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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 07-062

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated January 2005.]**

#### 2. Form, Style and Placement in Administrative Code

- a. In many instances, references to the statutes in Clearinghouse Rule 07-062 lack the required reference to “Stats.” It is suggested that the entire rule be reviewed to remedy this deficiency.
- b. It is suggested that “expressly” and “to the contrary” be deleted from s. ETF 20.17 (1) (d) 4.
- c. In s. ETF 20.17 (1) (g) 3., the citation at the end should be preceded by “s.”
- d. Section ETF 20.17 (2) (a) defines “at the time of application” to mean “on the date of application.” “Date of application” is defined in s. ETF 20.17 (2) (c). Would it be possible to simplify Clearinghouse Rule 07-062 by using only one of the defined terms?
- e. The note following s. ETF 20.17 (2) (c) should indicate where the forms may be obtained. Are they available on the Internet?
- f. In s. ETF 20.17 (4) (b) 3. a., “as defined by sub. (2) (f)” is unnecessary and should be deleted.
- g. Section ETF 20.17 (8) (c) refers to a person who purchases creditable service under “former” s. 40.02 (17) (e), Stats. A more specific reference to the period when the statute was in effect, similar to the reference in s. ETF 20.17 (7) (e), is necessary.

### **3. Conflict With or Duplication of Existing Rules**

The rule repeals s. 20.15. Since current s. ETF 11.16 (2) (c) refers to s. ETF 20.15 (2) (c), this cross-reference will need to be corrected.

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

a. The reference to s. 40.23 (2) (fm), Stats., in note 1 to s. ETF 20.17 (1) (d) should be to s. 40.23 (2m) (fm), Stats.

b. The reference to s. 20.23 (2m) (f) 2., Stats., in note 2 to s. ETF 20.17 (1) (d) should be to s. 40.23 (2m) (f) 2., Stats.

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

a. In the third sentence under “Explanation of agency authority,” “less than” should replace “less that.”

b. In the first sentence describing Iowa’s rules, “post-7/1/19898” appears to be a typographical error.

c. Section ETF 20.17 (1) (b) 1. states that the Department of Employee Trust Funds (ETF) shall update and correct the calculation of the amount due to purchase creditable service after a completed application and “initial payment is actually received.”. This statement is ambiguous, because s. 40.285 (4) (b), Stats., authorizes ETF to accept an application if at least 10% of the estimated cost of creditable service is included with the application and the remainder of the estimated cost is received no later than 90 days after receipt of the application in the form of a plan-to-plan transfer. The requirement that the initial payment be “actually received” is not clear concerning whether payment of the estimated 10% cost satisfies the requirement in s. ETF 20.17 (1) (b).

d. It is suggested that the phrase “going forward” be deleted from s. ETF 20.17 (1) (d). This phrase is ambiguous. If the phrase is meant to convey that the purchase of creditable service has no retroactive effect, this is more clearly stated in the remainder of par. (d).

e. The last sentence of s. ETF 20.17 (1) (e) 2. is ambiguous. This subdivision limits the purchase of creditable service so that no more than one year of service can be credited for any annual earnings period. It is not clear how a person’s current creditable service for the annual earnings periods in question will be considered for purposes of this subdivision. It is suggested that the department clarify this matter.

f. Should the reference to a participant’s “fixed” additional contributions in s. ETF 20.17 (1) (g) 3. be a reference to a participant’s “core” additional contributions?

g. Under certain circumstances, s. ETF 20.17 (1) (h) 2. c. allows an applicant for the purchase of creditable service to request any amounts owed to ETF for the purchase of creditable service be deducted from his or her retirement system benefit. The rule subdivision paragraph allows this “notwithstanding” s. 40.08 (1), Stats. Because the purpose of administrative rules are

to interpret statutes, it is not proper to state that the rule applies notwithstanding the statute. If the department believes there is statutory authority for the administrative rule even though a statute appears to conflict with it, the department should, perhaps in a note to the rule, explain why it believes there is statutory authority. This comment also applies to s. ETF 20.17 (3) (f).

Section 40.08(1), Stats., prohibits the assignment of benefits payable by ETF. Because this statutory restriction can easily be interpreted to prohibit the assignment of ETF benefits to third parties and not to prohibit a beneficiary from using some of his or her retirement benefits to pay for the purchase of creditable service, it does not appear necessary to state that s. ETF 20.17(1) (h) 2. c. applies “notwithstanding” the statute.

h. The second occurrence of the word “or” in s. ETF 20.17(1) (h) 2. c. should be “of.”

i. It is suggested that the term “at least” be deleted from s. ETF 20.17 (2) (f) 1. c.

j. Section 40.285 (2) (a), Stats., requires that a participating employee must have at least three continuous years of creditable service at the time of application to purchase forfeited service. However, s. ETF 20.17 (3), which relates to the purchase of forfeited service, does not contain this requirement. The lack of reference to this requirement appears more significant because it is included in s. ETF 20.17 (4), relating to the purchase of other governmental service. It is suggested that the language of s. ETF 20.17 (4) (b) 1. be inserted in s. ETF 20.17 (3).