



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

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 of Employee Trust Funds  
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**Correspondence Memorandum**

**Date:** February 22, 2019

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

**From:** David H. Nispel, General Counsel  
 Dan Hayes, Attorney  
 Office of Legal Services

**Subject:** Administrative Rules Update

**This memo is for informational purposes only. No Board action is required.**

This memorandum informs board members about the status of administrative rules being promulgated by the Department of Employee Trust Funds (ETF) that require approval of one or more of the boards. ETF is in the early stages of promulgating two such rules. Prior to sending the draft rules to the Legislature for review, ETF will present them to the boards and request approval.

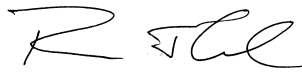
**Technical Rule (SS 018-19)**

As part of a larger rule that makes technical changes throughout the code, ETF is proposing changes to Chapters ETF 10, 11, 20 and 60 that will require approval by the retirement boards. A statement of scope (SS 018-19) was approved by the Governor on January 30, 2019; a copy is attached.

The objective of this rule is to make technical updates to existing ETF rules, delete obsolete language in ETF rules, and make other minor substantive changes. The changes affecting the WRS include:

- updating the code to be consistent with the break in service provisions of 2015 Wisconsin Act 187;
- removing obsolete references to domestic partnerships to be consistent with changes made in the 2017-2019 state budget;

Reviewed and approved by Robert J. Conlin, Secretary



Electronically Signed 3/5/19

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- updating ETF's receipt of electronic correspondence rule to make it consistent with the Wisconsin circuit court e-filing initiative;
- eliminating language that applies to domestic relations orders filed on or after January 1, 1982, and before April 28, 1990, because, as of May 1, 2018, ETF can no longer accept domestic relations orders more than 20 years old pursuant to a recent Wisconsin Supreme Court decision; and
- making other minor changes to clean-up the code, such as correcting out-of-date cross-references.

### **Disability Benefit Programs Redesign and Technical Changes to Regulations Related to the Duty Disability Program (SS 017-19)**

ETF is proposing technical updates to regulations for the Long-Term Disability Insurance program (LTDI). These updates will reflect the closure of the program to new claims, which took effect on January 1, 2018. The closure of LTDI is part of ETF's effort to streamline the disability programs it offers and corresponds with the reopening of the disability annuity program under Wis. Stat. § 40.63. Currently, Chapter ETF 50 of the code includes language that is no longer necessary now that the program is closed to new applications. In addition, ETF intends to draft minor technical modifications to the regulations related to the Duty Disability Program established by Wis. Stat. § 40.65. A statement of scope (SS 017-19) was approved by the Governor on January 30, 2019; a copy is attached.

Pursuant to a new statutory provision affecting the rule promulgation process, Senator Steve Nass, in his capacity as Co-chair of the Joint Committee for Review of Administrative Rules, has directed the department to hold a preliminary public hearing and comment period on the statement of scope, SS 017-19. The hearing is scheduled for 1:00 pm on March 21, 2019 at the Hill Farms State Office Building. Once the hearing is held, the comment period concludes, and the Secretary approves the statement of scope, ETF will consider any public feedback received and may begin drafting the rule.

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

Attachments A: Statement of Scope Technical Changes to ETF Rules  
B: Statement of Scope Disability Benefit Programs Redesign

# STATEMENT OF SCOPE

## Department of Employee Trust Funds

**Rule No.:** Chapters ETF 10, 11, 20, 40, 60 and 70 (revised)

**Relating to:** Technical Changes to ETF Rules

**Rule Type:** Permanent

### **1. Detailed description of the objective of the proposed rule:**

The objective of this rule is to make technical updates to existing ETF rules, delete obsolete language in ETF rules, and make other minor substantive changes. The changes include updating the code to be consistent with the break in service provisions of 2015 Wisconsin Act 187, removing obsolete references related to domestic partnerships, updating ETF's receipt of electronic correspondence rule to make it consistent with the Wisconsin circuit court e-filing initiative, eliminating language that applies to domestic relations orders filed on or after January 1, 1982, and before April 28, 1990, because, as of May 1, 2018, ETF can no longer accept domestic relations orders more than 20 years old pursuant to a recent Wisconsin Supreme Court decision, modifying the requirement to evaluate the third-party administrator of the Wisconsin Deferred Compensation Program from annually to biennially to make the code consistent with modern auditing practices, modifying the Wisconsin Deferred Compensation Program investment product termination process, correcting outdated cross-references to statutes, and other minor changes.

### **2. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:**

This rule is technical in nature and does not contain significant changes in policy. It is designed to update ETF rules by deleting obsolete regulatory provisions, terms, and cross-references and making ETF regulations consistent with recent statutory changes. The alternative is continuing with the outdated language in ETF's current code.

### **3. Detailed explanation of statutory authority for the rule (including the statutory citation and language):**

Wis. Stat. s. 40.03 (2) (i) The secretary... Shall promulgate, with the approval of the board, all rules, except rules promulgated under par. (ig) or (ir), that are required for the efficient administration of the fund or of any of the benefit plans established by this chapter. In addition to being approved by the board, rules promulgated under this paragraph relating to teachers must be approved by the teachers retirement board and

rules promulgated under this paragraph relating to participants other than teachers must be approved by the Wisconsin retirement board, except rules promulgated under s. 40.30.

Wis. Stat. § 40.03 (2)(ig): The secretary... Shall promulgate, with the approval of the group insurance board, all rules required for the administration of the group health, long-term care, income continuation or life insurance plans established under subchs. IV to VI.

Wis. Stat. s. 40.03 (ir) The secretary... Shall promulgate, with the approval of the deferred compensation board, all rules required for the administration of deferred compensation plans established under subch. VII.

General rulemaking authority for state agencies is found at Wis. Stat. s. 227.11 (2):

Rule-making authority is expressly conferred as follows:

(a) Each 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, but a rule is not valid if the rule exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:

1. A statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.

2. A statutory provision describing the agency's general powers or duties does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.

3. A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.

(b) Each agency may prescribe forms and procedures in connection with any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute, but this paragraph does not authorize the imposition of a substantive requirement in connection with a form or procedure.

(c) Each agency authorized to exercise discretion in deciding individual cases may formalize the general policies evolving from its decisions by promulgating

the policies as rules which the agency shall follow until they are amended or repealed. A rule promulgated in accordance with this paragraph is valid only to the extent that the agency has discretion to base an individual decision on the policy expressed in the rule.

(d) An agency may promulgate rules implementing or interpreting a statute that it will enforce or administer after publication of the statute but prior to the statute's effective date. A rule promulgated under this paragraph may not take effect prior to the effective date of the statute that it implements or interprets.

(e) An agency may not inform a member of the public in writing that a rule is or will be in effect unless the rule has been filed under s. 227.20 or unless the member of the public requests that information.

**4. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

State employees will spend an estimated 80 hours to develop this rule.

**5. List with description of all entities that may be affected by the proposed rule:**

The proposed rule will affect WRS employers and employee participants and participants in the Wisconsin Deferred Compensation Program.

**6. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

N/A

**7. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):**

ETF anticipates that the proposed rule will have no economic impact locally or statewide and will not impact small businesses.

**Contact Person:** ETF General Counsel David H. Nispel. Phone: (608) 264-6936



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Robert J. Conlin, Secretary  
Department of Employee Trust Funds

1/14/2019

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Date Submitted

# STATEMENT OF SCOPE

## Department of Employee Trust Funds

**Rule No.:** Chapters ETF 50 and 52 (revised)

**Relating to:** Disability Benefit Programs Redesign and Technical Changes to Regulations Related to the Duty Disability Program

**Rule Type:** Permanent

### 1. Detailed description of the objective of the proposed rule:

The Department of Employee Trust Funds (ETF) proposes technical updates to the regulations for the Long-Term Disability Insurance program (LTDI) to reflect the closure of the program to new claims, which took effect on January 1, 2018. ETF also proposes minor technical modifications to the regulations related to the Duty Disability Program established by Wis. Stat. § 40.65.

### 2. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

This rule is technical in nature and does not contain significant changes in policy. It is designed to update ETF rules by deleting obsolete regulatory provisions, terms, and cross-references and making ETF regulations consistent with recent program changes. The alternative is continuing with the outdated language in ETF's current code.

### 3. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Authority for the ETF Secretary to promulgate rules affecting ETF-administered programs is found at Wis. Stat. § 40.03 (2) (i): "The secretary... Shall promulgate, with the approval of the board, all rules, except rules promulgated under par. (ig) or (ir), that are required for the efficient administration of the fund or of any of the benefit plans established by this chapter. In addition to being approved by the board, rules promulgated under this paragraph relating to teachers must be approved by the teachers retirement board and rules promulgated under this paragraph relating to participants other than teachers must be approved by the Wisconsin retirement board, except rules promulgated under s. 40.30."

General rulemaking authority for state agencies is found at Wis. Stat. § 227.11 (2):

Rule-making authority is expressly conferred as follows:

(a) Each 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, but a rule is not valid if the rule exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:

1. A statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.
2. A statutory provision describing the agency's general powers or duties does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.
3. A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.

(b) Each agency may prescribe forms and procedures in connection with any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute, but this paragraph does not authorize the imposition of a substantive requirement in connection with a form or procedure.

(c) Each agency authorized to exercise discretion in deciding individual cases may formalize the general policies evolving from its decisions by promulgating the policies as rules which the agency shall follow until they are amended or repealed. A rule promulgated in accordance with this paragraph is valid only to the extent that the agency has discretion to base an individual decision on the policy expressed in the rule.

(d) An agency may promulgate rules implementing or interpreting a statute that it will enforce or administer after publication of the statute but prior to the statute's effective date. A rule promulgated under this paragraph may not take effect prior to the effective date of the statute that it implements or interprets.

(e) An agency may not inform a member of the public in writing that a rule is or will be in effect unless the rule has been filed under s. 227.20 or unless the member of the public requests that information.

**4. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

State employees will spend an estimated 80 hours to develop this rule.

**5. List with description of all entities that may be affected by the proposed rule:**

The proposed rule will affect all WRS employers and employee participants who apply for disability benefits.

**6. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

N/A

**7. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):**

ETF anticipates that the proposed rule will have no economic impact locally or statewide and will not impact small businesses.

**Contact Person:** ETF General Counsel David H. Nispel. Phone: (608) 264-6936



Robert J. Conlin, Secretary  
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