

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

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

INSTRUCTIONS

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

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

1. What is the short title of this rule? Survivor Benefits (Rule 11-1)

2. What is the subject of the proposed rule? Rules for benefits paid to surviving beneficiaries of ATRS members

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

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

When does the emergency rule expire? _____

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

5. Is this a new rule? Yes No
If yes, please provide a brief summary explaining the regulation.

Does this repeal an existing rule? Yes No
If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes No
If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

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

§ 24-7-305(b)(1)

7. What is the purpose of this proposed rule? Why is it necessary?
To bring into compliance and make consistent with Acts 140, 174, and 571 of 2013 and various minor changes for clarity.

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

www.artrs.gov

9. Will a public hearing be held on this proposed rule? Yes No
If yes, please complete the following:

Date: _____

Time: _____

Place: _____

10. When does the public comment period expire for permanent promulgation? (Must provide a date.) August 29, 2013

11. What is the proposed effective date of this proposed rule? (Must provide a date.) December 1, 2013

12. Do you expect this rule to be controversial? Yes No
If yes, please explain. _____

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

N/A

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

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

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

SHORT TITLE OF THIS RULE Survivor Benefits (Rule 11-1)

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

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

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

Current Fiscal Year

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

Next Fiscal Year

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

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

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

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

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

Summary of Proposed Rule Change

for
Arkansas Teacher Retirement System

Rule 11-1 Survivor Benefits

This Rule change is needed to comply with Acts 140, 174, and 571 of 2013. Act 140 is a "technical corrections" Act that in part, amended the portion of Arkansas Code that affect the payment of a survivor benefit. Act 174 allows ATRS to pay survivor benefits directly to persons who have legal custody of the child who is the beneficiary. Act 571 allows an eligible survivor to receive benefits as early as the month after the member's death if the application is filed within three months of the member's death. Other changes strike language that is duplicative of Arkansas Code language, and specific Arkansas Code cites are included in its place. Renumbering of paragraphs is made to be consistent with the numbering system utilized throughout the Rules. Specific changes as referenced by the Rule page number are listed as follows:

11-1-1 I. Language is changed to reference the Arkansas Code § 24-7-710, regarding Survivor Benefits.

11-1-1 I. A. The new language simplifies and restates the stricken language for clarity.

11-1-1 I. B. Language is changed to reference the Arkansas Code § 24-7-710, regarding Survivor Benefits.

11-1-1 II. A. Language is changed to reference the Arkansas Code section and to restate the stricken language in clearer terms.

11-1-2 II. C i. The stricken language in the old "i" is inconsistent with § 24-7-710(b)(1)(C).

11-1-2 II. C ii. The stricken language in the old "ii" is covered under § 24-7-710(b)(1)(B).

11-1-2 II. C iii. The stricken language in the old "iii" is covered under § 24-7-710(b)(1)(D).

11-1-2 III A. Stricken language is to comply with Act 571, and the added language is changed to reference the requirements in § 24-7-710 and Act 571 and to avoid duplication or possible confusion with the language in the law.

11-1-3 III C. Language is changed to reference the Arkansas Code section that defines "child", and to reword the remaining paragraphs for clarity. Additionally, the Rule requires proof of attendance at a school in order to continue receiving benefits beyond age 18.

11-1-4 III E. This change was made to comply with Act 174, that references payment of a benefit to a legal guardian.

11-1-4 IV. B. This change was made to comply with Act 140, which lists the order in which a final payment to a beneficiary is sent, until delivered.

11-1-5 IV. E. The additional language references the calculation of final average salary (which uses the member's 3 highest years of salary) to clarify the meaning of the paragraph.

11-1-5 IV. F. The second paragraph of "F" is deleted to avoid confusion or potential conflict because it substantially replicates the language in Arkansas Code § 24-7-710(g).

RULE 11-1

SURVIVOR BENEFITS

A.C.A. §§ 24-7-710, 713

I. RULES AND REGULATIONS (as amended by Act 1324 of 2009) **GENERAL:**
See A.C.A § 24-7-710 for Survivor Benefit Rules.

~~A. If an active member with five (5) or more years of actual and reciprocal service, including credited service for the year immediately preceding his or her death, dies while in active service before retirement, survivor benefits as provided in A.C.A. § 24-7-710, plus the monthly stipend under A.C.A. § 24-7-713, shall be paid to the following qualifying dependents. Benefits may be provided to dependents of qualifying members after the death of the member. To qualify, a member must have five (5) years of actual service and be an active member at the time of death.~~

~~B. A member shall also be considered ATRS considers a member to be active for the purpose of qualifying for survivor benefits under A.C.A. § 24-7-710(g) and if:~~

- ~~(1) i. The member has at least ten (10) days of service credit in each prior quarter of the fiscal year from the time the fiscal year began or the member was employed by an ATRS employer, whichever occurs last, provided however, the member must have at least one quarter with ten (10) days of service; and or~~
- ~~(2) ii. The member has at least ten (10) days of service in the quarter of the member's death, or, ten (10) working days have not elapsed in the quarter of the member's death.~~

4. SPOUSE II. SPOUSAL BENEFITS

~~A. The member's surviving spouse, who The benefits provided for in A.C.A. § 24-7-710, plus the monthly stipend under A.C.A. § 24-7-713 shall be paid to the spouse of the qualifying member if the spouse survives the member and was married to the member for at least two (2) years immediately prior to the member's death, shall receive a surviving spouse benefit.~~

~~B. i. If at the time of the member's death there are no dependent children eligible to receive a dependent child annuity, a surviving spouse who qualifies to receive a surviving spouse annuity may file with the System ATRS a waiver of any rights to the spouse spousal annuity.~~

- ii. If the surviving spouse files a waiver of the spouse spousal annuity, then the deceased member's residue beneficiary(ies) will receive a single distribution of the member's residue amount, if any.
- C. i. The spouse spousal annuity shall begin under the following schedule: is payable for the spouse's lifetime, regardless of remarriage, pursuant to A.C.A. § 24-7-710(b).
- i. ~~If the member was not eligible for early, regular, or deferred retirement at the time of his/her death, the spouse annuity will begin the date the member would have been eligible to receive retirement benefits and is payable for the spouse's lifetime, regardless of remarriage.~~
- ii. ~~However, if the member had either satisfied the age and service requirements provided in A.C.A. §§ 24-7-701 or 702 or attained age sixty (60) and was eligible for deferred retirement under A.C.A. § 24-7-707, then the spouse annuity commences the month following the member's death and is payable for the spouse's lifetime, regardless of remarriage.~~
- ii. iii. ~~If the surviving spouse is eligible to receive the survivor annuity upon the member's death but would receive a reduction due to the member being less than 60 years of age, the The spouse may defer receipt of the annuity until the member would have been entitled to an unreduced benefit at age 60, if applicable, under the deferred retirements provisions of A.C.A. § 24-7-707.~~

2.III. DEPENDENT CHILDREN BENEFITS

- A. ~~Effective July 1, 2011, upon the death of an active member, the dependent children shall each receive a surviving child annuity upon the member's death. The surviving child annuity shall be equal to 20% of the member's highest salary year in covered employment. If the member's highest salary year occurs in the year the member died, the System shall calculate the dependent child annuity(ies) on the basis of the full year of salary. Each child's annuity shall begin the month following the member's death and be payable until the annuity terminates Surviving dependent children of the member shall receive an annuity under A.C.A. § 24-7-710 and a cost of living adjustment,~~

~~Surviving children will receive a COLA the July 1 following the annuity commencement date if he/she has received at least 12 monthly benefit payments prior to the COLA implementation date. The cost of living adjustment shall be simple unless the Board elects to compound the COLA for that period as may be designated by the Board.~~

- B. ~~However, if a member has more than three (3) dependent children eligible under this section, then the aggregate annuity payable shall not exceed 60% of the member's highest salary year and shall be divided equally among the surviving dependent children. There are certain additional limitations on the amount of annuity payable to a dependent child if the member has multiple dependents. A.C.A. § 24-7-710(c).~~
- C. ~~i. A member's "child" eligible to receive a child annuity is a "child" under any of the following:~~
- ~~i. A natural child of the member; or~~
 - ~~ii. A child that has been made a child of the member by adoption or other court action prior to the member's death. "Child" is defined under A.C.A. § 24-7-202(9), and for purposes of receiving an annuity from ATRS, the child must be a dependent child in accordance with § 24-7-710. While a surviving dependent child's benefits normally cease once the child reaches eighteen (18) years of age, there are circumstances where the child may continue to receive benefits. These include:~~
- D. ~~A child identified as a dependent will remain eligible to receive a survivor annuity until he/she is no longer a dependent. A child is no longer dependent if he/she reaches the age of 18.~~
- E. ~~A child will continue to be eligible for a child survivor annuity after reaching age 18 if the child continues consecutively, without interruption as a full-time student at an accredited secondary school, postsecondary school such as a vocational technical school, college, or university. In any event, a dependent child annuity will terminate when the child reaches age 23.~~
- ~~i.a. A full-time student. A full-time student is defined as one carrying 12 semester hours or 8 trimester hours in college, four (4) hours per day in a secondary or postsecondary school, or other verifiable indices from an accredited institution that the dependent child is engaged in full time curriculum or field of study. Certification of attendance in an accredited school may be reported by the dependent child in the absence of a parent or legal guardian after the dependent child reaches age 18.~~
 - ~~ii.b. If For a child who is receiving a dependent child annuity is age 18 or older but becomes who is temporarily physically or mentally incapacitated, the Board may continue paying benefits upon receipt of a doctor's certification that the child is temporarily physically or mentally incapacitated; and is unable to attend school for the period of one semester or term. At the beginning of the next semester or term, if~~

the child does not reenter school full-time, the dependent child annuity will terminate.

~~iii. Certification of attendance in an accredited school may be reported by the dependent child in the absence of a parent or legal guardian after the dependent child reaches age 18.~~

~~F. c. A deceased member's dependent child who is dependent due to having been adjudged physically or mentally incapacitated by a court or legal tribunal of competent jurisdiction. Such a child continues to be eligible to receive a dependent child annuity as long as the incapacity exists, regardless of age. A.C.A. § 24-7-710(c).~~

~~GD. A dependent child annuity shall not be adjusted from remains at its initial monthly amount, adjusted only by a COLA increase, and is not readjusted when the member's other dependent child or children's annuities terminate except for COLAs.~~

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

3IV. GENERAL RULES REGARDING SURVIVOR ANNUITIES

- A. Survivors are required to produce sufficient proof of eligibility under these provisions prior to receiving benefit payments.
- B. ~~If at the time of an active member's death, a surviving spouse is listed on the death certificate, the System will search for the surviving spouse for up to one year. If after one year, ATRS has not located or been contacted by the surviving spouse, ATRS will refund the member's residue amount, if any, to the member's remaining residue beneficiaries surviving the member. ATRS will notify survivors who may be eligible for a survivor's benefit at the last address on file at ATRS. (See also ATRS Rule 11-5 Lost Payees).~~
- C. If the member dies before receipt of the first disability retirement check but after receiving final approval for disability retirement, the benefits will be paid under the disability retirement option selected by the member.
- D. If the member dies after the disability application is received by the System ATRS but before disability retirement is approved, then the System ATRS

shall consider the member to have died in "active" service and survivor benefits under A.C.A. § 24-7-710 shall be paid.

- E. For the purposes of determining child survivor benefits, the member's salary shall be the salary that the member would have received in the fiscal year in which he/she died had the member lived through the end of the fiscal year, if the member's high salary occurred in the year the member died.
- F. Salary payments made after the death of a member that were earned prior to death are subject to ~~System~~ ATRS deductions and shall be reported in total salary and days of service in the employer's quarterly report. Payments made by an employer after the death of an active member that are made as a mere gratuity and were not earned by the member shall not be included in the member's salary reported to ~~the System~~ ATRS and are not subject to contributions.

~~For purposes of survivor benefits, a member will be considered active for an additional fiscal year following the last fiscal year that actual service was rendered to a covered employer.~~

- G. If survivor benefits are payable by more than one reciprocal system to eligible survivors of a deceased member, the survivors shall not receive more as a percentage of the deceased member's final pay or as a minimum dollar amount than the largest amount payable by a single, reciprocal system. ~~The System~~ ATRS will prorate minimum benefits payable with any other reciprocal systems that have a minimum benefit provision in its plan. Each reciprocal system shall pay only its proportionate share of the minimum amount based on the ratio of service in its system to the total service in all reciprocal systems.
- H. When the member elects to transfer from ATRS to APERS under the provisions of Act 793 of 1977, APERS' law governs the survivors' eligibility for a payment of residue or survivor benefits upon the member's death

Amended: June 15, 2004
February 7, 2006
April 26, 2007
December 18, 2009
July 1, 2011 (Emergency)

Adopted: August 8, 2011
Effective: November 11, 2011
Approved by Board: August 6, 2012
Amended: October 13, 2012
Effective: March 6, 2013
Approved by Board **July 26, 2013**
Amended:
Effective:

RULE 11-1

SURVIVOR BENEFITS

A.C.A. §§ 24-7-710, 713

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

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

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

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

II. SPOUSAL BENEFITS

A. The benefits provided for in A.C.A. § 24-7-710, plus the monthly stipend under A.C.A. § 24-7-713 shall be paid to the spouse of the qualifying member if the spouse survives the member and was married to the member for at least two (2) years immediately prior to the member's death.

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

C.

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

III. DEPENDENT CHILDREN BENEFITS

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

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

- i. "Child" is defined under A.C.A. § 24-7-202(9), and for purposes of receiving an annuity from ATRS, the child must be a dependent child in accordance with § 24-7-710. While a surviving dependent child's benefits normally cease once the child reaches eighteen (18) years of age, there are circumstances where the child may continue to receive benefits. These include:
 - a. A full-time student. A full-time student is defined as one carrying 12 semester hours or 8 trimester hours in college, four (4) hours per day in a secondary or postsecondary school, or other verifiable indices from an accredited institution that the dependent child is engaged in full time curriculum or field of study. Certification of attendance in an accredited school may be reported by the dependent child in the absence of a parent or legal guardian after the dependent child reaches age 18.
 - b. For a child receiving a dependent child annuity is age 18 or older who is temporarily physically or mentally incapacitated, the Board may continue paying benefits upon receipt of a doctor's certification that the child is temporarily physically or mentally incapacitated, and is unable to attend school for the period of one semester or term. At the beginning of the next semester or term, if the child does not reenter school full-time, the dependent child annuity will terminate.

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

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

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

IV. GENERAL RULES REGARDING SURVIVOR ANNUITIES

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

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

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

D. If the member dies after the disability application is received by ATRS but before disability retirement is approved, then ATRS shall consider the member to have died in "active" service and survivor benefits under A.C.A. § 24-7-710 shall be paid.

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

F. Salary payments made after the death of a member that were earned prior to death are subject to ATRS deductions and shall be reported in total salary and days of service in the employer's quarterly report. Payments made by an employer after the death of an active member that are made as a

mere gratuity and were not earned by the member shall not be included in the member's salary reported to ATRS and are not subject to contributions.

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

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

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