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Chapter ETF 10

ADMINISTRATION

ETF 10.01 Definitions.
ETF 10.03 Creditable service.
ETF 10.05 Creditable service for Milwaukee teachers.
ETF 10.07 Leave of absence.
ETF 10.08 Separation from employment.
ETF 10.10 Employee trust funds board and teachers retirement board elections.
ETF 10.12 Separate retirement system participation in the retirement trust fund.
ETF 10.15 Annuity reserves.
ETF 10.20 Approval of group insurance plans for state employees.
ETF 10.25 Core retirement investment trust participation in the variable retirement investment trust.
ETF 10.30 Variable division participation.
ETF 10.50 Sick leave conversion credits.
ETF 10.55 Joint instrumentalities; reporting participating employees, service and earnings.
ETF 10.60 Reports and payments.
ETF 10.63 Due dates.
ETF 10.633 Debiting participant account to fund benefit.
ETF 10.635 Late paid earnings.
ETF 10.64 Late reporting charges and interest.
ETF 10.65 Refund of excess contributions.
ETF 10.70 Individual personal information.
ETF 10.71 Transcript fees.
ETF 10.72 Fee for search of historical records.
ETF 10.75 Power of attorney.
ETF 10.78 Guardianship requirements.
ETF 10.79 Reasonable efforts to locate benefit payees.
ETF 10.82 Receipt by the department.
ETF 10.84 Response to requests.
ETF 10.85 Prohibited transactions.
ETF 10.86 Electronic deposits.

ETF 10.01 Definitions. Words, phrases, and terms used in all ETF chapters which are not defined in this section shall have the meaning set forth in s. 40.02, Stats.:

(1g) "Active military service" and "active service," as that term is used with reference to military service, including in s. 40.02 (15) (a) (intro.) and 1., (c) (intro.), 1. and 4., and (48m) (f), Stats., mean active duty military service in the armed forces of the United States, excluding:

(a) Service reported by the military as active duty for training purposes.

(b) Service as a cadet or student at a U.S. military service academy.

Note: This definition does not apply to the term "active service" used in reference to active performance of the duties of employment with a participating employer, as for example in s. 40.63 (1) (c) and (2), Stats.

Insofar as possible, the department relies on U.S. armed forces documents, such as the DD 214, the AGO53-55 series, NAVPERS 553, and GSA 6851, to identify periods of "active duty" and "active duty for training."

(1h) "Administrative error" means a clerical mistake in copying or writing. The term also includes the unintentional omission of a number or factor in making a calculation or a mathematical miscalculation by a department employee or board staff. The term does not include an actual or alleged erroneous interpretation of applicable law, the giving of erroneous advice, or negligence on the part of an employee or agent of the department or member or agent of the board.

(1k) "Benefit approval date" is the date on which an application for a separation benefit, lump sum retirement benefit, or the payment of additional contributions, death benefit, or remaining guaranteed annuity payments in a lump sum, is confirmed by payment voucher by the department.

Note: See "benefit approval date" in s. ETF 20.19 (2) (a), "date the application for a separation benefit is approved" in s. 40.25 (2), Stats., and reference to the month in which the payment of a benefit is approved in ss. 40.04 (4) (b) and (bm) and 40.73 (1) (a) and (2) (a), Stats.

(1L) In this section, "child" includes a natural child, stepchild, adopted child, child in an adoptive placement under s. 48.837 (1), Stats., and legal ward who became a permanent legal ward of the employee or the employee's spouse or domestic partner prior to age 19.

(1m) "Current basic pay rate" means:

(a) Unless otherwise provided by ch. 230, Stats., contractual agreements authorized under subch. V of ch. 111, Stats., or par. (b) or (c), the hourly rate, or its equivalent, excluding any overtime or supplementary compensation, at which the employee is paid at the time of termination of employment or at the time of death. For an active employee or employee on an approved leave of absence the "current basic pay rate" means the hourly rate, or its equivalent, the employee is paid during the pay period or was paid prior to the commencement of the leave of absence. The equivalent of the hourly rate of pay shall be obtained by dividing the employee's total earnings in a typical pay period, excluding any overtime, on-call, extracurricular or supplementary compensation, by the number of hours, excluding hours, such as overtime, on-call and extracurricular hours which are incidental to the primary employment, for which the employee is paid in that pay period. If the employee has received a pay adjustment during the 12 months preceding termination, death or leave of absence, other than a permanent change that is broadly applicable to the employees of that employer, or unless that change is the result of a significant change in the nature and duties and activities of that employee, then the equivalent of the hourly rate shall be the greater of the previous current basic pay rate prior to the pay adjustment or the final average earnings divided by 174.

(b) For an annuitant who becomes a participating employee subject to s. 40.22, Stats., within 3 years of the original date of termination, the greater of the current basic pay rate as established under par. (a) on the effective date of the original annuity or the current basic pay rate at the time of subsequent termination.

(c) For annuitants who become participating employees subject to s. 40.22, Stats., after more than 3 years from the original date of termination the current basic pay rate determined in accordance with par. (a) at the time of subsequent termination for sick leave accumulated after reemployment only. The conversion of sick leave accumulation in effect prior to reemployment shall be calculated by application of the current basic pay rate in effect prior to reemployment as determined under par. (a).

(1r) "Decree date" as defined in s. 40.02 (18f), Stats., includes the first day of the month in which a participant's domestic partnership is terminated by a court under a final judgment, decree or order.

(2) "Dependent" means:

(a) For life insurance purposes, an eligible employee's spouse and an employee's child, including natural child, stepchild, adopted child, and a child in an adoptive placement under s.

48.837 (1), Stats., who is under the age of 26 or who is age 19 or older and incapable of self-support because of a physical or mental disability which is expected to be of long-continued or indefinite duration.

(b) For health insurance purposes, an eligible employee's spouse and an eligible employee's unmarried child who is dependent upon the employee or the other parent for at least 50% of support and maintenance. This support and maintenance requirement does not apply to eligible adult children as described in s. 632.885, Stats. A dependent includes an eligible employee's grandchild as provided in s. 632.895 (5m), Stats. It also includes the eligible employee's unmarried dependent child, regardless of age, when he or she is:

1. Under the age of 19,

2. Age 19 or older but less than age 26 as provided in s. 632.885, Stats.

3. Age 26 or older and incapable of self-support because of a physical or mental disability which is expected to be of indefinite duration or for at least one year or a full-time student as provided in s. 632.885, Stats.

(2g) "Domestic relations order" or "DRO" means a court order to divide a participant's Wisconsin retirement system account or annuity which has not been determined by the department to satisfy all the criteria of s. 40.02 (48m), Stats., and s. ETF 20.35.

(2m) "Earnings" under s. 40.02 (22), Stats., except as otherwise provided by federal regulations for OASDHI purposes, does not include payments made in lieu of welfare, payments made to reimburse welfare costs, or payments made as part of a work relief, general relief or public assistance program under ch. 49, Stats., unless employment is part of a training program to improve skills or increase employability and the employment satisfies the requirements under s. 40.22 (1), Stats.

(3) "Full calendar year" as used in s. 40.08 (8) (d) and (10), Stats., means the time period beginning on a given date and ending on the same date in the next year.

(3d) "Guardian" has the meaning given in s. 54.01 (10), Stats., and includes conservators appointed pursuant to s. 54.76, Stats. For minor children, "guardian" also has the meaning given in s. 48.02 (8), Stats., and includes the authority provided in s. 48.023, Stats.

(3e) "Highest basic pay rate" means, for purposes of s. 40.05, Stats., unless otherwise provided in a collective bargaining agreement under subch. V of ch. 111, Stats., the highest hourly rate, excluding any overtime or supplementary compensation, at which an employee accrued accumulated sick leave that is eligible for conversion under s. 13.121 (4), 36.30, 230.35 (2), 233.10, 238.04 (8), or 757.02 (5), Stats. Any supplemental compensation that is paid to a state employee who is classified under the state classified civil service as a teacher, teacher supervisor, or education director for the employee's completion of educational courses is considered as part of the employee's basic pay for purposes of this paragraph and s. 40.05, Stats.

(3h) "Inactive participant" means, for purposes of the teachers retirement board election under s. ETF 10.10, a participant who is neither a participating employee, as defined in s. 40.02 (46), Stats., nor an annuitant as defined in s. 40.02 (4), Stats.

(3i) "Maximum voluntary contribution" means the total amount eligible under section 415 (c) of the internal revenue code, as adjusted pursuant to section 415 (d) of the internal revenue code and the regulations promulgated pursuant to that section, to be contributed to the Wisconsin retirement system in a calendar year by or on behalf of a participating employee, less all required and employer-paid additional contributions which are includable in the limits of section 415 (c) of the internal revenue code, as determined by the department.

Note: A worksheet to assist the employee to estimate his or her maximum voluntary contribution is available from the department of employee trust funds at no charge.

(3m) "Medical record" includes medical evaluation, diagnosis, prognosis, rehabilitation potential, medication, treatment, diet, limitations on activities, symptoms, general physical or mental condition, x-rays, lab tests or results, or any communication or information related to the health, medical, surgical, dental, optometric, chiropractic, podiatric or hospital care or condition of a participant or the spouse or dependent of the participant.

(3o) "Minimum retirement age" means the earliest age at which a person may qualify to receive a regular, non-disability annuity or a lump sum payment in lieu of an annuity from the Wisconsin retirement system.

Note: The term "minimum retirement age" currently is not used in ch. 40, Stats. or ETF administrative rules. The term is defined in this rule (CR 09-057) to be consistent with s. 40.23 (1) (a) (intro.), Stats., which describes the earliest age at which a retirement annuity may be taken.

(3p) "Monthly compensation" means, for purposes of s. 40.19 (4) (g), Stats.:

(a) Where the compensation is paid on a weekly basis, the amount computed by multiplying the employee's basic weekly pay rate by 4.3333.

(b) Where the compensation is paid on a biweekly basis, the amount computed by multiplying the employee's basic biweekly pay rate by 2.1666.

(3r) "Public school" means, for purposes of s. 15.165 (3) (a) 1., Stats., a cooperative educational service agency established under ch. 116, Stats., a county children with disabilities education board established under s. 115.817, Stats., and any school supported wholly or in part by public funds which is under the control and management of the state of Wisconsin or any subdivision of the state of Wisconsin and which is empowered by law to employ teachers; but does not mean the University of Wisconsin System, any school in the city of Milwaukee, a state agency or a vocational, technical and adult education district.

(3s) "Qualified domestic relations order" or "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 s. ETF 20.35.

(3t) "Reinstate," for purposes of s. 40.25 (5) (a), Stats., means to restore a discharged employee to the previously held position, or a like position, with the participating employer, at the same pay and benefit level to which the employee would have been entitled if the employment had not been interrupted by the discharge. The court order, arbitration award or compromise settlement must direct that the disputed termination be expunged and the employee made whole with respect to all wages and benefits that the employee would have received if continuously employed by the participating employer under the conditions in effect prior to the disputed termination, except that the court order, arbitration award or compromise settlement may direct that back wages paid for the period of discharge be reduced by amounts earned from other sources and may identify a period of disciplinary suspension for which wages and benefits are not paid.

(3w) "Salary index" means, for purposes of s. 40.26, Stats., for years prior to 1982, 5%.

(4) "School system" includes, for life insurance purposes, any public entity whose primary purpose is education.

(4m) "School year" means, for purposes of s. 40.02 (3), Stats., the period beginning July 1 and ending the following June 30.

(5) "Student" means, for insurance purposes, a person, who

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is enrolled in an institution which provides a schedule of courses or classes and, whose principal activity is the procurement of an education. Full-time student status shall be defined by the institution in which the student is enrolled and shall include any usual vacation period if the child was a full-time student at the end of the previous term.

(6) "Summer vacation" means the time between the end of the regular school term of the school system in which the employee was last employed and the beginning of the next regular school term of that system.

(6m) "Surviving Spouse" 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., Stats., a judgment, order or decree of divorce, legal separation or annulment of the marriage terminates the marital relationship.

Note: 2007 Wis. Act 131 deleted the terms "widow or widower" from s. 40.08 (8) (a) 2., Stats., and replaced them with the term "surviving spouse." This rule (CR 09-057) provides a definition for "surviving spouse." The Wisconsin Retirement System (WRS) has allowed courts to order the division of WRS benefits in the property division associated with a legal separation because a legal separation is a termination of the marriage, at least for property division purposes. This treatment of the beneficiary definition is in conformity with that interpretation.

(7) "Three continuous years of creditable service" for purposes of s. 40.285, Stats., and s. ETF 20.17 means an uninterrupted period of at least 3 complete, non-overlapping annual earnings periods during each of which the participant earned some creditable current service. A period of continuous creditable service is considered interrupted if the participating employee is terminated from employment covered by the Wisconsin retirement system for a period of more than 90 calendar days. Service associated with contributions which have been debited to fund a benefit may not be applied toward continuous creditable service.

History: Cr. Register, February, 1983, No. 326, eff. 3-1-83.; r. and recr. (intro.), am. (2) (intro.), cr. (3m), Register, June, 1983, No. 330, eff. 7-1-83; cr. (3w), Register, December, 1983, No. 336, eff. 1-1-84; cr. (3h) and (3s), Register, March, 1984, No. 339, eff. 4-1-84; am. (1), Register, April, 1984, No. 340, eff. 5-1-84; emerg. cr. (4m), eff. 1-1-85; cr. (4m), Register, March, 1985, No. 351, eff. 4-1-85; cr. (2m), Register, October, 1985, No. 358, eff. 11-1-85; cr. (1m), Register, May, 1986, No. 365, eff. 6-1-86; am. (1m) (a), Register, August, 1986, No. 368, eff. 9-1-86; r. (1) and (3), Register, September, 1986, No. 369, eff. 10-1-86; r. and recr. (2), Register, January, 1987, No. 373, eff. 2-1-87; cr. (3p), Register, March, 1987, No. 375, eff. 4-1-87; cr. (3), Register, June, 1992, No. 438, eff. 7-1-92; cr. (1g), Register, September, 1992, No. 441, eff. 10-1-92; cr. (3d), Register, October, 1992, No. 442, eff. 11-1-92; cr. (7), Register, June, 1995, No. 474, eff. 7-1-95; cr. (3i), Register, December, 1996, No. 492, eff. 1-1-97; cr. (3t), Register, July, 1997, No. 499, eff. 8-1-97; cr. (8) and (9), (1h) renum. from ETF 11.02 (1), Register, July, 1999, No. 523, eff. 8-1-99; corrections in (3s) made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, July, 1999, No. 523; CR 00-022: cr. (1k), Register July 2001, No. 547 eff. 8-1-01; correction in (7) made under s. 13.93 (2m) (b) 7., Stats., Register July 2005 No. 595; corrections in (3d) made under s. 13.93 (2m) (b) 7., Stats., Register September 2006 No. 609; CR 07-062: am. (7) Register June 2008 No. 630, eff. 7-1-08; CR 09-057: cr. (3o) and (6m) Register May 2010 No. 653, eff. 6-1-10; EmR0938: emerg. cr. (1r), r. and recr. (2), am. (3m), r. (9), eff. 1-1-10; CR 10-004: cr. (1L) and (1r), r. and recr. (2), am. (3m), r. (9) Register July 2010 No. 655, eff. 8-1-10; CR 11-040: am. (2) (b) 2., 3. Register July 2012 No. 679, eff. 8-1-12; CR 13-004: am. (3i) Register August 2013 No. 692, eff. 9-1-13; CR 12-054: am. (3i) Register October 2013 No. 694, eff. 11-1-13; correction in (7) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694; CR 14-055: cr. (3e), am. (3i) Register May 2015 No. 713, eff. 6-1-15; CR 16-034: am. (2) (a) (intro.), r. (2) (a) 1., 2. Register April 2017 No. 736, eff. 5-1-17; cons. (a) (intro.) and 3. and renum. to (a) under ss. 13.92 (4) (b) 1. and 35.17, Stats., Register April 2017 No. 736; CR 19-126: am. (1k), (1L), (2) (a), (b) (intro.), cr. (2g), am. (3m), renum. (3s), (8) to (3r), (3s) and, as renumbered, am. (3s) Register May 2021 No. 785, eff. 6-1-21; CR 23-023: am. (3d) Register May 2024 No. 821, eff. 6-1-24.

ETF 10.03 Creditable service. (1) For annual earnings periods beginning on or after January 1, 1985, each participating employer shall determine and report service in hours for each participating employee in the manner prescribed in this section. Earnings which are paid to a teacher, as defined in s. 40.02 (55), Stats., an educational support personnel employee, as defined in s. 40.02 (22m), Stats., or a technical college educational support personnel employee, as defined in s. 40.02 (55g), Stats., who has contracted to receive such payments on either a 9 or 10 month contract basis, and which are paid after the beginning of a school year, as defined in s. ETF 10.01 (4m), for services rendered in the preceding school year, are deemed to be received by the employee on June 30 of the preceding school year for purposes of reporting service to the department.

(2) The full-time equivalent of one day of service is 8 hours. If an employer has established workdays of other than 8 hours as full-time employment for some or all of its employees, the number of hours to be reported within a reporting period is determined by the participating employer by dividing the number of hours for which earnings are paid to the employee in the reporting period by the number of hours which would have been worked in that reporting period by a regular full-time employee of that employer in the same kind of employment and multiplying the result by 40 times the number of weeks and fractions of a week in the reporting period.

(3) For purposes of s. 40.02 (17), Stats., the full-time equivalent of one year of creditable service for a teacher, as defined in s. 40.02 (55), Stats., who is not an executive participating employee, as defined in s. 40.02 (30), Stats., is 1,320 hours and for all other participating employees the full-time equivalent of one year of creditable service is 1,904 hours.

(4) When a participating employee receives earnings from the same participating employer for employment in more than one of the categories under s. 40.23 (2) (b), Stats., then the following tests shall be applied by the participating employer when service and earnings are reported:

(a) If employment in each of the categories meets the requirements of s. 40.22, Stats., by itself then the earnings and service shall be reported separately for each category.

(b) If employment in any one category meets the requirements of s. 40.22, Stats., and all other employment does not, then earnings and service shall be added to and reported under the one category which meets the eligibility requirements of s. 40.22, Stats.

(c) If employment in more than one category meets the qualifying requirements of s. 40.22, Stats., and all other employment does not, then earnings and service for employment in those categories which do not meet the qualifying requirements of s. 40.22, Stats., shall be added to and reported under:

1. That qualifying category in which the greatest number of hours is worked, or

2. The lowest numbered subdivision under sub. (5) (b) if the greatest number of hours worked is equal in 2 or more qualifying categories.

(d) If employment in none of the categories meets the requirements of s. 40.22, Stats., separately, but those requirements are met when the employment is added together then earnings and service shall be added to and reported under:

1. That category in which the greatest number of hours is worked, or

2. The lowest numbered subd. under sub. (5) (b) if the greatest number of hours worked is equal in 2 or more categories.

(5) (a) Fractions of an hour shall be rounded to the nearest hour prior to crediting and if the fraction is one-half hour then the hours credited shall be rounded up to the next whole number.

(b) If the total number of hours reported for an employee within an annual earnings period exceeds the applicable number specified in sub. (3) service shall be allocated and credited in the following sequence:

1. Service as a protective occupation participant not subject to Titles II and XVIII of the federal social security act whose formula rate is determined under s. 40.23 (2m) (e) 4., Stats.

2. Service as a protective occupation participant subject to

Titles II and XVIII of the federal social security act whose formula rate is determined under s. 40.23 (2m) (e) 3., Stats.

3. Service as an executive participating employee whose formula rate is determined under s. 40.23 (2m) (e) 2., Stats.

4. Service as an elected official whose formula rate is determined under s. 40.23 (2m) (e) 2., Stats.

5. Service as a teacher whose formula rate is determined under s. 40.23 (2m) (e) 1., Stats.

6. Service of a type not covered under subds. 1. to 5.

(c) The earnings shall be reported and credited in full without regard to any allocation of creditable service under par. (b).

(6) (a) For local elected officials who are participating employees, but serving in positions not considered full-time by the local unit of government, the amount of service shall be determined and reported by the employer as follows:

1. For employment which is essentially ministerial in nature, the number of hours reported shall be the actual number of hours for which the employee is paid if a regular work schedule has been established. If there is no regular work schedule, the number of hours reported may not be greater than the quotient derived from dividing the compensation paid during the reporting period by 2 times the minimum hourly wage rate established by the federal fair labor standards act for non-agricultural employment.

2. For members of governing bodies or other policy-making groups, the number of hours reported shall be the number of hours in actual attendance at meetings of the governing body, the policy-making group or any sub-group thereof and a reasonable amount of time spent in preparation for such meetings, but in no event shall the number of hours determined to have been spent in preparation time exceed twice the number of hours actually spent at the meetings.

(b) In applying the standards set forth in par. (a), it is the responsibility of the local unit of government to maintain the necessary documentation to justify the reasonableness of the basis used in reporting service for local elected officials.

(c) The department may consider other factors in granting creditable service to local elected officials where circumstances warrant and when satisfactory supporting information is provided.

(7) (a) If a participating employee receives earnings for on-call, standby, extracurricular or other service which is incidental to the primary employment, earnings shall be reported and contributions paid on those earnings pursuant to s. 40.05, Stats. The number of hours determined by the employer and reported pursuant to this subsection shall be the quotient derived from dividing the compensation paid for such service during the annual earnings period by the participating employee's current basic pay rate.

(b) The employer shall maintain the necessary documentation to justify the basis upon which service is reported in applying the standards set forth in par. (a).

(c) In no event shall the number of hours under par. (a), combined with the hours under the primary employment, exceed creditable service of one year during the entire calendar year.

Note: This rule requires a form which is available at no charge to reporting officials required to use them. The form can be obtained by writing to: department of employee trust funds, P.O. Box 7931, Madison, WI 53707-7931, or by calling: (608) 266-3285 or toll free at (877) 533-5020.

History: Emerg. cr. eff. 1-1-85; cr. Register, March, 1985, No. 351, eff. 4-1-85; cr. (7), Register, August, 1986, No. 368, eff. 9-1-86; CR 14-055: am. (1) Register May 2015 No. 713, eff. 6-1-15.

ETF 10.05 Creditable service for Milwaukee teachers. Creditable service for Milwaukee teachers shall be granted for teaching services performed for governmental agencies other than the city of Milwaukee pursuant to ss. 42.70 (2) (s), 42.78 (1) (a), 42.81 and 42.91, 1979 Stats., only if the requirements in subs. (1) to (6) are satisfied:

(1) The teacher was a member, as defined in s. 42.70 (2) (k), 1979 Stats., of the former Milwaukee teachers retirement fund on August 31, 1958, has not received a separation benefit since that date and the teaching service for which creditable service is requested was prior to September 1, 1958.

(2) The participant has 10 or more years of teaching service in the city of Milwaukee and the outside teaching credit granted, when added to the participant's separate, combined and formula teaching service in the city of Milwaukee, does not exceed 35 years for benefit computation purposes. If at the time of a benefit computation the total service exceeds 35 years, any payment made previously for outside teaching service including interest which cannot be used shall be transferred to the additional contributions of that participant.

(3) The participant applies in writing for the outside teaching credit giving pertinent details on when, where and for whom the outside teaching service was performed.

(4) The outside teaching service is verified by the school district, successor school district or public retirement plan.

(5) The applicable public retirement plan certifies to the department that the participant is not entitled to any benefit, absolute, contingent or otherwise, from that retirement plan as a result of the teaching service.

(6) The participant makes the contributions which would have been required if the service to be credited had been subject to s. 42.80, 1979 Stats., at the time the teacher became a member, as defined in s. 42.70 (2) (k), 1979 Stats., of the former Milwaukee teachers retirement fund, or if later, at the time the teacher returned to covered Milwaukee teaching after the period of outside teaching. The amount due shall be increased with interest at the effective rate, as defined in s. 40.02 (23), Stats., as though the contributions were in the fund on September 1, 1959.

History: Cr. Register, June, 1983, No. 330, eff. 7-1-83; am. (2), Register, September, 1983, No. 333, eff. 10-1-83; correction in (1) and (6) made under s. 13.93 (2m) (b) 7., Stats., Register, July, 1994, No. 463.

ETF 10.07 Leave of absence. (1) A person on a paid leave of absence from a position in which the person was a participating employee shall continue to qualify as a participating employee.

(2) Service shall be determined and reported by the employer in the following manner:

(a) If the compensation paid during the leave of absence is less than the earnings paid during the participant's immediately preceding service with that employer in a time period of the same length as the leave, then the service shall be computed by dividing the compensation paid during the leave by the earnings paid in that preceding period and multiplying the result by the service reported for that preceding period.

(b) If the compensation paid during the leave of absence is equal to or greater than the earnings paid during the participant's immediately preceding service with that employer in a time period of the same length as the leave, then the service reported shall be the same as in that preceding period.

(3) Compensation paid during a paid leave of absence shall be treated the same as earnings for purposes of ch. 40, Stats.

Note: This rule requires a form which is available at no charge to reporting officials required to use them. The form can be obtained by writing to: department of employee trust funds, P.O. Box 7931, Madison, WI 53707-7931, or by calling: (608) 266-3285 or toll free at (877) 533-5020.

History: Cr. Register, March, 1985, No. 351, eff. 4-1-85.

ETF 10.08 Separation from employment. (1) SCOPE.

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(a) This section defines separation of employment under s. 40.23 (1) (a) 1., Stats., for purposes of establishing eligibility to receive benefits from the Wisconsin retirement system, including separation benefits, lump sum benefits and retirement annuity benefits as provided by ss. 40.23, 40.24 and 40.25, Stats. For purposes of the Wisconsin retirement system, the terms "separation from employment" and "termination" are used interchangeably. An otherwise valid termination may become void and without effect as the result of reinstatement of the employee under s. 40.25 (5), Stats., and s. ETF 10.01 (3t), or because the employee received remedial payments deemed to be earnings under s. ETF 20.12 for a period in question, or if the employee failed to meet the minimum break in service requirements as a rehired annuitant under s. ETF 20.02 and s. 40.26 (5), Stats., and shall thereby be treated as employed during that period.

(b) The effective date of disability annuity benefits shall be determined as provided by ss. 40.23 (1) (b) and (bm) and 40.63 (8) (intro.) and (f), Stats.

(2) TERMINATION OF EMPLOYMENT. (a) *Intent to terminate.* No person may receive any retirement annuity, separation benefit or lump-sum payment from the Wisconsin retirement system without first terminating from his or her current participating employment with all participating employers. Whether the termination is a voluntary termination by the employee or an involuntary termination by the employer, the employer and employee shall act with the good-faith intent of ending the employee-employer relationship.

(b) *Required conditions.* Termination from participating employment occurs when all of the following conditions are met:

1. The employee ceases to render compensable personal services to or on behalf of the employer, and the employer has no further rights to any future services from the employee for which the employee [has received or] will receive compensation. This paragraph does not apply to services rendered as a part-time elected official after the effective date of a participant's waiver of [WRS coverage for] part-time elected service under s. 40.23 (1) (am), Stats.

Note: Missing language is shown in brackets.

2. If the employee's termination is voluntary, the employee and employer comply with the employer's policies for voluntary termination, including the filing of a letter of resignation.

3. As of the end of the day that participating employment terminates, the employee has no rights to any future compensable employment that meets the qualifications for inclusion under the Wisconsin retirement system provided under s. 40.22, Stats. A right to future compensable employment includes, but is not limited to, a contract for future employment with any participating employer, or having already been elected as of the termination date to a term of public office meeting the qualifications for participating employment, which term commences on or after the date of termination of employment, other than a term of public office as a part-time elected official for which the participant has waived WRS coverage under the provisions of s. 40.23 (1) (am), Stats.

4. Except as provided in s. ETF 50.30 (4), upon termination of employment the participant is treated consistently with the status of a former employee. This includes, but is not limited to the terminated employee no longer being eligible for benefits available only to active employees. Examples of such benefits may include health insurance, life insurance, income continuation insurance coverage, making deferred compensation or tax sheltered annuity contributions, worker's compensation coverage, internal grievance, promotion or transfer rights, or rights available to active employees under a collective bargaining agreement. This subdivision shall not apply to benefits that may be available to the employer's retired employees, such as severance pay, post-retirement insurance coverage and/or employer payment of premiums, or post-retirement benefits or other rights provided through collective bargaining or other retirement agreements. However, agreements made after the termination date for future compensable services to be rendered by the employee would not be precluded under subd. 3.

5. Immediately upon termination of employment, the participant has no authority to act as a representative of the employer in any capacity or to exercise any authority or control over other employees of the employer, and the employer has no responsibility or liability for any actions of the terminated employee. This subdivision shall not apply to employees of any WRS participating employer who provide services for which they have not and will not receive compensation of any kind, including but not limited to payment at some other time or compensatory paid leave.

Example: Emeritus professors could render services for the university after termination on the condition that they do not receive any form of compensation, including employer contributions to IRC s. 403 (b) accounts.

6. As of the termination of employment the employer has paid to the employee any accumulated benefits that similarly situated employees of that employer customarily receive upon termination of employment, including but not limited to accumulated vacation, compensatory time and sick leave, and the employee has no entitlement to any such remaining benefits.

(c) *Rehired annuitants.* In order to receive a benefit under s. 40.23 or 40.25, Stats., a person terminated from participating employment shall remain terminated from all employment meeting the qualifications for inclusion under s. 40.22, Stats., throughout a period beginning with the date of termination from all participating employment and ending on the latest of the following dates:

1. The day after the date which would be the effective date of the annuity as determined in accordance with s. 40.23 (1) (b) and (bm), Stats., as applicable to the annuity in question.

3. The seventy-sixth day after termination of employment in accordance with this section.

(d) *Terminated annuities.* For purposes of determining whether employment meets the qualifications under s. 40.22, Stats., the exclusion of s. 40.22 (2) (L), Stats., does not apply unless the person has met all qualifications for entitlement to an annuity, including termination from participating employment for the period specified in par. (c) 1. and 3. Payment of an annuity or other benefits in error does not qualify a person as an annuitant for purposes of s. 40.22 (2) (L), Stats.

Note: Refer to s. ETF 20.02 (2) on rehired annuitants.

(3) DETERMINING THE DATE OF TERMINATION. (a) The employer shall make the initial determination that an employee has terminated from employment under this section. Except as provided under par. (b), (c) or (d) the date of termination shall be the earliest of the dates determined under all the following applicable subdivisions:

1. The date an unpaid leave of absence expires, if the employer-employee relationship is terminated because the employee fails to return to work following an unpaid leave of absence granted by the employer.

2. The date 3 years after an unpaid leave of absence began, in accordance with s. 40.02 (40), Stats. This subdivision does not apply to a military leave or union service leave.

3. The effective date that the employer discharges the employee, other than as provided in subd. 1.

4. The effective date that the employer determines that the employer-employee relationship terminates, except that the effec-

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tive date of the termination cannot be earlier than the date on which the employer notifies the employee of the termination.

5. The last date for which the employee receives earnings for personal services rendered to or on behalf of the employer. If the employer has granted an unpaid leave of absence for a period of time after this date, this subdivision does not apply.

6. The date on which the employee's voluntary resignation is effective as accepted by the employer or, if later, the date on which the employer receives the employee's notice of resignation.

7. The date of the employee's death.

(b) Any report of a termination is subject to review by the department. Notwithstanding par. (a), the department is not bound by an employer's report and may determine a different termination date in accordance with this section and s. 40.02 (26), Stats., upon evidence satisfactory to the department.

(c) Except as expressly provided by law, no termination may be effective retroactive to a date earlier than the date on which the employee or employer notifies the other of the decision to terminate the participant's employment.

Note: See ss. ER 18.14 (4) and 21.03 (2) concerning termination retroactive to the date the leave of absence expired.

(d) No termination date may predate the last date for which the employee receives earnings for personal services rendered to or on behalf of the employer, except as provided in sub. (2) (b) 1., and except that operation of s. 40.29, Stats., does not preclude termination of an employee prior to the expiration of a period for which the employee receives temporary disability compensation under s. 102.43, Stats.

History: Cr. Register, June, 1998, No. 510, eff. 7-1-98; CR 08-026: am. (2) (b) 4. Register September 2009 No. 645, eff. 10-1-09; CR 11-042: am. (1) (a), (2) (a), cr. (2) (b) (title), am. (2) (b) 2., cr. (2) (c) (title), (d) (title) Register July 2012 No. 679, eff. 8-1-12; CR 14-055: am. (2) (a), (c) 2., 3. Register May 2015 No. 713, eff. 6-1-15; CR 19-126: am. (2) (c) (intro.), r. (2) (c) 2., am. (2) (d) Register May 2021 No. 785, eff. 6-1-21.

ETF 10.10 Employee trust funds board and teachers retirement board elections. (1) PURPOSE. This section establishes procedures for all elections of persons to the employee trust funds board or the teachers retirement board, pursuant to ss. 15.16 (1) (d) and (f), 15.165 (1) and (3) (a) 1., 2., 6., and 7., and 40.03 (2) (p), Stats. Except where noted otherwise, these procedures shall apply for elections to either the employee trust funds board or the teachers retirement board.

(1m) DEFINITIONS. In this section:

(a) "Annuitant" has the meaning given in s. 40.02 (4), Stats.

(b) "Election category" means the class of participating employees or annuitants who are eligible under s. 15.16 (1) (d) or (f), or 15.165 (3) (a) 1., 2., 6., or 7., Stats., to vote to elect a member to the employee trust funds board or the teachers retirement board.

(c) "Participating employee" has the meaning given in s. 40.02 (46), Stats.

(d) "Teacher" has the meaning given in s. 40.02 (55), Stats.

(2) SCHEDULING OF ELECTIONS. (ag) *Situations requiring an election.* The secretary shall schedule an election when the term for an elective board position is due to expire or the position is vacated for any reason.

(ar) *Regular elections.* When a term is due to expire, the secretary shall schedule the election to ensure that the election is completed and the new board member announced prior to the date the new term commences.

(b) *Vacancies.* If an elective board position is vacant for any reason other than the term expiring, the secretary shall schedule an election at a time determined by the secretary. The annuitant or participating employee elected in an election to fill a position vacated prior to the end of a term shall serve the remainder of the unexpired term.

(3) CALL FOR NOMINATIONS. The department shall publish, in a manner determined by the secretary, the notice of the election, the nomination timetable, and instructions explaining the nomination process for a prospective candidate.

(4) NOMINATION PROCEDURES. A candidate shall be nominated by petition on forms provided by the department. Petitions shall be received by the department no later than the petition filing date in the nomination time schedule published under sub. (3). A nominating petition received after this date is invalid. A candidate shall do all of the following:

(a) *Submit a nominating petition.* Submit to the department a nominating petition containing at least 25 but no more than 50 printed names and valid signatures of participating employees or annuitants eligible to vote in that election. The nominating petition shall contain the name and address of each signer's employer and the date signed. For an annuitant, the name and address of the signer's employer shall be that of the signer's last participating employer in the Wisconsin retirement system. The department will verify the entries on the petition based on records in the department. Entries that cannot be verified shall not be counted. If more than 50 signatures are submitted, the department shall review for validity only the first 50 signatures, based on the earliest date signed, and disregard the balance.

(b) *Certify the nominating petition.* Sign the nomination petition to certify that all signers are eligible to vote in the election category for which the candidate is running.

(c) *Submit a candidate statement.* Submit a candidate information form to the department containing no more than 150 words. The department shall print no more than the first 150 words of the candidate's information and make it available to eligible voters with the ballots. The candidate must sign the candidate information form verifying the accuracy and truthfulness of the information provided.

Note: A Board Election Packet containing the Nominating Petition form and Candidate Information form can be obtained from the department by contacting the department's board liaison at 877-533-5020.

(5) NOMINATIONS FOR THE EMPLOYEE TRUST FUNDS BOARD. Any person who meets the eligibility requirements of s. 15.16 (1) (d) or (f), Stats., on the date the person files nomination papers with the department and who plans to continue meeting the eligibility requirements upon election, may be nominated for election to the employee trust funds board by satisfying the requirements of pars. (4) (a) to (c) within the calendar dates established by the department.

(6) NOMINATIONS FOR THE TEACHERS RETIREMENT BOARD. Any person who meets the eligibility requirements of s. 15.165 (3) (a) 1., 2., 6., or 7., Stats., on the date the person files nomination papers with the department and who plans to continue meeting the eligibility requirements upon election, may be nominated for election to the teachers retirement board by satisfying the requirements of par. (4) (a) to (c) within the calendar dates established by the department.

(7) ELIGIBILITY TO VOTE. (a) *General requirements.* A person shall be eligible to vote if the person is an annuitant or participating employee in the election category for which the election is being held and meets the other voting eligibility requirements in this section at the time ballot materials are printed for distribution and the department has a record of his or her eligibility.

(b) *Teachers retirement board elections.* A participating employee of the state department of public instruction, state department of health services, state technical college system, and the state educational communications board, who is classified as a

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teacher under the Wisconsin retirement system, is not employed by a public school or a technical college system district and may not vote in any election to elect a teacher to serve on the teachers retirement board.

(c) *Teacher in public school and a technical college system district.* For a teacher concurrently employed by both a public school and a technical college system district, the teacher shall be eligible to vote in both categories specified under s. 15.165 (3) (a) 1. and 2., Stats.

(8) DISTRIBUTION PROCEDURES FOR PAPER BALLOTS. (ag) *Scope.* This subsection shall only apply to elections that are conducted using paper ballots. If an election is conducted using a combination of electronic and paper ballots, this subsection shall apply only to the paper ballots used in that election.

(ar) *Ballot format.* The department shall print ballots with the candidates' names in alphabetical order and shall include, when the ballots are distributed, instructions for marking the ballot and the deadline for its return.

(b) *Distribution of ballots to participating employees.* At the direction of the secretary, ballots may be distributed either through an employer or directly to a participating employee. If distributed through an employer, the department shall send each employer one ballot individually labeled with the participating employee's name for each participating employee in the election category for which the election is being held who is employed by the employer and whose position is known to the department. A distribution list, prepared by the department and containing the names of participating employees for whom ballots are included, shall accompany the ballots. The department shall require an employer to verify, by signing the distribution list, that the employer distributed the ballots within 30 days of the date they were mailed by the department. The employer shall indicate on the distribution list which ballots could not be distributed and shall return the undistributed ballots.

(c) *Distribution of ballots to annuitants.* The department shall send a ballot directly to each annuitant who is eligible to vote in that election at the last home address the department has on file.

(d) *Distribution of ballots to teachers with multiple employment locations.* If a teacher is employed in more than one employment location within an election category specified under s. 15.165 (3) (a) 1. or 2., Stats., the department shall provide a paper ballot to only one location as determined by the department.

(e) *Distribution of ballots to teachers employed in a public school and a technical college system district.* For a teacher concurrently employed by both a public school and a technical college system district, the department shall provide a ballot to both locations.

(9) VOTING. (ag) *Voting methods.* The secretary may conduct the election by paper ballots, electronic ballots, or a combination of such methods.

(ar) *Voting procedure.* The secretary shall approve a secure voting procedure that ensures that only a person eligible to vote is permitted to cast a vote, and that only one vote is recorded for each person who casts a vote in an election. A person eligible to vote shall cast his or her vote by indicating his or her choice of candidates in accordance with voting instructions approved by the secretary.

(b) *Voting when there are multiple teachers retirement board positions to be filled.* If there is more than one teachers retirement board position to be filled in an election category and an election is held, voters may vote for as many candidates, in the appropriate election category, as there are positions to be filled.

(10) CERTIFICATION OF ELECTION RESULTS. The board for which an election is being held shall appoint an election committee that shall consist of the secretary of the department or the secretary's designee and 2 board members who are not running for reelection. A majority of the election committee appointed by the respective boards shall determine the validity of ballots set aside by the department and certify the election results.

(11) VERIFICATION OF ELECTION RESULTS. The department shall set aside a vote that it believes may be invalid under pars. (a) to (h) for review by the election committee. The election committee shall deem a vote invalid if any of the following apply:

(a) The signature is not the same as the name on the ballot.

(b) The ballot is not signed.

(c) Too many candidates have been voted for on the ballot.

(d) A ballot is so defective that the committee cannot determine with reasonable certainty for whom the ballot was cast.

(e) The ballot contains the name of a write-in candidate.

(f) The ballot was submitted by an ineligible voter.

(g) The ballot was not received within the period prescribed by the election notice.

(h) The vote was not cast in the manner prescribed by the secretary under sub. (9) (ar).

(12) SPECIAL SITUATIONS. (a) *Insufficient number of candidates for holding an election.* If the number of candidates whose nomination petitions are approved by the department is equal to or less than the number of positions to be filled within an election category, all of the following shall apply:

1. The department shall not schedule an election.

2. The election committee shall not be appointed or convened.

3. The department shall declare all candidates as elected.

(b) *Multiple positions to be filled in an election category that do not have an equivalent amount of time remaining in a term.* If there are multiple positions to be filled within an election category and the vacant positions have different amounts of time remaining, the following shall apply:

1. If an election has been held, the candidate with the most votes shall receive the position with the most time remaining. The candidate with the second most votes shall receive the position with the second most time remaining, and so forth for any remaining candidates and positions.

2. If an election is not held because the number of candidates is equal to or less than the number of positions to be filled, but there are multiple candidates for the available positions, positions will be selected by the drawing of lots. If there is only one candidate and multiple vacant positions, the candidate will receive the position with most time remaining, unless the candidate requests otherwise from the secretary.

(13) TABULATION OF VOTES. The candidate who receives the largest number of votes shall be elected. The election committee shall break a tie by the drawing of lots. The counting of votes shall be conducted under the direction of the secretary or the secretary's designee.

(14) NOTIFICATION OF ELECTION RESULTS. For elections scheduled because a term is due to expire, the department shall notify all candidates of the results by certified mail before May 1 following the close of the election. If the department calls an election for any reason other than the expiration of a term, the department shall notify all candidates by certified mail of the results of the election within 15 days of the close of the election.

(15) RETENTION OF BOARD ELECTION MATERIALS. The department shall retain election reports, nominating petitions, and ballots for at least 1 year after the election is completed.

(16) RECOUNT OF RESULTS. A candidate may request no more than one recount per election. To request a recount, the candidate shall submit a written request to the secretary within 10 business days of the date that the candidates were notified of the certified election results under sub. (14). A recount shall be conducted under the direction of the secretary or designee. If the recount results change the ranking of the candidates, the recount results shall be certified by the election committee under sub. (10) and shall stand as the final election results.

History: Cr. Register, March, 1984, No. 339, eff. 4-1-84; r. (5) and am. (7) (intro.), Register, January, 1985, No. 349, eff. 2-1-85; am. (10), Register, September, 1992, No. 441, eff. 10-1-92; am. (1) to (7) (a), (7) (c) to (11) (b), (d), (12), (13) and (15) to (17), cr. (1m) and (11) (e), r. (14), Register, April, 1993, No. 448, eff. 5-1-93; corrections made under s. 13.93 (2m) (b) 6., Stats., Register, July, 1997, No. 499; am. (1), (1m) (b) and (7) (intro.), Register, December, 2000, No. 540, eff. 1-1-01; correction in (6) made under s. 13.92 (4) (b) 6., Stats., Register September 2009 No. 645; CR 12-020: am. (1), cr. (1m) (title), am. (2), r. and recr. (3), (4), cr. (5), r. and recr. (6), (7), (8), (9), am. (11) (intro), cr. (11) (f) to (h), renum. (12) to be (12) (a) (intro), 1., 2., 3., cr. (12) (b), r. (13), renum. (15), (16), (17) to be (13), (14), (15) and am., cr. (16) Register May 2013 No. 689, eff. 6-1-13; renum. (2) (intro), (a), (8) (intro), (a), (9) (intro), (a) to be (2) (ag), (ar), (8) (ag), (ar), (9) (ag), (ar) under s. 13.92 (4) (b) 1., Stats., cr. (2) (ag) (title), (8) (ag) (title), (9) (ag) (title) under s. 13.92 (4) (b) 2., Stats., Register May 2013 No. 689.

ETF 10.12 Separate retirement system participation in the retirement trust fund. (1g) PROCEDURE. The governing body of a separate retirement system qualifying under sub. (5) may request participation in the retirement trust fund by the adoption of a resolution accepting the provisions of this section in a form approved by the department. A certified copy of the resolution shall be forwarded to the department and participation shall be effective on the first day of the month following board approval of the resolution under s. 40.03 (1) (n), Stats. Funds may be delivered or sent to the department subject to this section.

(1r) DEPOSITS. (a) Deposits shall be made in accordance with instructions issued by the department.

(b) The separate retirement system may designate any portion of its deposit for investment in the variable retirement investment trust. Deposits shall be invested in the core retirement trust unless otherwise designated.

(c) The separate retirement system shall provide the department 30 days advance notice of any deposit in excess of $10 million. This requirement may be waived by the secretary.

(d) Deposits in the core and variable retirement investment trusts shall be accepted on the last working day of the month only, even if actually received earlier. Each investment shall be effective the last day of the month for purposes of investment valuation.

(2) INVESTMENT VALUATION. Investments by a separate retirement system shall be valued as follows:

(a) The current market values of the core and variable retirement investment trusts shall be determined as of the close of the last calendar day of the month.

(b) The market gain or loss of the core and variable retirement investment trusts shall each be determined for the month, net of administrative and investment costs.

(c) Each separate retirement system's share of the respective retirement investment trust's market gain or loss shall be determined and credited effective the close of the last calendar day of the month.

(d) Each separate retirement system's share of the retirement investment trust's market gain or loss shall be calculated as the total retirement investment trust's gain or loss multiplied by that separate retirement system's proportionate share of the average daily net assets available for investment during the month.

(e) The core or variable retirement investment trust's average daily net assets available for investment during the month shall be calculated as the sum of its daily beginning asset balances divided by the number of calendar days in the month.

Note: This rule (CR 09-057) replaces the term "fixed", when referring to the retirement investment trust, with the term "core" when referring to that retirement investment trust. 2005 Wis. Act 153 changed the name of the Fixed Fund to the Core Fund. This rule replaces the term "fixed" with the term "core" wherever it appears in the ETF administrative rules, specifically in ss. ETF 10.12 (1r) (b) and (d) and (2) (a) (b) and (e); 10.25 (intro.), (1) (a) and (b), (2), (3) (intro.), (b), (c) and (d) and (4); 10.30 (4) (a) and (b), (5) (a) 1., 2., 3. b., and (f); 11.16 (2) (a); 20.23 (2); and 20.25 (intro.), (1) (a) and (2).

(f) Each separate retirement system's average daily net assets available for investment during the month shall be calculated as the sum of its daily beginning asset balances divided by the number of calendar days in the month.

(3) REPORTS. The department shall provide, at least quarterly, each separate retirement system a report showing all transactions in its account during the preceding quarter and the current value of the system's investment.

(4) WITHDRAWALS. (a) Requests for withdrawal of funds shall be on a form prescribed by and in accordance with instructions issued by the department.

(b) The separate retirement system shall provide the secretary no less than 21 days advance notice of any withdrawal.

(c) Withdrawals by a separate retirement system shall be limited in any calendar month to one withdrawal paid on the last working day of the month of the greater of:

1. 5% of the system's balance on deposit or as was last calculated by the department,

2. $2 million, or

3. Such other amount as the secretary, after consulting with respect to each withdrawal with the executive director of the state of Wisconsin investment board, determines may be withdrawn without necessitating the premature liquidation of any investment or imprudently reducing cash holdings of the trust fund or otherwise causing actual harm to the participants of the Wisconsin retirement system who have a beneficial interest in the trust fund and its earnings.

(d) For investment valuation purposes, withdrawals shall be treated as if effective at the close of the last calendar day of the month.

(e) If a separate retirement system's balance on deposit drops below $2 million, that system's investment shall be refunded and the account closed.

(5) PARTICIPATING EMPLOYERS ELIGIBLE. (a) "Separate retirement system" for purpose of this section and s. 40.03 (1) (n) and (2) (q), Stats., means a pension benefit plan which is all of the following:

1. Established by the state or a political subdivision of the state which is also a participating employer subject to the provisions of the Wisconsin retirement system under s. 40.21, Stats.

2. A governmental plan as defined by 26 USC 414 (d) and 29 USC 1003 (32).

3. Qualified for federal tax purposes under the applicable provisions of the internal revenue code.

4. Maintained and administered for the exclusive benefit of the employees of that employer and their beneficiaries.

(b) Any separate retirement system that fails to certify upon the department's request, and at least annually, that it continues to meet the criteria of par. (a), and any separate retirement system that the department determines does not meet the criteria of par. (a), shall be compelled to withdraw its entire investment as rapidly as permitted under sub. (4).

(6) TERMINATION OF PROGRAM. The employee trust funds board or the secretary of the department may close the investment option under s. 40.03 (1) (n), Stats., to any or all separate retire-

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ment systems and compel withdrawal of investments under sub. (4) if the board or the secretary determines that the separate retirement system investment interferes with the duty to manage, administer, invest and otherwise deal with the public employee trust fund solely for the benefit of the participants in the benefits plans under ch. 40, Stats., and their beneficiaries as provided in that chapter.

Note: This rule requires a form which is available at no charge. The form can be obtained by writing to: department of employee trust funds, P.O. Box 7931, Madison, WI 53707-7931, or by calling: (608) 266-3285 or toll free at (877) 533-5020.

History: Cr. Register, October, 1985, No. 358, eff. 11-1-85; am. (2) (e) and (f), Register, December, 1990, No. 420, eff. 1-1-91; am. (4) (b) and (c) and r. (4) (d), Register, June, 1998, No. 510, eff. 7-1-98; CR 05-114: renum. (intro.) to be (1g) and am., renum. (1) (a), (b) and (c) to be (1r) (a), (b) and (c), r. (1) (d), cr. (1r) (d), (4) (d), (5) and (6), r. and recr. (2), am. (4) (c) (intro.) Register September 2006 No. 609, eff. 10-1-06; CR 09-057: am. (1r) (b), (d), (2) (a), (b) and (e) Register May 2010 No. 653, eff. 6-1-10.

ETF 10.15 Annuity reserves. The amounts credited to and the liabilities of the reserves for annuities granted shall be determined by the actuary on the basis of separate male-female experience with adjustments as necessary to reflect actual and projected experience of participants under the retirement system and not on the basis of the combined male-female experience used in individual benefit computations.

History: Renum. from ETF 7.07 and am. Register, December, 1983, No. 336, eff. 1-1-84.

ETF 10.20 Approval of group insurance plans for state employees. (1) In addition to group insurance plans specifically provided in ch. 40, Stats., and pursuant to s. 20.921 (1) (a) 3., Stats., the group insurance board shall approve or disapprove group insurance plans for which payment of premiums is made through payroll deductions.

(a) The group insurance board shall determine, after notice and hearing, whether the group insurance plan fulfills an important coverage need through consideration of, but not limited to, the following factors:

1. Number of employees affected.

2. Amount and variation in premiums.

3. Adequacy of other approved coverage providing the same or similar protection.

4. Duration of contract.

5. History, performance and acceptance of the plan by the employees.

6. New or additional coverage provided.

(b) The group insurance board shall determine whether the plan is adequately supervised through consideration of, but not limited to, the following factors:

1. Continuing representation of employee participants with professional insurance guidance.

2. Maintenance of adequate statistical records relating to retentions, experience, premiums, participants and other data necessary for actuarial computations.

3. Procedures for negotiating coverage.

(2) Notwithstanding approval granted to any plan under sub. (1), the group insurance board may subsequently withdraw its approval, after notice and hearing, upon finding that the plan does not meet the criteria established by sub. (1) (a). Withdrawal of approval shall be effective, at the discretion of the group insurance board, on the first day of the month subsequent to issuance of a finding that the plan does not meet the criteria pursuant to sub. (1) (a) or on the anniversary date of the contract under which the plan is provided.

History: Renum. from ch. Grp 26 and am. Register, December, 1983, No. 336, eff. 1-1-84.

ETF 10.25 Core retirement investment trust participation in the variable retirement investment trust. The core retirement investment trust may invest in the variable retirement investment trust subject to the following:

(1) COMBINED STOCK FUND. A combined stock fund shall be established and shall operate as a separate account within the variable retirement investment trust as follows:

(a) All investments in common and preferred stock by the core retirement investment trust and the variable retirement investment trust shall be made through the combined stock fund account.

(b) The trusts shall transfer funds to be invested in common and preferred stocks to the combined stock fund account. In exchange, the core retirement investment trust and variable retirement investment trust shall receive shares in the combined stock fund.

(c) Shares in the combined stock fund may be purchased only as of the first day of each month.

(d) All shares purchased in the combined stock fund shall, at the time of purchase, have a book value of one dollar per share.

(2) INVESTMENT OF COMBINED STOCKS. All funds received in the combined stock fund from the core retirement investment trust and the variable retirement investment trust shall be used to invest in common or preferred stocks or the state investment fund.

(3) EARNINGS DISTRIBUTIONS. Earnings shall be distributed from the combined stock fund to the core retirement investment trust and the variable retirement investment trust according to the following:

(a) The book value of all investments in the combined stock fund shall be adjusted to current market value as of the last day of each month. The appraisal gain or loss shall be recognized in the month incurred.

(b) As of the last day of each month the combined stock fund shall distribute to the core retirement investment trust and the variable retirement investment trust all income recorded for that month including interest received, dividends received, gain or loss realized on the sale of investments and the unrealized gain or loss recognized on the adjustment of investment book value to market value. Following these distributions the unit value of shares in the combined stock fund shall be one dollar.

(c) For any month, the distribution of income between the core retirement investment trust and the variable retirement investment trust shall be based on the ratio of the relative number of combined stock fund shares held by each trust as of the first day of that month to the total number of combined stock fund shares outstanding.

(d) Monthly distributions from the combined stock fund to the core retirement investment trust resulting from gains or losses realized on the sale of investments or unrealized appraisal gains or losses shall be transferred to the transaction amortization account. Distributions resulting from all other sources shall be recognized as current income to the core retirement investment trust in the month of distribution.

(e) All distribution to the variable retirement investment trust shall be treated as current income in the month of distribution.

(4) WITHDRAWALS. The core retirement investment trust or the variable retirement investment trust may withdraw funds from the combined stock fund as of the first day of any month. The withdrawal shall be accomplished by selling combined stock fund shares to the combined stock fund. Withdrawals made after the first day of any month shall be deemed to have been made on the first day of that month for purposes of distributing income at the end of that month.

History: Cr. Register, October, 1985, No. 358, eff. 11-1-85; r. and recr. (1), r. (2) and (4) (a), renum. (3), (4) (intro.), (b) to (f) and (5) to be (2) to (4), Register, De-

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cember, 1990, No. 420, eff. 1-1-91; CR 09-057: am. (intro.), (1) (a), (b), (2), (3) (intro.), (b), (c), (d) and (4) Register May 2010 No. 653, eff. 6-1-10.

ETF 10.30 Variable division participation. (1) PURPOSE. The purpose of this section is to interpret s. 40.04 (7), Stats. This section establishes the procedures for electing to participate, participating and electing to terminate participation in the variable division of the trust fund.

(1m) DEFINITIONS. In this section, "new participant" means any of the following:

(a) A person initially qualifying as a participant as defined by s. 40.02 (45), Stats., who has never previously been a participant in the Wisconsin retirement system or Wisconsin retirement fund or a member of the state teachers retirement system or Milwaukee teacher retirement fund.

(b) A person who was previously a participant but whose Wisconsin retirement system account was closed because of payment of a lump sum benefit under s. 40.25, Stats., and who returns to covered employment for the first time since the account closure. The term "new participant" does not include a person whose closed account is reestablished under s. 40.25 (5), Stats.

(2) ELIGIBILITY FOR AND EFFECTIVE DATES OF PARTICIPATION IN THE VARIABLE DIVISION. (a) An election to participate, or terminate participation, in the variable division shall be made on a form provided by the department. Except as provided in sub. (3), an election to participate in the variable division shall become effective for future contributions on the January 1 following receipt of the form by the department.

(b) Participants who elected to terminate participation in the variable division effective before December 31, 1999 may elect to participate in the variable division as provided in this section.

(c) Except as provided in par. (d), pursuant to s. 40.04 (7) (b), Stats., participants who elected to terminate participation in the variable division effective on or after December 31, 1999 may not re-elect to participate in the variable division.

(d) A participant who elects to terminate participation in the variable division effective on or after December 31, 1999 may re-elect to participate in the variable division only if the participant ceases to be a participant by closing the participant's account through taking a benefit under s. 40.25, Stats., and subsequently becoming a new participating employee.

(e) An election to participate in the variable division received by the department from a participant who is not a participating employee, and who ceased to be a participating employee before January 1, 2001, shall become effective on the January 1 on or after the date on which the participant again becomes a participating employee.

(f) An election to participate in the variable division received by the department after the participant's date of death is invalid.

Note: The form for electing to participate in the variable division, "Election to Participate in the Variable Trust Fund," ET-2356, can be obtained at no charge by writing to: department of employee trust funds, P.O. Box 7931, Madison, WI 53707-7931, or by calling: (608) 266-3285 or toll free at (877) 533-5020. The form is also available on the department's website: etf.wi.gov.

(3) VARIABLE DIVISION PARTICIPATION FOR NEW PARTICIPANTS. (a) An election to participate in the variable division filed by a person who becomes a new participant on or after January 1, 2001 shall become effective as follows:

1. Retroactive to the date on which the person becomes a participant, providing that the department receives the form no later than 30 calendar days after the date on which the person became a participant.

2. Elections to participate in the variable division that are received by the department more than 30 calendar days after the date on which the person becomes a participant shall become effective on the January 1 following receipt of the form by the department.

(b) The department shall accept elections to participate in the variable division up to 90 calendar days before the date on which a participant becomes a participating employee. Elections received by the department within this 90-day period or within the next 30 days after the person becomes a participating employee shall become effective on the date on which the person becomes a participating employee. Elections to participate in the variable division received by the department more than 90 calendar days before the date on which a person becomes a participant are invalid.

(4) RETROACTIVE CONTRIBUTIONS. (a) Retroactive interest credited to contributions for late-paid earnings shall be credited at the core effective rates as provided in s. 40.06 (5), Stats.

(b) Late-paid and other retroactive contributions shall be deposited in the core and variable trust accounts according to the participant's variable participation status at the time the contributions are deposited, regardless of the participant's variable participation status in the annual earnings period to which the contributions may be attributed for other purposes.

(5) TERMINATING PARTICIPATION IN THE VARIABLE DIVISION. (a) A participant may elect to terminate participation in the variable division and transfer the participant's variable division contributions to the core division on one of the following bases:

1. For future contributions only: Effective as of the December 31 after the date on which the department receives an election to terminate participation in the variable division, all future contributions shall be deposited in the core division.

2. An unconditional basis: Effective as of the December 31 after the date on which the department receives an election to terminate participation in the variable division, all future contributions shall be deposited in the core division and all variable contributions and accrued gain or loss shall be transferred to the core division.

3. A conditional basis:

a. For annuities, effective on the first January 1 after the department receives the election when the condition under s. 40.04 (7) (a) 1., Stats., is satisfied.

b. For all accounts from which an annuity is not being paid, effective on the first January 1 after the department receives the election when the condition under s. 40.04 (7) (a) 2., Stats., is satisfied. As of the first January 1 after the Department receives the election, all future contributions shall be deposited in the core division. As of the first January 1 when the condition under s. 40.04 (7) (a) 2., Stats., is satisfied, all variable contributions and accrued gain or loss shall be transferred to the core division.

Example 1: A participant, alternate payee, named survivor or beneficiary who is receiving an annuity from the Wisconsin retirement system, and who also has an account from voluntary additional contributions from which no annuity is being paid, is not an annuitant under s. 40.04 (7) (a) with respect to the additional contributions.

Example 2: An alternate payee who was also a participating employee in the Wisconsin retirement system and who is receiving an annuity only from the alternate payee account is not an annuitant with respect to the separate account established as a participating employee.

Note: The form for electing to terminate participation in the variable division, "Election to Cancel Variable Participation," ET-2313, can be obtained at no charge by writing to: department of employee trust funds, P.O. Box 7931, Madison, WI 53707-7931 or by calling: (608) 266-3285 or toll free at (877) 533-5020. The form also is available on the department's website: etf.wi.gov.

(b) Except as provided in par. (c), an election to terminate participation in the variable division may be rescinded if the department receives a written request to rescind the election from an alternate payee, beneficiary, named survivor, or participant as defined in s. 40.02 (2m), (8), (41r) and (45), Stats., before the De-

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cember 31 following the date on which the election to terminate participation in the variable division was received.

Note: No specific form exists for rescinding an election to terminate participation in the variable division. The written request must be dated and must make clear your intent and by including words to the effect of "I want to rescind my election to terminate participation in the variable division." Participants may send a letter or fax with this request to the following address: department of employee trust funds, P.O. Box 7931, Madison, WI 53707-7931 or fax (608) 267-4549.

(c) An election to terminate participation in the variable division received within 30 days after the date on which the person became a participant may be rescinded if the department receives the participant's written request to rescind the election no later than 30 days after the date on which the person became a new variable division participant as provided in sub. (3).

(d) A rescinded election to terminate participation in the variable division shall be treated as if the election never existed.

(e) When the department receives an election to terminate participation in the variable division more than 30 calendar days after the date on which a person became a new variable division participant as defined in sub. (3), the participant shall not be eligible to re-elect to participate in the variable division without meeting the requirements of sub. (2) (d).

(f) For an account or annuity that includes additional contribution, when an election to terminate participation in the variable division pursuant to s. 40.04 (7) (a) 1. or 2., Stats., is made by an alternate payee, beneficiary, named survivor, or participant as defined in s. 40.02 (2m), (8), (41r) and (45), Stats., the determination of whether the variable contributions and accrued gain or loss shall be transferred to the core division shall be based on an evaluation of the combined total of the required and additional contributions and shall be effective as prescribed in this section.

(g) An election to terminate participation in the variable division filed pursuant to s. 40.04 (7), Stats., shall be effective for all retirement contributions and benefits accrued as a participant except that for an annuitant who has variable accumulations from which no annuity is being paid, the effective date of an election shall be separately determined for the current annuity or annuities and for the variable division accumulations from which no annuity is being paid.

(h) When multiple elections to terminate participation in the variable division for an account are received by the department, the last election received by the department shall supersede previous elections and shall be applied to the account if it is received before the December 31 on which the previous election to terminate variable division participation would become effective.

(i) Any gains or losses at the effective date of a transfer pursuant to s. 40.04 (7), Stats., including subsequent interest credits, shall be reflected as an adjustment to the benefit at the time it is payable.

(j) Participants may rescind elections to participate in the variable division under the following conditions:

1. If an election to participate in the variable division would become effective on a January 1 after it is received, as provided in sub. (2), the election shall be rescinded if the department receives an election to terminate participation in the variable division before the date on which the election would otherwise become effective.

2. If an election to participate in the variable division would become effective on the date on which the participant became a participating employee as provided in sub. (3), the election to participate shall be rescinded if the department receives an election to terminate participation in the variable division within 30 calendar days after the date on which the participant becomes a participating employee.

(k) An election to terminate participation in the variable division received by the department after the date of death of the person making the election is invalid.

(L) A person may be a participant, alternate payee, named survivor, beneficiary or combination thereof under the Wisconsin retirement system, and may have different accounts or annuities in each capacity. Except as otherwise provided in this paragraph, an election to terminate participation in the variable division applies to all of a person's accounts and annuities. A person may specify that an election to terminate participation in the variable division applies only to one or more of the following:

1. All accounts and annuities held in the capacity of a participant.

2. All accounts and annuities held in the capacity of an alternate payee of a specified participant.

3. All accounts and annuities held in the capacity of a named survivor of a specified participant.

4. All accounts and annuities held in the capacity of a beneficiary of a specified participant.

(m) The December 31 effective date for an election to terminate participation in the variable division means on December 31 after interest crediting under s. 40.04 (4) (a), Stats., has occurred.

(6) RIGHTS OF BENEFICIARIES, ALTERNATE PAYEES, AND NAMED SURVIVORS. (a) An election to participate in the variable division received by the department from an alternate payee, beneficiary, or named survivor as defined in s. 40.02 (2m), (8), and (41r), Stats., is invalid.

(b) A person receiving or eligible to receive benefits as the alternate payee, sole beneficiary, or named survivor of a participant as defined in s. 40.02 (2m), (8), and (41r), Stats., may elect to terminate participation in the variable division pursuant to s. 40.04 (7), Stats.

(c) Except as provided in pars. (d) and (e), terminating participation or rescinding an election to participate in the variable division shall be determined pursuant to sub. (5).

(d) If there is more than one beneficiary of an account from which no annuity is being paid, the multiple beneficiaries may jointly elect to terminate participation in the variable division pursuant to s. 40.04 (7), Stats. Participation in the variable division will be terminated effective on the December 31 following receipt of an election to terminate participation in the variable division from each of the multiple beneficiaries. Any one of the multiple beneficiaries may rescind his or her election to terminate participation in the variable division prior to the date it would otherwise have gone into effect, in which case the rescinded election to terminate participation in the variable division shall be treated as if the election never existed.

(e) If there is more than one beneficiary of an account from which no annuity is being paid, and the beneficiaries do not all elect to terminate participation in the variable division pursuant to s. 40.04 (7), Stats., as provided in par. (d), an individual beneficiary's election to terminate participation in the variable division received by the department shall become effective on the December 31 on or after the effective date of the beneficiary's annuity from that beneficiary's portion of the participant's account, unless previously withdrawn.

(f) A participant's election to terminate participation in the variable division received by the department before the participant's date of death shall become effective as provided in sub. (2), and shall apply to any accounts or annuities that are payable to the participant's beneficiaries unless the election is rescinded as provided in sub. (5).

(7) INCOMPLETE ELECTIONS. (a) An election to participate in the variable division or an election to terminate participation in

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the variable division that does not contain the name, social security number and signature of the person making the election shall be deemed incomplete.

(b) An election to terminate participation in the variable division received by the department from a beneficiary or named survivor as defined in s. 40.02 (8) and (41r), Stats., that does not include the participant's name and social security number in addition to the name, social security number and signature of the person making the election shall be deemed incomplete. For terminations, the election must include a cancellation type as specified in sub. (5) (a).

(c) When the department receives an incomplete election, the election shall be returned by mail to the elector for completion. If a correctly completed election is received by the department within a grace period of 30 calendar days after the incomplete election was returned by mail to the elector, the original receipt date of the election shall be preserved for the purpose of determining the effective date of the election. The effective date for corrected elections that are not returned during the 30-day grace period shall be determined without regard to the original submission and based on the date a correctly completed election is received by the department.

(8) ELECTRONIC RECEIPT. (a) Subject to s. ETF 10.82 (2), the department may accept correctly completed elections to participate in the variable division, elections to terminate participation in the variable division and notifications to rescind elections to terminate participation in the variable division that are received by the department's facsimile machine or by electronic mail in a complete and legible form. The facsimile or electronic mail may be accepted as the original.

(b) The deadline for submitting an election to terminate participation in the variable division that is effective December 31 is December 31 of that year.

(c) The deadline for submitting an election to participate in the variable division that is effective January 1 is December 31 of the prior year.

(d) For the purposes of determining deadlines under this section, see s. 990.001 (4), Stats.

Note: Under s. 230.35 (4) (a), Stats., December 31 and January 1 are always legal holidays on which state offices are closed, as is the day following January 1 when January 1 falls on a Sunday. The department does not have duly established office hours on Saturday. Therefore, under s. 990.001 (4) (b), Stats., a December 31 deadline would be extended until the next date which is not a holiday, Saturday or Sunday. For example, the deadline of December 31, 2002, will be extended to Thursday, January 2, 2003. The deadline of December 31, 2004, will be extended to Monday, January 3, 2005. The deadline of December 31, 2005, will be extended to Tuesday, January 3, 2006.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81; renum. from ETF 8.02 and am., Register, December, 1982, No. 324, eff. 1-1-83; CR 02-126: r. and recr. Register April 2003 No. 568, eff. 5-1-03; CR 04-104: am. (8) (a) Register July 2005 No. 595, eff. 8-1-05; CR 09-057: am. (4) (a), (b), (5) (a) 1., 2., 3. b. and (f) Register May 2010 No. 653, eff. 6-1-10.

ETF 10.50 Sick leave conversion credits. (1) The amount of accumulated unused sick leave under s. 36.30, Stats., for all faculty and academic staff other than such faculty and staff appointed to work for either 52 or 39 weeks per year in the University of Wisconsin System convertible to credits to pay for health insurance premiums shall equal the number of days resulting from multiplying 0.0040708 times the number of hours per year appointed to work, as reported to the department, rounded off to the nearest tenth of a day. The maximum amount of such unused sick leave shall be limited to 8.5 days per year. The secretary of administration may waive this limitation under s. 40.05 (4) (bp) 2. and 3., Stats.

(2) Only participating employment and sick leave earned during participating employment can be used in the calculation of credits under ss. 40.05 (4) and 40.95, Stats.

History: Cr. Register, September, 1988, No. 393, eff. 10-1-88; CR 23-023: renum. to (1), cr. (2) Register May 2024 No. 821, eff. 6-1-24.

ETF 10.55 Joint instrumentalities; reporting participating employees, service and earnings. (1) SCOPE. This section applies to reporting and contributions with respect to employment by joint instrumentalities created by 2 or more units of government, when all of the following apply:

(a) At least one of the units of government creating the joint instrumentality is, or subsequently becomes, a participating employer in the Wisconsin retirement system.

(b) The joint instrumentality is not a separate and independent employer within the meaning of s. 40.02 (28), Stats., as determined by the department. A joint instrumentality which has not established itself as a separate unit of government for OASDHI purposes is not a separate and independent employer under this paragraph.

Example: A joint library district is not a separate and independent employer.

(c) There are persons employed by the joint instrumentality. This section does not apply with respect to employees of a unit of government loaned or assigned to perform services for a joint instrumentality. Those individuals remain the employees of their employing unit of government which is subject to the usual reporting and contribution requirements.

Example: If a joint library district's library board hired a librarian but the library was located on the premises of one of the units of government establishing the joint library district, which assigned one of its janitors to the library, then this section would apply with respect to the librarian but not the janitor.

(2) PURPOSE. With respect to the employees of joint instrumentalities subject to this section:

(a) Each participating employer forming a joint instrumentality covered by this section shall be responsible for its share of the retirement benefits of the instrumentality's employees who meet the qualifications for participating employees as both the share and qualifications are determined under this section.

(b) Nothing in this section prevents the units of government forming a joint instrumentality subject to this section from providing for their share of responsibility for the retirement benefits of the employees of the joint instrumentality in the agreement establishing the joint instrumentality. If they fail to expressly address the issue then the share of each participating employer shall be determined as provided in this section.

(c) Whether an employee of a joint instrumentality covered by this section is a participating employee under s. 40.22, Stats., is not affected by the number of units of government which form the joint instrumentality.

(3) PARTICIPATING EMPLOYEES. (a) An employee of a joint instrumentality subject to this section is a participating employee for Wisconsin retirement system purposes if any of the units of government forming the joint instrumentality is a participating employer under s. 40.21, Stats., unless the employee is excluded under s. 40.22 (2), Stats.

(b) In making determinations concerning the work expected of or services rendered by an employee of a joint instrumentality, including determining whether an employee is expected to work at least one-third of what is considered full time employment by s. ETF 20.015, the employee's work for the joint instrumentality shall be considered as a whole, without regard for the number of separate units of government which created the joint instrumentality or any agreement among them apportioning responsibility for expenses or for retirement contributions.

Example: A librarian working 900 hours per year for a joint library district created by six towns and villages, at least one of which is a participating employer, would not be barred from being a participating employee under the WRS by s. 40.22 (2) (a), Stats.

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(4) REPORTING REQUIREMENTS. (a) *Report participating employee.* Among the units of government which formed the joint instrumentality, each unit which is a participating employer under s. 40.21, Stats., shall report each employee of the joint instrumentality who qualifies as a participating employee under sub. (3) to the department as its own participating employee.

(b) *Reported earnings.* Earnings shall be reported by each participating employer, in the same manner and subject to the same requirements as for its other participating employees, with respect to each employee of the joint instrumentality required to be reported as a participating employee under sub. (3). The amount of earnings to be reported shall be determined by prorating the gross amount paid to the employee for services rendered to the joint instrumentality which would qualify as "earnings" under s. 40.02 (22), Stats., if the joint instrumentality were itself the employer among the units of government which created the joint instrumentality. If the proration is not specified by the agreement that establishes the joint instrumentality, proration shall be made as are expenses for the joint instrumentality. If no proration of expenses is provided in the agreement, each participating employer shall report the total amount of earnings divided by the number of units of government forming the joint instrumentality during that annual earnings period. If a unit of government joins or leaves a joint instrumentality during an annual earnings period, reported shares of earnings shall be adjusted as of the date of that event.

(c) *Contributions.* Each participating employer shall transmit as required contributions to the department the same percentages of the employee's reportable earnings determined under par. (a) as is required, and in the same manner as, contributions on earnings for its other participating employees in the same employment category.

(d) *Service.* The employee's hours of service for creditable service purposes shall be prorated in the same manner as earnings under par. (a) and reported to the department by each participating employer in the same manner as is required for its other employees.

Example: If a librarian qualifying as a participating employee worked 1,800 hours annually and was paid $20,000 per year by a joint library district created by a town and a village, both of which are participating employers, and they had agreed to split the expenses, with the town paying 80% and the village 20%, and the agreement was silent on allocating responsibility for the employees, then the town would report 1,440 hours of service and $16,000 in earnings, while the village reported 360 hours of service and $4,000 in earnings, with each making the associated contributions. If the village in this example was not a participating employer, it would have no obligation whatsoever while the town's responsibilities would remain exactly as stated.

(5) NON-PARTICIPATING EMPLOYERS. Nothing in this section shall be construed to require any employer which does not participate in the Wisconsin retirement system to make any report to the department or to pay any contributions to the public employee trust fund.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

ETF 10.60 Reports and payments. (1) Every employer, which has one or more employees as a participant under ch. 40, Stats., shall:

(a) Prepare and transmit a coverage report or reports to the department for each calendar month. Such reports shall be in the form prescribed by and in accordance with instructions from the department.

(b) Remit to the department, with the respective coverage reports required under par. (a), the employee and employer contributions or deposits, premiums, payments on the accrued liability or other amounts payable to the department for the calendar month covered by the report.

(2) Every employer shall submit the detailed annual earnings report required in the administration of subch. II of ch. 40, Stats., in an electronic format designated by the department.

(3) The secretary may, for specified employers or types of coverage, provide for summary reporting on a monthly basis to accompany the monthly remittance required in sub. (1) (b), and detailed reporting on a quarterly, semi-annual, or annual basis.

(4) The department may designate an agent or depository to receive on its behalf, payments or remittances as provided in sub. (1) (b) and any report or remittance will be considered received in the department's offices as of the date it is received by such a designated agent or depository.

History: Cr. Register, December, 1976, No. 252, eff. 1-1-77; emerg. am. (1) (a) and (b), eff. 8-1-80; am. (1) (a) and (b), Register, November, 1980, No. 299, eff. 12-1-80; renum. from ETF 4.01 and am. (1) (intro.), Register, December, 1982, No. 324, eff. 1-1-83; renum. (2) and (3) to be (3) and (4), cr. (2), Register, September, 2000, No. 537, eff. 10-1-00; CR 14-055: am. (2) Register May 2015 No. 713, eff. 6-1-15.

ETF 10.63 Due dates. (1) Reports and remittances required under this chapter shall be submitted to the department as follows:

(a) Contribution reports and remittances from state departments, excluding university and other state department reports which pertain to teachers only, required in the administration of subch. II of ch. 40, Stats., are due on a day determined by the secretary and communicated to employers by the department through email updates, employer bulletins, or other means of communication.

(b) Contribution reports and remittances other than those specified in par. (a) required in the administration of subch. II of ch. 40, Stats., are due on a day determined by the secretary and communicated to employers by the department through email updates, employer bulletins, or other means of communication.

(c) Detailed annual earnings reports required in the administration of subch. II of ch. 40, Stats., are due on a day determined by the secretary and communicated to employers by the department through email updates, employer bulletins, or other means of communication.

(d) Premium and coverage reports and remittances required in the administration of subchs. IV and VI of ch. 40, Stats., are due on a day determined by the secretary and communicated to employers by the department through email updates, employer bulletins, or other means of communication.

(e) Premium and coverage reports and remittances required in the administration of subch. V of ch. 40, Stats., are due on a day determined by the secretary and communicated to employers by the department through email updates, employer bulletins, or other means of communication.

(f) Reduction reports and remittances required in the administration of subch. VIII of ch. 40, Stats., are due on a day determined by the secretary and communicated to employers by the department through email updates, employer bulletins, or other means of communication.

(2) Whenever the due date determined by the secretary referred to in sub. (1) falls on a Saturday, Sunday, or holiday on which state offices are closed, a report or a remittance received on the first working day after the due date determined by the secretary referred to in sub. (1) shall be deemed to have been received on a timely basis.

(3) The secretary may waive charges and interest calculated under s. 40.06 (3), Stats., on any employer's reports and remittances, which are received within one day of the due date specified under subs. (1) and (2) and announced to employers by the department or on a day determined by the secretary referred to in sub. (1) and (2) if he or she determines that the waiver will not

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impair the objective of encouraging timely receipt of contributions and remittances.

History: Cr. Register, December, 1976, No. 252, eff. 1-1-77; emerg. cr. (1) (e), eff. 8-1-80; r. and recr. (1), am. (2) and (3), r. (4), renum. (5) and (6) to be (4) and (5) and am. (4), Register, November, 1980, No. 299, eff. 12-1-80; renum. from ETF 4.02, am. (1), renum. (2) to be ETF 10.64, renum. (3) to be (2), r. (4), renum. (5) to be (3) and am., Register, December, 1982, No. 324, eff. 1-1-83; am. (1) (f) and (2), Register, December, 1983, No. 336, eff. 1-1-84; r. and recr. (3), Register, April, 1986, No. 364, eff. 5-1-86; emerg. r. (1) (c), eff. 6-1-86; r. (1) (b) to (d), Register, September, 1986, No. 369, eff. 10-1-86; r. (1) (a), Register, January, 1987, No. 373, eff. 2-1-87; correction in (1) (g) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1995, No. 474; r. and recr. (1) and am. (2), Register, July, 2000, No. 535, eff. 8-1-00; CR 12-054: am. (1) (a) to (d), (e) 1., 2., (f), (2), (3) Register October 2013 No. 694, eff. 11-1-13; corrections in (1) (a) to (d), (e) 1., 2., (f), (3) made under s. 13.92 (4) (b) 6., Stats., Register October 2013 No. 694; CR 16-033: cr. (1) (intro.), am. (1) (a) to (d), cons. (1) (e) (intro.) and 1., renum. to (1) (e) and am., r. (1) (e) 2., am. (1) (f), (2) Register April 2017 No. 736, eff. 5-1-17.

ETF 10.633 Debiting participant account to fund benefit. (1) Except as provided in sub. (2), the date on which a participant's account in the employee accumulation reserve shall be debited to fund the benefit, as provided in s. 40.04 (4) (a) 3., Stats., shall be as follows:

(a) For a retirement annuity under s. 40.23 or 40.24, Stats., or s. ETF 20.04, and for a beneficiary annuity under s. 40.73 (3), Stats., the debit date shall be the twenty-first day of the same month as the date of the first payment.

(b) For a disability annuity under s. 40.63, Stats., the debit date shall be the twenty-first day of the same month as the date of the first payment.

(c) For a lump sum payment of any kind, including a separation benefit under s. 40.25 (2), Stats., or lump sum payments under s. 40.25 (1) or (4) or 40.73 (1) or (2), Stats., the debit date shall be the date of the payment.

(2) If the date specified under sub. (1) falls on a Saturday, Sunday or a holiday under s. 230.35 (4) (a), Stats., then the debit shall be made on the next working day.

(3) The department may correct its accounting of the participant's former account in the employee reserve after debiting the account. No corrections to the amount of the debit may affect the date of the debit provided in sub. (1) or (2) for other purposes, including those of ss. ETF 20.20 (2), (3) and (4), 50.31, and 60.51.

History: Cr. Register, January, 1996, No. 481, eff. 2-1-96; correction in (1) (c) made under s. 13.93 (2m) (b) 7., Stats., Register, July, 1999, No. 523; CR 14-055: am. (1), (a), (b), (c) Register May 2015 No. 713, eff. 6-1-15.

ETF 10.635 Late paid earnings. Except for purposes of s. 40.05 (3), Stats., contributions and premiums due on late-paid earnings, including payments for retroactive changes in earning rates and those considered covered earnings under s. 40.02 (22) (b) 9., Stats., shall be determined at the employee and employer rates which would have been in effect if the subsequent changes and decisions had been known at the time the earnings would normally have been payable and shall be subject to s. 40.06 (5), Stats.

History: Cr. Register, July, 1986, No. 367, eff. 8-1-86.

ETF 10.64 Late reporting charges and interest. (1) Except as provided in s. ETF 10.63 (2) and (3) and this subsection, any report or remittance not received within the period specified in this chapter, ch. 40, Stats., or an insurance contract between the group insurance board and an insurance carrier shall be subject to the charges and interest calculated in accordance with the provisions of s. 40.06, Stats. Reports and remittances required under s. ETF 10.63 (1) (f) are not subject to the interest charges under s. 40.06 (5), Stats.

(2) The employer shall be responsible for and transmit to the department any assessment made against the state by the federal government for late payment of contributions due on any OASDHI adjustment report.

(3) When interest is due under s. 40.06 (5), Stats., and the effective rate for the current year is unavailable, the effective rate for the previous calendar year shall be used. The due date specified on the billing notice shall be the next regularly scheduled due date for regular payments specified under s. ETF 10.63, ch. 40, Stats., or contracts between the group insurance board and any insurance carrier, but in no case less than 30 days from the date of the billing notice. When interest is due under s. 40.06 (3), Stats., it shall be assessed on a daily basis from the billing notice due date to the date payment is actually received.

History: Renum. from ETF 4.02 (2) and am., Register, December, 1982, No. 324, eff. 1-1-83; am. (1) and cr. (2), Register, August, 1984, No. 344, eff. 9-1-84; am. (1) and cr. (3), Register, October, 1986, No. 370, eff. 11-1-86; CR 23-023: am. (1) Register May 2024 No.821, eff. 6-1-24; correction in (1) made under s. 35.17, Stats., Register May 2024 No. 821.

ETF 10.65 Refund of excess contributions. The department shall refund contributions to be allocated to a participant's account that exceed the limits specified in s. 40.32, Stats., in accordance with s. 40.08 (6), Stats., according to the correction methods allowed under the Employee Plans Compliance Resolution System developed by the internal revenue service or similar correction program developed by the internal revenue service. Nothing in this section shall be interpreted as a basis for a determination of whether any payments credited to an employer are required to be paid by the employer to an employee under contractual agreements or other negotiated agreements or provisions of law.

Note: Revenue Procedure 2013-12 sets forth the Employee Plans Compliance Resolution System. The Procedure is updated periodically. A copy of the ruling may be obtained by writing: Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000 or on the Internet at http://www.irs.gov/Retirement-Plans/Correcting-Plan-Errors.

History: Cr. Register, June, 1998, No. 510, eff. 7-1-98; correction in (2) (b) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1998, No. 510; CR 13-004: renum. (1) (intro.) to 10.65 and am., r. (1) (a) to (f), (2), (3) Register August 2013 No. 692, eff. 9-1-13.

ETF 10.70 Individual personal information. (1) "Individual personal information" means all information in any individual record of the department, including the date of birth, earnings, contributions, interest credits, beneficiary designations, creditable service, marital or domestic partnership status, address, and social security number, but does not include information in any statistical report, other report or summary in which individual identification is not possible.

(2) Individual personal information may be disclosed as required for the proper administration of benefit programs under ch. 40, Stats., including discussion of this information in any meeting of any board created under s. 15.16 or 15.165, Stats., or disclosure in any written record of the board proceedings.

(3) (a) Pursuant to s. 40.07 (1m) (a), Stats., an individual's personal information may be disclosed, except as otherwise prohibited, upon proper identification, to that individual or the duly authorized personal representative of that individual in person, by telephone, or in writing.

(b) Except as provided in par. (d), an individual's authorization to release information to a personal representative shall be in writing, signed, and dated and shall refer specifically to the records in this department.

(c) A written authorization under par. (b) which does not contain an expiration date shall be deemed to have expired 6 months following the date the authorization was signed.

(d) The secretary of the department, or specific departmental employees designated by the secretary, may authorize disclosure of information without written authorization when urgent cir-

cumstances exist which warrant an exception to normal procedures and when the person to whom the information is to be given is otherwise authorized to receive it.

(4) In case of death, disabling injury, or disabling disease, the department may disclose individual personal information only to any of the following, as identified by the department:

(a) The legal representative of the individual whose record is the subject of the inquiry.

(b) A beneficiary of the deceased under s. 40.02 (8), Stats.

(c) The named survivor of the deceased under s. 40.02 (41r), Stats.

(d) The duly authorized representative of the beneficiary or the named survivor.

(e) The legal representative of the deceased individual's estate.

Note: The definition of "beneficiary" was affected by 2007 Wis. Act 131. The existing administrative rules using that term were reviewed in order to ensure that the use of the term remained logical, correct and consistent with the new definition. While conducting that review, the department located three provisions that needed to be amended: ss. ETF 10.70 (4), 10.70 (5) (b) 1. and 20.04 (2). This rule (CR 09-057) amends the current rule allowing disclosure of confidential personal information in case of death, disabling injury or disease, to clarify that disclosure to a beneficiary may be made only after the participant has died, since only then can the actual beneficiary be determined. The amendment will also help safeguard the confidential information of living participants.

(5) Notwithstanding sub. (3), disclosure of an individual's beneficiary designation shall only be made under any of the following circumstances:

(a) While the individual is living, to the individual or to his or her duly authorized representative, upon request.

(b) After the death of the individual:

1. Upon request, to the personal representative of the individual's estate, to the beneficiary of the individual under s. 40.02 (8), Stats., as identified by the department, or to the duly authorized representative of the personal representative or that beneficiary;

Note: The definition of "beneficiary" was affected by 2007 Wis. Act 131. The existing administrative rules using that term were reviewed in order to ensure that the use of the term remained logical, correct and consistent with the new definition. While conducting that review, the department located three provisions that needed to be amended: ss. ETF 10.70 (4), 10.70 (5) (b) 1. and 20.04 (2).

This rule (CR 09-057) amends the current rule allowing disclosure of a deceased individual's confidential personal information to clarify that the persons who may request that information are the personal representative of the estate, the decedent's beneficiary or a duly authorized representative of either of them.

2. To an insurance carrier or administrator of benefits under ch. 40, Stats., or predecessor as necessary for proper payment of benefits.

(c) To parties determined by the department to have an interest in the designation, when the information is relevant to a pending court action or to a pending appeal under s. 40.03 (1) (j), (6) (i), (7) (f), (8) (f), or 40.80 (2g), Stats.

(d) Nothing in this subsection shall be construed to prohibit the department from communicating with the individual or the individual's guardian about the individual's beneficiary designation at the department's initiative as necessary for the proper administration of the department.

(6) Nothing in this section shall require the department to disclose individual personal information if in the judgement of the department the requestor has not provided adequate evidence of identity or proper authorization to receive the information.

History: Cr. Register, June, 1983, No. 330, eff. 7-1-83; r. and recr. (5), Register, October, 1992, No. 442, eff. 11-1-92; am. (5) (a) and (b) 1., cr. (5) (d) and (6), Register, January, 1996, No. 481, eff. 2-1-96; correction in (3) (a) made under s. 13.93 (2m) (b) 7., Stats., Register September 2006 No. 609; CR 09-057: am. (4) and (5) (b), 1. Register May 2010 No. 653, eff. 6-1-10; EmR0938: emerg. am. (1), eff. 1-1-10; CR 10-004: am. (1) Register July 2010 No. 655, eff. 8-1-10; CR 16-033: renum. (4) to (4) (intro.), (a), (b), (d), (e) and am., cr. (4) (c) Register April 2017 No. 736, eff. 5-1-17; correction in (4) (intro.) made under s. 35.17, Stats., Register April 2017 No. 736.

ETF 10.71 Transcript fees. (1) The department shall provide a party to an appeal under ch. ETF 11, or a party to department proceedings under s. 227.42, Stats., with a copy of the transcript of any proceedings upon request and payment of a fee. The party shall make the request for the transcript in writing and pay a fee as follows:

(a) For an existing written transcript, a $5.00 flat charge plus $1.00 for each page of the transcript for single copies.

(b) For other electronic record, the reasonable cost of the medium and copying.

(2) One free copy of the transcript shall be provided to any party who establishes to the satisfaction of the department, that the payment of a transcript fee would prove to be an unreasonable financial burden due to the party's lack of financial resources.

History: Cr. Register, July, 1977, No. 259, eff. 8-1-77; renum. from ETF 3.02 and am. (1) (intro.) and (2), Register, June, 1983, No. 330, eff. 7-1-83; r. and recr. (1) (intro.), am. (1) (a), cr. (1) (c) to (e), Register, June, 1992, No. 438, eff. 7-1-92; CR 11-040: am. (1) (a), r. (1) (b), (c), (d), renum. (1) (e) to be (1) (b) Register July 2012 No. 679, eff. 8-1-12.

ETF 10.72 Fee for search of historical records. Individuals and employers may be charged an administrative fee of $5.00 for information concerning an account or record which is not readily available and which requires a search of historical records, either within the department or at the state records center. This charge shall not apply for searches required by s. 40.285 (2) (d), Stats.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78; renum. from ETF 3.03 am., Register, June, 1983, No. 330, eff. 7-1-83; correction made under s. 13.93 (2m) (b) 7., Stats., Register July 2005 No. 595.

ETF 10.75 Power of attorney. (1) As used in this section, "power of attorney" includes all of the following:

(a) A uniform statutory power of attorney as set forth in s. 244.61, Stats.

(b) A uniform statutory power of attorney as defined under and containing the language required in a uniform statutory power of attorney act enacted by a jurisdiction other than the state of Wisconsin, provided the power of attorney meets the requirements of and does not conflict with s. 244.61, Stats.

(c) A durable power of attorney as defined in s. 244.02 (3), Stats.

(d) A durable power of attorney as defined under and containing the language required in a uniform durable power of attorney act enacted by a jurisdiction other than the state of Wisconsin, provided the power of attorney meets the requirements of and does not conflict with s. 244.02 (3), Stats.

(e) A person's common law authorization, whether durable or non-durable, to act as the person's agent under a power of attorney.

(1m) (a) A power of attorney document signed before September 1, 2010, is presumed to be non-durable unless the power of attorney document specifies that it is durable.

(b) A power of attorney document signed on or after September 1, 2010, is presumed to be durable unless the power of attorney document specifies that it is non-durable.

(2) The department or the Wisconsin deferred compensation program administrator, as applicable, shall accept the agent's signature in lieu of the principal's signature for all transactions for which the department or the Wisconsin deferred compensation program administrator requires the principal's signature, provided that all of the following conditions are met:

(a) The department or the Wisconsin deferred compensation program administrator, as applicable, received either the original of the power of attorney which is dated and signed by the person granting the power of attorney, or a legible facsimile copy or e-

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mail attachment, subject to s. ETF 10.82. The department or the Wisconsin deferred compensation program administrator, as applicable, may require additional documentation deemed necessary to verify that the power of attorney remains in effect.

(b) The appointment under power of attorney has not terminated or expired.

(c) The powers delegated under the power of attorney include authority to make the transaction authorized by the agent.

(d) If requested by the department or the Wisconsin deferred compensation program administrator, the agent certifies that he or she does not have knowledge of the termination of the appointment, the principal's death, or if applicable, the principal's incapacitation. If the department or the Wisconsin deferred compensation program administrator requests such certification, and the agent does not provide the certification as requested, the department or the Wisconsin deferred compensation program administrator may decline to act upon the request.

(e) If the power of attorney is conditioned on the incapacitation of the principal, upon request of the department or the Wisconsin deferred compensation program administrator the agent provides evidence satisfactory to the department or the Wisconsin deferred compensation program administrator that the principal has become incapacitated. In this paragraph, "incapacity" has the meaning given in s. 244.02 (7), Stats.

(f) Subject to par. (c), the department and the Wisconsin deferred compensation program administrator, as applicable, shall treat as valid any beneficiary designation received prior to the principal's death that is signed by the agent, without regard to the date on which the power of attorney was executed by the principal or the date on which the department or the Wisconsin deferred compensation program administrator receives the beneficiary designation form, provided that the agent signed the beneficiary designation on or after the date on which the principal executed the power of attorney granting that authority to the agent.

(3) (a) The department or the Wisconsin deferred compensation program administrator, as applicable, shall review acknowledged power of attorney documents for technical completeness, and will reject any that are technically deficient within 10 days after receipt by the department.

(b) The department and the Wisconsin deferred compensation program administrator, as applicable, shall not honor transaction requests by the agent for which the power of attorney document does not grant authority to the agent, regardless of whether the agent's request is rejected within 10 days after the department received the agent's request.

(c) The effective dates of certain transactions are based on the receipt date of either the transaction request or certain documents, such as a benefit application. If the department receives such a transaction request from the agent, but either has not received the power of attorney or the department requests certification under sub. (2) (d), the department must receive the requested certification or the power of attorney within 30 days after the department's notification to the agent that the power of attorney or certification is required. If the department receives the certification or power of attorney within 30 days, the effective date of the transaction requested will be based on the original date on which the department received the transaction request.

(d) Paragraph (c) shall not apply if the principal executed the power of attorney after the date on which the department received the transaction request.

(e) A document signed by the agent prior to the date on which the power of attorney becomes effective shall have no force or effect.

(4) (a) If the principal has granted joint power of attorney to co-agents, the department or the Wisconsin deferred compensation program administrator, as applicable, shall require the signature of each agent on any transaction that requires the principal's signature.

(b) If the principal has granted separate power of attorney to more than one agent, each with independent authority, the department and the Wisconsin deferred compensation program administrator, as applicable, shall honor transaction requests signed by any single agent, subject to sub. (2) (c).

(c) If agents under par. (b) request to execute conflicting transactions, the department or the Wisconsin deferred compensation program administrator, as applicable, may decline to act upon the requests of one or more of the agents if it is determined to be in the best interests of the principal.

(5) The department or the Wisconsin deferred compensation program administrator, as applicable, may decline to act upon the request of an agent acting under an alleged power of attorney if there is reason to believe that the purported agent is not the appointed person, the appointment is not in effect, the authority of the power of attorney does not extend to the particular transaction, or the power of attorney is otherwise defective.

(6) (a) Unless otherwise specified in the power of attorney, if the agent is the principal's spouse or domestic partner as defined in s. 770.01 (1), Stats., the power of attorney terminates if an action is filed for the dissolution of the agent's marriage to the principal or the domestic partnership of the principal and agent is terminated.

(b) Unless otherwise specified in the power of attorney, if the agent is the principal's domestic partner as defined in s. 40.02 (21c), Stats., the power of attorney does not automatically terminate if only the domestic partnership as defined in s. 40.02 (21d), Stats., terminates.

History: Cr. Register, September, 1986, No. 369, eff. 10-1-86; r. and recr. Register, December, 1996, No. 492, eff. 1-1-97; CR 04-104: am. (2) (a) Register July 2005 No. 595, eff. 8-1-05; CR 10-138: r. and recr. Register August 2011 No. 668, eff. 9-1-11; CR 23-023: am. (2) (e) Register May 2024 No. 821, eff. 6-1-24; correction in (2) (e) made under s. 35.17, Stats., Register May 2024 No. 821.

ETF 10.78 Guardianship requirements. (1) When the amount of a single sum benefit payment to a minor, as defined under s. 54.01 (20), Stats., or incompetent, as described in s. 54.10 (3), Stats., exceeds $5,000, or when an annuity or disability annuity is payable, payment shall be made by the department to the court appointed guardian, for the benefit of the minor or incompetent, upon receipt of a certified copy of the letters of appointment. Letters of appointment shall be certified within the past 6 months. If the minor is married and has not been adjudged to be incompetent, the department shall make the payment to the minor.

(2) If a guardianship is identified prior to payment, payment shall be made to the guardian, for the benefit of the minor or incompetent, upon receipt of a certified copy of the letters of appointment.

(3) If there is a guardian of the estate and another guardian of the person, payment shall be made to the guardian of the estate.

History: Cr. Register, September, 1986, No. 369, eff. 10-1-86; corrections in (1) made under s. 13.93 (2m) (b) 7., Stats., Register September 2006 No. 609; EmR0938: emerg. r. (2), eff. 1-1-10; CR 10-004: r. (2) Register July 2010 No. 655, eff. 8-1-10; correction in (3) made under s. 13.92 (4) (b) 7., Stats., Register July 2010 No. 655; CR 11-040: am. (1), renum. (3), (4) to be (2), (3) Register July 2012 No. 679, eff. 8-1-12.

ETF 10.79 Reasonable efforts to locate benefit payees. (1) The department shall make reasonable efforts to maintain current addresses on file for participants, other than for participating employees under s. 40.02 (46), Stats., alternate pay-

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ees, beneficiaries or other potential benefit recipients. These efforts shall include, but shall not be limited to, the following:

(a) Require participating employers to report a current address for all terminating participants.

(b) Request social security numbers and addresses for all named beneficiaries on the departmental beneficiary designation form.

(c) Initiate a minimum of one written contact per year to alternate payees and participants, other than participating employees and annuitants, which may be accomplished by sending those persons an annual statement of account or benefit statement.

(d) Publish an article annually in the departmental participant newsletter communicating the importance of notifying the department of address changes.

(2) Before considering a benefit abandoned under s. 40.08 (8), Stats., the department shall make reasonable efforts to locate participants, alternate payees and beneficiaries except those persons whose accounts meet the conditions specified in s. 40.08 (8) (f), Stats. Reasonable efforts to locate potential benefit payees may include, but are not limited to:

(a) Seek current address information for potential benefit payees through locator services available from the social security administration, internal revenue service or other federal or state agencies.

(b) Seek current address information for potential benefit payees through private company data bases or locator services.

(c) Publish the names of potential benefit payees in the official state newspaper with instructions for contacting the department for application information. This paragraph shall not apply to accounts that meet the conditions specified in s. 40.08 (8) (f), Stats.

History: Cr. Register, June, 1998, No. 510, eff. 7-1-98.

ETF 10.82 Receipt by the department. (1) DATE OF RECEIPT OR FILING; NONBUSINESS HOURS AND HOLIDAYS EXCLUDED. (a) Except as otherwise specifically provided in par. (am) for a facsimile or electronic mail, the date a document is received by, or filed with, the department is the date the original document is physically received at the department at its offices during regular business hours as provided under s. 230.35 (4) (f), Stats., regardless of the date the document was mailed or otherwise intended to be transmitted to the department and regardless of any mishandling or misdirection by the U.S. postal service or any other agency or person. A document which arrives at the department's offices after 4:30 p.m. Monday through Friday or on a Saturday, Sunday or holiday as defined by s. 230.35 (4) (a), Stats., is deemed received by the department at 7:45 a.m. on the next day on which the department's offices are regularly open for business as provided under s. 230.35 (4) (f), Stats.

(am) Unless otherwise provided in sub. (2), a fax or e-mail to which sub. (2) applies is received by the department, regardless of whether any individual is aware of its receipt, when it enters the information processing system designated or used by the department for the purpose of receiving facsimiles or electronic mail, respectively, provided the following are true:

1. The fax or e-mail transmission is in a form capable of being processed by department's information processing system.

2. The department is able to retrieve the fax or e-mail from the information processing system.

(b) No department employee may affix a date stamp to a document received by the department which indicates a date received in conflict with par. (a).

Note: This paragraph does not prohibit a department employee from making a note attached to or on the document, separate from the official receipt stamp, concerning the circumstances under which the document arrived at the department, including dates or times.

(c) A document bearing the department's date stamp indicating receipt is conclusively presumed for all purposes associated with benefits under ch. 40, Stats., to have been received by the department on the date indicated by the stamp. This presumption may be rebutted only by clear and convincing evidence that the document was received by or filed with the department, as provided in par. (a), on a different date than shown by the official date stamp. The department may correct a date stamp the secretary determines was affixed in violation of par. (b).

(2) RECEIPT OF ELECTRONIC CORRESPONDENCE; FACSIMILES AND ELECTRONIC MAIL. (a) *Electronic correspondence may be accepted.* The department may accept correspondence transmitted to the department by fax or by e-mail, including letters, messages, and documents associated with payment or administration of, or eligibility for, benefits under ch. 40, Stats., and including authorizations to disclose confidential personal information, applications for benefits, beneficiary designations and elections to participate or terminate participation in the variable retirement investment trust.

Note 1: The purpose of this subsection is to allow persons corresponding with the department to utilize the speed, convenience and other legitimate advantages of electronic communications in transactions with the department. It is the purpose of this subsection to permit persons with access to fax or e-mail to carry out transactions only to the same extent and with the same results as for transactions by non-electronic means, except for the expanded time of receipt provided by sub. (1) (am).

Note 2: It is recognized that under this subsection and because of the inherent nature of electronic communications that the department may at times accept and act upon fax or e-mail correspondence without ever receiving a holographic document or signature. The department may reasonably rely on representations made in correspondence to the department in any form. The department is not required to use different or extraordinary care before accepting or acting upon correspondence received by fax or e-mail.

Note 3: Under s. 943.395 (1) (c), Stats., it is prohibited to present or cause to be presented a false or fraudulent claim or benefit application, or any false or fraudulent proof in support of such a claim or benefit application, or false or fraudulent information which would affect a future claim or benefit application, to be paid under any employee benefit program created by ch. 40, Stats. Criminal penalties are provided for violation of this prohibition.

(b) *Rejection and non-receipt.* 1. The department may, at its sole discretion and in whole or in part, treat as never received or formally reject any fax or e-mail unless the department is satisfied that the transmission is complete, duly authorized by the proper person, authentic and is not likely to result in any payment of benefits through fraud, misrepresentation or error. To the extent that the correspondence consists of a purported copy of a document, the department may reject a fax or e-mail or treat it as never received unless satisfied that the transmission is an accurate copy.

2. Examples of circumstances under which a transmission may be rejected or treated as if never received include the following:

a. The transmission as received is illegible, in whole or part.

b. The transmission is, or appears to be, incomplete or interrupted.

c. The transmission was not received on a fax machine or e-mail server, for fax and e-mail correspondence respectively, used by the department.

d. There is no separate fax cover sheet or similar information accompanying the transmission which provides the sender's name, mailing address, and telephone number, as well as the fax number or e-mail address from which the transmission was sent.

e. The department is unable to determine to its satisfaction the identity of the sender from the information transmitted.

f. The department is unable to determine from the transmitted information to whom or to what transaction the transmission pertains.

Note: Records in the department pertaining to participants, alternate payees and insured persons are filed by Social Security Number, member identification number

and name. Records pertaining to beneficiaries of deceased participants are filed with the deceased participant's records, identified by the decedent's name, Social Security Number and member identification number, as well as the name and Social Security Number of the beneficiary.

g. A reasonable doubt exists that a fax or e-mail or e-mail attachment is a true copy of the document of which it purports to represent, as determined by the department.

h. The authenticity of an underlying document is not established to the satisfaction of the department.

i. With respect to a benefit application form, waiver of benefits, beneficiary designation, election concerning the variable retirement investment trust or other document affecting entitlement to or payment of benefits, it is not established to the satisfaction of the department that the sender of the transmission was the living person whose benefits are affected, a person duly authorized to act on that person's behalf, such as a guardian of the estate or attorney-in-fact, or the trustee of a trust or personal representative of an estate entitled to receive death benefits.

j. The document is received after the deadline for receipt by, or filing with, the department.

Example: Annuity applications or beneficiary designations received after the death of the participant are never accepted.

(c) *Department may request additional information.* Before agreeing to acknowledge, accept, file, formally receive or act upon correspondence transmitted by fax or e-mail, the department may request additional information, including but not limited to the original document or other supporting representations and documentation, as necessary to establish to the department's satisfaction that the transmitted correspondence is authentic, offered by the proper person and, if the correspondence includes or consists of a copy of a document, that the transmission is a true and authentic copy.

(d) *No presumptions as to receipt.* Any attempt to file documents with the department by facsimile or electronic mail is entirely at the risk of the person transmitting the facsimile or electronic mail to the department. Transmission does not create a presumption of actual receipt by the department. Dates and times inserted into a fax or e-mail by a sending machine do not establish when, or if, correspondence was received by the department. Mere acknowledgement that a transmission was received does not establish that the transmission was complete, was accepted or that the content sent corresponds to the content received.

Note: Silence by the department does not indicate receipt or acceptance. If verification of receipt is important to the sender, the sender should seek and obtain verification from the department division, bureau or staff actually responsible for processing the transaction in question.

(e) *Agents and third-party administrators not affected.* This subsection does not require a third party administrator or agent under contract to any board to administer a benefit program supervised by that board to accept correspondence or documents by fax or e-mail. Neither does this rule prohibit such an agent or third party administrator from doing so, provided security, privacy, authenticity and accuracy concerns are adequately addressed.

(f) *Specific documents excluded.* The department may not accept or rely on electronic copies of certain documents, as follows:

1. The text includes words to the effect that a copy may not be relied upon to the same extent as the original.

2. The document is a record, or is offered to the department as necessary evidence, of the execution of a will or the creation of a testamentary trust.

(g) *Requirement to be in writing.* If a provision of ch. 40, Stats. or a rule adopted under ch. 40, Stats., requires a document offered to the department to be in writing, then the department may deem an e-mail or fax to satisfy that requirement.

(h) *Signature requirement.* If a provision of ch. 40, Stats., or a rule adopted under ch. 40, Stats., requires a signature, then the department may deem a signature transmitted by fax or incorporated in an e-mail, including any electronic sound, symbol or process attached to or logically associated with the e-mail and executed, adopted, or affixed by a person with the intent to sign the e-mail, to satisfy that requirement.

History: Cr. Register, December, 1994, No. 468, eff. 1-1-95; am. (2) (b) 27., 28. and 29., Register, January, 1996, No. 481, eff. 2-1-96; CR 02-126: am. (2) (b) 5. Register April 2003 No. 568, eff. 5-1-03; CR 04-104: am. (1) (a), cr. (1) (am), r. and recr. (2) Register July 2005 No. 595, eff. 8-1-05; correction in (2) (f) 2. a. made under s. 13.93 (2m) (b) 7., Stats., Register September 2006 No. 609; CR 19-126: am. (2) (f) 1. b., r. (2) (f) 1. c., 2. Register May 2021 No. 785, eff. 6-1-21; CR 23-023: renum. (2) (f) 1. to (2) (f), r. (2) (f) 3. Register May 2024 No. 821, eff. 6-1-24.

ETF 10.84 Response to requests. (1) The department shall generally attempt to respond to requests to provide documents such as informational brochures, blank forms and annuity or disability estimates in the order in which such requests are received by the department.

(2) When the department responds to a request for information, forms, estimates or similar documents, if the requestor is not actually available in the department's offices for delivery by hand, the method of transmission of requested documents to the requestor shall be through the U.S. mail, by e-mail, by facsimile, or through the requestor's participating employer, if any, at the discretion of the department.

History: Cr. Register, December, 1994, No. 468, eff. 1-1-95; CR 11-040: am. (2), r. (3) Register July 2012 No. 679, eff. 8-1-12.

ETF 10.85 Prohibited transactions. Effective January 1, 1989, the department may not engage in a prohibited transaction as defined in section 503 (b) of the internal revenue code.

History: CR 13-004: cr. Register August 2013 No. 692, eff. 9-1-13.

ETF 10.86 Electronic deposits. Any member, beneficiary, or distributee of any estate receiving benefits payable under any of the benefit plans administered by the department may have the benefits paid via electronic deposit into a financial institution account owned by a representative payee, nursing home, religious order, or other entity designated by the member, beneficiary, or distributee of any estate and approved by the department.

History: CR 12-054: cr. Register October 2013 No. 694, eff. 11-1-13.