



STATE OF WISCONSIN
Department of Employee Trust Funds
 A. John Voelker
 SECRETARY

Wisconsin Department
 of Employee Trust Funds
 PO Box 7931
 Madison WI 53707-7931
 1-877-533-5020 (toll free)
 Fax 608-267-4549
 etf.wi.gov

Correspondence Memorandum

Date: August 15, 2023

To: Deferred Compensation Board

From: Shelly Schueller, Director
 Wisconsin Deferred Compensation Program

Dan Hayes, Attorney
 Office of Legal Services

Kyle Kundert, Policy Analyst
 Division of Retirement Services

Subject: Proposed Plan and Trust Revisions: Implementation of Certain SECURE 2.0 Provisions, Suggested Updates, and Technical Corrections

The Department of Employee Trust Funds (ETF) recommends the Board revise the Plan and Trust to implement certain SECURE 2.0 provisions, update the plan document, and make technical corrections.

As part of the Board’s fiduciary responsibilities, the Board maintains the Wisconsin Deferred Compensation Program (WDC) Plan and Trust. This document contains the terms and conditions of the plan, including eligibility, contributions, distributions, and other benefits. The WDC Plan and Trust also includes optional provisions such as unforeseeable emergency withdrawals. The Board is responsible for ensuring the Plan and Trust is in compliance with current federal laws and regulations.

The Board last made changes to the Plan and Trust in 2021, when it approved revisions to enact certain provisions of the 2019 SECURE Act. This memo outlines current changes ETF is recommending and illustrates how revised portions of the Plan and Trust would appear if ETF’s recommendations were approved. The subsections of this memo explain revisions suggested to: 1) implement certain SECURE 2.0 provisions, 2) update the plan document, and 3) make technical corrections.

The version of the Plan and Trust attached to this memo is a marked-up draft, with recommended text changes illustrated via ~~strike-through~~ for deletions and underlining for additions. If the Board approves the recommended revisions, a clean copy will be

Matt Stohr

Reviewed and approved by Matt Stohr, Administrator, Division of Retirement Services
 Electronically Signed 08/22/2023

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presented to the Board Chair for signature and then posted electronically in the Board's Governance Manual and on the WDC website.

A. Implementing Required Provisions of SECURE 2.0

To formally implement certain SECURE 2.0 provisions, the Plan and Trust must be updated. The Department of Employee Trust Funds (ETF) recommends the following:

1. Revise Article II on pages 6 and 7 to conform to SECURE 2.0 Section 306 to eliminate the "first of the month" requirement:

2.02 If allowed by the employer, the PARTICIPANT may elect to defer accumulated sick pay, accumulated vacation pay, and back pay amounts into the PLAN, provided that a PARTICIPATION AGREEMENT is entered into before the amounts would otherwise be paid or made available and the PARTICIPANT is an EMPLOYEE of EMPLOYER. In the case of accumulated sick pay, vacation pay, or back pay that is payable before the PARTICIPANT has a SEVERANCE FROM EMPLOYMENT, the requirements of the preceding sentence are deemed satisfied if the PARTICIPATION AGREEMENT is entered into before the amount is currently available (as defined in regulations under IRC Section 401(k)). "Accumulated sick pay" is not equivalent to "accumulated unused sick leave" as that term is used in s. 40.05(4)(b), WI Stats. Accumulated unused sick leave may not be deferred into the PLAN.

2.03 The EMPLOYER shall commence the salary reduction as soon as administratively practicable after the date on which the PARTICIPATION AGREEMENT is filed with the ADMINISTRATOR.

- a. The PARTICIPANT may revoke his election to participate and may amend the amount of DEFERRED COMPENSATION by filing with the ADMINISTRATOR a revocation or amendment according to the procedural manner established by the ADMINISTRATOR. In addition, the PARTICIPANT may amend his investment specification in the procedural manner established by the ADMINISTRATOR. Any amendment that increases the amount of DEFERRED COMPENSATION for any pay period shall be effective only if an agreement providing for such additional amount is entered into before which the pay period commences. Any revocation or amendment of the amount of DEFERRED COMPENSATION shall be effective prospectively only.

2. Revise Article 10.02 on pages 20 and 21 to reflect SECURE 2.0 changes to Required Minimum Distributions and surviving spouse options.

10.02 c. Death of PARTICIPANT Before Distributions Begin. If the PARTICIPANT dies before distributions begin, the PARTICIPANT'S entire interest will be distributed, or begin to be distributed, no later than as follows:

- (i) If the PARTICIPANT'S surviving spouse is the PARTICIPANT'S sole designated beneficiary, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the PARTICIPANT died, or, if the surviving spouse irrevocably elects, no later than when the PARTICIPANT would have attained the applicable age provided under IRC 401(a)(9). The surviving spouse must make this irrevocable election by December 31 of the calendar year immediately following the calendar year in which the PARTICIPANT died on a form supplied by the ADMINISTRATOR. The applicable distribution period for distribution calendar years after the distribution calendar year including the employee's date of death is determined under the Uniform Lifetime Table.

- d. Required Minimum Distributions During PARTICIPANT'S Lifetime.** During the PARTICIPANT'S lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:
 - (ii) if the PARTICIPANT'S sole designated BENEFICIARY for the distribution calendar year is the PARTICIPANT'S spouse, the quotient obtained by dividing the PARTICIPANT'S account balance by the number in the Uniform Life Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the PARTICIPANT'S attained age as of the PARTICIPANT'S birthday in the distribution calendar year.

- e. Death On or After Date Distributions Begin and PARTICIPANT Survived by Designated BENEFICIARY.**
 - (ii) If the PARTICIPANT'S surviving spouse is the PARTICIPANT'S sole designated BENEFICIARY, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the PARTICIPANT'S death using the PARTICIPANT'S age as of the PARTICIPANT'S birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

3. Revise the definition of "public safety officer" found on page 5 to "eligible retired public safety officer" on page 3. This would match the Plan and Trust definition with the meaning found in WIS. Stat. § 40.02(25g), which matches federal language. In addition, replace Article 10.06 on page 25 with the language below to reflect SECURE 2.0 Section 328 changes enacted for distributions to eligible retired public safety officers:

1.01 hm. ELIGIBLE RETIRED PUBLIC SAFETY OFFICER has the same meaning as provided in WIS. Stat. § 40.02(25g).

10.06 Special Rules Regarding Distributions to Eligible Retired Public Safety Officers for Insurance Premium Payments: A PARTICIPANT receiving a distribution(s) from the PLAN where the PARTICIPANT is an ELIGIBLE RETIRED PUBLIC SAFETY OFFICER, as defined in 26 USC 402(l), may claim an income tax deduction for that portion of their distribution(s) which is used to pay for eligible health or other long-term care insurance premiums as defined 26 USC 7703B(b). An ELIGIBLE RETIRED PUBLIC SAFETY OFFICER may take the deduction whether they self-certify their eligibility for the deduction or elect to have the distribution(s) paid directly to their insurer.

B. Plan Updates

ETF also recommends updates related to certain Plan and Trust provisions, including:

1. Update Title of Article X from “Benefits” to “Distributions”

ETF suggests retitling Article X on page 18 from “Benefits” to “Distributions to more accurately describe the plan details found in this article.

ARTICLE X: Distributions

2. Delete obsolete language in Article 10.01

In reviewing Article X, ETF discovered there is obsolete language in Article 10.01 on page 19 that was added to implement a federal rule that permitted a one-year suspension of RMDs in 2009. This suspension has passed, and the language can be deleted. Article 10.01 would then read:

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 59½; 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.

3. Required Minimum Distribution (RMD) Forced Distributions

ETF recommends an addition to Article X of the Plan and Trust on page 19 that would enable forced RMDs for participants who do not take action to receive their

RMDs. This language is recommended because a 2021 compliance audit finding indicated not all participants were taking their RMDs timely and thus were subject to the federal excise tax. The WDC's recordkeeper has confirmed that if directed by the Board, they could help ensure RMDs are taken when required. Each year, Empower would notify participants of RMDs. If the participant does not take the RMD by the date specified in the correspondence, Empower would process all remaining RMDs on the specified date. The proposed Plan and Trust addition is:

10.02 bg. Default Required Minimum Distribution Commencement Date. If a PARTICIPANT does not elect otherwise, a PARTICIPANT shall receive payment(s) of his/her account in the amount required by IRC 401(a)(9) and the corresponding regulations beginning on the date that is necessary to satisfy the requirements.

4. Domestic Relations Orders

The Board informally discussed the cost of domestic relations orders (DROs) at the June 2023 meeting as part of a general discussion on plan expenses. DROs occur when a participant divorces and part of their WDC account is awarded to their ex-spouse. The WDC's recordkeeper, Empower, charges \$250 for each DRO. Unlike many of the WDC's peers, the cost of a DRO is currently paid for by the WDC. The ten-year average for WDC DROs is 61, for an average annual cost to the WDC of \$15,250.

At the June 2023 meeting, the Board indicated their interest in shifting the cost of a DRO from the plan to the participant and alternate payee. Empower has confirmed it is able to assess the DRO cost such that the cost would be debited from the participant and alternate payee accounts. Thus, ETF recommends the following new provision in Article XI on page 35, which would ensure that the cost of a DRO is borne equally by the participant and alternate payee(s):

11.10 Responsibility for Domestic Relations Order Processing Costs. The cost of processing a Domestic Relations Order will be evenly deducted from the accounts of the PARTICIPANT and ALTERNATE PAYEE(S).

5. Clarify eligibility to utilize the WDC

ETF recommends adding a sentence to Article 2.01 on page 6 of the Plan and Trust clarifying that any employee receiving compensation from a WDC participating employer is eligible to use the WDC for supplemental retirement savings.

2.01 The PARTICIPANT may elect to participate by signing the PARTICIPATION AGREEMENT and consenting to a reduction of salary by the deferral amount specified in the PARTICIPATION AGREEMENT. Any employee receiving COMPENSATION from an EMPLOYER who makes the

plan under Wis. Stat. § 40.80 available to any of its employees shall be eligible to be a PARTICIPANT.

6. Availability of Account Statements

ETF recommends updating Article 6 on page 14 of the Plan and Trust to reflect the Board's current administrative services contract with Empower, which specifies that participant statements will be available no later than 15 days after the end of a quarter. Currently, the Plan and Trust document specifies 20 days.

6.02 The PARTICIPANT or an ELIGIBLE RETIREMENT PLAN shall remit ELIGIBLE ROLLOVER DISTRIBUTION amounts to the ADMINISTRATOR or his designated agent. The ADMINISTRATOR shall maintain an ELIGIBLE ROLLOVER ACCOUNT with respect to each PARTICIPANT'S ELIGIBLE DISTRIBUTION amounts. A written report of the status of the PARTICIPANT'S ELIGIBLE ROLLOVER ACCOUNT shall be furnished quarterly and within fifteen (15) days after the end of each calendar quarter to the PARTICIPANT or BENEFICIARY.

6.03 The statement of accounts furnished by the ADMINISTRATOR to the PARTICIPANT or BENEFICIARY no later than ~~twenty (20)~~ fifteen (15) days from the end of the quarter shall reflect the current balance and all activity in each account during the quarter.

7. Update Article XIII, Administration of the Plan

ETF recommends deleting references in Article 13.01 on page 36 to a quarterly newsletter. After documenting lack of readership, the WDC newsletter was discontinued in 2020. Information on changes made to the Plan and Trust is included on quarterly participant statements and in news articles on the WDC website.

13.01 The TRUSTEES may at any time amend, modify or terminate this PLAN without the consent of the PARTICIPANT (or any BENEFICIARY thereof). All amendments shall become effective on the first day of the calendar month beginning after the date of the amendment. Notice shall be deemed given when the amendment and an explanation of such is posted electronically on the ETF and WDC websites or included in quarterly statements of account. ...

C. Technical Corrections

As part of the SECURE 2.0 analysis, ETF completed an extensive review of the Plan and Trust and found several instances where technical corrections should be made. These recommended changes on the following pages are reproduced from the attached Plan and Trust.

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1. Moving and renumbering the definition of “DEPARTMENT” on page 3 to “1.01 gg” which places the definition in the correct alphabetization location and renumbers the definition of “DESIGNATED ROTH CONTRIBUTION” as 1.01 gm.
2. Updating the definition of participation agreement on page 5 to reflect the current terminology and that a completed agreement must be submitted to the administrator (Empower) in order for a participant to use the WDC.

1.01 r. PARTICIPATION AGREEMENT means a completed enrollment application submitted by the PARTICIPANT to the ADMINISTRATOR to participate in the PLAN.

3. Adding the word “financial” to the definition of unforeseeable emergency on page 6. This addition makes the WDC definition consistent with the federal definition. ETF also recommends adding “financial” to Article 10.03 on pages 22 and 23, which describes how unforeseen financial emergency withdrawals may occur. Recommended revisions are show below:

a. 1.01 x. UNFORESEEABLE FINANCIAL EMERGENCY means a severe financial hardship to the PARTICIPANT or BENEFICIARY resulting from: an illness or accident of the PARTICIPANT or BENEFICIARY, the spouse of the PARTICIPANT or BENEFICIARY, or the PARTICIPANT or BENEFICIARY’S dependent, as that term is defined by 26 USC 152 but without regard to 26 USC 152 (b)(1) or (2) or (d)(1)(B); loss of PARTICIPANT’S or BENEFICIARY’S property due to casualty, including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, such as damage that is the result of a natural disaster; or, other similar or extraordinary and unforeseeable circumstances, arising as a result of events beyond the control of the PARTICIPANT or BENEFICIARY. Examples of circumstances which may constitute an unforeseeable financial emergency include: the imminent foreclosure of, or eviction from, the participant's or beneficiary's primary residence; the need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication; the need to pay for the funeral expenses of a PARTICIPANT’S or BENEFICIARY’S spouse or a dependent, as defined by 26 USC 152 without regard for 26 USC 152(b)(1) or (2) or (d)(1)(B). Examples that are not unforeseeable financial emergencies include: payment of college tuition; and, the purchase of a home, except as expressly provided above concerning the replacement of a home lost due to casualty.

b. 10.03 Unforeseen Financial Emergency Withdrawals: Unforeseen Financial Emergency Withdrawals: Notwithstanding any other provisions herein, in the event of an UNFORESEEABLE FINANCIAL EMERGENCY, a PARTICIPANT or BENEFICIARY may request that benefits be paid to him or her at any time. Such request shall be filed in accordance with procedures

established pursuant to this PLAN. If the application for payment is approved by the TRUSTEE or its designee, payments shall be effected within ten (10) working days of receipt of such approval. The decision whether a PARTICIPANT or BENEFICIARY is faced with an UNFORESEEABLE FINANCIAL EMERGENCY will be based upon the relevant facts and circumstances of each case and in accordance with the terms of the PLAN and 26 CFR §1.457-6(c)(2). Benefits to be paid shall be limited strictly to the amount necessary to meet the UNFORESEEABLE FINANCIAL EMERGENCY constituting financial hardship, and may include any amounts necessary to pay for any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution to the extent such UNFORESEEABLE FINANCIAL EMERGENCY is not relieved:

- a. by reimbursement or compensation from insurance or otherwise;
- b. by liquidation of the PARTICIPANT'S assets, to the extent the liquidation of such assets would not itself cause financial hardship; or
- c. by cessation of deferrals under the PLAN.

A PARTICIPANT'S deferrals will automatically be terminated upon approval of an UNFORESEEABLE FINANCIAL EMERGENCY application and the PARTICIPANT cannot re-enroll in the PLAN for 180 days from the date of approval of an UNFORESEEABLE FINANCIAL EMERGENCY withdrawal. The ADMINISTRATOR may require such medical, financial, or other evidence deemed appropriate for a determination to be made concerning the PARTICIPANT'S or BENEFICIARY'S withdrawal request.

The Board has determined that, *in general*, expenses or lost income related to events exceeding twelve (12) months prior to the date of an UNFORESEEABLE FINANCIAL EMERGENCY application may not *by themselves* be considered appropriate for an UNFORESEEABLE FINANCIAL EMERGENCY withdrawal because there is no UNFORESEEABLE FINANCIAL EMERGENCY involved. These are situations where the individual 1) had significant control or 2) could have reasonably and prudently anticipated, avoided, or budgeted for the event. Participants with situations created by events extending twelve months prior to the date of an UNFORESEEABLE FINANCIAL EMERGENCY withdrawal application must be prepared to submit additional documentation explaining how their situation may qualify as an UNFORESEEABLE FINANCIAL EMERGENCY.

Foreseeable personal expenditures normally budgetable, such as a down payment on a home, the purchase of an automobile, college or other educational expenses, etc., may not necessarily constitute an UNFORESEEABLE FINANCIAL

EMERGENCY. The decision of the TRUSTEE or its designee concerning the payment of benefits under this Section shall be appealable under Wisconsin Statutes Sections 40.80(2g) and 40.08 (12).

2. Correcting a reference to s. 40.05, WI Stats. in Article 2.02 at the bottom of page 6 with the addition of (4), as shown below. There is no s. 40.05(b), WI Stats.

2.02 “Accumulated sick pay” is not equivalent to “accumulated unused sick leave” as that term is used in s. 40.05(4)(b), WI Stats. Accumulated unused sick leave may not be deferred into the PLAN.

3. Adding a title to Article 2.05 on page 8 so that it would be clear that this article addresses age 50 plus catch-up contributions, as shown:

2.05 Age 50 Plus Catch-Up Contributions. The maximum deferral amount...

4. Correcting a number formatting issue with Article 13 starting on page 36, such that this article is correctly numbered.

5. Correcting the reference in Article 14.01 on page 38 from Article 12 to Article 13.

14.01 The EMPLOYER, the TRUSTEES or their authorized agent, the ADMINISTRATOR, is authorized to resolve any questions of fact necessary to decide the PARTICIPANT’S rights under this PLAN unless reversed on appeal under Article ~~12~~13.

ETF recommends the Board revise the Plan and Trust as outlined in this memo and indicated in the attached draft. The changes will ensure the WDC has implemented certain SECURE 2.0 provisions as required by federal law, updated the plan document, and made necessary technical corrections. If approved, these changes to Plan and Trust will go into effect on November 1, 2023.

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

Attachment A: [Plan and Trust with recommended changes illustrated via strike through for deletions and underlining for additions](#)