

STATEMENT OF SCOPE

Department of Employee Trust Funds

Rule No.: Chapters ETF 10 (revise)

Relating to: Technical Changes to ETF Rules

Rule Type: Permanent

1. Detailed description of the objective of the proposed rule:

The objective of this rule is to make technical updates to existing ETF rules, delete obsolete language in ETF rules and make other minor substantive changes. The changes include clarifying that non-medical individual personal information may be released to a joint survivor in certain situations, deleting obsolete language requiring documents signed by guardians to be accompanied by a certified copy of the court order establishing the guardianship, and making minor administrative changes. This rule will require the approval of the Employee Trust Funds Board.

2. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

This rule is technical in nature and does not contain significant changes in policy. It is designed to update ETF rules by deleting obsolete regulatory provisions, terms, and cross-references and making ETF regulations consistent with recent statutory changes. The alternative is continuing with the outdated language in ETF's current code.

3. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Authority for the ETF Secretary to promulgate rules affecting ETF-administered benefit plans is found at Wis. Stat. § 40.03 (2) (i): "The secretary...Shall promulgate, with the approval of the board, all rules, except rules promulgated under par. (ig) or (ir), that are required for the efficient administration of the fund or of any of the benefit plans established by this chapter. In addition to being approved by the board, rules promulgated under this paragraph relating to teachers must be approved by the teachers retirement board and rules promulgated under this paragraph relating to

participants other than teachers must be approved by the Wisconsin retirement board, except rules promulgated under s. 40.30.”

Wis. Stat. § 227.11 (2) Rule-making authority is expressly conferred as follows:

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:

1. A statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.
2. A statutory provision describing the agency's general powers or duties does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.
3. A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.

(b) Each agency may prescribe forms and procedures in connection with any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute, but this paragraph does not authorize the imposition of a substantive requirement in connection with a form or procedure.

(c) Each agency authorized to exercise discretion in deciding individual cases may formalize the general policies evolving from its decisions by promulgating the policies as rules which the agency shall follow until they are amended or repealed. A rule promulgated in accordance with this paragraph is valid only to the extent that the agency has discretion to base an individual decision on the policy expressed in the rule.

(d) An agency may promulgate rules implementing or interpreting a statute that it will enforce or administer after publication of the statute but prior to the statute's effective date. A rule promulgated under this paragraph may not take effect prior to the effective date of the statute that it implements or interprets.

(e) An agency may not inform a member of the public in writing that a rule is or will be in effect unless the rule has been filed under s. 227.20 or unless the member of the public requests that information.

4. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

State employees will spend an estimated 40 hours to develop these rules.

5. List with description of all entities that may be affected by the proposed rule:

The new rule will affect state and local public employers, members, subscribers, their beneficiaries and dependents who interact with ETF regarding the benefit programs administered by ETF.

6. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

No existing or proposed federal regulation addresses the contemplated rule changes.

7. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

ETF anticipates that the proposed rule will have no economic impact locally or statewide and will not impact small businesses.

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