

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

**Authority**

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

**Source and Effective Date**

R.2001 d.159, effective April 25, 2001.  
See: 33 N.J.R. 988(a), 33 N.J.R. 1601(a).

**Chapter Expiration Date**

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 7, Alternate Benefit Program, expires on October 22, 2006. See: 38 N.J.R. 2032(a).

**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: Source and Effective Date.

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**SUBCHAPTER 1. ADMINISTRATION**

**17:7-1.1 Designated providers**

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

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

**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 annuity 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 base salary after adjusting for the participant's mandatory pension contribution in accordance with 26 U.S.C. § 414(h)(2) and contributions made in accordance with 26 U.S.C. § 125.

(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.

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

(a) Limitations concerning 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 annuity contract.
2. If a participant earns less than 50 percent of full base 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 base salary during a pay period, the salary reduction will be calculated on the base salary earned.

(b) Limitations concerning 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.

### 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.

(c) The following statement shall be incorporated in every written notice setting forth the Division of Pensions and Benefits' determination in a matter where such determination is contrary to the claim made by the claimant or his or her legal representative:

"If you disagree with the determination of the Division of Pensions and Benefits in this matter, you may appeal by sending a written statement to the Division within 45 days from the date of this letter, informing the Division of your disagreement and all of the reasons therefor. If no such written statement is received within the 45-day period, this determination shall be considered final."

### 17:7-1.7 Records

(a) The records of the Alternate Benefit Programs are public record, and may be inspected during regular business hours at the Division of Pensions and Benefits under supervision of the assistant director or other representatives of the office.

(b) Records considered confidential include medical reports submitted for any purpose, mailing addresses of active and retired participants and individual files relating to beneficiary designation, where no official purpose or reason for inspection is indicated.

#### 17:7-1.8 Reporting of employee and employer contributions

(a) Effective January 1, 1995 mandatory contributions are subject to the provisions of Section 414(h)(2) of the Internal Revenue Code of 1954, 26 U.S.C. 414(h)(2), as amended.

(b) A participant may have voluntary additional tax-deferred contributions withheld by entering into a salary reduction agreement with the employer. These voluntary additional contributions cannot exceed the employee's statutory exclusion allowance under 26 U.S.C. § 403(b) or the limitations of Section 415 of the Internal Revenue Code, (26 U.S.C. § 415), and the regulations thereunder. Voluntary tax-deferred contributions should be computed on the participant's actual salary less mandatory pension contribution and Section 125 contribution, (26 U.S.C § 125).

(c) To the extent that mandatory employee contributions and employer contributions required by the Alternate Benefit Program exceed the limits established pursuant to Section 415 or Section 403(b) of the Internal Revenue Code, (26 U.S.C. § 415 and § 403(b)) and the regulations thereunder, the excess shall be made to participant's non-qualified plan.

(d) An employer claiming reimbursement of employer contributions for its employees enrolled in the Alternate Benefit Program shall certify to the Division of Pensions and Benefits the number of active and delayed vested participants for whom employer contributions were paid to the annuity provider. Such certification shall be made by the fifth day of the month following the month for which deductions were made. Copies of the annuity provider's report summary supporting employer and employee contributions shall accompany the Employer Contribution Report certification.

(e) No later than July 5th, the employer shall provide the Division of Pensions and Benefits with a duplicate report(s) of the employer and employee contributions that it sends to each of the respective annuity providers for the last month of the school year.

(f) No later than July 31, the Division of Pensions and Benefits shall submit to employers the Annual Salary Listing for Alternate Benefit Program participants. The employer is responsible for reporting the June 30 salary for that fiscal year for all active Alternate Benefit Program participants within the time frame established by the Division.

As amended, R.1981 d.240, effective July 9, 1981.

See: 13 N.J.R. 309(a), 13 N.J.R. 458(b).

(c): "Regarding . . . system" added.

As amended, R.1984 d.374, effective August 20, 1984.

See: 16 N.J.R. 703(a), 16 N.J.R. 2302(b).

Amended by R.1985 d.664, effective January 6, 1986.

See: 17 N.J.R. 2603(a), 18 N.J.R. 93(a).

Old (a) deleted and new text substituted; (b) text "or the allocation . . . Retirement Equities Fund" deleted and "or reductions substituted."

#### 17:7-1.9 Travel

Travel to and from work is not considered duty rendered in the course of employment for the purpose of determining eligibility for accidental death benefits.

#### 17:7-1.10 Fiscal year

(a) Fiscal year shall mean the 12-month period of fiscal transactions commencing July 1 and running until June 30 following.

(b) All reports and statements shall consider such a fiscal year except special reports not having direct relationship to the financial transactions of the retirement system.

#### 17:7-1.11 Contributions; late payment

(a) Participating institutions, which shall include the State for locations on State centralized payroll, shall pay employer and employee contributions (deductions and reductions, except for 403(b) salary reductions (26 U.S.C. § 403(b)) to the annuity provider underwriting annuity contracts within 30 days after the month in which the employee contributions are withheld, or within 15 days of receipt from the annuity provider of the statement of amount owed by the institution, whichever is later, but in no event later than 45 days after the month in which the employee contributions are withheld.

(b) All 403(b) (26 U.S.C. § 403(b)) amounts payable on behalf of an employee for a pay period, shall be transmitted to the employee's annuity provider and credited not later than the fifth business day after the date on which the employee is paid for that pay period.

(c) If a participating institution fails to withhold pension contributions within the first 12 months of the participant's eligibility, the institution shall pay interest on the contributions. The rate of interest is the average rate of return, to the nearest hundredth percent, of the State Cash Management Fund (State accounts) as reported by the Division of Investment for the fiscal year ending June 30 preceding the period for which interest is payable. No interest is payable if the amount of interest is less than \$10.00.

(d) The daily rate for interest on the contributions shall be the annual rate divided by 365, rounded to the nearest one-hundredth percent. The interest payable for each participant shall be indicated on the report to the carrier when the interest is paid.

(e) If participating institutions do not withhold pension contributions within the first 12 months of the participants

eligibility, the institution shall be liable for the employers share and shall forfeit reimbursement by the State.

New Rule, R.1987, d.276, effective July 20, 1987.  
See: 18 N.J.R. 1256(a), 19 N.J.R. 1235(a).

#### **17:7-1.12 Additional investment products and default annuity provider**

(a) The Division of Pensions and Benefits may, in its sole discretion, authorize existing Alternate Benefit Program annuity providers to add additional investment options to their existing product line for investment by participants. The availability of such new investment options, if any, shall be effective upon the Director's approval. A new investment option may be made available during a plan year if the Division of Pensions and Benefits must replace an investment option which has been eliminated for any reason.

(b) The Division shall notify the designated annuity providers of their ability to add additional investment options, permitting the designated annuity providers, upon the Director's approval, to prepare a structured proposal of the additional investment options.

(c) The annuity provider has a duty to select and offer those investment funds suitable to the needs and goals of the Alternate Benefit Program.

(d) The Division shall designate a default annuity provider to accept contributions from eligible participants of the Alternate Benefit Program who fail to select an annuity provider.

#### **17:7-1.13 Transfers, direct rollovers**

(a) An annuity provider shall permit transferability of an accumulated balance under the Alternate Benefit Program or any portion thereof to another annuity provider within the Alternate Benefit Program, subject to any applicable Federal laws, and this chapter.

(b) Annuity provider shall accept a transfer of a participant's account from other annuity providers within the Alternate Benefit Program, subject to any applicable Federal laws and the terms of the Alternate Benefit Program. Transfers between the annuity providers shall be treated in the same manner as other contribution payments.

(c) Funds transferred from participant's accounts to other annuity providers shall be deposited in accordance with the regulations of the U.S. Securities and Exchange Commission. Transferred funds shall be accompanied by a statement identifying the money type, source of contribution, and tax status for deposit into carrier's 401(a), 403(b) and non-qualified deferred annuity plan.

(d) Amounts distributed to a participant from another qualified plan may not be transferred into the participant's Alternate Benefit Program retirement account.

#### **17:7-1.14 Domestic relations orders**

(a) The participant's annuity provider, upon receipt of a certified copy of a domestic relations order as defined in 26 U.S.C. § 414(p), shall determine whether such order is a qualified domestic relations order, and shall notify the participant or retiree and each alternate payee of such determination. Payment of benefits to Alternate Payees cannot begin until the participants retire or withdraw their contributions.

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## **SUBCHAPTER 2. ENROLLMENT**

### **17:7-2.1 Enrollment eligibility; general provisions**

(a) Full-time faculty members, visiting professors and professional administrative staffs of the University of Medicine and Dentistry of New Jersey, Rutgers—The State University, the New Jersey Institute of Technology, the State universities and colleges, the county colleges, the Commission of Higher Education and the Higher Education Student Assistance Authority are eligible to participate in the Alternate Benefit Program under the provisions of N.J.S.A. 18A:66-167 et seq.

1. For the purposes of this subchapter, "professional administrative staff" means any employee whose minimum qualifications for hiring include a baccalaureate degree or its equivalent, but shall not include career service employees as defined by the Department of Personnel pursuant to the provisions of Title 11A of the New Jersey Revised Statutes.

2. For the purposes of this subchapter, "full-time" shall be defined as working 50 percent or more of the normal work week.

(b) Any eligible person who has been enrolled in the Alternate Benefit Program for at least one year may continue to be enrolled in the program, notwithstanding promotion or transfer to a position within the institution not otherwise eligible for the program.

(c) An Alternate Benefit Program participant shall be immediately vested if they own an annuity contract that contains employee and employer contributions based upon higher education employment or is an active or vested member of a state-administered retirement system in New Jersey or the United States. The retirement contract must be in force and the member entitled to receive benefits at a future date. Employee contributions are remitted to the carrier upon enrollment in the Alternate Benefit Program.

(d) Employees meeting the following criteria shall not be eligible to participate in the Alternate Benefit Program:

1. Individuals temporarily within the United States under an F or J visa;

2. Temporary employees who are appointed for one school year, one semester or a lesser period of time. Any such full-time employee reappointed for a third consecutive semester may enroll within the Alternate Benefit Program;

3. Any employee receiving a retirement benefit from any pension system of the State of New Jersey, including an individual collecting an annuity or cash distribution from the Alternate Benefit Program; or

4. Individuals employed in a clerical or other non-professional position.

(e) The Director of the Division of Pensions and Benefits shall have responsibility to determine eligibility for participation in the Alternate Benefit Program in accordance with the law and rules governing the retirement system.

1. If the Division of Pensions and Benefits declares a particular job title to be eligible, all personnel currently employed in that title at that institution will then become eligible for participation in the Alternate Benefit Program and must, if otherwise eligible, elect within 90 days to participate in either the Alternate Benefit Program or the Public Employees' Retirement System.

2. If an individual does not file an "Election of Retirement Coverage" form during this 90-day period, the individual must remain in, or, if a member of the Teachers' Pension and Annuity Fund, transfer to the Public Employees' Retirement System.

Repeal and New Rule, R.1995 d.215, effective May 1, 1995.  
See: 27 N.J.R. 469(b), 27 N.J.R. 1811(a).  
Formerly "Eligibility; new faculty position".

#### **17:7-2.2 Retention of contributions; compulsory enrollment; incomplete enrollment application**

(a) No employee or employer contributions shall be authorized by the Division of Pensions and Benefits for payment to any annuity provider until completed enrollment applications have been filed.

(b) Employees of the participating institutions who satisfy the eligibility requirements of N.J.A.C. 17:7-2.1 shall be required to enroll as members of the Alternate Benefit Program as a condition of employment. The compulsory enrollment date shall be fixed as the first of the month for an employee whose regular appointment date falls between the first through the 16th of the month. An employee whose regular appointment date falls between the 17th and the end of the month shall be fixed as of the first of the following month.

(c) If there is a delay in enrolling the participant into the Alternate Benefit Program, the employer shall be responsible for collecting contributions from the participant's eligible enrollment date.

(d) If the employee fails to file an application for enrollment, even though the eligible employee and the employer have been advised of the compulsory nature of enrollment, the certifying officer shall be obligated to complete Part I and Part II of the enrollment application no later than 30 days after the employee's eligibility determination date. The employee's estate shall be the employee's beneficiary for the employee's account until such time as proper designation forms are received by the Division of Pensions and Benefits.

(e) If the employee fails to designate an annuity provider, the certifying officer shall be obligated to complete the appropriate application to enroll the employee with the annuity provider selected as the default annuity provider for the current plan year. In these situations, the employer shall be required to submit both the employee's and employer's contributions to the default annuity provider designated for that plan year no later than 45 days after the commencement of payroll deductions.

R.1973 d.171, effective June 28, 1973.  
See: 5 N.J.R. 203(b), 5 N.J.R. 294(a).

#### **17:7-2.3 Part-time faculty members**

Alternate Benefit Program participants who concurrently work with the same employer in a part-time position, which is covered by another State administered pension plan, shall be ineligible to make ABP or other State administered pension plan contributions from their concurrent part-time salary.

Amended by R.2002 d.370, effective November 18, 2002.  
See: 34 N.J.R. 825(a), 34 N.J.R. 3969(a).

Inserted "with the same employer" preceding "in a part-time position", and inserted "or other State administered pension plan" preceding "contributions".

### **SUBCHAPTER 3. MEMBERSHIP**

#### **17:7-3.1 Base or contractual salary**

(a) N.J.S.A. 18A:66-169c provides that only base or contractual salary is subject to pension contributions. Payments related to guaranteed faculty practice moneys shall be included in such base salary up to the extent provided by N.J.S.A. 43:3C-9.1 et seq. The participant's mandatory contributions shall be computed on earned base salary and the employer's contributions shall be computed on the participant's contractual salary.

(b) If the participant elects to have voluntary additional contributions (elective 403(b)) made by entering into a salary reduction agreement with the employer, the contribution percentage is applied against the participant's actual salary after taking into account deductions for mandatory contributions and Section 125 (26 U.S.C. § 125) contributions.

As amended, R.1976 d.36, effective February 5, 1976.  
See: 7 N.J.R. 578(a), 8 N.J.R. 140(d).

### 17:7-3.2 Delayed vested contribution

(a) Mandatory contributions during a participant's first year of employment, including earnings credited thereto, shall be held in delayed vested status with the designated annuity provider specified by the participant.

(b) A participant who is in delayed vested status shall be ineligible to engage in the following transactions:

1. Loans;
2. Transfers of account accumulations between Alternate Benefit Program annuity providers; and
3. Investments of mandatory contributions with more than one annuity provider.

(c) The delayed-vested portion of a terminated participant's account attributable to employer contributions shall be forfeited at the time of termination. Such forfeitures shall be applied to the current or next succeeding employer contribution to the annuity provider underwriting the terminated participant's annuity contract. Repurchase account forfeitures, plus or minus any gains or losses from investment by the vendor, should be reported to the Division of Pensions and Benefits in the ABP Employer Contribution Report. The reimbursement of a subsequent ABP Employer Contribution Report shall be reduced by the reported forfeiture amount.

(d) The participating institutions shall be required to notify the designated annuity providers when a participant enters delayed vesting and has completed one year of service and is no longer in delayed vested status.

### 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 annuity provider if the participant terminates all employment subject to coverage by the Alternate Benefit Program.

(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).

### 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 base salary during a pay period. On the monthly 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 base salary during a pay period, no deductions should be made, and the member's ABP status shall be the same as that of a member on leave of absence without pay.

(b) Voluntary tax-deferred contributions (403(b) contributions) for a participant granted a leave of absence with pay shall be calculated on the actual base salary paid less the mandatory pension contribution, if the participant earns 50 percent or more of full base salary during a pay period. If a participant earns less than 50 percent of full base salary during a pay period, no payroll deductions shall be made for elective 403(b) voluntary additional contributions.

(c) Voluntary after-tax contributions elected by a participant granted a leave of absence with pay shall be calculated on the full base salary if the participant earns 50 percent or more of full base salary during a pay period. If the participant earns less than 50 percent of the full base salary during a pay period, no deductions shall be made for elective after-tax deductions.

(d) In order to give effect to the limitations of Section 415(c)(3) of the Internal Revenue Code (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 403(b) plan.

(e) 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), (c) and (d) 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.

**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 annuity provider for the period of the military leave per N.J.A.C. 17:1-4.36.

**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 annuity provider(s) and consistent with applicable Federal income tax law. Hardship withdrawals are limited to a participant's 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 annuity contracts purchased under the program.

(b) The annuity 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 annuity 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 annuity provider) shall be suspended for 12 consecutive months. When salary reduction resumes, the affected employee's Section 402(g) limit shall be reduced by the amount of any elective deferral made in the year the hardship withdrawal was taken.

**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 carrier.

(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).

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## 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).

#### 17:7-4.3 Death before payment to insurer

If a participant dies before the employee annuity deductions have been paid to the designated insurer, the deductions shall be paid in a single sum by the employer to the designated annuity provider.

#### 17:7-4.4 Base monthly salary for disability benefits

(a) In determining disability benefits, base monthly salary for 12-month employees shall be 1/12 of the participant's last 12 months of salary on which employer contributions were remitted prior to the last day of work as a result of the disability.

(b) In determining disability benefits, base monthly salary for 10-month employees shall be 1/10 of the participant's last 10 months of salary on which employer contributions were remitted prior to the last day of work as a result of the disability.

#### 17:7-4.5 Life insurance

(a) Any participant, who is reported on other than a 12-month contract year shall continue to be insured for the regular seasonal layoff provided a bona fide employee-employer relationship exists during this period as determined by the Division of Pensions and Benefits.

(b) The salary, in the month or biweekly pay period in which no salary was paid, shall be counted as zero.

(c) Death benefits shall be based upon the base salary upon which employer contributions were made to the Alternate Benefit Program during 12 months or 26 biweekly pay periods immediately preceding death.

(d) If a member dies within the first year following the date of enrollment, the insurance benefit shall be 3½ times the salary on which Alternate Benefit Program employer contributions were based on the actual months or pay periods of creditable service.

R.1982 d.483, effective January 17, 1983.  
See: 14 N.J.R. 1200(b), 15 N.J.R. 95(c).

#### 17:7-4.6 Long term disability insurance

(a) In accordance with the provision of the Federal Age Discrimination in Employment Act and upon advice of the New Jersey Attorney General's Office and despite the provisions of N.J.S.A. 18A:66-184, a participant enrolling in the Alternate Benefit Program or a participant becoming determined to be totally disabled after age 60 but under 70 will be eligible for long term disability insurance benefits.

(b) A participant determined to be totally disabled shall be eligible for long-term disability benefits if the participant has completed one year of full-time continuous service in a designated Alternate Benefit Program position pursuant to N.J.S.A. 18A:66-184.

(c) The disability benefits provided shall commence after six months of continuous disability. The disability benefits shall terminate the earlier of either the participant's retirement date or 70th birthday.

(d) A participant who is in receipt of long term disability benefits shall be entitled to full pension rights. The insurance carrier shall make the basic pension contribution that the participant would have been required to make while actively working. Employer contributions shall continue.

(e) Payments from short term disability or salary continuation plans underwritten by private carriers shall not be credited as base salary for the calculation of long term disability benefits nor shall contributions based on these payments be accepted.

(f) The disability benefit shall be offset by the receipt of periodic workers compensation benefits, Social Security benefits or other periodic benefits for loss of time on account of the disability pursuant to N.J.S.A. 18A:66-185.

R.1982 d.483, effective January 17, 1983.  
See: 14 N.J.R. 1200(b), 15 N.J.R. 95(c).

#### 17:7-4.7 Life insurance coverage during leave for illness

Life insurance coverage during a leave of absence due to illness, as set forth in N.J.S.A. 18A:66-176, shall apply only to the personal illness of the participant.

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### 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

If an Alternate Benefit Program participant terminates employment in a covered institution and becomes employed in an eligible position in another New Jersey public institution, the Division of Pensions and Benefits will, upon the filing of the required forms with the Division, continue all of the participant's rights and obligations in the New Jersey Alternate Benefit Program.

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.1995 d.215, effective May 1, 1995.  
See: 27 N.J.R. 469(b), 27 N.J.R. 1811(a).

### 17:7-5.2 Transfers, interest

Pursuant to the provisions of N.J.S.A. 18A:66-173, when payment of the transferred member's reserves in the State-administered retirement system is made more than 30 days after eligibility for the transfer, interest is added to the reserves being transferred from the system to the carriers of the Alternate Benefit Program. The 30-day period after eligibility for transfer shall not begin to run until the Division of Pensions and Benefits has received all the documents or other related information necessary to effectuate the transfer in question. The rate of interest is the average rate of return, to the nearest hundredth percent, of the State Cash Management Fund (State accounts) as reported by the Division of Investment for the fiscal year ending June 30 preceding the period for which interest is payable. No interest is payable if the amount of interest is less than \$10.00.

R.1982 d.480, effective January 17, 1983.

See: 14 N.J.R. 1201(a), 15 N.J.R. 96(a).  
Amended by R.1988 d.316, effective July 18, 1988.  
See: 20 N.J.R. 969(a), 20 N.J.R. 1732(a).

"30 days" was "one year"; added language concerning the average rate of return as payable interest, and a payable threshold of \$10.00.  
Amended by R.1990 d.517, effective November 5, 1990.

See: 22 N.J.R. 2405(a), 22 N.J.R. 3386(a).

Text added to clarify language.

#### Case Notes

Denial of cost free transfers from Public Employees' Retirement System to the Firemen's Retirement System under regulation to remedy prior age discrimination was not error. *Koschker v. Board of Trustees, Police and Firemen's Retirement System*, 233 N.J.Super. 209, 558 A.2d 503 (A.D.1989).

Denial of corrections officer's request to transfer from the Public Employees' Retirement System to the more beneficial Police and Firemen's Retirement System was improper. *Allen v. Board of Trustees, Police and Firemen's Retirement System*, 233 N.J.Super. 197, 558 A.2d 496 (A.D.1989).

Sheriff who had prior opportunity to transfer was not entitled to a cost-free transfer from Public Employees' Retirement System to Police and Firemen's Retirement System, under statute authorizing free transfer to those who had been previously precluded from making a transfer because they were over age 35. *Simon v. Board of Trustees, Police and Firemen's Retirement System*, 233 N.J.Super. 186, 558 A.2d 490 (A.D. 1989), certification denied 117 N.J. 652, 569 A.2d 1348.