

**STATE OF WISCONSIN
DEPARTMENT OF EMPLOYEE TRUST FUNDS**

FINAL DRAFT REPORT ON CLEARINGHOUSE RULE 00-022

AN ADMINISTRATIVE RULE creating ETF 10.01 (1k) and creating ETF 20.19, Wisconsin Administrative Code, relating to the Department's interpretation of what Wisconsin Retirement System creditable service is considered to be performed before January 1, 2000 vs. considered to be performed on or after that date under 1999 Wis. Act 11. A public hearing on this proposed rule has been scheduled for February 29, 2000.

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Agency Person to Be Contracted for Substantive Questions:

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Statement Explaining Need for Rule:

1999 Wisconsin Act 11 (Act 11) provides a higher formula factor for service performed before January 1, 2000. Act 11 contains specifications how military service and certain purchased service will be allocated to pre-2000 vs. post-1999 service, but needs further clarification or is silent for certain types of service. This rule is necessary for determining exactly how military, purchased and other service will be allocated to pre-2000 and post-1999 service for the wide variety of issues that can arise. The DETF is required by Wis. Stat. § 227.10 (1) to promulgate as a rule each interpretation of statute which it specifically adopts to govern its enforcement or administration of that statute. In addition, the DETF is required by Wis. Stat. § 40.03 (2) (i) to promulgate, with the approval of the Employee Trust Funds Board, rules necessary for the efficient administration of the fund or any of the benefit plans established by ch. 40, Stats.

Analysis Prepared by Department of Employee Trust Funds

Authority for Rule:

Wis. Stat. s. 40.03 (2) (i)

Statutes Interpreted:

Wis. Stats. § 40.23 (2m) (e) 1., 2., 3. and 4. as amended by 1999 Wis. Act 11, and Wis. Stat. 40.23 (2m) (em) 1. a., b. and c. as created by 1999 Wis. Act 11.

Analysis:

Section 19 of 1999 Wis. Act 11 provides higher percentage rates to be used to calculate the Wisconsin Retirement System benefits paid from the accounts of participants who are participating employees on the effective date of this provision, but only for creditable service that is considered to be performed before January 1, 2000. 1999 Wis. Act 11 provides some clarification of what creditable service shall be considered to be performed before January 1, 2000, but further clarification is required to administer this legislation.

1999 Wis. Act 11 provides that service forfeited through a separation benefit prior to January 1, 2000 shall be considered to be performed before that date; the rule would further clarify that service forfeited after December 31, 1999 and later purchased is considered to be performed after December 31, 1999. The rule also clarifies that all other purchased service that was actually performed before January 1, 2000 shall be considered to be performed before that date.

1999 Wis. Act 11 provides that the years of creditable military service for which a participant is eligible based on the creditable service performed before January 1, 2000 shall be considered to be performed before that date. The proposed rule would further clarify that the years of military service that are considered to be performed before January 1, 2000 are the years for

which the participant would be eligible if the participant would not accrue any additional service after January 1, 2000, except that if after January 1, 2000 the participant purchases creditable service that is considered to be performed before January 1, 2000, those years of “pre-2000” service are treated as “pre-2000” years of service and may increase the years of creditable military service that are considered to be performed before January 1, 2000. The proposed rule would also clarify that assumed creditable service used to calculate a Wisconsin Retirement System disability benefit that is calculated through December 31, 1999 is considered to be performed before January 1, 2000.

The rule would also clarify that the percentage of the participant’s account awarded to an alternate payee in a qualified domestic relations order shall apply equally to the participant’s years of creditable service that is considered to be performed before January 1, 2000 and the years of service considered to be performed on or after January 1, 2000 that date that is credited or creditable to the participant’s account as of the decree date. The creditable military service credited to the alternate payee’s account is that is considered to be performed either before January 1, 2000 or performed on or after that date is based on the creditable military service for which the participant would be eligible based solely on the participant’s years of service that are credited or creditable to the participant’s account as of the decree date.

Finally, the rule specifies the treatment of creditable service for the purpose of determining the applicable percentage rate used to calculate Wisconsin Retirement System benefits after a participant’s account is reestablished after a disability or retirement annuity is terminated.

Fiscal Estimate:

The Department estimates that there will be no direct fiscal impact from this rule-making upon the state and anticipates no effect upon the fiscal liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education school district or sewerage district.

Final Regulatory Flexibility Analysis:

This rule concerns a retirement program open exclusively to qualifying employees of the state, counties (except Milwaukee County) and municipalities which have elected to participate in the Wisconsin Retirement System, as provided in Wis. Stat. § 40.21. The Department therefore anticipates that the provisions of this proposed rule will have no direct adverse impact on small businesses.

Rule Text

Section 1:

ETF 10.01 (1k) is created to read:

ETF 10.01 (1k) “Benefit approval date” is the date on which an application for a separation benefit, lump sum retirement benefit, or the payment of additional contributions, death benefit, or remaining guaranteed annuity payments in a lump sum, is finally approved for payment by the department. The date of final approval is the date recorded by the department in the voucher box on the “Single Sum Benefit Data,” form ET-7102, or the electronic equivalent, associated with the benefit payment in question.

NOTE: See “benefit approval date” in s. ETF 20.19 (2) (a), “date the application for a separation benefit is approved” in s. 40.25 (2), Stats., and reference to the month in which the payment of a benefit is approved in ss. 40.04 (4) (b) and (bm) and 40.73 (1) (a) and (2) (a), Stats.

Section 2:

ETF 20.19 is created to read:

ETF 20.19 Treatment of purchased and other creditable service for percentage rates used to calculate retirement, disability and certain death benefits. (1) PURPOSE. 1999 Wisconsin Act 11 provides a higher percentage rate under s. 40.23 (2m) (e), Stats., for creditable service performed before January 1, 2000. The purpose of this section is to further clarify what percentage rate will apply to creditable service added to a participant’s account through service purchases, creditable military service, creditable prior service, and any other service added to the participant’s account as a result of a court decision, legislation, or any other means, and assumed creditable service used to calculate a disability benefit as provided in s. 40.63 (8), Stats.

(2) PURCHASED AND OTHER CREDITABLE SERVICE. For purposes of s. 40.23 (2m) (e), Stats., all of the following shall apply: (a) For purposes of s. 40.23 (2m) (em) 1. a., creditable service is forfeited on the date the participant’s benefit approval date for a benefit paid under s. 40.25 (2), Stats.

NOTE: See s. ETF 10.01 (1k).

(b) Purchased creditable service forfeited after January 1, 2000 shall be considered to be performed on or after January 1, 2000.

(c) Purchased creditable service that was originally forfeited before January 1, 2000, which is purchased under s. 40.25 (6), Stats. and is subsequently reforfeited after January 1, 2000, through a separation benefit paid under s. 40.25 (2), Stats., then later repurchased under s. 40.25 (6), Stats., shall be considered to be performed on or after January 1, 2000.

(d) A participant who applies to purchase forfeited service under s. 40.25 (6), Stats., and is eligible to purchase both service that was forfeited before January 1, 2000 and service that was forfeited after January 1, 2000, but is not eligible to purchase all of the forfeited service due to the restrictions in s. 40.25 (6) (a) 2., Stats., shall first receive credit for the maximum possible amount of purchased service that would be considered to be performed before January 1, 2000.

(e) A qualifying period of service purchased under s. 40.02 (17) (b), Stats., shall be considered to be performed before January 1, 2000.

(f) Executive service purchased under s. 40.02 (17) (e), Stats., shall be considered to be performed before January 1, 2000.

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

(h) Teacher improvement leave purchased under s. 40.02 (17) (i), Stats., shall be considered to be performed before January 1, 2000.

(i) Junior teacher service purchased under s. 40.02 (17) (k), Stats., shall be considered to be performed before January 1, 2000.

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

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

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

(3) CREDITABLE MILITARY SERVICE. (a) For purposes of s. 40.23 (2m) (e), Stats., except as provided in par. (b), creditable military service based on creditable service performed before January 1, 2000 means the years of creditable military service based on creditable service performed before January 1, 2000 as specified in s. 40.23 (2m) (em) 1. c., Stats., means the years of creditable military service for which the participant would be eligible that are based on the years of service that are considered to be performed before January 1, 2000. Creditable service that is considered to be performed after December 31, 1999 does not increase the amount of creditable military service that is considered to be performed before January 1, 2000.

(b) Any additional creditable military service for which a participant is eligible based on creditable service added to a participant's account after December 31, 1999, that is considered to have been performed before January 1, 2000 under sub. (2) or s. 40.23 (2m) (em) 1. a. or b., shall be considered to be based on service performed before January 1, 2000.

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

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

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

(6) TREATMENT OF CREDITABLE SERVICE AFTER A RETIREMENT ANNUITY IS TERMINATED AND THE ACCOUNT REESTABLISHED. (a) Except as provided under par. (b), when a participant's account is reestablished under s. 40.26 (2), Stats., if the participant was not a participating employee after December 31, 1999 but before the effective date of the participant's retirement annuity that was terminated under s. 40.26 (1), Stats., the percentage rates under s. 40.23 (2m) (e), Stats., shall not apply to the creditable service considered to be performed before January 1, 2000 that was performed before the annuity effective date.

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

(7) TREATMENT OF CREDITABLE SERVICE AFTER A DISABILITY ANNUITY IS TERMINATED AND THE ACCOUNT REESTABLISHED. (a) When a participant's account is reestablished under s. 40.63 (10), Stats., if the participant is a participating employee after December 31, 1999, all creditable service that is considered to be performed before January 1,

2000 under this section and under s. 40.23 (2m) (em), Stats., shall be considered to be performed before January 1, 2000, for any subsequent benefit calculations.

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

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

(END OF RULE TEXT)

Effective Date:

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

Explanation of Modifications as Result of Testimony at Public Hearing:

No testimony was offered at the public hearing.

List of persons appearing or registering for or against the rule:

No persons appeared or registered either for or against the rule at the public hearing on February 29, 2000. The record was held open for written comments until Wednesday, March 1, 2000, but no comments were received.

Response to Legislative Council Staff Recommendations:

All the recommendations of the Legislative Council Staff were accepted and implemented except one. With respect to comment 2.c., the proposed definition of "benefit approval date" was revised to clarify that the DETF intended only to provide a definition of the approval date for the rule and for identifying the date referred to in Wis. Stat. § 40.04 (4) (b) and (bm), 40.25 (2), and 40.73 (1) (a) and (2) (a).

Board Authorizations for Promulgation:

This final draft report on Clearinghouse Rule #00-022 has been duly approved for submission to the Legislature and for promulgation by the Teachers Retirement Board and the Wisconsin Retirement Board at their meetings on March 9, 2000, and by the Employee Trust Funds Board at its meeting on March 10, 2000.

Respectfully Submitted,

DEPARTMENT OF EMPLOYEE TRUST FUNDS

Eric O. Stanchfield, Secretary
Wisconsin Department of Employee Trust Funds