

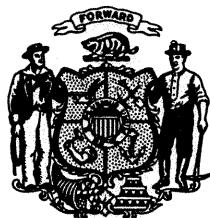
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FORM 2

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
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(608) 266-1946



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P.O. Box 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

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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.

**State of Wisconsin
Department of Employee Trust Funds**

PROPOSED 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.

Notice of Public Hearing.

A public hearing on this proposed rule, as well as on the identical emergency rule now in effect, will be 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 will be held open until 4:30 p.m. on Friday, February 25, 2000, to permit persons who are unable to attend the public hearing in person to submit written comments on the proposed rule. Any such written comments should be addressed to Shelly Schueller, Department of Employee Trust Funds, 801 W. Badger Road, P.O. Box 7931, Madison, WI 53707-7931.

Analysis Prepared by the Department of Employee Trust Funds.

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.

Flexibility Analysis.

This rule does not affect small businesses.

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 Employee 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 was 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. Employee 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.

Contact Person.

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

Text of Proposed Rule

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 employee 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), 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)

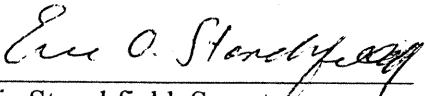
Effective date.

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 expiration of the emergency rule promulgated to be effective on December 31, 1999, which also renumbered and amended ETF 20.25 (1) and created ETF 20.25 (1) (b), including any extensions granted.

Approved for Publication.

This proposed rule is approved for publication in the Administrative Register.

Dated this 13th day of January, 2000.


Eric Stanchfield, Secretary
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

January 6, 2000

To the Honorable, the Legislature:

Enclosed is an Order of the Department of Employee Trust Funds adopting an Emergency Rule relating to 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 Wisconsin Act 11. A copy of this emergency rule is being sent to you pursuant to the requirements specified under s. 227.24 (3), Wis. Stats. A certified copy of the order has been filed in the Office of the Secretary of State and the Office of the Revisor of Statutes, as required by s. 227.20, Wis. Stats.

This emergency rule was published in the official state newspaper on December 27, 1999 and became effective on December 31, 1999. It will remain in effect for 150 days after publication, when a permanent rule is expected to be in place.

Copies of this letter and the emergency rule order are also hereby being transmitted to the Chief Clerks of the Senate and the Assembly with the request that the code, or notice of it, be published in the Journal of each house to make the rule amendment known to persons who will be affected by it.

The Department's fiscal estimate of the rule is included in the attached copy of the emergency rule.

Sincerely,

Eric O. Stanchfield
Secretary

Enclosure

STATE OF WISCONSIN

Department of Employee Trust Funds



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

February 4, 2000

Members of the Legislature:

Enclosed is a copy of the Order of the Department of Employee Trust Funds adopting an Emergency Rule relating to 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 Wisconsin Act 11. This emergency rule would be implemented only after the resolution of legal questions regarding 1999 Wisconsin Act 11 now pending before the Wisconsin Supreme Court.

A copy of the notice of public hearing dated January 6, 2000 on the emergency rule ETF 20.25 was sent to the Legislature instead of a copy of the original Order of the emergency rule with the statement of finding of emergency as required under s. 227.24 (3). A copy of the emergency rule with the finding of emergency statement is enclosed for your convenience.

As stated previously, this emergency rule was published in the official state newspaper on December 27, 1999 and became effective on December 31, 1999. It will remain in effect for 150 days after publication, when a permanent rule is expected to be in place.

Sincerely,

Eric O. Stanchfield
Secretary

Enclosure

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

EMERGENCY RULE: renumbering and amending ETF 20.25 (1) and creating ETF 20.25 (1) (b), Wisconsin Administrative Code, relating to 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 Wisconsin Act 11.

NOTICE OF HEARING AND EMERGENCY RULE

NOTICE OF HEARING

The Wisconsin Department of Employee Trust Funds will hold a public hearing to review the emergency rule, which renumbers and amends ETF 20.25 (1) and creates ETF 20.25 (1) (b), Wisconsin Administrative Code, relating to 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 Wisconsin Act 11, in accordance with the provisions of s. 227.16 (1), Wisconsin Statutes. The public hearing will be held on Friday, February 11, 2000 at 1:00 p.m. at the Department of Employee Trust Funds, Room 2A, 801 West Badger Road, Madison, Wisconsin.

The public record on the emergency rule will be held open until 4:30 p.m. on Friday, February 25, 2000 to permit the submission of written comments from persons unable to attend the public hearing in person, or who wish to supplement testimony offered at the hearing. Any such written comments should be addressed to Shelly Schueller, Department of Employee Trust Funds, 801 West Badger Road, P.O. Box 7931, Madison, Wisconsin 53707-7931.

Analysis Prepared by the Wisconsin Department of Employee Trust Funds

Section 27 (1) (a) of 1999 Wisconsin 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). This 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 **that** 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.

If the ETF Board takes no action, the same prorating would apply to the distribution of the funds transferred into the annuity reserve by 1999 Wis. Act 11, § 27 (1) (a). This emergency administrative rule provides that there will be no prorating of the distribution of those funds. The same percentage increase will be applied to annuities in effect for the full year or in effect for only part of 1999.

Litigation concerning 1999 Wisconsin Act 11 is anticipated. The litigation or potential injunctions may delay the actual implementation of provisions of the bill past the dates stated in the legislation and this rule. This rulemaking 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. This rulemaking shall not be construed as an endorsement of the transfer of funds from the TAA mandated by the Act.

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 control the treatment of the surplus in the annuity reserve which results from the extraordinary distribution mandated by the Act. 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.

Authority for Rule

Wis. Stat. s. 227.24; s. 40.03 (2) (i)

Initial 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 Employee 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 was 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 an injunction or court action, then previously unanticipated costs in distributing these funds will arise. If the 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. Employee 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 the period.

Initial Regulatory Flexibility Analysis

The Department anticipates that the provisions of this emergency rule will have no direct adverse effect on small businesses.

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 53707, telephone (608) 266-1071. For questions about this rule making, please call Shelly Schueller, Policy Analyst for the Division of Retirement Services, at (608) 266-6611.

TEXT OF EMERGENCY RULE

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

ETF 20.25 (1) (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) 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.

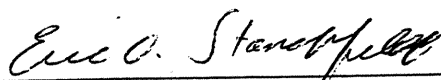
(END OF RULE TEXT)

Effective Date

This rule shall take effect on December 31, 1999, as an emergency rule.

Signed at Madison, Wisconsin this 7th day of January, 2000.

WISCONSIN DEPARTMENT OF EMPLOYE TRUST FUNDS



Eric O. Stanchfield, Secretary

EMERGENCY RULE

ORDER of the Department of Employee Trust Funds, Employee Trust Funds Board, Teacher Retirement Board and Wisconsin Retirement Board promulgating an:

EMERGENCY 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.

Analysis Prepared by the Department of Employee Trust Funds.

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). This 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.

If the ETF Board takes no action, the same prorating would apply to the distribution of the funds transferred into the annuity reserve by 1999 Wis. Act 11, § 27 (1) (a). This emergency administrative rule provides that there will be no prorating of the distribution of those funds. The same percentage increase will be applied to annuities in effect for the full year or in effect for only part of 1999.

Litigation concerning 1999 Wis. Act 11 is anticipated. The litigation or potential injunctions may delay the actual implementation of provisions of the bill past the dates stated in the legislation and this rule. 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. This rule-making shall not be construed as an endorsement of the transfer of funds from the TAA mandated by the Act.

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 control the treatment of the surplus in the annuity reserve which results from the extraordinary distribution mandated by the Act. 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.

Flexibility Analysis.

This rule does not affect small businesses.

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 Employee 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 was 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 an injunction or court action, then previously unanticipated costs in distributing these funds will arise. If the 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. Employee 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.

Contact Person.

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

Text of Emergency Rule

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) 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 December 31, 1999, as an emergency rule.

Finding of Emergency.

The Department of Employee Trust Funds, Employee Trust Fund Board, Teacher Retirement Board and Wisconsin Retirement Board find that an emergency exists and that this administrative rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

The Public Employee Trust Fund was created for the purpose of helping public employes to protect themselves and their beneficiaries against the financial hardships of old age, disability, death, illness and accident. The Trust Fund thus promotes economy and efficiency in public service by facilitating the attraction and retention of competent employes, by enhancing employe morale, by providing for the orderly and humane departure from service of employes no longer able to perform their duties effectively, and by establishing equitable benefit standards throughout public employment. There are approximately 102,000 annuitants of the Wisconsin Retirement System, of whom about 80% reside throughout the State of Wisconsin. The Department of Employee Trust Funds estimates that up to 7,000 public employes covered by the Wisconsin Retirement System will retire and take annuity benefits effective during 1999.

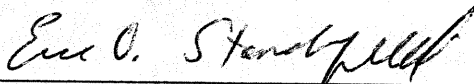
WRS participants who retire during 1999 are not eligible to have their retirement benefits calculated using the higher formula factors for pre-2000 service which are provided by the treatment of Wis. Stat. § 40.23 (2m) (e) 1. through 4. by 1999 Wis. Act 11. Section 27 (b) 2. of the Act directs that any funds allocated to the employer reserve in the Trust Fund as a result of the \$4 billion transfer mandated by the Act, which exceed \$200,000,000 shall be applied towards funding any liabilities created by using the higher formula factors with respect to pre-2000 service.

If the existing administrative rule mandating proration is not revised, then the distribution of the funds transferred into the annuity reserve by Act § 27 (1) (a) of 1999 Wis. Act 11 will be prorated with respect to annuities with effective dates after December 31, 1998, and before January 1, 2000. The extraordinary transfer of funds from the Transaction Amortization Account (TAA) mandated by 1999 Wis. 11 causes funds, which would otherwise have remained in the TAA to be recognized and fund annuity dividends in later years, to instead be transferred into the annuity reserve in 1999 and paid out as an annuity dividend effective April 1, 2000. Normally, annuities effective during 1999 would receive only a prorated dividend. If this occurred with respect to this

extraordinary distribution, then annuitants with annuity effective dates in 1999 would be deprived of a portion of the earnings of the Public Employe Trust Fund that would otherwise have affected their annuities as of April 1, 2001 and in subsequent years.

Promulgation of an emergency rule is the only available option for revising the effect of Wis. Admin. Code § ETF 20.25 (1) before December 31, 1999. Accordingly, the Department of Employe Trust Funds, Employe Trust Funds Board, Teacher Retirement Board and Wisconsin Retirement Board conclude that preservation of the public welfare requires placing this administrative rule into effect before the time it could be effective if the Department and Boards were to comply with the scope statement, notice, hearing, legislative review and publication requirements of the statutes.

Dated this 22nd day of December, 1999.



Eric Stanchfield, Secretary
Department of Employe Trust Funds

This emergency rule was approved for promulgation by the Teacher Retirement Board and the Wisconsin Retirement Board at the respective board meetings on December 9, 1999, and by the Employe Trust Funds Board at its meeting on December 10, 1999.



AUG 14 2000

STATE OF WISCONSIN

Department of Employee Trust Funds

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

April 26, 2000

HONORABLE JAMES BAUMGART
STATE SENATE
CHAIR, SENATE COMMITTEE ON LABOR
306 SOUTH, STATE CAPITOL
P.O. BOX 7882
MADISON WI 53707-7882

RE: Clearinghouse Rule #00-011, Clearinghouse Rule #00-021 and Clearinghouse Rule #00-022

Dear Senator Baumgart:

I am writing in response to action taken by the Senate Committee on Labor concerning promulgation of three Department of Employee Trust Funds Clearinghouse Rules: CR #00-011 relating to distribution to annuitants of the total amount distributed from the transaction amortization account to the annuity reserve under the non-statutory provisions of 1999 Wisconsin Act 11; CR #00-021 relating to the participation in the variable trust fund; and CR #00-022 relating to the Department's interpretation of what Wisconsin Retirement System (WRS) creditable service is considered performed before January 1, 2000 versus considered performed on or after that date under 1999 Wisconsin Act 11.

On March 27, 2000, Senator Judy Robson, Co-Chair of the Joint Committee on Review of Administrative Rules, sent a letter to you and Representative Steve Wieckert urging both the Senate Committee on Labor and the Assembly Committee on Government Operations to ensure that all three Clearinghouse Rules were not promulgated. The delay in promulgation was requested because Legislative Clearinghouse comments during the review period on the rules took the position that since implementation of 1999 Wisconsin Act 11 was enjoined by the Wisconsin Supreme Court, there was no statutory authority for the rules.

On April 18, 2000, the Senate Committee on Labor held a public hearing on the above three Clearinghouse Rules. The Committee unanimously passed a motion that required the Department to delay submission of these rules to the Revisor of Statutes for publication until the Wisconsin Supreme Court has ruled on the validity of 1999 Wisconsin Act 11. In addition, the Department, on or before May 9, 2000, was asked to provide written assurance that it will submit the three rules to the Revisor for publication only after the Court has ruled on the validity of Act 11. In the absence of this assurance, the Committee plans to object to the three rules in their entirety.

The Employee Trust Funds Board, the Department and I requested a preliminary injunction barring implementation of 1999 Wisconsin Acts 11 and 12 from the Supreme Court when we filed our petition for original jurisdiction and requested to have the petition stand as a complaint seeking declaratory judgment. The Supreme Court granted the preliminary injunction in its order dated December 29, 1999, but included the following:

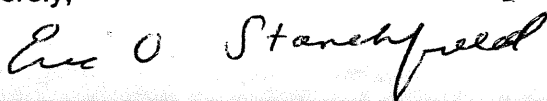
Senator Baumgart
April 26, 2000
Page 2

Notwithstanding the foregoing, the petitioners [*ETF Board, DETF and Secretary*] are not enjoined from taking such contingent and preparatory measures towards implementation of this legislation as they deem appropriate in their discretion and consistent with their fiduciary and other duties and responsibilities for administering the terms of the public employe trust fund. Any question raised by either party regarding the propriety of any particular contingent and preparatory measure toward implementation shall immediately be brought before this court for resolution;

A copy of the preliminary injunction is enclosed for your information. (*Employee Trust Funds Board, et al. v. Lightbourn, et al.*, No. 99-3297-OA, Supreme Court Order dated December 29, 1999, page 2.)

Even though the Department believes the Court's exception in the preliminary injunction provides the statutory authority to promulgate the above three rules, I am providing my written assurance that the Department will not submit Clearinghouse Rules #00-011, #00-021 and #00-022 to the Revisor of Statutes for publication until the Court has ruled on the validity of Act 11.

Sincerely,



Eric O. Stanchfield
Secretary

Enclosure

cc: Committee Members, Senate Committee on Labor
Senator Judith Robson, Co-Chair, Joint Committee on Review of Administrative Rules
Rep. Glenn Grothman, Co-Chair, Joint Committee on Review of Administrative Rules
Rep. Steve Wieckert, Assembly Committee on Government Operations
Gary Poulson, Deputy Revisor, Revisor of Statutes Bureau

AUG 03 2000



STATE OF WISCONSIN

Department of Employee Trust Funds

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

July 28, 2000

THE HONORABLE FRED A RISSER
PRESIDENT OF THE SENATE
C/O DONNA DOYLE
SENATE JOURNAL AND RECORDS
ONE EAST MAIN STREET, SUITE 402
MADISON WI 53702

Re: Clearinghouse Rule #CR 00-011

Dear Senator Risser:

Pursuant to s. 227.19 (4) (b) 4., I am recalling the proposed Clearinghouse Rule # 00-011 relating to the annuitant dividend distribution currently before the presiding officer of each house of the Legislature. The proposed rule will be resubmitted with a germane modification changing the effective date of the rule.

The effective date of the proposed rule will be modified as indicated below:

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 expiration of the emergency rule promulgated to be effective on December 31, 1999, which also renumbered and amended ETF 20.25 (1) and created ETF 20.25 (1) (b), including any extensions granted~~ 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).

The modification is necessary to make it clear that the proposed rule is tied to the implementation of 1999 Wisconsin Act 11.

In accordance with Wis. Stats. § 227.19 (2), I am resubmitting the proposed rule in final draft form to the presiding officer of each house of the Legislature. The report required under Wis. Stats. § 227.19 (3) is also enclosed. Please contact Pam Henning, Director of Legislation and Planning, at 267-2929 if you have any questions.

Sincerely,

Eric O. Stanchfield
Secretary

Enclosure

**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 Employe 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 Employe Trust Funds Board and Department of Employe 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 *Employe 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 Employe 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 Employe 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 Employee 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. Employee 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 employee 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

2564 Branch Street
Middleton, WI 53562
Phone 608-831-5115
Fax 608-831-1694
www.wrea.net

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.

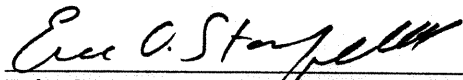
In proposed § ETF 20.25 (1) (b), the cross-reference to a statute has been corrected to read: "... s. 40.04 (3) (a), Stats., or otherwise."

Board Authorizations for Promulgation:

The Employee 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

AUG 14 2000

Department of Employee Trust Funds

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

August 2, 2000

Honorable James Baumgart
State Senate
Chair, Senate Committee on Labor
306 South, State Capitol
P.O. Box 7882
Madison, WI 53707-7882

Honorable Steve Wieckert
State Assembly
Chair, Assembly Committee on Government Operations
9 North, State Capitol
P.O. Box 8953
Madison, WI 53708

RE: Clearinghouse Rule (CR) #00-011 relating to the annuitant dividend distribution

Dear Senator Baumgart and Representative Wieckert:

I am writing to request the Senate Committee on Labor and Assembly Committee on Government Operations waive jurisdiction over the recently referred proposed rule, CR #00-011 on the annuitant dividend distribution, prior to expiration of the Committees' 30-day review period pursuant to s. 227.19 (4) (c). CR #00-011 was recalled and resubmitted for review before your Committees due to a change in the effective date provision in the rule.

As you will recall, the Department of Employee Trust Funds (DETF) submitted a proposed permanent rule through the normal administrative rule promulgation process in March 2000. Due to concerns raised about the statutory authority of the rule by Senator Judy Robson, Co-Chair of the Joint Committee for Review of Administrative Rules (JCRAR), the Senate Committee on Labor held a public hearing on April 18, 2000. The Committee passed a motion that required the DETF to delay submission of the rule to the Revisor of Statutes Bureau for publication until the Wisconsin Supreme Court ruled on the validity of 1999 Wisconsin Act 11. The DETF was also asked and further provided a written assurance to the Senate Committee on Labor (copy attached dated April 26, 2000) that it should submit the rule to the Revisor for publication after the Court has ruled on the validity of Act 11.

Since that assurance was provided by DETF to the Senate Committee on Labor on the permanent rule, the JCRAR held two public hearings on our emergency rule on the annuitant dividend distribution, first effective on December 31, 1999. At both hearings, May 10 and July 25, 2000, the JCRAR adopted a motion extending Emergency Rule ETF 20.25 (1) on a vote of 9-1 and 7-0, respectively.

Honorable James Baumgart and Steve Wieckert
August 2, 2000
Page 2

In recent discussions between our legal counsel, Legislative Council staff, Senator Robson and Senator Baumgart, it was determined that a change in the effective date of the proposed permanent rule should remove concerns raised by Senator Robson and the Senate Committee on Labor regarding statutory authority of the rule. The change in the effective date clearly ties the proposed rule to the implementation of 1999 Wisconsin Act 11. The effective date of the proposed rule is modified as follows:

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. Stats. § 227.22 (2) (intro.), or (2) ~~the expiration of the emergency rule promulgated to be effective on December 31, 1999, which also renumbered and amended ETF 20.25 (1) and created ETF 20.25 (1) (b), including any extensions granted~~ 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).

As stated in testimony before the JCRAR and Senate Committee on Labor, the DETF Board's intent since Act 11 became law and then enjoined by the Court was to have the annuitant dividend distribution rule in effect at all times until the distribution actually occurs or until the Court rules that portion of Act 11 unconstitutional. There are 6,281 annuitants whose annuities will be affected depending upon the action by the Court. If Act 11 is found constitutional and the proposed rule is in place, it will allow those annuitants retiring in 1999 to receive the full annuitant dividend based upon the portion of funds credited from the transaction amortization account (TAA) to the annuity reserve. If the rule is not in place, those same annuitants could lose annuity dividend increases worth an aggregate total of \$427,970 dollars per month. That loss continues for the rest of the annuitant's life and for the duration of the annuity.

If the Senate Committee on Labor and the Assembly Committee on Government Operations are willing to waive their 30-day review period of our rule, then we intend to publish the annuitant dividend distribution rule with an effective date of October 1, 2000. Our extended emergency rule expires on September 25, 2000, unfortunately leaving a gap before the new rule can become effective. However, waiver of the review period would still allow the permanent rule to become effective before any action by the Court as the Court scheduled oral arguments on *WPPA v. Lightbourn* for October 4, 2000.

Thank you for your consideration of this request. If you have any questions, please don't hesitate to contact me directly at 266-0301 or Pam Henning, Director of Legislation and Planning, at 267-2929.

Sincerely,



Eric O. Stanchfield
Secretary

Enclosure

cc: Senator Judith Robson