

Clearinghouse Rule 00-011

STATE OF WISCONSIN)
) SS
DEPARTMENT OF EMPLOYEE TRUST FUNDS)

I, Eric O. Stanchfield, Secretary of the Department of Employee Trust Funds and custodian of the official records, certify that the annexed rule, relating to the distribution to annuitants from the transaction amortization account to the annuity reserve under 1999 Wisconsin Act 11 was duly approved and adopted by the State of Wisconsin Employee Trust Funds Board on March 10, 2000 and by both the Teachers Retirement and Wisconsin Retirement Boards on March 9, 2000.

I further certify that this copy has been compared by me with the original on file in this department and that it is a true copy of the original, and of the whole of the original.

(no seal)

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department of Employee Trust Funds at 801 West Badger Road in the city of Madison, this 11th day of September, 2000.




Eric O. Stanchfield

**STATE OF WISCONSIN
DEPARTMENT OF EMPLOYE TRUST FUNDS**

FINAL DRAFT REPORT ON CLEARINGHOUSE RULE 00-011

AN ADMINISTRATIVE RULE	renumbering and amending ETF 20.25 (1) and creating ETF 20.25 (1) (b) regarding the distribution to annuitants of the total amount distributed from the transaction amortization account to the annuity reserve under the non- statutory provisions of 1999 Wis. Act 11.
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Agency Person to Be Contacted for Substantive Questions:

For information about this rule, please contact: David Stella, Administrator, Division of Retirement Services, Department of Employee Trust Funds, P.O. Box 7931, Madison WI 53707. Telephone: (608) 267-9038.

Statement Explaining Need for Rule:

If the ETF Board takes no action to revise the existing administrative rule, then when the present emergency rule expires, any subsequent distribution of the funds transferred into the annuity reserve by Act § 27 (1) (a) of 1999 Wis. Act 11 would be prorated, with respect to annuities with effective dates after December 31, 1998, and before January 1, 2000. The pending litigation concerning 1999 Wis. Act 11 may not be resolved before the present emergency rule expires. The purpose of this rule-making is to make permanent the emergency rule-making approved by the DETF, ETF Board, Teachers Retirement and Wisconsin Retirement Boards.

This rule-making will permanently modify the existing administrative rule on prorating in accord with the emergency rule. As a result, all annuities will be increased by the same percentage, including annuities with effective dates after December 31, 1998 and before January 1, 2000, as a result of the transfer of funds mandated by 1999 Wis. Act 11, §27 (1) (a). This treatment of the transfer is, of course, conditional upon the applicable parts of the legislation withstanding review by the courts.

Analysis Prepared by Department of Employee Trust Funds

- Authority for rule:** Wis. Stat. §§ 227.24, 40.03 (2) (i), and 40.27 (2) (b)
- Legislation interpreted:** 1999 Wis. Act 11, § 27 (1) (d), a non-statutory provision concerning the distribution of certain funds transferred to the Annuity Reserve.

Section 27 (1) (a) of 1999 Wis. Act 11 [*introduced as 1999 Assembly Bill 495*] directs that \$4,000,000,000 be distributed from the Transaction Amortization Account of the Public Employee Trust Fund's fixed retirement investment trust to the reserves and accounts of the fixed retirement investment trust, in an amount equal to a percentage of the total distribution determined by dividing each reserve's and account's balance on January 1, 1999 by the total balance of the fixed retirement investment trust on that date.

Section 27 (1) (d) of the Act further directs that the total amount allocated to the annuity reserve by the legislation, shall be distributed as provided under Wis. Stat. § 40.27 (2). That statutory subsection provides that surpluses in the fixed annuity reserve shall be distributed by

the Employee Trust Funds Board upon the recommendation of the actuary. These distributions are made in the form of percentage increases in the amount of the monthly annuity in force. Wis. Stat. § 40.27 (2) (b) provides that the ETF Board may, through administrative rule, apply prorated percentages based on the annuity effective date to annuities with effective dates during the calendar year preceding the effective date of the distribution. No distinction, other than annuity effective date, may be made.

The ETF Board previously adopted Wis. Admin. Code § ETF 20.25 (1) with respect to prorating the annual fixed annuity dividend for annuities which began before the calendar year preceding the dividend. For these annuities, the prorated percentage is calculated by multiplying the number of full months the annuity was in force during the year 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. If the resulting increase would be less than 1%, no increase applies.

Had the ETF Board taken no action, the same prorating would apply to annuities which became effective during 1999 with regard to the distribution of the funds transferred into the annuity reserve by 1999 Wis. Act 11, § 27 (1) (a). The ETF Board promulgated an emergency rule, effective on December 31, 1999, identical to this proposed rule. Both this proposed rule and the emergency administrative rule currently in effect provide that there will be no prorating of the distribution of the funds transferred into the annuity reserve as a result of 1999 Wis. Act 11. The same percentage increase will be applied to annuities in effect for the full year or in effect for only part of 1999.

In December 1999, the Employee Trust Funds Board and Department of Employee Trust Funds commenced litigation concerning the constitutionality of portions of 1999 Wis. Act 11, including the \$4 billion transfer, and the action is now pending before the Supreme Court. See *Employee Trust Funds Board, et al. v. Lightbourn, et al.*, Case No. 99-3297-OA. The Supreme Court issued a preliminary injunction against implementation of Act 11. This rule-making is part of contingency planning by the Department of Employee Trust Funds and ETF Board in case the Act, or parts of it, are approved by the courts and is not prohibited under the terms of the injunction. This rule-making shall not be construed as an endorsement of the transfer of funds from the TAA as mandated by Act 11.

As provided by Wis. Stat. § 227.24 (1) (c), the present emergency rule will expire on May 29, 2000, (150 days after its effective date) unless extended. It is the intention of the Department of Employee Trust Funds and ETF Board that if the \$4 billion transfer from the TAA is ultimately upheld by the courts and implemented, this rule will continue to control the treatment of the surplus in the annuity reserve which results from the extraordinary distribution mandated by Act 11 in the same manner as the emergency rule currently does. If an injunction or other court action delays the TAA transfer until after the extraordinary dividend would be paid, then any amounts which become payable to annuitants as a result of the Act and this rule will be calculated retroactive to the normal annual dividend dates.

Fiscal Estimate:

The rule has no fiscal impact on county, city, village, town, school district, technical college district and sewerage district fiscal liabilities and revenues. This rule itself has no anticipated state fiscal effect during the current biennium and no future effect on state funds, which do not include the Public Employe Trust Funds.

The costs of implementing an April 1, 2000, distribution to annuitants of funds transferred into the annuity reserve by the special TAA transfer mandated in this legislation were incorporated into the fiscal effect prepared for 1999 Assembly Bill 495. However, if the payment of the special dividend resulting from the extraordinary transfer from the TAA was to be delayed after April 1, 2000 – for example because of the present injunction or other court action, then previously unanticipated costs in distributing these funds will arise. If the \$4 billion distribution survives review by the courts, then additional payments would be owed to annuitants, some of whom may have died in the interim. DETF anticipates at least some administrative costs in locating, notifying and processing claims by estates or heirs of deceased annuitants, similar to the costs incurred in making the distribution required by the Supreme Court in *WRTA v. Employe Trust Funds Board*, 207 Wis. 2d 1, 558 N.W.2d 83 (1997). The exact amount of these costs will depend, in large part, on how long the litigation over this legislation remains before the courts and the mortality experience among the affected annuitants during that period.

Final Regulatory Flexibility Analysis:

This rule does not affect small businesses.

Text of Proposed Rule:

(BEGINNING OF RULE TEXT)

SECTION 1. ETF 20.25 (1) is renumbered ETF 20.25 (1) (a) and amended to read:

ETF 20.25 (1) (a) ~~A~~ Except as otherwise provided in par. (b), a fixed annuity dividend, as recommended by the actuary and approved by the chair of the employe 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 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 percent.

SECTION 2. ETF 20.25 (1) (b) is created to read:

ETF 20.25 (1) (b) The total amount distributed to the annuity reserve under 1999 Wis. Act 11, § 27 (1) (a) shall be distributed effective April 1, 2000, in the form of a percentage increase. The percentage shall be recommended by the actuary separate from the distribution of any surplus created by the annual distribution under s. 40.04 (3) (a), Stats., or otherwise. The percentage under this paragraph shall be the same for all affected annuities, including those with effective dates after December 31, 1998 and before January 1, 2000.

(END OF RULE TEXT)

Effective Date:

This rule shall take effect on the later of the following dates: (1) the first day of the month commencing after the date of publication as provided by Wis. Stat. § 227.22 (2) (intro.), or (2) the date of a Supreme Court decision or order in *Wisconsin Professional Police Association, Inc., et. al. v. Lightbourn, et. al.*, Case No. 99-3297-OA, which permits implementation of 1999 Wisconsin Act 11, § 27 (1) (a) and (d).

Explanation of Modifications as Result of Testimony at Public Hearing

No modifications were made to the proposed rule as a result of testimony received at the public hearing.

List of Persons Appearing or Registering For or Against the Rule:

A public hearing on both this proposed rule and the identical emergency rule now in effect was held on February 11, 2000, at 1:00 p.m. in Conference Room 2A at the offices of the Department of Employee Trust Funds, 801 West Badger Road, Madison, Wisconsin. The record of the hearing was held open until 4:30 p.m. on Friday, February 25, 2000, to permit persons who were unable to attend the public hearing in person to submit written comments on the proposed rule.

Mr. Roger Brumm of Middleton, Wisconsin, and Mr. John Schleisman of Madison, Wisconsin, both spoke in favor of the rule. Both described themselves as recent retirees covered by the Wisconsin Retirement System.

Jane Elmer, representing the Wisconsin Retired Educators Association, Melvin B. Sensenbrenner, representing the State Engineering Association, and Steven Urso, representing the Wisconsin Professional Police Association, all registered in favor of the rule.

The Wisconsin Retired Educators Association also wrote a letter, dated February 13, 2000, expressing that organization's support for the rule. A copy of this letter is located on the following page.



Date: February 13, 2000

To: Michelle Schueller, Department of Employee Trust Funds
(ETF) [Fax: 608-267-4549]

From: Eunice Berg, WREA President
Jane Elmer, WREA Executive Director

RE: Support for Clearinghouse Rule 00-011

We are writing on behalf of the Wisconsin Retired Educators' Association (WREA) to support Clearinghouse Rule 00-011 which corrects an inequity in AB 495. AB 495 is a complex piece of legislation and will be undergoing legal scrutiny.

Clearinghouse Rule 00-001 does correct one of the major problems in the bill. Without it, those who retired during 1999, would be severely wronged because they would not receive their fair share of any extra distribution that might result from the additional \$4 billion recognition from the TAA.

Giving these retirees the straight dividend (rather than the prorated dividend which is customary in the regular dividend process for the first year of retirement) corrects this inequity. Without the correction, 1999 retirees would lose out on a substantial portion of the pension amount due to them, and this loss would be carried forward throughout their retirement, unfairly penalizing them.

Therefore, WREA supports Clearinghouse Rule 00-011 and encourages your support as well.

Affiliated with
the National
Retired Teachers
Association (NRTA)—
A Division of AARP

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Middleton, WI 53562
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Madison, WI 53701-2536
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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 00-011

AN ORDER to renumber and amend ETF 20.25 (1); and to create ETF 20.25 (1) (b), relating to distribution to annuitants of the total amount distributed from the transaction amortization account to the annuity reserve under the nonstatutory provisions of 1999 Wisconsin Act 11.

Submitted by **DEPARTMENT OF EMPLOYE TRUST FUNDS**

01-13-00 RECEIVED BY LEGISLATIVE COUNCIL.
02-07-00 REPORT SENT TO AGENCY.

RS:GAA:jal;rv

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 STAFF

RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 00-011

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

a. Although the analysis to the rule clearly provides citations to the statutory authority for the rule and the statutes interpreted by the rule, a simple statement of these items should be included in the plain language analysis. [See s. 1.02 (2), Manual.]

b. In s. ETF 20.25 (1) (b), the notation ", Stats.," should be inserted following the statutory cross-reference.

Response to Legislative Council Staff Recommendations:

Both recommendations by the Legislative Council Staff have been implemented. Immediately preceding the analysis of the rule, DETF has added brief citations to the statutes which authorize this rulemaking. In addition, a separate, one line citation to the non-statutory provision of Act 11 affected by the rule is also added.

In proposed § ETF 20.25 (1) (b), the cross-reference to a statute has been corrected to read: "... s. 40.04 (3) (a), Stats., or otherwise."

Board Authorizations for Promulgation:

The Employe Trust Funds Board, at its meeting on March 10, 2000, and both the Teachers Retirement and Wisconsin Retirement Boards, at their respective meetings on March 9, 2000, duly approved this final draft report on Clearinghouse Rule #00-011 for submission to the Legislature and for promulgation.

Respectfully Submitted,

DEPARTMENT OF EMPLOYE TRUST FUNDS



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



STATE OF WISCONSIN

Department of Employee Trust Funds

Eric O. Stanchfield
Secretary
801 West Badger Road
P.O. Box 7931
Madison, WI 53707-7931

September 11, 2000

GARY POULSON, DEPUTY REVISOR
REVISOR OF STATUTES BUREAU
131 WEST WILSON STREET, SUITE 800
MADISON WI 53702

Re: Clearinghouse Rule No. 00-011

Dear Mr. Poulson:

As provided under Wis. Stats. § 227.20 (1) and § 227.21 (1), I am enclosing with this letter a copy of a Certificate and Order creating and adopting rules. A certified copy of this Order has been forwarded to the Secretary of State.

Please publish this rule in the September 30th issue of the *Wisconsin Administrative Register* for an effective date of October 1, 2000. A copy of this Certificate and Order will be sent to you as an e-mail attachment.

Please contact Pam Henning, Director of Legislation and Planning, at 267-2929 if you have any questions regarding the rule.

Sincerely,

Eric O. Stanchfield
Secretary

Enclosure

