

Clearinghouse Rule 11-041

State of Wisconsin
Department of Employee Trust Funds,
Employee Trust Funds Board, Teachers Retirement Board
and Wisconsin Retirement Board

DRAFT REPORT ON CLEARINGHOUSE RULE

RULE to amend administrative rule ETF 20.35 relating to the division of WRS accounts under a qualified domestic relations order (QDRO).

Agency Person to be Contacted for Questions.....	2
Statement Explaining Need for Rule.....	2
Analysis Prepared by Department of Employee Trust Funds.....	2
Statutes interpreted.....	2
Statutory authority	2
Explanation of agency authority.....	3
Related statutes or rules.....	3
Plain language analysis.....	3
Summary of, and comparison with, existing or proposed federal regulations.....	3
Comparison with rules in adjacent states.....	4
Summary of factual data and analytical methodologies.....	4
Analysis and documentation concerning effect on small businesses.....	4
Statement of effect on small business.....	5
Agency contact person.....	5
Proposed Effective Date.....	5
Fiscal Estimate.....	5
Text of Rule	6

Economic Impact Report.....NONE
 Department of Administration s. 227.138 Report..... NONE
 Energy Impact Report.....NONE

Agency Person to be Contacted for Questions

Please direct any questions about this rule-making to Lucas Strelow, Policy Analyst, Office of Policy, Privacy and Compliance, Department of Employee Trust Funds, P.O. Box 7931, Madison WI 53707. Telephone: (608) 267-0722. E-mail address: lucas.strelow@etf.state.wi.us.

Statement Explaining Need for Rule

This rule-making is needed to amend the existing qualified domestic relations order (QDRO) rule to incorporate language for QDROs from domestic partnerships, to address tax concerns under IRC S. 415(b), and to clarify and provide ETF with more flexibility in handling QDROs.

Analysis Prepared by the Department of Employee Trust Funds

1. Statutes Interpreted:
ETF 20.35 relating to qualified domestic relations orders (QDROs); the division of WRS accounts and annuities.
2. Statutory Authority:
Sections 40.03 (2) (i), (ig), (ir), (t), and 227.11 (2) (a)(intro), 1. to 3., 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. Also, 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 Statute or Rule:
There are no other rules that clarify the circumstances under which ETF will handle the division of WRS accounts and annuities.
5. Plain Language Analysis:
These rule changes add language for domestic partner QDROs, address tax concerns under IRC S. 415(b), clarify procedure, and provide ETF with more

flexibility in handling QDROs received out of sequence. These changes include the following:

- In order to remain in compliance with 2009 Wisconsin Act 28, language must be added throughout ETF 20.35 to make QDROs applicable to domestic partnerships.
- Currently, ETF 20.35 has no procedure to follow when multiple QDROs are received out of sequence in relation to their decree date. In other words, if the department receives more than one QDRO awarding a portion of the participant's WRS account or annuity to different "alternate" payees, but the award received by ETF first was issued by the court on a later date than the other(s), ETF has no rule for choosing which payee should receive the award. The newly proposed rule, under ETF 20.35 (9), divides the account chronologically in the order in which the department receives the QDRO. This policy is meant to encourage the timely submittal of QDROs to ETF and to manage the inherent difficulty of payment of a QDRO received out of sequence.
- An amendment, under ETF 20.35 (3) (c) (5), is added to address add-on service for part-time non-teaching staff. Language governing creditable service for these individuals was not included in the previous rule.
- An amendment to the rule, under ETF 20.35 (8) (d), fills a gap in procedure regarding retroactive annuity payments. The rule clarifies that no interest is payable from ETF on retroactive annuity payments made to alternate payees for any months prior to ETF's receipt of a QDRO. No interest is due because the WRS account is divided only when the QDRO is received by ETF, rather than at the time of its decree date.
- An amendment, under ETF 20.35 (6) (c), changes the language to invalidate QDROs received after the alternate payee's date of death. Previously, language only invalidated a QDRO upon the participant's death.
- An amendment, under ETF 20.35 (8) (c), addresses retroactive corrections that result in a benefit below statutory thresholds. The amendment clarifies that retroactive corrections below the threshold are not payable.
- Finally, in order to ensure compliance with the Internal Revenue Code, an amendment to the code, ETF 20.35 (10), addresses how to apply IRC 415 (b) limits to the participant's and alternate payee's aggregate benefits. The department is given flexibility under the amendment to make necessary adjustments to the participant's and alternate payee's benefits on an equitable pro rata basis to assure tax compliance.

6. Summary of, and Comparison with, Existing or Proposed Federal Regulations:

There are no existing federal regulations that specifically address how public retirement plans are to administer domestic partner QDRO's. IRC 415 (b) limits are, however, one federal statutory limitation that the proposed rule change stands to address. The amendment is written to ensure continued compliance with these federal tax laws, which provide for a general dollar limit that the plan can pay an annuitant annually.

7. Comparison with Rules in Adjacent States

- Illinois – The State of Illinois does not have domestic partnerships, and the state's civil unions are not given pension rights. The State Retirement System of Illinois (SRS) does not include domestic partnership or civil union language in its QDRO rule. SRS also does not have a rule in place for multiple QDROs received out of sequence, nor does it have a rule addressing compliance with S. 415 (b) of the Internal Revenue Code regarding the aggregate benefits paid to participant and alternate payee.
- Iowa – Iowa allows same-sex marriage, but uses the term “*administrable domestic relations order*” or “*ADRO*” to govern a domestic relations order that divides the marital property of same gender spouses. The Iowa Public Employee Retirement System (IPERS) has incorporated the ADRO into its domestic relations order rule, primarily as an addition to existing language. IPERS does not have a rule in place for multiple QDROs (or ADROs) received out of sequence, nor does it have a rule addressing compliance with S. 415 (b) of the Internal Revenue Code regarding the aggregate benefits paid to participant and alternate payee.
- Michigan – Michigan's Constitution bans same-sex marriage and other kinds of same-sex unions. Domestic partnership language is not within the State Employees Retirement System of Michigan regulations on QDROs. The State Employees Retirement System of Michigan also does not have a rule in place for multiple QDROs received out of sequence, nor does it have a rule addressing compliance with S. 415 (b) of the Internal Revenue Code regarding the aggregate benefits paid to participant and alternate payee.
- Minnesota – Minnesota does not provide for domestic partnerships, and the Minnesota State Retirement System (MSRS) does not include language for them in its QDRO rule. MSRS also does not have a rule in place for multiple QDROs received out of sequence, nor does it have a rule addressing compliance with S. 415 (b) of the Internal Revenue Code regarding the aggregate benefits paid to participant and alternate payee.

8. Summary of Factual Data and Analytical Methodologies:

The proposed rule amendment is intended to make ETF's QDRO rule clearer and more flexible, as well as to bring it into closer harmony with state and federal statutes.

9. Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of Economic Impact Report:
The 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.
10. Effect on small business:
There is no effect on small business.
11. Agency contact person:
Lucas Strelow, Policy Analyst, Department of Employee Trust Funds, 801 W Badger Rd, Madison, WI 53713-7931, P.O. Box 7931 (use ZIP Code 53707 for PO Box); Phone: 608-267-0722; E-mail: lucas.strelow@etf.state.wi.us
12. Proposed Effective Date:
This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided by s. 227.22 (2) (intro.), Stats.
13. Fiscal Estimate:
The rule will not have any fiscal effect on the administration of the Wisconsin Retirement System, nor will it have any fiscal effect on the private sector, the state or on any county, city, village, town, school district, technical college district, or sewerage districts.
14. Free Copies of Proposed Rule:
Copies of the proposed rule are available without cost from the Office of the Secretary, Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707-7931. The telephone number is: (608) 266-1071.

Text of Proposed Rule

1 **Section 1. ETF 20.35 (1) (b) and 20.35 (1) (c) are amended to read:**

2
3 **ETF 20.35 (1) (b)** The purpose of this section is to specify how the
4 department shall apply a valid QDRO to the participant's account or annuity
5 or respond to an order which is not a valid QDRO.

6
7 **ETF 20.35 (1) (c)** For purposes of ss. 40.02 (48m) and 40.08 (1m), Stats.,
8 and this section, a marriage is terminated upon entry of a judgment, decree
9 or order of divorce, annulment or legal separation. A domestic partnership
10 as defined in s. 40.02 (21d), Stats., is terminated as provided in sub. ETF
11 20.10 (3). A domestic partnership as defined in s. 770.01 (2) is terminated
12 as provided in s. 770.12, Stats.

13
14 **Section 2. ETF 20.35 (2) and 20.35 (3) are amended to read:**

15
16 **ETF 20.35 (2) DIVISION BY VALID QDRO.** Except as otherwise provided in
17 sub. (6) or (7), upon receipt of a valid QDRO the department shall divide
18 WRS accounts and annuities in accordance with the percentage awarded to
19 the alternate payee in the valid QDRO, based on the date on which the
20 marriage was terminated by a court judgment, decree or order or the
21 domestic relationship was terminated as provided in sub. ETF 20.10 (3) or s.
22 770.12, Stats. which includes the order to divide Wisconsin retirement
23 system benefits and the date the valid QDRO was received by the
24 department, as follows:

25
26 (a) With respect to marriages terminated on or after January 1, 1982, and
27 before April 28, 1990, the division shall be as provided in subs. (3) and (4),
28 when a valid QDRO is received by the department after May 2, 1998.

29
30 (b) With respect to marriages or domestic partnerships terminated before on
31 or after April 28, 1990, the division shall be as provided in subs. (3) and (5).

32
33 **Note:** ~~It was the department's intent for par. (b) to read as follows: "With~~
34 ~~respect to marriages terminated on or after April 28, 1990, the division shall~~
35 ~~be as provided in subs. (3) and (5)."~~ This language is consistent with the
36 heading of s. ETF 20.35 (5), which reads: Marriages terminated on or after
37 April 28, 1990."

38
39 **ETF 20.35 (3) ALL QDRO DIVISIONS.** (a) *Percentages.* The percentage of
40 the participant's account or annuity that is awarded to the alternate payee by
41 a valid QDRO is limited to a percentage between zero percent (0%) and fifty
42 percent (50%) expressed to no more than 2 decimal places. An otherwise
43 valid QDRO with a percentage awarded to the alternate payee expressed to
44 more than 2 decimal places may not be rejected for that reason alone, but
45 the department shall round the percentage to 2 decimal places.

47 (b) *Debts of the participant.* Any debt, memorandum account or account
48 receivable balance reflecting amounts owed by the participant to the
49 department, the fund or any benefit plan, accrued as of the decree date and
50 still outstanding at the time the account or annuity is divided, shall be divided
51 between the participant and alternate payee in the same proportion as the
52 participant's account or annuity.
53

54 (c) *Dividing Wisconsin retirement system annuities.*

55
56 1. 'Present actuarial values before and after division shall be equal.'
57 An annuity shall be divided so that the actuarial present value of the
58 undivided annuity is equal to the aggregate actuarial present values of
59 the 2 separate annuities resulting from the division, ~~all calculated~~ as of
60 the effective date of the division.
61

62 2. 'Division of accelerated annuity option.' If the participant selected an
63 accelerated payment option as provided in s. 40.24 (1) (e), Stats., or
64 s. ETF 20.04 (3), and the participant's temporary annuity is still in
65 force as of the effective date of the annuity division, then the
66 department shall calculate the present value of both the temporary
67 and life annuities using the actuarial tables in effect on the effective
68 date of the annuity division. The department shall then divide the total
69 present value based on the percentages specified in the QDRO and
70 calculate separate annuities for the participant and alternate payee as
71 specified in s. 40.08 (1m) (f) 2., Stats. If the participant or alternate
72 payee provides a projection of his or her social security benefits at age
73 62 from the social security administration, the department shall use
74 the that projected social security amount to calculate the amount of
75 the temporary annuity for that person. If no projection is supplied, then
76 notwithstanding s. ETF 20.03 (2), the department shall assume that
77 person's projected social security benefits at age 62 equals ~~the~~ that
78 person's prorated portion of the participant's temporary annuity
79 amount as of the effective date of the annuity division, calculated
80 based on the respective percentages of the annuity being awarded to
81 the participant and alternate payee. If the reduced annuity payable for
82 life to the alternate payee or participant is below the threshold
83 specified by s. ETF 20.05 (1), then that person shall receive an
84 annuity in the same optional form originally selected by the participant,
85 except that the temporary annuity option provided in s. 40.24 (1) (e),
86 Stats., or s. ETF 20.04 (3) is not available.
87

88 3. 'Disability annuities.' Upon division of a disability annuity calculated
89 under the provisions of s. 40.63 (1) or (4), Stats., the alternate payee's
90 annuity shall consist of a portion based on the participant's actual
91 service and a portion based on the assumed service used to calculate
92 the participant's disability annuity. The portion of the alternate payee's
93 annuity based on the participant's assumed service and age shall
94 cease upon the death of the alternate payee. Benefits payable upon
95 the death of the alternate payee's shall be based on the guaranteed

96 portion of the alternate payee's annuity only. Once the participant's
97 disability annuity has been divided, the termination or suspension of
98 the participant's disability annuity or the death of the participant has no
99 effect on the alternate payee's annuity. If the participant's disability
100 annuity is subsequently terminated and the participant's account
101 restored under the provisions of s. 40.63 (9) and (10), Stats., the
102 contributions and service credited to the restored account shall be
103 reduced by the same percentage awarded to the alternate payee by
104 the valid QDRO.

105
106 4. 'Actuarial adjustment for early retirement.' The actuarial reduction
107 applied to the participant's and alternate payee's annuities as provided
108 in s. 40.23 (2m) (f) and (fm), Stats., shall be calculated based on the
109 participant's and alternate payee's actual ages on his or her
110 respective annuity effective dates, using the creditable service that
111 would otherwise have been credited to the participant's account on the
112 respective annuity effective dates if the participant's creditable service
113 had not been reduced per a valid QDRO.

114
115 5. For the purposes of determining the amount of service used to
116 calculate the alternate payee's actuarial reduction for early retirement
117 under the provisions of s. 40.23 (2m) (fm), Stats., if the participant has
118 part-time service in at least five of the ten annual earnings periods
119 immediately preceding the annual earnings period in which the
120 alternate payee's retirement benefit becomes effective or the date on
121 which the participant terminated covered employment, whichever is
122 earlier, the provisions of s. 40.23 (2m) (fm), Stats., shall apply. If the
123 decree date is prior to July 1, 2009, the provisions of s. 40.23 (2m)
124 (fm), Stats., in effect prior to that date shall apply.

125
126 **Section 3. ETF 20.35 (4) (c) 3. is amended to read:**

127
128 **ETF 20.35 (4) (c) 3.** If the participant's retirement annuity is a money
129 purchase annuity calculated under the provisions of s. 40.23 (2) (c), (2m) (c)
130 or (d), or (3), Stats., the portion of the participant's annuity awarded to the
131 alternate payee shall be based on the ratio of the portion of the account
132 balance awarded to the alternate payee as of the decree date including
133 interest creditable through the day before the participant's annuity effective
134 date, based on the percentage specified in the valid QDRO, divided by the
135 total account balance used to calculate the participant's retirement annuity,
136 with the quotient rounded to 2 decimal places.

137
138 **Section 4. ETF 20.35 (5) and 20.35 (6) are amended to read:**

139
140 **ETF 20.35 (5) MARRIAGES AND DOMESTIC PARTNERSHIPS**
141 **TERMINATED ON OR AFTER APRIL 28, 1990.** (a) If the participant was not
142 an annuitant on the decree date, the department shall divide the participant's
143 account as provided in s. 40.08 (1m) (b) 1., (c), (d) and (f) 1., Stats., and sub.
144 (3) (d), and as follows:

145
146 1. The creditable service and amounts awarded to the alternate payee
147 shall be in a separate account in the fund for the benefit of the
148 alternate payee. After the division under this section, the alternate
149 payee may apply for a separation benefit under s. 40.25 (2), Stats.,
150 provided the application is received by the department prior to the
151 date on which the participant would have met the minimum age
152 requirement for a retirement annuity under s. 40.23, Stats., and
153 payment of a separation benefit would comply with all provisions of
154 the internal revenue code. After the date the participant reaches or
155 would have reached the minimum retirement age, the alternate payee
156 may only apply for retirement benefits under s. 40.23, 40.24, or 40.25
157 (1), Stats.

158
159 2. The participant shall ~~have~~ retain the remainder in his or her
160 separate account under s. 40.04 (4) (a), Stats., unless the participant
161 is an annuitant at the time of the division. If the participant is an
162 annuitant when the division occurs, the participant's creditable service
163 and account as of the decree date shall be reduced by the percentage
164 awarded to the alternate payee. The balances shall then be brought
165 forward to the effective date of the current annuity, including any
166 contributions and service for periods after the decree date, and the
167 annuity option chosen by the participant shall be recalculated. The
168 amount by which the monthly annuity payments previously made to
169 the participant exceed the participant's recalculated monthly
170 entitlement for the same period shall be a balance due from the
171 participant. This balance due shall be due from the participant and
172 may be collected as provided in s. 40.08 (4), Stats., including by a
173 reduction of the present value of the participant's annuity as reduced
174 by the division, resulting in a recalculation and reduction of the
175 participant's monthly annuity.
176

177 **ETF 20.35 (6) INVALID QDRO.** (a) *Rejection and notice.* The department
178 may not honor any order to divide Wisconsin retirement system benefits
179 which it determines is not a valid QDRO as defined in s. 40.02 (48m), Stats.
180 The department shall send written notice of its rejection of an order to the
181 person ~~offering~~ submitting the order and to the participant and alternate
182 payee if ~~that those person's name~~ persons' current names and address is
183 addresses are stated in the order or ~~is~~ are readily determinable from
184 department records.

185
186 (b) *Account already closed.* An otherwise valid QDRO received after the
187 participant's account was closed by payment of a lump sum benefit on or
188 after the decree date has no effect, regardless of whether the participant
189 returned to participating employment after the decree date. If the participant's
190 account to which the valid QDRO applies is subsequently restored under the
191 provisions of s. 40.25 (5), Stats., ~~or~~ because the benefit was paid in error, or
192 under an agreement approved by the department where the full amount of
193 the benefit paid plus monthly interest at the assumed rate has been paid to

194 the department, the restored account shall be divided according to the valid
195 QDRO.
196

197 (c) *Participant or alternate payee deceased.* An otherwise valid QDRO
198 received after the participant's or alternate payee's date of death has no
199 effect on the participant's account or annuity.
200

201 **Section 5. ETF 20.35 (7) (a) is amended to read:**

202 **ETF 20.35 (7) (a)** If the department rejects an order for the division of a
203 participant's account and subsequently receives a an otherwise acceptable
204 application from the participant for a benefit which would close the
205 participant's account due to payment of a lump sum benefit, the department
206 shall delay payment of the lump sum benefit until 30 days after the date the
207 order for division was rejected. This paragraph applies only if the basis for
208 the rejection was one or more of the following: 1. The order did not meet all
209 of the requirements in s. 40.02 (48m), Stats. 2. The order received by the
210 department was not a certified copy or an original, signed by the judge or a
211 duly authorized family court commissioner.
212

213
214 **Section 6. ETF 20.35 (8) is amended to read:**

215 **ETF 20.35 (8) EFFECT OF POST-DECREE DATE CORRECTIONS AND**
216 **ADJUSTMENTS.** (a) *Service purchased after decree date.* Credit for service
217 purchased by the participant after the decree date in a valid QDRO may not
218 be affected by that QDRO.
219

220 (b) *Active military service.* If the department divided a participant's account
221 per a valid QDRO without first receiving proof and certification of active
222 military service, as provided in sub. (3) (d) 3., and the participant
223 subsequently provides documentation of active military service and the
224 certification on the form prescribed by the department, the department shall
225 divide the ~~creditable~~ military service creditable for based on-services
226 rendered prior to the decree date between the participant and alternate
227 payee's accounts pursuant to the valid QDRO. Any resulting adjustments to
228 the alternate payee's and participant's benefits shall be made retroactive to
229 the respective benefit effective dates. The participant may not receive
230 creditable military service for any active military service that would have been
231 granted to the alternate payee had the participant submitted timely to the
232 department the certification of active military service as provided in s. 40.02
233 (48m) (f), Stats.
234

235 (c) *Other corrections and adjustments directly affecting benefits.* The effect of
236 any other corrections and adjustments to service, contributions, or interest
237 earnings affecting the benefits the participant accrued as of the decree date,
238 including corrections of administrative errors and corrections or adjustments
239 of any factor affecting the calculation of an annuity to be divided, shall be
240 divided between the participant and the alternate pursuant to the valid
241 QDRO. The participant and alternate payee accounts or annuities shall be
242

243 adjusted accordingly. However, the department shall not adjust benefit
244 amounts if the amount of the adjustment would be less than the thresholds
245 specified in s. 40.08 (7) (a), Stats.

246
247 (d) When a participant's annuity is divided as provided in par. (5) (b) and
248 retroactive payments are due to an alternate payee, or when an alternate
249 payee's annuity must be increased retroactively for any reason, no interest
250 as specified in s. 40.08 (7) (c) is payable to the alternate payee for any
251 monthly payments payable prior to the month in which the department
252 received the valid QDRO.

253
254
255 **Section 7. ETF 20.35 (9) and 20.35 (10) are created to read:**

256
257 **ETF 20.35 (9) MULTIPLE QDROS RECEIVED OUT OF SEQUENCE.** If the
258 department receives more than one QDRO for a participant that each awards
259 a portion of that participant's WRS account or annuity to a different alternate
260 payee, the account or annuity shall be divided based on the chronological
261 order in which the department receives the QDROs without regard to the
262 chronological order of the decree dates. The alternate payee shall be
263 awarded a percentage of the account value as of the decree date for the
264 QDRO received first. If the department subsequently receives a QDRO with
265 an earlier decree date, that QDRO shall have no effect on the portion of the
266 participant's account or annuity awarded to the alternate payee in the QDRO
267 received on an earlier date.

268
269
270 **ETF 20.35 (10) COMPLIANCE WITH SECTION 415(b) OF THE INTERNAL**
271 **REVENUE CODE, (a) The aggregate benefits paid to the participant and**
272 **alternate payee shall not exceed the benefit limits under Section 415(b) of**
273 **the Internal Revenue Code. The department shall make any necessary**
274 **adjustments to the participant's and alternate payee's benefits on an**
275 **equitable pro rata basis to assure compliance with Section 415(b) of the**
276 **Internal Revenue Code. Benefits derived from employee contributions that**
277 **are actually paid by the employee shall not be subject to the benefit**
278 **limitations under this sub.**

279
280 (b) If the participant's retirement annuity has been divided per a QDRO under
281 s. 40.08 (1m) (b) 2., Stats., any subsequent adjustments necessary for
282 compliance with Section 415(b) of the Internal Revenue Code that result from
283 either post-retirement annuity adjustments under s. 40.27 (2) or s. 40.28 (2),
284 Stats., or from increases in the compensation limits specified in Section
285 415(b) of the Internal Revenue Code, shall be prorated based on the
286 percentage of the participant's account that was awarded to the alternate
287 payee in the QDRO.

288
289 (c) If the participant's account is divided as provided in pars. (3) (d) or (5) (a),
290 any benefit adjustments required under Section 415(b) of the Internal
291 Revenue Code shall be applied as follows.

292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340

1. If the alternate payee's benefit becomes effective prior to the participant's benefit effective date:

a. If the aggregate benefits that would be payable to both the alternate payee and the participant on the alternate payee's benefit effective date do not exceed the maximum benefits that would be payable to the participant under Section 415(b) of the Internal Revenue Code if the account had not been divided, the alternate payee's benefit will not be reduced.

b. Any subsequent benefit adjustments necessary for compliance with Section 415(b) of the Internal Revenue Code will be applied solely to the participant's benefits, and shall not affect the benefit amount payable to the alternate payee.

2. If the participant's benefit becomes effective prior to the alternate payee's benefit effective date, or the participant's and alternate payee's benefits become effective on the same date:

a. If the aggregate benefits that would be payable to both the participant and alternate payee on the participant's benefit effective date exceed the maximum benefits that would be payable to the participant under Section 415(b) of the Internal Revenue Code if the account had not been divided, the adjustment to participant's annuity shall be prorated based on the percentage of the participant's account that was not awarded to the alternate payee in the QDRO.

b. When a benefit is subsequently paid to the alternate payee, the portion of the total adjustment necessary for compliance with Section 415(b) of the Internal Revenue Code that is applied to the alternate payee's benefits shall be prorated based on the percentage of the participant's account awarded to the alternate payee in the QDRO.

3. If the participant's benefit effective date is on or after the alternate payee's benefit effective date as specified in subd. 2., and as a result of either post-retirement annuity adjustments under s. 40.27 (2) or s. 40.28 (2), Stats., or of increases in the compensation limits specified in Section 415(b) of the Internal Revenue Code, subsequent benefit adjustments are necessary for compliance with Section 415(b) of the Internal Revenue Code, such adjustments shall be prorated based on the percentage of the participant's account that was awarded to the alternate payee in the QDRO.

(d) For the purposes of determining the aggregate benefits payable to the participant and alternate payee under par. (b), the department shall:

341 1. First calculate the present value of what the participant's benefit
342 would be as of the benefit effective date of the participant's or
343 alternate payee's benefit effective date, whichever is earlier, as though
344 the participant's account had never been divided by a QDRO.

345
346 2. If that total aggregate benefit amount is higher than the maximum
347 benefits permitted under Section 415(b) of the Internal Revenue Code,
348 the department shall reduce the aggregate benefits to the maximum
349 amount payable under Section 415(b) of the Internal Revenue Code.
350 The present value of that maximum benefit payable shall be divided
351 between the participant and alternate payee in proportion to the
352 percentage of the participant's account that was awarded to the
353 alternate payee. The benefits payable to the participant and alternate
354 payee shall then be adjusted as follows:

355
356 a. If the alternate payee has received a lump sum benefit under
357 s. 40.25 (1) or (2), Stats., the gross amount of the alternate
358 payee's lump sum payment shall be subtracted from the
359 present value of the participant's maximum benefit payable
360 under Section 415(b) of the Internal Revenue Code calculated
361 under par. (d). The present value of the benefit paid to the
362 participant shall not exceed the remainder of the present value
363 of that maximum benefit payable under Section 415(b) of the
364 Internal Revenue Code.

365
366 b. If the alternate payee has previously taken a monthly
367 retirement annuity, the present value of the alternate payee's
368 annuity as of the alternate payee's annuity effective date shall
369 be subtracted from the present value of the participant's
370 maximum benefit payable under Section 415(b) of the Internal
371 Revenue Code. The present value of the benefit paid to the
372 participant shall not exceed the remainder of the present value
373 of that maximum benefit payable under Section 415(b) of the
374 Internal Revenue Code.

375
376 c. If the participant's benefit becomes effective prior to the
377 alternate payee's benefit effective date, the present value of the
378 benefit paid to the participant shall not exceed the maximum
379 aggregate benefit calculated under par. (d) minus the present
380 value of the benefit payable to the alternate payee as of the
381 participant's annuity effective date.

382
(END OF RULE TEXT)
