

QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE

DEPARTMENT/AGENCY Arkansas Teacher Retirement System
DIVISION Administration
DIVISION DIRECTOR George Hopkins
CONTACT PERSON Laura Gilson, General Counsel
ADDRESS 1400 West Third Street, Little Rock, AR 72201
PHONE NO. 501-682-1266 **FAX NO.** 501-682-6326 **E-MAIL** laurag@arttrs.gov
NAME OF PRESENTER AT COMMITTEE MEETING George Hopkins
PRESENTER E-MAIL georgeh@arttrs.gov

INSTRUCTIONS

- A. Please make copies of this form for future use.
B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Donna K. Davis
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
Room 315, State Capitol
Little Rock, AR 72201

RECEIVED

DEC 12 2012

BUREAU OF

1. What is the short title of this rule? Disability Retirement (Rule 9-4) LEGISLATIVE RESEARCH

2. What is the subject of the proposed rule? Rules for the application and grant of disability retirement benefits.

3. Is this rule required to comply with a federal statute, rule, or regulation? Yes ☐ No ☒
If yes, please provide the federal rule, regulation, and/or statute citation.

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes ☐ No ☒
If yes, what is the effective date of the emergency rule? _____

When does the emergency rule expire? _____

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes ☐ No ☐

5. Is this a new rule? Yes ☐ No ☒

If yes, please provide a brief summary explaining the regulation.

Does this repeal an existing rule?

Yes ☐ No ☒

If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule?

Yes ☒ No ☐

If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule?
If codified, please give Arkansas Code citation.

A. C. A. § 247-305 (b)(1)

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

To comply with change enacted in § 247-704 during the 2009 legislative session.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).

www.arters.gov

9. Will a public hearing be held on this proposed rule? Yes ☐ No ☒

If yes, please complete the following:

Date: _____

Time: _____

Place: _____

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

January 10, 2013

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

March 30, 2013.

12. Do you expect this rule to be controversial? Yes ☐ No ☒

If yes, please explain. _____

13. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

N/A

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Teacher Retirement System
DIVISION Administration
PERSON COMPLETING THIS STATEMENT Laura Gilson
TELEPHONE NO. 501-682-1266 **FAX NO.** 501-682-6326 **EMAIL:** laurag@arttrs.gov

To comply with Act 1104 of 1995, please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Disability Retirement (Rule 9-4)

1. Does this proposed, amended, or repealed rule have a financial impact? Yes ☐ No ☒
2. Does this proposed, amended, or repealed rule affect small businesses? Yes ☐ No ☒
If yes, please attach a copy of the economic impact statement required to be filed with the Arkansas Economic Development Commission under Arkansas Code § 25-15-301 et seq.

3. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain.

N/A

4. If the purpose of this rule is to implement a federal rule or regulation, please give the incremental cost for implementing the rule. Please indicate if the cost provided is the cost of the program.

Current Fiscal Year

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

Next Fiscal Year

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

5. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule? Identify the party subject to the proposed rule and explain how they are affected.

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

6. What is the total estimated cost by fiscal year to the agency to implement this rule? Is this the cost of the program or grant? Please explain.

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

**Summary of Proposed Rule Change
For
Arkansas Teacher Retirement System**

Disability Retirement (Rule 9-4)

Substantive changes:

During the 2009 legislative session, several changes were made to the disability law to strengthen the application of the law. One of the changes provided that a disability retiree who returns to covered employment before attaining sixty (60) years of age would immediately become an active member of the system, and the disability retirement would be cancelled. The Board determined that "disability retirement" means that a member under age 60 cannot work **at all** for any ATRS employer, or they will no longer be eligible for disability retirement. ATRS has had a few instances where a member's health improves, and he or she chooses to return to work and earn additional service credit for an enhanced benefit.

The rule change is also necessary to clear an ambiguity in the rule. ATRS recently had a member appeal where a disability retiree worked for a national company that happened to do work for an ATRS-covered employer; and the same member subsequently formed an LLC contracting to work for an ATRS-covered employer. When this was brought to ATRS' attention, the ambiguity of the law became apparent. It could be interpreted that a disability retiree could work full time for a private company that works for an ATRS-covered employer and retain ATRS disability benefits. This runs counter to the law. A disability retiree age 60 or older can work for an ATRS employer and keep drawing benefits because he or she would *otherwise* be eligible for age and service benefits. This rule prevents a member from circumventing A.C.A. § 24-7-704(c)(5).

Non-substantive changes:

None

DISABILITY RETIREMENT

A.C.A. § 24-7-704

RULES (as amended by Acts 468 and 743 of 2009)

- A. If a disability is determined to exist by the Medical Committee, Disability retirement benefits shall commence the calendar month following the member's termination of active membership the first day of the calendar month following the date the member is found to be disabled by the Medical Committee 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. 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 employment relationship. Paid sick leave, Family Medical Leave Act (FMLA) leave, if granted for the disability applicant, and other medical leave granted by the employer shall extend the date of active membership; however, service credit paid sick leave from the covered employer.
- B. If a disability is determined to exist by the Medical Committee, disability retirement benefits shall commence on the date of the member's termination of active membership. Termination of active membership means when all employer payments to the member have ceased due to the end of the employee/employer relationship. To receive disability retirement, a member cannot be employed by an ATRS-covered employer, nor may the member be indirectly employed by or through an independent contractor, limited liability company, partnership, corporation or legal entity that is employed by an ATRS covered employer if the member has substantial control of the employer/employee relationship, including but not limited to the ability to negotiate rates of pay with the ATRS covered employer or assign work and work hours to the member.
1. If a member is approved for disability retirement but continues to work for the covered employer or indirect employer, 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.
2. The disability retirement will be cancelled if the member receives notice of the proposed effective date but has not terminated the covered employment before the proposed disability retirement effective date. In

such instance, the member will be considered active, and is eligible to reapply for disability retirement as long as the member is otherwise qualified to apply for disability retirement and remains an active member.

- C. 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.
- D. If an active member dies after applying for disability retirement, the following will apply:
 - 1. If the member dies after the disability application is received by the System but before disability retirement is approved, then the System shall consider the member to have died in "active" service and survivor benefits under A.C.A. § 24-7-710 shall be paid.
- E. The annuity formula for computing disability retirement benefits is the same as for voluntary age and service retirement.
- F. 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(v), 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.
 - 1. 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(a)(C).
 - 2. 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).
- G. Disability retirants who are disapproved for further disability annuities due

to a medical examination reviewed by the Medical Committee shall be removed from the System's retirant payroll the earlier of six months following the review date or the first of the month following the return to covered employment.

~~H. If a member is approved for disability retirement but continues to work, he/she must terminate employment by the proposed disability retirement effective date. If covered employment is not terminated after receiving notice of the proposed effective date, disability retirement will be cancelled, the member will be considered active, and is eligible to reapply for disability retirement as long as the member is otherwise qualified to apply for disability retirement.~~

I. H. 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.

Amended: June 15, 2004
July 18, 2005
June 19, 2007
December 18, 2009
July 1, 2011
Adopted: August 8, 2011
Effective: November 11, 2011
Approved by Board: February 6, 2012
Amended: April 18, 2012
Effective: May 29, 2012
Approved by Board: December 3, 2012
Amended:
Effective:

DISABILITY RETIREMENT

A.C.A. § 24-7-704

RULES (as amended by Acts 468 and 743 of 2009)

- A. If a disability is determined to exist by the Medical Committee, disability retirement benefits shall commence the calendar month following the member's termination of active membership 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. 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. Paid sick leave, Family Medical Leave Act (FMLA) leave, if granted for the disability applicant, and other medical leave granted by the employer shall extend the date of active membership; however, service credit paid sick leave from the covered employer.
- B. To receive disability retirement, a member cannot be employed by an ATRS-covered employer, nor may the member be indirectly employed by or through an independent contractor, limited liability company, partnership, corporation or legal entity that is employed by an ATRS covered employer if the member has substantial control of the employer/employee relationship, including but not limited to the ability to negotiate rates of pay with the ATRS covered employer or assign work and work hours to the member.
- 1. If a member is approved for disability retirement but continues to work for the covered employer or indirect employer, 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.
- 2. The disability retirement will be cancelled if the member receives notice of the proposed effective date but has not terminated the covered employment before the proposed disability retirement effective date. In such instance, the member will be considered active, and is eligible to reapply for disability retirement as long as the member is otherwise qualified to apply for disability retirement and remains an active member.

- C. 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.
- D. If an active member dies after applying for disability retirement, the following will apply:
 - 1. If the member dies after the disability application is received by the System but before disability retirement is approved, then the System shall consider the member to have died in "active" service and survivor benefits under A.C.A. § 24-7-710 shall be paid.
- E. The annuity formula for computing disability retirement benefits is the same as for voluntary age and service retirement.
- F. 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(v), the Board shall allow a disability retiree at the time of retirement to designate and Option A or Option B beneficiary. Option C beneficiaries shall not be available to disability retirees.
 - 1. 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(a)(C).
 - 2. 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).
- G. Disability retirants who are disapproved for further disability annuities due to a medical examination reviewed by the Medical Committee shall be removed from the System's retirant payroll the earlier of six months following the review date or the first of the month following the return to covered employment.
- H. 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.

Amended: June 15, 2004
July 18, 2005
June 19, 2007
December 18, 2009
July 1, 2011
Adopted: August 8, 2011
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Amended: April 18, 2012
Effective: May 29, 2012
Approved by Board: December 3, 2012
Amended:
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QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
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DEPARTMENT/AGENCY Arkansas Teacher Retirement System
DIVISION Administration
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ADDRESS 1400 West Third Street, Little Rock, AR 72201
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NAME OF PRESENTER AT COMMITTEE MEETING George Hopkins
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C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
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Room 315, State Capitol
Little Rock, AR 72201

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BUREAU OF
LEGISLATIVE RESEARCH

1. What is the short title of this rule? Annuity Options and Disposition of Residue after Retirement (Rule 9-7)
2. What is the subject of the proposed rule? Sets out Rules for annuity options.
3. Is this rule required to comply with a federal statute, rule, or regulation? Yes ☐ No ☒
If yes, please provide the federal rule, regulation, and/or statute citation.
-
4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes ☐ No ☒
If yes, what is the effective date of the emergency rule? _____
When does the emergency rule expire? _____
Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes ☐ No ☐

5. Is this a new rule?

Yes ☐

No ☒

If yes, please provide a brief summary explaining the regulation.

Does this repeal an existing rule?

Yes ☐

No ☒

If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule?

Yes ☒

No ☐

If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule?

If codified, please give Arkansas Code citation.

A.C.A. § 24-7-305 (b) (1)

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

To clarify language to be consistent with interpretation of distribution of member's last benefit check.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).

www.artfs.gov

9. Will a public hearing be held on this proposed rule?

Yes ☐

No ☒

If yes, please complete the following:

Date: _____

Time: _____

Place: _____

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

January 10, 2013

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

March 30, 2013

12. Do you expect this rule to be controversial?

Yes ☐

No ☒

If yes, please explain.

13. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

N/A

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Teacher Retirement System
DIVISION Administration
PERSON COMPLETING THIS STATEMENT Laura Gilson
TELEPHONE NO. 501-682-1266 **FAX NO.** 501-682-6326 **EMAIL:** laurag@artrs.gov

To comply with Act 1104 of 1995, please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Annuity Options and Disposition of Residue after Retirement (Rule 9-7)

1. Does this proposed, amended, or repealed rule have a financial impact? Yes ☐ No ☒
2. Does this proposed, amended, or repealed rule affect small businesses? Yes ☐ No ☒
If yes, please attach a copy of the economic impact statement required to be filed with the Arkansas Economic Development Commission under Arkansas Code § 25-15-301 et seq.

3. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain.

N/A

4. If the purpose of this rule is to implement a federal rule or regulation, please give the incremental cost for implementing the rule. Please indicate if the cost provided is the cost of the program.

Current Fiscal Year

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

Next Fiscal Year

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

5. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule? Identify the party subject to the proposed rule and explain how they are affected.

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

6. What is the total estimated cost by fiscal year to the agency to implement this rule? Is this the cost of the program or grant? Please explain.

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

**Summary of Proposed Rule Change
For
Arkansas Teacher Retirement System**

Annuity Options and Disposition of Residue after Retirement (Rule 9-7)

Substantive changes:

The rule on the disbursement of the final retirement benefit upon the death of the payee lacks clarity. The rule currently reads, "benefits are payable through the month in which the last option beneficiary's death occurs." ATRS' interpretation is that the rule was written to include both the member and the option beneficiary, and apply to the last survivor of the two. The new language sets out a clear procedure for disposition of both the member's residue, if any, and the final benefit check.

Non-substantive changes:

None

ANNUITY OPTIONS AND DISPOSITION OF RESIDUE AFTER RETIREMENT

A.C.A. § 24-7-701, § 24-7-706, and § 24-7-709

DEFINITIONS

1. **Annuity Options** - The member's election at retirement of the annuity that shall be paid throughout the retiree's life in accordance with A.C.A. § 24-7-706.
2. **Option Beneficiary** - A person(s) nominated by the retiree by written designation duly executed and filed with ATRS at the time of retirement who, if eligible, will receive annuity payments under the annuity option chosen by the retiree after the retiree's death.
3. **Marriage Dissolution** - A final decree of divorce, separate maintenance, or annulment duly executed by a court of competent jurisdiction and filed of record in the Office of the Ex Officio Recorder.
4. **Person** - An individual, corporation, partnership, or other legal entity.
5. **Residue** - The member's accumulated contributions, including regular interest standing in the member's credit at the time of his/her retirement.
6. **Residue Beneficiary** - A person(s) nominated by the member/retiree to receive the residue, if any, at the termination of any option annuities payable on account of the retiree's death under A.C.A. § 24-7-709.

RULES

Before the date the first payment of an annuity becomes due, a member retiring on age and service or disability may elect to receive an annuity payable as provided in one of the following (Disability retirement option rights are modified as set forth in policy 9-4):

1. **Option 1:** A straight life annuity payable monthly for the life of the retiree. Upon the retiree's death, if the retiree has not received payments equal to the residue amount, the residue remaining, if any, shall be paid to the residue beneficiary. If no residue beneficiaries survive the retiree, the residue will be paid to the retiree's estate.

2. Effect of Option 1 Retiree's Death within the First Year of Retirement

If an Option 1 retiree dies within one 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 (100% survivor annuity) at that time.

The election shall become effective the first day of the month following receipt of the election form by ATRS. If the spouse elects Option A, the residue, if any, will not be paid until the Option A beneficiary's death.

3. Persons Eligible as Option A or Option B Beneficiaries at the Time of Retirement

In order to be nominated as an Option A or B beneficiary, the person must be one of the following:

- A. The retiree's spouse (if the retiree has been married to the spouse for at least one (1) year prior to the first annuity payment being paid to the retiree);
- B. A dependent child (regardless of age) who has been ruled physically or mentally incapacitated by a court of competent jurisdiction.

4. Eligibility of a Spouse to Become an Option A or Option B Beneficiary after a Member's Retirement.

If a member was married to his or her spouse for less than one (1) year upon his or her effective retirement date or the member marries after his or her effective retirement date, then the member may elect to cover the spouse after being married for one (1) year. Upon meeting the one (1) year marriage requirement, the member shall have six (6) months to file an election to cover his or her spouse under either Option A or Option B. The written election must be filed on a form approved by ATRS.

5. Emancipation of Incapacitated Child Option Beneficiary.

If an incapacitated child, who has been adjudged physically or mentally incapacitated by a court of competent jurisdiction, is nominated as an Option A or Option B beneficiary, and a court has determined that the incapacity issue no longer indicates incapacitation, or the incapacitated person is emancipated through marriage or dies, then the member may request ATRS to remove the incapacitated child from the member's account. Proof of the court's decision shall be by a copy of the court order, proof of emancipation shall be by a copy of the child's marriage license, or proof of death shall be by the death certificate.

Once proof is provided, the member may elect to return to Option 1 at that time, or if the member is married, the member shall have six months to designate the member's spouse as the member's option beneficiary. The election shall become effective the first day of the month following receipt of the election form by ATRS.

6. Limited Election Window for a Pre-July 1, 2011, Retiree to Modify His or Her Option Designation when Marrying after Retirement.

If a retiree married after retirement and designated his or her spouse as an Option B beneficiary, then the retiree may modify that beneficiary election from an Option B beneficiary election to an Option A beneficiary election, if the election is made on an ATRS form and is submitted to ATRS on or before June 30, 2012. If the retiree submits a form to modify the election to an Option A benefit, the election becomes effective on the first day of the month following receipt of the form by ATRS. The Option A benefit shall be calculated as if the retiree made the Option A election on the same date the Option B election was made; however, the additional reduction in benefits shall only apply after the effective date of the Option A election.

7. Residue Paid Upon Death of Option Annuitant

~~If after a retiree dies, an option annuity becomes payable, but the option beneficiary dies prior to the retiree and the option beneficiary receiving annuity payments equal to the residue amount, the residue, if any, shall be paid to member's residue beneficiary. If no residue beneficiary is nominated or survives upon the death of the option beneficiary, the residue remaining, if any, shall be paid to the last surviving option beneficiary's estate. Both the member and designated Option A and B beneficiary are considered option beneficiaries for the purpose of this Rule.~~

When the last option beneficiary dies, ATRS will pay the residue, if any, in the normal course of business to be distributed as follows:

- i. To a surviving residual beneficiary, if designated;
- ii. If no surviving residual beneficiary, then to the designated lump sum death beneficiary, if any, divided equally among multiple beneficiaries; or
- iii. If no residual beneficiary or designated lump sum death beneficiary, then to the member's estate.

8. Final Benefit Check

Both the member and designated Option A or B beneficiary are considered option beneficiaries for the purpose of this rule.

Benefits are payable through the month in which the last option beneficiary's death occurs.

- A. If the last option beneficiary dies prior to receiving the last check benefit payment, ATRS will pay the final check in the normal manner paid prior to death. For example, if an Electronic Fund Transfer is utilized to deposit amounts into an option beneficiary's bank account, the final benefit payment will be delivered in the same manner.
- B. If payment of the final check benefit payment is returned to the system or is not deliverable in the normal course becomes impossible of business, the final option beneficiary's annuity-check benefit payment will be returned to the System distributed as follows:
- i. To a surviving residual beneficiary, if designated;
 - ii. If no surviving residual beneficiary, then to the designated lump sum death beneficiary, if any, divided equally among multiple beneficiaries; or
 - iii. If no residual beneficiary or designated lump sum death beneficiary, then to the member's estate.

9. Eligible Residue Beneficiaries

Any "person" as defined in this policy is eligible to be designated by the member to receive the residue, if any, payable upon the member's death including individuals, trusts, estates, corporations, and other legally recognized entities.

10. Reasonable Efforts to Distribute

If a reasonable effort to distribute the final benefit payment or residue under this Rule is undertaken and the payment cannot be made, then the beneficiary's benefit payment or residue will remain in the trust assets of ATRS.

Amended:	June 15, 2004
	February 7, 2006
	April 26, 2007
	July 1, 2011 (Emergency)
Adopted:	August 8, 2011
Effective:	November 11, 2011

Adopted by Board: February 6, 2012
Amended April 18, 2012
Effective: May 29, 2012
Adopted by Board: **December 3, 2012**
Amended:
Effective:

ANNUITY OPTIONS AND DISPOSITION OF RESIDUE AFTER RETIREMENT

A.C.A. § 24-7-701, § 24-7-706, and § 24-7-709

DEFINITIONS

1. **Annuity Options** - The member's election at retirement of the annuity that shall be paid throughout the retiree's life in accordance with A.C.A. § 24-7-706.
2. **Option Beneficiary** - A person(s) nominated by the retiree by written designation duly executed and filed with ATRS at the time of retirement who, if eligible, will receive annuity payments under the annuity option chosen by the retiree after the retiree's death.
3. **Marriage Dissolution** - A final decree of divorce, separate maintenance, or annulment duly executed by a court of competent jurisdiction and filed of record in the Office of the Ex Officio Recorder.
4. **Person** - An individual, corporation, partnership, or other legal entity.
5. **Residue** - The member's accumulated contributions, including regular interest standing in the member's credit at the time of his/her retirement.
6. **Residue Beneficiary** - A person(s) nominated by the member/retiree to receive the residue, if any, at the termination of any option annuities payable on account of the retiree's death under A.C.A. § 24-7-709.

RULES

Before the date the first payment of an annuity becomes due, a member retiring on age and service or disability may elect to receive an annuity payable as provided in one of the following (Disability retirement option rights are modified as set forth in policy 9-4):

1. **Option 1:** A straight life annuity payable monthly for the life of the retiree. Upon the retiree's death, if the retiree has not received payments equal to the residue amount, the residue remaining, if any, shall be paid to the residue beneficiary. If no residue beneficiaries survive the retiree, the residue will be paid to the retiree's estate.

2. Effect of Option 1 Retiree's Death within the First Year of Retirement

If an Option 1 retiree dies within one 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 (100% survivor annuity) at that time.

The election shall become effective the first day of the month following receipt of the election form by ATRS. If the spouse elects Option A, the residue, if any, will not be paid until the Option A beneficiary's death.

3. Persons Eligible as Option A or Option B Beneficiaries at the Time of Retirement

In order to be nominated as an Option A or B beneficiary, the person must be one of the following:

- A. The retiree's spouse (if the retiree has been married to the spouse for at least one (1) year prior to the first annuity payment being paid to the retiree);
- B. A dependent child (regardless of age) who has been ruled physically or mentally incapacitated by a court of competent jurisdiction.

4. Eligibility of a Spouse to Become an Option A or Option B Beneficiary after a Member's Retirement.

If a member was married to his or her spouse for less than one (1) year upon his or her effective retirement date or the member marries after his or her effective retirement date, then the member may elect to cover the spouse after being married for one (1) year. Upon meeting the one (1) year marriage requirement, the member shall have six (6) months to file an election to cover his or her spouse under either Option A or Option B. The written election must be filed on a form approved by ATRS.

5. Emancipation of Incapacitated Child Option Beneficiary.

If an incapacitated child, who has been adjudged physically or mentally incapacitated by a court of competent jurisdiction, is nominated as an Option A or Option B beneficiary, and a court has determined that the incapacity issue no longer indicates incapacitation, or the incapacitated person is emancipated through marriage or dies, then the member may request ATRS to remove the incapacitated child from the member's account. Proof of the court's decision shall be by a copy of the court order, proof of emancipation shall be by a copy of the child's marriage license, or proof of death shall be by the death certificate.

Once proof is provided, the member may elect to return to Option 1 at that time, or if the member is married, the member shall have six months to designate the member's spouse as the member's option beneficiary. The election shall become effective the first day of the month following receipt of the election form by ATRS.

6. Limited Election Window for a Pre-July 1, 2011, Retiree to Modify His or Her Option Designation when Marrying after Retirement.

If a retiree married after retirement and designated his or her spouse as an Option B beneficiary, then the retiree may modify that beneficiary election from an Option B beneficiary election to an Option A beneficiary election, if the election is made on an ATRS form and is submitted to ATRS on or before June 30, 2012. If the retiree submits a form to modify the election to an Option A benefit, the election becomes effective on the first day of the month following receipt of the form by ATRS. The Option A benefit shall be calculated as if the retiree made the Option A election on the same date the Option B election was made; however, the additional reduction in benefits shall only apply after the effective date of the Option A election.

7. Residue Paid Upon Death of Option Annuitant

Both the member and designated Option A and B beneficiary are considered option beneficiaries for the purpose of this Rule.

When the last option beneficiary dies, ATRS will pay the residue, if any, in the normal course of business to be distributed as follows:

- i. To a surviving residual beneficiary, if designated;
- ii. If no surviving residual beneficiary, then to the designated lump sum death beneficiary, if any, divided equally among multiple beneficiaries; or
- iii. If no residual beneficiary or designated lump sum death beneficiary, then to the member's estate.

8. Final Benefit Check

Both the member and designated Option A or B beneficiary are considered option beneficiaries for the purpose of this rule.

Benefits are payable through the month in which the last option beneficiary's death occurs.

- A. If the last option beneficiary dies prior to receiving the last benefit payment, ATRS will pay the final check in the normal manner paid prior to death. For example, if an Electronic Fund Transfer is utilized to deposit

amounts into an option beneficiary's bank account, the final benefit payment will be delivered in the same manner.

B. If the final benefit payment is returned to the system or is not deliverable in the normal course of business, the final option beneficiary's benefit payment will be distributed as follows:

- i. To a surviving residual beneficiary, if designated;
- ii. If no surviving residual beneficiary, then to the designated lump sum death beneficiary, if any, divided equally among multiple beneficiaries; or
- iii. If no residual beneficiary or designated lump sum death beneficiary, then to the member's estate,

9. Eligible Residue Beneficiaries

Any "person" as defined in this policy is eligible to be designated by the member to receive the residue, if any, payable upon the member's death including individuals, trusts, estates, corporations, and other legally recognized entities.

10. Reasonable Efforts to Distribute

If a reasonable effort to distribute the final benefit payment or residue under this Rule is undertaken and the payment cannot be made, then the beneficiary's benefit payment or residue will remain in the trust assets of ATRS.

Amended:	June 15, 2004
	February 7, 2006
	April 26, 2007
	July 1, 2011 (Emergency)
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