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Subchapter 1, Administration, Subchapter 2, Enrollment, and Subchapter 3, Membership, were repealed; former Subchapter 4, Insurance, Death Benefits and Retirement, was recodified to Subchapter 22; former Subchapter 5, Transfers, was recodified to Subchapter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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SUBCHAPTER 1. GENERAL PROVISIONS

17:7-1.1 Program established

This document restates the provisions of the Alternate Benefit Program originally established effective July 1, 1969 by P.L. 1969, c. 242 § 4; N.J.S.A. 18A:64A-72, 18A:66-168 through 18A:66-175, 18A:66-183, 18A:66-185 through 18A:66-192, 18A:71A-11, 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-9.4, 43:3C-9.5, 43:3C-9.6, and 43:3C-10 and N.J.A.C. 17:1. The ABP Retirement Plan and the New Jersey Additional Contributions Tax-Sheltered Program are deemed to be pension funds or retirement systems for purposes of P.L. 1968, c. 23 (N.J.S.A. 43:3C-1 et seq.).

17:7-1.2 Program consists of five plans

(a) The Alternate Benefit Program consists of five benefit plans: the ABP Retirement Plan; the New Jersey Additional Contributions Tax-Sheltered Program (ACTS); the Group Life Insurance Plan (the "Group Life Insurance Plan"); the Group Long-Term Disability Benefit Plan (the "Group Long-Term Disability Plan"); and the ABP Pre-1995 Annuity Contracts Plan (Closed Plan). Assets held under the Program for the ABP Retirement Plan shall not be available for the payment of premiums, benefits, or administrative expenses with respect to the Group Life Insurance Plan, the Group Long-Term Disability Plan and/or the New Jersey Additional Contributions Tax-Sheltered Program. Assets held under the Program for the New Jersey Additional Contributions Tax-Sheltered Program shall not be available for the payment of premiums, benefits, or administrative expenses with respect to the Group Life Insurance Plan, the Group Long-Term Disability Plan, and/or the Retirement Plan.

1. ABP Retirement Plan. The ABP Retirement Plan is a plan of retirement benefits for the benefit of eligible employees and their beneficiaries. The ABP Retirement Plan is intended to be a tax-qualified defined contribution pension plan under IRC § 401(a) et seq. The Plan Administrator intends to maintain the ABP Retirement Plan as a profit-sharing plan that qualifies for favorable income tax treatment under IRC § 401(a)(27). The ABP 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 with respect to the ABP Retirement Plan shall be used solely for the purpose of providing benefits under the ABP Retirement Plan and for paying the administrative expenses of the ABP Retirement Plan.

2. New Jersey Additional Contributions Tax-Sheltered Program (ACTS). ACTS is a plan for which the applicable governing body of a public institution of higher education can reduce an employee's base salary pursuant to the agreement and shall pay an amount equal to the amount agreed upon for the salary reduction as an employer contribution to the issuer of the employee's annuity. The ACTS may also include employer contributions in addition to salary reduction contributions. The ACTS is an IRC § 403(b) plan. Assets with respect to the ACTS shall be used solely for the purpose of providing benefits under the ACTS and for paying the administrative expenses of the ACTS.

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

4. Group Long-Term Disability Benefit Plan. The Group Long-Term Disability Benefit Plan is a plan for the provision of group long-term disability insurance benefits for eligible employees.

5. Closed Plan. The Closed Plan is a grandfathered IRC § 403(b) plan providing individual annuity contracts for all public institutions of higher education in the State.

17:7-1.3 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.

17:7-1.4 Governmental plan rules

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

17:7-1.5 Exclusive benefit

The Program, and the Plans under the Program, are established for the exclusive benefit of participants and their beneficiaries. Consistent with IRC § 401(a)(2), no amount held under the ABP Retirement Plan or ACTS will ever inure to the benefit of the Plan Sponsor, any employer, the Plan Administrator, or any successor of any of them, and all ABP Retirement Plan investments and amounts will be held for the exclusive purpose of providing benefits to the ABP 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 ABP Retirement Plan or ACTS assets to be used for or diverted to purposes other than for the exclusive benefit of participants, beneficiaries, and alternate payees in the ABP Retirement Plan, except that payment of taxes and administration expenses may be made from the ABP Retirement Plan assets as provided by the ABP Retirement Plan.

17:7-1.6 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.

17:7-1.7 No additional benefits—ABP Retirement Plan only

No additional retirement, death, or other benefit under the ABP Retirement Plan shall be payable by the State; Rutgers, the State University; the New Jersey Institute of Technology; Rowan University; University Hospital; State colleges and universities; county colleges; or the Division of Pensions and Benefits. Benefits shall be payable to participants and their beneficiaries only by the pension providers under the terms of the contracts with such pension providers.

Amended by R.2015 d.072, effective May 4, 2015.
See: 46 N.J.R. 588(a), 47 N.J.R. 905(b).
Deleted "the University of Medicine and Dentistry;" preceding "Rutgers", and inserted "Rowan University; University Hospital;".

SUBCHAPTER 2. DEFINITIONS

17:7-2.1 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. 18A:66-169 or by the Internal Revenue Code.

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

"Accumulated deductions" means those contributions as defined in N.J.S.A. 18A:66-2 or in section 6 of P.L. 1954, c. 84 (N.J.S.A. 43:15A-6).

"Adjunct faculty members" or "part-time instructors" mean those faculty appointed as adjunct professors or part-time instructors by the respective school, whose employment agreement begins on or after November 1, 2008.

"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 Civil Service Commission pursuant to the provisions of Title 11A of the New Jersey Revised Statutes.

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

"Annuity payment option" means a payment option under the ABP 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, 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 annual salary" means the base salary upon which contributions by the participant and his or her employer to the ABP Retirement Plan were based during the year of creditable service last credited to the participant.

"Base salary" means a participant's regular base or contractual salary. 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). 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 employee's and employer's contributions shall be computed on earned and paid base salary. Base salary excludes bonus, overtime, or other forms of extra compensation, such as:

1. Longevity lump sum payments;

2. Lump sum terminal sick leave or vacation pay;

3. The value of maintenance;

4. Individual pay adjustments made within or at the conclusion of the participant's final year of service;

5. Retroactive salary adjustments or other pay adjustments made in the participant's final year of service unless such adjustment was made as a result of a general pay adjustment for all personnel of the department or institution;

6. Any unscheduled individual adjustment made in the final year to place the member at the maximum salary level within his or her salary range;

7. Any pay for services rendered during the summer vacation period by a participant who is required to work only 10 months of the year;

8. Vehicle allowance or reimbursement;

9. Housing allowance or reimbursement; and

10. Relocation allowance or reimbursement.

"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. A named beneficiary who feloniously and intentionally kills the participant or another beneficiary is not a beneficiary and is not entitled to any distribution or any other right under the Program or any Plan under the ABP Program; and any benefit is paid as though the killer had predeceased the participant or beneficiary. This definition shall not apply to the Group Life Insurance Plan.

"Beneficiary designation" means a valid and effective beneficiary designation made according to N.J.A.C. 17:7-22.

"Benefit" means the right under the ABP 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 Pension Provider Selection Board established under N.J.A.C. 17:7-3.

"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 ABP Retirement Plan or the ACTS, including employee contributions and employer contributions.

"County colleges" means the colleges so defined in N.J.S.A. 18A:64A-1.

"Designated service provider" or "DSP" means a company designated as a provider by the Board under N.J.S.A. 18A:66-172.1, or an insurance company selected by the State Treasurer to provide group life insurance or group long-term disability insurance coverage to participants under N.J.S.A. 18A:66-177. The term designated service provider also includes the pension providers approved to offer investment alternatives to participants of the ABP, the ABP Retirement Plan, and the ACTS. A DSP shall provide group life coverage to participants of the ABP. A DSP shall provide group long-term disability insurance coverage to participants of the ABP.

"Direct rollover" means a payment under the ABP Retirement Plan or the ACTS to an eligible ABP 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 ABP Retirement Plan, Group Life Insurance Plan, or ACTS.

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

"Division of Pensions and Benefits" means the Division of Pensions and Benefits established in the Department of the Treasury pursuant to section 1 of P.L. 1955, c. 70 (N.J.S.A. 52:18A-95) and is the agency responsible for the administration of the Alternate Benefit Program of the State and county colleges and for the administration of the group life and disability insurances of all Alternate Benefit Programs established in the State for public employees.

"Eligible employee" means, with respect to each plan, an employee of an employer who is classified as eligible for participation in the Plan pursuant to N.J.A.C. 17:7-4. 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 of this chapter shall be final and conclusive.

"Employee account" means the account maintained to account for employee contributions and earnings, losses, and administrative expenses charged to the account in the ABP Retirement Plan, the ACTS, or the Closed Plan, as applicable.

"Employee contributions" means those contributions made by the participant to the ABP Retirement Plan pursuant to N.J.A.C. 17:7-5.2.

"Employee voluntary contributions" means those contributions in addition to the employee contribution that the Plan Administrator may permit the participant to make to the ACTS. If the participant elects to have voluntary additional contributions (elective 26 U.S.C. § 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.

"Employer" means county colleges; Rutgers, the State University; Rowan University; University Hospital; and the State colleges, that pays the base salary of a participant for services rendered by the participant. Except as described in this definition, each employer with eligible employees shall be a participating employer with respect to the ABP for the benefit of its eligible employees as described in N.J.A.C. 17:7-4 and not excluded thereunder, and shall not be required to take affirmative action to adopt the ABP 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 the ABP 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 § 414(d) of the Federal Internal Revenue Code or Section 3(32) of the Employees Retirement Income Security Act, as amended. The Plan Administrator's determination in this regard shall be final and conclusive.

"Employer account" means the account maintained to account for employer contributions and earnings, losses, and administrative expenses charged to that account in the ABP Retirement Plan.

"Employer contributions" means those contributions made by the employer pursuant to N.J.A.C. 17:7-5.3 or 17.2.

"Enabling statute" means N.J.S.A. 18A:64A-72.

"Fees" means any fees required or permitted to be charged against the participant's (or beneficiary's or alternate payee's) ABP Retirement Plan account or ACTS account according to any one or more of the following, as applicable: the ABP Retirement Plan, the Participation Agreement, an investment option, including surrender and/or 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 that is accepted or deemed accepted by the participant (or beneficiary), or any court order. Additionally, the ABP Plan Administrator may impose fees to pay for expenses it deems proper to administer the Retirement Plan or the ACTS. 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.

"Full-time officers" and "Full-time members of the faculty" means all full-time officers and full-time members of the faculty, including, but not be limited to, the president, vice president, secretary, and treasurer of the respective school. "Full-time" shall also include eligible full-time officers and full-time members of the faculty who are granted sabbaticals or leaves of absence with pay where the compensation paid is 50 percent or more of the base salary at the time the leave commences and the period of eligibility terminates with the end of the school year following the year in which the sabbatical began.

"Group Annuity Plan" means the Group Annuity Contract R-134 between the Board of Trustees of the New Jersey Institute of Technology and the Prudential Insurance Company of America.

"Group Life Insurance Plan" means the Alternate Benefit Program Group Life Insurance Plan as described in this chapter.

"Group Long-Term Disability Plan" means the Alternate Benefit Program Group Long-Term Disability Benefit Plan as described in this chapter.

"Investment option" means any investment option offered by the Board in accordance with the ABP Retirement Plan's or ACTS's investment policy and approved by the Plan Administrator, for investment by participants (or beneficiaries) of their ABP Retirement Plan accounts or their ACTS accounts.

"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 Securities and Exchange Commission.

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

"Loan coordinator" means the person selected to oversee all aspects of the ABP Retirement Plan's, ACT's, or Closed Plan's loan program.

"Mutual fund company" means an investment company or trust regulated by the Federal Investment Company Act of 1940, 15 U.S.C. §§ 80a-1 et seq.

"New Jersey Institute of Technology" means the public research university comprised of all departments, colleges, schools, centers, branches, educational, and other units and extensions of the Newark College of Engineering, New Jersey School of Architecture, the College of Science and Liberal Arts, the School of Industrial Management, centers, extension and cooperative education programs, continuing education programs, and all other departments of higher education maintained by the education entity of this university.

"Non-academic employee" is one who does not occupy a faculty or other teaching position with academic rank or other equivalent title whose primary employment is not directly related to teaching, research, and/or other aspects of the educational programs of the county college. Adjunct faculty members and part-time instructors of the faculty of Rutgers, the State University; the New Jersey Institute of Technology; Rowan University; the State; and county colleges are excluded from this definition.

"NYSE" means the New York Stock Exchange.

"Part-time" means an appointment where the employee receives a salary or wages for a period of less than 50 percent of the normal work week. This definition shall apply to teaching and administrative staff members, and to employees serving in a dual capacity where the appointment includes teaching, as well as administrative duties. However, adjunct faculty members and part-time instructors of the faculty of Rutgers, the State University; the New Jersey Institute of Technology; Rowan University; the State; and county colleges shall be excluded from this definition.

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

"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, with respect to the ABP Retirement Plan, any, except as limited in this definition, of the options for payment of a participant's ABP Retirement Plan account that is permitted by the Plan Administrator consistent with the terms of the ABP Retirement Plan and any applicable investment contract approved by the Board. A payment option shall not be based on gender-distinct actuarial tables. A payment option must satisfy all applicable provisions of the ABP Retirement Plan, including, but not limited to, the applicable investment contract approved by the Board.

"Pension provider" means an insurance or mutual fund company selected by the Board under N.J.A.C. 17:7-3.

"Pension reserve" means those moneys as defined in N.J.S.A. 18A:66-2 or in section 6 of P.L. 1954, c. 84 (N.J.S.A. 43:15A-6).

"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 ABP Retirement Plan, the ACTS, the Group Long-Term Disability Plan, the Group Life Insurance Plan, and/or the Closed Plan, as the context requires.

"Plan Administrator" means the Director of the New Jersey Division of Pensions and Benefits and includes any designated service provider or pension provider to the extent that the Division of Pensions and Benefits delegates duties to that DSP or pension provider.

"Plan sponsor" means the State of New Jersey and the State and county colleges of New Jersey.

"Plan year" or "fiscal year" means each 12-month period ending June 30.

"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 Civil Service Commission pursuant to the provisions of Title 11A of the New Jersey Revised Statutes.

"Program" means the New Jersey Alternate Benefit Program provided by the enabling statute, as described by this chapter. The Program consists of the ABP Retirement Plan, the ACTS, the Group Life Insurance Plan, the Group Long-Term Disability Plan, and the Closed Plan.

"Qualified Domestic Relations Order" or "QDRO" means a domestic relations order directed to the Retirement Plan or the ACTS 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 ABP 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. 17:7-7.

"Retirement Plan" or "ABP Retirement Plan" means that portion of Alternate Benefit Program that is a qualified plan under IRC § 401(a) and to which IRC § 414(h)(2) contributions are deposited, as described in this chapter and as it may be amended.

"Rutgers, the State University" means the institution of higher education described in Chapter 65 of Title 18A of the New Jersey Statutes.

"Rollover account" means the sub-account maintained to account for rollover contributions pursuant to N.J.A.C. 17:7-13.3 and earnings, losses, and administration expenses charged to that sub-account.

"Rowan University" means the public research university described in Chapter 64M of Title 18A of the New Jersey Statutes.

"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.

"Severance from employment" means the date the participant terminates employment with an employer with no obligation or expectation 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 the individual that is the participant's spouse under applicable law and includes a civil union partner, except where Federal law requires a different definition for compliance with the Internal Revenue Code.

"State colleges" means the colleges so described in Chapter 64 of Title 18A of the New Jersey Statutes.

"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.

"University Hospital" means the principal teaching hospital of the New Jersey Medical School, New Jersey Dental School, and any other medical education programs located in Newark, pursuant to the terms of P.L. 2012, c. 45. ABP membership eligibility at this employing location applies only to those individuals employed by the former University of Medicine and Dentistry of New Jersey on June 30, 2013, who became employees of University Hospital on July 1, 2013, under special provisions of P.L. 2012, c. 45. All other employees of University Hospital are not eligible to participate in the ABP.

"University of Medicine and Dentistry" or "UMDNJ" means the University of Medicine and Dentistry of New Jersey established pursuant to the terms of section 3 of P.L. 1970, c. 102 (N.J.S.A. 18A:64G-3). Operations of the UMDNJ were merged with or transferred to Rutgers, the State University, Rowan University, or University Hospital on July 1, 2013, pursuant to the terms of P.L. 2012, c. 45.

"Valuation date" means any day on which both the NYSE is open for regular trading and the applicable designated service provider 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.

Amended by R.2015 d.072, effective May 4, 2015.
See: 46 N.J.R. 588(a), 47 N.J.R. 905(b).
In definition "Base salary", deleted "and" from the end of paragraph 6, substituted a semicolon for a period in paragraph 7, and added paragraphs 8 through 10; in definition "Distribution", inserted ", Group Life Insurance Plan,"; in definition "Employer", deleted "the University of Medicine and Dentistry;" following "means", and inserted "Rowan University; University Hospital;"; in definitions "Non-academic employee" and "Part-time", deleted "the University of Medicine and Dentistry of New Jersey" preceding "Rutgers", and inserted "Rowan University;" ; added definitions "Rowan University" and "University Hospital"; and rewrote definition "University of Medicine and Dentistry".

SUBCHAPTER 3. PENSION PROVIDER SELECTION BOARD

17:7-3.1 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 Division of Purchase and Property or a designee; and

5. A person appointed by the Director of the Division of Pensions and Benefits who is an active participant or receiving a benefit from the Alternate Benefit Program.

17:7-3.2 Selection of pension providers

(a) The Board shall select through a competitive bidding process at least three unrelated insurance or mutual fund companies licensed or otherwise authorized to transact business in New Jersey from which alternate benefit contracts will be purchased or investment options will be provided for the Retirement Plan and for the ACTS. These insurers or mutual fund companies shall be selected by competitive bidding in accordance with all applicable State laws and regulations. The selected pension providers shall be authorized to receive contributions within 60 days of their selection. Each contract shall be awarded for a period not to exceed six years with a renewal option for a period not to exceed three years. All pension providers shall be subject to a performance review by the Board every seven years and must meet such standards as the Board shall establish by rule in order to be renewed for another term of seven years as pension providers. The ability to remove a pension provider for cause during a seven-year term is not waived. In establishing by rule the criteria for the initial selection and any performance review of a pension provider, the Board shall consider, among other things, the following:

1. The portability of the contracts and investment options offered or to be offered by the company, based on the number of states in which the company provides contracts under similar plans;

2. The efficacy of the contracts and investment options in the recruitment and retention of employees for the various State public institutions of higher education;

3. The nature and extent of the rights and benefits to be provided by the contracts and investment options for participating employees and their beneficiaries;

4. The relation of the rights and benefits to the amount of contributions to be made pursuant to the provisions of N.J.S.A. 18A:66–172.1;

5. The suitability of the rights and benefits to the needs and interests of participating employees and the various State public institutions of higher education; and

6. The ability of the company to provide the rights and benefits under such contracts and investment options.

(b) The Board may not designate a company that serves as a disbursement system for other providers or which charges third-party administrative fees.

(c) A company that has been designated as of January 1, 1993 by the Division as a designated provider shall continue to be so designated until its status as a designated provider is terminated for cause by the Division or by the Board.

17:7-3.3 Performance review

(a) The Division shall review on an annual basis, or sooner if needed:

1. The financial soundness of the company, the extent of the company's financial commitment to the contracts and investment options, and whether the company meets the minimum financial criteria established by the Division;

2. The company's overall quality of service, its investment performance considering return on investments and risk, the administrative fee to be charged to participants, and the offering of a balanced array of investment opportunities; and

3. The nature of the informational or promotional materials to be provided to eligible employees.

SUBCHAPTER 4. PARTICIPATION IN THE ALTERNATE BENEFIT PROGRAM

17:7-4.1 Mandatory participation in the Alternate Benefit Program

(a) The following employees shall be eligible and shall immediately enroll in the Alternate Benefit Program:

1. All full-time officers and all full-time members of the faculty of Rutgers, the State University; the New Jersey Institute of Technology; Rowan University; the State universities and colleges; the county colleges; and all regularly appointed teaching and administrative staff members in applicable positions, as determined by the Director of the Division;

2. Adjunct faculty members and part-time instructors of the faculty of Rutgers, the State University; the New Jersey Institute of Technology; Rowan University; the State universities and colleges; and the county colleges, who teach a minimum of one three-credit hour course for a full fall or spring semester.

i. Adjunct faculty and part-time instructors will be considered 10-month employees.

ii. Salary is reportable and service will be accrued for teaching only during the spring and fall semesters.

iii. Six months of service credit will be earned for teaching a minimum of one three-credit hour course for the full semester.

iv. Additional teaching responsibilities over the minimum under this paragraph during the spring or fall semester will be pensionable based on the salary earned during each full semester.

v. Teaching assignments outside of the spring or fall semester or below the minimum will not accrue ABP service credit and related salary is not pensionable; and

3. Under special provisions contained in P.L. 2012, c. 45, all ABP members employed by the former University of Medicine and Dentistry of New Jersey on June 30, 2013, who are employees of University Hospital on July 1, 2013.

i. An employee who terminates employment with University Hospital for any reason and subsequently becomes reemployed by University Hospital will not be permitted to resume participation in the ABP.

ii. No employee of University Hospital hired on or after July 1, 2013, except those former employees of the University of Medicine and Dentistry of New Jersey who were employed by University Hospital on July 1, 2013, shall be eligible to participate in the ABP.

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

17:7-4.2 Ineligibility

(a) Employees meeting the following criteria shall not be eligible to participate in the ABP:

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;

3. Individuals employed in non-administrative staff positions;

4. Any person receiving a benefit by reason of his or her retirement from any retirement or pension system of the State of New Jersey or any political subdivision thereof (including an individual collecting an annuity or cash distribution from the Retirement Plan);

5. Those persons appointed in a part-time or temporary capacity, except as provided under N.J.A.C. 17:7-4.1(a)2 and 4.3(h);

6. Physicians and dentists holding employment in positions titled intern, resident, or fellow on or after September 2, 1982;

7. Persons compensated on a fee basis;

8. Members of the Teachers' Pension and Annuity Fund, the Public Employees' Retirement System, the Police and Firemen's Retirement System, or the Group Annuity Plan, who did not elect to transfer to the Alternate Benefit Program in accordance with the provisions of Chapter 64C or 65 of Title 18A of the New Jersey Statutes, P.L. 1967, c. 278 (N.J.S.A. 18A:66-130 et seq.), or P.L. 1967, c. 281 (N.J.S.A. 18A:66-142 et seq.), or P.L. 1968, c. 181 (N.J.S.A. 18A:66-154 et seq.);

9. Any eligible employee who has been enrolled in the Alternate Benefit Program for at least one year who is promoted or transferred to a part-time position within the institution will not be eligible for continued participation in the Alternate Benefit Program on the basis of that employment, unless they are covered by N.J.A.C. 17:7-4.1(a)2;

10. Non-U.S. citizens employed outside the United States; and

11. U.S. citizens employed outside the United States, where compensation paid is not subject to tax under the Federal Insurance Contributions Act (FICA).

(b) 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 Alternate Benefit Program contributions from their concurrent part-time salary.

Amended by R.2015 d.072, effective May 4, 2015.
See: 46 N.J.R. 588(a), 47 N.J.R. 905(b).
In (a)8, deleted "and" from the end; in (a)9, substituted a semicolon for a period; and added (a)10 and (a)11.

17:7-4.3 Optional participation

(a) An eligible employee of an employer who has been enrolled in the Alternate Benefit Program for at least one year pursuant to this section may continue to be enrolled in the Alternate Benefit Program, notwithstanding promotion or transfer to a position within the institution not otherwise eligible for the Alternate Benefit Program.

(b) Notwithstanding any other provision of the statutory law, the Commissioner of Education shall have the option to enroll in the Alternate Benefit Program if he or she exercises such option within 10 days from the date of his or her appointment.

(c) Any employee enrolled in the Alternate Benefit Program who is subsequently deemed to be eligible for enrollment by the Office of the Secretary of Higher Education pursuant to this chapter is permitted to continue his or her participation in the Alternate Benefit Program from the date of his or her original enrollment.

(d) Notwithstanding the provisions of any law to the contrary, any former employee of the Office of the Secretary of Higher Education or of the Commission on Science and Technology, created pursuant to Executive Order No. 12 (1982), who was a participant in the Alternate Benefit Program and who has continued in uninterrupted service with the New Jersey Commission on Science and Technology, created pursuant to P.L. 1985, c. 102 (N.J.S.A. 52:9X-1 et seq.), may continue to participate in the Alternate Benefit Program on the same terms as if the employee was an eligible employee of the Office of the Secretary of Higher Education.

(e) Notwithstanding the provisions of any law to the contrary, any employee of an auxiliary organization, as defined in section 2 of P.L. 1982, c. 16 (N.J.S.A. 18A:64-27), at a State or county college who has service credited in a private defined contribution retirement plan and who, without a break in service, becomes an employee of the State or county college may participate in the Alternate Benefit Program if the employee enrolled in the Program by February 6, 1993 or enrolls within 10 days from commencement of employment, whichever date is later.

(f) Notwithstanding the provisions of any law to the contrary, any former employee of the Office of Student Assistance who was a participant in the Alternate Benefit Program, P.L. 1969, c. 242 (N.J.S.A. 18A:66-168 et seq.), and who has continued in uninterrupted service with the State and is an employee of the Higher Education Student Assistance Authority may continue to participate in the Alternate Benefit Program on the same terms as other eligible employees.

(g) Notwithstanding the provisions of any law to the contrary, professional administrative staff of the Higher Education Student Assistance Authority are eligible to participate in the Alternate Benefit Program under the provisions of P.L. 1969, c. 242 (N.J.S.A. 18A:66-168 et seq.).

(h) Any temporary full-time employee reappointed for a third consecutive semester may enroll within the Alternate Benefit Program.

(i) If an eligible employee terminates employment with one employer and becomes an eligible employee of another employer in a circumstance described in (a) through (g) above, the eligible employee shall be entitled to an option to continue to be enrolled in the Alternate Benefit Program.

17:7-4.4 Responsibility to determine eligibility for participation in ABP

(a) The Director of the Division shall have the responsibility to determine eligibility for participation in the Alternate Benefit Program in accordance with the law and rules governing the Retirement Plan.

(b) If the Director of the Division 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.

(c) If an individual does not file an Election of Retirement Coverage form during this 90-day period, the individual must remain in the Alternate Benefit Program.

17:7-4.5 Participation in the Teachers' Pension and Annuity Fund, the Public Employees' Retirement System, the Police and Firemen's Retirement System, or the Group Annuity Plan

(a) Any person participating in the Alternate Benefit Program shall be ineligible for membership in the Teachers' Pension and Annuity Fund, the Public Employees' Retirement System, the Police and Firemen's Retirement System, or the Group Annuity Plan and any person electing to participate in the Alternate Benefit Program shall thereby waive all rights and benefits provided by the Teachers' Pension and Annuity Fund, the Public Employees' Retirement System, the Police and Firemen's Retirement System, or the Group Annuity Plan as a member of said fund, system, or plan, except as in this chapter and otherwise provided by law or under terms of the Group Annuity Plan.

(b) An eligible employee who is required to participate in the ABP Retirement Plan pursuant to N.J.S.A. 43:3C-9 may not waive participation under this chapter, except as otherwise provided in the Plan. Any person required to participate in the Alternate Benefit Program by reason of employment, who at the time of such employment is a member of the Teachers' Pension and Annuity Fund, shall be permitted to transfer his or her membership in said fund to the Public Employees' Retirement System, by waiving all rights and benefits that would otherwise be provided by the Alternate Benefit Program. Any such new employee who is a member of the Public Employees' Retirement System will be permitted to continue his or her membership in that system, by waiving all rights and benefits that would otherwise be provided by the Alternate Benefit Program. Such waivers shall be accomplished by filing forms satisfactory to the Division within 30 days of the beginning date of employment.

(c) An individual who is participating in the Teachers' Pension and Annuity Fund, the Public Employees' Retirement System, the Police and Firemen's Retirement System, or the Group Annuity Plan and who becomes an adjunct faculty member shall be mandatorily covered in the Alternate Benefit Program under N.J.A.C. 17:7-4.1(b) for purposes of his or her base salary in the adjunct faculty member position.

17:7-4.6 Transfers from other programs to the ABP Retirement Plan

(a) When a member of the Teachers' Pension and Annuity Fund, the Public Employees' Retirement System, or the Police and Firemen's Retirement System elects to transfer to the ABP Retirement Plan by filing the applicable form declaring his or her election to participate in such Alternate Benefit Program, the respective retirement system shall transfer the amount of his or her accumulated deductions as of the date of transfer to his or her individual account in the ABP Retirement Plan.

(b) There shall also be transferred from the contingent reserve fund or the pension fund of the Teachers' Pension and Annuity Fund, the Public Employees' Retirement System, the Police and Firemen's Retirement System, or from the Group Annuity Plan to the individual's account in the ABP Retirement Plan, the pension reserve required as of the date of his or her transfer to provide a pension for each year of service credited to the account of the member as set forth in N.J.S.A. 18A:66-36 or 18A:66-44; or as set forth in section 38 or 48 of P.L. 1954, c. 84 as such sections have been amended and supplemented as of July 1, 1969 (N.J.S.A. 43:15A-38 and 43:15A-48), as set forth in section 17 of P.L. 1964, c. 241 (N.J.S.A. 43:16A-11.2), or section 5 of P.L. 1944, c. 255 (N.J.S.A. 43:16A-5); or for each year of service credited under the Group Annuity Plan. Such transfer from the contingent reserve fund or the pension fund of the Teachers' Pension and Annuity Fund, the Public Employees' Retirement System, the Police and Firemen's Retirement System, or the Group Annuity Plan shall be made at the time of the member's transfer to the ABP Retirement Plan in the case of any such member who has then met the eligibility requirements for a pension under N.J.S.A. 18A:66-36 or 18A:66-44; section 38 or 48 of P.L. 1954, c. 84 (N.J.S.A. 43:15A-38 or N.J.S.A. 43:15A-48), section 17 of P.L. 1964, c. 241 (N.J.S.A. 43:16A-11.2), or section 5 of P.L. 1944, c. 255 (N.J.S.A. 43:16A-5); or the Group Annuity Plan. In the case of any member who elects to participate in the Alternate Benefit Program who has not then met the eligibility requirements for a pension under N.J.S.A. 18A:66-36 or 18A:66-44; section 38 or 48 of P.L. 1954, c. 84 (N.J.S.A. 43:15A-38 or 43:15A-48), section 17 of P.L. 1964, c. 241 (N.J.S.A. 43:16A-11.2), or section 5 of P.L. 1944, c. 255 (N.J.S.A. 43:16A-5); or under the Group Annuity Plan, the transfer from the contingent reserve fund or the pension fund of the Teachers' Pension and Annuity Fund, the Public Employees' Retirement System, the Police and Firemen's Retirement System, or the Group Annuity Plan shall be effected at the time such requirements have been met, taking into account for the purpose of such eligibility requirement his or her years of membership service at the time of his or her election and his or her subsequent years of service as a full-time member of the faculty of the University of Medicine and Dentistry; Rutgers, the State University; the New Jersey Institute of Technology; or the State or county colleges or as an eligible employee of the Office of the Secretary of Higher Education, or at the time he or she shall have 10 years of credit for New Jersey service and becomes physically incapacitated for the performance of duty if he or she had been a member of the Teachers' Pension and Annuity Fund, the Public Employees' Retirement System, or the Police and Firemen's Retirement System as of the date of transfer.

(c) The annuity to be used in determining the amount of pension is the actuarial equivalent of the member's accumulated deductions transferred from the Teachers' Pension and Annuity Fund, the Public Employees' Retirement System, or the Police and Firemen's Retirement System to the date the member attains 60 years of age, if subsequent to the date of election. The amount of pension is that established by formula within N.J.S.A. 18A:66-44; section 48 of P.L. 1954, c. 84 as such sections have been amended and supplemented as of July 1, 1969 (N.J.S.A. 43:15A-48); or section 5 of P.L. 1944, c. 255 (N.J.S.A. 43:16A-5); or under the Group Annuity Plan, and changes to N.J.S.A. 18A:66-44 or section 48 of P.L. 1954, c. 84 (N.J.S.A. 43:15A-48) or section 5 of P.L. 1944, c. 255 (N.J.S.A. 43:16A-5) enacted subsequent to this chapter or the Group Annuity Plan shall have no application to the provisions of this chapter.

(d) In the event that the eligibility requirement under N.J.S.A. 18A:66-36 or under section 38 of P.L. 1954, c. 84 (N.J.S.A. 43:15A-38) or section 17 of P.L. 1964, c. 241 (N.J.S.A. 43:16A-11.2) or under the Group Annuity Plan is changed at some future date to permit members to become eligible for such benefit prior to the completion of 15 years of service, the transfer of the reserve from the contingent reserve fund or the pension fund of the Teachers' Pension and Annuity Fund, the Public Employees' Retirement System, the Police and Firemen's Retirement System, or from the Group Annuity Plan shall be effective as of the date the member who had elected the Alternate Benefit Program meets the amended eligibility requirement or the effective date of the amendment, whichever is later.

(e) In the event an option is available with respect to the distribution of employee and employer contributions between fixed and variable annuities under the Alternate Benefit Program, the employee shall have the right to determine the percentage distribution of these funds subject to any limitations imposed by the designated insurer or insurers.

(f) No transfer of pension reserves shall be made pursuant to this section where more than two consecutive years elapse in which no employer contributions to an Alternate Benefit Program are required.

R.1982 d.483, effective January 17, 1983.
See: 14 N.J.R. 1200(b), 15 N.J.R. 95(c).
Special Repeal and New Rule, R.2013 d.044, effective January 23, 2013.
See: 45 N.J.R. 667(a).
Section was "Long term disability insurance".

17:7-4.7 Present or former members of Police and Firemen's Retirement System; transfer of contributions

Any person who is or has been a member of the Police and Firemen's Retirement System and who has taken, or shall take, an office, position, or employment in any position covered by the Alternate Benefit Program established pursuant to P.L. 1969, c. 242 (N.J.S.A. 18A:66-167 et seq.), but who, prior to the enactment of P.L. 1981, c. 342, was ineligible to transfer his or her contributions from the Police and Firemen's Retirement System, shall be entitled, upon application, to transfer his or her contributions from the Police and Firemen's Retirement System to the Alternate Benefit Program as provided in section 7 of P.L. 1969, c. 242. If the person's membership in the Police and Firemen's Retirement System has expired on or before December 17, 1981, but he or she has not withdrawn his or her contributions from the system, he or she shall be entitled, upon application, to transfer his or her contributions from the Police and Firemen's Retirement System to the Alternate Benefit Program as provided in section 7 of P.L. 1969, c. 242.

SUBCHAPTER 5. CONTRIBUTIONS TO THE ABP RETIREMENT PLAN

17:7-5.1 Enrollment in ABP Retirement Plan

(a) Employer and employee contributions with respect to the ABP Retirement Plan shall be made with respect to eligible employees who are enrolled as participants in the ABP Retirement Plan as follows:

1. An eligible employee shall be automatically enrolled as a participant in the ABP Retirement Plan, with respect to employee contributions, as a condition of his or her employment.

2. The compulsory enrollment date shall be fixed as the first of the month for an eligible employee whose regular appointment date falls between the first through 16th of the month. An eligible employee whose regular appointment falls between the 17th and the end of the month shall be fixed as of the first of the following month.

3. If there is a delay in enrolling the participant into the ABP Retirement Plan, the employer shall be responsible for collecting contributions from the participant's eligible enrollment date.

4. No employee or employer contribution shall be authorized by the Division for payment to any pension provider until the ABP enrollment application process has been completed.

5. If an employee fails to provide the member information required to complete the ABP enrollment application process, even though the eligible employee and the employer have been advised of the compulsory nature of enrollment, the certifying officer shall be obligated to provide the member information required for enrollment by no later than 30 days after the employee's eligibility determination date.

6. The employee's estate shall be the employee's beneficiary for the employee account until such time as a beneficiary designation on the applicable form is received by the Division.

7. If the employee fails to designate a pension provider on the applicable form, the certifying officer shall be obligated to complete the applicable form to elect the pension provider and investment option selected as the default 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 provider designated for that Plan year no later than 45 days after the commencement of payroll deductions.

17:7-5.2 Employee contribution; pick-up in ABP Retirement Plan

(a) Employee contributions will be made as follows:

1. Rutgers, the State University; the New Jersey Institute of Technology; University Hospital; and Rowan University shall reduce the compensation of each participant in the ABP Retirement Plan and pay over to the insurers or mutual fund companies for the benefit of the participant an employee contribution for the retirement annuity contract or contracts equal to five percent of the participant's base salary. The intervals for payroll shall be determined by the respective school governing bodies.

2. The Division shall provide for reductions from the compensation of each participant in the ABP Retirement Plan employed by the State and county colleges of an employee contribution equal to five percent of the participant's base salary and pay this amount to the insurers or mutual fund companies for the individual's retirement annuity contract or contracts. The intervals for payroll shall be determined by the Division.

(b) Each employer shall pick-up employee contributions with respect to all base salary paid after the effective date with respect to 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 employee contributions. Participants may not elect to receive such contributions directly instead of having them paid by the employer to the ABP Retirement Plan. Employee contributions so picked-up shall be treated for all purposes of the ABP Retirement Plan and State law, but not for Federal tax law, in the same manner as employee contributions made without a pick-up.

Amended by R.2015 d.072, effective May 4, 2015.
See: 46 N.J.R. 588(a), 47 N.J.R. 905(b).
In (a)1, deleted "The University of Medicine and Dentistry of New Jersey;" preceding "Rutgers" and "and" following "State University;"; and inserted "; University Hospital; and Rowan University".

17:7-5.3 Employer contributions

(a) The employer contribution(s) will be made be as follows:

1. Based on a certification to the Division by Rutgers, the State University; Rowan University; University Hospital; and the New Jersey Institute of Technology of the number and base salary of participants, the Division shall authorize the State to make payment of the employer contributions to the ABP Retirement Plan at a rate equal to eight percent of the participant's base salary, except the amount of the contribution shall not exceed eight percent of the maximum salary for department officers established pursuant to section 1 of P.L. 1974, c. 55 (N.J.S.A. 52:14-15.107), which moneys shall be paid to the pension providers for the benefit of each participant.

2. Based on a certification by the Division of the number and base salary of participants employed by the State and county colleges, the State shall make payment of the employer contributions to the ABP Retirement Plan at a rate equal to eight percent of the participant's base salary, except the amount of the contribution shall not exceed eight percent of the maximum salary for department officers established pursuant to section 1 of P.L. 1974, c. 55 (N.J.S.A. 52:14-15.107), which moneys shall be paid to the pension providers for the benefit of each participant.

3. For a member of the Public Employees' Retirement System employed by the county colleges, who is defined in the rules of the Division as a full-time member of the faculty and who is permitted to transfer his or her membership and does so, the State shall pay the employer contribution to the ABP Retirement Plan at a rate equal to eight percent of the participant's base salary, except the amount of the contribution shall not exceed eight percent of the maximum salary for department officers established pursuant to section 1 of P.L. 1974, c. 55 (N.J.S.A. 52:14-15.107).

4. For any non-academic employee of a county college who is eligible for the Alternate Benefit Program according to the rules of the Division, the county college shall pay the employer contribution to the ABP Retirement Plan on the employee's behalf in the same manner as the State, pursuant to this section.

(b) No employer contributions will be paid when the participant is on a leave of absence without pay or when the participant no longer meets the definition of eligible employee.

(c) Timely State reimbursement of employer contributions is dependent upon receipt in good order by the Division of all necessary certifications and information.

Amended by R.2015 d.072, effective May 4, 2015.
See: 46 N.J.R. 588(a), 47 N.J.R. 905(b).
In (a)1, deleted "the University of Medicine and Dentistry of New Jersey;" preceding "Rutgers" and "and" following "State University;"; and inserted " Rowan University; University Hospital;".

17:7-5.4 Contributions transmitted to designated service provider for ABP Retirement Plan

(a) Except as provided in N.J.A.C. 17:7-5.1, employer and employee contribution amounts for intervals shall be transmitted to the designated service provider by the respective employer for crediting to the participant's account not later than the fifth business day after the date on which the participant is paid for the period of the reduction, as determined by the respective employer.

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

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

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.

(c) The Plan Administrator may adopt rules and procedures to address delinquent contributions.

17:7-5.5 Allocation of contributions to participant's account in Retirement Plan

(a) The DSP shall credit to each participant's account (and each applicable sub-account) 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 designated for the Plan year, 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 DSP:

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 account to which employee contributions (and associated investment earnings and administrative expenses, if any) shall be credited or debited, as applicable; and

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

17:7-5.6 Contributions limited by IRC § 401(a)(17) – ABP Retirement Plan only

In addition to other applicable limits stated by the ABP Retirement Plan and notwithstanding any other provision of

the ABP Retirement Plan document to the contrary, the amount of base salary determined for the purposes of the contributions to the Retirement Plan for any Plan 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). This provision is subject to N.J.S.A. 43:3C-9.4.

17:7-5.7 Limit on annual additions—ABP Retirement Plan only

(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. Forty-five thousand dollars, 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 ABP 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). To the extent that any contributions required by this section would exceed the limits established pursuant to section 415 of the Internal Revenue Code, the contributions shall not be made to the ABP Retirement Plan. Instead, the excess contributions shall be made to a section 403(b) plan established by the State to the extent that those contributions would be permitted to the plan in compliance with any provisions of the Internal Revenue Code.

(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 ABP 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 IRC § 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. 17:7-11.22.

(i) For purposes of this section, an employee who is in qualified military service (within the meaning of IRC § 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 N.J.A.C. 17:7-5.6.

SUBCHAPTER 6. VESTING AND FORFEITURE—ABP RETIREMENT PLAN ONLY

17:7-6.1 Vesting schedules

(a) The Division may, in its sole discretion, qualify the ABP Retirement Plan under IRC § 401(a) of the Federal Internal Revenue Code (26 U.S.C. § 401(a)). In such a case, all contributions to the retirement annuity contracts shall be made as soon as the employee is eligible and has filed application forms required by the annuity pension provider.

1. A participant's interest in that portion of his or her account attributable to employee contributions shall immediately become and shall at all times remain fully vested and nonforfeitable.

2. A participant's interest in that portion of his or her account attributable to employer contributions shall become and shall remain fully vested and non-forfeitable on the date the participant commences the second year of employment. However, if at the time of the participant's initial employment, the participant either participates in a program substantially similar to the ABP Retirement Plan or is a member of another State-administered pension fund or retirement system, the participant's interest in that portion of his or her account attributable to employer contributions shall be immediately and fully vested.

3. Notwithstanding the vesting schedule described in (a)2 above, a participant's interest in that portion of his or her account attributable to employer contributions shall be vested and non-forfeitable upon his or her attainment, while employed by an employer, of age 65.

17:7-6.2 Delayed vested contributions

(a) Employer contributions during a participant's first year of employment, including earnings credited thereto, shall be held in delayed vested status with the DSP specified by the participant. The first year of employment is considered to be completed after the participant has received credit in the Retirement Plan for 12 months of service.

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

1. Loans from the ABP Retirement Plan;

2. Transfers of account accumulations between pension providers; and

3. Investments of employee contributions with more than one pension provider.

(c) The employer shall notify the DSP when a participant enters delayed vested status and then completes one year of service and is no longer in delayed vested status.

(d) An Alternate Benefit Program participant shall be immediately vested if the participant owns an annuity contract that contains employee and employer contributions based upon higher education employment or if participant 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 investment provider upon enrollment in the Alternate Benefit Program.

17:7-6.3 Forfeitures

(a) Forfeitures of non-vested and other amounts under the ABP Retirement Plan shall be used to reduce future employer contributions to the ABP Retirement Plan with respect to the participant's employer. Forfeitures shall not be reallocated among the accounts of participants.

(b) 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 pension provider underwriting the terminated participant's contract. Repurchase account forfeitures, plus or minus any gains or losses from investment by the pension provider, should be reported to the Division in the ABP Retirement Plan Employer Contribution Report. The reimbursement of a subsequent ABP Retirement Plan Employer Contribution Report shall be reduced by the reported forfeiture amount.

17:7-6.4 Forfeiture of employer contributions for dishonorable service

(a) In accordance with N.J.S.A. 43:1-3 and N.J.A.C. 17:1-6.1, the receipt of a public pension or retirement benefit is expressly conditioned upon the rendering of honorable service by a public officer or employee. Therefore, a member's dishonorable service will result in a total or partial forfeiture of the retirement benefits under the ABP Retirement Plan, as determined by the Plan Administrator.

1. When a member is indicted or dismissed, the matter shall be referred to the Director of the Division to determine the status of any claim which may be filed by the member.

2. No credit shall be granted for the period during which the member's salary has been terminated while under indictment or suspension, until the outcome of the proceedings determines the basis for the award of such credit, if any.

3. All claims for retirement, death benefits and the return of contributions cannot be processed until the matter has been completely resolved to the satisfaction of the Director of the Division of Pensions and Benefits. Resolution of the indictment, dismissal, or other charges must be verified by contact with the county Prosecutor's Office, the Attorney General's Office, the Department of Education, the Civil Service Commission, or other responsible agencies.

4. Likewise, in cases where anything pertaining to a member's employment is in litigation, or under appeal, the matter shall be held in abeyance until the Division determines if claims can be processed or whether the processing of such claims are to be postponed pending a final resolution of the litigation or appeal.

5. If an indictment regarding charges related to a member's public employment is received by the Division after the member's date of retirement, the Director of the Division may suspend retirement benefits pending the outcome of the indictment.

6. Where an individual's pension has been forfeited for dishonorable service, any monies accrued in the employer account designated for such individual shall be forfeited. The individual shall retain amounts in his or her employee account, including earnings.

17:7-6.5 Vesting rules

The ABP Retirement Plan shall be construed consistently with IRC § 401(a)(7) as in effect on September 1, 1974.

SUBCHAPTER 7. QUALIFIED DOMESTIC RELATIONS ORDER

17:7-7.1 QDRO procedures

(a) Upon receipt of a certified copy of a domestic relations order as defined in 26 U.S.C. § 414(p), directed to the ABP Retirement Plan or ACTS, the Plan Administrator, or (to the extent authority is so delegated to it) the DSP, will take the following steps:

1. The Plan Administrator will promptly notify the participant or retiree and each alternate payee of receipt of an order and the ABP Retirement Plan's or ACTS' procedures for deciding whether an order is a QDRO.

2. On receipt by the Plan Administrator of an order and during the period in which the Plan Administrator has not yet determined whether an order is a QDRO, the Plan Administrator will not instruct any payment that would be inconsistent with the order to the extent that the order might be a QDRO.

3. The Plan Administrator will continue the participant's investment direction until the Plan Administrator makes its determination.

4. The Plan Administrator will determine, with the advice of legal counsel to the extent necessary, whether the order is a QDRO, considering the factors set forth in N.J.A.C. 17:7-9.3.

5. If the Plan Administrator determines an order is a QDRO, it will:

i. Send notice to the participant and each alternate payee;

ii. Keep ABP Retirement Plan or ACTS accounts consistent with the QDRO; and

iii. Instruct the pension provider to pay the distribution provided by the QDRO.

6. If the Plan Administrator determines an order is not a QDRO, it will not instruct any distribution from the participant's account for a period of 18 months, unless the alternate payee either releases a claim to the benefits or such an escrow is resolved by the Plan Administrator in a manner consistent with the QDRO.

7. The Plan Administrator may delay the commencement of its consideration of any order until the later of the date that is 30 days after receipt of the signed, certified order, or 30 days after the date of the order or the date that the Plan Administrator is satisfied that all rehearing and appeal rights on the order have expired.

8. Any fee(s) for a QDRO charged by a DSP will be deducted and paid from the participant's account.

17:7-7.2 Age of alternate payee

Consistent with IRC § 414(p)(4), an order does not fail to be a QDRO solely because the order directs a distribution or payment to be paid or payable to the alternate payee at a time that is earlier than the participant's earliest retirement age. The alternate payee may request a distribution at any time after the QDRO is approved.

17:7-7.3 Required findings for QDRO

(a) An order will not be determined by the Plan Administrator to be a QDRO unless the Plan Administrator finds that:

1. The order does not require the ABP Retirement Plan or ACTS to provide any type or form of benefit or any option not otherwise provided under that Plan;

2. The order does not require the ABP Retirement Plan or ACTS to provide an increased benefit;

3. The order does not require the payment of benefits to an alternate payee that are required to be paid to another alternate payee under another order that the Plan Administrator (or a state court) previously determined to be a QDRO; and

4. The order clearly specifies:

i. The name and the last known mailing address (if any) of the participant, and the name and the mailing address of each alternate payee;

ii. The amount or percentage, or the manner in which the amount or percentage is to be determined, of the participant's account to be paid (or payable) to each alternate payee; and

iii. The form of payment, and the number of payments, or period to which the order applies.

(b) The Plan Administrator may assume that the alternate payee named by the court order is a proper payee and need not inquire into whether the person named is a spouse or former spouse of the participant.

17:7-7.4 Investment direction during domestic relations matter

Notwithstanding any notice to the Plan Administrator or to any other person dealing with or performing services regarding the ABP Retirement Plan or ACTS that a domestic relations order is or may be presented to be determined as a QDRO, the participant shall continue to exercise his or her duty of investment direction as required by the ABP Retirement Plan or ACTS unless a court order expressly provides otherwise and the Plan Administrator determines that the court order is a QDRO. If a QDRO provides for an alternate payee or any person other than the participant to have a right of investment direction under the ABP Retirement Plan or ACTS, the Plan Administrator shall give effect to that court order to the extent permitted by the ABP Retirement Plan or ACTS.

17:7-7.5 Inability to locate alternate payee

An alternate payee is responsible for maintaining a current residence address on file with the Plan Administrator and the DSP. The Plan Administrator has no duty to locate any alternate payee other than by sending written notice to the last known address on file with it.

SUBCHAPTER 8. DISTRIBUTIONS AND MINIMUM DISTRIBUTION REQUIREMENTS—ABP RETIREMENT PLAN

17:7-8.1 Distribution and repurchase

(a) The ABP Retirement Plan shall provide an option for cash surrender upon a participant's severance from employment. The cash surrender shall be applicable only for employee contributions and accumulations prior to the participant's 55th birthday. However, the cash surrender option shall be applicable to the full amount of all employee and employer contributions and accumulations after the participant's 55th birthday.

(b) In the event a participant in the ABP Retirement Plan terminates his or her employment for reasons other than retirement or disability and requests cash out of his or her annuity or annuities after the participant's 55th birthday, such cash-out amounts shall be allowed provided it meets the conditions under which the insurer or mutual fund company will repurchase annuities automatically.

1. Upon a participant's severance from employment, the participant is entitled to apply to receive his or her vested account(s) under the ABP Retirement Plan in a single sum distribution or, if permitted by the Plan Administrator, in a uniform manner with respect to participants similarly situated, in any other payment option, if any. The Plan Administrator shall prescribe the payment option(s), if any, in addition to the single sum distribution and the rules for determining the payments under any such

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.

17:7-9.2 Definitions

For purposes of this subchapter, the following definitions shall apply:

"Eligible ABP Retirement Plan" is any program defined in IRC §§ 401(a)(31) and 402(c)(8)(B) that accepts the distributee's eligible rollover distribution, as follows:

1. An individual retirement account under IRC § 408(a);

2. An individual retirement annuity under IRC § 408(b) (other than an endowment contract);

3. A Roth individual retirement plan under IRC § 408A;

4. A qualified trust under IRC §401(a) (so long as the Plan agrees to separately account for amounts rolled into the Plan);

5. An annuity plan under IRC § 403(a) (so long as the Plan agrees to separately account for amounts rolled into the Plan);

6. An eligible deferred compensation plan under IRC § 457(b), which is maintained by an eligible governmental employer under IRC § 457(e)(1)(A) (so long as the Plan agrees to separately account for amounts rolled into the Plan); and

7. An annuity contract under IRC § 403(b) (so long as the Plan agrees to separately account for amounts rolled into the Plan).

A "distributee" includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in IRC § 414(p), are distributees with regard to the interest of the spouse or former spouse. A distributee also includes the participant's non-spouse designated beneficiary (including, without limitation, a civil union partner) under N.J.A.C. 17:7-22. In the case of a non-spouse beneficiary, the direct rollover may be made only to an individual retirement account or annuity (IRA) described in IRC § 408(a) or § 408(b) that is established on behalf of the designated non-spouse beneficiary and that will be treated as an inherited IRA pursuant to the provisions of IRC § 402(c)(11). Also, in this case, the determination of any required minimum distribution under IRC § 401(a)(9) that is ineligible for rollover shall be made in accordance with Notice 2007-7, Q&A 17 and 18, 2007-5 I.R.B. 395.

"Eligible rollover distribution" is any distribution from the ABP Retirement Plan of any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:

1. Any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more;

2. Any distribution to the extent such distribution is required under IRC § 401(a)(9); or

3. The portion of any distribution that is not includible in gross income, provided that any portion of any distribution that is not includible in gross income may be an eligible rollover distribution for purposes of a rollover to either:

i. A traditional individual retirement account or individual retirement annuity under IRC § 408(a) or § 408(b); or

ii. A qualified trust, which is part of a plan that is a defined contribution plan under IRC §§ 401(a) or 403(a) that will separately account for the distribution, including the taxable and non-taxable portions of the distribution, in a direct trustee-to-trustee transfer.

17:7-9.3 Rollover of funds from other plans–ABP Retirement Plan and ACTS

(a) The ABP Retirement Plan and ACTS will accept participant rollover contributions and/or direct rollovers of eligible rollover distributions made after December 31, 2001, as described below:

1. Pre-tax contributions from a qualified plan described in IRC §§ 401(a), 401(k), or 403(a), an annuity contract described in IRC § 403(b), and an eligible deferred compensation plan described in IRC § 457(b) which is maintained by an eligible governmental employer under IRC § 457(e)(1)(A); and

2. A participant rollover of the portion of a distribution from an individual retirement account or annuity described in IRC § 408(a) or § 408(b) that is eligible to be rolled over and would otherwise be includible in gross income.

(b) The ABP Retirement Plan does not accept direct rollovers of after-tax or Roth contributions.

17:7-9.4 Eligible rollover distribution payable without delay–ABP Retirement Plan only

The Plan Administrator may (but is not required to) authorize commencement of the eligible rollover distribution less than 30 days after giving an eligible rollover distribution notice only if the following requirements are met. To the extent required by IRC § 402(f) and Treasury Reg. § 1.402(c)-2, the Plan Administrator or designated service provider must inform the distributee in an eligible rollover distribution notice or otherwise that the distributee has a right to a period of at least 30 days after receiving the eligible rollover distribution notice to consider the decision of whether to elect such a distribution and any available payment option, and the

distributee after receiving the eligible rollover distribution notice must affirmatively elect such a distribution.

SUBCHAPTER 10. PLAN ADMINISTRATION—ABP PROGRAM

17:7-10.1 Authority of Plan Administrator

(a) The Plan Administrator has full and complete authority and discretion to control and manage the operation of the Program. The Plan Administrator has any and all powers as may be necessary or advisable to discharge its duties under the Program, and has complete discretionary authority to decide all matters and questions under the Program.

(b) Without limiting the comprehensive effect of (a) above, the Plan Administrator's discretionary decisions may include, but shall not be limited to, any decision as to:

1. Whether a natural person is an employee;

2. Whether an employee belongs to a particular employment classification;

3. Whether an employee is an eligible employee, the amount of a participant's base salary, and the amount of contributions to be made;

4. Whether an amount of contributions exceeds the limits prescribed by the ABP Retirement Plan or applicable law;

5. Whether a payment option is an annuity payment option;

6. Whether a participant has a severance from employment;

7. Whether a beneficiary designation is valid or effective, and who is the proper beneficiary;

8. Whether a participant or beneficiary is a minor or incompetent, the person who is a proper recipient for a participant or beneficiary who is a minor or an incompetent; and

9. Whether any power-of-attorney is effective and acceptable to act with respect to the Program.

(c) The discretionary decisions of the Plan Administrator are final, binding, and conclusive on all interested persons for all purposes.

17:7-10.2 DSP responsibilities

Each DSP will be responsible for participant communication, administration, recordkeeping, and investment management services as set forth in the applicable RFP and response/proposal submitted by the DSP and the contracts entered into pursuant to those documents.

17:7-10.3 Plan Administrator responsibilities

The Plan Administrator is responsible for performing or delegating to the DSP all duties required for the operation of the Program and each Plan under the Program. The Plan Administrator is responsible for supervising the performance of the DSP.

17:7-10.4 Information from employer

To enable the Plan Administrator to perform his or her responsibilities, the employer shall promptly provide to the Plan Administrator complete and accurate information on any matter that is required by the Plan Administrator in order to make any decision or determination under the Program. The Plan Administrator shall rely upon this information as supplied by the employer, and shall have no duty or responsibility to verify this information.

17:7-10.5 Plan Administrator may delegate or contract

(a) To the extent permitted by the enabling statute or other State law, the Plan Administrator may, except when expressly prohibited by this Program, delegate any of his or her duties to any DSP or employer, as appropriate.

(b) The Plan Administrator may contract with any person to provide services to assist in the administration of the Program. The Plan Administrator must make such contracts in compliance with the enabling statute and other applicable State and local law.

(c) Any person other than the Plan Administrator who performs services regarding the Program, including, but not limited to, a DSP, is subject to the supervision and direction of the Plan Administrator, and does not have authority to control the operation of the Program.

17:7-10.6 Right to terminate the Program

The State Legislature may terminate or discontinue the Program, or any Plan under the Program at any time.

17:7-10.7 Final allocation

If on termination of the ABP Retirement Plan any amount is not allocated, all such amounts will be allocated among participants in the ratio of each participant's total account balance on the valuation day that immediately precedes this allocation to the total account balances of all participants on such valuation day.

SUBCHAPTER 11. GENERAL PROVISIONS—ABP PROGRAM

17:7-11.1 Anti-alienation

To the extent allowed by law, any benefit or interest available under a Plan, or any right to receive or instruct

payments under a Plan, or any distribution or payment made under the Program, or any Plan under the Program, shall not be subject to assignment, alienation, garnishment, attachment, transfer, anticipation, sale, mortgage, pledge, hypothecation, commutation, execution, or levy, whether by the voluntary or involuntary act of any interested person under a Plan, except (with respect to the ABP Retirement Plan and/or ACTS) for an interest that becomes payable pursuant to a Qualified Domestic Relations Order. However, the preceding sentence shall not be construed to preclude the payment of any fees or expenses (including taxes) under the ABP Retirement Plan.

17:7-11.2 Levy or judgment

Notwithstanding any other provision of the ABP Retirement Plan, the Plan Administrator may pay to the Internal Revenue Service or Federal agency from a participant's, beneficiary's, or alternate payee's account the amount that the Plan Administrator finds is demanded under an Internal Revenue Service levy or Federal restitution order with respect to that participant, beneficiary, or alternate payee or is sought to be collected by the United States under a judgment resulting from an unpaid tax assessment or restitution order against the participant, beneficiary, or alternate payee.

17:7-11.3 Audit

The Plan Administrator may engage a public accountant to audit or review the financial statements and/or internal control procedures with respect to the Program, and any fees paid or incurred for such audit or review and related accounting and auditing services shall be an expense that may be charged to the designated service provider according to their contract. To the extent the audit is not paid by the DSP, the expense can be charged to all participants' accounts in an equitable manner determined by the Plan Administrator.

17:7-11.4 Expenses—ABP Retirement Plan only

(a) The expenses incurred by the Plan Administrator in connection with the operation of the ABP Retirement Plan, including, but not limited to, the expenses incurred by reason of the engagement of professional assistants and consultants, shall, unless payable by the employer, be expenses of the ABP Retirement Plan and shall be payable from the ABP Retirement Plan at the direction of the Plan Administrator.

(b) Upon the Plan Administrator's written instruction, the Plan Administrator, the DSP or other person providing administrative services to the ABP Retirement Plan may be reimbursed for any reasonable expenses approved by the Plan Administrator that are incurred in performing administrative services regarding the ABP Retirement Plan. Except as otherwise provided or permitted, the reimbursement shall, with respect to the ABP Retirement Plan, be effected by deducting a charge against all accounts according to an equitable method determined by the Plan Administrator.

(c) If the Internal Revenue Service determines, and the determination is not contested, or if contested, is finally upheld (or otherwise finally determined), or if a final court order (that is not appealed) decides that any payment of expenses with respect to the ABP Retirement Plan is a violation of IRC § 401(a)(2), the Plan Administrator may assess the employers on a reasonable basis and/or may maintain an expense account that may be funded by rebates/payments from a DSP.

17:7-11.5 Fiduciary responsibility

(a) Any fiduciary will have only those specific powers, duties, responsibilities, and obligations specifically provided by the Program consistent with applicable law, or that are expressly required under a written agreement that is executed by or approved by the Plan Administrator if the written agreement is not inconsistent with the Program and applicable law.

(b) Each fiduciary warrants that any instruction or direction given, information furnished, or action taken by it will be according to the Program's provisions (or an instruction of the Plan Administrator).

(c) Each fiduciary will be responsible only for the proper exercise of his, her, or its own powers, duties, responsibilities, and obligations, and any fiduciary will not be liable for any act or omission (failure to act) of another fiduciary, except as provided in (d) below.

(d) A fiduciary will be liable for a breach of fiduciary responsibility of another fiduciary in the following circumstances:

1. If the fiduciary participates knowingly in, or knowingly undertakes to conceal, an act or omission of the other fiduciary, knowing such act or omission is a breach of the other fiduciary's responsibility;

2. If, by the fiduciary's failure to comply with his, her, or its duty in the administration of the fiduciary's specific responsibility that gives rise to the fiduciary's status as a fiduciary, the fiduciary has enabled the other fiduciary to commit a breach of the other fiduciary's responsibility; or

3. If the fiduciary has knowledge of a breach by the other fiduciary, unless the fiduciary makes reasonable efforts under the circumstances to remedy the breach.

17:7-11.6 Certifying officer

The business manager or other official designated by the participating employer shall be the certifying officer for the Alternate Benefit Program and shall be responsible for all duties prescribed by statute and by rules of the Division.

17:7-11.7 Governing law

The Program, and actions under or relating to the Program or any Plan under the Program, and the statute of limitations

for such actions shall be governed by and enforced by the laws of the State of New Jersey and shall be construed, to the extent that any construction beyond this chapter is necessary, according to the laws of the State of New Jersey or the Internal Revenue Code or other Federal law, where applicable.

17:7-11.8 Internal Revenue Service approval—ABP Retirement Plan only

If, under any application filed by or on behalf of the ABP Retirement Plan, the Internal Revenue Service determines that the ABP Retirement Plan as amended and restated does not qualify under IRC § 401(a), and the determination is not contested, or if contested, is finally upheld (or otherwise finally determined), the Plan Administrator, without further authorization or consent from the Plan Sponsor, may retroactively amend the ABP Retirement Plan to the earliest date permitted by Treasury regulations to the fullest extent that the Plan Administrator considers necessary to obtain an Internal Revenue Service determination that the ABP Retirement Plan qualifies under IRC § 401(a).

17:7-11.9 Mistaken contributions–ABP Retirement Plan and ACTS

If any contribution (or any portion of a contribution) is made by the employer by a good faith mistake of fact, upon receipt in good order of a proper request by the Plan Administrator, the DSP shall return the amount of the mistaken contribution(s), except as limited below, to the employer. A return of a mistaken contribution will not be made if the return will not be made within one year from the date of the mistaken payment of the contribution, or if the participant has had a severance from employment and received the distribution of his or her account. Upon any return of a mistaken contribution, earnings attributable to the mistaken contributions will not be returned and losses attributable to the mistaken contribution shall reduce the amount to be returned.

17:7-11.10 Necessary information

(a) The participant, beneficiary, or alternate payee shall provide upon any request of the Plan Administrator or DSP any information that may be needed for the proper and lawful operation and administration of the Program, including, but not limited to, full legal name, Social Security number (SSN) or other Taxpayer Identification number (TIN), current address and current address of spouse and of any beneficiary(s), evidence of age, and evidence of marital status. The participant shall promptly respond to and fully answer any reasonable inquiry related to these purposes. A failure to provide any information described above or which otherwise may be necessary or appropriate for the lawful operation of the Program may result in a delay of eligibility for participation, in a delay of the payment of contributions, or in a delay or refusal by the Plan Administrator, in his or her discretion, to authorize or permit any payment to be made.

(b) The Plan Administrator (and any party acting for him or her) shall have the right to rely on any information or representation given by any participant, beneficiary, or other person interested in the Program. The Plan Administrator shall have no duty to inquire into the accuracy or adequacy or truth of any such information or representation. Any such representation shall be binding upon any party seeking to claim a benefit through the participant.

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

17:7-11.11 No contract of employment

Under no circumstances shall the Program constitute or modify a contract of employment or in any way obligate the employer to continue the services of any employee.

17:7-11.12 No rights other than those provided by the Program

The establishment of the Program and the Plans under the Program and the purchase of any investment option(s) under the ABP Retirement Plan or ACTS shall not be construed as giving to any participant, beneficiary, alternate payee, or any other person any legal or equitable right against the employer or the Plan Administrator or their representatives, except as is expressly provided by the Program.

17:7-11.13 Taxes

The employer and the Plan Administrator do not guarantee that any particular Federal or State income, payroll, or other tax consequences would occur because of participation in the ABP.

17:7-11.14 Notices

Each participant, beneficiary, or alternate payee shall be responsible for furnishing the Plan Administrator and the DSP with his or her current address at all times. Any notice required or permitted to be given under the Program shall be deemed given if directed to the proper person at the current address in any Program (or investment option) record and mailed or otherwise delivered to that address. This provision shall not be construed to require the mailing or the delivery of any notice otherwise permitted to be given by posting or by publication.

17:7-11.15 Program is binding

The Program, and all acts and decisions taken under it, is binding and conclusive, for all purposes, upon every participant, beneficiary, alternate payee, any person claiming through a participant, beneficiary, or alternate payee, all other interested persons, and upon the personal representatives, executors, administrators, heirs, successors, and assigns of any and all such persons. The Program shall not affect

contracts or other dealings with a person who is not an interested person, unless a written agreement executed by that person expressly so provides.

17:7-11.16 Power-of-attorney

(a) A power-of-attorney is not effective to permit the attorney-in-fact to submit any claim, instruction, direction, or consent under the Program or otherwise act regarding the Program, unless the Plan Administrator, in his or her discretion, finds that the power-of-attorney is acceptable.

(b) Without limiting the effect of (a) above, the Plan Administrator will not accept a power-of-attorney until he or she finds that the power-of-attorney:

1. Is a properly executed and filed durable power-of-attorney pursuant to the law of the jurisdiction in which it was created, which will remain effective despite the later incapacitation or disability of the participant;

2. Indemnifies the Plan Administrator and every person that may rely on the durable power-of-attorney against any liability that may arise out of the Plan Administrator's acceptance of the power-of-attorney;

3. Contains the following provision or a substantially similar provision: "No person who may act in reliance upon the representations of my attorney-in-fact for the scope of authority granted to the attorney-in-fact shall incur any liability as to me or to my estate as a result of permitting the attorney-in-fact to exercise this authority, nor is any such person who deals with my attorney-in-fact responsible to determine or ensure the proper application of funds or property."; and

4. Grants specific authority for the attorney-in-fact to conduct transactions with the participant's retirement plan or employee benefit plan.

(c) A general grant of power in the power-of-attorney for the attorney-in-fact to handle the participant's affairs, without specific authorization in the power-of-attorney to deal with the member's retirement benefits, does not authorize the attorney-in-fact to conduct any business on behalf of the participant with the Program.

(d) The attorney-in-fact may not designate himself or herself as the beneficiary for a retirement benefit unless the power-of-attorney authorizes the attorney-in-fact to designate himself or herself as a retirement beneficiary or authorizes the attorney-in-fact to give gifts of the participant's property to himself or herself.

17:7-11.17 Disclosure of information

(a) The Plan Administrator (and any other person acting for or at the request of the Plan Administrator) may disclose information concerning a participant, beneficiary, or alternate payee:

1. When requested by the participant's, beneficiary's, or alternate payee's agent who acts under a power-of-attorney accepted by the Plan Administrator;

2. When required by applicable law;

3. When required by a court order or subpoena;

4. Without a court order when reasonably requested by the Internal Revenue Service;

5. When necessary or appropriate for the Plan Administrator to obtain tax or legal advice; or

6. When, in the course of the administration of a participant's, beneficiary's, or alternate payee's estate or succession, the personal representative (or an attorney-at-law who represents the personal representative) states in writing that he, she, or it needs the requested information to prepare a return of any estate tax, transfer tax, gift tax, inheritance tax, death tax, or similar tax, whether of the United States of America, any state, or any foreign nation.

17:7-11.18 Release

Any payment or any agreement to make payments under a payment option selected by the proper payee, shall, to the extent of the payment(s) or agreement, be in full satisfaction of all claims. If a dispute arises as to the proper payee of any payment(s), the Plan Administrator, in its sole discretion, may withhold or cause to be withheld any payment(s) until the dispute shall have been determined by a court of competent jurisdiction or shall have been settled by all the parties concerned.

17:7-11.19 Records

(a) The records of the Alternate Benefit Program are public record, and may be inspected during regular business hours at the Division under supervision of a representative of the Alternate Benefit Program. They are subject to the following restrictions:

1. Medical records of all active and retired participants are confidential and, absent a release signed by the active or retired participant or a court order, shall not be released.

2. Mailing addresses of all active and retired participants are confidential and, absent a release, signed by the active or retired participant or a court order, shall not be released.

3. Designations of beneficiaries of all active and retired participants are considered confidential and, absent a release signed by the active or retired participant, a court order or the death of the active or retired participant, shall not be released.

4. Original documents, if available, shall only be viewed by appointment at the Division.

5. All other records shall be subject to the public records restrictions of N.J.S.A. 47:1A-1 et seq.

17:7-11.20 Severability

If a court finds that any provision of the Program is invalid, that holding shall not affect the remaining provisions of the Program, or any Plan under the Program, which shall be construed and enforced as if the invalid provision had not been included in the Program or Plan, unless such a construction of the Program or Plan would be clearly contrary to the enabling statute.

17:7-11.21 Uniformity

To the extent required by the enabling statute or applicable State law, provisions of the Program and any Plan under the Program shall be construed and applied in a non-discriminatory manner.

17:7-11.22 Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) and Heroes Earnings and Assistance Relief Tax Act of 2008 (HEART)–ABP Retirement Plan and ACTS

(a) Notwithstanding any provisions of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with the USERRA (as codified at Chapter 43, Title 38, of the United States Code); IRC § 414(u); and, effective January 1, 2007, IRC § 401(a)(37), as amended from time to time.

(b) For purposes of this section, "qualified military service" means any service in the uniformed services as defined in USERRA by any individual if such individual is entitled to reemployment rights under USERRA with respect to such service.

(c) Effective January 1, 2009, a participant receiving a differential wage payment within the meaning of IRC § 414(u)(12)(D) from the employer, may be treated as a participant and the differential wage payment may be treated as base salary and compensation under N.J.A.C. 17:7-5.7. This subsection shall be applied to all similarly situated individuals in a reasonably equivalent manner.

(d) If the participant timely resumes employment in accordance with USERRA after a qualified military leave, the employer shall make any employer contribution that would have been made if the participant had remained employed during the participant's qualified military service. Such contributions must be made no later than 90 days after the date of such reemployment or when contributions are normally due for the year in which the qualified military service was performed, if later. In determining the amount of employer contribution, a participant shall be treated as receiving base salary from the employer during such period of qualified military service equal to:

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

2. If the base salary the participant would have received during such period is not reasonably certain, the participant'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).

(e) Effective January 1, 2007, to the extent provided under IRC § 401(a)(37), in the case of a participant whose employment is interrupted by qualified military service and who dies while performing qualified military service, the survivor of such participant shall be entitled to any additional benefit (other than benefit accruals) provided under the Plan as if the participant timely resumed employment in accordance with USERRA and then, on the next day, terminated employment on account of death.

17:7-11.23 Distribution to incompetent participant, beneficiary, or alternate payee

(a) If a participant, beneficiary, or alternate payee is unable to manage property effectively for any reason including, but not limited to, mental illness, mental deficiency, physical illness, physical disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance, any payment may be paid according to the terms of the applicable investment option(s) (if any) or according to applicable investment law (if any), or the Plan Administrator may direct payment(s) according to the following order:

1. As instructed by an appropriate court pursuant to a written court order;

2. To the duly court-appointed and currently acting conservator of the participant, beneficiary, or alternate payee;

3. To the duly court-appointed and currently acting legal guardian of the estate of the participant, beneficiary, or alternate payee;

4. To the duly appointed and currently acting attorney-in-fact under a durable power-of-attorney if the Plan Administrator finds that the power-of-attorney provides sufficient power to authorize the attorney-in-fact to receive the benefit; or

5. To the court having jurisdiction over the estate of the participant, beneficiary, or alternate payee.

(b) A payment under this section shall be in full satisfaction of all claims. The Plan Administrator has no duty to determine if a person is unable to manage his or her affairs and is only required to act pursuant to (a) above, if he or she is provided written evidence of the incapacity through a document showing one of (a)1 through 5 above prior to the

distribution. The Plan Administrator has no duty to supervise or inquire into the application of any amount(s) so paid.

(c) If at the time a distribution begins, the participant, beneficiary, or alternate payee is an incompetent or is incapacitated as described under (a) above and the Plan Administrator begins payments to another person under (a) above, the Plan Administrator may continue all payments under the distribution to the other person notwithstanding that the participant, beneficiary, or alternate payee may have become competent or may have been adjudicated as competent, unless the participant, beneficiary, or alternate payee files a written claim according to all of the requirements of the ABP Retirement Plan, including furnishing satisfactory evidence that he or she is competent to manage his or her benefit.

17:7-11.24 Payment to personal representative

Any payment (or delivery of property) to the duly appointed personal representative of the participant shall, to the extent of the payment (or delivery of property), bar recovery by any other person or entity, including every beneficiary, and shall, to the extent of the payment (or delivery of property), discharge any obligation under the ABP Retirement Plan.

17:7-11.25 Disclaimer by beneficiary

Any beneficiary may renounce or disclaim all or any part of any benefit by filing a written irrevocable disclaimer not later than 31 days before the distribution begins or any payment is otherwise to be made and before acceptance of any benefit. An acceptance may be express or may be inferred from actions or facts and circumstances, including, but not limited to, those actions described in the Uniform Probate Code as establishing an inference of acceptance. In addition to any requirements under State law, the disclaimer is not effective unless the disclaimer describes the benefit renounced, expressly declares the renunciation and the extent of it, expressly states the beneficiary's belief upon reasonably diligent examination that no creditor of the beneficiary (or, if the beneficiary is an executor, trustee, guardian, or other fiduciary of any current or reasonably anticipated beneficiary of the estate or trust or guardianship or other fiduciary relationship or entity) would be adversely affected by the disclaimer, expressly states that the disclaimer is irrevocable, is signed by the beneficiary, meets all requirements of IRC § 2518, such that the disclaimer would be treated as effective for Federal gift and estate tax purposes, and otherwise is made in a form that is acceptable to the Plan Administrator. Notwithstanding any State law that would permit otherwise, if the beneficiary is a minor or an incapacitated person, any disclaimer cannot have any effect regarding the Program until the court having jurisdiction of the minor's or incapacitated person's estate authorizes the disclaimer after finding that it is advisable and will not materially prejudice the rights of any interested person. Any benefit disclaimed shall be payable as if the beneficiary who submitted the disclaimer died before the participant.

SUBCHAPTER 12. NEW JERSEY ADDITIONAL CONTRIBUTIONS TAX-SHELTERED PROGRAM (ACTS)

17:7-12.1 Employee voluntary contributions to ACTS

(a) State and participating institutions are authorized to enter into agreements with ACTS participants for voluntary salary reductions of compensation to the maximum limitations set forth in IRC § 415(c) and the regulations thereunder, in order to purchase from the selected pension providers retirement or annuity contracts that are tax deferred under IRC § 403(b). The Board of Governors of Rutgers, the State University; the Board of Trustees of the New Jersey Institute of Technology; the Board of Trustees of Rowan University; and the boards of trustees of State and county colleges, are hereby authorized to enter into an agreement with each employee participating in the ABP whereby the employee agrees to take a reduction in salary with respect to amounts earned after the effective date of such agreement in return for the agreement of the respective institution to use a corresponding amount to purchase an annuity for such employee, so as to obtain the benefits afforded under IRC § 403(b). Any such agreement shall specify the amount of such reduction, the effective date thereof, and shall be legally binding and irrevocable with respect to amounts earned while the agreement is in effect; provided, however, that such agreement may be terminated after it has been in effect for a period of not less than one year upon notice in writing by either party, and provided further that not more than one such agreement shall be entered into during any taxable year of the employee. For the purposes of this section, any investment option and annuity or other contract offered by the DSP that meets the requirements of IRC § 403(b), may be utilized. The amount of the reduction in salary under any agreement entered into between the institutions and any employee pursuant to this section shall not exceed the limitations set forth in IRC §§ 415(c) and 403(b).

(b) Amounts payable pursuant to this section by an institution on behalf of an employee for a pay period shall be transmitted and credited not later than the fifth business day after the date on which the employee is paid for that pay period.

(c) Employee voluntary contributions are permitted as follows:

1. The employee voluntary contribution shall be made by a salary reduction contribution and shall be computed on the participant's compensation.

2. A participant electing to make such employee voluntary contributions shall enter into a salary reduction

agreement with the employer in accordance with IRC § 402(g)(4).

3. 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.

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

i. If the participant terminates employment with the employer, the salary reduction agreement, or any amendments made thereon, shall automatically terminate; and

ii. If the Division terminates ACTS, the salary reduction agreement shall automatically terminate.

Amended by R.2015 d.072, effective May 4, 2015.
See: 46 N.J.R. 588(a), 47 N.J.R. 905(b).
In (a) deleted "Board of Trustees of the University of Medicine and Dentistry of New Jersey; the" following the first occurrence of "The", and inserted "the Board of Trustees of Rowan University;".

17:7-12.2 Contributions transmitted to designated service provider for ACTS

All IRC § 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 pension provider and credited not later than the fifth business day after the date on which the employee is paid for that pay period.

17:7-12.3 Vesting schedule

A participant's interest in his or her account attributable to employee voluntary contributions shall immediately become and shall at all times remain fully vested and nonforfeitable.

17:7-12.4 Additional terms and conditions

The Plan Administrator may set forth additional terms and conditions of the ACTS.

SUBCHAPTER 13. INVESTMENTS AND INVESTMENT DIRECTION—ABP RETIREMENT PLAN AND ACTS

17:7-13.1 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 and the ACTS. Accounts may only be invested in those investment options offered by the DSP and the ACTS and approved by the Board.

17:7-13.2 Procedure for giving investment direction

The participant, beneficiary, or alternate payee must give investment direction according to the provisions of the ABP Retirement Plan or the ACTS, 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 DSPs have authority to accept an investment direction and any direction is effective only when received.

17:7-13.3 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) Surrender and/or 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.

17:7-13.4 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.

17:7-13.5 Duty to accept investment direction

(a) The DSP must accept every proper investment direction it receives 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. 17:7-13.3. 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.

17:7-13.6 Plan Administrator not responsible

(a) The Plan Administrator shall not be liable for any loss or liability arising out of any investment education, information, or advice provided by any DSP.

(b) To the extent of the participant's, beneficiary's, or alternate payee's investment direction or default, 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 that may arise from any participant's, beneficiary's, or alternate payee's investment direction or failure to exercise investment direction.

17:7-13.7 Failure to give investment direction (default investment provider)

If at any time a participant, beneficiary, or alternate payee fails to exercise 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 selected for the current plan year. Each DSP shall designate a default investment option. The Plan Administrator shall designate which DSP is the default pension provider. The Plan Administrator shall direct the DSP with respect to the investment of accounts in a default investment option or options.

SUBCHAPTER 14. LOANS—ABP RETIREMENT PLAN, ACTS, AND CLOSED PLAN

17:7-14.1 Loan permitted

(a) A participant may borrow from his or her employee account up to the amounts allowed under Federal law while still employed. The employee account and employer account shall be used solely to qualify for the amount of a policy loan.

1. Terms of loans. All loans shall be made on such terms and conditions as the Plan Administrator may determine and in accordance with the rules and procedures of the applicable DSP provided that all loans:

i. Shall be made pursuant to a promissory note and such other documents required by the pension provider, which are subject to default rules that are not inconsistent with (a)5 below and which are secured by the employee account and employer account and such other collateral as may be required by the Plan Administrator;

ii. Shall be amortized on a substantially level basis, with payments to be made not less frequently than quarterly throughout the repayment period, except that the loan may be prepaid fully, and except that alternative arrangements for repayment may apply in the event the borrower is on a bona fide unpaid leave of absence for a period not to exceed one year for leaves other than a qualified military leave within the meaning of IRC § 414(u) or for the duration of a leave which is due to qualified military service;

iii. Shall bear a reasonable rate of interest (which may be a fluctuating rate), which shall in no event be lower than the prime interest rate, as published in the Wall Street Journal on the last business day of the month, plus two percentage points;

iv. Shall provide for repayment in full on or before the earlier of:

(1) Five years after the date when the loan is made or 20 years after the date the loan is made if the loan is used to acquire a dwelling which, within a reasonable period of time, is to be used as the principal residence of the participant; or

(2) The date when distribution of the participant's ABP Retirement Plan benefit is fully distributed (including payments after retirement out of Plan distributions);

v. At the discretion of the DSP, the employee account of a participant who elects to borrow may be charged with loan fees and additional fees in an amount reasonably determined by the Plan Administrator to represent the cost to the Plan of processing the loan.

2. Amount of loan. The minimum amount of any new loan made to a participant shall be established by, and be subject to the loan rules and procedures of, the applicable DSP. The maximum amount of any new loan made to a participant shall be offset by the balance (principal plus accrued interest) due on any outstanding loans to the participant from the ABP Retirement Plan and ACTS (and from any other plans of the employer that are qualified employer plans under IRC § 72(p)(4)). In accordance with IRC § 72(p)(2), the principal amount of the new loan shall not exceed the lesser of:

i. Fifty thousand dollars, reduced by the greater of:

(1) The outstanding balance on any loan from the ABP Retirement Plan (and from any other plans of the employer that are qualified employer plans under IRC § 72(p)(4)) to the participant on the day the loan is made; or

(2) The highest outstanding loan balance on loans from the ABP Retirement Plan (and from any other plans of the employer that are qualified employer plans under IRC § 72(p)(4)) to the participant during the 12-month period ending on the day before the date on which the new loan is made (not taking into account any payments made during such 12-month period); or

ii. The greater of:

(1) Fifty percent of the value of the participant's vested accounts (as of the valuation date immediately preceding the date on which such loan is approved by the employer); or

(2) $10,000.

3. Source of loans. The amount to be borrowed by the participant shall come from assets held in the employee account or rollover account and any loan shall be considered an asset of such accounts.

4. Withholding and application of loan payments. Principal and interest payments shall be made:

i. Whenever possible through periodic payroll deductions from the participant's base salary from the employer; or

ii. By bank or cashier's check or money order whenever payroll withholding is not possible.

5. Default. Prior to repayment, a promissory note shall be considered in default in the event the borrower fails to make a payment when due and subsequently fails to make up such payment by the last day of the calendar quarter following the calendar quarter in which the payment was missed, dies, or terminates his or her participation in the Plan, the borrower files for relief under the United States Bankruptcy Code, the loan becomes a deemed distribution under IRC § 72(p), or the Plan is terminated. In the event a default occurs and is not cured within any grace period set forth in the promissory note, the full amount due under the note shall become immediately due and payable. In such event, the loan coordinator shall take such actions as it deems necessary or appropriate to cause the Plan to realize on its security for the loan.

6. Administrative rules and procedures. The loan coordinator may adopt such administrative rules and procedures applicable to the administration of this section as he or she may deem necessary or appropriate. Such rules and procedures may be more restrictive than the provisions of this section provided that these rules and procedures are nondiscriminatory in effect, prospectively applied, and permitted under the IRC and regulations thereunder.

7. Delayed vested participant. A participant who is in delayed vested status pursuant to N.J.A.C. 17:7-6.2 is not eligible to receive a loan.

SUBCHAPTER 15. ACCOUNTS—ABP RETIREMENT PLAN AND ACTS

17:7-15.1 Account statement or confirmation

Each account statement or confirmation furnished by (or on behalf of) the Plan Administrator is intended as a legally significant statement of the accrued benefit under the ABP Retirement Plan or ACTS. As to each account statement or confirmation, if, by the date that is 180 days after the date that the statement or confirmation was mailed or otherwise sent or delivered, the participant, beneficiary, or alternate payee has not delivered a written objection as to the accuracy of the statement or confirmation, the accounting reported is then settled and conclusive and an account stated. If an objection to any account statement or confirmation is withdrawn or is adjusted to the participant's, beneficiary's, or alternate payee's satisfaction, the accounting is then settled and conclusive and an account stated. To the extent that an account statement or confirmation is an account stated, the Plan Administrator and DSP are discharged from any liability that might otherwise arise out of the account as fully as if the account had been settled by an appropriate court proceeding.

17:7-15.2 Account balance

The account balance is the total amount or value of the account (or sub-account or separate account, as applicable) reduced by any applicable investment option or trust charges, fees, expenses, and taxes. At any time, the amount or value of any account or sub-account is the applicable account balance (in this section) as of the last valuation date.

SUBCHAPTER 16. ADMINISTRATION OF DISTRIBUTIONS—ABP RETIREMENT PLAN AND ACTS

17:7-16.1 Claim for distribution

(a) Any distribution shall be paid only upon a claim made on the applicable form, and submission of additional information requested by the Plan Administrator, including, but not limited to:

1. If the distribution is made under N.J.A.C. 17:7-8.1, appropriate evidence that the participant has a severance from employment;

2. If the distribution is an Eligible Rollover Distribution (as defined in N.J.A.C. 17:7-9.2), the distributee's instruction as to whether the distribution (or a portion of the distribution) is to be paid directly to an eligible ABP Retirement Plan (as defined in N.J.A.C. 17:7-9.2), and if any amount is to be paid directly to such an eligible ABP Retirement Plan, the name and address of the trustee or plan administrator of that eligible ABP Retirement Plan together with any other information that the Plan Administrator or DSP reasonably requests pursuant to Treasury Reg. § 1.401(a)(31)-1;

3. If the distribution is made on account of the participant's death, appropriate evidence of the participant's death;

4. Whenever required by the Plan Administrator, the date of birth of any person as relevant to the distribution;

5. If the account consists of more than one investment option, the order in which any investment options are to be charged or redeemed to pay the distribution;

6. Any other evidence or information that the Plan Administrator finds is relevant to administer a provision of the ABP Retirement Plan in the participant's, beneficiary's, or other distributee's circumstances;

7. Absent contrary evidence actually known to the Plan Administrator, an appropriate death certificate or a court order stating that the participant is found to be absent and presumed dead shall constitute appropriate evidence of the participant's death; and

8. If the distributee fails to submit proper instructions, the Plan Administrator may, to the extent provided by the investment option of the applicable DSP contract, determine which plan investment option(s) are to be charged.

17:7-16.2 Minimum advance notice

The Plan Administrator may require for payment of any distribution a minimum advance notice, uniformly determined and consistently applied.

17:7-16.3 Payor may rely on apparent entitlement

(a) The Plan Administrator and the DSP are not liable for having made a payment under an unclear beneficiary designation or participation agreement to a person not entitled to the payment, or for having taken or omitted any other action in good faith reliance on a person's apparent entitlement, before the payor actually received written notice of a claimed lack of entitlement.

(b) Any payor of any distribution is not liable for having made a payment or having transferred an item of property to a beneficiary designated in a beneficiary designation (or in a similar writing reasonably believed to constitute a beneficiary designation) who is not entitled to the distribution, or for having taken any other action in good faith reliance on the beneficiary's apparent entitlement under the terms of the beneficiary designation before the payor received written actual notice alleging that the beneficiary was not entitled to the distribution.

17:7-16.4 Valuation of payments

Except to the extent otherwise expressly provided by the investment option(s), any payment or payment option shall be determined as of the date of distribution that next follows the DSP's receipt in good order (within the meaning of the investment option(s) or applicable law) of a request for payment approved by the Plan Administrator.

17:7-16.5 Delay of payment

(a) The Plan Administrator may delay approval of a distribution and the DSP may delay payment of an approved distribution:

1. To receive any necessary information;

2. To permit a valuation of the account;

3. To permit any necessary or appropriate liquidation of assets;

4. If a dispute arises as to the proper payee;

5. If the Plan Administrator or the DSP has written notice of a domestic relations case or petition that may involve the applicable account;

6. If the Plan Administrator or the DSP has written notice of a bankruptcy case or petition that may involve the applicable account;

7. If the Plan Administrator or the DSP has notice of any legal proceeding or petition that may involve the applicable account;

8. For any reason described elsewhere in this chapter;

9. For any other lawful purpose;

10. Without limiting the comprehensive effect of (a)1 through 9 above, to the extent that any distribution requires a surrender and/or redemption or transfer of an investment option's shares, the Plan Administrator shall delay the distribution during any period when the NYSE is closed other than for a weekend or a holiday, or when trading on the NYSE is restricted (as determined by the SEC), or when an emergency exists making disposal of an investment option's securities or valuation of an investment option's net assets not reasonably practicable, or when the SEC has required or permitted the suspension of surrender and/or redemptions or transfers by order, or during any period otherwise described by § 22(e)(1) through (3) of the Investment Company Act of 1940, as amended (15 U.S.C. § 80a-22(e)(1) through (3)). Also, the Plan Administrator or the DSP may delay any distribution if doing so is

necessary or appropriate to avoid exceeding an investment option's "large transaction amount" requirement; or

11. If the participant received an allocation of employer contributions for a period that included his or her absence under a Federal or State Family and Medical Leave Act, the Plan Administrator shall delay payment of any distribution until the Plan Administrator is satisfied that the participant has returned to work from such absence or that the participant will not or did not return to work from such absence.

17:7-16.6 Dispute as to proper recipient

If a dispute arises as to the proper recipient of any payment(s), the Plan Administrator, in its sole discretion, may instruct the DSP to withhold payment until the dispute is determined by a court of competent jurisdiction or is settled by the parties concerned.

17:7-16.7 Distribution to minor beneficiary

(a) If a distribution is to be made to a minor beneficiary, any payment(s) may, except to the extent prohibited by applicable law, be paid to a responsible person according to the following order. If the amount is under $10,000 per year:

1. As instructed by an appropriate court pursuant to a written court order, which has been provided to the Plan Administrator before the distribution is made;

2. To the duly court-appointed and currently acting conservator of the beneficiary, evidence of which has been provided to the Plan Administrator before the distribution is made;

3. To the duly appointed and currently active guardian of the beneficiary, evidence of which has been provided to the Plan Administrator before the distribution is made;

4. To the custodial parent of the beneficiary;

5. To a custodial adult with whom the beneficiary maintains his or her residence; or

6. To the court having jurisdiction over the estate of the beneficiary.

(b) If the amount is over $10,000 a year, a conservator must be appointed by the court to receive the payment. This payment shall be in full satisfaction of all claims. The Plan Administrator has no duty to supervise or inquire into the application of any amount so paid.

(c) If at the time a distribution begins, the beneficiary is a minor and the Plan Administrator begins payments to another person under (a) above, the Plan Administrator may continue all payments under the distribution to the other person notwithstanding that the beneficiary may have attained full age, unless the beneficiary files a written claim, including furnishing satisfactory evidence that he or she is of full age.

SUBCHAPTER 17. ALTERNATE BENEFIT PROGRAM GROUP LIFE INSURANCE PLAN

17:7-17.1 Benefit

(a) As of July 1, 1969, the group contract providing life insurance for all participants in the Alternate Benefit Program of each public institution of higher education in the State shall be on a non-contributory basis and shall be in lieu of any non-contributory and contributory benefits provided pursuant to N.J.S.A. 18A:64C-11.1 through 11.9 (inclusive) and article 16 of Chapter 65 of Title 18A of the New Jersey Statutes, P.L. 1967, c. 278 and 281, and P.L. 1968, c. 181. In accordance with the provisions of this act such group contract or contracts providing life insurance shall be in an amount equal to three and one-half times the base annual salary at the time of death of the participant in the Alternate Benefit Program; provided, however, that if death shall occur after retirement, the amount payable shall equal one-half of the participant's base annual salary at the time of the participant's retirement.

(b) No beneficiary of a retired member shall be entitled to receive the death benefits payable in the event of death after retirement pursuant to this section unless such member:

1. Had at least 10 years of credited New Jersey participation in the Alternate Benefit Program; and

2. Had attained 60 years of age and was an actively employed participant in the Alternate Benefit Program in the year immediately preceding his or her initial receipt of a benefit from the ABP Retirement Plan.

(c) For purposes of this section, a participant shall be deemed to be in service and covered by the group life insurance for a period of no more than 93 days while on official leave of absence without pay when such leave is due to any reason other than illness, except for a leave up to one year to fulfill a residency requirement for an advanced degree, for a period of no more than one year in the event of an official leave due to maternity and for a period of no more than two years if satisfactory evidence is presented to the Division that such official leave of absence without pay is due to illness. A participant shall be deemed to be on an official leave of absence only if the leave is formally approved by his or her employer prior to the time the leave commenced and timely notice is filed by the employer with the Division; the lack of such timely notice shall place the responsibility for the payment of any benefits pursuant to this section directly upon the employer if the participant was otherwise eligible for such benefits.

(d) In the event of the death of a participant in active service in the first year of participation as a result of an accident met in the actual performance of duty at some definite time and place, the death benefit payable pursuant to this section shall be computed at the participant's current annual rate of base salary.

17:7-17.2 Purchase of group life insurance

As of July 1, 1969, the State Treasurer is hereby authorized and permitted to purchase from one or more insurance companies, as determined by him or her, group life insurance to provide for the death benefits in the amounts specified in this account. Such group life insurance may be provided under one or more policies issued to the State Treasurer specifically for this purpose or, in the discretion of the State Treasurer, under one or more policies issued to the State Treasurer which provide group life insurance coverage for members of one or more retirement systems of the State of New Jersey. Any dividend or retrospective rate credit allowed by an insurance company attributable to the Group Life Insurance Plan shall be credited in an equitable manner to the funds available to meet the employers' obligations under the Alternate Benefit Program.

17:7-17.3 Beneficiary designation

(a) Except with regard to the payment of the Group Life Insurance Plan benefit upon the death of a retirant, a participant may elect, by making written request, that the whole or any part of his or her Group Life Insurance Plan benefits be made payable to his or her beneficiary either as a life annuity or in equal installments over a period of years specified in such election, and may alter such election from time to time during his or her lifetime by again making such written request. In the event of a change of beneficiary, any previous arrangement by the participant or retirant under this subsection shall be void. The election set forth in this subsection shall not apply or be available when the beneficiary is an estate, or a corporation, partnership, association, institution, trustee, or any fiduciary.

(b) If, at the participant's death, an amount of group life death benefit would be payable to the beneficiary in a single sum, any election with regard to such amount which was available to the participant immediately prior to his or her death in accordance with (a) above shall then be available to such beneficiary for the benefit of such beneficiary.

17:7-17.4 Life Insurance Premium Fund

(a) Premiums for such group insurance coverage shall be paid from a special fund, hereby created, called the "Alternate Benefit Group Insurance Premium Fund." The State Treasurer shall estimate annually the amount that will be required for premiums for such benefits for the ensuing fiscal year and shall certify such amounts that shall be applied against the total employer contributions due for the participants from the several institutions where the Alternate Benefit Program is established, depositing such amounts in the Alternate Benefit Group Insurance Premium Fund.

(b) During the period such group insurance policy or policies are in effect with respect to participants in the Alternate Benefit Program, the State Treasurer shall in no way commingle moneys in this fund with any pension funds established under the Alternate Benefit Program.

SUBCHAPTER 18. ALTERNATE BENEFIT PROGRAM GROUP LONG-TERM DISABILITY BENEFIT PLAN

17:7-18.1 Group long-term disability insurance

(a) In accordance with the provisions 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 the Alternate Benefit Program or a participant 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:

1. The date the participant is no longer considered totally disabled;
2. The participant's retirement date; or
3. The participant's 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 continuance 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.

17:7-18.2 Benefit

(a) As of July 1, 1969, the group contract providing disability benefits for all participants in the Alternate Benefit Program of each public institution of higher education in the State shall be on a non-contributory basis and shall be in lieu of any non-contributory and contributory benefits provided pursuant to N.J.S.A. 18A:64C-11.1 through 11.9 (inclusive) and article 16 of Chapter 65 of Title 18A of the New Jersey Statutes, P.L. 1967, c. 278 and 281, and P.L. 1968, c. 181.

(b) The disability benefits provided under such group policy or policies for all eligible participants in the Alternate Benefit Program shall provide a monthly income if the participant becomes totally disabled from occupational or non-occupational causes for a period of at least six consecutive months following the effective date of the coverage. The monthly disability benefit may be paid by the insurance company, so long as the participant remains disabled up to his or her 70th birthday, provided the disability commenced prior to his or her 60th birthday. The benefit will terminate when the participant is no longer considered totally disabled, attains age 70, or begins to receive retirement benefits from this or any other State-administered retirement plan.

17:7-18.3 Amount of benefit

(a) The disability benefits set forth in this subchapter shall be in an amount equal to 60 percent of the participant's base monthly salary at the onset of the disability, reduced by periodic benefits to which the participant may be entitled during the period of total disability. The minimum monthly disability benefit will be $50.00.

(b) The periodic benefits by which the monthly disability benefits may be reduced shall include salary or wages, retirement benefits, or benefits from any source for which the State or other public employer has paid any part of the cost or made payroll deductions, Social Security disability, or other benefits, including dependents' benefits, and benefits paid by Social Security at the option of the participant before the age of 65, but not including any increase in Social Security benefits enacted after the disability benefits under such group policy or policies have commenced, and any other periodic benefits provided by law except on account of military service.

(c) When a participant begins to receive disability benefits under such group policy or policies the insurance company will pay an amount equal to the employee contribution which would have been required of the participant and deducted from his or her base salary in order to meet his or her obligation to the ABP Retirement Plan. Such amount shall be paid by the insurance company without reduction by any other periodic benefits which the participant is eligible to receive. Such amount will be paid by the insurance company to the insurer or insurers for the participant's retirement annuity contract or contracts.

17:7-18.4 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.

Recodified from N.J.A.C. 17:7-22.4 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. 17:7-18.4, Definition of total disability, recodified to N.J.A.C. 17:7-18.5.

17:7-18.5 Definition of total disability

(a) The participant will be considered totally disabled if he or she is unable to perform each duty of his or her occupation and is under the regular care of a physician. After the 12 months following the commencement of such disability benefit payments, he or she must be unable to engage in any gainful occupation for which he or she is reasonably fitted by education, training, or experience. In any event, total disability is not considered to exist if he or she is gainfully employed. However, following an agreement with the insurance company and the policyholder, the participant can continue to receive disability benefits for a limited time while performing some type of work. During the period of rehabilitation the monthly benefit will be the regular payment less 80 percent of the participant's earnings from such rehabilitative position.

(b) For purposes of this section, a participant shall be deemed to be in service and covered by the disability benefit insurance provisions for a period of no more than six months while on official leave of absence without pay if satisfactory evidence is presented to the Division that such leave of absence without pay is due to illness and that the member was not actively engaged in any gainful occupation during such period of leave of absence without pay.

(c) Disability benefit insurance provisions of the group policy or policies shall not cover disability resulting from or contributed to by pregnancy, act of war, intentionally self-inflicted injury, or attempted suicide whether or not sane. For purposes of such disability insurance, the participant will not be considered to be disabled while he or she is imprisoned or while outside the United States, its territories, or possessions.

(d) If the participant has recovered from the disability for which he or she had received benefits and again becomes totally disabled while insured, the later disability will be regarded as a continuation of the prior one unless the participant has returned to full-time covered employment for at least six months. However, if the later absence is due to an unrelated cause and the participant had returned to full-time work, it will be considered a new disability. The disability benefit insurance cannot be converted to an individual policy.

(e) No person shall be covered by the disability benefit provision of the group policy or policies except upon the completion of one year of full-time continuous employment in a position eligible for participation in the Alternate Benefit Program.

Recodified from N.J.A.C. 17:7-18.4 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. 17:7-18.5, Disability premium fund, recodified to N.J.A.C. 17:7-18.6.

17:7-18.6 Disability premium fund

(a) As of July 1, 1969, the State Treasurer is hereby authorized and permitted to purchase from one or more insurance companies, as determined by him or her, group life insurance and disability benefit coverage to provide for the disability benefits in the amounts specified in this chapter. Such disability benefit coverage may be provided under one or more policies issued to the State Treasurer specifically for this purpose or, in the discretion of the State Treasurer, under one or more policies issued to the State Treasurer which provide disability insurance coverage for members of one or more retirement systems of the State of New Jersey. Any dividend or retrospective rate credit allowed by an insurance company attributable to the Alternate Benefit Program shall be credited in an equitable manner to the funds available to meet the employers' obligations under the Alternate Benefit Program.

(b) Premiums for such group insurance coverage shall be paid from a special fund, hereby created, called the "Alternate Benefit Group Insurance Premium Fund." The State Treasurer shall estimate annually the amount which will be required for premiums for such benefits for the ensuing fiscal year and shall certify such amounts which shall be applied against the total employer contributions due for the participants from the several institutions where the Alternate Benefit Program is established, depositing such amounts in the Alternate Benefit Group Insurance Premium Fund.

(c) During the period such group insurance policy or policies are in effect with respect to participants in the Alternate Benefit Program, the State Treasurer shall in no way commingle moneys in this fund with any pension funds established under the Alternate Benefit Program.

(d) All reserves and moneys held by the insurance pension providers under the disability benefit policies providing for employer and employee contributions pursuant to the provisions of Chapters 64C and 65 of Title 18A of the New Jersey Statutes, P.L. 1967, c. 278 and 281 and P.L. 1968, c. 181, and any amendments and supplements thereto, as well as any accrued liabilities under such policies which may be terminated, shall be transferred and merged with those group policies purchased by the State Treasurer.

Recodified from N.J.A.C. 17:7-18.5 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. 17:7-18.6, Credit by insurer; savings on commissions, recodified to N.J.A.C. 17:7-18.7.

17:7-18.7 Credit by insurer; savings on commissions

Notwithstanding any other provision of law, any insurance company or companies, issuing a policy or policies under this subchapter may credit the policyholder either directly or in the form of reduced premiums, with savings by said company or companies in the event that no brokerage commission or commissions are paid by said company or companies on the issuance of such policy or policies.

Recodified from N.J.A.C. 17:7-18.6 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. 17:7-18.7, Certain employer obligations prohibited, recodified to N.J.A.C. 17:7-18.8.

17:7-18.8 Certain employer obligations prohibited

While any participant in the Alternate Benefit Program may make personal contributions at any time directly to the insurers or mutual fund companies 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 officer or full-time member of the faculty.

Recodified from N.J.A.C. 17:7-18.7 by R.2015 d.072, effective May 4, 2015.
See: 46 N.J.R. 588(a), 47 N.J.R. 905(b).

SUBCHAPTER 19. AMENDMENT

17:7-19.1 Program amendment

Subject only to the New Jersey Constitution and N.J.A.C. 17:7-19.2, the Legislature has the right to amend the Program at any time. To the extent consistent with the enabling statute, the Treasurer of the State of New Jersey has the right to amend the Program (including the terms of any Plan under the Program) and the separate premium funds with respect to the Group Life Insurance Plan and Group Long-Term Disability Plan at any time and/or to adopt rules and regulations consistent with the Program and applicable law.

17:7-19.2 Amendment cannot change exclusive benefit

Any amendment of the Program shall not be effective to the extent that the amendment has the effect of causing any Program assets to be diverted to or inure to the benefit of the State, the Plan Administrator, or any employer, or to be used for any purpose other than providing benefits to participants and beneficiaries in each respective plan in the Program, and defraying reasonable expenses of administering such Plan.

SUBCHAPTER 20. CONSTRUCTION

17:7-20.1 Construction and interpretation of Program

The provisions of this subchapter govern the construction or interpretation of this Program. This subchapter shall apply for all provisions, and shall supersede any other construction or interpretation rules.

17:7-20.2 Construction of ABP Retirement Plan as a qualified plan–ABP Retirement Plan only

(a) The Plan Sponsor intends that the ABP Retirement Plan conform to the Internal Revenue Code's requirements for Federal tax treatment under IRC §§ 401(a) and 414(d), with employee contributions picked-up under an arrangement consistent with IRC § 414(h)(2). Therefore, the Plan Administrator will construe and interpret the ABP Retirement Plan to conform to the requirements of IRC § 401, as applicable to a governmental plan under IRC § 414(d). When the Internal Revenue Code is amended through subsequent legislation, the Plan Administrator will construe and interpret the ABP Retirement Plan consistent with such amendment.

(b) To the extent required for the ABP Retirement Plan to qualify under IRC § 401(a), the provisions of this chapter shall be construed, consistent with Treasury Reg. § 1.401-1(b)(1)(ii), to provide:

1. A definite pre-determined formula for allocating contributions;

2. Crediting of actual investment earnings (and losses) to accounts, based upon investment options chosen;

3. Periodic valuation of Plan assets (including investment options) and trust assets at least once each year;

4. Periodic valuation of accounts at least once each year; and

5. Distribution of accounts after the occurrence of defined events.

17:7-20.3 Conformance with Federal statutes—ABP Retirement Plan only

(a) The ABP Retirement Plan has been drafted as a governmental plan intended to conform to the applicable requirements of the Uruguay Round Agreement Act, Pub. L. 103-465; the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 43 et seq.; the Small Business Job Protection Act of 1996, Pub. L. 104-188; the Taxpayer Relief Act of 1997, Pub. L. 105-34; the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206; and the Community Renewal Tax Relief Act of 2000, Pub. L. 106-554. Furthermore, the ABP Retirement Plan is amended to comply with certain provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), Pub. L. 107-16; the Pension and Protection Act of 2006 (PPA), Pub. L. 109-280; the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART), Pub. L. 110-245; and the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA), Pub. L. 110-458.

(b) Except as otherwise specifically provided in this chapter, this chapter establishes the rights and obligations with respect to individuals who are employees on and after such dates, as applicable, and to transactions under the ABP Retirement Plan on and after such dates, as applicable. The rights and benefits, if any, of individuals who are not employees on or after such dates, as applicable, shall be determined in accordance with the terms and provisions of the ABP Retirement Plan that were in effect on the date that their employment terminated, except as otherwise specifically provided in this chapter or in a subsequent amendment.

17:7-20.4 Conformance with enabling statute

The Program is established and maintained with the intent that the Program, and each Plan established under the Program conform to the applicable requirements of the enabling statute. The provisions of the Program shall be interpreted whenever possible to state provisions that conform to the applicable requirements of the enabling statute. When the enabling statute is amended or interpreted through subsequent legislation or regulations or an attorney general opinion, the Program should be construed as consistent with such amendment or interpretation of the applicable law.

17:7-20.5 Reference to statutes and regulations

(a) Any reference to a section of the Internal Revenue Code shall be construed to also refer to any successor provision. Any reference to a section of Treasury regulations shall be construed to also refer to any successor provision of such Treasury regulations. Any reference to a Revenue Ruling or Revenue Procedure or IRS Notice or IRS Announcement shall be construed to also refer to any guidance of general applicability that extends, amplifies, or modifies the Revenue Ruling or Revenue Procedure or IRS Notice or IRS Announcement.

(b) The Program refers to relevant regulations, including, but not limited to, Treasury regulations under the Internal Revenue Code, without regard to whether the regulations are substantive or interpretive and without regard to whether the regulations are proposed, temporary, or final; but it is intended that any provision that refers to a regulation shall be construed to refer to the regulation in the sense of the appropriate legal effect (under administrative procedure law and otherwise) that the regulation currently has at the time the construction is made.

(c) To the extent that a provision states a duty owed to any government (rather than a duty to a participant or beneficiary or other person or entity having an interest under the Program), the provision shall be construed as directory and shall be enforced only by such government. However, a provision that is necessary for the ABP Retirement Plan to meet the requirements of a qualified plan within the meaning of IRC § 401(a) includes a duty owed to participants and beneficiaries and is not directory.

17:7-20.6 Consistent with investment law

Whenever, after applying the specific construction rules of any definition or provision or part and the general construction rules stated in this subchapter, the ABP Retirement

Plan may be susceptible to more than one construction or interpretation, a construction or interpretation that is consistent with or that is not inconsistent with applicable investment law is preferred over a construction or interpretation that is inconsistent with applicable investment law.

17:7-20.7 Statute of limitations

As to any action at law or in equity under or with respect to this Program, the action shall be governed by (or precluded by) the relevant statute of limitations according to New Jersey law.

17:7-20.8 Venue

If any person bound by the Program under N.J.A.C. 17:7-11.15 or otherwise brings any proceeding against the Plan Administrator or the Board, such person submits to exclusive venue in the New Jersey courts sitting at Trenton, New Jersey.

17:7-20.9 Construction of words and phrases

(a) The headings and numbering of provisions in the Program and text that is stated within parenthesis are included solely for convenience of reference and are not intended to limit, amplify, or affect the construction of any provision of the Program.

(b) The phrases "under the Program," "under the Plan," "under this Program" or "under this Plan" refer to the entire Program or Plan as a whole, as applicable, and not merely to any part of any subchapter or section in which the phrase appears. Any reference to a part of this chapter refers to the whole chapter. Any reference to a definition or provision of this chapter refers to the whole definition or provision, unless the reference specifies a particular portion or paragraph of the provision.

(c) The singular shall be construed to include the plural, unless the context clearly indicates otherwise.

(d) The words "as" or "if" shall be construed to mean the phrase, "to the extent that," as appropriate in the context.

(e) Any reference to the Plan Administrator shall be construed to refer to a DSP to the extent that the DSP is authorized to act on behalf of or under the direction of the Plan Administrator.

(f) Unless the provision states otherwise, any reference to a person or party shall be construed to refer also to any non-natural person or any entity including, but not limited to, any trust or estate.

(g) Any reference to a corporation or similar organization shall be construed to include any successor to the corporation or similar organization.

(h) If any provision concerning a benefit under the Program is ambiguous, a construction or interpretation of the provision that would provide that such benefit is available in a non-discriminatory manner shall take precedence over a construction or interpretation that would not so provide.

17:7-20.10 Conformance with United States of America Constitution and New Jersey Constitution

When applying any of the preceding construction rules relating to the Internal Revenue Code or the enabling statute, the Plan Administrator need not consider any statute or regulation or order to the extent that its application is contrary to the Constitution of the United States of America or is contrary to the Constitution of the State of New Jersey.

SUBCHAPTER 21. CLAIMS AND APPEAL PROCEDURES

17:7-21.1 Appeal from Division decisions

(a) An Alternate Benefit Program participant may appeal a preliminary administrative determination from the Division by submitting a written statement to the Director of the Division within 45 days after the date of written notice of the determination. The Director of the Division shall reply to an appeal within 45 days with a written administrative determination.

(b) An Alternate Benefit Program Retirement Plan participant may appeal the initial administrative determination of the Director of the Division, in writing, 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's 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 of Pensions and Benefits within 45 days from the date of this letter, informing the Division of Pensions and Benefits 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."

(d) The Division shall determine whether to grant an administrative hearing based upon the standards for a contested case hearing set forth in the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

1. Administrative hearings shall be conducted by the Office of Administrative Law pursuant to the provisions of N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:1.

2. If the granted appeal involves solely a question of law, the Division may retain the matter and issue a final determination, which shall include detailed findings of fact and conclusions of law based upon the documents, submissions, and legal arguments of the parties. The Division's final determination may be appealed to the Superior Court, Appellate Division.

3. If the granted appeal involves questions of fact, the Division shall submit the matter to the Office of Administrative Law.

Amended by R.2015 d.072, effective May 4, 2015.
See: 46 N.J.R. 588(a), 47 N.J.R. 905(b).
Rewrote (a); and in (b), inserted ", in writing,"; and added (d).

17:7-21.2 Claims procedure

(a) By the terms of the Program, the claimant (or other aggrieved person) shall not be entitled to take any legal action or otherwise seek to enforce a claim to benefits or rights under the Program until he or she has exhausted all claims and appeals procedures provided by the Program.

(b) In considering claims under the Program and/or any Plan thereunder, the Plan Administrator has full power and discretionary authority to construe and interpret the provisions of the Program or Plan.

(c) In accordance with this chapter, a claimant or aggrieved individual shall file a claim with the Director of the Division. The Director has full power and discretionary authority to construe and interpret the provisions of the ABP Retirement Plan and this chapter and to adjudicate claims thereunder. Decisions of the Director shall be rendered in accordance with N.J.A.C. 17:1-1.3.

17:7-21.3 Determinations to be uniformly made

To the extent required by the enabling statute, any determination or decision required or permitted to be made for the purposes of the Program, or any Plan under the Program, by the Plan Administrator shall be uniformly and consistently made according to reasonable procedures established and maintained by the Plan administrator.

SUBCHAPTER 22. BENEFICIARY—GROUP LIFE INSURANCE PLAN ONLY

17:7-22.1 Beneficiary designation

(a) The designation of a beneficiary by a participant or retirant shall be made in writing on the applicable form to the Division and filed with the Division. The participant or retirant may, from time to time and without the consent of his or her designee, change the beneficiary by filing a written notice of the change on the applicable form. The new designation will be effective on the date the applicable form, in proper form, is received by the Division, and any prior applicable form shall thereupon become void.

(b) If more than one beneficiary is designated and in such designation the participant or retirant has failed to specify their respective interests, the beneficiaries shall share equally.

(c) Any amounts due for which there is no beneficiary at the death of a participant or retirant, shall be payable to the estate of such participant or retirant.

(d) With respect to any death benefits payable on the basis of the individual retirement annuity contract or contracts, all settlement options will be made available to the participant, retirant, or beneficiary, as are allowed by the insurer or insurers.

(e) The provisions of this section shall be construed separately with respect to each of the death benefits for which a beneficiary is designated by the participant or retirant.

New Rule, 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. 17:7-22.1, Death or retirement of participant; notice, recodified to N.J.A.C. 17:7-22.7.

17:7-22.2 Construction of beneficiary designation

(a) A beneficiary designation will be construed according to the following provisions:

1. Any statement in a beneficiary designation referring to a beneficiary's relationship to the participant is for convenience or information only, and has no effect in the construction or interpretation of the beneficiary designation.

2. A beneficiary designation will be construed to dispose of all of the remaining benefits under the Group Life Insurance Plan and will not be accepted otherwise. However, if a beneficiary designation specifies shares that total less than 100 percent of the benefit as the result of a beneficiary predeceasing the member, the Plan Administrator will adjust the shares pro rata, so that the shares equal 100 percent.

3. Except as otherwise provided by the Group Life Insurance Plan, a beneficiary designation that uses a term or phrase that would have significance in construing or interpreting a conveyance or disposition of a decedent's estate will, except as otherwise specified by the participant, be construed or interpreted according to the Uniform Probate Code (without regard to the participant's domicile at the time he or she made the beneficiary designation or at the time of his or her death). Likewise, if a beneficiary designation remains ambiguous after applying all provisions and construction rules stated by the Group Life Insurance Plan, but would be resolved by applying the rules of construction and interpretation of the Uniform Probate Code for construing a beneficiary designation or conveyance, such rules will apply to the beneficiary desig-

nation, except as otherwise provided by the Group Life Insurance Plan. Notwithstanding anything in this subsection, the Plan Administrator will not give effect to any Uniform Probate Code provision concerning the effect of divorce or marital separation. Also, the Plan Administrator will not give effect to any Uniform Probate Code provision or any construction or interpretation principle that would require the Plan Administrator to consider information not in the Group Life Insurance Plan records.

New Rule, 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. 17:7-22.2, Assignments; group life insurance, recodified to N.J.A.C. 17:7-22.8.

17:7-22.3 Beneficiary must be alive when the distribution becomes payable

Notwithstanding any beneficiary designation or any law to the contrary, a person will not be a beneficiary unless he or she is living or it exists when the distribution otherwise would become payable. Further, a person that would receive a distribution as a trustee or other fiduciary will not be a beneficiary unless the person that the trustee or fiduciary serves is living or exists when the distribution would become payable. Any right of a beneficiary is strictly personal to that beneficiary and lapses on his or her death. Any undistributed benefit that would have been distributable to a person had he or she lived is not distributable to that person's legatees or heirs. On a beneficiary's death, any undistributed benefit attributable to that beneficiary becomes distributable to the remaining primary beneficiaries or beneficiary if any, or if none, to the remaining contingent beneficiaries or beneficiary, in each case to be distributable in equal shares to all living beneficiaries of the applicable primary or contingent beneficiary class.

New Rule, 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. 17:7-22.3, Death before payment to insurer, recodified to N.J.A.C. 17:7-22.9.

17:7-22.4 Marriage or status has no effect

Notwithstanding any law to the contrary, a marriage, civil union, domestic partnership, or a divorce, dissolution, annulment, revocation, or other end of a marriage, civil union, or domestic partnership, or any other creation, interruption, or end of a spouse or other family relationship has no effect concerning whether a person is (or is not) a beneficiary.

New Rule, 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. 17:7-22.4, Base monthly salary for disability benefits, recodified to N.J.A.C. 17:7-18.4.

17:7-22.5 Lack of beneficiary designation

(a) If a participant failed to designate a beneficiary (including a failure because the participant's beneficiary designation is invalid or ineffective) or no beneficiary designated by the participant is living or exists when the distribution otherwise would become payable, then the participant's estate is the beneficiary to the extent of the failure or invalid or ineffective designation. For the purposes of this subsection, the Plan Administrator may rely on an appropriate court order or the personal representative's written statement as to the identity (including name, address, and taxpayer identifying number under IRC § 6109) of and shares allocable to the persons entitled to such estate.

(b) Invalid designations include any document that contains:

1. Provisions that have been crossed out;

2. Provisions that have been whited out;

3. Provisions completed in pencil;

4. Provisions that list the same individual(s) as both the primary and contingent beneficiary;

5. Provisions that use nicknames; the beneficiary's legal name must be provided;

6. Provisions that use general terms, like "my children" or "my grandchildren"; the specific name of each individual beneficiary must be listed;

7. In cases where a participant provides a distribution using specific percentages, provisions that do not add up to 100 percent; and

8. In cases where the participant provides a distribution using specific fractions, provisions that do not add up to one.

New Rule, 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. 17:7-22.5, Life insurance, recodified to N.J.A.C. 17:7-22.10.

17:7-22.6 A slayer cannot be a beneficiary

A named beneficiary who feloniously and intentionally kills the participant or another beneficiary is not a beneficiary and is not entitled to any distribution or any other right under the Program or any Plan under the ABP Program; and any benefit is paid as though the killer had predeceased the participant or beneficiary.

New Rule, 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. 17:7-22.6, Life insurance coverage during leave for illness, recodified to N.J.A.C. 17:7-22.11.

17:7-22.7 Death of participant; notice

Upon receiving notification of the death of a participant, the Division shall process the necessary forms related to such death and notify the insurer providing life insurance coverage.

Recodified from N.J.A.C. 17:7-22.1 and amended by R.2015 d.072, effective May 4, 2015.
See: 46 N.J.R. 588(a), 47 N.J.R. 905(b).

Section was "Death or retirement of participant; notice". Rewrote the section. Former N.J.A.C. 17:7-22.7, Election to receive cash distribution, recodified to N.J.A.C. 17:7-8.8.

17:7-22.8 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 section, 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).
Recodified from N.J.A.C. 17:7-22.2 and amended by R.2015 d.072, effective May 4, 2015.
See: 46 N.J.R. 588(a), 47 N.J.R. 905(b).
In (b), substituted "section" for "rule".

17:7-22.9 Death before payment to insurer

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

Amended by R.2006 d.360, effective October 2, 2006.
See: 38 N.J.R. 2032(a), 38 N.J.R. 4245(a).
Deleted "annuity" following "employee", substituted "investment provider" for "designated insurer", and substituted "investment" for "designated annuity".
Recodified from N.J.A.C. 17:7-22.3 by R.2015 d.072, effective May 4, 2015.
See: 46 N.J.R. 588(a), 47 N.J.R. 905(b).

17:7-22.10 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 3 1/2 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).
Recodified from N.J.A.C. 17:7-22.5 by R.2015 d.072, effective May 4, 2015.
See: 46 N.J.R. 588(a), 47 N.J.R. 905(b).

17:7-22.11 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.

Recodified from N.J.A.C. 17:7-22.6 by R.2015 d.072, effective May 4, 2015.
See: 46 N.J.R. 588(a), 47 N.J.R. 905(b).

SUBCHAPTER 23. TRANSFERS

17:7-23.1 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).

17:7-23.2 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.