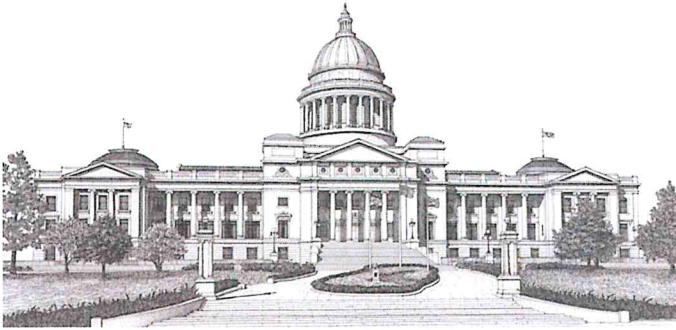


ARKANSAS REGISTER

Transmittal Sheet

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



Secretary of State

John Thurston

500 Woodlane, Suite 026

Little Rock, Arkansas 72201-1094

(501) 682-5070

www.sos.arkansas.gov



For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency ARKANSAS TEACHER RETIREMENT SYSTEM

Department ADMINISTRATION

Contact Clint Rhoden E-mail clintr@artsr.gov Phone 501-588-4367

Statutory Authority for Promulgating Rules A.C.A. §24-7-305

Rule Title: Rule 11: SURVIVORS AND DOMESTIC RELATIONS ORDER

Intended Effective Date

(Check One)

☐ Emergency (ACA 25-15-204)

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

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

Legal Notice Published

Final Date for Public Comment

Reviewed by Legislative Council

Adopted by State Agency

Date

02-06-2020

03-06-2020

05-14-2020

05-15-2020

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

Tammy Porter

tammyp@artsr.gov

05-18-2020

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

501-588-4367

clintr@artsr.gov

Phone Number

E-mail Address

EXECUTIVE DIRECTOR

Title

MAY 18, 2020

Date

ATRS Rule 11

SURVIVORS AND DOMESTIC RELATIONS ORDERS

A.C.A. §§ 24-7-710, 24-7-713, 24-7-720, 24-7-734, 9-18-101 — 9-18-103

I. Definitions

- A. "Alternate payee" means a spouse, former spouse, child, or other dependent of a member under Arkansas law.
- B. "Lump-sum death beneficiary" means the person(s) or entity(s) designated in writing by the member to receive payment of the lump-sum death benefit under A.C.A. § 24-7-720.
- C. "Lump-sum death benefit" means a monetary amount set by the Board, and paid by ATRS to lump-sum death beneficiaries as provided for under A.C.A. § 24-7-720.
- D. "QDRO" means a court order that meets the definition of a "Qualified Domestic Relations Order" under A.C.A. § 9-18-101.

II. Survivors General

- 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:
 - 1. 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
 - 2. 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.

III. 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. Waiver of Spousal Annuity

1. 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.
2. If the surviving spouse files a waiver of the spousal annuity, then the spouse may receive the member's accumulated contributions plus interest, if any, in a lump-sum distribution.

C. Spousal Annuity Generally

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

D. Alternative Residual Beneficiaries Generally

1. 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 (called "alternative residual beneficiary or beneficiaries"), documented on forms provided and approved by ATRS, and no spousal benefit or other monthly benefits shall be paid.
2. 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.

IV. Dependent Children Benefits

- A. A surviving dependent child of the qualifying member may receive an annuity under A.C.A. § 24-7-710.
- B. "Child of a member" as defined under A.C.A. § 24-7-202, is considered a dependent child for purposes of receiving a survivor annuity under § 24-7-710 from ATRS, if:
 1. The child is younger than eighteen (18) years of age; or
 2. The child is younger than twenty-three (23) years of age and has been a full time student without interruption since reaching age eighteen (18)

consistent with § 24-7-710(c)(2); or

3. The child is adjudged physically or mentally incapacitated by a court of competent jurisdiction.

C. To be considered a full-time student, the dependent child shall carry twelve (12) semester hours or eight (8) trimester hours in college, four (4) hours per day in a secondary or postsecondary school, or engage full-time in a curriculum or field of study based upon verifiable indices from an accredited institution. After the dependent child reaches eighteen (18) years of age, the dependent child may self-report their Certification of Attendance to ATRS, in the absence of a parent or legal guardian.

D. For a dependent child who is not a full-time student to continue receiving benefits after reaching eighteen (18) years of age, a doctor shall certify that the child is temporarily physically or mentally incapacitated to attend school for the current 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.

E. A child who is adjudged physically or mentally incapacitated by a court of competent jurisdiction and for whom a guardian has been appointed shall continue to be eligible to receive a dependent child annuity as long as the incapacity exists, regardless of age. A.C.A. § 24-7-710.

F. A dependent child annuity is established according to the formula set out in A.C.A. §24-7-710. The dependent child annuity remains at its initial monthly amount, adjusted by an annual COLA increase, as may be designated by the board. If more than one dependent child in a member's family receives an annuity, each child's annuity remains at its initial monthly amount and is not readjusted when the member's other dependent children's annuities terminate.

G. A deposit account designated to receive a survivor annuity payment for the benefit of a child under age eighteen (18) shall conform with the Arkansas Uniform Transfers to Minors Act or with a court order in a guardianship proceeding for the benefit of the ward. Each survivor annuity payment is made as a separate payment to the eligible child in the appropriate deposit account, and shall not be co-mingled with payments to other family members.

H. The total salary that the member would have received in the fiscal year in which the member died, or the member's highest member salary in another fiscal year, whichever is higher, will be used to calculate a dependent child survivor benefit.

V. 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.VIII below).
- 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, alternative residual beneficiary designation, or to the beneficiaries as 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 may be paid if no alternative residual beneficiary or beneficiaries designation has been made by the member.
- E. 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.
- F. 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. 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.
- G. 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.

VI. Lump Sum Death Benefit Rules

- A. The amount of the lump-sum death benefit may be set pursuant to rules adopted by the board in an amount up to ten thousand dollars (\$10,000) per member. The board may adjust the amount of the lump-sum death benefit each year and, as actuarially appropriate, prorate the amount of the lump-sum benefit based on the ratio of the member's contributory and noncontributory service credit.
 - 1. The lump-sum death benefit will be paid as a single amount to the beneficiary designated by the eligible member. If the eligible member

failed to designate a beneficiary or a designated beneficiary did not survive, the lump-sum death benefit will be paid to the member's estate.

2. Under Act 1323 of 2009, all lump-sum death benefit distributions made after June 30, 2009, shall be tax exempt, and no federal or state income tax shall be withheld by ATRS. After June 30, 2009, the lump-sum death benefit shall not be eligible for a direct rollover.
- B. Only members who are active or retired at the time of their death qualify for the lump-sum death benefit. Inactive members shall not be entitled to a lump-sum death benefit. A member is considered active for an additional fiscal year following the last fiscal year that the member renders at least one-fourth (1/4) year of actual service to a covered employer, credited as the total days of service.
- C. A member must have accrued the required amount of actual service at the time of his or her death to qualify for the lump-sum death benefit.
- D. A member may designate any natural person(s) or duly formed legal entity as his or her lump-sum death beneficiary, including a corporation, trust, partnership, or other recognized legal entity.
- E. The completed lump-sum death beneficiary form must be received by ATRS prior to the member's death to be effective.
- F. The member's most recently executed and filed lump-sum death beneficiary form supersedes all prior lump-sum death beneficiary forms that may have been filed by the member.
- G. If the member is eligible for the lump-sum death benefit at their death, the lump-sum death benefit payment shall be made within a reasonable amount of time to the member's proper beneficiary upon receipt of a written application, acceptable proof of the beneficiary's identification, and proof of the member's death.
- H. Lump-sum death beneficiary forms signed by a member's agent (such as an attorney-in-fact under a power of attorney) will not be processed until the document appointing the agent is filed with and accepted by ATRS. The document must authorize the agent to transact retirement plan business on behalf of the member, and specifically authorize the agent to change beneficiary designations.
- I. ATRS will not accept a lump-sum death beneficiary form signed by a guardian of the member's estate or other court-appointed conservator without an accompanying court order authorizing the guardian's designation of beneficiary(s).
- J. A lump-sum death beneficiary may waive his or her rights to payment of

the lump-sum death benefit by submitting a waiver and relinquishment form acceptable to ATRS. Upon receipt of a valid waiver, ATRS will pay the remaining eligible beneficiary(s).

- K. A lump-sum death beneficiary may not assign payment of a lump-sum death benefit to another person or entity.
- L. ATRS reserves the right to deduct from the lump-sum death benefit any amounts owed to ATRS by the member under A.C.A. § 24-7-205.
- M. ATRS reserves the right to collect any overpayments or other amounts owed to ATRS by the lump-sum death beneficiary(s).
- N. ATRS shall comply with all applicable laws relating to the distribution of the lump-sum death benefit including federal and state tax laws and the Uniform Transfer to Minors Act.

VII. Qualified Domestic Relations Orders (QDRO) for ATRS Members

- A. A QDRO is a court order that assigns a portion of a member's retirement benefit to be paid to an alternate payee (the divorced spouse) upon the member's retirement or upon a refund of the member's contributions.
- B. Under A.C.A. § 9-18-103(b), ATRS adopted a model QDRO to be utilized by its members when dividing an ATRS retirement benefit. A QDRO issued by a court must substantially follow the form and content of the ATRS model QDRO.
- C. ATRS shall accept a QDRO issued by a circuit court of the State of Arkansas or other court of competent jurisdiction regarding a member, subject to the following:
 - 1. Benefits to the alternate payee shall begin when the member retires or when the member ceases employment with a covered employer and receives a refund of contributions.
 - 2. ATRS shall:
 - a. Promptly notify the member and the alternate payee upon receipt of a QDRO, and
 - b. Within a reasonable time after receipt of the QDRO, determine whether the QDRO complies with ATRS's model QDRO and ATRS laws and regulations.
 - 3. A member or alternate payee may file a QDRO with ATRS prior to the member's retirement or termination of covered employment, but the alternate payee's portion is held in the member's account until payable under paragraph VII.C.1 above.
 - 4. A QDRO shall not require ATRS to:

- a. Provide an alternate payee any type or form of benefit or option not otherwise available to the member;
 - b. Provide the alternate payee actuarial benefits not available to the member; or
 - c. Pay any benefits to an alternate payee that are required to be paid to another alternate payee under an existing QDRO.
5. If alternate payee dies prior to the receipt of benefits under the QDRO, any amount or benefit that would be due to the alternate payee reverts to the member.
6. If the member dies prior to retirement, the alternate payee shall receive the same portion of the member's contributions, if any, as was assigned by the QDRO. In no case shall the alternate payee receive monthly annuity benefits from ATRS if the member has not received his/her retirement annuity at the time of his/her death.
7. ATRS computes the alternate payee's monthly annuity benefit under a QDRO on the benefit formula in effect at the time of the member's retirement and includes only service credit earned by the member during the marriage.
8. If the QDRO assigns a marital portion or other part of a member's interest in his/her T-DROP plan deposits and interest, the benefits in the T-DROP account shall be computed as a separate calculation under the provisions in the model order.
9. ATRS shall have the right to make any necessary correction to the monthly benefit amount paid under a QDRO and to recover from either the member or the alternate payee any overpayments due to ATRS.
10. If the alternate payee fails at any time to notify ATRS of a change of mailing address, ATRS shall not be required to make restitution for payments not made prior to receipt of a change of address.
11. Any benefit enhancements enacted by the Legislature or the Board of Trustees after entry of a QDRO shall not be assigned to the alternate payee but shall inure to the sole benefit of the member.
12. ATRS shall not accept a QDRO for a member who does not have five (5) years of actual service with ATRS at the time the QDRO is issued by a court.
13. If ATRS determines that the alternate payee's monthly benefits are less than twenty dollars (\$20.00), ATRS shall pay the member the total benefit due and the member shall be responsible for paying the alternate payee their portion under the QDRO.

14. QDRO shall not require ATRS to provide any benefit that is an actuarial cost to ATRS and is not otherwise contemplated in the ATRS' law and rules.
15. No provision in this rule or in a QDRO accepted by ATRS shall require ATRS to violate any plan qualification requirement in IRS Code § 401(a) or otherwise affect the ATRS requirement to operate as a governmental plan under IRS Code § 414(d).

VIII. Lost Payees Rules

- A. Each member of ATRS, as well as each beneficiary of a deceased member, is responsible for filing with ATRS in writing a current post office address and each change of post office address of the member or beneficiary.
- B. Any communication addressed to a member or beneficiary at the last filed address, or, if no address has been filed, the last address indicated on the records of the employer of the member or the beneficiary shall be the official address for ATRS communications to the member or beneficiary, and shall be binding on the member or beneficiary for all purposes of ATRS. Under A.C.A. § 24-7-734, ATRS has no obligation to determine the current address for any member or beneficiary.
- C. Member payments in the possession of ATRS are excluded from the definition of property under the Arkansas Unclaimed Property Act (A.C.A. § 18-28-201 et seq.). A.C.A. § 24-7-734 supersedes any conflict with the Arkansas Unclaimed Property Act.

Summary of Proposed Rule Change
REVISED 3/13/2020

Arkansas Teacher Retirement System
Rule 11 – Survivors and Domestic Relations Orders

SUBSTANTIVE CHANGES:

- ATRS reformed and reorganized four (4) current ATRS rules into one rule for consistency and professionalism.
- Although technically a "new" rule because the original rule has been renumbered and renamed, the language of the new rule remains the same as in current ATRS Rules 11-01, 11-02, 11-03 and 11-05, and incorporates necessary changes under **Acts 210 and 427 of 2019**.
- For ease in identifying changes, language in the new rule that remains the same as the current rules is underlined and appears as blue font. Any language that is *added or amended, or has been relocated from its original order in the existing rules, is underlined and italicized, and appears as black font*. Grammatical changes for ease of understanding are not italicized since they do not change the meaning or effect of the rule.
- The existing rules 11-01, 11-02, 11-03 and 11-05, are proposed to be repealed and replaced with the new consolidated ATRS Rule 11 – Survivors and Domestic Relations Orders
- **Act 210 of 2019** allowed a deceased members' dependent child to receive benefits until 23 years of age if the child remains in school, and the rule is amended to reflect that change (see Rule 11 IV. Dependent Children Benefits)
- **Act 427 of 2019** defines "final average salary" as the highest salaries earned by a member in a state fiscal year, and the language in the rule is changed to reflect the definition (see Rule 11 IV.H.)
- Clarifies that a deceased member's spouse will receive the member's accumulated contributions, *plus interest*, if they waive their spousal annuity. (see Rule 11 III.B.2)

NON-SUBSTANTIVE CHANGES:

- Grammatical changes for ease of understanding and consistency, renumbering for consolidated rule where appropriate, and correction of formatting issues, typographical errors.

CHANGES AS A RESULT OF PUBLIC COMMENTS:

- Correct grammar, numbering, and typographical errors.
- Delete language regarding calculation of the amount of lump-sum death benefits as this is set by Board resolution.
- Delete language that payment of a lump-sum death benefit is dependent upon a member's submission of an ATRS approved lump-sum death beneficiary form since the requirement has no basis in law.
- Delete language that payments to alternate payee under a Qualified Domestic Relations Order (QDRO) are calculated only on service credit earned during the marriage since this requirement has no basis in law.
- Restore language regarding lost payees and the binding nature of communication addressed to the last filed address in a member's record.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT ARKANSAS TEACHER RETIREMENT SYSTEM

DIVISION ADMINISTRATION

PERSON COMPLETING THIS STATEMENT MARTHA MILLER, GENERAL COUNSEL

TELEPHONE NO. (501) 682-3332 FAX NO. (501) 682-2359 EMAIL: martham@artrs.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two (2) copies with the Questionnaire and proposed rules.

SHORT TITLE OF THIS RULE ATRS Rule 11: Survivor and Domestic Relations Order

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

Next Fiscal Year

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

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

Total \$ 0.00

Total \$ 0.00

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

Current Fiscal Year

Next Fiscal Year

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

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

Total \$ 0.00

Total \$ 0.00

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

\$ _____

\$ _____

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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

\$ _____

\$ _____

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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.