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**STATE OF WISCONSIN
DEPARTMENT OF EMPLOYEE TRUST FUNDS
801 West Badger Road
Madison, WI 53702**

CORRESPONDENCE MEMORANDUM

DATE: May 28, 2003
TO: Employee Trust Funds Board
FROM: Shelly Schueller
SUBJECT: Secretary's Equity Authority Report

The Department's Equity Authority, § 40.03(2)(w), Wis. Stats., was created by 2001 Wisconsin Act 16 and was effective August 31, 2001. Section 40.03(2)(w), Wis. Stats., states:

If the secretary determines that an otherwise eligible participant has unintentionally forfeited or otherwise involuntarily ceased to be eligible for any benefit provided under this chapter principally because of an error in administration by the department, [the Secretary] may order the correction of the error to prevent inequity. A decision under this paragraph is not subject to review. The secretary shall submit a quarterly report to the employee trust funds board on decisions made under this paragraph.

The intention of this statute is to permit the Department Secretary to correct and prevent inequities that result from errors made by Department staff of the type described in the statutes. The Department has developed guidelines to assist staff in determining when to recommend use of the Department's equity authority.

This is the third time in 2003 that the Secretary has exercised this authority. In 2002, the Secretary used his equity authority twice. In accordance with state statute, this informational report is included with your regular board meeting materials whenever the Secretary has exercised his equity authority.

ETF Equity Authority #2003-03

BACKGROUND

Federal minimum distribution laws require that inactive WRS participants begin receiving distributions from their WRS accounts for the year in which they reach age 70½. Wisconsin statutes § 40.23 (4) and Wisconsin Administrative Code, chapter ETF 20.07, require that the Department begin the process of making an automatic distribution from the account of inactive employees if they do not apply for their benefits by the end of their age 69½ year. The benefit is then paid at any time on or before April 1 of the year in which they reach age 71½. Failure to meet

the minimum distribution requirements can subject participants to significant federal excise tax penalties.

FACTS

- February 2002. The Department notified an inactive WRS participant of the federal and state requirements regarding minimum distributions. The letter stated that WRS records indicated that the inactive participant would reach age 69½ during 2002 and provided the following two distribution options:

“1) **Until January 1, 2003**, you can apply for your benefit and specify the benefit begin date. Your benefit begin date can be no later than March 1, 2004 (the year in which you will reach age 71½). Most annuities must have an effective date on the first of the month.

2) **If the Department has not received your application by January 1, 2003**, your WRS account will be paid to you in a lump sum. Once this benefit is paid your WRS account is closed, and the distribution is final.”

Enclosed with the February 2002 letter was a *Retirement Benefit Estimate and Application*. The retirement estimate indicated that the participant was eligible for a lump sum payment of approximately \$7,796 with an effective date of January 1, 2003. The Department did not receive a retirement benefit application or any other information regarding the participant's selection of a retirement benefit during 2002.

- February 18, 2003. The participant died. The Department learned of the participant's death and prepared a death benefit estimate and application, which indicated that the participant's WRS account provided an inactive lump sum death benefit of approximately \$3,699. Since the participant never filed a retirement application, it was determined that the participant's benefit status at death was inactive.
- February 25, 2003. The Department received a letter from the spouse and beneficiary of the deceased participant. In the letter, the participant's spouse stated that based on the information provided by the Department in its February 2002 letter, it was the participant's understanding that if the participant did not apply for a retirement benefit before January 1, 2003, the Department would be required by law to automatically begin distribution of the benefit. The spouse asked the Department to pay the lump sum retirement amount printed on the February 2002 retirement benefit estimate, which is twice the amount of the lump sum inactive death benefit.

DECISION

On April 4, 2003, the Department Secretary exercised his equity authority and the beneficiary of a deceased inactive WRS participant will receive a lump sum retirement benefit of approximately \$7,796 instead of a lump sum death benefit of \$3,699. The beneficiary will have no further WRS benefit entitlement from the deceased participant's account.

SUMMARY OF WHY DECISION WAS MADE

The Secretary determined that the Department's February 2002 letter was incomplete and gave the impression that if the participant did not apply for a retirement annuity by January 1, 2003, the participant would receive an automatic lump sum distribution of the amount listed in the retirement estimate. In addition, the letter made no mention of the impact the participant's death would have

on the benefit. The participant could have relied on this incomplete information when making the decision *not* to apply for the benefit and as a consequence, upon the participant's death the higher benefit may have been unintentionally forfeited.

COMMENT

As a follow-up to the Secretary's determination in this particular case, the Department is reviewing the language in letters sent to participants nearing the minimum distribution age. The Department intends to clarify that the account is subject to automatic distribution any time before April of the year the participant reaches age 71½. By administrative code, the Department can force a distribution any time between January 1 following the year in which the participant reaches age 69½ and April of the participant's 71½ year. The Department will also clarify that the death benefit may be significantly different if a person would die as an annuitant versus a non-annuitant.