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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 02-126

#### 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 October 2002.]**

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

a. It is suggested that “returns” be substituted for the phrase “is now returning” in s. ETF 10.30 (1m) (a) 2. [See s. 1.01 (9) (b), Manual.]

b. In the second sentence of s. ETF 10.30 (2) (a), the correct reference to s. 10.30 (2) (d) is “par. (d).” [See s. 1.07 (2), Manual.] This comment also applies to s. 10.30 (2) (c), (5) (b) and (6) (c) and (e).

c. The word “shall” should be substituted for “may” in s. ETF 10.30 (3) (b).

d. In two instances in s. ETF 10.30 (5) (h) and one in s. ETF 10.30 (6) (d), “shall” should replace “will.”

#### **3. Conflict With or Duplication of Existing Rules**

The rule repeals s. ETF 10.31. However, current s. ETF 10.82 (2) (b) 5. refers to that section. The current reference should either be corrected or deleted.

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

a. It is suggested that the material in s. ETF 10.30 (1m) (a) 3. be placed in s. ETF 10.30 (1m) (a) 2. and that the phrase “Except as provided in subd. 3.” be deleted from subd. 2. This is suggested because s. ETF 10.30 (1m) (a) defines “new participant” as meaning “either of the

following,” which is confusing because it is followed by what appears to be three alternatives. In addition, the material in subd. 3. only applies to the definition in subd. 2.

In addition, it is inappropriate to subdivide a subsection into only one paragraph. Therefore, sub. (1m) (intro.) should read: “In this section, “new participant” means any of the following:”. What is drafted as subds. 1. and 2. should be pars. (a) and (b).

b. The phrase “pursuant to s. 40.04 (7), Stats.” should be deleted from s. ETF 10.30 (2) (a) because the statute does not require an election to participate or terminate participation in the variable division to be made on a form provided by the department. Section 227.11 (2) (b), Stats., provides statutory authority for this requirement, but does not need to be cited in the administrative rule.

c. It is suggested that the reference to s. ETF 10.30 (2) (d) be deleted from the second sentence of s. ETF 10.30 (2) (a) because par. (d) relates to eligibility to elect to participate in the variable fund, rather than the effective date of an election.

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

a. It is suggested that the examples following s. ETF 10.30 (5) be revised so that their meaning is more clear. The point of example 1. appears to be that with respect to an account in the Wisconsin Retirement System that consists of additional contributions from which no annuity is paid, the election to terminate participation in the variable division on a conditional basis must be made under s. ETF 10.30 (5) (a) 3. b. and cannot be made under subd. 3. even if the participant is an annuitant with respect to a separate account. The point of example 2. appears to apply the same principle to a person who has both an alternate payee account from which he or she is receiving an annuity, and a separate account from which he or she is not receiving an annuity. However, these points are not stated in either of the examples.

b. The last sentence of s. ETF 10.30 (7) (a) would be more clear if drafted in a manner similar to the following: “An election to terminate participation in the variable division shall specify whether the termination is to be made under sub. (5) (a) 1., 2., or 3.”

c. In s. ETF 10.30 (7) (c), it is suggested that the date upon which the 30-day grace period begins to run be made more specific in situations where the department returns an incomplete election to a participant by mail.