

## 15:35-1.5 Exclusions

(a) This chapter does not apply to:

1. Any municipality issuing a business permit or approval pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.; and
2. Any permit or approval related to a Federally-funded program or project or a permit that is specified or determined by or pursuant to Federal law or regulation.

## 15:35-1.6 Annual review

(a) The first consolidated and contemporaneous review of State and local agency-issued permits shall be completed by no later than March 1, 2012.

(b) The report shall be posted to the Department of State website.

(c) In accordance with N.J.S.A. 52:14B-30, the Secretary of State or Governor's designee shall report annually on or before March 1 to the Governor and to the Legislature as to those items identified in that statute.

## TREASURY — GENERAL

### (a)

#### DIVISION OF PENSIONS AND BENEFITS

##### Defined Contribution Retirement Program

##### Proposed Readoption of Specially Adopted New Rules: N.J.A.C. 17:6

##### Proposed Amendments: N.J.A.C. 17:6-2.1 and 5.8

Authorized By: Andrew P. Sidamon-Eristoff, State Treasurer.

Authority: N.J.S.A. 43:15C-1.

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

Proposal Number: PRN 2012-041.

Submit comments by May 4, 2012 to:

Susanne Culliton, Assistant Director  
Division of Pensions and Benefits  
PO Box 295  
Trenton, NJ 08625-0295

The agency proposal follows:

#### Summary

The Board of the Defined Contribution Retirement Program ("DCRP" or "Program") established by N.J.S.A. 43:15C-4 is responsible for reviewing the administrative rules within N.J.A.C. 17:6. When the Board becomes aware of a change in the laws or a court decision that could affect the DCRP, the administrative rules are reviewed and, if changes therein are mandated, steps are taken to propose changes to those rules to conform to the new statutes or court decision. Additionally, the rules are periodically reviewed by the Division of Pensions and Benefits staff to determine if the current rules require clarification, whenever practicable, so that they are consistent with the Internal Revenue Code as applicable to governmental plans.

The Board proposes to readopt the specially adopted new rules at N.J.A.C. 17:6, which expire on January 25, 2012 with the amendments discussed below. The specially adopted new rules proposed for readoption with amendments, affect the administration, enrollment, insurance, and death benefits, membership, investments, and retirement aspects of the plan. Pursuant to N.J.S.A. 52:14B-5.1c(2), by filing this notice of proposal with the Office of Administrative Law on or before January 25, 2012, the expiration date of N.J.A.C. 17:6 is extended to 180 days to July 23, 2012.

Members, participating employers, retirees, and survivors of retirees rely on the efficient operation of the retirement program to administer retirement benefits and to provide the information they need regarding the individual accounts. The Defined Contribution Retirement Program legislation originally became effective July 1, 2007 with the enactment of P.L. 2007, c. 92, as later amended by P.L. 2007, c. 103, P.L. 2008, c. 89, and P.L. 2010, c. 1. The Defined Contribution Retirement Program rules were adopted as a special adoption of new rules effective January 25,

2011. The following is a discussion of the specially adopted new rules proposed for readoption with amendments.

Subchapter 1, Establishment of Program, remains unchanged.

Subchapter 2, Definitions, is proposed for readoption with an amendment proposed to the definition of "severance." In this definition, the phrase "or expectation" is added to clarify that the participant shall knowingly not have obligation or expectation upon termination of employment to return to work after the date of severance with that employer.

Subchapter 3, Defined Contribution Retirement Program Board, remains unchanged.

Subchapter 4, Participation in the Retirement Plan, remains unchanged.

Subchapter 5, Contributions to the Retirement Plan, contains amendments to one section as follows. At N.J.A.C. 17:6-5.8, Plan to satisfy limit on annual additions, paragraph (a)1 is proposed for amendment to include the increase in the limit of the annual addition as required under IRC § 415(c) to \$50,000 in calendar year 2012, \$49,000 in calendar years 2009 through 2011, and \$46,000 in calendar year 2008. This paragraph originally just stated a base amount and "as adjusted," but will now include the prior annual additions. Paragraph (a)2 remains unchanged. Subsections (b) through (i) would remain unchanged. Subsection (j) is proposed for amendment to include that the current compensation limit for each participant shall not exceed the applicable limit established by IRC § 401(a)(17). For plan year 2012 this limit is \$250,000, for plan years 2009 through 2011 this limit was \$245,000, and for plan year 2008 this limit was \$230,000.

Subchapter 6, Investments and Investment Direction, remains unchanged.

Subchapter 7, Vesting and Forfeiture, remains unchanged.

Subchapter 8, Beneficiary, remains unchanged.

Subchapter 9, Qualified Domestic Relations Order, remains unchanged.

Subchapter 10, No Loan or Early Distribution, remains unchanged.

Subchapter 11, Distributions and Minimum Distribution Requirements, remains unchanged.

Subchapter 12, Accounts, remains unchanged.

Subchapter 13, Rollovers, remains unchanged.

Subchapter 14, Administration of Distributions, remains unchanged.

Subchapter 15, Plan Administration, remains unchanged.

Subchapter 16, General Provisions, remains unchanged.

Subchapter 17, Defined Contribution Retirement Program Group Life Insurance Plan, remains unchanged.

Subchapter 18, Defined Contribution Retirement Program Group Disability Benefit Plan, remains unchanged.

Subchapter 19, Amendment, remains unchanged.

Subchapter 20, Construction, remains unchanged.

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

#### Social Impact

The rules involving the Defined Contribution Retirement Program benefit the members, retirees, beneficiaries, and participating employers of the Program. The members, participating employers, retirees, and survivors of retirees rely on the efficient operation of the Program to provide them with both a retirement benefit and information needed regarding their individual accounts. The members rely upon the predictability of the rules, which guide the administration of their benefits and the stability of the Program. The protections and guarantees that these rules afford its members mandate their continued existence.

The proposed amendments to the rules are to keep a historical record of the annual limits established by the Internal Revenue Code. These changes will be updated in the Administrative Code at the time of any future proposed amendments, or at the latest, during future proposed readoptions. In addition, as case law develops over time, it may become necessary to amend and/or repeal rules, which have become either moot or partially unenforceable. The Division recognizes that there is a general societal interest in making sure a public retirement program is well run and available to its members.

**Economic Impact**

The specially adopted new rules proposed for readoption with amendments will not present any economic impact on the public; the rules represent a continuation of current provisions within the limitations placed upon all qualified retirement programs under Federal law and are regulatory requirements under the related statutory provisions. The rules as amended, do not impose any additional recordkeeping or other administrative requirements, and will serve to preserve the efficient administration and operation of the DCRP. The rules will enable the Division to provide for benefits in a manner that meets the statutory and contractual requirements.

The current procedures as set forth in N.J.A.C. 17:6 have proven to be effective in the proper administration of the DCRP. Without the administrative rules to provide for the efficient operation of the Program, financial disparities may result.

Employees enrolled in the Public Employees' Retirement System or the Teachers' Pension and Annuity Fund after July 1, 2007, or enrolled in the Police and Firemen's Retirement System or the State Police Retirement System after May 21, 2010, are subject to maximum compensation limits for pension contributions. The maximum compensation is based on the annual maximum wage for Social Security and is subject to change at the start of each calendar year. Therefore, an eligible employee who earns in excess of the annual maximum wage will be enrolled in the DCRP, and any attendant economic impact would be as a result of the enabling legislation and not the rules themselves. The additional income will be available in retirement based on contributions from salary above the maximum compensation limit invested in the DCRP.

The Division will continue to monitor the impact of these rules through research and review of new legislation. The Division is not aware of any provisions in these rules that would impose any hardship or costs on the members of the DCRP or on the public in general.

**Federal Standards Statement**

A Federal standards analysis is not required for the specially adopted new rules proposed for readoption with amendments because N.J.S.A. 43:15C-1 governs the subject of this rulemaking. The following Federal requirements affect the subject of this rulemaking: IRC §§ 401(a) et seq., 29 § U.S.C. 1002(32) and IRC § 414(d). The DCRP is a plan intended to be a tax-qualified defined contribution pension plan and is further intended to be a governmental plan. Thus, the rules must be in compliance with the Federal requirements and/or standards.

**Jobs Impact**

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

**Agriculture Industry Impact**

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

**Regulatory Flexibility Statement**

N.J.A.C. 17:6 only affects public employers and employees. Thus, the specially adopted new 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 specially adopted new rules proposed for readoption with amendments will not have an impact on affordable housing in New Jersey and the rules will not evoke a change in the average costs associated with housing because the rules only apply to the administration of the DCRP.

**Smart Growth Development Impact Analysis**

The specially adopted new rules proposed for readoption with amendments will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated

centers, under the State Development and Redevelopment Plan in New Jersey because the rules only apply to the administration of the DCRP.

**Full text** of the specially adopted new rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 17:6.

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

SUBCHAPTER 2. DEFINITIONS

17:6-2.1 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. 43:15C-1 et seq. or by the Internal Revenue Code.

...  
 "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.  
 ...

SUBCHAPTER 5. CONTRIBUTIONS TO THE RETIREMENT PLAN

17:6-5.8 Plan to satisfy limit on annual additions

(a) To the extent required under IRC § 415(c), in no event shall the "annual addition," as defined in this section for a participant for any Plan Year, exceed the lesser of:

1. \$ 45,000, as adjusted (**\$50,000 in calendar year 2012, \$49,000 in calendar years 2009 through 2011, and \$46,000 in calendar year 2008**); or
  2. (No change.)
- (b)-(i) (No change.)  
 (j) For purposes of this section, compensation of each participant shall not exceed the applicable limit established by IRC § 401(a)(17) as of the first day of the limitation year, as increased for the Cost of Living Adjustment [(\$245,000 for 2011)] (**\$250,000 for 2012, \$245,000 for 2009 through 2011, and \$230,000 for 2008**). The Cost of Living Adjustment in effect for a limitation year applies to compensation for the Plan Year that begins with or within such limitation year.

**OTHER AGENCIES**

**(a)**

**PUBLIC EMPLOYMENT RELATIONS COMMISSION**

**Unfair Practice Proceedings Interim Relief**

**Proposed Amendments: N.J.A.C. 19:14-9**

Authorized By: Public Employment Relations Commission, P. Kelly Hatfield, Chair.

Authority: N.J.S.A. 34:13A-5.4.c, d, and f; and 34:13A-11.

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

Proposal Number: PRN 2012-043.

Submit written comments by May 4, 2012 to:

P. Kelly Hatfield, Chair  
 Public Employment Relations Commission  
 PO Box 429  
 Trenton, New Jersey 08625-0429

Comments may also be submitted via facsimile to 609-777-0089; or via e-mail to [rulecomments@perc.state.nj.us](mailto:rulecomments@perc.state.nj.us).

The agency proposal follows: