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CORRESPONDENCE MEMORANDUM

DATE: May 5, 2006

TO: Wisconsin Deferred Compensation Board

FROM: Shelly Schueller, Director
 Wisconsin Deferred Compensation Program

SUBJECT: Proposed Plan and Trust Document Revisions Related to Domestic Relations Order Divisions of Wisconsin Deferred Compensation Accounts

This memo discusses proposed revisions to Articles I and XI of the Wisconsin Deferred Compensation (WDC) Program's Plan and Trust document. These changes are recommended in order to provide clarification of policies and procedures regarding Domestic Relations Order (DRO) divisions of WDC Program accounts.

Background

Governor Doyle signed 2003 Wisconsin Act 160 into law on March 16, 2004. This law authorizes the WDC to divide participant accounts per a DRO related to any marriage terminated after December 1, 2001. The law requires the Deferred Compensation Board to establish the requirements for a DRO and the administrative procedure for dividing an account. The requirements must be included in "any ... plan and trust document" approved by the Board. To date, less than sixty WDC participants have requested DRO divisions of their accounts.

The Board's contract with Great-West Retirement Services (Great-West) states that the Board and Great-West will develop "mutually agreeable procedures" for processing DROs. Consequently, staff has been reviewing the WDC's DRO policies and procedures. This analysis has shown that revisions to the Plan and Trust document are needed to clarify what constitutes a valid DRO and how such DROs will be processed. Among other things, this review has found that Great-West's processing procedures are slightly different from those used by the previous contract administrator and that new forms are needed to reflect the change in administrators.

Until DRO-related changes to the Plan and Trust document are completed and formally approved by the Board, processing of DRO requests will be slow and participants may face delays as Great-West works to implement existing WDC procedures that were developed for use with the prior record keeper.

Staff continues to refine the Plan and Trust language related to DROs. In order to finalize DRO procedures and implement them as soon as practical, staff recommends that the Board consider delegating approval of final Plan and Trust document revisions related to DROs to the Board Chair.

Reviewed and approved by Dave Stella, Deputy Secretary	
_____	_____
Signature	Date

Board	Mtg Date	Item #
DC	05/16/2006	7

Proposed Revisions

Article I

Staff is proposing two changes to the definitions found in Article I of the Plan and Trust document. A copy of Article I with the proposed changes is included as an attachment to this memo.

The first change is a revision to the definition of “administrator.” The revision clarifies that the “administrator” is the Department and any entity contracted by the Board to assist the Department in administering the WDC. Further, the revision provides that whether the contracted entity qualifies as a “plan administrator” under the Internal Revenue Code will depend on the nature of the responsibilities assigned to it in the contract. This change would make the definition of administrator used in the Plan and Trust document consistent with how it is used elsewhere by the WDC, including in the contract with Great-West.

The second change to the definitions creates a definition of “department.” This change will clarify that when “department” is used in the Plan and Trust document, it refers to the Department of Employee Trust Funds.

Article XI

For the Board’s review, staff has attached a May 3, 2006, draft of changes likely to be proposed for Article XI of the Plan and Trust document. This draft illustrates anticipated revisions; additions are shown with underlining and deletions are marked by ~~strikeout~~. However, the changes included in this draft are not final, as staff has not completed discussions with Great-West on all of the DRO-related procedures.

The proposed revisions to Article XI of the Plan and Trust document do the following:

- Clarify that the alternate payee may be the spouse, former spouse or child of the WDC participant. Formerly the WDC permitted only one alternate payee. This revision will bring the WDC into compliance with Wis. STAT. § 40.80 (2r) (a) 2.
- Provide flexibility in dividing WDC accounts. The revisions provide three different ways to make an award to an alternate payee: (1) a sum certain regardless of gains or losses that may have occurred; (2) as a dollar amount; or (3) percentage of the participant’s account, with both of the latter awards adjusted for post-divorce gains and losses.
- Require the DRO to be received by Great-West while the participant is alive, and require that any amendment to the DRO be received within six months and while the participant and any affected alternate payees are all alive.
- Specify the information that must be included with the DRO, including the relationship of the alternate payee to the participant and the amount to be divided among alternate payees. Additionally, the revision also provides that the DRO is a permanent division of the account after a marriage termination is final and there are no pending appeals, and reiterates that an account that has already been annuitized cannot be divided under a DRO.
- Identify the requirements and limitations of a DRO, including:
 - Permitting only one DRO per terminated marriage.
 - Permitting two DROs only if both parties to the divorce are WDC participants.

- Permitting correction of error amendments for up to six months after the order is first received by Great-West.
 - Requiring that all alternate payees be named in the same DRO.
 - Requiring Great-West to create a separate account for each alternate payee, except those who file a proper request for a lump-sum distribution.
 - Making the alternate payee responsible for managing his or her alternate payee account to achieve desired asset allocation or diversification.
 - Providing that the alternate payee, with some exceptions, has the same rights to the account as a participant no longer employed by a WDC-sponsoring employer, including the right to name account beneficiaries.
 - Establishing that any tax levy or attachment to a participant's account will continue to apply only to the remainder of the participant's account, unless the levy or attachment jointly names the alternate payee.
- Require alternate payees to pay appropriate federal income taxes on any DRO distributions or payments.
 - Assign responsibility for errors and correction of errors. For example, if a DRO payment is found to have been made in error, the error must be reported to the administrator (at this time, Great-West) and reimbursement made by the party receiving the payment in error to the appropriate party (alternate payee or participant). In addition, the revision holds the administrator liable for damages resulting from a DRO performed contrary to the Plan and Trust document and indemnifies the Department and Board from liability resulting from any act or omission by the administrator regarding DROs.

Recommendation

Until the recommended changes to the Plan and Trust document have been formally approved by the Board and the new DRO forms are finalized, any WDC participants seeking a DRO division of their accounts may face delays or have to wait before filing for a DRO. Therefore, staff recommends that the Board consider delegating approval of final Plan and Trust document revisions related to DROs to the Board Chair.

Delegating approval of final DRO-related changes to the Plan and Trust document should help to reduce any unnecessary delays for WDC participants seeking DRO account divisions. Delegation means the development of the procedures and new forms could continue and the revised procedures could be put in place as soon as practicable. In addition, without this delegation, it may be necessary to hold a special Board meeting this summer for the Board to review and take action on the proposed Plan and Trust document changes related to DROs.

Staff will be available at the May 16 meeting to discuss the anticipated revisions to the Plan and Trust document related to DROs and to answer any questions that Board members may have regarding the information in this memo.

Attachments

WDC PLAN AND TRUST
ARTICLE I: Definitions
May 3, 2006

1.01. The following terms shall, for purposes of this PLAN, have the meaning set forth below:

- a. ADMINISTRATOR means the ~~person, department, agency or organization appointed by the EMPLOYER to administer the PLAN~~ DEPARTMENT and, to the extent provided by the terms and conditions of contract, the entity contracted by the TRUSTEES to assist the DEPARTMENT in administering this benefit plan and to provide administrative services to the PLAN. Depending on the responsibilities assigned to the contracted entity, it may or may not be a “plan administrator” within the meaning of 26 U.S.C. §414(g).
- b. ALTERNATE PAYEE means the person identified in a DOMESTIC RELATIONS ORDER to whom is payable a portion or all of a PARTICIPANT’S benefit under the PLAN.
- c. BENEFICIARY means the person or estate entitled to receive benefits under this PLAN after the death of a PARTICIPANT.
- d. COMPENSATION means all cash compensation for services to the EMPLOYER, including salary, wages, fees, commissions, bonuses, and overtime pay, that is includable in the EMPLOYEE’S gross income for the calendar year, plus amounts that would be cash compensation for services to the EMPLOYER includable in the EMPLOYEE’S gross income for the calendar year but for a compensation reduction election under IRC Sections 125, 132(f), 401(k), 403(b), or 457(b), including an election to defer COMPENSATION under this PLAN
- e. CORE INVESTMENT SPECTRUM means the slate of investment options selected and monitored by the Deferred Compensation Board for offering to PARTICIPANTS of the PLAN for the investment of DEFERRED COMPENSATION and ELIGIBLE ROLLOVER DISTRIBUTION amounts.
- f. DEFERRED COMPENSATION means the amount of COMPENSATION that a PARTICIPANT elects to defer into the PLAN under the PARTICIPATION AGREEMENT.
- g. DEFERRED COMPENSATION ACCOUNT means the separate bookkeeping account maintained by the ADMINISTRATOR within the PLAN for a PARTICIPANT for amounts of COMPENSATION deferred into the PLAN.
- gm. DEPARTMENT means the Department of Employee Trust Funds.
- h. DOMESTIC RELATIONS ORDER means a judgment, decree, or order issued by a court pursuant to a domestic relations law of any state or territory of the United States relating to a marriage that terminated after December 1, 2001 and that conforms to the requirements of Wisconsin Statutes Section 40.80(2r) and the BOARD.

- i. ELIGIBLE ROLLOVER ACCOUNT means the separate bookkeeping account maintained by the ADMINISTRATOR within the PLAN for a PARTICIPANT for amounts of ELIGIBLE ROLLOVER DISTRIBUTIONS as defined in Section 1.01(h).
- j. ELIGIBLE ROLLOVER DISTRIBUTION means an eligible rollover distribution as defined in IRC Section 402(c)(4), including eligible rollover distributions to a surviving spouse under IRC Section 402(c)(9).
- k. ELIGIBLE RETIREMENT PLAN means an eligible retirement plan as defined in IRC Section 402(c)(8)(B).
- l. EMPLOYEE means any person, other than independent contractors, who receives any type of compensation from the EMPLOYER, for which services are rendered (including, but not limited to, elected or appointed officials, salaried employees and limited term employees).
- m. EMPLOYER means the State of Wisconsin or any governmental unit, any of its agencies, departments, subdivisions, or instrumentalities for which services are performed by a PARTICIPANT.
- n. INCLUDIBLE COMPENSATION means an EMPLOYEE'S actual wages in box 1 of Form W-2 for a year for services to the EMPLOYER, but subject to a maximum of \$200,000 (or such higher maximum as may apply under IRC Section 401(a)(17)) and increased (up to the dollar maximum) by any compensation reduction election under IRC Sections 125, 132(f), 401(k), 403(b), or 457(b), including an election to defer COMPENSATION under this Plan.
- o. IRC means the Internal Revenue Code of 1986 as now in effect or as hereafter amended.
- p. NORMAL RETIREMENT AGE means the age at which the PARTICIPANT is eligible to retire pursuant to the EMPLOYER'S Retirement System, by virtue of age, length of service or both, without consent of the EMPLOYER and with the right to receive immediate retirement benefits without actuarial or similar reduction because of retirement, before some later specified age, but in no event later than age 70 ½. In the absence of a formal EMPLOYER'S Retirement System, NORMAL RETIREMENT AGE shall mean 65. A special rule applies to PARTICIPANTS who are police or firefighters and categorized a protective employee under the Wisconsin Retirement System pursuant to Wisconsin Statutes, 40.02(48), that allows them to elect an age as early as 40 and no later than 70 ½ as NORMAL RETIREMENT AGE.
- q. PARTICIPANT means an individual who is currently deferring COMPENSATION, or who has previously deferred COMPENSATION under the PLAN by salary reduction and who has not received a distribution of his or her entire benefit under the PLAN. Only individuals who perform services for the EMPLOYER as an EMPLOYEE may defer COMPENSATION under the Plan.

- r. PARTICIPATION AGREEMENT means the application of the PARTICIPANT to the ADMINISTRATOR to participate in the PLAN.
- s. PLAN means the State of Wisconsin Public Employees Deferred Compensation Plan and Trust as set forth in this document and as it may be amended from time to time.
- t. PLAN YEAR means the calendar year in which the PLAN becomes effective, and each succeeding calendar year of existence of this PLAN.
- u. SEVERANCE FROM EMPLOYMENT means the date that the EMPLOYEE dies, retires, or otherwise has a severance from employment with the EMPLOYER, as determined by the ADMINSTRATOR (and taking into account guidance issued under the IRC).
- v. SDO means the Self-Directed Brokerage Option offered for additional opportunities for investment of account balance as a transfer of assets from the CORE INVESTMENT SPECTRUM account.
- w. TRUSTEES mean the Wisconsin Deferred Compensation Board.
- x. UNFORESEEABLE EMERGENCY means severe financial hardship to the PARTICIPANT or BENEFICIARY resulting from a sudden and unexpected illness or accident of the PARTICIPANT or BENEFICIARY, the spouse of the PARTICIPANT or BENEFICIARY, or a dependent (as defined in IRC Section 152(a)) of the PARTICIPANT or BENEFICIARY, loss of PARTICIPANT'S or BENEFICIARY'S property due to casualty, or other similar or extraordinary and unforeseeable circumstances (occurring with respect to such PARTICIPANT or dependent), arising as a result of events beyond the control of the PARTICIPANT or BENEFICIARY. Whether circumstances constitute an UNFORESEEABLE EMERGENCY depends on the facts of each case, but in any case, payment may not be made to the extent that such emergency is or may be relieved:
 - (i) through reimbursement or compensation by insurance or otherwise;
 - (ii) by liquidation of the PARTICIPANT'S assets, to the extent that liquidation itself would not cause severe financial hardship; or
 - (iii) by cessation of deferrals under the PLAN.

For example, the imminent foreclosure of or eviction from the PARTICIPANT'S or BENEFICIARY'S primary residence, the need to pay for medical expenses (including non-refundable deductibles), and the cost of prescription drug medication may constitute an unforeseeable emergency. Except in extraordinary circumstances, the purchase of a home and the payment of college tuition are not unforeseeable emergencies.

WDC PLAN AND TRUST
ARTICLE XI: Domestic Relations Orders
May 3, 2006

- 11.01 When the ADMINISTRATOR receives a judgment, decree or order (“Order”) issued by a court pursuant to a domestic relations law of any state or territory of the United States, the ADMINISTRATOR shall adhere to the procedures and requirements of Wisconsin Statutes Section 40.80(2r) and the PLAN in determining whether it is a DOMESTIC RELATIONS ORDER.
- a. The ADMINISTRATOR shall promptly notify the PARTICIPANT and ALTERNATE PAYEE of the receipt of the Order and the PLAN’S procedures for determining the status of the Order, and
 - b. Within a reasonable time, the ADMINISTRATOR will follow the procedures adopted by the PLAN to determine whether the Order meets the requirements of a DOMESTIC RELATIONS ORDER and will notify the PARTICIPANT and ALTERNATE PAYEE of such determination
- 11.02 A DOMESTIC RELATIONS ORDER is a judgment, decree, or order issued by a court pursuant to a domestic relations law of any state or territory of the United States that conforms with this Article and the provisions of 26 USC §414(p) applicable to a governmental plan and does all of the following:
- a. Relates to a marriage that terminated after December 1, 2001; and
 - b. Assigns all or part of a PARTICIPANT’S accumulated assets held in the PLAN to one or more ALTERNATE PAYEES. ALTERNATE PAYEE means one of the following to whom the PLAN participant is required to satisfy a marital property or family support obligation under both the applicable law and the court’s judgment, decree or order terminating the marriage:
 - (i) A spouse, but only in the event the action terminating the marriage is a court-ordered, legal separation which includes a final property division.
 - (ii) The former spouse of the marriage terminated by the court’s judgment, decree or order.
 - (iii) A child of the PLAN participant who is dependent upon the PLAN participant for his or her support. “Child” includes a natural child, stepchild, adopted child or child in court-ordered adoptive placement, regardless of age, provided the participant is legally obligated to support the child.
 - c. Names the PLAN and is submitted to the ADMINISTRATOR; and
 - d. Is actually received by the Administrator while the PLAN participant is still living.
 - e. Is on a form approved by the DEPARTMENT for the purpose.

f. Was issued by the court having jurisdiction over the property division while the court still had jurisdiction.

d.g. The Order ~~Clearly~~clearly specifies the following ~~information~~:

(i)(i) The name, last known mailing address, date of birth, and tax reporting identification numbers of the PARTICIPANT and ~~each and every~~ ALTERNATE PAYEE, ~~as well as the relationship of each ALTERNATE PAYEE to the PARTICIPANT~~;

(ii)(ii) The ~~dollar~~ amount or percentage, ~~or the manner in which the amount or percentage is to be determined~~, of the PARTICIPANT'S PLAN benefits account to be paid to ~~the~~each ALTERNATE PAYEE. All awards to all ALTERNATE PAYEES in a DOMESTIC RELATIONS ORDER must expressed in the same manner, either all as specific dollar amounts or all as percentages of the assets not to exceed the dollar amount of the account on the date the DOMESTIC RELATIONS ORDER is received by the ADMINISTRATOR;

(iii) That the Order ~~Is~~ intended to be a permanent, not temporary, division and is issued only after the termination of the marriage is final and either the property division is final or there is no pending appeal which could potentially affect the assignement to the ALTERNATE PAYEES ordered in the DOMESTIC RELATIONS ORDER.

(iv)(iv) That the Order ~~does not~~Not require a form of payment or any other benefit to the ALTERNATE PAYEE that is not otherwise provided under the PLAN; ~~and~~

(v)(v) That the Order ~~does N~~ot require the payment of benefits to an ALTERNATE PAYEE which are required by a prior DOMESTIC RELATIONS ORDER to be paid to another ALTERNATE PAYEE.

(vi) That the Order ~~does not~~ apply to any portion of a PLAN participant's account that has already been annuitized. This prohibition may be revised in future by the DEPARTMENT if and when all annuity providers under the PLAN have agreed to provisions for the division of the annuity under a DOMESTIC RELATIONS ORDER.

11.025 Division of a PLAN account under a DOMESTIC RELATIONS ORDER is subject to the following requirements and limitations.

a. There are three different permitted options for dividing a WDC account. Exactly the same option choice must be applied to each ALTERNATE PAYEE named in the DOMESTIC RELATIONS ORDER, although differing percentages or dollars amounts (depending on the option chosen) may be assigned to each.

(i) OPTION 1. The ALTERNATE PAYEE may be awarded a sum certain. This award will not be affected by any market gains and losses that may have occurred before the DOMESTIC RELATIONS ORDER is processed

by the ADMINISTRATOR. The sum certain will be distributed to the ALTERNATE PAYEE as a lump-sum distribution if an approved request is received on or before the date the DOMESTIC RELATIONS ORDER is received by the ADMINISTRATOR. Otherwise, when the DOMESTIC RELATIONS ORDER is processed by the ADMINISTRATOR, the sum certain will be deposited into a DEFERRED COMPENSATION ACCOUNT established for the ALTERNATE PAYEE and thereafter will be subject to gains and losses. A DOMESTIC RELATIONS ORDER making an Option 1 award shall be rejected if there are insufficient funds in the PARTICIPANT's DEFERRED COMPENSATION account to process the DOMESTIC RELATIONS ORDER. This is the only option available if the marriage terminated prior to December 1, 2005, because daily DEFERRED COMPENSATION ACCOUNT balances are not available prior to that date.

(ii) OPTION 2. The ALTERNATE PAYEE may be awarded either a percentage or a dollar amount from the PARTICIPANT's DEFERRED COMPENSATION ACCOUNT, as of the date the marriage is terminated, along with all subsequent gains and losses experienced by assets awarded to the ALTERNATE PAYEE beginning on the date the marriage is terminated.

(A) Option 2A is an award of a dollar amount. The DOMESTIC RELATIONS ORDER is void and shall be rejected if the amount awarded to the ALTERNATE PAYEE exceeds the amount of the PARTICIPANT's DEFERRED COMPENSATION ACCOUNT as of the date the marriage was terminated.

(B) Option 2B is an award of a percentage of the PARTICIPANT's DEFERRED COMPENSATION ACCOUNT expressed as a percentage to no more than two decimal places and up to 100%.

a. A PLAN participant's account may be affected only once by a DOMESTIC RELATIONS ORDER for each terminated marriage to which the participant is a party. All ALTERNATE PAYEES awarded an interest in the Participant's DEFERRED COMPENSATION ACCOUNT as a result of the termination of the marriage must be named in the same DOMESTIC RELATIONS ORDER.

(i) Except as provided in paragraph b., if the ADMINSTRATOR has accepted a DOMESTIC RELATIONS ORDER as valid under WIS. STAT. § 40.80 (2r) and this Article, then any subsequent DOMESTIC RELATIONS ORDERS pertaining to the same marriage and purporting to divide the same DEFERRED COMPENSATION ACCOUNT shall be rejected.

(ii) Remarriage of the parties to a divorce shall not result in voiding the effects of a previous DOMESTIC RELATIONS ORDER division of the PLAN participant's account between the parties.

- (iii) If the ADMINISTRATOR has accepted and acted upon a DOMESTIC RELATIONS ORDER based upon the termination of a marriage by a judgment of legal separation, then the subsequent conversion of the judgment of legal separation into a judgment of divorce shall have no effect under this Article.

- b. Notwithstanding paragraph a., in order to enable correction of an error by the court, a DOMESTIC RELATIONS ORDER may be amended for up to six months after the order is first received by the Administrator, provided however that:
 - (i) The court terminating the marriage retains jurisdiction.
 - (ii) The amended order must be clearly identified as such.
 - (iii) The amended order must be received by the ADMINISTRATOR while the Participant and each affected ALTERNATE PAYEE is still living.
 - (iv) There have been no intervening withdrawals of assets or other transactions, during the period between receipt of the original and amended DOMESTIC RELATIONS ORDERS, that make the amended division impossible, as determined by the ADMINISTRATOR.
 - (v) In recreating the PLAN participant account as if the original division had not occurred, any asset investments made in the interim in the ALTERNATE PAYEE account created by the original DOMESTIC RELATIONS ORDER shall be attributed to the PLAN participant, who shall bear any resulting gains or losses.
 - (vi) The amended assignment must be in the same form as the original. That is, an assignment of a percentage may not be amended into the assignment of a dollar amount, or vice versa.
 - (vii) No ALTERNATE PAYEE may be added to or deleted from the original DOMESTIC RELATIONS ORDER by an amended order.
 - (viii) The amended DOMESTIC RELATIONS ORDER complies in all respects with this Article.

- c. If both parties to the action to terminate a marriage are each a PLAN participant through his or her individual employment, then the PLAN participant account of each may be divided by using two separate DOMESTIC RELATIONS ORDERS.

- d. Each and every ALTERNATE PAYEE to whom an assignment of any part of the PLAN participant's account is made in the course of the termination of the particular marriage must be named in the same DOMESTIC RELATIONS ORDER.

- e. The Participant must be living on the date the DOMESTIC RELATIONS ORDER is received by the ADMINISTRATOR, or the DOMESTIC RELATIONS ORDER is void.

- f. The Administrator shall make all reasonable efforts to restore a DEFERRED COMPENSATION ACCOUNT divided in error under a DOMESTIC RELATIONS ORDER that was void. The ADMINISTRATOR may not be required to attempt to collect disbursements made in the good faith belief that the PARTICIPANT was alive on the date the DOMESTIC RELATIONS ORDER was received by the ADMINISTRATOR.
- g. Upon determining that a DOMESTIC RELATIONS ORDER is valid, the ADMINSTRATOR shall create a separate account for the ALTERNATE PAYEE and transfer into it from the PLAN Participant's account assets sufficient to satisfy the ordered assignment. Except, if the ALTERNATE PAYEE has filed an approved lump-sum disbursement request on or before the date the DOMESTIC RELATIONS ORDER is received, then in lieu of creating a separate account for the ALTERNATE PAYEE, the ADMINISTRATOR may make the appropriate lump-sum distribution to the ALTERNATE PAYEE.
- (i) If the assignment to the ALTERNATE PAYEE is of a specific dollar amount:
- (A) The ADMINISTRATOR shall transfer assets into the ALTERNATE PAYEE account (or make a lump-sum distribution to the ALTERNATE PAYEE) having the stated dollar value. If the dollar award is under Option 2A, the stated dollar valued shall first be adjusted by the interest and investment gains and losses attributable to the ALTERNATE PAYEE's share since the date the marriage was terminated.
- (B) The ADMINSTRATOR may transfer any such assets, or liquidate assets and transfer funds, as the ADMINISTRATOR deems necessary to satisfy the dollar amount stated in the DOMESTIC RELATIONS ORDER in a manner that is as impartial and fair to both the PLAN participant and the ALTERNATE PAYEE as possible.
- (C) If the ALTERNATE PAYEE's dollar amount exceeds the dollar value of the PARTICIPANT's account, the DOMESTIC RELATIONS ORDER shall be rejected and the reason explained.
- (iii) If the assignment to the ALTERNATE PAYEE is of a percentage of the PLAN participant's account:
- (A) The DOMESTIC RELATIONS ORDER shall be rejected if the aggregate of the percentages assigned to all ALTERNATE PAYEEs exceeds 100%.
- (B) The ADMINISTRATOR shall liquidate or transfer to the ALTERNATE PAYEE account, insofar as possible, the same stated percentage of each fund or other investment in the PLAN Participant's account, so that the award to the ALTERNATE

PAYEE consists of the same asset mix as the participant's account. However, the ADMINISTRATOR may, in order to achieve the overall percentage award ordered, vary the transfer of portions of particular assets to the minimum extent necessary and in a manner that is as impartial and fair to both the PLAN participant and the ALTERNATE PAYEE as possible.

- f. Following a division under a DOMESTIC RELATIONS ORDER, and establishment of a DEFERRED COMPENATION ACCOUNT for the ALTERNATE PAYEE, the ALTERNATE PAYEE shall then be responsible for transferring assets to achieve whatever investment goals or diversification the ALTERNATE PAYEE desires.
- g. Prior to receiving a total distribution under the PLAN of all assigned assets, an ALTERNATE PAYEE shall have the same rights, benefits and interests in his or her ALTERNATE PAYEE account as a former employee, no longer employed by an employer participating in the PLAN, has in his or her PLAN participant account, including but not limited to the right to designate a beneficiary for death benefit purposes and the right to direct PLAN investments to the extent permitted under the PLAN. Except, however:
- (i) Benefits will be payable to the Alternate Payee in any form or permissible option available to participants under the terms of the PLAN, except that a joint and survivor annuity option shall not be available.
- (ii) An ALTERNATE PAYEE account created in response to a DOMESTIC RELATIONS ORDER may not be merged or otherwise joined with any other PLAN account held by the individual, whether as a PLAN participant or as an ALTERNATE PAYEE.
- (iii) An ALTERNATE PAYEE account is not subject to division by a DOMESTIC RELATIONS ORDER.
- h. Any Internal Revenue Service or Wisconsin Department of Revenue levy or attachment against the Participant's account shall continue to apply only to the remainder of the Participant's account, unless the levy or attachment jointly names an Alternate Payee, to whom the levy or attachment shall then also apply.
- 11.03 The ADMINISTRATOR is authorized to place a restrictive hold on a PARTICIPANT'S account while it determines the validity of ~~and/or~~ processes a DOMESTIC RELATIONS ORDER. The ADMINISTRATOR shall establish a separate account for the ALTERNATE PAYEE and transfer the assigned value or benefit from the PARTICIPANT'S account into the ALTERNATE PAYEE'S account, unless the ALTERNATE PAYEE has timely and appropriately applied for a lump-sum distribution of the entire award.
- 11.04 The ALTERNATE PAYEE is entitled to receive ~~distributions~~ a lump-sum distribution of the entire award immediately, instead of having upon the establishment of his or her account a DEFERRED COMPENATION ACCOUNT established for him or her under Article X, provided the ALTERNATE PAYEE files a WDC lump-sum disbursement request form on

or before the date the DOMESTIC RELATIONS ORDER is received. In all other circumstances, a DEFERRED COMPENSATION ACCOUNT shall be established for the ALTERNATE PAYEE. The ALTERNATE PAYEE shall be treated as a PARTICIPANT who is no longer employed by a participating employer, except as otherwise provided in this Article.

- a. Distributions made to an ALTERNATE PAYEE are reported as taxable income to the ALTERNATE PAYEE. State taxes, if applicable, and Federal taxes will be withheld from any distribution on the ALTERNATE PAYEE'S account based upon the tax withholding elections of the ALTERNATE PAYEE.
- b. The ALTERNATE PAYEE may not make any contributions to his or her account but is permitted to designate beneficiaries for the account and to exercise exchanges among the investment options as permitted by the PLAN.
- c. Unless otherwise provided in this Article, all other PLAN rules and procedures applicable to a PARTICIPANT shall be applicable to the ALTERNATE PAYEE'S account.

11.05 The TRUSTEES, EMPLOYER and ADMINISTRATOR, and any member, employee, or agent thereof shall be immune from civil liability for any act or omission while performing duties relating to implementing a DOMESTIC RELATIONS ORDER and for any act or omission of a PARTICIPANT with respect to the PARTICIPANT'S account under the PLAN, including specifically any deferral or investment election or distribution during the period that begins on the day on which the PARTICIPANT'S marriage is terminated by a court and ends on the day on which his or her account is divided pursuant to a DOMESTIC RELATIONS ORDER.

11.06 Tax Treatment of Distributions. For purposes §§402(a)(1) and 72 of the Internal Revenue Code, or any successor Code section, any ALTERNATE PAYEE who is the spouse or former spouse of the Participant shall be treated as the distributee of any distribution or payments made to the ALTERNATE PAYEE under the terms of the DOMESTIC RELATIONS ORDER and, as such, will be required to pay the appropriate federal income taxes on such distribution.

11.07 Responsibility for Errors.

- a. In the event that the ADMINISTRATOR inadvertently pays to the Participant any benefits that are assigned to the Alternate Payee pursuant to the terms of a DOMESTIC RELATIONS ORDER, the Participant shall immediately, within 10 days, report the error to the ADMINISTRATOR and is personally liable for reimbursement to the Alternate Payee.
- b. In the event that the ADMINISTRATOR inadvertently pays to the ALTERNATE PAYEE any benefits that were not assigned to the Alternate Payee pursuant to the terms of a DOMESTIC RELATIONS ORDER, and instead remained the sole property of the Participant, the ALTERNATE PAYEE shall immediately, within 10 days, report the error to the ADMINISTRATOR and is personally liable for reimbursement to the Participant.

c. The entity contracted to assist the DEPARTMENT and provide administrative services for the PLAN may be held liable to the PLAN, TRUSTEES or DEPARTMENT for any damages resulting from a division performed contrary to the terms and conditions of the PLAN or under an order which did not qualify as a DOMESTIC RELATIONS ORDER. The contracted entity may consult with the DEPARTMENT for assistance in determining terms and conditions of the PLAN concerning a DOMESTIC RELATIONS ORDER, or whether an order qualifies as a DOMESTIC RELATIONS ORDER, and may rely upon the written determinations of the DEPARTMENT, unless overturned on appeal by the TRUSTEES. Aside from actions undertaken consistent with such written determinations, the contracted entity shall hold harmless and indemnify the DEPARTMENT, its employees, and agents and the TRUSTEES and Deferred Compensation Board employees and agents, from liability for any action or omission by the contracted entity regarding handling of any order purporting to be, or treated, as a DOMESTIC RELATIONS ORDER.