

Report From Agency

**State of Wisconsin
Department of Employee Trust Funds
Employee Trust Fund Board
Wisconsin Retirement Board
Teachers Retirement Board**

FINAL DRAFT REPORT ON CLEARINGHOUSE RULE #16-033

An order to repeal ETF 10.63 (1) (e) 2. and 10.80; to renumber and amend ETF 10.70 (4); to consolidate, renumber, and amend ETF 10.63 (1) (e) (intro.) and 1.; to amend ETF 10.63 (1) (a) to (d), (f), (2); and to create ETF 10.63 (1) (intro.) and 10.70 (4) (c), relating to technical and minor substantive changes in existing ETF administrative rules.

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The scope statement for this rule, SS 008-16, was approved by the Governor on January 27, 2016, published in Register No. 722A1, on February 1, 2016, and approved by ETF Secretary Robert Conlin on February 11, 2016.

Agency Person to be Contacted for Questions

Please direct any questions about the proposed rule to David Nispel, General Counsel, Department of Employee Trust Funds, P.O. Box 7931, Madison WI 53707. Telephone: (608) 264-6936. E-mail address: david.nispel@etf.wi.gov.

Statement Explaining Need for Rule

This rule-making is needed to make technical updates to existing ETF rules, delete obsolete language in ETF rules, and to make other minor substantive changes.

Analysis Prepared by the Department of Employee Trust Funds

1. Statutes interpreted:
Sections 40.07, 40.05 and 40.08 (9m), Stats.
2. Statutory authority:
Sections 40.03 (2) (i) and 227.11 (2) (a), Stats.
3. Explanation of agency authority:
By statute, the ETF Secretary is expressly authorized, with appropriate board approval, to promulgate rules required for the efficient administration of any benefit plan established in ch. 40 of the Wisconsin statutes.

In addition, each state agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency if the agency considers it necessary to effectuate the purpose of the statute.

4. Related statutes or rules:

There are no other related statutes or administrative rules directly related to this technical rule.

5. Plain language analysis:

The objective of this technical rule is to make technical updates to existing ETF rules and make other minor substantive changes. Three specific changes are made in this rule:

- Removing references to specific dates in a month that reports and remittances are required to be submitted to the department by Wisconsin Retirement System employers and makes these reports and remittances 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.
- Adding a “named survivor” to the types of people to whom the department may release individual personal information when a WRS member dies or suffers a disabling injury or disease and reorganizing the affected subsection for clarity.
- Deletes obsolete language related to invalidating certain documents signed by a guardian but not accompanied by a certified copy of an order of a circuit court approving the specific terms of the document.

6. Summary of, and comparison with, existing or proposed federal statutes and regulations:

The only federal regulations that may be affected by this proposed rule are provisions of the Internal Revenue Code regulating qualified pension plans. The Wisconsin Retirement System is required to be maintained as a qualified plan by s. 40.015, Stats.

7. Comparison with rules in adjacent states:

Periodically, retirement systems in adjacent states promulgate technical rules to update existing administrative rules.

8. Summary of factual data and analytical methodologies:

The department is proposing this rule to update existing rules and interpretations of existing statutes.

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

This rule does not have an effect on small businesses because private employers and their employees do not participate in, and are not covered by, the Wisconsin Retirement System. Please see attached economic impact analysis.

10. Effect on small business:
The rule has no effect on small businesses.

Regulatory Flexibility Analysis:

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

Fiscal Estimate and Economic Impact Statement:

Please see the attached Fiscal Estimate and Economic Impact Statement.

Text of Proposed Rule

SECTION 1. ETF 10.63 (1) (intro.) is created to read:

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

SECTION 2. ETF 10.63 (1) (a) to (d) are amended to read:

ETF 10.63 (1) (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 ~~the 20th day of the month following the reporting month or 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 ~~the last working day, excluding Saturdays, Sundays, and holidays when the state offices are closed, of the month following the end of the reporting month, or 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 ~~the last working day, excluding Saturdays, Sundays, and holidays when the state offices are closed, of the calendar month following the end of the calendar year, or 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 ~~the 20th day of the calendar month preceding the coverage month or on a day~~ determined by the secretary and

communicated to employers by the department through email updates, employer bulletins, or other means of communication.

SECTION 3. ETF 10.63 (1) (e) (intro.) and 1. are consolidated, renumbered to (1) (e), and amended to read:

ETF 10.63 (1) (e) Premium and coverage reports and remittances required in the administration of subch. V of ch. 40, Stats., are due ~~as follows: 1. For state agencies, on the 20th day of the calendar month following the reporting period or on a day~~ determined by the secretary and communicated to employers by the department through email updates, employer bulletins, or other means of communication.

SECTION 4. ETF 10.63 (1) (e) 2. is repealed.

SECTION 5. ETF 10.63 (1) (f) and (2) are amended to read:

ETF 10.63 (1) (f) Reduction reports and remittances required in the administration of subch. VIII of ch. 40, Stats., are due ~~within 2 working days after the date on which the regular employee payroll payments are issued, excluding Saturdays, Sundays, and holidays when the state offices are closed, or 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 ~~20th day of the calendar month or a day~~ 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 ~~20th day of the calendar month or a day~~ due date determined by the secretary referred to in sub. (1) shall be deemed to have been received on a timely basis.

SECTION 6. ETF 10.70 (4) is renumbered ETF 10.70 (4) (intro.) and amended to read:

ETF 10.70 (4) (intro.) In case of death, disabling injury, or disabling disease, ~~disclosure of the department may disclose~~ individual personal information ~~shall be made~~ 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, a
- (b) A beneficiary of the deceased under s. 40.02 (8), Stats., as identified by the department, the
- (d) The duly authorized representative of the beneficiary, the or the named survivor.
- (e) The legal representative of the deceased individual's estate.

SECTION 7. ETF 10.70 (4) (c) is created to read:

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

SECTION 8. ETF 10.80 is repealed.

SECTION 9. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

Response to Legislative Council Staff Recommendations

ETF implemented all of the Legislative Council Staff recommendations contained in the Clearinghouse Report.

List of Persons Who Appeared or Registered at the Public Hearing.

No persons appeared or registered either for or against the rule at the public hearing on June 15, 2016.

Summary of Public Comments.

No person wished to testify concerning the rule. The record was held open for written comments until 4:30 p.m. on June 15, 2016, but no comments were received.

Modifications to Rule as Originally Proposed as a Result of Public Comments.

None.

Modifications to the Analysis Accompanying the Proposed Rule.

None.

Modifications to the Initial Fiscal Estimate.

None.

Board Authorization for Promulgation.

This final draft report on Clearinghouse Rule #16-033 has been duly approved for submission to the Governor and Legislature, and for promulgation by the Department of Employee Trust Funds, by the Employee Trust Funds Board, Wisconsin Retirement Board and Teachers Retirement Board at their meetings on September 29, 2016.

Effective Date.

This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

Respectfully submitted,

DEPARTMENT OF EMPLOYEE TRUST FUNDS

Robert J. Conlin
Secretary

Date: _____