

ARKANSAS REGISTER

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State

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For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas Teacher Retirement System

Department N/A

Contact Laura Gilson E-mail laurag@artsr.gov Phone 501-682-1266

Statutory Authority for Promulgating Rules 24-7-305 (b)(1)

Rule Title: Rule 11-1 Survivor Benefits

Intended Effective Date

(Check One)

Date

☐ Emergency (ACA 25-15-204)

Legal Notice Published 9/28/2017

☒ 10 Days After Filing (ACA 25-15-204)

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☐ Other _____
(Must be more than 10 days after filing date.)

Reviewed by Legislative Council 12/12/2017

Adopted by State Agency 02/05/2018

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Laura Gilson

laurag@artsr.gov

02/06/2018

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Signature

501-682-1820

georgeh@artsr.gov

Phone Number

E-mail Address

Executive Director

Title

February 6, 2018

Date

RULE 11-1

SURVIVOR BENEFITS

A.C.A. §§ 24-7-710, 713

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

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

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

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

II. SPOUSAL BENEFITS OR ALTERNATIVE RESIDUAL BENEFICIARIES

A. Unless the member directs an alternative residual beneficiary or beneficiaries by written form approved by ATRS, the benefits provided for in A.C.A. § 24-7-710, shall be paid to the spouse of the qualifying member if the spouse survives the member and was married to the member for at least two (2) years immediately prior to the member's death.

B.

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

C.

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

D.

- i. A member may select one or more alternative beneficiaries to receive a lump sum payment of the member's residue in lieu of the member's surviving spouse ("alternative residual beneficiary or beneficiaries"), documented on forms provided and approved by ATRS, and no spousal benefit or other monthly benefits shall be paid.
- ii. If the member is a participant in T-DROP and chooses an alternative residual beneficiary or beneficiaries in lieu of the surviving spouse, and the member dies before retiring, then the designated alternative residual beneficiary or beneficiaries shall receive the T-DROP deposits as a lump sum and no spousal benefit or other monthly benefit shall be paid.

E. A member may change an alternative residual beneficiary or beneficiaries designation and revert to a spousal annuity designation by documenting the change on a form provided and approved by ATRS.

III. DEPENDENT CHILDREN BENEFITS

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

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

- i. "Child" is defined under A.C.A. § 24-7-202, and for purposes of receiving an annuity from ATRS, the child must be a dependent child in accordance with § 24-7-710. While a surviving dependent child's benefits normally cease once the child reaches eighteen (18) years of age, there are circumstances where the child may continue to receive benefits. These include:

- a. A full-time student. A full-time student is defined as one carrying 12 semester hours or 8 trimester hours in college, four (4) hours per day in a secondary or postsecondary school, or other verifiable indices from an

accredited institution that the dependent child is engaged in full time curriculum or field of study. Certification of attendance in an accredited school may be reported by the dependent child in the absence of a parent or legal guardian after the dependent child reaches age eighteen (18).

b. For a child receiving a dependent child annuity age eighteen (18) or older who is temporarily physically or mentally incapacitated, the Board may continue paying benefits upon receipt of a doctor's certification that the child is temporarily physically or mentally incapacitated, and is unable to attend school for the period of one semester or term. At the beginning of the next semester or term, if the child does not reenter school full-time, the dependent child annuity will terminate.

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

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

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

IV. GENERAL RULES REGARDING SURVIVOR ANNUITIES

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

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

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

D. If the member dies after the disability application is received by ATRS but before disability retirement is approved, then ATRS shall consider the member to have died in "active" service and survivor benefits under A.C.A. § 24-7-710 shall be paid if no alternative residual beneficiary or beneficiaries designation has been made by the member.

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

F. Salary payments made after the death of a member that were earned prior to death are subject to ATRS deductions and shall be reported in total salary and days of service in the employer's quarterly report. Payments made by an employer after the death of an active member that are made as a mere gratuity and were not earned by the member shall not be included in the member's salary reported to ATRS and are not subject to contributions.

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

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

HISTORY

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

Effective: **March 6, 2013**
Approved by Board: July 26, 2013
Amended: October 9, 2013
Effective: **November 8, 2013**
Approved by Board: December 1, 2014
Amended: May 18, 2015
Effective: **June 16, 2015**
Approved by Board: February 5, 2018
Effective: February 15, 2018

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT ATRS

DIVISION Legal

PERSON COMPLETING THIS STATEMENT Laura Gilson

TELEPHONE 501-682-1266 FAX _____ EMAIL: laurag@artrs.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Rule 11-1 Survivor Benefits

1. Does this proposed, amended, or repealed rule have a financial impact? Yes ☐ No ☒
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes ☐ No ☐
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes ☐ No ☐

If an agency is proposing a more costly rule, please state the following:

(a) How the additional benefits of the more costly rule justify its additional cost;

(b) The reason for adoption of the more costly rule;

(c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;

(d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

(a) What is the cost to implement the federal rule or regulation?

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	_____

(b) What is the additional cost of the state rule?

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 private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____ N/A

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____ N/A

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes ☐ No ☐

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

Summary of Proposed Rule Change

for
Arkansas Teacher Retirement System

Rule 11-1 Survivor Benefits

Substantive changes

This rule change is necessary after the passage of Act 243 of 2017 which eliminates the current automatic statutory designation that residual benefits must go to a spouse, even if the member objects. It allows a member of ATRS to voluntarily designate an alternative residual beneficiary in lieu of an automatic spousal designation to receive a lump sum payment of the member's residue amount upon death of an active or T-DROP member. This means that no spousal survivor benefit shall be payable if an alternate beneficiary is named.

The rule also strikes language regarding the inclusion of the monthly stipend because the Board now has greater flexibility to adjust the benefit stipend if needed in order to maintain actuarial soundness.

Non-substantive changes

Minor modifications to improve clarity and consistency to language in the rule.