

CALCULATING BENEFITS FOR EX-SPOUSE CONTINGENT ANNUITANTS

REQUIRED NOTICE

The Administrative Procedure Act requires the publication of substantive policy statements issued by agencies (A.R.S. § 41-1013(B)(15)). A substantive policy statement is a written expression which informs the general public of an agency's current approach to, or opinion of, the requirements of the federal or state constitution, federal or state statute, administrative rule or regulation, or final judgment of a court of competent jurisdiction, including, where appropriate, the agency's current practice, procedure or method of action based upon that approach or opinion.

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents which only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties, you may petition the agency under A.R.S. § 41-1033 for a review of the statement.

ASRS rules provide that “[a] member who is ten or more years older than the member’s non-spousal contingent annuitant is not eligible to participate in a 100% joint-and-survivor option. A member who is 24 or more years older than the member’s non-spousal contingent annuitant is not eligible to participate in a 66 2/3% joint-and-survivor option.” (A.A.C. R2-8-126(H)). However, effective March 6, 2016, R2-8-126(I) and (J) established two exceptions to the age limits restricting a member’s eligibility to participate in the joint-and-survivor annuity options. Notwithstanding the age limitations contained in R2-8-126(H), a member who lists an ex-spouse as a contingent annuitant, but does not meet the age restrictions in subsection (H) is eligible to participate in the joint-and-survivor annuity options, if:

- “1. The member selected the ex-spouse as the contingent annuitant prior to divorce from the ex-spouse; and
2. The member submits a DRO to the ASRS which requires the ex-spouse to be the contingent annuitant on the member’s account.”

SUBSTANTIVE POLICY STATEMENT

The ASRS interprets 2 A.A.C. 8, R2-8-126, Calculating Benefits, subsections (I) and (J) as applicable to a member with an original retirement date on or after the effective date of those rule provisions, March 6, 2016.

When the ASRS promulgated R2-8-126(I) and (J), it intended to provide exceptions applicable to *future* retirees to maintain/select an ex-spouse contingent annuitant who did not meet the age restrictions for the particular annuity options listed in R2-8-126(H). The ASRS did not intend for these rule provisions to be retroactive to the retirement date of each member; rather, the ASRS intended these provisions to be applied going forward, as is the generally accepted practice in promulgating rules without a retroactive effective date. Nevertheless, specifying the effective date of these particular subsections clarifies the rule’s applicability.

APPLICABLE LAWS

Arizona Revised Statutes §§ 38-760 and 38-764

Arizona Administrative Code, Title 2, Chapter 8, R2-8-126(H), (I), and (J)

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Effective: March 17, 2016

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