



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Scott Grosz and Jessica Karls-Ruplinger
Clearinghouse Co-Directors

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 14-055

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.]

1. Statutory Authority

Generally, numerous SECTIONS of the proposed rule treat provisions of ch. ETF 70 to remove rules relating to offering of an “alternate” deferred compensation plan. Should these references to an alternative plan be removed? Section 40.80 (2m), Stats., specifies that rules “establishing procedures, requirements and qualifications for offering deferred compensation plans to state employees in addition to [previously selected and contracted plans]” *shall* be promulgated. In a 1990 opinion, the Attorney General interpreted s. 40.80 (2m), Stats., to “mandatorily require only the establishment of rules for alternative or supplemental plans but not to require that any such plans need be offered.” [79 Atty. Gen. 168.]

2. Form, Style and Placement in Administrative Code

a. As recreated, s. ETF 20.17 (4) (c) 6. should include an introduction to subpars. a. and b. or should be split into two subdivisions.

b. In s. ETF 20.02 (3) (a), does the treatment prescribed by the department depend on the date an annuitant is rehired? If so, should the scope of this provision be clarified?

c. In s. ETF 20.02 (3) (c), should the amendment refer to par. (a) 1. *or* 2., rather than par. (a) 1. *and* 2.?

d. In s. ETF 20.35 (3) (d) 4., the order of strikes and underscores should conform to the style prescribed in s. 1.06 (1) (a), Manual. In the proposed rule, the stricken “~~since~~” should

precede the underscored “annuity”. See, also, ss. ETF 50.48 (4) (c), 50.52 (1) (b) 3., and 70.70 (2) (intro.) and (d) for occurrences of the same issue.

e. In s. ETF 40.01 (1) (b), the department appears to amend a paragraph title. First, the style of this title does not conform to the style prescribed by s. 1.05 (2) (d), Manual. This issue also arises for s. ETF 40.01 (1) (c), though the provision is not treated by the proposed rule. Second, note that titles to any unit of a rule are not part of the substance of the rule itself. [s. 1.05 (1), Manual.] Should the amended language in s. ETF 40.01 (1) (b) (title) be moved to the rule text? If not, the enumeration of sections treated by the rule should be revised to properly reference the treatment of par. (b) (title).

f. In s. ETF 70.01, when a single word is amended, the existing word (“plans”) should be stricken in its entirety and the new word (“plan”) should be underscored immediately after the strike-through. This comment should also be applied to s. ETF 70.02 (1).

g. In s. ETF 70.03 (4), did the department intend to strike “primary” rather than underscore it?

h. Section ETF 70.08 (3) (a) and (b) should more specifically be referred to as s. ETF 70.08 (3) (a) (intro.) and (b) (intro.), since they are followed by subdivisions. However, as introductory paragraphs, they should end in a colon rather than a period, and be written in a manner that properly introduces the subdivisions. The enumeration of sections treated by the rule should be revised to properly reference the treatment of s. ETF 70.08 (3) (a) (intro.) and (b) (intro.).

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

a. It is not clear whether the paragraph following proposed s. ETF 10.01 (3e) 2., is part of subd. 2., should be numbered as its own subdivision, or is a note to the subsection. Please clarify. Additionally, in s. ETF 10.01 (3e), the grammatical flow from the introduction to each subdivision should be reviewed for clarity.

b. In s. ETF 50.52 (1) (b) 3., the amended text should be written in the singular form. For example, the department could write: “For a protective occupation recipient, the offset shall be computed as of the recipient’s 62nd birthday.”.