



STATE OF WISCONSIN  
Department of Employee Trust Funds  
Robert J. Conlin  
SECRETARY

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## CORRESPONDENCE MEMORANDUM

**DATE:** February 12, 2013

**TO:** Employee Trust Funds Board  
Teachers Retirement Board  
Wisconsin Retirement Board

**FROM:** David H. Nispel, General Counsel

**SUBJECT:** Clearinghouse Rule #12-054  
Proposed Administrative Rule Making Technical and Minor  
Substantive Changes to Existing Administrative Rules

**Staff recommends the Boards approve the final version of this proposed rule.**

The Department of Employee Trust Funds (ETF) proposes to revise existing administrative rules of ETF to make them conform with 2011 Wisconsin Acts 10, 32, and 133, to reflect current practices of ETF, to provide flexibility regarding due dates for filing reports with ETF, and to make other technical changes. Sections 1 through 11 of the proposed rule are of particular interest to the retirement boards.

Board approval of the final version of the proposed rule is the next step in the administrative rule promulgation process. The Group Insurance Board also will need to approve the rule at their meeting in May 2013. If approved by all the boards, the rule will be submitted to the Governor's Office and the State Legislature for consideration. Prior to this date, ETF has taken the following action:

- Scope Statement approved by the Governor (July 30, 2012)
- Scope statement published in the Wisconsin Administrative Register (August 14, 2012)
- Scope statement approved by ETF Secretary (September 27, 2012)
- Posted the draft rule, fiscal estimate and economic impact analysis on its website (November 7, 2012)
- Submitted the proposed rule and report to the Legislative Council Administrative Rules Clearinghouse (December 17, 2012)

Reviewed and approved by Robert J. Conlin, Secretary

Electronically Signed 2/14/13

Board	Mtg Date	Item #
JI	3.7.13	4B
WR	3.7.13	4C
TR	3.7.13	4C
ETF	3.7.13	5B2

- Submitted the proposed rule and report to the Legislative Council to the Governor's Office, Department of Administration and Legislative Reference Bureau along with a notice of the scheduled public hearing (December 17, 2012)
- Submitted the proposed rule and economic impact analysis to the Governor's Office, Senate Chief Clerk and Assembly Chief Clerk (December 17, 2012)
- Published the notice of hearing in the Wisconsin Administrative Register (December 31, 2012)
- Received the Legislative Council Report (January 17, 2013)
- Held a public hearing (January 31, 2013)

The final draft report on the proposed administrative rule is attached to this memorandum. Changes to the rule were made in response to comments received in the Legislative Council Staff Clearinghouse Report. The rule now conforms to recommended form and style. There were no appearances at the public hearing and no written comments were received.

I will be available at the meeting to discuss this memorandum and answer any questions regarding the proposed rule.

Attachment: Administrative Rules Fiscal Estimate & Economic Impact Analysis

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

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1. Type of Estimate and Analysis

Original    Updated    Corrected

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2. Administrative Rule Chapter, Title and Number

ETF 10, 20 and 40

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3. Subject

Technical and minor substantive changes in existing ETF administrative rules

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4. Fund Sources Affected

GPR    FED    PRO    PRS    SEG    SEG-S

5. Chapter 20, Stats. Appropriations Affected

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6. Fiscal Effect of Implementing the Rule

No Fiscal Effect    Increase Existing Revenues    Increase Costs  
 Indeterminate    Decrease Existing Revenues    Could Absorb Within Agency's Budget  
 Decrease Cost

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7. The Rule Will Impact the Following (Check All That Apply)

State's Economy    Specific Businesses/Sectors  
 Local Government Units    Public Utility Rate Payers  
 Small Businesses **(if checked, complete Attachment A)**

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8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes    No

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9. Policy Problem Addressed by the Rule

The objective of this technical rule is to make technical updates to existing ETF rules, create consistency with statutes recently amended by the legislature, and make other minor substantive changes.

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10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

Information, including the proposed rule language, will be made available by posting on the ETF website and the Wisconsin administrative rules website and by submitting the information to the Governor's Office of Regulatory Compliance.

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11. Identify the local governmental units that participated in the development of this EIA.

None

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12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

No substantive impact is anticipated.

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13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

ETF 10.01 (3i) is amended to remove the language referencing the benefit adjustment contribution, since that type of contribution to the Wisconsin Retirement System was eliminated by 2011 Wisconsin Act 10.

ETF 10.63 establishes various deadlines by which reports are due to be filed with the department. The proposed rule allows employers more flexibility in the deadlines for submitting monthly reports to ETF and will allow the ETF Secretary to respond rapidly to future changes and needs. The need for flexibility arose because of changes made by 2011 Wisconsin Act 10.

ETF 10.86 is created to allow a member, beneficiary, or distributee of an estate who has benefits paid via electronic deposit into a financial institution account owned by him/her to designate a representative payee, nursing home, religious order or other entity that is approved by ETF.

ETF 20.515 (1) and (2) are repealed and replaced with language to comply with 2011 Wisconsin Act 32 eligibility requirements, including two paragraphs concerning educational support personnel employees.

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**ADMINISTRATIVE RULES**  
**Fiscal Estimate & Economic Impact Analysis**

ETF 40.10 is amended to comply with 2011 Wisconsin Act 133 and permit governmental employers who are not participating employers in the Wisconsin Retirement System to be covered in the local governmental health insurance plan offered by the Group Insurance Board.

The alternative would be to fail to comply with recent legislative changes, to have little flexibility in establishing deadlines for filing reports with ETF, and to not offer options for a member, beneficiary, or distributee of an estate to meet their financial obligations.

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14. Long Range Implications of Implementing the Rule

Implementation will bring the affected ETF rules into compliance with recent legislative changes and create flexibility for employers, members, beneficiaries and distributees of estates..

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15. Compare With Approaches Being Used by Federal Government

Not applicable

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16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Periodically, retirement systems in adjacent states promulgate technical rules to update existing administrative rules.

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17. Contact Name	18. Contact Phone Number
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David H. Nispel, General Counsel

608-264-6936

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This document can be made available in alternate formats to individuals with disabilities upon request.

**ADMINISTRATIVE RULES**  
**Fiscal Estimate & Economic Impact Analysis**

**ATTACHMENT A**

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

Not applicable

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

Not applicable

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements

Other, describe:

Small business analysis is not applicable.

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

Not applicable

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5. Describe the Rule's Enforcement Provisions

Not applicable

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

Yes  No

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**State of Wisconsin  
Department of Employee Trust Funds  
Employee Trust Fund Board  
Wisconsin Retirement Board  
Teachers Retirement Board  
Group Insurance Board**

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**FINAL DRAFT REPORT ON CLEARINGHOUSE RULE #12-054**

**An order to amend ETF 10.01 (3i), ETF 10.63 (1) (a) to (f), ETF 10.63 (2), and (3), and ETF 40.10 (1) (2) and (3) (e); to repeal and recreate ETF 20.015 (1) and (2); and to create ETF 10.86 relating to technical and minor substantive changes in existing ETF administrative rules.**

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**Agency Person to be Contacted for Questions**

Please direct any questions about the proposed rule to David Nispel, General Counsel, Department of Employee Trust Funds, P.O. Box 7931, Madison WI 53707. Telephone: (608) 264-6936. E-mail address: [david.nispel@etf.wi.gov](mailto:david.nispel@etf.wi.gov).

**Statement Explaining Need for Rule**

This rule-making is needed to make technical updates to existing ETF rules, create consistency with statutes recently amended by the legislature, and to make other minor substantive changes.

**Analysis Prepared by the Department of Employee Trust Funds**

1. Statutes interpreted:  
Sections 40.01 (1), 40.01 (2), 40.02 (55), 40.05 (1), 40.05 (2), 40.06 (1), 40.06 (2), 40.06 (3), 40.22 (1), 40.22 (2), 40.22 (2m), 40.22 (2r), 40.22 (3), 40.51 (7), Stats.
2. Statutory authority:  
Sections 40.03 (2) (i), (ig), 40.51 (7) (a), and 227.11 (2) (a), Stats.
3. Explanation of agency authority:  
By statute, the ETF Secretary is expressly authorized, with appropriate board approval, to promulgate rules required for the efficient administration of any benefit plan established in ch. 40 of the Wisconsin statutes.

Section 40.51 (7) (a) allows the department to establish by rule different eligibility standards or contribution requirements for any employer, other than the state, including an employer that is not a participating employer, that elects to offer to

all of its employees a health care coverage plan through a program offered by the group insurance board.

In addition, 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.

4. Related statutes or rules:  
There are no other related statutes or administrative rules directly related to this technical rule.
5. Plain language analysis:  
The purpose of this rule is to revise existing administrative rules of the Department of Employee Trust Funds to make them conform with 2011 Wisconsin Acts 10, 32 and 133, to reflect current practices of the department, to provide flexibility regarding due dates for filing reports with the department, and to make other technical changes.
6. Summary of, and comparison with, existing or proposed federal statutes and regulations:  
The only federal regulations that may be affected by this proposed rule are provisions of the Internal Revenue Code regulating qualified pension plans. The Wisconsin Retirement System is required to be maintained as a qualified plan by s. 40.015, Stats.
7. Comparison with rules in adjacent states:  
Periodically, retirement systems in adjacent states promulgate technical rules to update existing administrative rules.
8. Summary of factual data and analytical methodologies:  
The department is proposing this rule to update existing rules and interpretations of existing statutes.
9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:  
This rule does not have an effect on small businesses because private employers and their employees do not participate in, and are not covered by, the Wisconsin Retirement System. Please see attached economic impact analysis.
10. Effect on small business:  
The rule has no effect on small businesses.



### **Regulatory Flexibility Analysis:**

The proposed rule has no 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 and Economic Impact Statement:**

Please see the attached Fiscal Estimate and Economic Impact Statement.

### **Text of Proposed Rule**

#### **SECTION 1.** ETF 10.01 (3i) is amended to read:

(3i) "Maximum voluntary contribution" means the total amount eligible under section 415 (c) of the internal revenue code to be contributed to the Wisconsin retirement system in a calendar year by or on behalf of a participating employee, less all ~~benefit adjustment contributions and~~ required and employer-paid additional contributions which are includable in the limits of section 415 (c) of the internal revenue code, as determined by the department.

#### **SECTION 2.** ETF 10.63 (1) (a) is amended to read:

**ETF 10.63 Due dates. (1) (a)** Contribution reports and remittances from state departments, excluding university and other state department reports which pertain to teachers only, required in the administration of subch. II of ch. 40, Stats., are due on the 20th day of the month following the reporting month or on a day determined by the secretary and communicated to employers by ETF through email updates, employer bulletins or other means of communication.

#### **SECTION 3.** ETF 10.63 (1) (b) is amended to read:

(b) Contribution reports and remittances other than those specified in par. (a) required in the administration of subch. II and ch. 40, Stats., are due on the last working day, excluding Saturdays, Sundays, and holidays when the state offices are closed, of the month following the end of the reporting month, or on a day determined by the secretary and communicated to employers by ETF through email updates, employer bulletins or other means of communication.

#### **SECTION 4.** ETF 10.63 (1) (c) is amended to read:

(c) Detailed annual earnings reports required in the administration of subch. II of ch. 40, Stats., are due on the last working day, excluding Saturdays, Sundays, and holidays when the state offices are closed, of the calendar month following the end of the calendar year, or on a day determined by the secretary and communicated to

employers by ETF through email updates, employer bulletins or other means of communication.

**SECTION 5.** ETF 10.63 (1) (d) is amended to read:

(d) Premium and coverage reports and remittances required in the administration of subchs. IV and VI of ch. 40, Stats., are due on the 20th day of the calendar month preceding the coverage month or on a day determined by the secretary and communicated to employers by ETF through email updates, employer bulletins or other means of communication.

**SECTION 6.** ETF 10.63 (1) (e) is amended to read:

(e) Premium and coverage reports and remittances required in the administration of subch. V of ch. 40, Stats., are due as follows:

1. For state agencies, on the 20th day of the calendar month following the reporting period or on a day determined by the secretary and communicated to employers by ETF through email updates, employer bulletins or other means of communication.
2. For local government employers, on the 20th day of the calendar month preceding the month of coverage or on a day determined by the secretary and communicated to employers by ETF through email updates, employer bulletins or other means of communication.

**SECTION 7.** ETF 10.63 (1) (f) is amended to read:

(f) Reduction reports and remittances required in the administration of subch. VIII of ch. 40, Stats., are due within 2 working days after the date on which the regular employee payroll payments are issued, excluding Saturdays, Sundays, and holidays when the state offices are closed, or on a day determined by the secretary and communicated to employers by ETF through email updates, employer bulletins or other means of communication.

**SECTION 8.** ETF 10.63 (2) is amended to read:

**(2)** Whenever the 20th day of the calendar month or a day determined by the secretary referred to in sub. (1) falls on a Saturday, Sunday or holiday on which state offices are closed, a report or a remittance received on the first working day after the 20th day of the calendar month or a day determined by the secretary referred to in sub. (1) shall be deemed to have been received on a timely basis.

**SECTION 9.** ETF 10.63 (3) is amended to read:

**(3)** The secretary may waive charges and interest calculated under s. 40.06 (3), Stats., on any employer's reports and remittances, which are received within one day of the due date specified under subs. (1) and (2) and announced to employers by ETF or on a

day determined by the secretary referred to in sub. (1) and (2) if he or she determines that the waiver will not impair the objective of encouraging timely receipt of contributions and remittances.

**SECTION 10.** ETF 10.86 is created to read:

**ETF 10.86 Electronic deposits.**

Any member, beneficiary, or distributee of any estate receiving benefits payable under any of the benefit plans administered by the department may have the benefits paid via electronic deposit into a financial institution account owned by a representative payee, nursing home, religious order, or other entity designated by the member, beneficiary, or distributee of any estate and approved by the department.

**SECTION 11.** ETF 20.015 (1) and (2) are repealed and recreated to read:

**ETF 20.015 Participating employees.**

(1) PARTICIPATING EMPLOYEES: one-third of full-time employment.

(a) *Non-teachers.* Except as provided in par. (b) and (c), for purposes of s. 40.22, Stats., 600 hours of employment with an employer in one year is considered one-third of full-time employment.

(b) *Teachers.* For an employee classified as a teacher under s. 40.02 (55), Stats., for purposes of s. 40.22, Stats., 440 hours of employment with an employer in one year is considered one-third of full-time employment.

(c) *Educational support personnel employee.* Except as provided in par. (a), for purposes of s. 40.22, Stats., 440 hours of employment with an employer in one year is considered one-third of full-time employment.

(2) PARTICIPATING EMPLOYEES: two-thirds of full-time employment.

(a) *Non-teachers.* Except as provided in par. (b) and (c), for purposes of s. 40.22, Stats., 1200 hours of employment with an employer in one year is considered two-thirds of full-time employment.

(b) *Teachers.* For an employee classified as a teacher under s. 40.02 (55), Stats., for purposes of s. 40.22, Stats., 880 hours of employment with an employer in one year is considered two-thirds of full-time employment.

(c) *Educational support personnel employee.* Except as provided in par. (a), for purposes of s. 40.22, Stats., 880 hours of employment with an employer in one year is considered two-thirds of full-time employment.

**SECTION 12.** ETF 40.10 (1) is amended to read:

(1) An employee of an employer, other than the state, shall be eligible for health insurance under s. 40.51(7), Stats., if requirements of ss. 40.02(46) and 40.22, Stats., or of s. 40.19(4)(a), Stats., are satisfied. An employee of an employer that is not a participating employer shall be eligible for health insurance under s. 40.51(7),

Stats., if the requirements set forth in s. 40.02(28) are satisfied and the following requirements are met:

- (a) The employee works at least two-thirds of what is considered full-time employment by the department.
- (b) Employment in the employee's position is expected to last at least one year.

**SECTION 13.** ETF 40.10 (2) is amended to read:

- (2) As provided in a collective bargaining agreement under subch. IV of ch. 111, the employer, including an employer that is not a participating employer, shall pay an employer contribution toward the gross health insurance premium based on the lowest cost qualified plan in the service area of the employer, as follows:

**SECTION 14.** ETF 40.10 (3) (e) is amended to read:

- (e) The group insurance board, with the advice of the actuary, may classify a health plan offered to local government employees, including local government employees of employers who are not participating employers, in a tier that is different than that of the health plan of the same name as offered to state employees.

**SECTION 15. EFFECTIVE DATE.** This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.



LCRC  
FORM 2

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**WISCONSIN LEGISLATIVE COUNCIL  
RULES CLEARINGHOUSE**

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Scott Grosz and Jessica Karls-Ruplinger  
*Clearinghouse Co-Directors*

Terry C. Anderson  
*Legislative Council Director*

Laura D. Rose  
*Legislative Council Deputy Director*

**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 12-054**

AN ORDER to amend ETF 10.01 (3i), 10.63 (1) (a) to (f), (2) and (3), and 40.10 (1), (2) and (3) (e); to repeal and recreate ETF 20.015 (1) and (2); and to create ETF 10.86, relating to technical and minor substantive changes in existing ETF administrative rules.

Submitted by **DEPARTMENT OF EMPLOYEE TRUST FUNDS**

12-17-2012 RECEIVED BY LEGISLATIVE COUNCIL.

01-17-2013 REPORT SENT TO AGENCY.

SG:DWS

**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



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**WISCONSIN LEGISLATIVE COUNCIL  
RULES CLEARINGHOUSE**

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*Legislative Council Director*

Laura D. Rose  
*Legislative Council Deputy Director*

**CLEARINGHOUSE RULE 12-054**

**Comments**

**[NOTE:** All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated November 2011.]

**2. Form, Style and Placement in Administrative Code**

a. In the introductory clause, the enumeration of provisions treated by the proposed rule should be revised as follows: “AN ORDER to amend ETF 10.01 (3i), 10.63 (1) (a) to (f), (2) and (3), and 40.10 (1), (2) and (3) (e); to repeal and recreate ETF 20.015 (1) and (2); and to create ETF 10.86”.

b. Under the statutes interpreted section of the analysis, the sections described should be concluded with “, Stats.”.

c. Throughout the proposed rule, the use of underscores should be reviewed with regard to indicating commas and periods as new or old material.

d. In SECTIONS 8 and 9, would the rule text be more easily clarified by reference to previous subsections, rather than referring to the lengthy subject created by the department’s amendment?

e. IN SECTION 10, the creation of s. ETF 10.86 should include a title (perhaps “Electronic Deposits”) and the paragraph should be preceded by the selected title.

f. The form of titles in SECTION 11 should conform to s. 1.05, Manual. A period should follow s. ETF 20.015 (title).

g. The note in s. ETF 40.10 (1) (a) is confusing. The paragraph refers to two-thirds of full-time employment; the note refers to the definition of full-time employment. The department

may wish to clarify the note by indicating that two-thirds of full-time employment is equal to  $(2/3) \times (1904)$ .

h. The rule text should include an effective date section. [s. 1.02 (4), Manual.]

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

The second "2." in s. ETF 10.63 (1) (e) 2. is duplicative and should be eliminated.



**Response to Legislative Council Staff Recommendations**

ETF implemented all of the Legislative Council Staff recommendations contained in the Clearinghouse Report. As concerns recommendation 2. g., ETF decided not to include the note in the rule in order to prevent any confusion.

**List of Persons Who Appeared or Registered at the Public Hearing.**

No persons appeared or registered either for or against the rule at the public hearing on January 31, 2013.

**Summary of Public Comments.**

No person wished to testify concerning the rule. The record was held open for written comments until 4:30 p.m. on January 31, 2013, but no comments were received.

**Modifications to Rule as Originally Proposed as a Result of Public Comments.**

None.

**Modifications to the Analysis Accompanying the Proposed Rule.**

None.

**Modifications to the Initial Fiscal Estimate.**

None.

**Board Authorization for Promulgation.**

This final draft report on Clearinghouse Rule #12-054 has been duly approved for submission to the Governor and Legislature, and for promulgation by the Department of Employee Trust Funds, by the Employee Trust Funds Board, Wisconsin Retirement Board and Teachers Retirement Board at their meetings on March 7, 2013, as well as by the Group Insurance Board at its meeting on May 21, 2013.

**Effective Date.**

This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

Respectfully submitted,

**DEPARTMENT OF EMPLOYEE TRUST FUNDS**

\_\_\_\_\_  
Robert J. Conlin  
Secretary

Date: \_\_\_\_\_