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Correspondence Memorandum

Date: August 8, 2024

To: Deferred Compensation Board

From: Shelly Schueller, Director
 Wisconsin Deferred Compensation Program

Dan Hayes, Attorney
 Office of Legal Services

Subject: Proposed Plan and Trust Revisions: Implementation of Certain SECURE 2.0 Provisions, an Audit Recommendation, and a Technical Correction

The Department of Employee Trust Funds (ETF) recommends the Deferred Compensation Board (Board) revise the Plan and Trust to implement certain SECURE 2.0 provisions, an audit recommendation, and make a technical correction.

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.

Most recently, the Board made changes to the Plan and Trust in late 2023, when it approved revisions to enact certain provisions of SECURE 2.0. This memo outlines additional changes ETF is recommending and illustrates how revised portions of the Plan and Trust would appear if ETF’s recommendations were approved.

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 presented to the Board Chair for signature. The new signed document will be posted electronically in the Board’s Governance Manual and on the WDC website.

Patti Epstein

Reviewed and approved by Patti Epstein, Chief Benefits Officer, Division of Benefits Administration
 Electronically Signed 08/21/2024

Board	Mtg Date	Item #
DC	09.12.24	11

Implementing Certain Optional Provisions of SECURE 2.0

The SECURE 2.0 provisions outlined below relate to distributions. They are all optional and intended to increase distribution flexibility. They may also help reduce financial emergency hardship withdrawal requests because participants would have additional distribution options for certain situations. ETF will continue to monitor IRS rulings and guidance developments related to SECURE 2.0 and provide updates to the Board.

If the Board desires to expand WDC distributions to include any of the options permitted through SECURE 2.0, then the Plan and Trust must be updated. ETF recommends the Board consider adopting the following:

1. SECURE 2.0 SECTION 311: Repayment of Qualified Birth or Adoption Distribution.
2. SECURE 2.0 SECTION 314: Penalty-free Withdrawal from Retirement Plans for Individual in case of Domestic Abuse.
3. SECURE 2.0 SECTION 331: Qualified Federally Declared Disaster Distributions.

1. SECURE 2.0 SECTION 311: Repayment of Qualified Birth or Adoption Distribution.

This section specifies the repayment timeframe for Qualified Birth or Adoption Distributions (QBADs). QBADs were part of the SECURE Act of 2019 and permit participants to take a distribution from their account within 12 months after either the birth or adoption of a child. Each parent may withdraw up to \$5,000 in aggregate, per event. A participant requesting a distribution under this provision self-certifies the event, there is no 10% early distribution penalty, and participants may recontribute the distribution (e.g., pay back the distribution). The repayment feature may help participants seeking to balance immediate financial needs with retirement savings.

The SECURE Act of 2019 did not specify the timeframe for repayments. Section 311 of SECURE 2.0 specifies that QBADs must be repaid within three years, which aligns this provision with similar distributions and simplifies plan administration.

If the Board wishes to provide QBADs, ETF recommends expanding the distributions section, Article X, of the Plan and Trust. The proposed language shown below is reproduced from the attached Plan and Trust:

New Article 10.08

10.08. Special Rules Regarding Distributions for Qualified Birth or Adoptions.

Notwithstanding any other provision of the PLAN, a PARTICIPANT may request a recontributable distribution from the PLAN in connection with a qualified birth or adoption provided the requirements under IRC Sections 72(t)(2)(H) or 72(m)(7) are met. A PARTICIPANT shall make their request on the form and in the procedural manner prescribed by the ADMINISTRATOR.

2. SECURE 2.0 SECTION 314: Penalty-free Withdrawal from Retirement Plans for Individual in case of Domestic Abuse. This section permits penalty-free distributions to victims of domestic abuse in an amount not to exceed the lesser of \$10,000 (indexed) or 50% of the value of the employee's vested account under the plan. Funds could improve survivors' lives and help remove them from harmful and life-threatening abusive situations. Eligible distributions to a domestic abuse victim may be recontributed to the plan, subject to certain requirements, which are similar to the QBAD provision.

To adopt this provision, ETF recommends expanding Article X of the Plan and Trust. The proposed language shown below is reproduced from the attached Plan and Trust:

New Article 10.09

10.09. Special Rules Regarding Distributions to Domestic Abuse Victims.

Notwithstanding any other provision of the PLAN, a PARTICIPANT may request a recontributable distribution from the PLAN in connection with being a victim of domestic abuse if the requirements provided under IRC Section 72(t)(2)(K) are met. A PARTICIPANT shall make their request on the form and in the procedural manner prescribed by the ADMINISTRATOR.

3. SECURE 2.0 SECTION 331: Qualified Federally Declared Disaster Distributions. This section allows penalty-free distributions to a "qualifying individual" of up to \$22,000 per "qualifying disaster." A participant is a "qualified individual" if the individual's principal residence is in the qualified disaster area at any time during the incident period and the participant has sustained an economic loss by reason of the qualified disaster. A "qualified disaster" is a major disaster declared by the president and indicated on the Federal Emergency Management Agency website. Before SECURE 2.0, a plan could provide such relief only if Congress enacted a special law for the specific disaster. Like the other newly allowed distributions discussed above, qualified disaster distributions may be recontributed to the plan.

In May of 2024, the IRS released FS-2024-19, a fact sheet answering frequently asked questions about section 331, including who is a qualified individual, what is the incident period, and what is a qualified disaster. During the same time, Empower finalized their processes for implementing this provision.

To adopt this provision, ETF recommends expanding Article X of the Plan and Trust. The proposed language shown below is reproduced from the attached Plan and Trust, starting on page 18:

New Article 10.10

10.10. Special Rules Regarding Distributions for Qualified Federally Declared Disasters. Notwithstanding any other provision of the PLAN, a PARTICIPANT may request a recontributable distribution from the PLAN in connection with a federally

declared disaster if the requirements provided under IRC Section 72(t)(2)(M) & 72(t)(11) are met. A PARTICIPANT shall make their request on the form and in the procedural manner prescribed by the ADMINISTRATOR.

If the Board approves including these optional distributions in the WDC, ETF also recommends revising the introductory section of Article X to include the appropriate exceptions for the new distributions, as shown below:

~~10.01. **Commencement of Distributions.** Except for Unforeseen Financial Emergency Withdrawals under Section 10.03 and De Minimis withdrawals under Section 10.04,~~ withdrawals under Sections 10.03, 10.04, 10.08, 10.09, and 10.10, 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

Implementing an Audit Recommendation

The calendar year 2023 (CY2023) contract compliance audit ([Ref. DC | 06.06.24 | 4](#)) included a recommendation for an operational review of the Self-Directed Option (SDO). ETF subsequently evaluated what peer plans that offer an SDO are doing in this area and reviewed administrative alternatives with the record keeper (Empower). As a result of this review, ETF is proposing that the Board revise Article VIII: Special Rules Regarding the Self-Directed Option of the Plan and Trust to:

- a) Add “mutual fund” to 8.01, to help clarify that the WDC’s SDO is only for investing in mutual funds not in the core investment spectrum. The WDC’s SDO does not currently permit investing in stocks, exchange traded funds or options.
- b) Delete the last sentence in 8.01, which requires SDO investments begin only from the core options. Technology updates have made it possible for participant deferrals to go directly to a participant’s SDO traditional or Roth sweep account.
- c) Update the SDO language such that it reflects current practices regarding online enrollment and using either a traditional or Roth sweep account for transfers.
- d) Increase the minimum required balance from \$1,000 to \$3,000 in 8.04.
- e) Add a \$60 annual administrative fee for any participant using the SDO in 8.10. This fee will be withdrawn at the rate of \$15 per quarter from the participant’s core investments and will help ensure participants are covering their share of plan administrative expenses.
- f) Eliminate language regarding notification if core investment balances fall below \$250 in 8.11, as this is not administratively feasible; and
- g) Make minor non-substantive and grammatical corrections.

The recommended changes below are reproduced from pages 14-16 of the attached Plan and Trust:

ARTICLE VIII: Special Rules Regarding the Self-Directed Option (SDO)

- 8.01 In addition to the CORE INVESTMENT SPECTRUM, the PLAN also offers an SDO for additional mutual fund investment choices. ~~Investments can only be made in the SDO as a transfer of assets from the account balance in the CORE INVESTMENT SPECTRUM.~~
- 8.02. The PARTICIPANT or BENEFICIARY acknowledge that the TRUSTEES, EMPLOYER, PLAN ~~or~~ and its ADMINISTRATOR have no express or implied responsibility for the evaluation, selection, and/or monitoring of the continued offering of additional investment options in the SDO by the PLAN, including any duty to supervise or monitor the PARTICIPANT'S or BENEFICIARY'S investment experience in the SDO. The PARTICIPANT or BENEFICIARY acknowledge that it is their sole responsibility to determine if the SDO investment options selected are appropriate for long-term retirement savings and the PARTICIPANT or BENEFICIARY hereby agree to remain liable for any investment losses related thereto. It is understood that the TRUSTEES, EMPLOYER, PLAN ~~or~~ and its ADMINISTRATOR are held harmless from any liability for investment losses or lost investment opportunities pertaining to the PARTICIPANT'S or BENEFICIARY'S investment in SDO options.
- 8.03. The PARTICIPANT or BENEFICIARY acknowledge that any PARTICIPANT-related disputes or controversies involving SDO accounts are solely the responsibility of the PARTICIPANT or BENEFICIARY and hereby agree to settle such disputes according to the terms and conditions ~~of the LPOA form~~ referenced in Section 8.05 herein. It is understood that the TRUSTEES, EMPLOYER, PLAN ~~or~~ and its ADMINISTRATOR have no responsibility or liability to any PARTICIPANT or BENEFICIARY for any act, error, omission, controversy or dispute involving SDO accounts being offered by the PLAN as ~~additional investment choices.~~
- 8.04. A minimum balance of ~~\$1,000~~ \$3,000 in the CORE INVESTMENT SPECTRUM is required for a PARTICIPANT or BENEFICIARY to be eligible to establish an SDO account. A minimum amount of ~~\$500~~ \$2,500 must be maintained in the CORE INVESTMENT SPECTRUM account. ~~If at any time this account balance falls below \$250 the ADMINISTRATOR will provide notification to the PARTICIPANT or BENEFICIARY and may subsequently initiate an automatic transfer from the SDO to restore the CORE INVESTMENT SPECTRUM account balance to the \$500 minimum required balance. This liquidation will be made based on the steps identified in Section 10.06(3).~~

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- 8.05. Once eligible, a PARTICIPANT or BENEFICIARY may elect to participate in the SDO offered by the PLAN by signing a ~~Limited Power of Attorney form (LPOA)~~ an online self-directed account agreement and accepting the terms and conditions necessary to establish a separate account with the SDO provider. By signing this ~~form agreement~~ and submitting it to the ADMINISTRATOR, the PARTICIPANT or BENEFICIARY acknowledges that the options available through the SDO are not evaluated or monitored by the PLAN. The ~~LPOA form agreement~~ filed with the ADMINISTRATOR will be processed on the same business day as received if receipt is by 3:00 p.m. Central Time. All ~~LPOA forms agreements~~ received after 3:00 p.m. Central Time will be processed on the next business day.
- 8.06. After establishment of the SDO account, the PARTICIPANT or BENEFICIARY may initiate a transfer of assets from the CORE INVESTMENT SPECTRUM into the SDO. The minimum initial transfer amount to the SDO is \$500 with no minimum amount required for any subsequent transfers.
- 8.07. Amounts transferred from the CORE INVESTMENT SPECTRUM to the SDO will be initially deposited into ~~the SDO money market~~ a SDO Sweep Program or SDO Sweep Program Roth account. The PARTICIPANT or BENEFICIARY must initiate transfers from ~~the SDO money market~~ a SDO Sweep Program or SDO Sweep Program Roth to other SDO options by contacting the SDO provider. Transfer activity within the SDO may not take place until the initial transfer to the SDO has been processed by the ADMINISTRATOR and recorded into the SDO account. Transfers to the SDO require one (1) business day to process and the transferred assets will be out of the market during this processing period.
- 8.08. Amounts transferred from the SDO back to the CORE INVESTMENT SPECTRUM can only be made from the ~~SDO money market account~~ SDO Sweep Program or SDO Sweep Program Roth. Prior to initiating a transfer back into the core options, the PARTICIPANT or BENEFICIARY must first liquidate sufficient SDO investments and deposit this amount into the ~~SDO money market account~~ SDO Sweep Program or SDO Sweep Program Roth. Once dollars are available in the ~~SDO money market account~~ SDO Sweep Program or SDO Sweep Program Roth, transfers from the SDO back to the CORE INVESTMENT SPECTRUM require two (2) business days to process and the transferred assets will be out of the market for one business day of this processing period.
- 8.09. Administrative fees assessed by the PLAN will be based on the PARTICIPANT'S or BENEFICIARY'S entire account balance in the PLAN and include amounts invested in the SDO. The fee will be deducted entirely from the balance in the CORE INVESTMENT SPECTRUM account.

- 8.10. The PLAN may assess an additional fee of \$60 per year (\$15 per quarter) to PARTICIPANTS and BENEFICIARIES who have established or maintained an SDO account for administration of this option. The fee will be deducted entirely from the balance in the CORE INVESTMENT SPECTRUM account.
- 8.11. Notwithstanding any other provision of this Article, the ~~ADMINISTRATOR~~ PLAN may compel a PARTICIPANT to liquidate SDO investments, deposit the realized amount into ~~the SDO money market account~~ a SDB Sweep Program or SDB Sweep Program Roth and transfer a sum sufficient to enable implementation of a DOMESTIC RELATIONS ORDER into the CORE INVESTMENT SPECTRUM money market account, as provided in Article XI, §11.025 j (i) (D) and (ii) (B). ~~In the event the PARTICIPANT fails to act within 15 days after being sent a request to do so, the PLAN shall liquidate all SDO investments, deposit the realized amount into the SDO money market fund and transfer the entire amount to the CORE INVESTMENT SPECTRUM money market account.~~
- 8.12. Notwithstanding anything to the contrary in Article VIII, Special Rules Regarding the Self-Directed Option, a PARTICIPANT or BENEFICIARY who receives an ELIGIBLE ROLLOVER DISTRIBUTION may elect to distribute 100% of their SDO account assets in-kind to an ELIGIBLE RETIREMENT PLAN.

Making a Technical Correction

Finally, ETF completed a review of the Plan and Trust and found one instance where a technical correction should be made.

While drafting updates for SECURE 2.0 provisions, ETF inadvertently expanded the upper age range in the definition of “normal retirement age” for electing use of the special catch-up provision beyond the Internal Revenue Code (IRC) limitation of age 70 and a half. ETF confirmed that Empower has been administering this provision appropriately, which is according to the IRC.

ETF recommends correcting the definition of normal retirement age to mirror the IRC. The recommended changes below are reproduced from page 4 of the attached Plan and Trust:

1.01.p. NORMAL RETIREMENT AGE means, for purposes of making Special Catch-Up Contributions under Section 2.06, the date the PARTICIPANT designates that falls within the age at which the PARTICIPANT has the right to retire and receive, under the Wisconsin Retirement System’s defined benefit pension plan, an immediate annuity without actuarial or similar reduction because of retirement prior to the normal retirement date under WIS. STAT. § 40.02 (42) and ~~the applicable age found in IRC Section 401(a)(9)-age 70 ½.~~

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If the PARTICIPANT is not eligible to receive benefits under the Employer's pension plan, the PARTICIPANT may designate a Normal Retirement Age that is not earlier than age 65 nor later than ~~the applicable age found in IRC Section 401(a)(9)~~ age 70 ½.

In the event that the PARTICIPANT is a qualified police officer or firefighter as defined under IRC section 415(b)(2)(H)(ii)(I), the PARTICIPANT may designate a Normal Retirement Age that is not earlier than age 40 nor later than ~~the applicable age found in IRC Section 401(a)(9)~~ age 70 ½.

Conclusion

ETF recommends the Board revise the Plan and Trust as outlined in this memo and illustrated in the attached draft. The changes will ensure the WDC can implement certain SECURE 2.0 provisions and make necessary corrections. If approved, these changes to Plan and Trust will go into effect on January 1, 2025.

Direction on any approved distribution options will be provided to Empower. There will also be corresponding communication to both participants and employers. ETF and Empower will also update websites, brochures, and ensure the WDC staff can communicate information regarding new distribution options.

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

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