

**CR 13-004**

**State of Wisconsin  
Department of Employee Trust Funds,  
Employee Trust Funds Board**

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**FINAL DRAFT REPORT ON CLEARINGHOUSE RULE #13-004**

**AN ORDER** to repeal ETF 10.65 (1)(a) to (f), (2) and (3); to amend ETF 10.01(3i) and 10.65 (1)(intro); and to create ETF 10.65 (Note), 10.85, ETF 20.0251 and ETF 20.0251 (Note), relating to clarifying how ETF complies with applicable provisions of the Internal Revenue Code (IRC).

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**Agency Person to be Contacted for Questions**

Please direct any questions about this rule-making to Mary Alice McGreevy, Compliance Officer, Office of Policy, Privacy and Compliance, Department of Employee Trust Funds, P.O. Box 7931, Madison WI 53707. Telephone: (608) 267-2354. E-mail address: maryalice.mcgreevy@etf.wi.gov.

**Statement Explaining Need for Rule**

This rule-making is needed to maintain ongoing compliance of the Wisconsin Retirement System (WRS) with the IRC and regulations and guidance from the Internal Revenue Service.

**Analysis Prepared by the Department of Employee Trust Funds**

1. Statutes Interpreted:

Sections 40.015, 40.03 (1), (1) (am), 40.31, 40.32, Stats., relating to compliance with the IRC.

2. Statutory Authority:

Sections 40.03 (1) (am), (2) (i), (t), and 227.11 (2) (a)(intro), 1. to 3., 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. Also, 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.

The ETF Secretary is also required by statute to ensure that the WRS maintains compliance with the IRC as a qualified plan for tax purposes and each plan is administered in compliance with the code. Numerous provisions in Chapter 40 require ETF to comply with the IRC.

This rule is subject to s. 227.135 (2), as affected by 2011 Wis. Act 21. The statement of scope for this rule was approved by the Governor on 10/2/12 and published in Register No. 682 on 11/01/2012.

4. Related Statute or Rule:

There are no other relevant statutes or rules that are related to WRS compliance with the IRC that are not addressed in this rule.

5. Plain Language Analysis:

*Clarify how ETF treats specific situations under the IRC to ensure WRS compliance. These changes are consistent with current statutory requirements.*

- Amending the definition of “maximum voluntary contribution” to clarify that ETF will adjust the amounts according to the limits set by the Internal Revenue Service (IRS) and which are changed periodically.
- Amending ETF 10.65 regarding the refund of excess contributions to clarify that refunds will be processed as required by the IRS.
- Clarifies that ETF will not violate section 503(b) of the IRC regarding prohibited transactions.
- Clarifies that the WRS is maintained for the exclusive benefit of participants and their beneficiaries, as required by the IRC.

6. Summary of, and Comparison with, Existing or Proposed Federal Regulations:

This rule complies with the IRC, IRS regulations and other requirements. The rules are written to ensure continued compliance with these laws, regulations and requirements. Section 4 of the rule refers to a January 1, 1989 effective date, the date after which certain qualified retirement plans such as the WRS were prohibited from engaging in certain transactions. This statement is required to comply with the IRC, IRS and other guidance and standards.

7. Comparison with Rules in Adjacent States

Please see attached Fiscal and Economic Impact Analysis.

8. Summary of Factual Data and Analytical Methodologies:

The proposed rule is intended to clarify ETF's rules regarding compliance with the IRC . ETF worked closely with its outside tax counsel to develop the proposed rule.

9. Accuracy, Integrity, Objectivity and Consistency of Data:

The present rule changes were a result of recommendations from ETF's outside tax counsel and as required to maintain compliance with the IRC. ETF conducted analysis with integrity in an accurate, objective, and consistent manner in accordance with its fiduciary responsibilities to its members.

10. Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of Economic Impact Report:

The 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.

11. Effect on small business:

There is no effect on small business.

12. Agency Contact Person:

Mary Alice McGreevy, Department of Employee Trust Funds, 801 W Badger Rd, Madison, WI 53713-7931, P.O. Box 7931 (use ZIP Code 53707 for PO Box); Phone: 608-267-2354; E-mail: [maryalice.mcgreevy@etf.wi.gov](mailto:maryalice.mcgreevy@etf.wi.gov)

13. Place Where Comments are to be Submitted and Deadline for Submissions:

Comments may be submitted to the contact person no later than 4:30pm, Wednesday, February, 20, 2013. The public hearing will be held at 2:00pm on Wednesday, February 13, 2013 in conference room GB of the Wisconsin Employee Trust Fund building at 801 W. Badger Rd, Madison, WI 53713.

14. Proposed Effective Date:

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

15. Fiscal Estimate:

The rule will not have any fiscal effect on the administration of the Wisconsin Retirement System, nor will it have any fiscal effect on the private sector, the state or on any county, city, village, town, school district, technical college district, or sewerage districts.

16. Free Copies of Proposed Rule:

Copies of the proposed rule are available without cost from the Office of the Secretary, Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707-7931. The telephone number is: (608) 266-1071.

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**Text of Proposed Rule**

1   **SECTION 1. ETF 10.01 (3i) is amended to read:**

2   **ETF 10.01(3i)** "Maximum voluntary contribution" means the total amount eligible under  
3   section 415 (c) of the internal revenue code , as adjusted pursuant to section 415(d) of the  
4   internal revenue code, and the regulations promulgated pursuant to that section, to be  
5   contributed to the Wisconsin retirement system in a calendar year by or on behalf of a  
6   participating employee, ~~less all benefit adjustment contributions and required and~~  
7   employer-paid additional contributions which are includable in the limits of section 415 (c)  
8   of the internal revenue code, as determined by the department.

9

10   **SECTION 2. ETF 10.65 is amended to read:**

11   **ETF 10.65 Refund of excess contributions.**

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

20   **SECTION 3. ETF 10.65 (Note) is created to read:**

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

25

26 **SECTION 4. ETF 10.85 is created to read:**

27 **ETF 10.85 Prohibited transactions.**

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

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31 **SECTION 5: ETF 20.0251 is created to read:**

32 **ETF 20.0251 Exclusive benefit.** (1) The Wisconsin retirement system is maintained for  
33 the exclusive benefit of participants and their beneficiaries.

34 (2) No contributions or earnings on contributions may revert, and no contributions may be  
35 permitted to be returned to a participating employer, except as permitted by Revenue  
36 Ruling 91-4.

37

38 **SECTION 5: ETF 20.0251 (Note) is created to read:**

39 Note: Revenue Ruling 91-4 provides for circumstances under which money contributed by  
40 a participating employer may be returned to the employer. A copy of the ruling may be  
41 obtained by writing: Superintendent of Documents, P.O. Box 979050, St. Louis, MO  
42 63197-9000 or on the Internet at <http://bookstore.gpo.gov/help/ordering.jsp>.

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(END OF RULE TEXT)

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47 **SECTION 6. EFFECTIVE DATE.** This rule shall take effect on the first day of the month  
48 following publication in the Wisconsin Administrative Register as provided by s. 227.22 (2)  
49 (intro.), Stats.



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**WISCONSIN LEGISLATIVE COUNCIL  
RULES CLEARINGHOUSE**

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Scott Grosz and Jessica Karls-Ruplinger  
*Clearinghouse Co-Directors*

Terry C. Anderson  
*Legislative Council Director*

Laura D. Rose  
*Legislative Council Deputy Director*

**CLEARINGHOUSE REPORT TO AGENCY**

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

**CLEARINGHOUSE RULE 13-004**

AN ORDER to amend ETF 10.01 (3i) and 10.65; and to create ETF 10.65 (Note), 10.86, 20.0251, and 20.1251 (Note), relating to clarifying how ETF complies with applicable provisions of the Internal Revenue Code.

Submitted by **DEPARTMENT OF EMPLOYEE TRUST FUNDS**

01-14-2013 RECEIVED BY LEGISLATIVE COUNCIL.

02-06-2013 REPORT SENT TO AGENCY.

JKR:DWS



**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]  
Comment Attached      YES       NO
2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]  
Comment Attached      YES       NO
3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]  
Comment Attached      YES       NO
4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]  
Comment Attached      YES       NO
5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]  
Comment Attached      YES       NO
6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]  
Comment Attached      YES       NO
7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]  
Comment Attached      YES       NO



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**WISCONSIN LEGISLATIVE COUNCIL  
RULES CLEARINGHOUSE**

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*Clearinghouse Co-Directors*

Terry C. Anderson  
*Legislative Council Director*

Laura D. Rose  
*Legislative Council Deputy Director*

**CLEARINGHOUSE RULE 13-004**

**Comments**

**[NOTE:** All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated November 2011.]

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

a. The introductory clause indicates that the proposed rule creates s. ETF 10.86, whereas the text of the rule creates s. ETF 10.85. The latter appears correct and the introductory clause should be amended to reflect the correct section. In addition, in the introductory clause, “to clarify” should be replaced with “, relating to clarifying”. [s. 1.02 (1) (a), Manual.]

b. SECTION 2 of the proposed rule amends s. ETF 10.65. However, given the amount of stricken-through text, the agency may want to consider the following treatment for s. ETF 10.65: (1) amend s. ETF 10.65 (1) (intro.); and (2) repeal s. ETF 10.65 (1) (a) to (f) and (2). The agency should avoid renumbering s. ETF 10.65 (3). Renumbering is generally discouraged because it impairs the ability to trace a provision’s history. [s. 1.03 (5), Manual.]

c. In SECTION 2 of the proposed rule, “~~one-hundredth~~” should be inserted after “one” in s. ETF 10.65 (2) (a) to reflect the current text of the rule.

d. The proposed rule should contain an effective date section. [s. 1.02 (4), Manual.]

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

The agency may want to consider providing brief descriptions of the material covered in the Internal Revenue Code (IRC) citations mentioned in the text of the proposed rule. This may help clarify the subject area for the reader. For example, SECTION 1 of the proposed rule refers to “section 415 (c)” and “section 415 (d)” of the IRC. The agency may want to explain those sections in a note following the rule provision. [s. 1.09 (1), Manual.]

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

a. In the rule summary, the agency should explain why the date January 1, 1989 applies in SECTION 4 of the proposed rule.

b. In ss. ETF 10.85 (SECTION 4) and 20.0251 (SECTION 5), “shall” should be replaced with “may”. [s. 1.01 (2), Manual.]

ETF implemented nearly all Legislative Council staff recommendations. Staff did not implement the recommendation that explanatory notes regarding certain provisions of the IRC be included, as staff believe they are unnecessary.

### **List of Persons Appearing or Registering For or Against the Rules**

No persons appeared at the hearing or registered for or against the rule at the public hearing on February 13, 2013.

### **Summary of Comments Received at the Public Hearing**

No person testified concerning the rule. The record was held open for written comments until February 20, 2013 but ETF did not receive any written comments.

### **Modifications to Rule as Originally Proposed**

No changes were made from the original proposal as a result of public comments.

### **Modifications to Fiscal Estimate as Originally Proposed**

No changes were made to the fiscal estimate in the original proposal.

### **Modifications to the Analysis Accompanying the Proposed Rule**

No changes were made to the analysis accompanying the proposed rule.

### **Board Authorization for Promulgation**

This final draft report on Clearinghouse Rule #13-004 has been duly approved for submission to the Governor, the Legislature, and for promulgation by the Department of Employee Trust Funds and the following board:

- Employee Trust Funds Board on March 7, 2013

### **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), Stats.