

RULE 6-2 RECIPROCITY

A.C.A. §§ 24-2-401-408 as amended by Act 1022 of 2005 and,
Acts 97 and 297 of 2007, and Act 555 of 2013

I. DEFINITIONS

A. Reciprocal System means the Arkansas Teacher Retirement System in operation June 30, 1957, and continued by statutes; the Arkansas State Highway Employees' Retirement System, established by A.C.A. § 24-5-103; the Arkansas Public Employees' Retirement System established by A.C.A. § 24-4-103; the Arkansas State Police Retirement System established by A.C.A. § 24-6-203; the Arkansas Judicial Retirement System established by A.C.A. § 24-8-201; the Arkansas District Judge Retirement System established by A.C.A. §§ 24-8-801--824; the Arkansas Local Police and Fire Retirement System provided for under A.C.A. § 24-10-101; or an alternate retirement plan for a public college or university, or the Arkansas Department of Higher Education provided for under A.C.A. § 24-7-801 *et seq.*, or for a vocational-technical school or the Department of Workforce Education (formerly the Division of Vocational and Technical Education) provided for under A.C.A. § 24-7-901 *et seq.*

B. State Employer means the public employer whose employees are covered under the Arkansas Teacher Retirement System, the Arkansas State Highway Employees' Retirement System (A.C.A. § 24-5-103), the Arkansas Public Employees' Retirement System (A.C.A. § 24-4-103), the Arkansas State Police Retirement System (A.C.A. § 24-6-203), the Arkansas Judicial Retirement System (A.C.A. § 24-8-201), or the Arkansas District Judge Retirement System (A.C.A. §§ 24-8-801—824). "State employer" also includes a public employer that is a college, university, or the Arkansas Department of Higher Education (A.C.A. § 24-7-801 *et seq.*), or a vocational-technical school or the Department of Workforce Education (formerly the Division of Vocational and Technical Education) (A.C.A. § 24-7-901 *et seq.*).

C. Alternate Retirement Plans refers to the retirement plan(s) of a public college or university, or the Department of Higher Education provided for under A.C.A. § 24-7-801 *et seq.*, or for a vocational-technical school or the Department of Workforce Education (formerly the Division of Vocational and Technical Education) provided for under A.C.A. § 24-7-901 *et seq.*

D. Preceding System is a previous retirement system of record as defined above.

E. Succeeding System is the current retirement system of record, following membership in a retirement system covered above.

II. SUMMARY OF RECIPROCAL SERVICE

If a member leaves the employ of a state employer whose position is covered by any of the retirement systems listed above and enters the employ of another state employer whose position is covered by any of these retirement systems, the member shall be entitled to a deferred annuity according to A. C. A. § 24-2-401 et seq.

A. Age and Service Retirement with Reciprocal Service Credit

i. If ATRS is the preceding system, the member's annuity begins the first day of the month following the month the application was filed or after attainment of age 60 years, whichever is later. However, should the member have combined service of at least 25 years, the age limitation shall not apply. The deferred annuity shall not begin prior to the date of leaving the employ of the last state employer unless the member reaches age 65.

ii. ATRS is the preceding system, the member is eligible to apply for benefits without leaving the employ of the last state employer upon reaching age 65. The member's annuity will begin the first day of the month following the month the application was filed or after attainment of age 65, whichever is later. Only service credited and salaries earned prior to the ATRS effective date of benefits will be used in the ATRS benefit calculation.

B. Disability Retirement with Reciprocal Service Credit

i. A member is eligible to apply for disability benefits under A.C.A. § 24-2-405 from each reciprocal system in which he or she has credited service according to rules for eligibility promulgated by that system.

ii. The member's annuity for disability retirement payable by the preceding reciprocal system shall begin the first day of the month following the month the application was filed with the preceding system, but not prior to the date of leaving the employ of the last state employer.

III. RULES

A. A member who leaves a position covered by the Teacher Retirement System, becomes employed by a reciprocal system, and files a reciprocal service agreement becomes an inactive member and may become eligible for the benefit formula in effect at the time of retirement.

B.

i. Benefits will not be paid under reciprocity from ATRS as the preceding system until the member has ceased to be in the employ of a state employer unless the member reaches age 65.

ii. If ATRS is the preceding system, the member is eligible to apply for benefits without leaving the employ of the last state employer upon reaching age 65. The member's annuity will begin the first day of the month following the month the application was filed or after attainment of age 65, whichever is later. Only service credited and salaries earned prior to the ATRS effective date of benefits will be used in the ATRS benefit calculation.

C. Benefits will not be paid under reciprocity from ATRS as the preceding system earlier than age 60 unless the member has 25 or more years of combined service.

D. No minimum benefits apply under Act 488 of 1965 [A.C.A. § 24-2-402(5)(E)], as amended, for reciprocal service unless the member has five (5) or more years of credited service in ATRS.

E. If the survivor benefits are payable by more than one reciprocal system to eligible survivors of a deceased member, the survivors shall not receive more, as a percentage of the deceased member's final pay or as a minimum dollar amount than the largest amount payable by a single reciprocal system. ATRS will prorate minimum benefits payable with other reciprocal systems that have a minimum benefit provision in their plans. Each reciprocal system shall pay a proportionate share of the minimum amount based on the ratio of service in that system to the total service in all reciprocal systems. If the reciprocal system is an alternate retirement plan, survivor benefits shall be contingent upon provisions of that benefit having been provided by the alternate retirement plan and having been selected by the member as a benefit. [A.C.A § 24-2-402 (5)]

F. If an employee of the Department of Human Services who becomes a member of the Public Employees Retirement System under the provisions of Act 793 of 1977, as amended, leaves employment with the Department of Human Services and becomes employed in another position covered by ATRS, the benefits for service, both before and after any service under Act 793, shall be subject to the benefit provisions of the Teacher Retirement law. Such member shall be eligible to establish reciprocity under the provisions of Act 488 of 1965 as amended.

G. If an ATRS member has service credited during the same fiscal year with another reciprocal system and the combined service is greater than one year of service credit, ATRS will credit service as follows:

i. If credit by the reciprocal system is less than three (3) months, ATRS will credit service for one (1.00) year.

ii. If credit by the reciprocal system is three (3) or more months but less than six (6) months, ATRS will credit service for three-fourths (3/4) year.

iii. If credit by the reciprocal system is six (6) or more months but less than nine (9) months, ATRS will credit service for one-half (1/2) year.

iv. If credit by the reciprocal system is for nine (9) months but less than twelve (12) months, ATRS will credit service for one-fourth (1/4) year.

H. While participating in a reciprocal system, back contributions, additional contributions, and repayment of refund payments made to ATRS shall be made according to payment methods contained in Rule No. 8-5 (Purchase Payment Rules), except employer pick-up is prohibited while working for a noncovered ATRS employer.¹

Amended: July 18, 2005

April 26, 2007

Approved by Board: July 26, 2013

Amended: October 9, 2013

Effective: November 8, 2013

¹ From July 1, 1991, until December 31, 1991, an active member of the Public Employees Retirement System who was an active member of the Teacher Retirement System prior to January 1, 1978, and who became a member of the Public Employees Retirement System within thirty (30) days of departure from the Teacher Retirement System may establish reciprocity between the two systems and purchase out-of-state service rendered prior to January 1, 1978, in accordance with the provisions and conditions contained in A.C.A § 24-7-601 and § 24-7-603. Effective July 1, 1993, for a ninety (90) day period, employees of the Arkansas Rehabilitation Services may transfer from the Public Employees Retirement System to the Teacher Retirement System under Act 574 of 1993. Any employee making the change will establish reciprocity between the two systems, and Act 793 of 1977 shall no longer apply.

RULE 6-12

College Plan

A.C.A. §§ 24-7-1601 through 24-7-1607

A. Generally, an ATRS member who became employed by a non-mandatory employer prior to July 1, 2011, may continue to participate in ATRS instead of an alternative program offered by the non-mandatory employer if the ATRS member continues providing consistent service to the non-mandatory employer. For new employees after July 1, 2011, participation is governed by A.C.A. § 24-7-1601 et seq.

B. A PSHE employer may elect to offer ATRS participation to its employees by fulfilling the requirements under A.C.A. § 24-7-1605.

C. If an eligible non-mandatory employer college elects to offer ATRS participation to its employees, then the employer must regularly report information to ATRS on forms developed by ATRS as allowed by ATRS law. In addition to standard ATRS reporting forms, a PSHE employer shall provide supplemental reports on any form approved and adopted by the ATRS Board as a required form.

Adopted: July 1, 2011 (Emergency)

Adopted: August 8, 2011

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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, 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.

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

- 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, no 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.

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

Adopted: August 8, 2011

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EMPLOYEE (MEMBER) CONTRIBUTIONS

A.C.A. §§ 24-7-406, 411

RULES (amended by Acts 465 and 468 of 2009)

1. After June 30, 1997, each employer will remit the member contributions by employer “pick up” from the salary earned by contributory members, and those contributions will then be treated as employer contributions in determining tax treatment under the provision of the federal Internal Revenue Code and the Arkansas Income Tax Act. The employer may pay these contributions by a reduction in the cash salary of the member, or by a setoff against future salary increases, or by a combination of a reduction in salary and a setoff against future salary increases.
2. Member contributions shall be set by the Board by Resolution.
3. Overpayments or underpayments of member contributions shall be handled pursuant to the following:
 - A. If an underpayment of member contributions of less than \$25.00 occurs, the System shall not collect the difference of this underpayment and no adjustment to member service credit will be made.
 - B. If an overpayment of member contributions of less than \$25 occurs, a refund will not be issued unless requested by the member.
 - C. Should an underpayment of contributions occur as a result of a member's changing status from noncontributory to contributory, the member must remit to the System the contributions due based on gross salary earned retroactive to the beginning of that fiscal year. Service credit will not be credited until the total amounts due are paid in full.
 - D. Should an overpayment of member contributions occur as a result of changing status from contributory to noncontributory, the System will refund the overpayment of member contributions to the employer.
4. If the System is owed member contributions and interest by a member, the interest owed by the member may be waived by the Board or its designee under ATRS Rule No. 9-8 (Error Corrections and Collection of Overpayments).

Amended: August 11, 1998
July 18, 2005
February 11, 2008
December 18, 2009
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RULE 8-20 CONTRACT BUYOUTS OR OTHER COURT- ORDERED PAYMENTS

A.C.A. § 24-7-735

I. SERVICE CREDIT ACCRUAL

A. For contract buyouts and settlements or court ordered payments to a member, service credit is only allowed to accrue for actual on-site work for the covered employer by the member. However, if the member is not subject to either a contract buyout or court ordered payment, salary paid to the member as a regular employee, as if the member were providing services, shall be credited for salary and service purposes if the member is on call to the employer; however, such on call credit may not be stacked with salary at another ATRS employer.

B. In order to accrue service credit during a period of time that is redressed in a contract buyout or other court-ordered payment of salary, or salary and benefits, the member shall perform on-site work for the covered employer.

II. ADJUSTMENT OF BENEFIT

ATRS shall not adjust a benefit or benefit calculation for a member until the covered employer or benefit participant provides a certified copy of the court-order payment or settlement to ATRS, or if a contract buyout, a certified copy of the contract buyout.

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AGE AND SERVICE (VOLUNTARY) RETIREMENT

A.C.A. § 24-7-502, A.C.A. §§ 24-7-701—707, and A.C.A. § 24-7-202 (unless otherwise noted)

REGULATIONS

1. RETIREMENT ELIGIBILITY

If eligible, any active or inactive member who attains age 60 and has five (5) or more years of actual and reciprocal service credit may voluntarily retire upon written application filed with the System. In order to be eligible, a member must comply with the following requirements:

- A. Satisfy the credited service requirements under one of the System's retirement statutes, A.C.A. §§ 24-7-701—707,
- B. Be credited with all required employer and member contributions in the member's deposit account with no amounts owed to the System,
- C. Pay all amounts owed to the System for underpayments or purchase service accounts; and
- D. Terminate employment with all participating employers or have reached age 65 or older.

2. BENEFITS

A. Benefits Formula

The retirement benefits payable shall be the total number of contributory years of credited service multiplied by 2.15% of the final average salary, plus the total number of noncontributory years of credited service multiplied by 1.39% of the final average salary.

If an employer reports additional salary for a member, but the result does not increase or decrease the annual benefits by \$25.00 or more, the contributions will be transferred from the member's deposit account to the employer accumulation account without making any change in the member's benefit. If the additional salary does increase or decrease the retiree's annual benefit by \$25.00, the retirement benefits will be recalculated, and necessary changes will be made in the member's benefit.

B. Effective Date of Retirement Benefits (A.C.A. § 24-7-701)

If a member meets all eligibility requirements for retirement and is approved for retirement, annuity benefits shall be effective the month proposed by the member. If the member does not file an application at least one calendar month prior to the proposed effective retirement date, then that proposed retirement effective date cannot be used, and the member's effective retirement date shall be the following month.

If a member has signed an employment contract for the fiscal year and has been paid in full without providing service for the full period of the employment contract, the member's retirement effective date shall not be prior to July 1 of the subsequent fiscal year.

C. Compound Cost of Living Adjustment (A.C.A. § 24-7-727)

- i. In the years that the Board elects to compound the COLA, the simple COLA shall not be payable. In a year the Board elects not to compound the COLA, the simple COLA under A.C.A. § 24-7-713 shall be given.

D. Last Benefit Payment Upon Death

Benefits are payable through the month in which the retiree's death occurs.

RULES

1. A member age 65 or older may apply for retirement benefits without terminating employment and may begin drawing benefits with no effect on the member's retirement benefit.
2. In addition to a complete retirement application, the following documents are mandatory documents and shall be submitted to ATRS within six months of the effective date of retirement unless an extension is granted by ATRS:
 - A. Member elects a straight life annuity:
 1. Proof of member's birthdate from a birth certificate or other authenticating documents.
 2. Proof of member's tax payer identification number from a Social Security card or other authenticating documents.
 - B. Member elects Option A or Option B benefit with Spouse as the beneficiary:

1. Proof of member's birthdate from a birth certificate or other authenticating documents.
 2. Proof of member's tax payer identification number from a Social Security card or other authenticating documents.
 3. Proof of spouse's birthdate from a birth certificate or other authenticating documents.
 4. Proof of spouse's tax payer identification number from a Social Security card or other authenticating documents.
 5. Proof of marriage between the member and spouse from a marriage license or equivalent, marriage license recording document, or other legally acceptable proof of the existence of the marriage.
- C. Member elects Option A or Option B benefit with incompetent child as the beneficiary:
1. Proof of member's birthdate from a birth certificate or other authenticating documents.
 2. Proof of member's tax payer identification number from a Social Security card or other authenticating documents.
 3. Adequate proof of the existence of a guardianship of the member's child due to incapacity that preexists the member's official retirement date. Authenticating documents may include the order appointing guardianship of the person, letters of guardianship or other adequate proof of the existence of the guardianship due to the incapacity of the member's child.
 4. Proof of child's tax payer identification number from a Social Security card or other authenticating documents.
- D. Member elects Option C annuity:
1. Proof of member's birthdate from a birth certificate or other authenticating documents.
 2. Proof of member's tax payer identification number from a Social Security card or other authenticating documents.

The failure to submit a complete retirement application and any mandatory documents within a six-month period from the member's effective retirement date plus any extension granted by ATRS shall result in the retirement application being voided and of no effect. This rule on required documents applies to all retirement applications including retirement based upon age retirement, service retirement, early retirement, and disability retirement.

Amended: June 15, 2004
February 7, 2006
April 26, 2007
June 16, 2009 (Emergency)
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July 1, 2011 (Emergency)
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RULE 9-4

DISABILITY RETIREMENT

A.C.A. § 24-7-704

- I. RULES** (as amended by Acts 468 and 743 of 2009)
- A Disability retirement benefits shall commence the month the member files a written application with ATRS if at the time the member files the application the member is no longer employed by an ATRS-covered employer, if the member is otherwise eligible under A.C.A. § 24-7-704 and these Rules, and if after the Medical Committee determines a disability exists for the member.
 - B. Termination of active membership for disability retirement benefits shall be the last date of any employer payment to the member due to the end of the employee/employer relationship.
 - C. The member is considered active if they are using earned sick leave, Family Medical Leave Act (FMLA) leave, annual leave and catastrophic leave. Worker's compensation, which may or may not include the use of leave granted by the employer, is not considered leave by which a member is considered active, nor does it extend the date of active membership.
 - D.
 - i. A member cannot simultaneously be employed by an ATRS-covered employer and receive ATRS disability retirement. A.C.A. § 24-7-701 also prohibits a member from receiving disability retirement if the member performs work for an ATRS covered employer as an independent contractor in certain circumstances.
 - ii. If a member is approved for disability retirement but continues to work for the covered employer (directly or indirectly), he/she must terminate employment with the covered employer or indirect employer by the proposed disability retirement effective date or up to two (2) full calendar months after the Medical Committee meets if the member is wrapping up final work for which the member is paid to receive disability retirement.
 - iii. If the member does not terminate employment under the Rules and A.C.A. § 24-7-502, the application is rescinded and the member can reapply.

- E. If the application for disability retirement benefits is denied and the member elects and otherwise qualifies for voluntary retirement, the effective date for retirement shall be determined by the date the disability retirement application is filed.
- F. If the member dies after the disability application is received by ATRS but before disability retirement is approved, then ATRS shall consider the member to have died in “active” service and survivor benefits under A.C.A. § 24-7-710 shall be paid.
- G. The annuity formula for computing disability retirement benefits is the same as for voluntary age and service retirement.
- H.
 - i. For all disability retirement applications approved by the Medical Committee after May 31, 2011, in accordance with rule making authority granted to the ATRS Board under A.C.A. § 24-7-706(a)(3), the Board shall allow a disability retiree at the time of retirement to designate an Option A or Option B beneficiary. Option C beneficiaries shall not be available to disability retirees.
 - ii. If a disability retiree designates an Option A or Option B spouse beneficiary, and the disability retiree dies before reaching age 60, then the same rules that apply to active member option beneficiaries shall apply to the disability Option A and Option B beneficiaries under A.C.A. § 24-7-710(b).
 - iii. If a disability retiree designates an Option A or Option B incapacitated child beneficiary, and the disability retiree dies before reaching age 60, then the same rules that apply to an active member surviving child shall apply to the disability Option A or Option B beneficiary under A.C.A. § 24-7-710(c) until the disability retiree would have turned age 60, then the Option A or Option B incapacitated child beneficiary shall receive the greater of the surviving child annuity under A.C.A. § 24-7-710(c) or the Option A spouse annuity under A.C.A. § 24-7-710(a).
- I. Disability retirants who are disapproved for further disability annuities due to a medical examination reviewed by the Medical Committee shall be removed from ATRS' retirant payroll the earlier of six months following the review date or the first of the month following the return to covered employment.
- J. If a member applies for disability retirement and is disapproved, he/she

has the right to file a new disability application submitting additional information for review as long as the member remains active.

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	July 18, 2005
	June 19, 2007
	December 18, 2009
	July 1, 2011
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RULE 9-8

ERROR CORRECTIONS AND COLLECTION OF OVERPAYMENTS

A.C.A. § 24-7-205

I. RULES

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

- G. The Board authorizes the Executive Director to waive interest on required contributions under Nos. 1 and 2 above in an amount not to exceed \$5,000. Any request to excuse an interest amount exceeding \$5,000 shall be submitted to the ATRS Board for review. The Executive Director shall report to the Board any amounts excused under this section.
- H. If required, a receivable under this section that is found by the Board or its designee to be uncollectible or for which adjustment or payment has been waived will be submitted to the Chief Fiscal Officer of the state for abatement pursuant to A.C.A. §§ 19-2-301 – 307.
- I. A determination by ATRS of a manifest injustice in a particular instance due to a technical error or error in judgment is always discretionary and governed by the provisions of Act 303 of 2013, codified as § 24-7-202(40).

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RULE 10-2 EMPLOYMENT OF AN ATRS RETIREE BY A PARTICIPATING EMPLOYER

A.C.A. § 24-7-202, A.C.A. § 24-7-502, and A.C.A. § 24-7-708

I. DEFINITIONS

- A. **Salary** is defined by A.C.A. § 24-7-202(27), provided that non-mandatory compensation that is taxable by the IRS is not salary for ATRS purposes.
- B. **Normal retirement age** means sixty-five (65) years of age.
- C. **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.
- D. **Retiree** means a member receiving an ATRS retirement annuity.
- E. **Retires** means that a member ceases to be active and is eligible to receive an ATRS annuity.

II. REGULATIONS

- A. Upon acceptance of employment with a participating employer, the retiree and employer must report to ATRS the employment of the retiree on the forms and reports as required by the System.
- B. Employers will report all retirees who are employed by a participating employer on the retirement reports filed by employers.
- C. Effective July 1, 2009, no earnings limitation shall apply to retirees who become employed with participating employers.
- D. When a retiree becomes employed by a participating employer the retiree shall not accrue additional service credit, and no member contributions shall be withheld or paid to ATRS.
- E. For the return to work rules applicable to disability retirees receiving benefits under A.C.A. § 24-7-704, see Policy No. 9-4 (Disability Retirement).

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July 18, 2005
October 4, 2005
December 6, 2005
June 19, 2007
February 11, 2008
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RULE 10-3 TEACHER DEFERRED RETIREMENT OPTION PLAN (T-DROP)

A.C.A. §§ 24-7-1301 - 1316

I. The ATRS Board of Trustees has the authority under A.C.A. § 24-7-1301(c) to promulgate rules for the administration of a deferred retirement option plan for eligible members, called the T-DROP.

II. DEFINITIONS

- A. **DROP** means a deferred retirement option plan enacted by the General Assembly and administered under ATRS or a reciprocal system.
- B. **Early participant** means a member who has at least 28 years of service with an ATRS or reciprocal employer but less than 30 years, and participates in T-DROP under the requirements of A.C.A. § 24-7-1314 and any Board rules promulgated for early participants.
- C. **Fiscal Year** means the operating year for the State of Arkansas that begins on July 1 of each calendar year and ends on June 30 of the next calendar year.
- D. **Participant** means a member who elects to participate in T-DROP under A.C.A. § 24-7-1301 et seq.
- E. **Plan deposits** means the deposits made to each participant's T-DROP account pursuant to A.C.A. § 24-7-1306.
- F. **Plan interest** means the rate per annum, compounded annually on June 30, as the Board shall set and adopt at the end of each fiscal year, credited annually in each participant's T-DROP account. The interest rate shall be 2% less than ATRS' average rate of return with a maximum of 6% and minimum of 2%. The Board will determine the interest rate for the following fiscal year based upon the rate of return for the immediately preceding twelve-month period ending March 31 prior to the start of such fiscal year. The initial calculation of this rate shall begin March 31, 2005, for interest to be credited in the 2005-2006 fiscal year.
- G. **Post 10-year T-DROP interest** means the rate per annum, compounded annually, as the Board shall set and adopt at the end of each fiscal year, credited on June 30 to the balance of the T-DROP participant's account that meets the following criteria:

i. The member participated in T-DROP for ten (10) years and continued employment with an ATRS covered employer; and

ii. The member has not retired.

H. **Quarter** means one-fourth (1/4) of a fiscal year. The four (4) quarters applicable in this rule are:

1st Quarter: July 1 through September 30

2nd Quarter: October 1 through December 31

3rd Quarter: January 1 through March 31

4th Quarter: April 1 through June 30

I. **T-DROP Cash Balance Account** means the financial account set up for a participant who elects to defer distribution of his or her T-DROP account at a time that he or she is eligible to receive a lump-sum distribution of the T-DROP balance.

J. **T-DROP Cash Balance Account Interest** means the interest rate per annum applicable to a participant's T-DROP Cash Balance Account, compounded annually and credited on June 30 into a participant's T-DROP Cash Balance Account. The interest rates payable on the T-DROP Cash Balance Accounts are set forth in this rule in subsection 4 of the section titled "**T-DROP CASH BALANCE ACCOUNT**". The annual T-DROP Cash Balance Account interest rate shall be applied to T-DROP Cash Balance Accounts that have been held for at least one (1) fiscal year by ATRS.

K. **T-DROP Service Credit** shall be determined using the same rules that apply for service credit for an active member with the exception that "on call" availability shall not be used for T-DROP service credit requirements.

III. **T-DROP PARTICIPATION and ACCOUNT CREDIT**

A. In lieu of terminating employment and retiring under A.C.A. § 24-7-701, an active member of ATRS may elect to participate in T-DROP and continue to work for a covered employer. By continuing covered employment, the participant defers receipt of retirement benefits until a later date.

B. A member shall have at least 30 years of credit in ATRS to participate in T-DROP, or, to become an early participant in T-DROP, at least 28 years but less than 30.

- C. During participation in T-DROP, ATRS shall credit each participant's T-DROP account with plan deposits and plan interest.
- D. The plan interest rate determined by majority vote of the Board is final and binding upon ATRS and shall not be adjusted based on any revised rate of return reported after that date.
- E. The Post 10-year-T-DROP interest rate shall be set by the Board at same meeting that the plan interest rate is set. The 10-year plus T-DROP interest rate is limited to a maximum of six percent (6%) and a minimum of four percent (4%). The Post 10-year-T-DROP interest rate will be credited to the participant's T-DROP account on June 30th of each year.
- F. The initial Post 10-year-T-DROP interest rate for 2010 is set at four percent (4%) and will be credited to the participant's T-DROP account on June 30, 2010. The Post 10-year-T-DROP interest rate shall be set prospectively by the Board prior to the beginning of each fiscal year and that interest rate shall be credited to the participant's T-DROP account June 30th of the following year.
- G. The Post 10-year-T-DROP interest rate for each year determined by majority vote of the Board is final and binding upon the ATRS and shall not be adjusted based on any revised rate of return reported after that date.

IV. RULES

- A.
 - i. The participant's T-DROP benefit will be the monthly straight life annuity benefit to which the member would have been entitled had the member retired under A.C.A. § 24-7-701.
 - ii. The participant's T-DROP benefit may be reduced as set in these Rules and under A.C.A. § 24-7-1301 et seq.
 - iii. The T-DROP deposit shall not include the additional benefit, also known as the "monthly benefit stipend" provided in A.C.A. § 24-7-713(b).
- B. Plan deposits shall be a percentage of the T-DROP benefit, as follows:
 - i. One hundred percent (100%) reduced by the product of one percent (1.0%) multiplied by the number of years of contributory and noncontributory service credit, including reciprocal service, and fractions thereof.
 - ii. For a participant whose effective date in the T-DROP is before September 1, 2003, and who has more than thirty (30) years of service, the years of service above thirty (30) years shall be reduced by one-half of one percent

- (0.5%) for contributory years and three-tenths of one percent (0.3%) for noncontributory years.
- iii. Beginning July 1, 2001, when a participant whose effective date in the T-DROP is before September 1, 2003, reaches normal retirement age, the plan deposits shall be 100% with no reduction.
 - iv. For a participant whose effective date in the T-DROP is September 1, 2003, or after and who has more than thirty (30) years of service, the plan deposits for the years of service above thirty (30) years shall be reduced based upon the reduction established at the time the participant entered T-DROP.
 - v. For a participant whose effective date in the T-DROP is September 1, 2003, or after, and who reaches normal retirement age but does not retire, the plan deposits shall continue as reduced based upon the reduction established at the time the participant entered T-DROP.
- C. A participant shall elect an annuity option provided in A.C.A. § 24-7-706 at the time the participant separates from service and is granted a monthly retirement benefit or files for retirement upon reaching normal retirement age.
- D. A. A member's participation in T-DROP shall not exceed ten (10) consecutive calendar years for accruing plan deposits; however, the Board is authorized under A.C.A. § 24-7-1307 to provide for a separate deposit, called the Post 10-year T-DROP interest.
- B. If a participant continues covered employment after completing ten (10) years in T-DROP, the T-DROP account will be credited with Post 10-year T-DROP interest as set by the Board. Benefits payable at retirement will be based on the account balance the month before the participant begins drawing retirement benefits.
- E. The annuity upon which plan deposits are calculated shall receive the cost-of-living increase provided for in A.C.A. § 24-7-713(a) or § 24-7-727. The annuity plus the cost-of-living increase is reduced or adjusted under this Rule.
- F. If a participant elects to cash out or annuitize their T-DROP account balance upon election to retire, once the T-DROP account is distributed to the member, the participant shall not be allowed to reenroll in T-DROP, unless the member cancels their election under A.C.A. § 24-7-1302(c).
- G. As soon as possible after the end of each fiscal year, ATRS shall furnish the participant an annual statement of the participant's T-DROP account. The statement of T-DROP deposits and interest will not be final until the annual accounting has been reconciled for part-time T-DROP participants.

- H. If a participant earns service credit of 160 days or greater within a fiscal year and the participant does not terminate employment, retire, or die during the fiscal year, or the employer does not terminate the employer/employee relationship, then ATRS will allow crediting of twelve (12) monthly T-DROP deposits per fiscal year.
- I. Part time employment while participating in the T-DROP plan:
 - i. In the first or fourth quarter of the fiscal year, five (5) or more days of service credit shall be required to credit the participant's account with three (3) monthly deposits for that particular quarter. If a participant receives less than five (5) days of service credit in either the first or fourth quarter of the fiscal year, then no T-DROP deposits shall be made in the three months for that particular quarter.
 - ii. In the second or third quarters of the fiscal year, fifteen (15) or more days of service credit shall be required to credit the participant's account with three (3) monthly deposits for that particular quarter. If a participant receives less than fifteen (15) days of service credit in either the second or third quarter of the fiscal year, then no T-DROP deposits shall be made in the three months for that particular quarter.

V. CEASING T-DROP AND DISTRIBUTION OPTIONS

A. Participation in T-DROP ceases when:

- i. The participant separates from service and is granted a monthly retirement benefit from ATRS or a reciprocal plan; or
 - ii. The participant reaches normal retirement age and retires without separation from service, or
 - iii. The participant separates from covered employment but does not apply for monthly retirement benefits; or
 - iv. The participant dies.
- B. Any lump-sum distribution of a participant's T-DROP account balance is eligible to be rolled over into a qualifying retirement plan. The ATRS shall only roll over the T-DROP lump sum balance into one qualifying plan.
- C. A participant may direct that all or a part of his or her lump-sum distribution as set forth in Ark. Code Ann. § 24-7-1308 continue to be held by ATRS in a T-DROP Cash Balance Account described in this rule in the section titled **"T-DROP CASH BALANCE ACCOUNT"**.

- D. The T-DROP is intended to operate in accordance with Section 415 and other applicable sections of the IRS Code. Any provision of the T-DROP that conflicts with an applicable provision of the IRS Code is invalid.
- E. If a participant separates from covered employment but does not apply for monthly retirement benefits, the T-DROP monthly deposit shall cease the month of separation from service. No deposits will be credited to the participant's account for the duration of the separation. Upon returning to covered employment, the monthly deposits will resume. Upon application for retirement, benefits will be paid according to the account balance at the time of separation from service or the month prior to the effective date of benefits after reaching normal retirement age. Provided however, if a member has not separated from covered employment and remains on an employer payroll without obtaining sufficient service credit for monthly deposits, the member shall remain eligible for annual interest.
- F. If a participant leaves ATRS-covered employment to serve, on a voluntary or involuntary basis, in the uniformed services of the United States and returns to ATRS-covered employment, the member shall be treated as not having incurred a break in service with the employer. The employer shall certify to the ATRS that reemployment was in accordance with the requirements set forth in Section 4312 of P.L.103-353, the Uniformed Services Employment and Reemployment Act (USERA) of 1994.

Under this subsection, uniformed services of the United States are limited to the armed forces, the Army, and the Air National Guard when engaged in active duty for training, inactive duty training, full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or emergency.

VI. DEATH OF A T-DROP PARTICIPANT PRIOR TO RETIREMENT

- A. In the event a participant dies while still in T-DROP, the benefits payable from the T-DROP account shall be determined according to A.C.A. § 24-7-710.
- B. A T-DROP participant's surviving spouse may choose to receive the T-DROP benefit in a lump sum. If the spouse elects a lump-sum payment of the T-DROP balance, then the survivor annuities payable under A.C.A. § 24-7-710 shall be calculated on the service credit and salary earned by the member prior to participating in T-DROP.
- C. For the purposes of A.C.A. § 24-7-709 related to disposition of residue, any amount received from the T-DROP account, either in the form of a lump sum or annuity payments, shall be considered to be annuity payments received by the member or his or her designated beneficiary and shall act to reduce or eliminate the disposition of residue payable under A.C.A. § 24-7-1310(c).

VII. DROP PARTICIPATION UNDER RECIPROCAL SYSTEMS

- A. If a reciprocal system offers a DROP for its members, then service credit in ATRS, a reciprocal system, or the combination of service credit in the systems may be counted to meet the minimum service credit requirements for participation under each system's DROP.
- B. The benefit payable by the reciprocal system shall be based on the DROP provisions of each system. The final average salary used to determine plan deposits shall be that of the reciprocal system which furnishes the highest final average salary at the time of retirement. Each reciprocal system shall use the method of computing final average salary stipulated by its law. Salaries earned in the Arkansas Judicial Retirement System and alternate retirement plans shall not be used in computing final average salary.
- C. Plan deposits and plan interest credited to the DROP account will be paid under the deferred retirement option program in effect for that reciprocal system.

VIII. T-DROP CASH BALANCE ACCOUNT

- A. At the time that a participant may elect to receive a lump-sum distribution of all of his or her T-DROP account balance, the participant may instead elect to defer all or a part of his or her T-DROP account and direct that such amount be held in a T-DROP Cash Balance Account for the participant. If a participant chooses to defer only part of the T-DROP distribution into a T-DROP Cash Balance Account, the remainder of the T-DROP distribution shall be annuitized with ATRS according to the distribution options set out under A.C.A. § 24-7-1308.
- B. After the T-DROP Cash Balance Account participation has been established on the ATRS' accounting system, a participant with a T-DROP Cash Balance Account balance may withdraw funds from the account one time per quarter on such forms as ATRS may issue. ATRS may allow the participant to obtain an additional withdrawal in a quarter for a manifest emergency. As provided in Ark. Code Ann. §24-7-730, required minimum distributions will be made sufficient to satisfy legal requirements, including Internal Revenue Code §401(a)(9).
- C. A T-DROP Cash Balance Account that has been held at least one (1) full fiscal year by ATRS shall be credited annually on June 30 with T-DROP Cash Balance Account interest (computed on a weighted-average basis) and debited for all withdrawals and distributions.

D. The initial interest rates for participants electing to enter the T-DROP Cash Balance Account program are set forth in this subsection. Members establishing a T-DROP Cash Balance Account on or after July 1, 2012, shall receive interest on their T-DROP Cash Balance Account according to the following schedule:

After one (1) complete fiscal year:	2.00% interest.
After two (2) complete fiscal years:	2.25% interest.
After three (3) complete fiscal years:	2.50% interest.
After four (4) complete fiscal years:	2.75% interest.
After five (5) complete fiscal years:	3.00% interest.
After six (6) complete fiscal years:	3.25% interest.
After seven (7) complete fiscal years:	3.50% interest.
After eight (8) or more complete fiscal years:	4.00% interest.

These interest rates are minimum interest rates that apply to T-DROP Cash Balance Accounts that are established while these rates are in effect. The T-DROP Cash Balance Account interest may be increased by the ATRS Board of Trustees on a forward-looking and Ad Hoc basis.

E. The interest rates set forth in subsection 4 above and payable on T-DROP Cash Balance Accounts established on or after July 1, 2012, shall remain at the initial rate set for July 1, 2012, T-DROP Cash Balance Account entrants unless the ATRS Board of Trustees adopts a different interest rate schedule to be used for future entrants to the T-DROP Cash Balance Account at least one (1) year prior to the beginning of a fiscal year in which the new interest rates shall apply. The ATRS Board of Trustees may adopt an interest rate schedule for new entrants by Resolution, setting forth the new interest rate schedule for the T-DROP Cash Balance Account. T-DROP Cash Balance Accounts existing prior to the effective date of the Resolution shall be unaffected by the new interest rate schedule.

F. Based upon interest rates and financial market conditions, the ATRS Board of Trustees may approve Ad Hoc interest rate increases for participants in the T-DROP Cash Balance Account for a subsequent fiscal year through Resolution adopted by the ATRS Board of Trustees.

G. If a participant dies with a T-DROP Cash Balance Account, the account balance shall be paid as provided under Ark. Code Ann. § 24-7-1310.

Approved: June 13, 1995
Amended: July 30, 1997
June 17, 2003
February 15, 2005
July 18, 2005
April 26, 2007
February 1, 2010 under emergency rules.

June 7, 2010 Permanent
July 1, 2011 (Emergency)
Adopted: August 8, 2011
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Approved by Board: February 6, 2012
Amended: April 2, 2012 (Emergency)
Effective: May 29, 2012
Approved by Board: July 26, 2013
Amended: October 9, 2013
Effective: November 8, 2013

RULE 11-1

SURVIVOR BENEFITS

A.C.A. §§ 24-7-710, 713

I. GENERAL: See A.C.A § 24-7-710 for Survivor Benefit Rules.

A. Benefits may be provided to dependents of qualifying members after the death of the member. To qualify, a member must have five (5) years of actual service and be an active member at the time of death.

B. ATRS considers a member to be active for the purpose of qualifying for survivor benefits under A.C.A. § 24-7-710(g) and if:

- i. The member has at least ten (10) days of service credit in each prior quarter of the fiscal year from the time the fiscal year began or the member was employed by an ATRS employer, whichever occurs last, provided however, the member must have at least one quarter with ten (10) days of service; or
- ii. The member has at least ten (10) days of service in the quarter of the member's death, or, ten (10) working days have not elapsed in the quarter of the member's death.

II. SPOUSAL BENEFITS

A. The benefits provided for in A.C.A. § 24-7-710, plus the monthly stipend under A.C.A. § 24-7-713 shall be paid to the spouse of the qualifying member if the spouse survives the member and was married to the member for at least two (2) years immediately prior to the member's death.

B.

- i. If at the time of the member's death there are no dependent children eligible to receive a dependent child annuity, a surviving spouse who qualifies to receive a surviving spouse annuity may file with ATRS a waiver of any rights to the spousal annuity.
- ii. If the surviving spouse files a waiver of the spousal annuity, then the deceased member's residue beneficiary(ies) will receive a single distribution of the member's residue amount, if any.

C.

- i. The spousal annuity is payable for the spouse's lifetime, regardless of remarriage, pursuant to A.C.A. § 24-7-710(b).
- ii. The spouse may defer receipt of the annuity, if applicable, under the deferred retirements provisions of A.C.A. § 24-7-707.

III. DEPENDENT CHILDREN BENEFITS

A. Surviving dependent children of the member shall receive an annuity under A.C.A. § 24-7-710 and a cost of living adjustment, as may be designated by the Board.

B. There are certain additional limitations on the amount of annuity payable to a dependent child if the member has multiple dependents. A.C.A. § 24-7-710(c).

- i. "Child" is defined under A.C.A. § 24-7-202(9), and for purposes of receiving an annuity from ATRS, the child must be a dependent child in accordance with § 24-7-710. While a surviving dependent child's benefits normally cease once the child reaches eighteen (18) years of age, there are circumstances where the child may continue to receive benefits. These include:
 - a. A full-time student. A full-time student is defined as one carrying 12 semester hours or 8 trimester hours in college, four (4) hours per day in a secondary or postsecondary school, or other verifiable indices from an accredited institution that the dependent child is engaged in full time curriculum or field of study. Certification of attendance in an accredited school may be reported by the dependent child in the absence of a parent or legal guardian after the dependent child reaches age 18.
 - b. For a child receiving a dependent child annuity is age 18 or older who is temporarily physically or mentally incapacitated, the Board may continue paying benefits upon receipt of a doctor's certification that the child is temporarily physically or mentally incapacitated, and is unable to attend school for the period of one semester or term. At the beginning of the next semester or term, if the child does not reenter school full-time, the dependent child annuity will terminate.

C. A child who is adjudged physically or mentally incapacitated by a court of competent jurisdiction. Such a child continues to be eligible to receive a dependent child annuity as long as the incapacity exists, regardless of age. A.C.A. § 24-7-710(c).

D. A dependent child annuity remains at its initial monthly amount, adjusted only by a COLA increase, and is not readjusted when the member's other dependent child or children's annuities terminate.

E. A dependent child annuity is paid as a separate payment to each child monthly, rather than one lump-sum check payable to the spouse or custodian. Deposit accounts designated to receive survivor annuity payments to a child under age 18 shall conform with the Arkansas Uniform Transfers to Minors Act or court order in a guardianship.

IV. GENERAL RULES REGARDING SURVIVOR ANNUITIES

A. Survivors are required to produce sufficient proof of eligibility under these provisions prior to receiving benefit payments.

B. ATRS will notify survivors who may be eligible for a survivor's benefit at the last address on file at ATRS. (See also ATRS Rule 11-5 Lost Payees).

C. If the member dies before receipt of the first disability retirement check but after receiving final approval for disability retirement, the benefits will be paid under the disability retirement option selected by the member.

D. If the member dies after the disability application is received by ATRS but before disability retirement is approved, then ATRS shall consider the member to have died in "active" service and survivor benefits under A.C.A. § 24-7-710 shall be paid.

E. For the purposes of determining child survivor benefits, the member's salary shall be the salary that the member would have received in the fiscal year in which he/she died had the member lived through the end of the fiscal year, if the member's high salary occurred in the year the member died.

F. Salary payments made after the death of a member that were earned prior to death are subject to ATRS deductions and shall be reported in total salary and days of service in the employer's quarterly report. Payments made by an employer after the death of an active member that are made as a

mere gratuity and were not earned by the member shall not be included in the member's salary reported to ATRS and are not subject to contributions.

G. If survivor benefits are payable by more than one reciprocal system to eligible survivors of a deceased member, the survivors shall not receive more as a percentage of the deceased member's final pay or as a minimum dollar amount than the largest amount payable by a single, reciprocal system. ATRS will prorate minimum benefits payable with any other reciprocal systems that have a minimum benefit provision in its plan. Each reciprocal system shall pay only its proportionate share of the minimum amount based on the ratio of service in its system to the total service in all reciprocal systems.

H. When the member elects to transfer from ATRS to APERS under the provisions of Act 793 of 1977, APERS' law governs the survivors' eligibility for a payment of residue or survivor benefits upon the member's death

Amended:	June 15, 2004
	February 7, 2006
	April 26, 2007
	December 18, 2009
	July 1, 2011 (Emergency)
Adopted:	August 8, 2011
Effective:	November 11, 2011
Approved by Board:	August 6, 2012
Amended:	October 13, 2012
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Approved by Board:	July 26, 2013
Amended:	October 9, 2013
Effective:	November 8, 2013

RULE 11-2

LUMP-SUM DEATH BENEFIT

A.C.A. § 24-7-720

I. DEFINITIONS

- A. **Lump-sum beneficiary** means the person(s) or entity(s) designated in writing by the member to receive payment of the lump-sum death benefit under A.C.A. § 24-7-720.
- B. **Lump-sum death benefit** means a monetary amount set by the Board, and paid by ATRS to lump-sum beneficiaries as provided for under A.C.A. § 24-7-720.

II. RULES

- A. The amount of the lump-sum death benefit may be set pursuant to the rules and regulations adopted by the Board of Trustees in an amount *up to* \$10,000 per member. The Board of Trustees may adjust the amount of the lump-sum benefit each year and, as actuarially appropriate, prorate the amount of the lump-sum benefit based on the ratio of the member's contributory and noncontributory service credit.
 - i. The amount of the lump-sum death benefit has been set by the Board of Trustees at \$10,000 for eligible contributory members and eligible members who have a combination of contributory and non-contributory with at least fifteen (15) years of contributory service. For eligible noncontributory members the amount of the lump sum death benefit has been set at \$6,667, or a prorated amount at a ratio of 3:2 based upon the eligible member's contributory and noncontributory service credit.
 - ii. The benefit will be paid as a lump sum to the beneficiary designated by the eligible member. If the eligible member failed to designate a beneficiary or a designated beneficiary did not survive, the lump-sum benefit will be paid to the member's estate.
 - iii. However, on or after July 1, 2011, if a member has accrued a minimum of fifteen (15) years of actual, contributory service, but has also accrued noncontributory service, the

member is eligible for his or her survivors to receive the maximum lump sum death benefit as determined by the board.

- iv. To effectuate the legislative intent of Act 1323 of 2009, all lump-sum death benefit distributions made after June 30, 2009, shall be tax exempt, and no federal or state income tax shall be withheld by ATRS. After June 30, 2009, the lump-sum death benefit shall not be eligible for a direct rollover.

- B. A member must be classified as either *active* or *retired* at the time of his or her death to qualify for the lump-sum death benefit. Inactive members shall not be entitled to a lump-sum death benefit. A member is considered active for an additional fiscal year following the last fiscal year that the member renders at least one-fourth (1/4) year of actual service to a covered employer, credited as the total days of service.

- C. A member must have accrued the required amount of actual service at the time of his or her death to qualify for the lump-sum death benefit.

- D. A member may nominate any natural person(s) or duly formed legal entity as his or her lump-sum beneficiary including a corporation, trust, partnership, or other recognized legal entity.

- E. To nominate a lump-sum death beneficiary, a member must designate an eligible beneficiary on an ATRS approved form and sign the form.

- F. To be effective, the completed lump-sum beneficiary form must be received by ATRS prior to the member's death.

- G. A lump-sum beneficiary form, which is properly executed and filed with ATRS, supersedes all prior designations filed by the member for the lump-sum benefit.

- H. If the member is eligible for the lump-sum death benefit at his or her death, the lump-sum benefit payment shall be made within a reasonable amount of time to the member's proper beneficiary upon receipt of a written application, acceptable proof of the beneficiary's identification, and proof of the member's death.

- I. Lump-sum beneficiary forms signed by a member's agent (such as

an attorney-in-fact under a power of attorney) will not be processed until the document appointing the agent is filed with and accepted by ATRS. The authorizing document must contain authorization for the agent related to retirement plan transactions or the change of beneficiaries in order to authorize the agent to change the member's lump-sum beneficiary(s).

- J. ATRS will not accept a beneficiary form signed by a guardian of the member's estate or other court-appointed conservator without an accompanying court order authorizing the guardian's designation of beneficiary(s).
- K. A lump-sum beneficiary may waive his or her rights to payment of the lump-sum benefit by submitting a waiver and relinquishment form acceptable to ATRS. Upon receipt of a valid waiver, ATRS will pay the remaining eligible beneficiary(s).
- L. A lump-sum beneficiary may not assign payment of a lump-sum death benefit to another person or entity.
- M. ATRS reserves the right to deduct from the lump-sum benefit any amounts owed to ATRS by the member under A.C.A. § 24-7-205.
- N. ATRS reserves the right to collect any overpayments or other amounts owed to ATRS by the lump-sum beneficiary(s).
- O. ATRS shall comply with all applicable laws relating to the distribution of the lump-sum benefit including federal and state tax laws and the Uniform Transfer to Minors Act.

Amended: June 15, 2004
February 7, 2006
April 26, 2007
June 16, 2009 (Emergency)
October 5, 2009 (Permanent)
July 1, 2011 (Emergency)
Adopted: August 8, 2011
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RULE 11-5 **LOST PAYEES**

A.C.A. § 24-7-734
Act 385 of 2005
Act 140 of 2013

- I. Each member of ATRS, as well as each beneficiary of a deceased member, is responsible for filing with the Board of ATRS from time to time in writing the post office address and each change of post office address of the member or beneficiary.
- II. Any communication addressed to a member or beneficiary at the last address filed with the Board or ATRS or, if no address has been filed, the last address indicated on the records of the employer of the member or the beneficiary shall be binding on the member or beneficiary for all purposes of ATRS. Neither the Board nor ATRS is obligated to search for or ascertain the whereabouts of any member or beneficiary.
- III. If any provision of A.C.A. § 24-7-734, as amended by Act 385 of 2005, conflicts with a provision of the Arkansas Unclaimed Property Act (A.C.A. § 18-28-201 et seq.) the provision in A.C.A. § 24-7-734 supersedes the conflicting provision of the Arkansas Unclaimed Property Act. Furthermore, beginning July 1, 2013, distributable funds in the possession of ATRS are excluded from the definition of property under the Arkansas Unclaimed Property Act pursuant to A.C.A. § 18-28-201(13)(B)(iii).

Adopted: July 18, 2005
Approved by Board: July 26, 2013
Amended: October 9, 2013
Effective: November 8, 2013

RULE 12-1
PROTECTION OF “QUALIFIED TRUST” STATUS
OF ATRS UNDER
INTERNAL REVENUE CODE § 401(a)

A.C.A. § 24-7-202(16)
Act 71 of 2005

DEFINITION

Internal Revenue Code or **Code**, as used in these policies, rules, and regulations, means the federal Internal Revenue Code of 1986, as amended, as it existed on January 1, 2013.

RULES (A.C.A. § 24-7-210)

1. The Executive Director of the Arkansas Teacher Retirement System is authorized and directed to operate ATRS and interpret any provisions of A.C.A. §§ 24-7-101 *et seq.* and these policies, rules, and regulations consistent with the requirements under the federal Internal Revenue Code and applicable United States Treasury regulations necessary to permit ATRS to be operated as a “qualified trust” under section 401(a) of the Code.
2. Policies, rules, and regulations promulgated by the Board shall be consistent with these directions.
3. Any policies, rules, or regulations found to be in conflict with an applicable provision of the Code are void.
4. The Board may modify or eliminate an ATRS Rule by resolution at any Board meeting if a Code requirement becomes unnecessary, immaterial, or obsolete to the maintenance of ATRS qualified trust status, for the purposes under Act 109 of 2013.

Adopted: July 18, 2005

Approved by Board: July 26, 2013

Amended: October 9, 2013

Effective: November 8, 2013

RULE 13-1

ADMINISTRATION ADJUDICATIONS: STAFF DETERMINATIONS AND APPEALS

A.C.A. §§ 25-15-201 to 219

I. **Scope And Purpose**

- A. The purpose of this rule is to govern practice and procedure before ATRS and the Board of Trustees ("Board") involving any issue or claim ("claim(s)") arising as a result of any administrative decision or staff determination of ATRS relating to any retirement plan or program administered by ATRS. ATRS staff is responsible for administering ATRS members' accounts. Sometimes, the staff will make a determination based on ATRS rules and the rule of law that may be adverse to a member's claim. This rule outlines the procedure for a member to appeal a decision of ATRS.
- B. This rule applies to any claim of a member. "Member" includes any member of ATRS; any beneficiary of a member; any retiree of ATRS; any guardian, administrator, or executor of a member, retiree, or beneficiary; or any public school (all such categories of persons shall be referred to within this rule as the "member"). A document or decision shall be considered to be "issued" on the day the document is sent to the member. The Board and the ATRS Executive Director have the power to extend any deadline applicable to a member's appeal upon a showing of good cause, except when a Hearing Officer has been assigned, in which case such power shall rest with the Hearing Officer until the completion of the hearing.
- C. This rule should be read in conjunction with the Arkansas Administrative Procedures Act. See A.C.A. §§ 25-15-201 to -219 (the "APA"). To the extent any term or provision of this rule conflicts with any term or provision of the APA, the terms and provisions of the APA shall supersede this rule and control. This rule does not apply to claims or causes of action that ATRS or the Board may have against a member or any other person or entity, regardless of the origin or nature of the claim.

II. Informal Resolution Encouraged

- A. Claims by a member are usually settled by mutual agreement through correspondence or informal conference between the member and the staff of ATRS. The staff and the member are strongly encouraged to engage in a good faith attempt to mutually resolve Claims based upon proper application of the laws, statutes, and rules which govern the operation and administration of ATRS plans and programs to the specific facts of the member's claim.

III. Staff Determinations

- A. If the staff makes a determination that is adverse to a member's claim, ATRS shall issue a staff determination letter to the member. The letter shall detail the reasons for the decision. The member may disagree with the staff determination based upon a factual dispute or a dispute regarding the application of the rules and law. All reasonable efforts will be made to resolve the issue with the member informally. For claims that are not resolved informally, a member can appeal the staff determination to the Executive Director.
- B. Unless the member institutes a timely Executive Director review of the decision stated in the staff determination letter in accordance with Section 13.04 below, the decision of the staff will become a final administrative adjudication on the 31st day following the date of issuance of the staff determination letter.

IV. Executive Director Review

- A. Within thirty (30) days of the date of a staff determination letter, the member may request an Executive Director review of the staff decision. To commence an Executive Director review, the member shall only be required to serve a written request on the Executive Director requesting the review. Once the Executive Director receives the member's written request, the Executive Director will ~~send~~ issue a letter to the member acknowledging ~~the~~ his or her request.
- B. The member shall not be required to resubmit any documents or information with the written request for Executive Director review. If the member believes that the Executive Director should review any relevant documents or information not previously submitted to ATRS, the member may submit such information to the Executive Director. Any additional information must be served on the Executive Director within thirty-five (35) calendar days of the date of Executive Director's acknowledgment letter.
- C. The Executive Director will conduct an independent review of the facts and the law, taking into consideration the staff determination as well as any relevant information provided by the member. After the review period, which may vary in

length according to the facts of the member's claim, the Executive Director will issue an Executive Director review determination Letter to the member on the claim.

- D. The Executive Director may affirm, reverse, or modify the staff determination. The Executive Director shall provide to the member the applicable statutes and rules used in reaching the decision and a summary of the factual basis and legal conclusions for the Executive Director's decision. Unless the member institutes a timely appeal of the Executive Director's decision in accordance with Section 13.05 below, the decision of the Executive Director will become a final administrative adjudication on the 31st day following the date of issuance of the Executive Director review determination letter.

V. Appeals to the Board

- A. Any decision of the Executive Director regarding a staff determination may be appealed to the Board. In order to commence an appeal, the member must serve a written Notice of Appeal on the Board within thirty (30) days of the date of issuance of the Executive Director review determination letter. The Notice of Appeal may be in the form of a letter addressed to:

**ATRS Board of Trustees
Member Appeals
ATTN: Legal Department
1400 West Third Street
Little Rock, Arkansas 72201**

- B. All appeals from an Executive Director decision to the Board will be assigned to a Hearing Officer, who will conduct an administrative hearing, make a factual and legal determination of the claim, and prepare a proposed order to the Board that includes findings of fact and conclusions of law. The Executive Director or his designee shall appoint the Hearing Officer from a list of qualified individuals approved by the Executive Director.
- C. Following appointment, the Hearing Officer shall issue a written scheduling order to the member, the Executive Director of ATRS, and the legal counsel of ATRS. The scheduling order shall contain all information required under the Arkansas Administrative Procedures Act. (See A.C.A. § 25-15-208.) The Hearing Officer, at his or her discretion, may include in the scheduling order reasonable deadlines for the submission and exchange of exhibits, witness lists, and related materials prior to the hearing, including but not limited to, any requested proposed findings of fact and conclusions of law. Unless otherwise ordered, hearings shall be held at the offices of ATRS, 1400 West Third Street, Little Rock, Arkansas 72201.

- D. The Hearing Officer may continue any scheduled matter at his or her discretion for good cause shown by any party or counsel of record. If the member fails to appear at the hearing, the Member waives his or her right to present evidence and argument to the Hearing Officer, and the Hearing Officer may proceed with the hearing and prepare a proposed order to the Board based on the evidence presented.

VI. Filing of Documents

- A. Following the appointment of a Hearing Officer, all correspondence, documents, requests, submissions, or filings of any type relating to an appeal shall be mailed or hand delivered to:

**Arkansas Teacher Retirement System
Legal Department
1400 West Third Street
Little Rock, Arkansas 72201
Fax: (501) 682-6326**

- B. Any party submitting or filing a document relating to an appeal shall simultaneously serve a copy of the filing or document upon the opposing party (or opposing counsel, if applicable). It shall be the responsibility of ATRS to ensure: (a) that copies of all correspondence, documents, requests, submissions, and filings relating to an appeal are provided in a timely manner to the Hearing Officer; and (b) that a complete record of each appellate proceeding before a Hearing Officer and the Board is prepared and maintained in a single, centralized location.

VII. Hearings

- A. Hearings will be conducted according to this rule and the corresponding procedural provisions of the Arkansas Administrative Procedures Act (See Ark Code Ann. § 25-15-213). The member shall at all times have the right to counsel, provided that such counsel: (a) is duly licensed to practice law in the State of Arkansas; or (b) has been granted permission to appear *pro hac vice* by the Hearing Officer. All hearings shall be conducted in an orderly manner. The Hearing Officer shall have the authority to maintain the decorum of the hearing and may clear the hearing room of witnesses not under examination.
- B. The Hearing Officer shall have the authority to administer oaths and affirmations. Each party shall be entitled to examine and cross-examine witnesses, present evidence, make arguments, and generally participate in the conduct of the proceeding. The Hearing Officer may question a witness during any portion of the direct or cross-examination of such witness. All testimony to be considered

by the Hearing Officer, except matters officially noticed or entered by stipulation, shall be sworn testimony. Before giving testimony, each person shall swear or affirm that the testimony about to be given shall be the truth, the whole truth and nothing but the truth.

C. The hearing shall be informal and formal rules of evidence shall not apply. In conducting a hearing, the Hearing Officer shall not be bound by the formal rules of evidence, and no informality in any proceedings or in the manner of taking of testimony shall invalidate any order or decision of the Board. The Hearing Officer may admit into the record any evidence that in the judgment of the Hearing Officer:

i. has a reasonable degree of probative value and trustworthiness; or

ii. is of a type or nature commonly relied upon by reasonably prudent people in the conduct of their affairs. The Hearing Officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious. Objections to evidentiary offers may be made and shall be noted of record.

iii. Following the close of evidentiary submissions and witness testimony, the Hearing Officer may in his or her discretion allow summations and closing arguments by the parties.

D. ATRS shall arrange for a court reporter to attend and record all hearings. Documents received into evidence by the Hearing Officer shall be marked and filed as part of the record. ATRS shall be responsible for payment of the cost of the preparation of the transcript. Upon receipt of the transcript of the hearing, ATRS shall promptly forward a copy of the transcript to the Hearing Officer and the member (or counsel for the member, if applicable).

VIII. Posthearing Briefs

A. Upon the completion of the hearing, the Hearing Officer may allow the parties to submit posthearing briefs to be included as part of the record on appeal. The decision whether to allow the submission of posthearing briefs is committed to the sole discretion of the Hearing Officer. A decision by the Hearing Officer to not allow posthearing briefs shall have no effect on the validity of any order or decision issued by the Board.

B. If the Hearing Officer grants the member or ATRS an opportunity to submit a post-hearing brief, the Hearing Officer shall provide the opposing party an opportunity to submit a response. The Hearing Officer shall have discretion to set reasonable deadlines for the parties to submit posthearing briefs and responses, provided that the parties shall be allowed a minimum of fourteen (14)

days from the date of receipt of the transcript of the hearing before any initial posthearing brief shall be due for filing.

IX. Proposed Orders

- A. Once the Hearing Officer receives all evidence, arguments, and posthearing briefs (if any), the record before the Hearing Officer shall be officially closed. Once the record is closed, the Hearing Officer shall, as soon as practical, prepare a proposed order to be delivered to the Board of Trustees. The proposed order shall include findings of fact based exclusively on the evidence and testimony in the record of the hearing, conclusions of law, and a recommendation to the Board of Trustees. The Hearing Officer shall provide the proposed order to the Board at ATRS via facsimile and United States mail at the address listed in Section 13.06 of this rule. Upon receipt of the proposed order, ATRS shall mail a copy of the proposed order ~~upon~~ to the member (and his or her counsel, if applicable) via Certified, First Class, United States mail, with a copy to the Executive Director.

X. Written Objections to Proposed Order

- A. Within twenty (21) days of receipt of the Hearing Officer's proposed order, the member shall have the right to file a written statement of objections outlining any objections, exceptions, and/or arguments that the member desires the Board to consider in its evaluation of the Hearing Officer's proposed order. Any statement of objections must be filed with ATRS in accordance with Section 13.06 of this rule. The member may not introduce additional evidence or testimony in the statement of objections. Counsel for ATRS may prepare a written response to any statement of objections filed by the member. A copy of any response filed by counsel for ATRS shall be issued at least ten (10) days prior to the time the member's appeal is scheduled for consideration by the Board. The member may waive the ten (10) day limit if it would delay scheduling the matter before the Board.

XI. Board Consideration of Proposed Order

- A. The Board will make a final determination on the Hearing Officer's proposed order. The Board's consideration of the Hearing Officer's proposed order will be scheduled within a reasonable time to be heard, at a regular Board meeting after the issuance of the proposed order. The Board may call an emergency meeting to consider the Hearing Officer's proposed order if the situation warrants. ATRS shall notify the member or the member's counsel in writing of the date, time, and location of the Board Meeting.

- B. Failure of the member to appear at the meeting of the Board without prior notification will result in the member waiving his or her right to be heard by the Board. The member may petition the Board for a rehearing if the Board determines that the member's absence was for good cause.
- C. After consideration by the Board of the Hearing Officer's proposed order, the Board has the final authority to accept or reject all or part of the Hearing Officer's proposed order. The Board may:
 - i. accept the Proposed Order;
 - ii. reject the proposed order; or
 - iii. accept the Proposed Order as modified by the Board.
- D. If the Board elects to reject the Proposed Order or accept the Proposed Order as modified, the Board may:
 - i. make its own Findings of Fact and Conclusions of Law and issue its own Order based upon those findings and conclusions and may consider manifest injustice as a basis for any remedy; or
 - ii. remand the matter in whole or in part to the Hearing Officer for reconsideration or for additional findings of fact and/or additional conclusions of law.
- E. Before rendering a decision on the Hearing Officer's proposed order, the Board may request that the member (and his or her attorney, if applicable) make a brief statement to the Board concerning the facts and any arguments the member wishes to present and respond to any questions from Board. The Chairman of the Board will have final authority to set the amount of time any party may have to make a statement to the Board.
- F. As in all matters before the Board, a quorum of votes are necessary to approve any motion, resolution, or order under consideration.
- G. Following a decision of the Board with respect to the Hearing Officer's proposed order, the Board shall cause to be prepared a written final order on the member's appeal. The Board's final order shall include separate findings of fact and conclusions of law relied upon by the Board in formulating the final order. A copy of the Board's final order (including the Board's findings of fact and conclusions of law) will be delivered via Certified, First Class, United States mail to the member (and any counsel) by the Executive Director.

XII. Authority to Settle

- A. At any time prior to the issuance by the Board of a final order, the Executive Director is authorized to settle any claim in a manner mutually agreeable to ATRS and the member. In settling any claim, the Executive Director shall not exceed the authority previously granted to him or her by the Board. The Executive Director shall report to the Board any settlement that occurs after the Hearing Officer issues a proposed order.

XIII. Appeals Under the APA

- A. Any member receiving an adverse ruling from the Board retains certain rights under the Arkansas Administrative Procedures Act (See A.C.A. §§ 25-15-201 to -219.) The member may file a petition for judicial review. Any petition for judicial review of a final Board administrative decision shall be filed in Pulaski County Circuit Court. See A.C.A. § 25-15-212 and § 24-7-211. Such action must be filed within thirty (30) days after service upon the member of the Board's final order. See *id.*

XIV. Communications With the Hearing Officer and Board of Trustees

- A. The Arkansas Administrative Procedures Act prohibits direct or indirect communications by the Members and employees of ATRS with a Hearing Officer or the Board in connection with any issue of fact or law regarding an appeal, except upon notice that provides an opportunity for all parties to participate. Hearing Officers and the members of the Board will not consider any "ex-parte" or "off-the-record" evidence or statements made to them by the member or any employee of ATRS in connection with a pending appeal.
- B. This Section does not preclude communications by and between the Hearing Officer, ATRS Staff, and/or the Board concerning minor scheduling and procedural matters necessary to the timely and efficient processing and handling of appeals under these rules.

Approved: February 1, 2010 (Emergency)

June 7, 2010 Permanent

Approved by Board: July 26, 2013

Amended: October 9, 2013

Effective: November 8, 2013

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.

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16-1
CASH AND SAVINGS HELP PROGRAM
FOR MEMBERS

A.C.A. § 24-7-505 & A. C. A. § 24-7-707(a)(1)

I. This plan is called the "Cash and Savings Help Program (CASH Program).

II. AUTHORITY

This rule is promulgated under the authority granted in Act 606 of 2013.

III. PURPOSE and SCOPE

- A. The purpose of this Rule is to allow members an opportunity to receive a one-time lump sum cash payment in exchange for terminating their membership in ATRS. The benefit offering under this Rule shall be known as the "CASH Program". The one time lump sum cash payment shall be known as "CASH Program payment". The tender of the CASH Program payment by ATRS extinguishes any service credit or future retirement benefit from ATRS to the member that would have been based upon the member's service, and for all purposes "buys out" the membership, the retirement benefit rights, and all future rights in the system of the member.
- B. The opportunity for a CASH Program payment is available only under this Rule and only for a specific and temporary period of time to a specific category of members. The CASH Program payment is calculated under a formula that is unique to that category of members and is applicable for the offering period exclusively.
- C. ATRS is under no obligation to extend the offer or to make a future, similar offer. Terms, rules and rights for any CASH Program under a specific offering period do not apply to a subsequent CASH Program offering.
- D. This CASH Program is only applicable to ATRS members for their ATRS service. Reciprocal service shall not be eligible for the CASH Program nor shall the member combine reciprocal service with ATRS service in order to qualify for the CASH Program.

- E. The ATRS Board may target a CASH Program offering to a certain category of members within ATRS.
- F. A Cash Program payment may be made to a member by a check mailed to the member's address. A CASH Program payment may also be directly rolled over into a qualifying retirement plan under § 24-7-719, at the direction of the member. ATRS shall only roll over the CASH Program payment into one qualifying plan.
- G.
 - i. The Board shall set the dates for any offering period. To qualify for the CASH Program payment in a specific offering period, the member shall deliver the CASH Program Election Form to ATRS before the end of the offering period.
 - ii. A CASH Program Election Form that is postmarked after the offering period deadline is invalid. If sent by facsimile, the date stamp shall be before the offering period deadline. If sent as an attachment to an e-mail, the email shall be sent before the offering period deadline.
 - iii. The Board may re-offer a previously expired buyout plan or may extend the duration of a current offering through a resolution adopted by the Board at a meeting of the Board.
- H. While ATRS may make reasonable efforts to contact members eligible for the CASH Program, ATRS is under no duty to contact members, to verify the accuracy of the addresses, or to confirm receipt of the offer by the member, to confirm receipt of the election form by members, or to confirm receipt by ATRS of the CASH Program Election Form from members.

IV. THE CASH PROGRAM ELECTION FORM

- A. To participate in the CASH Program, a member shall submit a CASH Program Election Form to ATRS during the offering period. The CASH Program Election Form shall be completed in its entirety by the member in order to be accepted as a valid CASH Program Election Form.
- B. The CASH Program Election Form shall include the following:
 - i. A statement, signed by the member, that the member understands the purpose and scope of the CASH Program, and once ATRS tenders payment of CASH Program payment, the CASH Program Election Form may not be withdrawn.

- ii. A member who participates in the CASH Program plan shall receive a one-time lump sum payment from ATRS that cancels the member's interest in any retirement benefit and all future rights in ATRS effective upon tender of payment by ATRS.
 - iii. The signature of the member ; and
 - iv. The date.
- C. The CASH Program Election Form shall be made available to members using standard ATRS procedures.
 - D. ATRS is not required to accept any CASH Program Election Form that is not received during the offering period in the manner prescribed in this Rule.
 - E. ATRS is not responsible for the member's receipt of a CASH Program Election Form, regardless of the manner in which it is requested.
 - F. The member is exclusively responsible for obtaining and submitting the CASH Program Election Form as required under this Rule.
 - G. ATRS shall determine if the member is qualified to receive a CASH Program payment. Only qualifying members may receive the CASH Program payment and any erroneous delivery of a CASH Program Election Form by ATRS to a member does not establish a right to payment.

THE 2013 CASH PROGRAM FOR INACTIVE, VESTED, EXCLUSIVELY NONCONTRIBUTORY MEMBERS

V. APPLICABLE TO VESTED, NONCONTRIBUTORY MEMBERS ONLY

- A. This offering is limited to vested, exclusively non-contributory members that are inactive. The CASH Program payment, once the CASH Program Election Form is properly submitted to ATRS, will be paid within a reasonable time or rolled out to another administrator at the direction of the member. The acceptance of a CASH Program payment by the member does not make the member a retiree.

- B. This offering is limited to members of ARTS who:
- i. Have vested, exclusively noncontributory service credited in ATRS; and
 - ii. Are currently inactive and have remained inactive for at least one (1) year after the last fiscal year that the member rendered actual service to a covered employer, but not retired, during the offering period set forth in the Rule, and whose membership in ATRS is exclusively noncontributory.

VI. THE OFFERING PERIOD

The offering period for this CASH Program opportunity begins upon the effective date of these Rules and ends June 30, 2014, unless extended by the Board through a properly adopted resolution.

VII. THE CASH PROGRAM FORMULA

- A. Final Average Salary is defined under A.C.A. § 24-7-202(15) and calculated using the formula set in A.C.A. § 24-7-736.
- B. The member's age shall be determined on the date the CASH Program Election Form is received by ATRS.
- C. The CASH Program Payment is calculated on the following formula:

Step 1: (Final Average Salary) x (Years and partial years of Non-contributory Service) x (ATRS Non-contributory multiplier of .0139%) + (\$900.00 if the member has more than 10 years of Service) = Assumed Annual Benefit

Step 2: Assumed Annual Benefit ÷ 12 = Assumed Monthly Benefit Amount.

Step 3: Assumed Monthly Benefit Amount x Applicable Accrued Liability Factor for the Member as listed in the Accrued Liability Factor Table = Assumed Current Value.

Step 4: Assumed Current Value x 30% (.30) = CASH Program payment.

VIII. ACCRUED LIABILITY FACTOR TABLE

Sample Attained Ages	Accrued Liability Factor	Sample Attained Ages	Accrued Liability Factor
20	6.97	60	156.92
21	7.53	61	154.09
22	8.13	62	151.18
23	8.79	63	148.18
24	9.49	64	145.12
25	10.25	65	141.98
26	11.07	66	138.76
27	11.96	67	135.50
28	12.92	68	132.15
29	13.96	69	128.70
30	15.08	70	125.17
31	16.29	71	121.55
32	17.60	72	117.85
33	19.01	73	114.07
34	20.54	74	110.20
35	22.19	75	106.28
36	23.98	76	102.30
37	25.91	77	98.25
38	28.00	78	94.21
39	30.26	79	90.17
40	32.70	80	86.13
41	35.33	81	82.11
42	38.19	82	78.14
43	41.27	83	74.24
44	44.61	84	70.37
45	48.21	85	66.60
46	52.11	86	62.92
47	56.33	87	59.38
48	60.90	88	56.07
49	65.83	89	52.97
50	71.18	90	50.09
51	76.95		
52	83.21		
53	89.99		
54	97.35		
55	105.31		
56	113.97		
57	123.39		
58	133.63		
59	144.78		

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RULE 17-1 MANIFEST INJUSTICE

I. BACKGROUND AND PURPOSE.

The 89th General Assembly provided the ATRS Board the extraordinary remedy of waiving any rule, provision, or law that does not violate a federal law or rule in order to prevent a manifest injustice to a member, benefit participant, ATRS employer, or ATRS. Act 303 of 2013 grants that authority to the Board, and is codified at A.C.A. § 24-7-205 as follows:

*"(e) The board or its designee may waive or modify the impact of a rule, provision, or law that does not violate federal law or jeopardize the tax-qualified status of the system to correct or prevent a **manifest injustice** (emphasis added) that would affect the system, benefit participant, or employer in a particular instance."*

The definition of manifest injustice can be found at Ark. Code. Ann 24-7-202(40)(A) as follows:

"(40)(A) "Manifest injustice" means an obvious unfairness that has a direct and observable unconscionable effect that will occur as a result of a technical error or error of judgment, when the error made by the system, a benefit participant, or employer, and the disparity of outcome to the parties, when taken together and supported by clear and convincing evidence, show a great harm to the integrity of the system as a whole, the benefit participant, or an employer, unless the system is afforded the discretion to resolve the matter in a fair manner.

(B) In determining manifest injustice the system may consider:

- (i) The degree of fault of the system, benefit participant, or employer;*
 - (ii) An ambiguity in the interpretation of the circumstances, rule, or law;*
 - (iii) The cost to the system of correcting the error that is far outweighed by the benefit afforded to the system, benefit participant, or employer;*
 - (iv) Whether or not an expedited decision is in the public interest;*
 - (v) The fundamental fairness of a remedy in a particular situation;*
- and*

(vi) Whether or not the status quo would result in an unconscionable outcome."

II. GENERAL

The process of declaring a manifest injustice is a rare and extraordinary remedy that shall not be used as a routine method of addressing error, oversight, or simple mistake. As an extraordinary remedy, manifest injustice shall be cautiously and carefully used to prevent unfairness, to preserve the integrity of ATRS, and to avoid or correct unduly harsh or unconscionable outcomes.

III. DELEGATION TO ATRS EXECUTIVE DIRECTOR.

- A. The ATRS Executive Director is hereby given authority to implement a resolution of a manifest injustice once a determination is made that a manifest injustice exists using the review process set forth herein. The Executive Director may implement a resolution of a manifest injustice of up to \$10,000 of direct financial impact to ATRS. The Executive Director is specifically prohibited from waiving any deadlines that may apply in the ATRS Rules or law. Any waiver of a deadline is exclusively a Board remedy and not a remedy available to the ATRS Executive Director. Provided however, if any resolution that has a direct financial impact of more than \$5,000, then ATRS Executive Director shall provide the Chair of the ATRS Board of Trustees written notice about the manifest injustice determination and proposed resolution prior to implementing the resolution.
- B. The Executive Director is specifically prohibited from waiving any deadline that may apply in the ATRS Rules or law. A waiver of a deadline is exclusively a Board remedy and not a remedy available to the Executive Director.
- C. The Executive Director shall provide a report to the Board at least biannually that outlines the facts and circumstances of each manifest injustice referral, sets forth the findings and recommendations of the Manifest Injustice Committee, and sets forth and explains the resolution of the manifest injustice, if a manifest injustice is found. Members' names or other information that is not material to the findings shall not be required in the report to the Board.

IV. MANIFEST INJUSTICE COMMITTEE.

- A. The ATRS General Counsel, Assistant Director of Fiscal Affairs, and Member Services Administrator shall act as a 3-person Manifest Injustice Committee (the "Committee") to review all manifest injustice referrals.
 - i. The Committee will meet on a reasonable schedule or as needed to review any referral.
 - ii. A majority vote of the Committee shall constitute a recommendation on the referral.
 - iii. The Committee shall make an initial recommendation to the Executive Director based upon its review of the referral regarding whether or not a manifest injustice exists. If a manifest injustice exists, then the Committee shall propose a resolution of the manifest injustice to the Executive Director.
- B. If the Committee determines that no manifest injustice exists in a referral, then the Executive Director shall review the referral and the Committee's basis for the recommendation. The Executive Director may either accept the recommendation or return the referral to the Committee for further consideration.
 - i. If the Executive Director accepts the recommendation from the Committee, the discretionary review is officially ended and the matter is to be considered officially closed.
 - ii. If the referral is returned to the Committee, the Committee shall consider the matter again in light of any additional information provided by the Executive Director. If the Committee's recommendation remains that no manifest injustice exists, the matter shall be considered officially closed, unless referred to the Board.
- C. If the Committee determines that a manifest injustice does exist, then the Executive Director may implement the resolution suggested by the Committee or adopt an alternate resolution that falls within the Executive Director's delegated authority.

- D. If the Executive Director disagrees with the Committee's determination that a manifest injustice exists, then the Executive Director may return the referral for further consideration. If the Committee maintains the determination that a manifest injustice exists after the return of the referral, and the Executive Director continues to disagree, then the Executive Director may place the item on the Board agenda for the Board to consider and resolve, with input from both the Committee and Executive Director concerning the referral.
 - E. If a member of the Committee has a conflict or otherwise cannot act on a manifest injustice referral due to absence, sickness, or work load, a Committee member may appoint a representative from their Staff for a committee meeting.
 - F. A party may not administratively appeal a determination of a referral of manifest injustice, regardless of whether the determination occurs from the Executive Director's decision or through the Board's decision.
- V. The Executive Director may suspend an Executive Director Review if a manifest injustice determination might resolve the issue within the Executive Director review. The Executive Director review shall not be suspended absent the consent of the affected party/parties in the Executive Director review.

VI. REFERRALS.

- A. A referral of a potential or alleged manifest injustice may be made to the Executive Director by any:
 - i. ATRS Trustee;
 - ii. ATRS Staff member, including the Executive Director;
 - iii. Benefit Participant;
 - iv. Beneficiary;
 - v. ATRS-covered Employer; or
 - vi. Other interested party such as guardian or fiduciary.
- B. A referral shall be made to the Executive Director in order to create and preserve an appropriate record with ATRS.

- i. Each referral shall be given a number and a year designation. For example: "2013-MI-1, 2013-MI-2, 2013-MI-3" and so forth.
- ii. The Executive Director shall submit all referrals to the Committee.

VII. The Committee or the Executive Director may request that a party to a manifest injustice referral provide information or input concerning the referral. A party is not required to provide information.

VIII. A Board decision on a manifest injustice referral is a final discretionary decision and is not subject to further review.

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