

**CHAPTER 6****DEFINED CONTRIBUTION  
RETIREMENT PROGRAM****Authority**

N.J.S.A. 43:15C-1.

**Source and Effective Date**

R.2011 d.063, effective January 25, 2011.  
See: 43 N.J.R. 662(a).

**Chapter Expiration Date**

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 6, Defined Contribution Retirement Program, expires on July 23, 2012. See: 44 N.J.R. 559(a).

**Chapter Historical Note**

Chapter 6, Consolidated Police and Firemen's Pension Fund, was filed and became effective prior to September 1, 1969. Pursuant to Executive Order No. 66(1978), Chapter 6, Consolidated Police and Firemen's Pension Fund, expired on December 6, 1984.

Chapter 6, Consolidated Police and Firemen's Pension Fund, was adopted as new rules by R.1985 d.37, effective February 19, 1985. See: 16 N.J.R. 2997(b), 17 N.J.R. 475(b).

Pursuant to Executive Order No. 66(1978), Chapter 6, Consolidated Police and Firemen's Pension Fund, was readopted as R.1988 d.579, effective November 22, 1988. See: 20 N.J.R. 2537(a), 20 N.J.R. 3142(a). Pursuant to Executive Order No. 66(1978), Chapter 6 expired on November 22, 1993.

Chapter 6, Consolidated Police and Firemen's Pension Fund, was adopted as new rules by R.1993 d.659, effective December 20, 1993. See: 25 N.J.R. 3946(a), 25 N.J.R. 5942(b).

Pursuant to Executive Order No. 66(1978), Chapter 6, Consolidated Police and Firemen's Pension Fund, was readopted as R.1998 d.583, effective November 23, 1998, and Subchapter 2, Membership, and Subchapter 4, Transfers, were repealed by R.1998 d.583, effective December 21, 1998. See: 30 N.J.R. 3761(b), 30 N.J.R. 4388(a).

Chapter 6, Consolidated Police and Firemen's Pension Fund, was readopted as R.2003 d.352, effective August 7, 2003. See: 35 N.J.R. 2409(a), 35 N.J.R. 4124(b). Chapter 6, Consolidated Police and Firemen's Pension Fund, expired on August 7, 2008.

Chapter 6, Defined Contribution Retirement Program, was adopted as special new rules by R.2011 d.063, effective January 25, 2011. See: Source and Effective Date.

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#### **SUBCHAPTER 1. ESTABLISHMENT OF PROGRAM**

##### **17:6-1.1 Program established**

This document restates the provisions of the Defined Contribution Retirement Program (the "Program") originally established effective July 1, 2007 by P.L. 2007, c. 92 and amended by P.L. 2007, c. 103; P.L. 2008, c. 89, and P.L. 2010, c. 1; N.J.S.A. 43:1-1 et seq., 43:3C-1, 43:3C-3, 43:3C-4, 43:3C-5, 43:3C-6, 43:3C-8, 43:3C-9, 43:3C-9.1, 43:3C-9.2, 43:3C-9.3, 43:3C-9.4, 43:3C-9.5, 43:3C-9.6, 43:3C-10 and 43:15C-1 et seq.; and N.J.A.C. 17:1. The provisions of N.J.S.A. 43:15C-1 et seq. are incorporated into the Program as if fully set out in this chapter.

##### **17:6-1.2 Program consists of three plans**

(a) The Defined Contribution Retirement Program (DCRP) consists of three benefit plans: the DCRP Retirement Plan (the "Retirement Plan"), which is a defined contribution retirement plan intended to qualify for favorable Federal income tax treatment under Internal Revenue Code (IRC) § 401(a); the DCRP Group Life Insurance Plan (the "Group Life Insurance Plan"); and the DCRP Group Disability Benefit Plan (the "Group Disability Plan"). Assets held in the Trust under the Program for the Retirement Plan shall not be available for the payment of premiums, benefits or administrative expenses with respect to the Group Life Insurance Plan and/or the Group Disability Plan.

1. DCRP Retirement Plan. The DCRP Retirement Plan is a plan of retirement benefits for the benefit of eligible employees and their beneficiaries. The Retirement Plan is intended to be a tax-qualified defined contribution money purchase pension plan under IRC §§ 401(a) et seq., and is further intended to be a "governmental plan" within the meaning of 29 U.S.C. § 1002(32) and IRC § 414(d). The

Plan Administrator intends to maintain the Retirement Plan as a plan that qualifies for favorable income tax treatment under IRC § 401(a). The Retirement Plan is an individual account plan which provides for an individual account for each participant and for benefits based solely upon the amount of contributions, investment gains and losses, fees, and expenses allocated to the participant's account. Assets of the Trust with respect to the Retirement Plan shall be used solely for the purpose of providing benefits under the Retirement Plan, and for paying the administrative expenses of the Retirement Plan.

2. DCRP Group Life Insurance Plan. The DCRP Group Life Insurance Plan is a plan for the provision of group life insurance benefits for eligible employees.

3. DCRP Group Disability Benefit Plan. The DCRP Group Disability Benefit Plan is a plan for the provision of group disability insurance benefits for eligible employees.

### 17:6-1.3 ERISA does not apply

The United States Code provisions created by Title I of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§ 1001 et seq., do not apply to this Program.

### 17:6-1.4 Governmental plan rules

The Program is intended to be a governmental plan within the meaning of 29 U.S.C. § 1002(32) and IRC § 414(d).

### 17:6-1.5 Exclusive benefit

The Program, the Plans under the Program, and the Trust are established for the exclusive benefit of participants and their beneficiaries. Consistent with IRC § 401(a)(2), no amount held under the Defined Contribution Retirement Program Retirement Plan will ever inure to the benefit of the Plan Sponsor, any employer, the Plan Administrator, or any successor of any of them, and all Retirement Plan investments and amounts will be held for the exclusive purpose of providing benefits to the Retirement Plan's participants and their beneficiaries. Notwithstanding anything in this chapter to the contrary, it shall be impossible at any time before the satisfaction of all liabilities to participants, beneficiaries, and alternate payees for any part of the Program assets to be used for or diverted to purposes other than for the exclusive benefit of participants, beneficiaries, and alternate payees, except that payment of taxes and administration expenses may be made from the Program assets as provided by the Program, an applicable Plan under the Program or as permitted by applicable law.

### 17:6-1.6 No third-party beneficiary

The Plan Sponsor and each employer does not intend by any of the Program's provisions to make any person other than a participant, an alternate payee designated by a Qualified Domestic Relations Order, or a beneficiary under an applicable Plan following the death of the participant, a third-

party beneficiary of the Program or any Plan under the Program. Further, nothing in the Program can be construed or interpreted to authorize any person other than a participant, alternate payee, or beneficiary after the participant's death to maintain any cause of action under or relating to the Program. The duties, obligations, and responsibilities of the Plan Administrator and each employer concerning third parties will remain solely as imposed by applicable law.

## SUBCHAPTER 2. DEFINITIONS

### 17:6-2.1 Definitions

Whenever used in the Program or with respect to an applicable Plan, each of the following terms has the meaning stated below. To the extent that any term is not defined in this subchapter or otherwise by this chapter, such term has the meaning given by N.J.S.A. 43:15C-1 et seq. or by the Internal Revenue Code.

"Account" means the total of the individual sub-account(s) maintained on behalf of each participant, beneficiary, or alternate payee under the investment option(s) held pursuant to the Retirement Plan.

"Alternate payee" means a person who is an alternate payee (within the meaning of IRC § 414(p)(8)) under an order directed to the Retirement Plan that the Plan Administrator has determined to be a Qualified Domestic Relations Order.

"Annuity payment option" means a payment option under the Retirement Plan, if permitted by the Plan Administrator, which includes a provision for payments based, in whole or in part, upon the life of a natural person.

"Applicable form" means the appropriate form as designated and furnished by the Plan Administrator or DSP to make an election or provide a notice as required by the Program, including a form in electronic medium with an electronic signature in compliance with E-SIGN and applicable law. As used in this definition, the following terms have the following meanings:

1. "E-SIGN" means 15 U.S.C. §§ 7001 to 7006, 7021 and 7031; and 47 U.S.C. § 231 note – the Federal Electronic Signatures in Global and National Commerce Act.

2. "Electronic" means, consistent with E-SIGN, 15 U.S.C. § 7006(2), of or relating to technology having electrical, digital, magnetic, optical, electromagnetic, or similar capabilities regardless of medium.

3. "Electronic signature" means, consistent with E-SIGN, 15 U.S.C. § 7006(5), information or data in electronic form, attached to or logically associated with an electronic record, and executed or adopted by a person or

an electronic agent of a person, with the intent to sign a contract, agreement, or record.

“Applicable law” means the law of the United States of America or the law of the State of New Jersey that is applicable to the governance or administration of the Program or an applicable Plan under the Program.

“Base salary” means a participant’s regular base salary; except that for a participant described in N.J.A.C. 17:6-4.1(e), it shall mean the excess over the maximum compensation as specified in that paragraph. Base salary includes employee contributions as well as salary reduction contributions and other amounts excluded from gross income with respect to such base salary under, without limitation, IRC §§ 125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 403(b), 414(h)(2) or 457(b). Base salary excludes overtime or other forms of extra compensation, including but not limited to longevity lump sum payments, lump sum terminal sick leave or vacation pay, the value of maintenance, individual pay adjustments made within or at the conclusion of the participant’s final year of service, retroactive salary adjustments or other pay adjustments made in the participant’s final year of service unless the adjustment was made as a result of a general pay adjustment for all personnel of the public office or agency in which the participant is employed, or any unscheduled individual adjustment made in the final year to place the participant at the maximum salary level within salary range.

“Beneficiary” means each person a participant designates by a valid beneficiary designation to receive any undistributed benefit payable on or after the participant’s death.

“Beneficiary designation” means a valid and effective beneficiary designation made according to N.J.A.C. 17:6-8.

“Benefit” refers to the right under the Retirement Plan of the participant (or beneficiary or other payee) to receive a distribution of all or any portion of the participant’s account.

“Board” means the Defined Contribution Retirement Program Board established under N.J.S.A. 43:15C-4.

“Civil union partner” means the individual that is the participant’s civil union partner under the laws of the State of New Jersey.

“Contributions” means contributions under the provisions of the Retirement Plan, including employee contributions and employer contributions.

“Designated service provider” or “DSP” is a company designated as a provider by the Defined Contribution Retirement Program Board under N.J.S.A. 43:15C-4.

“Direct rollover” means a payment under the Retirement Plan to an eligible retirement plan specified by the distributee.

“Distributee” means any person who receives, or but for his or her instruction to the Plan Administrator is entitled to receive, a distribution. A distributee includes an alternate

payee to whom the Plan Administrator is directed to make a payment under a Qualified Domestic Relations Order.

“Distribution” means, as appropriate in the context, any kind of distribution or the particular kind of distribution provided by the Retirement Plan.

“Distribution commencement date” means the first date on which a distribution (or any payment under a distribution) is paid or becomes payable.

“Effective date” means July 1, 2007 for eligible employees as of the Retirement Plan implementation date and as effective with respect to payroll periods starting on and after that date. The effective date of this chapter is January 25, 2011. See N.J.A.C. 17:6-5.2 and 5.3 with respect to the making of catch-up employee mandatory contributions and associated employer contributions.

“Eligible employee” means an individual described in N.J.A.C. 17:6-4.1 and not excluded under N.J.A.C. 17:6-4.2, consistent with the requirements of N.J.S.A. 43:15C-2, and who is an eligible employee on or after the Retirement Plan implementation date. Subject to the approval of the Plan Administrator, the employer’s classification of a person as an employee or other individual with the status of an eligible employee for purposes hereof shall be final and conclusive.

“Employee contributions” means the sum of employee mandatory contributions and employee voluntary contributions.

“Employee mandatory contributions” means those contributions in the percentage amount of base salary required from a participant under the first sentence of N.J.S.A. 43:15C-3(a).

“Employee voluntary contributions” means those contributions in addition to the employee mandatory contribution that the Plan Administrator, pursuant to authority under the second sentence of N.J.S.A. 43:15C-3(a), may permit the participant to irrevocably elect upon initial enrollment in the Retirement Plan (or, if later, following the voluntary contribution implementation date).

“Employer” means the State or a political subdivision thereof, or an agency, board, commission, authority or instrumentality of the State or a subdivision, that pays the base salary of a participant for services rendered by the participant. Except as described in the following sentence, each employer with eligible employees shall be a participating employer with respect to the Plan for the benefit of its eligible employees as described in N.J.A.C. 17:6-4.1 and not excluded under N.J.A.C. 17:6-4.2, and shall not be required to take affirmative action to adopt this Plan for its eligible employees or to enter into any contractual arrangement regarding its obligations to contribute to the Plan except as may be required by the Plan Administrator. Notwithstanding the foregoing, the Plan Administrator may determine that an employer is not eligible to maintain this Plan for its

employees if the Plan Administrator reasonably concludes that the employer is not an employer that can maintain a "governmental plan" within the meaning of section 414(d) of the Internal Revenue Code or Section 3(32) of the Employees Retirement Income Security Act of 1974, 29 U.S.C. § 1002(32), as amended. The Plan Administrator's determination in this regard shall be final and conclusive.

"Employer contributions" means those contributions made by the employer under N.J.S.A. 43:15C-3(b).

"Enabling statute" means N.J.S.A. 43:15C-1 et seq.

"Fees" means any fees required or permitted to be charged against the participant's (or beneficiary's or alternate payee's) Retirement Plan account according to any one or more of the following: the Retirement Plan, the Trust Agreement, the participation agreement, an investment option including redemption fees, an investment advisory agreement, any other writing signed by the participant (or, after the participant's death, the beneficiary), any written notice given by or on behalf of the Plan Administrator or the Trustee that is accepted or deemed accepted by the participant (or beneficiary), or any court order. Additionally, the Plan Administrator may impose fees to pay for expenses it deems proper to administer the Retirement Plan. The fees may be charged to the participants' accounts according to an equitable method determined by the Plan Administrator.

"Fiduciary" means a person that is a fiduciary within the meaning of applicable law regarding the Program or an applicable Plan under the Program.

"Group Disability Plan" means the Defined Contribution Retirement Program Group Disability Benefit Plan as described in this chapter and as it may hereinafter be amended.

"Group Life Insurance Plan" means the Defined Contribution Retirement Program Group Life Insurance Plan as described in this chapter and as it may hereinafter be amended.

"Internal Revenue Code" or "IRC" means the Internal Revenue Code of 1986, as amended, and including any regulations and rulings (or other guidance of general applicability) under the IRC, as applicable to a governmental plan as defined by IRC § 414(d).

"Investment law" means, as applicable or relevant in the context, any Federal or State banking law, insurance law, securities law, and other rules of the National Association of Securities Dealers, Inc. (NASD), NYSE and any stock exchange or commodities exchange, to the extent approved or not disapproved by the SEC.

"Investment option" means any investment option selected by the Board (see N.J.A.C. 17:6-3.2) in accordance with the Retirement Plan's investment policy and approved by the Plan Administrator, for investment by participants (or

beneficiaries) of their Retirement Plan accounts. Default investment funds (in which a Retirement Plan account shall be invested in the event the participant or beneficiary has not filed a valid investment direction (see N.J.A.C. 17:6-6.8), shall be selected by the Plan Administrator, with the approval of the Division of Investment.

"Limitation year" means each 12-month period ended December 31.

"N.J.S.A." means the New Jersey Statutes Annotated.

"NYSE" means the New York Stock Exchange.

"Participant" means the eligible employee (or former eligible employee) who is enrolled in the Program or an applicable Plan under the Program and, with respect to the Retirement Plan, for whom contributions under the Retirement Plan have been made or accrued and whose account has not been fully distributed under the Retirement Plan.

"Participation agreement" means the applicable form that designates the participant's investment options and such other information as the Plan Administrator may prescribe for the efficient or convenient administration of the Program or an applicable Plan under the Program.

"Payment option" means any of the options for payment of a participant's Retirement Plan account that is permitted by the Plan Administrator consistent with the terms of the Retirement Plan and an applicable Retirement Plan investment option. A payment option shall not be based on gender-distinct actuarial tables. A payment option must satisfy all applicable provisions of the Retirement Plan, including, but not limited to, N.J.A.C. 17:6-11.2.

"Person" means a natural person, a corporation, a limited liability company, an unincorporated association, a partnership, a joint venture, a business trust, or anything that is a person within the meaning of applicable law.

"Personal representative" means the person duly appointed by an order of the court (or of a registrar or administrator under the court's supervision) having jurisdiction over the estate of the participant that grants the person the authority to receive the property of the deceased participant and to act as the personal representative of the participant's probate estate.

"Plan" means the Retirement Plan, the Group Disability Plan and/or the Group Life Insurance Plan, as the context requires.

"Plan Administrator" means the Director of the New Jersey Division of Pensions and Benefits.

"Plan Sponsor" means the State of New Jersey.

"Plan Year" means each 12-month period ended June 30.

"Program" means the New Jersey Defined Contribution Retirement Program provided by the enabling statute, as

described by this chapter. The Program consists of the Retirement Plan, the Group Life Insurance Plan and the Group Disability Plan.

“Qualified Domestic Relations Order” or “QDRO” means a domestic relations order directed to the Retirement Plan that creates or recognizes the existence of the right of an alternate payee to receive all or a portion of any benefit payable to a participant under the Retirement Plan and that further meets all requirements for a qualified domestic relations order stated by IRC § 414(p) as applied to a governmental plan and N.J.A.C. 17:6-8.

“Retirement Plan” means the Defined Contribution Retirement Program Retirement Plan as described in this chapter, and as it may hereafter be amended.

“Retirement Plan implementation date” means April 1, 2008, the date following which eligible employees are first enrolled as participants following the Plan’s effective date.

“SEC” means and refers to the Securities and Exchange Commission, an agency of the government of the United States of America, established by § 4(a) of the Federal Securities Exchange Act of 1934, 15 U.S.C. § 78d.

“Severance from employment” means the date the participant terminates employment with an employer with no obligation for future services to be performed for an employer by the participant. The Plan Administrator is entitled to rely upon the date of severance from employment certified by the employer.

“Spouse” means, except for the purposes of IRC § 401(a)(9), the individual that is the participant’s spouse under applicable law.

“State” means the State of New Jersey unless the context clearly indicates otherwise.

“Treasurer” means the Treasurer of the State of New Jersey. In the event there is no Treasurer then serving, the Acting Treasurer shall perform the functions described in this chapter.

“Trust” means and refers to the legal entity and the legal relationship created to hold and invest the assets of the Retirement Plan. Consistent with IRC § 401(a)(2), the Trust must be solely for the purposes of the Retirement Plan Program.

“Trust Agreement” means any agreement or declaration of trust executed under the Plan to hold and invest the assets of the Retirement Plan.

“Trustee” means the corporate trustee appointed and acting under the Trust Agreement.

“Valuation date” means any day on which both the NYSE is open for regular trading and the applicable DSP is open for

regular business at its principal office. A valuation date ends at the earliest of:

1. 4:00 P.M. New York time;
2. The time that the NYSE closes trading; or
3. The time that any investment option must value its assets and price its shares.

In addition, the Plan Administrator may make reasonable rules governing the time of day after which an instruction will be treated as received on the next valuation date.

“Voluntary contribution implementation date” means the date, if any, designated by the Plan Administrator for the initial implementation of employee voluntary contributions described at N.J.A.C. 17:6-5.2 and authorized by the second sentence of N.J.S.A. 43:15C-3(a).

### SUBCHAPTER 3. DEFINED CONTRIBUTION RETIREMENT PROGRAM BOARD

#### 17:6-3.1 Composition

(a) The Board shall consist of:

1. The Director of the Division of Pensions and Benefits or a designee;
2. The Director of the Division of Investment or a designee;
3. The Commissioner of the Department of Banking and Insurance or a designee;
4. The Director of the Office of Management and Budget or a designee; and
5. A person appointed by the Director of the Division of Pensions and Benefits who is an active participant or retiree of the Defined Contribution Retirement Program.

#### 17:6-3.2 Powers

(a) The Board shall select one or more designated service providers (DSPs), licensed or otherwise authorized to transact business in New Jersey, for the administration of all or part of the Program, including the management and investment of contributions to the Retirement Plan. The DSP or DSPs shall be selected in accordance with all applicable State laws and regulations.

(b) The Board shall determine investment options to be offered with respect to the investment of Retirement Plan accounts, including, but not limited, to mutual funds, subject to such rules and regulations as the Division of Pensions and Benefits may adopt, in accordance with all Internal Revenue Code rules and regulations. The Division of Pensions and Benefits as the Plan Administrator may direct the Trustee or DSP with respect to the investment options that may be made

participant's account in one or more default investment options as the Plan Administrator may designate from time to time, with the approval of the Division of Investment).

i. A participant may elect, to the extent permitted by State law and as provided in the participation agreement (or on a separate participation agreement), to make (in addition to his or her employee mandatory contributions) additional employee voluntary contributions in such amount and in accordance with such rules as shall be established by the Plan Administrator provided such election is filed no later than 60 days following the later of the participant's date of hire as an eligible employee or the voluntary contribution implementation date. Such election to make employee voluntary contributions shall authorize the employer to reduce such participant's base salary by a percentage amount each payroll period (after the filing of the participation agreement with respect to the employee voluntary contributions) for contribution to the Retirement Plan as an employee voluntary contribution.

#### 17:6-5.2 Employee contributions

(a) For each participant enrolled in the Retirement Plan and making employee contributions, the employer shall, subject to N.J.A.C. 17:6-5.7, make employee mandatory contributions, including catch-up employee mandatory contributions (if applicable) and, if the participant so elects pursuant to his or her timely filing of a participation agreement, employee voluntary contributions, in the percentage amount applicable to the participant multiplied by the participant's base salary for each payroll period beginning on and after the effective date of the participant's enrollment, provided the participant remains an eligible employee. For participants described in N.J.A.C. 17:6-4.1(a)5, employee contributions shall be made only with respect to that portion of base salary, if any, which is in excess of the annual maximum wage contribution base for Social Security benefits, pursuant to the Federal Insurance Contributions Act, 26 U.S.C. §§ 3101 et seq.

1. The enrollment of the participant in the Retirement Plan with respect to employee mandatory contributions shall, subject to N.J.A.C. 17:6-4.3, be effective as of the later of the effective date or the date on which the individual becomes an eligible employee. Because the Retirement Plan implementation date is later than the effective date, there shall be deducted, to the extent practicable, from the participant's base salary an additional amount equal to the catch-up employee mandatory contribution. The catch-up employee mandatory contribution is equal to the total employee mandatory contributions that are contributable for the period between the effective date (or the participant's date of hire as an eligible employee, if later) and the first payroll period following the Retirement Plan implementation date as of which the participant's employee mandatory contribution is in fact deducted from

his or her base salary for contribution to the Retirement Plan.

i. The Plan Administrator shall establish rules, which shall be uniformly applied with respect to participants the Plan Administrator determines are similarly situated, regarding the number of payroll periods over which the participant's base salary shall be additionally reduced in order to make the catch-up employee mandatory contribution. The Plan Administrator shall, for purposes of measuring the employer contribution with respect to such catch-up mandatory employee contribution, designate the past period or periods to which the catch-up employee mandatory contribution relates.

2. To the extent permitted by State law, the Plan Administrator is empowered to promulgate rules and procedures, consistent with N.J.S.A. 43:15C-3(a), regarding the maximum and minimum percentages of base salary which an eligible employee may elect for his or her employee voluntary contributions. Because all employee contributions are "picked up" by the employer and treated as employer contributions, the percentage amount of employee voluntary contributions, once elected by eligible employee within 60 days of date of hire as an eligible employee (or the voluntary contribution implementation date, as applicable), are irrevocable and cannot thereafter be changed except as may be permitted by the IRC and approved by the Plan Administrator.

#### 17:6-5.3 Employer contributions

(a) For each participant enrolled in the Retirement Plan and making employee mandatory contributions, the employer shall, subject to N.J.A.C. 17:6-5.7, make employer contributions in the percentage amount provided by N.J.S.A. 43:15C-3(b) multiplied by the participant's base salary for each payroll period beginning on or after the effective date of the participant's enrollment, provided the participant remains an eligible employee. For participants described in N.J.A.C. 17:6-4.1(a)5, employer contributions shall be made only with respect to that portion of base salary, if any, which is in excess of the annual maximum wage contribution base for Social Security benefits, pursuant to the Federal Insurance Contributions Act, 26 U.S.C. §§ 3101 et seq.

1. Employer contributions with respect to catch-up employee mandatory contributions. The employer shall make an additional employer contribution with respect to each payroll period for which a catch-up employee mandatory contribution is made, in the percentage amount provided by N.J.S.A. 43:15C-3(b) multiplied by the participant's base salary for the period to which the catch-up employee mandatory contribution relates.

#### 17:6-5.4 Employee contribution pick-up

Each employer shall pick up employee contributions with respect to all base salary paid after the effective date with

respect to enrolled participants. The employee contributions so picked up shall be treated as employer contributions pursuant to IRC § 414(h)(2). The employer shall pay the picked-up contributions directly to the Plan Administrator, instead of paying such amounts to the participants, and such contributions shall be paid from the same funds that are used in paying salaries to participants. Such contributions, although designated as employee contributions, shall be paid by the employer in lieu of contributions by participants. Participants may not elect to receive such contributions directly instead of having them paid by the employer to the Retirement Plan. Employee contributions so picked up shall be treated for all purposes of the Retirement Plan and State law, other than Federal tax law, in the same manner as employer contributions made without a pick-up.

#### **17:6-5.5 Contributions transmitted to DSP**

(a) Employer and employee contribution amounts for each pay period shall be transmitted to the DSP for crediting to the participant's account not later than the fifth business day after the date on which the participant is paid for that pay period.

1. Delinquent contributions. The Plan Administrator may adopt rules and procedures to address delinquent contributions.

#### **17:6-5.6 Allocation of contributions to participant's account**

(a) The DSP shall credit to each participant's account (and each applicable sub-account; see N.J.A.C. 17:6-2.1) the contributions actually received with respect to the participant. Such contributions shall be invested in the investment option or options as elected by the participant, or in the default investment option or options designated by the Plan Administrator, with the approval of the Division of Investment, if the participant has made an invalid or incomplete investment election, in accordance with rules and procedures promulgated by the Plan Administrator.

(b) The following sub-accounts shall be maintained by the DSPs:

1. An employer account to which employer contributions (and associated investment earnings and administrative expenses, if any) shall be credited or debited, as applicable;
2. An employee mandatory account to which employee mandatory contributions (and associated investment earnings and administrative expenses, if any) shall be credited or debited, as applicable;
3. An employee voluntary account to which employee voluntary contributions (and associated investment earnings and administrative expenses, if any) shall be credited or debited, as applicable; and

4. A rollover account to which rollovers (and associated investment earnings and administrative expenses, if any) shall be credited or debited, as applicable.

(c) If the participant designates more than one beneficiary, after the death of the participant and upon the written request of any beneficiary or upon an approved claim payable to any beneficiary and not all beneficiaries, the DSP shall, to the extent permitted by the investment option, maintain a separate account with respect to the interest of each beneficiary, beginning as of the next valuation date that occurs after the beneficiary's request or claim is received by the DSP.

#### **17:6-5.7 Contributions limited by IRC § 401(a)(17)**

In addition to other applicable limits stated by the Retirement Plan and notwithstanding any other provision of this chapter to the contrary, the amount of base salary or compensation determined for the purposes of the contributions to the Retirement Plan for any calendar year shall not exceed the limit prescribed by IRC § 401(a)(17) for the calendar year in which the Plan Year begins, as adjusted each calendar year according to IRC § 401(a)(17)(B).

#### **17:6-5.8 Plan to satisfy limit on annual additions**

(a) To the extent required under IRC § 415(c), in no event shall the "annual addition," as defined in this section for a participant for any Plan Year, exceed the lesser of:

1. \$45,000, as adjusted; or
2. One hundred percent of the "compensation," as defined in this section, of such participant received during the Plan Year.

(b) For purposes of this section and subject to IRC § 415(f)(1)(B), all defined contribution plans of each employer are to be treated as a single defined contribution plan.

(c) If the annual addition for a participant under the Retirement Plan, determined without regard to the limitation of (a) above, would have been greater than the annual addition for such participant as limited by (a) above, then the excess shall be corrected as permitted under the Employee Plans Compliance Resolution System (or similar Internal Revenue Service correction program).

(d) For purposes of this section, "annual addition" means the annual addition as defined in IRC § 415(c)(2) and as modified in IRC § 415(l)(1) and 419A(d)(2). In general, IRC § 415(c)(2) defines the annual addition as the sum of the following amounts credited to a participant's account for the limitation year under the Retirement Plan and any other qualified defined contribution plan maintained by an employer:

1. Employer contributions; and
2. Employee contributions.

(e) For purposes of this section, the following types of contributions are not treated as employer contributions and are not “annual additions”:

1. The restoration of an employee’s accrued benefit, or any other restoration, by the employer in accordance with IRC § 411(a)(3)(D) or IRC § 411(a)(7)(C) will not be considered an annual addition for the limitation year in which the restoration occurs.

2. The transfer of funds from one qualified plan to another will not be considered an annual addition for the limitation year in which the transfer occurs.

(f) For purposes of this section, the following types of contributions are not treated as employee contributions and are not “annual additions”:

1. Rollover contributions (as defined in IRC §§ 402(c)(1), 403(a)(4), 408(d)(3), 401(a)(31), 403(b)(8) and 457(e)(16);

2. Repayments of amounts described in IRC § 411(a)(7)(B); or

3. The direct transfer of employee contributions from one qualified plan to another.

(g) For purposes of this section, “compensation” means compensation as defined in IRC § 415(c)(3), as determined by the Plan Administrator consistent with the regulations under that IRC section. In general, IRC § 415(c)(3) defines compensation as all of a participant’s wages as defined in IRC § 3401(a) for the purposes of income tax withholding at the source but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in IRC § 3401(a)(2)); provided, however, compensation shall also include the amount of any elective deferrals, as defined in IRC § 402(g)(3), and any amount contributed or deferred by the employer at election of the employee and which is not includible in the gross income of the employee by reason of IRC § 125, 132(f), or 457. “Compensation” for purposes of this section shall not include any picked-up employee contributions to the Plan under IRS § 414(h). Compensation for a limitation year is the compensation actually paid or includable in gross income during such limitation year; provided, however, amounts earned during that limitation year but paid after the limitation year solely because of the timing of pay periods and pay dates shall be included if the amounts are paid during the first few weeks of the next limitation year, the amounts are included on a uniform and consistent basis with respect to all similarly situated participants, and no such compensation is included in more than one limitation year. However, compensation paid by the later of two and one-half months after severance from employment or the end of the

limitation year that includes such severance from employment shall be included in compensation if it is payment that, absent a severance from employment, would have been paid to the participant while the participant continued in employment with the employer and is:

1. Regular compensation for services during the participant’s regular working hours, or compensation for services outside the participant’s regular work hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, and the compensation would have been paid to the participant prior to a severance from employment if the participant had continued employment with the employer;

2. Payments for unused accrued bona fide sick, vacation or other leave, but only if the participant would have been able to use the leave if employment had continued; or

3. Payments pursuant to a nonqualified unfunded deferred compensation plan, but only if the payments would have been paid to the participant at the same time if the participant had continued employment with the employer and only to the extent that the payment is includible in the participant’s gross income.

(h) Any payment to a participant paid by the employer not described above is not considered compensation if paid after severance from employment, even if it is paid within two and one-half months following severance from employment except as otherwise provided under N.J.A.C. 17:6-16.23.

(i) For purposes of this section, an employee who is in qualified military service (within the meaning of Internal Revenue Code Section 414(u)(1)) shall be treated as receiving compensation from the employer during such period of qualified military service equal to:

1. The compensation the employee would have received during such period if the employee were not in qualified military service, determined based on the rate of pay the employee would have received from the employer but for the absence during the period of qualified military service; or

2. If the compensation the employee would have received during such period was not reasonably certain, the employee’s average compensation from the employer during the 12-month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

(j) For purposes of this section, compensation of each participant shall not exceed the applicable limit established by IRC § 401(a)(17) as of the first day of the limitation year, as increased for the Cost of Living Adjustment (\$245,000 for 2011). The Cost of Living Adjustment in effect for a limitation year applies to compensation for the Plan Year that begins with or within such limitation year.

## SUBCHAPTER 6. INVESTMENTS AND INVESTMENT DIRECTION

### 17:6-6.1 Duty of investment direction

Each participant and, when applicable, each beneficiary or alternate payee, shall, subject to the requirements of applicable investment law and any procedures established by the DSP, with the approval of the Plan Administrator, direct the investment of his or her account(s) under the Retirement Plan. Accounts may only be invested in those investment options offered by the DSP and approved by the Board.

### 17:6-6.2 Procedure for giving investment direction

The participant, beneficiary, or alternate payee must give investment direction according to the provisions of the Retirement Plan, including any procedure required by the DSP with the approval of the Plan Administrator. Each investment direction shall be on the applicable form and shall not be proper unless it is signed by the participant, beneficiary, or alternate payee. Only the DSP has authority to accept an investment direction and any direction is effective only when received.

### 17:6-6.3 Limits on frequency of investment directions

(a) The Plan Administrator, or the DSP with the consent of the Plan Administrator, may, but only on a uniform and consistent basis, impose reasonable restrictions on the frequency with which a participant, beneficiary, or alternate payee may give investment directions. In addition to such restrictions, a participant, beneficiary, or alternate payee may not give more than one investment direction in any valuation day; therefore, the latest investment direction in a valuation day cancels all earlier inconsistent investment directions in that valuation day.

(b) Redemption fees may be imposed by an investment option and will be charged to the participant's account in accordance with the investment option's written policy.

### 17:6-6.4 Who directs investment

(a) During the participant's life, the participant shall direct the investment of his or her account. After the participant's death, the beneficiary shall direct the investment of that beneficiary's separate account. If following a QDRO, the Plan Administrator maintains a separate account for the alternate payee, the alternate payee will direct investments of that separate account. During the participant's, beneficiary's, or alternate payee's disability or incompetence, investments shall be directed by the person that is the court appointed and currently serving conservator or guardian of the estate of the participant, or if there is no conservator or guardian, the person who has authority to act for the participant under a power-of-attorney accepted by the Plan Administrator.

(b) A participant, beneficiary, or alternate payee may authorize an agent or attorney-in-fact to direct investment for all of his or her account by giving written notice acceptable to the Plan Administrator and furnishing a power-of-attorney that is accepted by the Plan Administrator.

### 17:6-6.5 Duty to accept investment direction

(a) The DSP must accept every proper investment direction with respect to an investment option approved by the Board, and the DSP is obligated to comply with such proper investment direction.

(b) As of each valuation date with respect to an investment option, the DSP shall credit or debit to each participant's account the investment gain or loss with respect to such account's allocable share of the investment option since the previous valuation date.

(c) The Plan Administrator and the DSP may not charge the participant's, beneficiary's, or alternate payee's account for the expenses of executing his or her investment direction except as provided by N.J.A.C. 17:6-6.3. If such expenses are so charged, the Plan Administrator or the DSP shall inform the participant, beneficiary, or alternate payee of the charges. Any expenses charged by a DSP must be approved by the Plan Administrator.

### 17:6-6.6 Plan Administrator not responsible

(a) If any person, including a DSP, provides any investment education or investment information or investment advice of any kind, the Plan Administrator shall not be liable for any loss or liability arising out of such investment education or investment information or investment advice.

(b) To the extent of the participant's, beneficiary's, or alternate payee's investment direction, the Plan Administrator is relieved of any fiduciary responsibility and every kind of liability, and is not responsible for any damage or loss or expense or other claim which may arise from any participant's, beneficiary's, or alternate payee's investment direction or failure to exercise his or her duty of investment direction.

### 17:6-6.7 Failure to give investment direction

If at any time a participant, beneficiary, or alternate payee fails to exercise his or her duty of investment direction, or an investment direction is refused, the Plan Administrator shall, to the extent of the failure of proper investment direction, cause the account to be invested according to the default investment option or options designated from time to time by the Plan Administrator, with the approval of the Division of Investment. The Plan Administrator shall direct the Trustee or other DSP with respect to the investment of accounts in a default investment option or options.