

CHAPTER 7**ALTERNATE BENEFIT PROGRAM****Authority**

N.J.S.A. 18A:66-172.

Source and Effective Date

R.2006 d.360, effective September 8, 2006.
See: 38 N.J.R. 2032(a), 38 N.J.R. 4245(a).

Chapter Expiration Date

Chapter 7, Alternate Benefit Program, expires on September 8, 2011.

Chapter Historical Note

Chapter 7, Prison Officers' Pension Fund, was adopted and became effective prior to September 1, 1969.

Pursuant to Executive Order No. 66(1978), Chapter 7, Prison Officers' Pension Fund, was readopted as R.1983 d.176, effective May 16, 1983. See: 15 N.J.R. 527(a), 15 N.J.R. 930(d).

Pursuant to Executive Order No. 66(1978), Chapter 7, Prison Officers' Pension Fund, expired on May 16, 1988.

Chapter 7, Prison Officers' Pension Fund, was adopted as new rules by R.1988 d.577, effective December 19, 1988. See: 20 N.J.R. 2375(a), 20 N.J.R. 3142(b). Pursuant to Executive Order No. 66(1978), Chapter 7, Prison Officers' Pension Fund, expired on December 19, 1993.

Chapter 7, Alternate Benefit Program, was readopted with extensive revisions and recodified from N.J.A.C. 17:1-2 by R.2001 d.159, with the readoption effective April 25, 2001, and the recodification effective May 21, 2001. See: 33 N.J.R. 988(a), 33 N.J.R. 1601(a).

Chapter 7, Alternate Benefit Program, was readopted as R.2006 d.360, effective September 8, 2006. See: Source and Effective Date. See, also, section annotations.

CHAPTER TABLE OF CONTENTS**SUBCHAPTER 1. ADMINISTRATION**

- 17:7-1.1 Designated providers
- 17:7-1.2 Salary reduction agreements; authorization and termination
- 17:7-1.3 Salary reduction agreements; salary deductions; limitations
- 17:7-1.4 Proof of age
- 17:7-1.5 Certifying officer
- 17:7-1.6 Appeal from Division decisions
- 17:7-1.7 Records
- 17:7-1.8 Reporting of employee and employer contributions
- 17:7-1.9 Travel
- 17:7-1.10 Fiscal year
- 17:7-1.11 Contributions; late payment
- 17:7-1.12 Additional investment products and default investment provider
- 17:7-1.13 Transfers, direct rollovers
- 17:7-1.14 Domestic relations orders

SUBCHAPTER 2. ENROLLMENT

- 17:7-2.1 Enrollment eligibility; general provisions
- 17:7-2.2 Retention of contributions; compulsory enrollment; incomplete enrollment application
- 17:7-2.3 Part-time faculty members

SUBCHAPTER 3. MEMBERSHIP

- 17:7-3.1 Base or contractual salary
- 17:7-3.2 Delayed vested contribution
- 17:7-3.3 Leave without pay or change in status
- 17:7-3.4 Termination; withdrawal of delayed vested contributions
- 17:7-3.5 Leave of absence with pay
- 17:7-3.6 Military leave, withdrawal
- 17:7-3.7 Minimum adjustment
- 17:7-3.8 Hardship withdrawals
- 17:7-3.9 Awards of back pay
- 17:7-3.10 In-service withdrawals

SUBCHAPTER 4. INSURANCE, DEATH BENEFITS AND RETIREMENT

- 17:7-4.1 Death or retirement of participant; notice
- 17:7-4.2 Assignments; group life insurance
- 17:7-4.3 Death before payment to insurer
- 17:7-4.4 Base monthly salary for disability benefits
- 17:7-4.5 Life insurance
- 17:7-4.6 Long term disability insurance
- 17:7-4.7 Life insurance coverage during leave for illness
- 17:7-4.8 Election to receive cash distribution

SUBCHAPTER 5. TRANSFERS

- 17:7-5.1 Interprogram transfers; transfer to the Alternate Benefit Program from another State retirement system by employees of the Commission of Higher Education or Higher Education Student Assistance Authority
- 17:7-5.2 Transfers, interest

SUBCHAPTER 1. ADMINISTRATION**17:7-1.1 Designated providers**

(a) The providers approved by the Division of Pensions and Benefits to offer investment accounts for Alternate Benefit Program participants (investment providers) are designated to provide retirement and annuity contracts to participants of the Alternate Benefit Program.

(b) A designated provider shall provide group life coverage to participants of the Alternate Benefit Program.

(c) A designated provider shall provide disability insurance coverage to participants of the Alternate Benefit Program.

Amended by R.2006 d.360, effective October 2, 2006.
See: 38 N.J.R. 2032(a), 38 N.J.R. 4245(a).

In (a), deleted "annuity" preceding the first occurrence of "investment"; substituted "investment" for "annuity" preceding "providers" and inserted "and" following "retirement"; in (b), deleted "and disability insurance" following "group life"; and added (c).

17:7-1.2 Salary reduction agreements; authorization and termination

(a) The State and participating institutions are authorized to enter into agreements with Alternate Benefit Program participants for mandatory and voluntary salary reductions to the maximum limitations set forth in P.L. 93-406 (Employment Retirement Income Security Act of 1974 and the Internal

Revenue Code of 1954, 26 U.S.C. § 415(c), as amended for such year) of the employee's base salary and the regulations thereunder, in order to purchase from the selected investment providers retirement or annuity contracts which are tax deferred under section 403(b) of the Federal Internal Revenue Code as amended.

(b) The voluntary salary reduction contribution shall be computed on the participant's actual salary earned after adjusting for the participant's mandatory pension contribution in accordance with 26 U.S.C. § 414(h)(2).

(c) A participant electing to make such contributions shall enter into a salary reduction agreement with the employing institution in accordance with Internal Revenue Code of 1954, as amended and supplemented, 26 U.S.C. § 402(g)(4).

(d) A participant shall be permitted to enter into more than one salary reduction agreement with the employer during a calendar year by replacing one salary reduction agreement with another agreement. The employer shall determine the number of times during the course of the calendar year that such a change is permitted.

(e) The salary reduction agreement between the participant and institution shall continue indefinitely until amended or terminated by due notice to the institution by the participant, subject to the following conditions:

1. If the participant terminates employment with the institution, the salary reduction agreement, or any amendments made thereon, shall automatically terminate.

2. If the Division of Pensions and Benefits terminates the Plan of the Alternate Benefit Program 26 U.S.C. § 403(b), the salary reduction agreement shall automatically terminate.

As amended, R.1977 d.32, effective February 8, 1977.

See: 9 N.J.R. 43(b), 9 N.J.R. 147(c).

As amended, R.1981 d.239, effective July 9, 1981.

See: 13 N.J.R. 308(b), 13 N.J.R. 458(a).

Substantially amended.

Amended by R.2006 d.360, effective October 2, 2006.

See: 38 N.J.R. 2032(a), 38 N.J.R. 4245(a).

In (a), substituted "investment" for "annuity"; in (b), substituted "salary earned" for "base salary" and deleted "and contributions made in accordance with 26 U.S.C. § 125" from the end.

17:7-1.3 Salary reduction agreements; salary deductions; limitations

(a) Limitations concerning 26 U.S.C. § 403(b) salary reduction agreements are:

1. The entry into a salary reduction agreement between an employee and the employing institution shall not be available to any participant during the period of time in which no employer contributions are made on the employee's behalf to any retirement or annuity contract.

2. If a participant earns less than 50 percent of full salary during a pay period, no salary reductions will be reported to the Division of Pensions and Benefits.

3. If a participant earns 50 percent or more of full salary during a pay period, the salary reduction will be calculated on the salary earned.

(b) Limitations concerning 26 U.S.C. § 414(h) salary deductions are:

1. Salary deductions will be calculated on the full base salary if the participant earns 50 percent or more of base salary during a pay period.

2. If a person earns less than 50 percent of full base salary during a pay period, no base salary deductions will be reported to the Division of Pensions and Benefits.

As amended, R.1982 d.438, effective December 20, 1982.

See: 14 N.J.R. 1149(a), 14 N.J.R. 1464(a).

Wording changed to clarify rule.

Amended by R.2006 d.360, effective October 2, 2006.

See: 38 N.J.R. 2032(a), 38 N.J.R. 4245(a).

In (a), inserted "26 U.S.C. § 403(b)"; in (a)1, inserted "or" following "retirement"; in (a)2 and (a)3, deleted "base" preceding "salary" throughout; and in the introductory paragraph of (b), inserted "26 U.S.C. § 414(h)".

17:7-1.4 Proof of age

Documentary proof of the age of a participant and designated beneficiary may be required by the Division of Pensions and Benefits or the insurers if the age of a participant or beneficiary is material in determining eligibility for benefits.

17:7-1.5 Certifying officer

The business manager or other official designated by the institution shall be the certifying officer for the Alternate Benefit Program and shall be responsible for all duties prescribed by statute and by rules and regulations of the Divisions of Pensions and Benefits.

As amended, R.1981 d.85, effective March 6, 1981.

See: 13 N.J.R. 109(a), 13 N.J.R. 247(c).

"certifying officer" was "certifying agent".

17:7-1.6 Appeal from Division decisions

(a) An Alternative Benefit Program participant may appeal a preliminary administrative determination from the Division to the Director of the Division of Pensions and Benefits. The Director of the Division of Pensions and Benefits shall reply to an appeal with an administrative determination.

(b) An Alternative Benefit Program participant may appeal the initial administrative determination of the Director of the Division of Pensions and Benefits within 45 days from the date of the Director's determination. If no such written statement is received within the 45-day period, then the Director's initial administrative determination shall be considered a final administrative determination.

17:7-3.3 Leave without pay or change in status

While any participant in the Alternate Benefit Program may make personal contributions at any time directly to the insurer of the individual retirement annuities, no employer obligations will be paid when the participant is on a leave of absence without pay or when the participant no longer meets the definition of a full-time regularly appointed teaching or administrative staff member in an applicable academic position.

17:7-3.4 Termination; withdrawal of delayed vested contributions

(a) A participant may withdraw the participant's delayed vested contributions held by the investment provider if the participant terminates all employment subject to coverage by the Alternate Benefit Program. If a participant terminates employment while in delayed vested status and withdraws employee contributions, the participant is not considered to be retired and is eligible to participate in the Alternate Benefit Program at a later date.

(b) No application for withdrawal of contributions while in delayed vested status shall be approved if:

1. The participant is on official leave of absence;
2. The participant or employer certifies that the employment contract has not expired, or that the participant has executed another contract to work in a position subject to coverage by the Alternate Benefit Program; or
3. The participant has been dismissed or suspended from employment. In this event, such a participant will be eligible to withdraw if the participant has formally resigned from the position or there is no legal action contemplated or pending and this dismissal has been adjudged final.

As amended, R.1977 d.32, effective February 8, 1977.

See: 9 N.J.R. 43(b), 9 N.J.R. 147(c).

Amended by R.2006 d.360, effective October 2, 2006.

See: 38 N.J.R. 2032(a), 38 N.J.R. 4245(a).

In (a), substituted "investment" for "annuity" and added last sentence.

17:7-3.5 Leave of absence with pay

(a) The mandatory pension contribution for a participant granted a leave of absence with pay shall be calculated on the actual base salary paid, if the participant earns 50 percent or more of full contractual base salary during a pay period. On the monthly Alternate Benefit Program Employer Contribution Report, the full contractual base salary should be included in the Total Base Salary section, and the employer contribution shall be paid on this salary. If a participant earns less than 50 percent of full contractual base salary during a pay period, no deductions should be made, and the member's Alternate Benefit Program status shall be the same as that of a member on leave of absence without pay.

(b) Voluntary tax-deferred contributions (26 U.S.C. § 403(b) contributions) for a participant granted a leave of ab-

sence with pay shall be calculated on the actual salary paid less the mandatory pension contribution.

(c) In order to give effect to the limitations of 26 U.S.C. § 415(c)(3), an employer may be required to limit a participant's voluntary salary reduction contribution into the participant's 26 U.S.C. § 403(b) plan.

(d) When the employer, at the participant's request, approves an extension of the initial leave of absence, and the percentage of base salary to be paid is changed retroactive to the beginning of the initial leave effective date, (a), (b) and (c) above are applicable from the effective date of the initial leave of absence to the end date of the leave of absence, which must be in accordance with N.J.S.A. 18A:66-169h.

Amended by R.2006 d.360, effective October 2, 2006.

See: 38 N.J.R. 2032(a), 38 N.J.R. 4245(a).

In (a), inserted "contractual" two times, inserted the first occurrence of "Alternate Benefit Program", and substituted "Alternate Benefit Program" for "ABP"; rewrote (b); deleted (c); recodified (d) and (e) as (c) and (d); rewrote (c); and in (d), substituted "(b) and (c)" for "(b), (c) and (d)".

17:7-3.6 Military leave, withdrawal

No participant shall be entitled to withdraw amounts contributed by the employer for the period of a military leave of absence without pay unless the participant has resumed active employment and made contributions to an Alternate Benefit Program investment provider for the period of the military leave per N.J.A.C. 17:1-4.36.

Amended by R.2006 d.360, effective October 2, 2006.

See: 38 N.J.R. 2032(a), 38 N.J.R. 4245(a).

Substituted "investment" for "annuity".

17:7-3.7 Minimum adjustment

In order to facilitate the reconciliation of contributions by the Division of Pensions and Benefits, no rebates or additional contributions shall be made where an adjustment involves an amount of \$50.00 or less.

17:7-3.8 Hardship withdrawals

(a) Any request for an early withdrawal due to hardship shall be submitted with evidence of the hardship on forms satisfactory to the investment provider(s) and consistent with applicable Federal income tax law. Hardship withdrawals are limited to a participant's 26 U.S.C. § 403(b) voluntary contributions. Hardship withdrawals shall be approved only in the event the participant experiences an immediate and heavy financial need. The amount of such withdrawal shall be limited to the amount needed to satisfy the financial need; to the extent such need may not be satisfied from other resources that are reasonably available to the participant, including commercially available loans and loans available under the retirement or annuity contracts purchased under the program.

(b) The investment provider(s) shall determine whether the participant's request for hardship withdrawal satisfies the

requirements of this section and any applicable provisions of the Federal Income Tax Code and Regulations. The investment provider(s) shall notify the institutions of those employees who received hardship distributions, so that the salary reduction agreements shall be discontinued. All employee voluntary salary contributions (to any contract or investment provider) shall be suspended for 12 consecutive months. When salary reduction resumes, the affected employee's 26 U.S.C. § 402(g) limit shall be reduced by the amount of any elective deferral made in the year the hardship withdrawal was taken.

Amended by R.2006 d.360, effective October 2, 2006.

See: 38 N.J.R. 2032(a), 38 N.J.R. 4245(a).

Substituted "investment" for "annuity" throughout; in (a), inserted "26 U.S.C. §" and "retirement or"; and in (b), substituted "26 U.S.C. §" for "Section".

17:7-3.9 Awards of back pay

(a) A member shall receive credit for any month or biweekly pay period for which a full normal deduction is received by the Alternate Benefits Program.

(b) A member who appeals the suspension or termination of the member's employment and is awarded back pay for all, or a portion, of that employment for the stated period of such suspension or termination shall receive credit for the period covered by the award, provided a full normal pension contribution is received from the member or deducted from the value of the award. The amount of the employee pension contribution will be determined by the provisions of the award. If the member receives full back pay, including normal salary increases, then the contribution will be computed on the base salaries that the employee would have earned for the reinstated, suspended or terminated period. When the settlement is less than the full back pay, the employee pension contribution will be based upon the salary that the member was receiving for pension purposes prior to the suspension or termination of employment.

(c) In no case shall the award of back payment be less than the value of the normal pension contributions due. If the amount of the award of back pay is mitigated so that the member does not receive an amount equal to or greater than the value of the normal pension contributions due, then the member is required to remit the normal pension contribution to the employer who shall then submit it to the appropriate investment provider.

(d) The member is not entitled to investment profits or losses that the contributions would have made had the member receiving the award of back pay been employed continuously.

(e) The member is not entitled to the employer contributions for the period of the award unless the member receives an award equal to at least 50 percent of full back pay pursuant to N.J.A.C. 17:7-3.3.

(f) It is the responsibility of the certifying officer to provide a letter attesting to the base salary or salaries to be used to compute pension contributions and to provide a copy of the resolution or legal document that details the terms of the award.

New Rule, R.2004 d.125, effective April 5, 2004.

See: 35 N.J.R. 5525(a), 36 N.J.R. 1787(a).

Amended by R.2006 d.360, effective October 2, 2006.

See: 38 N.J.R. 2032(a), 38 N.J.R. 4245(a).

In (c), substituted "provider" for "carrier".

17:7-3.10 In-service withdrawals

(a) Withdrawals from investment accounts funded by either employer or employee mandatory contributions are not permitted in any form prior to the member's separation from employment with an eligible employer.

(b) Withdrawals from investment accounts funded by employee voluntary contributions pursuant to 26 U.S.C. § 403(b) are permitted in any form under the prevailing requirements of 26 U.S.C. § 403(b).

New Rule, R.2006 d.360, effective October 2, 2006.

See: 38 N.J.R. 2032(a), 38 N.J.R. 4245(a).

SUBCHAPTER 4. INSURANCE, DEATH BENEFITS AND RETIREMENT

17:7-4.1 Death or retirement of participant; notice

(a) Upon the death or retirement of participant, the employing institution shall notify the Division of Pensions and Benefits.

(b) The Division shall process the necessary forms related to such death or retirement and notify the insurer providing life insurance coverage.

17:7-4.2 Assignments; group life insurance

(a) Any participant insured under the Alternate Benefit Program group life insurance policy, pursuant to an arrangement among the insured, the group policyholder and the insurer, shall be entitled to make any person other than the employer a gift assignment of the rights and benefits conferred on the participant by any provision of such group life policy or by law, including specifically but not by way of limitation the right to exercise the conversion privilege and the right to name a beneficiary.

(b) Any such assignment, whether made before or after June 28, 1973, the effective date of this rule, shall entitle the insurer to deal with the assignee as the owner of all rights and benefits conferred on the insured under the group life policy in accordance with the terms of the assignment.

R.1973 d.171, effective June 28, 1973.

See: 5 N.J.R. 203(b), 5 N.J.R. 294(a).