



STATE OF WISCONSIN
Department of Employee Trust Funds
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 SECRETARY

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Correspondence Memorandum

Date: September 30, 2019

To: Deferred Compensation Board

From: Dan Hayes, Attorney
 Office of Legal Services

Shelly Schueller, Director
 Wisconsin Deferred Compensation Program

Subject: Proposed Administrative Rule Changes: CR 19-126

ETF recommends the Deferred Compensation Board (Board) approve the final version of this proposed rule.

The Department of Employee Trust Funds (ETF) proposes updating provisions in the Wisconsin Administrative Code that affect the Wisconsin Deferred Compensation Program (WDC). As part of a larger rule that makes technical changes throughout the code, ETF is proposing two changes to Chapter ETF 70. Board approval of the final version of the proposed rule is the next step in the administrative rule promulgation process. The Employee Trust Funds Board and the Retirement Boards will vote on whether to approve the proposed rule at their December 12, 2019 meetings.

The two changes affecting the WDC are as follows:

- Amend Wis. Admin. Code § ETF 70.03 (4). This subsection currently requires the Board to annually evaluate the performance of the program administrator, currently Empower Retirement, to determine compliance with its contract with the Board and established performance standards. ETF proposes updating the administrative code to reflect that such evaluations are completed every two years, rather than annually. For the past fifteen years, the contract compliance audit has been completed in odd-numbered years. This every-other-year approach has worked well and means that any significant findings can be addressed and resolved prior to the start of a new audit cycle.
- Amend Wis. Admin. Code § ETF 70.08 (3). This subsection currently provides for a two-step process over a 12-month period for participants to move their

Reviewed and approved by David Nispel, General Counsel, Legal Services

David H. Nispel Electronically Signed 10/7/19

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investment to another investment product if the Board decides to remove an investment product from the plan. This process is significantly longer than standard practice in other plans and limits the Board's flexibility to make plan changes. ETF proposes modifying this process to provide a 90-day period for participants to move their investment or have it moved for them to a board-designated alternative investment product.

The 90-day period will operate in the same manner as the current 12-month period, except that instead of two six-month phases, it will consist of two 45-day phases. During Phase 1, current members newly enrolling in the WDC are informed that the terminating investment product does not meet board's evaluation criteria and is not open to new enrollments. In addition, members already deferring to the terminating product are informed that they need to redirect future deferrals by the end of Phase 1, or their deferrals will be redirected. During Phase 2, members must transfer existing balances from the terminating product to another product or their account balance will be moved at the end of the second 45-day period.

If approved by all the boards, the rule will be submitted to the Governor's office and then to the State Legislature for consideration. Prior to this date, ETF has taken the following action:

- Scope statement approved by the Governor (January 30, 2019)
- Scope statement published in the Wisconsin Administrative Register (February 11, 2019)
- Scope statement approved by ETF Secretary Robert Conlin (March 22, 2019)
- Submitted the proposed rule and a report to the Legislative Council Administrative Rules Clearinghouse (September 23, 2019)
- Submitted the proposed rule to the Department of Administration and Legislative Reference Bureau along with a notice of the scheduled public hearing (September 23, 2019)
- Published the proposed rule and notice of hearing in the Wisconsin Administrative Register (September 30, 2019)
- Public hearing scheduled for October 24, 2019

The Proposed Draft Rule is attached to this memorandum. The provisions you will be asked to approve are found in Sections 29 and 30. The Final Draft Report of the proposed rule will be provided to the board after ETF receives the Legislative Council Report to Agency and prior to the October 31, 2019 board meeting.

Staff will be available at the Board meeting to answer any questions.

**State of Wisconsin
Department of Employee Trust Funds
Employee Trust Funds Board
Wisconsin Retirement Board
Teachers Retirement Board
Wisconsin Deferred Compensation Board**

The scope statement for this rule, SS 018-19, was approved by the Governor on January 30, 2019, published in Register No. 758A2, on February 11, 2019, and approved by ETF Secretary Robert Conlin on March 22, 2019.

The Wisconsin department of employee trust funds proposes an order to repeal ETF 10.08 (2) (c) 2., 10.82 (2) (f) 1. c., 2. and (Note), 11.06 (3) and (Note), 20.02 (2) (c), 20.10 (2) (b), and 20.19 (6) (b) and (Note); to renumber and amend ETF 20.19 (6) (a); to amend ETF 10.01 (1k) and (1L), (2) (a), (b) (intro.), (3m) and (8), 10.08 (2) (c) (intro.) and (d), 10.82 (2) (f) 1. b., 11.03 (1) (b), 11.04 (6) (b) and (8), 11.06 (4) (a) and (b), 11.08 (2) (b) 3., 11.09 (5), 11.12 (1) (d) 3. and (7), 11.13 (1) (intro) and (3), 11.14 (4) (a), 11.16 (2) (intro.), 20.04 (4), 20.07 (5) (Note), 20.10 (2) (b) and (5) (Note), 20.17 (1) (b) 2. and (d) 4. and (4) (b) 3. b. and (e) 5. b., 60.60 (8) (d), and 70.03 (4), 70.08 (3) (intro.), (a) (intro.) and 2., and (b) (intro.) and 1.; to repeal and recreate ETF 20.35; and to create ETF 10.01 (2g), relating to technical changes to update ETF rules.

Analysis Prepared by the Department of Employee Trust Funds

1. Statutes interpreted:
Sections 40.02 (21d), 40.08, 40.22, 40.23, 40.25, 40.26, 40.80, Stats.
2. Statutory authority:
Sections 40.03 (2) (i), 40.03 (2) (ir) and 227.11 (2) (a), Stats.
3. Explanation of agency authority:
By statute, the ETF Secretary is expressly authorized, with approval by the Employee Trust Funds Board, Teachers Retirement Board, Wisconsin Retirement Board, and Deferred Compensation Board to promulgate rules that are required for the efficient administration of the fund or of any of the benefit plans established by 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 rule.

5. Plain language analysis:
The purpose of this rule is to make technical updates to ETF rules by removing obsolete language, adjusting language to account for changes in Wisconsin law, and correcting references to repealed or renumbered statutes. This consists of changes to ETF 10, 20, and 60 to account for the changes in Wisconsin law regarding the availability of Domestic Partnerships. Additionally, changes to ETF 10 and 20 address recent changes to Wisconsin law regarding break in service and service purchases, Wisconsin circuit courts' e-filing initiative, and Qualified Domestic Relations Orders (QDROs) more than 20 years old. The section on QDROs is recreated for better organization. Amendments to ETF 11 seek to bring the code up to date with current ETF practices. Finally, this rule proposes changes to ETF 11 and 20 to correct links that currently link to renumbered or repealed statutes and references to repealed, amended, or renumbered statutes.
6. Summary of, and comparison with, existing or proposed federal statutes and regulations:
There are no existing or proposed federal regulations that directly pertain to this proposed rule.
7. Comparison with rules in adjacent states:
As the changes proposed are technical updates to correct obsolete language and make ETF rules consistent with recent changes in Wisconsin law, there is no directly applicable comparison to adjacent states. Periodically, similar agencies in adjacent states promulgate technical rules to update existing administrative rules.
8. Summary of factual data and analytical methodologies:
Due to changes in Wisconsin law, the ETF rules contain obsolete regulatory provisions, terms, and cross-references. The proposed technical changes would allow ETF rules to be consistent with recent changes in Wisconsin law, rather than continuing with outdated language in the code. Additionally, correction of obsolete terms and incorrect links will make the ETF rules more accurate and prevent confusion by those subject to the rules.
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.
11. 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.

12. Fiscal Estimate
Please see the attached fiscal estimate.
13. Agency contact person (including e-mail and telephone):
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. E-mail: david.nispel@etf.wi.gov. Telephone: (608) 264-6936.
14. Place where comments are to be submitted and deadline for submissions:
Written comments on the proposed rule may be submitted to David Nispel, General Counsel, Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707. Written comments must be received at the Department of Employee Trust Funds no later than 4:30 p.m. on October 24, 2019.
15. Proposed 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.
16. Free Copies of Proposed Rule:
Copies of the proposed rule are available without cost by contacting the General Counsel, Department of Employee Trust Funds, P. O. Box 7931, Madison, WI 53707-7931. You can also obtain a copy by calling (608) 264-6936 or by emailing david.nispel@etf.wi.gov.

Text of Proposed Rule

SECTION 1. 10.01 (1k), (1L), (2) (a) and (b) (intro.) are amended to read:

ETF 10.01 (1k) "Benefit approval date" is the date on which an application for a separation benefit, lump sum retirement benefit, or the payment of additional contributions, death benefit, or remaining guaranteed annuity payments in a lump sum, is finally approved vouchered for payment by the department. ~~The date of final approval is the date recorded by the department in the voucher box on the "Single Sum Benefit Data," form ET-7102, or the electronic equivalent, associated with the benefit payment in question.~~

(1L) In this section, "child" includes a natural child, stepchild, ~~child of the insured domestic partner,~~ adopted child, child in an adoptive placement under s. 48.837 (1), Stats., and legal ward who became a permanent legal ward of the employee or the employee's spouse or domestic partner prior to age 19.

(2) (a) For life insurance purposes, an eligible employee's spouse ~~or domestic partner~~ and an employee's child, including natural child, stepchild, ~~child of the domestic partner,~~ adopted child, and a child in an adoptive placement under s. 48.837 (1), Stats., who is under the age of 26 or who is age 19 or older and incapable of self-support

because of a physical or mental disability which is expected to be of long-continued or indefinite duration.

(b) (intro.) For health insurance purposes, an eligible employee's spouse, ~~an eligible employee's domestic partner if the eligible employee has elected coverage for the domestic partner as provided by the health insurance contract,~~ and an eligible employee's unmarried child who is dependent upon the employee or the other parent for at least 50% of support and maintenance. This support and maintenance requirement does not apply to eligible adult children as described in s. 632.885, Stats. A dependent includes an eligible employee's grandchild as provided in s. 632.895 (5m), Stats. It also includes the eligible employee's unmarried dependent child, regardless of age, when he or she is:

SECTION 2. ETF 10.01 (2g) is created to read:

ETF 10.01 (2g) "Domestic relations order" or "DRO" means a court order to divide a participant's Wisconsin retirement system account or annuity which has not been determined by the department to satisfy all the criteria of s. 40.02 (48m), Stats., and s. ETF 20.35.

SECTION 3. ETF 10.01 (3m) and (8) are amended to read:

(3m) "Medical record" includes medical evaluation, diagnosis, prognosis, rehabilitation potential, medication, treatment, diet, limitations on activities, symptoms, general physical or mental condition, x-rays, lab tests or results, or any communication or information related to the health, medical, surgical, dental, optometric, chiropractic, podiatric or hospital care or condition of a participant or the spouse, ~~domestic partner~~ or dependent of the participant.

(8) ~~"Valid qualified~~ Qualified domestic relations order" or ~~"valid~~ QDRO" means a court order to divide a participant's Wisconsin retirement system account or annuity which is determined by the department to satisfy all the criteria of s. 40.02 (48m), Stats., and s. ETF 20.35.

SECTION 4. ETF 10.08 (2) (c) (intro.) is amended to read:

ETF 10.08 (2) (c) (intro.) *Rehired annuitants.* In order to receive a benefit under s. 40.23 or 40.25, Stats., a person terminated from participating employment ~~on or after July 1, 1996,~~ shall remain terminated from all employment meeting the qualifications for inclusion under s. 40.22, Stats., throughout a period beginning with the date of termination from all participating employment and ending on the latest of the following dates:

SECTION 5. ETF 10.08 (2) (c) 2. is repealed.

SECTION 6. ETF 10.08 (2) (d) is amended to read:

ETF 10.08 (2) (d) Terminated annuities. For purposes of determining whether employment meets the qualifications under s. 40.22, Stats., the exclusion of s. 40.22 (2) (L), Stats., does not apply unless the person has met all qualifications for entitlement to an annuity, including termination from participating employment for the period specified in par. (c) 1., ~~2.~~, and 3. Payment of an annuity or other benefits in error does not qualify a person as an annuitant for purposes of s. 40.22 92) (L), Stats.

SECTION 7. ETF 10.82 (2) (f) 1. b. is amended to read:

ETF 10.82 (2) (f) 1. b. The document is a record, or is offered to the department as necessary evidence, of ~~adoption, divorce, other matters of family law,~~ the execution of a will or the creation of a testamentary trust.

SECTION 8. ETF 10.82 (2) (f) 1. c., 2. and (Note) are repealed.

SECTION 9. ETF 11.03 (1) (b) is amended to read:

ETF 11.03 (1) (b) Notwithstanding par. (a), an appeal seeking correction of an alleged error with respect to service credits or contribution, premium or benefit payments, based on a claim of fraud, is barred unless commenced within ~~6~~ 3 years from the date of the discovery by the aggrieved person of the facts constituting the fraud.

SECTION 10. ETF 11.04 (6) (b) and (8) are amended to read:

ETF 11.04 (6) (b) A party sending any communication or document to the hearing examiner by mail, e-mail, or facsimile shall also provide a copy to each party, including the department. This requirement does not pertain to the appeals coordinator ~~or other board staff~~ when submitting documents for the hearing examiner's signature for subsequent mailing to all parties.

(8) EXAMINER'S FILE. In the course of presiding over the appeal, the hearing examiner shall maintain the official record of the appeal, as well as filing correspondence to the examiner relating directly to the appeal but not part of the record. The hearing examiner may delegate some or all of this responsibility to ~~board staff~~ the appeals coordinator. After preparing the final or proposed decision, the hearing examiner shall forward the record and hearing examiner's file to the appeals coordinator for the department. The examiner's personal notes shall not be forwarded to the department and are not part of the official record. Disposition of the examiner's personal notes is at his or her discretion.

SECTION 11. ETF 11.06 (3) and (Note) are repealed.

SECTION 12. ETF 11.06 (4) (a) and (b) are amended to read:

ETF 11.06 (4) (a) A signature purporting to be that of a participant, annuitant, named survivor or beneficiary on a document previously accepted and filed by the

department is presumed to be that of the participant, annuitant, named survivor, or beneficiary absent clear and convincing proof to the contrary.

(b) A participant, annuitant, named survivor, beneficiary, insured or deferrer is presumed mentally competent at the time of making any application, election, designation or taking any other action affecting rights or benefits under ch. 40, Stats., accepted and acted upon by the department, whether affecting only the person or others. This presumption may be rebutted only by proof in the form of a certified copy of the judgment showing that, at the time of the event at issue, the person was adjudged incompetent with respect to management of his or her property.

SECTION 13. ETF 11.08 (2) (b) 3. is amended to read:

ETF 11.08 (2) (b) 3. The appeal concerns a request to correct an alleged error with respect to service credits or contribution, premium or benefit payments and the request was made more than 7 full calendar years after the date of the alleged error or beyond another applicable limitation specifically provided by statute. If the alleged error is the result of fraud the applicable limitation is instead 6 3 years from the date the aggrieved person discovered the facts constituting the fraud. Any portion of the appeal not time-barred may proceed.

SECTION 14. ETF 11.09 (5) is amended to read:

ETF 11.09 (5) AGENDA. Board staff shall place the appeal on the agenda for the regular board meeting next following the expiration of the time limit for filing objections. ~~Board staff~~ The appeals coordinator shall provide each board member with a copy of the record, including the proposed decision and the timely filed objections to the proposed decision. If board members would have less than 7 calendar days to review the record, proposed decision and timely objections, or the board's agenda is already full, the appeal may instead be added to the agenda of the subsequent regular board meeting. Nothing in this subsection shall prevent the board from electing to hear an appeal case at a special meeting of the board.

SECTION 15. ETF 11.12 (1) (d) 3. and (7) are amended to read:

ETF 11.12 (1) (d) 3. 'Overpayment refund.' If the final decision concludes that the appellant has overpaid the Wisconsin retirement system and a refund is due, the final decision shall include an order to the ~~board staff~~ appeals coordinator to compute the amount of the refund, as provided in this chapter. That computation shall be incorporated by reference into the final decision and order to the department to pay the refund.

(7) NOTICE. ~~Board staff~~ The appeals coordinator shall mail a copy of the final decision to each party or that party's attorney of record by first class mail. Each party, or that party's attorney of record shall also be mailed notice of the right to petition the board for a rehearing, the right to judicial review of an adverse decision, the time limits

for filing a petition for rehearing or judicial review and the name of the board to be named as respondent.

SECTION 16. ETF 11.13 (1) (intro.) and (3) are amended to read:

ETF 11.13 (1) (intro.) The hearing examiner and ~~board staff~~ appeals coordinator shall create a record of each appeal which shall include all of the following:

(3) The ~~board staff~~ appeals coordinator shall arrange for a stenographic, electronic or other record of the hearing proceedings to be made. A written transcript of the hearing shall be prepared upon request of a party, the hearing examiner, the board or the department. If a written transcript is prepared, the stenographic, electronic or other record need not be retained.

SECTION 17. ETF 11.14 (4) (a) is amended to read:

ETF 11.14 (4) (a) The ~~board staff~~ appeals coordinator shall immediately forward the petition for rehearing and the record to the hearing examiner, who shall consider and grant or deny the petition within 20 days.

SECTION 18. ETF 11.16 (2) (intro.) is amended to read:

ETF 11.16 (2) (intro.) COMPUTING REFUND OF OVERPAYMENT. If the final decision of an appeal determines that a participant overpaid the department and is entitled to a refund, the board shall direct ~~board staff~~ the appeals coordinator to calculate the refund due under s. 40.08 (6), Stats. No interest shall be paid upon a refund except as expressly authorized in ch. 40, Stats. A refund from a Wisconsin retirement system account shall not include interest but shall include investment earnings as provided in s. 40.08 (6), Stats. The ~~board staff's~~ appeals coordinator's calculation shall be appended to and become part of the board's final decision. ~~Board staff~~ The appeals coordinator shall do all of the following:

SECTION 19. ETF 20.02 (2) (c) is repealed.

SECTION 20. ETF 20.04 (4) is amended to read:

ETF 20.04 (4) A life annuity with a number of guaranteed payments equal to the number of full calendar months in the life expectancy of the annuitant as determined under ~~Table V of 26 CFR 1.72-9~~ the tables at 26 CFR 1.401 (a) (9) - 9 as in effect on the date when the annuity begins.

SECTION 21. ETF 20.07 (5) (Note) is amended to read:

ETF 20.07 (5) Note: Federal regulations require that a distribution from a qualified retirement plan begin no later than April 1 of the year following the year in which the participant turns age 70.5 or retires, whichever is later. ~~Under s. 40.23 (1) (c), Stats., an inactive participant who wishes to receive an annuity payment on April 1 must~~

~~elect a benefit effective date which is no later than March 1.~~ A form specifying a requested annuity effective date, form ET-4934, is available from the department of employee trust funds at no charge.

SECTION 22. ETF 20.10 (2) (b) is repealed.

SECTION 23. ETF 20.10 (2) (d) and (5) (Note) are amended to read:

ETF 20.10 (2) (d) Establishing a domestic partnership ~~or a same-sex marriage~~ in another state does not establish a domestic partnership for the purposes of the benefits authorized in ch. 40, Stats.

(5) Note: ~~The Affidavit of Domestic Partnership form, ET-2371, and the Affidavit of Termination of Domestic Partnership form, ET-2372,~~ can 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.

SECTION 24. ETF 20.17 (1) (b) 2. and (d) 4. and (4) (b) 3. b. and (e) 5. b. are amended to read:

ETF 20.17 (1) (b) 2. Except as provided in subd. 3. the application to purchase creditable service, on the form approved by the department, must be actually received at the department on or before the date the applicant ~~terminated~~ terminates all participating employment covered by the Wisconsin retirement system.

(d) 4. ~~Except as provided in s. ETF 50.50 (2) (b), buying~~ Buying creditable service does not establish creditable service in or for any particular annual earnings period or calendar year, or prior to any past date, or for purposes of measuring continuous years of creditable service.

(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 written statement in lieu of the employer's certification, or contact the employer directly. If the employer does not have the information necessary to make this certification, the department may accept the employee's affidavit written statement in lieu of the employer's certification.

(e) 5. b. Whether the participant has met the service requirements for disability benefits under s. 40.63 (1) (a) or (4), Stats., ~~or s. ETF 50.50 (2) (b).~~

SECTION 25. ETF 20.19 (6) (a) is renumbered ETF 20.19 (6) and amended to read:

ETF 20.19 (6) TREATMENT OF CREDITABLE SERVICE AFTER A RETIREMENT ANNUITY IS TERMINATED AND THE ACCOUNT REESTABLISHED. ~~Except as provided under par. (b), when~~ When a participant's account is reestablished under s. 40.26 (2), Stats., if the participant was not a participating employee after December 31, 1999 but before the effective date of the participant's retirement annuity that was terminated under s. 40.26 (1), Stats., the percentage rates under s. 40.23 (2m) (e), Stats., shall not apply to the creditable service considered to be performed before January 1, 2000 that was performed before the annuity effective date.

SECTION 26. ETF 20.19 (6) (b) and (Note) are repealed.

SECTION 27. ETF 20.35 is repealed and recreated to read:

ETF 20.35 Qualified domestic relations orders; division of WRS accounts and annuities

(1) SCOPE AND PURPOSE.

(a) This section applies to any order to divide any benefit of the Wisconsin retirement system which is received by the department.

(b) The purpose of this section is to specify how the department shall apply a QDRO to the participant's account or annuity or respond to an order which is not a QDRO.

(c) For purposes of ss. 40.02 (48m) and 40.08 (1m), Stats., and this section, a marriage is terminated upon entry of a judgment, decree or order of divorce, annulment or legal separation. A domestic partnership as defined in s. 40.02 (21d), Stats., is terminated as provided in s. ETF 20.10 (3). A domestic partnership, as defined in s. 770.01 (2), Stats., is terminated as provided in s. 770.12, Stats.

(d) The department must receive the DRO from either the participant or the alternate payee within 20 years after the marriage was terminated by a final judgment or decree, or the otherwise valid DRO shall have no effect on the participant's account or annuity.

Note: See s. ETF 10.82 concerning receipt by the department.

(2) ALL QDRO DIVISIONS. Upon receipt of a QDRO, the department shall divide WRS accounts and annuities in accordance with the percentage awarded to the alternate payee in the QDRO, based on the date on which the marriage was terminated by a court judgment, decree or order or the domestic relationship was terminated as provided in s. ETF 20.10 (3) or s. 770.12, Stats., as follows:

(a) *Percentages.* The percentage of the participant's account or annuity that is awarded to the alternate payee by a QDRO is limited to a percentage between zero percent (0%) and fifty percent (50%) expressed to no more than 2 decimal places. A QDRO with a percentage awarded to the alternate payee expressed to more than 2 decimal places may not be rejected for that reason alone, but the department shall round the percentage to 2 decimal places.

(b) *Debts of the participant.* Any debt, memorandum account or account receivable balance reflecting amounts owed by the participant to the department, the

fund or any benefit plan, accrued as of the decree date and still outstanding at the time the account or annuity is divided, shall be divided between the participant and alternate payee in the same proportion as the participant's account or annuity.

(3) DIVIDING ACCOUNT WHEN PARTICIPANT WAS NOT AN ANNUITANT ON DECREE DATE.

If the participant was not an annuitant on the decree date, the department shall divide the participant's account as provided in s. 40.08 (1m) (b) 1., (c), (d) and (f) 1., Stats., and as follows:

(a) Creditable service which the participant has been granted as of the decree date is a part of the Wisconsin retirement system account of a participant and shall be divided in the same ratio as other account balances. The creditable service and amounts awarded to the alternate payee shall be in a separate account in the fund for the benefit of the alternate payee. After the division under this section, the alternate payee may apply for a separation benefit under s. 40.25 (2), Stats., provided the application is received by the department prior to the date on which the participant would have met the minimum age requirement for a retirement annuity under s. 40.23, Stats., or after the date on which the participant has met the minimum age requirement but is not vested, and payment of a separation benefit would comply with all provisions of the internal revenue code. After the date the participant reaches or would have reached the minimum retirement age, and is vested, the alternate payee may only apply for retirement benefits under s. 40.23, 40.24, or 40.25 (1), Stats.

(b) The participant shall retain the remainder in his or her separate account under s. 40.40 (4) (a), Stats., unless the participant is an annuitant at the time of the division. If the participant is an annuitant when the division occurs, the participant's creditable service and account as of the decree date shall be reduced by the percentage awarded to the alternate payee. The balances shall then be brought forward to the effective date of the current annuity, including any contributions and service for periods after the decree date, and the annuity option chosen by the participant shall be recalculated. The amount by which the monthly annuity payments previously made to the participant exceed the participant's recalculated monthly entitlement for the same period shall be a balance due from the participant. This balance due shall be due from the participant and may be collected as provided in s. 40.08 (4), Stats., including by a reduction of the present value of the participant's annuity as reduced by the division, resulting in a recalculation and reduction of the participant's monthly annuity.

(c) *Purchased service credits.* Previously purchased service shall be divided in the same proportion as the other portions of the participant's account and creditable service. If an application to purchase creditable service is received prior to the decree date, as defined by s. 40.02 (18f), Stats., then service for which payment is made shall be included in the division. The department shall pay any refund due only to the participant and shall bill only the participant for any supplemental payment due for such purchased service. No refund shall be due to the participant from the department for the portion of any excess payment withdrawn from the public employee trust fund by the alternate payee. Credit for service purchased by an application received after the decree date shall not be divided by the qualified domestic relations order regardless of the source of the funds for the purchase or when the services were actually rendered.

(d) *Creditable military service.* If the participant has active military service, the alternate payee shall be granted the percentage specified in the QDRO of the military

service for which the participant would be eligible as of the decree date, based on the participant's total creditable service as of the decree date, regardless of when the participant requests the crediting or provides satisfactory documentation. If a participant does not provide to the department proof of active military service and the certification of active military service on the form prescribed by the department, the department shall nevertheless divide the participant's account without the military service provided the court order is otherwise a QDRO.

(e) Actuarial adjustment for early retirement.

1. The actuarial reduction applied to the participant's and alternate payee's annuities as provided in s. 40.23 (2m) (f) and (fm), Stats., shall be calculated based on the participant's and alternate payee's actual ages on his or her respective annuity effective dates, using the creditable service that would otherwise have been credited to the participant's account on the respective annuity effective dates if the participant's creditable service had not been reduced per a QDRO.

2. For the purposes of determining the amount of service used to calculate the alternate payee's actuarial reduction for early retirement under the provisions of s. 40.23 (2m) (fm), Stats., if the participant has part-time service in at least five of the ten annual earnings periods immediately preceding the annual earnings period in which the alternate payee's retirement benefit becomes effective or the date on which the participant terminated covered employment, whichever is earlier, the provisions of s. 40.23 (2m) (fm), Stats., shall apply. If the decree date is prior to July 1, 2009, the provisions of s. 40.23 (2m) (fm), Stats., in effect prior to that date shall apply.

(4) DIVIDING ACCOUNT WHEN PARTICIPANT WAS AN ANNUITANT ON DECREE DATE.

(a) Except as provided in par. (b), if the participant was an annuitant on the decree date, the department shall divide the present value of the annuity as provided in s. 40.08 (1m) (b) 2., (c), (d) and (f) 2., Stats., and sub. (3) (e), and as follows, and pay separate annuities to the participant and alternate payee, respectively. An annuity shall be divided so that the actuarial present value of the undivided annuity is equal to the aggregate actuarial present values of the 2 separate annuities resulting from the division as of the effective date of the division.

(b) If the participant's annuity is a joint and survivor annuity with the alternate payee as the named survivor, and the percentage awarded to the alternate payee in the QDRO is zero percent (0%), then the alternate payee may not receive any Wisconsin retirement system annuity based on the QDRO and the participant's annuity shall be recalculated as a straight life annuity payable to the participant, with no change in the remaining guarantee period, if any.

(c) Division of accelerated annuity option. If the participant selected an accelerated payment option as provided in s. 40.24 (1) (e), Stats., or s. ETF 20.04 (3), and the participant's temporary annuity is still in force as of the effective date of the annuity division, then the department shall calculate the present value of both the temporary and life annuities using the actuarial tables in effect on the effective date of the annuity division. The department shall then divide the total present value based on the percentages specified in the QDRO and calculate separate annuities for the participant and alternate payee as specified in s. 40.08 (1m) (f) 2., Stats. If the participant or alternate payee provides a projection of his or her social security benefits at age 62 from the social security administration, the department shall use that

projected social security amount to calculate the amount of the temporary annuity for that person. If no projection is supplied, then notwithstanding s. ETF 20.03 (2), the department shall assume that person's projected social security benefits at age 62 equals that person's prorated portion of the participant's temporary annuity amount as of the effective date of the annuity division, calculated based on the respective percentages of the annuity being awarded to the participant and alternate payee. If the reduced annuity payable for life to the alternate payee or participant is below the threshold specified by s. ETF 20.05 (1), then that person shall receive an annuity in the same optional form originally selected by the participant, except that the temporary annuity option provided in s. 40.24 (1) (e), Stats., or s. ETF 20.04 (3) is not available.

(d) Disability annuities. Upon division of a disability annuity calculated under the provisions of s. 40.63 (1) or (4), Stats., the alternate payee's annuity shall consist of a portion based on the participant's actual service and a portion based on the assumed service used to calculate the participant's disability annuity. The portion of the alternate payee's annuity based on the participant's assumed service and age shall cease upon the death of the alternate payee. Benefits payable upon the death of the alternate payee shall be based on the guaranteed portion of the alternate payee's annuity only. Once the participant's disability annuity has been divided, the termination or suspension of the participant's disability annuity or the death of the participant has no effect on the alternate payee's annuity. If the participant's disability annuity is subsequently terminated and the participant's account restored under the provisions of s. 40.63 (9) and (10), Stats., the contributions and service credited to the restored account shall be reduced by the same percentage awarded to the alternate payee by the QDRO.

(e) Rehired annuitant with suspended account. The suspended payments in the participant's memorandum account are converted into a monthly annuity as of the decree date. This monthly amount consists of the increase that is attributable to the suspended payments from the participant's original annuity. This increase is added to the monthly annuity as of the decree date, and the annuity division is based on this amount.

(5) REJECTION OF DRO.

(a) Rejection and notice. The department may not honor any order to divide Wisconsin retirement system benefits which it determines is not a QDRO as defined in s. 40.02 (48m), Stats. The department shall send written notice of its rejection of an order to the person submitting the order and to the participant and alternate payee if those persons' current names and addresses are stated in the order or are readily determinable from department records.

(b) Participant's account already closed. A QDRO or order to vacate received after the participant's account was closed by payment of a lump sum benefit on or after the decree date has no effect, regardless of whether the participant returned to participating employment after the decree date. If the participant's account to which the QDRO applies is subsequently restored under the provisions of s. 40.25 (5), Stats., because the benefit was paid in error, or under an agreement approved by the department where the full amount of the benefit paid plus monthly interest at the assumed rate has been paid to the department, the restored account shall be divided according to the QDRO.

(c) *Alternate payee's account already closed.* An order to vacate or an amended DRO received after the alternate payee's account was closed by payment of a lump sum benefit has no effect.

(d) *Participant or alternate payee deceased.* A QDRO received after the participant's or alternate payee's date of death has no effect on the participant's account or annuity.

(6) LIMITED GRACE PERIOD TO CORRECT SPECIFIED ERRORS.

(a) If the department rejects an order for the division of a participant's account and subsequently receives an otherwise acceptable application from the participant for a benefit which would close the participant's account due to payment of a lump sum benefit, the department shall delay payment of the lump sum benefit until 30 days after the date the order for division was rejected. This paragraph applies only if the basis for the rejection was one or more of the following:

1. The order did not meet all of the requirements in s. 40.02 (48m), Stats.
2. The order received by the department was not a certified copy or was not signed by the judge or a duly authorized family court commissioner.

(b) If the department has not received a second QDRO within 30 days after the rejection, then the department shall complete processing the application for benefits and sub. (5) (b) shall apply.

(7) EFFECT OF POST-DECREE DATE CORRECTIONS AND ADJUSTMENTS.

(a) *Service purchased after decree date.* Credit for service purchased by the participant after the decree date in a QDRO may not be affected by that QDRO.

(b) *Active military service.* If the department divided a participant's account per a QDRO without first receiving proof and certification of active military service, as provided in sub. (3) (d), and the participant subsequently provides documentation of active military service and the certification on the form prescribed by the department, the department shall divide the military service creditable based on services rendered prior to the decree date between the participant and alternate payee's accounts pursuant to the QDRO. Any resulting adjustments to the alternate payee's and participant's benefits shall be made retroactive to the respective benefit effective dates. The participant may not receive creditable military service for any active military service that would have been granted to the alternate payee had the participant submitted timely to the department the certification of active military service as provided in s. 40.02 (48m) (f), Stats.

(c) *Other corrections and adjustments directly affecting benefits.* The effect of any other corrections and adjustments to service, contributions, or interest earnings affecting the benefits the participant accrued as of the decree date, including corrections of administrative errors and corrections or adjustments of any factor affecting the calculation of an annuity to be divided, shall be divided between the participant and the alternate pursuant to the QDRO. The participant and alternate payee accounts or annuities shall be adjusted accordingly. However, the department shall not adjust benefit amounts if the amount of the adjustment would be less than the thresholds specified in s. 40.08 (7) (a), Stats.

(d) When a participant's annuity is divided as provided in sub. (4) and retroactive payments are due to an alternate payee, or when an alternate payee's annuity must be

increased retroactively for any reason, no interest as specified in s. 40.08 (7) (c), Stats., is payable to the alternate payee for any monthly payments payable prior to the month in which the department received the QDRO.

(8) COMPLIANCE WITH SECTION 415(B) OF THE INTERNAL REVENUE CODE.

(a) The aggregate benefits paid to the participant and alternate payee shall not exceed the benefit limits under Section 415(b) of the Internal Revenue Code. The department shall make any necessary adjustments to the participant's and alternate payee's benefits on an equitable pro rata basis to assure compliance with Section 415(b) of the Internal Revenue Code. Benefits derived from employee contributions that are actually paid by the employee shall not be subject to the benefit limitations under this subsection.

(b) If the participant's retirement annuity has been divided per a QDRO under s. 40.08 (1m) (b) 2., Stats., any subsequent adjustments necessary for compliance with Section 415(b) of the Internal Revenue Code that result from either post-retirement annuity adjustments under s. 40.27 (2) or 40.28 (2), Stats., or from increases in the compensation limits specified in Section 415(b) of the Internal Revenue Code, shall be prorated based on the percentage of the participant's account that was awarded to the alternate payee in the QDRO.

(c) If the participant's account is divided as provided in sub. (3), any benefit adjustments required under Section 415(b) of the Internal Revenue Code shall be applied as follows:

1. If the alternate payee's benefit becomes effective prior to the participant's benefit effective date:

a. If the aggregate benefits that would be payable to both the alternate payee and the participant on the alternate payee's benefit effective date do not exceed the maximum benefits that would be payable to the participant under Section 415(b) of the Internal Revenue Code if the account had not been divided, the alternate payee's benefit will not be reduced.

b. Any subsequent benefit adjustments necessary for compliance with Section 415(b) of the Internal Revenue Code will be applied solely to the participant's benefits and shall not affect the benefit amount payable to the alternate payee.

2. If the participant's benefit becomes effective prior to the alternate payee's benefit effective date, or the participant's and alternate payee's benefits become effective on the same date:

a. If the aggregate benefits that would be payable to both the participant and alternate payee on the participant's benefit effective date exceed the maximum benefits that would be payable to the participant under Section 415(b) of the Internal Revenue Code if the account had not been divided, the adjustment to participant's annuity shall be prorated based on the percentage of the participant's account that was not awarded to the alternate payee in the QDRO.

b. When a benefit is subsequently paid to the alternate payee, the portion of the total adjustment necessary for compliance with Section 415(b) of the Internal Revenue Code that is applied to the alternate payee's benefits shall be prorated based on the percentage of the participant's account awarded to the alternate payee in the QDRO.

3. If the participant's benefit effective date is on or after the alternate payee's benefit effective date as specified in subd. 2., and as a result of either post-retirement annuity adjustments under s. 40.27 (2) or 40.28 (2), Stats., or of increases in the compensation limits specified in Section 415(b) of the Internal Revenue Code, subsequent benefit adjustments are necessary for compliance with Section 415(b) of the Internal Revenue Code, such adjustments shall be prorated based on the percentage of the participant's account that was awarded to the alternate payee in the QDRO.

(d) For the purposes of determining the aggregate benefits payable to the participant and alternate payee under par. (b), the department shall:

1. First calculate the present value of what the participant's benefit would be as of the benefit effective date of the participant's or alternate payee's benefit effective date, whichever is earlier, as though the participant's account had never been divided by a QDRO.

2. If that total aggregate benefit amount is higher than the maximum benefits permitted under Section 415(b) of the Internal Revenue Code, the department shall reduce the aggregate benefits to the maximum amount payable under Section 415(b) of the Internal Revenue Code. The present value of that maximum benefit payable shall be divided between the participant and alternate payee in proportion to the percentage of the participant's account that was awarded to the alternate payee. The benefits payable to the participant and alternate payee shall then be adjusted as follows:

a. If the alternate payee has received a lump sum benefit under s. 40.25 (1) or (2), Stats., the gross amount of the alternate payee's lump sum payment shall be subtracted from the present value of the participant's maximum benefit payable under Section 415(b) of the Internal Revenue Code calculated under par. (d). The present value of the benefit paid to the participant shall not exceed the remainder of the present value of that maximum benefit payable under Section 415(b) of the Internal Revenue Code.

b. If the alternate payee has previously taken a monthly retirement annuity, the present value of the alternate payee's annuity as of the alternate payee's annuity effective date shall be subtracted from the present value of the participant's maximum benefit payable under Section 415(b) of the Internal Revenue Code. The present value of the benefit paid to the participant shall not exceed the remainder of the present value of that maximum benefit payable under Section 415(b) of the Internal Revenue Code.

c. If the participant's benefit becomes effective prior to the alternate payee's benefit effective date, the present value of the benefit paid to the participant shall not exceed the maximum aggregate benefit calculated under this paragraph minus the present value of the benefit payable to the alternate payee as of the participant's annuity effective date.

SECTION 28. ETF 60.60 (8) (d) is amended to read:

ETF 60.60 (8) (d) An insured surviving spouse, ~~domestic partner~~, or dependent child may not continue payment of premiums from the conversion account after the death of the insured but may elect, if otherwise eligible, to continue coverage as provided in s. ETF 40.01.

SECTION 29. ETF 70.03 (4) is amended to read:

ETF 70.03 (4) Evaluate the performance of the primary administrator, ~~annually~~ biennially, to determine contractual compliance and compliance with standards as established under sub. (3).

SECTION 30. ETF 70.08 (3) (intro.), (a) (intro.) and 2., and (b) (intro.) and 1. are amended to read:

ETF 70.08 (3) (intro.) 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 ~~12-month~~ 90-day period that shall commence on the first business day of the ~~sixth~~ third month following the board's decision, as follows:

(a) (intro.) Phase 1 of the investment product termination process shall last for ~~6 months~~ 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:

2. At the end of the ~~6-month~~ 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.

(b) (intro.) Phase 2 of the investment product termination process immediately follows the first ~~6-month~~ 45-day period and provides an additional ~~6-month~~ 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 ~~6-month~~ 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.

SECTION 31. 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.