

indicated within an envelope within which each access point may be located, consistent with the provisions of this chapter;

7. Lot frontages where access would not be allowed identifying the reason why access is not allowed;

8. All existing and proposed traffic control devices, such as signal locations and median openings, and other operational improvements along the subject State highway segment and along other roadways as needed. Such devices and improvements shall be indicated within an envelope within which each device or improvement may be located, consistent with the provisions of this chapter;

9. All existing and proposed bicycle and pedestrian facilities and improvements;

10. Such portions of the existing and proposed local roadway network including lanes and traffic patterns;

11. Proposed improvements intended to provide access to the general systems of streets and highways for each lot having frontage on the subject State highway segment and for any other lot for which the AMP has designed access;

12. All major existing passenger and freight transit facilities; and

13. Title page with the State route, municipality, county, scale, final draft date, number of map page(s), engineering firm, name of engineer, and Professional Engineer’s license number, and name of person who drew and checked the documents. All subsequent AMP map modifications must include an attachment to the title page, which includes the revision number, revision, date, and sheet number referencing location on the AMP map.

TREASURY—GENERAL

(a)

DIVISION OF PENSIONS AND BENEFITS

Alternate Benefit Program

Adopted Amendments: N.J.A.C. 17:7-1.2, 2.1, 5.7, 9.2, 12.1, 14.1, and 16.1

Adopted New Rules: N.J.A.C. 17:7-12.5 through 12.19

Proposed: March 5, 2018, at 50 N.J.R. 941(a).
 Adopted: June 18, 2018, by John D. Megariotis, Acting Director,
 Division of Pensions and Benefits.
 Filed: June 18, 2018, as R.2018 d.140, **without change**.
 Authority: N.J.S.A. 18A:66-192 and 52:18A-113.2.
 Effective Date: July 16, 2018.
 Expiration Date: May 4, 2022.

Summary of Public Comment and Agency Response:
No comments were received.

Federal Standards Statement

The adopted new rules and amendments 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 these rules and, therefore, a Federal standards analysis is not necessary.

Full text of the adoption follows:

SUBCHAPTER 1. GENERAL PROVISIONS

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. (No change.)

2. New Jersey Additional Contributions Tax-Sheltered Program (ACTS). ACTS is a plan for which the applicable governing body of a public institution of 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.-5. (No change.)

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 52:18A-113.2 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, taking into account all contributions made to the investment option and all earnings or losses (including expenses) that are allocable to the participant’s account, any rollover contributions or transfers held under the participant’s account, and any distribution made to the participant, the participant’s beneficiary, or any alternate payee. The account balance includes any part of the participant’s account that is treated under the ACTS as a separate contract to which IRC § 403(c) (or another applicable provision of the Code) applies.

“Annuity contract” means a nontransferable contract as defined in IRC §§ 403(b)(1) and 401(g), established for each participant by the employer, or by each participant individually, that is issued by an insurance company qualified to issue annuities in New Jersey and that includes payment in the form of an annuity, to hold assets of the ACTS.

“Beneficiary designation” means a valid and effective beneficiary designation made according to N.J.A.C. 17:7-22.1.

“Custodial account” means the group or individual custodial account or accounts, as defined in IRC § 403(b)(7), established for each participant by the employer or by each participant individually to hold assets of the ACTS.

“Elective deferral” means the employer contributions made to the ACTS at the election of the participant in lieu of receiving cash compensation. Elective deferrals may be pre-tax salary reduction contributions or Roth elective deferrals as designated by the participant.

“Employee” with respect to the ACTS means each individual, whether appointed or elected, who is a common law employee of the employer. If the employer is a public school, the individual must perform services for a public school as an employee of the employer, including an individual who is appointed or elected. This definition is not applicable unless the employee’s compensation for performing services for a public school is paid by the employer. Further, a person occupying an elective or appointive public office is not an employee performing services for a public school unless such office is one to which an individual is elected or appointed only if the individual has received training, or is experienced, in the field of education. A public office includes any elective or appointive office of a State or local

government. For ACTS purposes, the Plan Administrator may rely upon the certification of the employer that a person is an employee.

... “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.

“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” with respect to the ACTS must be either: a governmental instrumentality that is a tax-exempt organization under IRC § 501(c)(3); or a public school that is a State-sponsored educational organization described in IRC § 170(b)(1)(A)(ii) (relating to educational organizations that normally maintain a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where educational activities are regularly carried out). Any State entity must meet the definition of Treasury Reg. § 1.403(b)-2(b)(8), which requires that, for public schools, the State is the employer, but only with respect to an employee of the State performing services for a public school. Furthermore, the Plan Administrator may determine that an employer is not eligible to maintain the ACTS Program for its employees if the Plan Administrator reasonably concludes that the employer is not a governmental instrumentality that is a tax-exempt organization under IRC § 501(c)(3) or a public school that is a State-sponsored educational organization described in IRC § 170(b)(1)(A)(ii). The Plan Administrator’s determination in this regard shall be final and conclusive.

... “Employer contributions” means contributions that are made by an employer that are not elective deferrals.

... “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. With respect to ACTS, an “investment option” must be an annuity contract or custodial account in the ACTS that satisfies the requirements of Treasury Reg. § 1.403(b)-3 and that is issued or established for funding amounts held under the ACTS. A list of pension providers and investment options approved for use under the ABP Retirement Plan and ACTS, including sufficient information to identify the approved investment options, shall be maintained by the Plan Administrator. The terms governing each investment option under the ABP Retirement Plan and ACTS, excluding those terms that are inconsistent with State law, IRC § 401(a), or IRC § 403(b), are hereby incorporated by reference in this chapter.

... “Payment option” means, with respect to the ABP Retirement Plan and ACTS, any of the options for payment of a participant’s ABP Retirement Plan account or ACTS account that is permitted by the Plan Administrator and consistent with the terms of the ABP Retirement Plan or ACTS, respectively, and any applicable investment contract approved by the Board, except as limited in this definition. 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 or the ACTS, respectively, as determined by the Plan Administrator, including, but not limited to, the applicable investment contract approved by the Board. A payment option must also satisfy all applicable provisions of applicable law.

... “Related employer” means the employer and any other entity that is under common control with the employer under IRC § 414(b), (c), (m), or (o). The employer shall determine which entities are related employers based on a reasonable, good faith standard and taking into account the special rules applicable under Internal Revenue Service Notice 89-23, 1989-1 C.B. 654.

... “Roth elective deferrals” means, for the ACTS, if permitted under the terms of the applicable investment option, all or a portion of the participant’s elective deferrals designated as Roth elective deferrals. A Roth elective deferral is an elective deferral that is designated irrevocably by the participant at the time of the election as a Roth elective deferral that is being made in lieu of all or a portion of the pre-tax elective deferrals the participant is otherwise eligible to make under the ACTS and treated by the employer as includible in the participant’s income at the time the participant would have received that amount in cash if the participant had not made a salary reduction agreement.

... “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. “Severance from employment” also means, for purposes of the ACTS, that an employee ceases to be employed by the employer maintaining the ACTS or a related employer that is eligible to maintain a 403(b) plan or in a capacity that is employment with an eligible employer. For example, if the employer is a public school, “severance from employment” means that the employee ceases to be employed by the employer and is not an employee of any other public school of the State, even though the employee may continue to be employed by a related employer that is another unit of the State that is not a public school or in a capacity that is not employment with a public school.

SUBCHAPTER 5. CONTRIBUTIONS TO THE ABP RETIREMENT PLAN

17:7-5.7 Limit on annual additions—ABP Retirement Plan only (a)-(b) (No change.)

(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 returned to the participant.

(d)-(j) (No change.)

SUBCHAPTER 9. ROLLOVERS AND TRANSFERS—ABP RETIREMENT PLAN

17:7-9.2 Definitions

For purposes of this subchapter, the following definitions shall apply: “Eligible 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.-7. (No change.)

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.-2. (No change.)

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. (No change.)

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

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

17:7-12.1 Employee elective deferrals to ACTS; additional voluntary contributions

(a) 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; the boards of trustees of State and county colleges; and local boards of education are hereby authorized to enter into an agreement with each employee participating in the ABP whereby the employee agrees to make elective deferrals by 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 salary reduction 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).

1. Employees of University Hospital are prohibited from making new contributions to the ACTS Program under Federal Internal Revenue Code provisions, but they shall be permitted to continue to participate in the ACTS Program with respect to their existing account as of June 30, 2014, and they shall also be permitted to enter into salary reduction agreements in the 457(b) program known as the New Jersey State Employees' Deferred Compensation Plan.

2. ABP members employed by the former UMDNJ on June 30, 2013, who became employees of University Hospital on July 1, 2013, under special provisions of P.L. 2012, c. 45, may maintain any ACTS accounts opened before July 1, 2013; however, they will not be permitted to make additional contributions to ACTS after June 30, 2014, and their ACTS salary reduction agreements will no longer be valid.

(b) (No change.)

(c) Employee elective deferrals are permitted as follows:

1. The employee elective deferral shall be made by a salary reduction contribution and shall be computed on the participant's base salary.

2. A participant electing to make such employee elective deferrals shall enter into a salary reduction agreement with the employer in accordance with IRC § 402(g)(4).

3.-4. (No change.)

(d) In addition to elective deferrals, an employee may make additional voluntary contributions to the ACTS subject to the limits of IRC § 415(c), if these contributions are accepted in the investment option.

(e) The following employees are excluded from eligibility to have elective deferrals made on their behalf under the ACTS:

1. Employees who are students performing services described in IRC § 3121(b)(10);

2. Employees who normally work fewer than 20 hours per week. An employee normally works fewer than 20 hours per week if, for the 12-month period beginning on the date the employee's employment commenced, the employer reasonably expects the employee to work fewer than 1,000 hours of service (as defined under IRC § 410(a)(3)(C)) in such period, and, for each plan year ending after the close of that 12-month period, the employee has worked fewer than 1,000 hours of service in the preceding 12-month period. Under this provision, an employee who works 1,000 or more hours of service in the 12-month period beginning on the date the employee's employment commenced or in a plan year ending after the close of that 12-month period shall then be eligible to participate in the ACTS; and

3. Nonresident aliens pursuant to IRC § 410(b)(3)(C) and Treasury Reg. § 1.403(b)-5(b)(4)(ii)(C).

(f) Each participant shall provide to the Plan Administrator at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the Plan Administrator to administer the ACTS, including any information required under the investment options.

(g) Unless the salary reduction agreement is otherwise revised, if an employee is absent from work by leave of absence, elective deferrals under the ACTS shall continue to the extent that compensation continues.

17:7-12.5 Plan administration

(a) The ACTS shall be administered, and the provisions of the various documents comprising the ACTS shall be coordinated, in accordance with the terms of applicable law and the requirements of IRC § 403(b). In addition to the provisions of N.J.A.C. 17:7-10.1, the provisions and requirements under this subchapter for the Plan Administrator include, but are not limited to:

1. Determining whether hardship withdrawals and loans comply with applicable requirements and limitations;

2. Determining that any transfers, rollovers, or purchases of service credit comply with applicable requirements and limitations;

3. Maintaining a list of all pension providers under the ACTS;

4. Determining that the requirements of the ACTS and IRC § 403(b) are properly applied, including whether the employer is a member of a controlled group; and

5. Determining the status of domestic relations orders or qualified domestic relations orders (QDROs).

(b) The ACTS, together with the investment options, is intended to satisfy the requirements of IRC § 403(b) and the Income Tax Regulations thereunder.

17:7-12.6 Administrative summary

Persons to whom administrative functions have been delegated, and the specific functions delegated to such persons, shall be identified in an administrative summary maintained by the Plan Administrator. Service agreements and other records or information pertaining to the administration of the ACTS may be included or incorporated by reference in the administrative summary. The administrative summary may be modified from time to time. A modification of the administrative summary is not an amendment of the ACTS.

17:7-12.7 Elective deferrals

(a) Except as provided in (b) below, the maximum amount of the elective deferral under the ACTS for any calendar year shall not exceed the lesser of:

1. The applicable dollar amount, meaning the amount established under IRC § 402(g)(1)(B) and is adjusted for cost-of-living to the extent provided under IRC § 402(g)(4) for periods after 2013; or

2. The participant's includible compensation, as defined in N.J.A.C. 17:7-12.10(h), for the calendar year.

(b) An employee who is a participant who will attain age 50 or more by the end of the calendar year is permitted to elect an additional amount of elective deferrals, up to the maximum age 50 catch-up elective deferrals for the year under IRC § 414(v).

(c) Amounts in excess of the limitation set forth in (a) above shall be allocated as an age 50 catch-up contribution under (b) above. However, in no event can the amount of the elective deferrals for a year be more than the participant's includible compensation for the year.

(d) If the participant is or has been a participant in one or more other plans under IRC § 403(b) (and any other plan that permits elective deferrals under IRC § 402(g)), then the ACTS and all such other plans shall be considered as one plan for purposes of applying the limitations of this section. The Plan Administrator shall take into account any other such plan maintained by any related employer and shall also take into account any other such plan for which the Plan Administrator receives from the participant sufficient information concerning his or her participation in such other plan. Notwithstanding the foregoing, another plan maintained by a related employer shall be taken into account for purposes of (b) above, only if the other plan is an IRC § 403(b) plan.

(e) If the elective deferral on behalf of a participant for any calendar year exceeds the limitations described in this section, or the elective deferral on behalf of a participant for any calendar year exceeds the limitations in this section when combined with other amounts deferred by the participant under another plan of the employer under IRC § 403(b) (and any other plan that permits elective deferrals under IRC § 402(g) for which the participant provides information that is accepted by the Plan Administrator), then the elective deferral, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto), shall be distributed to the participant. To the extent that the excess amount is composed of pre-tax elective deferrals and Roth elective deferrals for the year, if the participant does not designate which type of elective deferral to be distributed on the applicable form, the ACTS will distribute the pre-tax elective deferrals first.

(f) The provisions of IRC § 402(g)(7) do not apply to the ACTS.

(g) The ACTS will accept Roth elective deferrals under IRC § 402A.

17:7-12.8 Employer contribution

Employer contributions are permitted, subject to the limitations on annual additions.

17:7-12.9 Protection of persons who serve in a uniformed service

(a) An employee whose employment is interrupted by qualified military service under IRC § 414(u) or who is on a leave of absence for qualified military service under IRC § 414(u) may elect to make additional elective deferrals upon resumption of employment with the employer equal to the maximum elective deferrals that the employee could have elected during that period if the employee's employment with the employer had continued (at the same level of compensation) without the interruption or leave, reduced by the elective deferrals, if any, actually made for the employee during the period of the interruption or leave. Except to the extent provided under IRC § 414(u), this right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave).

(b) A participant receiving a "differential wage payment" within the meaning of IRC § 414(u)(12)(D) from the employer, shall be treated as a participant who is eligible to make elective deferrals and the differential wage payment shall be treated as compensation and includible compensation. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner. However, such participant shall be treated as having a severance from employment for

purposes of electing to take a distribution from the ACTS during any period such individual is performing service in the uniformed services described in IRC § 3401(h)(2)(A) while on active duty for a period of more than 30 days. A participant who elects a distribution from pre-tax amounts in his or her account by reason of the preceding sentence may not make an elective deferral during the six-month period beginning on the date of the distribution.

17:7-12.10 Limitations on annual additions

(a) A participant cannot receive an allocation for a limitation year greater than the maximum annual addition as set forth in this section.

(b) If annual additions are credited to a participant under any IRC § 403(b) plans of the employer in addition to ACTS for a limitation year, the sum of the participant's annual additions for the limitation year under the ACTS, and such other IRC § 403(b) plans may not exceed the maximum annual addition as set forth in this section.

(c) If a participant is in control of any employer for a limitation year, the sum of the participant's annual additions for the limitation year under the ACTS, any other IRC § 403(b) plans of the employer, any defined contribution plans maintained by controlled employers, and any section 403(b) plans of any other employers may not exceed the maximum annual addition as set forth in this section. For purposes of this subsection, a participant is in the control of an employer as set forth in IRC §§ 414(b) and (c) and 415(h); and a defined contribution plan means a defined contribution plan that is qualified under IRC § 401(a) or 403(a), an IRC § 403(b) plan, or a simplified employee pension within the meaning of IRC § 408(k). The Plan Administrator will provide written or electronic notice to participants that explains the limitation in this subsection in a manner calculated to be understood by the average participant and informs participants of their responsibility to provide information to the Plan Administrator that is necessary to satisfy this subsection. The notice will advise participants that the application of the limitations in this subsection will take into account information supplied by the participant and that failure to provide necessary and correct information to the Plan Administrator could result in adverse tax consequences to the participant, including the inability to exclude contributions to the ACTS under IRC § 403(b). The notice will be provided annually, beginning no later than the year in which the employee becomes a participant.

(d) The annual additions that may be credited to a participant under the ACTS for any limitation year will not exceed the maximum annual addition under this section, reduced by the annual additions credited to the participant under any other IRC § 403(b) Prototype Plans of the employer in addition to the ACTS and, if the participant is in control of an employer, any defined contribution plans maintained by controlled employers and IRC § 403(b) plans of any other employers. Contributions to the participant's accounts under the ACTS will be reduced to the extent necessary to prevent this limitation from being exceeded.

(e) If, notwithstanding (a), (b), (c), and (d) above, a participant's annual additions under the ACTS, or under the ACTS and plans aggregated with the ACTS under (a) and (b) above, result in an excess annual addition for a limitation year:

1. The excess annual addition will be deemed to consist of the annual additions last credited, except annual additions to a defined contribution plan qualified under IRC § 401(a) or a simplified employee pension maintained by an employer controlled by the participant will be deemed to have been credited first;

2. If an excess annual addition is credited to a participant under the ACTS and another IRC § 403(b) plan of the employer on the same date, the excess annual addition attributable to the ACTS will be the product of:

i. The total excess annual addition credited as of such date; times

ii. The ratio of the annual additions credited to the participant for the limitation year as of such date under the ACTS to the total annual additions credited to the participant for the limitation year as of such date under this and all other IRC § 403(b) plans of the employer; and

3. Any excess annual addition attributable to the ACTS will be corrected in the manner described in (g) below.

(f) If annual additions are credited to the participant for the limitation year under another IRC § 403(b) plan of the employer that is not a 403(b) Prototype Plan, the annual additions that may be credited to the participant under the ACTS for the limitation year shall be limited in accordance with (d) and (e) above as though the other plan were a 403(b) Prototype Plan.

(g) A participant's excess annual additions for a taxable year are includible in the participant's gross income for that taxable year. A participant's excess annual additions attributable to the ACTS will be credited in the year of the excess to a separate account under the plan for such excess annual additions which will be maintained by the pension provider until the excess annual additions are distributed. This separate account will be treated as a separate contract to which IRC § 403(c) (or another applicable provision of the IRC) applies. Amounts in the separate account may be distributed at any time, notwithstanding any other provisions of applicable law.

(h) The following definitions apply to this section only.

"Annual additions" means the following amounts credited to a participant under the ACTS or any other plan aggregated with the ACTS under (b) and (c) above:

1. Employer contributions, including elective deferrals (other than age 50 catch-up contributions described in IRC § 414(v) and contributions that have been distributed to the participant as excess elective deferrals under N.J.A.C. 17:7-12.7(e));
2. After-tax employee contributions;
3. Forfeitures allocated to the participant's account;
4. Amounts allocated to an individual medical account, as defined in IRC § 415(l)(2), which is part of a pension or annuity plan, and amounts derived from contributions paid or accrued that are attributable to post-retirement medical benefits, allocated to the separate account of a key employee, as defined in IRC § 419A(d)(3), under a welfare benefit fund, as defined in IRC § 419(e); and
5. Allocations under a simplified employee pension.

Amounts described in paragraphs 1, 2, 3, and 4 above are annual additions for purposes of both the dollar limitation under this subsection and the percentage of compensation limitation under this subsection. Amounts described in paragraph 5 above are annual additions solely for purposes of the dollar limitation under this subsection.

"Employer" means, solely for purposes of this subsection, the employer that has adopted the ACTS and any employer required to be aggregated with that employer under IRC § 414(b) and (c) (each as modified by IRC § 415(h), (m), (o), and Treasury Reg. § 1.414(c)(5)).

"Excess annual addition" means the annual additions credited to the participant for the limitation year under the ACTS and plans aggregated with the ACTS under (b), (c), and (d) above over the maximum annual addition for the limitation year under this subsection.

"Includible compensation" means an employee's actual wages in Box 1 of Form W-2 for a calendar year for services to the employer, but subject to a maximum of \$200,000 (or such higher maximum as may apply under IRC § 401(a)(17)(B)) and increased (up to the dollar maximum) by any compensation reduction election under IRC §§ 125, 132(f), 401(k), 403(b), or 457(b) (including any elective deferral under the ACTS). The amount of includible compensation is determined without regard to any community property laws. Includible compensation includes any compensation described in paragraphs 1 or 2 below paid after an employee's severance from employment, provided it is paid by the later of two and one-half months after the employee's severance from employment or the end of the calendar year in which the employee has a severance from employment:

1. Any payment that would have been paid to the employee prior to a severance from employment if the employee had continued in employment with the employer and that otherwise satisfies this definition of includible compensation; and
2. A payment for unused accrued bona fide sick leave (if the employee qualifies for such payment under the employer's criteria), vacation, or other leave, but only if the employee would have been able to use the leave if employment had continued and the payment would be includible compensation if paid prior to the employee's severance from employment.

Any payment that is not described in paragraph 1 or 2 above is not considered includible compensation if paid after severance from

employment, even if it is paid within two and one-half months following severance from employment. Thus, for example, includible compensation does not include amounts paid after severance from employment that are severance pay or unfunded nonqualified deferred compensation.

Includible compensation also includes payments to an individual who does not currently perform services for the employer by reason of qualified military service (as that term is used in IRC § 414(u)(1)) to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service.

Includible compensation also includes "differential wage payments," as that term is described in N.J.A.C. 17:7-11.22.

For purposes of applying the limitations on annual additions to non-elective employer contributions pursuant to IRC § 415, includible compensation for a participant who is permanently and totally disabled (as defined in IRC § 22(e)(3)) is the includible compensation such participant would have received for the limitation year if the participant had been paid at the rate of compensation paid immediately before becoming permanently and totally disabled.

"Limitation year" means the calendar year. However, if the participant is in control of an employer pursuant to (c) above, the limitation year shall be the limitation year in the defined contribution plan controlled by the participant.

"Maximum annual additions" means, except for age 50 catch-up elective deferrals described in IRC § 414(v) and allowed under N.J.A.C. 17:7-12.7(b), the annual addition that may be contributed or allocated to a participant's account under the ACTS for any limitation year, which shall not exceed the lesser of:

1. Fifty one thousand dollars, as adjusted for increases in the cost-of-living under IRC § 415(d) for periods after 2013; or
2. One hundred percent of the participant's includible compensation for the limitation year.

The includible compensation limit referred to above shall not apply to any contribution for medical benefits after separation from service (within the meaning of IRC § 401(h) or IRC § 419A(f)(2)) that is otherwise treated as an annual addition.

17:7-12.11 Benefit distributions

(a) Except as permitted in the case of excess elective deferrals, pre-1989 elective deferral contributions (excluding earnings thereon) to an annuity contract that are separately accounted for, amounts rolled over into the ACTS, a distribution made in the event of hardship, a qualified reservist distribution as defined in IRC § 72(t)(2)(G), termination of the ACTS, a payment pursuant to QDRO or levy, or as may otherwise be provided by applicable law, distributions of elective deferrals from a participant's account may not be made earlier than the date on which the participant has a severance from employment, dies, becomes disabled (under IRC § 22(e)(3)), or attains age 59 and one-half. The participant's account may be distributed in accordance with any available payment option.

(b) To the extent permitted under the terms governing the applicable investment option, distributions may be made in the form of a lump-sum payment, without the consent of the participant or beneficiary, but not without the consent of the participant or beneficiary if the participant's accumulated benefit (determined without regard to any separate account that holds rollover contributions) exceeds \$1,000, or any lesser amount specified in the investment option. Any such distribution shall comply with the requirements of IRC § 401(a)(31)(B) (relating to automatic distribution as a direct rollover to an individual retirement plan for distributions in excess of \$1,000).

(c) The Plan Administrator shall make all reasonable attempts to determine the identity and address of a participant or a participant's beneficiary entitled to benefits under the ACTS. For this purpose, a reasonable attempt means:

1. The mailing by certified mail of a notice to the last known address shown on the employer's or the Plan Administrator's records;
2. Notification sent to the Social Security Administration or the Pension Benefit Guaranty Corporation (under its program to identify payees under retirement plans); and

3. The payee has not responded within six months. If the Plan Administrator is unable to locate such a person entitled to benefits under this subchapter, or if there has been no claim made for such benefits, the investment option shall continue to hold the benefits due such person.

17:7-12.12 Minimum distributions

(a) The ACTS shall comply with the minimum distribution requirements of IRC § 401(a)(9) and the regulations thereunder in accordance with the terms governing each investment option, unless and to the extent otherwise permitted by law and regulations or other rules of general applicability published by the Department of the Treasury or the Internal Revenue Service. For purposes of applying the distribution regulations of IRC § 401(a)(9), each investment option is treated as an individual retirement account (IRA) and distributions shall be made in accordance with the provisions of Treasury Reg. § 1.408-8, except as provided in Treasury Reg. § 1.403(b)-6(e).

1. Notwithstanding this section, and unless otherwise provided in the investment option, a participant or beneficiary who would have been required to receive required minimum distributions for 2009 but for 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, the joint lives (or joint life expectancy) of the participant and the participant's beneficiary, or for a period of at least 10 years (extended 2009 RMDs) will receive those distributions for 2009, unless the participant or beneficiary chooses not to receive such distributions. Participants and beneficiaries described in this paragraph will be given the opportunity to elect to stop receiving the distributions described in this paragraph. In addition, solely for purposes of applying the direct rollover provisions of N.J.A.C. 17:7-12.13, 2009 RMDs and extended 2009 RMDs will be treated as eligible rollover distributions in 2009.

(b) The distribution requirements in this section generally apply to a participant's entire account. However, these requirements do not apply to the undistributed portion of a participant's account valued as of December 31, 1986, exclusive of subsequent earnings (the pre-1987 account balance), provided that the applicable requirements of Treasury Reg. § 1.401(a)(9)-6(e)(6) are satisfied. In this case, a participant's pre-1987 account balance shall be distributed in accordance with the incidental benefit requirements of Treasury Reg. § 1.401-1(b)(1)(i). To the extent permitted under Treasury Reg. § 1.403(b)-6(e)(7), a participant's investment options under the ACTS, or under the ACTS and other IRC § 403(b) plans in which the participant participates as an employee, may be aggregated and the minimum distribution requirements satisfied by distribution from any one or more of the investment options.

(c) Distribution of the participant's account will begin no later than the first day of April following the later of the calendar year in which the participant attains age 70 and one-half or the calendar year in which the participant retires from employment (the required beginning date) over the life of the participant, the lives of the participant and beneficiary, or a period certain not extending beyond the life expectancy of the participant or the joint and last survivor expectancy of the participant and beneficiary.

1. If the participant's account is not distributed as an annuity, the amount to be distributed each year, beginning with the calendar year the participant attains age 70 and one-half or retires and continuing through the year of death, shall not be less than the quotient obtained by dividing the value of the account, including outstanding rollovers and transfers, as of the end of the preceding year by the distribution period in the Uniform Lifetime Table in Q&A-2 of Treasury Reg. § 1.401(a)(9)-9, using the participant's age as of his or her birthday in the year. However, if the participant's sole beneficiary is his or her surviving spouse and such spouse is more than 10 years younger than the participant, then the distribution period is determined under the Joint and Last Survivor Table in Q&A-3 of Treasury Reg. § 1.401(a)(9)-9, using the ages as of the participant's and spouse's birthdays in the year.

2. If the participant's account is distributed as an annuity, the distribution periods described in (c)1 above cannot exceed the periods

specified in section Treasury Reg. § 1.401(a)(9)-6. Payments must be made in periodic payments at intervals of no longer than one year and must be either non-increasing or they may increase only as provided in Q&As-1 and -4 of Treasury Reg. § 1.401(a)(9)-6. In addition, any distribution must satisfy the incidental benefit requirements specified in Q&A-2 of Treasury Reg. § 1.401(a)(9)-6.

3. The required minimum distribution for the year the participant attains age 70 and one-half or retires (or first required annuity payment) can be made as late as the required beginning date. The required minimum distribution (or required annuity payment) for any other year, including the year that contains the required beginning date, must be made by the end of such year.

(d) If the participant's account is distributed as an annuity and the participant dies on or after required payments begin, the remaining portion of the participant's interest will continue to be distributed under the contract option chosen. If the participant's account is not distributed as an annuity and the participant dies on or after the required beginning date, the remaining portion of the participant's interest will be distributed at least as rapidly as follows:

1. If the beneficiary is someone other than the participant's surviving spouse, the remaining interest will be distributed over the remaining life expectancy of the beneficiary, with such life expectancy determined using the beneficiary's age as of his or her birthday in the year following the year of the participant's death, or over the period described in (d)2 below, if longer.

2. If the participant's sole beneficiary is the participant's surviving spouse, the remaining interest will be distributed over such spouse's life or over the period described in (d)3 below, if longer. Any interest remaining after such spouse's death will be distributed over such spouse's remaining life expectancy determined using the spouse's age as of his or her birthday in the year of the spouse's death, or, if the distributions are being made over the period described in (e) below, over such period.

3. If there is no beneficiary, or if applicable by operation of (d)1 or 2 above, the remaining interest will be distributed over the participant's remaining life expectancy determined in the year of the participant's death.

4. The amount to be distributed each year under (d)1, 2, or 3 above, beginning with the calendar year following the calendar year of the participant's death, is the quotient obtained by dividing the account as of the end of the preceding year by the remaining life expectancy specified in such paragraph. Life expectancy is determined using the Single Life Table in Q&A-1 of Treasury Reg. § 1.401(a)(9)-9. If distributions are being made to a surviving spouse as the sole beneficiary, such surviving spouse's remaining life expectancy for a year is the number in the Single Life Table corresponding to such surviving spouse's age in the year. In all other cases, remaining life expectancy for a year is the number in the Single Life Table corresponding to the beneficiary's or participant's age in the year specified in (d)1, 2, or 3 above and reduced by one for each subsequent year.

(e) If the participant dies before the required beginning date (or the date required for payments to begin, in the case of any annuity), his or her entire interest will be distributed at least as rapidly as follows:

1. If the beneficiary is someone other than the participant's surviving spouse, the entire interest will be distributed, starting by the end of the calendar year following the calendar year of the participant's death, over the remaining life expectancy of the beneficiary, with such life expectancy determined using the age of the beneficiary as of his or her birthday in the year following the year of the participant's death, or, if elected, in accordance with (e)3 below.

2. If the participant's beneficiary is the participant's surviving spouse, the entire interest will be distributed, starting by the end of the calendar year following the calendar year of the participant's death (or by the end of the calendar year in which the participant would have attained age 70 and one-half, if later), over such surviving spouse's life, or, if elected, in accordance with (e)3 below. If the surviving spouse dies before distributions are required to begin, the remaining interest will be distributed, starting by the end of the calendar year following the calendar year of the surviving spouse's death, over the surviving spouse's beneficiary's remaining life expectancy determined using such

beneficiary's age as of his or her birthday in the year following the death of the surviving spouse, or, if elected, will be distributed in accordance with (e)3 below. If the surviving spouse dies after distributions are required to begin, any remaining interest will be distributed over the surviving spouse's remaining life expectancy determined using the surviving spouse's age as of his or her birthday in the year of the surviving spouse's death.

3. If there is no beneficiary, or if applicable by operation of (e)1 or 2 above, the entire interest will be distributed by the end of the calendar year containing the fifth anniversary of the participant's death (or of the surviving spouse's death in the case of the surviving spouse's death before distributions are required to begin under (e)2 above).

(f) Except in the case of a distribution as an annuity, the amount to be distributed each year under (e) above is the quotient obtained by dividing the value of the account as of the end of the preceding year by the remaining life expectancy specified in (e)1, 2, or 3 above. Life expectancy is determined using the Single Life Table in Q&A-1 of Treasury Reg. § 1.401(a)(9)-9. If distributions are being made to a surviving spouse as the beneficiary, the surviving spouse's remaining life expectancy for a year is the number in the Single Life Table corresponding to the surviving spouse's age in the year. In all other cases, remaining life expectancy for a year is the number in the Single Life Table corresponding to the beneficiary's age in the year specified in (e) above and reduced by one for each subsequent year. The "value" of the account or the "interest" in the annuity includes the amount of any outstanding rollover and transfer and the actuarial value of any other benefits provided under the annuity such as guaranteed death benefits, to the extent required under applicable regulations.

(g) For purposes of (d) and (e) above, required annuity payments are considered to begin on the participant's required beginning date or, if applicable, on the date distributions are required to begin to the surviving spouse under (e)2 above. However, if distributions start prior to the applicable date in the preceding sentence, on an irrevocable basis (except for acceleration) under an annuity contract meeting the requirements of Treasury Reg. § 1.401(a)(9)-6, then required annuity payments are considered to begin on the annuity starting date.

(h) If a participant has a separate account attributable to rollover contributions to the ACTS, to the extent permitted by the terms governing the applicable investment option, the participant may at any time elect to receive a distribution of all or any portion of the amount held in the rollover account.

17:7-12.13 Direct rollovers

(a) Notwithstanding any provision of the ACTS to the contrary that would otherwise limit a distributee's election, a distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an eligible rollover distribution that is equal to at least \$500.00 paid directly to an eligible retirement plan specified by the distributee in a direct rollover. If an eligible rollover distribution is less than \$500.00, a distributee may not make the election set forth in this section to roll over only a portion of the eligible rollover distribution.

(b) Definitions. For purposes of this section, the following definitions apply.

"Direct rollover" means a payment by the ACTS to the eligible retirement plan specified by the distributee.

"Distributee" includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employees' 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 nonspouse designated beneficiary. In the case of a nonspouse beneficiary, the direct rollover may be made only to an individual retirement account or annuity described in IRC § 408(a) or (b) (IRA) that is established on behalf of the beneficiary and that will be treated as an inherited IRA pursuant to the provisions of IRC § 402(c)(11). The determination of any required minimum distribution under IRC § 401(a)(9) that is ineligible for rollover shall be made in accordance with IRS Notice 2007-7, Q&A-17 and 18, 2007 I.R.B. 395.

"Eligible retirement plan" means a qualified plan described in IRC § 401(a), an annuity plan described in IRC § 403(a), an annuity contract described in IRC § 403(b), an individual retirement account or annuity described in IRC § 408(a) or (b), a Roth individual retirement plan under IRC § 408A, or an eligible plan under IRC § 457(b), which is maintained by a state and which agrees to separately account for amounts transferred into such plan from the ACTS, that accepts the distributee's eligible rollover distribution. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order as defined in IRC § 414(p).

"Eligible rollover distribution" means any distribution of all or any portion of the distributee's account balance, 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 period of 10 years or more;

2. Any distribution to the extent such distribution is required under IRC § 401(a)(9) (other than amounts that would have been required but for a statutory waiver of the IRC § 401(a)(9) requirements);

3. Any hardship distribution;

4. The portion of any other distribution(s) that is not includible in gross income;

5. Any distribution(s) that is reasonably expected to total less than \$200.00 during a year;

6. Any corrective distribution of excess amounts under IRC § 402(g) and/or 415(c) and income allocable thereto; and

7. Any loans that are treated as deemed distributions pursuant to IRC § 72(p).

A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in IRC § 408(a) or (b), or by direct rollover to a qualified plan described in IRC § 401(a) or a tax-sheltered annuity described in IRC § 403(b) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution that is includible in gross income and the portion of such distribution that is not includible.

(c) Each pension provider shall provide, within a reasonable time period before making an eligible rollover distribution, a written explanation to the participant that satisfies the requirements of IRC § 402(f).

(d) This subsection shall apply to the Roth elective deferrals.

1. A direct rollover of a distribution from a Roth elective deferral account under the ACTS will only be made to another Roth elective deferral account under an applicable retirement plan described in IRC § 402A(e)(1) or to a Roth IRA described in IRC § 408A, and only to the extent the rollover is permitted under IRC § 402(c).

2. The ACTS will not provide for a direct rollover (including an automatic rollover) for distributions from a participant's Roth elective deferral account if the amounts of the distributions that are eligible rollover distributions are reasonably expected to total less than \$200.00 during a year. In addition, any distribution from a participant's Roth elective deferral account is not taken into account in determining whether distributions from a participant's other accounts are reasonably expected to total less than \$200.00 during a year. However, eligible rollover distributions from a participant's Roth elective deferral account are taken into account in determining whether the total amount of the participant's accumulated benefits under the ACTS exceeds \$1,000 for purposes of mandatory distributions from the ACTS.

3. The provisions of the ACTS that allow a participant to elect a direct rollover of only a portion of an eligible rollover distribution but only if the amount rolled over is at least \$500.00 is applied by treating any amount distributed from the participant's Roth elective deferral account as a separate distribution from any amount distributed from the

participant's other accounts in the ACTS, even if the amounts are distributed at the same time.

17:7-12.14 Hardship distributions

(a) To the extent permitted by the terms governing the applicable investment option, distribution of elective deferrals may be made to a participant in the event of hardship. A hardship distribution may only be made on account of an immediate and heavy financial need of the participant and where the distribution is necessary to satisfy the immediate and heavy financial need.

(b) The following are the only financial needs considered immediate and heavy:

1. Expenses incurred or necessary for medical care, described in IRC § 213(d), of the participant, the participant's spouse or dependents, or the participant's primary beneficiary (as defined in Q&A-5 of IRS Notice 2007-7);

2. The purchase (excluding mortgage payments) of a principal residence for the participant;

3. Payment of tuition and related educational fees for the next 12 months of post-secondary education for the participant, the participant's spouse, children, or dependents, or the participant's primary beneficiary;

4. Payments necessary to prevent the eviction of the participant from, or a foreclosure on the mortgage of, the participant's principal residence;

5. Payments for funeral or burial expenses for the participant's deceased parent, spouse, child or dependent, or the participant's primary beneficiary; and

6. Expenses to repair damage to the participant's principal residence that would qualify for a casualty loss deduction under IRC § 165 (determined without regard to whether the loss exceeds 10 percent of adjusted gross income).

(c) A distribution will be considered as necessary to satisfy an immediate and heavy financial need of the participant only if:

1. The distribution is not in excess of the amount of the immediate and heavy financial need (including amounts necessary to pay any Federal, State, or local income taxes or penalties reasonably anticipated to result from the distribution);

2. The participant has obtained all distributions, other than hardship distributions, and all nontaxable loans under all plans maintained by the employer (except to the extent such actions would be counterproductive to alleviating the financial need); and

3. All plans maintained by the employer provide that the participant's elective deferrals will be suspended for six months after the receipt of the hardship distribution.

(d) The investment options shall provide for the exchange of information among the Plan Administrator, employer, and the pension providers to the extent necessary to implement the investment options, including, in the case of a hardship withdrawal that is automatically deemed to be necessary to satisfy the participant's financial need (pursuant to Treasury Reg. § 1.401(k)-1(d)(3)(iv)(E)), the pension provider notifying the employer of the withdrawal in order for the employer to implement the resulting six-month suspension of the participant's right to make elective deferrals under the ACTS. In addition, in the case of a hardship withdrawal that is not automatically deemed to be necessary to satisfy the financial need (pursuant to Treasury Reg. § 1.401(k)-1(d)(3)(iii)(B)), the pension provider shall obtain information from the Plan Administrator or other pension providers to determine the amount of any plan loans and rollover accounts that are available to the participant under the ACTS to satisfy the financial need.

17:7-12.15 Rollover contributions

(a) The ACTS will accept rollover contributions as provided in N.J.A.C. 17:7-9.3.

(b) The ACTS will accept a rollover contribution to a Roth elective deferral account only if it is a direct rollover from another Roth elective deferral account under an applicable retirement plan described in IRC § 402A(e)(1) and only to the extent the rollover is permitted under the rules of IRC § 402(c). A rollover of Roth elective deferrals will only be accepted if the Plan Administrator obtains information regarding the participant's tax basis under IRC § 72 in the amount rolled over.

(c) The pension provider shall establish and maintain for the participant a separate account for any eligible rollover distribution paid to the ACTS. Separate subaccounts must be kept for rollovers from an IRC § 457(b) eligible governmental plan and rollovers from a Roth elective deferral account or a Roth IRA.

17:7-12.16 Transfers to the ACTS

(a) At the direction of the employer, for a class of employees who are participants or beneficiaries in another plan under IRC § 403(b), the Plan Administrator may accept a transfer of assets to the ACTS only if:

1. The transferor plan provides for direct transfer of assets;

2. The participant is an employee or former employee of the employer;

3. The participant or beneficiary whose assets are being transferred has an accumulated benefit immediately after the transfer at least equal to the accumulated benefit with respect to that participant or beneficiary immediately before the transfer; and

4. The transferred amounts are subject to restrictions on distributions that are not less stringent than those imposed by the transferor plan.

(b) The Plan Administrator and any pension provider accepting such transferred amounts may require that the transfer be in cash or other property acceptable to it.

(c) The Plan Administrator or any pension provider accepting such transferred amounts may require such documentation from the other plan as it deems necessary to effectuate the transfer in accordance with Treasury Reg. § 1.403(b)-10(b)(3) and to confirm that the other plan is a plan that satisfies IRC § 403(b).

(d) To the extent provided in the investment options holding such transferred amounts, the amount transferred shall be held, accounted for, administered, and otherwise treated in the same manner as an elective deferral by the participant under the ACTS, except that the transferred amount shall not be considered an elective deferral under the ACTS in determining the maximum elective deferral under N.J.A.C. 17:7-12.7.

17:7-12.17 Exchanges

(a) A participant or beneficiary is permitted to change the investment of his or her account among the pension providers under the ACTS. However, an investment change that includes an investment with a pension provider that is not eligible to receive contributions (referred to as an exchange) is not permitted.

(b) If any pension provider ceases to be eligible to receive elective deferrals under the ACTS, the Plan Administrator will enter into an information sharing agreement to the extent the Plan Administrator's contract with the pension provider does not provide for the exchange of information.

17:7-12.18 Transfers to purchase service credit

(a) If a participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in IRC § 414(d)) that provides for the acceptance of plan-to-plan transfers with respect to the participant, then the participant may elect to have any portion of the participant's accumulated benefit transferred to the defined benefit governmental plan. A transfer may be made before the participant has had a severance from employment.

(b) A transfer may be made only if the transfer is either for the purchase of permissive service credit (as defined in IRC § 415(n)(3)(A)) under the receiving defined benefit governmental plan or a repayment to which IRC § 415 does not apply by reason of IRC § 415(k)(3).

17:7-12.19 Investment

(a) All elective deferrals or other amounts contributed to the ACTS, all property and rights purchased with such amounts under the investment options, and all income attributable to such amounts, property, or rights shall be held and invested in one or more annuity contracts or custodial accounts.

(b) Each participant or beneficiary shall direct the investment of his or her account among the investment options available under the annuity contract or custodial account in accordance with the terms of the investment options.

(c) Each pension provider and the Plan Administrator shall exchange such information as may be necessary to satisfy IRC § 403(b) or other requirements of applicable law.

1. The Plan Administrator shall maintain a list of all pension providers under the ACTS, including a pension provider that has ceased to be a pension provider eligible to receive elective deferrals under the ACTS and a pension provider holding assets under the ACTS. Such list is hereby incorporated as part of the ACTS.

2. Each pension provider and the Plan Administrator shall exchange such information as may be necessary to satisfy IRC § 403(b) or other requirements of applicable law. In the case of a pension provider that is not eligible to receive elective deferrals under the ACTS (including a pension provider that has ceased to be a pension provider eligible to receive elective deferrals under the ACTS and a pension provider holding assets under the ACTS), the employer shall keep the pension provider informed of the name and contact information of the Plan Administrator in order to coordinate information necessary to satisfy IRC § 403(b) or other requirements of applicable law.

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.iii. (No change.)
- iv. Shall provide for repayment in full on or before the earlier of:
 - (1) (No change.)
 - (2) The date when distribution of the participant’s Plan benefit is fully distributed (including payments after retirement out of Plan distributions); and

v. (No change.)

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 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) (No change.)
 - ii. (No change.)
- 3.-7. (No change.)

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. 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 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 Retirement Plan, the name and address of the trustee or plan administrator of that eligible 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.-8. (No change.)

TREASURY—TAXATION
(a)

DIVISION OF TAXATION
Transfer Inheritance Tax and Estate Tax
Adopted New Rules: N.J.A.C. 18:26

Proposed: July 17, 2017, at 49 N.J.R. 2210(a).
 Adopted: June 13, 2018, by John J. Ficara, Acting Director, Division of Taxation.
 Filed: June 13, 2018, as R.2018 d.139, 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. 54:38-7 and 54:50-1.
 Effective Date: July 16, 2018.
 Expiration Date: July 16, 2025.

Summary of Public Comments and Agency Responses:

The Division received comments from:
 1. Bruce S. Shapiro, Local Government & Regulatory Affairs Manager, New Jersey Realtors; and

2. Robert B. Hille, President of the New Jersey State Bar Association.
 1. COMMENT: The commenter expressed that N.J.S.A. 18:26-3C-1, the lack of imposition of an estate tax, will assist families of the deceased, and make New Jersey more competitive with surrounding states by removing an economic burden. (1)

RESPONSE: The Division thanks the commenter for his comment.
 2. COMMENT: The proposed heading of Subchapter 2 should be “Imposition and Computation of Transfer Inheritance Tax,” not merely “Imposition and Computation of Tax,” for clarity. (2)

RESPONSE: Although Subchapter 2 does indeed only apply to transfer inheritance tax, the change suggested may confuse the public that only Subchapter 2 applies for transfer inheritance tax. Other subchapters, such as those that include waivers and exemptions for purposes of calculation, also are implicated. The Division has made clear those chapters that are specific to the estate tax to distinguish between the two taxes.

3. COMMENT: The Division should clarify the imposition of transfer inheritance tax under N.J.A.C. 18:26-2.1(a)1. The proposed rule states that such tax applies “in the case of resident decedent, where such transfers consist of real or tangible personal property situated in this State or intangible personal property wherever situated, owned by such decedent.” The last clause should be changed to read: “... owned by such decedent at the time of death or within three years of the decedent’s death.” (2)

RESPONSE: The proposed rule concerns the general imposition of the transfer inheritance tax to property, not to specific provisions of the tax. The Division has provided guidance in Subchapter 5 concerning transfers within three years prior to the decedent’s date of death.

4. COMMENT: The proposed rule for N.J.A.C. 18:26-2.10 would delete the phrase “admitted to probate” from the previous version. The rule, as currently proposed, states that if a transferee agrees to a distribution different than what is provided in a decedent’s will, the transfer inheritance tax is computed according to the will terms. Including the phrase would increase clarity. (2)

RESPONSE: The purpose of the proposed rule is to clarify that the terms of the will govern the application of the transfer inheritance tax. Regardless of whether a transferee agrees to a distribution different than what is provided in a decedent’s will, the transfer inheritance tax is computed according to the will’s terms. Given that any situation involving multiple wills or will contests will be determined by the probate court, the Division agrees and makes the recommended change.

5. COMMENT: The Division’s proposed rules concerning the valuation and calculation of tax on “family limited partnerships” (N.J.A.C. 18:26-3A.2(b), 3B.2(b), and 8.12(b)), should not be included