

## NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 4. PROFESSIONS AND OCCUPATIONS

#### CHAPTER 41. DEPARTMENT OF VETERANS' SERVICES ADMINISTRATION

[R08-456]

#### PREAMBLE

**1. Sections Affected**

Article 1  
R4-41-101  
R4-41-102  
R4-41-103  
R4-41-104  
R4-41-105  
R4-41-106

**Rulemaking Action**

New Article  
New Section  
New Section  
New Section  
New Section  
New Section  
New Section

**2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific):**

Authorizing statutes: A.R.S. § 41-608.04

Implementing statutes: A.R.S. § 41-603(B)(6)

**3. A list of all previous notices appearing in the *Register* addressing the proposed rules:**

Notice of Rulemaking Docket Opening: 14 A.A.R. 3439, August 29, 2008

**4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Gabriel M. Forsberg, Strategic Planner/Special Projects

Address: Department of Veterans' Services  
3839 N. Third St., Suite 108  
Phoenix, AZ 85012

Telephone: (602) 234-8431

Fax: (602) 297-6691

E-mail: gforsberg@azdvs.gov

**5. An explanation of the rule, including the agency's reasons for initiating the rule:**

A.R.S. § 41-608.04 established the Military Family Relief Fund in September 2007, to allow applicants to request funds from the Military Family Relief Fund Advisory Committee. The monies in the fund shall be used to provide financial assistance to family members of military personnel who were killed or wounded in the line of duty, and who were deployed from a military base in this state or who were members of the Arizona army or air national guard. The assistance to family members shall be based on financial need. The rule will provide the application process and procedure followed by the Military Family Relief Fund Advisory Committee and the Arizona Department of Veterans' Services.

The Arizona Department of Administration (ADOA) determined that a waiver of the competitive process set forth in A.R.S. § 41-2701 et seq. was appropriate, pursuant to A.R.S. § 41-2702. The letter granting the waiver was dated December 19, 2008 and has been made part of the agency's official rulemaking file.

Notices of Proposed Rulemaking

**6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None

**7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**8. The preliminary summary of the economic, small business, and consumer impact:**

The monies in the fund shall be used to provide financial assistance to family members of military personnel who were killed or wounded in the line of duty, and who were deployed from a military base in this state or who were members of the Arizona army or air national guard. Awards from the fund must be used on living expenses for families of wounded military personnel or survivors of war casualties. The private sector, including small businesses, and political subdivisions are expected to be minimally impacted economically.

The agency anticipates that there will be continuing costs associated with administering the program. The salary plus employee related expenses plus supplies and office expenses total \$55,000 per year. The administrative costs associated with the program are capped by law and may not exceed 5% of the donations to the Military Family Relief Fund.

The Military Family Relief Fund balance was \$99,916 as of October 17, 2008 and has a stated goal to increase the fund to \$500,000 by the end of the year.

**9. The name and addressee of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Gabriel M. Forsberg, Strategic Planner/Special Projects

Address: Department of Veterans' Services  
3839 N. Third St., Suite 108  
Phoenix, AZ 85012

Telephone: (602) 234-8431

Fax: (602) 297-6691

E-mail: gforsberg@azdvs.gov

**10. The time, place, and nature of the proceedings for the making, amendment or repeal of the rules, or if no proceeding is scheduled, where, when and how persons may request an oral proceeding on the proposed rules:**

Comments may be written, faxed, or presented orally. Written comments must be received by 5:00 p.m., Tuesday, March 3, 2009. An oral proceeding is scheduled for:

Date: February 24, 2009, Tuesday

Time: 11:00 a.m.

Location: Arizona State Veteran Home  
Conference Room B205  
4141 N. Third St.  
Phoenix, AZ 85012

A person may request information about the oral proceeding by contacting the person listed above.

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**12. Incorporations by reference and their location in the rules:**

None

**13. The full text of the rules follows:**

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 41. DEPARTMENT OF VETERANS' SERVICES  
ADMINISTRATION**

**ARTICLE 1. MILITARY FAMILY RELIEF FUND**

Section	
<u>R4-41-101.</u>	<u>Definitions</u>
<u>R4-41-102.</u>	<u>General Provisions</u>
<u>R4-41-103.</u>	<u>Application for Military Family Relief Fund</u>
<u>R4-41-104.</u>	<u>Application Processing</u>
<u>R4-41-105.</u>	<u>Appeal Process: Hearings</u>
<u>R4-41-106.</u>	<u>Appeal Process: Rehearing or Review of the Decision</u>

**ARTICLE 1. MILITARY FAMILY RELIEF FUND**

**R4-41-101. Definitions**

The following definitions apply unless otherwise stated:

“Active duty” means military members who are currently serving full time in their federal military capacity.

“ADVS” means the Arizona Department of Veterans’ Services.

“Applicant” means an individual who has submitted an application for benefits under the Military Family Relief Fund.

“Committee” means the Military Family Relief Fund Advisory Committee established pursuant to A.R.S. § 41-608.04(B).

“Deployed” means location from which an individual moves to the individual’s active duty location.

“Deputy Director” means the Deputy Director of the ADVS.

“Director” means the Director of ADVS.

“Eligible Military Personnel” means an individual who meets the qualification for benefits to be distributed to family members under A.R.S. § 41-608.04.

“Family members” means widow, widower, spouse or minor children of service members.

“Financial need” means household assets as set forth (but not limited to) R4-41-301(C)(1)(g) and (h) as compared to costs associated with the qualifying event which is set for (but not limited to) criteria set forth in R4-41-301(C)(1)(i).

“Home of record” means the place recorded as the home of the individual when commissioned, appointed, enlisted, inducted or ordered into a tour of active duty.

“In the line of duty” means a determination by the respective military service that the service member’s injuries were sustained while participating in an authorized activity.

“Qualifying living expenses” means residential mortgage, rent and utility payments and other basic living household expenses.

“Qualifying event” means the death or injury of a military personnel who was deployed from a military base in this state or who was a member of the Arizona army or air national guard.

“Veterans Affairs” means the United States Department of Veterans Affairs.

**R4-41-102. General Provisions**

**A. An eligible applicant is:**

1. A widow or widower of military personnel killed in the line of duty, or
2. A spouse or minor children of military personnel wounded in the line of duty.

**B. After the termination of military pay and death benefits, widows or widowers of military personnel killed in the line of duty may apply for a stipend for qualifying living expenses for up to six months.**

**C. Spouses and minor children of military personnel who were wounded in the line of duty may apply for a stipend for qualifying living expenses for up to six months near a military or veterans hospital or rehabilitation facility where the person is being treated, including travel and housing expenses.**

**D. Applications and supporting documents that do not meet the criteria set out in A.R.S. § 41-608.04 and A.A.C. R4-40-301 will be returned to the applicant.**

**R4-41-103. Application for Military Family Relief Fund**

**A. Applications for the Military Family Relief Fund are available at the office of the Director.**

**B. Completed applications shall be submitted via e-mail, fax, hand-delivery or United States Postal Service at Arizona Department of Veterans’ Services, 3839 North 3rd Street, Office of the Director - Suite 200, Phoenix, Arizona 85012. All applications submitted via e-mail or fax shall also be submitted via hand-delivery or United States Postage Service at the address set forth in the agency web site at [www.azdvs.gov](http://www.azdvs.gov).**

**C. Applicants shall provide the following information on a Military Family Relief Fund application form:**

1. The following applicant information:
  - a. Full name:

Notices of Proposed Rulemaking

- b. Current mailing address;
  - c. Phone number;
  - d. Date of birth;
  - e. Relationship to eligible military personnel;
  - f. Amount of assistance requested from the Military Family Relief Fund;
  - g. Total household monthly income, to include the following:
    - i. Checking and savings account balance.
    - ii. Net monthly salary.
    - iii. Monthly child support payments received.
    - iv. Monthly alimony received, and
    - v. Other monthly payments received by applicant.
  - h. Applicant's assets, to include the following:
    - i. Make, model, year and value of vehicles owned; and
    - ii. Real estate owned.
  - i. Total monthly household and qualifying living expenses, to include the following:
    - i. Rent or mortgage payment.
    - ii. Food and clothing costs.
    - iii. Utilities.
    - iv. Medical services and prescriptions.
    - v. Automobile and health insurance.
    - vi. Vehicle payment.
    - vii. Alimony payments.
    - viii. Child support obligations.
    - ix. Childcare expenses.
    - x. Credit card payment, and
    - xi. Other monthly income.
  - j. Statement of how the financial assistance from the Military Family Relief Fund will be used; and
  - k. Certification that the information provided is true and complete.
2. The following information about the eligible military personnel:
- a. Full name;
  - b. Dates of military service;
  - b. Home of record at the time of deployment;
  - c. Address and phone number, if different from Applicant's; and
  - d. Date of injury or death.

**D.** Applicants interested in obtaining assistance from the Military Family Relief Fund shall provide the following documentation:

- 1. Copies of eligible military personnel's Federal DD-214 or other documents proving separation from service.
- 2. Verification of any medical condition submitted as part of application.
- 3. Evidence of the applicant's U.S. citizenship, alien status, legal residency or lawful presence in the U.S.

**E.** Applicants interested in obtaining assistance from the Military Family Relief Fund shall also provide the other information or documentation the Committee determines is necessary to fully evaluate the application, consistent with the Committee's authority pursuant to A.R.S. § 41-608.04.

**R4-41-104. Application Processing**

**A.** The Committee will review the application and may recommend disapproval of an application for the following reasons, which may include but are not limited to the following:

- 1. The applicant failed to meet eligibility criteria set out in A.R.S. § 41-608.04 and A.A.C. R4-40-201.
- 2. The application is incomplete.
- 3. The \$10,000 maximum allowable benefits per service member has been reached.
- 4. The applicant failed to establish financial need.
- 5. Applicant failed to provide necessary documentation in support of the application, or
- 6. Insufficient funds are available in the Military Family Relief Fund.

**B.** The Committee shall forward all applications that meet the criteria set out in A.R.S. § 41-608.04 and A.A.C. R4-40-301 to the Deputy Director with a recommendation to approve or disapprove the application and the amount to be distributed.

**C.** The Deputy Director has the final authority to approve or disapprove an application and the amount of monies, if any, distributed to an applicant.

**D.** The decision of the Deputy Director to approve or disapprove applications and the amount of funds distributed shall be based on the Deputy Director's discretion. The Deputy Director may consider the following factors in reaching the decision:

1. The recommendation of the Committee.
2. Financial resources of the Military Family Relief Fund.
3. Evidence of gross errors in the application review process, or
4. Manifest injustice in the application review process.

**R4-41-105. Appeal Process: Hearings**

- A.** Within 30 days after receiving a notice of a denial of an application or notice indicating amount to be distributed, the applicant may file a notice of appeal under A.R.S. § 41-1092.03 with the Director. The notice shall identify the applicant, the applicant's address and other contact information, the action being appealed, and contain a concise statement of the reason for the appeal.
- B.** The hearing shall be conducted by the Office of Administrative Hearings as specified in A.R.S. Title 41, Chapter 6, Article 10.

**R4-41-106. Appeal Process: Rehearing or Review of the Decision**

- A.** Under A.R.S. § 41-1092.09, the ASVH Director or the Director's designee may grant a rehearing or review of the decision.
- B.** Rehearing or review of the decision is granted for any of the following reasons that materially affect the requesting party's rights:
  1. Irregularity in the proceedings of a hearing that deprived the requesting party of a fair hearing.
  2. Misconduct of the judge.
  3. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing.
  4. The decision is the result of passion or prejudice.
  5. The decision is not supported by the evidence or is contrary to law.
- C.** Within 30 days after a decision is rendered, the Director or the Director's designee may, on the Director's or designee's own initiative, order a rehearing or review of a decision for any reason for which a rehearing on motion of a party might have been granted. The order granting the rehearing shall specify the grounds for the review of the decision.