

sustained in the course of performance of duty, not as a result of willful negligence, within the borders of the municipality after January 1, 2000.

(c)-(d) (No change.)

17:1-11.4 Application for a survivor’s pension

(a) (No change.)

(b) The resolution must be accompanied by a certified death certificate of the volunteer emergency worker, a copy of the accident or police report, and an application for the survivor’s pension. The application must be completed in all respects and filed with the Division on or before the date benefits are to begin. The application must include a copy of the marriage certificate in the case of a widow or widower, a copy of the birth certificate(s) in the case of a child or children, or a copy of the volunteer emergency worker’s tax return indicating the dependency of the parent(s). The child’s birth certificate must name the volunteer emergency worker as the child’s parent, unless the child was legally adopted, in which case, a copy of legal documentation evidencing the adoption is required.

(c) (No change.)

(d) If the municipal governing body determines, by resolution, the eligibility of a widow, widower, children, or parent for a survivor’s pension, after the January of the calendar year in which the benefit should have started, the Volunteer Emergency Worker Survivors Pension shall be paid on a prospective basis only. Eligibility for benefits shall begin with the first month following the receipt of the resolution.

17:1-11.5 Ineligibility to receive two survivor’s benefits

A survivor who is eligible for accidental death benefits under a State-administered retirement system cannot receive a Volunteer Emergency Workers Survivors Pension for the same event.

SUBCHAPTER 13. NEW JERSEY STATE EMPLOYEES TAX SAVINGS PROGRAM (TAX\$AVE)

17:1-13.7 Forfeiture of account balances

In the event that the amount elected by an employee to fund a plan account in a given plan year exceeds the employee’s total claims eligible for payment from the plan account, for expenses incurred in that plan year, including the 2 1/2 month grace period immediately following the end of the calendar year (as submitted no later than April 30 of the following calendar year), the balance in the plan account shall be forfeited to the State.

SUBCHAPTER 14. THE NEW JERSEY STATE EMPLOYEES COMMUTER TAX SAVINGS PROGRAM (COMMUTER TAX\$AVE PROGRAM)

17:1-14.1 Establishment of plan

State employees eligible to participate in the State Health Benefits Program, except those part-time employees participating due to the provisions of P.L. 2003, c. 172 (N.J.S.A. 52:14-17.33a), are eligible to participate in the New Jersey State Employees Commuter Tax Savings Program, which shall be referred to as the Commuter Tax\$ave Program, set forth in this subchapter. The Division has been charged by the Treasurer with responsibility for administering the Commuter Tax\$ave Program. In each month, an employee, but not the employee’s spouse or domestic partner, may participate in one or both of the plan options available: mass transit expenses and commuter parking expenses.

17:1-14.2 Enrollment in and deductions for the Commuter Tax\$ave Program

(a) (No change.)

(b) Monthly deductions shall be taken by Centralized Payroll in the first pay period of the month prior to the benefit month. State colleges and universities may establish a schedule of deductions to occur each month prior to the benefit month.

(c) The amount of any reduction in an employee’s salary for the purpose of contributing to the payment of the qualified transportation fringe benefit shall continue to be treated as regular compensation for all other purposes, including the calculation of pension contributions and the amount of any retirement allowance, up to the limit permitted by the Federal Internal Revenue Code, but shall not be included in the

computation of Federal, Social Security, or Medicare taxes withheld from the employee’s salary.

SUBCHAPTER 17. COMPLIANCE WITH INTERNAL REVENUE CODE

17:1-17.8 Normal retirement age for the Public Employees’ Retirement System

(a) In addition to any other vesting provided by State law and in accordance with Internal Revenue Service guidance, a member’s benefit is nonforfeitable upon attainment of the normal retirement age, which is as follows:

1. For PERS General:

i. (No change.)

ii. Age 62 for persons who become members on or after November 2, 2008 (Tier 3 and Tier 4); and

iii. Age 65 for persons who become members on or after June 28, 2011 (Tier 5);

2.-6. (No change.)

17:1-17.14 Retiree reemployment

(a)-(c) (No change.)

(d) In order to demonstrate that there has been a bona fide severance from employment in compliance with Federal law, each member and the member’s employer shall certify as part of the application for a retirement benefit that the member has had a bona fide severance from employment with the employer as of a specific date and that there is no pre-arranged agreement for that member to be reemployed by the employer as an employee, a contract employee, a leased employee, or an independent contractor. The certification shall be made under penalties of perjury.

(e)-(f) (No change.)

(g) As required by Federal law, the Division shall issue a Form 1099-R with respect to any retired member who receives a taxable distribution from the defined benefit plans. In order to fulfill its obligations under Federal law with respect to the defined benefit plans, the Division must identify those retired members who may be subject to a premature distribution penalty (10 percent of the taxable amount of the benefit) because they have not attained age 59 1/2. In the case of a retired member who returns to employment with the same employer (as defined in (e) above) within the 180-day period specified in (e) above, if the retired member has not attained age 59 1/2 during the time that some or all of distributions were made from the defined benefit plans, the Division shall code the Form 1099-R to indicate that the distribution is an “Early Distribution” and that no known exception from the penalty applies.

(a)

**DIVISION OF PENSIONS AND BENEFITS  
JUDICIAL RETIREMENT SYSTEM**

**Judicial Retirement System**

**Readoption with Amendments: N.J.A.C. 17:10**

**Adopted Repeals and New Rules: N.J.A.C. 17:10-5.2 and 5.5**

Proposed: December 7, 2015, as 47 N.J.R. 2907(b).

Adopted: May 17, 2016, by the Judicial Retirement System, Henry Matwiejewicz, Acting Secretary.

Filed: May 17, 2016, as R.2016 d.066, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 43:6A-29.d.

Effective Dates: May 17, 2016, Readoption;  
June 20, 2016, Amendments, Repeals, and New Rules.

Expiration Date: May 17, 2023.

**Summary of Public Comments and Agency Responses:**

The comment period officially ended on February 5, 2016. Comments on the notice of proposed re-adoption were received from the following individuals:

1. A private citizen who identified herself as Jean Public (1); and
2. Janet Share Zatz, Director of Human Resources, Administrative Office of the Courts.

**N.J.A.C. 17:10-1**

1. COMMENT: The commenter expresses a major concern regarding the acceptance of naturalization and immigration papers to establish proof of age. The commenter points out that forged immigration documents can be bought easily and are a common form of identity fraud. For this reason, the commenter asserts that this type of documentation should be scrutinized carefully when submitted as proof-of-age evidence. (1)

RESPONSE: Identity fraud and identity theft are serious problems that many public and private agencies now face commonly, regardless of the type of documentation in question. However, the Division must offer alternate forms of proof-of-age evidence, for members and their beneficiaries who are unable to obtain a digital driver license. Finally, the Division no longer accepts less reliable proof of age evidence, such as census records and affidavits from older family members, which is an important step taken to hinder identity fraud and theft. For the reasons cited above, naturalization and immigration papers will continue to be accepted as proof-of-age evidence for Judicial Retirement System (JRS) members at retirement.

**N.J.A.C. 17:10-4**

2. COMMENT: The commenter objects to allowing JRS members to purchase eligible service credit, unless it is eligible military service or judicial service worked in New Jersey's courts. The commenter asserts that such service credit puts a huge burden on taxpayers, who are already subject to exorbitant taxation for massive pension deficits. The commenter also objects to the issuance of pension loans, because it requires the utilization of public resources for the calculation and processing of such loans. (1)

RESPONSE: Although the commenter's concerns for the taxpayers' economic burdens are to be lauded, current statutes already exist that allow for the purchase of eligible service and the issuance of pension loans. Specifically, pension loans are provided for under N.J.S.A. 43:6A-34.3, which states, "... any member who has at least three years of service to the member's credit for which the member has contributed as a member may borrow from the retirement system, an amount equal to not more than 50% of the amount of the member's accumulated deductions, but not less than \$50.00; provided, that the amount so borrowed, together with interest thereon, can be repaid by additional deductions from compensation, not in excess of 25% of the member's compensation, made at the same time compensation is paid to the member." The statutory provisions for service credit purchases by JRS members are found at N.J.S.A. 43:6A-14.2(a), which states: "... any judge who shall be appointed to sit on any of the several courts who wishes to receive credit for previous service rendered in office, position, or employment of this State or of a county, municipality, board of education, or public agency of this State, shall file an application therefor with the State House Commission and pay into the annuity savings fund the amount required by applying the factor, supplied by the actuary, as being applicable to his age at the time of purchase, to his salary at that time." The regulatory process is not the proper legal avenue for repealing current statutes.

**N.J.A.C. 17:10-5**

3. COMMENT: The commenter objects to the verbiage changes regarding early and service retirements for JRS members. The commenter asserts that a judge's retirement date should not be subject to change to enhance a judge's retirement benefit. The effective date of retirement should be the date submitted on the retirement application, and the date on which the judge does not show up for work. The commenter also states that the retirement age for judges should be moved up to age 68, as "comparable to the Social Security age, since people are living longer" now. Further, the commenter asserts that the State House Commission does not need to be involved, except as a check. (1)

RESPONSE: The changes to N.J.A.C. 17:10-5.8 and 5.9 represent corrections to verbiage found in current rules, not pension enhancements. N.J.A.C. 17:10-5.8, Early retirement defined, is amended to reflect current statute, not to enhance present JRS benefits. N.J.S.A. 43:6A-10 currently defines an early retirement as occurring when a member has 25 years of service and retires before reaching age 60, but current N.J.A.C. 17:10-5.8 incorrectly states that retirement on the first of the month in which a member attains age 60 shall be classed as an "early" retirement. Thus, the present verbiage is being changed to, "Retirement on the first of the month before a member attains age 60 shall be classed as an "early" retirement."

N.J.A.C. 17:10-5.9, Service retirement; eligibility, is amended, so that it correctly reflects the service retirement options that are available to eligible JRS members at retirement, based on the number of years of JRS service and other service that a member has, pursuant to N.J.S.A. 43:6A-8-9. Current rules only reference the available service retirement option available when a member attains the age of 60; however, other options based on age and the number of years of service that the member has attained are also available to members, so that specific age reference is to be removed. The last sentence will now state, "If the member's birthday falls on the first of the month in which the member becomes eligible for a service retirement—under any of the options specified at N.J.S.A. 43:6A-8 and 9—the retirement shall become effective on that date, provided it is the retirement date indicated on the member's retirement application."

In addition, N.J.S.A. 43:6A-16.1 already provides that when a JRS member dies with a retirement application pending, the member's named beneficiary for an optional settlement may request that the member's retirement and selected option become effective. Furthermore, the regulatory process is not the proper legal avenue for repealing current statutes, such as those that dictate the age at which members are eligible to receive their retirement benefits. Finally, since the general responsibility for the proper operation of the retirement system is given to the State House Commission under N.J.S.A. 43:6A-29a, the State House Commission's involvement in the administration of the JRS is significant and also based on current statute.

**N.J.A.C. 17:10-6**

4. COMMENT: The commenter makes a general statement about the massive economic impact that New Jersey's public pensions have on New Jersey taxpayers, who "simply cannot afford to pay such generous retirement plans anymore. " The commenter also asserts that "there should never be any retirement benefits to people who are still working for State or municipal governments. Members who receive a retirement allowance should not be employed by our State government or the Federal system at all, because they are hurting NJ taxpayers with their huge payouts." (1)

RESPONSE: The commenter's general assertions present issues that would need to be addressed legislatively. The regulatory process is present to provide for the effective administration of existing statutes or newly passed laws. Rules that directly oppose current law cannot be adopted.

**N.J.A.C. 17:10-6.1(d)**

5. Comment: The commenter states that the JRS liaison at the Division of Pensions and Benefits does not receive or process JRS enrollment applications until after a judge's date of oath. Further, the commenter states that the language contained in the enrollment letter sent to new JRS members reflects the Division's current practice of allowing judges to submit an application for interfund transfer within 90 days from the date on the enrollment letter or the date of oath, whichever is later. Requiring the application to be submitted within 90 days of the appointment date would give a judge a period that is less than 90 days to submit the Application for Interfund Transfer. The commenter requests that N.J.A.C. 17:10-6.1(d) be modified so that it is consistent with the language found in the enrollment letter provided to each new JRS member. (2)

RESPONSE: The commenter's reference to current Division procedures regarding interfund transfers for JRS members is correct in that JRS members are given 90 days from the date of the member's enrollment letter or 90 days from their date of oath, to submit an Application for Interfund Transfer, since a member's date of appointment

may precede the date of the enrollment letter or date of oath. However, since N.J.S.A. 43:6A-14 specifically states that transfers “shall be accomplished by filing forms satisfactory to the New Jersey Division of Pensions ... within 90 days ... of . . . appointment to one of the several courts,” with the appointment process culminating on the date that the member takes the oath of office, the Division is statutorily barred from extending this window beyond 90 days from the date the member is sworn in (date of oath). For this reason, current verbiage will be modified, but only to clarify that the date of oath shall represent the culmination of the judicial appointment process. Article VI, Section VI of the New Jersey Constitution determines how individuals become Supreme Court justices or Superior Court or Tax Court judges. As specifically outlined on the New Jersey Judiciary website (<http://www.judiciary.state.nj.us/process.htm>), the appointment process begins when “the Governor nominates a person to be a justice or a judge. The Governor submits the nomination to the State Senate, which then votes whether to confirm the nominee for the position. If confirmed by the Senate, the nominee is sworn in for an initial term of seven years.”

#### Federal Standards Statement

The rules readopted with amendments, new rules, and repeals meet the applicable Federal standards, that is, 26 U.S.C. § 403(b). There are no other Federal standards applicable to the subject matter of this chapter.

**Full text** of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 17:10.

**Full text** of the adopted amendments and new rules follows (additions to proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

### SUBCHAPTER 1. ADMINISTRATION

#### 17:10-1.4 Certifying officer

(a) (No change.)

(b) The prime purpose of the certifying officer will be to certify facts of enrollment, retirement, and resignation; to implement proper procedures for the reports concerning members; and to act as liaison for all dealings between the courts and the retirement system.

#### 17:10-1.8 Proof of age

(a) As most members are appointed at a later age in the Judicial Retirement System (System), all members shall be required to establish proof of their age with the System at the time of their enrollment in the System. If a member is transferring to the Judicial Retirement System from another State-administered retirement system where proof of age was secured, no additional proof of age will be requested. Acceptable proofs of age include birth certificates with visible seal, passports, U.S. passport cards, naturalization or immigration papers, valid New Jersey, New York, or Pennsylvania digital driver licenses, digital non-driver ID cards from the New Jersey Motor Vehicle Commission (MVC), or military records indicating a member's age.

(b)-(c) (No change.)

### SUBCHAPTER 2. ENROLLMENT AND PURCHASES

#### 17:10-2.1 Enrollment date

The Chief Justice and associate justices of the State Supreme Court, and all judges of the Superior Court and tax courts of the State of New Jersey are required to become members of the JRS as a condition of employment. A new appointee to any of the above courts shall be considered as beginning membership in the Judicial Retirement System on the date of taking the oath of office following confirmation.

### SUBCHAPTER 3. INSURANCE AND DEATH BENEFITS

#### 17:10-3.4 Survivor benefits

(a) (No change.)

(b) In the instance of survivors of members who die in service, the initial pension payment will be for the month following the month in which the member died, and the last payment will cover the month the survivor dies or ceases to qualify for the continuance of benefits. In the event that the member has no surviving spouse, civil union partner,

domestic partner, child, or parent who is eligible for the survivor benefit; and no other beneficiary designation is in effect at the time of the member's death, the Division shall pay the deceased member's aggregate contributions to the deceased member's estate.

#### 17:10-3.5 Contributory group life insurance; beneficiary designation

Members enrolled in the contributory group life insurance (Group Term life insurance or Group Variable Universal Life (GVUL) insurance) must designate their beneficiary or beneficiaries directly with the insurance provider. Any change of beneficiary designation for non-contributory group life insurance filed with the Division of Pensions and Benefits shall not affect the beneficiary designation for the contributory group life insurance.

### SUBCHAPTER 4. MEMBERSHIP

#### 17:10-4.1 Creditable salary (compensation)

(a) “Compensation” means the base salary for services as a member of the JRS, as defined at N.J.S.A. 43:6A-3f, in accordance with established policies of the State for all employees in the same position.

(b) “Compensation” shall not include:

1. Individual salary adjustments that are granted primarily in anticipation of the member's retirement.
2. Retroactive salary adjustments if the increase is not of a normal, overall, published program of increases.
3. Bonus or overtime payments; or
4. Longevity, terminal leave, or vacation payments, if paid in a lump sum or other than as a regular salary disbursement.

(c) (No change in text.)

#### 17:10-4.5 Purchasing eligible service credit

(a) Only former public service in New Jersey may be purchased for service credit. Former non-Judicial Retirement System service will be calculated pursuant to N.J.S.A. 43:6A-14.2.a.

(b) Military service after October 13, 1994, that is rendered after Judicial Retirement System enrollment occurs may be purchased in accordance with the requirements of the Federal Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).

#### 17:10-4.8 Minimum adjustment

In order to facilitate the reconciliation of a member's account, no refunds or additional contributions shall be made where an adjustment involves an amount of \$50.00 or less during a calendar quarter.

#### 17:10-4.10 Eligibility for loan

(a) Only active contributing members of the Judicial Retirement System may exercise the privilege of obtaining a loan. The member's total outstanding loan balance shall not exceed the lesser of 50 percent of the accumulated deductions posted to the member's account or \$50,000. The loan is subject to I.R.C. § 72(p) (2007) of the Internal Revenue Code.

(b) The rate of interest per annum for loans from the State-administered retirement system shall be a commercially reasonable rate as required by the Internal Revenue Code to be determined by the State Treasurer on January 1 of each calendar year. An administrative fee in an amount set by the State Treasurer for each calendar year may be charged for any loan requested, pursuant to N.J.S.A. 43:6A-34.3.

(c) All other statutes and rules governing loans apply, including N.J.S.A. 43:6A-34.4, Repayment of loans after retirement of members of JRS, and N.J.A.C. 17:1-1.9, Bankruptcy; subsequent loans.

### SUBCHAPTER 5. RETIREMENT

#### 17:10-5.1 Applications

(a) Applications for retirement must be made on forms prescribed by the Judicial Retirement System (System):

1. (No change.)
2. In the event a member files an incomplete application, the deficiencies shall be brought to such member's attention and such member will be required to file a completed application with the System within 90 days to enable acceptance for processing.
3. (No change.)

(b) P.L. 2002, c. 54 provides a Judicial Retirement System member the option of selecting a reduced retirement benefit in order to provide a monthly survivor benefit to a named beneficiary. This monthly benefit is in addition to and separate from the statutory benefit already in place for a surviving spouse and dependent children. A member shall, on the retirement application, select one of nine ways (options) to receive retirement benefits. Each option provides the member with a lifetime monthly retirement benefit. Once a retirement benefit becomes due and payable, as defined by N.J.A.C. 17:10-5.3, the option cannot be changed. Except under the Maximum Option and Option 1, once a member designates a beneficiary, that beneficiary cannot be changed. The options are as follow:

1.-9. (No change.)

(c) Before an application for retirement may be processed, the Division must receive proof of the member's age, if none is already in the member's record and proof of the beneficiary's age, if the member elected Option A, B, C, D, 2, 3, or 4.

(d) (No change.)

17:10-5.2 Effective date

A member's retirement allowance shall not become due and payable until 30 days after the date the State House Commission approves the application for retirement or 30 days after the date of retirement, whichever is later.

17:10-5.5 Benefits payable when a member dies with a retirement application pending

Pursuant to N.J.S.A. 43:6A-16.1, the person designated as the beneficiary of an optional settlement on a member's pending retirement application may request, upon the member's death, that the member's retirement and selected option become effective. The surviving beneficiary must request in writing that the State House Commission approve the retirement. If the deceased member failed to select an optional settlement, the State House Commission shall grant an Option 3 settlement.

17:10-5.7 Employer disability application; employee notice

(a) (No change.)

(b) The member will have six months to supplement the medical and documentary evidence submitted by the court. If a member requires additional time to supplement medical and documentary evidence, the member must request an extension of time and provide a sound basis for the request.

17:10-5.8 Early retirement defined

Retirement on the first of the month before a member attains age 60 shall be classed as "early" retirement, although a reduction is not applied if the member's 60th birthday occurs on or before the 15th of such month.

17:10-5.9 Service retirement; eligibility

A member becomes eligible for "service" retirement on the first of the month following the month in which the member satisfies the conditions of retirement for age and service. If the member's birthday falls on the first of the month in which the member becomes eligible for a service retirement under any of the options specified at N.J.S.A. 43:6A-8 and 9, the retirement shall become effective on that date, provided it is the retirement date indicated on the member's retirement application.

SUBCHAPTER 6. TRANSFERS

17:10-6.1 Interfund transfers; other State systems

(a) (No change.)

(b) 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, if the Board or Commission of an employee's former system determines that all or a portion of the employee's prior service is dishonorable, the Board or Commission of the employee's new State-administered retirement system shall disallow the purchase or transfer of that portion of prior service deemed dishonorable.

(c) (No change in text.)

(d) The System will transfer membership to any State-administered system as follows:

1. \*[A]\* **\*Pursuant to N.J.S.A. 43:6A-14A, a\*** member desiring to transfer credits to any State-administered retirement system must file an "Application for Interfund Transfer" within 90 days of the appointment, in place of the customary application for withdrawal of accumulated contributions\*, **where the date on which the member takes the oath of office will represent the culmination of the appointment process\***. This application will void all possible credit against the present system when approved and the new membership shall commence in the new system.

2.-5. (No change.)

Recodify existing (d) and (e) as (e) and (f) (No change in text.)