

# Clearinghouse Rule 99-027

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 dividing Wisconsin Retirement System accounts or annuities per a Qualified Domestic Relations Order, was duly approved and adopted by the State of Wisconsin Teachers Retirement Board and Wisconsin Retirement Board on March 18, 1999 and by the State of Wisconsin Employee Trust Funds Board on March 19, 1999.

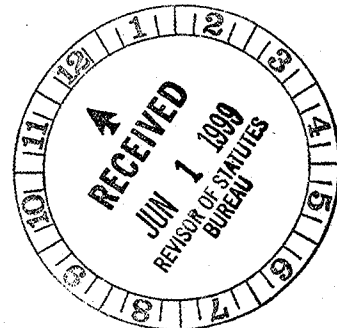
I further certify that this copy has been compared by me with the original on file in this department and that it is a true copy of the original, and of the whole of the original.

(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

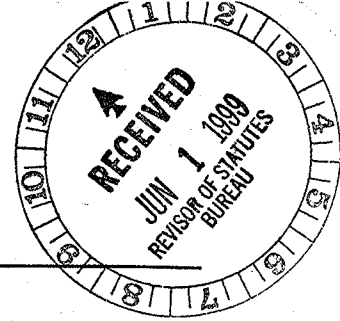
28<sup>th</sup> day of May 1999

Eric O. Stanchfield  
Eric O. Stanchfield



8-1-99

STATE OF WISCONSIN  
DEPARTMENT OF EMPLOYE TRUST FUNDS



**FINAL DRAFT REPORT ON CLEARINGHOUSE RULE 99-027**

AN ADMINISTRATIVE RULE to renumber s. ETF 11.02, to amend s. ETF 10.03 (2) (intro.), and to create ss. ETF 10.01 (8) and (9), 20.35 and 50.30 (3), Wisconsin Administrative Code, relating to dividing WRS accounts or annuities per a qualified domestic relations order (QDRO).

---

Agency Person to Be Contracted for Substantive Questions .....	2
Statement Explaining Need for Rule.....	2
Analysis Prepared by Department of Employee Trust Funds.....	2
Authority for rule .....	2
Statutes interpreted.....	2
Fiscal Estimate .....	3
Final Regulatory Flexibility Analysis .....	3
Rule Text.....	4
Effective Date.....	15
Explanation of Modifications as Result of Testimony at Public Hearing.....	15
List of persons appearing or registering for or against the rule .....	17
Legislative Council Staff Clearinghouse Report.....	18
Response to Legislative Council Staff Recommendations .....	24



**Agency Person to Be Contracted for Substantive Questions:**

---

For information about this rule, please contact: Linda Owen, Benefits Plan Policy Analyst, Department of Employee Trust Funds, P.O. Box 7931, Madison, Wisconsin, 53707-7931. Telephone: (608) 261-8164. FAX: (608) 267-4549.

**Statement Explaining Need for Rule:**

---

The division of Wisconsin Retirement System benefits is complex. The rule is necessary to define the procedures to be followed in the wide variety of possible circumstances, describe the results of a division and to serve as a reference for judges, attorneys and others involved in drafting or issuing qualified domestic relations orders. 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. § 40.03 (2) (i), 227.10 (1)

*Statutes interpreted:* Wis. Stat. § 40.02 (48m), 40.06 (7), 40.08 (1m), as created by 1989 Wis. Act 218, 40.26 (2) as amended by 1989 Wis. Act 218, and 40.08 (1m)(f) as affected by 1997 Wis. Act 125.

Effective April 28, 1990, for marriages that are terminated on or after that date, up to 50% of a participant's WRS account or annuity could be awarded to an alternate payee (the former spouse). Upon receipt of a Qualified Domestic Relations Order (QDRO), the Department creates a separate account or annuity for the alternate payee. The account or annuity division is effective on the decree date (the first of the month in which the marriage is legally terminated).

Effective May 2, 1998, the law changed to allow the Department to divide a WRS account or annuity per a QDRO for marriages terminated on or after January 1, 1982 and on or before April 27, 1990. These QDROs do not apply to payments made before the date the Department receives the QDRO, although the value of the account is still divided as of the decree date. The participant's account status may have changed between the decree date and the date the Department receives the QDRO. For example, the participant may have been actively employed under the WRS on the decree date, but may have been retired for several years by the time ETF receives the QDRO. When the participant status has changed since the decree date, the prospective division of the account or annuity is based on the current account status, but the value of the benefits awarded to the alternate payee is based on a percentage (specified in the QDRO) of the value of the account or annuity as of the decree date.

The purpose of this rule is to clarify how the Department will apply a QDRO to a participant's account or annuity. Once the division has occurred, the participant's and alternate payee's benefits will be calculated to assure that to the extent possible, the total combined actuarial value of their benefits will be equal to the actuarial value of the participant's benefits had the account or annuity not been divided per a QDRO.

This proposed rule further clarifies how the Department will determine whether a QDRO meets the criteria in § 40.02 (48m), Stats. If it is necessary to reject a QDRO that does not meet the statutory requirements, the rule provides that the Department will delay processing any application to close the account with a lump sum benefit for 30 days after the QDRO is rejected to give the parties an opportunity to submit a corrected QDRO. It specifies the procedures that the Department will follow if the participant fails to submit the military service certification timely as required by statute, and that the participant may not receive credit for the portion of any active military service that the alternate payee would have received if the participant had submitted the certification timely.

This rule would also specify how retirement, accelerated payment and disability annuities would be divided to assure that the benefit liabilities of the fund after the division are equal to the benefit liability that would have existed if the annuity were not divided. For marriages terminated on or after April 28, 1990, all account and annuity divisions are retroactive to the decree date. However, for marriages terminated on or after January 1, 1982 and before April 2, 1990, although the portion of the account or annuity being awarded to the alternate payee is based on the account value as of the decree date, the division applies to future payment only. This may result in a different percentage of a current annuity being awarded to the alternate payee than is specified in the QDRO. For example, the participant may have continued to work under the WRS after the decree date, but the alternate payee cannot receive a benefit from service or contributions accrued after the decree date. Consequently, the percentage of the participant's current benefit actually granted to the alternate payee may be lower than the percentage of the account (as of the decree date) that is awarded to the alternate payee in the QDRO.

**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.

(BEGINNING OF RULE TEXT)

SECTION 1. Sections ETF 10.01 (8) and (9) are created to read:

ETF 10.01 (8) "Valid qualified domestic relations order" or "valid QDRO" means a court order to divide a participant's Wisconsin retirement system account or annuity which is determined by the department to satisfy all the criteria of s. 40.02 (48m), Stats., and section ETF 20.35.

ETF 10.01 (9) "Widow or widower" means the spouse to whom the deceased was married at the time of death. For purposes of determining a beneficiary under s. 40.02 (8) (a) 2., a judgment, order or decree of divorce or an annulment of the marriage terminates the marital relationship, but a legal separation does not, unless and until converted to a divorce.

SECTION 2. Section ETF 10.03 (2)(intro.) is amended to read:

ETF 10.03 (2) For purposes of determining maximum benefits under s. 40.23 (2), Stats., and integrated benefits under s. 40.24 (4), Stats., except as provided to the contrary in s. ETF 20.35 (3) (c) 2. the estimated OASDHI benefit shall be based on the following:

SECTION 3. Section ETF 11.02 (1) is renumbered ETF 10.01 (1h).

SECTION 4. Section ETF 20.35 is created to read:

ETF 20.35 QUALIFIED DOMESTIC RELATIONS ORDERS; DIVISION OF WRS

ACCOUNTS AND ANNUITIES. (1) SCOPE AND PURPOSE. (a) This section applies to any order to divide any benefit of the Wisconsin retirement system which is received by the department.

(b) The purpose of this section is to specify how the department shall apply a valid QDRO to the account or annuity or respond to an order which is not a valid QDRO.

(c) For purposes of s. 40.02 (48m) and 40.08 (1m), Stats., and this section, a marriage is terminated upon entry of a judgment, decree or order of divorce, annulment or legal separation.

(2) DIVISION BY VALID QDRO. Except as otherwise provided in sub. (6) or (7), upon receipt of a valid QDRO the department shall divide WRS accounts and annuities in accordance with the percentage awarded to the alternate payee in the valid QDRO, based on the date on which the marriage was terminated by a court judgment, decree or order which includes the order to divide Wisconsin retirement system benefits and the date the valid QDRO was received by the department, as follows:

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

(b) With respect to marriages terminated before April 28, 1990, the division shall be as provided in subs. (3) and (5).

NOTE: See s. ETF 10.82 concerning receipt by the department.

(3) ALL QDRO DIVISIONS. (a) Percentages. The percentage of the participant's account or annuity that is awarded to the alternate payee by a valid QDRO is limited to a percentage between zero percent (0%) and fifty percent (50%) expressed to more than 2

decimal places. An otherwise valid QDRO with a percentage awarded to the alternate payee expressed to more than 2 decimal places may not be rejected for that reason alone but the department shall round the percentage to 2 decimal places.

(b) Debts of the participant. Any debt, memorandum account or account receivable balance reflecting amounts owed by the participant to the department, the fund or any benefit plan, accrued as of the decree date, shall be divided between the participant and alternate payee in the same proportion as the participant's account or annuity.

(c) Dividing Wisconsin retirement system annuities. 1. 'Present actuarial values before and after division shall be equal.' An annuity shall be divided so that the actuarial present value of the undivided annuity is equal to the aggregate actuarial present values of the 2 separate annuities resulting from the division, all calculated as of the effective date of the division.

2. 'Division of accelerated annuity option.' If the participant selected an accelerated payment option as provided in s. 40.24 (1) (e), Stats., or s. ETF 20.04 (3), and the participant's temporary annuity is still in force as of the effective date of the annuity division, then the department shall calculate the present value of both the temporary and life annuities using the actuarial tables in effect on the effective date of the annuity division. The department shall then divide the total present value based on the percentages specified in the QDRO and calculate separate annuities for the participant and alternate payee as specified in s. 40.08 (1m) (f) 2., Stats. If the participant or alternate payee provides a projection of his or her social security benefits at age 62 from the social security administration, the department shall use the projected social security amount to calculate the amount of the temporary annuity for that person. If no projection is supplied, then notwithstanding s. ETF 20.03 (2), the department shall assume that person's projected social security benefits at age 62 equals

the that person's prorated portion of the participant's temporary annuity amount as of the effective date of the annuity division, calculated based on the respective percentages of the annuity being awarded to the participant and alternate payee. If the reduced annuity payable for life to the alternate payee or participant is below the threshold specified by ETF 20.05 (1), then that person shall receive an annuity in the same optional form originally selected by the participant, except that the temporary annuity option provided in s. 40.24 (1) (e), Stats., or s. ETF 20.04 (3) is not available.

3. 'Disability annuities.' Upon division of a disability annuity calculated under the provisions of s. 40.63 (1) or (4), Stats., the alternate payee's annuity shall consist of a portion based on the participant's actual service and a portion based on assumed service. The portion of the alternate payee's annuity based on the participant's assumed service and age shall cease upon the death of the alternate payee. Benefits payable upon the death of the alternate payee's shall be based on the guaranteed portion of the alternate payee's annuity only. Once the participant's disability annuity has been divided, the termination or suspension of the participant's disability annuity or the death of the participant has no effect on the alternate payee's annuity. If the participant's disability annuity is subsequently terminated and the participant's account restored under the provisions of s. 40.63 (9) and (10), Stats., the contributions and service credited to the restored account shall be reduced by the same percentage awarded to the alternate payee by the valid QDRO.

4. 'Actuarial adjustment for early retirement.' The actuarial reduction applied to the participant's and alternate payee's annuities as provided in s. 40.23 (2m) (f) and (fm), Stats., shall be calculated based on the participant's and alternate payee's actual ages on his or her respective annuity effective dates, using the creditable service that would otherwise have



been credited to the participant's account on the respective annuity effective dates if the participant's creditable service had not been reduced per a valid QDRO.

(d) Dividing Wisconsin retirement system accounts. 1. 'Creditable service.'

Creditable service which the participant has been granted as of the decree date is a part of the Wisconsin retirement system account of a participant and shall be divided in the same ratio as other account balances. With respect to a decree date on or after January 1, 1982 through April 1, 1990, if the employer is unable to accurately report earnings and service up to the decree date, as required by s. 40.02 (48m) (j), Stats., the department shall prorate the participant's service, earnings and contributions for the calendar year in which the decree date falls. The service and contributions shall be prorated based on the number of months between January 1 of the year in which the marriage is terminated and the decree date, divided by the number of complete and partial months during that calendar year in which the participant was a participating employee, with the quotient rounded to 2 decimal places.

2. 'Purchased service credits.' If the department has received the participant's application and payment to purchase creditable service before the decree date, the purchased service shall be divided in the same proportion as the other portions of the participant's account. Any refunds or billing for supplemental payment due for such purchased service shall be divided between the participant and alternate payee in the same proportion as the service was divided.

3. 'Creditable military service.' If the participant has active military service, the alternate payee shall be granted the percentage specified in the valid QDRO of the military service for which the participant would be eligible as of the decree date, based on the participant's total creditable service as of the decree date, regardless of when the participant requests the crediting or provides satisfactory documentation. If a participant does not

provide to the department proof of active military service and the certification of active military service on the form prescribed by the department, the department shall nevertheless divide the participant's account without the military service provided the court order is otherwise a valid QDRO.

4. 'Rehired annuitant with reestablished account.' If the participant's account has been reestablished since the decree date under the provisions of s. 40.26 (2), Stats., any memorandum account balance resulting from the annuity payments paid during the period in which the participant was an annuitant between the decree date and the effective date on which the account was reestablished, plus accumulated interest on that amount, shall be divided in the same proportion as the other portions of the participant's account.

(4) MARRIAGES TERMINATED ON OR AFTER JANUARY 1, 1982 AND BEFORE APRIL 2, 1990. (a) The division of accounts and annuities that are divided per valid QDROs with respect to marriages terminated between January 1, 1982 and April 27, 1990, both dates inclusive, shall be calculated to reflect changes in the participant's account, including but not limited to commencing or terminating an annuity, between the decree date and the effective date of the account or annuity division, as provided in this subsection.

(b) If the participant was an annuitant on the decree date and has continued to be an annuitant until the effective date of the annuity division, the department shall calculate the present value of the participant's annuity as of the effective date of the division based on the actuarial tables in effect on the effective date of the annuity division, and award a share of the total present value to the alternate payee, then calculate separate annuities for the alternate payee as provided in s. 40.08 (1m) (b) 2., (c) and (d), Stats.

(c) If the participant was not an annuitant on the decree date, but is an annuitant on the date that the department receives the valid QDRO, the participant's annuity shall be divided as provided in sub. (3) (c), and as follows:

1. The portion of the annuity awarded to the alternate payee may not reflect any service or contributions reportable for any period of the participant's participating employment after the decree date.

2. If the participant's retirement annuity is a formula annuity calculated under the provisions of s. 40.23 (2) (b) or (2m) (e), Stats., the percentage of the participant's annuity awarded to the alternate payee shall be based on the ratio of the years of creditable service awarded to the alternate payee as of the decree date, based on the percentage specified in the valid QDRO and including any creditable military service, divided by the total creditable service used to calculate the participant's retirement annuity, with the quotient rounded to 2 decimal places.

3. If the participant's retirement annuity is a money purchase annuity calculated under the provisions of s. 40.23 (2) (c), (2m) (c) or (d), or (3), Stats., the portion of the participant's annuity awarded to the alternate payee shall be based on the ratio of the portion of the account balance awarded to the alternate payee as of the decree date, based on the percentage specified in the valid QDRO, divided by the total account balance used to calculate the participant's retirement annuity, with the quotient rounded to 2 decimal places.

4. If the participant is receiving a disability annuity under s. 40.63 (1) or (4), Stats., the alternate payee's share of the portion of the participant's disability annuity based on assumed service shall be calculated by dividing the years of creditable service awarded to the alternate payee as of the decree date, based on the percentage specified in the valid QDRO and including any creditable military service, by the total service that was available to

calculate the guaranteed portion of the participant's disability annuity, including any creditable military service, regardless of whether the guaranteed portion of the disability annuity was calculated under s. 40.23 (2) (b) or (c), (2m) (c), (d) or (e) or (3), Stats.

(d) If a participant's annuity is divided under the provisions of par. (c), and that annuity was reduced under the provisions of s. 40.23 (2) or (2m) (b), Stats., the percentage of the annuity to be awarded to the alternate payee shall be determined as provided in par. (c), and those percentages shall be applied to the annuity amounts payable on the effective date that the annuity is divided per the valid QDRO.

(e) If the participant was an annuitant on the decree date but the account was subsequently reestablished under the provisions of s. 40.26 (2), Stats., and the participant is not an annuitant on the date the department receives the valid QDRO, the department shall establish a separate account for the alternate payee consisting of a share of the participant's contributions and creditable service, based on the percentage specified in the valid QDRO and including any creditable military service, that was available to calculate the participant's original retirement annuity. Interest shall be added to the contribution balances for the period between the decree date and the date the alternate payee's account is reestablished. If the participant has a memorandum account balance, the alternate payee's account shall also be credited with a share of the participant's memorandum account balance as provided in sub. (3) (b), based on the percentage specified in the valid QDRO.

(5) MARRIAGES TERMINATED ON OR AFTER APRIL 28, 1990. (a) If the participant was not an annuitant on the decree date, the department shall divide the participant's account as provided in s. 40.08 (1m) (b) 1., (c), (d) and (f) 1., Stats., and sub. (3) (d), and as follows:

1. The creditable service and amounts awarded to the alternate payee shall be in a separate account in the fund for the benefit of the alternate payee. After the division under this section, the alternate payee may apply for a separation benefit under s. 40.25 (2), Stats., provided the application is received by the department prior to the date on which the participant would have met the minimum age requirement for a retirement annuity under s. 40.23, Stats. After the date the participant would have reached the minimum retirement age, the alternate payee may only apply for retirement benefits under ss. 40.23, 40.24, or 40.25 (1), Stats.

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

(b) 1. Except as provided in subd. 2., if the participant was an annuitant on the decree date, the department shall divide the present value of the annuity as provided in s.

40.08 (1m) (b) 2, (c), (d) and (f) 2., Stats., and sub. (3) (c) and pay separate annuities to the participant and alternate payee, respectively.

2. If the participant's annuity is a joint and survivor annuity with the alternate payee as the named survivor, and the percentage awarded to the alternate payee in the valid QDRO is zero percent (0%), then the alternate payee may not receive any Wisconsin retirement system annuity based on the valid QDRO and the participant's annuity shall be recalculated as a straight life annuity payable to the participant, with no change in the remaining guarantee period, if any.

(6) **INVALID QDRO.** (a) Rejection and notice. The department may not honor any order to divide Wisconsin retirement system benefits which it determines is not a valid QDRO. The department shall send written notice of its rejection of an order to the person offering the order and to the participant and alternate payee if that person's name and address is stated in the order or is readily determinable from department records.

(b) Account already closed. An otherwise valid QDRO received after the participant's account was closed by payment of a lump sum benefit on or after the decree date has no effect, regardless of whether the participant returned to participating employment after the decree date. If the participant's account to which the valid QDRO applies is subsequently restored under the provisions of s. 40.25 (5), Stats., or because the benefit was paid in error, the restored account shall be divided according to the valid QDRO.

(c) Participant deceased. An otherwise valid QDRO received after the participant's date of death has no effect on the participant's account or annuity.

(7) **LIMITED GRACE PERIOD TO CORRECT SPECIFIED ERRORS.** (a) If the department rejects an order for the division of a participant's account and subsequently receives a otherwise acceptable application for a benefit which would close the participant's

account due to payment of a lump sum benefit, the department shall delay payment of the lump sum benefit until 30 days after the date the order for division was rejected. This paragraph applies only if the basis for the rejection was one or more of the following:

1. The order did not meet all of the requirements in s. 40.02 (48m), Stats.,
2. The order received by the department was not a certified copy or an original,

signed by the judge or a duly authorized family court commissioner.

(b) If the department has not received a second, valid QDRO within 30 days after the rejection, then the department shall complete processing the application for benefits and sub.

(6) (b) shall apply.

#### (8) EFFECT OF POST-DECREE DATE CORRECTIONS AND ADJUSTMENTS.

(a) Service purchased after decree date. Credit for service purchased by the participant after the decree date in a valid QDRO may not be affected by that QDRO.

(b) Active military service. If the department divided a participant's account per a valid QDRO without first receiving proof and certification of active military service, as provided in sub. (3) (d) 3., and the participant subsequently provides documentation of active military service and the certification on the form prescribed by the department, the department shall divide the creditable military service for services rendered prior to the decree date between the participant and alternate payee's accounts pursuant to the valid QDRO. The participant may not receive creditable military service for any active military service that would have been granted to the alternate payee had the participant submitted timely to the department the certification of active military service as provided in s. 40.02 (48m) (f), Stats.

(c) Other corrections and adjustments directly affecting benefits. The effect of any other corrections and adjustments to service, contributions, or interest earnings affecting the

benefits the participant accrued as of the decree date, including corrections of administrative errors and corrections or adjustments of any factor affecting the calculation of an annuity to be divided, shall be divided between the participant and the alternate pursuant to the valid QDRO. The participant and alternate payee accounts or annuities shall be adjusted accordingly.

SECTION 5. Section 50.30 (3) is created to read:

ETF 50.30 (3) In measuring creditable service earned in a calendar year for purposes of s. 40.63 (1) (a), Stats., and in totaling accumulated creditable service for purposes of s. 40.63 (4), Stats., the creditable service shall be determined based upon the service that would have been credited if the participant's account had not been divided by a qualified domestic relations order to which s. 40.08 (1m) (b) 1. applied.

NOTE: See s. 40.08 (1m) (g), Stats., and s. ETF 20.35.

(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 Wis. Stat. § 227.22 (2).

**Explanation of Modifications as Result of Testimony at Public Hearing:**

---

No testimony was offered at the public hearing.

Following the scheduled public hearing, the proposed rule was modified from its originally proposed form in a number of respects following review of the recommendations of the Legislative Counsel staff and consultation with departmental legal counsel. Most of the changes are editorial in nature. The provisions of the rule were reordered from the original proposal and edited. In some cases, new introductory provisions were added to improve clarity.



A substantive change in the proposed rule was to revise the proposed treatment of post-division corrections and adjustments. The original proposal had provided that, except for late-claimed creditable military service and corrections of defined administrative errors, any correction or adjustments made after the division under a valid QDRO would affect only the participant's remaining account or annuity, even if the correction or adjustment affected benefits accrued as of the decree date. The alternate payee would neither have been affected by the adjustment nor notified of the effect on the participant's WRS benefits. The provision has been revised to require that any corrections or adjustments to service, contributions, or interest earnings affecting the benefits the participant accrued as of the decree date, including correction of administrative errors and corrections or adjustments of any factor affecting the calculation of an annuity to be divided, shall be divided between the participant and the alternate per the QDRO.

The proposed rule codifies the DETF interpretation that, for purposes of a qualified domestic relations order, a marriage is terminated by divorce, annulment or legal separation. For purposes of marital property division and for income tax purposes under Wis. Stat. § 71.01 (8) and 26 U.S.C. §7703(a)(2), a marriage ends upon divorce, annulment or legal separation. However, the intent of this rule is to confine that interpretation of the termination of marriage to property division, not other benefits plans or benefits payable as the result of the death of a Wisconsin Retirement System participant under the statutory sequence in Wis. Stat. § 40.02 (8) (a) 2.

For example, coverage under the group health insurance plan is unaffected by a legal separation. Wis. Stat. § 632.897 (2)(a) provides that no group hospital or medical coverage policy which covers a spouse of a group member may terminate coverage of the spouse solely because of a break in the marital relationship except for entry of a judgment of divorce or annulment (i.e., not legal separation). The Group Insurance Board's group health insurance coverage is required to comply with Wis. Stat. § 632.897 (2) (a) by Wis. Stat. § 40.51 (5). This rule is not intended to affect the current procedures and practices of any group insurance program

The proposed creation of s ETF 10.01 (9) adds a definition of the term "widow and widower" as used in s. 40.02 (8) (a) 2., Stats., which provides that a legally separated surviving spouse would still be the beneficiary under group 1 of the statutory sequence. In the absence of a written beneficiary designation, the standard sequence may control the payment of amounts payable as the result of the death of the participant. The group life insurance program utilizes the same statutory sequence through incorporation of a reference to Wis. Stat. § 40.02 (8) in the contract. However, the interpretation codified in this rule is already followed by the group life insurance program. This rule has no effect on the life insurance program.

The proposed amendment of s. ETF 10.03 (2) (intro.) is intended to harmonize the conflict between the usual method for calculating accelerated annuities, as provided in an existing rule, and the method to be used to calculate annuities in that form for participants and alternate payees following division by a QDRO specified in proposed s. ETF 20.35 (3) (c) 2., [formerly numbered s. ETF 20.35 (5) (a)]. Also, proposed s. ETF 20.35 (3)(c) 2. now cross-references existing rules concerning the calculation of accelerated annuity options. This subdivision now provides that if the lifetime annuity resulting from the division falls below a minimum monthly amount set by existing rules, the accelerated option is not available.

The proposed renumbering of s. ETF 11.02 (1) moves the current definition of "administrative error" used throughout the rule governing administrative appeals to ch. ETF 10, where it will apply

throughout all ETF chapters. At present, the term appears only in ch. ETF 11 and in the proposed § ETF 20.35 (8) (c).

The proposed creation of ss. ETF 50.30 (3) moves a provision from this rule as originally proposed [*formerly numbered s. ETF 20.35 (6)(L)*]. This provision, interpreting s. 40.08 (1m)(g), Stats., with respect to creditable service and eligibility for disability annuity and special disability annuity benefits is more appropriately placed in the administrative code section concerning eligibility for disability annuity benefits, i.e., Wis. Admin. Code § ETF 50.30. Reference to the long-term disability insurance program has been deleted, as this rule is not being promulgated by the Group Insurance Board.

**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 March 11, 1999. The record was held open for written comments until Friday, March 12, 1999, but no comments were received.

WISCONSIN LEGISLATIVE COUNCIL STAFF



**RULES CLEARINGHOUSE**

Ronald Sklansky  
Director  
(608) 266-1946

Richard Sweet  
Assistant Director  
(608) 266-2982

RECEIVED  
MAR 09 1999  
EMPLOYE TRUST FUNDS



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 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 99-027**

AN ORDER to create ETF 20.35, relating to dividing WRS accounts and annuities per qualified domestic relations orders (QDROs).

Submitted by **DEPARTMENT OF EMPLOYE TRUST FUNDS**

02-12-99 RECEIVED BY LEGISLATIVE COUNCIL.

03-09-99 REPORT SENT TO AGENCY.

RS:JLK:jal;ksm

**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

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 99-027

### 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. Under s. 227.15 (1), Stats., an agency may not hold a public hearing on a proposed rule until after it has received the written report of the Legislative Council Staff review or until after the initial review period of 20 working days, whichever comes first. In this case, the report to the agency is due March 11, 1999 and the first possible hearing date is March 12, 1999 unless the Legislative Council Staff submits a report before its due date. However, the agency has scheduled a hearing on March 11, 1999. In order to avoid the necessity of rescheduling the hearing, this report is being submitted before its due date. In the future, unless prior arrangements are made with the Legislative Council Staff for early submission of its report, the agency should avoid scheduling hearings before the statutory due date of the Legislative Council Staff report.

b. The first line of the text of the rule should be: "SECTION 1. ETF 20.35 is created to read:". [See s. 1.04 (1), Manual.]

c. The title of s. ETF 20.35 refers to a "qualified domestic relations order" and then follows it with a parenthetical reference to the acronym "QDRO." The text uses only the acronym and indicates that it is defined in s. 40.02 (48m), Stats. However, s. 40.02 (48m), Stats., defines the term "qualified domestic relations order" without using the acronym. A definition of "qualified domestic relations order" or "QDRO" should be added, either as a subsection of s. ETF 20.35 or as a definition in s. ETF 10.01. [See s. 1.01 (8), Manual.]

d. In s. ETF 20.35 (intro.), the term "Intro:", which should be "(intro.)," is not necessary, since this is a created section, and should be deleted. In addition, unless this material grammatically leads into the following subsections, it should be renumbered as sub. (1) and the remaining subsections and internal cross-references should be renumbered accordingly. [See s. 1.03 (8), Manual.]

e. In the third sentence of s. ETF 20.35 (intro.), "must equal" should be changed to "shall equal." In the fourth sentence of s. ETF 20.35 (intro.), "will determine" should be changed to "shall determine." In the last sentence of s. ETF 20.35 (6) (d), "shall not receive" should be changed to "may not receive." In the first sentence of s. ETF 20.35 (6) (k), "department will delay" should be changed to "department shall delay." In the second sentence of s. ETF 20.35 (6) (k), "department will process" should be changed to "department shall process." In the last sentence of s. ETF 20.35 (6) (k), "QDRO will have no effect" should be changed to "QDRO has no effect." [See s. 1.01 (2), Manual.]

f. Section ETF 20.35 (5) (b) (intro.) and (7) (intro.) would benefit from including introductory language such as "all of the following" or "any of the following."

g. In s. ETF 20.35 (2), the two references to "two" should be changed to "2." [See s. 1.01 (5), Manual.] This comment also applies to s. ETF 20.35 (6) (a) and (7) (b) 1. and 2. Also, in sub. (2), the word "truncate" should be replaced by the word "round," unless there is a specific reason for inconsistency with other provisions of the rule.

h. In s. ETF 20.35 (5), (6) and (7), a title should not be included unless titles are included for all of the subsections of s. ETF 20.35. [See s. 1.05 (1), Manual.]

i. In s. ETF 20.35 (5) (a), "Social Security" and "Social Security Administration" should not be capitalized. [See s. 1.01 (4) (a), Manual.]

j. In s. ETF 20.35 (5) (b) (intro.), "this par.:" should be changed to "this paragraph:." [See s. 1.07 (2), Manual.] Also, in par. (b) 1., the reference "10)" should be replaced by the reference "(10)."

k. In s. ETF 20.35 (6) (e), the notation "par." should be replaced by the notation "pars."

l. In s. ETF 20.35 (6) (g), "ch. ETF 11.02 (1)" should be changed to "s. ETF 11.02 (1)." [See s. 1.07 (2), Manual.]

m. In s. ETF 20.35 (6) (L), "ch. ETF 50 subch. III," should be changed to "subch. III of ch. ETF 50." [See s. 1.07 (2), Manual.]

n. In the last sentence of s. ETF 20.35 (7) (b) 3., the reference to "s. 40.23 (2) (c), (2m) (c) or (d), or (3), or under s. 40.23 (2) (b) or (2m) (e), Stats." should be changed to "s. 40.23 (2) (b) or (c), (2m) (c), (d) or (e) or (3), Stats." Also, the introductory material of par. (b) does not grammatically lead into the following subunits. Consequently, the introduction should be renumbered as subd. 1. and the remaining subdivisions renumbered accordingly. Finally, par. (b)

makes references to rounding quotients to two decimal places; this does not appear to be necessary in light of sub. (2).

o. In the last sentence of s. ETF 20.35 (7) (c), the reference to “par. (6) (a)” should be changed to “sub. (6) (a).” [See s. 1.07 (2), Manual.]

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

In the last sentence of s. ETF 20.35 (6) (k), the reference to “par. (g)” should be to “par. (h).”

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

a. The close parenthesis symbol should be added before the period at the end of the first sentence in the analysis.

b. In the second sentence of the analysis, “alternate” should be changed to “alternate payee.”

c. In the second and the last paragraphs of the analysis, to avoid ambiguity about the status of the first and last dates, the phrase “between January 1, 1982 and April 27, 1990” should be changed to “on or after January 1, 1982, and on or before April 27, 1990” or “during the period that begins on January 1, 1982, and ends on April 27, 1990.” [See s. 40.08 (1m) (f) 3., Stats.] Alternatively, the phrase could be changed to “on or after January 1, 1982, and before April 28, 1990.” [See s. 40.08 (1m) (k) 2., Stats.] See, also, the title to s. ETF 20.35 (7).

Also, although the analysis refers to various dates with respect to the date a marriage terminates, s. ETF 20.35 does not do so, with the exception of the title of s. ETF 20.35 (7). A reference to those dates should be included in the rule text.

d. In the fourth paragraph of the analysis, the first sentence is difficult to follow. It may be useful to separate it into two sentences.

e. In the last paragraph of the analysis, the references to “degree date” should be changed to “decree date.” Also, in the last sentence, the word “a” should be deleted.

f. In the “Copies of Rule and Contact Persons” provision of the analysis, the last sentence should give the actual name, title and telephone number of the contact person, rather than stating “please call (name, title, phone).” Also, the sentence should end with a period.

g. In s. ETF 20.35 (5) (a), a period should be inserted after “2” in the reference to “s. 40.08 (1m) (f) 2, Stats.”

h. In the second sentence of s. ETF 20.35 (5) (a), “their” should be changed to “his or her.”

i. The first sentence of s. ETF 20.35 (6) (k) is difficult to follow. It may be useful to separate it into two sentences, for example, “The department shall reject a QDRO if it does not meet

all the requirements of s. 40.02 (48m), Stats., or if it is not an original QDRO signed by the judge or family court commissioner or does not have an original certification from the issuing court. If a QDRO is rejected and the department receives a benefit application that would close the participant's account through payment of a lump sum benefit, the department shall delay payment of the lump sum benefit for a period of 30 days after the date the QDRO is rejected."

j. In the last sentence of s. ETF 20.35 (6) (k), a comma should be inserted after "closed" to set off the introductory phrase.

While the title of s. ETF 20.35 (7) refers to QDROs for marriages terminated between January 1, 1982, and April 27, 1990, s. ETF 20.35 (7) (intro.) refers to the division of accounts and annuities divided under QDROs submitted *under the provisions of s. 40.08 (1m) (f) 3., Stats.* Section 40.08 (1m) (f) 3., Stats., applies to marriages terminated during the period that begins on January 1, 1982, and ends on April 27, 1990 *for which the Department of Employee Trust Funds (DETF) receives a QDRO after May 2, 1998.* No reference is made in s. ETF 20.35 (7) to the provision of s. 40.08 (1m) (f) 3., Stats., relating to May 2, 1998.

Moreover, s. 40.08 (1m) (f) 3., Stats., simply provides that for marriages terminated during the period that begins on January 1, 1982, and ends on April 27, 1990 for which DETF receives a QDRO after May 2, 1998, the division of benefits does not apply to any benefits paid to the participant before DETF receives the QDRO. Thus, it may not be appropriate to refer only to QDROs submitted under the provisions of s. 40.08 (1m) (f) 3., Stats. Should there be a reference to s. 40.08 (1m) (k) 2., Stats., or to some other provision?

If a reference to s. 40.08 (1m) (f) 3., Stats., is retained, a period should be inserted following "3."

k. In the last sentence of s. ETF 20.35 (7) (c), a comma should be inserted after the first use of the word "balance" to set off the introductory phrase.



**Response to Legislative Council Staff Recommendations:**

All the recommendations of the Legislative Council Staff were accepted and implemented except that the references to rounding quotients to 2 decimal places were retained in proposed s. ETF 20.35 (3)(a) and (d)1. and (4)(c) 1. and 2. because in the different computations being described the point at which rounding occurs may make a difference in the result.

**Board Authorizations for Promulgation:**

This final draft report on Clearinghouse Rule #99-027 has been duly approved for submission to the Legislature and for promulgation by the Employee Trust Funds Board at its meeting on March 19, 1999, and by both the Teacher Retirement and Wisconsin Retirement Boards at their respective meetings on March 18, 1999.

Respectfully Submitted,

DEPARTMENT OF EMPLOYE TRUST FUNDS



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

Date 3/27/99



STATE OF WISCONSIN

Department of Employee Trust Funds

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

May 28, 1999

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

RE: Clearinghouse Rule No. 99-027

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 July 31 issue of the administrative register. I also enclose a copy of the rule on disk, in Word format.

Please contact me if you have any questions.

Sincerely,

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

