

ALTERNATE BENEFIT PROGRAM

CHAPTER 7

ALTERNATE BENEFIT PROGRAM

Authority

N.J.S.A. 52:18A-107 et seq., specifically, 18A:66-192.

Source and Effective Date

R.2015 d.072, effective May 4, 2015.
See: 46 N.J.R. 588(a), 47 N.J.R. 905(b).

Chapter Expiration Date

Chapter 7, Alternate Benefit Program, expires on May 4, 2022.

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

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 7, Alternate Benefit Program, was scheduled to expire on September 8, 2013. See: 43 N.J.R. 1203(a).

Subchapter 1, Administration, Subchapter 2, Enrollment, and Subchapter 3, Membership, were repealed; former Subchapter 4, Insurance, Death Benefits and Retirement, was recodified to Subchapter 22; former Subchapter 5, Transfers, was recodified to Subchapter 23; Subchapter 1, General Provisions, Subchapter 2, Definitions, Subchapter 3, Pension Provider Selection Board, Subchapter 4, Participation in the Alternate Benefit Program, Subchapter 5, Contributions to the ABP Retirement Plan, Subchapter 6, Vesting and Forfeiture—ABP Retirement Plan Only, Subchapter 7, Qualified Domestic Relations Order, Subchapter 8, Distributions and Minimum Distribution Requirements—ABP Retirement Plan, Subchapter 9, Rollovers and Transfers—ABP Retirement Plan, Subchapter 10, Plan Administration—ABP Program, Subchapter 11, General Provisions—ABP Program, Subchapter 12, New Jersey Additional Contributions Tax-Sheltered Program (Acts), Subchapter 13, Investments and Investment Direction—ABP Retirement Plan and Acts, Subchapter 14, Loans—ABP Retirement Plan, Acts, and Closed Plan, Subchapter 15, Accounts—ABP Retirement Plan and Acts, Subchapter 16, Administration of Distributions—ABP Retirement Plan and Acts, Subchapter 17, Alternate Benefit Program Group Life Insurance Plan, Subchapter 18, Alternate Benefit Program Group Long-Term Disability Benefit Plan, Subchapter 19, Amendment, Subchapter 20, Construction, and Subchapter 21, Claims and Appeal Procedures, were adopted as special new rules by R.2013 d.044, effective January 23, 2013 (to expire September 8, 2013). See: 45 N.J.R. 667(a).

In accordance with N.J.S.A. 52:14B-5.1d, the expiration date of Chapter 7, Alternate Benefit Program, was extended by gubernatorial directive from September 8, 2013 to March 8, 2014. See: 45 N.J.R. 2263(a).

Chapter 7, Alternate Benefit Program, expired September 4, 2014, and was adopted as new rules by R.2015 d.072, effective May 4, 2015. As a part of R.2015 d.072, Subchapter 22, Insurance, Death Benefits and Retirement, was renamed Beneficiary - Group Life Insurance Plan Only. See: Source and Effective Date. See, also, section annotations.

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payment options. The Plan Administrator may, but shall not be required to, permit a participant to postpone distribution of his or her account, but not beyond the required beginning date (as defined in N.J.A.C. 17:7-8.3).

2. Upon a participant's death with undistributed amounts in his or her ABP Retirement Plan Account, such amounts will be distributed in a single sum to the participant's designated beneficiaries, as soon as practicable following the receipt of notice by the Plan Administrator of the participant's death. Notwithstanding the foregoing, the Plan Administrator may, but is not required to, promulgate rules regarding the distribution of amounts in a participant's account following his or her death other than in an immediate single sum distribution, in a payment option consistent with N.J.A.C. 17:7-10.2.

3. Membership or participation in the Retirement Plan shall terminate and the individual shall be considered retired once he or she has elected to receive a cash distribution of the value of his or her accounts in a direct payout as a cash distribution, a rollover, or an annuity (or a combination of these distributions). Any such distribution shall only occur upon severance from employment.

Amended by R.2015 d.072, effective May 4, 2015.

See: 46 N.J.R. 588(a), 47 N.J.R. 905(b).

In the introductory paragraph of (b), substituted "participant's" for "participants" and "cash-out" for "cash out".

17:7-8.2 Minimum distribution

(a) The requirements of this section will take precedence over any inconsistent provisions of this chapter.

(b) All distributions required under this section will be determined and made in accordance with IRC § 401(a)(9) and the Treasury regulations under IRC § 401(a)(9).

(c) Distributions to a participant and his or her beneficiaries under this section shall only be made in accordance with the incidental death benefit requirements of IRC § 401(a)(9)(G) and the Treasury regulations thereunder.

1. The participant's entire interest will be distributed, or begin to be distributed, to the participant no later than the participant's required beginning date (as defined in N.J.A.C. 17:7-8.3).

2. If the participant dies before distributions begin, and subject to the payment option(s), if any, in fact permitted by the Plan Administrator in addition to a single sum distribution, the participant's entire interest must be distributed, or begin to be distributed, no later than as follows:

i. If the participant's surviving spouse is the participant's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the participant died, or by December 31 of the calendar year in which the participant would have attained age 70½, if later.

ii. If the participant's surviving spouse is not the participant's sole designated beneficiary, then distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the participant died.

iii. If there is no designated beneficiary as of September 30 of the year following the year of the participant's death, the participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the participant's death.

iv. If the participant's surviving spouse is the participant's sole designated beneficiary and the surviving spouse dies after the participant but before distributions to the surviving spouse begin, this subparagraph, rather than subparagraph (c)2i above, will apply as if the surviving spouse were the participant. For purposes of this subsection, unless this subparagraph applies, distributions are considered to begin on the participant's required beginning date (as defined in N.J.A.C. 17:7-8.3). If this subparagraph applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under subparagraph (c)2i above. If distributions under an annuity purchased from an insurance company irrevocably commence to the participant before the participant's required beginning date (or to the participant's surviving spouse before the date distributions are required to begin to the surviving spouse) the date distributions are considered to begin is the date distributions actually commence.

3. If the participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of IRC § 401(a)(9) and the Treasury regulations thereunder.

17:7-8.3 Definitions

As used in this subchapter, the following terms shall have the following meanings, unless the context clearly indicates otherwise.

"Designated beneficiary" means the individual who is designated as the beneficiary under this Program.

"Required beginning date" means the April 1 of the calendar year following the later of:

1. The calendar year in which the participant attains age 70 ½; or
2. The calendar year in which the participant incurs a severance from employment.

17:7-8.4 Default retirement distribution

If a distribution is required to begin according to N.J.A.C. 17:7-8.2 and the participant has not filed a claim by the date that is 90 days before the participant's required beginning

date (as defined in N.J.A.C. 17:7-8.3), or if the Plan Administrator has denied a claim and an acceptable claim has not been filed before the applicable date, the Plan Administrator shall direct payment in a single sum distribution to the participant or beneficiary, as the case may be.

17:7-8.5 Minimum distribution life expectancy

If an annuity payment option is permitted by the Plan Administrator, then the participant, alternate payee, or beneficiary may elect on the applicable form whether to recalculate life expectancy (or any element of it) to the fullest extent permitted by IRC § 401(a)(9)(D). If the participant, alternate payee, or beneficiary does not timely make this election, the participant, alternate payee, or beneficiary is deemed to have elected the “default” method specified by the applicable annuity payment option with respect to an investment option, or to the extent that no method is so specified, that no recalculation shall apply with respect to any individual’s life expectancy.

17:7-8.6 Minimum distribution period

If a participant has not furnished evidence of his or her spouse’s date of birth, the plan administrator, or designated service provider will use the participant’s age in determining the minimum distribution period according to Treasury regulation § 1.401(a)(9)-5, Q&A-4(a) without regard to Treasury regulation § 1.401(a)(9)-5, Q&A-4(b).

17:7-8.7 Distributions in cash—ABP Retirement Plan

All distributions shall be paid in cash, less required withholding.

17:7-8.8 Election to receive cash distribution

An election to receive cash distribution, as set forth in N.J.S.A. 18A:66-175, will include an election to transfer, or rollover, funds upon separation from service to an investment provider or to investment products not offered as part of the Alternate Benefit Program.

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

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

Recodified from N.J.A.C. 17:7-22.7 by R.2015 d.072, effective May 4, 2015.

See: 46 N.J.R. 588(a), 47 N.J.R. 905(b).

Former N.J.A.C. 17:7-8.8, Corrective distributions, recodified to N.J.A.C. 17:7-8.9.

17:7-8.9 Corrective distributions

The amounts corrected by a corrective distribution are disregarded for all purposes of the ABP Retirement Plan, except as otherwise expressly provided by the ABP Retirement Plan. A corrective distribution cannot be counted as a required minimum distribution under IRC § 401(a)(9). A corrective distribution is not an eligible rollover distribution (as that term is used in N.J.A.C. 17:7-9.1). A corrective distribution includes, but is not limited to, a corrective

disbursement under Treasury regulation § 1.415-6(b)(6) or IRS Rev. Proc. 92-93.

Recodified from N.J.A.C. 17:7-8.8 by R.2015 d.072, effective May 4, 2015.

See: 46 N.J.R. 588(a), 47 N.J.R. 905(b).

Former N.J.A.C. 17:7-8.9, Required minimum distribution waiver of 2009—ABP Retirement Plan, recodified to N.J.A.C. 17:7-8.10.

17:7-8.10 Required minimum distribution waiver of 2009—ABP Retirement Plan

(a) Notwithstanding any other provisions of this subchapter, a participant or beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of IRC § 401(a)(9)(H) (2009 RMDs), and who would have satisfied that requirement by receiving distributions that are equal to the 2009 RMDs or one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the participant’s designated beneficiary, or for a period of at least 10 years (Extended 2009 RMDs), will not receive those 2009 distributions unless the participant or beneficiary elects to receive such distribution. Participants and beneficiaries described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence.

(b) Notwithstanding any other provisions of the Plan, and solely for purposes of applying the rollover provisions of the Plan, 2009 RMDs (amounts that would have been required minimum distributions for 2009 but for the enactment of IRC § 401(a)(9)(H)) and Extended 2009 RMDs (one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the participant’s designated beneficiary, or for a period of at least 10 years), will be treated as eligible rollover distributions as provided in N.J.A.C. 17:7-9.1.

Recodified from N.J.A.C. 17:7-8.9 by R.2015 d.072, effective May 4, 2015.

See: 46 N.J.R. 588(a), 47 N.J.R. 905(b).

SUBCHAPTER 9. ROLLOVERS AND TRANSFERS— ABP RETIREMENT PLAN

17:7-9.1 Direct rollover of funds to other plans

Consistent with IRC § 401(a)(31), for any distribution that is an eligible rollover distribution, the distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to instruct the designated service provider to have any portion of an eligible rollover distribution paid directly to an eligible ABP Retirement Plan specified by the distributee.