



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: November 9, 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: Recommended Plan and Trust Document Revisions: Implementation of Section 325 of SECURE 2.0, Updates to Articles 2.04 and 2.06, and the Definition of “Participant”

The Department of Employee Trust Funds (ETF) recommends the Deferred Compensation Board (Board) revise the Plan and Trust to implement Section 325 of SECURE 2.0, update Articles 2.04 and 2.06, and the definition of “participant.”

The Board approved changes to the Plan and Trust Document at its September 2023 meeting ([Ref. DC | 09.07.23 | 11](#)) that included updating the plan to incorporate certain provisions of SECURE 2.0 as well as enact plan updates and technical corrections.

This memo outlines additional revisions ETF is recommending related to section 325 of SECURE 2.0, updates to articles 2.04 and 2.06 and a modification to the definition of “participant.”

SECURE 2.0 Section 325

Section 325, which is effective January 1, 2024, extends the pre-death Required Minimum Distributions (RMD) exemption to Roth amounts in plans. To formally implement section 325 of SECURE 2.0, the Plan and Trust must be updated. ETF recommends adding the following to Article X: Distributions:

10.02 am. Required Minimum Distributions Not Required on Pre-Death Roth Accounts. In accordance with IRC Section 402A(d)(5), no

Matt Stohr

Reviewed and approved by Matt Stohr, Administrator, Division of Retirement Services
 Electronically Signed 11/14/2023

Board	Mtg Date	Item #
DC	12.07.23	8

required minimum distributions are required on contributions in a designated Roth account before a PARTICIPANT'S death.

The Wisconsin Deferred Compensation Program's (WDC's) administrator has made the necessary programming changes to implement Section 325 beginning in 2024 and is prepared to share communications with participants as appropriate.

Updating Articles 2.04 and 2.06

While reviewing the Plan and Trust for SECURE 2.0 revisions, ETF discovered that Articles 2.04 and 2.06 need updating. The reference in Article 2.04 to the Internal Revenue Code (IRC) can be simplified to reference IRC section 457(b)(2), making this article evergreen and also in compliance with SECURE 2.0 section 109. Changes to Article 2.06 eliminate old language related to federal law changes in 2002 and likewise make the article evergreen by referencing IRC section 457(b)(3) and (e)(18). Both articles can be simplified as shown below:

Article 2.04

Except as provided in Sections 2.05 and 2.06, the maximum amount of DEFERRED COMPENSATION under the PLAN for the PARTICIPANT'S taxable year shall not exceed the amounts provided under IRC Section 457(b)(2). ~~lesser of (a) the maximum dollar amount (2)(A) as adjusted for cost of living adjustments described in IRC Section 457(e)(15); or (b) 100% of the PARTICIPANT'S INCLUDIBLE COMPENSATION as provided in IRC Section 457(b)(2)(B).~~

Article 2.06

If the applicable year is one of a PARTICIPANT'S last 3 calendar years ending before the year in which the PARTICIPANT attains NORMAL RETIREMENT AGE and the amount deferred under this Section exceeds the amount computed under Sections 2.04 and 2.05, then the maximum deferral under this Section shall be not exceed the amounts provided under IRC Sections 457(b)(3) and (e)(18). ~~the lesser of:~~

a. ~~— An amount equal to 2 times the maximum deferral amount described in Section 2.04 for such year; or~~

b. ~~— The sum of:~~

~~An amount equal to (A) the aggregate of maximum deferral amount for the current year plus each prior calendar year beginning after December 31, 2001 during which the PARTICIPANT was an EMPLOYEE under the PLAN, minus (B) the aggregate amount of COMPENSATION that the PARTICIPANT deferred under the PLAN during such years; plus~~

~~An amount equal to (A) the aggregate limit referred to in IRC Section 457(b)(2) for each prior calendar year beginning after December 31, 1978 and before January 1, 2002 during which the PARTICIPANT was an EMPLOYEE (determined without regard to this Section and Section 2.05), minus (B) the aggregate contributions to Pre-2002 Coordination.~~

~~However, in no event can the deferred amount be more than the PARTICIPANT'S COMPENSATION for the year. If the PARTICIPANT is or has been a PARTICIPANT in one or more eligible plans within the meaning of IRC Section 457(b), then this PLAN and all such other plans shall be considered as one plan for purposes of applying the foregoing limitations. For this purpose, the ADMINISTRATOR shall take into account any other such eligible plan for which the ADMINISTRATOR receives from the PARTICIPANT sufficient information concerning his or her participation in such other plan. In applying the foregoing limitations, a year shall be taken into account only if (i) the PARTICIPANT was eligible to participate in the PLAN during all or a portion of the year and (ii) COMPENSATION deferred, if any, under the PLAN during the year was subject to the maximum annual limit described in Section 2.04 or any other plan ceiling required by IRC Section 457(b).~~

~~The term "contributions to Pre-2002 Coordination Plans " means an employer contribution, salary reduction or elective contribution under any other eligible IRC Section 457(b) plan, or a salary reduction or elective contribution under an IRC Section 401(k) qualified cash or deferred arrangement, IRC Section 402(h)(1)(B) simplified employee pension (SARSEP), IRC Section 403(b) annuity contract, and IRC Section 408(p) simple retirement account, or under any plan for which a deduction is allowed because of a contribution to an organization described in IRC Section 501(c)(18), including plans, arrangements or accounts maintained by the EMPLOYER or any employer for whom the PARTICIPANT performed services. However, the contributions for any calendar year are only taken into account for purposes of Section 2.06(b)(2)(B) to the extent that the total of such contributions does not exceed the aggregate limited referred to in IRC Section 457(b)(2) for that year.~~

Definition of "Participant"

ETF suggests the Board modify the Plan and Trust definition of PARTICIPANT on page 5 of the document and reproduced below because, as written, the definition unintentionally excludes participants who open WDC accounts for rollover purposes. While the plan does allow rollovers in practice, the proposed update would clarify that the plan is available to those participants who seek to open an account with the intent to rollover funds from other qualified plans to the WDC.

- q. PARTICIPANT means an individual who is currently deferring COMPENSATION, is eligible to defer COMPENSATION, or who has

Recommended Plan and Trust Revisions: Implementation of Section 325 of SECURE 2.0, Updates to Articles 2.04 and 2.06, and the Definition of “Participant”

November 9, 2023

Page 4

previously deferred COMPENSATION under the PLAN by salary reduction and who has not received a distribution of his or her entire benefit under the PLAN. Only individuals who perform services for the EMPLOYER as an EMPLOYEE may defer COMPENSATION under the PLAN.

If the recommended Plan and Trust changes are approved by the Board, they will take effect on January 1, 2024. A copy of the updated Plan and Trust will be posted electronically in the Board’s Governance Manual and on the WDC website.

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

Attachment A: [Plan and Trust with recommended changes illustrated via strikeout and underlining](#)