employees are eligible for membership under A.C.A. § 24-7-501 or other applicable law.
- 4 **B. Partial Year Service Year** means service in a fiscal year that constitutes less than a full year of service due to less than the required service days at an ATRS employer due to a reduction in service credit caused by an adjustment in ATRS service credit because reciprocal service credit occurs in the same fiscal year, due to a member retiring prior to the end of a fiscal year, or due to any other law or policy that provides a member less than a full year of service in a fiscal year.

II. REGULATIONS

- ~~1. The Board of Trustees may set the number of years used in calculating a member's final average salary at no less than three (3) years or more than five (5) years.~~
- 2 **A.** For purposes of calculating a member's final average salary, the System ATRS will include salary received from all participating employers during a fiscal year.
- ~~3. When calculating final average salary, the following limits shall apply:~~

- ~~A. A. The System shall rank the member's highest salary years from lowest to highest. The lowest salary year shall be considered the initial base year. Except for the base year, the highest salary years shall be reduced to the extent either exceeds 120% of the prior year's salary, subject to the limitations in ACA § 24-7-202(27)(e).~~
- ~~B. If a salary year used in calculating final average salary does not constitute salary for a full service year due to the partial year salary being greater than the full service year salary that would otherwise be applied in the final average salary calculation, then the reduction, if any, provided for in 3(A) above shall apply.~~
- ~~BC. However, if a salary year used in calculating final average salary does not constitute salary for a full service year due to the member not having enough full service years for the final average salary calculation, then, the next highest salary year shall not be reduced although it may exceed the compared salary by 120% or more the next highest or highest year.~~
- 4 B. For purposes of determining if a salary year constitutes a full service year, ~~the following shall be excluded from the limits under No. 3 above A.C.A § 24-7-736:~~
- Aj. Any salary year which constitutes member service during two (2) or fewer quarters in a fiscal year; or
 - Bii. Any salary year that constitutes less than one (1) year of service credit under the schedule set forth in ATRS Policy No. 7-2.
- ~~5. If a member is retiring with a retirement effective date other than October 1, January 1, April 1, or July 1, no salary paid to a member for the last year worked shall be counted in calculating a member's final average salary.~~
- ~~6. C. Regardless of any provision in statute or regulation to the contrary, salary or other compensation paid which exceeds the limitations set forth in Section 401(a)(17) of the Internal Revenue Code shall be disregarded. The limitation on compensation for "eligible employees" shall not be less than the amount allowed under the System in effect on July 1, 1993. For this purpose, an "eligible employee" is an individual who was a member of the System before the first plan year beginning after December 31, 1995.~~
- ~~7. D. If a conflict exists between the statute or policy governing the treatment of a member's salary between the participating employer's laws or policies relating to compensation and the calculating of a member's final average salary for benefits, the System's laws and regulations shall control.~~

IV. RULES (Amended by Act 146 of 2005, and Act 1325 of 2009).

4A. Effective April 1, 1998, when calculating a member's final average salary, the System shall calculate final average salary using the three (3) years in which the member received the highest salary from a participating employer subject to the foregoing limitations.

2B. The final average salary used for members with reciprocal service shall be the highest salary years credited by either the ATRS participating employer or the reciprocal system under AGA A.C.A. § 24-7-402.

3C. For members who are retiring and who are employed in agencies or other institutions that use the state 26-week payroll, employers should report to ~~Teacher Retirement~~ ATRS the salary, contributions, and actual days worked through the current year payroll period. Contributions should not be withheld on any salary earned after the close of the current year's payroll, nor should any salary or days of service be reported for that period.

4D. For members who are retiring and who are employed by employers using a fiscal year ending June 30, employers should report to ~~the System~~ ATRS the salary contributions, and actual days worked through the current fiscal years ending June 30. Contributions should not be withheld on any salary earned after the end of the current fiscal year, no should any salary or days of service be reported for that period.

5E. For retiring members, employee contributions remitted on salary paid after the end of the current fiscal year or current year payroll period, whichever applied, will be refunded as promptly as possible.

~~6. In case of any dispute concerning a member's final average salary, the Board shall have the authority to decide the dispute.~~

Amended: August 11, 1998
July 18, 2005
June 16, 2009 (Emergency)
October 5, 2009 (Permanent)
July 1, 2011 (Emergency)

Adopted: August 8, 2011

Effective: November 11, 2011

Approved by Board: July 26, 2013

Amended:

Effective:

RULE 7-1

CALCULATION OF FINAL AVERAGE SALARY

A.C.A. § 24-7-202, A.C.A. § 24-7-602, A.C.A. § 24-7-705, and
A.C.A. § 24-7-736

(SEE ALSO POLICY NOS. 7-3 AND 7-4.)

I. DEFINITIONS

- A. **Participating Employer** means an employer who participates in the Arkansas Teacher Retirement System whose employees are eligible for membership under A.C.A. § 24-7-501 or other applicable law.

- B. **Partial Year Service Year** means service in a fiscal year that constitutes less than a full year of service due to less than the required service days at an ATRS employer due to a reduction in service credit caused by an adjustment in ATRS service credit because reciprocal service credit occurs in the same fiscal year, due to a member retiring prior to the end of a fiscal year, or due to any other law or policy that provides a member less than a full year of service in a fiscal year.

II. REGULATIONS

- A. For purposes of calculating a member's final average salary, ~~the System~~ ATRS will include salary received from all participating employers during a fiscal year.

- B. For purposes of determining if a salary year constitutes a full service year, the following shall be excluded from the limits under A.C.A § 24-7-736:
 - i. Any salary year which constitutes member service during two (2) or fewer quarters in a fiscal year; or

 - ii. Any salary year that constitutes less than one (1) year of service credit under the schedule set forth in ATRS Policy No. 7-2.

- C. Regardless of any provision in statute or regulation to the contrary, salary or other compensation paid which exceeds the limitations set forth in Section 401(a)(17) of the Internal Revenue Code shall be disregarded. The limitation on compensation for "eligible employees" shall not be less than the amount allowed under the System in effect on July 1, 1993. For this purpose, an "eligible employee" is an individual who was a member of the System before the first plan year beginning after December 31, 1995.

- D. If a conflict exists between the statute or policy governing the treatment of a member's salary between the participating employer's laws or policies relating to compensation and the calculating of a member's final average salary for benefits, the System's laws and regulations shall control.

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- A. Effective April 1, 1998, when calculating a member's final average salary, the System shall calculate final average salary using the three (3) years in which the member received the highest salary from a participating employer subject to the foregoing limitations.
- B. The final average salary used for members with reciprocal service shall be the highest salary years credited by either the ATRS participating employer or the reciprocal system under A.C.A. § 24-7-402.
- C. For members who are retiring and who are employed in agencies or other institutions that use the state 26-week payroll, employers should report to ATRS the salary, contributions, and actual days worked through the current year payroll period. Contributions should not be withheld on any salary earned after the close of the current year's payroll, nor should any salary or days of service be reported for that period.
- D. For members who are retiring and who are employed by employers using a fiscal year ending June 30, employers should report to ATRS the salary contributions, and actual days worked through the current fiscal years ending June 30. Contributions should not be withheld on any salary earned after the end of the current fiscal year, nor should any salary or days of service be reported for that period.
- E. For retiring members, employee contributions remitted on salary paid after the end of the current fiscal year or current year payroll period, whichever applied, will be refunded as promptly as possible.

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