



Clearinghouse Rule 96-167  
STATE OF WISCONSIN

Department of Employee Trust Funds

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

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

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 deadlines to apply for death benefits payable from the Wisconsin Retirement System and timing of automatic distribution of these benefits, was duly approved and adopted by the State of Wisconsin Teachers Retirement Board and Wisconsin Retirement Board on December 12, 1996 and by the State of Wisconsin Employee Trust Funds Board on December 13, 1996.

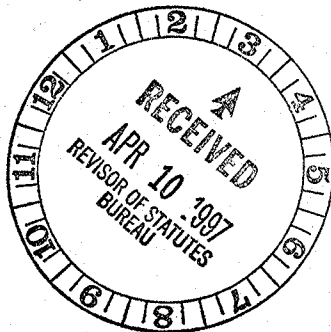
I further certify that this copy has been compared by me with the original on file in this department and that it is a true copy of the original, and of the whole of the original.

(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

9<sup>th</sup> day of April, 1997

Eric O. Stanchfield  
Eric O. Stanchfield



6-1-97  
96-167

State of Wisconsin  
DEPARTMENT OF EMPLOYE TRUST FUNDS -- OFFICE OF THE SECRETARY  
and  
EMPLOYE TRUST FUNDS BOARD  
TEACHER RETIREMENT BOARD  
WISCONSIN RETIREMENT BOARD

---

Clearinghouse Rule #CR-167

AN ORDER renumbering s. ETF 60.53 (1), (2) and (3) and creating s. ETF 60.53 (2), Wisconsin Administrative Code, relating to deadlines to apply for death benefits payable from the Wisconsin Retirement System and timing of automatic distribution of these benefits.

---

REPORT OF THE WISCONSIN DEPARTMENT OF EMPLOYE TRUST FUNDS  
ON THE FINAL DRAFT RULE

---

This report, prepared in compliance with ch. 227, Wis. Stats., includes the following:

Part 1 - Analysis prepared by the Department of Employee Trust Funds;

Part 2 - Rule text in Final Draft Form;

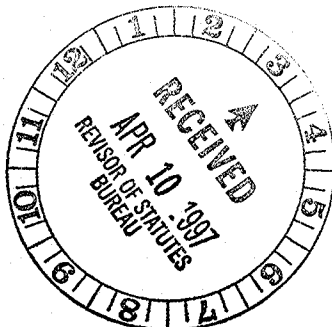
Part 3 - Recommendations of the Legislative Council Staff;

Part 4 - Report prepared pursuant to the provisions of s. 227.19 (3),  
Wis. Stats., including:

- (a) Statement of the Need for the Rule;
- (b) Explanation of Modifications to the Rule after Public Hearings;
- (c) List of Persons Appearing or Registering an Opinion;
- (d) Response to Legislative Council Staff Recommendations;
- (e) Final Regulatory Flexibility Analysis.

Submitted by:

Mary Anglim  
Division of Retirement Services  
Wisconsin Department of Employee Trust Funds  
801 West Badger Road  
P.O. Box 7931  
Madison, Wisconsin 53707-7931  
Telephone: (608) 266-6611



## Analysis Prepared by the Wisconsin Department of Employee Trust Funds

Under s. 401(a)(9)(B) of the Internal Revenue Code (IRC), if a participant or alternate payee dies before beginning a distribution from a qualified retirement plan, the person's entire interest in the plan must be distributed by the end of the fifth year after the year of death. This is the so-called five-year rule. Normally, death benefits are paid in a lump sum under this rule.

There are two exceptions to the five-year rule. First, any beneficiary may receive the death benefit as an annuity paid over his or her lifetime or for a period not exceeding his or her life expectancy, provided the annuity begins and at least one payment is made by the end of the first year following the year of the participant's death. Second, a beneficiary who was the spouse of the participant may defer application for an annuity until the later of this date or January 1 of the year the participant would have attained age 70.5. The exception for spouses does not include spouses of deceased alternate payees.

Before May 16, 1996, the Department lacked statutory authority to limit death benefit payment options in accord with federal tax law and to make mandatory distributions when the account owner failed to apply voluntarily. 1995 Wisconsin Act 302 authorized the Department to require distributions of death benefits in conformance with federal tax law. Effective January 1, 1997, the Department promulgated a rule to govern automatic distributions to living participants and alternate payees and to beneficiaries of annuitants. The rule currently being proposed is intended to govern payment of death benefits to beneficiaries of participants and alternate payees who died before beginning a distribution from their Wisconsin Retirement System (WRS) account. This proposed rule potentially affects death benefits for all active and inactive WRS participants and for annuitants who have not yet begun distribution from their additional contributions account.

The proposed rule provides the following:

- Beneficiaries may receive a death benefit as a life annuity by applying by the end of September of the year following the year of the participant's or alternate payee's death. This deadline was chosen for administrative and federal compliance reasons. Federal law requires a beneficiary who chooses a life annuity to receive at least one annuity payment before the end of the year following the year of death. In order to receive a check from the WRS on December 1, a beneficiary must have an annuity effective date of November 1. The late September application deadline ensures that the Department has sufficient time to process the application and issue the first check within federal deadlines.
- Beneficiaries who elect a lump sum benefit may control the date of payment by filing an application at the appropriate time. The Department pays lump sum death benefits as quickly as possible, usually within 60 days of the date it receives the application. In the year of payment, lump sum death benefits are credited with 5% interest pro-rated for the number of full calendar months before the payment date. Thus it is often to the beneficiary's advantage to apply for a payment early in a calendar year. The proposed rule provides that the

Department will not accept applications filed after the end of September in the fifth year following the year of the participant's or alternate payee's death. Since the Department is required to distribute the benefit in a lump sum prior to December 31 of that year, with or without an application, the late September deadline ensures that the Department has sufficient time to make the distribution within federal deadlines.

- A beneficiary who was the spouse of the participant at the time of death may defer application until the end of the year in which the participant would have reached age 69.5, if that is later than the dates described above. However, under the proposed rule, to preserve the right to receive a life annuity at a later date, a spouse must file a beneficiary designation by the end of September in the year following the year of the participant's death or by September 30, 1999, whichever is later. The deferred effective date is included to allow the Department time to locate and inform spouses who would otherwise be beyond the deadline to apply for a life annuity.

Section 40.23 (4) (e) 2., Stats., and this proposed rule require the spouse to file a beneficiary designation in order to prevent significant tax penalties to a secondary beneficiary or possible forfeiture of the benefit should the spouse die before applying. Under s. 40.02 (8)(b), Stats., if a potential beneficiary dies without filing either a benefit application or a beneficiary designation, the benefit is payable to the original participant's next beneficiary. Non-spouse beneficiaries have only five years after the year of the participant's death to receive the death benefit without tax penalties. However, under IRC s. 401(a)(9)(B)(iv)(II) and Prop. Reg. 1.401(a)(9)(B)-1, C-5, if the spouse has named a beneficiary the five-year period starts over from the date of the spouse's death.

- Provided a beneficiary can be located, the Department will automatically distribute the benefit as a lump sum if no application is filed by the deadlines described above, i.e., before December 31 of the fifth year after the year of the participant's or alternate payee's death or (for the spouse of the deceased participant only) effective January 1 of the year the participant would have attained age 70.5.

This rule does not address steps the Department will take, as mandated under s. 40.08 (8), Stats., when beneficiaries cannot be located. The Department intends to promulgate a rule on abandoned account procedures in the future.

#### General Summary of Rule.

This proposed rule specifies deadlines within which beneficiaries of certain deceased participants, alternate payees, and beneficiaries may apply for death benefits from the Wisconsin Retirement System.

Beneficiaries may receive a death benefit as a life annuity by applying by the end of September of the year following the year of the participant's or alternate payee's death. They may apply for a lump sum benefit no later than the end of September of the fifth year following the year

of the participant's or alternate payee's death. A beneficiary who was the spouse of the participant at the time of death may defer application until the end of the year in which the participant would have reached age 69.5, if that is later than the dates described above. However, to preserve the right to receive a life annuity at a later date, a spouse must file a beneficiary designation by the end of September in the year following the year of the participant's death or by September 30, 1999, whichever is later.

If the department does not receive an application by the applicable deadline, and it is able to locate a beneficiary, the department will distribute the benefit as a lump sum. The rule limits a beneficiary's ability to postpone the distribution by filing a waiver of benefits and specifies that beneficiaries who become eligible as a result of a waiver or the death of another beneficiary are subject to the original application and distribution deadlines.

Authority for Rule. Section 40.03 (2) (i), Stats.; ss. 40.015 (2), 40.03 (2) (t), and 40.23 (4) (e) and (f), Stats., as affected by 1995 Wisconsin Act 302.

Statutes Interpreted. Section 40.02 (8), Stats.; ss. 40.08 (8), 40.23 (4) (c), (e) and (f), and 40.73, Stats., as affected by 1995 Wisconsin Act 302

Related Federal Statutes and regulations. Section 401(a)(9)(B), Internal Revenue Code; Prop. Reg. 1.401(a)(9)-1, C-1 to C-6.

Final Fiscal Estimate. The Department estimates that there will be no direct fiscal impact from this rule 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.

Copies of Rule and Contact Persons. Copies of this rule are available without cost by making a request to the Department of Employee Trust Funds, Office of the Secretary, P.O. Box 7931, Madison, Wisconsin 53713-2625, telephone (608) 266-1071. For questions about this rule, please call Mary Anglim, (608) 266-6611.

Part 2

TEXT OF RULE

SECTION 1. ETF 60.53 (1), (2), and (3) are renumbered 60.53 (1) (a), (b), and (c).

SECTION 2. ETF 60.53 (2) is created to read:

ETF 60.53 (2) (a) This subsection applies to death benefits payable from required or additional contribution accumulations that the department had not begun to distribute before the death of the participant or alternate payee.

(b) The department shall treat a distribution paid as a lump sum under s. 40.25 (2) or (2m), Stats., as having begun prior to the death of the participant or alternate payee if the date of the check is on or before the date of death. The department shall treat a distribution paid as an annuity or as a lump sum in lieu of an annuity under s. 40.25 (1) or (4), Stats., as having begun prior to the death of the participant or alternate payee if all of the following apply:

1. The participant or alternate payee is living on the date the department receives the benefit application and on the effective date of the benefit;
2. The department does not receive the participant's or alternate payee's written request to cancel the benefit as provided under s. ETF 20.20 (4) on or before the date of death.

(c) A beneficiary may elect to receive a death benefit payable under this subsection as a monthly annuity, subject to s. 40.73 (3), Stats., provided the beneficiary applies, and the

department receives the application, no later than the close of business on the last working day of September in the calendar year following the year of the participant's or alternate payee's death. The annuity effective date may not be later than November 1 of that year.

(d) A beneficiary may elect to receive the death benefit as a lump sum provided the beneficiary applies, and the department receives the application, no later than the close of business on the last working day of September in the fifth calendar year following the year of the participant's or alternate payee's death.

(e) 1. A beneficiary who was the spouse of the deceased participant at the time of death may defer application for the death benefit until the latest of the following dates:

a. For an application for a monthly annuity, the application date specified in par. (c);

b. For an application for a lump sum, the application date specified in par. (d);

c. For an application for any optional form of payment, the last working day of the year in which the participant would have attained age 69.5. The department may not accept an application for a monthly annuity under this subdivision if the department receives the application after the application date specified in par. (c), unless the beneficiary files a beneficiary designation that the department receives by that date or by September 30, 1999, whichever is later.

2. This paragraph does not apply to spouses of deceased alternate payees.

(f) During the calendar year that the participant would have attained age 69.5, a beneficiary who was the spouse of the participant at the time of death and who has filed a beneficiary

designation if required under par. (e) 1. c., may apply for a death benefit with a deferred effective date which may not be later than January 1 of the year in which the participant would have attained age 70.5.

(g) Unless the account is considered abandoned as provided in s. 40.08 (8) (a) 2. or 2m., Stats., the department shall distribute the death benefit as a lump sum unless it has received an application for the death benefit within the applicable deadline specified in par. (d) or (e). If the application was due under par. (d) or par. (e) 1. b., the department shall make the distribution on or before the last working day of the fifth calendar year following the year of the death of the participant or alternate payee. If the application was due under par. (e) 1. c. , the department shall make the distribution effective January 1 of the year in which the participant would have attained age 70.5. Beneficiaries may not cancel distributions made under this paragraph.

(h) The department may not accept a waiver of a benefit under s. 40.74 (2), Stats., for a benefit payable under this subsection if the effective date of the waiver is on or after the application deadline specified in par. (d). If a beneficiary becomes eligible for a benefit under this subsection as a result of a waiver, the department shall base the new beneficiary's deadlines to apply for the benefit on the participant's or alternate payee's date of death.

(i) Except as provided in s. 40.23 (4) (e) 4., Stats., if a beneficiary becomes eligible for a death benefit under this subsection as a result of the death of a beneficiary, the department shall



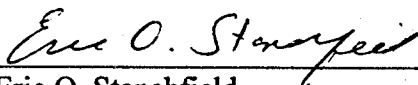
base the new beneficiary's deadlines to apply for the benefit on the participant's or alternate payee's date of death.

(END OF RULE TEXT)

---

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.), Wis. Stats.

Signed at Madison, Wisconsin this 20<sup>th</sup>  
day of January, 1997.

  
\_\_\_\_\_  
Eric O. Stanchfield  
Secretary  
Wisconsin Department of Employee Trust  
Funds

**RULES CLEARINGHOUSE**

**Ronald Sklansky**  
Director  
(608) 266-1946

**Richard Sweet**  
Assistant Director  
(608) 266-2982



**David J. Stutz, Director**  
Legislative Council Staff  
(608) 266-1304

One E. Main St., Ste. 401  
P.O. Box 2536  
Madison, WI 53701-2536  
FAX: (608) 266-3830

---

**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 96-167**

**AN ORDER** to create ETF 60.53 (2), relating to deadlines to apply for death benefits payable from the Wisconsin retirement system and timing of automatic distribution of these benefits.

Submitted by **DEPARTMENT OF EMPLOYE TRUST FUNDS**

10-21-96      RECEIVED BY LEGISLATIVE COUNCIL.

11-18-96      REPORT SENT TO AGENCY.

RS:GAA;jt;kjf

## **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

## **RULES CLEARINGHOUSE**

Ronald Sklansky  
Director  
(608) 266-1946

Richard Sweet  
Assistant Director  
(608) 266-2982



David J. Stute, Director  
Legislative Council Staff  
(608) 266-1304

One E. Main St., Ste. 401  
P.O. Box 2536  
Madison, WI 53701-2536  
FAX: (608) 266-3830

## **CLEARINGHOUSE RULE 96-167**

### **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 October 1994.]**

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

- a. Should the statement of statutory authority contained in the analysis to the rule refer to s. 40.24 (1) (e) and (f), Stats., rather than to s. 40.24 (4) (e) and (f), Stats.?
- b. The treatment clause should read: "SECTION 1. ETF 60.53 (2) is created to read:".
- c. Because the first sentence of s. ETF 60.53 (2) does not grammatically lead into the following subunits, it should be numbered as par. (a). The remaining paragraphs and internal cross-references should be renumbered accordingly.
- d. In s. ETF 60.53 (2) (b), "same" should be deleted in the last line.
- e. In s. ETF 60.53 (2) (d), the Note is substantive and should be contained in the body of the rule. This can be done by renumbering par. (d) (intro.) as par. (d) 1., renumbering the subdivisions to subpars. a. to c. and including the Note as par. (d) 2.
- f. In s. ETF 60.53 (2) (e) and (f), the notation "subd." should be replaced by the notation "par."

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

- a. Section ETF 60.53 (2) (a) states that the department will treat a distribution "paid as annuity or as a lump sum in lieu of an annuity" as having begun if the participant or payee dies

on or after "the effective date of the annuity and the annuity is in effect on the date of death." However, if a lump sum has been paid in lieu of annuity, the provision is unclear on how the department will treat the distribution. Is it the date on which the annuity would have begun? This provision should be rewritten to clarify when a distribution paid as a lump sum in lieu of an annuity will be considered to be paid by the department.

b. In s. ETF 60.53 (2) (e), a period should be inserted following "70.5."

## Part 4

### Report Required by s. 227.19 (3), Wis. Stats.

#### (a) Need for the Rule.

Section 40.23 (4) (e) 5., Stats., requires the department to specify by rule all procedures relating to an automatic distribution to a spouse. This proposed rule is intended to fulfill this requirement. In addition, certain portions of the rule are needed to provide department staff and the public with clear deadlines within which non-spousal beneficiaries may apply for a death benefit as provided under s. 40.23 (4) (f), Stats.

#### (b) Modifications to the Rule.

1. Section 1. was added to renumber an existing rule, and portions of Section 2 were renumbered as recommended by the Legislative Council Staff.
2. Section ETF 60.53 (2) (b) was reworded for clarity as recommended by the Legislative Council Staff.
3. The deadlines in paragraph (e) were restated for clarity.

#### (c) List of Persons Who Appeared or Registered For or Against the Proposed Rule at a Public Hearing.

No one attended the public hearing and no written comments were received.

#### (d) Response to Legislative Council Staff Recommendations.

All recommendations of the Legislative Council Staff have been implemented.

(e) Final regulatory flexibility analysis. The proposed rule itself does not directly affect small businesses.

(END OF FINAL DRAFT REPORT)



STATE OF WISCONSIN

**Department of Employee Trust Funds**

**Eric Stanchfield**

*Secretary*

*801 West Badger Road*

*P.O. Box 7931*

*Madison, Wisconsin 53707-7931*

April 10, 1997

GARY L. POULSON, DEPUTY REVISOR  
REVISOR OF STATUTES BUREAU  
8TH FLOOR  
131 W WILSON ST  
MADISON, WISCONSIN 53707

RE: Clearinghouse Rule No. 96-167

Dear Mr. Poulson:

Enclosed is a Certificate and two copies of an Order creating and adopting rules. A certified copy of this Order has been forwarded to the Secretary of State.

I request that the rule be published in the May 31 issue of the administrative register.

I also enclose a copy of the rule on disk, in Wordperfect 5.1 format.

Please contact me if you have any questions.

Sincerely,

David Stella, Administrator  
Division of Retirement Services  
(608) 267-9038  
FAX # (608) 261-6908  
TDD # (608) 267-0676

