

**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? Benefit Restoration Plan and Trust (Rule 15-1)

2. What is the subject of the proposed rule? To provide benefits for members to the maximum extent allowed by law

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.

The attached summary explains the new Rule.

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If yes, a copy of the repealed rule is to be included with your completed questionnaire.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.

Act 109 of 2013; § 24-7-305(b)(1)

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

To allow members to received benefits that would otherwise be prohibited under the limitation of 415(b) of the Interl Revenue Code.

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 Benefit Restoration Plan (Rule 15-1)

- 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

Next Fiscal Year

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

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 15-1 Benefit Restoration Plan and Trust

This is a new rule authorized by Act 109 of 2013. Act 109 provides that ATRS should take action to minimize the impact of IRS regulations where those regulations have become obsolete or inapplicable, and for ATRS to take necessary action to pay all benefits earned by members. The benefit restoration plan trust is available to ensure that ATRS has an authorized method of paying all benefits due to a member while still protecting the tax qualified status of ATRS.

RULE 15-1

BENEFIT RESTORATION PLAN AND TRUST

A.C.A. § 24-7-305

I. ESTABLISHMENT OF PLAN AND TRUST

- A. Establishment Of Plan and Trust. The Arkansas Teacher Retirement System Benefit Restoration Plan and Trust ("this Plan") is established effective upon final adoption by the Board pursuant to authority granted by Ark. Code Ann. §24-7-305.
- B. Purpose.
- i. The purpose of this Plan is solely to restore the part of a Participant's Retirement Benefit that would otherwise have been payable by the Arkansas Teacher Retirement System ("ATRS") except for the limitations of Code Section 415(b). This Plan is intended to be a "qualified governmental excess benefit arrangement" within the meaning of Code Section 415(m)(3) and must be interpreted and construed consistently with that intent. This Plan is deemed a portion of the Employers' qualified plan solely to the extent required under, and within the meaning of, Code Section 415(m)(3) and Ark. Code Ann. §24-7-305.
 - ii. This Plan is an "exempt governmental deferred compensation plan" described in Code Section 3121(v)(3). Code Sections 83, 402(b), 457(a) and 457(f)(1) do not apply to this Plan. ATRS will not hold any assets or income under this Plan in trust for the exclusive benefit of participants or their beneficiaries.

II. DEFINITIONS AND CONSTRUCTIONS

- A. Definitions. Definitions are exclusive to this plan unless stated otherwise. When a word or phrase is capitalized herein, it has the same meaning as defined below:
- i. **Actuary** means the actuary selected by the Board from time to time.
 - ii. **Administrator** means ATRS and includes any person with whom ATRS contracts to provide services to the Plan.

- iii. **ATRS** means the Arkansas Teacher Retirement System.
- iv. **Beneficiary** means an individual receiving joint and survivor benefits from ATRS.
- v. **Benefit Restoration** means the benefit determined in accordance with Section 4.01 of this Plan.
- vi. **Board** means the Board of Trustees of ATRS.
- vii. **Code** means the Internal Revenue Code as is defined under Ark. Code Ann. §24-7-202.
- viii. **Employer** means any public school, other educational agency, or other eligible employer participating in ATRS as provided under Ark. Code Ann. §24-7-202(13).
- ix. **Participant** means a Retiree or Beneficiary who is entitled to benefits under this Plan.
- x. **Plan** means the Arkansas Teacher Retirement System Benefit Restoration Plan and Trust established pursuant to Ark. Code Ann. §24-7-305.
- xi. **Plan Year** means the twelve calendar month period ending on December 31 of each year.
- xii. **Retiree** means a member of ATRS who is receiving a Retirement Benefit from ATRS.
- xiii. **Retirement Administrator** means ATRS.
- xiv. **Retirement Benefit** means the amount of retirement income payable to a Retiree of ATRS, or the benefit payable to a Beneficiary, without regard to any limitations on that retirement income or benefit under Code Section 415(b).
- xv. **Retirement Fund** means the trust fund established pursuant to Act 266 of 1937, approved March 17, 1937.
- xvi. **State** means the State of Arkansas.

xvii. Trust Fund means the trust fund established pursuant to Section 6.1, below, which fund constitutes a valid trust under the law of the State.

xviii. Trustees mean the members of the Board.

B. Construction.

- i. Words used in this Plan in the masculine gender include the feminine gender where appropriate, and words used in this Plan in the singular or plural include the plural or singular where appropriate.
- ii. Whenever any actuarial present value or actuarial equivalency is to be determined under the Plan to establish a benefit, it will be based on reasonable actuarial assumptions approved by the Board in its sole discretion, and will be determined in a uniform manner for all similarly situated Participants.

III. PARTICIPATION

All Retirees and Beneficiaries of ATRS are eligible to participate in this Plan if their Retirement Benefits from ATRS for a Plan Year are or have been since January 1, 2013, limited by Code Section 415(b). The Board determines for each Plan Year which Retirees and Beneficiaries are eligible to participate in the Plan. Participation in the Plan begins each Plan Year once a Retiree or Beneficiary has a Benefit Restoration in that Plan Year. Participation in the Plan ends for any portion of a Plan Year in which the Retirement Benefit of a Retiree or Beneficiary is not limited by Code Section 415(b) or when all benefit obligations under the Plan to the Retiree or Beneficiary have been satisfied.

IV. PAYMENT OF BENEFITS

- A. Benefit Amount. A Participant in the Plan will receive a benefit equal to the amount of retirement income that would have been payable to, or with respect to, a Participant by ATRS that could not be paid because of the application of the limitations on his retirement income under Code Section 415(b). A Benefit Restoration under the Plan will be paid only if and to the extent the Participant is receiving Retirement Benefits from the Retirement Fund.
- B. Time for Payment: Form of Benefit. The Benefit Restoration will be paid at the same time and in the same manner as the Retirement Benefit payable

under ATRS, and the timing of the Benefit Restoration must take into account the existence of monthly deductions from the Retirement Benefit. No election is provided at any time to the Participant, directly or indirectly, to defer compensation under this Plan.

- C. Vesting. A Participant's right to a Restoration Benefit shall be vested as of the Participant's vesting under the Retirement Fund. Additionally, each member in the Retirement Fund receiving a Retirement Benefit under the Retirement Fund on the date of adoption of this Plan shall be vested. A Beneficiary's right to a Restoration Benefit shall be vested as of the date of the Participant's death. Notwithstanding the foregoing, if the Retirement Fund is terminated and Employers are making no further contributions to the Retirement Fund, no further Restoration Benefits shall be payable after the date that the Employers' contributions to the Retirement Fund cease unless the Employers establish another plan to serve the same purpose or to make other arrangements to pay benefit amounts that would have been payable had the Plan continued to receive Employers' Contributions to fully fund the plan.

V. CONTRIBUTIONS AND FUNDING

- A. Funding. The Plan is, and will remain, unfunded and the rights, if any, of any person to any benefits under the Plan are limited to those specified in the Plan. The Plan constitutes a mere unsecured promise by the Employers to make benefit payments in the future.
- B. Contributions.
- i. The Executive Director, using authority delegated by the Board will determine the amount necessary to pay the Benefit Restoration under the Plan for each Plan Year. The Retirement Administrator will provide an estimate of the Benefit Restoration on or before March 1 of each year, provided however, in 2013, the Plan Administrator will provide an estimate of the Benefit Restoration within ten (10) days of the effective date of this rule. The required contribution will be the aggregate of the Benefit Restorations payable to all Participants for the Plan Year and an amount determined by the Executive Director, through delegation, to be a necessary and reasonable expense of administering the Plan. The Employers will contribute the amount determined to be necessary to pay the Benefit Restoration of the Participants and administrative expenses of the Plan, and these payments will be made before the Employers' deposits are credited to the Retirement Fund. The Employers' required contribution will be due at the same time as contributions to the Retirement Fund. Under

no circumstances will the Employers' contributions to fund the Benefit Restorations be credited to the Retirement Fund. Any contributions not used to pay the Benefit Restoration for a current Plan Year, together with any income accruing to the Trust Fund, will be used to pay the administrative expenses of the Plan for the Plan Year. Any contributions not used to pay the Benefit Restoration for the current Plan Year that remain after paying administrative expenses of the Plan for the Plan Year will be used to fund administrative expenses or benefits of Participants in future Plan Years.

- ii. ATRS will account separately for the amounts the Executive Director, using the authority delegated by the Board, determines to be necessary to provide the Benefit Restoration under the Plan for each Participant. But, this separate accounting will not be deemed to set aside these amounts for the benefit of a Participant. Benefits under this Plan will be paid from the Trust Fund.
- iii. The consultants, independent auditors, attorneys, and actuaries performing services for ATRS may also perform services for this Plan; but, any fees attributable to services performed with respect to this Plan will be payable solely from the Trust Fund.

VI. TRUST FUND

- A. Establishment of Trust Fund. A "Benefit Restoration Trust Fund" (the "Trust Fund") is established pursuant to Ark. Code Ann. §24-7-305, separate from the Retirement Fund, to hold Employers' Contributions to this Trust Fund. Contributions to this Trust Fund will be held separate and apart from the funds comprising the Retirement Fund and will not be commingled with assets of the Retirement Fund, and must be accounted for separately.
- B. Trust Fund Purpose. The Trust Fund is maintained solely to provide benefits under a qualified governmental excess benefit arrangement within the meaning of Code Section 415(m) and pay administrative expenses of this arrangement.
- C. Trust Fund Assets. All assets held by the Trust Fund to assist in meeting the Employers' obligations under the Plan, including all amounts of Employers' contributions made under the Plan, all property and rights acquired or purchased with these amounts and all income attributable to these amounts, will be held separate and apart from other funds of the Employers and will be used exclusively for the uses and purposes of Participants and general creditors as set forth in this Plan. Participants

have no preferred claim on, or any beneficial interest in, any assets of the Trust Fund. Any rights created under the Plan are unsecured contractual rights of Participants against the Employers. Any assets held by the Trust Fund are subject to the claims of the Employers' general creditors under federal and state law in the event of insolvency.

- D. Grantor Trust. The Trust Fund is intended to be a grantor trust, of which the Employers are the grantors, within the meaning of subpart E, part I, subchapter J, chapter 1, subtitle A of the Code, and will be construed accordingly. This provision will not be construed to create an irrevocable trust of any kind.
- E. Trust Fund Income. Income accruing to the Trust Fund under the Plan constitutes income derived from the exercise of an essential governmental function upon which the Trust is exempt from tax under Code Section 115, as well as Code Section 415(m)(l).

VII. ADMINISTRATION

- A. Administrative Authority. The Board has the exclusive authority to control and manage the operation and administration of the Plan. The Board has the same rights, duties and responsibilities respecting the Plan as it has with respect to the Retirement Fund. The Administrator has the same duties and authority respecting the Plan as the Administrator has with respect to the Retirement Fund.
- i. The Board has the power and authority (including discretion with respect to the exercise of that power and authority) necessary, advisable, desirable or convenient to enable it:
- a. to establish procedures to administer the Plan not inconsistent with the Plan and the Code, and to amend or rescind these procedures;
 - b. to determine, consistent with the Plan, applicable law, rules or regulations, all questions of law or fact that may arise as to eligibility for participation in the Plan and eligibility for distribution of benefits from the Plan, and the status of any person claiming benefits under the Plan;
 - c. to make payments from the Trust Fund to Participants pursuant to Article IV of the Plan;

- d. contract with a third party to perform designated administrative services under this Plan;
 - e. to construe and interpret the Plan as to administrative issues and to correct any defect, supply any omission or reconcile any inconsistency in the Plan with respect to same, subject to and consistent with the Code.
 - ii. Any action by the Board that is not found to be an abuse of discretion will be final, conclusive and binding on all individuals affected thereby. The Board may take any such action in such manner and to such extent as the Board in its sole discretion may deem expedient, and the Board will be the sole and final judge of such expediency.
 - iii. The Board may delegate any of its authority to the Administrator with respect to the Trust Fund. The Board has delegated certain authority as set forth herein, to the Executive Director.
- B. Advice. The Board may obtain assistance and advice with regard to its responsibilities under the Plan.
- C. Payment of Benefits. If in doubt concerning the correctness of their action in making a payment of a benefit, the Board may suspend payment until satisfied as to the correctness of the payment or the person to receive the payment.
- D. Delegation by Administrator. The Administrator will handle the day-to-day operation of the Plan and may delegate certain functions to a third party as required.

VIII. PLAN AMENDMENTS

The Board, from time to time, may amend, suspend, or terminate any or all of the provisions of this Plan as may be necessary to comply with Code Section 415(m) and to maintain the Plan's or the Retirement Fund's qualified status under the Code.

IX. NONASSIGNABILITY AND EXEMPTION FROM TAXATION AND EXECUTION

The interests of Participants under this Plan are exempt from any state, county, municipal or local tax, and are not subject to execution, garnishment, attachment, or any other process of law whatsoever, and are unassignable and nontransferable.

X. MISCELLANEOUS

- A. Federal and State Taxes. The Board, the Employers, and the Administrator, if any, do not guarantee that any particular Federal or State income, payroll, or other tax consequence will occur because of participation in this Plan.
- B. Investment. The Board may hold the assets of the Plan uninvested as it deems advisable for making distributions under the Plan.
- C. Conflicts. In resolving any conflict between provisions of the Plan, and in resolving any other uncertainty as to the meaning or intention of any provision of the Plan, the prevailing interpretation will be the one that (i) causes the Plan to constitute a qualified governmental excess benefit arrangement under the provisions of Code Section 415(m) and the Trust Fund to be exempt from tax under Code Sections 115 and 415(m), (ii) causes the Plan and ATRS to comply with all applicable requirements of the Code, and (iii) causes the Plan and ATRS to comply with all applicable State laws.
- D. Limitation on Rights. Neither the establishment or maintenance of the Plan, nor any amendment to the Plan, nor any act or omission under the Plan (or resulting from the operation of the Plan) may be construed:
- i. as conferring upon any Participant or any other person a right or claim against the Board, Trustees, Employers, or Administrator, if any, except to the extent that the right or claim is specifically expressed and provided in the Plan;
 - ii. as creating any responsibility or liability of the Employers for the validity or effect of the Plan;
 - iii. as a contract between the Employers and any Participant or other person;
 - iv. as being consideration for, or an inducement or condition of, employment of any Participant or other person, or as affecting or restricting in any manner or to any extent whatsoever the rights or

obligations of the Employers or any Participant or other person to continue or terminate the employment relationship at any time; or

v. as giving any Participant the right to be retained in any Employer's service or to interfere with any Employer's right to discharge any Participant or other person at any time.

E. Erroneous Payments. Any benefit payment that should not have been made, according to the terms of the Plan and the benefits provided hereunder, may be recovered as provided by law.

F. Release. Any payment to any Participant will, to the extent thereof, be in full satisfaction of the Participant's claim being paid thereby, and the Board may condition the payment on the delivery by the Participant of the duly executed receipt and release in a form determined by the Board.

G. Liability.

- i. The Board, Trustees, or Administrator, if any, will not incur any liability in acting upon any paper or document or electronic transmission believed by the Board, Trustees, or Administrator to be genuine or to be executed or sent by an authorized person.
- ii. The Plan will hold harmless and indemnify the Board, the Trustees, and the Administrator, and the officers and employees thereof, from financial loss arising out of any claim, demand, suit or judgment by reason of alleged negligence or other act by that board member, trustee, officer or employee, provided that the board member, trustee, officer or employee at the time of the alleged negligence or act was acting in the discharge of his duties and within the scope of his employment and that the damages did not result from a willful and wrongful act of gross negligence of the board member, trustee, officer or employee, and provided further that the board member, trustee, officer or employee will, within five days of the time he is served with any summons, complaint, process, notice, demand or pleading, deliver the original or a copy thereof to the Administrator's legal advisor.
- iii. The Board may obtain insurance to provide coverage for any liabilities that may arise as described by this Section.
- iv. This Plan does not directly or indirectly waive any sovereign immunity protection of the Board, the Trustees, the Administrator, and the officers and employees thereof.

- H. Governing Laws. The laws of Arkansas apply in determining the construction and validity of this Plan.
- I. Necessary Parties to Disputes. The only party necessary to any accounting, litigation or other proceedings relating to the Plan is the Administrator. The settlement or judgment in any case in which the Administrator is duly served will be binding upon all affected Participants in the Plan, their beneficiaries, estates and upon all persons claiming by, through or under them.
- J. Severability. If any provision of the Plan is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of the Plan will continue to be fully effective.

Approved by Board: July 26, 2013

Adopted:

Effective:

RULE 15-1

BENEFIT RESTORATION PLAN AND TRUST

A.C.A. § 24-7-305

I. ESTABLISHMENT OF PLAN AND TRUST

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- iii. **ATRS** means the Arkansas Teacher Retirement System.
- iv. **Beneficiary** means an individual receiving joint and survivor benefits from ATRS.
- v. **Benefit Restoration** means the benefit determined in accordance with Section 4.01 of this Plan.
- vi. **Board** means the Board of Trustees of ATRS.
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xvii. **Trust Fund** means the trust fund established pursuant to Section 6.1, below, which fund constitutes a valid trust under the law of the State.

xviii. **Trustees** mean the members of the Board.

B. Construction.

- i. Words used in this Plan in the masculine gender include the feminine gender where appropriate, and words used in this Plan in the singular or plural include the plural or singular where appropriate.
- ii. Whenever any actuarial present value or actuarial equivalency is to be determined under the Plan to establish a benefit, it will be based on reasonable actuarial assumptions approved by the Board in its sole discretion, and will be determined in a uniform manner for all similarly situated Participants.

III. PARTICIPATION

All Retirees and Beneficiaries of ATRS are eligible to participate in this Plan if their Retirement Benefits from ATRS for a Plan Year are or have been since January 1, 2013, limited by Code Section 415(b). The Board determines for each Plan Year which Retirees and Beneficiaries are eligible to participate in the Plan. Participation in the Plan begins each Plan Year once a Retiree or Beneficiary has a Benefit Restoration in that Plan Year. Participation in the Plan ends for any portion of a Plan Year in which the Retirement Benefit of a Retiree or Beneficiary is not limited by Code Section 415(b) or when all benefit obligations under the Plan to the Retiree or Beneficiary have been satisfied.

IV. PAYMENT OF BENEFITS

- A. **Benefit Amount.** A Participant in the Plan will receive a benefit equal to the amount of retirement income that would have been payable to, or with respect to, a Participant by ATRS that could not be paid because of the application of the limitations on his retirement income under Code Section 415(b). A Benefit Restoration under the Plan will be paid only if and to the extent the Participant is receiving Retirement Benefits from the Retirement Fund.
- B. **Time for Payment: Form of Benefit.** The Benefit Restoration will be paid at the same time and in the same manner as the Retirement Benefit payable

under ATRS, and the timing of the Benefit Restoration must take into account the existence of monthly deductions from the Retirement Benefit. No election is provided at any time to the Participant, directly or indirectly, to defer compensation under this Plan.

- C. Vesting. A Participant's right to a Restoration Benefit shall be vested as of the Participant's vesting under the Retirement Fund. Additionally, each member in the Retirement Fund receiving a Retirement Benefit under the Retirement Fund on the date of adoption of this Plan shall be vested. A Beneficiary's right to a Restoration Benefit shall be vested as of the date of the Participant's death. Notwithstanding the foregoing, if the Retirement Fund is terminated and Employers are making no further contributions to the Retirement Fund, no further Restoration Benefits shall be payable after the date that the Employers' contributions to the Retirement Fund cease unless the Employers establish another plan to serve the same purpose or to make other arrangements to pay benefit amounts that would have been payable had the Plan continued to receive Employers' Contributions to fully fund the plan.

V. CONTRIBUTIONS AND FUNDING

- A. Funding. The Plan is, and will remain, unfunded and the rights, if any, of any person to any benefits under the Plan are limited to those specified in the Plan. The Plan constitutes a mere unsecured promise by the Employers to make benefit payments in the future.
- B. Contributions.
 - i. The Executive Director, using authority delegated by the Board will determine the amount necessary to pay the Benefit Restoration under the Plan for each Plan Year. The Retirement Administrator will provide an estimate of the Benefit Restoration on or before March 1 of each year, provided however, in 2013, the Plan Administrator will provide an estimate of the Benefit Restoration within ten (10) days of the effective date of this rule. The required contribution will be the aggregate of the Benefit Restorations payable to all Participants for the Plan Year and an amount determined by the Executive Director, through delegation, to be a necessary and reasonable expense of administering the Plan. The Employers will contribute the amount determined to be necessary to pay the Benefit Restoration of the Participants and administrative expenses of the Plan, and these payments will be made before the Employers' deposits are credited to the Retirement Fund. The Employers' required contribution will be due at the same time as contributions to the Retirement Fund. Under

no circumstances will the Employers' contributions to fund the Benefit Restorations be credited to the Retirement Fund. Any contributions not used to pay the Benefit Restoration for a current Plan Year, together with any income accruing to the Trust Fund, will be used to pay the administrative expenses of the Plan for the Plan Year. Any contributions not used to pay the Benefit Restoration for the current Plan Year that remain after paying administrative expenses of the Plan for the Plan Year will be used to fund administrative expenses or benefits of Participants in future Plan Years.

- ii. ATRS will account separately for the amounts the Executive Director, using the authority delegated by the Board, determines to be necessary to provide the Benefit Restoration under the Plan for each Participant. But, this separate accounting will not be deemed to set aside these amounts for the benefit of a Participant. Benefits under this Plan will be paid from the Trust Fund.
- iii. The consultants, independent auditors, attorneys, and actuaries performing services for ATRS may also perform services for this Plan; but, any fees attributable to services performed with respect to this Plan will be payable solely from the Trust Fund.

VI. TRUST FUND

- A. Establishment of Trust Fund. A "Benefit Restoration Trust Fund" (the "Trust Fund") is established pursuant to Ark. Code Ann. §24-7-305, separate from the Retirement Fund, to hold Employers' Contributions to this Trust Fund. Contributions to this Trust Fund will be held separate and apart from the funds comprising the Retirement Fund and will not be commingled with assets of the Retirement Fund, and must be accounted for separately.
- B. Trust Fund Purpose. The Trust Fund is maintained solely to provide benefits under a qualified governmental excess benefit arrangement within the meaning of Code Section 415(m) and pay administrative expenses of this arrangement.
- C. Trust Fund Assets. All assets held by the Trust Fund to assist in meeting the Employers' obligations under the Plan, including all amounts of Employers' contributions made under the Plan, all property and rights acquired or purchased with these amounts and all income attributable to these amounts, will be held separate and apart from other funds of the Employers and will be used exclusively for the uses and purposes of Participants and general creditors as set forth in this Plan. Participants

have no preferred claim on, or any beneficial interest in, any assets of the Trust Fund. Any rights created under the Plan are unsecured contractual rights of Participants against the Employers. Any assets held by the Trust Fund are subject to the claims of the Employers' general creditors under federal and state law in the event of insolvency.

- D. Grantor Trust. The Trust Fund is intended to be a grantor trust, of which the Employers are the grantors, within the meaning of subpart E, part I, subchapter J, chapter 1, subtitle A of the Code, and will be construed accordingly. This provision will not be construed to create an irrevocable trust of any kind.
- E. Trust Fund Income. Income accruing to the Trust Fund under the Plan constitutes income derived from the exercise of an essential governmental function upon which the Trust is exempt from tax under Code Section 115, as well as Code Section 415(m)(l).

VII. ADMINISTRATION

- A. Administrative Authority. The Board has the exclusive authority to control and manage the operation and administration of the Plan. The Board has the same rights, duties and responsibilities respecting the Plan as it has with respect to the Retirement Fund. The Administrator has the same duties and authority respecting the Plan as the Administrator has with respect to the Retirement Fund.
 - i. The Board has the power and authority (including discretion with respect to the exercise of that power and authority) necessary, advisable, desirable or convenient to enable it:
 - a. to establish procedures to administer the Plan not inconsistent with the Plan and the Code, and to amend or rescind these procedures;
 - b. to determine, consistent with the Plan, applicable law, rules or regulations, all questions of law or fact that may arise as to eligibility for participation in the Plan and eligibility for distribution of benefits from the Plan, and the status of any person claiming benefits under the Plan;
 - c. to make payments from the Trust Fund to Participants pursuant to Article IV of the Plan;

- d. contract with a third party to perform designated administrative services under this Plan;
 - e. to construe and interpret the Plan as to administrative issues and to correct any defect, supply any omission or reconcile any inconsistency in the Plan with respect to same, subject to and consistent with the Code.
 - ii. Any action by the Board that is not found to be an abuse of discretion will be final, conclusive and binding on all individuals affected thereby. The Board may take any such action in such manner and to such extent as the Board in its sole discretion may deem expedient, and the Board will be the sole and final judge of such expediency.
 - iii. The Board may delegate any of its authority to the Administrator with respect to the Trust Fund. The Board has delegated certain authority as set forth herein, to the Executive Director.
- B. Advice. The Board may obtain assistance and advice with regard to its responsibilities under the Plan.
- C. Payment of Benefits. If in doubt concerning the correctness of their action in making a payment of a benefit, the Board may suspend payment until satisfied as to the correctness of the payment or the person to receive the payment.
- D. Delegation by Administrator. The Administrator will handle the day-to-day operation of the Plan and may delegate certain functions to a third party as required.

VIII. PLAN AMENDMENTS

The Board, from time to time, may amend, suspend, or terminate any or all of the provisions of this Plan as may be necessary to comply with Code Section 415(m) and to maintain the Plan's or the Retirement Fund's qualified status under the Code.

IX. NONASSIGNABILITY AND EXEMPTION FROM TAXATION AND EXECUTION

The interests of Participants under this Plan are exempt from any state, county, municipal or local tax, and are not subject to execution, garnishment, attachment, or any other process of law whatsoever, and are unassignable and nontransferable.

X. MISCELLANEOUS

- A. Federal and State Taxes. The Board, the Employers, and the Administrator, if any, do not guarantee that any particular Federal or State income, payroll, or other tax consequence will occur because of participation in this Plan.
- B. Investment. The Board may hold the assets of the Plan uninvested as it deems advisable for making distributions under the Plan.
- C. Conflicts. In resolving any conflict between provisions of the Plan, and in resolving any other uncertainty as to the meaning or intention of any provision of the Plan, the prevailing interpretation will be the one that (i) causes the Plan to constitute a qualified governmental excess benefit arrangement under the provisions of Code Section 415(m) and the Trust Fund to be exempt from tax under Code Sections 115 and 415(m), (ii) causes the Plan and ATRS to comply with all applicable requirements of the Code, and (iii) causes the Plan and ATRS to comply with all applicable State laws.
- D. Limitation on Rights. Neither the establishment or maintenance of the Plan, nor any amendment to the Plan, nor any act or omission under the Plan (or resulting from the operation of the Plan) may be construed:
 - i. as conferring upon any Participant or any other person a right or claim against the Board, Trustees, Employers, or Administrator, if any, except to the extent that the right or claim is specifically expressed and provided in the Plan;
 - ii. as creating any responsibility or liability of the Employers for the validity or effect of the Plan;
 - iii. as a contract between the Employers and any Participant or other person;
 - iv. as being consideration for, or an inducement or condition of, employment of any Participant or other person, or as affecting or restricting in any manner or to any extent whatsoever the rights or

obligations of the Employers or any Participant or other person to continue or terminate the employment relationship at any time; or

- v. as giving any Participant the right to be retained in any Employer's service or to interfere with any Employer's right to discharge any Participant or other person at any time.
- E. **Erroneous Payments.** Any benefit payment that should not have been made, according to the terms of the Plan and the benefits provided hereunder, may be recovered as provided by law.
- F. **Release.** Any payment to any Participant will, to the extent thereof, be in full satisfaction of the Participant's claim being paid thereby, and the Board may condition the payment on the delivery by the Participant of the duly executed receipt and release in a form determined by the Board.
- G. **Liability.**
- i. The Board, Trustees, or Administrator, if any, will not incur any liability in acting upon any paper or document or electronic transmission believed by the Board, Trustees, or Administrator to be genuine or to be executed or sent by an authorized person.
 - ii. The Plan will hold harmless and indemnify the Board, the Trustees, and the Administrator, and the officers and employees thereof, from financial loss arising out of any claim, demand, suit or judgment by reason of alleged negligence or other act by that board member, trustee, officer or employee, provided that the board member, trustee, officer or employee at the time of the alleged negligence or act was acting in the discharge of his duties and within the scope of his employment and that the damages did not result from a willful and wrongful act of gross negligence of the board member, trustee, officer or employee, and provided further that the board member, trustee, officer or employee will, within five days of the time he is served with any summons, complaint, process, notice, demand or pleading, deliver the original or a copy thereof to the Administrator's legal advisor.
 - iii. The Board may obtain insurance to provide coverage for any liabilities that may arise as described by this Section.
 - iv. This Plan does not directly or indirectly waive any sovereign immunity protection of the Board, the Trustees, the Administrator, and the officers and employees thereof.

- H. **Governing Laws.** The laws of Arkansas apply in determining the construction and validity of this Plan.
- I. **Necessary Parties to Disputes.** The only party necessary to any accounting, litigation or other proceedings relating to the Plan is the Administrator. The settlement or judgment in any case in which the Administrator is duly served will be binding upon all affected Participants in the Plan, their beneficiaries, estates and upon all persons claiming by, through or under them.
- J. **Severability.** If any provision of the Plan is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of the Plan will continue to be fully effective.

Approved by Board: July 26, 2013
Adopted:
Effective: