

96-125

Clearinghouse Rule 96-125



STATE OF WISCONSIN

Department of Employee Trust Funds

Eric Stanchfield
Secretary
201 East Washington Avenue
P. O. Box 7931
Madison, Wisconsin 53707

In Reply Refer To:

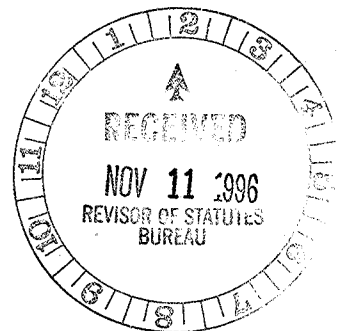
STATE OF WISCONSIN)
) SS
DEPARTMENT OF EMPLOYEE TRUST FUNDS)

I, David C. Mills, Deputy Secretary of the Department of Employee Trust Funds and custodian of the official records, certify that the annexed rule, relating to signatures on Wisconsin Retirement System documents by an agent holding the person's power of attorney, was duly approved and adopted by the State of Wisconsin Teachers Retirement Board and Wisconsin Retirement Board on September 12, 1996 and by the State of Wisconsin Employee Trust Funds Board on September 13, 1996.

I further certify that this copy has been compared by me with the original on file in this department and that it is a true copy of the original, and of the whole of the original.

(no seal) IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department of Employee Trust Funds at 201 East Washington Avenue in the city of Madison, this 11th day of November 1996

David C. Mills



State of Wisconsin
DEPARTMENT OF EMPLOYE TRUST FUNDS -- OFFICE OF THE SECRETARY
and
EMPLOYE TRUST FUNDS BOARD
TEACHER RETIREMENT BOARD
WISCONSIN RETIREMENT BOARD

Clearinghouse Rule #CR-96-125

AN ORDER repealing and recreating s. ETF 10.75, Wis. Admin. Code, relating to signatures on Wisconsin Retirement System documents by an agent holding the person's power of attorney.

REPORT OF THE WISCONSIN DEPARTMENT OF EMPLOYE TRUST FUNDS
ON THE FINAL DRAFT RULE

This report, prepared in compliance with ch. 227, Wis. Stats., includes the following:

Part 1 - Analysis prepared by the Department of Employee Trust Funds;

Part 2 - Rule text in Final Draft Form;

Part 3 - Recommendations of the Legislative Council Staff;

Part 4 - Report prepared pursuant to the provisions of s. 227.19 (3),
Wis. Stats., including:

- (a) Statement of the Need for the Rule;
- (b) Explanation of Modifications to the Rule after Public Hearings;
- (c) List of Persons Appearing or Registering an Opinion;
- (d) Response to Legislative Council Staff Recommendations;
- (e) Final Regulatory Flexibility Analysis.

Submitted by:

Mary Anglim, Assistant Director
Retirement and Survivor Benefits
Wisconsin Department of Employee Trust Funds
201 East Washington Avenue, Room 171
P.O. Box 7931
Madison, Wisconsin 53707-7931
Telephone: (608) 266-6611

Analysis Prepared by the Wisconsin Department of Employee Trust Funds

Under s. ETF 10.75, Wis. Admin. Code, WRS participants, spouses, and beneficiaries are largely prevented from granting power of attorney to an agent to handle WRS-related decisions in cases of absence, emergencies, or future incompetence. Agents holding a person's durable power of attorney as described in s. 243.07, Stats., may sign some WRS documents, but the most important categories, benefit applications and beneficiary designations, are excluded under the existing rule.

In May 1992, the Legislature enacted a so-called "Statutory Power of Attorney" provision, s. 243.10, Stats. This statute allows individuals to appoint an agent to act with complete authority on a wide variety of matters, including insurance and annuity transactions, beneficiary transactions, and retirement plan transactions. This legislation was intended to be uniform in all states and similar language has been adopted by some other states.

To comply with the 1992 legislation, the Department now accepts the signature of an agent appointed under the Statutory Power of Attorney Act for any transaction for which the agent has been granted authority. The proposed rule change brings the current rule into conformance with s. 243.10, Stats. and facilitates submission of benefit applications, beneficiary designations, and other important documents to the Department of Employee Trust Funds. The new rule further states that, except for Deferred Compensation Program transactions, the Department will accept the signature of an agent who holds a non-statutory power of attorney, provided the agent's powers include the transaction in question and the appointment is in effect. An approved form is required to be used in the Deferred Compensation Program if the Statutory Power of Attorney is not used.

The proposed policy provides greater flexibility to WRS participants who have appointed agents using instruments other than the statutory power of attorney.

General Summary of Rule.

The proposed rule provides that:

- In lieu of a person's signature, the department will accept for any benefit plan transaction other than a Deferred Compensation Program transaction, signature by an agent holding a statutory or non-statutory power of attorney, provided the person has not withheld power to act in the relevant area (e.g. insurance, beneficiary designations, retirement plan transactions).
- Before approving or acting on a document signed by an agent, the Department must receive the original or a copy of the signed, dated, and notarized letter of appointment. The Department may require the agent to certify that the appointment is in effect.

- In the Deferred Compensation Program, only Statutory Power of Attorney and limited power of attorney on a form approved for specific use in this Program are acceptable, and the original document must be submitted to the administrator of the Program.
- The Department may refuse to act on a document signed by an agent claiming to hold a principal's power of attorney if it has reason to believe that the letters of appointment are no longer in effect, do not apply to the transaction, or are otherwise defective.

Statutes Interpreted

Sections 243.07 and 243.10, Stats.

The proposed rule would apply to signatures on beneficiary designations under s. 40.02 (8) (a) 1., Stats.; annuity applications under ss. 40.23 (1) (a), 40.23 (4) (b) as affected by 1995 Wisconsin Act 302, and 40.63 (8) (h) 2., Stats.; lump sum retirement and separation benefit applications under s. 40.25 (1), (2) and (2m), Stats.; required spousal signatures under s. 40.23 (7), Stats.; insurance applications under ss. 40.51 (2), 40.61 (2), and 40.70 (1) (b), Stats.; and to all other transactions in programs administered by the Department of Employee Trust Funds for which the written instruction or consent of the affected person is required.

The proposed rule affects the application of ss. 40.08 (9) and (9m), Stats. In cases where the person granted the relevant authority to an agent under a durable power of attorney before becoming incompetent, the rule would permit the Department to act on the instructions of the agent.

Authority for Rule.

Section 40.03 (2) (i), Stats.

Final fiscal estimate. The Department anticipates no fiscal effect of this proposed rule on the fiscal liabilities or revenues of the state or any county, city, village, town, school district, vocational, technical and adult education district or sewer district.

Copies of Rule. Copies of this rule are available without cost upon request to the Office of the Secretary, Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707, telephone (608) 266-1071.

Contact Persons. Persons with questions about this rule may write to the above address or call Mary Anglim, Assistant Director, Retirement and Survivor Benefits, (608) 266-6611. Legal questions about this rule may be addressed to Robert Weber, Wisconsin Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707, telephone (608) 266-5804.

Part 2

TEXT OF RULE

SECTION 1. ETF 10.75 is repealed and recreated to read:

ETF 10.75 POWER OF ATTORNEY. (1) As used in this section, "power of attorney" includes all of the following: (a) A uniform statutory power of attorney as defined under and containing the language required in s. 243.10, Stats.;

(b) A uniform statutory power of attorney as defined under and containing the language required in a uniform statutory power of attorney act enacted by a jurisdiction other than the state of Wisconsin, provided the power of attorney meets the requirements of and does not conflict with s. 243.10, Stats.;

(c) A durable power of attorney as defined under and containing the language required in s. 243.07, Stats.;

(d) A durable power of attorney as defined under and containing the language required in a uniform durable power of attorney act enacted by a jurisdiction other than the state of Wisconsin, provided the power of attorney meets the requirements of and does not conflict with s. 243.07, Stats.;

(e) A person's common law authorization, whether durable or non-durable, to act as the person's agent under a power of attorney.

(2) Except as provided in sub. (3), for all benefit plan transactions for which the department requires a person's signature, the department shall accept the signature of the person's

agent acting under power of attorney in lieu of the person's signature provided that all of the following conditions are satisfied:

(a) The department received the original of the power of attorney which is signed by the person granting the power of attorney, dated, and notarized, or a legible photocopy or facsimile copy thereof. The department may require submittal of the original power of attorney.

(b) The appointment has not expired.

(c) The powers delegated under the power of attorney include authority to make the transaction under consideration.

(d) If requested by the department, the agent acting under the power of attorney executes an affidavit stating that he or she does not have knowledge of the termination of the appointment, or of the person's death, disability, incapacity, or incompetency.

(e) The agent acting under the power of attorney provides evidence satisfactory to the department that the person has become disabled or incapacitated, or has been adjudged incompetent. This paragraph applies only if the power of attorney is conditioned on the disability, incapacity, or incompetence of the person.

(3) For all transactions related to the deferred compensation program defined in s. ETF 70.02 (14) for which the administrator defined in s. ETF 70.02 (2) requires a person's signature, the administrator shall accept the signature of the person's agent acting under power of attorney in lieu of the person's signature provided that all of the following conditions are satisfied:

(a) The power of attorney is on a form approved by the administrator for use in the deferred compensation program or is on a form specified in sub. (1) (a) or (b);

(b) The administrator received the original power of attorney, which is signed by the person granting the power of attorney, dated, and notarized.

(c) The conditions specified in sub. (2) (b) to (e) are satisfied.

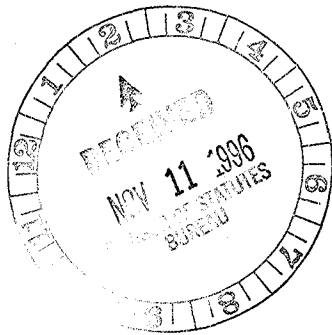
NOTE: A limited power of attorney form for use in the deferred compensation program is available at no charge from the program administrator at Wisconsin Deferred Compensation Program, Suite 209, 16 North Carroll Street, Madison WI 53703.

(4) The department may decline to act upon the request of an agent acting under an alleged power of attorney if there is reason to believe that the purported agent is not the appointed person, the appointment is not in effect, the authority of the power of attorney does not extend to the particular transaction or the power of attorney is otherwise defective.

(END OF RULE TEXT)

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.), Wis. Stats.

Signed at Madison, Wisconsin this 24th
day of September, 1996.



Eric O. Stanchfield
Eric O. Stanchfield
Secretary
Wisconsin Department of Employee Trust
Funds

WISCONSIN LEGISLATIVE COUNCIL STAFF



RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

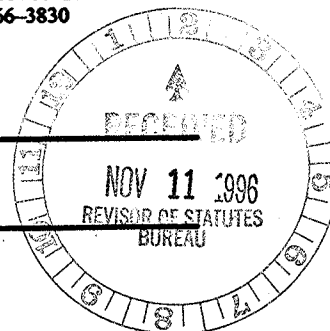


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CLEARINGHOUSE REPORT TO AGENCY



[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 96-125

AN ORDER to repeal and recreate ETF 10.75, relating to signatures on Wisconsin retirement system documents by an agent holding the person's power of attorney.

Submitted by **DEPARTMENT OF EMPLOYE TRUST FUNDS**

08-01-96 RECEIVED BY LEGISLATIVE COUNCIL.
08-22-96 REPORT SENT TO AGENCY.

RS:RJC:jt:kjf

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 STAFF

RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 96-125

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

- a. In the analysis, the method of statutory citation should be reviewed and corrected.
- b. The period after the "5" in the title of s. ETF 10.75 should be deleted and a period added after the word "ATTORNEY."
- c. Because s. ETF 10.75 (1) is effectively a definition, the defined term, "power of attorney," should be set off in quotation marks.
- d. In s. ETF 10.75 (2) (a), the phrase "at its discretion" is unnecessary and should be deleted.

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

- a. For purposes of clarity, in s. ETF 10.75 (1), the phrase "all of the following:" should be inserted after the word "includes." Then the different types of powers of attorney could be listed in separate, lettered paragraphs after the colon. Also, the phrases "or the uniform durable power of attorney act" and "or the uniform statutory power of attorney act" are unnecessary and should be deleted.
- b. The rule refers to the person making a power of attorney differently. The rule refers to such a person as "the person," "the principal" and "the participant." A uniform term should

be used throughout the rule, and possibly defined at the beginning of the rule, to eliminate any possible confusion.

c. In s. ETF 10.75 (2) (intro.), the phrase "a signature" should be replaced by the phrase "the signature of the participant/person/principal." [See comment b, above.]

d. In s. ETF 10.75 (2) (a), to what does the term "letter of appointment" refer? It appears that the term is not used in s. 243.07 or 243.10, Stats., relating to powers of attorney. Perhaps the rule could simply refer to an original or photocopy of the power of attorney. Similarly, the word "appointment" in par. (b) could be replaced by the term "power of attorney." Finally, for clarity, the phrase "by the power of attorney" could be inserted after the word "delegated" in par. (c).

e. In s. ETF 10.75 (3), the phrase "there is" should be replaced by the phrase "the department has."

Part 4

Report Required by s. 227.19 (3), Wis. Stats.

(a) Need for the Rule.

The Department of Employee Trust Funds must have a reasonable and reliable policy defining acceptable signatures for benefit applications or other important WRS-related transactions. The existing rule, s. ETF 10.75, Wis. Admin. Code, is more restrictive than the uniform statutory power of attorney act and has been superseded by it. Therefore modification of the rule is necessary.

(b) Modifications to the Rule.

In the final draft, sub. (3) is a new addition making special provisions for use of power of attorney in the Deferred Compensation Program. Other minor changes in wording have been made for clarity.

(c) List of Persons Who Appeared or Registered For or Against the Proposed Rule at a Public Hearing.

One member of the public attended the public hearing but did not appear or register for or against the proposed rule.

(d) Response to Legislative Council Staff Recommendations.

Recommendation 5.a. advised deletion of the phrases "or the uniform durable power of attorney act" and "or the uniform statutory power of attorney act." These phrases were clarified rather than deleted. All other recommendations of the Legislative Council Staff have been implemented.

(e) Final regulatory flexibility analysis. The proposed rule itself does not directly affect small businesses.

(END OF FINAL DRAFT REPORT)



STATE OF WISCONSIN

Department of Employee Trust Funds

Eric Stanchfield
Secretary
201 East Washington Avenue
P. O. Box 7931
Madison, Wisconsin 53707

November 11, 1996

In Reply Refer To:

GARY L. POULSON, DEPUTY REVISOR
REVISOR OF STATUTES BUREAU
8TH FLOOR
131 W WILSON ST
MADISON, WISCONSIN 53707

Dear Mr. Poulson:

RE: Clearinghouse Rule No. 96-125

Enclosed is a Certificate and two copies of an Order creating and adopting rules. A certified copy of this Order has been forwarded to the Secretary of State.

I request that the rule be published in the December 31 issue of the administrative register.

I also enclose a copy of the rule on disk, in Wordperfect 5.1 format.

Please contact me if you have any questions.

Sincerely,

David Stella, Administrator
Division of Retirement Services
(608) 267-9038
FAX # (608) 267-0633
TDD # (608) 267-0676

