

# ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT<sup>1</sup>

## TITLE 2. ADMINISTRATION

### CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

#### 1. Identification of the rulemaking:

Currently, R2-8-116 is expired. The ASRS needs to establish R2-8-116 as a new section to clarify that pursuant to A.R.S. § 38-766.02, an ASRS employer that employs a retiree must remit contributions to the ASRS at an alternate contribution rate (ACR) for the retiree whether the retiree is directly employed by the employer, either as a direct hire employee or an independent contractor, or leased to the employer by a third party.

The rule will reflect that employers cannot avoid paying an ACR to the ASRS merely by claiming that a worker is leased; rather, the employer must show that the entire class of positions performing substantially similar functions, to which the retiree belongs, has been properly leased as well. If the employer is unable to show that the entire class of positions performing substantially similar functions has been properly leased, then the employer must pay an ACR to the ASRS for all retirees employed in those positions performing substantially similar functions, whether the individual retiree is leased or not. For example, an ASRS employer that directly hires employees to teach students must pay an ACR to the ASRS for any retiree it also hires to teach students, whether the retiree is leased from a third party and whether the retiree is teaching students under an arbitrary status such as “part-time” or “substitute.”

#### a. The conduct and its frequency of occurrence that the rule is designed to change:

A.R.S. § 38-711(23) defines a “member” and does not include a leased employee. However, an employer shall remit an ACR to the ASRS for a “retired member who returns to work in any capacity in a position ordinarily filled by an employee of the employer.” (A.R.S. § 38-766.02(A)). The ACR must be remitted to the ASRS within 14 days of the pay period end date. However, some employers remit an incorrect ACR amount and many employers fail to remit an ACR amount at all. Thus, the ASRS needs to clarify for which retirees, the employer must remit an ACR in order

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<sup>1</sup> If adequate data are not reasonably available, the agency shall explain the limitations of the data, the methods used in an attempt to obtain the data, and characterize the probable impacts in qualitative terms. (A.R.S. § 41-1055(C)).

to reduce the frequency that an ACR amount is not remitted or an incorrect ACR amount is remitted.

b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

If an incorrect ACR amount is remitted, the funded status of the ASRS may decrease, which could result in increased rates for retirement and health benefit supplement contributions. Moreover, unpaid ACR amounts are typically discovered through an employer audit, which may occur well after the ACR was due to the ASRS, resulting in increased interest owed on the unpaid ACR amount. The conduct is likely to continue without this rulemaking because, as discussed in subsection (a) above, many employers have difficulty in understanding for which retirees they are required to remit an ACR and believe that leasing a retiree does not require remittance of an ACR.

c. The estimated change in frequency of the targeted conduct expected from the rule change:

This rulemaking will clarify for which retirees an employer must remit an ACR, thereby increasing the number of the ACR amounts paid to the ASRS on time and reducing the number of incorrect ACR amounts that are remitted. With the completion of this rulemaking, employers will better understand that an ACR amount must be remitted for all retirees who return to work with an employer, unless the entire class of positions to which the retiree belongs has been leased as well.

2. A brief summary of the information included in the economic, small business, and consumer impact statement:

There is little to no economic, small business, or consumer impact, other than the minimal cost to the ASRS to prepare the rule package. The rules will have minimal economic impact, if any, because the rulemaking simply clarifies statutory requirements that already exist. If an employer chooses to hire a retired member and claim that the ACR is not owed for the retired member, then there may be some economic impact to provide the documentation necessary for the ASRS to determine whether the employer has properly leased the class of positions, such that an ACR is not owed for the retired member. Clarifying that an employer must pay

the ACR for all retired members unless the entire class of positions has been properly leased, will increase understandability of the statutory requirements in A.R.S. § 38-766.02, thereby reducing the regulatory burden imposed on the public. This clarification will ensure that ASRS employers have notice about which personnel require the employer to remit an ACR to the ASRS. Thus, the economic impact is minimized.

3. The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:

Name: Jessica A. Ross, Rules Writer  
Address: Arizona State Retirement System  
3300 N. Central Ave., Suite 1400  
Phoenix, AZ 85012-0250  
Telephone: (602) 240-2039  
E-mail: [JessicaR@azasrs.gov](mailto:JessicaR@azasrs.gov)

4. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:

In general, all members of the ASRS will be directly affected by, bear the costs of, and directly benefit from this rulemaking. The ASRS incurred the cost of the rulemaking. The ASRS currently has a total membership of approximately 558,136.

Specifically, employers that hire retirees will be directly affected by this rulemaking. This rule will clarify for which retirees an employer must remit an ACR. Such clarification will benefit the employers by increasing the readability of the ACR requirement described in A.R.S. §§ 38-766 through 38-766.02, which, in turn, will reduce the amount of delinquency charges the employer incurs from unpaid ACRs.

5. Cost-benefit analysis:

a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:

All ASRS employers, including all state agency employers, are directly affected by this rulemaking because it will clarify for which retirees the employer must remit an ACR. However, the ASRS has determined that no new full-time employees will be required to implement and enforce the rule.

- b. Costs and benefits to political subdivisions directly affected by the rulemaking:  
Although political subdivisions may be directly affected by the rulemaking to the extent they are ASRS employers, this rulemaking does not provide any benefits or impose any costs on political subdivisions.
  - c. Costs and benefits to businesses directly affected by the rulemaking:  
No businesses are directly affected by the rulemaking.
6. Impact on private and public employment:  
The rulemaking will have no impact on private or public employment, except to the extent that an ASRS employer will be better able to estimate the costs associated with hiring retirees and makes hiring decisions based on whether it will be required to remit an ACR for a particular retiree it hires.
7. Impact on small businesses<sup>2</sup>:
- a. Identification of the small business subject to the rulemaking:  
No businesses, regardless of size, are subject to the rulemaking.
  - b. Administrative and other costs required for compliance with the rulemaking:  
Not applicable.
  - c. Description of methods that may be used to reduce the impact on small businesses:  
Not applicable.
8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:  
All ASRS employers are directly affected by the rulemaking. The effect has been previously described above.
9. Probable effects on state revenues:  
There will be no effect on state revenues.

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<sup>2</sup> Small business has the meaning specified in A.R.S. § 41-1001(20).

10. Less intrusive or less costly alternative methods considered:

The ASRS believes this is the least costly and least intrusive method because it will clarify the statutory requirements for remitting an ACR without imposing any additional requirements on the public.