

# STATEMENT OF SCOPE

## Department of Employee Trust Funds

Rule No.: Chapter ETF 20

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Relating to: Employer Participation in the Wisconsin Retirement System

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Rule Type: Permanent

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### 1. Detailed description of the objective of the proposed rule:

ETF intends to make changes to the administrative code in order to properly administer provisions enacted by 2015 Wisconsin Act 174, specifically 40.21 (7) and 40.22 (2) (cm), in relation to employer election to participate in the Wisconsin Retirement System (WRS). The proposed administrative rules would also include clarification of requirements under federal tax law relating to employers' elections to include or exclude employees in a tax-qualified governmental pension plan.

### 2. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

2015 Wisconsin Act 174 allows an employer that elects to be included within the provisions of the WRS (participating employer) to elect to be a participating employer only with respect to employees hired on or after the date on which the employer elects to participate in WRS. The Act also provides that a municipal employer that elects to be a participating employer on or after March 2, 2016, only with respect to employees hired on or after the date on which the employer makes the election, may offer its current employees the option of becoming participating employees in the WRS. An employee who exercises this option must do so in writing, on a form provided by the Department of Employee Trust Funds, prior to the effective date on which the employer becomes a participating employer. Finally, the Act allows a municipal employer that elects to be a participating employer on or after March 2, 2016, to choose not to include its public utility employees as WRS participants. Effective date: March 2, 2016.

ETF proposes a rule that would clarify that an election for inclusion or exclusion under Wis. Stat. 40.21 (7) as created under 2015 Wisconsin Act 174 must comply with Internal Revenue Code (IRC) and Treasury Regulations. Treas. Reg. 1.401(k)-1(a)(3)(v). Treas. Reg. §1.401(k)-1(a)(3)(i). Additional clarifications may be necessary in order to properly administer the requirements of the Act.

### 3. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Authority for the ETF Secretary to promulgate rules affecting ETF-administered insurance programs is found at Wis. Stat. § 40.03 (2)(i): “The secretary...Shall promulgate, with the approval of the board, all rules, except rules promulgated under par. (ig) or (ir), that are required for the efficient administration of the fund or of any of the benefit plans established by this chapter. In addition to being approved by the board, rules promulgated under this paragraph relating to teachers must be approved by the teachers retirement board and rules promulgated under this paragraph relating to participants other than teachers must be approved by the Wisconsin retirement board, except rules promulgated under s. 40.30.”

(a) General rulemaking authority for state agencies is found at Wis. Stat. § 227.11 (2):

Rule-making authority is expressly conferred as follows:

Each 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, but a rule is not valid if the rule exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:

1. A statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.
2. A statutory provision describing the agency's general powers or duties does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.
3. A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.

(b) Each agency may prescribe forms and procedures in connection with any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute, but this paragraph does not authorize the imposition of a substantive requirement in connection with a form or procedure.

(c) Each agency authorized to exercise discretion in deciding individual cases may formalize the general policies evolving from its decisions by promulgating the policies as rules which the agency shall follow until they are amended or repealed. A rule promulgated in accordance with this paragraph is valid only to the extent that the agency has discretion to base an individual decision on the policy expressed in the rule.

(d) An agency may promulgate rules implementing or interpreting a statute that it will enforce or administer after publication of the statute but prior to the statute's effective date. A rule promulgated under this paragraph may not take effect prior to the effective date of the statute that it implements or interprets.

(An agency may not inform a member of the public in writing that a rule is or will be in effect unless the rule has been filed under s. 227.20 or unless the member of the public requests that information.)

**4. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

State employees will spend an estimated 40 hours to develop these rules.

**5. List with description of all entities that may be affected by the proposed rule:**

The proposed rules will affect all new WRS employers.

**6. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

The proposed rule would ensure compliance with existing federal regulations governing retirement plan qualification status, specifically cash deferred arrangements under 401(k).

**7. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):**

ETF anticipates that the proposed rule will have no economic impact locally or statewide and will not impact small businesses.

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May 2, 2016

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Date Submitted