

**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).

**Executive Order No. 66(1978) Expiration Date**

Chapter 7, Alternate Benefit Program, expires on April 25, 2006.

**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.

**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.

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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.

## 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.