

**State of Wisconsin
Department of Employee Trust Funds,
Employee Trust Funds Board, Teachers Retirement Board,
Wisconsin Retirement Board and Group Insurance Board.**

FINAL DRAFT REPORT ON CLEARINGHOUSE RULE #07-062

FINAL RULE to repeal ETF 11.16 (2) (c), 20.14, 20.15, 20.16 and 20.18, amend ETF 10.01 (7), 20.19 (2) (a), (b) (d), and (dm), 20.35 (3) (d) 2. and 50.50 (2) (b), repeal and recreate ETF 29.19 (2) (c) and create ETF 20.17 regarding the purchase of credit for service.

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Agency Person to be Contacted for Questions

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Statement Explaining Need for Rule

This rule-making is needed to supplement and codify agency interpretations of the statute governing the purchase of creditable service under the Wisconsin Retirement System (WRS): Section 40.285, Stats., was created by 2003 Wis. Act 33 and subsequently amended by 2005 Wis. Act 154. The legislation revised and combined the previously dispersed statutes concerning purchasing WRS service. This rule-making is needed in order to delete language and administrative policies incorporated in the existing pre-1997 rules that have been superseded by subsequent legislation or which have otherwise become obsolete due to changes in the applicable law. In their place, the rule-making consolidates all the department’s rules on purchasing creditable service in the WRS into one new administrative code provision. In addition, this rule-making is required in order to meet the mandates of s. 40.285 (2) (b) 1. d. and (4) (c), Stats. Under these provisions, the department is required to promulgate rules to establish how the cost of purchasing credit for other governmental service will be affected by the participant’s employment category and how to prorate a payment for purchasing

credit less than all a participant's forfeited service, when the participant previously forfeited credit for service in different categories of employment.

Analysis Prepared by the Department of Employee Trust Funds

1. Statute interpreted:

Section 40.285, Stats.

2. Statutory authority:

Sections 40.03 (2) (i), 40.285 (2) (a) 3., and (b) 1. d. and 5., (4) (c) and (5) (c), and 227.11 (2) (a), Stats.

3. Explanation of agency authority:

By statute, the DETF Secretary is expressly authorized, with Board approval, to promulgate rules required for the efficient administration of any benefit plan established in ch. 40 of the Wisconsin Statutes. 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. The Legislature has expressly required the Department to specify, by rule, how the purchase of service credit for previously forfeited service will be prorated when more than one category of employment is involved and credit for less than all the previously forfeited service is purchased. In addition, the Legislature has mandated that the Department shall establish by rule different rates for different categories of participants who purchase credit for other governmental service, based upon factors recommended by the actuary.

4. Related statute or rule:

Section 40.285, Stats.

5. Plain language analysis:

A. Introduction.

This rule-making supplements and interprets the re-codification of the statutes governing the purchase of creditable service under the Wisconsin Retirement System (WRS). The law governing the WRS allows participating employees to purchase credit under the WRS for six different kinds of service: previously forfeited service, other governmental service, previous executive service not credited because of over-62 age restrictions, a 6-month uncredited qualifying period, teacher improvement leave and uncredited junior teaching service. Existing Administrative Code provisions apply to service purchases generally (s. ETF 20.14), the purchase of forfeited service (s. ETF 20.15), qualifying service (s. ETF 20.16) and other governmental service (s. ETF 20.18). All of these

existing administrative rules are repealed by this rule-making. A paragraph cross-referencing ETF 20.15, specifically ETF 11.16 (2) (c), is also being repealed,

In July 2003, 2003 Wis. Act 33 created a new s. 40.285, Stats., that revised and combined all the former statutes concerning the purchase of service credits. In the process, the former ss. 40.02 (17) (b), (e), (i), and (k) and 40.25 (5) and (6), Stats., were eliminated, either by renumbering or repeal. Subsequently, in April 2006, 2005 Wis. Act 154 amended s. 40.285 (4) (d), Stats., regarding the role of funds received for the purchase of other governmental service in calculating WRS death benefits and money purchase retirement benefits.

Section ETF 20.14 was created effective January 1, 1997, and s. ETF 20.18 was created effective July 1, 1995. Neither has been amended by the Department since then. Sections ETF 20.15 and 20.16 were both created during 1982 and were most recently amended effective January 1, 1997. This rulemaking deletes language and policies incorporated in these rules that have been superseded by subsequent legislation or which have otherwise become obsolete due to changes in the applicable law. In their place, the rule-making creates a new s. ETF 20.17 uniting the rules covering all purchases of creditable service into one code provision.

B. Service Credit Purchases; Generally.

Under s. 40.285, Stats., a participating employee may purchase credit in the WRS for six different kinds of service. Such service credit purchases both increase the creditable service used to calculate a formula annuity and also increase the account balance in the employee's required contribution account. Except for amounts received to purchase other governmental service, these additional funds increase the value of the participating employee's money purchase pension benefit.

(1) Defining terms.

In s. ETF 20.17 (2), this rule-making defines key terms. All definitions are based on the present s. ETF 20.18 (2) (a), (b), (c), (d) and (e). The phrase "date of application" is defined consistent with s. ETF 10.82 (1), to which reference is added. The definitions of the remaining terms, "current earnings," "military service," "money purchase balance," and "other governmental service," are substantially similar to the current definitions, except for necessary cross-reference corrections and some minor clarifications.

The rule-making also makes technical amendments to the existing definition of the term "three continuous years of creditable service" in s. ETF 10.01 (7). This is a statutory pre-requisite to eligibility for purchasing credit for either forfeited service or other governmental service.

(2) Estimates, applications and final calculations.

As provided by this rule, the Department will upon request prepare a combination estimate and application form to be used to make the purchase. After the completed application and actual payment is received, the DETF will audit the transaction and, if necessary, recalculate the amount due. Such adjustments may be necessary, for example, if an estimate was prepared during one year and the employee submits the application later, after a change in the employee's compensation has occurred.

This rule-making eliminates the limits on how much may be paid into the retirement system found in the current s. ETF 20.14 (1) and (2) (a) 1. The limits were based on now obsolete provisions of s. 415(c) of the Internal Revenue Code (IRC). The sources of permissible funds to use to make the service credit purchase are also expanded from current rules, in accord with the latest federal tax laws.

(3) Deadline for applying.

Because only a "participating employee" may buy credit for service under s. 40.285, Stats., the completed application must be received at the DETF before the employee terminates participating employment. A special provision establishes the deadline for a retired employee who holds a second participating position as a part-time elected official and "opts out" of WRS coverage with respect to that part-time position as permitted under s. 40.23 (1) (am) 2., Stats. The treatment under the rule is consistent with that statute and establishing when the person ceases to be a participating employee.

(4) Rejection of ineligible,
unpaid and incomplete applications.

An application for service credits the applicant is not entitled to buy must be rejected. Late applications must be rejected. Generally, applications not accompanied by payment-in-full must also be rejected. However, there are some exceptions. The applicant may use voluntary additional contributions already in the participant's WRS account as part of the payment, including funds held by the WRS as part of an employer's plan under s. 403(b) IRC. Alternatively, the applicant may pay a required 10% down-payment and arrange to transfer the remainder from another qualifying benefit plan, as permitted by federal tax laws, within 90 days. An application that remains incomplete for more than 90 days may be rejected, at the Department's discretion. If the Department underestimated the actual final cost of the service purchase, the applicant may cancel the transaction, or pay the balance due. The Department allows participants in this situation who have already begun to receive their WRS

pensions to pay the balance due out of one of the next monthly annuity payments. At present, that option exists only for purchases of credit for forfeited or other governmental service. This rule will expand that option to all types of service purchase and also allow the balance to be deducted from a lump sum paid in lieu of a retirement annuity.

(5) Effects of buying service credit.

This rule-making clarifies the long-standing DETF policy that buying credit for service simply adds the amount of service credit purchased to the person's total creditable service, going forward, for the sole purpose of calculating a formula annuity benefit under s. 40.23 (2) (b) or (2m) (e), Stats., or making other formula annuity calculations in that manner such as for disability annuity benefits or special death benefits under s. 40.63 (8) or 40.73 (1) (c), Stats., respectively. Buying creditable service has no retroactive effect and therefore does not do any of the following:

- Undo any effects of the requirement of s. 40.25 (3), Stats., that a person who takes a separation benefit, then is later employed by a WRS participating employer, must be treated as a new employee for all ch. 40 purposes.
- Establish an earlier date of participation or restore an account as though it had never been closed.
- Restore or entitle the purchaser to any benefits or rights associated with being a participant in the WRS or a member of any predecessor retirement system, at the time the services for which credit is being purchased were actually performed.
- Establish any creditable service in, or for, any particular year or restore earnings associated with a forfeited year for final average earnings purposes or any other benefit computation.
- Circumvent the statutory limit of 1.0 years of creditable service for any annual earnings period.

Under s. 40.23 (2m) (e) 1. to 4., Stats., higher multipliers are used to calculate formula annuity benefits based on pre-2000 creditable service. In s. ETF 20.17 (1) (j), this rule-making cross-references the treatment of purchased service credits for that purpose, as provided by s. ETF 20.19 (2). In addition, s. 40.23 (2m) (em) 1. a., Stats., provides that any service forfeited by taking a separation benefit prior to January 1, 2000, will be treated as pre-2000 service if a service credit is purchased under s. 40.285 (2) (a), Stats. This rule-making amends the existing s. ETF 20.19 (2) (c) to clarify this treatment and expands the existing rule that covers situations in which a participant purchases service credit for forfeited

service, forfeits that and other creditable service by taking a separation benefit, then again purchases credit for the forfeited service.

For added clarity and to remove unnecessary cross-references to the former s. 40.25 (6), Stats., which was repealed by 2003 Wis. Act 33, this rule-making also amends s. ETF 20.19 (2) (a) through (d), concerning the pre-2000 or post-1999 treatment of purchased service credits for forfeited service. The existing protection of the employee by applying partial payments to pre-2000 service credit first is retained and expressly cross-referenced in the new s. ETF 20.17 (3) (d).

A new s. ETF 20.19 (2) (dm) is created to provide that the purchased service credit for other governmental service will be treated as post-1999 or pre-2000 service for formula benefit purposes, depending on when the services were actually rendered to the non-WRS governmental entity. This is in accord with the provision of s. 40.23 (2m) (em) 1. b., Stats., that purchased service credit for other governmental service will be treated as pre-2000 service for calculating a formula annuity benefit under s. 40.23 (2m) (e), Stats., if the purchase was based on services considered to have been performed before January 1, 2000.

Section ETF 20.19 (2) (e), (h), (i) and (f) already provide that purchased service credit for a qualifying period, teacher improvement leave, and previously uncredited service as a junior teacher or executive participating employee will be treated as pre-2000 service in calculating formula benefits under s. 40.23 (2m) (e), Stats. This rule-making does not affect those provisions.

(6) Treatment of payments.

Amounts received for the purchase of service credit will be effectively deposited into the participant's required contribution account, described in s. 40.04 (4) (a) 1., Stats. However, as provided in s. ETF 20.17 (4) (f), funds received for the purchase of other governmental service will also be accounted for so that they are not matched by funds from employer required contributions when calculating a money purchase or a death benefit, as provided by ss. 40.23 (3) and 40.73 (1) (am) and (c), Stats.

Generally, the purchase amount will be treated as amounts received during the year in which the DETF actually receives the payment, meaning the funds will not be credited with interest for that calendar year. Generally, if the participant participates in the variable retirement investment trust, the amounts received will be divided between the core and variable retirement investment trusts just like the participant's current contributions.

There are exceptions to those general rules, however. An employee may use accumulated after-tax additional contributions, including those under s. 40.05 (1) (a) 5., Stats., which are already in the Public Employee Trust Fund to make the

service purchase. In order to protect the employee from losing year-end interest crediting on such funds, the rule creates an exception in s. ETF 20.17 (1) (g) 3. that treats such funds as being in the Trust Fund throughout the year, as they were in fact. For similar reasons, the same exception also preserves the source of such funds in the core retirement investment trust and variable retirement investment trust.

(7) Refunds.

Section 40.285 (7), Stats., prohibits any refund of \$25 or less. Above that threshold, this rule provides in s. ETF 20.17 (1) (f) that excess amounts received shall be refunded to the participant. An exception exists if the source of the purchase funds was a plan-to-plan transfer from another qualifying benefit plan. In those cases, in order to avoid tax liabilities for the employee, the refund must be paid back to the appropriate plan, as determined by the DETF.

Regarding the payment of interest on a refund, this rule-making cross-references the applicable statute. s. 40.08 (6) (e), Stats., prohibits the payment of interest on a refund.

(8) Payment shortfalls.

By statute, the DETF will not undertake collection actions against the applicant if the payment shortfall is under \$25. In s. ETF 20.17 (1) (h), the rule anticipates that payment shortfalls might occur in different ways, separately or in combination. The applicant might include the full estimated amount with the application, but the subsequent audit and final calculation determines that the actual amount due is higher. Or, the applicant arranges for a plan-to-plan transfer to partly fund the service purchase, and the amount transferred from the other plan is insufficient, perhaps because the anticipated value of the account dropped in the interim.

When a plan-to-plan transfer is involved, the employee will be given 30 days to pay the shortfall. If not timely paid in full, the DETF will generally prorate the amount of service credit purchased to match the amount received in conformity with s. 40.285 (5) (c), Stats. The purchase of credit for other governmental service will be recalculated rather than prorated. This is the only circumstance in which a person may purchase less than all of the available credit for a qualifying period, teacher improvement leave, and previously uncredited service as a junior teacher or executive participating employee.

If the shortfall is the result of a low estimate by the Department, and a plan-to-plan transfer was involved, the DETF will proceed in the same manner as for an insufficient transfer. Otherwise, the employee will be given 30 days to pay the difference due or withdraw the application. If the balance due is not timely received or the employee withdraws the application, the amounts received will be

refunded. This is the only circumstance under which an applicant may withdraw or cancel an application to purchase service after any payment has been received by the DETF.

This rulemaking creates one other alternative payment option. It applies only when the estimate was too low, and the applicant has a WRS retirement benefit payable. In this case, the applicant may ask that the Department deduct the balance due from a subsequent monthly annuity payment or from a lump sum payable in lieu of an annuity. The current ss. ETF 20.15 (2) (em) and 20.16 (4m), allow such a deduction in connection with shortfalls in payments for the purchase of credit for forfeited service and qualifying service, respectively. This rule-making will expand the option to all service purchases.

A shortfall might occur if the applicant deliberately pays less than the full amount due. This is permissible only for a purchase connected with forfeited service or other governmental service. In those cases, the applicant will be given notice of the shortfall and an opportunity to pay the difference. If the difference is not received within 30 days after notice is sent to the participant, the department shall complete the purchase, reducing the amount of service credit purchased to the credit that can be purchased by the payment actually received. This permits the applicant to decide to buy less than the full amount of service credit available, but only for service credit purchases under s. 40.285 (2) (a) and (b), Stats., and accords with long-standing Department practice and policy.

(9) Effect of Qualified Domestic Relations Orders.

This rule-making clarifies the treatment of purchased credit for service when a court orders a division of a WRS account by a qualified domestic relations order (QDRO). By amending the existing s. ETF 20.25 (3) (d) 2., this rule-making provides that credit for service purchased under s. 40.285, Stats., will be divided by a qualified domestic relations like all other creditable service in the participant's account, provided the application for the purchase was actually received by the department prior to the first day of the month in which the marriage was terminated. This date is defined by s. 40.02 (18f), Stats., as the "decree date" and is the effective date of a QDRO. If the application to purchase credit for service is received after the decree date, then any service purchased under the application will not be affected by the QDRO, regardless of the source of the funds for the purchase or when the services in question were actually rendered. The amendment also provides that the Department will send any bill for payment shortfalls and any refund due in connection with the application to purchase service only to the participant, regardless of whether there is a QDRO or when the application was received. Nothing in this rule-making will prevent the parties to a divorce, or the court, from making arrangements between the parties for the participant to share refunds with the ex-spouse or for the ex-spouse to contribute, through the participant, to the payment of a shortfall. But the Department will not

be required to split bills or refunds or deal with the ex-spouse concerning the participant's application to purchase service credits.

(10) Number of service credit purchases per year.

Section 40.285 (2) (a) 3. and (b) 5., Stats., allow the Department the option to allow, by rule, more than two service credit purchases of forfeited service or two purchases of other governmental service per year. This proposed rule-making does not expand the default limit of two such service purchases per year and applies that limit across the board to all service credit purchases. This is necessary because of a payment option created by s. 40.285 (5), Stats.

The purchase of the service for the qualifying period, teacher improvement leave, and previously uncredited service as a junior teacher or executive participating employee are all intended to be one-time purchases of the entire available credit with payment-in-full accompanying the application. Applications without full payment would generally be rejected. However, under s. 40.285 (5), Stats., a plan-to-plan transfer is an available payment option for all forms of creditable service purchase. The possibility exists that there will be a payment shortfall resulting in prorating the service purchased as provided by s. 40.285 (5) (c), Stats. To address that possibility, this rule-making permits an additional creditable service purchase of the same type during the same calendar year, provided the participating employee remains otherwise eligible. So, s. ETF 20.17 (1) (e) limits all types of creditable service purchase to two per year, maximum.

C. Rule-making for particular kinds of service purchase.

(1) Rules specific to purchase
of credit for forfeited service.

This rule-making provides that the Department will prepare an estimate for purchase of forfeited service based upon all the years and fractions of a year of forfeited service for which credit may then be purchased, unless the employee specifies a lesser amount. Purchases of credit for forfeited service are limited by the accumulated creditable service of the employee at the time of the purchase, no matter how much previous service was actually forfeited.

Unlike purchases of credit for service during a qualifying period, teacher improvement leave, and previously uncredited service as a junior teacher or executive participating employee, these rules allow an employee to decide (after receiving the estimate and application form) to buy credit for less than the full amount of service credit available for forfeited service.

The rule-making also codifies in s. ETF 20.17 (3) (am) 2. and 3. a list of the pre-1982 separation and withdrawal statutes governing the former Wisconsin retirement fund, state teachers retirement system and Milwaukee teachers retirement fund. Receipt of a lump sum benefit under those statutes is a prerequisite for an otherwise qualified person to purchase credit for the previous services rendered. The rule also codifies a list of pre-1982 statutes akin to the present s. 40.25 (1) which allowed for payment of a lump sum in lieu of a retirement annuity. Receipt of such benefits does not create any potential eligibility to purchase service credit under s. 40.285 (2) (a).

Section 40.285 (4) (c) and (5) (c), Stats., require the Department to specify, by rule, how a purchase of forfeited service, by a participant who forfeited service under more than one category of employment, will be prorated in the event of different kinds of payment shortfalls. In this rule-making, s. ETF 20.17 (3) (d) provides that, unless the applicant specifies otherwise, the amount received will be applied until exhausted to buy all the available creditable service under each of the employee's different employment categories listed in the order of the highest to lowest multipliers in s. 40.23 (2m) (e) 1. through 4, Stats. In addition, credit for service as a protective occupation participant with Social Security coverage is listed ahead of service as an elected official or executive participating employee, and service as a teacher credited separately and ahead of other service in the general category under s. 40.23 (2m) (e) 1, Stats.

(2) Rules specific to purchase of credit for other governmental service.

This rule-making provides that the actuary shall determine the method for calculating the cost of purchasing credit for other governmental service and may revise the calculation at any time if there are changes in the benefit laws, valuation assumptions or other factors the actuary finds significant. The goal is that the cost should reflect the actuarial value of the benefit.

This rule-making describes in s. ETF 20.17 (4) (b) 3. and (c) the proof necessary to establish that service for which credit is sought was performed and meets the definition of "other governmental service." The specified proof is carried over from the existing s. ETF 20.18 (4) with minimal changes for clarity.

A new rule requirement, based upon s. 40.285 (2) (b) 4., Stats., is for a certification that the other governmental service is not being used to establish entitlement to or the amount of other pension, retirement or similar federal, state or local government benefits, except for Social Security, disability or benefits for service in the national guard or reserves. The new rule clarifies that the statutory prohibition bars buying credit only to service being used for other pension and retirement benefits from federal, state or local governmental plans.

A provision of the existing s. ETF 20.18 (4) (c) states that the department's determination as to the sufficiency of the evidence is conclusive. This is not carried over to the new rule. Rather than being conclusive, this rule-making specifies that the determination, like virtually all determinations made by the Department, is subject to timely appeal to the Board.

The provision of the current s. ETF 20.18 (6) (a) limiting the amount of credit for other governmental service that may be purchased is carried over to this new rule-making, in part. The participating employee may not purchase more credit than he or she has already earned under the WRS. However, the present absolute cap on purchasing more than 10 years of other governmental service is removed.

The current s. ETF 20.18 (3) (b) allowing a participant to submit an application 90 days after terminating all participating employment is not carried over. Instead, the application must submit an application while still a participating employee, but then has up to 90 days to submit the supporting documentation.

The current provision in s. ETF 20.18 (7) (f) allowing the Department to reject an application for the purchase of other governmental service that is incomplete after 6 months is not carried over. Rather, any application for purchasing any type of service credit may be rejected by the Department if still incomplete after 90 days.

These rules allow an employee to decide (after receiving the estimate and application form) to buy credit for less than the full amount of service credit available for other governmental service. This treatment is unlike purchases of credit for service during a qualifying period, teacher improvement leave, and previously uncredited service as a junior teacher or executive participating employee,

As is currently provided in s. ETF 20.18 (6), the amount of service credit will be determined by applying the 1,904 hour test applicable to full-time employment for non-teachers, regardless of the nature of the services rendered for the other government. Also, service credit purchased for other governmental service may not be applied for purposes of satisfying any of the following:

- The vesting requirement of former s. 40.23 (1) (a) 3., 1995 Stats.
- The minimum recent service criteria for disability benefits
- The service requirements to be eligible to continue insurance after termination.

Neither may the service credit purchased for other governmental service be considered as part of the participant's accumulated creditable service for determining the maximum amount of service credit that may be purchased for forfeited service or other governmental service.

One kind of other governmental service for which credit may be purchased is employment by an employer that joined the WRS after the services in question were rendered, and did not recognize 100% of the employee's prior service for WRS purposes. Since s. 40.21 (6) (b), Stats., allows a WRS participating employer to later recognize such prior service, this rule contains in s. ETF 20.17 (4) (e) 5. f. a protection for the employee who already bought service credits for prior service, which is later recognized by the employer. The purchase payment and associated interest will be transferred to the employee's voluntary additional contribution account and the service credit will be recognized as ordinary service, not subject to the restrictions noted above for other governmental service credits.

Section 40.285 (2) (b) 1. d., Stats., provides that an applicant to buy creditable service under the WRS for so-called other governmental service must pay the cost of the purchase in a lump sum equal to the present value of the creditable service. The actuary is to determine rates that will be actuarially sufficient to fund the costs of the increased benefit resulting from the purchase of this service. The department is required to establish, by rule, different rates for different categories of participants, based on factors recommended by the actuary. This rule-making attempts to satisfy that requirement by providing that the participant's service in different categories of employment must be considered by the actuary in devising the method for calculating the cost.

The part of current s. ETF 20.18 (5) (c) requiring Department pre-approval of the actuary's calculation for setting the cost of purchasing credit for other governmental service is not carried over. Neither is the portion of s. ETF 20.18 (5) (d) that allows the Department to prescribe when the actuary's revised calculation method will be applied. The rule requires that the actuary's new method of calculation be applied as of the effective date recommended by the actuary. However, the new calculation method will not be applied to applications received before the actuary's effective date.

Factors to be considered by the actuary in setting the rate for purchasing other governmental service currently stated in s. ETF 20.18 (5) (b) are carried over into the new rule, with three exceptions. The obsolete reference to differing interest crediting on participant accounts in s. ETF 20.18 (5) (b) 2. c. is eliminated as are references to the participant's so-called "money purchase" balance and distinctions made by the actuary based on gender and occupation when making assumptions about mortality and withdrawal. Two new factors have been added in this rule-making. The participant's accumulated required employee contributions and, for voluntary participants in the variable retirement investment trust, any variable excess or deficiency are also specified factors for the actuary to consider.

(3) Rules specific to purchase of
credit for qualifying period.

A pre-requisite for purchasing credit for a qualifying period is to first purchase service credit for any subsequently forfeited service. This rule carries over into s. ETF 20.17 (5) (c) this requirement, which is currently found in s. ETF 20.16 (1). The applicant to purchase service credit for a qualifying period must first purchase all service credit the applicant is currently eligible to buy for forfeited service.

An applicant must purchase all available qualifying period service credit, up to the 6-month statutory maximum. The sole exception is that prorating may occur due to a shortfall in a plan-to-plan transfer to pay for the benefit, as required under s. 40.285 (5) (c), Stats.

The cost of the service credit is based on the employee's highest earnings in a single annual earnings period. For an application received, for example, in March, the annual earnings for the current period are unknown. The Department will look back to the highest completed annual earnings period in its records. If the applicant was part-time during that annual earnings period, then the earnings will be extrapolated upwards to reflect a full-time amount to be used in calculating the purchase price for the service credit.

The service credit purchased for qualifying service will be in the category of employment in which it would have been granted if the services had been creditable at the time they were performed.

(4) Rules specific to purchase of
credit for teacher improvement leave.

The only service credit available for teacher improvement leave under s. 40.285 (2) (e), Stats., is for a leave occurring between January 1, 1964 and August 21, 1967. The rule provides that an employee wishing to purchase service credit for such leave must first obtain the certification from the University of Wisconsin Board of Regents that is required by the statute. The Department will then provide an estimate and application form based on the period of leave certified.

An applicant must purchase all available teacher improvement leave service credit. The sole exception is that a prorating may occur due to a shortfall in a plan-to-plan transfer to pay for the benefit, as required under s. 40.285 (5) (c), Stats.

(5) Rules specific to purchase of
credit for uncredited junior teaching service.

This rule clarifies that to be eligible to purchase service credit for “junior teacher” service, the applicant must have been employed as a teacher in the public schools covered by the former State Teacher Retirement System. This excludes City of Milwaukee teachers. In addition, the teaching service in question must have occurred prior to the 1957-58 school year, and during a school year when the teacher had not attained age by the July 1 before the start of the school year. The eligibility criteria in s. ETF 20.17 (7) (b) is based on the statutory definition of “junior teacher” in former s. 42.20 (6), Stats. Junior teachers were effectively excluded from coverage under the State Teachers Retirement System until former s. 40.40, 1955 Stats., was amended by Chapter 12, s. 10, Laws of 1957, effective July 1, 1957.

An applicant must purchase all available junior teacher service credit. The sole exception is that prorating may occur due to a shortfall in a plan-to-plan transfer to pay for the benefit, as required under s. 40.285 (5) (c), Stats.

(6) Rules specific to purchase of
credit for uncredited service as an executive official.

In s. ETF 20.17 (8) this rule-making describes the eligibility criteria for purchasing credit under s. 40.285 (2) (c), Stats., which are not readily apparent from the statutory references to uncredited service due to age restrictions. It is not impossible that there are still participating employees eligible for this benefit, but it is not likely. The rule clarifies that a participating employee who, on or after May 3, 1988, held a position as an executive participating employee. In addition, the person must have held a position between July 1, 1974 and May 3, 1988, while the position was listed in one of the executive salary groups under s. 20.923 (4), Stats., or certain specified deputy and executive assistant positions under s. 20.923 (8) or (9), Stats., respectively. The applicable restrictions on age concerned barring creditable service after a person reached age 62. The effective date of this bar was not the 62nd birthday. From mid-1974 through 1981, the effective date of the bar was the end of the calendar quarter in which the person reached age 62. From 1982 until the bar was eliminated in May 1988, the effective date was the first day of the fourth month that began after the individual reached 62. No person born after January 31, 1926 would have been affected by these age restrictions, so an eligible participating employee would be at least 81 years old today.

The rule also interprets the statutory language of s. 40.285 (2) (c), Stats., based on the history of that language, to mean that:

- All participating employees purchasing service under that paragraph, will pay the same rate for such service regardless of whether the participating employee is a present or former elected official or an appointee of such an official;
- No one who purchased service under former s. 40.02 (17) (e), Stats., which was in effect from May 3, 1988 through August 14, 1991, is entitled to buy credit under s. 40.285 (2) (c), Stats.; and,
- No present or former elected official, or an appointee of such an official, who purchased service under that former s. 40.02 (17) (e), Stats., is entitled to any refund or additional benefit based upon the amendment of that statute by 1991 Wisconsin Act 39 or by the renumbering and subsequent amendment of that statute by 2003 Wisconsin Act 33.

In the event that a person does qualify to purchase credit under s. 40.285 (2) (c), Stats., then all such credit available must be purchased, unless a plan-to-plan transfer method of payment is used, and there is a shortfall.

D. Other rule-making incorporated.

(1). Eligibility for long-term disability insurance benefits.

This rule amends s. ETF 50.50 (2) concerning the minimum recent service requirement to qualify for long-term disability insurance benefits. An applicant for benefits must have at least one-third of a year of creditable service in at least 5 years out of the 7 years preceding the application and the year of the application itself.

At present, “repurchased service” may be counted towards this requirement only if the service itself was rendered during the calendar year in which the application was received or one of the 7 preceding years. This rulemaking clarifies that in this context, the only purchased service credits which may potentially be counted are those under s. 40.286 (2) (a), Stats., pertaining to purchased credit for forfeited service.

(2) Non-substantive, technical rule-making.

A technical, non-substantive, clarification is also added to s. ETF 50.50 (2) by this rulemaking to identify another type of service that counts towards the minimum service requirement. Veterans who left WRS covered employment to go into the armed forces, then returned to their previous employment afterwards, may qualify

for “creditable military service” under s. 40.02 (15) (a), Stats. Similarly, returning members of the uniformed services may also qualify for WRS creditable service under the federal Uniformed Services Employment and Reemployment Rights Act which supercedes state law. This rule-making clarifies that such creditable service will be counted towards satisfying the minimum prior service requirement for long-term disability insurance eligibility, in accord with federal requirements. The rulemaking preserves the present exclusion of creditable military service under s. 40.15 (c), Stats., which is awarded to employees based on longevity.

The rule amends s. ETF 10.01 (7) to make the cross-reference changes necessary because of the repeal of s. 40.25 (6) and (7), Stats., by 2003 Wis. Act 33, effective July 26, 2003.

This rule reflects the terminology changes resulting from changing the name of the “fixed” retirement investment trust to the “core” retirement investment trust in 2005 Wis. Act 153, effective April 5, 2006.

Section ETF 20.15 includes provisions related to the interest due when service was purchased on a 5-year installment basis. Because of the repeal of s. ETF 20.15 by this rule-making, the legislative clearinghouse staff recommended revising the existing cross-reference to s. ETF 20.15 (2) (c) that appears in s. ETF 11.16 (2) (c). The department has determined that s. ETF 11.16 (2) (c) has become obsolete since payment by installments was only available with respect to service purchases initiated before October 1992. This rule-making therefore repeals s. ETF 11.16 (2) (c), too.

6. Summary of, and comparison with, existing or proposed federal regulations:

Federal regulations do not require that a governmental retirement plan allow the purchase of permissive service credit. However, 26 U.S.C. 415(n), a provision of the tax code, provides special rules relating to the purchase of permissive service credits, if allowed by a pension plan. Also, 26 U.S.C. 457(e)(17) concerns trustee-to-trustee transfers from governmental deferred compensation plans to purchase permissive service credit and 26 C.F.R. 1.457-10 (b) provides U.S. Treasury regulations pertaining to such plan-to-plan transfers. An exclusion from gross income for plan-to-plan transfer to purchase permissive service credits using another tax sheltered annuity funds is found in 26 U.S.C. 403(b)(13)(A). This rule-making is in accord with the federal tax code and regulations in order to preserve both the qualified status of the Wisconsin Retirement System and the tax benefits for employees as required by s. 40.015, Stats.

7. Comparison with rules in adjacent states:

Although there are a number of governmental retirement plans in Illinois, Iowa, Minnesota and Michigan, their administrative rules are not directly relevant to interpreting the Wisconsin statutes governing the Wisconsin Retirement System because the governmental retirement plans in the different states are designed differently. All of the following are plan design issues reflected in the differing laws governing the different plans:

- Whether the plan is a defined benefit plan in which creditable service affects the calculation of benefits.
- If so, whether the plan allows any purchase of service credits.
- If so, exactly what service credits may be purchased and how the cost of the purchase is determined.

Also, governmental plans differ in the degree to which the terms of the plan are established by enabling legislation or left to subsequent administrative rulemaking. Consequently, the administrative rules, if any, for purchasing service credit will necessarily vary between each retirement plan, making a meaningful comparison difficult or impossible.

Illinois

The eligibility to purchase service under the Illinois State Employees' Retirement System is discussed in 80 Illinois Administrative Code s. 1540.50 a) 1). As in the Wisconsin Retirement System, purchasing service does not change the effective date of coverage under the plan. See 80 IL ADC s. 1540.210 a). After-tax and payroll deduction methods to pay for forfeited service and purchases of permissive service credits are covered in 80 IL ADC s. 1540.255. The ISERS defines "permissive service" in 80 IL ADC s. 1540.350 a) 8) as including credit purchased by the member for military service, leaves of absence, early retirement incentives, contractual service, federal or out-of-state service, visually handicapped service, legislative staff intern service and unused sick and vacation time.

Under 80 IL ADC s. 1600.50, participants in the Illinois State Universities Retirement System may pay contributions for periods of employment predating their being certified as a plan participant. Estimated annuity payments from SURS do not, pursuant to 80 IL ADC s. 1600.140 c), include additional service credits purchased after the retirement annuity application was received.

For the Teachers Retirement System of the State of Illinois, 80 IL ADC s. 1650.310 c) pertains to calculating cost of buying credit for military service and private school teaching. Eligibility for purchase of credit for leaves of absence is established in 80 IL ADC 1650.3 h). The minimum payment amount for purchase of optional service is covered by 80 IL ADC s. 1650.3. Refunds for purchasing

duplicate service or for service in excess of what was needed to reach the maximum formula pension benefit are provided for by 80 IL ADC s. 1650.410. Amount rolled-over into the TRS may be used to buy service credits, as authorized by 80 IL ADC 1650.480. The rule 80 IL ADC s. 1650.1202 d) concerns extending payroll deduction agreements to complete a purchase of service. By 80 IL ADC s. 1650.1205, a limit of payment per year is set on employer payments towards an employee's purchase of optional service.

The State of Illinois Employees' Deferred Compensation Plan allows transfers from the plan to a defined benefit plan for the purpose of purchasing permissive service credits. See 80 IL ADC 2700.750.

Iowa

The Iowa Public Employee Retirement System describes the service that may be purchased in s. 495-8.1 of the Iowa Administrative Code, including the purchase of "prior service" associated with having taken a refund of contributions, credit for other public employment, credit for active service in the U.S. armed forces, service in the state legislature, post-7/1/1998 leaves of absence, credit for employment where coverage under the retirement system could have been elected, but was not, credit for employment for which optional coverage under the retirement system was not available, such as substitute teaching or temporary employment, credit for federal Peace Corps service, and purchase of credit for employment by certain Canadian governmental entities. Revocations of service purchase applications and refunds are covered by IA-ADC s. 495.8.2. Issues of service purchase and compliance with Internal Revenue Code 415(c) and (n) limitations on defined contributions are addressed in IA-ADC s. 495-8.3. A requirement for four calendar quarters of wages as a pre-requisite to make service purchases is waived for seasonal or limited term employees by IA-ADC s. 495-8.4. The information required in order to quote a cost for a service purchase is listed in IA-ADC s. 495-8.5. Limitations on service credit purchases are found in IA-ADC s. 495-8.5(3). Terminated employees who take a refund and are later reinstated as the remedy for an employment dispute may buy back their service credit under IA-ADC s. 495-9.5. Under IA-ADC 495-11.7(4), a member of the retirement system who takes a refund, but violates the required severance period, and who fails to pay back the refund within 30 days, may buy service credit for the period covered by the refund, but only at its actuarial cost. Service purchases completed after the first month of retirement benefit entitlement do not count towards determining a pre-7/1/1990 retiree's minimum benefit under IA-ADC s. 495-12.3(2). The waiver of rules concerning service purchase costs is prohibited by IA-ADC s. 495-33.10.

An active member of the Iowa Peace Officer's Retirement, Accident and Disability System may, under IA-ADC s. 661-402.300, for a one year period ending July 2, 2007, make contributions to purchase up to the maximum amount of permissive

service credit to be counted towards eligible qualified service. See also IA-ADC s. 661-402.301(2) on permissive service credit and adopting section 415(n) of the Internal Revenue Code as well as IA-ADC s. 661-402.302 on determining the cost to the member and providing a cost quote. The application process is covered in IA-ADC s. 661-402.303. An exception allowing refunds of service credit purchase amounts in order to comply with the Internal Revenue Code is authorized by IA-ADC s. 661-402.304. Provision for review and appeal of a rejected service purchase application is found in IA-ADC s. 661-402.305(2). Finally, IA-ADC s. 661-402.306(1) contains a reporting requirement intended to prevent a member from receiving credit under more than one retirement plan for the same period of service.

Michigan

The State Employee Retirement System does not yet have administrative rules.

Michigan Administrative Code R. 38.112 gives the Public School Employees' Retirement Board authority to set the rate of interest to be applied to repay a refund, purchase out-of-system educational service and other creditable service. Eligibility criteria and application procedure for purchasing out-of-system educational service are found in MN-ADC R. 38.1120 and 38.1122.

Minnesota

The Minnesota Teachers Retirement Association has no formal administrative rules.

Under MN-ADC s. 7905.2560, the deferred compensation plan of the Minnesota State Retirement System allows amounts to be transferred to purchase service credits in an eligible plan, in accord with section 457 of the Internal Revenue Code.

8. Summary of factual data and analytical methodologies:

The proposed rule is based on logical analysis of the situations that can arise under the plan-to-plan transfers newly permitted by s. 40.285, Stats., as well as many years of experience in administering purchases of service credits. The rule generally carries over the policies and practices codified in prior administrative rules on the subject of purchasing credit for a qualifying period or other governmental service, except when those policies or practices have become obsolete due to applicable changes in state or federal law. With respect to establishing the cost for purchasing credit for other governmental service the Department has weighted the practical limitations on the information known to the Department at the time of the purchase and specified relevant factors identified by

the actuary in order to approximate, insofar as reasonably possible, the actuarial cost of the increased benefit resulting from the purchase, which the employee must pay. In regard to prorating service, when the employee is able to purchase credit for more than one category of employment, the rule provides that payment will first be applied to purchase credit for the category of employment which is of the most benefit to the employee in calculating a formula annuity, and within each category, pre-2000 service will be credited ahead of post-1999 service for the same reason.

9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:

The rule cannot affect small businesses because it pertains to the purchase of service credit under the Wisconsin Retirement System created by s. 40.20, Stats. The WRS is a governmental pension plan open only to state agencies, counties, cities, towns, school districts, and other governmental units and their qualifying employees. See ss. 40.02 (28), 40.21 and 40.22, Stats. No small businesses participate in the Wisconsin Retirement System. Indeed, any participation by any private, non-governmental employer would potentially jeopardize the qualified plan status of the WRS, in violation of s. 40.015 (1), Stats.

10. Anticipated costs incurred by private sector:

None.

11. Effect on small business:

No effect.

Regulatory Flexibility Analysis:

This rule-making has no significant 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.

Fiscal Estimate:

The rule has no fiscal effect upon the fiscal liabilities or revenues of any county, city, village, town, school district, technical college district or sewerage district, with one possible exception. Certain school districts and educational institutions may incur minor additional administrative costs to authorize the transfer of funds that are part of their section 403(b) IRC plans. Although these funds, to be used for the employee's purchase of service credits under the Wisconsin Retirement System, are already deposited in the Public Employee Trust Fund, the transfer

must nevertheless be authorized by the employer operating the 403(b) plan. See s. ETF 20.17 (1) (c) 3. a. in this rule-making. The Department of Employee Trust Funds does not itself operate a plan under 403(b) of the Internal Revenue Code, but accepts deposits from qualifying school districts or other educational institutions that operate such plans as additional contributions under s. 40.05 (1) (a) 5, Stats.

Text of Rule

SECTION 1. ETF 10.01 (7) is amended to read:

ETF 10.01 (7) “Three continuous years of creditable service” for purposes of ~~s. 40.25 (6) (a) and (7) (a) 2. ss. 40.26 (3) (bm) and 40.285, Stats., and s. ETF 20.17~~ means an uninterrupted period of at least 3 complete, non-overlapping annual earnings periods during each of which the participant earned some creditable current service. A period of continuous creditable service is considered interrupted if the participating employee is terminated from employment covered by the Wisconsin retirement system for a period of more than 90 calendar days. Service associated with contributions which have been debited to fund a benefit may not be applied toward continuous creditable service.

SECTION 2. ETF 11.16 (2) (c), 20.14, 20.15 and 20.16 are repealed.

SECTION 3. ETF 20.17 is created to read:

ETF 20.17 Service purchases (1) GENERAL PROVISIONS. (a) *Scope.* This section applies to service purchases under s. 40.285, Stats.

(b) *Preparation of estimates; Deadline for application.* 1. Upon request, the department shall prepare a written estimate of the cost of purchasing service under s. 40.285 (2), Stats., on an application form to be used for the purpose and send the application form to the participating employee. Anytime after the department receives a completed application and at least the minimum payment or authorization to transfer additional contributions required to accompany that application, the department may update and correct the calculation of the amount due as necessary, before finalizing the purchase of service credit.

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 before the date the applicant terminated all participating employment covered by the Wisconsin retirement system.

3. The deadline for a part-time elected official whose date of separation from the last participating employer is determined under s. 40.23 (1) (am) 2., Stats., is the date the applicant terminated participating employment other than as a part-time elected official, or the date on which the applicant elected to waive further Wisconsin retirement system participation under s. 40.23 (1) (am) 2., Stats., whichever date is later.

Note: The “Waiver of Part-Time Elected Service,” form ET-4303, becomes effective on the day after its receipt by the department or, if more than one ET-4303 is being submitted, on the first day after the first waiver is received by the department.

(c) *Rejection of application.* 1. An application received after the deadline in par. (b) shall be rejected.

2. If the department determines that the participant is ineligible to purchase service for which the participant has applied, the application shall be rejected and any payment previously received by the department shall be refunded as provided in par. (f).

3. The department shall reject an application which is not accompanied by a payment in one of the following forms:

a. Payment in full of the department’s estimated cost of the service credit if the purchase is for a qualifying period, teacher improvement leave or previously uncredited service as a junior teacher or executive official under s. 40.285 (2) (c) to (f), Stats. Such payment may include authority to transfer 403(b) funds or additional contributions under s. 40.05 (1) (a) 5., Stats., already held by the department in order to make the purchase. A transfer of 403(b) funds must be authorized by the school district or other educational institution employer operating the plan under s. 403(b) of the internal revenue code.

b. In lieu of payment in full, the applicant may include at least 10% of the department’s estimated cost of the creditable service with the application and arrange for the balance to be paid by a plan-to-plan transfer under s. 40.285 (5), Stats. Such transfer funds must be received within 90 days after receipt of the application or the application or the purchase will be treated under the payment shortfall provisions of s. 40.285 (5) (c), Stats., and par. (h).

c. Partial payment of the department’s estimated cost of the service credit, but only if the purchase is for forfeited service or other governmental service, under s. 40.285 (2) (a) or (b), Stats.

4. The department may reject any application which 90 days after the date of application remains incomplete in any respect other than receipt of payment. If an application is rejected under this subdivision then the department shall refund any associated payment as provided by par. (f).

5. An application to purchase creditable service for forfeited service or other governmental service under s. 40.285 (2) (a) or (b), Stats., shall be rejected if the applicant does not have at least three continuous years of creditable service immediately preceding the date the completed application form is received by the department, with no break in service between the three continuous years and the application date.

(d) *Effect of purchasing service.* Buying creditable service under this section adds the amount of service purchased to the person's total creditable service for the purpose of calculating a formula annuity benefit under s. 40.23 (2) (b) or (2m) (e), Stats., or making a formula annuity calculation in the same manner, including under s. 40.25 (1), 40.63 (8) or 40.73 (1) (c) Stats. Buying creditable service has no retroactive effect, including but not limited to the following:

1. Buying creditable service does not undo any effects of the requirement that a person who takes a separation benefit must thereafter be treated as a new employee upon subsequent employment by a participating employer.

Note: See s. 40.25 (3), Stats.

2. Buying creditable service does not establish an earlier date of participation nor restore an account as though it had never been closed.

3. Buying creditable service does not restore or entitle the purchaser to any benefits or rights associated with being a participant in the Wisconsin retirement system, or a member of any predecessor retirement system, at the time the services for which credit is being purchased were actually performed.

4. Except as provided in s. ETF 50.50 (2), 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.

Note 1: As a consequence of purchased service credits not establishing creditable service in or for any particular annual earnings period or calendar year, purchased service does not affect the denominator for the calculation of final average earnings in s. 40.02 (33) (a) 2., Stats., nor the amount of a person's creditable service in a particular annual earnings period for purposes of s. 40.23 (2m) (fm) or 40.63 (1) (a), Stats., for example.

Note 2: Purchased service credit is included in the "creditable service" used to determine the normal retirement age and the maximum formula benefit for a protective occupation participant under ss. 40.02 (42) (a) and 40.23 (2m) (b), Stats., respectively, as well as months of creditable service for reducing the actuarial adjustment under s. 40.23 (2m) (f) 2., Stats., and the reduction of duty disability benefits for service over 25 years under s. 40.65 (5) (a), Stats. Credit purchased under s. 40.285, Stats., except

under s. 40.285 (2) (b), Stats., also applies to the “creditable service” used to determine eligibility for creditable military service, group health, and post-retirement life insurance, under ss. 40.02 (15) (c), 40.02 (25) (b) 6. a., 6e., 6m. b. and 6r. and 40.72 (4) (b) , Stats. Limitations on the use of purchased credit for other governmental service in particular are listed in sub. (4) (e) 5.

Note 3: Service purchased under s. 40.285, Stats., shall be included with all other creditable service in the participant’s account divided by a qualified domestic relations order pursuant to s. 40.08 (1m) (b), Stats., provided the application for the purchase was actually received by the department prior to the decree date, as that term is defined by s. 40.02 (18f), Stats. See s. ETF 20.35 (3) (d) 2.

Example 1: A person became a participating employee covered by the Wisconsin retirement system in 1995. The participant terminated employment in 1999 and took a separation benefit in 2000 thereby closing her Wisconsin retirement system account. She again became a participating employee on January 1, 2002, and later purchased all the service forfeited by taking the separation benefit in 2000. The years of service purchased are added to the participant’s current service balance and are included in the creditable service used to calculate a formula annuity benefit under s. 40.23 (2) (e), Stats. However, for all Wisconsin retirement system purposes she is treated as a new participant as of January 1, 2002. Her account and benefit rights are not restored as though her account had never been closed.

Example 2. A former member of the state teacher retirement system took a separation benefit in 1971. Subsequently buying creditable service for teaching services rendered in 1970 does not confer any present right to the minimum retirement age of 50 for teachers that was in effect in 1970.

Example 3: A former member of either the state or Milwaukee teacher retirement system before 1964 whose account was later closed by withdrawing member contributions as a member of either the combined or formula group, or by withdrawing both member and state deposits as a member of the separate group, does not reestablish that account by subsequently purchasing credit for the forfeited service. The former teacher is treated for all WRS purposes as a new employee upon returning to participating employment. Consequently, any benefits now paid to the participant are not being paid on the account of a December 31, 1963, member. However, nothing in this section shall be construed to prevent the Wisconsin department of revenue from interpreting s. 71.05 (1) (a), Stats., as it sees fit for its purposes.

5. Buying credit for service does not affect or restore earnings for any annual earnings period or for purposes of calculating a benefit or final average earnings.

(e) *Limitation on creditable service purchases.* 1. A maximum of two purchases per calendar year may be made under each of subs. (3) through (8).

Note: The purchase of the service for the qualifying period, teacher improvement leave, and previously uncredited service as a junior teacher or executive participating employee are all intended to be one-time purchases of the entire available credit with payment-in-full accompanying the application. Applications without full payment would generally be rejected. However, because a plan-to-plan transfer under s. 40.285 (5), Stats., is now an available payment option for all forms of creditable service purchase, the possibility exists that there will be a payment shortfall resulting in proration of the service purchased as provided by s. 40.285 (5) (c), Stats. This paragraph permits an additional creditable service purchase of the same type during the same calendar year, provided the participating employee remains otherwise eligible.

2. A person may not purchase credit for service to the extent that the effect would be to exceed the 1.0 year limit on creditable service for any annual earnings period. For purposes of this subdivision, notwithstanding par. (d) 4., the service for which the person wishes to purchase credit and all the person's other purchased service credits shall be treated as if credited under the Wisconsin retirement system or a predecessor retirement system in the annual earnings periods when the services were actually rendered. The person's current creditable service for an annual earnings period together with all previously granted service credits associated with that annual earnings period, including but not limited to purchased service credits as provided in this subdivision, shall first be subtracted from 1.0 year to determine the balance remaining, if any, for each annual earnings period that may be purchased under this section and s. 40.285, Stats.

Example 1. A participant earned 0.40 years of creditable service working for a participating employer during the 2004 annual earnings period. During the same annual earnings period, the participant worked 1,905 hours, the equivalent of one full year of creditable service, for another governmental employer not covered by the Wisconsin retirement system. Even if the participant is otherwise eligible to purchase credit for the other governmental service, no more than 0.60 years of service for the 2004 annual earnings period may be purchased.

Example 2. A participant whose annual earnings periods are calendar years, earned 0.60 years of creditable service between January and May 2005 by working overtime. The participant then terminated and took a separation benefit, forfeiting the service. The participant then returned to participating employment in July and earned 0.58 years of creditable service for the remainder of 2005. Some years later, the participant meets the qualifications to purchase the forfeited service. The participant may not purchase credit for more than 0.42 years of the forfeited service.

(f) *Refunds.* Refunds may not be made for amounts under the threshold established by s. 40.285 (7), Stats. Refunds shall be made in the manner provided by s. 40.285 (6), Stats. Interest on refunds is subject to the provisions of s. 40.08 (6), Stats. No excess funds transferred to the department by a plan-to-plan transfer may be refunded directly to the participant. If the department refunds any payment taken from additional contributions under subd. 2. or 3., it shall restore the refunded amount to the

additional account as if the transfer had not occurred. The following order of priority shall determine the sources of any refund due:

1. The participant's lump sum payment to the department. The refunded amount shall be paid directly to the participant.

2. Additional contributions transferred from the participant's after-tax additional contribution account. The amount refunded shall be transferred back to the participant's after-tax additional account.

3. Additional contributions transferred from the participant's tax sheltered additional contribution account. The amount refunded shall be transferred back to the participant's tax-sheltered additional account.

4. Funds transferred from another qualified retirement plan under s. 40.285 (5), Stats. When more than one qualified retirement plan was the source of transferred funds, the department shall determine the refunded amount to be returned to each qualified retirement plan.

(g) *Treatment of payments.* 1. Payments retained by the department shall be deposited in the participant's required contribution account under s. 40.04 (4) (a) 1., Stats. Except as otherwise provided in subd. 3., if the participant participates in the variable trust the payment shall be divided between the core and variable accounts in the same proportion as the participant's current contributions are so divided at the time that payment is received.

2. For interest crediting purposes, except as otherwise provided in subd. 3., all payments received to purchase creditable service including plan-to-plan transfer funds shall be treated as amounts received during the year in which the department actually receives the payment or transferred funds.

3. Notwithstanding subd. 2., for interest crediting purposes, funds transferred from the participant's voluntary employee additional contributions that were in the prior year's closing balance of the additional contribution account, including interest credited, when the transfer occurs shall retain that status so that the participant will not forfeit interest to be credited on the prior year's closing balance. Notwithstanding subd. 1., amounts transferred from a participant's additional contributions in the core investment fund to buy service shall remain in the core investment fund, and additional contributions transferred from the participant's variable additional contributions to buy service shall remain in the variable fund. Nothing in this subdivision shall be construed to affect an individual's variable cancellation rights under s. ETF 10.30 (5).

(h) *Payment shortfalls.* 1. For any type of creditable service purchased under s. 40.285 (2), Stats., if the purchase includes a plan-to-plan transfer and the total amount received by the department is less that amount required for the purchase of the service,

and the difference exceeds the threshold for corrections under s. 40.285 (7), Stats., then the department shall proceed under s. 40.285 (5) (c), Stats., and allow the participant 30 days to pay the difference. If the difference is not received within 30 days after notice is sent to the participant, the department shall complete the purchase, reducing the amount of service credit purchased to the credit that can be purchased by the payment actually received.

Note: See s. ETF 20.17 (3) (d) for the required rules concerning how a forfeited service purchase is prorated when the participant forfeited service under more than one category of employment.

2. If the department determines that the actual cost of purchasing service under s. 40.285 (2), Stats., is greater than the amount estimated by the department for the participant, and the participant paid the estimated amount in full, then the participant shall be notified and allowed 30 days to either pay the balance due or withdraw the application, without prejudice. If the balance due or is not received prior to the deadline, then the department shall proceed under subdivision paragraph a., b., c. or d., as appropriate.

a. When a plan-to-plan transfer made up part of the payment, the department shall proceed under the payment shortfall provisions of s. 40.285 (5) (c), Stats., except as otherwise provided by subd. par. c. or d.

b. When no plan-to-plan transfer is involved and subdivision paragraphs c. or d. do not apply, or the participant made a timely request to withdraw the application, the department shall refund all amounts received as provided in par. (f).

c. If a Wisconsin retirement system annuity or lump sum in lieu of an annuity under s. 40.25 (1), Stats., is to be paid to the applicant, and the applicant so requests, the balance due shall be deducted from the lump sum or a subsequent monthly annuity payment payable. This subdivision paragraph does not apply if the balance due exceeds the amount of the benefit under s. 40.25 (1), Stats., or if the Department determines that the amount of the monthly annuity available for this deduction is insufficient.

d. If the application was for the purchase of credit for forfeited service or other governmental service, and subdivision paragraph c. does not apply, the department may complete a partial purchase as provided in sub. (3) (d) or (4) (g), respectively.

(i) *No participant withdrawal or cancellation of application; Exception.* The participant may not cancel or withdraw an application to purchase service credits once any payment has been received by the department, except under the circumstances specified in par. (h) 2. b.

(j) *Treatment of purchased service credit as pre-2000 or post-1999 service.* For purposes of computing formula annuity benefits under s. 40.23 (2m) (e), Stats., and the differing multipliers applicable to creditable service that was performed before January 1, 2000, and on and after that date, purchased service credits will be treated as provided in s. ETF 20.19 (2).

(2) DEFINITIONS. Words, phrases and terms used in this section shall have the same meanings as set forth in s. 40.02, Stats., and s. ETF 10.01. In addition, in this section:

(b) "Current earnings" means the participant's earnings in the most recent complete annual earnings period, provided the participant was a participating employee for the full annual earnings period. If the participant was not a participating employee throughout the most recently ended annual earnings period, "current earnings" means the product of the participant's hourly pay rate on the date of application, multiplied by the number of hours the participant would reasonably be expected to be employed as a participating employee during the current annual earnings period, assuming that the participant would continue to be employed for the remainder of the current annual earnings period.

(c) "Date of application" means the date the signed application on the form approved by the department for the purchase of the type of service in question is received by the department, as determined under s. ETF 10.82 (1).

Note: The forms approved by the department for the purchase of service credits are "Application to Purchase Other Governmental Service," form ET-2205, "Qualifying Service Purchase Estimate/Application," form ET-4314, "Forfeited Service Purchase Estimate/Application" form ET-4315, "Uncredited Teaching Service Purchase Estimate/Application," form ET-4323. These are individually customized forms that reflect the department's estimate of the amount required from the participant for that particular purchase. In addition, where no standard form exists for the type of service purchase, customized estimates will be prepared by the department upon request. All forms and estimates are available free upon request to the department at 801 W. Badger Road, P.O. Box 7931, Madison, WI 53707-7931, or by calling the ETF Call Center at (608) 266-3285 or toll free at (877) 533-5020. Forms should be requested at least four (4) weeks before the date the participating employee intends to apply, and well in advance of any anticipated termination of employment, to allow sufficient time for the department to calculate the personalized estimates of the cost.

(d) "Military service" means active military service and active service as defined in s. ETF 10.01 (1g), active duty for training, service as a cadet or student at a U.S. military service academy, and service in the national guard and the reserves.

(e) "Money purchase balance" means the sum of the participant's employee required contributions and accrued interest, including accumulations resulting from

purchases under this section, plus an amount from the employer reserve equal to the employee required accumulation less any amount resulting from purchases under s. 40.285 (2) (b), Stats., and interest accumulated on those amounts.

(f) "Other governmental service" means one of the following:

1. Service, other than military service, performed as an employee of any of the following:

a. The federal government.

b. The government of a U.S. state other than Wisconsin or a political subdivision, department or agency of such state.

c. An employer as defined by s. 40.02 (28), Stats., that does not participate in the Wisconsin retirement system with respect to the employee's employment category.

2. Service as an employee for a participating employer in the Wisconsin retirement system that was performed before the employer began to participate with respect to the employee's employment category, and that has not been recognized by the employer as creditable prior service.

Note: Under s. 40.21 (6), Stats., an employer may choose to recognize none, 25%, 50%, 75% or 100% of the previous service of existing employees when the employer first joins the Wisconsin retirement system, and may subsequently increase the recognized percentage for those who are still participating employees at the time. Any percentage of an employee's previous service remaining unrecognized is "other governmental service" within the meaning of subd. 2.

(3) PURCHASING CREDITABLE SERVICE FORFEITED BY A SEPARATION BENEFIT OR WITHDRAWAL OF EMPLOYEE OR MEMBER CONTRIBUTIONS. (a) *Scope*. This subsection applies to purchases of service under s. 40.285 (2) (a), Stats.

(am) *Eligibility criteria*. 1. An applicant is eligible to purchase service under this subsection if, on the date of application, the applicant is a participating employee with at least 3 continuous years of creditable service, as defined by s. ETF 10.01 (7) and no break in service between the three continuous years and the application date.

2. For purposes of s. 40.285 (2) (a) 2. b., unless barred because of receipt of a benefit as provided in subd. 2. or as otherwise provided in this section or s. 40.285, Stats., a person may purchase credit for rendering services that were then covered by the state teacher retirement system, Milwaukee teacher retirement fund or Wisconsin retirement fund, if the person subsequently received a lump sum payment under one of the separation or withdrawal laws in effect before January 1, 1982, including ss. 41.16, 1969-79 Stats., 42.242 (5), 243 (7) (e), 1957-79 Stats., 42.245 (4), 1965-79 Stats.,

42.49 (1) (a), 1945-79 Stats., 42.49 (14), 1955-79 Stats., 42.49 (16), 1965-79 Stats., 42.75 (1), 42.76 (10), 42.78 (6), 1971-75 Stats., 42.86 (1) and (2) and 42.91, 1969-79 Stats., 66.90 (15), 1945 Stats., 66.91, 1947-67 Stats.

3. Conversely, a person who received an annuity, or a lump sum payment in lieu of an annuity under s. 40.25 (1), is not eligible to purchase credit under s. 40.285 (2) (a) for any services rendered to a participating employer as a participating employee prior to payment of the benefit. Correspondingly, no person may purchase credit under s. 40.285 (2) (a) for services rendered prior to receiving a lump sum benefit under the similar laws in effect for the Wisconsin retirement fund, state teacher retirement system or Milwaukee teacher retirement fund prior to January 1, 1982, including ss. 41.11, (11), 1969 Stats., 41.11 (8) or (10), 1971-79 Stats., 42.242 (7), 1957-79 Stats., 42.245 (6), 1965-79 Stats., 42.49 (15), 1955-79 Stats., 42.73 (1) and 42.76 (12) (c), 1971-79 Stats., 42.78 (2) (k) 1. or 2., 1975-79 Stats., and 66.906 (3d), 1967 Stats. Those are not separation or withdrawal benefit laws within the meaning of s. 40.285 (2) (a) 2. b, Stats.

(b) *Service in different categories of employment; Calculation of cost.* In cases where the service to be reestablished was earned in more than one employment category, separate calculations shall be done for each period of service using the applicable statutory contribution rate under s. 40.05 (1) (a), Stats. as affected by s. 40.05 (2n) (b), Stats., for each employment category. The department's estimate to purchase service shall be calculated based on all the years and fractions of a year of forfeited service that are then available for purchase under s. 40.285 (2) (a), Stats., and this subsection, including the limits of s. 40.285 (2) (a) 1. a. and b., Stats., unless the applicant specifies a lesser amount. If the applicant so requests on the application received by the department, the final calculation of cost made after the application is received may include all years and fractions of a year of forfeited service eligible for purchase under s. 40.285 (2) (a), Stats., as of the date of application.

(d) *Proration of multiple category service for payment shortfall.* If the participant's payment to purchase service forfeited by a separation benefit or withdrawal of employee or member contributions is less than the amount needed to purchase all of the forfeited service that the participant is eligible to buy, the department shall complete the purchase by reducing the service credit purchased to the prorated credit that can be purchased by the payment actually received. Within each category of employment, the payment received shall be applied first to purchase service credit eligible to be treated as pre-2000 service, as provided in s. ETF 20.19 (2) (d). If the participant has forfeited service based on employment in more than one category under s. 40.23 (2) (b), Stats., and the participant does not specify the service category or categories to which the payment is to be applied, the department shall use the following order of priority in determining to which category of service to apply the payment, until the amount paid is exhausted:

1. Service as a protective occupation participant not subject to the federal Social Security Act, as described in s. 40.23 (2m) (e) 4, Stats.

2. Service as a protective occupation participant subject to the federal Social Security Act as described in s. 40.23 (2m) (e) 3., Stats.

3. Service as an elected official, as described in s. 40.23 (2m) (e) 2., Stats.

Service as an executive participating employee, as described in s. 40.23 (2m) (e) 2., Stats.

5. Service described in s. 40.23 (2m) (e) 1, Stats., as a teacher, as that term is as defined in s. 40.02 (55), Stats.

6. Service as a general category employee as described in s. 40.23 (2m) (e) 1, Stats., excluding service as a teacher.

(4) PURCHASE AND CREDITING OF OTHER GOVERNMENTAL SERVICE. (a) *Scope*. This subsection applies to creditable service purchases under s. 40.285 (2) (b), Stats.

(b) *Eligibility criteria*. The department shall grant creditable service for other governmental service to participants who meet all of the following requirements:

1. On the date of application, the applicant is a participating employee with at least 3 continuous years of creditable service, as defined by s. ETF 10.01 (7), with no break in service between the three continuous years and the application date.

2. With respect to the other governmental service for which credit is to be purchased, the participant was the employee of a federal, state or local governmental entity. In this paragraph, notwithstanding s. 40.02 (26) and (28), Stats., the terms “employee” and “employer” have their common meanings. The term “employee” does not include an unpaid volunteer, an independent contractor, a person contracted to furnish more than his or her personal services, a patient or inmate of a hospital, home or institution who performs services therein, or anyone who did not receive salary, wages or other compensation for his or her services. Employment by a private or non-profit entity which received government moneys or which was under contract to provide services to or on behalf of a governmental entity does not constitute employment with a governmental entity.

3. The participant submits an application to the department with payment, on a form approved by the department. The applicant shall then have 90 days to complete the application process by submitting all of the following:

a. Evidence that the service was other governmental service and which meets the requirements of par. (c). The department’s determination as to the sufficiency of the documentation shall be subject to timely appeal to the employee trust funds board under ch. ETF 11.

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 s. 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 in lieu of the employer's certification, or contact the employer directly.

Note: If the federal, state or local governmental retirement or pension plan, like the Wisconsin retirement system, provides a benefit defined in part by service but also includes an alternative money-purchase benefit, then service under that plan is used to establish entitlement even if the particular individual received a benefit calculated without reference to years of service. The same is true for any plan with a vesting requirement.

(c) *Required evidence of service.* A participant who proposes to purchase other governmental service shall provide to the department all of the following:

1. The correct name and current or latest address, and telephone number, if any, of the employer for which the service was rendered.

2. The dates of service for the other governmental employer, including the beginning and ending dates of each period of employment.

3. Evidence of whether the employment was considered full-time or part-time, and of the number of hours worked in each calendar year, sufficient to establish the amount of service which the participant is eligible to purchase. Full-time employment will be assumed to be 8 hours per day and 40 hours per week, absent a showing that the employer established a different standard. Years of service shall be calculated from hours of service rendered in the manner provided in s. ETF 10.03 (3).

4. Evidence that the employer was a federal, state, or local governmental entity in the United States. The department may rely on the determination of the social security administration as to whether an employer is a governmental entity.

5. Evidence that the participant was an employee of the governmental entity.

6. Evidence that the service required, or was expected to require, at least 600 hours of employment per calendar year, regardless of whether the employment involved teaching in any form.

7. The employee's sworn certification that all of the following are true:

a. The service was not performed as an independent contractor or subject to a contract under which the employee furnishing more than his or her personal services.

b. That the services were not performed as a student assistant, or as an employee-in-training or for a school or other educational institution where the employee was a student attending classes and performing services incidental to the course of study.

c. The services were not performed on or after April 23, 1992, while the person was a full-time student who had not attained age 20.

d. The services were not performed after the person had already become an annuitant, excluding annuities received in the capacity of another person's beneficiary, named survivor or alternate payee.

e. The services performed for a hospital, home or institution while the person was a patient or inmate.

f. The employer was not a private or non-profit entity under a contract to provide services to or on behalf of a governmental entity.

(d) *Cost to purchase other governmental service.* 1. The cost to purchase other governmental service is intended to fully fund the anticipated benefit increase provided by the purchased service credit, based on the laws then in effect.

2. The actuary shall devise the method for calculating the cost to purchase other governmental service. The actuary's calculation shall use the same economic and actuarial assumptions used in the actuary's valuations of the Wisconsin retirement system. The actuary shall establish the factors necessary to determine the actuarial value to each applicant of the purchased service credit. Those factors shall include, without limitation:

a. The participant's current employment category as determined under s. 40.23 (2m) (e), Stats. If the participant is employed in 2 or more categories on the date of application, the computation shall be based on the current employment category in which the participant has accrued the most creditable service.

b. The participant's earnings for the last completed annual earnings period, as of January 1 preceding the date of application..

c. The number of years, in hundredths of a year, of service credit the participant requests to purchase.

d. The participant's date of birth.

e. The participant's accumulated employee required contributions, including interest, as of the January 1 preceding the date of application.

f. Twelve times the participant's final average earnings determined as of January 1 preceding the date of application.

g. The participant's years of creditable , including all previously purchased service credit, by employment category and by pre-2000 and post-1999 service.

h. The participant's variable excess or deficiency balance under s. 40.23 (2m) (c), Stats., as of January 1 preceding the date of application.

3. The actuary may, at any time, change the method of calculating the cost of other governmental service credits if warranted by changes in the benefit laws or valuation assumptions of the Wisconsin retirement system or by other factors the actuary determines to be actuarially significant. The actuary's new method of calculation shall be applied as soon as possible unless a delayed effective date is recommended by the actuary. The department may complete pending transactions and honor cost estimates produced before the new method of calculation went into effect.

(e) Creditable service based on purchase of other governmental service; Limitations. 1. The amount of other governmental service purchased through all purchases made under this section may not exceed the amount of the participant's creditable service earned under the Wisconsin retirement system and credited as of the date of the last application to purchase other governmental service, excluding any service previously purchased by the participant.

2. Other governmental service shall be credited in the general employment category regardless of the employee's current employment category or the nature of the service, and benefits based on the purchased service shall be calculated under s. 40.23 (2m) (e) 1., Stats.

3. Service, including teaching service, shall be granted in hundredths of a year, at the rate of one year for 1,904 hours or more worked in one calendar year. If the participant worked less than 1,904 hours in a calendar year, the partial year of other governmental service shall be calculated by dividing the number of hours worked by 1,904.

4. A participant's total creditable service in any annual earnings period from all sources may not exceed one year.

5. Creditable service purchased under this section shall be used solely to calculate a formula annuity benefit amount based upon years of creditable service, as under ss. 40.23 (2) (b) or (2m) (e), 40.25 (1), 40.63 (8), and 40.73 (1) (c), Stats. The

department may not consider purchased other governmental service for any other purpose, including but not limited to determining:

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).

c. Whether the participant has met the service requirements to continue insurance after termination of employment under s. 40.02 (25) (b) 6. a., 6e. 6m. b., 6r., or 40.72 (4) (b), Stats.

d. The amount of creditable service which the participant is eligible to reestablish under s. 40.285 (2) (a), Stats., or to purchase under this subsection.

e. The amount of creditable military service for which the participant is eligible under s. 40.02 (15) (c), Stats.

f. Notwithstanding sub. (1) (g) 1., if any service for a Wisconsin employer which has been credited under this section is subsequently recognized as creditable prior service under s. 40.21 (6), Stats., the participant's creditable service for other governmental service shall be reduced accordingly and the associated contributions plus the interest credited to those contributions shall be transferred to the employee's additional account and shall be available to the employee in the same manner as other contributions under s. 40.05 (1) (a) 5., Stats. No other refund to the employee may be made.

(f) *Payments received to purchase other governmental service; Limitations on benefits.* The department shall account for amounts received to purchase other governmental service, and the interest credited to such in a manner that permits identifying and subtracting such funds from amounts to be increased by a matching amount from the employer reserve when computing a money purchase annuity or a death benefit, as provided by ss. 40.23 (3) and 40.73 (1) (am), Stats., and for purposes of calculating the hypothetical annuity under s. 40.73 (1) (c), Stats.

(g) *Payment shortfall.* If the participant does not withdraw the application or pay the balance due on a payment shortfall within 30 days after notice is sent to the participant, the department shall complete the purchase, either by deducting the amount due from the participant's annuity, if any, as provided in sub. (1) (h) or by reducing the amount of service credit purchased to the credit that can be purchased by the payment actually received.

(5) CREDIT FOR SERVICE DURING QUALIFYING PERIOD. (a) *Scope.* This subsection applies to purchases of service under s. 40.285 (2) (d), Stats.

(b) *Calculation of amount due.* The department's estimate to purchase service shall be calculated based on the fraction of a year of qualifying service that is available

for purchase under s. 40.285 (2) (d), Stats., and this subsection. The payment to purchase qualifying service as provided in s. 40.285 (2) (d), Stats., shall be based on the applicant's highest earnings in a single annual earnings period as of the date of application. The earnings shall be annualized prior to calculating the amount due from an applicant who earned less than a full year of service in the highest annual earnings period as defined in s. 40.02 (3), Stats.

Example 1. Calendar year 2005 was the applicant's highest annual earnings period on the date her application to purchase service is received. During 2005, the applicant had 0.75 years of creditable service and \$27,000 in earnings. The earnings will be "annualized" to \$36,000 (i.e., \$27,000 divided by 0.75) and that amount will be used for purposes of calculating the payment due.

Example 2. An applicant whose annual earnings periods are calendar years had \$34,000 in earnings and 1.0 years of creditable service in 2004, the highest earnings reported for any calendar year as of the date of application. The applicant also had \$27,000 in earnings but only 0.75 years of creditable service in 2005. For purposes of calculating the payment due, the actual earnings for 2004 will be used because that is the highest earnings year, and the department will not annualize the lower 2005 earnings to \$36,000.

(c) *Requirement to first purchase forfeited service.* If a participating employee has previously received a separation benefit or withdrawal of member contributions after serving a qualifying period, the participant may purchase credit for a qualifying period only if the participant has first reestablished the maximum possible years of forfeited creditable service under s. 40.285 (2), Stats. that the participant is eligible to buy as of the date that the department receives the application to buy qualifying service.

(d) *Employment category to be credited.* The qualifying period of service shall be credited to the employment category in which the service would be credited if the qualifying service had been creditable at the time it was performed.

(6) PURCHASE OF SERVICE FOR TEACHER IMPROVEMENT LEAVE. (a) *Scope.* This subsection applies to purchase of creditable service under s. 40.285 (2) (e), Stats.

(b) *Eligibility; Board of regents certification.* In addition to the other requirements of sub. (1) for applying, the applicant is responsible for first applying to the board of regents as required by s. 40.285 (2) (e) 1., Stats., and obtaining the certification of the period of compensated teacher improvement leave occurring between January 1, 1964, and August 31, 1967. The board of regents certification must be submitted to the department in order to obtain the application form to apply to purchase credit for the service.

Note: "Uncredited Teaching Service Purchase Estimate/Application," form ET-4323.

(c) *Calculation of amount due.* The department's estimate to purchase service shall be calculated based on all the years and fractions of a year of teacher improvement leave that are identified in the board of regents' certification and are available for purchase under s. 40.285 (2) (e), Stats., and this subsection.

(7) PURCHASE OF PREVIOUSLY UNCREDITED SERVICE AS A JUNIOR TEACHER. (a) *Scope.* This subsection applies to purchase of creditable service under s. 40.285 (2) (f), Stats.

(b) *Eligibility.* Purchase of service under this subsection is available only to participating employees who were both:

1. Engaged as a principal occupation in teaching in the public schools, state colleges or university of the state or any political subdivision of the state, excluding the city of Milwaukee.

2. So employed during any part of a school year prior to the 1957-58 school year, when the teacher's 25th birthday had not occurred by the July 1 immediately preceding the beginning of the school year.

(c) *Calculation of amount due.* The department's estimate to purchase service shall be calculated based on all the years and fractions of a year of junior teaching service that are available for purchase under s. 40.285 (2) (f), Stats., and this subsection.

(8) PURCHASE OF PREVIOUSLY UNCREDITED SERVICE AS AN EXECUTIVE OFFICIAL. (a) *Scope.* This subsection applies to purchases of previously uncredited service as an executive official under 40.285 (2) (c), Stats.

(b) *Eligibility.* Except as provided in par. (c), any current participating employee who, on or after May 3, 1988, was an executive participating employee as defined by s. 40.02 (30), Stats., may purchase credit under s. 40.285 (2) (c), Stats., for service previously uncredited due to any statutory age restriction for persons over age 62, provided the participating employee also meets the criteria of subd. 1. or 2. or both.

1. Was born before January 1, 1920, and who at any time from July 1, 1974 through September 30, 1981, held a position listed in s. 20.923 (4), (8) or (9), Stats., during the time of employment.

Note: Section 20.926 (1) (a), Stats., as in effect from July 1, 1974, through December 31, 1981, excluded credit for service in such position rendered after the end of the calendar quarter in which the person attained age 62.

2. Was born before February 1, 1926, and who at any time from October 1, 1981, through January 31, 1988, held a position listed in s. 20.923 (4), (8) or (9), Stats., during the time of employment.

Note 1: Section 40.02 (17) (c), Stats., as in effect from January 1, 1982, until May 3, 1988, barred creditable service for persons in such positions after the first day of the fourth month commencing after attaining the age of 62.

Note 2: The referenced positions listed in s. 20.923 (4), (8) and (9), Stats., include the president of the university of Wisconsin system, which was so listed in s. 20.923 (4) (j) 1., Stats., effective from August 4, 1973, and at all times material to s. 40.285 (2) (c), Stats.

(c) *Exclusion from eligibility.* No person who purchased creditable service under s. 40.02 (17) (e), Stats., as in effect from May 3, 1988, until July 26, 2003, is eligible to purchase creditable service under s. 40.285 (2) (c), Stats.

(d) *Calculation of amount due.* The department's estimate shall be calculated based on all the years and fractions of a year of previously uncredited service that are available for purchase under s. 40.285 (2) (c), Stats., and this subsection. All participating employees purchasing service under s. 40.285 (2) (c), Stats., shall pay the same rate for such service, as prescribed by that statute, regardless of whether the participating employee is a present or former elected official or an appointee of such an official.

(e) *No retroactive effect on prior payment.* No present or former elected official, or an appointee of such an official, who purchased service under former s. 40.02 (17) (e), Stats., as in effect from May 3, 1988 through August 14, 1991, shall be entitled to any refund or additional benefit based upon the amendment of s. 40.02 (17) (e), 1989 Stats., by 1991 Wisconsin act 39 or the renumbering and subsequent amendment of s. 40.02 (17) (e), Stats., by 2003 Wisconsin act 33.

SECTION 4. ETF 20.18 is repealed.

SECTION 5. ETF 20.19 (2) (b) is amended to read:

ETF 20.19 (2) (b) Purchased creditable service credit under s. 40.285 (2) (a), Stats., for service forfeited after January 1, 2000 shall be considered to be performed on or after January 1, 2000 treated as post-1999 service, regardless of when the services were actually rendered. This same treatment applies to purchased service credit for service that was originally forfeited before January 1, 2000, then purchased under s. 40.285 (2) (a), Stats., or s. 40.25 (6), 1981-2001 Stats., was subsequently forfeited after January 1, 2000, through a separation benefit paid under s. 40.25 (2), Stats., then later purchased under s. 40.285 (2) (a), Stats., or s. 40.25 (6) 1999-2001 Stats.

SECTION 6. A Note following ETF 20.19 (2) (b) is created to read:

ETF 20.19 (2) (b) Note: Section 40.25 (6), Stats., was repealed by 2003 Wis. Act 33.

SECTION 7. ETF 20.19 (2) (c) and the Note following are repealed and ETF 20.19 (2) (c) is recreated to read:

ETF 20.19 (2) (c) Purchased service credit under s. 40.285 (2) (a), Stats., for creditable service forfeited before January 1, 2000, will be treated as pre-2000 service if the creditable service in question was forfeited before January 1, 2000, regardless of when the service credit is purchased.

SECTION 8. ETF 20.19 (2) (d) is amended to read:

(d) ~~A~~ If for any reason a participant who applies to purchase forfeited service under s. 40.25 (6), Stats., and is eligible to purchase service credit for both service that was forfeited before January 1, 2000 and service that was forfeited after January 1, 2000, purchases less than all of the available service credit, then the payment received shall first be applied to purchase credit for service treated as pre-2000 service but is not eligible to purchase all of the forfeited service due to the restrictions in s. 40.25 (6) (a) 2., Stats., shall first receive credit for the maximum possible amount of purchased service that would be considered to be performed before January 1, 2000.

~~**Note:** Section 40.25 (6), Stats., was repealed by 2003 Wis. Act 33.~~

SECTION 9. ETF 20.19 (2) (dm) is created to read:

ETF 20.19 (2) (dm) Purchased service credits under s. 40.285 (2) (b), Stats., for other governmental service will be treated as pre-2000 or post-1999 service depending on when the actual services for which credit is purchased were rendered to the governmental entity described in ETF 20.17 (1) (f).

SECTION 10. ETF 20.35 (3) (d) 2. is amended to read:

ETF 20.25 (3) (d) 2. 'Purchased service credits.' ~~If the department has received the participant's application and payment to purchase creditable service before the decree date, the purchased~~ 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 refunds any or billing for supplemental payment due for such purchased service shall be divided between the participant and alternate payee in the same proportion as the service was divided. 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.

SECTION 11. ETF 50.50 (2) (b) is amended to read:

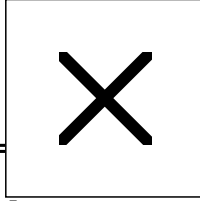
ETF 50.50 (2) (b) *Minimum creditable service.* Except as provided in par. (c), the claimant must have earned at least 0.33 years of creditable current service or prior service, or both, in each of at least 5 calendar years not including any calendar year preceding by more than 7 calendar years the year in which the claim for LTDI benefits is received by the department. ~~Repurchased service~~ Service credit purchased under s. 40.285 (2) (a), Stats., may be counted towards this requirement only if the service itself was rendered during the calendar year of the application or the preceding 7 calendar years. For this purpose, the service credit purchased under s. 40.285 (a) (a), Stats., shall be allocated to the specific year or years as the forfeited service was originally credited. Purchase of forfeited service may not qualify a person under this paragraph if the person would not have qualified had no service been forfeited. Creditable military service granted under s. 40.02 (15) (a), Stats., or the federal uniformed services employment and reemployment rights act is counted towards this requirement as if the employee had been employed by a participating employer during the period of service. Creditable military service granted under s. 40.02 (15) (c), Stats., does not satisfy this requirement.

Note: The use of purchased service credit to meet this requirement for creditable service in certain annual earnings periods is an express exception to the general rule of s. ETF 20.17 (1) (d) 4.

(end of rule text)

Effective Date

This rule shall become effective upon the first day of the month following publication as provided by s. 227.22 (2) (intro.).



**WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE**

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 07-062

AN ORDER to repeal ETF 20.14, 20.15, 20.16, and 20.18; to amend ETF 10.01 (7), 20.19 (2) (a), (b), (d), and (dm), 20.35 (3) (d) 2., and 50.50 (2) (b); to repeal and recreate ETF 29.19 (2) (c); and to create ETF 20.17, relating to the purchase of credit for service.

Submitted by DEPARTMENT OF EMPLOYE TRUST FUNDS

06-15-2007 RECEIVED BY LEGISLATIVE COUNCIL.

07-16-2007 REPORT SENT TO AGENCY.

RNS:WF

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

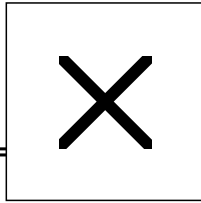
Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
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CLEARINGHOUSE RULE 07-062

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated January 2005.]

2. Form, Style and Placement in Administrative Code

- a. In many instances, references to the statutes in Clearinghouse Rule 07-062 lack the required reference to "Stats." It is suggested that the entire rule be reviewed to remedy this deficiency.
- b. It is suggested that "expressly" and "to the contrary" be deleted from s. ETF 20.17 (1) (d) 4.
- c. In s. ETF 20.17 (1) (g) 3., the citation at the end should be preceded by "s."
- d. Section ETF 20.17 (2) (a) defines "at the time of application" to mean "on the date of application." "Date of application" is defined in s. ETF 20.17 (2) (c). Would it be possible to simplify Clearinghouse Rule 07-062 by using only one of the defined terms?
- e. The note following s. ETF 20.17 (2) (c) should indicate where the forms may be obtained. Are they available on the Internet?
- f. In s. ETF 20.17 (4) (b) 3. a., "as defined by sub. (2) (f)" is unnecessary and should be deleted.

- g. Section ETF 20.17 (8) (c) refers to a person who purchases creditable service under “former” s. 40.02 (17) (e), Stats. A more specific reference to the period when the statute was in effect, similar to the reference in s. ETF 20.17 (7) (e), is necessary.

3. Conflict With or Duplication of Existing Rules

The rule repeals s. 20.15. Since current s. ETF 11.16 (2) (c) refers to s. ETF 20.15 (2) (c), this cross-reference will need to be corrected.

4. Adequacy of References to Related Statutes, Rules and Forms

- a. The reference to s. 40.23 (2) (fm), Stats., in note 1 to s. ETF 20.17 (1) (d) should be to s. 40.23 (2m) (fm), Stats.
- b. The reference to s. 20.23 (2m) (f) 2., Stats., in note 2 to s. ETF 20.17 (1) (d) should be to s. 40.23 (2m) (f) 2., Stats.

5. Clarity, Grammar, Punctuation and Use of Plain Language

- a. In the third sentence under “Explanation of agency authority,” “less than” should replace “less that.”
- b. In the first sentence describing Iowa’s rules, “post-7/1/19898” appears to be a typographical error.
- c. Section ETF 20.17 (1) (b) 1. states that the Department of Employee Trust Funds (ETF) shall update and correct the calculation of the amount due to purchase creditable service after a completed application and “initial payment is actually received.”. This statement is ambiguous, because s. 40.285 (4) (b), Stats., authorizes ETF to accept an application if at least 10% of the estimated cost of creditable service is included with the application and the remainder of the estimated cost is received no later than 90 days after receipt of the application in the form of a plan-to-plan transfer. The requirement that the initial payment be “actually received” is not clear concerning whether payment of the estimated 10% cost satisfies the requirement in s. ETF 20.17 (1) (b).
- d. It is suggested that the phrase “going forward” be deleted from s. ETF 20.17 (1) (d). This phrase is ambiguous. If the phrase is meant to convey that the purchase of creditable service has no retroactive effect, this is more clearly stated in the remainder of par. (d).
- e. The last sentence of s. ETF 20.17 (1) (e) 2. is ambiguous. This subdivision limits the purchase of creditable service so that no more than one year of service can be credited for any annual earnings period. It is

not clear how a person's current creditable service for the annual earnings periods in question will be considered for purposes of this subdivision. It is suggested that the department clarify this matter.

- f. Should the reference to a participant's "fixed" additional contributions in s. ETF 20.17 (1) (g) 3. be a reference to a participant's "core" additional contributions?
- g. Under certain circumstances, s. ETF 20.17 (1) (h) 2. c. allows an applicant for the purchase of creditable service to request any amounts owed to ETF for the purchase of creditable service be deducted from his or her retirement system benefit. The rule subdivision paragraph allows this "notwithstanding" s. 40.08 (1), Stats. Because the purpose of administrative rules are to interpret statutes, it is not proper to state that the rule applies notwithstanding the statute. If the department believes there is statutory authority for the administrative rule even though a statute appears to conflict with it, the department should, perhaps in a note to the rule, explain why it believes there is statutory authority. This comment also applies to s. ETF 20.17 (3) (f).

Section 40.08(1), Stats., prohibits the assignment of benefits payable by ETF. Because this statutory restriction can easily be interpreted to prohibit the assignment of ETF benefits to third parties and not to prohibit a beneficiary from using some of his or her retirement benefits to pay for the purchase of creditable service, it does not appear necessary to state that s. ETF 20.17(1) (h) 2. c. applies "notwithstanding" the statute.

- h. The second occurrence of the word "or" in s. ETF 20.17(1) (h) 2. c. should be "of."
- i. It is suggested that the term "at least" be deleted from s. ETF 20.17 (2) (f) 1. c.
- j. Section 40.285 (2) (a), Stats., requires that a participating employee must have at least three continuous years of creditable service at the time of application to purchase forfeited service. However, s. ETF 20.17 (3), which relates to the purchase of forfeited service, does not contain this requirement. The lack of reference to this requirement appears more significant because it is included in s. ETF 20.17 (4), relating to the purchase of other governmental service. It is suggested that the language of s. ETF 20.17 (4) (b) 1. be inserted in s. ETF 20.17 (3).

Response to Legislative Council Staff Recommendations

The DETF implemented all the Legislative Council Staff recommendations, with two exceptions.

Comment 3 suggested amending s. ETF 11.16 (2) (c) because it includes a cross-reference to s. ETF 20.15, a provision repealed by this rule-making. The department has concluded that s. ETF 11.16 (2) (c) is obsolete and therefore added its repeal to this rule-making.

The Legislative Council Staff comments 5.g. and 5.j. concern eligibility to purchase forfeited service. The department addressed these suggestions by adding s. ETF 20.17 (3) (am), titled "Eligibility criteria," to the rule text. This first subdivision of this new provision repeats the three continuous years of creditable service prerequisite from s. 40.285 (2) (a) 1. a., Stats., as recommended. The second subdivision of the new paragraph lists the pre-1982 separation and withdrawal statutes of the former Wisconsin retirement fund, state teacher retirement system and Milwaukee teacher retirement fund that do give rise to eligibility to purchase service. This listing of specific statutes replaces the attempt to broadly describe pre-1982 laws by their effect as originally proposed in s. ETF 20.17 (3) (f). That paragraph is now deleted from this rule-making.

In addition to modifying the text of the rule accordingly, the original analysis of the proposed rule has now been revised to conform with the new rule text.

List of Persons Appearing or Registering For or Against the Rules.

No persons registered either for or against the rule at the public hearing on July 12, 2007.

Summary of Comments Received at Public Hearing.

No person wished to testify concerning the rule. The record was held open for written comments until 4:30 p.m. on July 13, 2007, but no comments were received.

Modifications to Rule as Originally Proposed.

No changes were made from the original proposal as a result of public comments. However, because of the removal during the legislative process of the provisions originally in 2007 Senate Bill 40 pertaining to educational support personal and affecting ss. 40.02 (17) (intro.) and (33), 40.22 (2) (a), (2m) (intro.), (a) and (3) (b), Stats., the proposed creation of s. ETF 20.17 (3) (d) 4m. has been removed from this rule-making.

The Department has made a number of changes to the proposed rule text upon further consideration. The description of the cost of purchasing credit for other governmental service was originally carried over with minor changes from the present Wis. ADMIN. CODE § ETF 20.18 (5) to proposed s. ETF 20.17 (4) (d). However, s. ETF 20.17 (4) (d) has now been revised to simplify the provision and to better describe the data the Department will input into the actuary's method of calculation. The actuary is in the process of revising the method of calculating cost. Proposed s. ETF 20.17 (4) (d) 3. intro., e. and f. are deleted, but the factors listed have been combined with the list in subdivision 2. A new factor, concerning the participant's variable excess or deficiency, applicable to participants in the variable retirement investment trust has been added. The requirement from the proposed rule that the actuary assume that any participating employee who has reached eligibility for an unreduced formula annuity benefit will retire after completing the transaction, has been removed. While it is not possible to precisely calculate the actuarial value of purchasing credit for other governmental service except at the time of retirement, the revised list of factors to be taken into account by the actuary, and the actuary's new cost methodology, are intended to achieve more accurate results.

The Department made several technical and editorial changes to the rule text for added clarity. A Note was added following s. 20.17 (1) (b) 3. to further explain the deadline for applying to purchase credit for forfeited service when the applicant is both a part-time elected official and a participant because of other service.

The text of s. ETF 20.17 (1) (c) 5., (3) (am) 1. and (4) (b) 1., describing the eligibility criteria for purchasing service, generally, and forfeited service and other governmental service in particular, were modified to clarify that there may be no break in service between the requisite three continuous years of service and the purchase of service credit.

Subdivision ETF 20.17 (1) (d) 5. was added to state that buying credit for service does affect the earnings amounts that will be used for calculating benefits, since the service purchase does not affect or restore any earnings amounts.

The word "prorated" was deleted from the provisions on payment shortfalls in s. ETF 20.17 (1) (h) 1., 2. d. and (4) (g) because the cost of part of the credits for other governmental service for which the estimate was prepared may not be proportional to the whole.

The description of how retiree may pay a shortfall by asking the Department to withhold the balance due from an upcoming annuity payment has been revised slightly to give the Department discretion to determine whether the amount that may be withheld is sufficient to allow use of this payment option.

A purely editorial change was made by deleting the word “then” in s. ETF 20.17 (1) (h) 2. a. A typographical error in s. ETF 20.17 (1) (l) was corrected by substituting “service credits” for the word “creditable” to describe the purchase.

The words “as affected by s. 40.05 (2n) (b), Stats.” were inserted into s. ETF 20.17 (3) (b) to modify the reference to the statutory contribution rates used to calculate the cost of purchasing credit for forfeited service. The actual contribution rate applicable to a period of service will be used, even if that rate was reduced below the statutory figure through operation of the benefit adjustment contribution rate and s. 40.05 (2n) (b), Stats.

A sentence was added to s. ETF 20.17 (4) (c) 7. d. This clarifies that a participating employee who has received an annuity from the Wisconsin Retirement System as the beneficiary, alternate payee or named survivor of another participant may still purchase service credit for other governmental services rendered after receiving those particular annuities.

Subdivision paragraph s. ETF 20.17 (4) (e) 5. a. was deleted because no one eligible to purchase credit for other governmental service is now subject to the referenced vesting provision.

In Section 5, the reference to amending s. ETF 20.19 (2) (a) is deleted as both the proposed and final rule amend only s. ETF 20.19 (2) (b).

Modifications to the Analysis Accompanying the Proposed Rule.

References in the analysis to “the proposed rule” were changed to “this rule-making” as appropriate to differentiate the final draft report. The original analysis has been slightly revised in accord with suggestions by the Legislative Council Staff and to conform with the modifications to the rule text recommended in their Clearinghouse Report as well as the changes in the proposed rule text described above.

Modifications to the Initial Fiscal Estimate

None.

Board Authorization for Promulgation

This final draft report on Clearinghouse Rule #07-062 has been duly approved for submission to the Legislature, and for promulgation, by the Department of Employee Trust Funds and by:

The Employee Trust Funds Board at its meeting on _____.

The Group Insurance Board at its meeting on August 28, 2007.

The Teacher’s Retirement Board at its meeting on _____.

The Wisconsin Retirement Board at its meeting on _____.

Respectfully submitted,

DEPARTMENT OF EMPLOYEE TRUST FUNDS

David A. Stella
DETF Secretary

Date: _____