

# ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT<sup>1</sup>

## TITLE 2. ADMINISTRATION

### CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

#### 1. Identification of the rulemaking:

Effective July 1, 2013, ASRS statutes changed to require an ASRS member to name the member's current spouse as primary beneficiary of at least 50 percent of the member's retirement account and, at the time of retirement, to choose a joint and survivor annuity that names the current spouse as at least a 50 percent contingent annuitant. The statutes also provide a means for the current spouse to waive this right and consent to an alternative. This rulemaking implements the statutory change.

##### a. The conduct and its frequency of occurrence that the rule is designed to change:

ASRS has already implemented the statutory change regarding spousal consent. However, members of ASRS have questions regarding how the statute is applied in a variety of circumstances. Without this rulemaking, ASRS will continue to spend resources answering questions that can be efficiently addressed in rule.

##### b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

ASRS spends limited resources repeatedly answering questions that can be efficiently addressed in rule.

##### c. The estimated change in frequency of the targeted conduct expected from the rule change:

Even with the rulemaking, some members will have questions regarding spousal consent. However, the rulemaking will reduce the number of questions and allow ASRS to deal with other issues.

#### 2. A brief summary of the information included in the economic, small business, and consumer impact statement:

The primary economic impact results from the statutory change made by the legislature. As a result of the legislative action, a married ASRS member has limited options regarding who can be designated as beneficiary of the member's retirement account, the form of retirement benefit that can be chosen, and who can be designated as contingent annuitant without obtaining spousal consent to an alternative. The rulemaking will have minimal economic

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<sup>1</sup> If adequate data are not reasonably available, the agency shall explain the limitations of the data, the methods used in an attempt to obtain the data, and characterize the probable impacts in qualitative terms.

impact because it simply addresses how the legislative directive is implemented in various circumstances.

The legislative change was prompted by an administrative appeal regarding the beneficiary designation of a married member. Mr. W was a member of ASRS from July 22, 1993, until his death on December 15, 2009. Mr. W married Mrs. W on November 16, 1998, and named her as his sole ASRS beneficiary on January 28, 2000. On October 7, 2008, Mr. W designated his sister as his sole ASRS beneficiary. After her husband’s death, Mrs. W appealed the ASRS determination that Mr. W’s sister was entitled to receive Mr. W’s survivor benefits.

An ALJ found that Mr. and Mrs. W were married at the time of his death; Mrs. W was not aware of the changed beneficiary designation; and Mrs. W had not waived her community property interest in Mr. W’s ASRS benefits. As a result, the ALJ found that Mrs. W was entitled to half of the ASRS survivor benefits accrued during the term of their marriage. The ASRS Board concurred.

The following table shows that the statutory change had an immediate impact on married members of ASRS who retired before and after the spousal consent requirement:

**Retirement Option Election by Married Members**

	<b>Pre-Spousal Consent FY 2013</b>		<b>Post-Spousal Consent July 2013 to April 2014</b>	
	<b>Number</b>	<b>%</b>	<b>Number</b>	<b>%</b>
<b>Retirement Option</b>				
Straight Life	5,549	64.3%	2,109	53.1%
Period Certain	387	4.5%	190	4.8%
Joint and Survivor	2,695	31.2%	1,669	42.1%
<b>Total</b>	<b>8,631</b>	<b>100%</b>	<b>3,968</b>	<b>100%</b>

Before the statutory change regarding spousal consent, around 31 percent of married ASRS members chose the joint and survivor form of retirement benefits, which is the form of benefits that guarantees the member’s spouse will continue to receive benefits after the death of the member. After the statutory change regarding spousal consent, more than 42 percent of

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(A.R.S. § 41-1055(C)).

married ASRS members chose the joint and survivor form of retirement benefits. Both before and after the statutory change, the straight life benefit option is most frequently chosen. A married member choosing this option today must have spousal consent to the choice.

3. The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:

Name: Patrick M. Klein, Assistant Director

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4. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:

ASRS currently has a total membership of 542,845, including 207,572 active members, 208,573 inactive members, 122,257 retired members, and 4,443 disabled members and survivor beneficiaries. There are 690 employer participants, including state agencies.

Married members of ASRS and their spouses will be directly affected by, bear the costs of, and directly benefit from R2-8-120. However, as indicated previously, most of the effect, costs, and benefits result from legislative action rather than this rulemaking. The impact of the rulemaking is to make it easier for married members of ASRS and their spouses to understand the statutory requirements and obligations of the member and member's spouse.

ASRS will also be directly affected by, bear the costs of, and directly benefit from the rulemaking. ASRS incurred the cost of the rulemaking. It will benefit from having rules that answer many of the questions regarding application of the spousal-consent statute in different circumstances.

5. Cost-benefit analysis:
  - a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:

ASRS is the only state agency directly affected by the rulemaking. The Board has determined that no new full-time employees will be required to implement and enforce the rule.

- b. Costs and benefits to political subdivisions directly affected by the rulemaking:  
No political subdivisions are directly affected by the rulemaking.
  - c. Costs and benefits to businesses directly affected by the rulemaking:  
No businesses are directly affected by the rulemaking.
6. Impact on private and public employment:  
The rulemaking will have no impact on private or public employment.
7. Impact on small businesses<sup>2</sup>:
- a. Identification of the small business subject to the rulemaking:  
No businesses, regardless of size, are subject to the rulemaking.
  - b. Administrative and other costs required for compliance with the rulemaking:  
The only administrative cost required for compliance with the rulemaking results from the legislative action. A married ASRS member who wishes to choose a form of retirement benefit other than the joint and survivor form will have to obtain written consent from the member's spouse or provide other information showing that the provision is not applicable.
  - c. Description of methods that may be used to reduce the impact on small businesses:  
Because no businesses, regardless of size, are impacted by this rulemaking, no alternative methods can be considered.
8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:  
Married ASRS members and their spouses are directly affected by the statutory change implemented by R2-8-120. The effect has been previously described.
9. Probable effects on state revenues:  
There will be no effect on state revenues.
10. Less intrusive or less costly alternative methods considered:  
No alternative methods were considered.

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<sup>2</sup> Small business has the meaning specified in A.R.S. § 41-1001(20).