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Proposed Rulemaking

Title

Promulgated by:
Arkansas Teacher Retirement System

Title 24. Retirement and Pensions

Chapter III. Arkansas Teacher Retirement System

Subchapter A. Generally

Part 10. Arkansas Teacher Retirement System Rules

Subpart 6. Retirement and Benefits

24 CAR § 10-601. Definitions.

As used in this subpart:

(1) "Act 808 employee" means an employee of a state agency who:

(A) On April 8, 1987, was an active member of the Arkansas Teacher Retirement System;

(B) Qualified to retire before January 1, 1988, under the Early Retirement Incentive Law of 1987 (Acts 1987, No. 187); and

(C) Could elect to become a member of the Arkansas Public Employees' Retirement System and have his or her credited service in the Arkansas Teacher Retirement System transferred to the Arkansas Public Employees' Retirement System;

(2) "Annuity options" means one (1) or more options that:

(A) Concern how an annuity benefit shall be paid, in accordance with Arkansas Code § 24-7-706, to a member for his or her lifetime after the member's retirement; and

(B) Are available for a member's election at the time of the member's retirement;

(3) “Application”, for the purposes of retirement eligibility, means an application form and any other documents required by the Arkansas Teacher Retirement System to establish a member’s eligibility to retire;

(4) "Covered employer" or “employer” means an employer:

(A) Who participates in the Arkansas Teacher Retirement System; and

(B) Whose employees are eligible for membership in the Arkansas Teacher Retirement System;

~~(5) “Dependent child” means a child of a member or retiree who:~~

~~(A) Is a minor; or~~

~~(B) Has been adjudged physically or mentally incapacitated by a court of competent jurisdiction;~~

~~(6)~~(5) "Effective retirement date" means the first day of the month in which a member requests to receive retirement benefits and for which the member submits a timely retirement application;

~~(7)~~(6) “Eligible employee”, for the purposes of salary or compensation limitations concerning the calculation of a final average salary, means a person who was a member of the Arkansas Teacher Retirement System before the first plan year beginning after December 31, 1995;

~~(8)~~(7) “Full service year” means employment with a covered employer for one hundred sixty (160) days or more in a fiscal year;

~~(9)~~(8) “Incapacitated child” means a child who has been adjudged physically or mentally incapacitated by a court of competent jurisdiction;

~~(10)~~(9) "Marriage dissolution" means a final decree of divorce, separate maintenance, or annulment executed by a court of competent jurisdiction and filed of record in the Office of the Ex Officio Recorder;

~~(11)~~(10) "Medical committee" means the committee of three (3) physicians appointed by the Board of Trustees of the Arkansas Teacher Retirement System for the purpose of evaluating disability retirement applications;

~~(12)~~(11) "Option beneficiary" means a person who:

(A) A member nominates by written designation, before or after the member's retirement, to receive annuity payments after the member's death in accordance with the annuity option selected by the member; and

(B) If eligible, shall receive annuity payments after the member's death in accordance with the annuity option selected by the member;

~~(13)~~(12) "Partial service year" means employment with a covered employer for less than one hundred sixty (160) days in a fiscal year;

~~(14)~~(13) "Person" means an individual, trust, estate, corporation, partnership, or other legal entity;

~~(15)~~(14) "Residue" means a member's accumulated contributions, including regular interest standing in the member's credit at the time of his or her retirement;

~~(16)~~(15) "Residue beneficiary" means a person who a member nominates by written designation to receive the member's residue, if any, under Arkansas Code § 24-7-709;

~~(17)~~(16) "Receivable" means moneys due to the Arkansas Teacher Retirement System from a member, former member, covered employer, contributor, retiree, beneficiary, or alternate payee under a qualified domestic relations order (QDRO) as a result of an overpayment of any payment or benefit by the Arkansas Teacher Retirement System; and

~~(18) "Retiree" means a retired member who receives an annuity from the Arkansas Teacher Retirement System; and~~

~~(19)~~(17) "Service" means employment rendered as an employee.

24 CAR § 10-602. State employee transfers to the Arkansas Public Employees' Retirement System.

(a) An Act 808 employee shall make the election to transfer to the Arkansas Public Employees' Retirement System on a form approved by the Arkansas Teacher Retirement System.

(b) The transfer from the Arkansas Teacher Retirement System to the Arkansas Public Employees' Retirement System shall be effective on the employee's effective date of retirement.

(c) The Arkansas Teacher Retirement System shall certify to the Arkansas Public Employees' Retirement System a record of the Act 808 employee's service credit in the Arkansas Teacher Retirement System.

(d)(1) If an Act 808 employee is a noncontributory member of the Arkansas Teacher Retirement System at the time of his or her retirement, the Act 808 employee shall:

(A) Retire under the noncontributory provisions of Acts 1987, No. 187; and

(B) Be entitled to a refund of his or her Act 808 employee contributions made since January 1, 1978, to the Arkansas Teacher Retirement System.

(2) If an Act 808 employee was a contributory member of the Arkansas Teacher Retirement System at the time of his or her retirement, the Act 808 employee shall retire under the contributory provisions of Acts 1987, No. 187.

(e)(1) The Arkansas Public Employees' Retirement System shall pay the monthly benefits of an Act 808 employee who elects to transfer to the Arkansas Public Employees' Retirement System.

(2) The Arkansas Public Employees' Retirement System shall certify monthly to the Arkansas Teacher Retirement System the amount of monthly benefits paid and the Arkansas Teacher Retirement System shall transfer its pro rata portion to the Arkansas Public Employees' Retirement System.

(f) Upon receipt of a death certificate from the Arkansas Public Employees' Retirement System for a retiree who chose a straight life annuity and has a balance remaining in his or her account, the Arkansas Teacher Retirement System shall transfer the remaining balance in the retiree's account to the Arkansas Public Employees' Retirement System for refunding to the retiree's designated beneficiary.

24 CAR § 10-603. Retirement eligibility.

(a) ~~To~~Except as otherwise provided by law or rule, to be eligible for age and service retirement or disability retirement under the Arkansas Teacher Retirement System, a member shall:

(1) Satisfy the credited service requirements under one (1) of the retirement statutes, Arkansas Code §§ 24-7-701 – 24-7-707;

(2) Be credited with all required covered employer and member contributions in the member's deposit account, with no amounts owed to the system;

(3) Pay all amounts owed to the system for:

(A) Underpayments;

(B) Overpayments; or

(C) Purchase service accounts; and

(4) Terminate employment with each of his or her covered employers or reach the normal retirement age.

(b) A member who enters into a written agreement to repay the system all amounts owed shall be eligible for age and service retirement or disability retirement.

24 CAR § 10-604. Age and service retirement — Effective retirement date.

(a) For a member who is inactive, vested, and immediately eligible to retire, retirement benefits shall be payable the month after the Arkansas Teacher Retirement System receives the member's application for age and service retirement.

(b)(1) If a member meets all eligibility requirements for age and service retirement and is approved for retirement, annuity benefits shall be effective on the month proposed in the member's application.

(2) If the member does not file an application at least one (1) calendar month before the proposed effective retirement date, then the proposed retirement effective date in the member's application shall not be used, and the member's effective retirement date shall be the following month.

(c) 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 effective retirement date shall not be before July 1 of the subsequent fiscal year.

(d) If a member has accrued a full year of service credit equal or greater to one hundred sixty (160) days in a fiscal year, the member's retirement date shall not begin earlier than July 1 of the subsequent fiscal year. year unless the member:

(1) Has attained the normal retirement age and is not separating from employment; or

(2) Is not licensed or otherwise certified as a classroom teacher and vacating a classroom.

(e)(1) A member who attains the normal retirement age may:

(A) Apply for retirement benefits without terminating employment; and

(B) Begin drawing retirement benefits.

(2) The retirement benefits of a member who attains the normal retirement age shall not be affected if the member applies for and draws retirement benefits.

24 CAR § 10-605. Age and service retirement — Application.

(a) A copy of the age and service retirement application may be downloaded from the Arkansas Teacher Retirement System's website or requested from the system.

(b)(1) If eligible, an active or inactive member who attains age sixty (60) and has five (5) or more years of actual and reciprocal service credit may voluntarily retire by filing a written application with the system.

(2) If eligible, an active or inactive member who has not reached age sixty (60) and has twenty-five (25) or more years of actual and reciprocal service credit, including purchased or free credited service, may voluntarily retire by filing a written application with the system.

(c)(1) In order for a retirement application to be timely filed, there is a three-month window to apply for retirement benefits.

(2) An active member who is currently employed by a covered employer shall file his or her retirement application:

(A) No sooner than four (4) months before the active member's effective retirement date; and

(B) No later than one (1) month before the active member's effective retirement date.

(d) The system's procedure for handling a retirement application received by the system from a member shall include the following:

(1) If a retirement application is received by the system before the three-month window begins for the member's anticipated effective retirement date, the system shall:

(A) Consider the retirement application untimely;

(B) Reject the retirement application;

(C) Notify the member of one (1) or more dates on which the member may timely file a retirement application; and

(D) Notify the member of the procedure to use in order to timely file a retirement application; and

(2) If a retirement application is received after the three-month window ends for the member's anticipated effective retirement date, the system shall:

(A) Consider the retirement application untimely; and

(B) Provide the member with a new effective retirement date that begins on the first day of the month following the member's previously anticipated effective retirement date.

(e) Subsections (c) and (d) of this section do not apply to a disability retirement application or an application for survivor benefits.

(f) The following table shows examples of the windows for filing a retirement application:

EXAMPLE OF RETIREMENT FILING DATES			
Effective Date of Retirement	Retirement Application Must be Filed In:	Last Date of Employment	First Retirement Check

January 1	September, October or November	December 31	End of January
February 1	October, November or December	January 31	End of February
March 1	November, December or January	Feb 28/29 (Leap year)	End of March
April 1	December, January or February	March 31	End of April
May 1	January, February or March	April 30	End of May
June 1	February, March or April	May 31	End of June
July 1	March, April or May	June 30	End of July
August 1	April, May or June	July 31	End of August
September 1	May, June or July	August 31	End of September
October 1	June, July or August	September 30	End of October
November 1	July, August or September	October 31	End of November
December 1	August, September or October	November 30	End of December

(g) The following table is the only window for filing a Teacher Deferred Retirement Option Participation application:

Effective Date of Retirement	**Retirement Application Must be Filed In:**

July 1	March, April or May

24 CAR § 10-606. Age and service retirement — Additional documents.

(a) Unless an extension is granted by the Executive Director of the Arkansas Teacher Retirement System, in addition to a completed application for retirement, a member shall submit the following additional documents to the Arkansas Teacher Retirement System by the end of the sixth full calendar month immediately following the member's effective retirement date:

(1) For members who elect a straight life annuity:

(A) Proof of the member's birthdate from a birth certificate or other authenticating documents; and

(B) Proof of the member's taxpayer identification number from a Social Security card or other authenticating documents;

(2) For members who elect an Option A or Option B annuity and designate their spouse as the beneficiary:

(A) Proof of the member's birthdate from a birth certificate or other authenticating documents;

(B) Proof of the member's taxpayer identification number from a Social Security card or other authenticating documents;

(C) Proof of the spouse's birthdate from a birth certificate or other authenticating documents;

(D) Proof of the spouse's taxpayer identification number from a Social Security card or other authenticating documents; and

(E) Proof of the 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;

(3) For members who elect an Option A or Option B annuity and designate a dependent child as their beneficiary:

(A) Proof of the member's birthdate from a birth certificate or other authenticating documents;

(B) Proof of the member's taxpayer identification number from a Social Security card or other authenticating documents;

(C)(i) Proof of guardianship.

(ii) Adequate proof of the existence of a guardianship due to the incapacity of the member's dependent child that preexists the member's official retirement date.

(iii) Authenticating documents may include the order appointing guardianship of the person, letters of guardianship, or other adequate proof of the existence of the guardianship;

(D) Proof of the dependent child's birthdate from a birth certificate or other authenticating documents; and

(E) Proof of the dependent child's taxpayer identification number from a Social Security card or other authenticating documents; and

(4) For members who elect an Option C annuity:

(A) Proof of the member's birthdate from a birth certificate or other authenticating documents; and

(B) Proof of the member's taxpayer identification number from a Social Security card or other authenticating documents.

(b)(1) Unless an extension is granted by the executive director, a member shall submit by the end of the sixth full calendar month immediately following the member's effective retirement date all additional documents required by the system in order to begin issuing benefit payments to the member.

(2) If all additional documents required by the system are not submitted by the deadline or any extension granted by the executive director, the member's retirement application shall be void and without effect.

24 CAR § 10-607. Disability retirement — Application.

(a)(1) A member shall submit a completed application for disability retirement and all accompanying documentation required by the Arkansas Teacher Retirement System by the end of the sixth full calendar month immediately following the date of the member's disability retirement application.

(2) If a member does not submit all accompanying documentation by the end of the sixth full calendar month immediately following the date of the member's disability retirement application, the system shall:

(A) Submit the disability retirement application to the medical committee for review as complete; or

(B) Withdraw the application at the request of the member unless an extension is granted by the Executive Director of the Arkansas Teacher Retirement System.

(b)(1) Disability retirement benefits shall begin on the first of the month in which a member files a disability retirement application with the system if the:

(A) Member is eligible for disability retirement;

(B) Member is no longer employed by a covered employer at the time he or she files the disability retirement application; and

(C) Medical committee determines that the member has a disability.

(2) If the member is still employed by a covered employer at the time the member files the disability retirement application then, once approved by the medical committee and then the Board of Trustees of the Arkansas Teacher Retirement System, the member's disability retirement shall begin on the first of the month following the last day of the member's covered employment.

(c) If a member's initial application for disability retirement is denied and the member elects and qualifies for age and service retirement, the member's effective retirement date shall be determined by the date the member's initial disability retirement application is filed.

(d)(1) A member may request a second review of his or her initial disability retirement application if the:

(A) Member's initial disability retirement application is denied; and

(B) Member submits additional medical documentation for the medical committee's consideration.

(2) A member may only request a second review one (1) time.

(3) If a member requests a second review, unless an extension is granted by the executive director, the member has until the end of the sixth full calendar month immediately following the date of the written notice of the medical committee's denial of the member's initial application for disability retirement to submit additional medical documentation.

(4)(A) If a member's initial disability retirement application is denied after the second review, the member may file another subsequent disability retirement application and submit additional information for consideration if the member is active and eligible for disability retirement.

(B) If a member's initial disability retirement application is denied and the member is ineligible to apply for disability retirement benefits or is inactive, the member may apply for age and service retirement if the member meets the requirements for age and service retirement.

(e) If a member dies after the disability application is received by the system, but before his or her disability retirement application is approved, then the:

(1) Member shall be considered as having died in active service; and

(2) Survivor benefits under Arkansas Code § 24-7-710 shall be paid, unless the member designated one (1) or more alternative residual beneficiaries.

(f)(1) If a disability retirement application is approved by the medical committee after May 31, 2011, the board shall allow the member to designate an Option A or Option B beneficiary at the time of retirement.

(2) An Option C beneficiary shall not be designated by:

(A) A member who applies for disability retirement; or

(B) A disability retiree.

(g)(1) The same rules that apply to an active member's surviving spouse under Arkansas Code § 24-7-710(b) shall apply to a disability retiree's surviving spouse if the disability retiree:

(A) Designates his or her spouse as Option A or Option B beneficiary at the time of retirement; and

(B) Dies before reaching sixty (60) years of age.

(2) The same rules that apply to a surviving spouse of an active member under Arkansas Code § 24-7-710(b) shall apply to the surviving spouse of a disability retiree if the disability retiree:

(A) Dies after disability retirement benefit payments to the disability retiree begin;

(B) Does not designate his or her spouse as an Option A or Option B beneficiary; and

(C) Does not designate a residue beneficiary.

(3) The same rules that apply to a surviving spouse of an active member under Arkansas Code § 24-7-710(b)(1)(B) shall apply to the surviving spouse of a disability retiree if the disability retiree:

(A) Dies after disability retirement benefit payments to the disability retiree began;

(B) Does not designate his or her spouse as an Option A or Option B beneficiary; and

(C) Designates his or her spouse as a residue beneficiary.

(4) The same procedures used under Arkansas Code § 24-7-710 that are used to determine when an active member's surviving spouse is entitled to begin receiving benefit payments shall be used to determine when benefit payments shall begin for a residue beneficiary who is the surviving spouse of a disability retiree and elects an Option A – 100% Survivor Annuity.

(5) If a disability retiree designates his or her dependent child as an Option A or Option B beneficiary, and the disability retiree dies before reaching age sixty (60), then:

(A) The same rules that apply under Arkansas Code § 24-7-710(c) to an active member's surviving child shall apply to the disability retiree's Option A or Option

B dependent child beneficiary until the date on which the disability retiree would have turned sixty (60) years of age; and

(B) On the date on which the disability retiree would have turned sixty (60) years of age, the Option A or Option B dependent child beneficiary shall receive the greater of the surviving child annuity under Arkansas Code § 24-7-710(c) or the Option A spouse annuity under Arkansas Code § 24-7-710(b).

24 CAR § 10-608. Disability retirement — Disability review.

(a) A deadline imposed by this subpart may be extended as provided by this section and Arkansas Code § 24-7-704.

(b)(1) A retiree shall submit to the Arkansas Teacher Retirement System a Social Security Administration determination letter that finds the retiree disabled within thirty-six (36) months from:

(A) July 1, 2015, if the retiree's effective retirement date is before July 1, 2015; or

(B) The retiree's effective retirement date if the effective date of retirement is on or after July 1, 2015.

(2) A retiree may apply to the system for an extension of the thirty-six-month deadline if the retiree demonstrates through an administrative or judicial confirmation of an active Social Security Administration claim that the claim is:

(A) Still under review;

(B) Part of a continuous claim without voluntary dismissal or withdrawal; and

(C) The Social Security Administration disability claim was filed and remained active for at least twenty-four (24) months before the thirty-six-month deadline.

(c) The system shall suspend disability retirement benefit payments to a retiree if the retiree does not:

(1) Provide the system with a Social Security Administration determination letter finding the retiree disabled within the thirty-six-month deadline;

(2) Receive an extension of the thirty-six-month deadline to provide the system with a Social Security Administration determination letter finding the retiree disabled; or

(3) Apply to the medical committee for a review by the end of the third full calendar month immediately following the system's suspension of disability retirement benefit payments to the retiree due to the retiree's failure to provide a Social Security Administration determination letter finding the retiree disabled.

(d)(1) A retiree who attempts and is unable to receive a Social Security Administration determination letter finding the retiree disabled may apply for a review by the medical committee if the member submits either an unfavorable Social Security Administration determination letter finding that the retiree is not disabled or documentation showing that the retiree applied for Social Security Administration benefits before the thirty-six-month deadline to submit a favorable Social Security Administration determination letter finding the retiree disabled expired.

(2) A retiree may apply for a review by the medical committee:

(A) No earlier than three (3) full calendar months before the date on which the retiree's disability retirement benefit payment would otherwise be suspended; and

(B) No later than by then end of the third full calendar month immediately following the system's suspension of disability retirement benefit payments to the retiree.

(3) A review performed by the medical committee shall follow the standards and procedures in Arkansas Code § 24-7-704(a)(1)(E).

(4)(A) After a disability review is held due to the Social Security Administration finding that a member is not disabled, the medical committee's recommendations shall be submitted to the Board of Trustees of the Arkansas Teacher Retirement System for a final order.

(B) If a member is denied further disability benefits after a disability review by the medical committee, the member may:

(i) Offer additional medical information within thirty (30) days of the date of the disability review; and

(ii) Request that the board return the matter to the medical committee for reconsideration.

(C)(i) Disability retirement benefit payments to a member shall resume in the month immediately following the board's entry of an order finding the member eligible to receive disability retirement benefits if the board had previously entered an order finding the member ineligible to receive disability retirement benefits.

(ii) If the board enters an order finding a member eligible to receive disability retirement benefits, the member shall not be entitled to retroactive back pay of disability retirement benefits if the:

(a) Board had previously entered an order finding the member ineligible to receive disability retirement benefits;

(b) Member did not submit a favorable Social Security Administration determination letter within thirty-six (36) months of his or her effective date of disability retirement; and

(c) Member submits a favorable Social Security Administration determination letter after the board entered the order finding the member ineligible to receive disability retirement benefits.

(e) A member's option to request a second review of his or her initial disability retirement application does not apply to a retiree who seeks a disability review due to his or her inability to obtain a Social Security Administration determination letter finding him or her disabled.

(f) A retiree shall begin receiving regular retirement benefits as if the retiree voluntarily retired and a Social Security Administration determination letter shall not be required if the retiree:

(1) Attains fifty-seven (57) years of age in the month the retiree's disability retirement benefits become effective; or

(2) Attains sixty (60) years of age.

24 CAR § 10-609. Disability retirement — Employment after disability retirement.

(a) A member's disability retirement is effective from the date the member files a disability retirement application with the Arkansas Teacher Retirement System and terminates employment with each of his or her covered employers.

(b)(1) A member is considered active if the member is using earned:

(A) Sick leave;

(B) Family Medical Leave Act leave;

(C) Annual leave; and

(D) Catastrophic leave.

(2) Workers' compensation, which may or may not include the use of leave granted by an employer, shall not:

(A) Be considered leave by which a member is considered active; and

(B) Extend the date of active membership.

(c)(1) A member shall not receive disability retirement benefit payments if the member indirectly performs work for a covered employer as described in Arkansas Code § 24-7-502.

(2) If a member is approved for disability retirement and continues to work either directly or indirectly for a covered employer, the member shall:

(A) Terminate direct or indirect employment with the covered employer by the proposed disability effective retirement date; or

(B) If the member is finalizing work for the covered employer, terminate employment no later than two (2) full calendar months after the medical committee's final decision.

(3) If the member does not terminate employment in accordance with system rules and Arkansas Code § 24-7-502:

(A) The member's disability retirement application shall be considered rescinded; and

(B) The member may reapply for disability retirement if eligible.

(d)(1) A retiree under the age of sixty (60) may be employed by a covered employer and also receive disability retirement benefit payments if the retiree performs less than eighty (80) days of actual service during a fiscal year.

(2)(A) After receiving approval for disability retirement under the system, a retiree may choose to return to covered employment and relinquish his or her disability retirement.

(B) If a retiree chooses to return to covered employment, the member shall:

(i) Not receive disability retirement benefit payments;

(ii) Be considered an active member; and

(iii) Comply with Arkansas Code § 24-7-738 (Acts 2017, No. 549).

(3) A retiree shall become an active member and his or her disability retirement shall be immediately terminated if:

(A) The retiree notifies the system in writing of his or her intent to perform more than eighty (80) days of actual service during a fiscal year; or

(B) The system receives written notification of the retiree's intent to perform more than eighty (80) days of actual service during a fiscal year through a termination and status sheet, membership data form, or any other reasonably reliable documentation.

(e) A disability retiree shall not be permitted to transfer his or her disability retiree status to that of an age and service retiree.

24 CAR § 10-610. Benefit formula and compound cost of living adjustment.

(a) The annuity formula for computing disability retirement benefits shall be the same annuity formula used to compute age and service retirement benefits.

(b)(1) The retirement benefits payable to a retiree shall be the total number of contributory years of credited service, multiplied by a factor that is not less than one and seventy-five hundredths percent (1.75%) and not more than two and fifteen hundredths percent (2.15%) of the final average salary as set by the Board of Trustees

of the Arkansas Teacher Retirement System, plus the total number of noncontributory years of credited service multiplied by a factor that is not less than five-tenths percent (0.5%) and not more than one and thirty-nine hundredths percent (1.39%) of the final average salary, as set by the board.

(2) The board shall modify the standard multipliers for credited service of ten (10) years as necessary to maintain actuarial soundness.

(c)(1) The board by resolution may reverse a compound cost of living adjustment as needed to maintain the actuarial soundness of the Arkansas Teacher Retirement System.

(2) A reversal may be phased in as the board determines appropriate.

(d)(1) If a covered employer reports additional salary for a member and the additional salary does not cause the member's annual benefit to increase or decrease by more than the de minimis amount, then the member's contributions on the additional salary shall be transferred from the member's deposit account to the employer accumulation account without making any change to the member's annual benefit.

(2) If the additional salary does increase or decrease the member's annual benefit by more than the de minimis amount, then the member's annual benefit shall be recalculated.

24 CAR § 10-611. Final average salary — Salary limitations.

(a) The Board of Trustees of the Arkansas Teacher Retirement System may adopt rules to modify the definition of salary for the purpose of calculating retirement benefits available under the Arkansas Teacher Retirement System.

(b) The system shall include the salary received from each of a member's covered employers when calculating the member's final average salary.

(c)(1) Regardless of any provision in a state statute, rule, or regulation to the contrary, remuneration, salary, or other compensation that exceeds the limitations set forth provided in the Internal Revenue Code of 1986, 26 U.S.C. § 401(a)(17), as it

existed on January 1, 2011, shall not be used for the purposes of calculating the final average salary on which benefits available under the system are based.

(2) The limitation on remuneration, salary, or compensation for an eligible employee shall not be less than the amount that was allowed to be considered by the system as in effect on July 1, 1993.

(d)(1) A salary earned by a member before the member's death and paid after the member's death is subject to deductions by the system and the member's covered employer shall report the member's total salary and days of service in the covered employer's quarterly report.

(2) Gratuitous payments made by a covered employer to a member after the death of the member shall not be:

(A) Considered the salary of the member;

(B) Subject to contribution requirements; and

(C) Included in the covered employer's quarterly report to the system.

(e) The system shall not consider remuneration, salary, or compensation paid by a covered employer to a member as a salary earned by the member if the:

(1) Remuneration, salary, or compensation is paid as an incentive payment, bonus, separation payment, additional salary, or special payment in consideration for the member's agreement to retire, terminate employment, or not renew a contract with the covered employer;

(2) Offer described in subdivision (d)(1) of this section is extended by the covered employer to two (2) or more members;

(3) Remuneration, salary, or compensation is not offered as an additional salary or payment for the purchase of service credit that is part of a separation agreement resulting from the resolution of a claim of wrongful termination;

(4) Remuneration, salary, or compensation is not payment for accumulated, unused sick leave that:

(A) Accrued in the years immediately preceding the member's termination of covered employment; and

(B) Were in excess of the number of sick days that the covered employer allowed the member to carry forward;

(5) Covered employer offers a voluntary early retirement incentive plan, staff reduction plan, or buyout plan that would require the member as a participant of the plan to retire or terminate his or her employment with the covered employer; and

(6) Member voluntarily participates in the plan in exchange for the remuneration, salary, or compensation offered by the covered employer.

(f)(1) A covered employer shall not withhold a member's contributions or pay employer contributions from a remuneration, salary, or compensation paid to a member if the remuneration, salary, or compensation is subject to a salary limitation as provided by this subpart.

(2) A covered employer that offers an early retirement plan, separation, plan, or contract nonrenewal plan and intends to pay remuneration, salary, or compensation that is subject to a salary limitation as provided by this subpart shall notify the system before making a payment under the plan.

(g)(1) At the request of a covered employer, the system shall:

(A) Review a potential plan or payment that may be subject to a salary limitation as provided by this subpart; and

(B) Provide written guidance to the covered employer concerning the applicability of the salary limitation to the plan or payment.

(2) The system's written determination on the applicability of a salary limitation to a plan or payment shall be treated as a staff determination letter, which may be appealed by the covered employer using the procedures in 24 CAR § 10-1001 et seq.

(3) The law, rules, and policies applicable to the system shall be controlling if a conflict exists between the system's calculation of final average salary and a covered employer's laws, rules, or policies concerning the compensation of final average salary.

24 CAR § 10-612. Final average salary — Service years.

(a) If a member dies during active service on or after July 1, 2013, the member's paid or unpaid accrued, unused sick leave, shall be credited as service in the fiscal year of the member's death for the purpose of determining the member's retirement eligibility, final average salary, and eligibility for other benefits under the Arkansas Teacher Retirement System.

(b)(1) A partial service year shall be excluded from the calculation of a member's final average salary unless the:

(A) Partial service year is higher than a full service year; or

(B) Member has less than the required number of years to calculate a final average salary.

(2) Anti-spiking calculations shall not be applied to a partial service year or a fiscal year immediately following a partial service year.

(c)(1) The Board of Trustees of the Arkansas Teacher Retirement System shall set annually the applicable number of years to be used in computing final average salary for retirement benefits at not less three (3) years and not more than five (5) years.

(2) Unless otherwise provided by law, rules, or policies applicable to the Arkansas Teacher Retirement System, effective July 1, 2018, the Arkansas Teacher Retirement System shall calculate a member's final average salary using the five (5) years in which the member received the highest salary from a covered employer.

(d)(1) If a member has less than the minimum number of years of credited service that would be used to calculate a final average salary, the member's final average salary shall be the total salary paid to the member for his or her years of credited service divided by the member's total credited years of service.

(2) If a member does not have full service years for the total years of service used in the calculation of final average salary, the board may establish by rule a fair base salary for a member's final average salary for purposes of comparing the member's highest salary years.

(e)(1) For an active member who has three (3) or more full service years as of July 1, 2018, the Arkansas Teacher Retirement System shall:

(A) Treat the active member as if he or she was retiring or entering the Teacher Deferred Retirement Option Plan as of June 30, 2018; and

(B) Determine the benchmark final average salary using the highest salary from the member's three (3) full service years through fiscal year 2018.

(2) A final average salary calculation using three (3) full service years shall be the benchmark comparison for a five-year final average salary calculation to which the active member may be entitled.

(3) The Arkansas Teacher Retirement System shall calculate the active member's final average salary using the five (5) years in which the active member received the highest salary from a covered employer if at the time of the active member's retirement using a five-year calculation of the final average salary is higher than using a three-year calculation.

(4) The Arkansas Teacher Retirement System shall not use a benchmark final average salary for an inactive member unless the inactive member provides the Arkansas Teacher Retirement System with appropriate documentation showing that the inactive member was active in a reciprocal system or alternate retirement plan during the 2018 fiscal year.

(f) For a member with reciprocal service credit, the Arkansas Teacher Retirement System shall use the highest final average salary calculated, at the time of the member's retirement, by the Arkansas Teacher Retirement System or a reciprocal system in which the member has at least two (2) years of service credit pursuant to Arkansas Code § 24-2-402.

24 CAR § 10-613. Annuity options.

(a) Before the date the first benefit payment of an annuity becomes due, a member retiring with age or service may elect one (1) of the following annuity options:

(1) Option 1 – straight life annuity, which is a straight life annuity payable monthly for the life of the retiree; or

(2)(A) Option 2 – reduced straight life annuity with option beneficiaries, under which a retiree shall receive the actuarial equivalent of his or her straight life annuity in a reduced annuity payable for the retiree's lifetime.

(B) Under Option 2, at the time of his or her retirement, a member may designate one (1) or more beneficiaries to receive one (1) of the following annuity options:

(i)*(a)* Option A – one hundred percent (100%) survivor annuity.

(b) Upon the death of the retiree, the retiree's reduced annuity shall be continued and paid throughout the life of the retiree's designated beneficiary.

(c) A member's eligible spouse, one (1) or more of the member's children who qualify as a dependent child, or both may be designated as an Option A beneficiary.

(d) If both a spouse and one (1) dependent child are designated as Option A beneficiaries, the retiree's reduced annuity shall be paid in equal shares to the spouse and the dependent child.

(e) If both a spouse and more than one (1) dependent child are designated as Option A beneficiaries, the spouse shall receive fifty percent (50%) of the retiree's reduced annuity and the remaining fifty percent (50%) shall be paid in equal shares to the dependent children.

(f) If more than one (1) dependent child is designated as an Option A beneficiary and a spouse is not designated as an Option A beneficiary, the retiree's reduced annuity shall be paid in equal shares to each dependent child.

(g) A dependent child's portion of the annuity shall not revert to the spouse or any other dependent children if the dependent child becomes ineligible to continue receiving annuity payments or predeceases the spouse or any other dependent children.

(h) A spouse's portion of the annuity shall not revert to any dependent child if the spouse becomes ineligible to continue receiving annuity payments or predeceases one (1) or more dependent children;

(ii)*(a)* Option B – fifty percent (50%) survivor annuity.

(b) Upon the death of the retiree, one-half (1/2) of the retiree's reduced annuity shall be continued and paid throughout the life of the retiree's designated beneficiary.

(c) A member's eligible spouse, one (1) or more of the member's children who qualify as a dependent child, or both may be designated as an Option B beneficiary.

(d) If both a spouse and one (1) dependent child are designated as Option B beneficiaries, one-half (1/2) of the retiree's reduced annuity shall be paid in equal shares to the spouse and the dependent child.

(e) If both a spouse and more than one (1) dependent child are designated as Option B beneficiaries, the spouse shall receive fifty percent (50%) of one-half (1/2) of the retiree's reduced annuity and the remaining fifty percent (50%) of one-half (1/2) of the retiree's reduced annuity shall be paid in equal shares to the dependent children.

(f) If more than one (1) dependent child is designated as an Option A beneficiary and a spouse is not designated as an Option B beneficiary, one-half (1/2) of the retiree's reduced annuity shall be paid in equal shares to each dependent child.

(g) A dependent child's portion of the annuity shall not revert to the spouse or any other dependent children if the dependent child becomes ineligible to continue receiving annuity payments or predeceases the spouse or any other dependent children.

(h) A spouse's portion of the annuity shall not revert to any dependent child if the spouse becomes ineligible to continue receiving annuity payments or predeceases one (1) or more dependent children; or

(iii)*(a)* Option C – annuity for ten (10) years certain and life thereafter.

(b) The retiree shall receive a reduced annuity payable throughout the retiree's life.

(c) If the retiree dies before receiving one hundred twenty (120) monthly annuity payments, the payments shall be continued for the remainder of the period of one hundred twenty (120) months and paid to one (1) or more of the retiree's designated beneficiaries in equal shares.

(d) A member may designate one (1) or more beneficiaries under Option C.

(b) The following persons are eligible to be designated as an Option A or Option B beneficiary:

(1) The retiree's spouse if the retiree and his or her spouse have been married to each other for at least one (1) year before the first annuity benefit payment to the retiree; and

(2) A retiree's dependent child who has been adjudged physically or mentally incapacitated by a court of competent jurisdiction, regardless of the age of the dependent child.

(c)(1) If an Option 1 retiree dies within one (1) year of retirement, and his or her spouse qualifies for Option A benefits, the spouse may elect to cancel the Option 1 annuity in effect and elect Option A, one hundred percent (100%) survivor annuity, by the end of the fourth full calendar month following the retiree's death.

(2) The election shall be effective the first day of the month following receipt of the election form by the Arkansas Teacher Retirement System.

(3) If the spouse elects Option A benefits, the residue, if any, shall not be paid until the Option A beneficiary's death.

(4) A spouse who is eligible to elect Option A benefits may elect to receive a lump-sum distribution of the retiree's residue in lieu of the spousal annuity if:

(A) The spouse waives his or her right to the spousal annuity; and

(B) The retiree did not designate one (1) or more dependent children as a beneficiary.

(d)(1) After his or her retirement, a retiree may designate his or her spouse as an Option A or Option B beneficiary if the retiree:

(A) Has been married to his or her spouse for one (1) year; and

(B) Either:

(i) Was married to his or her spouse for less than one (1) year upon his or her effective retirement date; or

(ii) Marries his or her spouse after his or her effective retirement date.

(2)(A) Upon meeting the one-year marriage requirement, the retiree shall have six (6) months to file a written nomination designating his or her spouse as either an Option A or Option B beneficiary.

(B) The designation shall be filed on a form approved by the system.

(e) After a retiree's effective retirement date, the retiree may designate an Option A or Option B dependent child beneficiary if the:

(1) Retiree previously designated his or her spouse as the Option A or Option B beneficiary;

(2) Spouse designated as the retiree's Option A or Option B beneficiary predeceases the retiree; and

(3) Dependent child has been adjudged physically or mentally incapacitated by a court of competent jurisdiction.

(f)(1) A member may request that the system remove an incapacitated child as his or her Option A or Option B beneficiary if:

(A) The member designated the incapacitated child as his or her Option A or Option B dependent child beneficiary; and

(B) One (1) of the following applies:

(i) A court finds that the incapacitated child is no longer incapacitated;

(ii) The incapacitated child is emancipated through marriage; or

(iii) The incapacitated child dies.

(2) The following forms of proof shall be submitted, as appropriate, with the member's request to remove an incapacitated child as his or her Option A or Option B:

(A) A file-marked copy of the court's order finding that the incapacitated child is no longer incapacitated;

(B) A copy of the incapacitated child's marriage license or equivalent, marriage license recording document, or other legally acceptable proof of the existence of the marriage; or

(C) A copy of the incapacitated child's death certificate.

(3) Once the proof required to remove an incapacitated child as the member's Option A or Option B beneficiary is submitted to the system, the member may:

(A) Elect to return to an Option 1; or

(B)(i) If the member is married, designate his or her spouse as the Option A or Option B beneficiary within six (6) months of the date on which the system receives the proof required under this section.

(ii) The member's election shall be effective on the first day of the month following the date on which the system receives the election form.

(g)(1) A member may designate any person as a residue beneficiary.

(2) A retiree's residue, if any, shall be paid to the retiree's residue beneficiary if the:

(A) Retiree dies before receiving annuity benefit payments equal to the residue amount; and

(B) Option beneficiary dies before receiving annuity benefit payments equal to the residue amount.

(3) If a residue beneficiary is not nominated or does not survive the death of the option beneficiary, the residue shall be paid to the retiree's estate.

(4)(A) If a residue beneficiary survives the death of the retiree and the option beneficiary, but dies before payment of the residue can be issued by the system, the residue shall be paid to the residue beneficiary's estate.

(B) If more than one (1) residue beneficiary survives the death of the retiree and option beneficiary, but all the residue beneficiaries die before payment of the residue can be issued by the system, the residue shall be paid to the estate of the most recently deceased residue beneficiary.

(C) If all residue beneficiaries predecease the retiree, the residue shall be paid to the retiree's estate.

(h)(1) A member who designates a person or the parent or legal guardian of a person who is designated as a beneficiary of an annuity or benefit under Arkansas Code §§ 24-7-706, 24-7-709, 24-7-711, or 24-7-720 may elect to have the annuity or benefit paid to a special needs trust that meets the requirements of Arkansas Code § 24-7-739(a).

(2) The parent or legal guardian of a person who is eligible to receive an annuity under Arkansas Code § 24-7-710 may elect to have the annuity paid to a special needs trust that meets the requirements of Arkansas Code § 24-7-739(b).

(3) The system shall pay an annuity or benefit directly to a person if at the time that the person is entitled to receive an annuity or a benefit payment:

(A) A special needs trust that meets the requirements of Arkansas Code § 24-7-739(a) or Arkansas Code § 24-7-739(b) has not been established for the benefit of the person; or

(B) A special needs trust that meets the requirements of Arkansas Code § 24-7-739(a) or Arkansas Code § 24-7-739(b) that has been established for the benefit of the person cannot be identified by the system or has ceased to exist.

24 CAR § 10-614. Change of marital status.

(a)(1) If the marital status of a retiree changes due to the death of the retiree's spouse or a marriage dissolution, the retiree may choose to:

(A) Cancel his or her designation of the former spouse as a beneficiary; or

(B) Designate a dependent child as a replacement beneficiary if the:

(i) Retiree previously designated the former spouse as his or her Option A or Option B beneficiary; and

(ii) Former spouse predeceases the retiree.

(2) If the retiree chooses to cancel the designation of his or her former spouse as his or her Option A or Option B beneficiary or chooses to designate a dependent child as a replacement Option A or Option B beneficiary:

(A) The retiree shall file with the Arkansas Teacher Retirement System a change of option beneficiary on a form approved by the system; and

(B) Any change in the benefit amount shall become effective the month after the system receives the approved form.

(b)(1) If a member designates one (1) or more alternative residual beneficiaries in lieu of his or her spouse, the member shall submit the names of each alternative residue beneficiary to the system on a form approved by the system.

(2) If a member designates one (1) or more alternative residue beneficiaries in lieu of his or her spouse, each alternative residue beneficiary shall receive an appropriate lump-sum payment of the greater of either:

(A) The member's residue from the Teacher Deferred Retirement Option Plan (T-DROP); or

(B) The member's contributions.

24 CAR § 10-615. Final benefit check.

(a)(1)(A) In the case of a retiree, benefits are payable through the month in which the retiree's death occurs.

(B) If a final benefit payment is not delivered in the normal course of business, the benefit payment shall be sent in the following order until delivered:

(i) To the member's residue beneficiary, if any;

(ii) To the member's lump-sum death beneficiary, if any;

(iii) To the member's estate, if any; or

(iv) To the trust assets of the Arkansas Teacher Retirement System.

(2)(A) In the case of an option beneficiary, benefits are payable through the month in which the last option beneficiary's death occurs.

(B)(i) If an option beneficiary dies before receiving the last check, the system shall pay the final check in the normal manner paid before death.

(ii) If payment of the final check in the normal course becomes impossible, the final option beneficiary's annuity check shall be returned the system.

(b) The Board of Trustees of the Arkansas Teacher Retirement System shall direct a benefit payment amount forfeited to the trust assets of the system if the:

(1) Benefit payment cannot be made five (5) years after the benefit payment is due because the location of the member or the identity and location of the member's beneficiary or personal representative cannot be ascertained by mailing the benefit payment to the last known address of the member, beneficiary, or personal representative in the system's records; and

(2) Neither the member, beneficiary, or personal representative submitted paperwork or forms approved by the system updating his or her location or last known address to the system before the expiration of five (5) years from when the benefit payment is due.

24 CAR § 10-616. Correction of errors and collection of overpayments.

(a)(1) If a change or error in the records of the Arkansas Teacher Retirement System is discovered during the look-back period and results in either an overpayment or underpayment to the system, the Board of Trustees of the Arkansas Teacher Retirement System shall authorize the system's staff to:

(A) Correct the error in the records;

(B) Adjust a benefit or any other amount payable to the corrected amount as far as practicable; and

(C) Take all necessary and appropriate action, including without limitation the options allowed under Arkansas Code § 24-7-205(b).

(2)(A) The board or its designee may adjust the records of the system, a covered employer, and a member 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.

(B) Before making an adjustment of benefits that causes a reduction of the benefits or pursuing any other collection action, the system shall provide notice to the person who is the subject of the adjustment and the notice shall:

(i) State the amount determined to be a receivable;

(ii) State the reasons underlying the determination;

(iii) Describe the process for disputing an adjustment of benefits; and

(iv) Suggest alternate methods for payment of the receivable.

(b)(1) The manifest injustice process shall not be used to address a change, omission, or error in the records of the system that may be corrected within the look-back period.

(2) The manifest injustice process may be used to correct a change, omission, or error in the records of the system discovered after the look-back period if the board determines that the time limitation imposed by the look-back period would cause a manifest injustice.

(c) If a member is subject to a qualified domestic relations order and is paid a benefit or payment by the system to which the member is not entitled, and it is discovered during the look-back period, then a receivable is created and the board or its designee, may collect the amount due to the system.

(d)(1) Appeals to dispute collections shall be made according to the procedures in 24 CAR § 10-1001 et seq.

(2) During the appeal process, retirement benefits may continue to be paid.

(3) Actions that affect benefit rights shall not be corrected or adjusted further than a five-year look-back period unless a manifest injustice has occurred or an exception exists under Arkansas Code § 24-7-205(c).

(4) A determination by the system of a manifest injustice in a particular instance due to a technical error or error in judgment is discretionary and governed by Arkansas Code § 24-7-205.

(e)(1) The Executive Director of the Arkansas Teacher Retirement System may waive interest on required contributions in an amount not to exceed five thousand dollars ($5,000).

(2) A request to excuse an interest amount exceeding five thousand dollars ($5,000) shall be submitted to the board for review.

(3) The executive director shall report any amounts excused under this section to the board.

(f)(1) The executive director may approve the correction of a change, omission, or error in the records of the system and implement a resolution that has a direct financial

impact to the system of up to five thousand dollars ($5,000) without obtaining board approval.

(2) Board approval shall be required to implement a resolution that has a direct financial impact to the system in excess of five thousand dollars ($5,000).

(g) 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 shall be submitted to the Chief Fiscal Officer of the State for abatement pursuant to Arkansas Code §§ 19-2-301 — 19-2-307.