

Scope of Proposed Rule ***Employee Trust Funds***

The Department of Employee Trust Funds gives notice pursuant to s. 227.135, Stats., that it proposes to create a new administrative rule, specifically Wis. Admin. Code § ETF 20.39.

SUBJECT

The proposed rule concerns some effects of a waiver, or partial waiver, of Wisconsin Retirement System benefits under s. 40.08 (3) and the waiver of death benefits by a beneficiary under s. 40.74 (2). The rule also codifies interpretations related to determining the beneficiary entitled to receive payment of Wisconsin Retirement System death benefits.

POLICY ANALYSIS

The proposed rule will establish, codify or clarify with respect to annuity benefits from the Wisconsin Retirement System that:

- The annuity effective date for an annuity affected by a waiver remains the effective date determined from the date the application was received, not the effective date of the waiver. This will permit benefits to be effective at the earliest possible date and establish a date necessary for calculating annuity benefits.
- Similarly, the annuity effective date for calculating the present value of an annuity for a lump sum payment under Wis. Stat. § 40.25 (1), when the participant's eligibility depends on a waiver of benefits, remains the effective date determined from the date the application was received, not the effective date of the waiver.
- A person may waive a portion of a WRS annuity benefit in order to qualify for a lump sum payment under Wis. Stat. § 40.25 (1). This codifies a policy adopted in 1998, reversing an earlier interpretation that a person could not use a partial waiver of benefits to qualify for a lump sum payment.

With respect to death benefits payable from the Wisconsin Retirement System, the rule will establish, codify or clarify that:

- Wis. Stat. § 40.08 (3) and 40.74 (1) will be read together to permit a beneficiary of a WRS death benefit to waive part of a death benefit. This codifies current Department policy and practice. Codification of this liberal

interpretation of the waiver statutes will help prevent confusion for persons considering waiver in the future. In past years, the Department had allowed waiver only if the entire death benefit was waived.

- Waivers may be filed by potential beneficiaries for the purpose of extinguishing any possible claim the person might have. This will permit a person to file a waiver even before the Department has determined that the person qualifies as a beneficiary. By statute, waivers are not effective until the first day of the second month after receipt. Consequently, there is a 29 to 62 day delay before a waiver received by the Department becomes effective and irrevocable. If waivers by secondary and successive beneficiaries could only be accepted after waivers by primary beneficiaries had become effective, the result would be a series of delays. The rule will facilitate and expedite the ultimate purpose and effect of the waivers.

To illustrate this last objective, consider the example of a WRS participant who filed a beneficiary designation 40 years ago naming her mother as primary beneficiary and a brother as her secondary beneficiary, in the event the mother predeceases the participant. The participant married, but never filed a beneficiary designation naming the spouse as her beneficiary. She dies and is survived by the mother, brother and her spouse. The spouse can only become her beneficiary if there are no surviving designated beneficiaries, or if the mother and brother both waive the death benefit. The mother and brother are willing to waive. Under the proposed rule, DETF could accept waivers from the brother and mother in any order. The brother's waiver could be filed and become effective, extinguishing the brother's potential beneficiary interest, even before a waiver from the mother was received.

Finally, with respect to clarifying who may become a beneficiary, the proposed rule will establish and clarify that:

- A person who waives a WRS benefit payable because of the death of another person will be treated as if that person waiving had failed to survive the decedent. If a potential beneficiary files a beneficiary designation applicable to a death benefit payable to that person, then waives the benefits, the beneficiary designation is void and does not control the payment of any benefit.
- A person who intentionally kills the decedent may not receive any benefit payment resulting from the death.

STATUTORY AUTHORITY

Sections 40.03 (2) (i), 227.11 (2) (a), Stats.

ESTIMATE OF AGENCY STAFF TIME TO DEVELOP RULE:

The Department estimates that state employees will spend 20 hours to develop this rule.

ENTITIES LIKELY TO BE AFFECTED BY THE PROPOSED RULE

The proposed rule affects participants in the Wisconsin Retirement System and their beneficiaries or potential beneficiaries.

SUMMARY OF AND COMPARISON TO FEDERAL REGULATIONS

No existing or proposed federal regulations directly address the waiver provisions applicable to the Wisconsin Retirement System. The federal tax code indirectly affects the proposed rule's treatment of beneficiaries who waive death benefits. If a beneficiary could waive receipt of benefits, but still control to whom the benefits would be paid, the IRS would treat this as constructive receipt with tax consequences and requiring Departmental reporting and tax withholding. The proposed rule is therefore intended to prevent constructive receipt.

I have reviewed this Statement of Scope and approve it for publication in the Administrative Register this 28th day of February, 2005.

Eric O. Stanchfield, Secretary
Department of Employee Trust Funds