

(d) N.J.S.A. 43:15A-43 requires the Board to designate physicians to perform medical examinations of members who apply for accidental disability retirements. If a member or retiree who is enrolled in the World Trade Center Health Program provides medical documentation for treatment provided, or paid, by the World Trade Center Health Program sufficient to allow the Medical Review Board to certify that the member or retiree is totally and permanently disabled by a qualifying condition or impairment of health as a direct result of participation in World Trade Center rescue, recovery, or cleanup operations, no further evaluation is necessary. However, if the medical documentation is not sufficient to establish a total and permanent disability caused by a qualifying condition or impairment of health as a direct result of participation in World Trade Center rescue, recovery, or cleanup operations after review by the Medical Review Board, then an independent medical examination shall be required pursuant to N.J.A.C. 17:1-7.10.

#### 17:2-9.5 Calculation of accidental disability

If a member or retiree is approved for an accidental disability retirement under the provisions of P.L. 2019, c. 157, the annual allowance shall be 72.7 percent of the member or retiree's salary at the time of participation in World Trade Center rescue, recovery, or cleanup operations. If a member or retiree was not a member of PERS at the time of participation in World Trade Center rescue, recovery, or cleanup operations, the annual allowance shall be 72.7 percent of the member or retirees' salary at the time of enrollment in PERS.

## (a)

### DIVISION OF PENSIONS AND BENEFITS

#### Alternate Benefit Program

#### Proposed Readoption with Amendments: N.J.A.C. 17:7

Authorized By: Division of Pensions and Benefits, John D. Megariotis, Acting Director.

Authority: N.J.S.A. 18A:66-192.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2020-083.

Submit comments by November 7, 2020, to:

Susanne Culliton  
Assistant Director  
Division of Pensions and Benefits  
PO Box 295  
Trenton, NJ 08625-0295  
[DPB.regulations@treas.nj.gov](mailto:DPB.regulations@treas.nj.gov)

The agency proposal follows:

#### Summary

The Division of Pensions and Benefits (Division) is responsible for promulgating and reviewing the administrative rules for the Alternate Benefit Program ("ABP" or "Program") codified at N.J.A.C. 17:7. When the Division becomes aware of a court decision or change in the law that could affect the ABP, the administrative rules are reviewed and, if changes are mandated, steps are taken to propose revisions to those rules, so that they conform to the new statute or court decision. Additionally, the rules are periodically reviewed by the Division to ascertain whether current rules are necessary, cost efficient, reflect current procedures of the Division, and maintain qualified plan status in compliance with Federal IRS regulations. Finally, when the rules at N.J.A.C. 17:7 are due to expire, they must be readopted.

The Director of the Division proposes to readopt the existing rules at N.J.A.C. 17:7, with several amendments, at N.J.A.C. 17:7-8.11, in light of a review of other states' experience in this area. The rules proposed for readoption with amendments reflect the requirements for administration, enrollment, contributions, distribution, termination, and transfers at N.J.S.A. 18A:66-167 through 192. N.J.A.C. 17:7 was scheduled to expire on May 4, 2022. As the Division has filed this notice of readoption prior

to May 4, 2022, that date is extended 180 days to October 31, 2022, pursuant to N.J.S.A. 52:14B-5.1.c(1).

The ABP is a defined contribution retirement program for eligible employees of the public institutions of higher education in New Jersey. In addition to the distribution of retirement benefits, the ABP provides members with life insurance and disability coverage. Under the ABP, members direct their own retirement accounts and may accumulate contribution balances with any employer who participates in the ABP. Authorized ABP carriers offer a variety of investment choices and distribution methods to ABP members. Vested members are permitted to allocate and transfer employer and employee contributions to authorized investment carriers.

A member of the ABP becomes eligible to commence distributions at any age upon termination of employment or retirement. Members may receive benefits in the form of an annuity or cash distribution. Annuity benefits are calculated by the investment carrier(s) based upon the account accumulation, life expectancy, and the distribution option selected. Cash distributions to members under the age of 55 are limited to their employee contributions and accumulations. The remaining employer contributions and earnings are available for distribution upon attaining age 55. Once vested members start collecting benefits from their ABP account, members are considered retired and are not eligible to enroll in any New Jersey State-administered retirement system; nor are they eligible to reenroll in the ABP. Transitional programs exist across the higher education landscape. They allow key faculty who may be the head of a significant research project or program, or the advisor for graduate students, to transition projects to another faculty member, wind down research, or, in the case of graduate students, successfully transition students toward graduation. Transitional programs tend to extend from three to five years across the nation.

Members, retirees, and survivors of members and retirees rely on the efficient operation of the ABP to administer their accounts and to provide the information they need regarding their accounts. They rely on the presence and predictability of rules that guide the administration of their accounts. The protections and guarantees that the rules afford members and retirees mandate their continued existence.

Following is a discussion of the rules proposed for readoption with amendments:

#### Subchapter 1. General Provisions

Subchapter 1 restates the provisions of the Alternate Benefit Program established by statute. It includes information about the Program's establishment, the ABP as an exclusive benefit, and the five plans that make up the ABP, including the ABP Retirement Plan, the ACTS Program, the Group Life Insurance Plan, the Group Long-Term Disability Benefit Plan, and the closed ABP Pre-1995 Annuity Contracts Plan. No changes are proposed to this subchapter.

#### Subchapter 2. Definitions

Subchapter 2 provides definitions for terms that are used regularly in ABP rules. No changes are proposed to this subchapter.

#### Subchapter 3. Pension Provider Selection Board

The composition of the Pension Provider Selection Board is delineated in Subchapter 3. In addition, the pension provider selection process and the pension provider performance review process is outlined. No changes are proposed to this subchapter.

#### Subchapter 4. Participation in the Alternate Benefit Program

Subchapter 4 outlines eligibility requirements for participation in the ABP. It includes information about who carries the responsibility for determining ABP eligibility and about transfers from other programs into the ABP. No changes are proposed to this subchapter.

#### Subchapter 5. Contributions to the ABP Retirement Plan

The process of enrolling members in the ABP Retirement Plan is outlined at Subchapter 5. Subchapter 5 specifies the employee and employer contributions to be made, based on a member's base salary. No changes are proposed to this subchapter.

**Subchapter 6. Vesting and Forfeiture—ABP Retirement Plan Only**

The main purpose of Subchapter 6 is to provide vesting schedules for the ABP Retirement Plan, including the one-year delay of vesting during a member's first year of employment. Subchapter 6 also outlines how forfeitures are to be executed in cases of dishonorable service. No changes are proposed to this subchapter.

**Subchapter 7. QDRO Procedures**

Subchapter 7 outlines when, and how, a Plan Administrator of the ABP Retirement Plan or ACTS is to enforce a domestic relations order as a QDRO. Required notices to participants and alternate payees regarding distributions are specified, as well as how investments are to be directed during a domestic relations matter. No changes are proposed to this subchapter.

**Subchapter 8. Distributions and Minimum Distribution Requirements—ABP Retirement Plan**

Subchapter 8 outlines the distribution requirements to be met when a member severs his or her ABP employment through retirement or disability. It also includes information about minimum distribution, corrective distributions, default retirement distributions, and repurchases.

The Division of Pensions and Benefits proposes to amend N.J.A.C. 17:7-8.11, Transition to retirement programs. N.J.A.C. 17:7-8.11 outlines the specific procedures and eligibility requirements for the transition to retirement programs that are now permitted as a result of P.L. 2013, c. 120, the "Transition to Retirement Programs" (TTRP) Act, which was signed into law on August 9, 2013.

Pursuant to N.J.A.C. 17:7-8.11, ABP members employed at institutions of higher education are permitted to continue to teach or continue to participate in research on a limited basis and collect a salary, while also receiving ABP distributions during a period of transition to retirement. TTRPs provide an exception to N.J.A.C. 17:7-8.1, which otherwise prohibits distributions to ABP members who are actively employed. The current language permits TTRPs entered into prior to the promulgation of the existing rule (that is, prior to September 21, 2015), to continue until September 21, 2020. As the date for the end of the participation for these TTRPs comes near, the Division has looked at practices in other states, where programs average between three and five years. Given that the current period is one year, the Division has determined that expansion to three years is likely to achieve the goal of orderly retirement planning where research or graduate students are involved. The Division, thus, proposes to expand the period of time allowed for an ABP member's transition to retirement under a TTRP to not more than three years or less. This change will allow these individuals, and the institutions they serve, some flexibility to finalize any research or other projects, while still ensuring a definitive timeframe to retirement. The rule also permits those TTRPs that permitted only one year, to amend their current TTRP to extend for a period of up to, but not more than, three years. These TTRPs shall not be provided as an incentive to the member to retire. Therefore, the Division plans to require that the employer to provide a certification and evidence that: (1) the TTRP is not an incentive by the employer for the member to retire; (2) the employer has set in place policies and procedures to ensure that its TTRPs comply with the three-year maximum timeframe; and demonstrates that all employees in the program carry no more than 50 percent of a full-time faculty load and received compensation of no more than 50 percent of the final, full-time year's salary.

In addition, the limitation of TTRP participation has been modified to include ABP members with a minimum of 10 years of service who have attained the age of 59 1/2 (the age at which all forms of distribution become available to eligible ABP members, including employee contributions and accumulations, and employer contributions and earnings without an early distribution penalty) up from 55. All other requirements remain the same.

**Subchapter 9. Rollovers and Transfers—ABP Retirement Plan**

The types of rollover distributions of retirement plan funds that are allowable are outlined in Subchapter 9. In addition, Subchapter 9 stipulates that the acceptance of rollover distributions into the ABP

Retirement Plan and ACTS is permitted. No changes are proposed to this subchapter.

**Subchapter 10. Plan Administration—ABP Program**

The plan administrator's authority to control and manage the operation of the ABP Program is set forth at Subchapter 10, including tasks, such as determining whether an employee is eligible for membership or determining when severance from employment should occur, as well as whether a valid beneficiary designation has been submitted. Subchapter 10 also includes information about designated service provider responsibilities and plan administrator responsibilities. No changes are proposed to this subchapter.

**Subchapter 11. General Provisions—ABP Program**

The general provisions of the ABP are provided at Subchapter 11. Subchapter 11 includes information like the engagement of audits by a plan administrator, how expenses incurred by a plan administrator are to be covered, the role of the ABP certifying officer, Internal Revenue Service approval for the retirement plan, and the resolution of mistaken contributions made to the ABP or ACTS by members. No changes are proposed to this subchapter.

**Subchapter 12. New Jersey Additional Contributions Tax-Sheltered Program (ACTS)**

Subchapter 12 governs the administration of the ACTS program, one of the five plans that comprise the ABP. It includes information about the voluntary contributions to ACTS that ABP members may make, as well as the vesting schedule within ACTS. No changes are proposed to this subchapter.

**Subchapter 13. Investments and Investment Direction—ABP Retirement Plan and ACTS**

Subchapter 13 covers the general area of investments. The subchapter specifies the procedures that members must follow to direct their ABP and ACTS investments, as well as the limits placed on the frequency of directing investments. It also stipulates that the designated service provider must accept every proper investment direction received from an ABP member. No changes are proposed to this subchapter.

**Subchapter 14. Loans—ABP Retirement Plan, ACTS, and Closed Plan**

Subchapter 14 specifies that loans are permitted and sets forth how loans are to be administered. Information like loan amounts, interest, and repayment terms are stipulated. No changes are proposed to this subchapter.

**Subchapter 15. Accounts—ABP Retirement Plan and ACTS**

Subchapter 15 specifies account statement or confirmation information that is to be furnished by the plan administrator, as well as account balance information. No changes are proposed to this subchapter.

**Subchapter 16. Administration of Distributions—ABP Retirement Plan and ACTS**

Subchapter 16 specifies how distributions to members or their beneficiaries are to be paid. The subchapter includes information about the valuation of payments, payment delays, and distributions to proper recipients and minor beneficiaries. No changes are proposed to this subchapter.

**Subchapter 17. Alternate Benefit Program Groups Life Insurance Plan**

Subchapter 17 specifies how the non-contributory group life insurance benefit is payable to ABP members. Member eligibility rules are also set out, as well as how the life insurance premiums are funded. No changes are proposed to this subchapter.

**Subchapter 18. Alternate Benefit Program Group Long-Term Disability Benefit Plan**

Subchapter 18 governs the administration of the ABP Group Long-Term Disability Benefit Plan, one of the five plans that comprise the ABP. It includes a definition of total disability, the amount of benefit that a member may receive, and information about the Disability Premium Fund. No changes are proposed to this subchapter.

**Subchapter 19. Amendment**

Subchapter 19 specifies that the New Jersey Legislature has the right to amend the Program at any time, in accordance with the New Jersey Constitution and N.J.A.C. 17:7-19.2. The State Treasurer also has the right to amend the Program in accordance with the enabling statute, including the terms of any plan and the group life insurance premium funds. No changes are proposed to this subchapter.

**Subchapter 20. Construction**

The provisions of Subchapter 20 govern the construction and interpretation of the Program. The Program is constructed to be a qualified plan and the ABP Retirement Plan is to conform to applicable Federal statutes and is to be consistent with investment law. No changes are proposed to this subchapter.

**Subchapter 21. Claims and Appeal Procedures**

Subchapter 21 provides instructions about how to appeal decisions made by the Division regarding the ABP and the claims procedures that may or may not follow. No changes are proposed to this subchapter.

**Subchapter 22. Insurance, Death Benefits, and Retirement**

Subchapter 22 outlines the rules governing beneficiary designations for ABP group life insurance. No changes are proposed to this subchapter.

**Subchapter 23. Transfers**

Subchapter 23 specifies how transfers of a member's account balance are to be effected, as well as in what cases interest is to be added. No changes are proposed to this subchapter.

As the Division has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking requirements pursuant to N.J.A.C. 1:30-3.3(a)5.

**Social Impact**

The rules proposed for readoption with amendments benefit ABP members, retirees, and survivors of members and retirees. Members, retirees, and survivors of members and retirees rely on the efficient operation of the ABP to provide them with a monthly distribution in retirement, proper crediting of contributions and earnings, death benefits, and information regarding their individual accounts. Rules that amend eligibility requirements for ABP membership and clarify current practices regarding proper beneficiary designations result in greater efficiency in the administration of the ABP.

The proposed amendments at Subchapter 8 allow public colleges and universities to retain the services of qualified and experienced professors, who will be permitted to continue teaching for up to three years at a reduced load (50 percent or less). They also allow faculty members who are TTRP participants to continue to earn a salary for up to three years.

**Economic Impact**

The rules proposed for readoption with amendments will not impose any adverse economic effects on the public. On the contrary, they will maintain the ABP's status as a qualified plan under existing IRS regulations and will improve the efficient administration of the ABP. The rules proposed for readoption with amendments do not impose any additional recordkeeping or other requirements, and will serve to preserve and improve the efficient administration and operation of the ABP. Since the process of designating beneficiaries for group life insurance is made clearer and eligibility requirements for ABP membership are brought in line with existing Division practice under the rules proposed for readoption with amendments, greater efficiency in the administration of the ABP will result.

In addition, the TTRP rules at Subchapter 8 allow public colleges and universities to retain the services of qualified and experienced professors, who will be permitted to continue teaching for up to one year at a reduced load (50 percent or less). They also allow faculty members who are TTRP participants to continue to earn a salary for up to a year. The proposed amendments at Subchapter 8 allow public colleges and universities to retain the services of qualified and experienced professors, who will be permitted to continue teaching for up to three years at a reduced load (50 percent or less).

They also allow faculty members who are TTRP participants to continue to earn a salary for up to three years.

Finally, participation in the ABP is an economic benefit to its members, as it provides a means of securing a retirement income for faculty members and administrators at institutions of higher education in the State of New Jersey.

**Federal Standards Statement**

The rules proposed for readoption with amendments meet, but do not exceed, 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; therefore, a Federal standards analysis is not required.

**Jobs Impact**

The operation of the rules proposed for readoption with amendments will not result in the generation or loss of jobs. The Division invites any interested parties to submit any data or studies concerning the jobs impact of the rules proposed for readoption with amendments with their written comments.

**Agriculture Industry Impact**

The rules proposed for readoption with amendments will not have any impact on the agriculture industry.

**Regulatory Flexibility Statement**

The rules of the ABP affect ABP members and retirees and survivors of ABP members and retirees. Thus, the rules proposed for readoption with amendments do not impose any reporting, recordkeeping, or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

**Housing Affordability Impact Analysis**

The rules proposed for readoption with amendments will have no impact on the affordability of housing in New Jersey, nor will they evoke a change in the average costs associated with housing, because the rules pertain to administration of the ABP for members, retirees, and survivors of members and retirees.

**Smart Growth Development Impact Analysis**

The rules proposed for readoption with amendments will not have any impact on the achievement of smart growth nor will they evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan because the rules pertain to administration of the ABP for members, retirees, and survivors of members and retirees.

**Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The rules proposed for readoption with amendments will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State.

**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 17:7.

**Full text** of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

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

17:7-8.11 Transition to retirement programs

(a) Members will be permitted to file for retirement from the ABP, and receive benefits under the ABP, if the member participates in a transition to retirement program (TTRP) adopted by the employer that meets the following minimum requirements:

1. Members must meet the eligibility requirements for transition to retirement programs provided below:

i. Members must be full-time tenured faculty who are at least [55] **59** 1/2 years of age;

ii.-iii. (No change.)

2. Members who meet all of the requirements of the TTRP and are approved by their employer shall be permitted to participate for [one year only] **a maximum of three years**.

i. Members whose employer's current [Transition to Retirement Program] **transition to retirement program** allows for participation for [more than one year] **up to a maximum of three years** may participate in the employer's program through September 21, 2020.

**ii. A member who already is participating in an employer's one-year transition plan may enter into a new TTRP for an additional period, up to a maximum of three years total, counting time in both the one-year and the extended program;**

3. Program minimum requirements must include:

i. Participating faculty must officially retire from the college or university and then seek re-employment under the terms of this section[;]. **Incentives to retire are not permitted. Employers shall submit a document to the Division certifying that the member's participation in the TTRP is not an incentive by the employer;**

ii.-iv. (No change.)

(b) [Evidence] **An employer** shall [be submitted] **submit evidence** to the Division demonstrating the employer's actions to ensure that all TTRPs are compliant with the [one-year] **three-year** requirement [under] **at** (a)2 above [through September 21, 2020].

(c) ABP employers shall provide to the Division an annual listing of all ABP members at their location who are participants in their TTRP, **along with a certification evidencing compliance with the limitation of up to 50 percent of the full-time faculty load, as well as 50 percent of the final year's salary.**

\_\_\_\_\_