

Sec. 3309.45. Except as provided in division (C)(1) of this section, in lieu of accepting the payment of the accumulated account of a member who dies before service retirement, the beneficiary, as determined in section 3309.44 of the Revised Code, may elect to forfeit the accumulated account and to substitute certain other benefits either under division (A) or (B) of this section.

(A) If a deceased member was eligible for a service retirement allowance as provided in section 3309.36, 3309.38, or 3309.381 of the Revised Code, a surviving spouse or other sole dependent beneficiary may elect to receive a monthly benefit computed as the joint-survivor allowance designated as "plan D" in section 3309.46 of the Revised Code, which the member would have received had the member retired on the last day of the month of death and had the member at that time selected such joint-survivor plan. Payment shall begin with the month subsequent to the member's death.

(B) If the deceased member had completed at least one and one-half years of credit for Ohio service, with at least one-quarter year of Ohio contributing service credit within the two and one-half years prior to the date of death, or was receiving at the time of death a disability benefit as provided in section 3309.40 or 3309.401 of the Revised Code, qualified survivors ~~may~~ WHO elect to receive monthly benefits, SHALL RECEIVE THE GREATER OF THE BENEFITS provided in divisions DIVISION (B)(1) and ~~(5)~~ (a) OR (b) AS ALLOCATED IN ACCORDANCE WITH DIVISION (B)(5) of this section.

(1)(a) Number

of Qualified survivors affecting the benefit	Annual Benefit as a Per Cent of Decedent's Final Average Salary	Or Monthly Benefit shall not be less than
1	25%	\$96
2	40	186
3	50	236
4	55	236
5 or more	60	236

(b) YEARS OF SERVICE

ANNUAL BENEFIT AS A PER CENT OF MEMBER'S FINAL AVERAGE SALARY

20	29%
21	33
22	37
23	41
24	45
25	48
26	51
27	54
28	57
29 OR MORE	60

(2) Benefits shall begin as qualified survivors meet eligibility requirements as follows:

(a) A qualified spouse is the surviving spouse of the deceased member who is age sixty-two, or REGARDLESS OF age ~~if~~ if the deceased member had ten or more years of Ohio service credit, or regardless of age if caring for a surviving child, or regardless of age if adjudged physically or mentally incompetent.

(b) A qualified child is any ~~unmarried~~ child of the deceased member WHO HAS NEVER BEEN MARRIED AND TO WHOM ONE OF THE FOLLOWING APPLIES:

(i) IS under age eighteen, or under age twenty-two if the child is attending an institution of learning or training pursuant to a program designed to complete in each school year the equivalent of at least two-thirds of the full-time curriculum requirements of such institution and as further determined by board policy, ~~or regardless;~~

(ii) REGARDLESS of age ~~if~~, IS adjudged physically or mentally incompetent IF THE INCOMPETENCE EXISTED PRIOR TO THE MEMBER'S DEATH AND PRIOR TO THE CHILD ATTAINING AGE EIGHTEEN, OR AGE TWENTY-TWO IF ATTENDING AN INSTITUTION DESCRIBED IN DIVISION (B)(2)(b)(i) OF THIS SECTION.

(c) A qualified parent is a dependent parent aged sixty-five or older.

(3) "Physically or mentally incompetent" as used in this section may be determined by a court of jurisdiction, or by a physician appointed by the retirement board. Incapability of earning a living because of a physically or mentally disabling condition shall meet the qualifications of this division.

(4) Benefits to a qualified survivor shall terminate upon a first marriage, abandonment, adoption, or during active military service. Benefits to a deceased member's surviving spouse that were terminated under a former version of this section that required termination due to remarriage and were not resumed prior to the effective date of this amendment SEPTEMBER 16, 1998, shall resume on the first day of the month immediately following receipt by the board of an application on a form provided by the board.

Upon the death of any subsequent spouse who was a member of the public employees retirement system, state teachers retirement system, or school employees retirement system, the surviving spouse of such member may elect to continue receiving benefits under this division, or to receive survivor's benefits, based upon the subsequent spouse's membership in one or more of the systems, for which such surviving spouse is eligible under this section or section 145.45 or 3307.66 of the Revised Code. If the surviving spouse elects to continue receiving benefits under this division, such election shall not preclude the payment of benefits under this division to any other qualified survivor.

Benefits shall begin or resume on the first day of the month following the attainment of eligibility and shall terminate on the first day of the month following loss of eligibility.

(5) ~~Benefits~~ (a) IF A BENEFIT IS PAYABLE UNDER DIVISION (B)(1)(a) OF THIS SECTION, BENEFITS to a qualified spouse shall be paid in the amount determined for the first qualifying survivor in division (B)(1)(a) of this section, but shall not be less than one hundred six dollars per month if the deceased member had ten or more years of Ohio service credit. All other qualifying survivors shall share equally in the benefit or remaining portion thereof.

(6) (b) ALL QUALIFYING SURVIVORS SHALL SHARE EQUALLY IN A BENEFIT PAYABLE UNDER DIVISION (B)(1)(b) OF THIS SECTION, EXCEPT THAT IF THERE IS A SURVIVING SPOUSE, THE SURVIVING SPOUSE SHALL RECEIVE NO LESS THAN THE GREATER OF THE AMOUNT DETERMINED FOR THE FIRST QUALIFYING SURVIVOR IN DIVISION (B)(1)(a) OF THIS SECTION OR ONE HUNDRED SIX DOLLARS PER MONTH.

(6) The beneficiary of a member who is also a member of the public employees retirement system, or of the state teachers retirement system, must forfeit the member's accumulated contributions in those systems, if the beneficiary takes a survivor benefit. Such benefit shall be exclusively governed by section 3309.35 of the Revised Code.

(C)(1) Regardless of whether the member is survived by a spouse or designated beneficiary, if the school employees retirement system receives notice that a deceased member described in division (A) or (B) of this section has one or more qualified children, all persons who are qualified survivors under Division (B) of this section shall receive monthly benefits as provided in division (B) of this section.

If, after determining the monthly benefits to be paid under division (B) of this section, the system receives notice that there is a qualified survivor who was not considered when the determination was made, the system shall, notwithstanding section 3309.661 of the Revised Code, recalculate the monthly benefits with that qualified survivor included, even if the benefits to qualified survivors already receiving benefits are reduced as a result. The benefits shall be calculated as if the qualified survivor who is the subject of the notice became eligible on the date the notice was received and shall be paid to qualified survivors effective on the first day of the first month following the system's receipt of the notice.

If the retirement system did not receive notice that a deceased member has one or more qualified children prior to making payment under section 3309.44 of the Revised Code to a beneficiary as determined by the retirement system, the payment is a full discharge and release of the system from any future claims under this section or section 3309.44 of the Revised Code.

(2) If benefits under division (C)(1) of this section to all persons, or to all persons other than a surviving spouse or other sole beneficiary, terminate, there are no children under the age of twenty-two years, and the surviving spouse or beneficiary qualifies for benefits under division (A) of

this section, the surviving spouse or beneficiary may elect to receive benefits under division (A) of this section. Benefits shall be effective on the first day of the month following receipt by the board of an application for benefits under division (A) of this section.

(D) THE FINAL AVERAGE SALARY USED IN THE CALCULATION OF A BENEFIT PAYABLE PURSUANT TO DIVISION (A) OR (B) OF THIS SECTION TO A SURVIVOR OR BENEFICIARY OF A DISABILITY BENEFIT RECIPIENT SHALL BE ADJUSTED FOR EACH YEAR BETWEEN THE DISABILITY BENEFIT'S EFFECTIVE DATE AND THE RECIPIENT'S DATE OF DEATH BY THE LESSER OF THREE PER CENT OR THE ACTUAL AVERAGE PERCENTAGE INCREASE IN THE CONSUMER PRICE INDEX PREPARED BY THE UNITED STATES BUREAU OF LABOR STATISTICS (U.S. CITY AVERAGE FOR URBAN WAGE EARNERS AND CLERICAL WORKERS: "ALL ITEMS 1982-84=100").

(E) If the survivor benefits due and paid under this section are in a total amount less than the member's accumulated account that was transferred from the employees' savings fund, the state teachers retirement fund, and the public employees retirement fund to the survivors' benefit fund, then the difference between the total amount of the benefits paid shall be paid to the beneficiary under section 3309.44 of the Revised Code.

SECTION 3. The School Employees Retirement System shall recalculate under section 3309.36, 3309.381, 3309.40, 3309.401, or 3309.45 of the Revised Code, as amended by this act, or under section 3309.38 of the Revised Code, each benefit that is payable under any of those sections or under section 3309.46 of the Revised Code and became effective on or after January 1, 2000, but before the effective date of this act. If the recalculated benefit is greater than the recipient's benefit prior to the recalculation, the system shall do both of the following:

- (A) Pay the recalculated benefit beginning on the first day of the month immediately following the date the board recalculates the benefit;
- (B) Make a one-time payment to each recipient receiving a benefit on the effective date of this act.

The payment shall be an amount equal to the difference between the benefits paid to the recipient between January 1, 2000, and the date of the payment and the increased benefits that would have been paid to the recipient had the amendments to sections 3309.36, 3309.381, 3309.40, 3309.401, and 3309.45 of the Revised Code gone into effect on January 1, 2000.

SECTION 5. If the surviving spouse of a member who died on or after January 1, 2000, but before the effective date of this act would be eligible for a benefit under division (B)(2)(a) of section 3309.45 of the Revised Code as amended by this act and the surviving spouse has not taken the payment of the member's accumulated account, the system shall calculate the benefit payable to the surviving spouse under section 3309.45 of the Revised Code as of the effective date of this act and do both of the following:  
(A) Begin payment to the surviving spouse on the first day of the month immediately following the date the calculation is made;  
(B) Make a one-time payment to each surviving spouse eligible to receive payment under division (A) of this section.  
The payment under this division shall be an amount equal to the sum of the monthly benefits that would have been paid to the surviving spouse had the amendments to section 3309.45 of the Revised Code gone into effect on January 1, 2000.

EFF: 4-9-01