Report From Agency

STATE OF WISCONSIN
DEPARTMENT OF EMPLOYEE TRUST FUNDS
DEFERRED COMPENSATION BOARD

FINAL DRAFT REPORT ON CLEARINGHOUSE RULE #08-016

FINAL RULE to amend ETF 70.08 (3); to amend ETF 70.10, and to create ETF 70.02 (4m), relating to the start date for phasing out investment options under the Wisconsin deferred compensation plan and to expand emergency financial hardship withdrawals for beneficiaries.

Agency Person to be Contacted for Questions
Please direct any questions about this rule-making to David Nispel, Deputy Chief Counsel, Department of Employee Trust Funds, P. O. Box 7931, Madison, WI 53707. Email: david.nispel@etf.state.wi.us. Telephone: (608) 264-6936.

Statement Explaining Need for Rule
This rule-making is needed to provide an adjustable start date for closing or phasing out an investment option from the primary or alternate deferred compensation plan in order to reduce complications associated with the closure and to expand financial emergency hardship withdrawals to include hardships for a named beneficiary.

Analysis Prepared by the Department of Employee Trust Funds

1. Statute interpreted:
   Section 40.80, Wis. Stats.

2. Statutory authority:
   Sections 40.03 (2) (ir) and 227.11 (2) (a), Wis. Stats.

3. Explanation of agency authority:
   By statute, the DETF Secretary is expressly authorized, with appropriate board approval, to promulgate rules required for the efficient administration of any benefit plan established in ch. 40 of the Wisconsin statutes. Also, each state agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency if the agency considers it necessary to effectuate the purpose of the statute.

4. Related statute or rule:
   Ch. ETF 70, Wis. Admin. Code, establishes a procedure for administration of the deferred compensation program as provided by s. 40.80, Wis. Stats. There are no other related administrative rules or statutes.

5. Plain language analysis:
   The purpose of this rule is to adjust the start date for phasing out an investment option from the primary or alternate plan in order to reduce complications associated with the phase out and to expand financial emergency hardship withdrawals to include hardships for a named beneficiary.

6. Summary of, and comparison with, existing or proposed federal regulations:
   FUND CLOSURE: There are no known existing or proposed federal regulations that are intended to address the fund closure start date or timeline regulated by this proposed rule.

   FINANCIAL HARDSHIPS AND BENEFICIARIES: The proposed rule would be in conformance with changes to federal regulations made by s. 826 of the federal

Pension Protection Act of 2006, which expanded financial emergency hardship withdrawals to include hardships for a named beneficiary.

7. Comparison with rules in adjacent states:
FUND CLOSURE: A query to adjacent states and the National Association of Government Defined Contribution Administrators list serve revealed that Wisconsin is unique in providing a specific start date and timeline for fund closures. Most other state programs have not formalized this process or provided a specific timeframe. Based on the query, it appears that the fund closeout process can take, on average, 30 to 90 days, and begins whenever a plan's governing body makes the decision to remove a fund.

FINANCIAL HARDSHIPS AND BENEFICIARIES: In order to be in compliance with recent federal regulations, most states and other s. 457 plan providers are in the process of modifying or already have modified their definition of financial emergency hardship withdrawals to include hardships for a named beneficiary.

8. Summary of factual data and analytical methodologies:
Currently s. ETF 70.08 (3) requires that phase one of the twelve month investment fund removal process begin on January 1 of the year following the deferred compensation board's decision to remove a fund from the Wisconsin deferred compensation program. Starting the process on January 1st and ending the process on December 31st of that calendar year presents many difficulties, including reconciliation requirements and other end of calendar year activities, and additional days that the financial markets are closed for holidays. By eliminating the January 1st start date and permitting the process to begin six months after the board has made a fund removal decision many of these complications will be eliminated.

The proposed revision would create a rolling fund closure window outside of end of the calendar year complications, but retain the 12-month time frame to notify participants of the pending closure.

Financial emergency hardship withdrawals from the deferred compensation program are permitted under s. ETF 70.10. The federal Pension Protection Act of 2006 expanded financial emergency hardship withdrawals to include hardships for a named beneficiary. While the Wisconsin Deferred Compensation Plan and Trust Document already provides for this type of hardship withdrawal, there is not a similar provision in the Wisconsin administrative code. It is necessary to revise the administrative rule in order to allow hardship withdrawals for named beneficiaries, which could be done by adding the word "beneficiary" to the applicable subsections of s. ETF 70.10. The definition of "beneficiary" in this rule is the same as in s. 40.02 (8), Stats.

9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report.

The rule does not have an effect on small businesses because private employers and their employees do not participate in, and are not covered by, the Wisconsin deferred compensation program. The deferred compensation program is an optional, supplementary retirement plan covering only governmental employees.

10. Effect on small business:
There is no effect on small business.

Regulatory Flexibility Analysis

This rule-making has no significant effect on small businesses because only governmental employers and their employees may participate in the benefit programs under ch. 40 of the statutes administered by the Department of Employee Trust Funds.

Fiscal Estimate

The rule has no fiscal effect on any county, city, village, town, school district, technical college district or sewerage district. The rule will have no effect on state funds.

Text of Rule

Section 1. ETF 70.02 (4m) is created to read:

ETF 70.02 (4m) "Beneficiary" has the meaning given in s. 40.02 (8), Stats.

Section 2. ETF 70.08 (3) is amended to read:

ETF 70.08 (3) Based on the board's review required under s. ETF 70.03 (11) the board may determine that an investment product offered by the primary plan or an alternate plan is no longer acceptable for inclusion in the program. If the board decides to remove an investment product from the plan as a result of the product's failure to meet the criteria as established under s. ETF 70.03 (10), the product shall be phased out of the primary or alternate plan in a 2-step process over a 12 month period that shall commence ~~January 1 of the year~~ on the first business day of the sixth month following the board's decision, as follows:

Section 3. ETF 70.10 is amended to read:

ETF 70.10 (1) A participant or beneficiary may make emergency withdrawals in the event of an unforeseeable emergency under the following conditions and limitations:

ETF 70.10 (1)(a) As defined in 26 USC 457 (b) (5) and 26 CFR 1.457-2 (h) (4), an unforeseeable emergency is one which causes severe financial hardship to the participant or beneficiary as a result of a sudden and unexpected illness or accident of the participant or beneficiary or of a dependent of the participant or beneficiary, loss of the participant's or beneficiary's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant or beneficiary.

ETF 70.10 (1)(b) The need to send a participant's or beneficiary's child to college or the desire to purchase a home are examples of what are not unforeseeable emergencies.

ETF 70.10 (1)(d)2. By liquidation of the participant's or beneficiary's assets to the extent the liquidation of these assets would not itself cause severe financial hardship, or

ETF 70.10 (2)(a) Receive requests from participants or beneficiaries for unforeseeable emergency withdrawals.

Effective Date

This rule shall take effect on the first day of the month commencing after the date of publication in the Wisconsin administrative register as provided by s. 227.22 (2) (intro.), Wis. Stats.

Economic Impact Report

None.

Department of Administration s. 227.138 Report

None.

Energy Impact Report

None.

Legislative Council Staff Clearinghouse Report

Attached.

Response to Legislative Council Staff Clearinghouse Report

The Department has implemented all of the Legislative Council Staff recommendations contained in the Clearinghouse Report. This involved updating the "rule summary" to include all required material that was inadvertently left out of the version originally submitted to the Legislative Council Staff, including a proposed effective date for the rule and a fiscal estimate. The sections of the rule-making order were also renumbered and reformatted to reflect the preferred administrative code style.

List of Persons Who Appeared or Registered at the Public Hearing

No persons appeared or registered at the public hearing held March 19, 2008.

Summary of Public Comments

No person wished to testify concerning the rule. The record was held open for written comments until 4:30 p.m. on March 20, 2008, but no comments were received.

Modifications to Rule as Originally Proposed

No changes were made from the original proposal as a result of public comments.

Modifications to the Analysis Accompanying the Proposed Rule
None.

Modifications to the Fiscal Estimate
None.

Board Authorization for Promulgation
This final draft report on Clearinghouse Rule #08-016 has been duly approved for submission to the Legislature, and for promulgation, by the Department of Employee Trust Funds and by the Deferred Compensation Board at its meeting on May 6, 2008.

Respectfully submitted,

DEPARTMENT OF EMPLOYEE TRUST FUNDS

________________________________ Date: _______________
David A. Stella
DETF Secretary