



DECEMBER 15, 2021

SUMMARY OF PROPOSED RULE AMENDMENT

ATRS RULE 11 – SURVIVORS AND DOMESTIC RELATIONS ORDERS

I. PURPOSE

To amend ATRS Rule 11 – Survivors and Domestic Relations Orders (Rule 11) in accordance with legislation enacted during the Regular Session, 2021, and to redraft current provisions for clarity and to correct nonsubstantive issues such as formatting, renumbering, grammar, and spelling as appropriate. The amendments to Rule 11 are necessary for the proper operation and administration of the Arkansas Teacher Retirement System.

II. BACKGROUND AND DISCUSSION

A.C.A. § 24-7-301 provides that the Board of Trustees of the Arkansas Teacher Retirement System is responsible for the general administration and proper operation of the Arkansas Teacher Retirement System and for implementing the Arkansas Teacher Retirement System Act, A.C.A. § 24-7-201 et seq.

A.C.A. § 24-7-305(b) gives the Board of Trustees of the Arkansas Teacher Retirement System the authority to promulgate rules as it deems necessary from time to time in the transaction of its business and in administering the Arkansas Teacher Retirement System. A.C.A. § 24-7-1301(c) gives the Board of Trustees of the Arkansas Teacher Retirement System the authority to promulgate rules necessary for the orderly administration of the Teacher Deferred Retirement Option Plan, including without limitation the rules for eligibility for continuance of deposits for part-time employment. Acts 2021, No. 595 requires the Arkansas Teacher Retirement System to promulgate rules pursuant to the provisions of each act identified by the Bureau of Legislative Research as requiring the promulgation of one (1) or more rules.

Acts 2021, No. 279 amended the law to clarify the pro rata formula to be used to calculate the residue of a participant in the Teacher Deferred Retirement Option Plan. The formula is required to be used if the participant's residue would have been paid under A.C.A. § 24-7-709 except for the provisions of A.C.A. § 24-7-1310(c). Rule 11 is being amended to incorporate this amendment to the law.

Rule 11 does not currently address whether a dependent child who qualifies under A.C.A. § 24-7-710(c)(2)(B)(i) to receive survivor annuity benefit payments may have his or her benefit payments temporarily suspended when he or she is called to active military duty or active military training. Rule 11 is being amended to clarify that a dependent child who qualifies under A.C.A. § 24-7-710(c)(2)(B)(i) to receive survivor annuity benefit payments and is called to active military duty or active military training may have his or her benefit payments temporarily suspended and resumed at a later time if certain requirements are met.

Rule 11 is being amended to redraft the current provisions for clarity and correct nonsubstantive issues such as formatting, renumbering, grammar, and spelling as appropriate.



III. KEY POINTS

Rule 11 is being amended to:

- Clarify the pro rata formula that is used to calculate a Teacher Deferred Retirement Option Plan participant's residue;
- Clarify that a dependent child who qualifies under A.C.A. § 24-7-710(c)(2)(B)(i) to receive survivor annuity benefit payments and is called to active military duty or active military training may have his or her benefit payments temporarily suspended and resumed at a later time if certain requirements are met;
- Amend or add language recommended through public comment that:
 - Revises the definition of a "qualifying member" to align with Ark. Code Ann. §§ 24-7-720(a)(1)(B) and 24-7-720(b)(1);
 - Clarifies that a surviving spouse must be the only designated primary residue beneficiary in order for the surviving spouse to elect an Option A survivor annuity;
 - Changes "physicalyy" to "physically"; and
 - Add clarifications and additional rules concerning benefit payments made pursuant to a qualified domestic relations order; and
- Redraft current provisions for clarity and correct nonsubstantive issues such as formatting, renumbering, grammar, and spelling as appropriate.

Public Comments

Proposed Rule 11 – Survivors and Domestic Relations Orders

1. Page 2, Section (I)(g)(1)(B)(iii)

- a. **BLR Comment:** The proposed rule appears to be premised on Ark. Code Ann. § 24-7-720(a)(1)(B), which provides that the member have “*ten (10) or more years of actual service.*” I’m not seeing the language contained in the rule that the service be “*for the year immediately preceding his or her death.*” Is there a reason that the language has been included in the rule?
- b. **Response:** No. The Arkansas Teacher Retirement System (ATRS) agrees that the language referenced by the commentator should not be included. This change has been made.

2. Page 2, Section (I)(g)(1)(C)(ii)

- a. **BLR Comment:** The proposed rule appears to be premised on Ark. Code Ann. § 24-7-720(b)(1). Should “*including actual service*” preface “*for the year immediately preceding his or her death*”?
- b. **Response:** Yes. This change has been made.

3. Pages 6-7, Sections (III)(d)(2) and (3)

- a. **ATRS Staff Comment:** Do the provisions of Sections (III)(d)(2) and (3) permit a member’s surviving spouse to elect Option A survivor annuity benefits if the member designates one (1) or more alternative residue beneficiaries as primary beneficiaries of the member’s residue?
- b. **Response:** No. The proposed rule has been revised to clarify that in order for a member’s surviving spouse to elect Option A survivor annuity benefits, the surviving spouse must be the only designated primary residue beneficiary.

4. Page 9, Section (IV)(c)(3)(B)

- a. **BLR Comment:** There is a typo with the word “physicalyy”.
- b. **Response:** Yes. This change has been made.

5. Page 19, Section (VII)

- a. **ATRS Staff Comment:** Should this section include additional rules concerning the responsibility for payments that are not received by a party under a qualified domestic relations order?
- b. **Response:** Yes. Appropriate changes have been made.

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ATRS Rule RULE 11 SURVIVORS AND DOMESTIC RELATIONS ORDERS

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

I. Definitions

- a. ~~A.~~ "Alternate payee" means a spouse, former spouse, child, or other dependent of a member under Arkansas law~~-.i~~;
- b. ~~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 ~~the person(s) or entity(s)~~ one (1) or more persons or entities designated in writing by the member to receive payment of the lump-sum death benefit under ~~A.C.A.~~ Arkansas Code § 24-7-720~~-.i~~;
- ~~C.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 A.C.A. Arkansas Code § 24-7-720-.; and
- ~~D.f.~~ "QDRO" means a court order that:
 - 1. ~~meets~~ Meets the definition of a ~~"Qualified Domestic Relations Order"~~ qualified domestic relations order under ~~A.C.A.~~ 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

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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 General~~ Survivors – Generally

- ~~a. 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~~

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~~actual service and be an active member at the time of death.~~ 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.

~~B. ATRS considers a member to be active for the purpose of qualifying for~~

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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. A.—Eligibility for Surviving Spouse Annuity

1. ~~Unless the member directs an~~ a qualifying member designates one (1) or more ~~alternative residual beneficiary or beneficiaries~~ residue beneficiaries ~~by written form approved by ATRS, the~~ survivor annuity ~~benefits provided for in A.C.A. Arkansas Code § 24-7-710, shall be paid to the spouse of the qualifying member if the spouse:~~

A. —survives the member Survives the qualifying member; and

A.B. —was married to the member Was married to the qualifying member for at least two (2) years immediately prior to the member's death before the qualifying member's death.

a.b. —B.—Waiver of Spousal Surviving Spouse 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.~~ 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 the spousal~~ of his or her right to receive surviving spouse ~~annuity~~ benefits, then the surviving spouse may receive the ~~member's~~ qualifying member's accumulated contributions plus interest, if any, in a lump-sum distribution.

b.c. —C.—Spousal Payment of Surviving Spouse Annuity Generally

1. ~~The~~ Pursuant to Arkansas Code § 24-7-710, spousal surviving spouse

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annuity is benefits are payable for the surviving spouse's lifetime, regardless of the remarriage of the surviving spouse, ~~pursuant to~~ A.C.A. § 24-7-710.

2. The surviving spouse may defer receipt of the surviving spouse annuity benefits, if applicable, under the deferred ~~retirements~~ retirement provisions of A.C.A. 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

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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

A.B. Date on which a survivor application is filed with ATRS.

d. ~~D.~~ Alternative Residual Beneficiaries Generally

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 member may select one or more~~ A qualifying member may designate one (1) or more alternative beneficiaries, also known as alternative residue beneficiaries, to receive a lump-sum lump-sum payment of the member's qualifying member's residue in lieu of the member's qualifying member's surviving spouse (called "alternative residual beneficiary or beneficiaries"), documented on forms by using a beneficiary form provided and approved by ATRS, and no spousal benefit or other monthly benefits shall be paid.

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

i-ii. Does not designate an alternative residue beneficiary as the primary residue beneficiary.

3. ~~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-

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~~DROP deposits as a lump sum and no spousal benefit or other monthly benefit shall be paid.~~ 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

i-ii. Does not designate an alternative residue beneficiary as the primary residue beneficiary.

~~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.~~

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

i-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. A surviving dependent child of the a qualifying member may receive an~~ is eligible to receive a survivor annuity benefit under A.C.A. Arkansas Code § 24-7-710 if the child qualifies as a dependent child.

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b. ~~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;~~ A child of a qualifying member qualifies as a dependent child if the child is:

1. ~~The child is younger~~ 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~~ 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. ~~The child is adjudged~~ Has been adjudged physically or mentally incapacitated by a court of competent jurisdiction.

c. ~~C. Dependent Child – Full-time Student~~

1. To be considered a full-time student, the dependent child shall:
 - ~~A. carry~~ Take twelve (12) semester hours or eight (8) trimester hours in college; _i
 - ~~B. Take~~ Take four (4) hours per day in a secondary or postsecondary school; _i or
 - ~~C. engage~~ Engage full-time in a curriculum or field of study based upon verifiable indices from an accredited institution.
2. ~~After the a dependent child reaches eighteen (18) years of age,~~ in the absence of a parent or legal guardian, the dependent child may self-report their his or her 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.~~

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

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physically or mentally incapacitated to attend school for the current semester or term.

A.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.

~~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.~~

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.

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e. F. Dependent Child – Calculation and Payment of Survivor Annuity

1. A dependent child annuity is established according to the formula set out in A.C.A. §24-7-710. 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 remains at its shall remain at the initial monthly amount, adjusted by an annual COLA cost-of-living adjustment increase, as may be designated by the board Board.
4. If more than one (1) dependent child in a member's family of a qualifying member receives an survivor annuity benefits, each dependent child's annuity remains at its survivor annuity benefit shall:
 - A. Remain at the initial monthly amount and is not; and
 - B. readjusted when the member's other dependent children's annuities terminate 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;

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- 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.

~~G.~~

7. A deposit account designated to receive a survivor annuity benefit payment for the benefit of a dependent child who is under age eighteen (18) years of age shall conform with:

A. ~~the Arkansas Uniform Transfers to Minors Act~~ The Arkansas Uniform Transfers to Minors Act, Arkansas Code § 9-26-201 et seq.; or

B. ~~with a~~ A court order in a guardianship proceeding for the benefit of the ward dependent child.

8. Each survivor annuity benefit payment is shall:

A. ~~made~~ Be made as a separate payment to the eligible dependent child in the appropriate deposit account; and

A.B. ~~shall not~~ 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 Annuity Benefits

- a. ~~A. Survivors are required to produce sufficient proof of eligibility under these provisions prior to receiving benefit payments.~~ 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. ~~B. ATRS will notify survivors~~ shall send each survivor who is identified by the qualifying member to ATRS and who may be eligible for a ~~survivor's~~

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survivor annuity benefit written notice of his or her potential eligibility at the survivor's last address on file at with ATRS.¹ (See also ATRS Rule 11.VIII below).

- c. ~~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. 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. ~~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. 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. ~~E.~~ Payments After Death of Member

1. ~~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.~~ 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. ~~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.~~ 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

¹ (See also ATRS Rule 11.VIII below).

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A.C. Included in the covered employer's quarterly report to ATRS

f. 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 ~~eligible survivors~~ one (1) or more eligible survivors of a deceased qualifying member, the survivors shall not receive ~~more (as a percentage of the deceased member's final pay or as a minimum dollar amount)~~ 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 will shall prorate minimum benefits payable with any other reciprocal systems that have system that has a minimum benefit provision.

3. ~~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.~~ A reciprocal system shall pay the reciprocal system's proportionate share of the minimum benefit amount.

4.4. 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.

e.g. ~~G.~~ When the a member elects to transfer from ATRS to APERS under the provisions of Act 793 of 1977, Acts 1977, No. 793, APERS' law ~~governs~~ shall govern the survivors' eligibility for a payment of residue or survivor annuity benefits upon the member's death.

VI. Lump-Sum 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.

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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~~ Board in an amount of up to ten thousand dollars (\$10,000) per member.
- ~~4.2.~~ The ~~board~~ 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.
- ~~4.3.~~ The A lump-sum death benefit will shall be paid as a single amount to the beneficiary designated by the ~~eligible~~ qualifying member.
- ~~4.~~ If the ~~eligible member failed~~ qualifying member fails to designate a beneficiary or a designated beneficiary ~~did not~~ does not survive the qualifying member, the lump-sum death benefit will shall be paid to the qualifying 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.

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.
 - 4.2. After June 30, 2009, a 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.d. Lump-Sum Death Benefit – Beneficiary Designations and Authorized Agents

1. A member may designate any natural person(s) or one (1) or more natural persons, a duly formed legal entity, including a corporation,

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trust, partnership, or other legal entity, as his or her lump-sum death benefit beneficiary, ~~including a corporation, trust, partnership, or other recognized legal entity.~~

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

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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.
- 4.5. A designated beneficiary shall not assign his or her right to a payment of a lump-sum death benefit to another person or entity.
- ~~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~~

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~~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).~~

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.

1.2. ATRS reserves the right to collect any overpayment or other amount owed to ATRS by a designated beneficiary.

N.g. Lump-Sum Death Benefit – Compliance

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

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.~~

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**

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member's retirement benefits or contributions between the member and an alternate payee.

b. QDRO Issued by Court

1. ~~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 and an alternate payee, subject to the following:

~~A. 1.~~ Benefits to the alternate payee shall begin when the member Retires. The alternate payee is eligible to receive benefit payments if the member:

~~i. retires~~ Retires; or

~~ii. when the member ceases~~ Terminates employment with a covered employer and receives a refund of contributions.

~~A.B. 2.~~ ATRS shall:

~~a. i.~~ Promptly notify the member and the alternate payee upon receipt of receiving a QDRO; ~~i~~ and

~~b. ii. Within a reasonable time after receipt of the QDRO, determine whether the QDRO complies with ATRS's model QDRO and ATRS laws and regulations.~~ 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.

~~B.C. 3. A~~ The member or the alternate payee may file a QDRO with ATRS prior to before 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.~~

~~C.D. 4.~~ A QDRO shall not require ATRS to:

i. ~~a.~~ Provide ~~an the~~ alternate payee with any type or form of benefit or option not otherwise available to the member;

~~ii. b.~~ Provide the alternate payee actuarial benefits not available to the member; or

~~iii. c.~~ Pay any benefits to ~~an the~~ alternate payee that are required to be paid to another alternate payee under an existing QDRO.

~~D.E. 5.~~ If Any benefit that would be due to the alternate payee under the QDRO shall revert back to the member if the alternate payee dies prior to the receipt of before receiving the benefit

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~~benefits under the QDRO, any amount or benefit that would be due to the alternate payee reverts to the member.~~

F. ~~6.~~ If the member dies prior to before retirement, the alternate payee shall receive the same portion of the member's contributions, if any, as was assigned by the QDRO.

E.G. ~~In no case shall the alternate payee~~ The alternate payee shall not receive monthly retirement annuity benefits from ATRS if the member has not received his/her his or her retirement annuity at the time of his/her his or her death.

F.H. ~~7.~~ ATRS ~~computes~~ 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 ~~includes~~ shall include only service credit earned by the member during the marriage.

G.I. ~~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. 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. ~~9.~~ ATRS shall have the right to:

i. ~~make~~ Make any necessary correction to the monthly retirement benefit amount paid under a the QDRO; and

i.ii. ~~to recover from either the member or the alternate payee~~ Recover any overpayments due owed to ATRS from either the member or the alternate payee.

K. ~~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.~~ 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

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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

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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.

~~O. 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.~~ 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.

~~P. 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.~~

~~Q. 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.~~ 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).

~~R. 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~~

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dollars (\$20.00).

- S. 14- ~~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 ATRS' ~~the~~ law and rules applicable to ATRS.
- T. 15- No provision in this rule ATRS Rule 11 or in a QDRO accepted by ATRS shall require ATRS to violate any plan qualification requirement in IRS the Internal Revenue Code, 26 U.S.C. § 401(a), or otherwise affect ~~the ATRS~~ ATRS' requirement to operate as a governmental plan under IRS the Internal Revenue Code, 26 U.S.C. § 414(d).

VIII. Lost Payees Rules

- a. ~~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. 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. ~~B.~~ Any communication Communication addressed to a member or beneficiary at the last filed 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. ~~be the~~ The official post office address for ATRS communications communication to the member or beneficiary; and
 2. ~~and shall be binding~~ Binding on the member or beneficiary for all ~~purposes of ATRS~~ purposes.
 3. ~~Under A.C.A. § 24-7-734, ATRS has~~ shall have no obligation to determine the current post office address or any other address for any a member or beneficiary. (Arkansas Code § 24-7-734)
- c. ~~C.~~ Unclaimed Property Act
1. Member payments in the possession of ATRS are shall be excluded from the definition of property ~~under the Arkansas~~ as provided in the Unclaimed Property Act, (A.C.A. Arkansas Code § 18-28-201 et seq.).
 2. A.C.A. Arkansas Code § 24-7-734 supersedes any conflict with the ~~Arkansas~~ Unclaimed Property Act, Arkansas Code § 18-28-201 et seq.

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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

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Teacher Retirement System

DIVISION _____

PERSON COMPLETING THIS STATEMENT Jennifer Liwo

TELEPHONE NO. (501) 682-1517

FAX NO. (501) 682-2359

EMAIL: jenniferl@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 - Survivors and Domestic Relations Orders

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;

N/A

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

N/A

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

N/A

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

N/A

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

\$ _____

\$ _____

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 ☐

N/A

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.