

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 Administration

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Statutory Authority for Promulgating Rules A.C.A. §§ 24-7-305, 24-7-1301, and 25-15-216

Rule Title: Rule 11 - Survivors and Domestic Relations Orders

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

12/15/2021

01/14/2022

04/20/2022

02/07/2022

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

Jennifer Liwo

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5/10/2022

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

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Executive Director

Title

05/05/2022

Date

ATRS RULE 11
SURVIVORS AND DOMESTIC RELATIONS ORDERS
Arkansas Code §§ 9-18-101 — 9-18-103, 24-7-710, 24-7-713, 24-7-720, and
24-7-734

I. Definitions

- a. "Alternate payee" means a spouse, former spouse, child, or other dependent of a member under Arkansas law;
- b. "Application" for the purposes of retirement eligibility means an application form and any other documents required by the Arkansas Teacher Retirement System (ATRS) to establish a member's eligibility to retire;
- c. "Immediately eligible" for the purpose of survivor annuity benefits means a survivor of an active member who at the time of his or her death attained the normal retirement age and could have retired;
- d. "Lump-sum death beneficiary" means one (1) or more persons or entities designated in writing by the member to receive payment of the lump-sum death benefit under Arkansas Code § 24-7-720;
- e. "Lump-sum death benefit" means a monetary amount set by the Board of Trustees of the Arkansas Teacher Retirement System (Board), and paid by ATRS to one (1) or more lump-sum death beneficiaries as provided for under Arkansas Code § 24-7-720; and
- f. "QDRO" means a court order that:
 - 1. Meets the definition of a qualified domestic relations order under Arkansas Code § 9-18-101; or
 - 2. Assigns a portion of a member's retirement benefit to the member's divorced spouse or an alternate payee upon the member's retirement or a refund of the member's contributions at the request of the member;
- g. "Qualifying member" means:
 - 1. For the purposes of eligibility for a lump-sum death benefit under Arkansas Code § 24-7-720, a member or retiree to whom one (1) of the following categories apply:
 - A. The member:
 - i. Is deceased;
 - ii. Was an active member of ATRS before July 1, 2007; and
 - iii. Has five (5) or more years of actual service, including actual service for the year immediately preceding his or her death;

- B. The member:
 - i. Is deceased;
 - ii. Was an active member of ATRS on or after July 1, 2007; and
 - iii. Has ten (10) or more years of actual service; or
- C. The retiree:
 - i. Dies before July 1, 2007; and
 - ii. Has accrued five (5) or more years of actual service, including actual service, for the year immediately preceding his or her death; or
- D. The retiree:
 - i. Dies on or after July 1, 2007; and
 - ii. Has accrued ten (10) or more years of actual service, including actual service for the year immediately preceding his or her death; or
- 2. For the purpose of an eligible survivor qualifying for survivor annuity benefits under Arkansas Code § 24-7-710, a member who:
 - A. Is an active member as defined in Arkansas Code § 24-7-202(2);
 - B. Has at least five (5) years of actual service and reciprocal service, including credited service for the year immediately preceding his or her death; and
 - C. Is active as provided in Arkansas Code § 24-7-710(f) and this ATRS Rule 11 II.a.

II. Survivors – Generally

- a. Survivor Annuity Benefits – Member Qualification
 - 1. A member shall be considered active for the purpose of an eligible survivor qualifying for survivor annuity benefits under Arkansas Code § 24-7-710 if:
 - A. The member has at least:
 - i. 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 a covered employer, whichever occurs last; and
 - ii. One (1) quarter with ten (10) days of service; or
 - B. Either of the following apply to the member:
 - i. The member has earned at least ten (10) days of service credit in the quarter of the member's death and in each quarter before the member's death, collectively; or
 - ii. Less than ten (10) working days have elapsed in the quarter of the member's death.

2. A member shall also be considered active for an additional fiscal year following the last fiscal year in which the member renders actual service to a covered employer and obtains at least one-fourth (1/4) of a year of service credit.
- b. Survivor Annuity Benefit – Applicable Law
 1. The law in effect on the date of the qualifying member's death shall determine the:
 - A. Eligibility of a qualifying member's spouse or child to receive survivor annuity benefits;
 - B. Amount of the survivor annuity benefits to be received by an eligible survivor; and
 - C. The time at which an eligible survivor may begin receiving survivor annuity benefit payments.
 - c. Survivor Annuity Benefit - Eligibility - Generally
 1. An eligible survivor of a qualifying member may receive survivor annuity benefits after the death of the qualifying member.

III. Spousal Benefits or Alternative Residual Beneficiaries

- a. Eligibility for Surviving Spouse Annuity
 1. Unless a qualifying member designates one (1) or more alternative residue beneficiaries by written form approved by ATRS, the survivor annuity benefits provided for in Arkansas Code § 24-7-710 shall be paid to the spouse of the qualifying member if the spouse:
 - A. Survives the qualifying member; and
 - B. Was married to the qualifying member for at least two (2) years immediately before the qualifying member's death.
- b. Waiver of Surviving Spouse Annuity
 1. A surviving spouse who is eligible to receive surviving spouse annuity benefits may file a waiver of his or her right to the surviving spouse annuity benefits with ATRS if, at the time of the qualifying member's death, the qualifying member does not have children who are eligible to receive dependent child survivor annuity benefits.
 2. If the surviving spouse files a waiver of his or her right to receive surviving spouse annuity benefits, then the surviving spouse may receive the qualifying member's accumulated contributions plus interest, if any, in a lump-sum distribution.
- c. Payment of Surviving Spouse Annuity
 1. Pursuant to Arkansas Code § 24-7-710, surviving spouse annuity ~~is~~ benefits are payable for the surviving spouse's lifetime, regardless of the remarriage of the surviving spouse.

2. The surviving spouse may defer receipt of the surviving spouse annuity benefits, if applicable, under the deferred retirement provisions of Arkansas Code § 24-7-707.
3. A surviving spouse shall submit the following documents to ATRS before a surviving spouse annuity benefit payment is issued to the surviving spouse:
 - A. Proof of the qualifying member's death and date of death from the qualifying member's death certificate or another legally acceptable document;
 - B. Proof of the surviving spouse's taxpayer identification number from a Social Security card or another authenticating document;
 - C. Proof of the surviving spouse's date of birth from a birth certificate or another authenticating document; and
 - D. Proof of the marriage between the qualifying member and surviving spouse from a marriage license or equivalent, marriage license recording document, or other legally acceptable proof of the existence of the marriage.
4. A surviving spouse who is immediately eligible to receive a monthly survivor annuity benefit after the death of the qualifying member shall receive monthly survivor annuity benefits:
 - A. Beginning the month after the death of the qualifying member if the survivor application is filed with ATRS within three (3) months of the qualifying member's death; or
 - B. Beginning the month in which the survivor application is filed with ATRS if at the time of the qualifying member's death the qualifying member:
 - i. Accumulated at least twenty-five (25) years of credited service and was eligible to receive a voluntary retirement or early retirement annuity; or
 - ii. Reached sixty (60) years of age and was eligible to receive a deferred retirement annuity.
5. A surviving spouse who is not immediately eligible to receive a monthly survivor annuity benefit shall receive monthly survivor annuity benefits beginning the later of either the:
 - A. Month following the date on which the qualifying member would have been eligible to receive retirement benefits had the qualifying member survived; or
 - B. Date on which a survivor application is filed with ATRS.
- d. Alternative Residual Beneficiaries
 1. Generally
 - A. A member may change his or her alternative residue beneficiary designation and designate his or her spouse as a residue beneficiary

under Arkansas Code § 24-7-710 by documenting the change on a form provided and approved by ATRS.

2. Qualifying Member

- A. A qualifying member may designate one (1) or more alternative beneficiaries, also known as alternative residue beneficiaries, to receive a lump-sum payment of the qualifying member's residue in lieu of the qualifying member's surviving spouse by using a beneficiary form provided and approved by ATRS.
- B. A surviving spouse annuity benefit or any other type of monthly benefit shall not be paid to a qualifying member's surviving spouse if the qualifying member designates one (1) or more alternative beneficiaries to receive a lump-sum payment of the qualifying member's residue in lieu of the qualifying member's surviving spouse.
- C. A surviving spouse may elect Option A — 100% Survivor Annuity benefits if the qualifying member:
 - i. Designates only the surviving spouse as the primary residue beneficiary; and
 - ii. Does not designate an alternative residue beneficiary as the primary residue beneficiary.

3. T-DROP Plan Participant

- A. A Teacher Deferred Retirement Option Plan (T-DROP) participant (plan participant) may designate one (1) or more alternative residue beneficiaries to receive a lump-sum payment of his or her T-DROP benefits in lieu of his or her surviving spouse.
- B. A T-DROP plan benefit, surviving spouse annuity benefit, or any other type of monthly benefit shall not be paid to a plan participant's surviving spouse if the plan participant designates one (1) or more alternative residue beneficiaries to receive a lump-sum payment of his or her T-DROP benefits in lieu of his or her surviving spouse.
- C. A surviving spouse may elect Option A — 100% Survivor Annuity benefits if the plan participant:
 - i. Designates only the surviving spouse as the primary residue beneficiary; and
 - ii. Does not designate an alternative residue beneficiary as the primary residue beneficiary.
- D. A plan participant's T-DROP residue that otherwise would have been paid pursuant to Arkansas Code § 24-7-709 shall be calculated as the greater of either of the following:
 - i. The accumulated contributions and regular interest credited to the retirement reserve account as of the member's effective retirement date reduced by the total amount of regular annuities paid, further

- reduced by amounts received from the T-DROP account in the form of a lump-sum or annuity benefit payments; or
- ii. The T-DROP account as of the member's effective retirement date reduced by amounts received from the T-DROP account in the form of a lump-sum or annuity benefit payments.

IV. Dependent Children Benefits

- a. A child of a qualifying member is eligible to receive a survivor annuity benefit under Arkansas Code § 24-7-710 if the child qualifies as a dependent child.
- b. A child of a qualifying member qualifies as a dependent child if the child is:
 - 1. Is younger than eighteen (18) years of age; or
 - 2. Is between eighteen (18) years of age and twenty-three (23) years of age and continuously enrolled as a full-time student at an accredited secondary school, college, or university; or
 - 3. Has been adjudged physically or mentally incapacitated by a court of competent jurisdiction.
- c. Dependent Child – Full-time Student
 - 1. To be considered a full-time student, the dependent child shall:
 - A. Take twelve (12) semester hours or eight (8) trimester hours in college;
 - B. Take four (4) hours per day in a secondary or postsecondary school; or
 - C. Engage full-time in a curriculum or field of study based upon verifiable indices from an accredited institution.
 - 2. After a dependent child reaches eighteen (18) years of age, in the absence of a parent or legal guardian, the dependent child may self-report his or her Certification of Attendance to ATRS.
 - 3. Temporary Physical or Mental Incapacitation
 - A. A qualifying member's child who is between eighteen (18) years of age and twenty-three (23) years of age and not a full-time student may continue to qualify as a dependent child and receive a survivor annuity benefit if a doctor certifies that the child is temporarily physically or mentally incapacitated to attend school for the current semester or term.
 - B. If a doctor does not certify the child as temporarily physically or mentally incapacitated to attend school for the following semester or term and the child does not attend school as a full-time student in the following semester, the child shall no longer qualify as a dependent child and shall be ineligible to receive survivor annuity benefits.
 - 4. Active Military Duty or Training
 - A. A dependent child who qualifies under Arkansas Code § 24-7-710(c)(2)(B)(i) to receive survivor annuity benefit payments may have his

or her payments temporarily suspended if he or she:

- B. Is called to active military duty or active military training; and
- C. Submits a copy of his or her military orders to the ATRS.
- D. Survivor annuity benefit payments to the dependent child shall be suspended for the duration of the dependent child's participation in active military duty or active military training.
- E. Survivor annuity benefit payments to the dependent child shall resume if the dependent child:
 - i. Is between eighteen (18) and twenty-three (23) years of age;
 - ii. Immediately re-enrolls as a full-time student upon his or her return from active military duty or active military training; and
 - iii. Submits documentation of his or her re-enrollment as a full-time student to ATRS.

d. Dependent Child — Incapacitated Child

- 1. A qualifying member's child who qualifies as a dependent child because he or she has been 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 survivor annuity benefit as long as the incapacity exists, regardless of the age of the child. Arkansas Code § 24-7-710.

e. Dependent Child – Calculation and Payment of Survivor Annuity

- 1. The amount of the survivor annuity benefit payable to a dependent child shall be the amount provided in Arkansas Code § 24-7-710.
- 2. The highest of the following shall be used to calculate a dependent child's survivor annuity benefit:
 - A. The total salary that the qualifying member would have received in the fiscal year in which the qualifying member died; or
 - B. The qualifying member's highest salary in another fiscal year.
- 3. The dependent child survivor annuity shall remain at the initial monthly amount, adjusted by an annual cost-of-living adjustment increase, as may be designated by the Board.
- 4. If more than one (1) dependent child of a qualifying member receives survivor annuity benefits, each dependent child's survivor annuity benefit shall:
 - A. Remain at the initial monthly amount; and
 - B. Not be readjusted if the survivor annuity benefit payments to one (1) or more of the dependent children terminates.

5. A dependent child shall receive monthly survivor annuity benefits:
 - A. Beginning the month after the qualifying member's death if the survivor application is filed with ATRS within three (3) months of the qualifying member's death; or
 - B. If a survivor application is not filed with ATRS within three (3) months of the qualifying member's death, beginning the month in which the survivor application is filed with ATRS.
6. A dependent child shall submit the following documents to ATRS before a survivor annuity benefit payment is issued to the dependent child:
 - A. Proof of the qualifying member's death and date of death from the qualifying member's death certificate or another legally acceptable document;
 - B. Proof of the dependent child's taxpayer identification number from a Social Security card or another authenticating documents;
 - C. Proof that the dependent child is a child of the qualifying member from the dependent child's birth certificate or another legally acceptable document;
 - D. Proof of the dependent child's date of birth from a birth certificate or another authenticating document;
 - E. If applicable, a file-marked court order finding the dependent child physically or mentally incapacitated; and
 - F. If applicable, proof of enrollment as a full-time student from an accredited secondary school, college, or university.
7. A deposit account designated to receive a survivor annuity benefit payment for the benefit of a dependent child who is under eighteen (18) years of age shall conform with:
 - A. The Arkansas Uniform Transfers to Minors Act, Arkansas Code § 9-26-201 et seq.; or
 - B. A court order in a guardianship proceeding for the benefit of the dependent child.
8. Each survivor annuity benefit payment is shall:
 - A. Be made as a separate payment to the eligible dependent child in the appropriate deposit account; and
 - B. Not be co-mingled with payments to other family members.

V. General Rules Regarding Survivor ~~Annuities~~ Annuity Benefits

- a. Survivor annuity benefits shall not be paid to the survivor of a qualifying member until the survivor provides ATRS with sufficient proof of his or her eligibility to receive survivor annuity benefit payments.
- b. ATRS shall send each survivor who is identified by the qualifying member to

ATRS and who may be eligible for a survivor annuity benefit written notice of his or her potential eligibility at the survivor's last address on file with ATRS.¹

- c. If a member receives final approval for disability retirement and dies before receiving the first disability retirement benefit payment, the member's disability retirement benefits shall be paid to one (1) or more option, alternative residual, or other beneficiaries designated by the member.
- d. If a member's disability retirement application is received by ATRS and the member dies before his or her disability application is approved, the member shall be considered to have died in active service and survivor annuity benefits under Arkansas Code § 24-7-710 may be paid if the member has not designated an alternative residual beneficiary.
- e. Payments After Death of Member
 - 1. A salary earned by a member before the member's death and paid after the member's death is subject to ATRS deductions 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 ATRS
- f. Survivor Annuity Benefits Payable by One (1) or More Reciprocal Systems
 - 1. If survivor annuity benefits are payable by more than one (1) reciprocal system to one (1) or more eligible survivors of a deceased qualifying member, the survivors shall not receive, as a percentage of the qualifying member's final pay or as a minimum dollar amount, more than the largest amount payable by a single, reciprocal system.
 - 2. ATRS shall prorate minimum benefits payable with any other reciprocal system that has a minimum benefit provision.
 - 3. A reciprocal system shall pay the reciprocal system's proportionate share of the minimum benefit amount.
 - 4. A reciprocal system's proportionate share of the minimum benefit amount shall be based on the ratio of the qualifying member's service in the reciprocal system to the qualifying member's total service in all other reciprocal systems.
- g. When a member elects to transfer from ATRS to APERS under the provisions of Acts 1977, No. 793, APERS' law shall govern the survivors' eligibility for a payment of residue or survivor annuity benefits upon the member's death.

¹ (See also ATRS Rule 11.VIII below).

VI. Lump-Sum Death Benefit Rules

a. Lump-Sum Death Benefits – Member Qualification

1. A member who is active or retired and accrues the required amount of actual service at the time of his or her death may qualify for a lump-sum death benefit.
2. For the purposes of eligibility for a lump-sum death benefit under Arkansas Code § 24-7-720, a member shall be considered active for an additional fiscal year following the last fiscal year in which the member renders actual service to a covered employer and obtains at least a quarter (1/4) of a year of service credit.

b. Lump-Sum Death Benefit – Amount

1. The amount of the lump-sum death benefit may be set pursuant to rules adopted by the Board in an amount of up to ten thousand dollars (\$10,000) per member.
2. 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.
3. A lump-sum death benefit shall be paid as a single amount to the beneficiary designated by the qualifying member.
4. If the qualifying member fails to designate a beneficiary or a designated beneficiary does not survive the qualifying member, the lump-sum death benefit shall be paid to the qualifying member's estate.

c. Lump-Sum Death Benefit – Tax Exemption

1. Pursuant to Acts 2009, No. 1323, a lump-sum death benefit distribution made after June 30, 2009, shall be tax exempt, and no federal or state income tax shall be withheld by ATRS.
2. After June 30, 2009, a lump-sum death benefit shall not be eligible for a direct rollover.

d. Lump-Sum Death Benefit – Beneficiary Designations and Authorized Agents

1. A member may designate one (1) or more natural persons, a duly formed legal entity, including a corporation, trust, partnership, or other legal entity, as his or her lump-sum death benefit beneficiary.
2. A completed lump-sum death benefit beneficiary form shall not be considered effective if the form is received by ATRS after the member's death.
3. A member's most recently completed, executed, and filed lump-sum death benefit beneficiary form shall supersede all previous lump-sum death benefit beneficiary forms completed, executed, and filed by the member.

4. Authorized Agent and Guardian – Authority to Designate Beneficiary

A. Attorney-in-Fact and Power of Attorney

- i. A lump-sum death benefit beneficiary form that is signed by a member's authorized agent, including an attorney-in-fact, agent under a power of attorney, or any other legally recognized agent, shall not be processed until the document appointing the member's authorized agent is filed with and accepted by ATRS.
- ii. Only a document that appoints and authorizes the member's authorized agent to transact retirement plan business on behalf of the member shall be effective for ATRS purposes.
- iii. Only a document that specifically authorizes a member's authorized agent to change the member's beneficiary designations shall be effective to allow the authorized agent to change a beneficiary designation on the member's behalf with ATRS.

B. Guardians and Court-Appointed Conservators

- i. A lump-sum death benefit beneficiary form signed by a guardian of the member's estate or another court-appointed conservator shall not be effective to allow the guardian or court-appointed conservator to change a beneficiary designation on the member's behalf with ATRS unless there is an accompanying court order specifically authorizing the guardian or court-appointed conservator to change a beneficiary designation on the member's behalf.

e. Lump-Sum Death Benefit – Distribution, Waiver, and Assignment

1. A designated beneficiary shall submit the following forms and documents to ATRS before a lump-sum death benefit payment is issued to the designated beneficiary:
 - A. A written application on a form approved by ATRS; and
 - B. The qualifying member's death certificate or other acceptable proof of the qualifying member's death.
2. A lump-sum death benefit payment shall be made within a reasonable time to a qualifying member's designated beneficiary after the death of the qualifying member.
3. A designated beneficiary of a lump-sum death benefit may waive his or her right to receiving a payment of the lump-sum death benefit by submitting a waiver of his or her right to the lump-sum death benefit on a form that is acceptable to ATRS.
4. If a designated beneficiary waives his or her right to the payment of a lump-sum death benefit, ATRS shall pay all or the balance of the lump-sum death benefit, whichever is applicable, to any other remaining designated beneficiaries.

5. A designated beneficiary shall not assign his or her right to a payment of a lump-sum death benefit to another person or entity.
- f. Lump-Sum Death Benefit – Overpayments
 1. ATRS reserves the right to deduct from a qualifying member's lump-sum death benefit any amount owed to ATRS by the qualifying member under Arkansas Code § 24-7-205.
 2. ATRS reserves the right to collect any overpayment or other amount owed to ATRS by a designated beneficiary.
- g. Lump-Sum Death Benefit – Compliance

ATRS shall comply with all applicable laws relating to the distribution of a lump-sum death benefit including the Arkansas Uniform Transfers to Minors Act, Arkansas Code § 9-26-201 et seq.

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

- a. QDRO — Adopted by ATRS
 1. The model QDRO adopted by ATRS pursuant to Arkansas Code § 9-18-103(b) shall be used by a member if a court intends to divide the member's retirement benefits or contributions between the member and an alternate payee.
- b. QDRO Issued by Court
 1. ATRS shall accept a QDRO issued by a circuit court of the State of Arkansas or other court of competent jurisdiction regarding a member and an alternate payee, subject to the following:
 - A. The alternate payee is eligible to receive benefit payments if the member:
 - i. Retires; or
 - ii. Terminates employment with a covered employer and receives a refund of contributions.
 - B. ATRS shall:
 - i. Promptly notify the member and the alternate payee upon receiving a QDRO; and
 - ii. Determine within a reasonable time after receiving the QDRO whether the QDRO complies with the Arkansas Code, ATRS Rules, ATRS' model QDRO, and other applicable laws.
 - C. The member or the alternate payee may file a QDRO with ATRS before the member's retirement or termination of covered employment.
 - D. A QDRO shall not require ATRS to:
 - i. Provide the alternate payee with any type or form of benefit or option not otherwise available to the member;

- ii. Provide the alternate payee actuarial benefits not available to the member; or
 - iii. Pay any benefits to the alternate payee that are required to be paid to another alternate payee under an existing QDRO.
- E. Any benefit that would be due to the alternate payee under the QDRO shall revert back to the member if the alternate payee dies before receiving the benefit.
- F. If the member dies before retirement, the alternate payee shall receive the same portion of the member's contributions, if any, as was assigned by the QDRO.
- G. The alternate payee shall not receive monthly retirement annuity benefits from ATRS if the member has not received his or her retirement annuity at the time of his or her death.
- H. ATRS shall compute the alternate payee's monthly retirement annuity benefit under a QDRO ~~on~~ using the benefit formula in effect at the time of the member's retirement and shall include only service credit earned by the member during the marriage.
- I. If the QDRO issued by the circuit court assigns a marital portion or other part of the member's interest in his or her T-DROP plan deposits and interest, the benefits in the member's T-DROP account shall be computed as a separate calculation as provided by ATRS' model QDRO.
- J. ATRS shall have the right to:
 - i. Make any necessary correction to the monthly retirement benefit paid under a the QDRO; and
 - ii. Recover any overpayments owed to ATRS from either the member or the alternate payee.
- K. The alternate payee shall:
 - i. Notify ATRS of a change of the alternate payee's mailing address; and
 - ii. Verify annually his or her address with ATRS beginning one (1) year from the date of the letter notifying the alternate payee of ATRS' acceptance of the QDRO.
- L. The alternate payee's portion of the member's retirement benefits or contributions shall be held in the member's account until the alternate payee is eligible to receive benefit payments under this ATRS Rule 11 VII b.1.A.
- M. If the alternate payee is eligible to receive benefit payments, ATRS shall:
 - i. Not hold the alternate payee's portion of the member's retirement benefits or contributions in the member's account;
 - ii. Pay the alternate payee's portion of the member's retirement

- benefits or contributions when payment is due to the:
- a. Alternate payee if the alternate payee has completed and submitted to ATRS an enrollment form and all other documents required by ATRS in order to issue the payment; or
 - b. Member to be held by the member as constructive trustee.
- N. If the alternate payee is eligible to receive benefit payments and has not completed and submitted an enrollment form or all other required documents to ATRS, the following shall apply:
- i. ATRS shall notify the member in writing that the alternate payee has not completed and submitted an enrollment form or all other documents required in order for ATRS to issue a payment to the alternate payee;
 - ii. ATRS shall pay the alternate payee's portion of the member's retirement benefits or contributions to the member;
 - iii. The member shall hold as constructive trustee the alternate payee's portion of the member's retirement benefits or contributions upon receiving the alternate payee's portion of the member's retirement benefits or contributions; and
 - iv. The member shall be responsible for verifying with ATRS the amount of the alternate payee's portion of the member's retirement benefits or contributions to be held by the member as constructive trustee.
- O. If an amount that should not have been distributed to the member or alternate payee under the QDRO is received by the member or alternate payee, the member or alternate payee shall:
- i. Be responsible for holding the amount as a constructive trustee; and
 - ii. Notify ATRS immediately that he or she received the amount.
- P. ATRS shall not make restitution for:
- i. A payment that is issued to the alternate payee before ATRS receives notice of the alternate payee's change of address;
 - ii. A distributed amount that:
 - a. The alternate payee is entitled to receive under the terms of a QDRO; and
 - b. Is received by the member as constructive trustee; or
 - iii. A distributed amount that:
 - a. The member is entitled to receive under the terms of a QDRO; and
 - b. Is received by the alternate payee as constructive trustee.

- Q. A benefit enhancement enacted by the General Assembly or the Board after entry of the QDRO shall inure to the benefit of the member and shall not be assigned to the alternate payee.
- R. 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.
- S. ATRS shall pay the member the total retirement benefit if ATRS determines that the alternate payee's monthly retirement benefit is less than twenty dollars (\$20.00).
- T. The member shall be responsible for paying the alternate payee his or her portion under the QDRO if ATRS determines that the alternate payee's monthly retirement benefit is less than twenty dollars (\$20.00).
- U. The QDRO issued by the circuit court shall not require ATRS to provide any benefit that is an actuarial cost to ATRS and is not otherwise contemplated in the law and rules applicable to ATRS.
- V. No provision in this ATRS Rule 11 or in a QDRO accepted by ATRS shall require ATRS to violate any plan qualification requirement in the Internal Revenue Code, 26 U.S.C. § 401(a), or otherwise affect ATRS' requirement to operate as a governmental plan under the Internal Revenue Code, 26 U.S.C. § 414(d).

VIII. Lost Payees Rules

- a. A member or beneficiary of a deceased member, whichever is appropriate, is responsible for filing a current post office address and any subsequent change of address with ATRS.
- b. Communication addressed to a member or beneficiary at the last post office address last filed with ATRS, or, if no post office address has been filed with ATRS, the last post office address indicated on the records of the employer of the member or the beneficiary shall be:
 - 1. The official post office address for ATRS communication to the member or beneficiary; and
 - 2. Binding on the member or beneficiary for all ATRS purposes.
 - 3. ATRS shall have no obligation to determine the current post office address or any other address for a member or beneficiary. (Arkansas Code § 24-7-734)
- c. Unclaimed Property Act
 - 1. Member payments in the possession of ATRS shall be excluded from the definition of property as provided in the Unclaimed Property Act, Arkansas Code § 18-28-201 et seq.
 - 2. Arkansas Code § 24-7-734 supersedes any conflict with the Unclaimed Property Act, Arkansas Code § 18-28-201 et seq.

HISTORY

Adopted:	August 10, 1993	11-3
Amended:	March 6, 1996	11-3
Amended:	February 10, 1998	11-3
Amended:	May 5, 1998	11-3
Amended:	October 7, 2003	11-3
Amended:	June 15, 2004	11-1, 11-2
Adopted:	July 18, 2005	11-5
Amended:	February 7, 2006	11-1, 11-2
Amended:	April 26, 2007	11-1, 11-2
Amended:	October 6, 2008	11-3
Amended:	June 16, 2009	(Emergency) 11-2
Amended:	October 5, 2009	(Permanent) 11-2
Amended:	December 18, 2009	11-1
Amended:	July 1, 2011	(Emergency) 11-1, (Emergency) 11-2
Adopted:	August 8, 2011	11-1, 11-2
Effective:	November 11, 2011	11-1, 11-2
Approved by Board:	August 6, 2012	11-1
Amended:	October 13, 2012	11-1
Effective:	March 6, 2013	11-1
Approved by Board:	July 26, 2013	11-1, 11-2, 11-5
Amended:	October 9, 2013	11-1, 11-2, 11-5
Effective:	November 8, 2013	11-1, 11-2, 11-5
Approved by Board:	December 1, 2014	11-1
Amended:	May 18, 2015	11-1
Effective:	June 16, 2015	11-1
Approved by Board:	February 5, 2018	11-1
Effective:	February 16, 2018	11-1
Effective:	May 28, 2020	Rule 11