

## Chapter ETF 20

## WISCONSIN RETIREMENT SYSTEM

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**Note:** Corrections made under s. 13.93 (2m) (b) 6., Stats., Register January 2004 No. 577.

**ETF 20.015 Participating employees. (1)** PARTICIPATING EMPLOYEES: ONE-THIRD OF FULL-TIME EMPLOYMENT. (a) *Non-teachers*. Except as provided in par. (b) and (c), for purposes of s. 40.22, Stats., 600 hours of employment with an employer in one year is considered one-third of full-time employment.

(b) *Teachers*. For an employee classified as a teacher under s. 40.02 (55), Stats., for purposes of s. 40.22, Stats., 440 hours of employment with an employer in one year is considered one-third of full-time employment.

(c) *Educational support personnel employee*. Except as provided in par. (a), for purposes of s. 40.22, Stats., 440 hours of employment with an employer in one year is considered one-third of full-time employment.

**(2)** PARTICIPATING EMPLOYEES: TWO-THIRDS OF FULL-TIME EMPLOYMENT. (a) *Non-teachers*. Except as provided in par. (b) and (c), for purposes of s. 40.22, Stats., 1200 hours of employment with an employer in one year is considered two-thirds of full-time employment.

(b) *Teachers*. For an employee classified as a teacher under s. 40.02 (55), Stats., for purposes of s. 40.22, Stats., 880 hours of employment with an employer in one year is considered two-thirds of full-time employment.

(c) *Educational support personnel employee*. Except as provided in par. (a), for purposes of s. 40.22, Stats., 880 hours of employment with an employer in one year is considered two-thirds of full-time employment.

**(3)** YEAR. For purposes of this section “year” means 365 consecutive calendar days, or 366 consecutive calendar days if the period measured includes February 29.

**History:** Cr. Register, January, 1985, No. 349, eff. 2-1-85; r. and recr. Register, September, 1992, No. 441, eff. 10-1-92; CR 12-054: r. and recr. (title), (1), (2) Register October 2013 No. 694, eff. 11-1-13.

**ETF 20.016 Student employees. (1)** As provided in s. 40.22 (2) (gm), Stats., a participating employer may not include under the provisions of the Wisconsin retirement system an employee first hired on or after April 23, 1992, if the employee is under the age of 20 and is regularly enrolled or expected to be enrolled as a full-time student in a public, private, or parochial elementary or high school as defined in s. 118.257 (1) (d), Stats.

**(2)** For purposes of this section, an employee who is not enrolled in school is expected to be regularly enrolled as a full-time student in a school included under s. 118.257 (1) (d), Stats., if all of the following apply:

(a) The employee is under age 20 and has not received a high school diploma or a general equivalency diploma;

(b) The employee was enrolled in a school included under s. 118.257 (1) (d), Stats., during the immediately prior regular semester;

(c) The employee has not notified the employer, as provided in sub. (3) (c), that he or she does not intend to enroll as a full-time student in a school included under s. 118.257 (1) (d), Stats., during the next regular semester.

**(3)** An employee who is excluded from participation in the Wisconsin retirement system by s. 40.22 (2) (gm), Stats., shall become eligible for participation, subject to s. 40.22 (2) and (2m), Stats., as if he or she had been initially hired on the earliest of the following dates:

(a) The date the employee attains age 20;

(b) The employee's first working day following the date the employee completes all requirements for a high school diploma;

(c) The employee's first working day following the date the employee notifies the employer that he or she has ceased to be enrolled, and does not expect to be enrolled during the next regular semester, as a full-time student in a school included under s. 118.257 (1) (d), Stats. The written statement of the employee or, if the employee is under age 18, of the employee's parent or guardian shall be sufficient to establish that the employee has left school and does not intend to return in the next semester. If the employee intends to continue as a part-time student only, he or she may establish this fact by submitting to the employer a written certification from the principal of the school in which the student is enrolled. The definition of full-time student shall be that of the school in which the student is enrolled.

**History:** Cr. Register, October, 1992, No. 442, eff. 11-1-92.

**ETF 20.017 Employer resolutions to participate.** If the official notice of election to be included has been received by the department on or before November 15, the effective date of participation of the employer shall be the ensuing January 1. If the department receives the notice of election after November 15, the effective date shall be the January 1 after the ensuing January 1. The employer may withdraw a notice of election to be included if the employer's written notice to withdraw is received by the department before the November 15 deadline of the year before the January effective date.

**History:** CR 11-040: cr. Register July 2012 No. 679, eff. 8-1-12.

**ETF 20.02 Rehired annuitants. (1)** SCOPE. In this section, “rehired annuitant” means a participant on or after July 1, 1996, who has applied for and is eligible to receive a monthly

annuity under s. 40.23, Stats., including satisfying the requirement to remain separated from participating employment for the period specified under s. 40.23 (1) (a) 1., Stats., and who subsequently is employed by a participating employer in employment which would meet the eligibility criteria for inclusion under the provisions of the Wisconsin retirement system specified in s. 40.22, Stats., but for the exclusion of s. 40.22 (2) (L), Stats., and whose termination of previous employment by a participating employer meets all criteria under s. ETF 10.08 (2) (b).

(2) **BREAK IN SERVICE.** The minimum break in service period required under s. 40.23 (1) (a), Stats., is satisfied when the rehired annuitant returns to work no earlier than the latest of the following dates:

- (a) The day after the annuity effective date.
- (b) The seventy-sixth day after the date participating employment terminated.
- (c) The seventy-sixth day after the date the benefit application was received by the department.

(3) **REQUIRED CONTRIBUTIONS.** (a) The department shall include a rehired annuitant under the provisions of the Wisconsin retirement system as a participating employee if any of the following conditions apply:

1. A rehired annuitant who terminated participating employment prior to July 2, 2013, is employed in a position which meets the requirement for participation specified in s. 40.22, Stats., and files with the department a written election to be included under the provisions of the Wisconsin retirement system as a participating employee. The election shall be on a form provided by the department.

2. A rehired annuitant who terminated participating employment after July 1, 2013, is employed in a position which meets the requirement for participation specified in s. 40.22, Stats., and files with the department a written election to be included under the provisions of the Wisconsin retirement system as a participating employee. The election shall be on a form provided by the department. This subsection does not apply to a rehired annuitant who meets the requirements of s. 40.26 (1m) (a), Stats.

3. The rehired annuitant meets the requirements for suspension of the annuity under s. 40.26 (1m) (a), Stats.

(c) An election filed pursuant to par. (a) 1. or 2. shall take effect on the first day of the month following its receipt by the department. The department shall suspend the annuity on the day prior to the effective date of the election, unless the department receives the rehired annuitant's written notice revoking the election prior to the effective date of the election.

(d) A suspension of an annuity pursuant to par. (a) 3. shall take effect on the first day of the month following the date the annuitant is rehired.

(4) **EMPLOYER REPORTING.** Employers shall report to the department all rehired employees receiving an annuity from the Wisconsin retirement system, regardless of whether the employee qualifies as a rehired annuitant under this section and whether the employee's position meets the qualifications for inclusion under s. 40.22, Stats. Employers shall report rehired annuitants in the manner, form, and at the time requested by the department.

**Note:** A rehired annuitant or employer may obtain a copy of the "Rehired Annuitant Election" form, ET-2319, required by s. ETF 20.02 at no charge by writing to: department of employee trust funds, P.O. Box 7931, Madison, WI 53707-7931, or by calling: (608) 266-3285 or toll free at (877) 533-5020. The form also is available on the department's website: [etf.wi.gov](http://etf.wi.gov).

**History:** Emerg. cr. eff. 7-1-83; cr. Register, October, 1983, No. 334, eff. 11-1-83; r. and recr. Register, October, 1992, No. 442, eff. 11-1-92; correction in (3) (a) 2. made under s. 13.93 (2m) (b) 7., Stats., Register, July, 1999, No. 523; am. (1) and (3) (a) 3., r. and recr. (2) and r. (3) (a) 2., (b), (4) and (5), Register, August, 2000, No. 536, eff. 9-1-00; CR 11-042: am. (1), cr. (2) (title), (3) (title), (4) Register July 2012 No. 679, eff. 8-1-12; CR 14-055: am. (2) (b), (c), r. and recr. (3) (a), am. (3) (c), cr. (3) (d) Register May 2015 No. 713, eff. 6-1-15.

**ETF 20.025 Minimum retirement age.** (1) **REGULAR RETIREMENT ANNUITIES AND LUMP SUMS IN LIEU OF AN ANNUITY.**

The earliest age at which a person may qualify to receive an annuity under s. 40.23 or 40.24, Stats., or a lump sum in lieu of an annuity under s. 40.25 (1), Stats., is the minimum retirement age.

(2) **SEPARATION BENEFITS.** An application for a lump sum benefit under s. 40.25 (2), Stats., must be received by the department before the applicant has reached minimum retirement age unless the applicant is eligible for a lump sum benefit under s. 40.23 (2m) (er) or 40.23 (3) (b), Stats.

**Note:** The term "minimum retirement age" currently is not used in ch. 40, Stats. or ETF administrative rules., except for ss. ETF 10.01 (3o) and 20.025 as proposed in this rule (CR 09-057). The term is defined in this rule to be consistent with s. 40.23 (1) (a) (intro.), Stats., which is implicitly referenced by s. 40.25 (1) (a), Stats., and with s. 40.25 (2), Stats.

**History:** CR 09-057: cr. Register May 2010 No. 653, eff. 6-1-10; CR 14-055: am. (2) Register May 2015 No. 713, eff. 6-1-15.

**ETF 20.0251 Exclusive benefit.** (1) The Wisconsin retirement system is maintained for the exclusive benefit of participants and their beneficiaries.

(2) No contributions or earnings on contributions may revert, and no contributions may be permitted to be returned to a participating employer, except as permitted by Revenue Ruling 91-4.

**Note:** Revenue Ruling 91-4 provides for circumstances under which money contributed by a participating employer may be returned to the employer. A copy of the ruling may be obtained by writing: Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000.

**History:** CR 13-004: cr. Register August 2013 No. 692, eff. 9-1-13.

**ETF 20.03 Annuity computations.** (1) For purposes of annuity computations, other than option conversion, an applicant's age shall be determined to the nearest month. For option conversion purposes, an applicant's age shall be determined to the nearest quarter year.

(2) For purposes of determining maximum benefits under s. 40.23 (2), Stats., and accelerated benefits under s. 40.24 (4), Stats., except as provided to the contrary in s. ETF 20.35 (3) (c) 2., the estimated OASDHI benefit shall be based on the following:

**Note:** 2007 Wis. Act 131 revised s. 40.24 (1) (e), Stats., for annuities effective after July 1, 2008 to remove the alternative provision terminating the temporary annuity portion of the benefit at death and thereby made the temporary annuity an annuity certain payable until the annuitant would have reached age 62. Once called "Social Security Integrated" or "integrated" annuities, these two-part annuity options are now known as accelerated annuity options. This rule (CR 09-057) updates the last remaining reference in the administrative rules to an "integrated" annuity benefit.

(a) It shall be assumed that the employee has been in a position covered under OASDHI from the year in which age 30 was attained to the year of retirement or death, except that years in which earnings are reported under s. 40.05 (1) (a) 4., Stats., shall not be counted.

(b) It shall be assumed that covered earnings increased from the year in which age 30 was attained to the year of retirement or death at a rate determined by the actuary to reflect changes in the OASDHI wage base and approximate average changes in earnings during that time.

(bm) With respect to accelerated annuity options under s. 40.24 (1) (e), Stats., or s. ETF 20.04 (3), that become effective on or after July 1, 2008, the temporary annuity portion is payable in all cases until the annuitant reaches, or would have reached, age 62, without regard for an earlier date of death. The actuary shall make all tables, other assumptions and calculations relevant to the accelerated annuity benefit accordingly.

**Note:** 2007 Wis. Act 131 revised s. 40.24 (1) (e), Stats., for annuities effective after July 1, 2008 to remove the alternative provision terminating the temporary annuity portion of the benefit at death and thereby made the temporary annuity an annuity certain payable until the annuitant would have reached age 62. This rule (CR 09-057) requires the actuary's assumptions, tables and calculations to take into account that the temporary portion of future accelerated annuity benefits will be an annuity certain.

(c) The delayed retirement credit under federal social security regulations shall be applied to each year after age 65 and up to age 72.

(d) Based upon the assumptions in pars. (a) to (c) and in accordance with the provisions of the federal social security act, the actuary shall prepare a table correlating the employee's age and

final average earnings with a primary OASDHI benefit, adjusting the table as necessary to prevent, in most cases, assumed OASDHI benefits from exceeding actual OASDHI benefits.

(e) Notwithstanding pars. (a) to (d), if the applicant furnishes the official social security award certificate or a letter from the social security administration which shows that the retirement or disability benefit that is first payable from the participant's OASDHI account at the time of application for Wisconsin retirement system benefits is or will be in a different amount, the amount certified by the social security administration shall be used in the benefit computation.

(3) The actuarial factors used in computing annuities for beneficiaries shall be the same as the factors used in computing retirement annuities. For purposes of computing a beneficiary accelerated payment annuity the beneficiary's estimated OASDHI benefit shall be the primary OASDHI benefit amount determined for the deceased participant pursuant to sub. (2).

(4) (a) When the earnings of a state elected official whose final average earnings are subject to s. 40.02 (33) (b) 1. or 2., Stats., are paid on a payroll schedule other than monthly, the final average earnings used to calculate benefits under ss. 40.23, 40.63 and 40.73 (1) (c), Stats., shall be calculated by multiplying the participant's hourly rate of pay at the time of termination of employment from state elected official service by 2,080, then dividing the result by 12.

(b) The final average earnings calculated under par. (a) shall not be used to calculate benefits based on creditable service granted in any category of employment other than that as a state elected official.

**Note:** This rule (CR 09-057) codifies the department's long-standing practice for calculating the final average earnings for state elected officials and ensures the practice is consistent for calculating retirement annuities, disability annuities, and death benefits.

**History:** Renum. from ETF 7.01 (2), 7.03 and 7.06 and am. Register, December, 1983, No. 336, eff. 1-1-84; r. and recr. (2) (a) and (b), Register, December, 1990, No. 420, eff. 1-1-91; CR 01-096: am. (3), Register December 2001 No. 552, eff. 1-1-02; CR 09-057: am. (2) (intro.), cr. (2) (bm) and (4) Register May 2010 No. 653, eff. 6-1-10.

**ETF 20.04 Optional forms of annuity.** Pursuant to s. 40.24, Stats., a participant may elect one of the optional annuity forms prescribed in this section in lieu of an option prescribed under s. 40.24, Stats.:

(1) A joint and survivor annuity with payments reduced 25% effective either with the payment for the month in which the participant dies, or effective with the payment for the month after the month in which the named survivor who was designated by the participant in the original application for an annuity dies.

(2) (a) A joint and survivor annuity payable for the life of the annuitant, with a guarantee period of at least 180 monthly payments, and after the death of the annuitant continued at 100% for the life of the named survivor who was designated by the participant as the named survivor in the original application for the annuity.

(b) The participant may designate a beneficiary or beneficiaries as provided in s. 40.02 (8) (a) 1., Stats., to receive the balance of payments due in the event of the death of both the participant and named survivor before 180 monthly payments have been made. The participant may change the designation of the beneficiary.

(c) A named survivor or beneficiary receiving a deceased participant's annuity payments under this subsection, may designate a beneficiary or beneficiaries as provided in s. 40.02 (8) (a) 1., Stats., and thereafter change his or her designation of the beneficiary of any remaining guaranteed monthly payments.

(d) In the event of the death of the named survivor who is receiving continued benefits after the death of the participant, but prior to payment of 180 monthly benefits, the remainder of the 180 monthly payments shall continue to the named survivor's designated beneficiary, or in the absence of a designated beneficiary or

the death of all the named survivor's designated beneficiaries prior to the death of the named survivor, payment shall be made under the named survivor's standard sequence as set forth in s. 40.02 (8) (a) 2., Stats.

(e) In the event of the death of the named survivor prior to the death of the participant, the remainder of the 180 monthly payments shall continue to the participant's designated beneficiary, or in the absence of a beneficiary designation or the death of all the designated beneficiaries prior to the death of the participant, payment shall be made under the participant's standard sequence as set forth in s. 40.02 (8) (a) 2., Stats.

(f) In the event of the death of the beneficiary after becoming entitled to receive monthly payments but before receipt of the remainder of the guaranteed 180 monthly payments, the then present value of the annuity shall be paid, in lieu of the continuation of monthly payments, pursuant to s. 40.73 (2) (b) 3., Stats., as a death benefit to the beneficiary's designated beneficiary, or in the absence of a beneficiary designation or the death of all the beneficiary's designated beneficiaries prior to the death of the beneficiary, the then present value of the annuity shall be paid under the beneficiary's standard sequence as set forth in s. 40.02 (8) (a) 2., Stats.

(g) In the event of the death of both the named survivor and all the participant's designated beneficiaries prior to being entitled to receive benefits, the remaining monthly payments shall continue pursuant to the participant's standard sequence as set forth under s. 40.02 (8) (a) 2., Stats., if the participant's death occurs before 180 monthly payments have been made.

**Note:** The definition of "beneficiary" was affected by 2007 Wis. Act 131. The term "named survivor" was first used and defined by 1997 Act 110, and replaced the term "beneficiary" in some cases. In reviewing the existing administrative rules using the term, to make sure the usage remained logical, correct and consistent with the new definition, the department found three provisions that needed amendment, ss. ETF 10.70 (4), 10.70 (5) (b) 1. and 20.04 (2). This rule (CR 09-057) amends the current rule describing the joint-and-surviving annuity option with 180-payment guarantee to use the term "beneficiary" correctly.

(3) An annuity payable under sub. (1) or (2) plus an accelerated payment annuity as determined under s. 40.24 (1) (e), Stats.

(4) A life annuity with a number of guaranteed payments equal to the number of full calendar months in the life expectancy of the annuitant as determined under Table V of 26 CFR 1.72-9 as in effect on the date when the annuity begins.

**Note:** This rule (CR 09-057) concerns the optional forms of an annuity and updates the existing rule to better reflect ongoing changes in federal regulations and to more clearly state that the number of guaranteed payments is to equal the number of full calendar months in the annuitant's life expectancy.

**History:** Cr. Register, November, 1982, No. 323, eff. 12-1-82; am. (intro.), renum. (2) to be (3) and am., cr. (2), Register, May, 1987, No. 377, eff. 11-1-87; cr. (4), Register, December, 1996, No. 492, eff. 1-1-97; CR 01-096: am. (1), (2) (a) to (e) and (g) and (3), Register December 2001 No. 552, eff. 1-1-02; CR 09-057: am. (2) (b) to (g) and (4) Register May 2010 No. 653, eff. 6-1-10; correction in (2) (c) made under s. 13.92 (4) (b) 7., Stats., Register May 2010 No. 653.

#### ETF 20.045 Changes to optional form of payment.

(1) Changing the form of payment from a lump sum payment under s. 40.25 (1) or (4), or 40.73 (1) (a), Stats., to an annuity under s. 40.24 (1) or 40.73 (3), Stats., or from an annuity to a lump sum payment, is subject to the option change deadline specified in s. 40.24 (4), Stats.

(2) (a) If a participant, alternate payee or beneficiary has made a timely request under sub. (1) to change from a lump sum payment to a monthly annuity, the effective date of the annuity shall be determined based on the original date on which the department received the original application for benefits.

(b) If the department receives a timely payment option change request after the lump sum payment has already been issued, or receives it too late to prevent the payment from being issued, the applicant must return the payment in full within 30 calendar days after the date on which the department received the option change request. If the lump sum payment is not returned within the 30-day period, the option change request is null and void.

(c) The department shall not commence making annuity payments before the department has received the returned lump sum payment.

(3) If a participant, alternate payee or beneficiary has made a timely request under sub. (1) to change from a monthly annuity to a lump sum payment after one or more monthly payments have been issued, or if the department receives the option change request too late to prevent a monthly payment from being issued, the amount of the annuity payments that would have been paid under the terminated annuity if the annuity had been a straight life annuity shall be deducted from the lump sum payment that would otherwise have been payable.

**Note:** This rule (CR 09-057) codifies the department interpretation that the deadline for making a change to an optional form of payment is 60 days after the date on which the first annuity check is issued or funds are otherwise transferred. If the request for a payment option change is received by the department too late to prevent the lump sum payment, the applicant has 30 calendar days from the date of the request to return the payment in full.

If the request is received too late to prevent issuance of one or more monthly payments, the value of the payments issued shall be deducted from the lump sum payment.

(4) Subject to the restrictions in s. 40.24 (7) (a), Stats., a participant's request to change the designation of a named survivor to a different named survivor shall be subject to the deadline specified in s. 40.24 (4), Stats., for changing the optional form of payment selected.

**History:** CR 09-057: cr. Register May 2010 No. 653, eff. 6-1-10; CR 11-040: cr. (4) Register July 2012 No. 679, eff. 8-1-12.

#### ETF 20.05 Accelerated payment annuity options.

(1) A participant, alternate payee or beneficiary shall not be eligible for the accelerated payment annuity if the reduced annuity payable for life in the normal form under s. 40.24 (1) (e), Stats., would be equal to or less than \$129 per month for a benefit with an effective date in calendar year 2001 or, for a benefit with an effective date in a subsequent calendar year, the monthly amount applied under this section for the previous calendar year increased by the salary index, as defined in s. 40.02 (52), Stats., ignoring fractions of the dollar.

(2) Pursuant to s. 40.03 (2) (k), Stats., the department will assume that the primary OASDHI benefit, as defined in s. 40.02 (44), Stats., for a person eligible to receive a beneficiary annuity and selecting an option payable under s. 40.24 (1) (e), Stats., will be based on the work record of the participant from whose account the benefit is being paid.

**History:** Cr. Register, June, 1979, No. 282, eff. 1-1-80; cr. (2), (1) renum. from ETF 7.02 (1) and am., Register, November, 1982, No. 323, eff. 12-1-82; am. (1), Register, December, 1987, No. 384, eff. 1-1-88; CR 01-096: am. (1) and (2), Register December 2001 No. 552, eff. 1-1-02.

**ETF 20.055 Spouse's or domestic partner's signature on a benefit application.** Documentation of inability to obtain a spouse's or domestic partner's signature on an annuity application as required under s. 40.24 (7) (a) or s. 40.25 (3m), Stats., or on a separation benefit application as provided in s. 40.25 (3m), Stats., shall be accepted for any of the following reasons:

(1) (a) The spouse or domestic partner is incompetent as defined under s. 54.10 (3), Stats., and a copy of the court order appointing the spouse's or domestic partner's guardian is submitted to the department.

(b) The guardian's signature shall be required on the annuity application in lieu of the spouse's or domestic partner's signature if the participant chooses an annuity option other than an option specified under s. 40.24 (7) (a) or 40.25 (1) (a), Stats.

(c) The spouse's, domestic partner's or guardian's signature is not required when the participant is only eligible for a single sum benefit payable under s. 40.25 (1) (a), Stats.

(2) The participant certifies, on a form provided by the department, that the participant does not now know and has not known the whereabouts of the spouse or domestic partner for at least the 90 days immediately prior to the date the application is signed, or

the participant provides evidence to the department's satisfaction that the spouse's or domestic partner's signature is otherwise not obtainable.

**Note:** Section ETF 20.055 (2) requires a form which can be obtained at no charge by writing to: department of employee trust funds, P.O. Box 7931, Madison, WI 53707-7931, or by calling: (608) 266-3285 or toll free at (877) 533-5020.

(3) The requirements in s. 40.24 (7) (a) (intro.) and (b), Stats., and in s. 40.25 (3m), Stats., as it applies to s. 40.25 (1) (b), Stats., related to the requirement for the domestic partner's signature on benefit applications, shall not apply if the participant is prohibited under the internal revenue code from selecting a joint and survivor annuity with the domestic partner as the named survivor, based on the participant's and domestic partner's respective ages.

**History:** Cr. Register, September, 1986, No. 369, eff. 10-1-86; EmR0938: emerg. am. eff. 1-1-10; CR 10-004: am. Register July 2010 No. 655, eff. 8-1-10; CR 10-137: am. Register August 2011 No. 668, eff. 9-1-11.

#### ETF 20.06 Early retirement reduction factors.

Pursuant to s. 40.23 (2), Stats., this section applies only to participants who are not participating employees after March 9, 1984. In computing a formula annuity in the normal form beginning prior to the normal retirement date of a participant, there shall be a .5% reduction for each month the participant's age is under 65 but at least 60 and a .4% reduction for each month the participant's age is under 60.

**History:** Cr. Register, June, 1979, No. 282, eff. 1-1-80; renum. from ETF 7.02 (2), Register, November, 1982, No. 323, eff. 12-1-82; am. Register, March, 1986, No. 363, eff. 4-1-86.

#### ETF 20.07 Annuity options — automatic distributions.

(1) When the department begins to distribute an account under the provisions of s. 40.23 (4) (c), Stats., the benefit shall include the amount, if any, which can be provided by accumulated employer and employee required and additional contributions credited to the account. The department may not distribute a participating employee's account under this section.

(2) The benefit shall be paid in the first of the following forms that applies:

(a) For benefits payable solely from the participant's additional contribution accumulations under s. 40.05 (1) (a) 5., Stats., or if the amount of the annuity in the normal form based on all undistributed balances in the account is less than the amount determined under s. 40.25 (1) (a), Stats., a lump sum payment.

(b) If the participant's or alternate payee's age on the birthday which occurs during the year that the distribution begins is less than 72, the option specified in s. 40.24 (1) (c), Stats.

(c) If the participant's or alternate payee's age on the birthday which occurs during the year that the distribution begins is 72 or more, except as provided in par. (d), the option specified in s. ETF 20.04 (4).

(d) If the number of guaranteed payments determined under s. ETF 20.04 (4) is less than 60, a lump sum payment equal to the present value of the annuity.

(3) The effective date of the automatic distribution paid under sub. (2) shall be January 1 of the year in which the participant attains or would have attained age 70.5 years, or January 1 of the year following the year in which the participant retires, if later. Standard sequence under s. 40.02 (8) (a) 2., Stats., shall become effective with regard to beneficiaries of death benefits under ss. 40.71 and 40.73, Stats., on the effective date of the automatic distribution.

(4) The participant or alternate payee may not cancel distributions under this section, except as provided in sub. (5). Subject to the requirements of the internal revenue code, the participant or alternate payee may change the optional form of payment as provided under s. 40.24 (4), Stats.

(5) The department shall distribute the account as specified in this section unless the department receives the participant's or alternate payee's application for the benefit on a form provided by the department. The application may specify a deferred effective date which may not be later than March 1 of the calendar year in

which the participant will attain the age of 71.5 years, or March 1 of the calendar year following the year in which the participant retires, if later. For alternate payees of deceased participants, the deferred effective date may not be later than March 1 of the calendar year in which the participant would have attained the age of 71.5 years. The department must receive the application specifying a deferred benefit effective date on or after January 1 of the year in which the participant attains (or, for alternate payees of deceased participants, would have attained) the age of 69.5, but no later than the deadline to request cancellation provided under s. **ETF 20.20 (3)** or **(4)** with respect to the benefit which is being automatically distributed.

**Note:** Federal regulations require that a distribution from a qualified retirement plan begin no later than April 1 of the year following the year in which the participant turns age 70.5 or retires, whichever is later. Under s. **40.23 (1) (c)**, Stats., an inactive participant who wishes to receive an annuity payment on April 1 must elect a benefit effective date which is no later than March 1. A form specifying a requested annuity effective date, form ET-4934, is available from the department of employee trust funds at no charge.

**(6)** If the participant or alternate payee submits a waiver of a lump sum benefit under s. **40.08 (3)**, Stats., and the department receives it on or before the deadline specified in s. **ETF 20.20 (3)** or **(4)**, the department shall defer the automatic distribution during the waiting period before the waiver effective date. The department shall not defer automatic distribution of monthly annuity benefits if a waiver is filed, but shall continue to make monthly payments until the waiver takes effect.

**Note:** This rule (CR 09-057) amends ss. **ETF 20.07 (6)** and **60.53 (1) (c)** to conform to the new effective date for waivers in s. **40.08 (3)**, Stats., as affected by 2007 Wis. Act 131.

**History:** Cr. Register, December, 1996, No. 492, eff. 1-1-97; correction in (2) (a) made under s. 13.93 (2m) (b) 4. and 7., Stats., Register, July, 1999, No. 523; CR 09-057: am. (6) Register May 2010 No. 653, eff. 6-1-10.

**ETF 20.08 Termination of marriage or domestic partnership for determination of beneficiary.** For purposes of determining a beneficiary under s. **40.02 (8) (a) 2.**, Stats., a judgment, order or decree of divorce, legal separation or an annulment of the marriage terminates the marital relationship. A domestic partnership terminates as specified in s. **ETF 20.10 (3)** for the purposes of determining a beneficiary under s. **40.02 (8) (a) 2.**, Stats.

**History:** EmR0938: emerg. cr. eff. 1-1-10; CR 10-004: cr. Register July 2010 No. 655, eff. 8-1-10; title created under s. **13.92 (4) (b) 2.**, Stats., Register July 2010 No. 655.

**ETF 20.10 Domestic partner benefits. (1)** For the purposes of this section, “member” means any of the following persons:

- (a) Participant.
- (b) Annuitant.
- (c) Eligible employee.
- (d) Beneficiary.
- (e) Alternate payee.
- (f) Recipient of duty disability benefits under s. **40.65**, Stats.

**(2)** (a) For the purposes of the benefits authorized under ch. 40, Stats., a domestic partnership as defined in s. **40.02 (21d)**, Stats., becomes effective on the date that the department receives a completed and notarized *Affidavit of Domestic Partnership* form (ET-2371), except that a domestic partnership cannot become effective before January 1, 2010.

(b) The department may reject any *Affidavit of Domestic Partnership* (ET-2371) that is illegible or missing information necessary for benefit administration purposes. Affidavits that are missing the name or signature of either domestic partner or are not notarized shall be rejected. Any affidavit so rejected shall have no force or effect, and for the purposes of the benefits authorized in ch. 40, Stats., the effective date of the domestic partnership shall be based on the date the department receives a completed, notarized *Affidavit of Domestic Partnership* form (ET-2371) signed by both partners.

(c) Registering as domestic partners under the provisions of ch. 770, Stats., does not establish a domestic partnership for the purposes of the benefits authorized in ch. 40, Stats.

(d) Establishing a domestic partnership or a same-sex marriage in another state does not establish a domestic partnership for the purposes of the benefits authorized in ch. 40, Stats.

**(3)** Once a domestic partnership becomes effective it remains in force until the earlier of the following dates:

(a) The date on which the department receives a notarized *Affidavit of Termination of Domestic Partnership* form (ET-2372) signed by either the member or the domestic partner.

(b) Based on evidence provided to the department, the date established to the department’s satisfaction that the domestic partnership no longer met all of the conditions in s. **40.02 (21d)**, Stats. Examples of no longer meeting the conditions include one of the domestic partners marrying another person or establishing a new domestic partnership with a different partner under sub. **(2)**, or no longer sharing a common residence.

(c) The date on which neither domestic partner is a member as defined in sub. **(1)**.

(d) The date determined by the court that a domestic partnership terminated.

(e) The department may reject any *Affidavit of Termination of Domestic Partnership* (ET-2372) that is illegible or missing information necessary for benefit administration purposes. Any affidavit terminating a domestic partnership that is missing the name of either domestic partner, the signature of the domestic partner who is terminating the domestic partnership, or is not notarized shall be rejected, and shall have no force or effect. Except as provided in pars. **(b)**, **(c)**, and **(d)**, for the purposes of the benefits authorized in ch. 40, Stats., the effective date of the termination of the domestic partnership shall be based on the date the department receives a completed, signed and notarized *Affidavit of Termination of Domestic Partnership* form (ET-2372).

(f) Terminating a domestic partnership created under the provisions of ch. 770, Stats., does not terminate a domestic partnership established under sub. **(2)** for the purposes the benefits authorized in ch. 40, Stats.

**(4)** Affidavits certifying or terminating a domestic partnership that are received after the date of death of either domestic partner are invalid, and shall have no force or effect.

**(5)** The domestic partner provisions in ss. **40.08 (8) (a) 4.** and **40.23 (4) (e) 1.** and **(f)**, Stats., shall not apply if such provisions are inconsistent with any internal revenue code provisions that authorize and regulate the benefit plan.

**Note:** The Affidavit of Domestic Partnership form, ET-2371, and the Affidavit of Termination of Domestic Partnership form, ET-2372, can be obtained at no charge by writing to: department of employee trust funds, P.O. Box 7931, Madison, WI 53707-7931, or by calling: (608) 266-3285 or toll free at (877) 533-5020. The forms also are available on the department’s website: [etf.wi.gov](http://etf.wi.gov).

**History:** EmR0938: emerg. cr. eff. 1-1-10; CR 10-004: cr. Register July 2010 No. 655, eff. 8-1-10; correction in (3) (e) made under s. **13.92 (4) (b) 7.**, Stats., Register July 2010 No. 655.

**ETF 20.12 Payments considered Wisconsin retirement system earnings. (1)** (a) The purpose of this section is to establish the circumstances under which some or all payments made as a remedy for an employment dispute may be treated as earnings for Wisconsin retirement system purposes and to state the elements required for such treatment.

(b) This section applies to court orders and compromise settlements having an effective date which is on or after May 16, 1996.

(c) This section does not apply to retroactive or other wage payments made to all eligible employees in a bargaining unit under a collective bargaining contract.

**(2) DEFINITIONS.** (a) “Compromise settlement,” for purposes of this section, means a written, binding agreement between a participating employer and a current or former participating employee of that employer, to settle a wage claim or a dispute

involving an involuntary suspension or termination of participating employment. For purposes of this section only, the department shall treat a final order issued by the Wisconsin employment relations commission or an arbitration award under a collective bargaining agreement, for which all appeal opportunities have expired without an appeal being filed, as a compromise settlement.

(b) “Effective date” of the court order or compromise settlement, for purposes of this section, means the date an order of the court, the Wisconsin employment relations commission, or an arbitrator is issued or, when the matter is resolved by a compromise settlement signed by the parties rather than a final order, the date on which the compromise settlement in its final form is first signed by all of the parties.

(3) Except as provided in this section, no payment resulting from a court order or compromise settlement may be considered as earnings for Wisconsin retirement system purposes. The department may decline to act on a court order or compromise settlement which does not contain all of the information required under this section or is otherwise defective.

(4) Subject to all provisions of this section, the department shall treat as earnings for Wisconsin retirement system purposes a payment made under a court order or compromise settlement by a participating employer to an employee or former employee provided all of the following conditions are met:

(a) The payment is one of the following:

1. Retroactive wages paid to a participant for a period following an involuntary termination of the employee’s participating employment by that participating employer, which are paid under court order or the terms of a compromise settlement which also expunges the previously reported termination.

2. Retroactive wages paid to a participant for a period during which the participating employee was involuntarily placed on unpaid leave or suspension by that participating employer.

3. Additional wages properly due to a continuously participating employee from that participating employer for hours of service actually rendered and previously reported to the department.

4. Additional wages properly due to a continuously participating employee from that participating employer for hours of service actually rendered but not previously reported to the department.

(b) The employee or former employee is living on the effective date of the court order or compromise settlement.

(c) The court order or compromise settlement is in writing and is signed and dated by the issuing authority or by the parties to the agreement.

(d) The court order or compromise settlement specifies the wages to be paid to the employee for each annual earnings period and the associated hours of service actually rendered by the employee or that would have been rendered but for the disputed suspension or termination.

**Note:** “Annual earnings period” is defined by s. 40.02 (3), Stats.

(e) The employer reports the wages and hours of service to the department under a transaction code designated by the department for actions resulting from court orders and compromise settlements. At the department’s request, the employer shall report wages and hours of service in sufficient detail to enable the department readily to calculate the wages and hours for each payroll period during the period under dispute and shall distinguish between additional wages, if any, paid for hours of service previously reported to the department, and wages and hours of service not previously reported.

**Note:** Employer reporting is described in detail in ET-1127, WRS Administration Manual, which is available from the Department at no charge.

(f) If the dispute concerns a termination of participating employment or if the amount of wages reported under par. (e) exceeds the employee’s current basic rate of pay multiplied by 80, the employer submits with the transaction report the original court

order or compromise settlement or a complete copy thereof. The department may require submittal of the court order or compromise settlement associated with a smaller wage payment. If the employer fails to submit the transaction report and the court order or compromise settlement, if required, within 90 days after the effective date, the employee, the collective bargaining agent, or the issuing court or agency may submit a complete copy of the court order or compromise settlement to the department for purposes of requesting employer reporting.

(g) The employer remits required contributions on the wages, or that portion of the wages which the department treats as earnings, including interest computed under s. 40.06 (5), Stats., and s. ETF 10.635.

(h) If the remedy includes payment of wages for a period following a disputed termination of participating employment, the court order or compromise settlement does all of the following:

1. Directs the employer to rescind the termination date previously reported to the department and, if the employee is not to be reinstated, specifies the date on which the employee–employer relationship terminated, which date shall be treated as the termination date for Wisconsin retirement system purposes. This date may not be later than the effective date of the court order or compromise settlement.

2. Directs the employer to pay the employee all wages from the rescinded termination date to the date the employee returns to work or the new termination date reported under subd. 1. as if the employee had been continuously employed throughout the period under the conditions of employment prevailing prior to the termination, except that the court order or compromise settlement may direct that wages be reduced by amounts earned from other sources and may identify a period of suspension for which wages are not paid.

(5) The department may not consider any of the following payments as earnings:

(a) A payment that results from resolution of a dispute over the employer’s failure to hire a person. Any payment in such cases shall be considered by the department as a damage award. This paragraph does not exclude retroactive wages related to a participating employer’s failure to hire a participating employee of that employer for another position, provided the court order or compromise settlement also directs that the employee’s basic pay rate be permanently increased.

(b) A payment directed by a court order or compromise settlement if either the specified hours of service or associated wages exceed the creditable service and earnings which would have been properly reported for the employee if the employee had been continuously employed through the period at issue under the conditions of employment prevailing prior to the dispute.

(c) A payment directed by a court order or compromise settlement which purports to pay earnings in one annual earnings period which actually result from employment during another annual earnings period or a combination of annual earnings periods.

(d) A payment for actual or constructive services rendered, or deemed to have been rendered, after termination of employment.

(e) A payment directed by a court order or compromise settlement which is excluded from earnings under s. 40.02 (22) (b), Stats., including all of the following:

1. A payment which is other than wages or salary for personal services actually rendered to that participating employer by the participating employee, or which would have been rendered but for the disputed termination or suspension;

2. A payment, including a wage payment, made in return for, or in order to secure, the employee’s resignation or termination from participating employment, whether immediately or at some specified time in the future, or to secure release from an unexpired contract of employment, including the employee’s voluntary waiver of grievance rights under a collective bargaining contract. This subdivision does not prevent a remedy from including both

a wage payment and a payment to secure the employee's agreement to other conditions, provided the court order or compromise settlement specifies the portion of the total payment that represents wages.

3. A lump sum payment for accumulated vacation, sick leave, or compensatory time, unless the payment is broadly applicable to the employees of the employer regardless of age, length of service or likelihood of employment termination.

4. A payment for damages, attorney fees, interest or penalties included in the court order or compromise settlement, regardless of whether the amount of the payment reflects previous salary levels.

5. A payment based on a change in the method of computing the base compensation of the employee during the last 5 years of employment, unless resulting from application of a broader change permitted under s. 40.02 (22) (b) 10., Stats.

6. A payment made in lieu of fringe benefits normally paid for or provided by the employer.

(6) The department may not consider as earnings a payment for wages for a period during which the employee was an annuitant, or a payment made to a person whose Wisconsin retirement system account was closed by receipt of a benefit under s. 40.25 (1), or (2), Stats., on or before the effective date of the court order or compromise settlement. This subsection shall not be construed to affect a reinstatement as provided under s. 40.25 (5), Stats.

(7) (a) Except as provided in par. (b), if the court order or compromise settlement directs that the retroactive earnings to be paid first be reduced by amounts earned from other sources, the department shall determine the earnings to be credited in each annual earnings period based on the unreduced amount, subject to the limitations of section 415 of the internal revenue code and to sub. (5) (b). The department may determine the hours of service to be credited in each annual earnings period from data available to the department or by dividing the unreduced amount otherwise treatable as earnings in accord with this section for each affected annual earnings period by the rate of pay the department determines applied during the period under dispute.

(b) If the employee has other participating employment during the disputed period, the department shall reduce the amount of earnings and service it credits under the court order or compromise settlement by the earnings and service resulting from the other participating employment.

Example: An employee who normally earns \$12.00 per hour in a full-time position works half-time in another participating position for \$10.00 per hour during the disputed termination. In each week, the employee earns \$200.00 and 20 hours of service. If the employee is made whole for wages and benefits under the compromise settlement and receives back wages of \$480.00 per week for the period of termination, the department will credit only an additional \$280 in earnings and an additional 20 hours of service for each week.

(c) In cases of part-time participating employment, the department may increase the service and earnings credited under par. (b) if the employee submits satisfactory evidence showing that the total earnings and service credited during the disputed period, if properly reported, would have been greater than those prevailing before the dispute.

(8) Regardless of when payment to the employee actually occurs and regardless of whether payment is reported as taxable income in the year payment was made or by revising reports of taxable income for previous years, any payments considered as earnings under this section shall be treated for the purposes of the Wisconsin retirement system as earnings in the annual earnings period in which the earnings should normally have been paid.

(9) (a) Except as limited by sub. (10), resolution of any employment dispute between a participating employer and participating employee may include making additional contributions to the participant's account.

(b) The department shall respond to reasonable requests by a participant or a participating employer to estimate the amount of additional contribution necessary to fund a benefit equivalent to a hypothetical Wisconsin retirement system benefit.

(10) (a) Regardless of the terms of a court order or compromise settlement, if the department finds that a contribution exceeds the limits on contributions to qualified pension plans established by the internal revenue code and regulations promulgated thereunder, as determined by the department, the department shall refuse to accept the contribution. If any excess contribution is accepted in error, the department shall refund or credit it as provided in s. 40.08 (6), Stats.

(b) In order to establish the amount of an employee's reportable income for a specified year, as necessary to compute contribution limits, and in order to verify that payments requested to be considered as earnings under this section were reported as taxable income, the employee shall furnish to the department upon request proof of all taxable compensation received and all retirement contributions made to all retirement plans during each year at issue.

History: Cr., Register, July, 1997, No. 499, eff. 8-1-97; correction in (6) made under s. 13.93 (2m) (b) 7., Stats., Register, July, 1999, No. 523.

**ETF 20.17 Service purchases.** (1) GENERAL PROVISIONS. (a) *Scope.* This section applies to service purchases under s. 40.285, Stats.

(b) *Preparation of estimates; deadline for application.* 1. Upon request, the department shall prepare a written estimate of the cost of purchasing service under s. 40.285 (2), Stats., on an application form to be used for the purpose and send the application form to the participating employee. Anytime after the department receives a completed application and at least the minimum payment or authorization to transfer additional contributions required to accompany that application, the department may update and correct the calculation of the amount due as necessary, before finalizing the purchase of service credit.

2. Except as provided in subd. 3, the application to purchase creditable service, on the form approved by the department, must be actually received at the department before the date the applicant terminated all participating employment covered by the Wisconsin retirement system.

3. The deadline for a part-time elected official whose date of separation from the last participating employer is determined under s. 40.23 (1) (am) 2., Stats., is the date the applicant terminated participating employment other than as a part-time elected official, or the date on which the applicant elected to waive further Wisconsin retirement system participation under s. 40.23 (1) (am) 2., Stats., whichever date is later.

Note: The "Waiver of Part-Time Elected Service," form ET-4303, becomes effective on the day after its receipt by the department or, if more than one ET-4303 is being submitted, on the first day after the first waiver is received by the department.

(c) *Rejection of application.* 1. An application received after the deadline in par. (b) shall be rejected.

2. If the department determines that the participant is ineligible to purchase service for which the participant has applied, the application shall be rejected and any payment previously received by the department shall be refunded as provided in par. (f).

3. The department shall reject an application which is not accompanied by a payment in one of the following forms:

a. Payment in full of the department's estimated cost of the service credit if the purchase is for a qualifying period, teacher improvement leave or previously uncredited service as a junior teacher or executive official under s. 40.285 (2) (c) to (f), Stats. Such payment may include authority to transfer 403(b) funds or additional contributions under s. 40.05 (1) (a) 5., Stats., already held by the department in order to make the purchase. A transfer of 403(b) funds must be authorized by the school district or other educational institution employer operating the plan under section 403(b) of the internal revenue code.

b. In lieu of payment in full, the applicant may include at least 10% of the department's estimated cost of the creditable service with the application and arrange for the balance to be paid by a plan-to-plan transfer under s. 40.285 (5), Stats. Such transfer

funds must be received within 90 days after receipt of the application or the application or the purchase will be treated under the payment shortfall provisions of s. 40.285 (5) (c), Stats., and par. (h).

c. Partial payment of the department's estimated cost of the service credit, but only if the purchase is for forfeited service or other governmental service, under s. 40.285 (2) (a) or (b), Stats.

4. The department may reject any application which 90 days after the date of application remains incomplete in any respect other than receipt of payment. If an application is rejected under this subdivision then the department shall refund any associated payment as provided by par. (f).

5. An application to purchase creditable service for forfeited service or other governmental service under s. 40.285 (2) (a) or (b), Stats., shall be rejected if the applicant does not have at least three continuous years of creditable service immediately preceding the date the completed application form is received by the department, with no break in service between the three continuous years and the application date.

(d) *Effect of purchasing service.* Buying creditable service under this section adds the amount of service purchased to the person's total creditable service for the purpose of calculating a formula annuity benefit under s. 40.23 (2) (b) or (2m) (e), Stats., or making a formula annuity calculation in the same manner, including under s. 40.25 (1), 40.63 (8) or 40.73 (1) (c), Stats. Buying creditable service has no retroactive effect, including but not limited to the following:

1. Buying creditable service does not undo any effects of the requirement that a person who takes a separation benefit must thereafter be treated as a new employee upon subsequent employment by a participating employer.

**Note:** See s. 40.25 (3), Stats.

2. Buying creditable service does not establish an earlier date of participation nor restore an account as though it had never been closed.

3. Buying creditable service does not restore or entitle the purchaser to any benefits or rights associated with being a participant in the Wisconsin retirement system, or a member of any predecessor retirement system, at the time the services for which credit is being purchased were actually performed.

4. Except as provided in s. ETF 50.50 (2) (b), buying creditable service does not establish creditable service in or for any particular annual earnings period or calendar year, or prior to any past date, or for purposes of measuring continuous years of creditable service.

**Note 1:** As a consequence of purchased service credits not establishing creditable service in or for any particular annual earnings period or calendar year, purchased service does not affect the denominator for the calculation of final average earnings in s. 40.02 (33) (a) 2., Stats., nor the amount of a person's creditable service in a particular annual earnings period for purposes of s. 40.23 (2m) (fm) or 40.63 (1) (a), Stats., for example.

**Note 2:** Purchased service credit is included in the "creditable service" used to determine the normal retirement age and the maximum formula benefit for a protective occupation participant under ss. 40.02 (42) (a) and 40.23 (2m) (b), Stats., respectively, as well as months of creditable service for reducing the actuarial adjustment under s. 40.23 (2m) (f) 2., Stats., and the reduction of duty disability benefits for service over 25 years under s. 40.65 (5) (a), Stats. Credit purchased under s. 40.285, Stats., except under s. 40.285 (2) (b), Stats., also applies to the "creditable service" used to determine eligibility for creditable military service, group health, and post-retirement life insurance, under ss. 40.02 (15) (c), 40.02 (25) (b) 6. a., 6e., 6m. b. and 6r. and 40.72 (4) (b), Stats. Limitations on the use of purchased credit for other governmental service in particular are listed in sub. (4) (e) 5.

**Note 3:** Service purchased under s. 40.285, Stats., shall be included with all other creditable service in the participant's account divided by a qualified domestic relations order pursuant to s. 40.08 (1m) (b), Stats., provided the application for the purchase was actually received by the department prior to the decree date, as that term is defined by s. 40.02 (18f), Stats. See s. ETF 20.35 (3) (d) 2.

**Example 1.** A person became a participating employee covered by the Wisconsin retirement system in 1995. The participant terminated employment in 1999 and took a separation benefit in 2000 thereby closing her Wisconsin retirement system account. She again became a participating employee on January 1, 2002, and later purchased all the service forfeited by taking the separation benefit in 2000. The years of service purchased are added to the participant's current service balance and are included in the creditable service used to calculate a formula annuity benefit under s. 40.23 (2) (e), Stats. However, for all Wisconsin retirement system purposes she is

treated as a new participant as of January 1, 2002. Her account and benefit rights are not restored as though her account had never been closed.

**Example 2.** A former member of the state teacher retirement system took a separation benefit in 1971. Subsequently buying creditable service for teaching services rendered in 1970 does not confer any present right to the minimum retirement age of 50 for teachers that was in effect in 1970.

**Example 3.** A former member of either the state or Milwaukee teacher retirement system before 1964 whose account was later closed by withdrawing member contributions as a member of either the combined or formula group, or by withdrawing both member and state deposits as a member of the separate group, does not reestablish that account by subsequently purchasing credit for the forfeited service. The former teacher is treated for all WRS purposes as a new employee upon returning to participating employment. Consequently, any benefits now paid to the participant are not being paid on the account of a December 31, 1963, member. However, nothing in this section shall be construed to prevent the Wisconsin department of revenue from interpreting s. 71.05 (1) (a), Stats., as it sees fit for its purposes.

5. Buying credit for service does not affect or restore earnings for any annual earnings period or for purposes of calculating a benefit or final average earnings.

(e) *Limitation on creditable service purchases.* 1. A maximum of two purchases per calendar year may be made under each of subs. (3) through (8).

**Note:** The purchase of the service for the qualifying period, teacher improvement leave, and previously uncredited service as a junior teacher or executive participating employee are all intended to be one-time purchases of the entire available credit with payment-in-full accompanying the application. Applications without full payment would generally be rejected. However, because a plan-to-plan transfer under s. 40.285 (5), Stats., is now an available payment option for all forms of creditable service purchase, the possibility exists that there will be a payment shortfall resulting in proration of the service purchased as provided by s. 40.285 (5) (c), Stats. This paragraph permits an additional creditable service purchase of the same type during the same calendar year, provided the participating employee remains otherwise eligible.

2. A person may not purchase credit for service to the extent that the effect would be to exceed the 1.0 year limit on creditable service for any annual earnings period. For purposes of this subdivision, notwithstanding par. (d) 4., the service for which the person wishes to purchase credit and all the person's other purchased service credits shall be treated as if credited under the Wisconsin retirement system or a predecessor retirement system in the annual earnings periods when the services were actually rendered. The person's current creditable service for an annual earnings period together with all previously granted service credits associated with that annual earnings period, including but not limited to purchased service credits as provided in this subdivision, shall first be subtracted from 1.0 year to determine the balance remaining, if any, for each annual earnings period that may be purchased under this section and s. 40.285, Stats.

**Example 1.** A participant earned 0.40 years of creditable service working for a participating employer during the 2004 annual earnings period. During the same annual earnings period, the participant worked 1,905 hours, the equivalent of one full year of creditable service, for another governmental employer not covered by the Wisconsin retirement system. Even if the participant is otherwise eligible to purchase credit for the other governmental service, no more than 0.60 years of service for the 2004 annual earnings period may be purchased.

**Example 2.** A participant whose annual earnings periods are calendar years, earned 0.60 years of creditable service between January and May 2005 by working overtime. The participant then terminated and took a separation benefit, forfeiting the service. The participant then returned to participating employment in July and earned 0.58 years of creditable service for the remainder of 2005. Some years later, the participant meets the qualifications to purchase the forfeited service. The participant may not purchase credit for more than 0.42 years of the forfeited service.

(f) *Refunds.* Refunds may not be made for amounts under the threshold established by s. 40.285 (7), Stats. Refunds shall be made in the manner provided by s. 40.285 (6), Stats. Interest on refunds is subject to the provisions of s. 40.08 (6), Stats. No excess funds transferred to the department by a plan-to-plan transfer may be refunded directly to the participant. If the department refunds any payment taken from additional contributions under subd. 2. or 3., it shall restore the refunded amount to the additional account as if the transfer had not occurred. The following order of priority shall determine the sources of any refund due:

1. The participant's lump sum payment to the department. The refunded amount shall be paid directly to the participant.

2. Additional contributions transferred from the participant's after-tax additional contribution account. The amount refunded shall be transferred back to the participant's after-tax additional account.

3. Additional contributions transferred from the participant's tax sheltered additional contribution account. The amount refunded shall be transferred back to the participant's tax-sheltered additional account.

4. Funds transferred from another qualified retirement plan under s. 40.285 (5), Stats. When more than one qualified retirement plan was the source of transferred funds, the department shall determine the refunded amount to be returned to each qualified retirement plan.

(g) *Treatment of payments.* 1. Payments retained by the department shall be deposited in the participant's required contribution account under s. 40.04 (4) (a) 1., Stats. Except as otherwise provided in subd. 3., if the participant participates in the variable trust the payment shall be divided between the core and variable accounts in the same proportion as the participant's current contributions are so divided at the time that payment is received.

2. For interest crediting purposes, except as otherwise provided in subd. 3., all payments received to purchase creditable service including plan-to-plan transfer funds shall be treated as amounts received during the year in which the department actually receives the payment or transferred funds.

3. Notwithstanding subd. 2., for interest crediting purposes, funds transferred from the participant's voluntary employee additional contributions that were in the prior year's closing balance of the additional contribution account, including interest credited, when the transfer occurs shall retain that status so that the participant will not forfeit interest to be credited on the prior year's closing balance. Notwithstanding subd. 1., amounts transferred from a participant's additional contributions in the core investment fund to buy service shall remain in the core investment fund, and additional contributions transferred from the participant's variable additional contributions to buy service shall remain in the variable fund. Nothing in this subdivision shall be construed to affect an individual's variable cancellation rights under s. ETF 10.30 (5).

(h) *Payment shortfalls.* 1. For any type of creditable service purchased under s. 40.285 (2), Stats., if the purchase includes a plan-to-plan transfer and the total amount received by the department is less than amount required for the purchase of the service, and the difference exceeds the threshold for corrections under s. 40.285 (7), Stats., then the department shall proceed under s. 40.285 (5) (c), Stats., and allow the participant 30 days to pay the difference. If the difference is not received within 30 days after notice is sent to the participant, the department shall complete the purchase, reducing the amount of service credit purchased to the credit that can be purchased by the payment actually received.

**Note:** See s. ETF 20.17 (3) (d) for the required rules concerning how a forfeited service purchase is prorated when the participant forfeited service under more than one category of employment.

2. If the department determines that the actual cost of purchasing service under s. 40.285 (2), Stats., is greater than the amount estimated by the department for the participant, and the participant paid the estimated amount in full, then the participant shall be notified and allowed 30 days to either pay the balance due or withdraw the application, without prejudice. If the balance due or is not received prior to the deadline, then the department shall proceed under subd. 2. a., b., c. or d., as appropriate.

a. When a plan-to-plan transfer made up part of the payment, the department shall proceed under the payment shortfall provisions of s. 40.285 (5) (c), Stats., except as otherwise provided by subd. 2. c. or d.

b. When no plan-to-plan transfer is involved and subd. 2. c. or d. do not apply, or the participant made a timely request to withdraw the application, the department shall refund all amounts received as provided in par. (f).

c. If a Wisconsin retirement system annuity or lump sum in lieu of an annuity under s. 40.25 (1), Stats., is to be paid to the

applicant, and the applicant so requests, the balance due shall be deducted from the lump sum or a subsequent monthly annuity payment payable. This subdivision paragraph does not apply if the balance due exceeds the amount of the benefit under s. 40.25 (1), Stats., or if the Department determines that the amount of the monthly annuity available for this deduction is insufficient.

d. If the application was for the purchase of credit for forfeited service or other governmental service, and subdivision paragraph c. does not apply, the department may complete a partial purchase as provided in sub. (3) (d) or (4) (g), respectively.

(i) *No participant withdrawal or cancellation of application; exception.* The participant may not cancel or withdraw an application to purchase service credits once any payment has been received by the department, except under the circumstances specified in par. (h) 2. b.

(j) *Treatment of purchased service credit as pre-2000 or post-1999 service.* For purposes of computing formula annuity benefits under s. 40.23 (2m) (e), Stats., and the differing multipliers applicable to creditable service that was performed before January 1, 2000, and on and after that date, purchased service credits will be treated as provided in s. ETF 20.19 (2).

**(2) DEFINITIONS.** Words, phrases and terms used in this section shall have the same meanings as set forth in s. 40.02, Stats., and s. ETF 10.01. In addition, in this section:

(b) "Current earnings" means the participant's earnings in the most recent complete annual earnings period, provided the participant was a participating employee for the full annual earnings period. If the participant was not a participating employee throughout the most recently ended annual earnings period, "current earnings" means the product of the participant's hourly pay rate on the date of application, multiplied by the number of hours the participant would reasonably be expected to be employed as a participating employee during the current annual earnings period, assuming that the participant would continue to be employed for the remainder of the current annual earnings period.

(c) "Date of application" means the date the signed application on the form approved by the department for the purchase of the type of service in question is received by the department, as determined under s. ETF 10.82 (1).

**Note:** The forms approved by the department for the purchase of service credits are "Application to Purchase Other Governmental Service," form ET-2205, "Qualifying Service Purchase Estimate/Application," form ET-4314, "Forfeited Service Purchase Estimate/Application" form ET-4315, "Uncredited Teaching Service Purchase Estimate/Application," form ET-4323. These are individually customized forms that reflect the department's estimate of the amount required from the participant for that particular purchase. In addition, where no standard form exists for the type of service purchase, customized estimates will be prepared by the department upon request. All forms and estimates can be obtained at no charge by writing to: department of employee trust funds, P.O. Box 7931, Madison, WI 53707-7931, or by calling (608) 266-3285 or toll free at (877) 533-5020. Forms should be requested at least four (4) weeks before the date the participating employee intends to apply, and well in advance of any anticipated termination of employment, to allow sufficient time for the department to calculate the personalized estimates of the cost.

(e) "Money purchase balance" means the sum of the participant's employee required contributions and accrued interest, including accumulations resulting from purchases under this section, plus an amount from the employer reserve equal to the employee required accumulation less any amount resulting from purchases under s. 40.285 (2) (b), Stats., and interest accumulated on those amounts.

(f) "Other governmental service" means one of the following:

1. Service performed as an employee of any of the following:

a. The federal government.

b. The government of a U.S. state other than Wisconsin or a political subdivision, department or agency of such state.

c. An employer as defined by s. 40.02 (28), Stats., that does not participate in the Wisconsin retirement system with respect to the employee's employment category.

2. Service as an employee for a participating employer in the Wisconsin retirement system that was performed before the

employer began to participate with respect to the employee's employment category, and that has not been recognized by the employer as creditable prior service.

**Note:** Under s. 40.21 (6), Stats., an employer may choose to recognize none, 25%, 50%, 75% or 100% of the previous service of existing employees when the employer first joins the Wisconsin retirement system, and may subsequently increase the recognized percentage for those who are still participating employees at the time. Any percentage of an employee's previous service remaining unrecognized is "other governmental service" within the meaning of subd. 2.

**(3) PURCHASING CREDITABLE SERVICE FORFEITED BY A SEPARATION BENEFIT OR WITHDRAWAL OF EMPLOYEE OR MEMBER CONTRIBUTIONS.** (a) *Scope.* This subsection applies to purchases of service under s. 40.285 (2) (a), Stats.

(am) *Eligibility criteria.* 1. An applicant is eligible to purchase service under this subsection if, on the date of application, the applicant is a participating employee with at least 3 continuous years of creditable service, as defined by s. ETF 10.01 (7) and no break in service between the three continuous years and the application date.

2. For purposes of s. 40.285 (2) (a) 2. b., Stats., unless barred because of receipt of a benefit as provided in subd. 3. or as otherwise provided in this section or s. 40.285, Stats., a person may purchase credit for rendering services that were then covered by the state teacher retirement system, Milwaukee teacher retirement fund or Wisconsin retirement fund, if the person subsequently received a lump sum payment under one of the separation or withdrawal laws in effect before January 1, 1982, including ss. 41.16, 1969–79 stats., 42.242 (5), 42.243 (7) (e), 1957–79 stats., 42.245 (4), 1965–79 stats., 42.49 (1) (a), 1945–79 stats., 42.49 (14), 1955–79 stats., 42.49 (16), 1965–79 stats., 42.75 (1), 42.76 (10), 42.78 (6), 1971–75 stats., 42.86 (1) and (2) and 42.91, 1969–79 stats., 66.90 (15), 1945 stats., 66.91, 1947–67 stats.

3. Conversely, a person who received an annuity, or a lump sum payment in lieu of an annuity under s. 40.25 (1), Stats., is not eligible to purchase credit under s. 40.285 (2) (a), Stats., for any services rendered to a participating employer as a participating employee prior to payment of the benefit. Correspondingly, no person may purchase credit under s. 40.285 (2) (a), Stats., for services rendered prior to receiving a lump sum benefit under the similar laws in effect for the Wisconsin retirement fund, state teacher retirement system or Milwaukee teacher retirement fund prior to January 1, 1982, including ss. 41.11, (11), 1969 stats., 41.11 (8) or (10), 1971–79 stats., 42.242 (7), 1957–79 stats., 42.245 (6), 1965–79 stats., 42.49 (15), 1955–79 stats., 42.73 (1) and 42.76 (12) (c), 1971–79 stats., 42.78 (2) (k) 1. or 2., 1975–79 stats., and 66.906 (3d), 1967 stats. Those are not separation or withdrawal benefit laws within the meaning of s. 40.285 (2) (a) 2. b., Stats.

(b) *Service in different categories of employment; Calculation of cost.* In cases where the service to be reestablished was earned in more than one employment category, separate calculations shall be done for each period of service using the applicable statutory contribution rate under s. 40.05 (1) (a), Stats., as affected by s. 40.05 (1) (b), Stats., for each employment category. The department's estimate to purchase service shall be calculated based on all the years and fractions of a year of forfeited service that are then available for purchase under s. 40.285 (2) (a), Stats., and this subsection, including the limits of s. 40.285 (2) (a) 1. a. and b., Stats., unless the applicant specifies a lesser amount. If the applicant so requests on the application received by the department, the final calculation of cost made after the application is received may include all years and fractions of a year of forfeited service eligible for purchase under s. 40.285 (2) (a), Stats., as of the date of application.

(d) *Proration of multiple category service for payment shortfall.* If the participant's payment to purchase service forfeited by a separation benefit or withdrawal of employee or member contributions is less than the amount needed to purchase all of the forfeited service that the participant is eligible to buy, the department shall complete the purchase by reducing the service credit pur-

chased to the prorated credit that can be purchased by the payment actually received. Within each category of employment, the payment received shall be applied first to purchase service credit eligible to be treated as pre-2000 service, as provided in s. ETF 20.19 (2) (d). If the participant has forfeited service based on employment in more than one category under s. 40.23 (2) (b), Stats., and the participant does not specify the service category or categories to which the payment is to be applied, the department shall use the following order of priority in determining to which category of service to apply the payment, until the amount paid is exhausted:

1. Service as a protective occupation participant not subject to the federal Social Security Act, as described in s. 40.23 (2m) (e) 4., Stats.

2. Service as a protective occupation participant subject to the federal Social Security Act as described in s. 40.23 (2m) (e) 3., Stats.

3. Service as an elected official, as described in s. 40.23 (2m) (e) 2., Stats.

4. Service as an executive participating employee, as described in s. 40.23 (2m) (e) 2., Stats.

5. Service described in s. 40.23 (2m) (e) 1., Stats., as a teacher, as that term is as defined in s. 40.02 (55), Stats.

6. Service as a general category employee as described in s. 40.23 (2m) (e) 1., Stats., excluding service as a teacher.

**(4) PURCHASE AND CREDITING OF OTHER GOVERNMENTAL SERVICE.** (a) *Scope.* This subsection applies to creditable service purchases under s. 40.285 (2) (b), Stats.

(b) *Eligibility criteria.* The department shall grant creditable service for other governmental service to participants who meet all of the following requirements:

1. On the date of application, the applicant is a participating employee with at least 3 continuous years of creditable service, as defined by s. ETF 10.01 (7), with no break in service between the three continuous years and the application date.

2. With respect to the other governmental service for which credit is to be purchased, the participant was the employee of a federal, state or local governmental entity. In this paragraph, notwithstanding s. 40.02 (26) and (28), Stats., the terms "employee" and "employer" have their common meanings. The term "employee" does not include an unpaid volunteer, an independent contractor, a person contracted to furnish more than his or her personal services, a patient or inmate of a hospital, home or institution who performs services therein, or anyone who did not receive salary, wages or other compensation for his or her services. Employment by a private or non-profit entity which received government moneys or which was under contract to provide services to or on behalf of a governmental entity does not constitute employment with a governmental entity.

3. The participant submits an application to the department with payment, on a form approved by the department. The applicant shall then have 90 days to complete the application process by submitting all of the following:

a. Evidence that the service was other governmental service and which meets the requirements of par. (c). The department's determination as to the sufficiency of the documentation shall be subject to timely appeal to the employee trust funds board under ch. ETF 11.

b. A written certification by the employer for which the service was rendered that the service will not be used to establish entitlement to, or the amount of, any other pension or retirement benefit from a plan for federal, state or local government employees which is subject to sections 401 or 403 of the internal revenue code, except for a disability or OASDHI benefit or a benefit paid for service in the national guard and the reserves. If the participant is unable to obtain the employer's certification through reasonable efforts, the department may accept the employee's affidavit

in lieu of the employer's certification, or contact the employer directly. If the employer does not have the information necessary to make this certification, the department may accept the employee's affidavit in lieu of the employer's certification.

**Note:** If the federal, state or local governmental retirement or pension plan, like the Wisconsin retirement system, provides a benefit defined in part by service but also includes an alternative money-purchase benefit, then service under that plan is used to establish entitlement even if the particular individual received a benefit calculated without reference to years of service. The same is true for any plan with a vesting requirement.

(c) *Required evidence of service.* A participant who proposes to purchase other governmental service shall provide to the department all of the following:

1. The correct name and current or latest address, and telephone number, if any, of the employer for which the service was rendered.

2. The dates of service for the other governmental employer, including the beginning and ending dates of each period of employment.

3. Evidence of whether the employment was considered full-time or part-time, and of the number of hours worked in each calendar year, sufficient to establish the amount of service which the participant is eligible to purchase. Full-time employment will be assumed to be 8 hours per day and 40 hours per week, absent a showing that the employer established a different standard. Years of service shall be calculated from hours of service rendered in the manner provided in s. ETF 10.03 (3).

4. Evidence that the employer was a federal, state, or local governmental entity in the United States. The department may rely on the determination of the social security administration as to whether an employer is a governmental entity.

5. Evidence that the participant was an employee of the governmental entity.

6. Evidence that:

a. For service that was performed before July 1, 2011, the service met the participation standard under s. ETF 20.015 (1).

b. For service that was performed on or after July 1, 2011, the service met the participation standard under s. ETF 20.015 (2).

7. Evidence that all of the following are true:

a. The service was not performed as an independent contractor or subject to a contract under which the employee furnished more than his or her personal services.

b. That the services were not performed as a student assistant, or as an employee-in-training or for a school or other educational institution where the employee was a student attending classes and performing services incidental to the course of study.

c. The services were not performed on or after April 23, 1992, while the person was a full-time student who had not attained age 20.

d. The services were not performed after the person had already become an annuitant, excluding annuities received in the capacity of another person's beneficiary, named survivor or alternate payee.

e. The services were not performed for a hospital, home or institution while the person was a patient or inmate.

f. The employer was not a private or non-profit entity under a contract to provide services to or on behalf of a governmental entity.

8. If the participating employee is applying to receive creditable service for service in the U.S. armed forces or national guard, evidence that the employee was discharged from the U.S. armed forces or national guard under honorable or general conditions.

(d) *Cost to purchase other governmental service.* 1. The cost to purchase other governmental service is intended to fully fund the anticipated benefit increase provided by the purchased service credit, based on the laws then in effect.

2. The actuary shall devise the method for calculating the cost to purchase other governmental service. The actuary's calculation shall use the same economic and actuarial assumptions used in the actuary's valuations of the Wisconsin retirement system. The actuary shall establish the factors necessary to determine the actuarial value to each applicant of the purchased service credit. Those factors may include, without limitation:

a. The participant's current employment category as determined under s. 40.23 (2m) (e), Stats. If the participant is employed in 2 or more categories on the date of application, the computation shall be based on the current employment category in which the participant has accrued the most creditable service.

b. The participant's earnings for the last completed annual earnings period, as of January 1 preceding the date of application.

c. The number of years, in hundredths of a year, of service credit the participant requests to purchase.

d. The participant's date of birth.

e. The participant's accumulated employee required contributions, including interest, as of the January 1 preceding the date of application.

f. Twelve times the participant's final average earnings determined as of January 1 preceding the date of application.

g. The participant's years of creditable service, including all previously purchased service credit, by employment category and by pre-2000 and post-1999 service.

**Note:** This amendment (CR 09-057) to the existing rule provides clarification that the actuary may include the eight factors specified in the rule when determining the actuarial value of the purchased service credit along with other relevant factors. In addition, the rule corrects a typo by adding the word "service" to the applicable section.

h. The participant's variable excess or deficiency balance under s. 40.23 (2m) (c), Stats., as of January 1 preceding the date of application.

3. The actuary may, at any time, change the method of calculating the cost of other governmental service credits if warranted by changes in the benefit laws or valuation assumptions of the Wisconsin retirement system or by other factors the actuary determines to be actuarially significant. The actuary's new method of calculation shall be applied as soon as possible unless a delayed effective date is recommended by the actuary. The department may complete pending transactions and honor cost estimates produced before the new method of calculation went into effect.

(e) *Creditable service based on purchase of other governmental service; limitations.* 1. The amount of other governmental service purchased through all purchases made under this section may not exceed the amount of the participant's creditable service earned under the Wisconsin retirement system and credited as of the date of the last application to purchase other governmental service, excluding any service previously purchased by the participant.

2. Other governmental service shall be credited in the general employment category regardless of the employee's current employment category or the nature of the service, and benefits based on the purchased service shall be calculated under s. 40.23 (2m) (e) 1., Stats.

3. Service, including teaching service, shall be granted in hundredths of a year, at the rate of one year for 1,904 hours or more worked in one calendar year. If the participant worked less than 1,904 hours in a calendar year, the partial year of other governmental service shall be calculated by dividing the number of hours worked by 1,904.

4. A participant's total creditable service in any annual earnings period from all sources may not exceed one year.

5. Creditable service purchased under this section shall be used solely to calculate a formula annuity benefit amount based upon years of creditable service, as under ss. 40.23 (2) (b) or (2m) (e), 40.25 (1), 40.63 (8), and 40.73 (1) (c), Stats. The department

may not consider purchased other governmental service for any other purpose, including but not limited to determining:

b. Whether the participant has met the service requirements for disability benefits under s. 40.63 (1) (a) or (4), Stats., or s. ETF 50.50 (2) (b).

c. Whether the participant has met the service requirements to continue insurance after termination of employment under s. 40.02 (25) (b) 6. a., 6e., 6m. b., 6r., or 40.72 (4) (b), Stats.

d. The amount of creditable service which the participant is eligible to reestablish under s. 40.285 (2) (a), Stats., or to purchase under this subsection.

e. The amount of creditable military service for which the participant is eligible under s. 40.02 (15) (c), Stats.

f. Notwithstanding sub. (1) (g) 1., if any service for a Wisconsin employer which has been credited under this section is subsequently recognized as creditable prior service under s. 40.21 (6), Stats., the participant's creditable service for other governmental service shall be reduced accordingly and the associated contributions plus the interest credited to those contributions shall be transferred to the employee's additional account and shall be available to the employee in the same manner as other contributions under s. 40.05 (1) (a) 5., Stats. No other refund to the employee may be made.

(f) *Payments received to purchase other governmental service; limitations on benefits.* The department shall account for amounts received to purchase other governmental service, and the interest credited to such in a manner that permits identifying and subtracting such funds from amounts to be increased by a matching amount from the employer reserve when computing a money purchase annuity or a death benefit, as provided by ss. 40.23 (3) and 40.73 (1) (am), Stats., and for purposes of calculating the hypothetical annuity under s. 40.73 (1) (c), Stats.

(g) *Payment shortfall.* If the participant does not withdraw the application or pay the balance due on a payment shortfall within 30 days after notice is sent to the participant, the department shall complete the purchase, either by deducting the amount due from the participant's annuity, if any, as provided in sub. (1) (h) or by reducing the amount of service credit purchased to the credit that can be purchased by the payment actually received.

**(5) CREDIT FOR SERVICE DURING QUALIFYING PERIOD.** (a) *Scope.* This subsection applies to purchases of service under s. 40.285 (2) (d), Stats.

(b) *Calculation of amount due.* The department's estimate to purchase service shall be calculated based on the fraction of a year of qualifying service that is available for purchase under s. 40.285 (2) (d), Stats., and this subsection. The payment to purchase qualifying service as provided in s. 40.285 (2) (d), Stats., shall be based on the applicant's highest earnings in a single annual earnings period as of the date of application. The earnings shall be annualized prior to calculating the amount due from an applicant who earned less than a full year of service in the highest annual earnings period as defined in s. 40.02 (3), Stats.

**Example 1.** Calendar year 2005 was the applicant's highest annual earnings period on the date her application to purchase service is received. During 2005, the applicant had 0.75 years of creditable service and \$27,000 in earnings. The earnings will be "annualized" to \$36,000 (i.e., \$27,000 divided by 0.75) and that amount will be used for purposes of calculating the payment due.

**Example 2.** An applicant whose annual earnings periods are calendar years had \$34,000 in earnings and 1.0 years of creditable service in 2004, the highest earnings reported for any calendar year as of the date of application. The applicant also had \$27,000 in earnings but only 0.75 years of creditable service in 2005. For purposes of calculating the payment due, the actual earnings for 2004 will be used because that is the highest earnings year, and the department will not annualize the lower 2005 earnings to \$36,000.

(c) *Requirement to first purchase forfeited service.* If a participating employee has previously received a separation benefit or withdrawal of member contributions after serving a qualifying period, the participant may purchase credit for a qualifying period only if the participant has first reestablished the maximum possible years of forfeited creditable service under s. 40.285 (2),

Stats., that the participant is eligible to buy as of the date that the department receives the application to buy qualifying service.

(d) *Employment category to be credited.* The qualifying period of service shall be credited to the employment category in which the service would be credited if the qualifying service had been creditable at the time it was performed.

**(6) PURCHASE OF SERVICE FOR TEACHER IMPROVEMENT LEAVE.** (a) *Scope.* This subsection applies to purchase of creditable service under s. 40.285 (2) (e), Stats.

(b) *Eligibility; Board of Regents certification.* In addition to the other requirements of sub. (1) for applying, the applicant is responsible for first applying to the Board of Regents as required by s. 40.285 (2) (e) 1., Stats., and obtaining the certification of the period of compensated teacher improvement leave occurring between January 1, 1964, and August 31, 1967. The Board of Regents certification must be submitted to the department in order to obtain the application form to apply to purchase credit for the service.

**Note:** The form "Uncredited Teaching Service Purchase Estimate/Application," form ET-4323 can be obtained at no charge by writing to: department of employee trust funds, P.O. Box 7931, Madison, WI 53707-7931, or by calling (608) 266-3285 or toll free at (877) 533-5020.

(c) *Calculation of amount due.* The department's estimate to purchase service shall be calculated based on all the years and fractions of a year of teacher improvement leave that are identified in the Board of Regents' certification and are available for purchase under s. 40.285 (2) (e), Stats., and this subsection.

**(7) PURCHASE OF PREVIOUSLY UNCREDITED SERVICE AS A JUNIOR TEACHER.** (a) *Scope.* This subsection applies to purchase of creditable service under s. 40.285 (2) (f), Stats.

(b) *Eligibility.* Purchase of service under this subsection is available only to participating employees who were both:

1. Engaged as a principal occupation in teaching in the public schools, state colleges or university of the state or any political subdivision of the state, excluding the city of Milwaukee.

2. So employed during any part of a school year prior to the 1957-58 school year, when the teacher's 25<sup>th</sup> birthday had not occurred by the July 1 immediately preceding the beginning of the school year.

(c) *Calculation of amount due.* The department's estimate to purchase service shall be calculated based on all the years and fractions of a year of junior teaching service that are available for purchase under s. 40.285 (2) (f), Stats., and this subsection.

**(8) PURCHASE OF PREVIOUSLY UNCREDITED SERVICE AS AN EXECUTIVE OFFICIAL.** (a) *Scope.* This subsection applies to purchases of previously uncredited service as an executive official under s. 40.285 (2) (c), Stats.

(b) *Eligibility.* Except as provided in par. (c), any current participating employee who, on or after May 3, 1988, was an executive participating employee as defined by s. 40.02 (30), Stats., may purchase credit under s. 40.285 (2) (c), Stats., for service previously uncredited due to any statutory age restriction for persons over age 62, provided the participating employee also meets the criteria of subd. 1. or 2. or both.

1. Was born before January 1, 1920, and who at any time from July 1, 1974 through September 30, 1981, held a position listed in s. 20.923 (4), (8) or (9), Stats., during the time of employment.

**Note:** Section 20.926 (1) (a), Stats., as in effect from July 1, 1974, through December 31, 1981, excluded credit for service in such position rendered after the end of the calendar quarter in which the person attained age 62.

2. Was born before February 1, 1926, and who at any time from October 1, 1981, through January 31, 1988, held a position listed in s. 20.923 (4), (8) or (9), Stats., during the time of employment.

**Note 1:** Section 40.02 (17) (c), Stats., as in effect from January 1, 1982, until May 3, 1988, barred creditable service for persons in such positions after the first day of the fourth month commencing after attaining the age of 62.

**Note 2:** The referenced positions listed in s. 20.923 (4), (8) and (9), Stats., include the president of the university of Wisconsin system, which was so listed in s. 20.923

(4) (j) 1., Stats., effective from August 4, 1973, and at all times material to s. 40.285 (2) (c), Stats.

(c) *Exclusion from eligibility.* No person who purchased creditable service under s. 40.02 (17) (e), Stats., as in effect from May 3, 1988, until July 26, 2003, is eligible to purchase creditable service under s. 40.285 (2) (c), Stats.

(d) *Calculation of amount due.* The department's estimate shall be calculated based on all the years and fractions of a year of previously uncredited service that are available for purchase under s. 40.285 (2) (c), Stats., and this subsection. All participating employees purchasing service under s. 40.285 (2) (c), Stats., shall pay the same rate for such service, as prescribed by that statute, regardless of whether the participating employee is a present or former elected official or an appointee of such an official.

(e) *No retroactive effect on prior payment.* No present or former elected official, or an appointee of such an official, who purchased service under former s. 40.02 (17) (e), Stats., as in effect from May 3, 1988 through August 14, 1991, shall be entitled to any refund or additional benefit based upon the amendment of s. 40.02 (17) (e), 1989 stats., by 1991 Wisconsin act 39 or the renumbering and subsequent amendment of s. 40.02 (17) (e), Stats., by 2003 Wisconsin act 33.

**History:** CR 07-062; cr. Register June 2008 No. 630, eff. 7-1-08; CR 09-057; am. (4) (d) 2. (intro.) and g. Register May 2010 No. 653, eff. 6-1-10; correction in (1) (c) 3. a. made under s. 13.92 (4) (b) 7., Stats., Register August 2013 No. 692, eff. 9-1-13; correction in (3) (b) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694, eff. 11-1-13; CR 14-055; r. (2) (d), am. (2) (f) 1. (intro.), (4) (b) 3. b., r. and recr. (4) (c) 6., am. (4) (c) 7. (intro.), a., e., cr. (4) (c) 8. Register May 2015 No. 713, eff. 6-1-15; 2015 Wis. Act 330 s. 20; am. (6) (b), (c) Register April 2016 No. 724, eff. 5-1-16.

### **ETF 20.19 Treatment of purchased and other creditable service for percentage rates used to calculate retirement, disability and certain death benefits.**

**(1) PURPOSE.** 1999 Wisconsin Act 11 provides a higher percentage rate under s. 40.23 (2m) (e), Stats., for creditable service performed before January 1, 2000. The purpose of this section is to further clarify what percentage rate will apply to creditable service added to a participant's account through service purchases, creditable military service, creditable prior service, and any other service added to the participant's account as a result of a court decision, legislation, or any other means, and assumed creditable service used to calculate a disability benefit as provided in s. 40.63 (8), Stats.

**(2) PURCHASED AND OTHER CREDITABLE SERVICE.** For purposes of s. 40.23 (2m) (e), Stats., all of the following shall apply:

(a) For purposes of s. 40.23 (2m) (em) 1. a., Stats., creditable service is forfeited on the date the participant's benefit approval date for a benefit paid under s. 40.25 (2), Stats.

**Note:** See s. ETF 10.01 (1k).

(b) Purchased service credit under s. 40.285 (2) (a), Stats., for service forfeited after January 1, 2000 shall be treated as post-1999 service, regardless of when the services were actually rendered. This same treatment applies to purchased service credit for service that was originally forfeited before January 1, 2000, then purchased under s. 40.285 (2) (a), Stats., or s. 40.25 (6), 1981-2001 stats., was subsequently forfeited after January 1, 2000, through a separation benefit paid under s. 40.25 (2), Stats., then later purchased under s. 40.285 (2) (a), Stats., or s. 40.25 (6) 1999-2001 stats.

**Note:** Section 40.25 (6), Stats., was repealed by 2003 Wis. Act 33.

(c) Purchased service credit under s. 40.285 (2) (a), Stats., for creditable service forfeited before January 1, 2000, will be treated as pre-2000 service if the creditable service in question was forfeited before January 1, 2000, regardless of when the service credit is purchased.

(d) If for any reason a participant who is eligible to purchase service credit for both service that was forfeited before January 1, 2000 and service that was forfeited after January 1, 2000, purchases less than all of the available service credit, then the pay-

ment received shall first be applied to purchase credit for service treated as pre-2000 service.

(dm) Purchased service credits under s. 40.285 (2) (b), Stats., for other governmental service will be treated as pre-2000 or post-1999 service depending on when the actual services for which credit is purchased were rendered to the governmental entity described in s. ETF 20.17 (1) (f).

(e) A qualifying period of service purchased under s. 40.285 (2) (d), Stats., shall be considered to be performed before January 1, 2000.

(f) Executive service purchased under s. 40.285 (2) (c), Stats., shall be considered to be performed before January 1, 2000.

(g) Creditable service granted under s. 40.02 (17) (gm), Stats., for services performed as an assistant district attorney shall be considered to be performed before January 1, 2000.

(h) Teacher improvement leave purchased under s. 40.285 (2) (e), Stats., shall be considered to be performed before January 1, 2000.

(i) Junior teacher service purchased under s. 40.285 (2) (f), Stats., shall be considered to be performed before January 1, 2000.

(j) Service performed as a member or employee of the legislature or employee of a legislative service agency that is purchased under 1999 Wis. Act 11, section 27 (2), shall be considered to be performed before January 1, 2000.

(k) Creditable prior service credited under s. 40.02 (16), Stats., that was actually performed before January 1, 2000 shall be considered to be performed before January 1, 2000. Creditable prior service that was actually performed after December 31, 1999 shall be considered to be performed after that date.

(L) Any other service actually performed before January 1, 2000 that is credited to the participant's account as a result of a court decision, legislation, or any other means shall be considered to be performed before January 1, 2000 for the purpose of determining the applicable percentage rate under s. 40.23 (2m) (e), Stats.

**(3) CREDITABLE MILITARY SERVICE.** For purposes of s. 40.23 (2m) (em) 1. c., Stats., the amount of creditable military service that is considered to be performed before January 1, 2000, is granted in proportion to the final amount of the participant's total creditable service, other than creditable military service, credited to the participant's account.

**(4) ASSUMED SERVICE FOR DISABILITY BENEFITS.** (a) The assumed creditable service under s. 40.63 (8), Stats., that is calculated through December 31, 1999 shall be considered to be performed before January 1, 2000, and the assumed creditable service calculated for any period after December 31, 1999 shall be considered to be performed after that date.

(b) Any assumed creditable military service for which a participant is eligible based on actual and assumed creditable service that is calculated through December 31, 1999 shall be considered to be performed before January 1, 2000. Any assumed creditable military service for which a participant is eligible based on actual and assumed creditable service that is calculated for any period after December 31, 1999 shall be considered to be performed after that date.

**(5) CREDITABLE SERVICE FOR PERIODS OF TEMPORARY DISABILITY.** Creditable service granted for any period of temporary disability through December 31, 1999 under s. 40.29, Stats., shall be considered to be performed before January 1, 2000. The creditable service granted for any period of temporary disability after December 31, 1999 shall be considered to be performed after that date.

**(6) TREATMENT OF CREDITABLE SERVICE AFTER A RETIREMENT ANNUITY IS TERMINATED AND THE ACCOUNT REESTABLISHED.** (a) Except as provided under par. (b), when a participant's account is reestablished under s. 40.26 (2), Stats., if the participant was not a participating employee after December 31, 1999 but before the

effective date of the participant's retirement annuity that was terminated under s. 40.26 (1), Stats., the percentage rates under s. 40.23 (2m) (e), Stats., shall not apply to the creditable service considered to be performed before January 1, 2000 that was performed before the annuity effective date.

(b) If the participant whose account is reestablished under s. 40.26 (2), Stats., meets the criteria established in s. 40.26 (3) (bm), Stats., the percentage rates under s. 40.23 (2m) (e), Stats., shall apply to an amount of the creditable service considered to be performed before January 1, 2000 that was performed before the annuity effective date that is equal to the amount of service earned under s. 40.26 (3) (bm) 1., Stats. Any service earned under s. 40.26 (3) (bm) 1., Stats., that is performed before January 1, 2000 shall be considered to be performed after that date, and any service earned under s. 40.26 (3) (bm) 1., Stats., that is performed after December 31, 1999 shall be considered to be performed after that date.

**Note:** Sub. (6) (b) was rendered obsolete by 2013 Wis. Act 20 and will be repealed in future rulemaking.

**(7) TREATMENT OF CREDITABLE SERVICE AFTER A DISABILITY ANNUITY IS TERMINATED AND THE ACCOUNT REESTABLISHED.** (a) When a participant's account is reestablished under s. 40.63 (10), Stats., if the participant is a participating employee after December 31, 1999, all creditable service that is considered to be performed before January 1, 2000 under this section and under s. 40.23 (2m) (em), Stats., shall be considered to be performed before January 1, 2000, for any subsequent benefit calculations.

**(8) CREDITABLE SERVICE DIVIDED PER A QUALIFIED DOMESTIC RELATIONS ORDER.** (a) The percentage of a participant's account that is awarded to an alternate payee in qualified domestic relations order under s. 40.08 (1m), Stats., shall be applied equally to the creditable service considered to be performed both before January 1, 2000 and the service considered to be performed after December 31, 1999, which is credited or creditable to the participant's account as of the decree date.

(b) The percentage of a participant's account that is awarded to an alternate payee in a qualified domestic relations order under s. 40.08 (1m), Stats., shall be applied equally to the creditable military service considered to be performed both before January 1, 2000 and the creditable military service considered to be performed after December 31, 1999, date for which the participant would be eligible based on the years of service that are credited or creditable to the participant's account as of the decree date. Creditable service performed after the decree date does not increase the amount of creditable military service that is awarded to the alternate payee.

**History:** CR 00-022: cr. Register July 2001, No. 547 eff. 8-1-01; corrections in (2) (e), (f), (h) and (i) made under s. 13.93 (2m) (b) 7., Stats., Register January 2004 No. 577; CR 07-062: am. (2) (b), (d) and (3) (d) 2., r. and recr. (2) (c), cr. (2) (dm) Register June 2008 No. 630, eff. 7-1-08; CR 11-040: am. (3) (a), r. (3) (b) Register July 2012 No. 679, eff. 8-1-12; renun. (3) (a) to (3) under s. 13.92 (4) (b) 1., Stats., Register July 2012 No. 679.

**ETF 20.20 Cancellation of application for retirement annuity, separation or lump sum benefit.** (1) Any separation, retirement or lump sum benefit payment application canceled pursuant to this section shall have no force or effect, and any subsequent application shall be treated as a new application. Repayment in full of any sum paid under the application for which cancellation is sought shall be required. The employer may not make this payment on behalf of the recipient of the benefit.

(2) A request to cancel an application under this section shall be in writing. The request to cancel shall be rejected unless received by the department by the close of regular office hours on the last working day prior to the applicable deadline under sub. (3) or (4). If the deadline specified under sub. (3) or (4) falls on a Saturday, Sunday or holiday under s. 230.35 (4) (a), Stats., the request to cancel shall be timely only if received in the department by the

close of regular office hours on the last working day preceding the Saturday, Sunday or holiday.

**Example:** If the date the account will be debited in response to the application falls on a Monday which is not a holiday, then the request to cancel must be received by the department no later than 4:30 p.m. on the preceding Friday, the last working day prior to the debiting date. If that Monday were a holiday, the debiting date would be Tuesday, the next working day as provided by s. ETF 10.633 (3), but the deadline for cancelling the application would remain Friday, the last working day preceding the debiting date.

(3) An application for a separation benefit under s. 40.25 (2), Stats., shall be canceled if:

(a) The applicant's written request for cancellation is received by the department no later than the close of the department's regular office hours on the last working day before the participant's account in the employee accumulation reserve is debited for funding the benefit as provided by s. ETF 10.633 (1) (c).

(b) The applicant becomes a participating employee within 30 days after the application was received by the department.

(c) The applicant dies prior to the date of the separation benefit check.

(4) An application for a retirement annuity under s. 40.23 or 40.24, Stats., or s. ETF 20.04, or a lump sum payment under s. 40.25 (1) or (4), Stats., shall be canceled if the participant's written request for cancellation is received by the department no later than the close of the department's regular office hours on the last day before the participant's account in the employee accumulation reserve is debited for funding the benefit as provided by s. ETF 10.633 (1) (a) or (c) for retirement annuities or lump sum payments, respectively.

**History:** Cr. Register, April, 1983, No. 328, eff. 5-1-83; am. (3) (intro.), Register, October, 1992, No. 442, eff. 11-1-92; am. (1), (2), (3) (intro.) and (a) and (4), Register, January, 1996, No. 481, eff. 2-1-96; correction in (3) (intro.) made under s. 13.93 (2m) (b) 7., Stats., Register, July, 1999, No. 523.

**ETF 20.21 Changing annuity effective dates.** An annuity effective date shall not be changed after the effective date of the annuity unless the applicant's written request for the change is received by the department within 60 days after the date on which the first annuity check, share draft or other draft is issued or funds are otherwise transferred.

**Note:** This rule (CR 09-057) codifies the department's use of a deadline pertaining to annuity effective date changes and makes that deadline consistent with the deadline for annuity option changes in s. 40.24 (4), Stats.

**History:** CR 09-057: cr. Register May 2010 No. 653, eff. 6-1-10.

**ETF 20.23 Adjusting annuities for equity after reentry into service.** (1) Pursuant to s. 40.03 (1) (a), Stats., in determining the monthly amount of a recomputed annuity in the normal form under s. 40.26 (3), Stats., the applicant's estimated social security benefit shall not be greater than the amount determined by:

(a) Dividing the creditable service earned prior to the effective date of the prior annuity by the participant's total creditable service.

(b) Dividing the final average earnings determined for the new annuity computation by the final average earnings determined in computing the prior annuity.

(c) Multiplying the result in par. (a) times the result in par. (b) times the social security benefit amount used in determining the amount of the prior annuity.

(d) Dividing the creditable service earned since the effective date of the prior annuity by the participant's total creditable service.

(e) Multiplying the result in par. (d) times the social security benefit amount determined under s. ETF 20.03 (2) based on the participant's total service and earnings.

(f) Adding the amounts determined in pars. (c) and (e).

(2) Pursuant to s. 40.03 (1) (a), Stats., the monthly amount of a recomputed annuity in the normal form under s. 40.26 (3), Stats., excluding any portion which on either the original or recomputed

annuity was a variable annuity, shall not be less than the monthly amount of the original core annuity in the normal form increased by any dividends granted prior to termination of the original annuity.

(3) The board may review adjustments made under this section and may make other adjustments as necessary to prevent any inequity.

**History:** Cr. Register, February, 1984, No. 338, eff. 3-1-84; CR 09-057: am. (2) Register May 2010 No. 653, eff. 6-1-10.

### ETF 20.25 Core and variable annuity changes.

Annuity changes shall be made as follows:

(1) (a) Except as otherwise provided in par. (b), a core annuity dividend, as recommended by the actuary and approved by the chair of the employee trust funds board and the department's secretary, shall be distributed based on each December 31 valuation as specified in s. 40.27 (2), Stats. The dividend shall be effective on the April 1 following the valuation date and shall apply to core annuities effective on or prior to the date of the valuation. As authorized under s. 40.27 (2) (b), Stats., different percentages shall be determined for annuities effective for less than a full year on the valuation date. The percentages shall be determined by multiplying the number of full months the annuity was in force times the percentage change applicable to annuities effective for the full year, dividing the result by 12 and rounding the answer to the nearest tenth of a percent. No increase shall be applied to any annuity for which the resulting increase would be less than one tenth of a percent.

(b) The total amount distributed to the annuity reserve under 1999 Wis. Act 11, section 27 (1) (a) shall be distributed effective April 1, 2000, in the form of a percentage increase. The percentage shall be recommended by the actuary separate from the distribution of any surplus created by the annual distribution under s. 40.04 (3) (a), Stats., or otherwise. The percentage under this paragraph shall be the same for all affected annuities, including those with effective dates after December 31, 1998 and before January 1, 2000.

(2) Variable annuity changes, as recommended by the actuary and approved by the secretary, shall be made based on each December 31 valuation as specified in s. 40.28 (2), Stats. The changes shall be effective on the April 1 following the valuation and shall apply to variable annuities effective on or prior to the date of the valuation, regardless of whether the annuity becomes a core annuity in the following year.

**History:** Cr. Register, November, 1957, No. 23, eff. 12-31-57; r. and recr. Register, December, 1976, No. 252, eff. 1-1-77; renum. from Ret 8.05 (2) and am., Register, January, 1983, No. 325, eff. 2-1-83; emerg. r. and recr. eff. 1-1-84; r. and recr. Register, April, 1984, No. 340, eff. 5-1-84; renum. (1) to (1) (a) and am., cr. (1) (b), Register, September, 2000, No. 537, eff. 10-1-00; CR 02-049: am. (1) (a) and (2) Register September 2002 No. 561, eff. 10-1-02; CR 03-062: am. (1) (a) and (2), Register January 2004 No. 577, eff. 2-1-04; CR 09-057: am. (intro.), (1) (a) and (2) Register May 2010 No. 653, eff. 6-1-10.

**ETF 20.30 Annuity underpayments.** Pursuant to s. 40.08 (7) (c), Stats., if an annuity under s. 40.23, 40.24, 40.63, or 40.73, Stats., is underpaid by more than \$2 in a month, and if that underpayment is uncorrected for 12 or more months, then the payment to the annuitant to correct the underpayment shall include interest at 0.4% per month for each full month between the date the underpayment occurred and the date the retroactive correction is paid. The interest due shall be calculated separately for each month's underpaid amount. For purposes of this section, "full month" means the period from any date in a month to the corresponding date in the next month, or to the end of the month if there is no corresponding date.

**Note:** This rule (CR 09-057) changes the calculation of interest on underpayments to conform to s. 40.08 (7) (c), Stats., and pay monthly interest on a particular month's underpayment until it is corrected.

**History:** Cr. Register, October, 1992, No. 442, eff. 11-1-92; CR 09-057: am. Register May 2010 No. 653, eff. 6-1-10.

**ETF 20.35 Qualified domestic relations orders; division of WRS accounts and annuities.** (1) SCOPE AND PURPOSE. (a) This section applies to any order to divide any benefit of the Wisconsin retirement system which is received by the department.

(b) The purpose of this section is to specify how the department shall apply a valid QDRO to the participant's account or annuity or respond to an order which is not a valid QDRO.

(c) For purposes of ss. 40.02 (48m) and 40.08 (1m), Stats., and this section, a marriage is terminated upon entry of a judgment, decree or order of divorce, annulment or legal separation. A domestic partnership as defined in s. 40.02 (21d), Stats., is terminated as provided in s. ETF 20.10 (3). A domestic partnership, as defined in s. 770.01 (2), Stats., is terminated as provided in s. 770.12, Stats.

(2) DIVISION BY VALID QDRO. Except as otherwise provided in sub. (6) or (7), upon receipt of a valid QDRO the department shall divide WRS accounts and annuities in accordance with the percentage awarded to the alternate payee in the valid QDRO, based on the date on which the marriage was terminated by a court judgment, decree or order or the domestic relationship was terminated as provided in s. ETF 20.10 (3) or s. 770.12, Stats., as follows:

(a) With respect to marriages terminated on or after January 1, 1982, and before April 28, 1990, the division shall be as provided in subs. (3) and (4), when a valid QDRO is received by the department after May 2, 1998.

(b) With respect to marriages or domestic partnerships terminated on or after April 28, 1990, the division shall be as provided in subs. (3) and (5).

**Note:** See s. ETF 10.82 concerning receipt by the department.

(3) ALL QDRO DIVISIONS. (a) *Percentages.* The percentage of the participant's account or annuity that is awarded to the alternate payee by a valid QDRO is limited to a percentage between zero percent (0%) and fifty percent (50%) expressed to no more than 2 decimal places. An otherwise valid QDRO with a percentage awarded to the alternate payee expressed to more than 2 decimal places may not be rejected for that reason alone, but the department shall round the percentage to 2 decimal places.

(b) *Debts of the participant.* Any debt, memorandum account or account receivable balance reflecting amounts owed by the participant to the department, the fund or any benefit plan, accrued as of the decree date and still outstanding at the time the account or annuity is divided, shall be divided between the participant and alternate payee in the same proportion as the participant's account or annuity.

(c) *Dividing Wisconsin retirement system annuities.* 1. 'Present actuarial values before and after division shall be equal.' An annuity shall be divided so that the actuarial present value of the undivided annuity is equal to the aggregate actuarial present values of the 2 separate annuities resulting from the division as of the effective date of the division.

2. 'Division of accelerated annuity option.' If the participant selected an accelerated payment option as provided in s. 40.24 (1) (e), Stats., or s. ETF 20.04 (3), and the participant's temporary annuity is still in force as of the effective date of the annuity division, then the department shall calculate the present value of both the temporary and life annuities using the actuarial tables in effect on the effective date of the annuity division. The department shall then divide the total present value based on the percentages specified in the QDRO and calculate separate annuities for the participant and alternate payee as specified in s. 40.08 (1m) (f) 2., Stats. If the participant or alternate payee provides a projection of his or her social security benefits at age 62 from the social security administration, the department shall use that projected social security amount to calculate the amount of the temporary annuity

for that person. If no projection is supplied, then notwithstanding s. ETF 20.03 (2), the department shall assume that person's projected social security benefits at age 62 equals that person's prorated portion of the participant's temporary annuity amount as of the effective date of the annuity division, calculated based on the respective percentages of the annuity being awarded to the participant and alternate payee. If the reduced annuity payable for life to the alternate payee or participant is below the threshold specified by s. ETF 20.05 (1), then that person shall receive an annuity in the same option.

3. 'Disability annuities.' Upon division of a disability annuity calculated under the provisions of s. 40.63 (1) or (4), Stats., the alternate payee's annuity shall consist of a portion based on the participant's actual service and a portion based on the assumed service used to calculate the participant's disability annuity. The portion of the alternate payee's annuity based on the participant's assumed service and age shall cease upon the death of the alternate payee. Benefits payable upon the death of the alternate payee's shall be based on the guaranteed portion of the alternate payee's annuity only. Once the participant's disability annuity has been divided, the termination or suspension of the participant's disability annuity or the death of the participant has no effect on the alternate payee's annuity. If the participant's disability annuity is subsequently terminated and the participant's account restored under the provisions of s. 40.63 (9) and (10), Stats., the contributions and service credited to the restored account shall be reduced by the same percentage awarded to the alternate payee by the valid QDRO.

4. 'Actuarial adjustment for early retirement.' The actuarial reduction applied to the participant's and alternate payee's annuities as provided in s. 40.23 (2m) (f) and (fm), Stats., shall be calculated based on the participant's and alternate payee's actual ages on his or her respective annuity effective dates, using the creditable service that would otherwise have been credited to the participant's account on the respective annuity effective dates if the participant's creditable service had not been reduced per a valid QDRO.

5. For the purposes of determining the amount of service used to calculate the alternate payee's actuarial reduction for early retirement under the provisions of s. 40.23 (2m) (fm), Stats., if the participant has part-time service in at least five of the ten annual earnings periods immediately preceding the annual earnings period in which the alternate payee's retirement benefit becomes effective or the date on which the participant terminated covered employment, whichever is earlier, the provisions of s. 40.23 (2m) (fm), Stats., shall apply. If the decree date is prior to July 1, 2009, the provisions of s. 40.23 (2m) (fm), Stats., in effect prior to that date shall apply.

(d) *Dividing Wisconsin retirement system accounts.* 1. 'Creditable service.' Creditable service which the participant has been granted as of the decree date is a part of the Wisconsin retirement system account of a participant and shall be divided in the same ratio as other account balances. With respect to a decree date on or after January 1, 1982 through April 1, 1990, if the employer is unable to accurately report earnings and service up to the decree date, as required by s. 40.02 (48m) (j), Stats., the department shall prorate the participant's service, earnings and contributions for the calendar year in which the decree date falls. The service and contributions shall be prorated based on the number of months between January 1 of the year in which the marriage is terminated and the decree date, divided by the number of complete and partial months during that calendar year in which the participant was a participating employee, with the quotient rounded to 2 decimal places.

2. 'Purchased service credits.' Previously purchased service shall be divided in the same proportion as the other portions of the participant's account and creditable service. If an application to purchase creditable service is received prior to the decree date, as defined by s. 40.02 (18f), Stats., then service for which payment

is made shall be included in the division. The department shall pay any refund due only to the participant and shall bill only the participant for any supplemental payment due for such purchased service. No refund shall be due to the participant from the department for the portion of any excess payment withdrawn from the public employee trust fund by the alternate payee. Credit for service purchased by an application received after the decree date shall not be divided by the qualified domestic relations order regardless of the source of the funds for the purchase or when the services were actually rendered.

3. 'Creditable military service.' If the participant has active military service, the alternate payee shall be granted the percentage specified in the valid QDRO of the military service for which the participant would be eligible as of the decree date, based on the participant's total creditable service as of the decree date, regardless of when the participant requests the crediting or provides satisfactory documentation. If a participant does not provide to the department proof of active military service and the certification of active military service on the form prescribed by the department, the department shall nevertheless divide the participant's account without the military service provided the court order is otherwise a valid QDRO.

4. 'Rehired annuitant with suspended account.' If the participant's annuity was suspended prior to the decree date under the provisions of s. 40.26 (2), Stats., any memorandum account balance resulting from the annuity payments paid prior to the decree date and after the effective date on which the account was suspended, plus accumulated interest on that amount, shall be divided in the same proportion as the other portions of the participant's account.

(4) MARRIAGES TERMINATED ON OR AFTER JANUARY 1, 1982 AND BEFORE APRIL 28, 1990. (a) The division of accounts and annuities that are divided per valid QDROs with respect to marriages terminated between January 1, 1982 and April 27, 1990, both dates inclusive, shall be calculated to reflect changes in the participant's account, including but not limited to commencing or terminating an annuity, between the decree date and the effective date of the account or annuity division, as provided in this subsection.

(b) If the participant was an annuitant on the decree date and has continued to be an annuitant until the effective date of the annuity division, the department shall calculate the present value of the participant's annuity as of the effective date of the division based on the actuarial tables in effect on the effective date of the annuity division, and award a share of the total present value to the alternate payee, then calculate separate annuities for the alternate payee as provided in s. 40.08 (1m) (b) 2., (c) and (d), Stats.

(c) If the participant was not an annuitant on the decree date, but is an annuitant on the date that the department receives the valid QDRO, the participant's annuity shall be divided as provided in sub. (3) (c), and as follows:

1. The portion of the annuity awarded to the alternate payee may not reflect any service or contributions reportable for any period of the participant's participating employment after the decree date.

2. If the participant's retirement annuity is a formula annuity calculated under the provisions of s. 40.23 (2) (b) or (2m) (e), Stats., the percentage of the participant's annuity awarded to the alternate payee shall be based on the ratio of the years of creditable service awarded to the alternate payee as of the decree date, based on the percentage specified in the valid QDRO and including any creditable military service, divided by the total creditable service used to calculate the participant's retirement annuity, with the quotient rounded to 2 decimal places.

3. If the participant's retirement annuity is a money purchase annuity calculated under the provisions of s. 40.23 (2) (c), (2m) (c) or (d), or (3), Stats., the portion of the participant's annuity awarded to the alternate payee shall be based on the ratio of the portion of the account balance awarded to the alternate payee as

of the decree date including interest creditable through the day before the participant's annuity effective date, based on the percentage specified in the valid QDRO, divided by the total account balance used to calculate the participant's retirement annuity, with the quotient rounded to 2 decimal places.

4. If the participant is receiving a disability annuity under s. 40.63 (1) or (4), Stats., the alternate payee's share of the portion of the participant's disability annuity based on assumed service shall be calculated by dividing the years of creditable service awarded to the alternate payee as of the decree date, based on the percentage specified in the valid QDRO and including any creditable military service, by the total service that was available to calculate the guaranteed portion of the participant's disability annuity, including any creditable military service, regardless of whether the guaranteed portion of the disability annuity was calculated under s. 40.23 (2) (b) or (c), (2m) (c), (d) or (e) or (3), Stats.

(d) If a participant's annuity is divided under the provisions of par. (c), and that annuity was reduced under the provisions of s. 40.23 (2) or (2m) (b), Stats., the percentage of the annuity to be awarded to the alternate payee shall be determined as provided in par. (c), and those percentages shall be applied to the annuity amounts payable on the effective date that the annuity is divided per the valid QDRO.

(e) If the participant was an annuitant on the decree date but the account was subsequently reestablished under the provisions of s. 40.26 (2), Stats., and the participant is not an annuitant on the date the department receives the valid QDRO, the department shall establish a separate account for the alternate payee consisting of a share of the participant's contributions and creditable service, based on the percentage specified in the valid QDRO and including any creditable military service, that was available to calculate the participant's original retirement annuity. Interest shall be added to the contribution balances for the period between the decree date and the date the alternate payee's account is reestablished. If the participant has a memorandum account balance, the alternate payee's account shall also be credited with a share of the participant's memorandum account balance as provided in sub. (3) (b), based on the percentage specified in the valid QDRO.

**(5) MARRIAGES AND DOMESTIC PARTNERSHIPS TERMINATED ON OR AFTER APRIL 28, 1990.** (a) If the participant was not an annuitant on the decree date, the department shall divide the participant's account as provided in s. 40.08 (1m) (b) 1., (c), (d) and (f) 1., Stats., and sub. (3) (d), and as follows:

1. The creditable service and amounts awarded to the alternate payee shall be in a separate account in the fund for the benefit of the alternate payee. After the division under this section, the alternate payee may apply for a separation benefit under s. 40.25 (2), Stats., provided the application is received by the department prior to the date on which the participant would have met the minimum age requirement for a retirement annuity under s. 40.23, Stats., and payment of a separation benefit would comply with all provisions of the internal revenue code. After the date the participant reaches or would have reached the minimum retirement age, the alternate payee may only apply for retirement benefits under s. 40.23, 40.24, or 40.25 (1), Stats.

2. The participant shall retain the remainder in his or her separate account under s. 40.04 (4) (a), Stats., unless the participant is an annuitant at the time of the division. If the participant is an annuitant when the division occurs, the participant's creditable service and account as of the decree date shall be reduced by the percentage awarded to the alternate payee. The balances shall then be brought forward to the effective date of the current annuity, including any contributions and service for periods after the decree date, and the annuity option chosen by the participant shall be recalculated. The amount by which the monthly annuity payments previously made to the participant exceed the participant's recalculated monthly entitlement for the same period shall be a balance due from the participant. This balance due shall be due from the participant and may be collected as provided in s. 40.08

(4), Stats., including by a reduction of the present value of the participant's annuity as reduced by the division, resulting in a recalculation and reduction of the participant's monthly annuity.

(b) 1. Except as provided in subd. 2., if the participant was an annuitant on the decree date, the department shall divide the present value of the annuity as provided in s. 40.08 (1m) (b) 2., (c), (d) and (f) 2., Stats., and sub. (3) (c) and pay separate annuities to the participant and alternate payee, respectively.

2. If the participant's annuity is a joint and survivor annuity with the alternate payee as the named survivor, and the percentage awarded to the alternate payee in the valid QDRO is zero percent (0%), then the alternate payee may not receive any Wisconsin retirement system annuity based on the valid QDRO and the participant's annuity shall be recalculated as a straight life annuity payable to the participant, with no change in the remaining guarantee period, if any.

**(6) INVALID QDRO.** (a) *Rejection and notice.* The department may not honor any order to divide Wisconsin retirement system benefits which it determines is not a valid QDRO as defined in s. 40.02 (48m), Stats. The department shall send written notice of its rejection of an order to the person submitting the order and to the participant and alternate payee if those persons' current names and addresses are stated in the order or are readily determinable from department records.

(b) *Account already closed.* An otherwise valid QDRO received after the participant's account was closed by payment of a lump sum benefit on or after the decree date has no effect, regardless of whether the participant returned to participating employment after the decree date. If the participant's account to which the valid QDRO applies is subsequently restored under the provisions of s. 40.25 (5), Stats., because the benefit was paid in error, or under an agreement approved by the department where the full amount of the benefit paid plus monthly interest at the assumed rate has been paid to the department, the restored account shall be divided according to the valid QDRO.

(c) *Participant or alternate payee deceased.* An otherwise valid QDRO received after the participant's or alternate payee's date of death has no effect on the participant's account or annuity.

**(7) LIMITED GRACE PERIOD TO CORRECT SPECIFIED ERRORS.** (a) If the department rejects an order for the division of a participant's account and subsequently receives an otherwise acceptable application from the participant for a benefit which would close the participant's account due to payment of a lump sum benefit, the department shall delay payment of the lump sum benefit until 30 days after the date the order for division was rejected. This paragraph applies only if the basis for the rejection was one or more of the following:

1. The order did not meet all of the requirements in s. 40.02 (48m), Stats.

2. The order received by the department was not a certified copy or an original, signed by the judge or a duly authorized family court commissioner.

(b) If the department has not received a second, valid QDRO within 30 days after the rejection, then the department shall complete processing the application for benefits and sub. (6) (b) shall apply.

**(8) EFFECT OF POST-DECREE DATE CORRECTIONS AND ADJUSTMENTS.** (a) *Service purchased after decree date.* Credit for service purchased by the participant after the decree date in a valid QDRO may not be affected by that QDRO.

(b) *Active military service.* If the department divided a participant's account per a valid QDRO without first receiving proof and certification of active military service, as provided in sub. (3) (d) 3., and the participant subsequently provides documentation of active military service and the certification on the form prescribed by the department, the department shall divide the military service creditable based on services rendered prior to the decree date between the participant and alternate payee's accounts pursuant

to the valid QDRO. Any resulting adjustments to the alternate payee's and participant's benefits shall be made retroactive to the respective benefit effective dates. The participant may not receive creditable military service for any active military service that would have been granted to the alternate payee had the participant submitted timely to the department the certification of active military service as provided in s. 40.02 (48m) (f), Stats.

(c) *Other corrections and adjustments directly affecting benefits.* The effect of any other corrections and adjustments to service, contributions, or interest earnings affecting the benefits the participant accrued as of the decree date, including corrections of administrative errors and corrections or adjustments of any factor affecting the calculation of an annuity to be divided, shall be divided between the participant and the alternate pursuant to the valid QDRO. The participant and alternate payee accounts or annuities shall be adjusted accordingly. However, the department shall not adjust benefit amounts if the amount of the adjustment would be less than the thresholds specified in s. 40.08 (7) (a), Stats.

(d) When a participant's annuity is divided as provided in sub. (5) (b) and retroactive payments are due to an alternate payee, or when an alternate payee's annuity must be increased retroactively for any reason, no interest as specified in s. 40.08 (7) (c), Stats., is payable to the alternate payee for any monthly payments payable prior to the month in which the department received the valid QDRO.

**(10) COMPLIANCE WITH SECTION 415(B) OF THE INTERNAL REVENUE CODE.** (a) The aggregate benefits paid to the participant and alternate payee shall not exceed the benefit limits under Section 415(b) of the Internal Revenue Code. The department shall make any necessary adjustments to the participant's and alternate payee's benefits on an equitable pro rata basis to assure compliance with Section 415(b) of the Internal Revenue Code. Benefits derived from employee contributions that are actually paid by the employee shall not be subject to the benefit limitations under this subsection.

(b) If the participant's retirement annuity has been divided per a QDRO under s. 40.08 (1m) (b) 2., Stats., any subsequent adjustments necessary for compliance with Section 415(b) of the Internal Revenue Code that result from either post-retirement annuity adjustments under s. 40.27 (2) or 40.28 (2), Stats., or from increases in the compensation limits specified in Section 415(b) of the Internal Revenue Code, shall be prorated based on the percentage of the participant's account that was awarded to the alternate payee in the QDRO.

(c) If the participant's account is divided as provided in pars. (3) (d) or (5) (a), any benefit adjustments required under Section 415(b) of the Internal Revenue Code shall be applied as follows:

1. If the alternate payee's benefit becomes effective prior to the participant's benefit effective date:

a. If the aggregate benefits that would be payable to both the alternate payee and the participant on the alternate payee's benefit effective date do not exceed the maximum benefits that would be payable to the participant under Section 415(b) of the Internal Revenue Code if the account had not been divided, the alternate payee's benefit will not be reduced.

b. Any subsequent benefit adjustments necessary for compliance with Section 415(b) of the Internal Revenue Code will be applied solely to the participant's benefits, and shall not affect the benefit amount payable to the alternate payee.

2. If the participant's benefit becomes effective prior to the alternate payee's benefit effective date, or the participant's and alternate payee's benefits become effective on the same date:

a. If the aggregate benefits that would be payable to both the participant and alternate payee on the participant's benefit effective date exceed the maximum benefits that would be payable to the participant under Section 415(b) of the Internal Revenue Code

if the account had not been divided, the adjustment to participant's annuity shall be prorated based on the percentage of the participant's account that was not awarded to the alternate payee in the QDRO.

b. When a benefit is subsequently paid to the alternate payee, the portion of the total adjustment necessary for compliance with Section 415(b) of the Internal Revenue Code that is applied to the alternate payee's benefits shall be prorated based on the percentage of the participant's account awarded to the alternate payee in the QDRO.

3. If the participant's benefit effective date is on or after the alternate payee's benefit effective date as specified in subd. 2., and as a result of either post-retirement annuity adjustments under s. 40.27 (2) or 40.28 (2), Stats., or of increases in the compensation limits specified in Section 415(b) of the Internal Revenue Code, subsequent benefit adjustments are necessary for compliance with Section 415(b) of the Internal Revenue Code, such adjustments shall be prorated based on the percentage of the participant's account that was awarded to the alternate payee in the QDRO.

(d) For the purposes of determining the aggregate benefits payable to the participant and alternate payee under par. (b), the department shall:

1. First calculate the present value of what the participant's benefit would be as of the benefit effective date of the participant's or alternate payee's benefit effective date, whichever is earlier, as though the participant's account had never been divided by a QDRO.

2. If that total aggregate benefit amount is higher than the maximum benefits permitted under Section 415(b) of the Internal Revenue Code, the department shall reduce the aggregate benefits to the maximum amount payable under Section 415(b) of the Internal Revenue Code. The present value of that maximum benefit payable shall be divided between the participant and alternate payee in proportion to the percentage of the participant's account that was awarded to the alternate payee. The benefits payable to the participant and alternate payee shall then be adjusted as follows:

a. If the alternate payee has received a lump sum benefit under s. 40.25 (1) or (2), Stats., the gross amount of the alternate payee's lump sum payment shall be subtracted from the present value of the participant's maximum benefit payable under Section 415(b) of the Internal Revenue Code calculated under par. (d). The present value of the benefit paid to the participant shall not exceed the remainder of the present value of that maximum benefit payable under Section 415(b) of the Internal Revenue Code.

b. If the alternate payee has previously taken a monthly retirement annuity, the present value of the alternate payee's annuity as of the alternate payee's annuity effective date shall be subtracted from the present value of the participant's maximum benefit payable under Section 415(b) of the Internal Revenue Code. The present value of the benefit paid to the participant shall not exceed the remainder of the present value of that maximum benefit payable under Section 415(b) of the Internal Revenue Code.

c. If the participant's benefit becomes effective prior to the alternate payee's benefit effective date, the present value of the benefit paid to the participant shall not exceed the maximum aggregate benefit calculated under this paragraph minus the present value of the benefit payable to the alternate payee as of the participant's annuity effective date.

**History:** Cr. Register, July, 1999, No. 523, eff. 8-1-99; CR 07-062: am. (3) (d) 2. Register June 2008 No. 630, eff. 7-1-08; CR 11-040: am. (2) (b) Register July 2012 No. 679, eff. 8-1-12; CR 11-041: am. (1) (b), (c), (2), (3) (a), (b), (c) 1. to 3., cr. (c) 5., am. (4) (c) 3., (5), (6), (7) (a), (8) (b), (c), cr. (8) (d), (9), (10) Register July 2012 No. 679, eff. 8-1-12; CR 14-055: am. (3) (d) 4., r. (9) Register May 2015 No. 713, eff. 6-1-15.

**ETF 20.37 Death benefits.** (1) **TERMINATION PRIOR TO DEATH.** If employment with a participating employer actually terminated prior to the death of the participant, then the participant

may not be treated as a participating employee for purposes of s. 40.71, Stats., regardless of when notice of the termination is filed with the department.

**Note:** If the termination of employment occurs on the last day on which the employee actually performs services for the employer, and the death occurs on the same day, the participant will be treated as an employee through the end of that day, as provided by s. 40.02 (25), Stats.

(2) For purposes of applying s. 40.74 (6), Stats., when determining beneficiaries of a death benefit, reasonable efforts to locate a potential beneficiary of a participant shall consist of all of the following actions:

(a) Search on the department's internal information technology systems for information regarding the participant and any potential beneficiary.

(b) Utilize an appropriate Internet program for locating people.

(c) Contact a person who may be a beneficiary, if the department learns the name of that person.

(d) Contact the employer of a person who may be a beneficiary, if the department learns the name of the employer.

**Note:** 2007 Wisconsin Act 131 created s. 40.74 (6), Stats. This provision allows the department, when determining beneficiaries of a death benefit, to presume that a beneficiary who cannot be located within 12 months actually died before the participant. The language in the statute is permissive. This rule (CR 09-057) establishes what will be considered to be reasonable efforts by the department to locate the potential beneficiary.

**History:** CR 07-068: cr. Register March 2008 No. 627, eff. 4-1-08; CR 09-057: cr. (2) Register May 2010 No. 653, eff. 6-1-10; CR 14-055: r. (2) (e) Register May 2015 No. 713, eff. 6-1-15.

**ETF 20.39 Delinquent state tax obligations. (1) PAYMENTS SUBJECT TO ATTACHMENT.** As provided by s. 40.08 (1r), Stats., in order to satisfy delinquent tax obligation of a person, the Wisconsin department of revenue may attach any one of the following types of payment being made by the Wisconsin retirement system to that person:

(a) Monthly payments of a regular annuity under s. 40.23 or 40.24, Stats.

(b) Monthly payments of a disability annuity under s. 40.63, Stats.

(c) The continued monthly annuity payments of a joint-and-survivor annuity that are paid to a named survivor after the death of the annuitant, regardless of whether the annuity is a regular annuity under s. 40.23 or 40.24, Stats., or a disability annuity under s. 40.63, Stats.

(d) Monthly payments of an annuity from the annuitant's additional contributions.

(e) A lump sum paid in lieu of an annuity under s. 40.25, Stats., regardless of whether the payment is required or is made at the request of the participant.

(f) A lump sum separation benefit paid under s. 40.25 (2), Stats..

(2) LIMITATIONS AND WRS PAYMENTS NOT SUBJECT TO ATTACHMENT. (a) Attachment under s. 40.08 (1r), Stats., and this section applies only to benefits in pay status. The department of revenue may not compel the payment of benefits for which a person has not applied or apply for benefits on behalf of any person.

(b) Section 40.08 (1r), Stats., and sub. (1) do not apply to lump sum payments of additional contributions made under s. 40.25 (4), Stats., or to death benefits paid under s. 40.73, Stats., including but not limited to remaining guaranteed monthly annuity payments, regardless of whether the death benefits are paid in the form of an annuity.

(3) NOTICE AND CONTINUED WITHHOLDING FROM ANNUITIES.

(a) The department shall transmit amounts withheld under s. 40.08 (1r), Stats., to the department of revenue and notify the payee of the amount withheld.

(b) The withholding from annuity payments subject to sub. (1) shall continue until the earlier of the following:

1. The department has withheld the total amount the department of revenue identified as attached to satisfy a delinquent tax obligation.

2. The department is instructed otherwise by the department of revenue or a court of competent jurisdiction.

**Note:** 2007 Wis. Act 131 moved the authorization for the department of revenue to attach benefits for delinquent state tax obligations from s. 40.08 (1), Stats., into a new s. 40.08 (1r), Stats. The authorization was also amended to limit the authority of the department of revenue to attaching only lump sum payments and annuities paid under ss. 40.23, 40.24, 40.25 (1) or (2), or 40.63, Stats. This rule (CR 09-057) therefore states that a tax attachment does apply to joint-and-survivor annuities being paid to a named survivor but does not apply to certain lump sum benefits and death benefits payable under statutes not cited in the new s. 40.08 (1r), Stats. The rule would also state that the attachment of an annuity will result in continued monthly withholding until the entire delinquent tax amount has been withheld, or the department is instructed to stop withholding. The rule also provides that the statutory authority to attach a payment does not confer any right for the department of revenue to ask the department of employee trust funds to pay out a benefit for which the person has not applied.

**History:** CR 09-057: cr. Register May 2010 No. 653, eff. 6-1-10; correction in numbering of (3) (b) made under s. 13.92 (1) (b) 1., Stats., Register May 2010 No. 653.