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Correspondence Memorandum

Date: May 28, 2024

To: Executive Committee

From: Diana M. Felsmann, General Counsel
 Office of Legal Services

Subject: Non-WRS-eligible Employees of WRS Employers and Participation in
 Other ETF-administered Benefits

This memo is for informational purposes only. No Committee action is required.

I. Background

The purpose of this memo is to describe the extent to which non-Wisconsin Retirement System (WRS)-eligible employees of WRS participating employers that resolve to participate in the WRS for new employees only may participate in other ETF benefit programs. The question was prompted by [2023 Wisconsin Act 12](#), which provided for the City of Milwaukee and Milwaukee County to freeze their respective retirement plans to new participants if certain requirements were met and enroll new employees who meet WRS eligibility standards in the WRS. This question, however, applies to any new WRS participating employer that resolves to participate in the WRS for new employees only under [Wis. Stat. §40.21\(7\)](#).

To provide a comprehensive answer, ETF formed an internal workgroup consisting of representatives from the Division of Benefits Administration (DBA), the Office of Strategic Health Policy (OSHP), and the Office of Legal Services (OLS).

II. Analysis

In sum, the extent to which non-WRS-eligible employees of WRS participating employers that resolve to participate in the WRS for new employees only may participate in other ETF benefit programs varies by program. While the descriptions below are specific to the city and county of Milwaukee, the analysis would be the same for any employer that resolved to participate in the WRS for new hires only under [Wis. Stat. §40.21\(7\)](#).

Reviewed and approved by John Voelker, Secretary
 Electronically Signed 06/05/2024

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A. Wisconsin Deferred Compensation Program

With respect to the Wisconsin Deferred Compensation (WDC) Program, federal and state law provide that a local employer may resolve to offer the WDC to all of its employees. Internal Revenue Code Section 457(b), [Wis. Stat. §40.81](#). The City of Milwaukee and Milwaukee County both already offer Code Section 457(b) plans. The city's plan is administered by Voya and the county's plan is administered by Empower. However, federal law allows for employers to offer more than one 457(b) plan. As a result, the city and county would be allowed to resolve to participate in WDC for all of their active employees regardless of whether the employee was eligible for the WRS.

B. Life Insurance Program

To be eligible for ETF's Life Insurance Program, per [Wis. Stat. §40.70\(1\)\(a\)](#), employees must be WRS-eligible or participate in an equivalent retirement system. Therefore, the city or county could resolve to offer ETF's Life Insurance Program to all of their employees covered by a retirement system, whether that system was their respective frozen pension plans or the WRS.

C. State of Wisconsin Group Health Insurance Program

The State of Wisconsin Group Insurance Board oversees the Group Health Insurance Program (GHIP) pursuant to its authority under [Wis. Stat. §40.03\(6\)](#). GHIP is divided into the State GHIP and the Local GHIP.

As concerns the Local GHIP, state law allows for local WRS participating employers to resolve to provide health insurance coverage to WRS-eligible employees under [Wis. Stat. §40.51\(7\)](#). That same statutory language further allows for non-WRS local governmental employers to offer GHIP to their employees who meet WRS-eligibility requirements. See *id.*; [Wis. Stat. § 40.02\(28\)](#).

Current administrative code separates GHIP for local employers into two categories: (1) WRS participating employers; or (2) governmental employers not participating in the WRS. [Wis. Admin. Code § ETF 40.10\(1\)](#). The city and county became WRS participating employers under [Wis. Stat. §40.21\(7\)](#), limiting WRS participation to new employees only. Therefore, the city or county could resolve to offer GHIP to their WRS-eligible employees.

For the city or county to offer GHIP to WRS-eligible and non-WRS eligible employees as a single group, ETF recommends adding language to Chapter 40 of ETF's administrative code. The purpose of the language would be to clarify that a new WRS participating employer who resolves to bring new hires only into the WRS under [Wis. Stat. §40.21\(7\)](#) would be allowed to resolve to join GHIP for the purpose of all WRS-

eligible employees and all employees who would have been WRS-eligible but for their date-of-hire.

[Wis. Stat. §40.03\(2\)\(ig\)](#) provides that administrative code changes related to GHIP must be approved by the Group Insurance Board.

ETF would not recommend an administrative code change that would allow a new WRS participating employer who resolves to bring new hires only into the WRS to limit GHIP coverage to their non-WRS eligible employees. Extending this type of coverage may harm the Local GHIP. The reason is that this type of coverage would be to a closed group. Over time, this type of closed group would consist of older employees and retirees as no new employees would be added to the group.

When WRS or non-WRS local governmental employers with 50 or more employees seek to join the GHIP, they must go through underwriting and may be assessed a surcharge. The surcharge is applied when an employer's risk is determined to be detrimental to the existing pool. Surcharge rates are passed on to the health plan and prescription drug plan to cover anticipated claims. Generally, older employees and retirees need more health care than younger employees. Thus, closed groups are far riskier to insure, reaching a point where claim costs are very high and premiums become unaffordable. This can result in healthier members seeking insurance elsewhere, further escalating any rise in claims and premiums.

D. Income Continuation Insurance Program

Regarding ETF's Income Continuation Insurance (ICI) Program, non-WRS eligible employees would only be allowed to participate if there were a change to Chapter 50 of ETF's administrative code. [Wis. Stat. § 40.61\(3\)](#). [Wis. Stat. §40.03\(2\)\(ig\)](#) provides that administrative code changes related to ICI must be approved by the Group Insurance Board.

ETF would not recommend making an administrative code change to allow non-WRS eligible employees to participate in ICI because it would be difficult for ETF to collect overpayments. Overpayments are common with respect to ICI based on how the program is structured. The ICI program begins paying benefits while a member is waiting for approval of other benefits that would be an offset to ICI. In many cases, long-term ICI benefits will be totally offset by SSDI and WRS benefits. ETF is then required to recover these ICI overpayments through other WRS benefits, such as a 40.63 disability retirement annuity or WRS annuity. If an employee has no other WRS benefits, as would be the case for non-WRS eligible employees, it is unlikely that ETF could recover any ICI overpayments.

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The ability to collect overpayments is provided for in Chapter 40 and is a part of ETF's fiduciary duty to only pay benefits to individuals who are eligible and to recover overpayments to make the trust fund whole.

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