



STATE OF WISCONSIN  
Department of Employee Trust Funds  
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SECRETARY

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## Correspondence Memorandum

**Date:** November 10, 2022

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

**From:** Dan Hayes, Attorney  
Office of Legal Services

**Subject:** Administrative Rules Update

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

This memo provides an update on a new administrative rule that the Department of Employee Trust Funds has begun promulgating. On November 3, 2022, ETF submitted a Statement of Scope to the Department of Administration (DOA) and the Governor's office. DOA will review the rule to determine whether ETF has proper authority to promulgate it. If the rule is found to be properly authorized, the Governor will review and either approve or not approve the Statement of Scope. The rule will be technical in nature and does not make any significant substantive changes that would impact Wisconsin Retirement System members. The objective of the rule is explained in the attached Statement of Scope.

Further along in the promulgation process, the proposed rule will come before each of the boards for approval before it is submitted to the Legislature for review.

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

Reviewed and approved by Diana Felsmann, General Counsel, Office of Legal Services  
Electronically Signed 11/14/22

Board	Mtg Date	Item #
JM	12.08.22	4E

# STATEMENT OF SCOPE

## Department of Employee Trust Funds

**Rule No.:** Chapters ETF 10, 20, 50, 52, and 60 (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 required minimum distribution provisions of the federal Setting Every Community Up for Retirement Enhancement (SECURE) Act and 2021 Wisconsin Act 245, updating the definition of “guardian” to be consistent with changes in the child guardianship law, removing obsolete sections related to Social Security wage reporting requirements, adding a reference to the Chapter 244 definition of “incapacity” to power of attorney requirements, amending the code to round an annuity applicant’s age to the nearest month, rather than the nearest quarter year, for annuity option conversion purposes, require a domestic relations order to be submitted on ETF’s form, 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.”

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 approximately 1,500 public employers who offer their employees benefits through WRS programs. These programs provide benefits to approximately 650,000 active employees, annuitants, and inactive employees with deferred benefits payable.

**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:**

The required minimum distribution (RMD) provisions of the of the federal SECURE Act are codified at 26 U.S.C. § 401 (a) (9). It changes the required beginning date for RMDs from age 70½ to age 72. The Wisconsin Retirement System is a qualified plan under the federal Internal Revenue Code and must comply with 26 U.S.C. § 401 (a) (9).

**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.

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A. John Voelker, Secretary  
Department of Employee Trust Funds

11.02.2022  
Date Submitted