

**RULE PROPOSALS
TREASURY -- GENERAL
DIVISION OF PENSIONS AND BENEFITS**

47 N.J.R. 887(a)

Proposed Changes: N.J.A.C. 17:7-8.11

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Notice of Proposed Substantial Changes upon Adoption to Proposed New Rule

Alternate Benefit Program

Proposed: April 7, 2014, at 46 N.J.R. 588(a).

Authorized By: Florence J. Sheppard, Acting Director, Division of Pensions and Benefits.

Authority: N.J.S.A. 52:18A-107 et seq., specifically, 18A:66-192.

Submit written comments by July 3, 2015, to:

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Take notice that the Division of Pensions and Benefits is proposing substantial changes to proposed new N.J.A.C. 17:7-8.11 to permit Alternate Benefit Program (ABP) members whose employers have existing Transition to Retirement Programs (TTRPs) that allow participation for more than one year, to elect to participate in their employer's current program within five years of the effective date of this section. In addition, employers will be required to provide evidence through their actions that their TTRPs comply with the one-year requirement within five years of the date that this section is adopted.

Summary of Public Comments and Agency Responses:

The Division of Pensions and Benefits (Division) received two sets of comments, from Executive Director Patrick Nowlan (commenter 1), on behalf of the American Association of University Professors-American Federation of Teachers (AAUP-AFT), and one from Lisa T. Wahler, Esq., Associate Vice President and Deputy General Counsel for Rutgers, the State University of New Jersey (commenter 2). The Division of Pensions and Benefits wishes to thank both commenter 1 and commenter 2 for their comments.

1. COMMENT: A major concern expressed by commenter 1 regarding the new rules proposed to regulate the TTRPs for Alternate Benefit Program members, as permitted under P.L. 2013, c. 120, was the term limit established for TTRP participation. The proposed new rule stipulates that a member's TTRP participation be limited to a maximum period of one year. Commenter 1 wishes to modify N.J.A.C. 17:7-8.11(a)2 to permit members approved to enter into a TTRP agreement with their employer to participate for up to three years.

2. COMMENT: Commenter 2 takes issue with the one-year limit placed on a member's TTRP participation, as set forth in N.J.A.C. 17:7-8.11, the new rule proposed to regulate the TTRPs. Like commenter 1, commenter 2 requests that member participation in a TTRP be allowed for up to three years, rather than only one year.

RESPONSE TO COMMENTS 1 AND 2: While the Division acknowledges the concerns of the commenters, N.J.A.C. 17:7-8.11 already permits members to continue to work under a TTRP for a period of up to one year after the member's retirement date. The Division points out that the statutes governing other State-administered retirement systems do not permit a member to retire and continue working with his or her employer. Therefore, this TTRP already provides an exception to current public policy requiring New Jersey public employees to achieve a "bona fide" retirement before they are permitted to return to public employment, where the term "bona fide" indicates that the employee has made a good faith action to retire and the employer-employee relationship has been severed completely. Since TTRPs allow ABP members to continue to work at a reduced load while also collecting a retirement benefit, the employer-employee relationship has not been completely severed and a bona fide retirement has not occurred prior to the member's return to employment.

The TTRP also represents an additional financial burden for the State, in the form of retired State-paid health insurance coverage costs for members who retire from a New Jersey county college after 25 or more years of service, but continue to work at the same county institution of higher education under a TTRP agreement. While each county college pays the employer's share of the cost of health insurance coverage for its actively employed ABP members, the burden of that cost shifts to the State at retirement, for all members with 25 or more years of service (see P.L. 1992, c. 126). Therefore, it is an important fiscal responsibility of the Division to limit TTRP participation to one year, in order to minimize the additional financial burden the State will have to carry for retired health insurance coverage for ABP members who are still actively employed at a county college under a TTRP agreement.

[page=888] Furthermore, several other reasons for limiting TTRP participation warrant mention. TTRPs allow members to take an in-service distribution without penalty, since members who participate in TTRPs are permitted to receive a retirement benefit while also continuing to collect a salary for employment with the same employer. In addition, by allowing members to receive a salary from their employer (college or university), while also collecting a retirement benefit based on service at the same college or university, TTRPs serve to undermine the general intent of ABP enrollment, which is to provide a pension benefit to members upon retirement.

Because TTRPs contradict public policy regarding public employment after retirement, and members of all other retirement systems are required to achieve a "bona fide" retirement before a return to public employment is allowed, the Division intends to limit TTRP participation to a period of one year. ABP members who seek more than a year's time to transition to retirement are, in fact, not ready to retire and will have to postpone their participation in a TTRP.

However, the Division also recognizes that a number of TTRP agreements established between ABP members and their employers existed prior to this new rule, so the Division proposes to amend the Transition to Retirement Program rule by adding N.J.A.C. 17:7-8.11(a)2i, to allow for an exception to the one-year limit established for TTRP participation. P.L. 2013, c. 92 permits the promulgation of rules for the TTRP retroactive to July 1, 2008. For members whose employer's current Transition to Retirement Program allows for participation for more than one year, a member may elect to participate in their employer's

current program within five years of the effective date of this section, which is a term that exceeds the three-year participation term requested by the commenters. In addition, N.J.A.C. 17:7-8.11(b) is added to stipulate that all employers shall restructure their transition to retirement programs within five years of the effective date of N.J.A.C. 17:7-8.11, to comply with the new rule, which authorizes only one year of participation in a TTRP.

Effect of Proposed Changes on Impact Statements Included in Original Proposal

The changes to the proposed new rule will affect the Economic Impact statement but will not affect the other impact statements included in the original rule proposal.

Economic Impact

The changes to the proposed new rule will have a negative economic impact on the State in the area of health benefits for ABP members who are employed at county colleges, as TTRPs represent an additional financial burden for the State, in the form of retired State-paid health insurance coverage costs for members who retire from a New Jersey county college after 25 or more years of service but continue to work at the same county institution of higher education under a TTRP agreement. Each county college pays the employer's share of the cost of health insurance coverage for its actively employed ABP members, but the burden of that cost shifts to the State at retirement, for all members with 25 or more years of service (see P.L. 1992, c. 126). For those members at the county level with 25 or more years of service who will be able to participate in a TTRP for a period exceeding one year, the cost assumed by the State will increase significantly.

The substantial change to the proposed new rule provides an economic benefit to its members and employers, as it furnishes a means of securing a retirement income for faculty members and administrators at institutions of higher education in the State of New Jersey, while also allowing public colleges and universities to retain the services of qualified and experienced professors, who will be permitted to continue teaching at a reduced load (50 percent or less). Unfortunately, as indicated above, it does place an increased economic burden on the State for continuing State-paid health benefits.

Full text of the proposed substantial changes to the proposed new rule follows (additions to proposal indicated in italicized boldface *thus*; deletions from proposal indicated in italicized braces [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 years of age;**
- ii. Members must have served a minimum of 10 years at a college or university;**

iii. Members who wish to participate in the program must submit the request to retire under the terms of the TTRP to their employer no later than April 1 of the calendar year preceding the academic year in which they wish to participate in the program;

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.

i. Members whose employer's current Transition to Retirement Program allows for participation for more than one year may participate in the employer's program through (five years after the effective date of this section).

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;

ii. As retirees, participating faculty have no claims of tenure or other rights and/or obligations of a tenured member of the faculty;

iii. In no event shall the total assignment exceed 50 percent of a full-time faculty load; and

iv. Participating faculty shall receive compensation proportional to the assignment approved by the college or university which shall not exceed 50 percent of their final year's salary.

(b) Evidence shall be submitted to the Division demonstrating the employer's actions to ensure that all TTRPs are compliant with the one-year requirement under (a)2 above through (five years after the effective date of this section).

~~[(b)]~~ (c) ABP employers shall provide to the Division an annual listing of all ABP members at their location who are participants of their TTRP.