

## Chapter ETF 70

### DEFERRED COMPENSATION PLANS

#### Subchapter I — General Provisions

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#### Subchapter I — General Provisions

**ETF 70.01 Statement of purpose.** The purpose of this chapter is to establish a procedure for administration of a deferred compensation program as provided by s. 40.80, Stats. The procedure includes requirements and regulations for the primary deferred compensation plan and any alternate deferred compensation plan. All plans shall be monitored, evaluated and approved by the deferred compensation board. However, only the primary plan shall be supported by the board as the official state of Wisconsin deferred compensation plan.

**History:** Cr. Register, June, 1992, No. 438, eff. 7-1-92.

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

(1) “Administrator” means any company with which the board contracts to provide administrative services for deferred compensation plans authorized under s. 40.80, Stats.

(2) “Alternate administrator” means any company with which the board contracts to provide administrative services for an alternate deferred compensation plan authorized under s. 40.80 (2m), Stats.

(3) “Alternate plan” means any deferred compensation plan authorized under s. 40.80 (2m), Stats., and offered by an alternate administrator.

(4) “Beneficiary” has the meaning given in s. 40.02 (8), Stats.

(5) The “board” means the deferred compensation board.

(6) The “department” means the department of employee trust funds.

(7) “Employee” means any person who receives earnings as payment for personal services rendered for the benefit of any employer including officers of the employer and is eligible to participate in the deferred compensation program.

(8) “Investment product” means any insurance or annuity contract, bank or credit union account, mutual or money market fund or other type of investment vehicle.

(9) “Investment provider” means any company that manages and offers investments products.

(10) “Member” means any employee electing to participate in the deferred compensation program.

(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.

(12) “Primary administrator” means the company contracted

to provide administrative services for the primary deferred compensation plan authorized under s. 40.80 (1), Stats.

(13) “Primary plan” means the deferred compensation plan authorized under s. 40.80 (1), Stats., and offered by the primary administrator.

(14) “Program” includes the primary plan and any alternate plan authorized under s. 40.80, Stats., and approved by the board for offering to eligible employees.

**History:** Cr. Register, June, 1992, No. 438, eff. 7-1-92; CR 08-016: cr. (4m) Register August 2008 No. 632, eff. 9-1-08; CR 11-040: renum. (1) to (4m) to be (intro.) to (4) Register July 2012 No. 679, eff. 8-1-12; CR 14-055: am. (11) Register May 2015 No. 713, eff. 6-1-15.

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

(1) Act, at all times, in a manner consistent with that of a trustee with a fiduciary duty to the program and members.

(2) Determine and implement the most efficient and cost effective method for administration of the program consistent with high quality services to members.

(3) Establish standards by which the primary administrator shall be evaluated for initial and continued participation in the primary plan.

(4) Evaluate the performance of the primary administrator, biennially, to determine contractual compliance and compliance with standards as established under sub. (3).

(5) Declare the board’s official support of the primary plan to participating employers and members in the publication prepared by the department as required in s. ETF 70.04 (5) (c).

(6) Determine the initial eligibility of any potential alternate administrator that petitions the board to offer an alternate plan based on criteria established in s. ETF 70.06.

(7) Evaluate alternate administrators, annually, based on criteria established in s. ETF 70.06 to determine their continued eligibility.

(8) Define general categories of investment products to be offered under the primary plan and any alternate plan.

(9) Establish criteria by which specific investment products shall be evaluated for initial and continued participation in the primary plan or any alternate plan.

(10) Evaluate investment products offered by the administrator, annually, based on criteria established in sub. (9) to determine if the investment product continues to be acceptable for offering by the primary plan or alternate plan.

**History:** Cr. Register, June, 1992, No. 438, eff. 7-1-92; CR 11-040: renum. (1) to (11) to be (intro.) to (10), correction in (4), (5), (10), as renumbered, made under s. 13.92 (4) (b) 7., Stats., Register July 2012 No. 679, eff. 8-1-12; CR 19-126: am. (4) Register May 2021 No. 785, eff. 6-1-21.

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

(1) Negotiate and implement contracts with administrators and investment companies.

(2) Monitor plan administration and ensure contract compliance.

(3) Develop and maintain a plan document that defines rules and requirements of the program regarding member enrollment in the program, member deferral amounts, distribution of account balances, and administration of the program that will be distributed, by the administrator, to new and current members by request.

(4) Provide information and recommendations to the board and its committees that shall be necessary to complete the evaluation of the primary and alternate administrator as required in s. ETF 70.03 (4) and (7) and the investment products as required in s. ETF 70.03 (10).

(5) Prepare and distribute to members an annual publication that presents a balanced and impartial overview of the primary plan and any alternate plan that includes the following:

(a) Description of investment products and corresponding investment risks.

(b) Full disclosure of all direct and indirect costs to members.

(c) Announcement of the board's official support of the primary plan as required in s. ETF 70.03 (5).

(d) General information about deferred compensation plans including the maximum deferral amount allowed under internal revenue code section 457.

(6) Review and approve all material prepared by the primary administrator and alternate administrator to describe the primary plan and alternate plan and investment products to eligible employers, employees and members.

(7) Review and issue a determination on all requests for emergency withdrawals as defined in s. ETF 70.10.

(8) Provide reports to the board at each board meeting that detail emergency withdrawals, enrollment statistics, plan assets and any other information that may be requested by the board.

**History:** Cr. Register, June, 1992, No. 438, eff. 7-1-92; CR 11-040: renum. (1) to (9) to be (intro.) to (8), correction in (5), (6) (c) made under s. 13.92 (4) (b) 7., Stats., Register July 2012 No. 679, eff. 8-1-12.

**ETF 70.05 Primary plan administration.** (1) Based upon a request for proposal process, the board shall contract with one primary administrator to offer the primary plan that is approved and officially supported by the board. The administrator awarded the contract for the primary plan shall have:

(a) At least 5 years experience administering other section 457 deferred compensation programs. The administrator's experience shall include administering at least one program that meets each of the following:

1. Participation level of 30,000 members or more.
2. Program involves multiple payroll reporting agencies.
3. Record keeping includes consolidated record keeping for all investment products that are offered.

(b) Marketing and enrollment services that include the following:

1. A staffed office located in Madison and field representatives to provide services to all areas of the state.
2. Contacts to each eligible employee at least annually to describe the plan being offered by this administrator.
3. Frequent enrollment opportunities at intervals established by the board.
4. Presentations to employees that include full disclosure of

all direct and indirect costs to members as well as advantages and disadvantages of participating in the plan offered by this administrator.

5. Literature and forms regarding the plan to be distributed to employees and payroll personnel that are in a form approved by the department.

(c) Member services that include the following:

1. Unlimited opportunities to increase or decrease deferral amounts.

2. Unlimited opportunities to redirect deferral amounts to any other investment product offered by the administrator.

(d) Accounting procedures and consolidated record keeping for member account transactions that maintains all individual member records and submits deferrals, transfers and withdrawals to the investment companies offering investment products to the primary plan.

(2) The potential administrator shall agree to return all interest earned on idle funds of the plan that are held by the administrator to the department to offset plan costs.

(3) The potential administrator shall provide the necessary financial disclosure for assurance of its financial soundness.

(4) The investment products offered by the primary administrator shall meet the criteria in s. ETF 70.03 (9) and be approved by the board.

(5) The primary administrator shall provide an annual report to the board illustrating the investment performance of all investment products offered by the primary plan, as measured by criteria established under s. ETF 70.03 (8).

**History:** Cr. Register, June, 1992, No. 438, eff. 7-1-92; correction in (4), (5) made under s. 13.92 (4) (b) 7., Stats., Register July 2012 No. 679, eff. 8-1-12; CR 14-055: am. (1) (a) 1. Register May 2015 No. 713, eff. 6-1-15.

**ETF 70.06 Alternate plan administration.** (1) At its discretion, the board may contract with an alternate administrator to offer an alternate plan. An alternate plan shall not be officially supported by the board. Any administrator that meets the criteria set forth in s. ETF 70.05 (1), (2) and (3) may be allowed to offer an alternate plan. The board shall not contract with more than one alternate administrator at any one time.

(2) Investment products offered by an alternate administrator shall meet the criteria as established in s. ETF 70.03 (9) and be approved by the board and shall not duplicate any of the specific investment products offered by the primary administrator.

(3) The alternate administrator shall provide an annual report to the board that describes the investment performance of all investment products offered by the alternate plan, as measured by the criteria in s. ETF 70.03 (9).

(4) Potential alternate administrators who meet the minimum requirements as defined in subs. (1), (2) and (3) may petition the board for approval to participate in the program within a 30 day period beginning the day after publication of these rules in the Wisconsin Administrative Code and then from May 1 through May 31 of every other year starting in 1994 for approval to participate in the program as of the next calendar year. The board shall limit the number of alternate administrators to one through a request for proposal process should there ever be a second, or more, potential administrator that petitions the board.

(5) If the evaluation of an alternate administrator as required in s. ETF 70.03 (7) results in the termination of the alternate administrator's participation in the program or if their contract is not renewed, members shall be instructed to redirect deferrals and transfer existing balances from investment products offered by the terminated administrator to other investment products offered by the primary administrator or any other alternate adminis-

trator within a six-month period or other time period designated by the board. At the end of the six-month period or the date designated by the board, the board shall instruct the terminated administrator to redirect any deferrals and transfer any remaining account balances with investment products offered by the terminated administrator to board designated alternative investment products offered by the primary administrator. Surrender charges that are normally assessed against funds transferred from investment products offered by one administrator to another, shall not be assessed for transactions under this subsection.

**History:** Cr. Register, June, 1992, No. 438, eff. 7-1-92; correction in(2), (3), (5) made under s. 13.92 (4) (b) 7., Stats., Register July 2012 No. 679, eff. 8-1-12.

**ETF 70.07 Primary and alternate plan administration.** (1) All contracts with administrators shall be approved by the board and signed by the board chair or designee. Any administrator who participates in the program shall sign a contract in which the administrator agrees to:

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

(b) Share information, such as member's annual deferral amounts, with the department and any other administrator contracted by the board to ensure compliance with internal revenue code section 457.

(c) Provide full disclosure of all revenues received by the administrator from members and investment providers of their plan to the department at least annually.

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

(e) Provide an annual independently audited financial statement of the administrator to the department within 120 days from the end of the calendar year.

(f) Submit to the department an acceptable contingency plan to address both data processing systems failures and administrative services interruptions.

(g) Provide to members, upon enrollment, full disclosure of all fees and charges that are assessed, either directly or indirectly as an offset of earnings, by the administrator or the investment providers. A memorandum of understanding detailing key aspects and restrictions of the primary plan or any alternate plan shall be presented to and signed by employees enrolling in either the primary plan or any alternate plan.

(h) Provide to members, when requested, a copy of the fund prospectus and annual report for each investment product offered by the administrator and the ability to transfer account balances from investment products offered by one administrator to those offered by another.

(i) Provide statements to members, at least 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.

(j) Provide information and counseling to members at termination of employment or retirement, regarding the options offered by the administrator for distribution of their account and timely processing of payouts. The type of distribution options offered shall include lump sum and partial lump sum payments, installment payment options and annuity options.

(2) The primary plan and any alternate plan shall reimburse the department for their proportionate share of the department's costs associated with the program.

(3) The administrator, their agents and the investment products they offer shall meet all applicable state and federal regulations including section 457 of the internal revenue code, security

and exchange commission regulations, and state and federal insurance laws and regulations.

**History:** Cr. Register, June, 1992, No. 438, eff. 7-1-92; CR 14-055: am. (1) (a), (d), (e), (i) Register May 2015 No. 713, eff. 6-1-15.

**ETF 70.08 Investment providers.** (1) Investment providers offering an investment product through the primary plan or an alternate plan shall be selected by the board based on the investment product categories and criteria established under s. ETF 70.03 (8) and (9). All contracts with investment providers of the primary plan or an alternate plan shall be approved by the board and signed by the board chair or designee.

(2) Investment providers shall not be allowed to assess any direct or indirect costs to members.

(3) Based on the board's review required under s. ETF 70.03 (10), the board may determine that an investment product offered by the primary plan or an alternate plan is no longer acceptable for inclusion in the program. If the board decides to remove an investment product from the plan as a result of the product's failure to meet the criteria as established under s. ETF 70.03 (9), the product shall be phased out of the primary or alternate plan in a 2-step process over a 90-day period that shall commence on the first business day of the 3rd month following the board's decision, as follows:

(a) Phase 1 of the investment product termination process shall last for 45 days during which time current members and employees newly enrolling in the primary or alternate plan shall be informed in writing that the terminating investment product does not meet board's evaluation criteria and that this investment product is not open to new enrollments, and all of the following shall occur:

1. Any members already deferring to the terminating investment product shall be informed in writing that they need to redirect future deferrals from this product to an alternative investment product offered by the primary or alternate plan by notifying the administrator of their new investment choice.

2. At the end of the 45-day period, the board shall instruct the administrator to automatically redirect any member's deferrals that have not been redirected to an alternative investment product from the terminated product into a board designated alternative investment product offered by the primary or alternate plan.

3. Existing member account balances shall be allowed to remain in the terminating investment product during this period.

(b) Phase 2 of the investment product termination process immediately follows the first 45-day period and provides an additional 45-day period during which time members shall transfer existing balances from the terminating product to another investment product offered by the primary or alternate plan, and all of the following shall occur:

1. If at the end of the additional 45-day period, any member has failed to move a remaining account balance from the terminated fund, the board shall instruct the administrator to automatically move that member's account balance into a board designated alternative investment product offered by the primary or alternate plan.

2. During the phase out process and at any time prior to the end of the second phase, the board may re-examine the performance of the terminating investment product to determine if continued plan participation is justified.

**History:** Cr. Register, June, 1992, No. 438, eff. 7-1-92; CR 08-016: am. (3) (intro.) Register August 2008 No. 632, eff. 9-1-08; correction in (1), (3), made under s. 13.92 (4) (b) 7., Stats., Register July 2012 No. 679, eff. 8-1-12; CR 19-126: am. (3) (intro.), (a) (intro.), 2., (b) (intro.), 1. Register May 2021 No. 785, eff. 6-1-21; correction in (3) (intro.) made under s. 35.17, Stats., Register May 2021 No. 785.

**ETF 70.09 Member responsibilities.** (1) Employees electing to become a member of the primary or an alternate plan shall sign a memorandum of understanding prior to enrolling to certify that all program requirements and regulations have been clearly explained.

(2) A member shall select one administrator for his or her deferrals. A member may not simultaneously defer earnings to the primary plan and an alternate plan.

(3) Each member shall review information provided by the administrator and the department about the investment type and performance of the investment products offered to determine which investment products best meet the member's individual needs and financial objectives.

(4) Each member shall monitor his or her own annual deferral amounts to ensure the amount does not exceed the maximum deferral amount allowed under internal revenue code section 457.

**History:** Cr. Register, June, 1992, No. 438, eff. 7-1-92; CR 14-055: r. (5) Register May 2015 No. 713, eff. 6-1-15.

**ETF 70.10 Emergency withdrawals.** (1) A participant or beneficiary may make emergency withdrawals in the event of an unforeseeable emergency under the following conditions and limitations:

(a) As defined in 26 USC 457 (b) (5) and 26 CFR 1.457-2 (h) (4), an unforeseeable emergency is one which causes severe financial hardship to the participant or beneficiary as a result of a sudden and unexpected illness or accident of the participant or beneficiary or of a dependent of the participant or beneficiary, loss of the participant's or beneficiary's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant or beneficiary.

**Note:** "A dependent of the participant" as used here is defined by the secretary of the treasury as one specified in 26 USC 152 (a).

(b) The need to send a participant's or beneficiary's child to college or the desire to purchase a home are examples of what are not unforeseeable emergencies.

(c) The facts of each case shall be ascertained to determine if the circumstances constitute an unforeseeable emergency.

(d) Withdrawal payment may not be made to the extent that the hardship is or may be relieved:

1. Through reimbursement or compensation by insurance or otherwise,

2. By liquidation of the participant's or beneficiary's assets to the extent the liquidation of these assets would not itself cause severe financial hardship, or

3. By cessation of deferrals under the plan.

(e) The withdrawal, because of an unforeseeable emergency, shall be limited to an amount reasonably needed to satisfy the emergency need.

(2) The administrator shall:

(a) Receive requests from participants or beneficiaries for unforeseeable emergency withdrawals,

(b) Investigate and document the facts on a form prescribed by the department, and

(d) Within 5 working days after the receipt of the information 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.

(6) The department shall prepare a report on unforeseeable emergency withdrawal activity since the last meeting of the board for presentation at the following meeting of the board.

**History:** Cr. Register, June, 1985, No. 354, eff. 7-1-85; renum. from ETF 10.01, Register, June, 1992, No. 438, eff. 7-1-92; CR 08-016: am. (intro.), (1) (a), (b), (d) 2. and (2) (a) Register August 2008 No. 632, eff. 9-1-08; CR 14-055: am. (2) (intro.), r. (2) (c), am. (2) (d), r. (3) to (5) Register May 2015 No. 713, eff. 6-1-15; correction in (2) (b) made under s. 35.17, Stats., Register May 2015 No. 713.

## Subchapter II — State Deferred Compensation Plan for Local Employees

**ETF 70.11 Participation in the deferred compensation plan.** The governing body of any employer as defined under s. 40.02 (28), Stats., other than the state, may provide the state's deferred compensation plan for its employees by the adoption of a resolution in the form approved by the department. The employer shall forward a certified copy of the resolution to the department and the then current administrative plan provider as defined in s. 40.02 (18s), Stats.

**History:** Cr. Register, June, 1985, No. 354, eff. 7-1-85; renum. from ETF 70.10, Register, June, 1992, no. 438, eff. 7-1-92.

**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 70.11.

**History:** Cr. Register, June, 1985, No. 354, eff. 7-1-85; CR 14-055: am. Register May 2015 No. 713, eff. 6-1-15.

**ETF 70.15 Terminating participation in the deferred compensation plan.** 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 70.11 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.

**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](http://etf.wi.gov) or on the Wisconsin deferred compensation program's website: [www.wdc457.org](http://www.wdc457.org).

**History:** Cr. Register, June, 1985, No. 354, eff. 7-1-85; CR 14-055: am. Register May 2015 No. 713, eff. 6-1-15.