

**STATE OF WISCONSIN
DEPARTMENT OF EMPLOYEE TRUST FUNDS
EMPLOYEE TRUST FUND BOARD
WISCONSIN RETIREMENT BOARD
TEACHERS RETIREMENT BOARD
GROUP INSURANCE BOARD
DEFERRED COMPENSATION BOARD**

FINAL DRAFT REPORT ON CLEARINGHOUSE RULE #09-057

FINAL RULE to amend ETF 10.12 (1) (b) and (d), and (2) (a), (b) and (e), 10.25 (intro.), (1) (a) and (b), (2), (3) (intro.), (b), (c) and (d), and (4), 10.30 (4) (a) and (b), (5) (a) 1., 2., 3. b., and (f), 10.70 (4), 10.70 (5) (b) 1., ETF 11.16 (2) (a), ETF 20.03 (2) (intro.), 20.04 (2) (b) to (g), 20.04 (4), 20.07 (6), 20.17 (4) (d) 2. (intro.) and (g), 20.18 (9), 20.23 (2), 20.25 (intro.), (1) (a) and (2), 20.30, ETF 52.04 (2), ETF 60.53 (1) (c), 60.60 (2) (h), and 60.60 (8) (a); and to create ETF 10.01 (3o), ETF 10.01 (6m), ETF 20.025, ETF 20.03 (2) (bm) and 20.03 (4), ETF 20.045, ETF 20.21, ETF 20.37 (2), ETF 20.39, relating to technical and minor substantive changes in existing ETF administrative rules.

Agency Person to be Contacted for Questions	2
Statement Explaining Need for Rule	2
Analysis Prepared by Department of Employee Trust Funds	3
Statutes interpreted	3
Statutory authority	3
Explanation of agency authority.....	3
Related statutes or rules	3
Plain language analysis	3
Summary of, and comparison with, existing or proposed federal regulations	3
Comparison with rules in adjacent states	4
Summary of factual data and analytical methodologies	4
Analysis and documentation concerning effect on small businesses	4
Anticipated costs incurred by private sector.....	4
Statement of effect on small business	4
Regulatory Flexibility Analysis	4
Fiscal Estimate	4

Text of Rule.....5

Economic Impact Report.....None

Department of Administration s. 227.138 Report.....None

Energy Impact Report.....None

Legislative Council Staff Clearinghouse Report.....19

Response to Legislative Council Staff Recommendation.....24

List of Persons Who Appeared or Registered at the Public Hearing.....24

Summary of Public Comments.....24

Modifications to the Rule as Originally Proposed.....24

Modifications to the Analysis Accompanying the Proposed Rule.....24

Modifications to the Fiscal Estimate.....24

Board Authorization for Promulgation.....24

Effective Date.....25

Agency Person to be Contacted for Questions

Please direct any questions about the proposed rule to David Nispel, General Counsel, Department of Employee Trust Funds, P.O. Box 7931, Madison WI 53707. Telephone: (608) 264-6936. E-mail address: david.nispel@etf.state.wi.us.

Statement Explaining Need for Rule

This rule-making is needed to revise existing administrative rules of the Department of Employee Trust Funds to reflect enactment of 2007 Wisconsin Act 31, other changes made to ch. 40, Stats., and current practices of the department.

Analysis Prepared by the Department of Employee Trust Funds

1. Statutes interpreted:

Sections 40.02 (8), 40.02 (8) (a) 1. and 2., 40.02 (33) (b) 1. and 2., 40.02 (39m), 40.03 (1) (a), 40.04 (7) (a) 2., 40.06 (5), 40.08 (1r), 40.08 (3), 40.08 (7) (c), 40.23, 40.23 (1) (a) (intro.), 40.24, 40.24 (1) and (1) (e), 40.24 (4), 40.25 (1), 40.25 (1) (a), 40.25 (2), 40.25 (4), 40.26 (3), 40.27 (2), 40.55, 40.63, 40.65, 40.65 (3), 40.73, 40.73 (1) (a) and (c), 40.73 (2) (b) 3., 40.73 (3), and 40.74 (2) and (6), Stats.

2. Statutory authority:

Sections 40.03 (2) (i), (ig), (ir) and 227.11 (2) (a), Stats.

3. Explanation of agency authority:

By statute, the DETF Secretary is expressly authorized, with appropriate board approval, to promulgate rules required for the efficient administration of any benefit plan established in ch. 40 of the Wisconsin statutes. Also, each state 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.

4. Related statute or rule:

There are no other related statutes or administrative rules directly related to this technical rule.

5. Plain language analysis:

The purpose of this rule is to revise existing administrative rules of the Department of Employee Trust Funds to reflect enactment of 2007 Wisconsin Act 131, other changes made to ch. 40, Wis. Stats., and current practices of the department. Each individual SECTION of the rule contains a note that describes the action taken by the department.

6. Summary of, and comparison with, existing or proposed federal regulations:

The only federal regulations that may be affected by this proposed rule are provisions of the Internal Revenue Code regulating qualified pension plans. The Wisconsin Retirement System is required to be maintained as a qualified plan by s. 40.015, Stats.

7. Comparison with rules in adjacent states:

Periodically, retirement systems in adjacent states promulgate technical rules to update existing administrative rules.

8. Summary of factual data and analytical methodologies:

The department is proposing this rule to update existing rules and create other rules in light of 2007 Wisconsin Act 131, and in order to reflect current interpretations of existing statutes.

9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:

This rule does not have an effect on small businesses because private employers and their employees do not participate in, and are not covered by, the Wisconsin Retirement System.

10. Anticipated costs incurred by private sector

None.

11. Statement of effect on small business:

The rule has no effect on small businesses.

Regulatory Flexibility Analysis:

The proposed rule has no significant effect on small businesses because only governmental employers and their employees may participate in the benefit programs under ch. 40 of the statutes administered by the Department of Employee Trust Funds.

Fiscal Estimate:

The proposed rule has no direct fiscal impact. The proposed rule generates no revenues for any employer. The proposed rule itself has no effect on the fiscal liabilities of any county, city, village, town, school district, technical college district or sewerage. The rule has no state fiscal effect during the current biennium and no fiscal impact on state funds.

Text of Rule

SECTION 1. ETF 10.01 (3o) is created to read:

ETF 10.01 (3o) “Minimum retirement age” means the earliest age at which a person may qualify to receive a regular, non-disability annuity or a lump sum payment in lieu of an annuity from the Wisconsin retirement system.

Note: The term “minimum retirement age” currently is not used in ch. 40, Stats. or ETF administrative rules. The term is defined in this rule to be consistent with s. 40.23 (1) (a) (intro.), Stats., which describes the earliest age at which a retirement annuity may be taken.

SECTION 2. ETF 10.01 (6m) is created to read:

ETF 10.01 (6m) “Surviving Spouse” means the spouse to whom the deceased was married at the time of death. For purposes of determining a beneficiary under s. 40.02 (8) (a) 2., Stats., a judgment, order or decree of divorce, legal separation or annulment of the marriage terminates the marital relationship.

Note: 2007 Wis. Act 131 deleted the terms “widow or widower” from s. 40.08 (8) (a) 2., Stats., and replaced them with the term “surviving spouse.” This rule provides a definition for “surviving spouse.” The Wisconsin Retirement System (WRS) has allowed courts to order the division of WRS benefits in the property division associated with a legal separation because a legal separation is a termination of the marriage, at least for property division purposes. This treatment of the beneficiary definition is in conformity with that interpretation.

SECTION 3. ETF 10.12 (1) (b) and (d) and (2) (a) (b) and (e) are amended to read:

ETF 10.12 (1) (b) The separate retirement system may designate any portion of its deposit for investment in the variable retirement investment trust. Deposits shall be invested in the fixed core retirement trust unless otherwise designated.

ETF 10.12 (1) (d) Deposits in the fixed core and variable retirement investment trusts shall be accepted on the last working day of the month only, even if actually received earlier. Each investment shall be effective the last day of the month for purposes of investment valuation.

ETF 10.12 (2) (a) The current market values of the fixed core and variable retirement investment trusts shall be determined as of the close of the last calendar day of the month.

ETF 10.12 (2) (b) The market gain or loss of the fixed core and variable retirement investment trusts shall each be determined for the month, net of administrative and investment costs.

ETF 10.12 (2) (e) The fixed core or variable retirement investment trust's average daily net assets available for investment during the month shall be calculated as the sum of its daily beginning asset balances divided by the number of calendar days in the month.

Note: This rule replaces the term "fixed", when referring to the retirement investment trust, with the term "core" when referring to that retirement investment trust. 2005 Wis. Act 153 changed the name of the Fixed Fund to the Core Fund. This rule replaces the term "fixed" with the term "core" wherever it appears in the ETF administrative rules, specifically in ss. ETF 10.12 (1) (b) and (d) and (2) (a) (b) and (e); 10.25 (intro.), (1) (a) and (b), (2), (3) (intro.), (b), (c) and (d) and (4); 10.30 (4) (a) and (b), (5) (a) 1., 2., 3. b., and (f); 11.16 (2) (a); 20.23 (2); and 20.25 (intro.), (1) (a) and (2).

SECTION 4. ETF 10.25 (intro.), (1) (a) and (b), (2), (3) (intro.), (b), (c) and (d) and (4) are amended to read:

ETF 10.25 Fixed Core retirement investment trust participation in the variable retirement investment trust. The fixed core retirement investment trust may invest in the variable retirement investment trust subject to the following:

ETF 10.25 (1) (a) All investments in common and preferred stock by the fixed core retirement investment trust and the variable retirement investment trust shall be made through the combined stock fund account.

ETF 10.25 (1) (b) The trusts shall transfer funds to be invested in common and preferred stocks to the combined stock fund account. In exchange, the fixed core retirement investment trust and variable retirement investment trust shall receive shares in the combined stock fund.

ETF 10.25 (2) INVESTMENT OF COMBINED STOCKS. All funds received in the combined stock fund from the fixed core retirement investment trust and the variable retirement investment trust shall be used to invest in common or preferred stocks or the state investment fund.

ETF 10.25 (3) EARNINGS DISTRIBUTIONS. Earnings shall be distributed from the combined stock fund to the fixed core retirement investment trust and the variable retirement investment trust according to the following:

ETF 10.25 (3) (b) As of the last day of each month the combined stock fund shall distribute to the fixed core retirement investment trust and the variable retirement investment trust all income recorded for that month including interest received, dividends received, gain or loss realized on the sale of investments and the unrealized gain or loss

recognized on the adjustment of investment book value to market value. Following these distributions the unit value of shares in the combined stock fund shall be one dollar.

ETF 10.25 (3) (c) For any month, the distribution of income between the fixed core retirement investment trust and the variable retirement investment trust shall be based on the ratio of the relative number of combined stock fund shares held by each trust as of the first day of that month to the total number of combined stock fund shares outstanding.

ETF 10.25 (3) (d) Monthly distributions from the combined stock fund to the fixed core retirement investment trust resulting from gains or losses realized on the sale of investments or unrealized appraisal gains or losses shall be transferred to the transaction amortization account. Distributions resulting from all other sources shall be recognized as current income to the fixed core retirement investment trust in the month of distribution.

ETF 10.25 (4) WITHDRAWALS. The fixed core retirement investment trust or the variable retirement investment trust may withdraw funds from the combined stock fund as of the first day of any month. The withdrawal shall be accomplished by selling combined stock fund shares to the combined stock fund. Withdrawals made after the first day of any month shall be deemed to have been made on the first day of that month for purposes of distributing income at the end of that month.

SECTION 5. ETF 10.30 (4) (a) and (b), (5) (a) 1., 2., 3. b., and (f) are amended to read:

ETF 10.30 (4) RETROACTIVE CONTRIBUTIONS. (a) Retroactive interest credited to contributions for late-paid earnings shall be credited at the fixed core effective rates as provided in s. 40.06 (5), Stats.

ETF 10.30 (4) (b) Late-paid and other retroactive contributions shall be deposited in the fixed core and variable trust accounts according to the participant's variable participation status at the time the contributions are deposited, regardless of the participant's variable participation status in the annual earnings period to which the contributions may be attributed for other purposes.

ETF 10.30 (5) TERMINATING PARTICIPATION IN THE VARIABLE DIVISION. (a) A participant may elect to terminate participation in the variable division and transfer the participant's variable division contributions to the fixed core division on one of the following bases:

ETF 10.30 (5) (a) 1. For future contributions only: Effective as of the December 31 after the date on which the department receives an election to terminate participation in the variable division, all future contributions shall be deposited in the fixed core division.

ETF 10.30 (5) (a) 2. An unconditional basis: Effective as of the December 31 after the date on which the department receives an election to terminate participation in the variable division, all future contributions shall be deposited in the fixed core division and all variable contributions and accrued gain or loss shall be transferred to the fixed core division.

ETF 10.30 (5) (a) 3. b. For all accounts from which an annuity is not being paid, effective on the first January 1 after the department receives the election when the condition under s. 40.04 (7) (a) 2., Stats., is satisfied. As of the first January 1 after the Department receives the election, all future contributions shall be deposited in the fixed core division. As of the first January 1 when the condition under s. 40.04 (7) (a) 2., Stats., is satisfied, all variable contributions and accrued gain or loss shall be transferred to the fixed core division.

ETF 10.30 (5) (f) For an account or annuity that includes additional contribution, when an election to terminate participation in the variable division pursuant to s. 40.04 (7) (a) 1. or 2., Stats., is made by an alternate payee, beneficiary, named survivor, or participant as defined in s. 40.02 (2m), (8), (41r) and (45), Stats., the determination of whether the variable contributions and accrued gain or loss shall be transferred to the fixed core division shall be based on an evaluation of the combined total of the required and additional contributions and shall be effective as prescribed in this section.

SECTION 6. ETF 10.70 (4) is amended to read:

ETF 10.70 (4) In case of death, disabling injury or disease, disclosure of individual personal information shall be made only to the legal representative of the individual whose record is the subject of the inquiry, a proper beneficiary of the deceased under s. 40.02 (8), Stats., as identified by the department, or the duly authorized representative of the beneficiary or to the legal representative of the individual or the deceased individual's estate. ~~whose record is the subject of inquiry.~~

Note: The definition of "beneficiary" was affected by 2007 Wis. Act 131. The existing administrative rules using that term were reviewed in order to ensure that the use of the term remained logical, correct and consistent with the new definition. While conducting that review, the department located three provisions that needed to be amended: ss. ETF 10.70 (4), 10.70 (5) (b) 1. and 20.04 (2). This rule amends the current rule allowing disclosure of confidential personal information in case of death, disabling injury or disease, to clarify that disclosure to a beneficiary may be made only after the participant has died, since only then can the actual beneficiary be determined. The amendment will also help safeguard the confidential information of living participants.

SECTION 7. ETF 10.70 (5) (b) 1. is amended to read:

ETF 10.70 (5) (b) 1. Upon request, to the personal representative of the individual's estate, to ~~a~~ the beneficiary of the individual under s. 40.02 (8), Stats., as

identified by the department, or to the duly authorized representative of the personal representative's representative or the beneficiary's duly authorized representative that beneficiary;

Note: The definition of “beneficiary” was affected by 2007 Wis. Act 131. The existing administrative rules using that term were reviewed in order to ensure that the use of the term remained logical, correct and consistent with the new definition. While conducting that review, the department located three provisions that needed to be amended: ss. ETF 10.70 (4), 10.70 (5) (b) 1. and 20.04 (2).

This rule amends the current rule allowing disclosure of a deceased individual’s confidential personal information to clarify that the persons who may request that information are the personal representative of the estate, the decedent’s beneficiary or a duly authorized representative of either of them.

SECTION 8. ETF 11.16 (2) (a) is amended to read:

ETF 11.16 (2) (a) Treat the overpayment as a separate account, participating in the variable and fixed core rate trusts to the same extent as the participant, unless another treatment is expressly provided by ch. 40, Stats.

SECTION 9. ETF 20.025 is created to read:

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.

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. 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.

SECTION 10. ETF 20.03 (2) (intro.) is amended to read:

ETF 20.03 (2) For purposes of determining maximum benefits under s. 40.23 (2), Stats., and integrated 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 updates the last remaining reference in the administrative rules to an "integrated" annuity benefit.

SECTION 11. ETF 20.03 (2) (bm) is created to read:

ETF 20.03 (2) (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 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.

SECTION 12. ETF 20.03 (4) is created to read:

ETF 20.03 (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 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.

SECTION 13. ETF 20.04 (2) (b) to (g) are amended to read:

ETF 20.04 (2) (b) The participant may ~~name designate~~ a ~~secondary~~ 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.

ETF 20.04 (2) (c) ~~The participant, or in the event of the death of the participant,~~ 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. 40.08 (a) 1., Stats., and thereafter at any time change the his or her designation of the secondary beneficiary of any remaining guaranteed monthly payments.

ETF 20.04 (2) (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 ~~secondary named survivor's designated~~ beneficiary, or in the absence of a secondary designated beneficiary or the death of the secondary beneficiary 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.

ETF 20.04 (2) (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 ~~secondary participant's designated~~ beneficiary, or in the absence of a secondary beneficiary designation or the death of all the secondary beneficiary 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.

ETF 20.04 (2) (f) In the event of the death of the ~~secondary~~ 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 ~~secondary beneficiary's named~~ designated beneficiary, or in the absence of a beneficiary designation or the death of all the secondary beneficiary's named beneficiary designated beneficiaries prior to the death of the ~~secondary~~ beneficiary, the then present value of the annuity shall be paid under the ~~secondary~~ beneficiary's standard sequence as set forth in s. 40.02 (8) (a) 2., Stats.

ETF 20.04 (2) (g) In the event of the death of both the named survivor and ~~secondary beneficiary~~ 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 amends the current rule describing the joint-and-surviving annuity option with 180-payment guarantee to use the term “beneficiary” correctly.

SECTION 14. ETF 20.04 (4) is amended to read:

ETF 20.04 (4) ~~If the participant's or alternate payee's age on the birthday which occurs during the year that the annuity begins is 72 or more, a~~ A life annuity with a number of guaranteed payments equal to the number of full calendar months in the life expectancy ~~for that age of the annuitant~~ as determined under Table V of 26 CFR 1.72-9 as in effect on ~~January 1, 1997~~ the date when the annuity begins.

Note: This rule 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.

SECTION 15. ETF 20.045 is created to read:

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 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.

SECTION 16. ETF 20.07 (6) is amended to read:

ETF 20.07 (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 waiver effective date may not be later than the first day of the second month which begins after the deadline to request cancellation of lump sum benefits specified in s. ETF 20.20 (3) or (4).~~ 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 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.

SECTION 17. ETF 20.17 (4) (d) 2. (intro.) and g. is amended to read:

ETF 20.17 (4) (d) 2. (intro.) 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 ~~shall~~ may include, without limitation:

ETF 20.17 (4) (d) 2. 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 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.

SECTION 18. ETF 20.18 (9) is amended to read:

ETF 20.18 (9) Nothing in this section shall prohibit the department from refunding payments which are in excess of the limits on contributions to qualified retirement plans established under section 415 of the internal revenue code, ~~as defined in s. 71.01 (6), Stats.~~, and reducing the creditable service granted accordingly.

Note: This rule amends ss. ETF 20.18 (9), 60.60 (2) (h) and 60.60 (8) to conform to the definition of “internal revenue code” in s. 40.02 (39m), Stats., added by 2007 Wis. Act 131 by deleting the former reference to s. 71.01 (6), Stats. Section ETF 10.01 (intro.) already provides that definitions in s. 40.02, Stats., apply throughout all ETF chapters.

SECTION 19. ETF 20.21 is created to read:

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 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.

SECTION 20. ETF 20.23 (2) is amended to read:

ETF 20.23 (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 fixed core annuity in the normal form increased by any dividends granted prior to termination of the original annuity.

SECTION 21. ETF 20.25 (intro.), (1) (a) and (2) are amended to read:

ETF 20.25 Fixed Core and variable annuity changes. Annuity changes shall be made as follows:

ETF 20.25 (1) (a) Except as otherwise provided in par. (b), a fixed 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 fixed 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.

ETF 20.25 (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 fixed core annuity in the following year.

SECTION 22. ETF 20.30 is amended to read:

ETF 20.30 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 per in a month, and if ~~the~~ that underpayment ~~continues~~ is uncorrected for 12 or more ~~monthly payments~~ months, ~~then~~ the payment to the annuitant to correct the underpayment shall include interest ~~equal to~~ at 0.4% of the cumulative underpayment amount multiplied by the number of monthly payments in which the annuity was underpaid 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 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.

SECTION 23. ETF 20.37 (2) is created to read:

ETF 20.37 (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.

- e. Publish the participant's name in the official state newspaper and on the department's website to solicit information about beneficiaries.

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 establishes what will be considered to be reasonable efforts by the department to locate the potential beneficiary.

SECTION 24. ETF 20.39 is created to read:

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) to the department of

revenue and notify the payee of the amount withheld.

(c) 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 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.

SECTION 25. ETF 52.04 (2) is amended to read:

ETF 52.04 (2). The department may request any income or benefit information, or any information concerning a person's marital status, which it considers to be necessary to determine the amount of each monthly benefit payable under s. 40.65, Stats., and its effective date. The department ~~shall~~ may require a participant receiving duty disability benefits to submit a certified copy of his or her ~~most recent~~ state or federal income tax return ~~annually~~.

Note: This rule amends s. ETF 52.04 (2) to conform to the treatment of s. 40.65 (3) by 2007 Wis. Act 131 by removing the mandate for the department to obtain a certified copy of each duty disability recipient's tax return each year and treating a failure to provide a tax return, if requested, in the same manner as other refusals to provide requested information.

SECTION 26. ETF 60.53 (1) (c) is amended to read:

ETF 60.53 (1) (c) If the beneficiary submits a waiver of a lump sum benefit under s. 40.74 (2), Stats., and the department receives it on or before the deadline specified in s. ETF 60.51 (2), the department shall defer automatic distribution of the benefit during

the waiting period before the waiver effective date. ~~The waiver effective date may not be later than the first day of the second month which begins after the deadline specified in s. ETF 60.51 (2).~~ Any new beneficiary who becomes eligible for a continuation of the monthly payments as a result of a waiver shall be granted the period specified in sub. (1) to apply for continuation of the monthly payments.

Note: This rule 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.

SECTION 27. ETF 60.60 (2) (h) is amended to read:

ETF 60.60 (2) (h) "Long-term care insurance" means insurance which is provided under s. 40.55, Stats., and which qualifies as an accident and health plan under section 106 of the internal revenue code ~~as defined in s. 71.01 (6), Stats.~~

Note: This rule amends ss. ETF 20.18 (9), 60.60 (2) (h) and 60.60 (8) to conform to the definition of "internal revenue code" in s. 40.02 (39m), Stats., added by 2007 Wis. Act 131 by deleting the former reference to s. 71.01 (6), Stats. Section ETF 10.01 (intro.) already provides that definitions in s. 40.02, Stats., apply throughout all ETF chapters.

SECTION 28. ETF 60.60 (8) (a) is amended to read:

ETF 60.60 (8) (a) The moneys credited to the conversion account may only be used to provide health or long-term care insurance premiums or death benefits. The insured may not receive the balance in the conversion account as a living benefit or in any form which would be included in the insured's gross income under applicable provisions of the internal revenue code ~~as defined in s. 71.01 (6), Stats., or of the temporary or permanent federal regulations.~~

Note: This rule amends ss. ETF 20.18 (9), 60.60 (2) (h) and 60.60 (8) to conform to the definition of "internal revenue code" in s. 40.02 (39m), Stats., added by 2007 Wis. Act 131 by deleting the former reference to s. 71.01 (6), Stats. Section ETF 10.01 (intro.) already provides that definitions in s. 40.02, Stats., apply throughout all ETF chapters.

(end of rule text)



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE **09-057**

AN ORDER to renumber and amend ETF 10.01 (9); to amend ETF 10.12 (1) (b) and (d) and (2) (a), (b), and (e), 10.15 (intro.), (1) (a) and (b), (2), (3) (intro.), (b), and (c), and (d), and (4), 10.30 (4) (a) and (b), (5) (a) 1., 2., and 3. b. and (f), 10.70 (4) and (5) (b) 1., 11.16 (2) (a), 20.03 (2) (intro.), 20.04 (2) (b) to (g) and (4), 20.07 (6), 20.17 (4) (d) 2. (intro.), and g., 20.18 (9), 20.23 (2), 20.25 (intro.), (1) (a), and (2), 20.30, 52.04 (2), 60.53 (1) (c), and 60.60 (2) (h) and (8); and to create ETF 10.01 (3o) and (3r), 20.025, 20.03 (2) (bm) and (4), 20.045, 20.21, 20.37 (2), and 20.39, relating to technical and minor substantive changes in existing ETF administrative rules.

Submitted by **DEPARTMENT OF EMPLOYE TRUST FUNDS**

07-31-2009 RECEIVED BY LEGISLATIVE COUNCIL.

08-13-2009 REPORT SENT TO AGENCY.

RS:DWS

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 09-057

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008].

1. Statutory Authority

Section ETF 10.01 (3r) creates a definition of the term “per stirpes” to mean the modified per stirpes distribution described in s. 854.04 (2), Stats. Section 854.04 (1), Stats., describes the traditional per stirpes distribution of an estate and provides that this method applies if a statute calls for property to be distributed “per stripe.” Section 854.04 (2), Stats., describes the method of distribution if a statute calls for property to be distributed by “modified per stirpes.” Section 854.04 (2), Stats., states that ch. 854, Stats., applies to all statutes that transfer property at death. Since s. 40.02 (8) (a) 2., Stats., provides that in the circumstances described in that provision the state shares payable to the issue of a person will be determined “per stirpes,” what statutory authority exists for determining by rule the term “per stirpes” as used in s. 40.02 (8) (a) 2., Stats., really means “modified per stirpes” as used in s. 854.04 (2), Stats.?

It might be argued that, in spite of the statement of scope in s. 854.02, Stats., the distribution provisions in s. 854/04, Stats., do not directly affect the provisions of ch. 40., Stats., because ch. 854, Stats., is part of what used to be known as Wisconsin’s Probate Code and has no application outside of the probate setting. Then, the new definition in s. ETF 10.01 (3r) could be

described as merely adopting the language of s. 854.04 (2), Stats., rather than ignoring the language of ss. 854.02 and 854.04 (1), Stats. However, even if this argument is valid, what statutory authority exists for the department to alter the traditional notion of the term “per stirpes” by replacing it with a demonstrably different method of distribution under the term “modified per stirpes.”?

2. Form, Style and Placement in Administrative Code

a. In the rule preface statement of statutes interpreted, all of the statutes interpreted by the rule should be listed.

b. In the rule preface statement of statutory authority, the correct citation is “: ss. 40.03 (2) (i), (ig), and (i) 4., and 227.11 (2) (a), Stats.”

c. The rule preface description of related statutes or rules is not very helpful. If there are statutory or rule provisions that are directly related to the rule, they should be listed.

d. The rule preface plain language analysis should note that each individual SECTION of the rule contains a note that describes the action taken by the department.

e. In s. ETF 10.01 (3r), the first cross-reference should read “s. 40.02 (8) (a) 2., Stats.”

f. Section ETF 10.70 (4) should read, in its final form, as follows:

ETF 10.70 (4) In case of death, disabling injury or disease, disclosure of personal information shall be made only to one or more of the following:

(a) The legal representative. . . .

(b) The beneficiary of the deceased under s. 40.02 (8), Stats., as identified by the department.

(c) The duly authorized representative. . . identified in par. (b).

(d) The legal representative of the deceased individual’s estate.

g. In s. ETF 10.70 (5) (b) 1., the notation “, Stats.,” should be inserted after the reference “s. 40.02 (8).”

h. In s. ETF 20.03 (4), the two cross-references should read “s. 40.02 (33) (b) 1. or 2., Stats.” and ss. 40.23, 40.63, and 40.73 (1) (c), Stats.

i. In s. ETF 20.04 (2) (b), the notation “, Stats.,” should be inserted after the statutory cross-reference. [See also ss. ETF 20.04 (2) (c), 20.37 (2) (intro.), and 20.39 (2) (a).]

j. In s. ETF 20.045 (1), the first two cross-references should read “s. 40.25 (1) or (4) or 40.73 (1) (a), Stats.,” and “s. 40.24 (1) or 40.73 (3), Stats.,”.

k. In SECTION 18, the notation “intro.” Should be shown within parentheses both in the treatment section and in the text of the rule.

l. In s. ETF 20.37 (2) (intro.), the phrase “al of” should be inserted before the phrase “the following actions.” The subunits of sub. (2) should be renumbered as pars. (a) to (e). Finally,

newly numbered pars. (c) and (d) should read: “Contact a person who may be a beneficiary, if the department learns the name of that person.” and “Contact the employer of a person who may be a beneficiary, if the department learns the name of the employer.” [See also ss. 227.27 (1) and 990.001 (1), Stats.]

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. ETF 20.03 (4), delete “Calculating final average earnings for state elected officials.” The title is inconsistent with the other subsections of s. ETF 20.03 which do not contain titles.

b. In s. ETF 20.03 (4) (b), delete “sub. (1)” and substitute “par. (a).” It appears that this paragraph refers to the prior paragraph, not sub. (1).

c. In s. ETF 20.045, the note following should read: “This rule codifies the department interpretation that the deadline for making a change.....” Also, the note does not seem to describe sub. (3).

Response to Legislative Council Staff Recommendations

The DETF implemented all of the Legislative Council Staff recommendations contained in the Clearinghouse Report with one minor exception. Changes were made in form, style and placement in the administrative code as well as clarity, grammar, punctuation and use of plain language. However, comment “b” in the section regarding form, style and placement in the administrative code contains a reference to s. 40.03 “(i) 4.”, although there is no such reference in the statute. That change was not made. As concerns the recommendations concerning statutory authority, the DETF deleted section ETF 10.01 (3r) from the rule and will instead include the provision as part of a technical bill that the department will submit to the legislature.

List of Persons Appearing or Registering For or Against the Rules.

No persons registered either for or against the rule at the public hearing on September 10, 2009.

Summary of Comments Received at Public Hearing.

No person wished to testify concerning the rule. The record was held open for written comments until 4:30 p.m. on September 10, 2009, but no comments were received.

Modifications to Rule as Originally Proposed as a Result of Public Comments

None.

Modifications to the Analysis Accompanying the Proposed Rule.

None.

Modifications to the Initial Fiscal Estimate

None.

Board Authorization for Promulgation

This final draft report on Clearinghouse Rule #09-057 has been duly approved for submission to the Legislature, and for promulgation, by the Department of Employee Trust Funds, by the Group Insurance Board and Deferred Compensation Board at their meetings on November 10 and 17, 2009, respectively, as well as by the Employee Trust Funds Board, Wisconsin Retirement Board and Teachers Retirement Board at their meetings on December 3, 2009.

Effective Date

This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2), Stats.

Respectfully submitted,

DEPARTMENT OF EMPLOYEE TRUST FUNDS

David A. Stella
Secretary

Date: _____