



**STATE OF WISCONSIN**  
**Department of Employee Trust Funds**  
 Eric O. Stanchfield  
 SECRETARY

801 W Badger Road  
 PO Box 7931  
 Madison WI 53707-7931  
 1-877-533-5020 (toll free)  
 Fax (608) 267-4549  
 TTY (608) 267-0676  
<http://etf.wi.gov>

**CORRESPONDENCE MEMORANDUM**

**DATE:** June 5, 2006

**TO:** Members of the Employee Trust Funds Board, Teachers Retirement Board and Wisconsin Retirement Board

**FROM:** Robert Weber, DETF Chief Counsel

**SUBJECT:** Administrative Rule-making Status Report

The table below shows all rules for which Legal Services assistance has been requested and illustrates which key steps in the rule-making process have been completed. Following the table is a paragraph summarizing each rule proposal and its current status.

Rule	1	2	3	4	5	6	7	8	9	Status notes
Valuing Sep Ret Sys investments	✓	✓	✓	✓	✓	✓	✓			Final draft approved
Physician disability certifications	-	-								Project cancelled
Purchase of service credits	✓	✓								Drafting rule & analysis
Death & late reported termination	✓	✓								Drafting rule & analysis
Waiver effect on benefit date	✓	✓								Drafting rule & analysis
"Dependent" defined (health ins)										Drafting scope statement
Hearsay evidence rule	✓	✓								Drafting rule & analysis
TR Board elections rule										Drafting scope statement
Disability annuity w/o termination	✓	✓								Drafting rule & analysis

The 9 key steps in the process illustrated by this progress chart are:

1. Scope statement published
2. Scope statement approved
3. Proposed rule submitted to Legislative Council Staff
4. Clearinghouse Report received
5. Public hearing held
6. Final draft approved
7. Final draft report submitted to Legislature
8. Final Rule order officially filed with Revisor & Secretary of State
9. Rule now in effect

Board	Mtg Date	Item #
Jl	06/22/06	8

## **Summaries of Pending Rules**

### **Valuing Separate Retirement System Investments — ETF ID R#04-003; Clearinghouse Rule number CR05-114.**

If the ETF Board allows assets from separate retirement systems to be invested into the Core (Fixed) or Variable Retirement Investment Trust, then the DETF Secretary has authority to promulgate rules governing the times and amounts that may be sent, delivered or withdrawn, the valuation of such funds and the distribution of investment income. At present, only the Milwaukee Public Schools have put assets of their retirement system into the Core (Fixed) or Variable Retirement Investment Trusts. The rule largely replaced the previous § ETF 10.12 by codifying some of the current valuation practices and clarifying others in order to value assets and distribute investments in accord with good industry practices. The final draft of the proposed rule was approved by the ETF Board on March 31, 2006. Legislative committee approval is now necessary.

### **Physician Disability Certifications — ETF ID R#04-004.**

This rule was originally intended to codify and clarify the administrative policies and procedures associated with medical certifications needed in connection with applications for disability annuity or long-term disability insurance benefits. The project was cancelled April 7, 2006 at the request of the Disability Programs Bureau.

### **Purchase of Service Credits — ETF ID R#04-005; Clearinghouse Rule number not yet assigned.**

This rule will correct obsolete provisions and cross-references in the existing §§ ETF 20.14, 20.15, 20.16 and 20.18. It will also provide interpretations and clarifications necessary to the administration of the purchase of creditable service provisions, which were all reorganized into Wis. Stat. § 40.285 by 2003 Wis. Act 33. The service purchase statutes were also revised to take advantage of changes in federal tax laws by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), especially concerning the transfer of funds between different types of retirement plans in order to buy permissive service credits. The proposed rule and analysis are being drafted.

### **Death & Late Reported Termination — ETF ID R#04-006; Clearinghouse Rule number not yet assigned.**

This rule will codify a new, and more logical, interpretation of Wis. Stat. § 40.71 (1) (b) concerning the death benefit payable upon the death of a non-annuitant. Under the new interpretation, a person whose employment terminates prior to death will be treated as an inactive employee for purposes of calculating the death benefit payable. This will be true even if the employer delays reporting the termination to DETF. The proposed rule and analysis is being drafted.

**Waiver Effect on Benefit Date — ETF ID R#04-007; Clearinghouse Rule number not yet assigned.**

This rule will interpret the effects of a waiver under Wis. Stat. § 40.08 (3) on the effective date of benefits associated with the waiver. The goal will be to allow benefits to be effective as early as possible without adverse effects caused by the inherent delay built into a waiver. A waiver cannot become effective earlier than the first day of the second month after receipt at DETF. Some benefits, such as sick leave conversion and retiree health insurance, may be dependent on having an annuity effective within 30 days of termination. The proposed rule and analysis are being drafted.

**Dependent Definition for Health Insurance — ETF ID#05-001; Clearinghouse Rule number not yet assigned.**

This rule will update the definition of “dependent” for health insurance purposes to better conform the rule to the language used in the contract and eliminate references to the “former spouse” which have caused confusion. A scope statement is being drafted.

**Hearsay Evidence Rule — ETF ID#05-002; Clearinghouse Rule number not yet assigned.**

The proposed rule removes the current prohibition in § ETF 11.12 (2) (b) that, “[n]o finding of fact may be based upon hearsay.” The proposed rule adds to the responsibilities of the legal advisor during the Board’s quasi-judicial deliberations on an administrative appeal before the Board. The counsel to the Board will have an express duty to advise the Board concerning any hearsay evidence in the record and whether the Board may rely upon that evidence to make factual findings. The purpose of this rule is to allow the Boards hearing appeals of determination made by the Department of Employee Trust Funds to take advantage of any discretion regarding their reliance upon hearsay evidence that may be allowed to administrative tribunals under the Supreme Court decision in Gehin v. Wisconsin Group Insurance Board, 278 Wis.2d 111, 692 N.W.2d 572 (2005), or future court decisions interpreting or expanding upon that precedent. The scope statement was published in December 31, 2005, *Administrative Register*.

**Teacher Retirement Board Elections Rule — ETF ID#05-003; Clearinghouse Rule number not yet assigned.**

The purpose of this rule is to supplement the existing rules for Teacher Retirement Board elections. These are found in Wis. ADMIN. CODE § ETF 10.10. If an elected seat on the Board becomes vacant during the term of office, a special election must be held, at the discretion of the DETF Secretary, to fill the seat for the remaining, unexpired term of office. The rule will provide a method for combining the special election with the next regular election to any seat on the Board. In addition, the rule will resolve several questions arising from the possibility of having too few candidates running for the number of available seats.

The rule will also provide that if a term of office ends and there is no candidate for the seat in the regularly scheduled election process, then a special election will be held to fill the seat. A scope statement is being drafted.

**Disability Annuity Without Termination Rule — ETF ID#06-001; Clearinghouse Rule number not yet assigned.**

The purpose of this rule is to change the current DETF interpretation of the eligibility criteria for a disability annuity. At present, DETF interprets the applicable statutes to allow a disabled employee who is on a leave of absence and not expected to return to service to apply for a disability annuity. However, actual termination of employment is necessary before disability annuity payments may commence. The rulemaking is prompted by requests that disabled employees be allowed to remain on leave of absence and continue to receive benefits provided by the employer, such as health insurance, while simultaneously receiving monthly disability annuity payments from the WRS. This rule will also address whether future disability annuitants will be deemed to have terminated employment with regard to other fringe benefits under ch. 40. The scope statement was published on March 31, 2006.