

Clearinghouse Rule 11-040

**State of Wisconsin
Department of Employee Trust Funds
Employee Trust Fund Board
Wisconsin Retirement Board
Teachers Retirement Board
Group Insurance Board
Deferred Compensation Board**

The Wisconsin department of employee trust funds proposes an order to repeal ETF 10.71 (1) (b), (c) and (d), 10.84 (3), ETF 20.02 (3) (a) 3. Note, 20.19 (3) (b), to renumber ETF 10.71 (1) (e), 10.78 (1) Note, 10.78 (3) and (4), 11.02 (9), (10), (11), (12), and (13), ETF 70.02 (2), (3), (4) and (4m), 70.03 (2), (3), (4), (5), (6), (7), (8), (9), (10) and (11), 70.04 (2), (3), (4), (5), (6), (7), (8) and (9), to amend ETF 10.03 Note, 10.07 Note, 10.12 (6) Note, 10.30 (2) Note, 10.30 (5) (a) Note, 10.30 (5) (b) Note, 10.71 (1) (a), 10.78 (1), 10.82 (2) (b) 2. f. Note, 10.84 (2), 11.03 (4) (a), 11.03 (4) (b), 11.03 (4) (c), 11.04 (6) (b), 11.05 (2), 11.05 (5) (a), 11.06 (4) (c), 11.08 (2) (b) 1., 11.09 (3) (introductory), 11.12 (5) (a), ETF 20.02 (3) (c) Note, 20.055 (2) Note, 20.10 Note, 20.17 (2) (c) Note, 20.17 (6) (b) Note, 20.19 (3) (a), ETF 20.35 (2) (b), 20.35 (2) (b) Note, ETF 40.01 (2) Note, ETF 50.46 Note, 50.48 (1) Note, 50.52 (2) (a), 50.58 (1) (b), ETF 52.06 (5) Note, 52.06 (9), ETF 60.60 (3) Note, ETF 70.02 (1), 70.03 (1), 70.04 (1), 70.15 Note, and to create ETF 11.02 (9), 11.02 (10), 11.03 (4) (a) Note, 11.09 (3) Note, ETF 20.017, 20.045 (4) relating to technical and minor substantive changes in existing ETF administrative rules.

Text of Proposed Rule

SECTION 1. ETF 10.03 Note is amended to read:

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.

SECTION 2. ETF 10.07 Note is amended to read:

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.

SECTION 3. ETF 10.12 (6) Note is amended to read:

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.

SECTION 4. ETF 10.30 (2) Note is amended to read:

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.

SECTION 5. ETF 10.30 (5) (a) Note is amended to read:

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.

SECTION 6. ETF 10.30 (5) (b) Note is amended to read:

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 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.

SECTION 7. ETF 10.71 (1) (a) is amended to read:

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

SECTION 8. ETF 10.71 (1) (b), (c), and (d) are repealed.

SECTION 9. Section 10.71 (1) (e) is renumbered ETF 10.71 (1) (b).

SECTION 10. ETF 10.78 (1) is amended to read:

ETF 10.78 (1) 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.

SECTION 11. ETF 10.78 (1) Note is repealed.

SECTION 12. Section 10.78 (3) and (4) are renumbered ETF 10.78 (2) and (3).

SECTION 13. ETF 10.82 (2) (b) 2. f. Note is amended to read:

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.

SECTION 14. ETF 10.84 (2) is amended to read:

(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.

SECTION 15. ETF 10.84 (3) is repealed.

SECTION 16. ETF 11.02 (9), (10), (11), (12), and (13) are renumbered to ETF 11.02 (11), (12), (13), (14), and (15).

SECTION 17. ETF 11.02 (9) is created to read:

(9) "E-mail" means to send via electronic mail over a computer network.

SECTION 18. ETF 11.02 (10) is created to read:

(10) "Hearing examiner" means the person who presides over each appeal of a determination made by the department of employee trust funds including an administrative law judge employed by the division of hearings and appeals.

SECTION 19. ETF 11.03 (4) (a) is amended to read:

(a) The request is in writing. No appeal may be commenced based upon an oral request. The requestor may, but is not required to, file the request for an appeal by using form ET-4938, "Appeal Form."

SECTION 20. ETF 11.03 (4) (a) Note is created to read:

Note: The Appeal Form 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.

SECTION 21. ETF 11.03 (4) (b) is amended to read:

(b) The request identifies the particular department determination being challenged and the factual and legal basis for the appeal, including specifically identifying the particular material facts and legal interpretations underlying the department determination which the appellant believes are erroneous. Any question about the sufficiency of the pleading under this paragraph shall be resolved by the hearing examiner.

SECTION 22. ETF 11.03 (4) (c) is amended to read:

(c) The request for an appeal is mailed, sent by e-mail, sent by facsimile, or delivered to the appropriate board in care of the appeals coordinator at the department of employee trust funds by the person requesting the appeal. Appeal requests received which erroneously name a board with respect to a subject matter reviewed by another board shall be redirected to the appropriate board by the appeals coordinator.

SECTION 23. ETF 11.04 (6) (b) is amended to read:

ETF 11.04 (6) (b) A party sending any communication or document to the hearing examiner by mail, e-mail, or facsimile shall also provide a copy to each party, including the department. This requirement does not pertain to the appeals coordinator or other board staff when submitting documents for the hearing examiner's signature for subsequent mailing to all parties.

SECTION 24. ETF 11.05 (2) is amended to read:

ETF 11.05 (2) In an appeal of the denial of an application for a disability annuity or duty disability benefits under s. 40.63 (5) or (9) (d) or 40.65 (2) (b) 3., Stats., the department may provide the hearing examiner, employer, participant and any other party to the appeal with copies of any physician certifications under s. 40.63 (1) (d) or 40.65 (2) (b) 2., Stats., received in connection with the application.

SECTION 25. ETF 11.05 (5) (a) is amended to read:

ETF 11.05 (5) Testimony may be taken and preserved of a witness:

(a) Who is beyond the reach of the subpoena of the agency, any other party, or the hearing examiner;

SECTION 26. ETF 11.06 (4) (c) is amended to read:

ETF 11.06 (4) (c) For the purpose of determining timeliness of an appeal request, notice of the department determination is conclusively presumed to have been given to the addressee and all listed recipients of copies on the date the determination was sent by mail or e-mail. Absent clear and convincing proof to the contrary, the day the determination is dated is presumed to be the date the determination was sent by mail or e-mail. Absent clear and convincing proof to the contrary, a request for an appeal is presumed received on the day stated by the date stamp affixed to incoming department correspondence. If the request for an appeal is made by e-mail, the request is presumed to be received by the department on the date the e-mail enters the information processing system designated or used by the department for the purpose of receiving electronic mail provided the following are true:

1. The e-mail transmission is in a form capable of being processed by the department's information processing system.
2. The department is able to retrieve the e-mail from the information processing system.

SECTION 27. ETF 11.08 (2) (b) 1. is amended to read:

1. The appeal was not filed within 90 days after the department determination appealed from was mailed to the person aggrieved by the determination. The entire appeal shall be dismissed.

SECTION 28. ETF 11.09 (3) (introductory) is amended to read:

ETF 11.09 (3) OBJECTIONS. Any party may file a written objection to the proposed decision within 20 days of the date of the notice of the proposed decision. The party shall specify, in detail, the following:

SECTION 29. ETF 11.09 (3) Note is created to read:

Note: The written objection shall be filed with the division of hearings and appeals at the following address: 5005 University Avenue Suite 201, P.O. Box 7875, Madison, WI 53707-7875.

SECTION 30. ETF 11.12 (5) (a) is amended to read:

(a) Parties to the appeal and their attorneys of record may not be present during the closed session, except that board staff and advisory staff of the department who were not involved in the proceedings or in making the underlying department determination may be present at the discretion of the board.

SECTION 31. ETF 20.017 is created to read:

20.017 Employer resolutions to participate. If the official notice of election to be included has been received by the department on or before November 15 the effective date of participation of the employer shall be the ensuing January 1. If the department receives the notice of election after November 15 the effective date shall be the January 1 after the ensuing January 1. The employer may withdraw a notice of election to be included if the employer's written notice to withdraw is received by the department before the November 15 deadline of the year before the January effective date.

SECTION 32. ETF 20.02 (3) (a) 3. Note is repealed.

SECTION 33. ETF 20.02 (3) (c) Note is amended to read:

Note: A rehired annuitant or employer may obtain a copy of the "Rehired Annuitant Election" form, ET-2319, required by s. ETF 20.02 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.

SECTION 34. ETF 20.045 (4) is created to read:

ETF 20.045 (4) Subject to the restrictions in s. 40.24 (7) (a), Stats., a participant's request to change the designation of a named survivor to a different named survivor shall be subject to the deadline specified in s. 40.24 (4), Stats., for changing the optional form of payment selected.

SECTION 35. ETF 20.055 (2) Note is amended to read:

Note: Section ETF 20.055 (2) requires forms which 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.

SECTION 36. ETF 20.10 Note is amended to read:

Note: The Affidavit of Domestic Partnership form, ET-2371, and the Affidavit of Termination of Domestic Partnership form, ET-2372, 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 forms also are available on the department's website: etf.wi.gov.

SECTION 37. ETF 20.17 (2) (c) Note is amended to read:

ETF 20.17 (2) (c) Note: The forms approved by the department for the purchase of service credits are "Application to Purchase Other Governmental Service," form ET-2205, "Qualifying Service Purchase Estimate/Application," form ET-4314, "Forfeited Service Purchase Estimate/Application" form ET-4315, "Uncredited Teaching Service Purchase Estimate/Application," form ET-4323. These are individually customized forms that reflect the department's estimate of the amount required from the participant for that particular purchase. In addition, where no standard form exists for the type of service purchase, customized estimates will be prepared by the department upon request. All forms and estimates can be obtained at no charge by writing to: the 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. Forms should be requested at least four (4) weeks before the date the participating employee intends to apply, and well in advance of any anticipated termination of employment, to allow sufficient time for the department to calculate the personalized estimates of the cost.

SECTION 38. ETF 20.17 (6) (b) Note is amended to read:

ETF 20.17 (6) Note: The form “Uncredited Teaching Service Purchase Estimate/Application,” form ET-4323 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.

SECTION 39. ETF 20.19 (3) (a) is amended to read:

(3) CREDITABLE MILITARY SERVICE. (a) For purposes of s. 40.23 (2m) (em) 1. c., Stats., the amount of creditable military service that is considered to be performed before January 1, 2000, is granted in proportion to the final amount of the participant’s total creditable service, other than creditable military service, credited to the participant’s account.

SECTION 40. ETF 20.19 (3) (b) is repealed.

SECTION 41. ETF 20.35 (2) (b) is amended to read:

ETF 20.35 (2) (b) With respect to marriages terminated on or after April 28, 1990, the division shall be as provided in subs. (3) and (5).

SECTION 42. ETF 20.35 (2) (b) Note is amended to read:

Note: This language is consistent with the heading of s. ETF 20.35 (5), which reads: “Marriages terminated on or after April 28, 1990.”

SECTION 43. ETF 40.01 (2) Note is amended to read:

Note: A copy of the applicable group health insurance contract may be obtained at no charge by writing to: department of employee trust funds, division of insurance services, P.O. Box 7931, Madison, WI 53707-7931, or by calling (608) 266-3285 or toll free at (877) 533-5020.

SECTION 44. ETF 50.46 Note is amended to read:

Note: Form ET-5321, "LTDI Election," may be obtained at no charge by writing to: department of employee trust funds, P.O. Box 7931, Madison, Wisconsin 53707-7931, or by calling (608) 266-3285 or toll free at (877) 533-5020.

SECTION 45. ETF 50.48 (1) Note is amended to read:

Note: Form ET-5313, "Long-Term Disability Benefit Claim Form," may be obtained at no charge by writing to: department of employee trust funds, P.O. Box 7931, Madison, Wisconsin 53707-7931, or by calling (608) 266-3285 or toll free at (877) 533-5020.

SECTION 46. ETF 50.52 (2) (a) is amended to read:

ETF 50.52 (2) (a) LTDI RETIREMENT SUPPLEMENTAL BENEFIT. (a) In addition to the basic LTDI benefit payable to a recipient, the LTDI program shall pay a retirement supplemental benefit in the form of an employer additional contribution to the Wisconsin retirement system for recipients qualifying under this subsection.

SECTION 47. ETF 50.58 (1) (b) is amended to read:

ETF 50.58 (1) (b) Integration with benefits under s. 66.191, 1981 Stats. Any person entitled to payments of LTDI benefits who may otherwise be entitled to payments under s. 66.191, 1981 Stats., may file with this department and the department of workforce development a written election to waive payments due under this subchapter and accept in lieu of the payments under this subchapter payments as may be payable under s. 66.191, 1981 Stats., but no person may receive payments under both s. 66.191, 1981 Stats., and this subchapter. However, any person otherwise entitled to payments under this subchapter may receive the payments, without waiver of any rights under s. 66.191, 1981 Stats., during any period as may be required for a determination of the person's rights under s. 66.191, 1981 Stats. Upon the final adjudication of the person's rights under s. 66.191, 1981 Stats., if waiver is filed under this paragraph, the person shall immediately cease to be entitled to payments under this subchapter and the LTDI account shall be reimbursed from the award made under s. 66.191, 1981 Stats., for all payments made under this subchapter.

SECTION 48. ETF 52.06 (5) Note is amended to read:

Note: The “Duty Disability Application,” form ET–5311, and an initial “Duty Disability Medical Report,” form ET–5312, may 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.

SECTION 49. ETF 52.06 (9) is amended to read:

(9) FALSE INFORMATION. The department may deny the application of any person who submits false information regarding an application for duty disability benefits.

SECTION 50. ETF 60.60 (3) Note is amended to read:

Note: Form ET–2324, “Election to Convert Life Insurance to Pay Health or Long–Term Care Insurance Premiums,” is available at no charge from the department of employee trust funds. The form 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.

SECTION 51. ETF 70.02 (1) is amended to read:

ETF 70.02 Definitions. In this chapter, words and phrases shall have the following meanings:

SECTION 52. ETF 70.02 (2), (3), (4), and (4m) are renumbered ETF 70.02 (1), (2), (3), and (4).

SECTION 53. ETF 70.03 (1) is amended to read:

ETF 70.03 Board responsibilities. The board shall have the following responsibilities in regard to the program:

SECTION 54. ETF 70.03 (2), (3), (4), (5), (6), (7), (8), (9), (10), and (11) are renumbered ETF 70.03 (1), (2), (3), (4), (5), (6), (7), (8), (9), and (10).

SECTION 55. ETF 70.04 (1) is amended to read:

ETF 70.04 Department responsibilities. The department shall be responsible for the following:

SECTION 56. ETF 70.04 (2), (3), (4), (5), (6), (7), (8), and (9) are renumbered ETF 70.04 (1), (2), (3), (4), (5), (6), (7), and (8).

SECTION 57. ETF 70.15 Note is amended to read:

Note: Chapter ETF 70 requires several forms which are available at no charge by contacting either the department of employee trust funds or the current administrative plan provider. The forms may 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 forms also are available on the department's website: etf.wi.gov or on the Wisconsin deferred compensation program's website: www.wdc457.org.