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

FINAL DRAFT REPORT ON CLEARINGHOUSE RULE #14-055

An order to repeal ETF 10.01 (3i) (Note), 20.01, 20.17 (2) (d), 20.35 (9), 20.37 (2) (e), ch. ETF 41, 70.09 (5), 70.10 (2) (c), and (3) to (5); to amend ETF 10.01 (3i), 10.03 (1), 10.08 (2) (a) and (c) 2. and 3., 10.60 (2), 10.633 (1) (a) to (c), 11.04 (5) (e), 20.02 (2) (b) and (c), 20.02 (3) (c), 20.025 (2), 20.17 (2) (f) 1. (intro.), (4) (b) 3. b., (c) 7. (intro.), a. and e., 20.35 (3) (d) 4., 40.01 (1) (b) (title), (1) (b), (1) (c) (title), and (2m) (a) and (b), 50.48 (1), (2) (Note), (3) (a), (b) 5., (4) (b) 3., and (c), 50.50 (1) (c) 2. and (5) (b), 50.52 (1) (b) 3., 60.60 (5) (c) and (f), 70.02 (11), 70.05 (1) (a) 1., 70.07 (1) (a), (d), (e), and (i), 70.10 (2) (intro.) and (d), 70.12 and 70.15; to repeal and recreate ETF 20.02 (3) (a) and 20.17 (4) (c) 6.; and to create ETF 10.01 (3e), 20.02 (3) (d), 20.17 (4) (c) 8., and 52.16 (5) (c); relating to technical and minor substantive changes in existing ETF administrative rules.

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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, create consistency with statutes recently amended by the legislature, and to make other minor substantive changes.

Analysis Prepared by the Department of Employee Trust Funds

1. Statutes interpreted:
   Sections 40.01 (1), 40.01 (2), 40.05 (4) (b), 40.23 (2m) (er) and (3) (b), 40.26, 40.285 (2) (b), 40.55, 40.80, Stats.

2. Statutory authority:
   Sections 40.03 (2) (i), (ig), (ir), 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, delete obsolete language in ETF rules, create consistency with provisions in 2013 Wisconsin Act 20 related to rehired annuitants, and make other minor substantive changes.

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 10.01 (3e) is created to read:

ETF 10.01 (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.

SECTION 2. ETF 10.01 (3i) is amended to read:

ETF 10.01 (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.

SECTION 3. ETF 10.01 (3i) (Note 1) is repealed.

SECTION 4. ETF10.03 (1) is amended to read:

ETF 10.03 (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 ~~teacher~~ employee on June 30 of the preceding school year for purposes of reporting service to the department.

SECTION 5. ETF 10.08 (2) (a), and (c) 2. and 3. are amended to read:

ETF 10.08 (2) (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.

ETF 10.08 (2) (c) 2. The ~~thirty-first~~ seventy-sixth day after the benefit application is received by the department as provided in s. 40.23 (1) (a), Stats.

ETF 10.08 (2) (c) 3. The ~~thirty-first~~ seventy-sixth day after termination of employment in accordance with this section.

SECTION 6. ETF 10.60 (2) is amended to read:

ETF 10.60 (2) Every employer ~~which employs 250 or more employees~~ 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.

SECTION 7. ETF 10.633 (1) (a) to (c) are amended to read:

ETF 10.633 (1) (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 ~~annuity check or other transfer of funds~~ payment.

ETF 10.633 (1) (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 ~~disability annuity check or other transfer of funds~~ payment.

ETF 10.633 (1) (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 ~~benefit check~~ payment.

SECTION 8. ETF 11.04 (5) (e) is amended to read:

ETF 11.04 (5) (e) A hearing examiner who receives an ex parte communication, other than a communication described in ~~s. 227.50 (1) (b) through (e)~~ s. 227.50 (1) (a) 1m. and (1) (am) 1. through 3., Stats., shall make a record of the violation, and notify all parties.

SECTION 9. ETF 20.01 is repealed.

SECTION 10. ETF 20.02 (2) (b) and (c) are amended to read:

ETF 20.02 (2) (b) The ~~thirty-first~~ seventy-sixth day after the date participating employment terminated.

ETF 20.02 (2) (c) The ~~thirty-first~~ seventy-sixth day after the date the benefit application was received by the department.

SECTION 11. ETF 20.02 (3) (a) is repealed and recreated to read:

ETF 20.02 (3) (a) The department shall include a rehired annuitant under the provisions of the Wisconsin retirement system as a participating employee if any of the following conditions apply:

1. A rehired annuitant who terminated participating employment prior to July 2, 2013, is employed in a position which meets the requirement for participation specified in s. 40.22, Stats. and files with the department a written election to be included under the provisions of the Wisconsin retirement system as a participating employee. The election shall be on a form provided by the department.

2. A rehired annuitant who terminated participating employment after July 1, 2013, is employed in a position which meets the requirement for participation specified in s. 40.22, Stats. and files with the department a written election to be included under the provisions of the Wisconsin retirement system as a participating employee. The election shall be on a form provided by the department. This subsection does not apply to a rehired annuitant who meets the requirements of s. 40.26(1m)(a), Stats.

3. The rehired annuitant meets the requirements for suspension of the annuity under s. 40.26(1m)(a), Stats.

SECTION 12. ETF 20.02 (3) (c) is amended to read:

ETF 20.02 (3) (c) An election filed pursuant to par. (a) 1. or 2. shall take effect on the first day of the month following its receipt by the department. The department shall ~~terminate~~ suspend the annuity on the day prior to the effective date of the election, unless the department receives the rehired annuitant's written notice revoking the election prior to the effective date of the election.

SECTION 13. ETF 20.02 (3) (d) is created to read:

ETF 20.02 (3) (d) A suspension of an annuity pursuant to par. (a) 3. shall take effect on the first day of the month following the date the annuitant is rehired.

SECTION 14. ETF 20.025 (2) is amended to read:

ETF 20.025 (2) Separation benefits. An application for a lump sum benefit under s. 40.25 (2), Stats., must be received by the department before the applicant has reached minimum retirement age unless the applicant is eligible for a lump sum benefit under s. 40.23 (2m) (er) or 40.23 (3) (b), Stats.

SECTION 15. ETF 20.17 (2) (d) is repealed.

SECTION 16. ETF 20.17 (2) (f) 1. (intro.) is amended to read:

ETF 20.17 (2) (f) 1. Service~~, other than military service,~~ performed as an employee of any of the following:

SECTION 17. ETF 20.17 (4) (b) 3. b. is amended to read:

ETF 20.17 (4) (b) 3. b. A written certification by the employer for which the service was rendered that the service will not be used to establish entitlement to, or the amount of, any other pension or retirement benefit from a plan for federal, state or local government employees which is subject to sections 401 or 403 of the internal revenue code, except for a disability or OASDHI benefit or a benefit paid for service in the national guard and the reserves. If the participant is unable to obtain the employer's certification through reasonable efforts, the department may accept the employee's affidavit in lieu of the employer's certification, or contact the employer directly. <u>If the employer does not have the information necessary to make this certification, the department may accept the employee's affidavit in lieu of the employer's certification.</u>

SECTION 18. ETF 20.17 (4) (c) 6. is repealed and recreated to read:

ETF 20.17 (4) (c) 6. Evidence that:

a. For service that was performed before July 1, 2011, the service met the participation standard under s. ETF 20.015 (1).

b. For service that was performed on or after July 1, 2011, the service met the participation standard under s. ETF 20.015 (2).

SECTION 19. ETF 20.17 (4) (c) 7. (intro.), a., and e. are amended to read:

ETF 20.17 (4) (c) 7. ~~The employee's sworn certification~~ <u>Evidence</u> that all of the following are true:

a. The service was not performed as an independent contractor or subject to a contract under which the employee ~~furnishing~~ <u>furnished</u> more than his or her personal services.

e. The services <u>were not</u> performed for a hospital, home or institution while the person was a patient or inmate.

SECTION 20. ETF 20.17 (4) (c) 8. is created to read:

ETF 20.17 (4) (c) 8. If the participating employee is applying to receive creditable service for service in the U.S. armed forces or national guard, evidence that the employee was discharged from the U.S. armed forces or national guard under honorable or general conditions.

SECTION 21. ETF 20.35 (3) (d) 4. is amended to read:

ETF 20.35 (3) (d) 4. `Rehired annuitant with ~~reestablished~~ suspended account.' If the participant's ~~account has been reestablished since~~ annuity was suspended prior to the decree date under the provisions of s. 40.26 (2), Stats., any memorandum account balance resulting from the annuity payments paid ~~during the period in which the participant was an annuitant between~~ prior to the decree date and after the effective date on which the account was ~~reestablished~~ suspended, plus accumulated interest on that amount, shall be divided in the same proportion as the other portions of the participant's account.

SECTION 22. ETF 20.35 (9) is repealed.

SECTION 23. ETF 20.37 (2) (e) is repealed.

SECTION 24. ETF 40.01 (1) (b) (title), (1) (b) and (c) (title) are amended to read:

ETF 40.01 (1) (b) *Family coverage of all surviving insured dependents continues.* The family coverage as in effect at the time of the death of the insured employee will continue in effect, covering the dependents who were duly insured under that coverage at the time of that death until all dependents lose eligibility or become insured under another health insurance policy and as approved by the department.

ETF 40.01 (1) (c) *Other continuation coverage rights preserved.* Nothing in this section shall be construed to interfere with any person's right to apply or eligibility for continued health insurance coverage under the terms and conditions of the group health insurance contract as expressly mandated by s. 40.51 (3), (4) or (5), Stats., referencing s. 632.897 (2) (b) 3., Stats., or under 42 USC 300bb-1 and federal regulations prescribed thereunder.

SECTION 25. ETF 40.01 (2m) (a) and (b) are amended to read:

ETF 40.01 (2m) (a) *Multiple surviving insured dependents, with surviving spouse or domestic partner.* If the deceased insured employee is survived by a spouse or domestic partner and other dependents of the deceased insured employee, then the family coverage shall continue in effect and the surviving spouse or domestic partner shall be the responsible person and have the same control and responsibilities with respect to the insurance coverage of the insured surviving dependents as the insured employee had while living except that the responsible person may split any converted sick leave credits among surviving insured dependents as approved by the department.

ETF 40.01 (2m) (b) *Multiple surviving insured dependents, without surviving spouse or surviving domestic partner.* If the deceased insured employee is not survived by a spouse or domestic partner but by more than one insured dependents, then the family coverage will continue in effect. The oldest surviving insured dependent, or that person's guardian, shall be the responsible person and have the same rights and responsibilities with respect to the insurance coverage of the insured surviving dependents as the insured employee had while living except that the responsible person may split any converted sick leave credits among surviving insured

dependents as approved by the department. Upon reasonable request from any adult surviving insured dependent or the guardian of any minor surviving insured dependent, the department may designate another surviving insured dependent, or that person's guardian, as the responsible person.

SECTION 26. ETF Chapter 41 is repealed.

SECTION 27. ETF 50.48 (1), (2) (Note), (3) (a), (3) (b) 5., (4) (b) 3., and (4) (c) are amended to read:

ETF 50.48 (1) CLAIMANT'S APPLICATION. A claimant shall establish that he or she meets all the requirements to receive benefits under this subchapter. A claimant shall apply for benefits by making an application on the form approved by the department or by contacting the third-party administrator.

ETF 50.48 (2) (Note): Form ET-5338, "LTDI Medical Report" is sent to the applicant with the LTDI claim form ET-5313. ~~A second form is sent to the applicant by the department after the first completed form is received by the department.~~ Form ET- 5353, "LTDI Special Disability Medical Report" will be sent with the LTDI claim form upon request of a protective occupation participant.

ETF 50.48 (3) (a) The department shall provide the employer with a ~~description of the claimed disability on the department~~ form for the employer to state the information necessary under s. ETF 50.50 (5).

ETF 50.48 (3) (b) 5. The employer shall state in writing on the employer statement form ~~it intends to contest the employee's application for disability benefits as provided in ch. ETF 50.~~ the reason for the employee's termination or leave of absence.

ETF 50.48 (4) (b) 3. The department receives a written statement from the employer on the employer statement form indicating ~~they wish to contest the employee's application for disability under ch. ETF 50.~~ that the employee's termination or leave of absence was for a reason other than a medical issue.

ETF 50.48 (4) (c) If the department's denial is based solely on par. (b) 1. or 3., or both, the claimant may appeal to the group insurance board. The group insurance board's decision shall include a finding as to whether the employer's ~~certifying non-termination or contesting approval of the employee's disability claim was~~ responses on the employer statement form were reasonable and correct. If the group insurance board determines that the employer's ~~action was~~ responses were unreasonable and incorrect, the group insurance board decision shall include an order to the employer to amend the statement and an order to the department to process the LTDI application when the amended statement is received.

SECTION 28. ETF 50.50 (1) (c) 2. and (5) (b) are amended to read:

ETF 50.50 (1) (c) 2. The claimant is not employed by any employer~~. "Employer" as used in this subdivision shall have its broadest plain meaning and is not limited to the definition~~ as defined in s. 40.02 (28), Stats.

ETF 50.50 (5) (b) The requirement of par. (a) is not met if the employer certifies the employee was not terminated or not on leave of absence~~. The LTDI benefit will be denied if the employer contests the employee's application for disability benefits under ch. ETF 50.~~ or because the employee's termination or leave of absence was for a reason other than a medical issue.

SECTION 29. ETF 50.52 (1) (b) 3. is amended to read:

ETF 50.52 (1) (b) 3. LTDI benefits shall be offset by the amount of any normal form retirement annuity or lump sum retirement benefit under s. 40.23 or 40.25, Stats., for which the recipient is eligible, including a separation benefit that the recipient is eligible to receive under s. 40.23 (2m) (er) or 40.23 (3) (b), Stats., excluding the portion of any annuity or lump sum benefit or separation benefit on which the recipient would not be subject to federal income tax, ~~a separation benefit~~ or a benefit funded by employee additional contributions. ~~This~~ Except for a protective occupation recipient, this offset shall be computed as of the recipient's normal retirement age. This subdivision applies only after a recipient's normal retirement date as defined by s. 40.02 (42), Stats. For a protective occupation recipient, the offset shall be computed as of the recipient's 62nd birthday. This subdivision does not apply to an annuity for which the recipient is eligible solely as a beneficiary, alternate payee or joint survivor of another participant.

SECTION 30. ETF 52.16 (5) (c) is created to read:

ETF 52.16 (5) (c) *Benefits payable to non-vested participants.* Monthly duty disability benefits shall be reduced by benefits payable to a non-vested participant under s. 40.25 (2), Stats., at age 50.

SECTION 31. ETF 60.60 (5) (c) and (f) are amended to read:

ETF 60.60 (5) (c) Establish a conversion account in the insured's name from the appropriate reserve, as determined by the company and the department, held by the company for the policyholder. The company shall credit the account with the present value computed in par. (b) and debit the account ~~each month~~ periodically by the premium amount and for the prescribed period certified by the department.

ETF 60.60 (f) Remit to the department from each conversion account, by the 20th of the month preceding the coverage ~~month~~ period, the applicable premiums for health and long-term care insurance.

SECTION 32. ETF 70.02 (11) is amended to read:

ETF 70.02 (11) "Plan and trust document" means the document developed by the department and approved by the board to describe in detail the regulations of the program and ensure

program compliance with section 457 of the internal revenue code which requires the availability of this document to members.

SECTION 33. ETF 70.05 (1) (a) 1. is amended to read:

ETF 70.05 (1) (a) 1. Participation level of ~~5,000~~ 30,000 members or more.

SECTION 34. ETF 70.07 (1) (a) (d) (e) and (i) are amended to read:

ETF 70.07 (1) (a) Follow all requirements and regulations of the program as defined in the plan and trust document.

ETF 70.07 (1) (d) Provide ~~monthly~~ quarterly reports to the department to allow adequate monitoring of program administration and compliance with internal revenue code section 457 regulations.

ETF 70.07 (1) (e) Provide an annual independently audited financial statement of the administrator ~~and the plan~~ to the department within 120 days from the end of the calendar year.

ETF 70.07 (1) (i) Provide statements to members, at least ~~annually~~ quarterly, detailing member's year to date annual deferral amounts, account balance information and disclosure of all fees and charges affecting member's interest earnings or account balances.

SECTION 35. ETF 70.09 (5) is repealed.

SECTION 36. ETF 70.10 (2) (intro.) is amended to read:

ETF 70.10 (2) (intro.) The ~~administrative plan provider as defined in s. 40.02 (18s), Stats., which is selected by the board under s. 40.80, Stats., and which administers the deferrals which are the subject of the withdrawal request~~ administrator shall:

SECTION 37. ETF 70.10 (2) (c) is repealed.

SECTION 38. ETF 70.10 (2) (d) is amended to read:

ETF 70.10 (2) (d) Within 5 working days after the receipt of the information ~~required in sub. (3)~~ requested from the employer or other parties, either render a decision or make a recommendation to the department on a form prescribed by the department.

SECTION 39. ETF 70.10 (3) (4) and (5) are repealed.

SECTION 40. ETF 70.12 is amended to read:

ETF 70.12 Effective date.

Local implementation of the deferred compensation plan and enrollment of eligible employees may begin immediately upon acceptance, by the department, of the resolution under ~~s. ETF 70.10~~ s. ETF 70.11.

SECTION 41. ETF 70.15 is amended to read:

ETF 70.15 The governing body of an employer, other than the state, may terminate participation in the state deferred compensation plan after a minimum of one year from the date the certified copy of the resolution required under ~~s. ETF 70.10~~ s. ETF 70.11 was accepted by the department, by adopting a resolution in the form approved by the department and forwarding a copy of the resolution to the department and the then current administrative plan provider as defined in s. 40.02 (18s), Stats. Enrollment and payroll deferral activities shall cease 90 days after receipt by the department of the certified copy of a resolution to terminate participation in the state's deferred compensation plan. Treatment of previous individual deferral investment specifications, accounts and benefits shall continue to be governed by the plan and investment plan provider contracts, unless the employer exercises its right of ownership under 26 CFR 1.457−2 (j) to provide for different treatment.

SECTION 42. 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.

LCRC
FORM 2

WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE

Scott Grosz and Jessica Karls-Ruplinger
Clearinghouse Co-Directors

Terry C. Anderson
Legislative Council Director

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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 **14-055**

AN ORDER to repeal ETF 10.01 (3i) (Note), 20.01, 20.17 (2) (d), 20.35 (9), 20.37 (2) (e), 41, 70.02 (2), (3), (12), and (14), 70.03 (5) to (7), 70.04 (5) (c), 70.05 (4), 70.06, 70.09 (2) and (5), and 70.10 (2) (c), and (3) to (5); to amend ETF 10.01 (3i), 10.03 (1), 10.08 (2) (a) and (c) 2. and 3., 10.60 (2), 10.633 (1) (a) to (c), 11.04 (5) (e), 20.02 (2) (b) and (c), and (3) (c), 20.025 (2), 20.17 (2) (f) 1. (intro.), (4) (b) 3. b., (c) 7. (intro.), a. and e., 20.35 (3) (d) 4., 40.01 (1) (b) and (2m) (a) and (b), 50.48 (1), (2) (Note), (3) (a), (b) 5., and (4) (b) 3., and (c), 50.50 (1) (c) 2. and (5) (b), 50.52 (1) (b) 3., 60.60 (5) (c) and (f), 70.01, 70.02 (1), (11) and (13), 70.03 (3), (4), and (8) to (10), 70.04 (4), (5) (intro.) and (6), 70.05 (title), (1) (intro.), (a) 1., and (d), 70.07 (title), (1) (a), (b), (d), (e), (g), (i), and (2), 70.08 (1) and (3) (intro.), (a) 1. and 2., (b), and (b) 1., 70.09 (1), and 70.10 (2) (intro.) and (d), 70.12 and 70.15; to repeal and recreate ETF 20.02 (3) (a) and 20.17 (4) (c) 6.; and to create ETF 10.01 (3e), 20.02 (3) (d), 20.17 (4) (c) 8., and 52.16 (5) (c), relating to technical and minor substantive changes in existing ETF administrative rules.

Submitted by **DEPARTMENT OF EMPLOYEE TRUST FUNDS**

09-16-2014 RECEIVED BY LEGISLATIVE COUNCIL.

10-14-2014 REPORT SENT TO AGENCY.

SG:DWS

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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 ☑

WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE

Scott Grosz and Jessica Karls-Ruplinger
Clearinghouse Co-Directors

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 14-055

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.]

1. Statutory Authority

Generally, numerous SECTIONS of the proposed rule treat provisions of ch. ETF 70 to remove rules relating to offering of an "alternate" deferred compensation plan. Should these references to an alternative plan be removed? Section 40.80 (2m), Stats., specifies that rules "establishing procedures, requirements and qualifications for offering deferred compensation plans to state employees in addition to [previously selected and contracted plans]" *shall* be promulgated. In a 1990 opinion, the Attorney General interpreted s. 40.80 (2m), Stats., to "mandatorily require only the establishment of rules for alternative or supplemental plans but not to require that any such plans need be offered." [79 Atty. Gen. 168.]

2. Form, Style and Placement in Administrative Code

a. As recreated, s. ETF 20.17 (4) (c) 6. should include an introduction to subpars. a. and b. or should be split into two subdivisions.

b. In s. ETF 20.02 (3) (a), does the treatment prescribed by the department depend on the date an annuitant is rehired? If so, should the scope of this provision be clarified?

c. In s. ETF 20.02 (3) (c), should the amendment refer to par. (a) 1. *or* 2., rather than par. (a) 1. *and* 2.?

d. In s. ETF 20.35 (3) (d) 4., the order of strikes and underscores should conform to the style prescribed in s. 1.06 (1) (a), Manual. In the proposed rule, the stricken "~~since~~" should

precede the underscored "annuity". See, also, ss. ETF 50.48 (4) (c), 50.52 (1) (b) 3., and 70.70 (2) (intro.) and (d) for occurrences of the same issue.

e. In s. ETF 40.01 (1) (b), the department appears to amend a paragraph title. First, the style of this title does not conform to the style prescribed by s. 1.05 (2) (d), Manual. This issue also arises for s. ETF 40.01 (1) (c), though the provision is not treated by the proposed rule. Second, note that titles to any unit of a rule are not part of the substance of the rule itself. [s. 1.05 (1), Manual.] Should the amended language in s. ETF 40.01 (1) (b) (title) be moved to the rule text? If not, the enumeration of sections treated by the rule should be revised to properly reference the treatment of par. (b) (title).

f. In s. ETF 70.01, when a single word is amended, the existing word ("plans") should be stricken in its entirety and the new word ("plan") should be underscored immediately after the strike-through. This comment should also be applied to s. ETF 70.02 (1).

g. In s. ETF 70.03 (4), did the department intend to strike "primary" rather than underscore it?

h. Section ETF 70.08 (3) (a) and (b) should more specifically be referred to as s. ETF 70.08 (3) (a) (intro.) and (b) (intro.), since they are followed by subdivisions. However, as introductory paragraphs, they should end in a colon rather than a period, and be written in a manner that properly introduces the subdivisions. The enumeration of sections treated by the rule should be revised to properly reference the treatment of s. ETF 70.08 (3) (a) (intro.) and (b) (intro.).

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

a. It is not clear whether the paragraph following proposed s. ETF 10.01 (3e) 2., is part of subd. 2., should be numbered as its own subdivision, or is a note to the subsection. Please clarify. Additionally, in s. ETF 10.01 (3e), the grammatical flow from the introduction to each subdivision should be reviewed for clarity.

b. In s. ETF 50.52 (1) (b) 3., the amended text should be written in the singular form. For example, the department could write: "For a protective occupation recipient, the offset shall be computed as of the recipient's 62nd birthday.".

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 October 27, 2014.

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 October 27, 2014, 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 #14-055 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 December 11, 2014, as well as by the Group Insurance Board at its meeting on November 18, 2014, and the Deferred Compensation Board at its meeting on November 4, 2014.

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.

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA-2049 (R03/2012)

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ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis
☒ Original ☐ Updated ☐ Corrected

2. Administrative Rule Chapter, Title and Number
ETF 10, 11, 20, 40, 41, 52, 55, 60, and 70

3. Subject
Technical and minor substantive changes in existing ETF administrative rules

4. Fund Sources Affected
☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG-S

5. Chapter 20, Stats. Appropriations Affected

6. Fiscal Effect of Implementing the Rule
☒ No Fiscal Effect ☐ Increase Existing Revenues ☐ Increase Costs
☐ Indeterminate ☐ Decrease Existing Revenues ☐ Could Absorb Within Agency's Budget
☐ Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)
☐ State's Economy ☐ Specific Businesses/Sectors
☐ Local Government Units ☐ Public Utility Rate Payers
☐ Small Businesses **(if checked, complete Attachment A)**

8. Would Implementation and Compliance Costs Be Greater Than $20 million?
☐ Yes ☒ No

9. Policy Problem Addressed by the Rule
The objective of this technical rule is to make technical updates to existing ETF rules, delete obsolete language in ETF rules, create consistency with provisions in 2013 Wisconsin Act 20 related to rehired annuitants, and make other minor substantive changes.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.
Information, including the proposed rule language, will be made available by posting on the ETF website and the Wisconsin administrative rules website and by submitting the information to the Governor's Office of Regulatory Compliance.

11. Identify the local governmental units that participated in the development of this EIA.
None

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)
No substantive impact is anticipated.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule
Implementation of the Rule will update ETF adminstrative code provisions to be consistent with recent statutory changes. This will enhance clarity and minimize confusion for the general public and public employers. The Rule deletes obsolete language from ETF administrative code provisions, such as multiple references throughout ETF Chapter 70 to "primary and alternative" plans within the Wisconsin Deferred Compensation Program. Such changes moderize the code and bring it into conformance with present-day realities. The Rule also makes minor changes to reflect current ETF administrative practices and to correct minor technical inacuracies in the existing code.

The alternative would be to fail to comply with recent legislative changes, and allow obsolete language to continue to exist.

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14. Long Range Implications of Implementing the Rule

Implementation will bring the affected ETF rules into compliance with recent legislative changes, update affected ETF rules to reflect current administrative practices and delete obsolete language from ETF rules.

15. Compare With Approaches Being Used by Federal Government

Not applicable

16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

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

17. Contact Name	18. Contact Phone Number
David H. Nispel, General Counsel	608-264-6936

This document can be made available in alternate formats to individuals with disabilities upon request.

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ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

Not applicable

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

Not applicable

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

☐ Less Stringent Compliance or Reporting Requirements
☐ Less Stringent Schedules or Deadlines for Compliance or Reporting
☐ Consolidation or Simplification of Reporting Requirements
☐ Establishment of performance standards in lieu of Design or Operational Standards
☐ Exemption of Small Businesses from some or all requirements
☒ Other, describe:

Small business analysis is not applicable.

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

Not applicable

5. Describe the Rule's Enforcement Provisions

Not applicable

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

☐ Yes ☒ No