

Clearinghouse Rule 11-041

**State of Wisconsin**  
**Department of Employee Trust Funds,**  
**Employee Trust Funds Board, Teachers Retirement Board**  
**and Wisconsin Retirement Board**

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**DRAFT REPORT ON CLEARINGHOUSE RULE**

**RULE** to amend administrative rule ETF 20.35 relating to the division of WRS accounts under a qualified domestic relations order (QDRO).

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Economic Impact Report.....NONE  
 Department of Administration s. 227.138 Report..... NONE  
 Energy Impact Report.....NONE

**Agency Person to be Contacted for Questions**

Please direct any questions about this rule-making to Lucas Strelow, Policy Analyst, Office of Policy, Privacy and Compliance, Department of Employee Trust Funds, P.O. Box 7931, Madison WI 53707. Telephone: (608) 267-0722. E-mail address: lucas.strelow@etf.state.wi.us.

**Statement Explaining Need for Rule**

This rule-making is needed to amend the existing qualified domestic relations order (QDRO) rule to incorporate language for QDROs from domestic partnerships, to address tax concerns under IRC S. 415(b), and to clarify and provide ETF with more flexibility in handling QDROs.

**Analysis Prepared by the Department of Employee Trust Funds**

1. Statutes Interpreted:  
ETF 20.35 relating to qualified domestic relations orders (QDROs); the division of WRS accounts and annuities.
2. Statutory Authority:  
Sections 40.03 (2) (i), (ig), (ir), (t), and 227.11 (2) (a)(intro), 1. to 3., Stats.
3. Explanation of Agency Authority:  
By statute, the ETF 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 rules that clarify the circumstances under which ETF will handle the division of WRS accounts and annuities.
5. Plain Language Analysis:  
These rule changes add language for domestic partner QDROs, address tax concerns under IRC S. 415(b), clarify procedure, and provide ETF with more

flexibility in handling QDROs received out of sequence. These changes include the following:

- In order to remain in compliance with 2009 Wisconsin Act 28, language must be added throughout ETF 20.35 to make QDROs applicable to domestic partnerships.
- Currently, ETF 20.35 has no procedure to follow when multiple QDROs are received out of sequence in relation to their decree date. In other words, if the department receives more than one QDRO awarding a portion of the participant's WRS account or annuity to different "alternate" payees, but the award received by ETF first was issued by the court on a later date than the other(s), ETF has no rule for choosing which payee should receive the award. The newly proposed rule, under ETF 20.35 (9), divides the account chronologically in the order in which the department receives the QDRO. This policy is meant to encourage the timely submittal of QDROs to ETF and to manage the inherent difficulty of payment of a QDRO received out of sequence.
- An amendment, under ETF 20.35 (3) (c) (5), is added to address add-on service for part-time non-teaching staff. Language governing creditable service for these individuals was not included in the previous rule.
- An amendment to the rule, under ETF 20.35 (8) (d), fills a gap in procedure regarding retroactive annuity payments. The rule clarifies that no interest is payable from ETF on retroactive annuity payments made to alternate payees for any months prior to ETF's receipt of a QDRO. No interest is due because the WRS account is divided only when the QDRO is received by ETF, rather than at the time of its decree date.
- An amendment, under ETF 20.35 (6) (c), changes the language to invalidate QDROs received after the alternate payee's date of death. Previously, language only invalidated a QDRO upon the participant's death.
- An amendment, under ETF 20.35 (8) (c), addresses retroactive corrections that result in a benefit below statutory thresholds. The amendment clarifies that retroactive corrections below the threshold are not payable.
- Finally, in order to ensure compliance with the Internal Revenue Code, an amendment to the code, ETF 20.35 (10), addresses how to apply IRC 415 (b) limits to the participant's and alternate payee's aggregate benefits. The department is given flexibility under the amendment to make necessary adjustments to the participant's and alternate payee's benefits on an equitable pro rata basis to assure tax compliance.

6. Summary of, and Comparison with, Existing or Proposed Federal Regulations:

There are no existing federal regulations that specifically address how public retirement plans are to administer domestic partner QDRO's. IRC 415 (b) limits are, however, one federal statutory limitation that the proposed rule change stands to address. The amendment is written to ensure continued compliance with these federal tax laws, which provide for a general dollar limit that the plan can pay an annuitant annually.

7. Comparison with Rules in Adjacent States

- Illinois – The State of Illinois does not have domestic partnerships, and the state's civil unions are not given pension rights. The State Retirement System of Illinois (SRS) does not include domestic partnership or civil union language in its QDRO rule. SRS also does not have a rule in place for multiple QDROs received out of sequence, nor does it have a rule addressing compliance with S. 415 (b) of the Internal Revenue Code regarding the aggregate benefits paid to participant and alternate payee.
- Iowa – Iowa allows same-sex marriage, but uses the term “*administrable domestic relations order*” or “*ADRO*” to govern a domestic relations order that divides the marital property of same gender spouses. The Iowa Public Employee Retirement System (IPERS) has incorporated the ADRO into its domestic relations order rule, primarily as an addition to existing language. IPERS does not have a rule in place for multiple QDROs (or ADROs) received out of sequence, nor does it have a rule addressing compliance with S. 415 (b) of the Internal Revenue Code regarding the aggregate benefits paid to participant and alternate payee.
- Michigan – Michigan's Constitution bans same-sex marriage and other kinds of same-sex unions. Domestic partnership language is not within the State Employees Retirement System of Michigan regulations on QDROs. The State Employees Retirement System of Michigan also does not have a rule in place for multiple QDROs received out of sequence, nor does it have a rule addressing compliance with S. 415 (b) of the Internal Revenue Code regarding the aggregate benefits paid to participant and alternate payee.
- Minnesota – Minnesota does not provide for domestic partnerships, and the Minnesota State Retirement System (MSRS) does not include language for them in its QDRO rule. MSRS also does not have a rule in place for multiple QDROs received out of sequence, nor does it have a rule addressing compliance with S. 415 (b) of the Internal Revenue Code regarding the aggregate benefits paid to participant and alternate payee.

8. Summary of Factual Data and Analytical Methodologies:

The proposed rule amendment is intended to make ETF's QDRO rule clearer and more flexible, as well as to bring it into closer harmony with state and federal statutes.

9. Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of Economic Impact Report:

The 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. Effect on small business:

There is no effect on small business.

11. Agency contact person:

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12. Proposed Effective Date:

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

13. Fiscal Estimate:

The rule will not have any fiscal effect on the administration of the Wisconsin Retirement System, nor will it have any fiscal effect on the private sector, the state or on any county, city, village, town, school district, technical college district, or sewerage districts.

14. Free Copies of Proposed Rule:

Copies of the proposed rule are available without cost from the Office of the Secretary, Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707-7931. The telephone number is: (608) 266-1071.

## Text of Proposed Rule

1   **Section 1.   ETF 20.35 (1) (b) and 20.35 (1) (c) are amended to read:**

2  
3   **ETF 20.35 (1) (b)** The purpose of this section is to specify how the  
4   department shall apply a valid QDRO to the participant's account or annuity  
5   or respond to an order which is not a valid QDRO.

6  
7   **ETF 20.35 (1) (c)** For purposes of ss. 40.02 (48m) and 40.08 (1m), Stats.,  
8   and this section, a marriage is terminated upon entry of a judgment, decree  
9   or order of divorce, annulment or legal separation. A domestic partnership  
10   as defined in s. 40.02 (21d), Stats., is terminated as provided in sub. ETF  
11   20.10 (3). A domestic partnership as defined in s. 770.01 (2) is terminated  
12   as provided in s. 770.12, Stats.

13  
14   **Section 2.   ETF 20.35 (2) and 20.35 (3) are amended to read:**

15  
16   **ETF 20.35 (2) DIVISION BY VALID QDRO.** Except as otherwise provided in  
17   sub. (6) or (7), upon receipt of a valid QDRO the department shall divide  
18   WRS accounts and annuities in accordance with the percentage awarded to  
19   the alternate payee in the valid QDRO, based on the date on which the  
20   marriage was terminated by a court judgment, decree or order or the  
21   domestic relationship was terminated as provided in sub. ETF 20.10 (3) or s.  
22   770.12, Stats. which includes the order to divide Wisconsin retirement  
23   system benefits and the date the valid QDRO was received by the  
24   department, as follows:

25  
26   (a) With respect to marriages terminated on or after January 1, 1982, and  
27   before April 28, 1990, the division shall be as provided in subs. (3) and (4),  
28   when a valid QDRO is received by the department after May 2, 1998.

29  
30   (b) With respect to marriages or domestic partnerships terminated before on  
31   or after April 28, 1990, the division shall be as provided in subs. (3) and (5).

32  
33   **Note:** ~~It was the department's intent for par. (b) to read as follows: "With~~  
34   ~~respect to marriages terminated on or after April 28, 1990, the division shall~~  
35   ~~be as provided in subs. (3) and (5)."~~ This language is consistent with the  
36   heading of s. ETF 20.35 (5), which reads: Marriages terminated on or after  
37   April 28, 1990."

38  
39   **ETF 20.35 (3) ALL QDRO DIVISIONS.** (a) *Percentages.* The percentage of  
40   the participant's account or annuity that is awarded to the alternate payee by  
41   a valid QDRO is limited to a percentage between zero percent (0%) and fifty  
42   percent (50%) expressed to no more than 2 decimal places. An otherwise  
43   valid QDRO with a percentage awarded to the alternate payee expressed to  
44   more than 2 decimal places may not be rejected for that reason alone, but  
45   the department shall round the percentage to 2 decimal places.

47 (b) *Debts of the participant.* Any debt, memorandum account or account  
48 receivable balance reflecting amounts owed by the participant to the  
49 department, the fund or any benefit plan, accrued as of the decree date and  
50 still outstanding at the time the account or annuity is divided, shall be divided  
51 between the participant and alternate payee in the same proportion as the  
52 participant's account or annuity.  
53

54 (c) *Dividing Wisconsin retirement system annuities.*

55  
56 1. 'Present actuarial values before and after division shall be equal.'  
57 An annuity shall be divided so that the actuarial present value of the  
58 undivided annuity is equal to the aggregate actuarial present values of  
59 the 2 separate annuities resulting from the division, ~~all calculated~~ as of  
60 the effective date of the division.  
61

62 2. 'Division of accelerated annuity option.' If the participant selected an  
63 accelerated payment option as provided in s. 40.24 (1) (e), Stats., or  
64 s. ETF 20.04 (3), and the participant's temporary annuity is still in  
65 force as of the effective date of the annuity division, then the  
66 department shall calculate the present value of both the temporary  
67 and life annuities using the actuarial tables in effect on the effective  
68 date of the annuity division. The department shall then divide the total  
69 present value based on the percentages specified in the QDRO and  
70 calculate separate annuities for the participant and alternate payee as  
71 specified in s. 40.08 (1m) (f) 2., Stats. If the participant or alternate  
72 payee provides a projection of his or her social security benefits at age  
73 62 from the social security administration, the department shall use  
74 ~~the~~ that projected social security amount to calculate the amount of  
75 the temporary annuity for that person. If no projection is supplied, then  
76 notwithstanding s. ETF 20.03 (2), the department shall assume that  
77 person's projected social security benefits at age 62 equals ~~the~~ that  
78 person's prorated portion of the participant's temporary annuity  
79 amount as of the effective date of the annuity division, calculated  
80 based on the respective percentages of the annuity being awarded to  
81 the participant and alternate payee. If the reduced annuity payable for  
82 life to the alternate payee or participant is below the threshold  
83 specified by s. ETF 20.05 (1), then that person shall receive an  
84 annuity in the same optional form originally selected by the participant,  
85 except that the temporary annuity option provided in s. 40.24 (1) (e),  
86 Stats., or s. ETF 20.04 (3) is not available.  
87

88 3. 'Disability annuities.' Upon division of a disability annuity calculated  
89 under the provisions of s. 40.63 (1) or (4), Stats., the alternate payee's  
90 annuity shall consist of a portion based on the participant's actual  
91 service and a portion based on the assumed service used to calculate  
92 the participant's disability annuity. The portion of the alternate payee's  
93 annuity based on the participant's assumed service and age shall  
94 cease upon the death of the alternate payee. Benefits payable upon  
95 the death of the alternate payee's shall be based on the guaranteed

96 portion of the alternate payee's annuity only. Once the participant's  
97 disability annuity has been divided, the termination or suspension of  
98 the participant's disability annuity or the death of the participant has no  
99 effect on the alternate payee's annuity. If the participant's disability  
100 annuity is subsequently terminated and the participant's account  
101 restored under the provisions of s. 40.63 (9) and (10), Stats., the  
102 contributions and service credited to the restored account shall be  
103 reduced by the same percentage awarded to the alternate payee by  
104 the valid QDRO.

105  
106 4. 'Actuarial adjustment for early retirement.' The actuarial reduction  
107 applied to the participant's and alternate payee's annuities as provided  
108 in s. 40.23 (2m) (f) and (fm), Stats., shall be calculated based on the  
109 participant's and alternate payee's actual ages on his or her  
110 respective annuity effective dates, using the creditable service that  
111 would otherwise have been credited to the participant's account on the  
112 respective annuity effective dates if the participant's creditable service  
113 had not been reduced per a valid QDRO.

114  
115 5. For the purposes of determining the amount of service used to  
116 calculate the alternate payee's actuarial reduction for early retirement  
117 under the provisions of s. 40.23 (2m) (fm), Stats., if the participant has  
118 part-time service in at least five of the ten annual earnings periods  
119 immediately preceding the annual earnings period in which the  
120 alternate payee's retirement benefit becomes effective or the date on  
121 which the participant terminated covered employment, whichever is  
122 earlier, the provisions of s. 40.23 (2m) (fm), Stats., shall apply. If the  
123 decree date is prior to July 1, 2009, the provisions of s. 40.23 (2m)  
124 (fm), Stats., in effect prior to that date shall apply.

125  
126 **Section 3. ETF 20.35 (4) (c) 3. is amended to read:**

127  
128 **ETF 20.35 (4) (c) 3.** If the participant's retirement annuity is a money  
129 purchase annuity calculated under the provisions of s. 40.23 (2) (c), (2m) (c)  
130 or (d), or (3), Stats., the portion of the participant's annuity awarded to the  
131 alternate payee shall be based on the ratio of the portion of the account  
132 balance awarded to the alternate payee as of the decree date including  
133 interest creditable through the day before the participant's annuity effective  
134 date, based on the percentage specified in the valid QDRO, divided by the  
135 total account balance used to calculate the participant's retirement annuity,  
136 with the quotient rounded to 2 decimal places.

137  
138 **Section 4. ETF 20.35 (5) and 20.35 (6) are amended to read:**

139  
140 **ETF 20.35 (5) MARRIAGES AND DOMESTIC PARTNERSHIPS**  
141 **TERMINATED ON OR AFTER APRIL 28, 1990.** (a) If the participant was not  
142 an annuitant on the decree date, the department shall divide the participant's  
143 account as provided in s. 40.08 (1m) (b) 1., (c), (d) and (f) 1., Stats., and sub.  
144 (3) (d), and as follows:



145  
146 1. The creditable service and amounts awarded to the alternate payee  
147 shall be in a separate account in the fund for the benefit of the  
148 alternate payee. After the division under this section, the alternate  
149 payee may apply for a separation benefit under s. 40.25 (2), Stats.,  
150 provided the application is received by the department prior to the  
151 date on which the participant would have met the minimum age  
152 requirement for a retirement annuity under s. 40.23, Stats., and  
153 payment of a separation benefit would comply with all provisions of  
154 the internal revenue code. After the date the participant reaches or  
155 would have reached the minimum retirement age, the alternate payee  
156 may only apply for retirement benefits under s. 40.23, 40.24, or 40.25  
157 (1), Stats.

158  
159 2. The participant shall ~~have~~ retain the remainder in his or her  
160 separate account under s. 40.04 (4) (a), Stats., unless the participant  
161 is an annuitant at the time of the division. If the participant is an  
162 annuitant when the division occurs, the participant's creditable service  
163 and account as of the decree date shall be reduced by the percentage  
164 awarded to the alternate payee. The balances shall then be brought  
165 forward to the effective date of the current annuity, including any  
166 contributions and service for periods after the decree date, and the  
167 annuity option chosen by the participant shall be recalculated. The  
168 amount by which the monthly annuity payments previously made to  
169 the participant exceed the participant's recalculated monthly  
170 entitlement for the same period shall be a balance due from the  
171 participant. This balance due shall be due from the participant and  
172 may be collected as provided in s. 40.08 (4), Stats., including by a  
173 reduction of the present value of the participant's annuity as reduced  
174 by the division, resulting in a recalculation and reduction of the  
175 participant's monthly annuity.  
176

177 **ETF 20.35 (6) INVALID QDRO.** (a) *Rejection and notice.* The department  
178 may not honor any order to divide Wisconsin retirement system benefits  
179 which it determines is not a valid QDRO as defined in s. 40.02 (48m), Stats.  
180 The department shall send written notice of its rejection of an order to the  
181 person ~~offering~~ submitting the order and to the participant and alternate  
182 payee if ~~that those person's name~~ persons' current names and ~~address is~~  
183 addresses are stated in the order or ~~is~~ are readily determinable from  
184 department records.  
185

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

194 the department, the restored account shall be divided according to the valid  
195 QDRO.

196  
197 (c) *Participant or alternate payee deceased.* An otherwise valid QDRO  
198 received after the participant's or alternate payee's date of death has no  
199 effect on the participant's account or annuity.

200  
201 **Section 5. ETF 20.35 (7) (a) is amended to read:**

202  
203 **ETF 20.35 (7) (a)** If the department rejects an order for the division of a  
204 participant's account and subsequently receives a an otherwise acceptable  
205 application from the participant for a benefit which would close the  
206 participant's account due to payment of a lump sum benefit, the department  
207 shall delay payment of the lump sum benefit until 30 days after the date the  
208 order for division was rejected. This paragraph applies only if the basis for  
209 the rejection was one or more of the following: 1. The order did not meet all  
210 of the requirements in s. 40.02 (48m), Stats. 2. The order received by the  
211 department was not a certified copy or an original, signed by the judge or a  
212 duly authorized family court commissioner.

213  
214 **Section 6. ETF 20.35 (8) is amended to read:**

215  
216 **ETF 20.35 (8) EFFECT OF POST-DECREE DATE CORRECTIONS AND**  
217 **ADJUSTMENTS.** (a) *Service purchased after decree date.* Credit for service  
218 purchased by the participant after the decree date in a valid QDRO may not  
219 be affected by that QDRO.

220  
221 (b) *Active military service.* If the department divided a participant's account  
222 per a valid QDRO without first receiving proof and certification of active  
223 military service, as provided in sub. (3) (d) 3., and the participant  
224 subsequently provides documentation of active military service and the  
225 certification on the form prescribed by the department, the department shall  
226 divide the ~~creditable~~ creditable for based on-services  
227 rendered prior to the decree date between the participant and alternate  
228 payee's accounts pursuant to the valid QDRO. Any resulting adjustments to  
229 the alternate payee's and participant's benefits shall be made retroactive to  
230 the respective benefit effective dates. The participant may not receive  
231 creditable military service for any active military service that would have been  
232 granted to the alternate payee had the participant submitted timely to the  
233 department the certification of active military service as provided in s. 40.02  
234 (48m) (f), Stats.

235  
236 (c) *Other corrections and adjustments directly affecting benefits.* The effect of  
237 any other corrections and adjustments to service, contributions, or interest  
238 earnings affecting the benefits the participant accrued as of the decree date,  
239 including corrections of administrative errors and corrections or adjustments  
240 of any factor affecting the calculation of an annuity to be divided, shall be  
241 divided between the participant and the alternate pursuant to the valid  
242 QDRO. The participant and alternate payee accounts or annuities shall be

243 adjusted accordingly. However, the department shall not adjust benefit  
244 amounts if the amount of the adjustment would be less than the thresholds  
245 specified in s. 40.08 (7) (a), Stats.

246  
247 (d) When a participant's annuity is divided as provided in par. (5) (b) and  
248 retroactive payments are due to an alternate payee, or when an alternate  
249 payee's annuity must be increased retroactively for any reason, no interest  
250 as specified in s. 40.08 (7) (c) is payable to the alternate payee for any  
251 monthly payments payable prior to the month in which the department  
252 received the valid QDRO.

253  
254  
255 **Section 7. ETF 20.35 (9) and 20.35 (10) are created to read:**  
256

257 **ETF 20.35 (9) MULTIPLE QDROS RECEIVED OUT OF SEQUENCE.** If the  
258 department receives more than one QDRO for a participant that each awards  
259 a portion of that participant's WRS account or annuity to a different alternate  
260 payee, the account or annuity shall be divided based on the chronological  
261 order in which the department receives the QDROs without regard to the  
262 chronological order of the decree dates. The alternate payee shall be  
263 awarded a percentage of the account value as of the decree date for the  
264 QDRO received first. If the department subsequently receives a QDRO with  
265 an earlier decree date, that QDRO shall have no effect on the portion of the  
266 participant's account or annuity awarded to the alternate payee in the QDRO  
267 received on an earlier date.

268  
269  
270 **ETF 20.35 (10) COMPLIANCE WITH SECTION 415(b) OF THE INTERNAL**  
271 **REVENUE CODE.** (a) The aggregate benefits paid to the participant and  
272 alternate payee shall not exceed the benefit limits under Section 415(b) of  
273 the Internal Revenue Code. The department shall make any necessary  
274 adjustments to the participant's and alternate payee's benefits on an  
275 equitable pro rata basis to assure compliance with Section 415(b) of the  
276 Internal Revenue Code. Benefits derived from employee contributions that  
277 are actually paid by the employee shall not be subject to the benefit  
278 limitations under this sub.

279  
280 (b) If the participant's retirement annuity has been divided per a QDRO under  
281 s. 40.08 (1m) (b) 2., Stats., any subsequent adjustments necessary for  
282 compliance with Section 415(b) of the Internal Revenue Code that result from  
283 either post-retirement annuity adjustments under s. 40.27 (2) or s. 40.28 (2),  
284 Stats., or from increases in the compensation limits specified in Section  
285 415(b) of the Internal Revenue Code, shall be prorated based on the  
286 percentage of the participant's account that was awarded to the alternate  
287 payee in the QDRO.

288  
289 (c) If the participant's account is divided as provided in pars. (3) (d) or (5) (a),  
290 any benefit adjustments required under Section 415(b) of the Internal  
291 Revenue Code shall be applied as follows.

292  
293 1. If the alternate payee's benefit becomes effective prior to the  
294 participant's benefit effective date:  
295

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

302  
303 b. Any subsequent benefit adjustments necessary for  
304 compliance with Section 415(b) of the Internal Revenue Code  
305 will be applied solely to the participant's benefits, and shall not  
306 affect the benefit amount payable to the alternate payee.

307  
308 2. If the participant's benefit becomes effective prior to the alternate  
309 payee's benefit effective date, or the participant's and alternate  
310 payee's benefits become effective on the same date:  
311

312 a. If the aggregate benefits that would be payable to both the  
313 participant and alternate payee on the participant's benefit  
314 effective date exceed the maximum benefits that would be  
315 payable to the participant under Section 415(b) of the Internal  
316 Revenue Code if the account had not been divided, the  
317 adjustment to participant's annuity shall be prorated based on  
318 the percentage of the participant's account that was not  
319 awarded to the alternate payee in the QDRO.

320  
321 b. When a benefit is subsequently paid to the alternate payee,  
322 the portion of the total adjustment necessary for compliance  
323 with Section 415(b) of the Internal Revenue Code that is  
324 applied to the alternate payee's benefits shall be prorated  
325 based on the percentage of the participant's account awarded  
326 to the alternate payee in the QDRO.

327  
328 3. If the participant's benefit effective date is on or after the alternate  
329 payee's benefit effective date as specified in subd. 2., and as a result  
330 of either post-retirement annuity adjustments under s. 40.27 (2) or s.  
331 40.28 (2), Stats., or of increases in the compensation limits specified  
332 in Section 415(b) of the Internal Revenue Code, subsequent benefit  
333 adjustments are necessary for compliance with Section 415(b) of the  
334 Internal Revenue Code, such adjustments shall be prorated based on  
335 the percentage of the participant's account that was awarded to the  
336 alternate payee in the QDRO.

337  
338 (d) For the purposes of determining the aggregate benefits payable to the  
339 participant and alternate payee under par. (b), the department shall:  
340

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

345  
346 2. If that total aggregate benefit amount is higher than the maximum  
347 benefits permitted under Section 415(b) of the Internal Revenue Code,  
348 the department shall reduce the aggregate benefits to the maximum  
349 amount payable under Section 415(b) of the Internal Revenue Code.  
350 The present value of that maximum benefit payable shall be divided  
351 between the participant and alternate payee in proportion to the  
352 percentage of the participant's account that was awarded to the  
353 alternate payee. The benefits payable to the participant and alternate  
354 payee shall then be adjusted as follows:

355  
356 a. If the alternate payee has received a lump sum benefit under  
357 s. 40.25 (1) or (2), Stats., the gross amount of the alternate  
358 payee's lump sum payment shall be subtracted from the  
359 present value of the participant's maximum benefit payable  
360 under Section 415(b) of the Internal Revenue Code calculated  
361 under par. (d). The present value of the benefit paid to the  
362 participant shall not exceed the remainder of the present value  
363 of that maximum benefit payable under Section 415(b) of the  
364 Internal Revenue Code.

365  
366 b. If the alternate payee has previously taken a monthly  
367 retirement annuity, the present value of the alternate payee's  
368 annuity as of the alternate payee's annuity effective date shall  
369 be subtracted from the present value of the participant's  
370 maximum benefit payable under Section 415(b) of the Internal  
371 Revenue Code. The present value of the benefit paid to the  
372 participant shall not exceed the remainder of the present value  
373 of that maximum benefit payable under Section 415(b) of the  
374 Internal Revenue Code.

375  
376 c. If the participant's benefit becomes effective prior to the  
377 alternate payee's benefit effective date, the present value of the  
378 benefit paid to the participant shall not exceed the maximum  
379 aggregate benefit calculated under par. (d) minus the present  
380 value of the benefit payable to the alternate payee as of the  
381 participant's annuity effective date.

382  
(END OF RULE TEXT)

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