

## ATRS Rule 11 Survivors and Domestic Relations Orders

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### § 11-101. Definitions.

As used in this rule:

(1) "Alternate payee" means a spouse, former spouse, child, or other dependent of a member under Arkansas law;

(2) "Application" for the purposes of retirement eligibility means an application form and any other documents required by the Arkansas Teacher Retirement System to establish a member's eligibility to retire;

(3) "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 would have been eligible to receive benefits and could have retired from the system;

(4) "Legal parent" means the biological father or mother of a child or the adoptive father or mother of a child;

(5) "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;

(6) "Lump-sum death benefit" means a monetary amount set by the Board of Trustees of the Arkansas Teacher Retirement System, and paid by the system to one (1) or more lump-sum death beneficiaries; and

(7) "QDRO" means a court order that:

(A) Meets the definition of a qualified domestic relations order under Arkansas Code § 9-18-101; or

(B) Assigns a portion of a member's retirement benefit to an alternate payee upon the member's retirement or a refund of the member's contributions at the request of the member;

(8) "Qualifying member" means:

(A) For the purposes of eligibility for a lump-sum death benefit, a member or retiree to whom one (1) of the following categories apply:

(i) The member:

(a) Is deceased;

(b) Was an active member of the system before July 1, 2007;

and

(c) Has five (5) or more years of actual service, including actual service for the year immediately preceding his or her death;

(ii) The member:

(a) Is deceased;

(b) Was an active member of the system on or after July 1, 2007; and

(c) Has ten (10) or more years of actual service, including actual service for the year immediately preceding his or her death; or

(iii) The retiree:

(a) Dies before July 1, 2007; and

(b) Has accrued five (5) or more years of actual service,

including actual service, for the year immediately preceding his or her death; or

(iv) The retiree:

(a) Dies on or after July 1, 2007; and

(b) Has accrued ten (10) or more years of actual service, including actual service for the year immediately preceding his or her death; or

(B) For the purpose of an eligible survivor qualifying for survivor annuity benefits under Arkansas Code § 24-7-710, a member who:

(i) Is an active member;

(ii) 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

(iii) Is active as provided in Arkansas Code § 24-7-710(f) and this

rule.

### **§ 11-102. Survivors.**

(a) The law in effect on the date of a qualifying member's death shall determine the:

(1) Eligibility of a qualifying member's spouse or child to receive survivor annuity benefits;

(2) Amount of the survivor annuity benefits to be received by an eligible survivor;

(3) The time at which an eligible survivor may begin receiving survivor annuity benefit payments; and

(4) Member's effective retirement date.

(b)(1) The Arkansas Teacher Retirement System shall send each survivor who is identified by the qualifying member to the system 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 the system.

(2) Survivor annuity benefits shall not be paid to the survivor of a qualifying member until the survivor provides the system with sufficient proof of his or her eligibility to receive survivor annuity benefit payments.

### **§ 11-103. Survivors — Qualifying members.**

(a) 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:

(1) The member has at least:

(A) 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

(B) One (1) quarter with ten (10) days of service; or

(2) Either of the following apply to the member:

(A) 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

(B) Less than ten (10) working days have elapsed in the quarter of the member's death.

(b) 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.

**§ 11-104. Survivors — Surviving spouse.**

(a) An eligible survivor of a qualifying member may receive survivor annuity benefits after the death of the qualifying member.

(b) Unless a qualifying member designates one (1) or more alternative residue beneficiaries by written form approved by the Arkansas Teacher Retirement System, 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:

(1) Survives the qualifying member; and

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

(c)(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 the system 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.

(d)(1) Pursuant to Arkansas Code § 24-7-710, surviving spouse annuity 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 the system 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 by the end of the sixth full calendar month following the date of the qualifying member's death; or

(B) Beginning the month in which the survivor application is filed with the system 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 the system.

**§ 11-105. Survivors — Alternative residue beneficiary.**

(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 the Arkansas Teacher Retirement System.

(b)(1) 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 the system.

(2) 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 residue beneficiaries to receive a lump-sum payment of the qualifying member's residue in lieu of the qualifying member's surviving spouse.

(3) A surviving spouse may elect Option A — 100% Survivor Annuity benefits if:

(A) 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; or

(B)(i) The surviving spouse is ineligible for an annuity solely as a result of the qualifying member designating an alternative residue beneficiary and the alternative residue beneficiary waives his or her right to the residue.

(ii) An alternative residue beneficiary's waiver of his or her right to the residue is not required if the qualifying member does not have a residue with a payable balance.

(c)(1) A member's designation of his or her former spouse as the member's alternative residue beneficiary shall not be honored by the system with regard to the former spouse if the:

(A) Member remarries;

(B) Member's current spouse would be eligible to receive survivor annuity benefits but for the member's former spouse's designation as the member's alternative residue beneficiary; and

(C) System receives proof of the member's remarriage in the manner required by the system before payment of the residue is issued to the former spouse.

(2) A member who remarries and desires to maintain his or her former spouse's designation as the member's alternative residue beneficiary shall file with the system a residue beneficiary designation form that:

(A) Designates his or her former spouse as the member's alternative residue beneficiary; and

(B) Has a signature date of the member that is on or after the date of the member's remarriage.

(3) The system shall not be obligated to recoup or reimburse a member's current spouse for any residue amount paid to the member's former spouse in accordance with a law, rule, or policy applicable to the system.

**§ 11-106. Survivors — T-DROP plan participant.**

(a)(1) A participant in the Teacher Deferred Retirement Option Plan 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.

(2) 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 TDROP benefits in lieu of his or her surviving spouse.

(3) A surviving spouse may elect Option A — 100% Survivor Annuity benefits if:

(A) 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; or

(B)(i) The surviving spouse is ineligible for an annuity solely as a result of the plan participant designating an alternative residue beneficiary and the alternative residue beneficiary waives his or her right to the residue.

(ii) An alternative residue beneficiary's waiver of his or right to the residue is not required if the plan participant does not have a residue with a payable balance.

(b) 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:

(1) 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

(2) 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.

**§ 11-107. Survivors — Dependent children.**

(a)(1) 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.

(2) A qualifying member's child shall be eligible to qualify as a dependent child or maintain his or her status as a dependent child if:

(A) The qualifying member was the legal parent of the child at the time of the qualifying member's death; and

(B) The child meets all other requirements to qualify as a dependent child or maintain his or her status as a dependent child.

(b)(1) A child of a qualifying member qualifies as a dependent child if the child is:

(A) Is younger than eighteen (18) years of age; or  
(B) Is at least eighteen (18) years of age and not older than twenty-two (22) years of age and continuously enrolled as a full-time student in an accredited secondary school, college, university, or vocational-technical school; or

(C) Has been adjudged physically or mentally incapacitated by a court of competent jurisdiction.

(2) A dependent child who enrolls in an accredited college, university, or vocational-technical school shall remain eligible to receive a dependent child annuity during his or her period of deferred enrollment if the dependent child:

(A) Is not older than twenty-two (22) years of age; and

(B) Submits proof of his or her deferred to the Arkansas Teacher Retirement System in the manner required by the system.

(c) A qualifying member's dependent child shall not be eligible to qualify as a dependent child again and shall have his or her dependent child annuity terminated by the system if the dependent child dies or ceases to qualify as a dependent child of the qualifying member.

#### **§ 11-108. Survivors — Dependent children — Full-time students.**

(a) To be considered a full-time student, a dependent child shall:

(1) Take twelve (12) semester hours or eight (8) trimester hours in college;

(2) Take four (4) hours per day in a secondary or postsecondary school; or

(3) Engage full-time in a curriculum or field of study based upon verifiable indices from an accredited institution.

(b) 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 the Arkansas Teacher Retirement System.

(c)(1) A qualifying member's child who is at least eighteen (18) years of age and not older than twenty-two (22) 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 and unable to attend school as a full-time student for the current semester or term due to the temporary physical or mental incapacitation.

(2) If a doctor does not certify the child as temporarily physically or mentally incapacitated and unable to attend school as a full-time student for the current semester or term due to the temporary physical or mental incapacitation 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.

#### **§ 11-109. Survivors — Dependent children — 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:

(1) Is called to active military duty or active military training; and

(2) Submits a copy of his or her military orders to the Arkansas Teacher Retirement System.

(b)(1) Survivor annuity benefit payments to a dependent child shall be temporarily

suspended for the duration of the dependent child's participation in active military duty or active military training.

(2) Survivor annuity benefit payments to the dependent child shall be reinstated if the dependent child:

(A) Is at least eighteen (18) years of age and not older than twenty-two (22) years of age;

(B) Immediately re-enrolls as a full-time student at an accredited secondary school, college, university, or vocational-technical school upon his or her return from active military duty or active military training; and

(C) Submits documentation of his or her re-enrollment as a full-time student to the system.

**§ 11-110. Survivors — Dependent children — Incapacitated child.**

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.

**§ 11-111. Survivors — Dependent children — Return to work retirees.**

(a) A dependent child annuity shall be payable to a surviving child of a retiree who dies after returning to work if the child qualifies as a dependent child and is eligible for a dependent child annuity under the law and rules applicable to the Arkansas Teacher Retirement System.

(b) The same rules applicable to the surviving child of qualifying member shall apply to the surviving child of a retiree who dies after returning to work.

**§ 11-112. Survivors — Dependent children — Calculation and payment of survivor annuity.**

(a) The amount of the survivor annuity benefit payable to a dependent child shall be the amount provided in Arkansas Code § 24-7-710.

(b) The highest of the following shall be used to calculate a dependent child's survivor annuity benefit:

(1) The total salary that the qualifying member would have received in the fiscal year in which the qualifying member died; or

(2) The qualifying member's highest salary in another fiscal year.

(c) 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 of Trustees of the Arkansas Teacher Retirement System.

(d) If more than one (1) dependent child of a qualifying member receives survivor annuity benefits, each dependent child's survivor annuity benefit shall:

(1) Remain at the initial monthly amount; and

(2) Not be readjusted if the survivor annuity benefit payments to one (1) or more of the dependent children terminates.

(e) A dependent child shall receive monthly survivor annuity benefits:

(1) Beginning the month after the qualifying member's death if the survivor

application is filed with the Arkansas Teacher Retirement System by the end of the sixth full calendar month following the qualifying member's death; or

(2) If a survivor application is not filed with the system by the end of the sixth full calendar month following the qualifying member's death, beginning the month in which the survivor application is filed with the system.

(f) A dependent child shall submit the following documents to the system before a survivor annuity benefit payment is issued to the dependent child:

(1) Proof of the qualifying member's death and date of death from the qualifying member's death certificate or another legally acceptable document;

(2) Proof of the dependent child's taxpayer identification number from a Social Security card or another authenticating documents;

(3) Proof that the dependent child is a child of the qualifying member from the dependent child's birth certificate or another legally acceptable document;

(4) Proof of the dependent child's date of birth from a birth certificate or another authenticating document;

(5) If applicable, a file-marked court order finding the dependent child physically or mentally incapacitated; and

(6) If applicable, proof of enrollment as a full-time student from an accredited secondary school, college, university, or vocational-technical school.

(g)(1) 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 § 9-26201 et seq.; or

(B) A court order in a guardianship proceeding for the benefit of the dependent child.

(2) 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.

### **§ 11-113. Survivors — Disability retirees.**

(a) 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 beneficiaries, alternative residue beneficiaries, or other beneficiaries designated by the member.

(b) If a member's disability retirement application is received by the Arkansas Teacher Retirement System 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 residue beneficiary.

### **§ 11-114. Survivors — Annuity benefits payable by reciprocal systems.**

(a) 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.



(b)(1) The Arkansas Teacher Retirement System shall prorate minimum benefits payable with any other reciprocal system that has a minimum benefit provision.

(2)(A) A reciprocal system shall pay the reciprocal system's proportionate share of the minimum benefit amount.

(B) 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.

(c) When a member elects to transfer from the Arkansas Teacher Retirement System to the Arkansas Public Employees' Retirement System under the provisions of Acts 1977, No. 793, the Arkansas Public Employees' Retirement System's law shall govern the survivors' eligibility for a payment of residue or survivor annuity benefits upon the member's death.

**§ 11-115. Survivors — Lump-sum death benefit — Qualification.**

(a) A member of the system who is active, retired, or a T-DROP plan participant and accrues the required amount of actual service at the time of his or her death may qualify for a lump-sum death benefit.

(b) For the purposes of eligibility for a lump-sum death benefit, 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.

**§ 11-116. Survivors — Lump-sum death benefit — Amount and tax exemption.**

(a)(1) The amount of the lump-sum death benefit may be set by a resolution or rules adopted by the Board of Trustees of the Arkansas Teacher Retirement System 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.

(b)(1) Upon a qualifying member's death, the maximum lump-sum death benefit that the qualifying member qualifies to receive in accordance with the law, rules, and resolutions of the board applicable to the system shall be paid in equal shares to each person designated as a beneficiary by the qualifying member in the manner required by the system.

(2) If the qualifying member fails to designate a beneficiary or all the designated beneficiaries predecease the qualifying member, the lump-sum death benefit shall be paid to the qualifying member's estate.

(c)(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 the Arkansas Teacher Retirement System.

(2) After June 30, 2009, a lump-sum death benefit shall not be eligible for a direct rollover.

**§ 11-117. Survivors — Lump-sum death benefit — Beneficiary designations and authorized agents.**

(a)(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) If a member designates a funeral home as his or her lump-sum death benefit beneficiary and the member is qualifying member who may receive a lump-sum death benefit at the time of his or her death, the Arkansas Teacher Retirement System shall not be obligated to do any of the following:

(A) Issue payment to the funeral home in an amount that exceeds the:

(i) Lump-sum death benefit amount that the member qualifies to receive in accordance with the laws, rules, and resolutions of the Board of Trustees of the Arkansas Teacher Retirement System; or

(ii) Share of the lump-sum death benefit amount that the funeral home would be entitled to receive if the member designates more than one (1) lump-sum death benefit beneficiary;

(B) Reimburse any person or entity for any amount received by the funeral home that exceeds the cost of the member's funeral service; or

(C) Recoup or assist any person or entity in recouping any amount received by the funeral home that exceeds the cost of the member's funeral service.

(3)(A) A member's designation of his or her former spouse as the member's lump-sum death benefit beneficiary shall not be honored by the system with regard to the former spouse if the:

(i) Member remarries; and

(ii) System receives proof of the member's remarriage in the manner required by the system before payment of the lump-sum death benefit is issued to the former spouse.

(B) A member who remarries and desires to maintain his or her former spouse's designation as the member's lump-sum death benefit beneficiary shall file with the system a lump-sum death benefit beneficiary designation form that:

(i) Designates his or her former spouse as the member's lump-sum death benefit beneficiary; and

(ii) Has a signature date of the member that is on or after the date of the member's remarriage.

(C) The system shall not be obligated to recoup or reimburse a member's current spouse for any lump-sum death benefit amount paid to the member's former spouse in accordance with this rule.

(b)(1) A completed lump-sum death benefit beneficiary form shall not be considered effective if the form is received by the Arkansas Teacher Retirement System after the member's death.

(2) 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.

(c)(1) 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 the system.

(2) 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 the system's purposes.

(3) 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 the system.

(d) 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 the system 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.

**§ 11-118. Survivors — Lump-sum death benefit — Distribution, waiver, and assignment.**

(a) A designated beneficiary shall submit the following forms and documents to the Arkansas Teacher Retirement System before a lump-sum death benefit payment is issued to the designated beneficiary:

(1) A written application on a form approved by the system; and

(2) The qualifying member's death certificate or other acceptable proof of the qualifying member's death.

(b) 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.

(c)(1) 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 the system.

(2) If a designated beneficiary waives his or her right to the payment of a lump-sum death benefit, the system shall pay all or the balance of the lump-sum death benefit, whichever is applicable, to any other remaining designated beneficiaries.

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

**§ 11-119. Survivors — Lump-sum death benefit — Overpayments.**

(a) The Arkansas Teacher Retirement System may deduct and reserves the right to deduct from a qualifying member's lump-sum death benefit any amount owed to the system by the qualifying member under Arkansas Code § 24-7-205.

(b) The system may collect and reserves the right to collect any overpayment or other amount owed to the system by a designated beneficiary.

**§ 11-120. Survivors — Lump-sum death benefit — Transfers to minors.**

The Arkansas Teacher Retirement System shall comply with all applicable laws relating to the distribution of a lumpsum death benefit including the Arkansas Uniform Transfers to Minors Act, Arkansas Code § 9-26-201 et seq.

**§ 11-121. Qualified domestic relations order.**

(a) The model qualified domestic relations order adopted by the Arkansas Teacher Retirement System 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)(1) The system shall promptly notify a member and the alternate payee upon receiving a QDRO.

(2)(A) Upon receiving a QDRO, the system shall determine within a reasonable time after receiving the QDRO whether the QDRO complies with the Arkansas Code, the system's rules, the system's model qualified domestic relations order, and other applicable laws.

(B) The system shall notify the member and the alternate payee in writing if the system determines that a QDRO submitted by the member or alternate payee does not comply with the Arkansas Code, the system's rules, the system's model qualified domestic relations order, or other applicable laws.

(C) The system 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 if the QDRO complies with the Arkansas Code, the system's rules, the system's model qualified domestic relations order, and other applicable laws.

**§ 11-122. Qualified domestic relations order — Limitations.**

(a) A QDRO shall not require the Arkansas Teacher Retirement System to:

(1) Provide an alternate payee with any type or form of benefit or option not otherwise available to the member;

(2) Provide an alternate payee actuarial benefits not available to the member;

(3) Pay any benefits to an alternate payee that are required to be paid to another alternate payee under an existing QDRO;

(4) Provide any benefit that is an actuarial cost to the system and is not otherwise contemplated in the law and rules applicable to the system; or

(5) Violate any plan qualification requirement in the Internal Revenue Code, 26 U.S.C. § 401(a), or otherwise affect the system's requirement to operate as a governmental plan under the Internal Revenue Code, 26 U.S.C. § 414(d).

(b) The system shall not accept a QDRO for a member who does not have five (5) years of actual service with the system at the time the QDRO is issued by a court.

(c) No provision in the system's rules or in a QDRO accepted by the system shall require the system to violate any plan qualification requirement in the Internal Revenue Code, 26 U.S.C. § 401(a), or otherwise affect the system's requirement to operate as a governmental plan under the Internal Revenue Code, 26 U.S.C. § 414(d).

**§ 11-123. Qualified domestic relations order — Computation of benefit payments.**

(a)(1) The Arkansas Teacher Retirement System shall compute an alternate payee's monthly annuity benefit under a QDRO accepted by the system by using the benefit formula in effect at the time of the member's retirement.

(2) When computing an alternate payee's monthly retirement annuity benefit under a QDRO accepted by the system, the system shall include only service credit earned by the member during the marriage.

(b) If the QDRO issued by the circuit court assigns a marital portion or other part of a 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 the model qualified domestic relations order adopted by the system.

**§ 11-124. Qualified domestic relations order — Eligibility to receive benefits.**

(a) The member or the alternate payee may file a QDRO with the Arkansas Teacher Retirement System before the member's retirement or termination of covered employment.

(b)(1) An alternate payee is eligible to receive benefit payments if the member retires or terminates employment with a covered employer and receives a refund of contributions.

(2) 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 rule.

(c) A benefit enhancement enacted by the General Assembly or the Board of Trustees of the Arkansas Teacher Retirement System after entry of a QDRO shall inure to the benefit of the member and shall not be assigned to the alternate payee.

**§ 11-125. Qualified domestic relations order — Enrollment of alternate payee.**

(a)(1) The alternate payee shall notify the Arkansas Teacher Retirement System of a change of his or her mailing address and verify annually his or her address with the system beginning one (1) year from the date of the letter notifying the alternate payee of the system's acceptance of the QDRO.

(2) If an alternate payee's address changes from the address provided on the QDRO accepted by the system or the address provided by the alternate payee during the system's enrollment of the alternate payee, the system shall not be obligated to determine the current post office address or any other address of the alternate payee.

(b) 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 the system, the following shall apply:

(1) The system 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 the system to issue a payment to the alternate payee;

(2) The system shall pay the alternate payee's portion of the member's retirement benefits or contributions to the member;

(3) 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

(4) The member shall be responsible for verifying with the system 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.

(c) If an alternate payee is eligible to receive benefit payments, the system shall:

(1) Not hold the alternate payee's portion of the member's retirement benefits or contributions in the member's account;

(2) 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 the system an enrollment form and all other documents required by the system in order to issue the payment; or

(B) Member to be held by the member as constructive trustee.

(d)(1) The system shall pay the member the total retirement benefit if the system determines that the alternate payee's monthly retirement benefit is less than twenty dollars (\$20.00).

(2) The member shall be responsible for paying the alternate payee his or her portion of benefits if the system determines that the alternate payee's monthly retirement benefit is less than twenty dollars (\$20.00).

**§ 11-126. Qualified domestic relations order — Benefit payments — Overpayments.**

(a) The Arkansas Teacher Retirement System shall have the right to:

(1) Make any necessary correction to the monthly annuity benefit paid under a QDRO accepted by the system; and

(2) Recover any overpayments owed to the system from either the member or the alternate payee.

(b)(1) If an amount that should not have been distributed to the member or alternate payee under the QDRO accepted by the system is received by the member or alternate payee, the member or alternate payee shall:

(A) Be responsible for holding the amount as a constructive trustee; and

(B) Notify the system immediately that he or she received the amount.

(c) The system shall not make restitution for:

(1) A payment that is issued to the alternate payee before the system receives notice of the alternate payee's change of address;

(2) A distributed amount that:

(A) The alternate payee is entitled to receive under the terms of a QDRO accepted by the system; and

(B) Is received by the member as constructive trustee;

(3) A distributed amount that:

(A) The member is entitled to receive under the terms of a QDRO accepted by the system; and

(B) Is received by the alternate payee as constructive trustee; or

(4) An amount that was distributed before the system receives a court order voiding the QDRO accepted by the system.

**§ 11-127. Qualified domestic relations order — Benefit payments — Death of member or alternate payee.**

(a)(1) Any benefit that would be due to the alternate payee under a QDRO accepted by the Arkansas Teacher Retirement System shall revert back to the member if the alternate payee dies before receiving the first benefit payment issued to him or her by the system.

(2) An alternate payee's portion of benefits payable to him or her under a QDRO accepted by the system shall not revert back to the member if the alternate payee dies after receiving the first benefit payment issued to him or her by the system.

(b)(1) If a member dies before retirement and a survivor annuity is not payable, the alternate payee shall receive the same portion of the member's contributions, if any, as

was assigned by the QDRO accepted by the system.

(2) The alternate payee shall not receive monthly retirement annuity benefits from the system if the member has not received his or her retirement annuity at the time of his or her death.

(c) If a member dies after retiring from the system, the alternate payee shall not be entitled to continue receiving his or her portion of benefits and the system shall cease paying the alternate payee his or her portion of benefits in the month immediately following the member's date of death.

**§ 11-128. Qualified domestic relations order — Cancellation of retirement — Order voiding qualified domestic relations order.**

(a)(1) If a member cancels his or her retirement, the Arkansas Teacher Retirement System may recoup any benefits paid to an alternate payee from the member, the alternate payee, or both the member and the alternate payee.

(2) If a member cancels his or her retirement, the system may recoup benefits paid to an alternate payee regardless of whether a court enters an order voiding the QDRO approved by system.

(b)(1) If a member does not cancel his or her retirement, the system shall not be required to:

(A) Reimburse the member for benefits that were paid to an alternate payee before an order voiding the QDRO approved by the system was entered by a court; or

(B) Recoup for the member any benefits that were paid to an alternate payee before an order voiding the QDRO approved by the system was entered by a court

(2) If a court enters an order voiding a QDRO approved by the system, the alternate payee's portion of benefits shall revert back to the member as of the date on which the court entered the order voiding the QDRO approved by the system.

**§ 11-129. Lost payees and benefit forfeitures.**

(a)(1) Each member and beneficiary of a deceased member is responsible for filing and shall file his or her respective current post office address and any subsequent change of address with the Arkansas Teacher Retirement System.

(2) Communication addressed to a member or beneficiary at the post office address last filed with the system, or, if no post office address has been filed with the system, the last post office address indicated on the records of the employer of the member or the beneficiary shall be:

(A) The official post office address used for the system's communication to the member or beneficiary; and

(B) Binding on the member or beneficiary for all system purposes.

(b) The system shall not be obligated to determine the current post office address or any other address for a member or beneficiary.

(c)(1) Member payments in the possession of the system 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.

**Authority: Arkansas Code §§ 9-18-101 — 9-18-103, 24-7-710, 24-7-713, 24-7-720, and 24-7-734**

## History

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