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Correspondence Memorandum

Date: February 11, 2021

To: Deferred Compensation Board

From: Shelly Schueller, Director
Wisconsin Deferred Compensation Program

Dan Hayes, Attorney
Office of Legal Services

Subject: Plan and Trust Review: In-Service Distributions

The Department of Employee Trust Funds (ETF) recommends the Board revise the Plan and Trust to permit in-service distributions for participants aged 59½ or older. In the alternative, ETF recommends the Board restore the minimum age of 70½ for in-service distributions in the Plan and Trust to correct an administrative error.

As discussed at previous board meetings, the federal Setting Every Community Up for Retirement Enhancement Act (SECURE Act) and Bipartisan American Miners Act (Miners Act) of 2019 became law in December of 2019. Since then, the Internal Revenue Service (IRS) and the federal Treasury Department have issued guidance related to implementing various provisions and more guidance is expected.

On September 2, 2020, the IRS published Notice 2020-68 (Notice) in a question and answer format that provides guidance on certain provisions of the SECURE Act and Miners Act. One provision addressed relates to in-service distributions from § 457(b) plans such as the Wisconsin Deferred Compensation Program (WDC).

Section 104 of the Miners Act permits in-service distributions from § 457(b) plans at age 59½ instead of the current age of 70½. This rule is optional, beginning on or after January 1, 2020. As discussed at the November 2020 Board meeting (Ref. DC | 11.19.20 | 9), ETF believes federal guidance is sufficiently developed for the Board to consider such a change to the WDC Plan and Trust document.

Per the Board's November 2020 discussion and directions, this memo contains additional details on the pros and cons of permitting in-service distributions at age 59½,

Reviewed and approved by Matt Stohr, Administrator, Division of Retirement Services

Matt Stohr — Electronically Signed 2/22/21

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as well as proposed revisions to the Plan and Trust that would permit these in-service distributions.

Considerations re: In-Service Distributions at Age 59½	
Reasons to Allow (Pros)	**Reasons Not to Allow (Cons)**
• May be an attractive option to the approx. 5,000 participants who would be eligible to use it	• Early withdrawal may mean a smaller WDC account at the participants' actual retirement date
• May potentially reduce financial emergency withdrawal requests for participants aged 59½ or older	• May result in larger tax burden for participants using the feature
• Might be useful for participants transitioning to retirement by working fewer hours. A WDC distribution could supplement their reduced earnings	• May require additional staff training to help explain tax implications to participants using this feature
• Relatively easy to administer as distributions are not complex	
• Administrator's staff are already trained on distribution rules	

ETF recommends the Board revise the Plan and Trust to permit in-service distributions for participants aged 59½ or older. If this change is approved, ETF will work with the administrator to update the distribution form, announce this option for participants, etc. In the alternative, if the board decides to retain the current age of 70½, ETF recommends that the board restore the age of 70½ in the Plan and Trust to correct an administrative error. ETF will modify the Plan and Trust in accordance with the Board's action and obtain the signature of the Board Chair to make the change effective.

The language is found at section 10.01 of the Plan and Trust:

> **ARTICLE X: Benefits**
> 10.01. **Commencement of Distributions.** Except for Hardship Withdrawals under Section 10.03 and De Minimus withdrawals under Section 10.04, distributions from the PLAN may not be made to a PARTICIPANT earlier than (a) the calendar year in which the PARTICIPANT attains age ~~72~~ 59½ (or 70½); or (b) the calendar year in which there is a SEVERANCE FROM EMPLOYMENT by the PARTICIPANT. All irrevocable elections of a Benefit Commencement Date made by PARTICIPANTS or BENEFICIARIES prior to January 1, 2002 shall become revocable as of January 1, 2002. If a PARTICIPANT has an ELIGIBLE ROLLOVER ACCOUNT, the PARTICIPANT may at any time elect to receive a distribution of all or any portion of the amount held in the ELIGIBLE ROLLOVER ACCOUNT subject to any procedures established by the ADMINISTRATOR. Notwithstanding any other provisions of Article X of the PLAN, a PARTICIPANT

or BENEFICIARY who would have been required to receive a required minimum distribution for 2009 but for the enactment of section 401(a)(9)(H) of the Code (“2009 RMDs”), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (or life expectancy) of the PARTICIPANT’S designated BENEFICARY, or for a period of at least 10 years (“Extended 2009 RMDs”), will receive those distributions for 2009 unless the PARTICIPANT or BENEFICIARY chooses not to receive such distributions. PARTICIPANTS and BENEFICIARIES described in the preceding sentence will be given the opportunity to elect to stop receiving the distributions described in the preceding sentence. If the PARTICIPANT or BENEFICIARY has not elected to receive a 2009 RMD or Extended 2009 RMD then the PARTICIPANT or BENEFICIARY will not receive a 2009 or Extended 2009 RMD unless the PARTICIPANT elects to receive the distributions.

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