

**Report From Agency**

**State of Wisconsin  
Department of Employee Trust Funds  
Employee Trust Fund Board  
Wisconsin Retirement Board  
Teachers Retirement Board  
Group Insurance Board**

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**FINAL DRAFT REPORT ON CLEARINGHOUSE RULE #12-054**

**An order to amend ETF 10.01 (3i), ETF 10.63 (1) (a) to (f), ETF 10.63 (2), and (3), and ETF 40.10 (1) (2) and (3) (e); to repeal and recreate ETF 20.015 (1) and (2); and to create ETF 10.86 relating to technical and minor substantive changes in existing ETF administrative rules.**

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**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.wi.gov](mailto:david.nispel@etf.wi.gov).

**Statement Explaining Need for Rule**

This rule-making is needed to make technical updates to existing ETF rules, create consistency with statutes recently amended by the legislature, and to make other minor substantive changes.

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

1. Statutes interpreted:  
Sections 40.01 (1), 40.01 (2), 40.02 (55), 40.05 (1), 40.05 (2), 40.06 (1), 40.06 (2), 40.06 (3), 40.22 (1), 40.22 (2), 40.22 (2m), 40.22 (2r), 40.22 (3), 40.51 (7), Stats.
2. Statutory authority:  
Sections 40.03 (2) (i), (ig), 40.51 (7) (a), and 227.11 (2) (a), 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.

Section 40.51 (7) (a) allows the department to establish by rule different eligibility standards or contribution requirements for any employer, other than the state, including an employer that is not a participating employer, that elects to offer to all of its employees a health care coverage plan through a program offered by the group insurance board.

In addition, 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 statutes or rules:  
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 make them conform with 2011 Wisconsin Acts 10, 32 and 133, to reflect current practices of the department, to provide flexibility regarding due dates for filing reports with the department, and to make other technical changes.
6. Summary of, and comparison with, existing or proposed federal statutes and 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 interpretations of existing statutes.
9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:  
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. Please see attached economic impact analysis.
10. Effect on small business:  
The rule has no effect on small businesses.

**Regulatory Flexibility Analysis:**

The proposed rule has no 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 and Economic Impact Statement:**

Please see the attached Fiscal Estimate and Economic Impact Statement.

**Text of Proposed Rule**

**SECTION 1.** ETF 10.01 (3i) is amended to read:

(3i) "Maximum voluntary contribution" means the total amount eligible under section 415 (c) of the internal revenue code to be contributed to the Wisconsin retirement system in a calendar year by or on behalf of a participating employee, less all ~~benefit adjustment contributions and~~ required and employer-paid additional contributions which are includable in the limits of section 415 (c) of the internal revenue code, as determined by the department.

**SECTION 2.** ETF 10.63 (1) (a) is amended to read:

**ETF 10.63 Due dates. (1)** (a) Contribution reports and remittances from state departments, excluding university and other state department reports which pertain to teachers only, required in the administration of subch. II of ch. 40, Stats., are due on the 20th day of the month following the reporting month or on a day determined by the secretary and communicated to employers by ETF through email updates, employer bulletins or other means of communication.

**SECTION 3.** ETF 10.63 (1) (b) is amended to read:

(b) Contribution reports and remittances other than those specified in par. (a) required in the administration of subch. II and ch. 40, Stats., are due on the last working day, excluding Saturdays, Sundays, and holidays when the state offices are closed, of the month following the end of the reporting month, or on a day determined by the secretary and communicated to employers by ETF through email updates, employer bulletins or other means of communication.

**SECTION 4.** ETF 10.63 (1) (c) is amended to read:

(c) Detailed annual earnings reports required in the administration of subch. II of ch. 40, Stats., are due on the last working day, excluding Saturdays, Sundays, and holidays when the state offices are closed, of the calendar month following the end of the calendar year, or on a day determined by the secretary and communicated to employers by ETF through email updates, employer bulletins or other means of communication.

**SECTION 5.** ETF 10.63 (1) (d) is amended to read:

(d) Premium and coverage reports and remittances required in the administration of subchs. IV and VI of ch. 40, Stats., are due on the 20th day of the calendar month preceding the coverage month or on a day determined by the secretary and communicated to employers by ETF through email updates, employer bulletins or other means of communication.

**SECTION 6.** ETF 10.63 (1) (e) is amended to read:

(e) Premium and coverage reports and remittances required in the administration of subch. V of ch. 40, Stats., are due as follows:

1. For state agencies, on the 20th day of the calendar month following the reporting period or on a day determined by the secretary and communicated to employers by ETF through email updates, employer bulletins or other means of communication.
2. For local government employers, on the 20th day of the calendar month preceding the month of coverage or on a day determined by the secretary and communicated to employers by ETF through email updates, employer bulletins or other means of communication.

**SECTION 7.** ETF 10.63 (1) (f) is amended to read:

(f) Reduction reports and remittances required in the administration of subch. VIII of ch. 40, Stats., are due within 2 working days after the date on which the regular employee payroll payments are issued, excluding Saturdays, Sundays, and holidays when the state offices are closed, or on a day determined by the secretary and communicated to employers by ETF through email updates, employer bulletins or other means of communication.

**SECTION 8.** ETF 10.63 (2) is amended to read:

**(2)** Whenever the 20th day of the calendar month or a day determined by the secretary referred to in sub. (1) falls on a Saturday, Sunday or holiday on which state offices are closed, a report or a remittance received on the first working day after the 20th day of the calendar month or a day determined by the secretary referred to in sub. (1) shall be deemed to have been received on a timely basis.

**SECTION 9.** ETF 10.63 (3) is amended to read:

(3) The secretary may waive charges and interest calculated under s. 40.06 (3), Stats., on any employer's reports and remittances, which are received within one day of the due date specified under subs. (1) and (2) and announced to employers by ETF or on a day determined by the secretary referred to in sub. (1) and (2) if he or she determines that the waiver will not impair the objective of encouraging timely receipt of contributions and remittances.

**SECTION 10.** ETF 10.86 is created to read:

**ETF 10.86 Electronic deposits.**

Any member, beneficiary, or distributee of any estate receiving benefits payable under any of the benefit plans administered by the department may have the benefits paid via electronic deposit into a financial institution account owned by a representative payee, nursing home, religious order, or other entity designated by the member, beneficiary, or distributee of any estate and approved by the department.

**SECTION 11.** ETF 20.015 (1) and (2) are repealed and recreated to read:

**ETF 20.015 Participating employees.**

(1) PARTICIPATING EMPLOYEES: one-third of full-time employment.

(a) *Non-teachers.* Except as provided in par. (b) and (c), for purposes of s. 40.22, Stats., 600 hours of employment with an employer in one year is considered one-third of full-time employment.

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

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

(2) PARTICIPATING EMPLOYEES: two-thirds of full-time employment.

(a) *Non-teachers.* Except as provided in par. (b) and (c), for purposes of s. 40.22, Stats., 1200 hours of employment with an employer in one year is considered two-thirds of full-time employment.

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

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

**SECTION 12.** ETF 40.10 (1) is amended to read:

- (1) An employee of an employer, other than the state, shall be eligible for health insurance under s. 40.51(7), Stats., if requirements of ss. 40.02(46) and 40.22, Stats., or of s. 40.19(4)(a), Stats., are satisfied. An employee of an employer that is not a participating employer shall be eligible for health insurance under s. 40.51(7), Stats., if the requirements set forth in s. 40.02(28) are satisfied and the following requirements are met:
- (a) The employee works at least two-thirds of what is considered full-time employment by the department.
  - (b) Employment in the employee's position is expected to last at least one year.

**SECTION 13.** ETF 40.10 (2) is amended to read:

- (2) As provided in a collective bargaining agreement under subch. IV of ch. 111, the employer, including an employer that is not a participating employer, shall pay an employer contribution toward the gross health insurance premium based on the lowest cost qualified plan in the service area of the employer, as follows:

**SECTION 14.** ETF 40.10 (3) (e) is amended to read:

- (e) The group insurance board, with the advice of the actuary, may classify a health plan offered to local government employees, including local government employees of employers who are not participating employers, in a tier that is different than that of the health plan of the same name as offered to state employees.

**SECTION 15. 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) (intro.), Stats.



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FORM 2

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**WISCONSIN LEGISLATIVE COUNCIL  
RULES CLEARINGHOUSE**

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Scott Grosz and Jessica Karls-Ruplinger  
*Clearinghouse Co-Directors*

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 12-054**

AN ORDER to amend ETF 10.01 (3i), 10.63 (1) (a) to (f), (2) and (3), and 40.10 (1), (2) and (3) (e); to repeal and recreate ETF 20.015 (1) and (2); and to create ETF 10.86, relating to technical and minor substantive changes in existing ETF administrative rules.

Submitted by **DEPARTMENT OF EMPLOYEE TRUST FUNDS**

12-17-2012 RECEIVED BY LEGISLATIVE COUNCIL.

01-17-2013 REPORT SENT TO AGENCY.

SG: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



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**WISCONSIN LEGISLATIVE COUNCIL  
RULES CLEARINGHOUSE**

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**CLEARINGHOUSE RULE 12-054**

**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 November 2011.]**

**2. Form, Style and Placement in Administrative Code**

- a. In the introductory clause, the enumeration of provisions treated by the proposed rule should be revised as follows: “AN ORDER to amend ETF 10.01 (3i), 10.63 (1) (a) to (f), (2) and (3), and 40.10 (1), (2) and (3) (e); to repeal and recreate ETF 20.015 (1) and (2); and to create ETF 10.86”.
- b. Under the statutes interpreted section of the analysis, the sections described should be concluded with “, Stats.”.
- c. Throughout the proposed rule, the use of underscores should be reviewed with regard to indicating commas and periods as new or old material.
- d. In SECTIONS 8 and 9, would the rule text be more easily clarified by reference to previous subsections, rather than referring to the lengthy subject created by the department’s amendment?
- e. IN SECTION 10, the creation of s. ETF 10.86 should include a title (perhaps “Electronic Deposits”) and the paragraph should be preceded by the selected title.
- f. The form of titles in SECTION 11 should conform to s. 1.05, Manual. A period should follow s. ETF 20.015 (title).
- g. The note in s. ETF 40.10 (1) (a) is confusing. The paragraph refers to two-thirds of full-time employment; the note refers to the definition of full-time employment. The department

may wish to clarify the note by indicating that two-thirds of full-time employment is equal to  $(2/3) \times (1904)$ .

h. The rule text should include an effective date section. [s. 1.02 (4), Manual.]

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

The second "2." in s. ETF 10.63 (1) (e) 2. is duplicative and should be eliminated.

### **Response to Legislative Council Staff Recommendations**

ETF implemented all of the Legislative Council Staff recommendations contained in the Clearinghouse Report. As concerns recommendation 2. g., ETF decided not to include the note in the rule in order to prevent any confusion.

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

No persons appeared or registered either for or against the rule at the public hearing on January 31, 2013.

### **Summary of Public Comments.**

No person wished to testify concerning the rule. The record was held open for written comments until 4:30 p.m. on January 31, 2013, 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 #12-054 has been duly approved for submission to the Governor and Legislature, and for promulgation by the Department of Employee Trust Funds, by the Employee Trust Funds Board, Wisconsin Retirement Board and Teachers Retirement Board at their meetings on March 7, 2013, as well as by the Group Insurance Board at its meeting on May 21, 2013.

### **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) (intro.), Stats.

Respectfully submitted,

**DEPARTMENT OF EMPLOYEE TRUST FUNDS**

\_\_\_\_\_  
Robert J. Conlin  
Secretary

Date: \_\_\_\_\_