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April 22, 2014

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SENT BY E-MAIL [paul.c.hogan2@irs.gov]
AND DELIVERED BY COURIER

Mr. Paul Hogan
Internal Revenue Service TE/GE
915 Second Avenue
Mail Stop 510
Seattle, WA 98174

Dear Mr. Hogan:

Re: Qualification of the Employees'
Retirement System of the County of
Milwaukee ("ERS")
EIN: 39-6005720 PIN: 001
Control Number: 911670517

As you know, we represent the County of Milwaukee (the "Plan Sponsor") and the Pension Board of the Employees' Retirement System of the County of Milwaukee (the "Plan Administrator") with respect to this submission. On June 29, 2007, we requested, on behalf of the Plan Sponsor and Plan Administrator, a compliance letter for ERS under the Voluntary Correction Program ("VCP") with respect to qualification failures outlined in that submission. We later submitted supplemental VCP information.

We now ask that the filing be allowed to include the violations detailed in the attached document. The Plan Administrator is completing the review of the particular details related to a number of these violations. As noted in the attached supplement, we will provide additional detail on these violations as necessary when available.

The following exhibits are enclosed:

Exhibit 14-1 Revisions to VCP Submission.

Mr. Paul Hogan
April 22, 2014
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- Exhibit 14-2 Resolution amending Ordinance Section 201.24(2.4).
- Exhibit 14-3 Proposed resolution amending the Ordinances for EGTRRA, PPA and HEART compliance.
- Exhibit 14-4 A copy of the current Plan Document.
- Exhibit 14-5 Copy of current Form 2848.

Because the above described filing is still pending, we are providing these additional corrections in this manner. Please let us know if you would prefer a different approach. Please advise if we can provide any other documentation or further assist you in your review of this submission. We will call you to discuss this filing.

REINHART BOERNER VAN DEUREN s.c.

BY


Steven D. Huff

14387761

Encs.

EXHIBIT 14-1

APRIL 22, 2014 SUPPLEMENT

EMPLOYEES' RETIREMENT SYSTEM OF THE COUNTY OF MILWAUKEE

EIN: 39-6005720 PLAN #: 001

CONTROL # 911670517

SECTION II - APPLICANT'S DESCRIPTION OF FAILURES

1. Description of Failures. The Pension Board of the Employees' Retirement System of the County of Milwaukee has authority over ERS. The ERS Retirement Office is responsible for day-to-day administration of ERS. In addition to the violations reported in our past VCP filing, a comprehensive review of ERS has revealed several additional operational errors, which are described in detail below.

a. Compliance with Domestic Relations Support Orders. Ordinance section 201.24(11.7) provides for the non-alienation of retirement benefits. ERS Rule 1017 provides a limited exception to this prohibition for a Domestic Relations Order ("DRO"). The Rule requires that in order to be treated as a DRO, the support order must contain certain elements. Periodically ERS receives Income Withholding Support Orders sent by County support enforcement agencies requesting that the Retirement Office withhold support amounts from members' benefit checks for a child or former spouse. These support orders do not contain all of the information required under Rule 1017 to qualify as a DRO. However, the Retirement Office has generally complied with these orders and a basis exists to conclude that state law requires ERS to comply with these orders.

b. Lump Sum BackDROP Payments Failed to Include Interest. ERS Rule 711 allows members remaining in County employment past their earliest retirement date to elect to receive a back DROP benefit upon actual retirement from County employment. This benefit consists of a lump sum DROP benefit comprised of the member's monthly annuity payments that would have been payable to the member had the member retired on his or her back DROP date through the member's actual retirement date. The member will prospectively receive a monthly annuity in the amount that the member would have received had the member retired on his or her back DROP date. ERS Rule 713 provides that the interest rate applicable to calculating the back DROP lump sum benefit shall be the rate used by the ERS actuary as the assumed rate of return for funding purposes in the year of the member's actual retirement. The Retirement Office discovered an error in the ERS computer system's calculation of interest on the back DROP payments. When calculating a back DROP benefit, the computer system did not include interest on the member's final month of service to the County. For example, if the retiring member's last day on the payroll is the 20th of the month, 20 days of interest for that final month should have been included in the back DROP amount. This final partial month of service was not included in the final interest calculation.

c. Cost of Living Adjustments ("COLA"). Ordinance section 201.24(5.7) provides that each year after retirement a member's monthly pension benefit shall be increased by two percent of the amount paid to the member for the first full month of retirement. Beneficiaries

receiving annuities after the death of the member are also entitled to these increases. The Retirement Office discovered two categories of errors relating to the COLA adjustments.

i. Failure to Apply COLAs to Benefits. ERS failed to apply COLAs to some members' benefits, resulting in underpayments to these individuals. This error occurred primarily as a result of the change to ERS's new computer system.

ii. Paid Excess COLAs. ERS also discovered members for whom excess COLAs had been paid, resulting in overpayments to these individuals.

d. Administration of 10-Year Certain Benefit. ERS Rule 1013 provides that members may choose a 10-year certain annuity which provides a reduced monthly benefit payable to the member for his or her lifetime. If the member dies before receiving 120 monthly payments, then the monthly payments shall be payable to the member's beneficiary until the full 120 payments have been made. The Retirement Office discovered the following errors in the administration of this benefit.

i. Exceeding Cut-Off Dates/Calculation Errors. Overpayments to beneficiaries resulted from calculation errors and the failure to cut-off monthly benefit payments after the required 120 payments were made.

ii. Premature Cut-Offs. Underpayments to beneficiaries occurred as a result of premature cut-off dates. The Retirement Office failed to continue to make payments to the designated beneficiary if the member died prior to receiving 120 payments.

e. Incorrect Retirement Option. The Retirement Office discovered one member whose survivor benefits were calculated under the wrong retirement option. The member elected a 100% joint and survivor annuity, but the survivor benefit was calculated based on a 50% joint and survivor annuity. This resulted in an underpayment of approximately \$117,556.

f. Allowing Optional Employees to Remain in OBRA After Electing into ERS. The County administers two retirement systems for its employees: ERS and the OBRA 1990 Retirement System of the County of Milwaukee ("OBRA"). ERS is the primary retirement system for County employees. In general, most employees automatically become members of ERS but certain members can elect into ERS or OBRA. Rule 202 governs these elections and provides that the option to elect into ERS from OBRA may be exercised at any time but may not be thereafter revoked except by withdrawal from service and the retirement system. Up until 2014, seasonal employees were provided the option to elect into ERS. However, given the nature of their employment schedules with the County, they often leave and return each season. While ERS treats seasonal employees as terminated at the end of each season and returning employees are reenrolled in ERS or OBRA each season, the majority do not withdraw from the retirement system each year. Therefore, violations occurred when a seasonal employee elected into ERS in a previous year and chose to remain in OBRA in a subsequent year without first withdrawing from ERS.

g. BackDROP Election by Beneficiary. Members' beneficiaries selected a back DROP form of benefit on the members' behalf after the members died. Pursuant to Rule 711,

only members who are in active service may elect a back DROP. Beneficiaries are ineligible to elect a back DROP for a member.

h. Designation of Multiple Beneficiaries for Annuity. The Retirement Office discovered an error with the payment of an active member's death benefit. The member's death benefit is being paid to multiple beneficiaries, which is not allowed under the Ordinances and Rules unless the member has approval from the Pension Board under an Option 7 form of benefit. The beneficiaries also received a back DROP and are included as part of the error explained in Section (g) above.

i. Use of Incorrect Service Credit to Calculate Pension Benefit. The Retirement Office discovered that an overpayment had been made to a member's spouse because the benefit was calculated using full-time instead of part-time service credit.

j. Benefit Paid to Wrong Member. The Retirement Office recently discovered that the surviving spouse of an ERS member was incorrectly receiving her spouse's benefits plus the pension benefit of another member. Neither the spouse nor the individual who should have been receiving the benefit notified ERS so the error was not discovered until the surviving spouse died.

k. Definition of Employee. Prior to the adoption of a resolution amending Ordinance section 201.24(2.4), which includes the definition of "Employee" under the Plan, the definition of Employee for purposes of the Plan included only individuals employed by the County or individuals employed by the State who received a portion of his or her wages from the County. State employees who received their entire wages from the State participated in ERS after their positions were transferred from County to State oversight. Accordingly, these individuals were not encompassed within the definition of Employee in Ordinance section 201.24(2.4).

l. IRS and Wisconsin Department of Revenue Levies. ERS periodically receives notices of levy/attachment for delinquent income taxes from the IRS and the Wisconsin Department of Revenue ("DOR") requesting that ERS send all or a portion of a member's pension benefit to the IRS or DOR for payment of unpaid taxes. ERS generally complies with these levies. However, Ordinance section 201.24(11.7) ("Section 11.7") provides for the non-alienation of ERS retirement benefits, which prohibits the payment of pension benefits to satisfy a debt, claim, damage or judgment. Accordingly, ERS's compliance with the levies violates the alienation of benefits prohibition in Section 11.7.

m. Benefit Processing Issues. An internal audit identified potential errors whereby members' benefits were potentially incorrectly processed under the wrong forms of benefit, which could result in overpayments or underpayments to the members and the members' beneficiaries. The Retirement Office is completing an in-depth review to confirm whether errors occurred related to these benefit payments.

n. Payment of Deferred Vested Benefits to Non-Vested Members. Ordinance section 201.24(4.5) provides that members are eligible for deferred vested benefits, if among other requirements, they have sufficient service credit to vest in their benefits. Members become eligible for deferred vested benefits if there is a gap between the member's termination of service

and retirement (*i.e.*, the member does not retire directly from active service). The required years of service necessary to vest in a benefit depends on the member's enrollment date. For enrollment dates between January 1, 1971 and January 1, 1982, a member must have 6 years of service credit. For enrollment dates on or after January 1, 1982, where the member did not earn service credit after January 1, 2001, the member must have 10 years of service. For members who have service on or after January 1, 2001, the member must have 5 years of service to vest in his or her deferred vested benefit from ERS. Despite the vesting requirements in Ordinance section 201.24(4.5), members with less than the required service credit necessary to vest have been paid benefits in violation of this Ordinance section.

o. Pension Protection Act of 2006 ("PPA") and Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART") Amendments. The legislative body with authority to amend ERS did not adopt the required amendments under PPA and HEART within the required time period. ERS has operationally complied with the requirements.

2. Years in which the Failures Occurred. ERS believes that:

- a. This failure occurred in 2000 through 2013.
- b. This failure occurred in 2009, 2010, 2011 and 2012.
- c. This failure occurred in approximately 1985, 1993, 1996, 2001, 2004, 2008-2013.
- d. (1) This failure occurred in 2006, 2007 and 2008.
(2) This failure occurred in approximately 2002, 2009 and 2010.
- e. This failure occurred over a number of years. The Retirement Office is confirming the exact dates, and this filing will be updated once those dates are received.
- f. This failure occurred over a number of years. The Retirement Office is confirming the exact dates, and this filing will be updated once those dates are received.
- g. This failure occurred in 2002, 2003 and 2004.
- h. This failure occurred in 2003 through 2014.
- i. This failure occurred over a number of years. The Retirement Office is confirming the exact dates, and this filing will be updated once those dates are received.
- j. This failure occurred in approximately 2008 through 2010.
- k. This failure occurred in 2009-2011.
- l. This failure occurred in 2000 through 2013.
- m. If a failure occurred, it occurred over a number of years. The Retirement Office is confirming the exact dates, and this filing will be updated once those dates are received.
- n. This failure occurred from approximately 2011 through 2013, but the Retirement Office is confirming if any additional errors occurred earlier than 2011.
- o. This failure occurred in 2011.

3. Number of Participants Affected. ERS believes that:
- a. This failure affected 80 participants.
 - b. This failure affected 598 participants.
 - c. This failure affected 62 participants, but the Retirement Office is confirming this number.
 - d. (1) This failure affected 7 beneficiaries, but the Retirement Office is confirming this number.
(2) This failure affected 4 beneficiaries, but the Retirement Office is confirming this number.
 - e. This failure affected 1 member's beneficiary.
 - f. This failure affected all optional employees who previously elected into ERS and were subsequently allowed to remain in OBRA. The Retirement Office is confirming an estimate of the number of affected participants.
 - g. This failure affected 5 beneficiaries.
 - h. This failure affected 4 beneficiaries.
 - i. This failure affected 1 participant.
 - j. This failure affected 1 participant and 1 beneficiary.
 - k. This failure affected 40 participants.
 - l. This failure affected at least 11 participants, but the Retirement Office is confirming if any additional members were affected.
 - m. If this failure occurred, it affected at least 1 participant, but the Retirement Office is confirming the number of members affected.
 - n. This failure affected approximately 11 participants.
 - o. This failure did not affect individual participants.

Section III - Proposed Method of Correction.

1. Relief Requested. On behalf of the Plan Sponsor and ERS, we respectfully request a favorable compliance letter for ERS in accordance with Revenue Procedure 2013-17. We respectfully request a conference with you or Review Staff in the event you contemplate issuing a determination that is unfavorable.

2. Methods of Correction.

a. Compliance with Domestic Relations Orders. ERS proposes to correct this failure by retroactively amending the Plan document to authorize acceptance of these support orders.

b. Back DROP Interest Errors. ERS proposes to determine the difference between the amount of interest the member should have received with his or her back DROP and the amount of interest the member actually received with his or her back DROP. ERS further proposes to calculate interest on that difference and pay the difference, plus 5% interest, to the member. ERS has already begun making these corrective payments.

c. Cost of Living Adjustments. ERS proposes to determine the correct COLA attributable to the member's benefit. If the member did not receive COLAs when required, ERS will recalculate the member's benefit and begin paying the member the appropriate amount. ERS will also pay to the member a lump sum payment for the COLA amounts not paid, plus 5% interest.

If a member received a COLA when it should not have been received, ERS proposes to recalculate the member's benefit to reflect the appropriate amount and request repayment of the overpaid amount. If the affected member does not refund the overpayment, then the Retirement Office will obtain the refund by reducing the member's monthly annuity benefit as illustrated in Rev. Proc. 2013-12 Appendix B § 2.04(1)(a)(ii). To recover the overpayment, the Retirement Office will reduce the recalculated benefit to recoup the overpayment (over a period not longer than the remaining payment period), plus 5% interest. The Plan Sponsor will contribute to ERS any overpayment that is not repaid by the member.

d. Administration of the 10-Year Certain Benefit.

i. Exceeding Cut-Off Dates/Calculation Errors. ERS proposes to correct this failure by discontinuing the benefit payments and attempting to recover the overpayments, plus 5% from the members. Any amounts not returned to ERS will be contributed by the Plan Sponsor to ERS.

ii. Pre-Mature Cut-Offs. ERS proposes to determine the amount of the underpayment, calculate 5% interest on the underpaid amount, and pay the total amount to the individual. The Retirement Office has already begun making corrective payments.

e. Incorrect Retirement Option. ERS proposes to recalculate the beneficiary's benefit under the correct retirement option, determine the amount of the underpayment and pay the underpayment, plus 5% interest to the individual. The Retirement Office has already made the corrective payment.

f. Optional Employee Elections. ERS proposes to correct this failure by amending the Plan document to authorize optional members to have the option to elect into ERS each season after termination of employment from the prior season. Prospectively, the Plan document has already been amended to specify that seasonal employees are no longer allowed to elect into ERS.

g. Back DROP Election by Beneficiary. ERS proposes to seek a refund of the back DROP lump sum benefit paid to each ineligible beneficiary, including interest, according to the following procedure. The Retirement Office would recalculate the pension benefit that each beneficiary would have been entitled to receive had he or she not elected the back DROP benefit. The beneficiary's monthly benefit will be increased accordingly. The Retirement Office would

offset the amount of the refund by the amount of the additional pension benefit to which each beneficiary would have been entitled had he or she not elected the back DROP. If, after the appropriate amount is offset against the refund, the Retirement Office determines that the beneficiary received an underpayment, such amount shall be paid in a lump sum to the individual, plus 5% interest.

If a beneficiary received an overpayment as determined by the process described above, ERS will seek a refund of such amount. If the affected beneficiary does not refund the back DROP amount, then the Retirement Office will obtain the refund by reducing the beneficiary's monthly annuity benefit, as illustrated in Rev. Proc. 2013-12 Appendix B § 2.04(1)(a)(ii). To recover the overpayment, the Retirement Office will reduce the recalculated benefit to recoup the overpayment (over a period not longer than the remaining payment period), plus 5% interest. Any amounts not returned to ERS will be contributed by the Plan Sponsor to ERS.

h. Death Benefit. ERS proposes to discontinue the benefit payments to the four beneficiaries and request repayment of the overpayment. To calculate the overpayment, the Retirement Office will combine the lump sum back DROP amount and the total monthly payments paid to each beneficiary. This amount will be charged 5% interest. This figure will be decreased by any death benefit that was payable under the Ordinances and Rules. Any amounts not returned to ERS will be contributed by the Plan Sponsor to ERS.

i. Full-time Instead of Part-Time Credit Used to Calculate Benefit. ERS proposes to recalculate the beneficiary's monthly benefit, determine the amount of the overpayment and request the repayment of the amount of the overpayment, plus interest at 5%, from the beneficiary. The Retirement Office has already commenced corrective actions and has entered into an agreement with the beneficiary to completely offset the beneficiary's benefit until the overpayment, plus interest, is recovered. Once the overpayment, plus interest, is recovered, the Retirement Office will resume the beneficiary's monthly payments at the recalculated amount. Any amounts not returned to ERS will be contributed by the Plan Sponsor to ERS.

j. Benefit Paid to Wrong Individual. The Retirement Office has determined the amount of the overpayment paid to the surviving spouse and the underpayment that should have been paid to the member. The Retirement Office has commenced the member's monthly benefit payments and made a lump sum payment to the member consisting of the missed benefit payments, plus 5% interest. The Retirement Office has contacted the surviving spouse's beneficiary to recover the amount of the overpayment and will continue its efforts to recover the amount of the overpayment, plus 5% interest. If the Retirement Office is unable to recover the full amount of the overpayment plus interest, the Plan Sponsor will contribute the remaining amount to ERS.

k. Definition of Employee. Because ERS is a governmental pension plan, amendments to the Ordinances are made by a legislative body, the County Board of Supervisors. ERS has no authority to adopt amendments to the Ordinances. The amendment included in Exhibit 14-2, adopted by the County Board in December 2011, corrects the operational failures created by retroactively revising the definition of "employee" in Ordinance section 201.24(2.4)

to permit state employees who receive all of their compensation from the state to be members of ERS. ERS requests retroactive effect of this amendment to correct the errors created by members participating in ERS who did not fit the definition of "employee" at the time of their participation.

l. IRS and Wisconsin Department of Revenue Levies. As noted above, because ERS is a governmental pension plan, amendments to the Ordinances are made by a legislative body, the County Board of Supervisors. ERS has no authority to adopt amendments to the Ordinances. ERS proposes to correct the error by adopting a retroactive amendment or a Rule allowing for compliance with federal and state tax levies and corrects the operational failures created by retroactively permitting ERS to comply with tax levies from the IRS and Wisconsin Department of Revenue.

m. Benefit Processing Issues. If it is determined that an error has occurred with regard to a member's benefit, ERS proposes to recalculate the member's monthly benefit and determine whether an overpayment or underpayment has occurred.

If an overpayment has occurred, ERS will request repayment of the overpayment from the affected member, plus 5%. If the member does not repay the overpayment, ERS will offset the member's future benefits, if any, in accordance with Rev. Proc. 2013-12 Appendix B § 2.04(1)(a)(ii). To recover the overpayment, the Retirement Office will reduce the recalculated benefit to recoup the overpayment (over a period not longer than the remaining payment period), plus 5% interest. Any amounts not returned to ERS will be contributed by the Plan Sponsor to ERS.

If it is determined that an underpayment occurred, the Retirement Office will pay the member the amount of the underpayment, plus 5% interest, in a lump sum.

n. Payment of Deferred Vested Benefits to Non-Vested Members. ERS proposes to correct these operational errors by ceasing the members' monthly benefits, determining the amount of the overpayments and requesting the return of the overpayments from the members, plus 5% interest. If the members fail to return the full amount of overpayments, plus 5% interest, the County, as Plan Sponsor, will contribute the remaining amounts to ERS.

o. PPA and HEART Amendments. ERS has submitted the proposed amendments attached as Exhibit 14-3 to the legislative body for adoption with retroactive effective dates. Please note that the attached amendments also include amendments related to EGTRRA. The EGTRRA failure was submitted to the IRS on August 21, 2007 as part of the June 29, 2007 VCP filing.

3. Expected Cost of Correction of Operational Errors. The Retirement Office is preparing an estimate of the cost of correcting all of the new operational errors outlined above. The estimate will be provided once finalized.

4. Calculations or Assumptions Used to Determine Amounts For Correction for Operational Errors. The Retirement Office will use ERS's normal plan assumptions to recalculate pension amounts for any individual who received an overpayment or underpayment as outlined above.

5. Methodology to Calculate Interest for Correction of Operational Errors. Any interest on amounts owed to ERS by the members described above as well as amounts that ERS owes to such members is currently calculated using a five percent interest rate. ERS determined that the five percent interest rate is reasonable under these particular circumstances for this specific purpose. See Ordinance section 201.24(3.5) (granting the Pension Board authority to set the interest rate for refunds of membership and savings accounts under ERS).

6. Sample Calculations of Operational Error Correction Method. The Retirement Office is preparing sample calculations. The sample calculations will be provided once finalized.

SECTION IV - APPLICANT'S PROPOSED PROCEDURES TO LOCATE AND NOTIFY FORMER EMPLOYEES OR BENEFICIARIES

To the extent ERS is required, it will communicate with any affected former employee concerning the VCP correction by mailing a notice to the last known address of the former employee. To the extent ERS is unable to locate any former employee, it agrees to utilize, as applicable, commercial locator services, credit reporting locator services or Internet search tools to locate the former employees.

SECTION V - APPLICANT'S PROPOSED REVISION TO ADMINISTRATIVE PROCEDURES

Explanation of How and Why Failures Occurred. The Pension Board has delegated authority to the Retirement Office to conduct the day-to-day administration of ERS. The Retirement Office is charged with administering a very large defined benefit retirement plan, and in light of the demands imposed on the Retirement Office in administering this plan, the Retirement Office could have been more fully staffed. Additionally, the Retirement Office has also experienced turnover within the Office and in the outside advisors retained to assist the Retirement Office with actuarial and other services. Furthermore, ERS recently changed computer systems and the newly installed system had errors in its initial programming. Those errors have been identified and have been fixed.

To the best information available at this time, ERS believes that the operational failures occurred because the Retirement Office did not have procedures in place (a) to identify and comply with the applicable rules of certain Ordinances and Rules; or (b) conduct necessary annual testing and to ensure that all provisions of ERS are properly administered.

Measures to be Implemented to Ensure Same Failures Do Not Continue to Occur. The Retirement Office's new computer system and attendant control measures ensure that compliance with all ERS governing plan documents is monitored on a regular basis. Additionally, the Retirement Office has a new manager who routinely utilizes Corporation Counsel and outside counsel to answer questions regarding proper administrative procedures.

EXHIBIT 14-2

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(ITEM) From Corporation Counsel, requesting authorization to amend Sections 201.24(2.4) of the Milwaukee County Code of General Ordinances as it pertains members of the Employee Retirement Services that are employees of the State of Wisconsin, by recommending adoption of the following:

A RESOLUTION / ORDINANCE

WHEREAS, the Employees' Retirement System of the County of Milwaukee ("ERS") is a tax-qualified governmental retirement plan that must comply with the applicable provisions of the Internal Revenue Code of 1986 (the "Code"); and

WHEREAS, the Pension Board of the Employees' Retirement System of the County of Milwaukee (the "Pension Board") serves as a fiduciary for and oversees administration of ERS, and as such, seeks to suggest amendments to the Ordinances to preserve the tax-qualified status of ERS; and

WHEREAS, recently enacted state statutes have transferred some ERS members from County employment to State employment while mandating or allowing these individuals to remain members of ERS; and

WHEREAS, the Ordinance section 201.24(2.4) definition of "employee" should be amended to clarify that the transferred individuals are included within the definition; and

WHEREAS, the State reimburses the County for the actuarial cost of membership, but pays the employees their compensation directly; and

WHEREAS, the Pension Board recommends enactment of this Ordinance amendment; and

WHEREAS, pursuant to Section 201.24(8.17) of the Milwaukee County Code of General Ordinances, the proposed changes have been referred to the Pension Board and the Pension Board has been given thirty (30) days to comment upon the proposed changes, and the Pension Board has repeated its recommendation that the Ordinance be amended; and

WHEREAS, the proposed changes have been referred to the pension fund actuary whose actuarial analysis indicates that the changes will have no negative impact on the funding of ERS because the State will reimburse the County for the actuarial cost of membership; and

WHEREAS, at its meeting on November 16, 2011, the Pension Board recommended enactment of the proposed ordinance amendment; and

46 WHEREAS, at its meeting on December 8, 2011, the Committee on Finance and
47 Audit recommended approval of the said request (vote 6-0); and

48
49 WHEREAS, at its meeting on December 9, 2011, the Committee on Personnel
50 concurred with the recommendation of the Finance and Audit Committee to approve
51 (vote 7-0); and

52
53 WHEREAS, at its meeting on December 9, 2011, the Pension Study Commission
54 reviewed the actuary's and has recommended that the County Board adopt the
55 proposed changes (vote 5-0); now, therefore,

56
57 BE IT RESOLVED, that the Milwaukee County Board of Supervisors hereby
58 amends Section 201.24 of the Milwaukee County Code of General Ordinances by
59 adopting the following:

60
61 **AN ORDINANCE**

62
63 The County Board of Supervisions of the County of Milwaukee does ordain as
64 follows:

65
66 **SECTION 1.** Section 201.24(2.4) of the General Ordinances of Milwaukee County shall
67 be revised to state in its entirety as follows:

68
69 Employe shall mean any person regularly employed by the county at an annual
70 wage or salary including any person who is employed by the state but receives
71 part of his/her wage or salary from the county, as well as any person regularly
72 employed by the state but who was previously employed by the county and who
73 has, pursuant to a state statute, continued to be a member of ERS during such
74 state employment and for whom the state shall reimburse the county the
75 employer required contributions related to such employee's membership. In the
76 event of a question arising as to the right of any person in the service of the
77 county to be classified as an employe under this act, the decision of the board
78 shall be final.

79
80 **SECTION 2.** The provisions of this ordinance shall be effective upon passage and
81 publication.

EXHIBIT 14-3

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3
4 **A RESOLUTION**

5
6 To amend sections 201.24(2.7), (2.10), (4.6), (4.7), (4.8), (12.1), (12.2), (12.3),
7 (12.4), (12.6), (12.8), (13.3) and (13.4) of the Milwaukee County Code of General
8 Ordinances.

9
10 Whereas, the Employees' Retirement System of the County of Milwaukee
11 ("ERS") is a tax-qualified governmental retirement plan that must comply with the
12 applicable provisions of the Internal Revenue Code of 1986, as amended (the "Code");
13 and

14
15 Whereas, the Pension Board of the Employees' Retirement System of the County
16 of Milwaukee (the "Pension Board") acts as the fiduciary for and oversees
17 administration of ERS, and as such, the Pension Board seeks to ensure that ERS
18 maintains its tax-qualified status; and

19
20 Whereas, the United States Congress and the Internal Revenue Service ("IRS")
21 adopted various pieces of legislation and regulations, respectively, impacting tax-
22 qualified retirement plans, including the Economic Growth and Tax Relief Reconciliation
23 Act of 2001, the Pension Protection Act of 2005 and the Heroes Earnings Assistance
24 and Relief Tax Act of 2008; and

25
26 Whereas, the Pension Board requested that ERS be amended to comply with
27 required legislative and regulatory changes; and

28
29 Whereas, the proposed amendments have been referred to the pension fund
30 actuary, whose analysis indicates their cost will be immaterial **[pending confirmation**
31 **in the actuary's official report]**; and

32
33 Whereas, the Pension Study Commission reviewed the actuary's report on
34 [] and has recommended the Milwaukee County Board of Supervisors
35 ("County Board") adopt the proposed amendments; and

36
37 NOW THEREFORE, BE IT RESOLVED, that, as requested by the Pension
38 Board, ERS is hereby amended to comply with the laws governing tax-qualified
39 retirement plans required by legislative and regulatory changes.

40
41 BE IT FURTHER RESOLVED, that to ensure the above-noted revisions are
42 properly codified, the County Board does hereby adopt the following:

43
44 **AN ORDINANCE**

1 To amend Chapter 201.24 of the Milwaukee County Code of General Ordinances
2 General Ordinances of Milwaukee County as appropriate to comply with federal
3 legislative and regulatory changes related to tax-qualified retirement plans that impact
4 the Employees Retirement System of the County of Milwaukee.

5
6 The County Board of Supervisors of the County of Milwaukee does ordain as
7 follows:

8
9 **Section 1.** Effective January 1, 2002, section 201.24(2.7) is amended to read as
10 follows:

11
12 Earnable compensation shall mean total compensation that would be payable to
13 a member if he worked the full normal working time for his position, plus all
14 payments for authorized overtime but excluding payments in lieu of vacations,
15 provided that where service is credited during periods of absences as provided in
16 section 2.9 hereof, the employe shall be considered to have earnable
17 compensation during such periods of absence equivalent to his earnable
18 compensation as of the last month of employment prior to the beginning of such
19 absences. In cases where compensation includes maintenance, the board shall
20 fix the value of that portion of the compensation not payable in money. Where
21 the county pays less than the full rate of compensation for a position and the
22 balance is payable by some other government, company or individual, the
23 amount paid by the county shall be considered the earnable compensation for
24 such period of service. The annual earnable compensation of each member
25 taken into account for determining all benefits provided under the system for any
26 year shall not exceed the annual compensation limit pursuant to Internal
27 Revenue Code section 401(a)(17); provided, however, that this limitation shall
28 apply only with respect to members who first commence participation in the
29 system after 1995. The annual compensation limit shall be adjusted annually for
30 increases in the cost of living by the Secretary of the Treasury or his delegate,
31 except that the dollar increase in effect on January 1 of any calendar year is
32 effective for years beginning in such calendar year. The "annual compensation
33 limit" is two one-hundred fifty-thousand dollars (\$20150,000.00), as indexed.

34
35 **Section 2.** Effective January 1, 2007 or as noted below, the following shall be added to
36 the end of section 201.24(2.10):

37
38 To the extent required by the Heroes Earnings Assistance and Relief Tax Act of
39 2008 (HEART Act) and as applicable for the system, the following provisions
40 apply:

- 41
42 (a) Effective January 1, 2007, if a member dies while performing qualified
43 military service, the survivors of the member shall be entitled to any
44 additional benefits (other than contributions relating to the period of
45 qualified military service) provided under the system as if the member

1 had been reemployed on the day prior to death and then severed
2 employment on the actual date of death.

3 (b) Effective for payments made on or after January 1, 2009,
4 compensation for purposes of section 2.4 includes any differential
5 wage payments (as defined in Internal Revenue Code section
6 3401(h)(2)) to an individual who does not currently perform services for
7 the county by reason of qualified military service while on active duty
8 for a period of more than thirty (30) days and represents all or a portion
9 of the wages the individual would have received from the county if the
10 individual was performing services for the county. Such differential
11 wage payment shall be treated as a payment of wages by the county
12 to the member.

13 Qualified military service for the purposes of the above provisions is determined
14 pursuant to Internal Revenue Code section 414(u)(5).

15
16 **Section 3.** Effective January 1, 2003, section 201.24(4.6) is amended to read as
17 follows:

18
19 (1) In order to receive a pension, a member shall file with the board a written
20 application therefor on a form prescribed by the board.

21 (2) A member who files with the board a completed application for benefits from
22 the system shall be entitled to have his benefits commence no later than the 60th
23 day after the close of the year in which the later of the following occurs:

24 (a) The member attains his normal retirement age; or

25 (b) The member terminates employment.

26 Notwithstanding the preceding, regardless of whether a member files an
27 application for benefits, in all events, payments shall commence no later than the
28 member's required beginning date, which is the April 1 following the calendar
29 year in which the member attains age seventy and one-half (70 1/2) or, if later,
30 the calendar year in which the member retires. All distributions made under
31 sections (4.6) and (4.7) shall be determined and made in accordance with
32 Internal Revenue Code section 401(a)(9) and corresponding Treasury
33 regulations. Notwithstanding the other provisions of this section 4.6 and
34 section 4.7, distributions may be made under a designation made before
35 January 1, 1984, in accordance with section 242(b)(2) of the Tax Equity and
36 Fiscal Responsibility Act (TEFRA) and the provisions of Ordinance
37 section 201.24(4.8) that relate to section 242(b)(2) of TEFRA. For a retired
38 member who attained age seventy and one-half (70 1/2) after December 31,
39 1987 and before January 1, 1989, payments shall commence not later than April
40 1, 1990.

41 (3) Benefits may not be distributed to any member under a method of payment
42 which, as of the member's required beginning date, does not satisfy the minimum
43 distribution requirements of Internal Revenue Code section 401(a)(9) and

1 applicable Treasury regulations, including the minimum distribution incidental
2 benefit requirements of proposed Treasury regulation Section 1.401(a)(9)-2,
3 which the system hereby incorporates by reference. Life expectancy is
4 computed by use of the Single Life Table in section 1.401(a)(9)-9 of the
5 Treasury regulations. Section II(6) permits a member to receive a pension in the
6 form of an annuity (i.e., periodic payments payable at regular intervals). If a
7 member receives his pension benefit in the form of an annuity, payments under
8 the annuity shall satisfy the following requirements:

9 (a) The amount that must be distributed on or before the member's
10 required beginning date (or, if the member dies before distributions begin,
11 the date distributions are required to begin under sections 4.7(2)(a) or (b)
12 below) is the payment that is required for one payment interval. The
13 second payment need not be made until the end of the next payment
14 interval even if that payment interval ends in the next calendar year.
15 Payment intervals are the periods for which payments are received, e.g.,
16 bi-monthly, monthly, semi-annually, or annually. All of the member's
17 benefit accruals as of the last day of the first distribution calendar year will
18 be included in the calculation of the amount of the annuity payments for
19 payment intervals ending on or after the member's required beginning
20 date;~~The amount to be distributed each year must be at least an amount~~
21 ~~equal to the quotient obtained by dividing the member's entire interest by~~
22 ~~the life expectancy of the member or the joint and last survivor expectancy~~
23 ~~of the member and designated beneficiary~~

24 (b) Life expectancy (a joint life and last survivor expectancy), for purposes
25 for determining the period certain, shall be determined without
26 recalculation of life expectancy;

27 (c) Life expectancy of a member and the joint life expectancy of a member
28 and his beneficiary for all other purposes shall be determined in
29 accordance with applicable law and regulations, provided that the member
30 or his spouse may elect to recalculate life expectancy for one (1) or both
31 lives no more frequently than annually, provided such election is made
32 prior to the member's required distribution date;

33 (d) Once payments have begun over a period certain, the period certain
34 may not be lengthened even if the period certain is shorter than the
35 maximum permitted;

36 (e) Annuity distributions must be paid in periodic payments made at
37 intervals not longer than one (1) year;

38 (f) Life (or joint and survivor) annuity payments will satisfy the minimum
39 distribution incidental benefit requirements of A-2 of Treasury regulation
40 section 1.401(a)(9)-6; and

41 (g) Payments will either be nonincreasing or increase only as follows (and
42 only if so allowed by and provided for in other Ordinance provisions):

1 (i) By an annual percentage increase that does not exceed the
2 annual percentage increase in an eligible cost-of-living index (as
3 defined under A-14 of Treasury regulation section 1.401(a)(9)-6) for
4 a twelve- (12-) month period ending in the year during which the
5 increase occurs or a prior year;

6 (ii) By a percentage increase that occurs at specified times and
7 does not exceed the cumulative total of annual percentage
8 increases in an eligible cost-of-living index (as defined under A-14
9 of Treasury regulation section 1.401(a)(9)-6) since the annuity
10 starting date, or if later, the date of the most recent percentage
11 increase, provided (in the case of a cumulative increase), an
12 actuarial increase may not be provided to reflect that increases
13 were not provided in the interim years;

14 (iii) To the extent of the reduction in the amount of the member's
15 payments to provide for a survivor benefit upon death, but only if
16 there is no longer a survivor benefit because the beneficiary whose
17 life was being used to determine the distribution period described in
18 section 4.7(2) dies or is no longer the member's beneficiary
19 pursuant to a domestic relations order within the meaning of
20 Rule 1017;

21 (iv) To allow a beneficiary to convert the survivor portion of a joint
22 and survivor annuity into a single sum distribution upon the
23 member's death;

24 (v) To pay increased benefits that result from an Ordinance
25 amendment; or

26 (vi) To the extent increases are otherwise permitted under A-14 of
27 Treasury regulation section 1.401(a)(9)-6.

28 (h) Any additional benefits accruing to the member in a calendar year after
29 the first distribution calendar year will be distributed beginning with the first
30 payment interval ending in the calendar year immediately following the
31 calendar year in which such amount accrues.

32 (4) Requirements for annuity distributions that commence during a member's
33 lifetime.

34 (a) Joint Life Annuities Where the Beneficiary Is Not the Member's
35 Spouse. If the member's interest is being distributed in the form of a joint
36 and survivor annuity for the joint lives of the member and a nonspouse
37 beneficiary, annuity payments to be made on or after the member's
38 required beginning date to the designated beneficiary after the member's
39 death must not at any time exceed the applicable percentage of the
40 annuity payment for such period that would have been payable to the

1 member as determined for individuals less than age seventy and one-half
2 (70 1/2) at the member's annuity starting date using the table set forth in
3 A-2 of section 1.401(a)(9)-6 of the Treasury regulations. If the form of
4 distribution combines a joint and survivor annuity for the joint lives of the
5 member and a nonspouse beneficiary and a period certain annuity, the
6 requirement in the preceding sentence will apply to annuity payments to
7 be made to the designated beneficiary after the expiration of the period
8 certain.

9 (b) Period Certain Annuities. Unless the member's spouse is the sole
10 designated beneficiary and the form of distribution is a period certain and
11 no life annuity, the period certain for an annuity distribution commencing
12 during the member's lifetime may not exceed the applicable distribution
13 period for the member under the Uniform Lifetime Table set forth in
14 section 1.401(a)(9)-9 of the Treasury regulations for the calendar year that
15 contains the annuity starting date.

16 If the member's spouse is the member's sole designated beneficiary and
17 the form of distribution is a period certain and no life annuity, the period
18 certain may not exceed the longer of the member's applicable distribution
19 period, as determined under this section, or the joint life and last survivor
20 expectancy of the member and the member's spouse as determined under
21 the Joint and Last Survivor Table set forth in section 1.401(a)(9)-9 of the
22 Treasury regulations.

23 **Section 4.** Effective January 1, 2003, section 201.24(4.7) is amended to read as
24 follows:

25
26 (1) If the member dies after his required beginning date, as determined under
27 section 4.6(2), or, if earlier, the date he commences an irrevocable annuity, any
28 remaining benefit must continue to be distributed at least as rapidly as under the
29 method of distribution in effect prior to the member's death.

30 (2) If the member dies before his distributions begin and before his required
31 beginning date, as determined under subsection 4.6(2), distribution of the
32 member's entire benefit shall be completed by December 31 of the calendar year
33 containing the 5th anniversary of the member's death, unless an election is made
34 to receive distributions in accordance with subsections (a) or (b) below.

35 (a) If any portion of the member's benefit is payable to a designated
36 beneficiary, distributions shall commence ~~may be made either (i) over the~~
37 ~~life of the designated beneficiary or (ii) over a period certain not greater~~
38 ~~than the life expectancy of the designated beneficiary commencing on or~~
39 before December 31 of the calendar year immediately following the
40 calendar year in which the member died.

41 (b) If the designated beneficiary is the member's spouse, the date
42 distributions are required to begin in accordance with section (a) above
43 shall not be earlier than the later of (i) December 31 of the calendar year

1 immediately following the calendar year in which the member died, or (ii)
2 December 31 of the calendar year in which the member would have
3 attained age seventy and one-half (70 1/2).

4 If the member has not made an election pursuant to this section by the time of
5 his death, the member's designated beneficiary must elect the method of
6 distribution no later than the earlier of (a) December 31 of the calendar year in
7 which distributions would be required to begin under this section, or (b)
8 December 31 of the calendar year which contains the 5th anniversary of the date
9 of death of the member. If the member has no designated beneficiary, or if the
10 beneficiary fails to elect a method of distribution, distribution of the member's
11 entire interest must be completed by December 31 of the calendar year
12 containing the 5th anniversary of the member's death.

13 If the surviving spouse dies after the member, but before payments commence,
14 the above provisions, with the exception of subsection (b) above, shall be applied
15 as if the surviving spouse were the member.

16 (3) Requirements for Minimum Distributions Where Member Dies Before Date
17 Distributions Begin.

18 (a) Member Survived by Designated Beneficiary. If the member dies before
19 the date distribution of his interest begins and there is a designated
20 beneficiary, the member's entire interest will be distributed, beginning no later
21 than the time described in sections 4.7(2)(a) or (b), over the life of the
22 designated beneficiary or over a period certain not exceeding:

23 (i) The applicable distribution period determined under A-5 of Treasury
24 regulations section 1.401(a)(9)-5, unless the annuity starting date is
25 before the first distribution calendar year. For purposes of sections 4.6
26 and 4.7, the first distribution calendar year is the calendar year
27 immediately preceding the calendar year which contains the member's
28 required beginning date. For distributions beginning after the member's
29 death, the first distribution calendar year is the calendar year in which
30 distributions are required to begin under section 4.7(2)(a) or (b).

31 (ii) The life expectancy of the designated beneficiary is determined using
32 the beneficiary's age as of the beneficiary's birthday in the calendar year
33 that contains the annuity starting date, if the annuity starting date is
34 before the first distribution calendar year.

35 (b) No Designated Beneficiary. If the member dies before the date
36 distributions begin and there is no designated beneficiary as of
37 September 30 of the year following the year of the member's death,
38 distribution of the member's entire interest will be completed by December
39 31 of the calendar year containing the fifth anniversary of the member's
40 death.

1 (c) Death of Surviving Spouse Before Distributions to Surviving Spouse
2 Begin. If the member dies before the date distribution of his interest begins,
3 the member's surviving spouse is the member's sole designated beneficiary,
4 and the surviving spouse dies before distributions to the surviving spouse
5 begin, this section will apply as if the surviving spouse were the member,
6 except that the time by which distributions must begin will be determined
7 without regard to section 4.7(2)(a) above.

8 (34) The board shall, upon the member's written request, or in the case of a
9 distribution described in subsection (2)(b) above, upon written request of the
10 member's surviving spouse, may recalculate his and/or his spouse's life
11 expectancy for purposes of calculating the minimum distribution. The member
12 must make such an election not later than his required beginning date as defined
13 in section 4.6(2). A member's surviving spouse must make such an election no
14 later than the December 31 date described in subsection (2)(b) above. This
15 election is irrevocable. A recalculation election applicable to a joint life
16 expectancy payment where the survivor is a nonspouse may not take into
17 account any adjustment to any life expectancy other than the member's life
18 expectancy. In the absence of a recalculation election, the system does not
19 permit recalculation of applicable life expectancy.

20
21 **Section 5.** Effective January 1, 2003, section 201.24(4.8)(4) is hereby amended to
22 read as follows:

23 (4) If a designation is revoked, any subsequent distribution must satisfy the
24 requirements of Internal Revenue Code section 401(a)(9) and the proposed
25 regulations thereunder. If a designation is revoked subsequent to the date
26 distributions are required to begin, the trust must distribute, by the end of the
27 calendar year following the calendar year in which the revocation occurs, the
28 total amount not yet distributed which would have been required to have been
29 distributed to satisfy Internal Revenue Code section 401(a)(9) and the proposed
30 regulations thereunder, including the minimum incidental benefit requirements of
31 ~~proposed regulation Section 401(a)(9)-2~~. Any changes in the designation will be
32 considered to be a revocation of the designation. However, the mere substitution
33 or addition of another beneficiary (one not named in the designation) under the
34 designation will not be considered to be a revocation of the designation, so long
35 as such substitution or addition does not alter the period over which distributions
36 are to be made under the designation, directly or indirectly (for example, by
37 altering the relevant measuring life).

38
39 **Section 6.** Effective January 1, 2008, section 201.24(12.1)(3) is hereby restated to
40 read as follows:

41
42 ~~(3) If a member has never participated in an includable arrangement which~~
43 ~~provides an annual addition as defined in section 12.2 (other than one (1) or~~
44 ~~more qualified defined benefit plans), the limitation in subsection 12.2(a) above is~~

1 ~~deemed satisfied if the annual benefit payable to the member is not more than~~
2 ~~one thousand dollars (\$1,000.00), multiplied by the member's number of years of~~
3 ~~service or parts thereof (not to exceed ten(10)).~~

4 (3) Notwithstanding anything else in this section to the contrary, the benefit
5 otherwise payable to a member under this system shall be deemed not to
6 exceed the maximum permissible benefit if:

7 (a) the retirement benefits payable for a limitation year under any form of
8 benefit with respect to such member under this system and under all other
9 defined benefit plans (without regard to whether a plan has been
10 terminated) ever maintained by the county do not exceed \$10,000
11 multiplied by a fraction – (i) the numerator of which is the member's
12 number of years (or part thereof, but not less than one year) of service
13 (not to exceed 10) with the county, and (ii) the denominator of which is 10;
14 and

15 (b) the county (or a predecessor employer) has not at any time maintained
16 a qualified defined contribution plan in which the member participated (for
17 this purpose, mandatory employe contributions under a defined benefit
18 plan, individual medical accounts under Internal Revenue Code section
19 401(h), and accounts for postretirement medical benefits established
20 under Internal Revenue Code section 419A(d)(1) are not considered a
21 separate defined contribution plan).

22
23 **Section 7.** Effective January 1, 2008, section 201.24(12.2)(1) is hereby amended to
24 read as follows:

25
26 (1) "Annual benefits" means the retirement benefit under the system which is
27 payable annually in the form of a straight life annuity. Except as provided in this
28 section, a benefit payable in a form other than a straight life annuity must be
29 adjusted to an actuarially equivalent straight life annuity that begins at the same
30 time as such other forms of benefit and is payable on the first day of each month,
31 before applying the limitations of this section XII. The annual benefit does not
32 include any benefits attributable to employee contributions or rollover
33 contributions or the assets transferred or rolled over from a qualified plan that
34 was not maintained by the county. For members who make contributions to their
35 membership accounts, to the extent the County does not pick up these
36 contributions and to the extent that such contributions are not measured by
37 Internal Revenue Code section 415(n), the annual benefit attributable to such
38 contributions shall be determined according to Internal Revenue Code section
39 411(c)(3) and the Treasury regulations thereunder. No actuarial adjustment to
40 the benefit is required for the following benefits:

41 (a)The value of survivor benefits payable to a surviving spouse under a
42 qualified joint and survivor annuity to the extent such benefits would not be
43 payable if the member's benefit were not paid in a qualified joint and
44 survivor annuity;

1 (b) The value of benefits that are not directly related to retirement benefits;
2 and

3 (c) For members who at retirement do not have the value of the cost of
4 living adjustment described in section 5.7 included in their Internal
5 Revenue Code section 415 compliance calculation, the value of an
6 automatic benefit increase feature, provided the form of benefit is not
7 subject to Internal Revenue Code section 417(e)(3), would otherwise
8 satisfy the limitations of this section XII, and the amount payable under the
9 form of benefit in any limitation year shall not exceed the limits of this
10 section XII and Internal Revenue Code section 415(b) applicable at the
11 annuity starting date. For this purpose, an automatic benefit increase
12 feature is included in a form of benefit if the form of benefit provides for
13 automatic, periodic increases to the benefits paid in that form—post-
14 retirement cost-of-living increases made in accordance with Internal
15 Revenue Code section 415(d) and applicable Treasury Regulations.

16 The determination of the annual benefit shall take into account Social Security
17 supplements described in Internal Revenue Code section 411(a)(9).

18 The determination of actuarial equivalence of forms of benefit other than a
19 straight life annuity shall be made in accordance with the following
20 section 12.2(1)(a) or (b).

21 (a) Benefit Forms Not Subject to Internal Revenue Code

22 Section 417(e)(3): The straight life annuity that is actuarially equivalent to
23 the member's form of benefit shall be determined under this
24 section 12.2(1) if the form of the member's benefit is either (1) a
25 nondecreasing annuity (other than a straight life annuity) payable for a
26 period of not less than the life of the member (or, in the case of a qualified
27 pre-retirement survivor annuity, the life of the surviving spouse), or (2) an
28 annuity that decreases during the life of the member merely because of
29 (a) the death of the survivor annuitant (but only if the reduction is not
30 below fifty (50) percent of the benefit payable before the death of the
31 survivor annuitant), or (b) the cessation or reduction of Social Security
32 supplements or qualified disability payments (as defined in Internal
33 Revenue Code section 401(a)(11)).

34 (i) Limitation Years Beginning Before July 1, 2007. For limitation
35 years beginning before July 1, 2007, the actuarially equivalent
36 straight life annuity is equal to the annual amount of the straight life
37 annuity commencing at the same annuity starting date that has the
38 same actuarial present value as the member's form of benefit
39 computed using whichever of the following produces the greater
40 annual amount: (I) the interest rate specified in Rule 1014(c)(2)
41 and the mortality table specified in Rule 1014(c)(1) for adjusting
42 benefits in the same form; and (II) a five (5) percent interest rate

1 assumption and the applicable mortality table defined in Internal
2 Revenue Code section 417(e) for that annuity starting date.

3 (ii) Limitation Years Beginning on or After July 1, 2007. For
4 limitation years beginning on or after July 1, 2007, the actuarially
5 equivalent straight life annuity is equal to the greater of (1) the
6 annual amount of the straight life annuity (if any) payable to the
7 member under the system commencing at the same annuity
8 starting date as the member's form of benefit; and (2) the annual
9 amount of the straight life annuity commencing at the same annuity
10 starting date that has the same actuarial present value as the
11 member's form of benefit, computed using a five (5) percent interest
12 rate assumption and the applicable mortality table defined in
13 Internal Revenue Code section 417(e) for that annuity starting date.

14 (b) Benefit Forms Subject to Internal Revenue Code Section 417(e)(3):
15 The straight life annuity that is actuarially equivalent to the member's form
16 of benefit shall be determined under this paragraph if the form of the
17 member's benefit is other than a benefit form described in
18 section 12.2(1)(a). In this case, the actuarially equivalent straight life
19 annuity shall be determined as follows:

20 (i) Annuity Starting Date in Limitation Years Beginning After 2005.
21 The actuarially equivalent straight life annuity is equal to the
22 greatest of (I) the annual amount of the straight life annuity
23 commencing at the same annuity starting date that has the same
24 actuarial present value as the member's form of benefit, computed
25 using the interest rate specified in Rule 1014(c)(2) and the mortality
26 table specified in Rule 1014(c)(1) for adjusting benefits in the same
27 form; (II) the annual amount of the straight life annuity commencing
28 at the same annuity starting date that has the same actuarial
29 present value as the member's form of benefit, computed using a
30 five and one-half (5.5) percent interest rate assumption and the
31 applicable mortality table defined in Internal Revenue Code
32 section 417(e); and (III) the annual amount of the straight life
33 annuity commencing at the same annuity starting date that has the
34 same actuarial present value as the member's form of benefit,
35 computed using the applicable interest rate defined in Internal
36 Revenue Code section 417(e) and the applicable mortality table
37 defined in Internal Revenue Code section 417(e), divided by one
38 and five one-hundredths (1.05).

39
40 (ii) Annuity Starting Date in Limitation Years Beginning in 2004 or
41 2005. If the annuity starting date of the member's form of benefit is
42 in a limitation year beginning in 2004 or 2005, and if the IRS so
43 requires, the actuarially equivalent straight life annuity is equal to
44 the annual amount of the straight life annuity commencing at the

1 same annuity starting date that has the same actuarial present
2 value as the member's form of benefit, computed using whichever
3 of the following produces the greater annual amount: (I) the
4 interest rate specified in Rule 1014(c)(2) and the mortality table (or
5 other tabular factor) specified in Rule 1014(c)(1) for adjusting
6 benefits in the same form; and (II) a five and one-half (5.5) percent
7 interest rate assumption and the applicable mortality table defined
8 in Rule 1014(b)(1).

9 If the member's chosen form of benefit is subject to Internal
10 Revenue Code section 417(e)(3) and the annuity starting date of
11 the member's benefit is on or after the first day of the first limitation
12 year beginning in 2004 and before December 31, 2004, the
13 application of this section 12.2(1)(b)(ii) shall not cause the amount
14 payable under the member's form of benefit to be less than the
15 benefit calculated under the system, taking into account the
16 limitations of this section XII, except that the actuarially equivalent
17 straight life annuity is equal to the annual amount of the straight life
18 annuity commencing at the same annuity starting date that has the
19 same actuarial present value as the member's form of benefit,
20 computed using whichever of the following produces the greatest
21 annual amount:

22 (I) the interest rate specified in Rule 1014(c)(2) and the
23 mortality table (or other tabular factor) specified in Rule
24 1014(c)(1) for adjusting benefits in the same form;

25 (II) the applicable interest rate defined in Internal Revenue
26 Code section 417 and the applicable mortality table defined
27 in Internal Revenue Code section 417: and

28 (III) the applicable interest rate defined in Internal Revenue
29 Code section 417 (as in effect on the last day of the last
30 limitation year beginning before January 1, 2004, under
31 provisions of the system then adopted and in effect) and the
32 applicable mortality table defined in Internal Revenue Code
33 section 417.

34 **Section 8.** Effective January 1, 2002, section 201.24(12.3)(2) is amended to read as
35 follows:
36

37 (2) If the annual benefit of the member commences on or after age sixty-two
38 (62), the general limitations of subsection (1) above shall apply. The defined
39 benefit dollar limitation shall be adjusted if the annuity starting date of the
40 member's benefit is before age 62.

1 (a) Adjustment of Defined Benefit Dollar Limitation for Benefit
2 Commencement Before Age 62.

3 (i) Limitation Years Beginning Before July 1, 2007. If the
4 annuity starting date for the member's benefit is prior to age 62 and
5 occurs in a limitation year beginning before July 1, 2007, the
6 defined benefit dollar limitation for the member's annuity starting
7 date is the annual amount of a benefit payable in the form of a
8 straight life annuity commencing at the member's annuity starting
9 date that is the actuarial equivalent of the defined benefit dollar
10 limitation (adjusted under section 12.3(1) for years of participation
11 less than ten (10), if required) with actuarial equivalence computed
12 using a five (5) percent interest rate assumption and the 1994 GAR
13 mortality table.

14 (ii) Limitation Years Beginning on or After July 1, 2007. If the
15 annuity starting date for the member's benefit is prior to age 62 and
16 occurs in a limitation year beginning on or after July 1, 2007, the
17 defined benefit dollar limitation for the member's annuity starting
18 date is the lesser of: [a] the annual amount of a benefit payable in
19 the form of a straight life annuity commencing at the member's
20 annuity starting date that is the actuarial equivalent of the defined
21 benefit dollar limitation (adjusted under section 12.3(1) for years of
22 participation less than ten (10), if required) with actuarial
23 equivalence computed using a five (5) percent interest rate and the
24 applicable Internal Revenue Code section 417(e) mortality table
25 effective for that annuity starting date and [b] the defined benefit
26 dollar limitation (adjusted under section 12.3(1) for years of
27 participation less than ten (10), if required) multiplied by the ratio of
28 the annual amount of the immediately commencing straight life
29 annuity under the system at the member's annuity starting date to
30 the annual amount of the immediately commencing straight life
31 annuity under the system at age sixty-two (62), both determined
32 without applying the limitations of this section XII (and expressing
33 the participant's age based on completed calendar months as of the
34 annuity starting date).

35 (b) Notwithstanding the other requirements of this section 12.3, no
36 adjustment shall be made to the defined benefit dollar limitation to reflect
37 the probability of a member's death between the annuity starting date and
38 age sixty-two (62) if benefits are not forfeited upon the death of the
39 member prior to the annuity starting date. To the extent benefits are
40 forfeited upon death before the annuity starting date, such an adjustment
41 shall be made.

42 (c) Notwithstanding the other requirements of this section 12.3, no
43 adjustment shall be made to the defined benefit dollar limitation for

1 commencement of a benefit before age sixty-two (62) for a distribution on
2 account of a member's becoming disabled by reason of a personal injury
3 or sickness, or as a result of the death of a member.

4
5 **Section 9.** Effective January 1, 2002, section 201.24(12.3)(3) is amended to read as
6 follows:

- 7
8 (3) ~~Except as provided in this paragraph, if the annual benefit of the member~~
9 ~~commences prior to age sixty two (62), the defined benefit dollar limitation~~
10 ~~shall be the actuarial equivalent of an annual benefit beginning at age~~
11 ~~sixty two (62). To determine actuarial equivalence, the interest rate~~
12 ~~assumption is the greater of the rates specified in paragraph (13) of~~
13 ~~section II or five (5) percent. In the event the annual benefit of the member~~
14 ~~commences between age fifty five (55) and sixty two (62), the actuarial~~
15 ~~reduction of the defined benefit dollar limitation shall not result in a dollar~~
16 ~~limitation which is less than seventy-five thousand dollars (\$75,000.00).~~
17 ~~In the event the annual benefit of the member commences prior to~~
18 ~~age fifty-five (55), the defined benefit dollar limitation shall be the greater~~
19 ~~of (a) the amount which is the actuarial equivalent of a seventy five~~
20 ~~thousand dollar (\$75,000.00) annual benefit commencing at age fifty five~~
21 ~~(55); or (b) the actuarial equivalent of the defined benefit dollar limitation~~
22 ~~beginning at age sixty two (62), both calculated using the interest rate~~
23 ~~specified in the second sentence of this section 12.3(3). Notwithstanding~~
24 ~~the provisions of this section 12.3(2), the defined benefit dollar limitation of~~
25 ~~a "qualified member" shall not be actuarially adjusted. For purposes of~~
26 ~~this section, a "qualified member" is a member whose years of service~~
27 ~~taken into account in determining his benefit include at least fifteen (15)~~
28 ~~years of service as a full-time employe of any department of the county~~
29 ~~which provides police protection, firefighting services, or emergency~~
30 ~~medical services for any area within the jurisdiction of the county or is a~~
31 ~~member of the armed forces of the United States.~~

32
33 **Section 10.** Effective January 1, 2002, section 201.24(12.4)(1) is amended to read as
34 follows:

- 35
36 (1) The annual addition to a member's savings account and membership
37 account for any limitation year shall not exceed the lesser of:
38
39 (a) ~~the greater of thirty thousand dollars (\$30,000.00) or twenty-five~~
40 ~~(25) percent of the defined benefit dollar limitation recited in Internal~~
41 ~~Revenue Code Section 415(b)(1)(A) for such year the defined~~
42 ~~contribution dollar limitation provided in Internal Revenue Code~~
43 ~~section 415(c)(1)(A), or such successor provision of the Internal~~
44 ~~Revenue Code, as adjusted for cost of living adjustments pursuant~~
45 ~~to Internal Revenue Code section 415(d); or~~
46

1 (b) ~~twenty five (25)~~ one hundred (100) percent of the compensation
2 paid or made available to the member for such year.
3

4 **Section 11.** Effective January 1, 2002, section 201.24(12.6) is amended to read as
5 follows:
6

7 The defined benefit dollar limitation shall equal One Hundred Sixty Thousand
8 Dollars (\$160,000.00) ~~is ninety thousand dollars (\$90,000.00)~~. Effective
9 January 1, 1988 and each January 1 thereafter, the ~~ninety thousand dollar~~
10 limitation shall be adjusted by multiplying such limit by the cost of living
11 adjustment factor prescribed by the Secretary of the Treasury under Internal
12 Revenue Code section 415(d). The new dollar limitation shall apply to limitation
13 years ending within the calendar year of the date of adjustment.
14

15 **Section 12.** Effective January 1, 2001, section 201.24(12.8) is hereby amended to read
16 as follows:
17

18 Compensation, for the purposes of this section, means "member's
19 compensation," as defined in Internal Revenue Code section 415(c)(3) and the
20 regulations thereunder, including elective contributions made by the County on
21 behalf of the member that are not includable in income under Internal Revenue
22 Code section 125, 132(f)(4), 401(h)(2), 402(e)(3), 402(h) or 403(b).
23

24 **Section 13.** Effective January 1, 2008, section 201.24(12.8) is hereby amended to read
25 as follows:
26

27 Compensation, for the purposes of this section, means "member's
28 compensation," as defined in Internal Revenue Code section 415(c)(3) and paid
29 prior to the member's severance from employment and the regulations
30 thereunder, including elective contributions made by the County on behalf of the
31 member that are not includable in income under Internal Revenue Code
32 section 125, 132(f)(4), 401(h)(2), 402(e)(3), 402(h) or 403(b).
33

34 **Section 14.** Effective January 1, 2002, section 201.24(13.3) is amended to read as
35 follows:
36

37 An eligible retirement plan is an individual retirement account described in
38 Internal Revenue Code section 408(a), an individual retirement annuity described
39 in Internal Revenue Code section 408(b), an individual retirement annuity
40 described in Internal Revenue Code section 403(a), ~~or a qualified trust described~~
41 ~~in Internal Revenue Code section 401(a) that accepts the distributee's eligible~~
42 ~~rollover distribution, an eligible deferred compensation plan described in Internal~~
43 ~~Revenue Code section 457(b) which is maintained by an eligible employer~~
44 ~~described in Internal Revenue Code section 457(e)(1)(A), or an annuity contract~~
45 ~~described in Internal Revenue Code section 403(b). However, in the case of an~~
46 ~~eligible rollover distribution to a distributee's surviving spouse, an eligible~~

1 retirement plan is an individual retirement account or individual retirement
2 account or an individual retirement annuity.

3
4 **Section 15.** Effective January 1, 2010, the following shall be added to the end of
5 section 201.24(13.3):

6
7 Effective for eligible rollover distributions made on or after January 1, 2008, an
8 eligible retirement plan shall also mean a Roth individual retirement account
9 described in Internal Revenue Code section 408A provided that eligible rollover
10 distributions made on or after January 1, 2008 are subject to the adjusted gross
11 income limits of Internal Revenue Code section 408A(c)(3)(B), as applicable,
12 and the distribution rules of Internal Revenue Code section 408A(d)((3). For a
13 distributee who is a nonspouse designated beneficiary, the direct rollover may
14 be made only to an individual retirement account or annuity described in Internal
15 Revenue Code section 408(a) or 408(b) that is established on behalf of the
16 designated beneficiary for the purpose of receiving the distribution as an
17 inherited individual retirement account or annuity pursuant to the provisions of
18 Internal Revenue Code section 408(d)(3)(C).

19
20 **Section 16.** Effective January 1, 2010, section 201.24(13.4) of the Milwaukee County
21 Code of General Ordinances is amended to read as follows:

22
23 A distributee includes a member or former member. In addition, the member's or
24 former member's surviving spouse and the member's or former member's spouse
25 or former spouse who is the alternate payee under a qualified domestic relations
26 order, as defined in Internal Revenue Code section 414(p), are distributees with
27 regard to the interest of the spouse or former spouse. A distributee also includes
28 a member or former member's nonspouse beneficiary.

29
30 **Section 17.** The provisions of this ordinance shall be effective upon passage
31 and publication.

EXHIBIT 14-4

Chapter 201 COUNTY EMPLOYEES' RETIREMENT SYSTEM*

*Editor's note--Rules of the employees' retirement system are printed on appendix B to the Code.

201.01--201.23. (On file in county clerk's office.)

201.24. Employee's retirement system of the county (effective December 24, 1967).

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2.2. Board.

2.3. County.

2.4. Employee.

2.5. Member.

2.6. Pension.

2.7. Earnable compensation.

2.8. Final average salary.

2.9. Service.

2.10. Military service.

2.11. Termination of service.

2.12. Medical board.

2.13. Actuarial equivalent.

2.14. Deputy sheriff.

2.15. Elected official.

2.16. Beneficiary.

2.17. Normal retirement date.

2.18. Normal retirement age.

2.19. Retirement.

2.20. Membership account.

2.21. Savings account.

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3.11. Employee contribution.

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3.4. Voluntary employee contributions.

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4.25. Retirement incentive for a limited time period.

4.26. Retirement incentive for a limited time period due to discontinuance of Doyne Hospital operations.

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- 5.3. Accidental disability pension.
- 5.31. Accidental disability pension for nonrepresented officers and employees.
- 5.4. Ordinary disability pension.
- 5.5. Deferred vested pension.
- 5.6. Minimum pension.
- 5.7. Post-retirement pension adjustment.
- 5.8. Retirees prior to December 24, 1967.
- 5.9. Sheriffs' annuity and benefit fund retirees prior to December 22, 1968.
- 5.10. [Paid health insurance.]

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- 6.1. Accidental death benefit for deputy sheriffs.
- 6.2. Ordinary death benefit for deputy sheriffs.
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- 6.4. Survivor pensions for members other than deputy sheriffs.
- 6.5. Election by surviving spouse at age sixty.

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- 7.1. Optional benefits.
- 7.2. Other forms of payment.

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- 8.1. Pension board.
- 8.2. Membership.
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- 8.4. Oath of office.
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- 8.6. Rules and regulations.
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- 8.9. Data required.
- 8.10. Records; publication.

- 8.11. Legal advisor.
- 8.12. Medical board.
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- 8.15. Periodic valuations, tables and rates thereon.
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14.1. [Generally.]

14.2. [Written notice of claim.]

14.3. [Insurance against loss or liability.]

14.4. [Construction.]

14.5. [Applicability.]

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201.01--201.23.

Sections 201.01 through 201.23 are not published as they are only applicable to employees who entered county service prior to December 24, 1967. These sections may be examined at the county clerk's office.

201.24. Employee's retirement system of the county (effective December 24, 1967).

Notwithstanding the provisions of sections 201.01 to 201.23 of the Code, the benefits payable and the manner of payment to members of the employees' retirement system of the county, the management of the funds of the system and the method of financing on and after the effective date of this section shall be as follows:

SECTION I. PURPOSE AND EFFECTIVE DATE

The purpose of this ordinance is to encourage qualified personnel to enter and remain in the service of the county by providing for a system of retirement, disability and death benefits to or on behalf of such employees.

The system created hereunder shall become effective as of December 24, 1967, as to all persons in the employment of the county on or after such date and shall be a continuation of the retirement system originally effective on January 1, 1938, as amended from time to time thereafter.

SECTION II. DEFINITIONS

Except where the context plainly requires a different meaning, the following words and phrases shall have the following meanings:

2.1. Retirement system.

Retirement system shall mean the employees' retirement system of the county.

2.2. Board.

Board shall mean the pension board provided for in section 8.1 of this ordinance to administer the retirement system.

2.3. County.

County shall mean Milwaukee County.

2.4. Employee.

Employee shall mean any person regularly employed by the county at an annual wage or salary including any person who is employed by the state but receives part of his/her wage or salary from the county, as well as any person regularly employed by the state but who was previously employed by the county and who has, pursuant to a state statute, continued to be a member of ERS during such state employment and for whom the state shall reimburse the county the employer required contributions related to such employee's membership. In the event of a question arising as to the right of any person in the service of the county to be classified as an employee under this act, the decision of the board shall be final.

[NOTE: State employee language added December 2011.]

2.5. Member.

Member shall mean any person who is an employee on or after December 24, 1967, unless:

- (a) He has previously filed an election not to become a member, or
- (b) He has been excluded by action of the board as provided in section 8.17.

2.6. Pension.

Pension shall mean a series of periodic payments which are payable to a person who is entitled to receive benefits under the ordinance.

2.7. Earnable compensation.

Earnable compensation shall mean total compensation that would be payable to a member if he/she worked the full normal working time for his/her position, plus all payments for authorized overtime but excluding payments in lieu of vacations, provided that where service is credited during periods of absences as provided in section 2.9 hereof, the employee shall be

considered to have earnable compensation during such periods of absence equivalent to his/her earnable compensation as of the last month of employment prior to the beginning of such absences. In cases where compensation includes maintenance, the board shall fix the value of that part of the compensation not payable in money. Where the county pays less than the full rate of compensation for a position and the balance is payable by some other government, company or individual, the amount paid by the county shall be considered the earnable compensation for such period of service. The annual earnable compensation of each member taken into account for determining all benefits provided under the system for any year shall not exceed the annual compensation limit pursuant to Code section 401(a)(17); provided, however, that this limitation shall apply only with respect to members who first commence participation in the system after 1995. The annual compensation limit shall be adjusted annually for increases in the cost of living by the Secretary of the Treasury or his/her delegate, except that the dollar increase in effect on January 1 of any calendar year is effective for years beginning in such calendar year. The "annual compensation limit" is one hundred fifty thousand dollars (\$150,000.00), as indexed.

2.8. Final average salary.

- (1) Final average salary for a member whose continuous membership began prior to January 1, 1982, means the average annual earnable compensation for the three (3) consecutive years of service during which the member's earnable compensation was the highest, or, if he should have less than three (3) years of service, then his/her average annual earnable compensation during such period of service. Final average salary for a member whose continuous membership began after January 1, 1982, means the average annual earnable compensation for the five (5) consecutive years of service during which the member's earnable compensation was the highest, or, if he should have less than five (5) years of service, then his/her average annual earnable compensation during such period of service. However, when a member is employed by the state but paid partly by the county, his/her final average salary with respect to any period of employment solely by the county shall be the average earnable compensation for the three (3) or five (5) consecutive years respectively of such service during which his/her earnable compensation was the highest.
 - (a) For non-represented employees whose continuous membership in the employee retirement system begins on or after September 1, 1985, the final average salary shall be based solely on the total straight time hours paid, excluding any overtime hours paid, for the five (5) consecutive years of service during which the employee's earnable compensation was the highest, or, if he/she should have less than five (5) years of service then his/her average straight time hours paid, excluding any overtime hours paid, during such period of service.
 - (b) For non-represented employees, and employees represented by a collective bargaining unit which has agreed to the provisions of 5.15, final average salary shall include the retention incentive bonus authorized in section 5.15. Final average salary shall not include any payments for accrued sick allowance received by the member at the time of retirement under 17.184 nor shall final average salary include any back drop pension benefit payment received by the member under section 5.16.
 - (c) For non-represented employees, and employees represented by a collective bargaining unit which has agreed to this provision, effective January 1, 2003 final

average salary shall mean the average annual earnable compensation for the three (3) consecutive years of service during which the member's earnable compensation was the highest, or, if he/she should have less than three (3) years of service, then his/her average annual earnable compensation during such period of service. This paragraph shall not apply to a member who was formerly a represented deputy sheriff who was appointed to a non-represented position effective after June 30, 2009.

2.9. Service.

Service shall mean service as an employe of the county or of any municipal subdivision of the county in departments the operation of which is taken over by the county. Service shall also include any period of military service recognized hereunder; any period of employment by the county or in any department of any town, village, city or metropolitan sewerage commission in the county, which has been absorbed by the county, prior to January 1, 1938; any period of continuous employment with the City of Milwaukee which terminated between September 1 and December 31, 1937; and any prior service granted to new members brought into the system by any amendment effective subsequent to January 1, 1938.

2.10. Military service.

Military service shall mean all time after January 1, 1938, during which any employe performed service in the uniformed services. "Service in the uniformed services" shall mean the performance of duty on a voluntary or involuntary basis in the uniformed services under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, and period for which a person is absent from a position of employment for the purposes of an examination to determine the fitness of the person to perform any such duty. "Uniformed service" shall mean the Armed Forces, the Army National Guard, and the Air National Guard when engaged in active duty for training, inactive duty training or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or emergency. Military service shall include absence during federal hospitalization because of injuries or sickness resulting from military service. Military service shall begin with the date the employe was excused or granted leave of absence from the county and shall extend until the date the employe returns to county employment. An employe shall be granted service credit for military service to the extent required by 38 U.S.C. § 4318 and Internal Revenue Code section 414(u) provided he returns to county employment within three (3) months after termination of military service. An employe must, if reasonable, give advance written or oral notice to the county of the absence for military service to be eligible for military service credit.

Military service shall also include all military service in the U.S. armed forces after January 1, 1938, and before December 31, 1974, for any person who is credited with five (5), ten (10), fifteen (15) or twenty (20) or more years of creditable service at the time of retirement, for not more than one (1), two (2), three (3) or four (4) years, respectively, of active service for any such person who was discharged from the U.S. armed forces under conditions other than dishonorable and not counting any previously creditable military service heretofore defined in the preceding paragraph and such creditable military service under this paragraph shall be allocated at the time of retirement in proportion to the amount of the member's creditable service under section 5.1 either before or after January 1, 1982, on the date the member attains five (5), ten (10), fifteen (15) or twenty (20) years of creditable county service. Provided further that any such eligibility under this paragraph shall not apply with respect to any such active

service if the active service is used for the purpose of establishing entitlement to, or in the amount of, any benefit to be paid by any state retirement program. The provisions of this section shall apply to all retirees who retired between July 1, 1985 and January 26, 1989 and to retirees who retired after January 26, 1989 and were not represented by a collective bargaining unit immediately prior to their retirement. The provisions of this section shall also apply to retirees who were represented by a collective bargaining unit immediately prior to their retirement and retired after January 26, 1989 providing the labor agreement negotiated and executed by that collective bargaining unit immediately after the agreement in effect as of January 26, 1989 included the provisions of this section. Any proportional pension service credit received as a result of the foregoing shall not be used to obtain eligibility for county paid health insurance benefits for retirees as provided in section 17.14(17) of the Code.

Effective solely with respect to pension payments payable on and after January 1, 1997, the provisions of the preceding paragraph shall apply to all retirees who retired from the county before July 1, 1985. Pensions payable with respect to such retirees shall be recalculated effective January 1, 1997, to take into account any additional years of military service awarded pursuant to the preceding paragraph. This adjustment will apply prospectively only (effective January 1, 1997), and such retirees will not be entitled to receive any retroactive increase, adjustment or payment for periods during which a pension was in pay status before January 1, 1997.

2.11. Termination of service.

Should any member in a period of ten (10) consecutive years after last becoming a member be absent from service more than five (5) years, except for military service or authorized leave of absence, he shall thereupon cease to be a member and his service credit hereunder shall be terminated.

2.12. Medical board.

Medical board shall mean the board of physicians provided for in section VIII of this act.

2.13. Actuarial equivalent.

Actuarial equivalent shall mean an equality in value of the aggregate expected payments under different forms of pension payments considering expected mortality and interest earnings on the basis of tables adopted from time to time by the board.

2.14. Deputy sheriff.

Deputy sheriff shall mean a person employed in the sheriff's department of the county, whose duty is to preserve the peace and order of the county, having the power to arrest without warrant.

2.15. Elected official.

Elected official is any employe elected by vote of the people.

2.16. Beneficiary.

Each member shall designate the beneficiary(ies) who shall receive the amount, if any, which is payable upon his death under section 6.2 or due to his contributions to the system. The designation of a beneficiary, and any change or revocation thereof, shall be made in writing on forms provided by the board and shall not be effective unless filed with the board. If a valid designation is not in effect at the time of the death of a member or retired member, the amount payable upon his death, if any, shall be paid to his surviving spouse, or there be none surviving, to his estate.

2.17. Normal retirement date.

Normal retirement date shall be the first day of the month following the date on which the member reaches the minimum ages for normal retirement.

2.18. Normal retirement age.

- (1) Except as provided in subsections (2), (3), (4), and (5), normal retirement age for all members shall be age sixty (60).
- (2) Normal retirement age shall be age fifty-seven (57) for a member who is a deputy sheriff at the time his employment terminates.
- (3) Normal retirement age shall be age sixty-four (64) for the following members whose initial membership date in the retirement system began on or after January 1, 2010:
 - (a) A member who is not covered by a collective bargaining agreement and who is not an elected official at the time his employment terminates; or
 - (b) A member who is represented by the International Association of Machinists and Aerospace Workers at the time his employment terminates; or
 - (c) A member who is represented by the Technicians, Engineers and Architects of Milwaukee County at the time his employment terminates; or
 - (d) A member who is represented by the Association of Milwaukee County Attorneys at the time his employment terminates.
- (4) Normal retirement age shall be age sixty-four (64) for a member who is represented by the American Federation of State, County and Municipal Employees District Council 48 at the time his employment terminates and whose initial membership date is on or after August 1, 2011.
- (5) Normal retirement age shall be age sixty-four (64) for a member who is represented by the Federation of Nurses and Health Professionals or by the Milwaukee Building and Construction Trades Council at the time his employment terminates and whose initial membership date is on or after January 1, 2012.

[NOTE: Current language adopted in July 2011.]

2.19. Retirement.

Retirement shall mean termination of employment after a member has fulfilled all requirements for a pension. Retirement shall be considered as commencing on the day immediately following a member's last day of employment (or authorized leave of absence, if later), and terminating upon date of death of retiree or beneficiary under option.

2.20. Membership account.

Membership account shall mean the account maintained to record the contributions of each employe, contributions credited pursuant to section 3.3 and adjustments to such account in accordance with section III.

2.21. Savings account.

Savings account shall mean the account maintained to record the voluntary contribution of each employe and adjustments to such account in accordance with section III.

2.22. Masculine and feminine pronouns.

The masculine pronoun shall include the feminine.

SECTION III. CONTRIBUTIONS

3.1. County contributions.

- (1) *Budget year contributions.* The pension board shall furnish to the county executive, prior to June 1 of each year:
 - (a) An estimated budget contribution required by the county, including contributions required under section 3.3, to pay the following year's cost and to amortize the amount of unfunded obligation of the county over such period of years as determined from time to time by the county board (e.g., in 1984, estimate the cost to be incurred in 1985, which will be payable in 1986); and
 - (b) The established actuarial assumptions supporting said required amount. The county executive shall submit an informational report to the committees on finance, personnel, and audit, for consideration during the June committee cycle, providing for an estimated contribution amount for the next year's budget and shall include this pension contribution amount in the executive budget as transmitted to the county board. The final amount appropriated in the adopted budget by the county board shall be the estimated contribution to be expensed in the budget year, but paid to the system in the next following budget year (e.g., in 1984, an estimate will be made for the amount to be expensed in 1985 but paid in 1986).
- (2) *Current year contribution.* The pension board shall furnish to the committee on finance, personnel and audit of the county board, annually, in time for the first county board committee cycle after the summer recess, a statement of the actual contribution required for the current year compared with the amount provided in the budget. The amount appropriated in the adopted budget shall be paid to the system, regardless of whether such amount is more or less than the actual amount required for that year, as determined by the final calculations prepared by the actuary retained by the system. Any overpayment or shortfall in the amount actually provided to the system for a given year shall be amortized over a five-year period, commencing with the contribution estimate prepared by the system's actuary for inclusion in the budget for the following year.
 - (a) Notwithstanding the provisions of the preceding paragraph, any contribution made from the proceeds of a sale of obligations issued under ss. 59.85 and 67.12, Wis. Stats., shall be used first to offset any prior contribution variances that are being amortized pursuant to the last sentence of the preceding paragraph. After that offset, the balance of that contribution shall not be considered to be part of the current year contribution and shall be exempted from the provisions of the preceding paragraph.
- (3) In order to meet the requirements of this ordinance, the county board is authorized to levy a tax, annually, which tax shall be in addition to all other taxes such county board has been authorized to levy upon all taxable property, real and personal. Such tax shall be levied and collected at the same time and in the same manner as other county taxes are levied and collected according to the law.

3.11. Employee contribution.

- (1) Mandatory employee contributions. Each member of the employees' retirement system shall contribute to the retirement system a percentage of the "member's compensation" according to subsections 3.11(2) and (3) based on the following schedule:
 - (a) Effective January 1, 2011 through July 23, 2011, for any member who is not covered by the terms of a collective bargaining agreement, or who is covered by a collective bargaining agreement that has adopted this ordinance, other than members who make a contribution to the system under section 3.3(2), the member shall contribute the amount provided in subsection (3)(a);
 - (b) Effective January 1, 2011 through July 23, 2011, for any member who is an elected official, the member shall contribute the amount provided in subsection (3)(b);
 - (c) Except as provided in paragraph (g), effective July 24, 2011, any member who is, or on a subsequent date becomes, (1) not covered by the terms of a collective bargaining agreement, or (2) an elected official, or (3) covered by a collective bargaining agreement with the American Federation of State, County and Municipal Employees (AFSCME), shall contribute the amount provided in subsection (3)(c);
 - (d) Effective July 24, 2011, any member whose initial date of membership in the retirement system is on or after July 24, 2011 and who (1) is not covered by the terms of a collective bargaining agreement, or (2) is an elected official, or (3) is covered by a collective bargaining agreement with the American Federation of State, County and Municipal Employees (AFSCME), or (4) is covered by a collective bargaining agreement with the Milwaukee Deputy Sheriffs Association, or (5) is covered by a collective bargaining agreement with the Milwaukee County Firefighters Association, shall contribute the amount provided in subsection (3)(c);
 - (e) Effective January 1, 2012, a member who is covered by a collective bargaining agreement with (1) the Association of Milwaukee County Attorneys, or (2) the Federation of Nurses and Health Professionals, or (3) the Milwaukee Building and Trades Council, or (4) the Technicians, Engineers, and Architects of Milwaukee County, or (5) the International Association of Machinists and Aerospace Workers, shall contribute the amount provided in subsection (3)(c);
 - (f) Any member whose initial date of membership in the retirement system is on or after January 1, 2012 and who is covered by the terms of a collective bargaining agreement with (1) the Association of Milwaukee County Attorneys, or (2) the Federation of Nurses and Health Professionals, or (3) the Milwaukee Building and Trades Council, or (4) the Technicians, Engineers, and Architects of Milwaukee County, or (5) the International Association of Machinists and Aerospace Workers, shall contribute the amount provided in subsection (3)(c);
 - (g) Any member who, on July 24, 2011, was a nonrepresented law enforcement or firefighting managerial employe, as set forth in s. 59.875, Wis. Stats., and any member who, on July 24, 2011, was a represented law enforcement or

firefighting employe and who becomes, after July 24, 2011, a nonrepresented law enforcement or firefighting managerial employe, as set forth in s. 59.875, Wis. Stats., shall contribute the same amount respectively as represented law enforcement and firefighting employes whose initial date of membership in the retirement system was prior to July 24, 2011.

- (2) Member compensation shall include all salaries and wages of the member, except for the following: overtime earned and paid; any expiring time paid such as overtime, and holiday; and injury time paid; and any supplemental time paid such as vacation or earned retirement.
- (3) Contribution percentage. The percentage shall be as follows:
 - (a) Two (2) percent of member's compensation earned between January 9, 2011 and June 11, 2011 and three (3) percent of member's compensation earned between June 12, 2011 and July 23, 2011;
 - (b) Two (2) percent of member's compensation earned between January 9, 2011 and July 23, 2011.
 - (c) A percentage of member's compensation as established by the county board based on a recommendation from the retirement system actuary. The percentage of member's compensation shall be derived from the "actual contribution required for the current year" as set forth in section 3.1 of chapter 201.24 of the ordinances, with members being responsible for the contribution required by state statute. The county board shall set forth in its annual adopted budget the percentage of a member's compensation required to comply with the statutorily required contribution. The percentage of a member's compensation may vary from year to year and shall be applicable for twenty-six (26) pay periods and shall apply on a prospective basis beginning with the first pay period each year.
- (4) Pick-up contributions. Notwithstanding the preceding, contributions shall be made by the county in lieu of contributions by the employe even though the contribution is designated as an employe contribution. Members have no option to choose to receive the contributions provided for in this section directly instead of having the contribution paid by the county to the retirement system. The contribution shall be made on a pre-tax basis, and there shall be a corresponding reduction in compensation actually paid to the member. These contributions shall qualify as pick-up contributions (pursuant to Internal Revenue Code section 414(h)(2)). These contributions shall have no impact on internal plan contribution limits or forms of benefit payment under the retirement system. The pick-up of these contributions shall not be construed to reduce the salary upon which final average salary is calculated, as defined in section 2.8. Unless specified otherwise, these contributions do not impact the calculation of a member's benefit. The designation and qualification of these contributions as pick-up contributions pursuant to Internal Revenue Code section 414(h)(2) does not, however, result in the county paying the required contribution on behalf of the employe in a manner inconsistent with state statutory requirements and its prohibition of an employer making the payment on behalf of the employe.

Notwithstanding the preceding, contributions made under this section by optional members, as defined in section 3.3(2), shall not be picked up and made on a pre-tax basis as provided in this subsection unless and until the county receives a favorable private letter ruling from the IRS authorizing such pick-up. Corporation counsel shall determine if and when a favorable private letter ruling has been received and pick up of these contributions shall then commence for optional employees.

- (5) Determination of accumulated contributions. A member's accumulated contributions shall be equal to the sum of his mandatory employe contributions.
- (6) Refund of accumulated contributions.
 - (a) Refunds of all accumulated contributions made under this section 3.11, with interest at the rate of five (5) percent per annum, shall be made on the same conditions and under the same circumstances as refunds under section 3.5, but may only be paid in the form of a lump sum payment.

Any refund of accumulated contributions must be requested within one hundred eighty (180) days after termination of County employment. The Retirement Office shall send an employe who terminates employment a written notice of the refund option via United States mail, or an equivalent service, to the member's address on file with the system.

If a member does not receive written notice of the refund option, then the Pension Board, or the Retirement Office as delegated by the Pension Board, may allow the individual to receive a refund of accumulated contributions latter than the refund period of this Section 3.11. A determination that notice was not received can be based on the Retirement Office and/or Pension Board finding that notice was either not sent by the Retirement Office or not received by the member. The member shall have the burden of proving notice was not received, and the Pension Board or Retirement Office shall have the sole and exclusive authority to determine whether the individual received written notice. The appeal rules of the Pension Board shall apply to refund requests under this paragraph.

If a member requests and receives a refund of accumulated contributions under this section and Section 3.5, the member shall receive a refund of all amounts included in his or her membership account at that time.

- (b) Members receiving a refund or on whose behalf a refund is paid under this subsection shall cease to be a member of the employes' retirement system and shall have no further right to any benefit under this plan.
- (c) The provisions of Section 11.1 shall not apply to accumulated contributions withdrawn by members under this section.

**[NOTE: Current language adopted in July 2011.
Revised December 2013]**

3.3. Employee membership accounts.

- (1) In addition to the contributions required by Section 3.1, the county, commencing with the 4th day of January 1969, shall contribute to the system the following percentage of the earnable compensation of each member, except members listed in paragraph (2):
 - (a) Employees, other than deputy sheriffs and elected officials, six (6) percent.
 - (b) Deputy sheriffs, eight (8) percent.
 - (c) Elected officials, eight (8) percent.

All such sums contributed by the county for members whose last period of employment began prior to January 1, 1971, shall be credited to the employee's membership account in addition to contributions made by the employee, other than voluntary savings. The contributions provided for in this section 3.3(1) shall be considered separate and distinct from the employee contributions required under section 3.11.

- (2) In addition to the contributions required by section 3.11, the following members, who have elected to become optional members of ERS, shall also contribute to the system, by payroll deduction, six (6) percent of their earnable compensation:
 - (a) All interns, students and trainees employed in non-civil-service positions.
 - (b) All resident physicians employed in non-civil-service positions.
 - (c) Seasonal employes, except those whose last period of continuous membership began prior to December 24, 1967.
 - (d) Employes serving under emergency appointments except:
 - (1) Employes whose last period of continuous membership began prior to December 24, 1967.
 - (2) Employes on leave of absence to accept an emergency appointment.
 - (3) Employes whose positions have been reclassified.

Every member required to make the above contribution shall be deemed to consent and agree to the payroll deductions made and provided herein. All sums contributed by a member shall be credited to his membership account. The contributions provided for in this section 3.3(2) shall be considered separate and distinct from the employee contributions required under section 3.11.

3.4. Voluntary employee contributions.

A member may voluntarily contribute to his savings account an amount not to exceed ten (10) percent of his annual earnable compensation for the year. Voluntary contributions may be made by payroll deductions, or by other methods and at other intervals, in accordance with rules established by the board. A member shall be permitted to discontinue voluntary contributions but, in such event, he shall not be permitted to resume such contributions.

Effective January 1, 1971, members shall not be permitted to make contributions to a voluntary savings account unless, prior to such date, they have authorized payroll deductions for such purposes. Employees who have authorized payroll deductions prior to such date shall be permitted to increase or decrease the amount of such deductions.

3.5. Refunds upon severance or death.

Notwithstanding the following, a member shall not be eligible to receive a refund of the portion of his membership account attributable to accumulated contributions contributed under section 3.11 if the member's employment was terminated due to fault or delinquency on the member's part under section 4.5 or if the member or a beneficiary of the member is eligible, at the time the request for a refund is made, for the present receipt of any monthly annuity benefit under sections 4.1, 4.5, 6.1, 6.2, 6.4, 7.1 or 7.2 of the Chapter 201.24 of the ordinances. Upon termination of employment, for reason other than death or retirement, a member shall be entitled to receive a refund of the balance as of the date of termination of his membership account and his savings account, accumulated at interest as set from time to time by the board. However, if a member who is eligible for a deferred vested pension withdraws his membership account, he shall forfeit all rights to a deferred vested pension. If a member requests, under this paragraph, a refund of assets in his or her membership account related to contributions made pursuant to Sections 3.11 or 3.3, the member shall receive a refund of all assets contained in his or her membership account at that time, with interest as provided above, provided that the request is made within the time limits contained in Section 3.11.

Upon termination of employment by reason of a member's death or upon the death of a member who is eligible for a deferred vested pension, the member's beneficiary shall be paid in lump sum the balance, as of the date of death, of his membership account and his savings account, provided that if a joint and survivor option under section VII is effective or a survivorship benefit under section VI is payable, the membership account shall not be paid to the beneficiary. However, if the amount of the membership account at the date of a member's death exceeds the total of the amount of the payments made to the spouse and children under sections 6.1, 6.2, 6.4 and 7.1, after all payments due thereunder have been made, such excess shall be paid in a lump sum to the member's beneficiaries.

Upon retirement of a member, the balance of his savings account shall be paid in one (1) of the following forms as determined by the board:

- (a) Lump sum payment.
- (b) Life annuity with full cash refund or on a term certain basis.
- (c) Installments of a designated amount or over a designated period of time.

If under any of the above options a benefit becomes payable to some other person as a result of the death of the retired member, payment shall be made to the beneficiary designated by the member or, in the absence of a valid designation, than as provided in section 2.16.

[NOTE: Revised December 2013.]

3.6. Withdrawals.

While in the employ of the county, a member shall be permitted to withdraw his savings account, or any portion thereof, only with the consent of the board, and the board shall permit such withdrawal only in the event of financial hardship. After January 1, 1971, withdrawals from voluntary savings accounts shall be permitted only if the entire balance in the account is withdrawn.

3.7. Nondiscriminatory member contributions.

To the extent applicable to the retirement system, contributions to the savings account shall satisfy the actual contribution percentage test, and Internal Revenue Code section 401(m)(2) and Treasury regulation section 1.401(m)-1(b) are incorporated by reference.

SECTION IV. REQUIREMENT FOR RETIREMENT BENEFITS

4.1. Normal retirement.

- (1)
 - (a) A member shall be eligible for a normal pension if his employment is terminated on or after he has attained age fifty-five (55) and has completed thirty (30) years of service, or if his employment is terminated on or after he has attained normal retirement age as defined in section 2.18. Deputy sheriffs shall be eligible to retire at age fifty-seven (57) regardless of their number of years of service or at age fifty-five (55) with at least fifteen (15) years of creditable pension service.
 - (b) Notwithstanding the provisions of subparagraph (a), a member of the International Association of Machinists and Aerospace Workers whose initial membership date is before January 1, 2012 shall not be eligible for a normal pension until the member has attained normal retirement age as defined in section 2.18 and has completed five (5) years of service.
 - (c) Notwithstanding the provisions of subparagraph (a), a member of the Federation of Nurses and Health Professionals whose initial membership date is before January 1, 2012 shall not be eligible for a normal pension until the member has attained normal retirement age as defined in section 2.18 and has completed five (5) years of service.
- (2) Rule of 75.
 - (a) A member who, on September 29, 2011, is employed and is not covered by the terms of a collective bargaining agreement, and whose initial membership in the retirement system under chapter 201.24 began prior to January 1, 2006, and who retires on and after September 1, 1993, shall be eligible for a normal pension when the age of the member when added to his years of service equals seventy-five (75), but this provision shall not apply to any member eligible under section 4.5 nor to any nonrepresented deputy sheriff who was hired as a deputy sheriff after December 31, 1993 and whose appointment to a nonrepresented position was first effective after June 30, 2009, nor to a member who was formerly a represented correction officer who was hired as a correction officer after December 31, 1993 and who was appointed to a nonrepresented position effective after May 1, 2011.
 - (b) A member who, on September 29, 2011, is employed and is covered by the terms of a collective bargaining agreement with the American Federation of State, County and Municipal Employes District Council 48, or with the Technicians, Engineers and Architects of Milwaukee County, or with the International Association of Machinists and Aerospace Workers, and whose initial membership date is prior to January 1, 1994, shall be eligible for a normal pension when the age of the member when added to his years of service equals seventy-five (75), but this provision shall not apply to any member eligible under section 4.5.
 - (c) A member who is employed and is covered by the terms of a collective bargaining agreement with the Federation of Nurses and Health Professionals, and whose initial membership date is prior to January 1, 2013, shall be eligible for a normal pension when the age of the member when added to his years of service equals seventy-five (75), but this provision shall not apply to any member eligible under section 4.5.

- (d) A member who, on September 29, 2011, is employed and is covered by the terms of a collective bargaining agreement with the Association of Milwaukee County Attorneys, and whose initial membership date is prior to January 1, 2006, shall be eligible for a normal pension when the age of the member when added to his years of service equals seventy-five (75), but this provision shall not apply to any member eligible under section 4.5.
- (e) A member who, on September 29, 2011, is employed and is covered by the terms of a collective bargaining agreement with the Milwaukee Building and Construction Trades Council, and whose initial membership date is prior to February 21, 2006, shall be eligible for a normal pension when the age of the member when added to his years of service equals seventy-five (75), but this provision shall not apply to any member eligible under section 4.5.

[NOTE: Current language adopted in July 2011; September cut-off dates adopted in September 2011; September cut-off date was deleted from subsection (c) in November 2011.]

4.2. Early retirement.

A member shall be eligible for an early pension if his employment is terminated on or after his 55th birthday, provided he has completed fifteen (15) or more years of service, but the amount thereof shall be reduced as provided in section 5.2.

4.25. Retirement incentive for a limited time period.

Any member of the employees' retirement system, except for elected officials, who files an application for retirement benefits between August 15, 1990 and October 15, 1990, and completes their last day of active service as a county employe no later than October 27, 1990, shall be entitled to:

- (1) Three (3) additional years of creditable pension service credit; or
- (2) Add three (3) years to their age in order to meet the age requirement for retirement benefits; or
- (3) Add a total of not more than three (3) years, in some combination to be determined by the employe, to both their age and years of creditable pension service so as to be able to qualify for retirement benefits.

All other existing ordinances and rules governing the pension benefits to which an applicant may be entitled shall remain in effect. Members of the employees' retirement system who apply for a nondeferred pension benefit on or after June 12, 1990, but prior to October 15, 1990, as well as members who applied for a nondeferred pension benefit prior to June 12, 1990, with an effective retirement date on or after that date, shall also be entitled to the provisions of this section.

4.26. Retirement incentive for a limited time period due to discontinuance of Doyne Hospital operations.

Any member of the employees retirement system, except for those eligible under subsection 4.5 of this section, who files an application for retirement benefits or has a retirement date, between November 30, 1994 and August 1, 1995, and completes their last day of active service as a county employe no later than September 9, 1995, shall be eligible for:

- (1) An additional three (3) years of creditable pension service credit; or
- (2) The addition of three (3) years to their age in order to meet the age requirement for retirement benefits; or
- (3) The addition of a total of not more than three (3) years, in some combination to be determined by the employe, to both his/her age and years of creditable pension service credit so as to be able to qualify for retirement benefits.

Employes eligible to retire under this section may be required to remain in the active service as a county employe until no later than December 2, 1995, if their continued active service is deemed critical to the operations of the county by the directors of administration and human resources. However, employes at the School of Nursing who file an application to retire under this section and are deemed critical may be required to remain in active service as a county employe until December 31, 1997. Additionally, employes at the Mental Health Division who file an application to retire under this section and are deemed critical to "outpatient services" may be required to remain in active service as a county employe until a date identified in the 1996 adopted budget.

Employes who apply for retirement under this section shall have all accrued sick allowance, vacation, holiday and personal time to which they are entitled as of the last day of active service converted to additional pension service credit in lieu of receiving payment for such accrued time in accordance with the provisions of chapter 17 of the county general ordinances, unless payment for such time commenced prior to April 8, 1995. Employes who filed an application for retirement and received payment for accrued time prior to April 8, 1995, shall not be able to rescind their application for the purpose of having accrued time converted to pension service credit. Accrued time converted to pension service credit shall not be used to attain eligibility to retire under this section. All other existing ordinances and rules governing the pension benefits to which an applicant may be entitled and all other provisions of chapter 17, which are not inconsistent with this section, shall remain in effect. Provisions of this section are contingent on county board and county executive approval of an agreement for the sale or lease of Doyne Hospital, or county board and county executive approval of the discontinuance of Doyne Hospital operations, effective no later than December 31, 1995. This section shall not be effective if the county is prohibited from discontinuing operation of Doyne Hospital.

- (4) Any member who was eligible to retire under this section as of September 9, 1995, and completes their last day of service as a county employe no later than December 2, 1995, shall be eligible for the benefit of this section if they file an application to retire after November 30, 1994, and on or before November 27, 1995.

4.3. Accidental disability retirement.

A member shall be eligible for an accidental disability pension if his employment is terminated prior to his normal retirement age by reason of total and permanent incapacity for any duty as the natural and proximate result of an accident occurring at some definite time and place while in the actual performance of duty. The last payment shall be made, if disability ceases prior to his normal retirement date, the first day of the month in which disability ceases.

Disability shall be considered total and permanent if the medical board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated to perform any job that he is reasonably suited for by means of education, training or experience. Disability must be as a result of such service accident and such incapacity is likely to be permanent.

A member shall not be entitled to both an accidental disability pension and ordinary disability pension.

(County clerk note: An ordinance change to accidental disability benefits for nonrepresented officers and employes was adopted on February 19, 1987, J. Proc. p. 186--187, published March 19, 1988. The effective date and application of these changes to section 5.31 is conditioned upon certain contingencies which are listed as follows: This ordinance shall become effective following passage and publication and on the date that any salary adjustment for 1987 for nonrepresented employes is to take effect, but its future application involving nonrepresented officers and employes shall not take effect as to any member either presently receiving an accidental disability pension under section 5.3 nor as to any member who has sustained an accident occurring prior to the language change accomplished within section 4.3 by adoption of an ordinance on December 18, 1986, whereby eligibility would have existed under the former language in such ordinance before the date of publication and language change.)

4.4. Ordinary disability retirement.

A member shall be eligible for an ordinary disability pension if his employment is terminated by reason of ordinary disability, provided he has completed fifteen (15) or more years of service. The last payment shall be made, if disability ceases prior to his normal retirement date, the first day of the month in which disability ceases.

Disability shall be considered total and permanent if the medical board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for further duty and such incapacity is likely to be permanent.

4.5. Deferred vested retirement.

- (1) A member shall be eligible for a deferred vested pension if his employment is terminated for any cause, other than fault or delinquency on his part, provided that he elects not to withdraw any part of his membership account and that his pension when he qualifies for a normal retirement as defined in section 4.1 is at least ten dollars (\$10.00) per month.
- (2) Notwithstanding the foregoing provisions of this section 4.5, any member whose last period of continuous membership began on or after January 1, 1971, but prior to January 1, 1982, shall not be eligible for a deferred vested pension if his employment is terminated prior to his completion of six (6) years of service. Also, notwithstanding the

foregoing provisions of this section 4.5 any member who first became a member of the system on and after January 1, 1982, shall not be eligible for a deferred vested pension if his employment is terminated prior to his completion of ten (10) years of service.

- (3) Notwithstanding the foregoing provisions of this section, any nonrepresented Doyme employe who was a member of the employe's retirement system and any member who was represented by the Federation of Nurses & Health Professionals when they voluntarily resigned their employment between September 1, 1995, and December 31, 1995, at the time of, and in lieu of, a layoff from county service as a direct result of the sale/lease of John L. Doyme Hospital and employes of the School of Nursing who resign from county service in lieu of being laid off due to the closure of the School of Nursing who left county service with seven (7) or more years of service shall be vested for a deferred vested pension.
- (4) Payment of a deferred vested pension shall commence as of the member's normal retirement date, but in no event until timely application for the deferred vested pension is filed with the board. However, if a member has at least fifteen (15) years of service, he may request the board to authorize commencement of his deferred vested pension as of his 55th birthday, or as of any date after his 55th birthday, which precedes his normal retirement date, and if the board consents thereto, his pension shall commence as of the date so requested but the amount thereof shall be reduced as provided in section 5.5. The last payment shall be made as of the date of death of the retired member.

4.6. Distribution requirements.

- (1) In order to receive a pension, a member shall file with the board a written application therefor on a form prescribed by the board.
- (2) A member who files with the board a completed application for benefits from the system shall be entitled to have his benefits commence no later than the 60th day after the close of the year in which the later of the following occurs:
 - (a) The member attains his normal retirement age; or
 - (b) The member terminates employment.

In all events, payments shall commence no later than the April 1 following the calendar year in which the member attains age seventy and one-half (70 1/2) or, if later, the calendar year in which the member retires. For a retired member who attained age seventy and one-half (70 1/2) after December 31, 1987 and before January 1, 1989, payments shall commence not later than April 1, 1990.

- (3) Benefits may not be distributed to any member under a method of payment which, as of the member's required beginning date, does not satisfy the minimum distribution requirements of Internal Revenue Code Section 401(a)(9) and applicable Treasury regulations, including the minimum distribution incidental benefit requirements of proposed Treasury regulation Section 1.401(a)(9)-2, which the system hereby incorporates by reference. Section II(6) permits a member to receive a pension in the form of an annuity (i.e., periodic payments payable at regular intervals). If a member receives his pension benefit in the form of an annuity, payments under the annuity shall satisfy the following requirements:

- (a) The amount to be distributed each year must be at least an amount equal to the quotient obtained by dividing the member's entire interest by the life expectancy of the member or the joint and last survivor expectancy of the member and designated beneficiary;
- (b) Life expectancy (a joint life and last survivor expectancy), for purposes for determining the period certain, shall be determined without recalculation of life expectancy;
- (c) Life expectancy of a member and the joint life expectancy of a member and his beneficiary for all other purposes shall be determined in accordance with applicable law and regulations, provided that the member or his spouse may elect to recalculate life expectancy for one (1) or both lives no more frequently than annually, provided such election is made prior to the member's required distribution date;
- (d) Once payments have begun over a period certain, the period certain may not be lengthened even if the period certain is shorter than the maximum permitted; and
- (e) Annuity distributions must be paid in periodic payments made at intervals not longer than one (1) year.

4.7. Minimum death distribution provision.

- (1) If the member dies after his required beginning date, as determined under section 4.6(2), or, if earlier, the date he commences an irrevocable annuity, any remaining benefit must continue to be distributed at least as rapidly as under the method of distribution in effect prior to the member's death.
- (2) If the member dies before his required beginning date, as determined under subsection 4.6(2), distribution of the member's entire benefit shall be completed by December 31 of the calendar year containing the 5th anniversary of the member's death, unless an election is made to receive distributions in accordance with subsections (a) or (b) below.
 - (a) If any portion of the member's benefit is payable to a designated beneficiary, distributions may be made either (i) over the life of the designated beneficiary or (ii) over a period certain not greater than the life expectancy of the designated beneficiary commencing on or before December 31 of the calendar year immediately following the calendar year in which the member died.
 - (b) If the designated beneficiary is the member's spouse, the date distributions are required to begin in accordance with section (a) above shall not be earlier than the later of (i) December 31 of the calendar year immediately following the calendar year in which the member died, or (ii) December 31 of the calendar year in which the member would have attained age seventy and one-half (70 1/2).

If the member has not made an election pursuant to this section by the time of his death, the member's designated beneficiary must elect the method of distribution no later than the earlier of (a) December 31 of the calendar year in which distributions would be required to begin under this section, or (b) December 31 of the calendar year which contains the 5th anniversary of the date of death of the member. If the member has no designated beneficiary, or if the

beneficiary fails to elect a method of distribution, distribution of the member's entire interest must be completed by December 31 of the calendar year containing the 5th anniversary of the member's death.

If the surviving spouse dies after the member, but before payments commence, the above provisions, with the exception of subsection (b) above, shall be applied as if the surviving spouse were the member.

- (3) The board shall, upon the member's written request, or in the case of a distribution described in subsection (2)(b) above, upon written request of the member's surviving spouse, may recalculate his and/or his spouse's life expectancy for purposes of calculating the minimum distribution. The member must make such an election not later than his required beginning date as defined in section 4.62(2). A member's surviving spouse must make such an election no later than the December 31 date described in subsection (2)(b) above. This election is irrevocable. A recalculation election applicable to a joint life expectancy payment where the survivor is a nonspouse may not take into account any adjustment to any life expectancy other than the member's life expectancy. In the absence of a recalculation election, the system does not permit recalculation of applicable life expectancy.

4.8. TEFRA transitional rule.

- (1) Notwithstanding the other requirements of this section, distribution on behalf of any employe may be made in accordance with all of the following requirements (regardless of when such distribution commences):
 - (a) The distribution by the trust is one which would not have disqualified such trust under Internal Revenue Code Section 401(a)(9), as in effect prior to amendment by the Deficit Reduction Act of 1984;
 - (b) The distribution is in accordance with a method of distribution designated by the employe whose interest in the trust is being distributed or, if the employe is deceased, by a beneficiary of such employe;
 - (c) Such designation was in writing, was signed by the employe or the beneficiary, and was made before January 1, 1984;
 - (d) The employe had accrued a benefit under the system as of December 31, 1983; and
 - (e) The method of distribution designated by the employe or the beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and in the case of any distribution upon the employe's death, the beneficiaries of the employe listed in order of priority.
- (2) A distribution upon death will not be covered by this transitional rule unless the information [in the designation contains the required information] described above with respect to the distributions to be made upon the death of the employe.
- (3) For any distribution which commences before January 1, 1984, but continues after December 31, 1983, the employe, or the beneficiary, to whom such distribution is being

made, will be presumed to have designated the method of distribution under which the distribution is being made if the method of distribution was specified in writing and the distribution satisfies the requirements in subsections (1)(a) and (2) above.

- (4) If a designation is revoked, any subsequent distribution must satisfy the requirements of Internal Revenue Code Section 401(a)(9) and the proposed regulations thereunder. If a designation is revoked subsequent to the date distributions are required to begin, the trust must distribute, by the end of the calendar year following the calendar year in which the revocation occurs, the total amount not yet distributed which would have been required to have been distributed to satisfy Internal Revenue Code Section 401(a)(9) and the proposed regulations thereunder, including the minimum incidental benefit requirements of proposed regulation Section 401(a)(9)-2. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life).

4.9. Hearings before the pension board with respect to disability retirement.

- (1) The board shall provide a hearing with respect to a petition filed by a member which is based upon a denial of disability retirement under sections 4.3 and 4.4. Such petition must be verified and filed with the board within thirty (30) days from the determination by the board denying such disability retirement, and such members shall request a hearing on such denial. The petition shall state the name and address of the member, the department in which he was employed, the date on which he entered active service, the date of the occurrence which is claimed as a basis for the disability retirement and a full explanation, in writing, of the facts which relate to such occurrence and which are claimed to support the member's right to a disability retirement allowance, including such other and pertinent information as the board deems necessary.
- (2) Upon receipt of such verified petition, the board shall set a hearing on said petition and shall notify the member by registered mail, at least five (5) days prior to the hearing, with respect to the date, time and place when the hearing on the petition will be held.
- (3) The hearing shall be convened before the board and, at such hearing, not less than four (4) members of the board shall be present.
- (4) The board, after the hearing on the petition, shall make a finding based on the facts adduced at such hearing and such finding shall be made in such manner and form as the board determines to be appropriate. In making such finding, the board shall give due consideration to the requirements of section 4.3. Predicated upon the finding of the board, the board shall make a determination in writing as to whether disability retirement is warranted under the provisions of the employees' retirement system. A copy of the written findings, and of the board's determination, shall be forwarded to the member who filed the petition.
- (5) The member filing a petition shall appear in person and may also be represented at the hearing by counsel. If the member selects counsel to appear at the hearing for and on his behalf, then the member shall state in writing who his counsel shall be.

- (6) The board may examine, under oath, such persons as it believes has knowledge of the facts pertaining to the claim for disability retirement. The chairperson of the board, or any member of the board designated by the chairperson, may administer the oath to persons who shall appear before the board as witnesses, and the oath shall be in the form which is employed in the circuit court of the county.
- (7) The board shall have charge of the procedure of the hearing and may determine the order of calling witnesses. It shall rule on the relevancy and pertinence of the evidence submitted at the hearing. The board may also devise procedures which are designed to make the hearing more expeditious and less time consuming, and the board's judgment as to the procedure to be employed shall be at its exclusive determination, and the board may promulgate rules relating to procedures with respect to hearings.
- (8) The board, in its discretion, may permit oral arguments by the member or by the attorney, and may request a brief to be filed.
- (9) When the board is fully advised in the premise, it shall make the determination with respect to the claimed disability, either granting it or denying it. At least four (4) members of the board shall approve the determination in order to make it effective and binding.
- (10) Following the hearing and a determination made by the board, if the member who has filed such a petition deems himself aggrieved by the determination of the board, he may seek a review of such determination by filing a writ of certiorari with the circuit court of the county within thirty (30) days from the date of the board's determination, but not thereafter.
- (11) The board may authorize an examiner or a committee of the board to hold hearings, make rulings, consider evidence, swear witnesses and make findings of fact, conclusions of law and order. Any party in interest, who is dissatisfied with the findings, conclusions or order of an examiner or a committee of the board, may file a written petition with the board as a body to review the findings, conclusions and order. If no petition is filed within twenty (20) days from the date a copy of the findings, conclusions and order of examiner or committee of the board was mailed to the member or his attorney, the findings, conclusions and order shall be considered the findings, conclusions and order of the board as a body unless set aside, reversed or modified by the board within such time. Within forty-five (45) days after the filing of such petition with the board, the board shall either affirm, reverse, set aside or modify such findings, conclusions or order, in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted.

SECTION V. AMOUNT OF RETIREMENT BENEFIT

5.1. Normal pension.

- (1) A member, other than a member covered by the terms of a collective bargaining agreement, a deputy sheriff or elected official, whose continuous membership began prior to January 1, 1982 who meets the requirements for a normal pension shall receive an amount equal to two (2) percent of his final average salary multiplied by the number of his years of service rendered prior to January 1, 2010, other than as a member covered by the terms of a collective bargaining agreement, a deputy sheriff or elected official, and shall receive an amount equal to one and six-tenths (1.6) percent of his final average salary multiplied by the number of his years of service rendered on and after January 1, 2010, other than as a member covered by the terms of a collective bargaining agreement, a deputy sheriff or elected official. A member, other than a member covered by the terms of a collective bargaining agreement, a deputy sheriff or elected official, whose continuous membership began after January 1, 1982, who meets the requirements for a normal pension shall receive an amount equal to one and one-half (1 1/2) percent of his final average salary multiplied by the number of his years of service rendered prior to January 1, 2010, other than as a member covered by the terms of a collective bargaining agreement, a deputy sheriff or elected official and shall receive an amount equal to one and six-tenths (1.6) percent of his final average salary multiplied by the number of his years of service rendered on and after January 1, 2010, other than as a member covered by the terms of a collective bargaining agreement, a deputy sheriff or elected official.
- (2)
 - (a) A member covered by the terms of a collective bargaining agreement, other than a deputy sheriff, whose continuous membership began prior to January 1, 1982, who meets the requirements for a normal pension shall receive an amount equal to two (2) percent of his final average salary multiplied by the number of his years of service as a collective bargaining agreement member other than a deputy sheriff.
 - (b) A member covered by the terms of a collective bargaining agreement, other than a deputy sheriff, whose continuous membership began after January 1, 1982 who meets the requirements for a normal pension shall receive an amount equal to one and one-half (1 1/2) percent of his final average salary multiplied by the number of his years of service as a collective bargaining agreement member other than a deputy sheriff.
 - (c) A member shall receive an amount equal to one and six-tenths (1.6) percent of his final average salary multiplied by the number of his years of service, for service as a member represented by AFSCME District Council 48, rendered on or after August 1, 2011.
 - (d) A member shall receive an amount equal to one and six-tenths (1.6) percent of his final average salary multiplied by the number of his years of service, for service as a member represented by the Technicians, Engineers and Architects of Milwaukee County or by the International Association of Machinists, rendered on or after May 1, 2010.

- (e) A member shall receive an amount equal to one and six-tenths (1.6) percent of his final average salary multiplied by the number of his years of service, for service as a member represented by the Association of Milwaukee County Attorneys, rendered on or after June 1, 2010.
- (f) A member shall receive an amount equal to one and six-tenths (1.6) percent of his final average salary multiplied by the number of his years of service, for service as a member represented by the Federation of Nurses and Health Professionals or by the Milwaukee Building and Construction Trades Council, rendered on or after January 1, 2012.

[NOTE: Current language adopted in July 2011.]

- (3) A member who is a deputy sheriff whose continuous membership began prior to July 1, 1995, and who meets the requirements for a normal pension shall receive an amount equal to two and five-tenths (2.5) percent of his final average salary multiplied by the number of his years of service as a deputy sheriff. A member who is a deputy sheriff whose continuous membership began on or after July 1, 1995 and who meets the requirements for a normal pension shall receive an amount equal to two (2) percent of his final average salary multiplied by the number of his years of service as a deputy sheriff. Incumbents of positions of chief investigator or investigator authorized in the office of the district attorney shall receive the same pension benefit as a deputy sheriff. Incumbents of the positions of airport fire chief, assistant airport fire chief, and firefighter shall receive an amount equal to one and one-half (1 1/2) percent of their final average salary multiplied by the number of years of service for all service in these classifications prior to January 1, 1999, and two (2) percent of their final average salary multiplied by the number of years of service in these classifications for all service after December 31, 1998.
- (4) A member who is an elected official whose continuous membership began prior to January 1, 1982, and who meets the requirements for a normal pension, shall receive an amount equal to two and one-half (2 1/2) percent of his final average salary multiplied by the number of his years of service as an elected official. A member who is an elected official whose continuous membership began after January 1, 1982, and who meets the requirements for a normal pension, shall receive an amount equal to two (2) percent of his final average salary multiplied by the number of his years of service as an elected official. Regardless of when membership began, an elected official shall receive an amount equal to one and six-tenths (1.6) percent of his final average salary multiplied by the number of his years of service rendered on and after October 14, 2010 as an elected official.
- (5) If a member has service in more than one (1) of the foregoing job capacities, his pension shall be the sum of the amounts computed by multiplying his final average salary by the product of the foregoing benefit percentage for each such capacity and his service in each such capacity.
- (6) If a member has service in one (1) or more of the foregoing job capacities as well as service as an employe of the state who receives part of his wage or salary from the county, his pension for service shall be equal to two and one-half (2 1/2) percent or two (2) percent respectively of his final average salary paid by the county multiplied by the number of years of service as an elected county or state official and two (2) percent or

one and one-half (1 1/2) percent respectively multiplied by the number of years of service other than as an elected official.

- (7) The pension payable to a member under the provisions of this section 5.1 shall not exceed eighty (80) percent of his final average salary increased by the post-retirement pension adjustment percentage in effect for each year of the member's continued employment after having accrued sufficient service to have become subject to the eighty (80) percent maximum percentage.

5.15. Recruitment and retention incentive effective January 1, 2001.

The provisions of this section shall apply to all members of the employees' retirement system eligible to accrue pension service credit as of January 1, 2001, who are not represented by a collective bargaining unit and file an application for retirement after January 1, 2001. This section shall supersede any provisions of section 5.1 that may conflict with this section. The provisions of this section shall not apply to any member of the employees' retirement system who filed an application for retirement prior to January 1, 2001, which shall be effective on or after January 1, 2001. The provisions of this section shall not apply to members of the employees' retirement system who, as of January 1, 2001, are either eligible for a deferred vested retirement benefit under section 4.5 or are receiving a retirement benefit, unless such members return to a status eligible to accrue additional service credit on or after January 1, 2001. The provisions of this section shall not apply to years of service earned on or after January 1, 2010, by a member who, at the time the service is earned, is not covered by the terms of a collective bargaining agreement, nor shall this section apply to service credit earned on or after October 14, 2010 by a member who, at the time service is earned, is an elected official, nor shall this section apply to service credit earned on or after the effective date of sections 201.24(5.1)(2)(c) through (f). **[NOTE: Last sentence revised in July 2011].**

- (1) If membership in the employees' retirement system initially began on or after January 1, 1982, the following recruitment and retention incentives shall apply:
 - (a) Except for a non-represented deputy sheriff whose membership began prior to July 1, 1995, or whose appointment to a non-represented position was first effective after June 30, 2009, and elected officials whose membership began on or after March 15, 2002, all pension service credit earned on and after January 1, 2001, shall be credited in an amount equal to an additional one-half (0.5) percent of the member's final average salary. For each year of service credit earned after January 1, 2001, eight (8) years of service credit earned prior to January 1, 2001, shall be credited at an additional one-half (0.5) percent of the member's final average salary. The additional service credits under this section 5.15(1)(a) shall not apply to any elected official whose membership began prior to March 15, 2002, if such elected official consents irrevocably in writing filed with the system to waive the right to receive such additional pension service credits.
 - (b) An employee shall not be eligible for a deferred vested pension if his/her employment is terminated prior to his/her completion of five (5) years of service.
- (2) Retention incentive bonus. If initial membership in the employees' retirement system began prior to January 1, 1982, or July 1, 1995, for a nonrepresented deputy sheriff whose appointment to a non-represented position was first effective prior to July 1, 2009, at the time of retirement, the member shall have their final average salary increased by a

bonus of seven and five tenths (7.5) percent for each year of pension service credit earned after January 1, 2001. The maximum bonus that shall be added to an eligible member's final average salary shall not be more than twenty-five (25) percent. This provision shall not apply to a member of the employees' retirement system who became a member of the system prior to January 1, 1982, and as of January 1, 2001, is either eligible for a deferred vested benefit under section 201.24 (4.5), or is receiving a pension benefit, unless such member returns to a status whereby the member is eligible to earn additional pension service credit on or after January 1, 2001. The retention incentive bonus under this section 5.15(2) shall not apply to any elected official who is otherwise eligible to receive such bonus if such elected official consents irrevocably in writing filed with the system to waive the right to receive such retention incentive bonus.

- (3) Members who hold positions for which membership in the employees' retirement system is optional and opt for such membership, shall have pension service credit earned after January 1, 2001, credited at two (2) percent. However, such service credit shall not result in a multiplier increase for service credit earned prior to January 1, 2001, nor shall such service credit qualify the member for a retention incentive bonus.

The provisions of this section shall not apply to a member of the employees' retirement system who is either eligible for a deferred vested benefit under section 201.24 (4.5), or is receiving a pension benefit as of January 1, 2001, unless such member returns to active county employment and is eligible to earn additional pension service credit under section 201.24.

5.16. Back drop pension benefit.

- (1) The provisions of this section shall apply to any member whose application to retire is filed and effective after January 1, 2001, but shall not apply to any member of the retirement system who
 - (a) is an elected official, or who was in a position that was not in a certified collective bargaining unit on June 29, 2011, and who began membership in said system on or after March 15, 2002,
 - (b) was in a position in a certified collective bargaining unit represented by the American Federation of State, County and Municipal Workers on June 29, 2011 and who began membership on or after February 1, 2007,
 - (c) was in a position in a certified collective bargaining unit represented by the Milwaukee Building and Construction Trades Council on June 29, 2011 and who began membership on or after February 21, 2006,
 - (d) was in a position in a certified collective bargaining unit represented by the Association of Milwaukee County Attorneys on June 29, 2011 and who began membership on or after January 1, 2006,
 - (e) was in a position in a certified collective bargaining unit represented by the International Association of Machinists or by the Technicians, Engineers and Architects of Milwaukee County on June 29, 2011 and who began membership on or after November 4, 2005,

- (f) was in a position in a certified collective bargaining unit represented by the Federation of Nurses and Health Professionals on June 29, 2011 and who began membership on or after December 16, 2005,
 - (g) was in a position in a certified collective bargaining unit represented by the Milwaukee County Firefighters Association on June 29, 2011 and who began membership on or after June 19, 2007,
 - (h) was formerly a represented deputy sheriff and who was appointed to a non-represented position effective after June 30, 2009,
 - (i) is eligible for a deferred pension benefit under section 201.24(4.5) or a disability pension benefit under sections 201.24(5.3), (5.31) or (5.4), or
 - (j) is an elected official whose membership began prior to March 15, 2002, if such elected official consents irrevocably in writing filed with the system to waive the right to elect to receive a "back drop" pension benefit.
- (2) Upon retirement, the provisions as hereafter described shall be the sole method for calculating retirement benefits under this section. A member eligible under paragraph (1) may opt for a "back drop" pension benefit as follows:
- (a) A member may request a "monthly pension benefit" based on accrued pension service credit and final average salary calculation as of a specific date in the past which shall be referred to as the "back drop date." The "back drop date" may not be prior to the earliest date that the member was eligible to retire, and shall not be less than one (1) year prior to the date the member leaves active county service. The monthly pension benefit the member was eligible to receive as of the "back drop date" shall be referred to as the "monthly pension benefit."
 - (b) In addition to the monthly pension benefit set forth in paragraph (a), a member will receive a "total drop benefit" equal to the total amount of the "monthly drop benefit" payments, as defined in paragraph (c), the member would have received (including the annual two (2) percent pension increase) between the "back drop date" and the date the member is removed from the county payroll due to actual retirement (after exhausting all accrued time balances as documented by an ETCR form), plus interest earnings (compounded monthly) equal to the pension fund rate of return used by the ERS actuary.
 - (c)
 - (1) If the backdrop date requested by the member is on or after April 1, 2013, then the "monthly drop benefit" utilized for calculating the "total drop benefit" in paragraph (b) shall be the monthly amount calculated based on the member's final average salary, service credit and applicable multiplier(s) as of April 1, 2013. If such a member was not employed on April 1, 2013, but returns to county employment thereafter, then the "monthly drop benefit" shall be the monthly amount calculated based on the member's final average salary, service credit and applicable multiplier(s) as of his or her last day of employment prior to April 1, 2013.
 - (2) If the backdrop date requested by the member is prior to April 1, 2013, then the "monthly drop benefit" utilized for calculating the "total drop

benefit" in paragraph (b) shall be the "monthly pension benefit" in paragraph (a) on the "back drop date" requested by the member.

- (3) Notwithstanding subparagraphs (c)(1) and (2), if the member is represented at the time of retirement by the Milwaukee County Firefighters Association, then the "monthly drop benefit" utilized for calculating the "total drop benefit" in paragraph (b) shall be the "monthly pension benefit" in paragraph (a) on the "back drop date" requested by the member.
- (3) If the member opts for a "back drop" pension benefit the "total drop benefit" shall be paid to the member with appropriate deductions for state and federal taxes; or if permitted by IRS regulations, the member may "roll over" all or a portion of the "total drop benefit" to an IRA.
- (4) The standard pension options shall be available to a member who opts for a "back drop benefit", and the retention incentives incorporated into the pension benefit effective January 1, 2001, shall be included when calculating the "monthly pension benefit" or the "monthly drop benefit." Therefore, a member who opts for a "back drop benefit" with a "back drop date" prior to January 1, 2001, shall be eligible for the retention incentives which became effective as of January 1, 2001, based on continued service after January 1, 2001.
- (5) A member who opted for a "back drop benefit" upon retirement and later returns to active service and is eligible to earn additional pension service credit, shall cease receiving the monthly pension benefit until the member once again terminates active service. Upon once again retiring, the member shall have any new service credit added to the service credit used to calculate the "monthly pension benefit", and the member's final average salary shall be recalculated to incorporate the most recent earnings.

5.17. Lump sum termination benefit.

A member whose membership in the employe's retirement system began prior to January 1, 1994, shall, upon commencing his/her pension from the retirement system, receive from the retirement system a termination benefit equal to the member's total unpaid sick hours accrued with the county multiplied by the applicable "hourly dollar rate." The county shall annually fund the entire estimated cost of this benefit regardless of and separate from any surplus funding in the retirement system. The lump sum termination payment shall be paid in a single lump sum or a direct rollover (if eligible), as elected by the member. The amount shall be paid as soon as administratively feasible but no later than thirty (30) days after the employe leaves the county payroll, as shown by a completed ETCR form.

5.2. Early pension.

A member who meets the requirements for an early pension shall receive an amount which shall be computed in the same manner as a normal pension, considering his earnable compensation and service prior to retirement. If payment of an early pension commences prior to the member's normal retirement date, the monthly amount shall be reduced by five-twelfths of one (1) percent for each month (i.e., five (5) percent for each full year) in the period between the date as of which the pension begins and his normal retirement date.

5.3. Accidental disability pension.

A member who meets the requirements for an accidental disability pension shall receive an amount computed in the same manner as a normal pension considering his earnable compensation and service prior to retirement, but no less than seventy-five (75) percent of his final average salary.

5.31. Accidental disability pension for nonrepresented officers and employes.

Notwithstanding the provisions of section 5.3, a member who is a nonrepresented officer or employe and who meets the requirements for an accidental disability pension shall receive an amount computed in the same manner as a normal pension considering earnable compensation and service prior to retirement, but no less than sixty (60) percent of his final average salary.

All accidental disability pensions computed under this paragraph shall be converted at age sixty-two (62) to a retirement based on years of service. A member shall be credited with years of active service plus years of presumed service while on accidental disability pension to age sixty-two (62) when conversion occurs.

(County clerk note: An ordinance change to accidental disability benefits for nonrepresented officers and employes was adopted on February 19, 1987, J. Proc. p. 186--187, published March 19, 1987. The effective date and application of these changes to section 5.31 is conditioned upon certain contingencies which are listed as follows: This ordinance shall become effective following passage and publication and on the date that any salary adjustment for 1987 for nonrepresented employes is to take effect, but its future application involving nonrepresented officers and employes shall not take effect as to any member either presently receiving an accidental disability pension under section 5.3 nor as to any member who has sustained an accident occurring prior to the language change accomplished within section 4.3 by adoption of an ordinance on December 18, 1986, whereby eligibility would have existed under the former language in such ordinance before the date of publication and language change.)

5.4. Ordinary disability pension.

A member who meets the requirements for an ordinary disability pension shall receive an amount computed in the same manner as a normal pension considering his earnable compensation and service prior to retirement, but not less than twenty-five (25) percent of his final average salary.

5.5. Deferred vested pension.

A member who meets the requirements for a deferred vested pension shall receive an amount computed in the same manner as a normal pension considering his earnable compensation and service prior to retirement. If payment of a deferred vested pension commences prior to the member's normal retirement date, the monthly amount shall be reduced by five-twelfths of one (1) percent for each month (i.e., five (5) percent for each full year) in the period between the date as of which the pension begins and his normal retirement date.

5.6. Minimum pension.

The pension of an employe who is a member on December 24, 1967, shall in no event be less than the amount which would have been payable to him under the system as in effect on December 23, 1967, had the system continued in effect without change until the member's date of retirement after making an appropriate allowance for changes, if any, in the member's mandatory contribution rate made by this ordinance.

5.7. Post-retirement pension adjustment.

Each year after retirement, effective on the first day of the month in which a retired member reaches the anniversary of his retirement date, his monthly pension shall be increased by one and one-half (1 1/2) percent of the amount paid him for the first full month of his retirement. In the event that the member has elected option 2, the percentage increase shall be applied to the reduced pension. On the member's death, the accumulated percentage increases during his retired life plus an additional one and one-half (1 1/2) percent per year shall be applied to the payments of his beneficiary. Commencing with the calendar year 1971, the percentage of increase in the monthly pension shall be two (2) percent instead of one and one-half (1 1/2) percent.

This section shall apply with retroactive effect to all persons retiring after December 24, 1967.

The monthly pension payable to a survivor under section 6.4 shall be increased each year by two (2) percent of the first full monthly benefit. This provision shall be retroactive to July 15, 1969.

5.8. Retirees prior to December 24, 1967.

Commencing with the month of July 1970, the monthly pension payable to members who retired prior to December 24, 1967, or to their beneficiaries, shall be increased by three (3) percent, and commencing with the month of January 1971, by five (5) percent. In the month of January of each succeeding year, the pension shall be increased by two (2) percent of the monthly pension paid to such member or beneficiary for the month of June 1970.

On or before the first day of July 1970, each member who retired prior to December 24, 1967, or the beneficiary of such member, shall receive a lump sum payment of thirty-six (36) percent of the monthly pension payable to such member or beneficiary for the month of June 1970, being the amount of the post-retirement adjustment such member or beneficiary would have received if the provisions of section 5.7 had been applicable during the period from December 24, 1967 to July of 1970.

5.9. Sheriffs' annuity and benefit fund retirees prior to December 22, 1968.

Commencing with the month of September 1970, the monthly pension payable to members of the sheriffs' annuity and benefit fund who retired prior to December 22, 1968, and the monthly pension payable to widows of members of the sheriffs' annuity and benefit fund, shall be increased by three (3) percent, and commencing with the month of January 1971, by five (5) percent. In the month of January of each succeeding year, the pension shall be increased by two (2) percent of the monthly pension paid to such member or widow for the month of August 1970.

On or before the first day of August 1970, each member of the sheriffs' annuity and benefit fund who retired prior to December 22, 1968, and each widow of a member of the sheriffs' annuity and benefit fund, shall receive a lump sum payment of twenty-one (21) percent of the monthly pension payable to such member or widow for the month of September 1970, being the amount of the post-retirement adjustment such member or beneficiary would have received if such adjustment had been in effect during the period from December 22, 1968 to September of 1970.

5.10. [Paid health insurance.]

Members who retire with sufficient pension service credit as noted in chapter 17 of the Code, or the appropriate labor agreement, shall be provided with paid health insurance as noted in chapter 17 of the Code, however such benefit shall not be funded via the pension fund.

SECTION VI. OTHER BENEFITS

6.1. Accidental death benefit for deputy sheriffs.

If the death of a member who is a deputy sheriff occurs in active service as the natural and proximate result of an accident occurring at some definite time and place while the member was in the actual performance of duty, as determined by the board on the basis of acceptable evidence presented to it, the board shall grant a survivorship pension equal to fifty (50) percent of the final average salary of such deceased member:

- (a) To a surviving spouse for life or until remarriage.
- (b) If there be no surviving spouse, or if the surviving spouse dies or remarries before every child of such deceased member attains the age of eighteen (18) years, then to his child(ren) under said age divided in such manner as the board in its discretion shall determine, to continue as a joint and survivor pension until every such child dies or attains said age; or
- (c) If there be no surviving spouse or child under the age of eighteen (18) years surviving such deceased member, then to his dependent father or mother, as the deceased member shall have nominated by written designation duly acknowledged and filed with the board; or if there be no such nomination, then to his dependent father or to his dependent mother as the board in its discretion shall direct, to continue for life.
- (d) The monthly benefit payable hereunder to a spouse or child shall at no time be less than the amount of the monthly benefit to which they would have been entitled under section 6.2 if death had not occurred in performance of duty.

6.2. Ordinary death benefit for deputy sheriffs.

Upon the death of a deputy sheriff in active service prior to satisfying the applicable age and service eligibility requirements for a normal pension (as described in section 4.1) after completing at least one (1) year of service if a benefit is not payable under section 6.1, his surviving dependent spouse or child shall be entitled to receive the benefits set forth in section 6.4.

6.3. Lump sum benefit upon death.

Upon the receipt of proper proofs of the death of a member, if such member has completed one (1) or more years of creditable service, and no survivors' benefits are payable under sections 6.1, 6.2, 6.4 or 7.1, there shall be paid a lump sum benefit of one-half (1/2) the final average salary of such deceased member, but not to exceed two thousand dollars (\$2,000.00). The member may designate as beneficiary a trustee(s) named or to be named by will.

6.4. Survivor pensions for members other than deputy sheriffs.

In the event of the death of a member in active service prior to satisfying the applicable age and service eligibility conditions for a normal pension (as described in section 4.1) and after completing at least one (1) year of service, his surviving dependent spouse or child shall receive

a survivor pension. The pension to a dependent spouse shall be payable for life or until remarriage. The pension to a child shall be payable until the child reaches age eighteen (18) or marries, or until attainment of age twenty-two (22) while not married and a full-time student in attendance at an educational institution including periods of nonattendance not in excess of four (4) months and in accordance with such rules and regulations as may be established by the board from time to time.

A dependent spouse is a spouse of a member:

- (a) Who is over age sixty (60) or who is under age sixty (60) and has a child who is eligible for a pension hereunder.
- (b) Who was married to the member at least one (1) year prior to his death.

The monthly pension payable to a dependent spouse prior to age sixty (60) and while with a child eligible for a pension hereunder shall be forty (40) percent of the rate of monthly salary of the member paid by the county for the year of his death less monthly survivors benefits payable to such spouse under the federal social security law. Commencing with the month immediately following attainment of age sixty (60) a dependent spouse shall be paid a monthly pension equal to fifty (50) percent of the normal pension which would have been payable to the member if his service had continued to the date he would have satisfied the applicable age and service eligibility conditions for a normal pension (as described in section 4.1) with the same final average salary as determined at the date of his death.

The monthly pension payable to an eligible child shall be equal to ten (10) percent of the rate of monthly salary of the member paid by the county for the year of his death less social security benefits payable to the child under the federal social security law, provided that if there are more than five (5) eligible children, the children's pension shall be reduced pro rata so that the total of the dependent spouse's pension and the pensions payable to the children, when added to monthly survivors benefits payable to them from federal social security, does not exceed ninety (90) percent of the rate of monthly salary of the member paid by the county. The social security laws in effect as of the date of death of the member shall be used in determining the social security benefits payable to the surviving spouse and children.

The monthly pensions provided herein for a dependent spouse and children shall not be payable where a member has designated a beneficiary(ies) to receive in lieu of the monthly pensions a lump sum payment of the balance in his membership account plus the death benefit payable under section 6.3.

6.5. Election by surviving spouse at age sixty.

A surviving spouse eligible to receive a pension under the provisions of section 6.4 at age sixty (60) may in lieu thereof elect to receive payment of the balance in the member's membership account and any death benefit payable under section 6.3, less any payments made under the provisions of section 6.4.

SECTION VII. OPTIONAL RETIREMENT BENEFITS

7.1. Optional benefits.

By filing an application with the board prior to the date on which his pension is due to commence a member may elect to convert his pension into another form in accordance with the following options:

Option 1. A reduced pension payable during his life, with the provision that the balance in his accumulated membership account as of the date of his retirement over the payments he has received that are attributable to that account, disregarding any post-retirement pension adjustment, shall be paid to his beneficiary.

Option 2. A reduced pension payable during his life, with the provision that after his death pension at one-half (1/2) of his reduced pension shall be continued during the life of and shall be paid to his beneficiary.

Option 3. A reduced pension payable during his life, with the provision that after his death it shall continue in the same amount during the life of and shall be paid to such beneficiary as he shall have nominated by written designation duly executed and filed with the board at the time of retirement.

The aggregate of the pension payments expected to be paid to the member under option 1 or to the member and his contingent pensioner under option 2 or 3 shall be the actuarial equivalent of the pension which the member is otherwise entitled to receive upon retirement.

Any member in active service who has attained age fifty-five (55) and has completed thirty (30) years of service or has attained age sixty (60), or who, pursuant to section 4.1 or a collective bargaining agreement, is eligible for a pension, or if a deputy sheriff has either attained age fifty-seven (57), or attained age fifty-five (55) and completed fifteen (15) years of service, [he] may elect a protective survivorship option by selecting option 2 or 3 in the manner hereinafter set forth, which option shall then become effective at his death with the same force and effect as if such member had retired under such option immediately prior to his death. The election of such option shall be in writing on a form prescribed by the board and may be revoked at any time prior to retirement. If the designated beneficiary shall die or if the designated beneficiary is the member's spouse and a divorce is granted prior to the member's retirement, the election shall be automatically revoked. If any member eligible to elect an option shall die in active service, without electing an option, his surviving spouse shall be paid a survivorship pension equal to the amount that would have been payable if such member had retired under option 3 immediately prior to his death except where the member has designated a beneficiary to receive in lieu of the survivorship pension payable under option 3 a lump sum payment of the balance in his membership account plus the death benefit payable under section 6.3.

The foregoing provision shall apply with retroactive effect to all employes who died in active service since July 15, 1969, provided, however, that any spouse who has received a lump sum benefit shall not be entitled to a pension unless such lump sum is repaid on or before June 1, 1972.

During any month in which a survivor's pension is payable under section 6.1 or 6.4 the amount of the survivorship pension payable under this section shall be reduced by such amounts.

7.2. Other forms of payment.

The board may, in its sole discretion, at the request of a member or contingent pensioner, direct that any benefit provided by the system be paid in some form other than that expressly set forth in the system, provided that payments in such other form shall be the actuarial equivalent of the benefit otherwise payable. The board shall, if it deems it appropriate, require a member or contingent pensioner to submit evidence of good health as a condition to receipt of any such other form of payment particularly any lump sum payment.

Notwithstanding anything herein to the contrary, if the actuarial value of a member's benefit under any optional benefit is less than fifty (50) percent of the value of the benefit otherwise payable to the member, the optional benefit shall be adjusted so that the value of the member's benefit under the option will be equal to fifty (50) percent of the value of the benefit otherwise payable to the member.

SECTION VIII. ADMINISTRATION

8.1. Pension board.

The general administration and responsibility for the proper operation of the retirement system and for making effective the provisions of this ordinance are hereby vested in a pension board which shall be organized immediately after the first four (4) members provided by in this section have qualified and taken the oath of office.

Prior to confirmation, and during incumbency, an appointee must either possess "financial literacy" as the United States Securities and Exchange Commission defines as "the ability to read and understand fundamental financial statements, including a company's balance sheet, income statement, and cash flow statement," or must meet one of the following qualifications: (1) a minimum of five (5) years of recent work experience in the financial industry, or, a minimum of five (5) years of recent work experience in the finance division of an organization; or (2) an advanced degree applicable to the financial industry or be licensed as a certified public accountant, certified managerial accountant, certified financial planner, or certified financial advisor.

In addition, neither an appointee, nor any family member of the appointee, shall be a participant in, or beneficiary of the employees retirement system. An appointee shall not have relationships or ties to any provider of services to the employees retirement system or pension board. Examples of a provider of service shall include but not be limited to, investment consultants, investment managers, actuaries, or attorneys.

8.2. Membership.

- (1) Members shall not serve more than two (2) consecutive, full, three-year terms; however, a member's service for a partial term of less than three full years in order for that member to complete the balance of a three-year term of a prior member is not included in this limitation. Members may not continue to serve after the completion of any term, unless reappointed and confirmed or re-elected. A member having served two (2) terms may be eligible for re-election or re-appointment after not having been a member for at least three (3) years from the last date of service on the board. If reappointed or re-elected, the members must adhere to the same term limitation of two (2) consecutive three-year terms. A member may not continue to serve if at any time the member does not possess the qualifications that would be applicable to the member at the time of the member's appointment, election, reappointment or re-election. The board shall determine any question arising under this section 8.2 concerning a member's qualification or eligibility to continue to serve as a member.
- (2) None of the appointed members of the pension board nor any family members of the appointed members of the pension board shall be participants in, or beneficiaries of, the Milwaukee County Employee Retirement System. None of the appointed members of the pension board shall have relationships or ties to any provider of services to the Milwaukee County Retirement System, Milwaukee County Pension Board, or the Milwaukee County Pension Study Commission.
- (3) No member shall be eligible to serve, or to continue serving, on the pension board who has been found or determined by any Wisconsin governmental unit or agency to have

violated any provision of an applicable ethics or lobbying code or who has been convicted of any crime of misconduct in office or any crime involving dishonesty or theft.

- (4) The membership of the board shall consist of the following:
- (a) Three (3) members to be appointed by the county executive (subject to confirmation by two-thirds (2/3) or more of the members-elect of the county board), for a term of three (3) years.
 - (b) Two (2) members appointed by the county board chairperson (subject to the confirmation of the county board and to county executive approval or veto, with proceedings on veto), for a term of three (3) years.
 - (c) Three (3) elected employe members who are not members of the Milwaukee Deputy Sheriffs Association. The employe board members shall be members of the system and shall be elected by members of the system, other than members of the Milwaukee Deputy Sheriffs Association. Effective for employe elections occurring after April 1, 2012, employes who work for the Employees Retirement System, Department of Human Resources or Corporation Counsel are not eligible for election to, or service on, the pension board. The board may adopt rules and regulations governing such election including a division of county employes into groups for the purpose of electing one (1) employe member of the board from among the employes of each group. However, no such group may include members of the Milwaukee Deputy Sheriffs Association.
 - (d) One (1) retiree member who shall be a member of the system and who shall be elected by retired members.
 - (e) One (1) employe member of the Milwaukee Deputy Sheriffs Association for a term of three (3) years who must be an active county employe upon appointment and throughout his or her term(s). This member shall be appointed by the executive board of the Milwaukee Deputy Sheriffs Association utilizing a method for selection that the executive board deems appropriate. Once appointed, this member may not be removed by the executive board of the Milwaukee Deputy Sheriffs Association.
 - (f) Appointing authorities shall ensure that the employee members of the pension board are released from their work assignments to attend meetings of the pension board and any other meeting related to pension board business for which public notice is required which occurs during their regularly scheduled work shift.

[NOTE: Current language adopted in June 2012.]

8.3. Vacancy; how filed.

If a vacancy occurs in the office of a board member, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled.

8.4. Oath of office.

Each member of the board shall, within ten (10) days after his appointment or election, take an oath of office that, so far as it devolves upon him he will diligently and honestly administer the affairs of the board and that he will not knowingly violate or willingly permit to be violated any of the provisions of law applicable to the retirement system.

8.5. Decision vote.

Each member of the board shall be entitled to one (1) vote in the board. Five (5) votes shall be necessary for a decision by the members of board at any meeting of the board.

8.6. Rules and regulations.

Subject to the limitations of this ordinance, the board shall, from time to time, establish rules and regulations for the administration of the funds created by this ordinance and for the transaction of its business.

8.7. Service credited.

The board shall fix and determine by appropriate rules and regulations how much service in any year is equivalent to one (1) year of service, but in no case shall more than one (1) year of service be creditable for all service in one (1) calendar year, nor in any case shall the board allow credit as service for any period of more than one (1) month's duration during which the employe was absent without pay.

8.8. Officers and employes; expenses.

The board shall elect from its membership a chairperson and shall by a majority vote of all its members appoint a secretary, who may be, but need not be, one of its members. It shall engage such actuarial and other services as shall be required to transact the business of the retirement system. The compensation of all persons engaged by the board and all other expenses of the board necessary for the operation of the retirement system shall be paid at such rates and in such amounts as the board shall approve.

8.9. Data required.

The board shall keep in convenient form such data as shall be necessary to actuarial valuation of the various funds of the retirement system, and for checking the experience of the system.

8.10. Records; publication.

The board shall keep a record of all of its proceedings which shall be open to public inspection. It shall publish annually a report showing the fiscal transactions of the retirement system for the preceding year, the amount of the accumulated cash and securities of the system, and the last balance sheet showing the financial condition of the system as disclosed by an actuarial valuation of the assets and liabilities of the retirement system.

8.11. Legal advisor.

The county corporation counsel shall be the legal advisor of the board. Whenever the county corporation counsel deems it necessary to obtain the services of private legal counsel to advise the board, the county corporation counsel shall follow the provisions of section 56.30(5) of the General Ordinances of Milwaukee County.

8.12. Medical board.

The board shall designate a medical board to be composed of three (3) physicians not eligible to participate in the retirement system. If required, other physicians may be employed to report on special cases. The medical board shall arrange for and pass upon all medical examinations required by the retirement system, shall investigate all essential statements and certificates by or on behalf of a member in connection with an application for disability retirement and shall report in writing to the board its conclusions and recommendations upon all the matters referred to it.

8.13. Actuary.

The board shall designate an actuary who shall be the technical advisor of the board on matters regarding the operation of the funds created by the provisions of this ordinance, and shall perform such other duties as are required in connection therewith.

8.14. Tables and rates.

As of the date of the establishment of the retirement system the actuary shall make such investigation of the mortality, service and compensation experience of the members of the system as the board shall authorize, and on the basis of such investigation he shall recommend for adoption by the board such tables and such rates as are required in section 8.15. The board shall adopt tables and certify rates, and as soon as practicable thereafter, the actuary shall make a valuation based on such tables and rates, of the assets and liabilities of the funds created by this ordinance.

8.15. Periodic valuations, tables and rates thereon.

At least once in the three-year period after the establishment of the retirement system and at least once in each five-year period thereafter, the actuary shall make an actuarial investigation into the mortality, service and compensation experience of the members and beneficiaries of the retirement system, and shall make a valuation of the assets and liabilities of the funds of the system, and taking into account the results of such investigation and valuation, the board shall adopt for the retirement system such mortality, service and other tables as shall be deemed necessary.

8.16. Annual valuations by board.

On the basis of such tables as the board shall adopt, the actuary shall make an annual valuation of the assets and liabilities of the funds of the retirement system.

8.17. Other powers.

The board shall have the power to construe and interpret the system, decide all questions of eligibility and determine the amount, manner and time of payment of any benefits and reasonable administrative expenses hereunder. The board may, in its discretion, deny membership to any class of employees whose compensation is only partially paid by the county or who are serving on a temporary or other than per annum basis, and it may, in its discretion, make optional with persons in any class their individual entrance into membership.

The pension board shall be given no less than thirty (30) days to comment in writing to the county executive and the county board upon the fiscal impact of proposed benefit changes referred from the county board. The pension board may request of the county board an extension of time to comment. In making its referral, the county board shall make full disclosure to the pension board of all actuarial information utilized in the proposed benefit changes.

8.18. Accounting.

The county shall establish and maintain an adequate system of accounts and records for the system which shall be integrated with the accounts, records and procedures in effect to the end that the system shall operate most effectively and at minimum expense and duplication. Two (2) accounts shall be maintained to record member contributions as follows:

- (1) A membership account shall be maintained for each member to which shall be credited his required contributions, creditable county contributions, as well as income pertaining thereto and to which related disbursements shall be charged.
- (2) A savings account shall be maintained for each member to which shall be credited the balance of his voluntary contributions to the system (under section 201.08(1)(d) and (e)) as of December 24, 1967 as well as his voluntary contributions on and after such date, and the income and disbursements pertaining thereto.

Savings accounts of members of group A, under the system prior to December 24, 1967, shall be credited as of December 24, 1967, with an amount equal to the balance which would have accumulated to such date had they elected to join group B as of January 1, 1958, and had their required contribution after such date been reduced in accordance with section 201.08(1)(e).

8.19. Certification by county agency.

The head of each county agency shall certify to the board on each and every payroll or in such manner as the board may prescribe, the amounts of contributions to be made pursuant to section 3.3 which shall be paid into the appropriate employee membership accounts.

8.20. Amounts due the county.

Upon notice from the civil service commission that a member who has terminated his employment for reason other than death or retirement is indebted to the county because of an overpayment of wages or salary, the secretary shall withhold from the refund payable to the employee under the provisions of section 3.5 an amount sufficient to pay the indebtedness due the county.

8.21. Delegation of authority.

The secretary of the pension board is delegated the authority to implement all collective bargaining agreements which amend any provision with this ordinance governing the employees' retirement system or which create new benefits or result in different computations for entitlements as such relates to the members of specific collective bargaining unit. All provisions of such collective bargaining agreements as applicable to specific members and relating to the employees' retirement system are hereby incorporated by reference within this ordinance for the purpose of this delegation of authority.

8.22. Professional services other than legal services.

- (1) The definitions contained in section 56.30(1) of the General Ordinances of Milwaukee County, as amended, are incorporated herein by reference and shall apply to this section.
- (2) The provisions of section 56.30(5)(a), (b), and (c) of the General Ordinances of Milwaukee County, as amended, are incorporated herein by reference. The provisions of that section applicable to Milwaukee County department administrators shall govern the actions of the ERS and the board when soliciting and entering into contracts to provide professional services other than legal services to the ERS or to the board.
- (3) No contract for professional services subject to this section shall be for a period greater than five (5) years.

SECTION IX. MANAGEMENT OF FUNDS

The funds of the retirement system, which, when taken in the aggregate shall constitute a special trust fund to be held in reserve as provided in this ordinance for the payment of benefits and for defraying the reasonable expenses of administering the retirement system shall be managed as provided below.

9.1. Investment of funds; care required.

The board shall be the trustees of the several funds of the system and may invest the funds within the limits of the following standards:

- (a) In acquiring, investing, reinvesting, exchanging, retaining, selling and managing said funds, the board shall exercise the judgment and care under the circumstances then prevailing which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. Within the limitations of the foregoing standard the board is authorized to acquire and retain every kind of property, real, personal or mixed, and every kind of investment, specifically including, but not by way of limitation, bonds, debentures and other corporate obligations, stocks, preferred or common, and shares of investment companies and investment trusts, which persons of prudence, discretion and intelligence acquire or retain for their own account.
- (b) Notwithstanding the provisions of subsection (a), the board shall not purchase or otherwise invest in common stocks if the percentage of the several funds of the system invested in common stock immediately after such purchase or investment will exceed seventy-five (75) percent of the total market value of the funds of the system. This limitation shall not require, however, the sale or other liquidation of a portion of the retirement system's holdings of common stocks even though at any given time the market value of the common stock investments of the retirement system exceeds seventy-five (75) percent of the total market value of all the funds of the system, or to prevent the reinvestment of the proceeds of the sale or other disposition of common stocks in other common stocks even though at the time the market value of the common stock investments of the retirement system exceeds seventy-five (75) percent of the total market value of the funds of the system. The board may rely upon published market quotations as to those investments for which such quotations are available, and upon such valuation of other investments as are fair and reasonable according to available information.

9.2. Transfers of property; reinvestment of funds.

The board shall have full power to make all transfers and conveyances of any securities or property in which it may from time to time invest and reinvest the several funds of the system or any part thereof, and no purchaser(s) shall be responsible for the application of the purchase money or other avails received by or for said board.

9.3. Interest.

The board annually shall allow interest on employe membership and voluntary savings accounts for the preceding year except that interest allowed on employes' voluntary savings accounts shall be computed semiannually on the balance as of the beginning of the semiannual periods. The amounts so allowed shall be charged to earned income from investments of the retirement system. Any additional amount required to meet the minimum interest creditable shall be paid by the county. Interest shall mean such rate as determined by the board on the basis of the interest earnings of the system for the preceding year and of the probable earnings to be made, in the judgment of the board, during the immediate future, such rate to be limited to a minimum of three (3) per centum.

9.4. Custodian of funds; withdrawals.

The treasurer of the county shall be the custodian of the several funds of the retirement system, except that the board may provide for custody by an appropriate entity of any of its funds and securities in a manner which it deems prudent.

9.5. Interest in or use of fund.

Except as herein provided no member of the board and no employe of the board shall have any interest, direct or indirect, in the gains or profits of any investment made by the board, nor as a member of the board directly or indirectly receive any pay or emolument for his service. No member of the board or employe thereof shall directly or indirectly, for himself or as an agent, in any manner use the funds or deposits of the retirement system except to make such current and necessary payments for benefits and for defraying the reasonable expenses of administering the retirement system as are authorized by the board; nor shall any member or employe of the board become an endorser or surety or in any manner an obligor for monies loaned or borrowed from the board.

SECTION X. REEXAMINATION OF MEMBERS RETIRED FOR ORDINARY OR ACCIDENTAL DISABILITY

10.1. Periodic medical examination.

Once each year during the first five (5) years following retirement of any disability pensioner and once in every three-year period thereafter, the board may require such disability pensioner, if he has not attained the minimum age for normal retirement, to submit to a medical examination by a physician(s) of or appointed by the medical board. Should any such disability pensioner refuse in any such year or period to undergo at least one (1) such medical examination, his allowance may be discontinued until he consents to the examination; and should the refusal continue for one (1) year, all rights in and to the pension may be revoked by the board.

10.2. Adjustment of allowance.

Should the board upon recommendation of the medical board deem that any disability pensioner is engaged in or is able to engage in gainful occupation paying more than the difference between his final average salary at the time of retirement and his pension, then the pension should be reduced by the amount of such excess. Should his earning capacity be later changed, the amount of his pension may be further modified; provided that the new pension shall not exceed the amount of pension granted at the time of retirement, nor an amount which when added to the amount earnable by the retired member together with his pension equals the amount of his final average salary at retirement. In determining any adjustment of the pension as aforesaid, the term final average salary shall be defined in accordance with the provisions of section 2.8 of this ordinance or as the maximum salary or compensation which the disability pensioner currently would be receiving in the position from which he was last retired, whichever is greater, provided, however, that if the position from which he was so retired has been abolished, the board, upon the basis of salary or compensation currently paid by the county to persons in similar or comparable positions, shall determine for the purpose of this subsection the maximum amount of salary or compensation which such disability pensioner would be receiving in such position.

10.3. Who not to become members.

Should any disability pensioner be restored to active service at a salary less than his final average salary at the time of retirement he shall not become a member at that time. No disability pensioner restored to active service after attaining the minimum age for normal retirement shall become a member.

10.4. Membership restored.

Should any disability pensioner be restored to active service prior to attaining the minimum age for normal retirement and at a salary equal to or greater than his final average salary at the time of retirement, or should any disability pensioner be at any time in active service prior to attaining the minimum age for normal retirement at a salary equal to or greater than his final average salary at the time of retirement, his disability retirement pension shall cease, and he shall again become a member of the retirement system and shall contribute thereafter at the same rate at which he contributed prior to his disability retirement. Upon his subsequent retirement he shall be credited with all his membership service on the basis of which his pension was computed at the time of his disability retirement, but should he be

restored to active service within three (3) years of his minimum normal retirement age, his pension upon subsequent retirement shall not exceed the sum of the pension which he was receiving immediately prior to his last restoration to membership and the pension that he would have received on account of his service since such last restoration had he first become a member at that time.

SECTION XI. MISCELLANEOUS

11.1. Reemployment of former members.

Should any member who terminated and withdrew his membership account return to active service, his service credits which he had at the time of such separation shall be restored to him, provided he renders two (2) years of service subsequent to his restoration to membership and provided further that within the two-year period or on or before December 31, 1971, whichever date is later, he redeposits the amount of any accumulated contributions withdrawn from his membership account at the time of his separation from the service, with interest thereon to date of redeposit. If he does not elect to restore his prior service credit by redepositing his accumulated contribution during said period of employment, the prior service credits shall be cancelled and service credited only from the date his most recent reemployment period commenced. Any person who was an employe of the county on June 4, 1937, but did not elect to become a member until a later date, may receive credit for his service as a county employe prior to his membership by depositing in his membership account before January 1, 1970, the contributions which he would have made as a member during the period from June 3, 1937, to the date he become a member together with interest to date of deposit.

Should any member who is eligible to receive a deferred vested pension under section 4.5 return to active service, he shall again become an active member of the retirement system and shall resume contributions. Upon his subsequent retirement, he shall be credited with all the service giving rise to his deferred vested pension benefit as well as his service as a member subsequent to his reemployment for purposes of redetermining the amount of his pension.

Any member who terminated and withdrew his accumulated contributions because of membership in the sheriffs' annuity and benefit fund of the county shall have restored to him all service credits which he had at the time of such termination, provided that within one (1) year from July 9, 1969, he redeposits the amount of any accumulated contributions withdrawn at the time of his termination with interest thereon to the date of redeposit.

Notwithstanding the foregoing, members may not redeposit under this section 11.1 accumulated contributions previously refunded to the member under section 3.11.

11.2. Reemployment of retired members.

Should a member receiving a pension under the provisions of this system be restored to active service, his pension shall cease, he shall again become a member of the retirement system, and resume contributions. Upon his subsequent retirement, he shall be credited with all the service giving rise to his pension payment as well as his service as a member subsequent to his reemployment for purposes of redetermining the amount of his pension. If the member received pension payments prior to his normal retirement date, the amount of his redetermined pension shall be reduced by the actuarial equivalent of these payments.

11.3. Benefits to previously retired members.

Effective on December 24, 1967, retirement allowances payable to or on behalf of beneficiaries who retired prior to such date shall be payable without the reductions under subsections 201.05(1)(g), (2)(ba)4, (2)(d)4 and (3)(c), of the Code.

11.4. County-city transfers.

(a) Any person who is a member of either the county or City of Milwaukee retirement system who within sixty (60) days after termination of employment transfers from employment in either the county or city, as the case may be, without receiving any withdrawal benefits from either the city or county retirement system, shall be entitled to receive a retirement allowance which shall be computed in the following manner, except as otherwise noted in section 11.4(b) hereof:

(1) It is the intention of this section that any person transferring as stated in subsection (a) above shall not suffer any diminution of the normal retirement benefit he had accrued in the system from which he has transferred. The service credit to which he is entitled shall be as provided in subsection (c) below. The formula for the calculation of such benefit shall be as follows:

County portion: Amount as provided in section 5.1 hereof multiplied by the number of years, or fractions thereof, of service credit accrued in county service; plus,

City portion: Amount as provided in section 36.05(1) of the employees' retirement system of the City of Milwaukee at the time he left the city service multiplied by the number of years, or fractions thereof, of service credit accrued in city service.

For employees transferred to the county after January 1, 1982 the final average salary as used in the above city and county portion calculations shall be the average annual earnable compensation for the five (5) consecutive years of service during which the member's earnable compensation was the highest under either city or county systems or the combination of both systems.

- (2) The final average salary of such person in the retirement system to which he has transferred shall be the base to which is applied the formula;
- (3) The aggregate creditable service including all service credit shall be the number of years or fraction of years of such service allowable under the respective provisions of both the county or city retirement system, as the case may be, together with the years of service or part thereof in the retirement system to which such person transferred.
- (4) The retirement system from which such person transferred shall contribute toward the retirement benefit computed as hereinbefore set forth as follows: Such contribution shall be prorated upon the basis of the total service earned by virtue of the service in the system from which the member transferred to the total service as provided for in paragraph 3 of this subsection.
- (5) In the event an entire department or a substantial number of employees in a department are transferred from city to county, or vice versa, then under such circumstances the method of contribution by the retirement system from which such employee transferred shall be handled at the time of transfer on a basis satisfactory to both systems and the method of contribution by the respective

pension systems may be altered in that event, but this shall not affect the other provisions hereof.

- (b) Any person who is transferred from the city system to the county system under this section and whose retirement occurs within five (5) years of the date of transfer shall receive an allowance on account of his service prior to the date of transfer which shall not be greater than the allowance he would have received on account of his service to the date of transfer if he had remained a member of the system from which he transferred. He shall also be entitled to and receive an allowance on account of his service subsequent to such transfer.
- (c) The aggregate creditable service including all service credit shall be the number of years or fraction of years of such service allowable under the respective provisions of both the county or city retirement system and be used to determine qualification for all retirement benefits.
- (d) Any person who is a member of the City of Milwaukee retirement system who after sixty (60) days of termination of employment with the city becomes employed by the county without receiving any withdrawal benefits from the city retirement system, shall be entitled to have his/her city pension service credit counted toward vesting in the county pension system and toward eligibility for receipt of a county pension based on the formula in effect as of the date he/she commenced employment with the county.

11.41. Calculation of county benefits under state law for certain former state or City of Milwaukee members.

Any member of the employees' retirement system who meets the requirements of s. 40.30, Wis. Stats. and has creditable pension service with the state or the City of Milwaukee pension systems may elect to have his/her pension benefit from the county employees' retirement system calculated in accordance with the provision of s. 40.30, Wis. Stats. Also, all pension service credit earned by an employe in the city or state pension systems prior to becoming a member of the county employees retirement system shall immediately be credited toward vesting in the county system. Upon retirement from the county pension system an employe eligible under this section shall have a benefit from the county based upon the formula then in effect for any individual who became a member of the system as of the date the employe eligible under this section became a member of the system.

11.5. Extension of benefits.

The provisions of section 3 of chapter 432, Laws of 1945, are extended so that the benefit contract of each member of a retirement system established under either chapter 201 or 396, Laws of 1937, shall be amended by this ordinance by making the provisions hereof which apply to the system of which he is a member a part of his contract on the effective date of this ordinance.

11.6. Guaranty and supervision.

The creation and maintenance of reserves as provided for, and interest creditable as provided for to the various funds, and the payment of all pensions, refunds and other benefits granted under the provisions of this ordinance, and all expenses in connection with the administration and operation of the retirement system are hereby made obligations of the

retirement system. The retirement system shall be subject to periodic examinations by the insurance department of the state, for the purpose of insuring that the technical features of this ordinance are observed. The legal title to the funds of the retirement system shall be in the retirement system created by this ordinance and shall be held by it in trust for the purposes for which they were contributed under this ordinance, and no amendment to the ordinance shall reduce the benefits of any member below those which can be provided by the reserves of the system held in his account, nor shall the reserves held on account of any member be diluted by the addition of new members of annuitants receiving the benefits of any members.

11.7. Exemption of funds and benefits from taxation, execution and assignment.

All moneys and assets of the retirement system and all benefits and pensions and every portion thereof, both before and after payment to any member or beneficiary, granted under the retirement system shall be exempt from any state, county, or municipal tax, and from attachment or garnishment process, and shall not be seized, taken, detained or levied upon by virtue of any executions, or any process or proceeding whatsoever issued out of or by any court of this state, for the payment and ratification in whole and in part of any debt, claim, damage, demand or judgment against any member of or beneficiary under the retirement system, and no member of or beneficiary under the retirement system shall have any right to assign his benefit or allowance, or any part thereof, either by way of mortgage or otherwise, provided, however, that the pension board may at its option and under rules and regulations promulgated by it permit retired members to assign a portion of their pension for the regular monthly payment of medical, surgical and hospital care. The exemption from taxation contained herein shall not apply with respect to any tax on income.

11.8. Protection against fraud.

Any person who shall knowingly make any false statement or shall falsify or permit to be falsified any record(s) of this retirement system in any attempt to defraud such system as a result of such act shall be guilty of a misdemeanor, and shall be punishable therefor under the laws of the state. Should any change or error in the records result in any member or beneficiary receiving from the retirement system more or less than he would have been entitled to receive had the records been correct, the board shall correct such error, and as far as practicable shall adjust the payments in such manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid.

11.9. Limitations on payment of benefit.

No other provision of law in any other statute which provides wholly or partly at the expense of the county for pensions or retirement benefits for employes of the county shall apply to members or beneficiaries of the retirement system governed by this ordinance. Any amounts which may be paid or payable under the provisions of any state workers' compensation or similar law to a member or to the dependents of a member on account of any disability or death shall be offset against and payable in lieu of any benefits payable out of funds provided by the county under the provisions of this ordinance on account of the same disability or death. Any disability or death benefits payable out of funds provided by the county under this ordinance to a member or beneficiaries of a member, shall be reduced by the amount paid such member or beneficiary under any law of the United States providing a pension or compensation for such disability or death, but the United States government insurance benefits for which the member has paid premiums shall not be considered to be a pension or compensation.

11.10. Sheriffs' annuity and benefit fund members on July 9, 1969.

All members of the sheriffs' annuity and benefit fund who became members of the retirement system of the county as of July 9, 1969, shall receive the same benefits and shall be subject to the same conditions as deputy sheriffs who were members of the retirement system prior to July 9, 1969, except that benefits payable to any member shall not be reduced by reason of the transfer. Credit for years of service as a deputy sheriff shall be allowed in the same amount as if the transferring member had continued his membership in the sheriffs' annuity and benefit fund.

The retirement system of the county assumes all obligations and liabilities of the sheriffs' annuity and benefit fund as of July 9, 1969, including the payment of benefits to beneficiaries in existence on that date. The board is authorized and directed to make the payments necessary to satisfy such liabilities.

SECTION XII. [ANNUAL BENEFITS]

12.1. Limitations on annual benefits.

- (1) The sum of a members annual benefits from the system and any includable arrangement shall not exceed the defined benefit dollar limitation as defined in section 12.6 below and Internal Revenue Code section 415(b)(1)(A). If the benefit a member would otherwise accrue in a limitation year would produce an annual benefit in excess of the maximum permissible amount, the rate of accrual shall be reduced so that the annual benefit equals the maximum permissible amount.
- (2) If a member is covered under an includable arrangement, other than one (1) or more qualified defined benefit plans maintained by the county, which provides an annual addition, as defined in section 12.2, the sum of the member's defined contribution fraction and defined benefit fraction shall not exceed 1.0 in any limitation year, and the annual benefit otherwise payable to the member under this system shall be limited, to the extent required, in accordance with section 12.3.
- (3) If a member has never participated in an includable arrangement which provides an annual addition as defined in section 12.2 (other than one (1) or more qualified defined benefit plans), the limitation in subsection 12.2(a) above is deemed satisfied if the annual benefit payable to the member is not more than one thousand dollars (\$1,000.00), multiplied by the member's number of years of service or parts thereof (not to exceed ten (10)).
- (4) "Includable arrangement" means any qualified plan, a welfare benefit fund as defined in Internal Revenue Code Section 419(e), or an individual medical account as defined in Internal Revenue Code Section 415(1)(2), which is maintained by the county.
- (5) If a member was covered under one (1) or more defined benefit plans of the county as of the first day of the first limitation year beginning after December 31, 1986, the application of the limitations of this section XII shall not cause the maximum permissible amount for such individual under all defined benefit plans to be less than the individual's current accrued benefit. A member's current accrued benefit is his accrued benefit under the system, determined as if he had separated from service as of the close of the last limitation year beginning before January 1, 1987, when expressed as an annual benefit within the meaning of Internal Revenue Code Section 415(b)(2). In determining the amount of a member's current accrued benefit, the following shall be disregarded:
 - (a) Any change in the terms and conditions of the system after May 5, 1986; and
 - (b) Any cost of living adjustments occurring after May 5, 1986.

This subsection applies only if all such defined benefit plans met the requirements of Internal Revenue Code Section 415 for all limitation years before January 1, 1987.

12.2. Annual benefits and annual additions.

- (1) "Annual benefits" means the retirement benefit under the system which is payable annually in the form of a straight life annuity. Except as provided in this section, a benefit payable in a form other than a straight life annuity must be adjusted to an actuarially

equivalent straight life annuity before applying the limitations of this section XII. The interest rate assumption used to determine actuarial equivalence shall be the greater of the interest rate determined pursuant to paragraph (13) of section II or five (5) percent. The annual benefit does not include any benefits attributable to employe contributions or rollover contributions or the assets transferred or rolled over from a qualified plan that was not maintained by the county. No actuarial adjustment to the benefit is required for:

- (a) The value of a qualified joint and survivor annuity;
 - (b) The value of benefits that are not directly related to retirement benefits; and
 - (c) The value of post-retirement cost-of-living increases made in accordance with Internal Revenue Code Section 415(d) and applicable Treasury regulations.
- (2) "Annual additions" means the sum of the following amounts credited to a member's account in a defined contribution plan for the limitation year:
- (a) Employer contributions;
 - (b) Employe contributions;
 - (c) Forfeitures; and
 - (d) Amounts allocated to an individual medical account, as defined in Internal Revenue Code Section 415(1)(2), and amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, which are attributable to post-retirement medical benefits allocated to the separate account of a key employe as defined in Internal Revenue Code Section 419A(d)(3).
- (3) Contributions considered picked-up under Internal Revenue Code Section 414(h)(2) are not included as annual benefits or annual additions when measuring compliance with the Internal Revenue Code Section 415 limits or any internal ERS limits.

12.3. Adjustments to the defined benefit dollar limitation.

- (1) If the member has less than ten (10) years of participation under the system, the defined benefit dollar limitation is multiplied by a fraction, the numerator of which is the number of years of participation (or parts thereof) in the system, and the denominator of which is ten (10). To the extent provided in regulations or other guidance issued by the Internal Revenue Service, the preceding sentence shall be applied separately with respect to each change in the benefit structure of the system.
- (2) If the annual benefit of the member commences on or after age sixty-two (62), the general limitations of subsection (1) above shall apply.
- (3) Except as provided in this paragraph, if the annual benefit of the member commences prior to age sixty-two (62) the defined benefit dollar limitation shall be the actuarial equivalent of an annual benefit beginning at age sixty-two (62). To determine actuarial equivalence, the interest rate assumption is the greater of the rate specified in paragraph (13) of section II or five (5) percent. In the event the annual benefit of the member

commences between age fifty-five (55) and sixty-two (62), the actuarial reduction of the defined benefit dollar limitation shall not result in a dollar limitation which is less than seventy-five thousand dollars (\$75,000.00). In the event the annual benefit of the member commences prior to age fifty-five (55), the defined benefit dollar limitations shall be the greater of (a) the amount which is the actuarial equivalent of a seventy-five thousand dollar annual benefit commencing at age fifty-five (55); or (b) the actuarial equivalent of the defined benefit dollar limitation beginning at age sixty-two (62), both calculated using the interest rate specified in the second sentence of this section 12.3(3). Notwithstanding the provisions of this section, the defined benefit dollar limitation of a "qualified member" shall not be actuarially adjusted. For purposes of this section, a "qualified member" is a member whose years of service taken into account in determining his benefit include at least fifteen (15) years of service as a full-time employe of any department of the county which provides police protection, firefighting services, or emergency medical services for any area within the jurisdiction of the county or as a member of the Armed Forces of the United States.

- (4) If the annual benefit of a member commences after the member attains age sixty-five (65), the defined benefit dollar limitation, as reduced in subsection (1) above, if necessary, shall be adjusted so that it is the actuarial equivalent of an annual benefit of such dollar limitation beginning at the member's attainment of age sixty-five (65). To determine actuarial equivalence, the interest rate assumption used is the lesser of the rate specified in paragraph (13) of section II or five (5) percent.

12.4. Maximum permissible amount of annual additions.

This section 12.4 shall limit contributions and allocations to a member's savings account and membership account.

- (1) The annual addition to a member's savings account and membership account for any limitation year shall not exceed the lesser of:
 - (a) The greater of thirty thousand dollars (\$30,000.00) or twenty-five (25) percent of the defined benefit dollar limitation recited in Internal Revenue Code Section 415(b)(1)(A) for such year; or
 - (b) Twenty-five (25) percent of the compensation paid or made available to the member for such year.
- (2) Effective for limitation years beginning in 1987, the "annual addition" shall mean the sum allocated to a member's account for any year of contributions pursuant to the system and allocated to this benefit pursuant to all other defined contribution plans maintained by the county for the limitation year, including employe contributions. Contributions allocated to any individual accounts which are part of a pension or annuity plan under Internal Revenue Code Sections 415(1) and 419(A)(d)(2) shall be treated as annual additions to a defined contribution plan. However, subsection 12.4(1)(b) above shall not apply to any accounts treated as an annual addition under the preceding sentence.

The annual addition shall not include the allocation to a member's account of income.

- (3) The pension board shall reallocate the excess of a member's annual addition over the limits stated above in accordance with the following subsections:

- (a) The excess amount may be used to reduce the county contributions for the next (or succeeding, if necessary) limitation year for the member who incurred the excess amounts provided the member is covered by the system at the end of such limitation year. If the member is not longer covered by the system as of the end of the limitation year, the excess amounts shall be held unallocated in a suspense account and reallocated in the next limitation year to all remaining members in the system as a reduction of such members' county contributions.
- (b) The excess amount may be held unallocated in a suspense account for the limitation year and used to reduce the county contributions for the next (or succeeding, if necessary) limitation year to all members in the system.
- (c) Excess amounts attributable to employe contributions shall be refunded to the member.

12.5. Defined benefit and defined contribution fractions.

- (1) The defined benefit fraction is a fraction, the numerator of which is the sum of member's projected annual benefits under all defined benefit plans (whether or not terminated) maintained by the county, and the denominator of which is the lesser of one hundred twenty-five (125) percent of the defined benefit dollar limitation or one hundred forty (140) percent of the member's average compensation for the three (3) consecutive years of service that produces the highest average, including adjustments under Internal Revenue Code Section 415(b). A member's projected annual benefit is the member's annual benefit assuming the member will continue employment until normal retirement age (or current age, if later), and the member's compensation for the current limitation year and all other relevant factors used to determine benefits under the system will remain constant for all future limitation years. Notwithstanding the above, if the member was a participant in one (1) or more defined benefit plans maintained by the county which were in existence on July 1, 1982, the denominator of the defined benefit fraction shall not be less than one hundred twenty-five (125) percent of the sum of the annual benefits under such plans which the member had accrued as of the later of September 30, 1983, or the end of the last limitation year beginning before January 1, 1983. The preceding sentence applies only if the defined benefit plans individually and in the aggregate satisfy the requirements of Internal Revenue Code Section 415 as in effect at the end of the 1982 limitation year.
- (2) The defined contribution fraction is a fraction, the numerator of which is the sum of the annual additions to the member's account under all includable arrangements (other than defined benefit plans), and the denominator of which is the sum of the maximum aggregate amounts for the current and all prior limitation years (regardless of whether a defined contribution plan was maintained by the county). The maximum aggregate amount in any limitation year is the lesser of one hundred twenty-five (125) percent of the defined benefit dollar limitation or thirty-five (35) percent of the member's compensation for such year. If the employe was a participant in one (1) or more defined contribution plans maintained by the county which were in existence on July 1, 1982, the numerator of the defined contribution fraction shall be adjusted if the sum of the fraction and the defined benefit fraction would otherwise exceed 1.0. Under the adjustment, an amount equal to the product of (1) the excess of the sum of the fractions over 1.0 times (2) the denominator of the fraction will be permanently subtracted from the numerator of the fraction. The adjustment is calculated using the fractions as they would be computed

as of the later of September 30, 1983 or the end of the last limitation year beginning before January 1, 1983. The adjustment also will be made if, at the end of the last limitation year beginning before January 1, 1984, the sum of the fractions exceeds 1.0 because of accruals or additions that were made before the limitation of this system became effective to any plans of the county in existence on July 1, 1982 or because the denominator of the fraction must be reduced to comply with federal law.

12.6. Defined benefit dollar limitation.

The defined benefit dollar limitation is ninety thousand dollars (\$90,000.00). Effective January 1, 1988 and each January 1 thereafter, the ninety thousand dollar limitation shall be adjusted by multiplying such limit by the cost of living adjustment factor prescribed by the Secretary of the Treasury under Internal Revenue Code Section 415(d). The new dollar limitation shall apply to limitation years ending within the calendar year of the date of adjustment.

12.7. Limitation year.

The calendar year. All qualified plans maintained by the county must use the same limitation year. If the limitation year is changed to a different twelve (12) consecutive month period, the new limitation year must begin on a date within the limitation year in which the change is made.

12.8. Compensation.

Compensation, for the purposes of this section, means "participant's compensation," as defined in IRS Code Section 415(c)(3) and the regulations thereunder, including elective contributions made by the county on behalf of the member that are not includable in income under IRS Code Sections 125, 401(h)(2), 402(a)(8), 402(h) or 403(b).

12.9. Testing of additional benefits.

The benefits provided by sections 5.16(3)(a) and 5.17 shall be considered "annual benefits," and shall be included in the county's determination of a member's ability to satisfy the provisions of section 12.1 and Internal Revenue Code Section 415(b)(1)(A). The benefits received under Sections 5.16(3)(a) and 5.17 shall be actuarially converted to an annual benefit in the form of a single life annuity, or, if other than a single life annuity, the form of benefit selected by the member.

SECTION XIII. [ROLLOVER DISTRIBUTION]

13.1. [Generally.]

Notwithstanding any provision of the ordinances to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at any time and in the manner prescribed by the pension board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover; provided, however, that if a distributee elects a direct rollover as to only a portion of his distributable benefit, the amount to be paid in a direct rollover must equal at least five hundred dollars (\$500.00).

13.2. Eligible rollover distribution.

An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one (1) of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Internal Revenue Code Section 401(a)(9); and the portion of any distribution that is not includable in gross income.

13.3. Eligible retirement plan.

An eligible retirement plan is an individual retirement account described in Internal Revenue Code Section 408(a), an individual retirement annuity described in Internal Revenue Code Section 408(b), an individual retirement annuity described in Internal Revenue Code Section 403(a), or a qualified trust described in Internal Revenue Code Section 401(a), that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to a distributee's surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

13.4. Distributee.

A distributee includes a member or former member. In addition, the member's or former member's surviving spouse and the member's or former member's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Internal Revenue Code Section 414(p), are distributees with regard to the interest of the spouse or former spouse.

13.5. Direct rollover.

A direct rollover is a payment by the system to the eligible retirement plan specified by the distributee.

SECTION XIV. [CLAIMS AGAINST BOARD MEMBERS OR EMPLOYE]

14.1. [Generally.]

In any proceeding commenced against or a claim made against a board member or an employe of the system alleging a civil wrong arising out of any act or omission occurring within the scope of his employment or duties under the ordinance, unless a court or a jury or an administrative agency finds that the conduct which gave rise to the claim was intentional, willful or grossly negligent, the system shall indemnify the board member or employe for any damages awarded and court costs and attorneys' fees assessed as part of any final judgment and any attorneys' fees, court costs and litigation expenses incurred by the board member or employe in defending the claim. In any such proceeding, if a majority of the board members who are not a party to the action determine that the conduct which gave rise to the claim was not intentional, willful or grossly negligent, the board members may agree to settlement of the proceeding or claim, and the system shall indemnify the board member or employe for any damages, court costs and attorneys' fees agreed to as part of the settlement and any attorneys' fees, court costs and litigation expenses incurred in defending the claim. The system shall advance reasonable defense costs in an amount determined by the board, subject to repayment if it is subsequently determined that indemnification is not due. This provision shall apply with respect to former board members or employes if the claim relates to acts of the former board member or employe occurring while previously serving the board or system.

14.2. [Written notice of claim.]

A board member or employe shall, within fifteen (15) days after receipt by the board member or employe of service of process or notice of a claim, give written notice of such proceeding or claim to the board and to the county corporation counsel.

14.3. [Insurance against loss or liability.]

The system may insure against loss or liability of board members or employes which may arise as a result of these claims. This insurance shall be carried by a company authorized to provide such coverage in the state.

14.4. [Construction.]

Nothing contained or implied in this provision shall operate, or be construed or applied, to deprive the county or the system, or any other board member or employe, of any immunity or any defense otherwise available.

14.5. [Applicability.]

This section shall apply regardless of whether the board member or employe is sued in his individual or official capacity.

14.6. [Payment of expenses.]

Any fees, costs or other expenses for which the system becomes liable or responsible under this section XIV shall be paid first by any insurance or bonds maintained with respect to the system. Subsequent to any payment by such insurance or bonds, any remaining fees, costs or other expenses for which the system becomes liable or responsible under this section XIV

which are not otherwise covered by the insurance or the bonds shall be paid by the system, to the extent the system provides indemnification for such board member or employe for such claim.

14.7. [Indemnification.]

If the system is obligated to indemnify a board member or employe under this section XIV, but such board member or employe is deceased or incompetent, then the system agrees to indemnify the heirs, estate or legal representative of such board member or employe in accordance with the terms of this section XIV.

LEGISLATIVE HISTORY

All sections effective upon passage and publication unless otherwise indicated.

Ch. 201.24. Created - Sept. 12, 1967, J. Proc. p. 1203--28, published Sept. 28, 1967, effective Dec. 24, 1967.

Section II

201.24(2.4). Amended - Dec. 15, 2011, J. Proc.

201.24(2.7). Amended - Dec. 21, 1995, J. Proc. p. 2171--74, published Jan. 12, 1996, effective Jan. 1, 1996; Sept. 28, 2001, J. Proc.

201.24(2.8). Repealed and recreated - Dec. 17, 1981, J. Proc. p. 2410--14, published Jan. 14, 1982, effective Jan. 1, 1982; Amended - Nov. 2, 2000, J. Proc. p. 1418-39, published Nov. 27, 2000, effective Jan. 1, 2001; July 23, 2009, J. Proc.

201.24(2.8(a)). Created - July 18, 1985, J. Proc. p. 1432--33, published Aug. 22, 1985, effective Sept. 1, 1985.

201.24(2.9). Amended - May 19, 1970, J. Proc. p. 553--57, published May 28, 1970; July 14, 1970, J. Proc. p. 885--86 [as printed June 16, 1970, J. Proc. p. 731], published July 30, 1970; May 11, 1971, J. Proc. p. 722, published May 27, 1971.

201.24(2.10). Amended - Dec. 15, 1988, J. Proc. p. 2189--91, 2199--200, published Jan. 26, 1989; Sept. 26, 1991, J. Proc. p. 1785--88, published Oct. 15, 1991, effective retroactive to July 1, 1985; Nov. 7, 1996, J. Proc. p. 1568--76, published Nov. 26, 1996; Nov. 12, 1996, J. Proc. p. 1569, 1705, published Nov. 26, 1996.

201.24(2.15). Amended - Feb. 21, 2002, J. Proc.

201.24(2.16). Amended - Feb. 21, 2002, J. Proc.

201.24(2.18). Amended - Dec. 17, 2009, J. Proc.; Amended - Feb. 29, 2012.

201.24(2.19). Amended - Oct. 8, 1968, J. Proc. p. 1029--32, published Oct. 17, 1968.

201.24(2.20). Amended - Jan. 16, 1973, J. Proc. p. 10 [as printed Dec. 21, 1972, J. Proc. p. 2240--42], published Jan. 26, 1973; correction - published March 30, 1973, effective upon passage.

Section III

201.24(3.1). Repealed and recreated - May 18, 1989, J. Proc. p. 859--62, published June 22, 1989; Amended - Feb. 2, 2006, J. Proc.; June 25, 2009, J. Proc.

201.24(3.1)[para. 2]. Amended - Nov. 4, 1993, J. Proc. p. 1886--89, published Dec. 17, 1993.

201.24(3.1)(1)(b). Amended - May 24, 2012, J. Proc.

201.24(3.1)(2). Amended - May 24, 2012, J. Proc.

201.24(3.11). Created - Dec. 16, 2010, J. Proc.; Amended - Feb. 29, 2012.

201.24(3.2). Repealed - Nov. 5, 1992, J. Proc. p. 1731--34, published Dec. 4, 1992.

201.24(3.3). Repealed and recreated - Feb. 8, 1972, J. Proc. p. 203--06, published Feb. 17, 1972; Amended - Dec. 16, 2010, J. Proc.; Amended - Feb. 29, 2012.

201.24(3.3)(2). Amended - July 28, 2011, J. Proc.

201.24(3.4). Amended - May 19, 1970, J. Proc. p. 553--57, published May 28, 1970, effective Jan. 1, 1971; Jan. 18, 1971, J. Proc. p. 21--25, published Feb. 3, 1972.

201.24(3.5). Amended - Oct. 8, 1968, J. Proc. p. 1094 [as printed March 19, 1968, J. Proc. p. 344--45], published Oct. 17, 1968; July 15, 1969, J. Proc. p. 887--92, published July 31, 1969; Jan. 18, 1972, J. Proc. p. 21--25, published Feb. 3, 1972; Feb. 27, 1973, J. Proc. p. 409--10, published March 30, 1973, effective upon passage; Correction - published Oct. 26, 1973; Amended - July 28, 2011, J. Proc.

201.24(3.6). Amended - Dec. 12, 1967, J. Proc. p. 1700--02, published Dec. 28, 1967; May 19, 1970, J. Proc. p. 553--57, published May 28, 1970, effective Jan. 1, 1971.

201.24(3.7). Created - Nov. 7, 1996, J. Proc. p. 1568--76, published Nov. 26, 1996, effective Jan. 1, 1997.

Section IV

201.24(4.1). Repealed and recreated - July 15, 1993, J. Proc. p. 1195--1205, published Aug. 13, 1993; Amended - Nov. 3, 2005, J. Proc.; July 23, 2009, J. Proc.; Dec. 17, 2009, J. Proc.; Amended - April 21, 2011; Amended - Feb. 29, 2012.

201.24(4.1)(2). Amended - Sept. 29, 2011, J. Proc.

201.24(4.1)(2)(c). Amended - Nov. 3, 2011, J. Proc.

201.24(4.2). Amended - Oct. 8, 1968, J. Proc. p. 1029--32, published Oct. 17, 1968; Correction - Nov. 4, 1968, J. Proc. p.1478.

201.24(4.25). Created - June 21, 1990, J. Proc. p. 1265--69, 1311--15, published July 20, 1990.

201.24(4.26). Created - April 13, 1995, J. Proc. p. 627--35, published April 27, 1995, effective upon county board and county executive approval of the sale or lease of Doyne Hospital to Froedtert Hospital and/or county board and county executive approval of the discontinuance of Doyne Hospital, whichever comes first. This ordinance shall not be effective if the county is prohibited from discontinuing operation of Doyne Hospital; Amended - Sept. 28, 1995, J. Proc. p. 1591--97, published Nov. 6, 1995; Nov. 2, 1995, J. Proc. p. 1861--66, 1871, published Nov. 10, 1995.

201.24(4.3). Amended - Oct. 8, 1968, J. Proc. p. 1029--32, published Oct. 17, 1968; Dec. 18, 1986, J. Proc. p. 2179--80, published Jan. 22, 1987, effective upon passage and publication but its application in respect to language changes shall not take effect as to any member either presently receiving an accidental disability pension or any member who has sustained an accident occurring prior to the language change whereby eligibility would exist under the former language in the ordinance before the date of publication and language change.

201.24(4.4). Amended - Oct. 8, 1968, J. Proc. p. 1029--32, published Oct. 17, 1968.

201.24(4.5). Repealed and recreated - Dec. 17, 1981, J. Proc. p. 2410--14, published Jan. 14, 1982, effective Jan. 1, 1982; Amended - Sept. 7, 1995, J. Proc. p. 1510--17, published Sept. 21, 1995, effective upon passage and publication and the ratification of the proposed collateral agreement with FNHP; March 21, 1996, J. Proc. p. 307--11, published April 23, 1996; Dec. 17, 2009, J. Proc.

201.24(4.6). Repealed and recreated - July 19, 1984, J. Proc. p. 1073, published Aug. 2, 1984, effective Sept. 1, 1984; Unnumbered paragraph numbered (1) - Feb. 17, 1994, J. Proc. p. 222--37, published April 11, 1994, effective retroactive to Jan. 1, 1987.

201.24(4.6)(1). Renumbered (4.6)(1) from (4.6) - Feb. 17, 1994, J. Proc. p. 222--37, published April 11, 1994, effective retroactive to Jan. 1, 1987.

201.24(4.6)(2). Created - Feb. 17, 1994, J. Proc. p. 222--37, published April 11, 1994, effective retroactive to Jan. 1, 1987.

201.24(4.6)(3). Created - Feb. 17, 1994, J. Proc. p. 222--37, published April 11, 1994, effective retroactive to Jan. 1, 1987.

201.24(4.7). Created - May 30, 1979, J. Proc. p. 1215--17, published June 21, 1979; Renumbered 201.24(4.9) and new (4.7) created - Feb. 17, 1994, J. Proc. p. 222--37, published April 11, 1994, effective retroactive to Jan. 1, 1987.

201.24(4.8). Created - Feb. 17, 1994, J. Proc. p. 222--37, published April 11, 1994, effective retroactive to Jan. 1, 1987.

201.24(4.9). Renumbered from 201.24(4.7) - Feb. 17, 1994, J. Proc. p. 222--37, published April 11, 1994, effective retroactive to Jan. 1, 1987.

Section V

201.24(5.1). Repealed and recreated - Dec. 17, 1981, J. Proc. p. 2410--14, published Jan. 14, 1982, effective Jan. 1, 1982; Amended - June 17, 1999, J. Proc. p. 784--89, published July 7, 1999; Dec. 17, 2009, J. Proc. Amended - September 30, 2010; Amended - Feb. 29, 2012.

201.24(5.1)(2). Amended - July 28, 2011, J. Proc.

201.24(5.1)(4). Amended - Sept. 30, 2010, J. Proc.

201.24(5.15). Created - Nov. 2, 2000, J. Proc. p. 1418-39, published Nov. 27, 2000, effective Jan. 1, 2001. Amended - July 23, 2009, J. Proc.; Dec. 17, 2009, J. Proc.; Amended - September 30, 2010.

201.24(5.15)(Intro. para.).Amended - Sept. 30, 2010, J. Proc.; July 28, 2011, J. Proc.

201.24(5.16). Created - Nov. 2, 2000, J. Proc. p. 1418-39, published Nov. 27, 2000, effective Jan. 1, 2001; Amended - July 23, 2009, J. Proc.; Dec. 20, 2012, J. Proc.

201.24(5.17). Created - Sept. 28, 2001, J. Proc.

201.24(5.31). Created - Feb. 19, 1987, J. Proc. p. 186--87, published March 19, 1987, effective upon passage and publication and on the date that any salary adjustment for 1987 for nonrepresented employees is to take effect, but its future application involving nonrepresented officers and employees shall not take effect as to any member either presently receiving an accidental disability pension under section 201.24(5.3) nor as to any member who has sustained an accident occurring prior to the language change accomplished within section 201.24(4.3) by adoption of an ordinance on December 18, 1986, whereby eligibility would have existed under the former language in such ordinance, before the date of publication and language change.

201.24(5.7). Amended - July 15, 1969, J. Proc. p. 887--92, published July 31, 1969; May 19, 1970, J. Proc. p. 553--57, published May 28, 1970, effective Jan. 1, 1971; July 14, 1970, J. Proc. p. 885--86, published July 30, 1970; Feb. 8, 1972, J. Proc. p. 203, published Feb. 17, 1972.

201.24(5.8). Created - May 19, 1970, J. Proc. p. 553--57, published May 28, 1970, effective as indicated.

201.24(5.9). Created - July 14, 1970, J. Proc. p. 885 [as printed June 16, 1970, J. Proc. p. 731-32], published July 30, 1970, republished Aug. 13, 1970.

201.24(5.10). Created - March 21, 1996, J. Proc. p. 292--98, published April 23, 1996.

Section VI

201.24(6.1). Created - July 15, 1969, J. Proc. p. 887--92, published July 31, 1969; Amended - Feb. 27, 1973, J. Proc. p. 409--10, published March 30, 1973, effective upon passage; correction - published Oct. 26, 1973.

201.24(6.2). Created - Sept. 12, 1967, J. Proc. p. 1203--28, published Sept. 28, 1967, effective Dec. 24, 1967; Renumbered 201.24(6.3) and new (6.2) created - July 15, 1969, J. Proc. p. 887--92, published July 31, 1969; Amended - Dec. 18, 1997, J. Proc. p. 1904--12, published Jan. 20, 1998.

201.24(6.3). Renumbered from 201.24(6.2) and amended - July 15, 1969, J. Proc. p. 887--92, published July 31, 1969.

201.24(6.4). Created - July 15, 1969, J. Proc. p. 887--92, published July 31, 1969; Amended - May 11, 1971, J. Proc. p. 722--24, published May 27, 1971; Feb. 8, 1972, J. Proc. p. 202--03, published Feb. 17, 1972; Jan. 16, 1973, J. Proc. p. 10 [as printed Dec. 21, 1972, J. Proc. p. 2239], published Jan. 26, 1973, effective upon passage; Feb. 27, 1973, J. Proc. p. 409--10, published March 30, 1973, effective upon passage; Correction - published Oct. 26, 1973; Amended - Dec. 18, 1997, J. Proc. p. 1904--12, published Jan. 20, 1998; June 17, 1999, J. Proc. p. 784--89, published July 7, 1999.

201.24(6.5). Created - May 19, 1970, J. Proc. p. 553--57, published May 28, 1970; Amended - Jan. 16, 1973, J. Proc. p. 10 [as printed Dec. 21, 1972, J. Proc. p. 2240--42], published Jan. 26, 1973, effective upon passage; Feb. 27, 1973, J. Proc. p. 409--10, published March 30, 1973, effective upon passage; Correction - published Oct. 26, 1973.

Section VII

201.24(7.1). Amended - Oct. 8, 1968, J. Proc. p. 1094 [as printed March 19, 1968, J. Proc. p. 344--45], published Oct. 17, 1968; July 15, 1969, J. Proc. p. 887--92, published July 31, 1969; May 19, 1970, J. Proc. p. 553--57, published May 28, 1970; May 11, 1971, J. Proc. p. 722--24, published May 27, 1971; Feb. 8, 1972, J. Proc. p. 201--02, published Feb. 17, 1972; Jan. 16, 1973, J. Proc. p. 10 [as printed Dec. 21, 1972, J. Proc. p. 2240--42], published Oct. 26, 1973, effective upon passage; Nov. 9, 1978, J. Proc. p. 2440--41, published Dec. 7, 1978; Nov. 7, 1996, J. Proc. p. 1566--68, published Nov. 26, 1996, effective Jan. 1, 1997; Dec. 18, 1997, J. Proc. p. 1904--12, published Jan. 20, 1998; Nov. 3, 2005, J. Proc.

201.24(7.2). Amended - Oct. 8, 1968, J. Proc. p. 1094 [as printed March 19, 1968, J. Proc. p. 344--45], published Oct. 17, 1968.

Section VIII

201.24(8.1). Amended - Feb. 23, 2004, J. Proc.

201.24(8.2). Amended - Feb. 23, 2004, J. Proc.; March 15, 2012, J. Proc.; June 28, 2012, J. Proc.

201.24(8.2(a)). Amended - Feb. 16, 1984, J. Proc. p. 168--69, published March 1, 1984.

201.24(8.2(b)). Amended - Dec. 11, 1973, J. Proc. p. 2284--85 [as printed April 12, 1973, J. Proc. p. 609--10], published Jan. 18, 1974; March 6, 1979, J. Proc. p. 474 [as printed Feb. 13, 1979, J. Proc. p. 247], published March 29, 1979; Feb. 16, 1984, J. Proc. p. 168--69, published March 1, 1984.

201.24(8.2(c)). Amended - April 15, 1974, J. Proc. p. 780--81, published May 1, 1985; Feb. 16, 1984, J. Proc. p. 168--69, published March 1, 1984.

201.24(8.5). Amended - Feb. 23, 2004, J. Proc.

201.24(8.8). Amended - Feb. 23, 2004, J. Proc.

201.24(8.11). Amended - July 28, 2005, J. Proc.

201.24(8.17). Amended - May 11, 1971, J. Proc. p. 722--24, published May 27, 1971; Nov. 5, 1992, J. Proc. p. 1731--34, published Dec. 4, 1992. Feb. 23, 2004, J. Proc.

201.24(8.18). Amended - Dec. 12, 1967, J. Proc. p. 1700--02, published Dec. 28, 1967; Jan. 16, 1973, J. Proc. p. 10 [as printed Dec. 21, 1972, J. Proc. p. 2240--42], published Oct. 26, 1973, effective upon passage.

201.24(8.19). Amended - Jan. 16, 1973, J. Proc. p. 10 [as printed Dec. 21, 1972, J. Proc. p. 2240--42], published Oct. 26, 1973, effective upon passage.

201.24(8.20). Created - Jan. 16, 1973, J. Proc. p. 9 [as printed Dec. 21, 1972, J. Proc. p. 2237--38], published Jan. 26, 1973, effective upon passage.

201.24(8.21). Created - March 19, 1987, J. Proc. p. 330--31, published April 23, 1987, effective upon passage and publication and shall be retroactive to the applicable dates of respective collective bargaining agreements.

201.24(8.22). Created - July 28, 2005, J. Proc.

Section IX

201.24(9). [Introductory Paragraph]. Amended - Nov. 5, 1992, J. Proc. p. 1731-34, published Dec. 4, 1992.

201.24(9.1). Repealed and recreated - March 19, 1968, J. Proc. p. 402--04, published March 28, 1968; Amended - May 11, 1971, J. Proc. p. 725--26, published May 27, 1971; Feb. 27, 1973, J. Proc. p. 409--10, published Oct. 26, 1973, effective upon passage.

201.24(9.3). Amended - Oct. 8, 1968, J. Proc. p. 1095--97, published Oct. 17, 1968; Jan. 16, 1973, J. Proc. p. 10 [as printed Dec. 21, 1972, J. Proc. p. 2240--42], published Oct. 26, 1973, effective upon passage.

201.24(9.4). Amended - April 15, 1975, J. Proc. p. 779--81, published May 1, 1975.

201.24(9.5). Amended - Nov. 5, 1992, J. Proc. p. 1731--34, published Dec. 4, 1992.

Section XI

201.24(11.1). Amended - July 15, 1969, J. Proc. p. 887--92, published July 31, 1969; May 11, 1971, J. Proc. p. 720--21, published May 27, 1971; Jan. 16, 1973, J. Proc. p. 10 [as printed Dec. 21, 1972, J. Proc. p. 2240--42], published Oct. 26, 1973, effective upon passage.

201.24(11.1)(Fourth para.). Created - Dec. 16, 2010, J. Proc.

201.24(11.2). Amended - May 11, 1971, J. Proc. p. 722--24, published May 27, 1971.

201.24(11.4). Repealed and recreated - Jan. 16, 1973, J. Proc. p. 9 [as printed Dec. 21, 1972, J. Proc. p. 2235--37], published Jan. 26, 1973, effective retroactive to such date as may be agreed upon by the county pension board and the City of Milwaukee pension board.

201.24(11.4). [Introduction]. Amended - May 7, 1974, J. Proc. p. 846--48, published May 23, 1974, effective upon passage.

201.24(11.4(a)). Amended - Feb. 17, 1983, J. Proc. p. 337--39, published March 3, 1983, effective retroactive to Jan. 1, 1982.

201.24(11.4(a)1). Amended - Feb. 17, 1983, J. Proc. p. 337--39, published March 3, 1983, effective retroactive to Jan. 1, 1982.

201.24(11.4(a)4). Repealed and recreated - May 7, 1974, J. Proc. p. 846--48, published May 23, 1974, effective upon passage.

201.24(11.4(a)5). Repealed and recreated and new 11.4(a)5 renumbered from 11.4(a)6 - May 7, 1974, J. Proc. p. 846--48, published May 23, 1974, effective upon passage.

201.24(11.4(a)6). Renumbered 11.4(a)5 - May 7, 1974, J. Proc. p. 846--48, published May 23, 1974, effective upon passage.

201.24(11.4(a)7). Renumbered 11.4(b) - May 7, 1984, J. Proc. p. 846--48, published May 23, 1974, effective upon passage.

201.24(11.4(b)). Renumbered from 11.4(a)7 - May 7, 1974, J. Proc. p. 846--48, published May 23, 1974, effective upon passage.

201.24(11.4(c)). Created - Feb. 17, 1983, J. Proc. p. 337--39, published March 3, 1983, effective retroactive to Jan. 1, 1972.

201.24(11.4(d)). Created - March 21, 1996, J. Proc. p. 292--98, published April 23, 1996.

201.24(11.41). Created - Nov. 7, 1991, J. Proc. p. 1987--89, published Nov. 21, 1991; Amended - March 21, 1996, J. Proc. p. 292--98, published April 23, 1996.

201.24(11.6). Amended - Nov. 5, 1992, J. Proc. p. 1731--34, published Dec. 4, 1992.

201.24(11.9). Amended - May 11, 1971, J. Proc. p. 722--24, published May 27, 1971.

201.24(11.10). Created - July 15, 1969, J. Proc. p. 887--92, published July 31, 1969.

Section XII

Section XII [annual benefits] 201(12.1) through (12.8). Created - Feb. 17, 1994, J. Proc. p. 222--37, published April 11, 1994, effective retroactive to Jan. 1, 1987.

201.24(12.1)(1). Amended - Nov. 2, 2000, J. Proc. p. 1418-39, published Nov. 27, 2000, effective Jan. 1, 2001.

201.24(12.2)(3). Created - Dec. 16, 2010, J. Proc.

201.24(12.3). Amended - Sept. 28, 2001, J. Proc.

201.24(12.3)(1). Amended - Nov. 2, 2000, J. Proc. p. 1418-39, published Nov. 27, 2000, effective Jan. 1, 2001

201.24(12.4). Amended - Sept. 28, 2001, J. Proc.

201.24(12.8). Amended - Sept. 28, 2001, J. Proc.

201.24(12.9). Amended - Nov. 2, 2000, J. Proc. p. 1418-39, published Nov. 27, 2000, effective Jan. 1, 2001; Repealed and recreated - Sept. 28, 2001, J. Proc.

Section XIII

Section XIII [rollover distribution] 201(13.1) through (13.5). Created - Feb. 17, 1994, J. Proc. p. 222--37, published April 11, 1994, effective retroactive to Jan. 1, 1993.

Section XIV

Section XIV [claims against board members or employee] 201(14.1) through (14.7). Created - Feb. 17, 1994, J. Proc. p. 222--37, published April 11, 1994.

HISTORY NOTE

(Ord. No. 09-10, § 1, 6-25-09; Ord. No. 09-11, §§ 1—4, 7-23-09; Ord. No. 09-17, §§ 3—7, 12-17-09; Ord. No. 10-10, §§ 3—6, 12-16-10; Ord. No. 11-7, § 1, 4-21-11; Ord. No. 11-12, §§ 1—3, 7-28-11; Ord. No. 11-13, §§ 1—4, 7-28-11; Ord. No. 11-15, § 1, 9-29-11; Ord. No. 11-18, § 1, 11-3-11; Ord. No. 11-22, § 1, 12-15-11; Ord. No. 12-7, § 1, 3-15-12; Ord. No. 12-12, § 13, 5-24-12; Ord. No. 12-16, § 1, 6-28-12; Ord. No. 13-1, § 1, 12-20-12)

APPENDIX B

RULES OF THE EMPLOYEES' RETIREMENT SYSTEM*

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* Editor's note-Printed herein are the rules and regulations of the employe's retirement system of the county, as adopted by the pension board. Amendments to the rules and regulations are indicated in the Legislative History following this appendix. The absence of a history indicates that the provision remains unchanged from the original. Obvious misspelling errors have been corrected without notation. For stylistic purposes, a uniform system of headings, catchlines, capitalization, citation to state statutes, and expression of numbers in text has been used to conform to the Code of Ordinances. Additions made for clarity are indicated by brackets. The employes' retirement system adopted by the county board is printed in chapter 201, section 201.24, of the Code.

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- 706. Pension benefit calculations after January 1, 2001--Nonrepresented deputy sheriff employes whose initial membership began prior to July 1, 1995.
- 707. Pension benefit calculations after January 1, 2001--Non-deputy sheriff employes whose initial membership began on or after January 1, 1982.
- 708. Pension benefit calculations after January 1, 2002--Nonrepresented deputy sheriffs whose initial membership began on or after July 1, 1995.
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- 710. Dual eligibility for benefit enhancements.
- 711. Back DROP pension benefit.
- 712. Benefit limitation.
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- 901. Contribution based on gross salary.
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- 1001. Action of board final after one year.
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- 1005. Location of office.
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- 1008. Increase in members' contributions.
- 1009. Social security estimate for survivor's benefit offset.
- 1010. Reports by accidental disability pensioners.
- 1011. Eligibility investigations.
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- 1012(a). Accidental and ordinary disability/worker's compensation (W/C) offset.
- 1013. Optional forms of payment.
- 1014. Actuarial equivalent.
- 1015. Forfeiture rule.
- 1016. Claims appeal procedure.
- 1017. Domestic relations orders.
- 1018. Offset for worker's compensation benefits.
- 1019. Determination of earnable compensation and service.
- 1020. Election of employee members of board.
- 1021. Lump sum distribution denied.
- 1023. Determination of final average salary in reciprocity cases.
- 1024. County-City transfers.
- 1025. Accidental disability retirement pensioner reexamination.
- 1026. Appeal procedures related to disability retirement determinations.
- 1027. Disability pension start date.
- 1028. Ordinary disability retirement pensioner reexamination.

- 1030. Termination benefit funding.
- 1031. Sick pay benefit--Single payment.
- 1032. Effective dates--Sick pay benefits.
- 1033. Waiver of benefits.
- 1034. Election of retiree member of board.
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- 1037. Default procedure for eligible rollover distributions.
- 1038. Manner of benefits payments.
- 1039. Information furnished by member.
- 1040. Approval of retirements.
- 1041. Election of chairperson and vice chairperson.
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- 1049. Retirement Effective Date.
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APPENDIX B -RULES OF THE EMPLOYES' RETIREMENT SYSTEM

PENSION BOARD EMPLOYES' RETIREMENT SYSTEM
OF THE COUNTY OF MILWAUKEE

RULES AND REGULATIONS ADOPTED PURSUANT TO SECTION 7(6) OF THE
RETIREMENT ACT AS SUBSEQUENTLY AMENDED BY SECTION 201.24,
SUBSECTION 8.6, OF THE GENERAL ORDINANCES OF MILWAUKEE COUNTY

DEFINITIONS

101. Full-time employe.

A full-time employe is one whose salary is wholly or partly paid by the county, whose name appears on the county payroll, and who is employed on a basis of at least twenty (20) pay periods per annum and in such pay periods is employable on every working day if on a monthly basis, or for two thousand (2,000) or more hours per annum if on an hourly basis, or for two hundred fifty (250) or more days per annum if on a daily basis, provided, however, that all elected officials shall be considered full-time employes.

102. Part-time employe.

A part-time employe is one who is employed on a basis of regular stated periods of less than full normal working hours.

103. Seasonal employe.

A seasonal employe is one who is employed on a basis of seasonal periods of less than ten (10) months per annum or during less than twenty (20) pay periods per annum regardless of the number of actual hours or days of employment.

104. Intermittent employe.

An intermittent employe is one who is employed for irregular periods of less than thirty (30) days' duration.

105. Emergency appointment employe.

An emergency appointment employe is one who is appointed to a position in the classified service and who under the rules of the civil service commission has no eligibility for regular appointment to the position which he occupies.

106. Deferred retirement allowance.

A deferred retirement allowance is one which commences at the attainment of age sixty (60), and is payable under the provisions of section 4.5 of the amended Retirement Act.

107. Retirement Act.

Retirement Act shall mean chapter 201, Laws of 1937 as amended.

108. Use of the word "system."

The use of the word "system" in the rules hereinafter stated shall refer to the employees' retirement system of the County of Milwaukee unless qualified by the word "other" which shall refer to all other systems to which the State of Wisconsin or any municipal subdivision thereof contributes public funds.

109. Use of the masculine pronoun.

The use of the masculine pronoun hereinafter shall include the feminine.

110. Earned income.

Earned income is any and all compensation for personal services, including but not limited to commissions, salaries, wages, bonuses, tips, vacation allowances, premiums and other cash benefits or payments in property, reserved earnings, assigned earnings or earnings to which the retired member is entitled but has not yet received.

111. Dependent father or mother.

Section 6.1 of the Retirement Act provides a survivor pension to the "dependent father or mother" of an eligible deputy sheriff. For purposes of section 6.1 of the Retirement Act, the father or mother of a deputy sheriff shall be treated as a dependent if (1) the deputy sheriff claims the parent as a dependent on his or her IRS Form 1040, or (2) the parent resides in the deputy sheriff's household.

112. Final average salary.

- (a) Any nonrepresented employe, or any employe represented by a collective bargaining unit which has agreed to the provisions of section 2.8(c), shall have his final average salary calculated in the following manner:
 - (1) If a member is hired before January 1, 1982, final average salary shall equal the average of the member's compensation for the three (3) consecutive years of service during which compensation was highest, including all earnable compensation.
 - (2) If a member is represented by a collective bargaining unit and was hired after January 1, 1982, or if a member is a nonrepresented employe who was hired after January 1, 1982 but before September 1, 1985, final average salary prior to January 1, 2003 shall equal the average of the member's compensation for the five (5) consecutive years of service during which compensation was highest, including all earnable compensation.
 - (3) If a member is a nonrepresented employe who was hired after September

1, 1985, final average salary prior to January 1, 2003 shall equal the average of the member's compensation, including only straight time hours paid and excluding overtime hours paid, for the five (5) consecutive years of service during which compensation was the highest.

(4) After January 1, 2003, final average salary shall equal the average of the member's compensation for the three (3) consecutive years during which compensation was the highest.

[A] For the purposes of this rule 112(a)(4), "compensation" includes all earnable compensation, if the employe is represented by a collective bargaining unit, or if the member is a nonrepresented employe who was hired before September 1, 1985.

[B] For the purposes of this rule 112(a)(4), "compensation" includes only compensation for straight time hours, excluding any overtime hours, if the member is a nonrepresented employe who was hired on or after September 1, 1985.

(b) For qualifying members, final average salary shall include the "bonus" described in section 5.15(2).

MEMBERSHIP

201. Effect of rules and regulations on employes who were on the county payroll on April 29, 1948.

The membership of any employe who became a member of the system under the standing resolutions in effect at the time he became a member shall not be affected by any change in the rules affecting his eligibility to membership. Similarly any employe who had previously been denied membership under the standing resolutions in effect through April 29, 1948 shall have the option to become a member rather than be required to do so.

202. Optional membership.

- (1) Employes whose salaries are paid in part by the State of Wisconsin.
- (2) All interns, students and trainees employed on non-civil service positions.
- (3) All resident physicians employed on non-civil service positions.
- (4) Seasonal employees.
 - (a) Seasonal employees initially employed by the County on or after January 1, 2014, or seasonal employees whose service credit was terminated and return to County employment on or after January 1, 2014, are excluded from Optional Membership and shall be denied membership in ERS under Rule 203.

- (b) Optional Membership includes seasonal employees who are members of ERS or OBRA on January 1, 2013, or are hired by the County as seasonal employees for the first time, or rehired after terminations of service credit, during the 2013 calendar year.
- (c) Any seasonal employee who is a member of ERS or OBRA as of January 1, 2013, or is hired by the County as a seasonal employee during the 2013 calendar year, will be provided a final election opportunity. A member shall make a final election within sixty (60) days after the later of March 15, 2013 or the first day of the member's employment after January 1, 2013. If the individual is not employed by the County as a seasonal employee during 2013, but was a member of ERS or OBRA as of January 1, 2013, the individual shall have a final election opportunity at the time the individual returns to County employment as a seasonal employee, unless the individual's service credit was terminated prior to his or her return to County employment due to absence from County employment for five years pursuant to Ordinance section 203(4.5) or Ordinance section 201.24(2.11). In this final election, a seasonal employee shall have the opportunity to permanently elect into ERS. If elected, the seasonal employee shall remain an ERS member until the member withdraws from the system. If a seasonal employee does not affirmatively elect into ERS during the employee's election period, the employee shall be permanently enrolled in OBRA for the duration of the employee's County employment unless and until the employee commences employment covered by ERS.
 - (i) No Service Credit Transfer. Regardless of a seasonal employee's final election, all service credit previously earned by a seasonal employee shall remain in the system in which it was earned.
 - (ii) Minors. Any minor who makes a final election pursuant to this Rule shall have a parent or guardian consent to the final election.
- (5) Part-time employees whose part-time monthly salary is at least equal to fifty (50) percent of the full-time monthly rate, with the exception of part-time "regular appointees" hired at least on a half time basis who shall become mandatory members.
- (6) Persons who previously have exercised their option not to become members and who pursuant to section 3(3) of the Retirement Act request to become members, and pass any medical examination required thereunder.
- (7) Persons holding emergency appointments, except retired members of the county retirement system, upon their return to county employment.

The option to become a member may be exercised at any time but may not be thereafter revoked except by withdrawal from service and the retirement system. The employee who exercises an option set forth above shall be considered a member from the first of the month next

following his or her date of application for membership. An employe who purchased prior service credit pursuant to Rule 207 shall be considered a member as specified in Rule 207. A seasonal employee who is eligible for, and provided, a final election right under Rule 202(4)(c) shall no longer have an option to become a member under this paragraph after the seasonal employee's final election period.

203. Denial of membership.

The following classes of employes shall not be eligible for membership in the retirement system:

- (1) Members of boards and commissions, except members of the county board of supervisors.
- (2) Physicians paid on the payroll on a per call or fee basis unless said persons previously held a position which permitted membership in the retirement system. In the event such a position was held by said persons, they shall be given service credit as follows:
 - (b) On a per call basis, each call shall be considered one-half hour and the total number of annual calls divided by two (2) will give the total number of hours on which the service credit will be figured as "X" hours over two thousand eighty (2,080) hours.
 - (c) On a clinical hour basis, the number of clinical hours over two thousand eighty (2,080) hours shall determine the annual service credit.
- (3) Part-time employes whose part-time monthly salary is less than fifty (50) percent of the full-time rate.
- (4) Noncivil service persons on county relief or work program.
- (5) Any employe in a teaching position eligible to membership in the state retirement system established by ss. 42.20-42.54, Wis. Stats., unless he became a member of the employes' retirement system of the County of Milwaukee prior to August 1, 1951.
- (6) Seasonal employees, unless considered optional members pursuant to Rule 202(4).

204. Mandatory membership.

All employes not specifically covered by rules 201, 202, 203 shall become members of the system as a condition of their employment.

205. Withdrawal of fifty (50) percent of annuity savings terminates membership.

In case an employe upon termination of active service shall withdraw more than fifty (50)

percent of his annuity savings fund, he shall cease to be a member of the system and shall be asked to withdraw his entire balance. No interest shall be credited to his account on any such balance left on deposit.

206. Employees becoming eligible for membership under the provisions of chapter 575, Laws of 1949.

Any employe who was denied membership by reason of the fact that he had been contributory to, a participant in or a beneficiary of a pension fund in operation in the state or any municipal subdivision thereof and who by reason of the enactment of chapter 575, Laws of 1949 is now eligible to become a member, shall have the option to become such member. Such membership shall commence after application therefor by the employe and annuity deductions from his pay.

207. Buy in for optional employes.

Effective for buy in applications filed on or after October 1, 1998 and before January 1, 2007, any current employe of the county (as defined in section 2.4 of the Retirement Act) who was eligible to elect to participate in the system for a prior period of employment with the county in a capacity for which participation in the system was optional (as defined in Rule 202), but who failed to elect to participate in the system for such prior period of employment, may elect to participate in the system for such period of employment pursuant to the following rules:

- (a) *Can only buy credit for periods prior to enrollment form.* Employes can only buy credit for periods prior to completing a system enrollment form. If an employe has multiple periods of employment with the county or opts in and out of the system, then he or she can only buy credit under Rule 207 for periods of employment prior to completing his or her first enrollment form.
- (b) *Buy in amount.* Employes can elect one (1) of the following options:
 - (i) *Purchase only pre-1992 credit.* Under this option, the employe can purchase credit under the system for periods of optional employment prior to 1992 (or the date the employe completed an enrollment form, if earlier). The employe must pay to the system an amount equal to: (1) six (6) percent of his wages earned with the county during his entire period of optional employment prior to 1992 (or the date the employe completed an enrollment form, if earlier), plus (2) interest, calculated through the date of the election, that would have been earned on this amount if the employe had contributed to the system six (6) percent of his wages earned with the county at the time he was employed in such optional capacity. The employe shall continue to participate in the OBRA 1990 Retirement System of the County of Milwaukee (the "OBRA System") for post-1991 employment, to the extent eligible.
 - (ii) *Purchase all optional credit.* Under this option, the employe can purchase credit under the system for all periods of optional employment (prior to the date the employe completed an enrollment form). The employe must

pay to the system an amount equal to: (1) six (6) percent of his wages earned with the county during this entire period of optional employment prior to completing an enrollment form, plus (2) interest, calculated through the date of the election, that would have been earned on this amount if the employe had contributed to the system six (6) percent of his wages earned with the county at the time he was employed in such optional capacity, minus (3) the present value of the employe's pension benefit under the OBRA System as of the date of the buy in election (based on the actuarial factors used to calculate lump sum payment under the OBRA System). In order to elect this option, the employe must affirmatively elect to waive all rights to his or her pension benefits in the OBRA System earned through the date of the election. The OBRA System will transfer to the system the present value of the employe's pension benefit under the OBRA System. This option shall be effective as of October 1, 1998 or the date the Internal Revenue Service approves this provision, whichever is later.

Interest for purposes of this subsection (b) shall equal the aggregate rate of return earned by the system's assets during each applicable year, as determined by the board.

(c) *Form of payment allowed.* If an employe elects to participate in the system pursuant to this Rule 207, the employe shall contribute the required amount (as described in subsection (b)) to the system in one (1) of the following forms:

(i) *Lump sum.* A single lump sum within ninety (90) days.

(ii) *Equal installments.* Alternatively, an employe may elect to pay the buy in amount to the system in up to four (4) equal, annual installments if the total buy in amount equals or exceeds two thousand five hundred dollars (\$2,500.00). The following rules and conditions shall apply to installment payments:

- No interest on installment schedule. Additional interest shall not be charged on the installment schedule.

- Payments credited to suspense account. An employe's installment payments will be credited to a suspense account in the system until all scheduled payments are made.

- Contingent service credit. Credit purchased through an installment schedule is contingent on the employe making all scheduled installment payments, and no credit is awarded until an employe makes all required payments. If an employe does not make all required installment payments to the system by the date his or her pension is to commence, then the board will refund the employe's prior buy in contributions to the employe (and to the OBRA System to the extent it transferred assets pursuant to subsection (b)(ii)), and the employe will not receive any service credit under the system pursuant to the buy in arrangement. Notwithstanding the foregoing, if an employe ceases making scheduled installment payments due to his or her death or total disability (pursuant to the ordinary disability standard applicable to the employe under

section 4.4), then the employe shall receive partial service credit under the system to the extent of the amount he or she (and the OBRA System) has paid to the system (with credit based on earliest service first). If an employe waives his or her OBRA System credit under subsection (b)(ii) above, and then fails to make all scheduled installment payments by the time his or her pension commences, the waived credit under the OBRA System shall be reinstated to the extent that the buy in contribution is refunded to the OBRA System under this subsection (c)(ii).

- Options if payments outstanding as of pension commencement date. If an employe desires to begin receiving his or her pension at a time when he or she still owes payments under an installment schedule (and the employe is not totally disabled), then the employe must either (1) pay the outstanding installments in a single lump sum (and begin receiving the pension with full buy in credit), (2) not pay the outstanding installment payments and begin receiving his or her pension (without any buy in credit, but with a refund of prior buy in contributions), or (3) defer his or her pension until all installment payments are made.

- (d) *Compliance with section 415.* An employe's benefit purchased pursuant to this Rule 207 cannot, together with any other pension benefit to which the employe is entitled under the system, exceed the limit described in section 415(b) of the Internal Revenue Code (as described in section XII of the Retirement Act).
- (e) *No partial purchases.* If an employe elects to participate in the system for prior periods of employment pursuant to this Rule 207, then the employe must contribute for either (i) all optional employment (prior to the enrollment form) or (ii) all pre-1992 optional employment (prior to the enrollment form), but only to the extent the contribution does not cause the employe to exceed the Code section 415(b) limit.
- (f) *Cannot buy forfeited credit under Rule 207.* Employes cannot utilize the buy in arrangement under Rule 207 to buy credit that has been forfeited under section 2.11.
- (g) *Active employe status.* In order to be eligible to commence a buy in, a person must be actively employed with the county. However, if an active employe begins buying in under an installment schedule and then terminates employment, the former employe can continue making installment payments.
- (h) *Applicable benefit rate.* The benefit rate under the system is based on the date "continuous membership" began in the system. For those employes who buy in under Rule 207, continuous membership will be deemed to begin as of the first date of optional employment for which an employe buys credit under Rule 207 (the "retroactive buy in date"). However, if an employe was initially nonoptional and participating in the system prior to transferring to optional employment, then continuous membership will be deemed to commence as of the date he or she commenced nonoptional employment. Notwithstanding the foregoing, collectively bargained employes who buy in under Rule 207 shall receive the greater of: (i) the benefit rate specified in the Retirement Act for employes hired on the retroactive buy in date in the same category of employment, or (ii) the rate

specified in the collective bargaining agreement for employees hired on the retroactive buy in date in the same category of employment.

- (i) *No buy in permitted after January 1, 2007.* 2007. Effective January 1, 2007, no employe shall be permitted to file an application to participate in the system pursuant to this Rule 207. However, an employe who has filed a buy in application prior to January 1, 2007 shall be permitted to complete his or her buy in pursuant to the requirements of this Rule 207.

SERVICE CREDITS

301. Full-time employe.

- (a) Full-time employe creditable service shall be expressed in years and such fractions thereof as the board determines. Service for a member who is an employe on a full-time twelve-month basis shall be credited on the basis of a twelve-month year, and all credits for partial months shall be based on a thirty-day month. Such credits shall be stated in terms of whole or decimal parts of a year so that each year shall equal 1.00000 years, each month shall equal .08333 years and each day shall equal .00277 years.
- (b) Absences resulting from separations, terminations, layoffs, resignations or retirements shall not be allowed as creditable service. Absences due to other causes totaling thirty (30) days or less within any calendar year can be allowed as creditable service. The employe shall receive no credit for absences in a calendar year in which he receives no compensation.

302. Part-time employe.

- (a) Service for a member who works less than a full year or who is less than full-time shall be credited on a prorated basis to full-time in accordance with rule 301.
- (b) If an employe became a member under the standing resolutions which were in effect prior to April 29, 1948, but would not be eligible for membership under the rules and regulations in effect on April 29, 1948, then his service credit shall be calculated in accordance with standing rules and regulations.
- (c) If employe became a member under the standing resolutions and is eligible for membership under the rules and regulations in effect on April 29, 1948, then his membership service credits shall be adjusted so that his entire membership service credit will conform to what he would have received had the rules and regulations been in effect for his entire period of employment.
- (d) In the event special situations arise which cannot be definitely determined in accordance with paragraphs (b) and (c) above, such cases shall be brought to the attention of the pension board and by such board determined on the basis of the merits of the particular cases.

303. Teacher, ten-month basis.

- (a) Services for a teacher employed on a ten-month basis shall be credited on the basis of a ten-month year. In no event shall more than one (1) year's credit be allowed for all service performed in one (1) calendar year.
- (b) Absences, resulting from separations, terminations, layoffs, resignations or retirements shall not be allowed as creditable service. Absences due to other causes shall be allowed up to thirty (30) days for any one (1) year.

304. Employees receiving worker's compensation.

Employees receiving worker's compensation for injuries received while in county service shall receive service credit for the period of time not otherwise credited upon proper application therefor to the secretary. The amount of service credit awarded pursuant to this rule 304 shall be based on hours reported to the board by the county. Service credit shall not be awarded pursuant to this rule 304 for periods after a member (1) terminates employment with the county, or (2) begins receiving a pension under the system.

305. Service not credited.

Service shall not be creditable under the following conditions:

- (a) During periods in which the employe is paid only on a fee or commission basis or other than a regular hourly, daily or monthly basis.
- (b) For more than one (1) position if the employe is receiving credit for service in one (1) position in which his normal hours of employment are forty (40) hours per week or more.
- (c) During periods in which the employe has elected not to be a member.
- (d) During periods for which the employe earns service credit in the OBRA System or for which the employe's employment would not qualify an employe for membership in ERS.

[Rule Amended September 2013]

306. Relief work program employment.

The board may allow as creditable service the time during which an employe was or is assigned to any emergency employment project or work of a similar nature in the service of the United States of America if he can produce an affidavit from his department head to the effect that he was so assigned and was an employe immediately prior to such assignment and was duly excused or granted leave of absence from his regular employment for such service, provided that the time allowed subsequent to January 1, 1938 shall not exceed a total of three (3) years without return to employment.

307. CETA and EEA employment.

- (a) Creditable pension service shall include service performed by a member while the member was employed by the county under the federally-funded Comprehensive Employment and Training Act ("CETA") or Emergency Employment Act ("EEA") programs in which the county participated.
- (b) Subsection (a) shall only apply to an individual who became a member of ERS after such individual had worked for the county through the CETA or EEA programs.
- (c) Creditable pension service granted under subsection (a) shall only retroactively count as creditable pension service, retroactive to a retired member's retirement date, for the sole purpose of a retired member receiving retroactive retirement benefits. Creditable pension service granted under this rule shall not retroactively count as creditable pension service for the purpose of a member's qualifying to retroactively receive the paid health insurance provided under Chapter 17 of the Milwaukee County Code of General Ordinances. A member granted creditable pension service under subsection (a) who receives a retroactive retirement benefit under this subsection (c) shall not receive interest on any retroactive pension benefit payment awarded.

INTEREST CREDITED TO ANNUITY SAVINGS ACCOUNT

401. Interest credited prior to complete withdrawal or pension commencement.

- (a) *Membership account.* Except as provided in rule 402(a), interest on an employee's membership account shall be credited as of the December 31 of each year on the balance on deposit from January 1 to December 31, inclusive, of such year at the interest rate established by the board.
- (b) *Savings account.* Except as provided in rule 402(b), interest on an employee's savings account shall be credited as of the December 31 of each year and shall be compounded semi-annually based on the account balances as of the January 1 and July 1 of such year and by using the interest rate established by the board.

402. Interest credited in year of complete withdrawal or pension commencement.

- (a) *Membership account.* If an employee (or his beneficiary) withdraws the remaining balance of his membership account or begins receiving a monthly pension from the system before the December 31 of a year, then interest on the membership account shall be credited for such year through the date of the complete withdrawal or pension commencement at the interest rate established by the board, and shall be calculated based on the balance of the membership account as of the day immediately preceding the date of the complete withdrawal or pension commencement, whichever is applicable. No additional interest will be credited to the membership account after the date of the complete withdrawal or pension commencement.

- (b) *Savings account.* If an employe (or his beneficiary) withdraws the remaining balance of his savings account or begins receiving periodic payments from the system based on his savings account before the December 31 of a year, then interest for such year shall be credited at the rate established by the board for such year and shall be compounded semi-annually based on the balance of the savings account as of the January 1 and July 1 (if applicable) of such year, less withdrawals prior to the complete withdrawal or commencement of periodic payments, through the date of the withdrawal or commencement of periodic payments. No additional interest will be credited to the savings account after the date of the complete withdrawal or commencement of periodic payments.

403. Interest rate established by the board.

Section 9.3 of the Retirement Act requires the board to credit earnings to the membership account and the savings account at an interest rate established by the board. Unless and until the board acts otherwise, the applicable interest rate established by the board pursuant to section 9.3 of the Retirement Act for purposes of rules 401 and 402 shall be five (5) percent.

404. Interest rate on employe buy backs.

- (a) If a member elects to participate in the buy back program to restore prior service credit, as described in subsection 201.24(11.1), the member must redeposit the previously withdrawn membership account amounts with interest thereon to the date of redeposit.
- (b) Interest shall equal the amount that the withdrawn amount would have earned had the withdrawn amount remained in the membership account throughout the "withdrawal period" beginning on the date of withdrawal and ending on the date of full repayment.
- (c) The retirement office will calculate interest by using the aggregate ERS annual rate of return for each calendar year included in the withdrawal period. As described in subsection (d) below in greater detail, all rates of return used in the interest calculation shall be determined and frozen as of the date of the retirement office's interest calculation.
 - (1) In years ERS experienced negative returns, the retirement office will apply a negative return in this interest calculation.
 - (2) In partial years, including the years during which the member repays the buy back amount, the retirement office will apply the annual rate for the given year on a per diem basis to calculate the full amount of interest owed.
- (d) The interest rate used to assess interest during the "buy back repayment period" will depend upon whether the member asks to buy back service in the member's first year of reemployment or the member's second year of reemployment.

- (1) If the member asks to buy back service in the member's first year of reemployment, the retirement office will calculate interest through the second anniversary of the member's return to county employment (the deadline for repayment of the buy back amount), using the same interest rate for the year of the member's return and throughout the buy back period. The interest rate will equal the ERS annual rate of return for the full calendar year prior to the member's return to employment.
 - (2) If the member asks to buy back service in the member's second year of reemployment, the retirement office will calculate interest through the second anniversary of the member's return to county employment (the deadline for repayment of the buy back amount). The retirement office will assess interest for the year of the member's return using the actual ERS rate of return for that year. The retirement office will use the actual ERS rate of return for any other calendar year during the buy back period that is fully completed before the member asks to buy back prior service. The retirement office will assess interest for any partial year during the buy back period (with such interest assessed on a per diem basis), using the ERS annual rate of return for the last fully completed calendar year during the buy back period as the interest rate.
- (e) If a member repays the total withdrawal amount with interest prior to the end of the two-year buy back period, the retirement office will provide the member with an interest rebate for the member's overpayment of interest at a per diem rate.
 - (f) If the member fails to repay the total withdrawal amount with interest prior to the end of the two-year buy back period, the retirement office will permanently cancel the service which the member seeks to buy back, and the retirement office will refund to the member the entire amount paid by the member to the retirement office to attempt to buy back service.

ACTIVE SERVICE

501. Eligibility for retirement or death benefits.

In determining eligibility for retirement or for death benefits, a member is required to be in active service and shall be so considered under one (1) of the following conditions at the time of filing his application for retirement or at the time of death:

- (a) If he is an employe currently receiving compensation.
- (b) If he is a member who has been granted a leave of absence by the civil service commission and his name continues to appear on the departmental payroll evidencing that such leave is in full force and effect. Such leave of absence, however, may not exceed five (5) years within a period of ten (10) consecutive years as provided in the retirement act.
- (c) If he is an employe whose civil service leave of absence has been terminated and

whose individual case merits consideration for an extension of active service rights by the annuity and pension board. Such an extension may at the option of the annuity and pension board be granted for a period of not more than one (1) year from the date of expiration of the leave of absence granted by the civil service commission. A request for such extension shall be made on a form provided for by the retirement system. Such extension of active service, however, together with the leave of absence granted by the civil service commission may not exceed five (5) years within the last ten (10) years of service as provided in the retirement act.

- (d) If he is a seasonal employe but his absence is due to the fact that no seasonal work of the type usually performed by the employe is available either by reason of insufficiency of work or seniority rules, but is eligible for reinstatement when such work is available.

503. Voidance of active service.

If an employe qualifies for active service under paragraph 501(b) or (c) and the reasons for the granting of the civil service leave of absence or the extension of active service rights no longer exist, such employe shall not be considered to be in active service.

FINAL AVERAGE SALARY

601. Methods for determining final average salary.

Four (4) methods shall be used for determining the final average salary depending upon the status of the employe and the nature of the benefits payable, to-wit:

Method A. The final average salary of an employe who is a member of the retirement system prior to April 29, 1948 and who is not eligible to become a member under the rules and regulations in effect commencing with April 29, 1948 shall be calculated in accordance with the standing resolutions in effect prior to April 29, 1948.

Method B. The final average salary for the purpose of determining both the retirement allowance as well as the death benefit of a full-time or part-time employe determined by taking the total the employe would have earned if he were paid the full annual salary for his position during the last three (3) creditable years of service and by dividing that figure by three (3). However, if there should be less than three (3) creditable years, then the total earnable compensation shall be divided by the actual number of creditable years. Full salary shall mean the actual salary paid plus salary loss due to allowable absences.

Method C. The final average salary for the purpose of determining the retirement allowance of a season or intermittent employe shall be determined as follows:

- (1) Recapitulate the actual earnings and service credit as shown in the service history record and in the employe ledger for the period required to

accumulate not more than three (3) creditable years of service.

- (2) Divide the accumulated earnings by the number of creditable years shown in step (1) above.

Method D. The final average salary for the purpose of determining the death benefit of a seasonal or intermittent employe shall be determined as follows:

- (1) Recapitulate the actual earnings and service credit as shown in the service history record and in the employe ledger for the period required to accumulate not more than three (3) creditable years of service.
- (2) Take the number of calendar years required to accumulate the service credits shown in step (1) above and deduct from the figure one-half year. Divide the accumulated earnings by the amount obtained in the preceding sentence.

602. Application of methods.

<i>Type of Benefit and Type of Employment</i>	<i>Method to be Used</i>			
	<i>A</i>	<i>B</i>	<i>C</i>	<i>D</i>
<i>Retirement - (except minimum ordinary disability)</i>				
Employe who would not be eligible under rules and regulations in effect commencing April 29, 1948	x			
Full-time or part-time employe		x		
Seasonal or intermittent employe			x	
<i>Death benefit and minimum ordinary disability</i>				
Employe who would not be eligible under rules and regulations in effect commencing April 29, 1948	x			
Full-time or part-time employe		x		
Seasonal or intermittent employe				x

603. Determination of employment status for death benefit.

The status of a member for the purpose of calculating death benefits under rule 601 shall

be considered to be that during his last year of creditable service immediately preceding the time of death. Should a member not have completed a year of creditable service under the last type of employment at time of death, his status shall be considered to be that of the type of employment in which he last completed a year of creditable service.

RETIREMENT AND DEATH BENEFIT ELIGIBILITY

701. Members retiring after attaining retirement age.

Members who retire after having attained retirement age shall be eligible for service retirement only.

702. Fifteen (15) years of creditable service required for ordinary disability retirement.

Members shall be entitled to ordinary disability retirement allowances only if they have completed at least fifteen (15) years of creditable service, provided, however, that seasonal employes shall be entitled to ordinary disability retirement allowances if they have worked fifteen (15) calendar years during which services were credited. Part-time employes who are eligible for membership solely by virtue of the standing resolutions in effect prior to April 29, 1948 shall be entitled to ordinary disability retirement allowances if their creditable periods of service would have been equivalent to fifteen (15) years service had they been employed on a full-time basis. If an employe has served in several types of employment, he shall be eligible for an ordinary disability retirement allowance if his combination of creditable services would be equivalent to fifteen (15) unit years under the provisions of this rule.

703. Involuntary termination of employment-Fifteen (15) years required.

Members shall be entitled to immediate retirement allowances under the provisions of section (5), subsection (6), paragraph (a)2, of the retirement act if they have completed at least fifteen (15) years of creditable service, which fifteen (15) years of creditable service shall be determinable as set forth in section 702 above. Application for such immediate retirement allowance shall be made on a form provided for this purpose within sixty (60) days after termination of service, otherwise the member shall be considered as entitled to a deferred retirement allowance, and be subject to rules 801-804.

704. One (1) year of service credit required for death benefit.

Members shall be entitled to death benefits in excess of the return of contributions and interest if they have completed at least one (1) year of creditable service, provided, however, that seasonal employes shall be entitled to such death benefits after one (1) year from the date their acceptable application for membership is filed.

Part-time employes who are eligible for membership solely by virtue of the standing resolutions in effect prior to April 29, 1948 shall be entitled to such death benefits if their creditable periods of service would have been equivalent to a year's service had they been employed on a full-time basis. If any employe has served in several types of employment, he shall be eligible for such death benefits if his combination of creditable service is equivalent to one (1) creditable year, and such death benefit shall be calculated in the manner prescribed for

the type of employment in which he was last employed.

705. Pension benefit calculations after January 1, 2001-Non-deputy sheriff employees whose initial membership began prior to January 1, 1982.

- (a) *Applicability of rule.* This rule 705 shall apply to any non-deputy sheriff employee of the county whose initial membership in the Employees' Retirement System began before January 1, 1982 and who accrues pension service credit on or after January 1, 2001, if the member: is not represented by a collective bargaining unit; or, is represented by a collective bargaining unit which has agreed to the provisions of section 5.15. This rule shall not apply to a member whose service on or after January 1, 2001 is solely in a position for which membership in the Employees' Retirement System is optional.
- (b) *"Bonus".* When calculating the normal pension benefit of a member, for each year of service earned after January 1, 2001, the member's final average salary shall be artificially increased by a "bonus" equal to seven and a half (7 1/2) percent of the member's pre-"bonus" final average salary. The "bonus" serves as an artificial increase to the member's final average salary solely for the purpose of calculating the amount of the member's pension benefit.
- (c) *Maximum "bonus".* The total artificial increase to a member's final average salary as a result of this "bonus" shall not exceed twenty-five (25) percent of the member's pre "bonus" final average salary.
- (d) *Proportionate "bonus".* For partial years of pension service credit earned on or after January 1, 2001, the member will receive a proportionate final average salary increase.

706. Pension benefit calculations after January 1, 2001-Nonrepresented deputy sheriff employees whose initial membership Began Prior to July 1, 1995.

- (a) *Applicability of rule.* This rule 706 shall apply to any nonrepresented deputy sheriff employee of the county whose initial membership in the Employees' Retirement System began prior to July 1, 1995 and who accrues pension service credit on or after January 1, 2001.
- (b) *"Bonus".* When calculating the normal pension benefit of a member, for each year of service earned after January 1, 2001, the member's final average salary shall be artificially increased by a "bonus" equal to seven and a half (7 1/2) percent of the member's pre-"bonus" final average salary. The "bonus" serves as an artificial increase to the member's final average salary solely for the purpose of calculating the amount of the member's pension benefit.
- (c) *Maximum "bonus".* The total artificial increase to a member's final average salary as a result of this "bonus" shall not exceed twenty-five (25) percent of the member's pre-"bonus" final average salary.

- (d) *Proportionate "bonus"*. For partial years of pension service credit earned on or after January 1, 2001, the member will receive a proportionate final average salary increase.

707. Pension benefit calculations after January 1, 2001-Non-deputy sheriff employees whose initial membership began on or after January 1, 1982.

- (a) *Applicability of rule*. This rule 707 shall apply to any non-deputy sheriff employe whose initial membership in the Employees' Retirement System began on or after January 1, 1982 and who accrues pension service credit on or after January 1, 2001, if the member: is not represented by a collective bargaining unit; or, is represented by a collective bargaining unit which has agreed to the provisions of section 5.15. This rule shall also apply to any non-deputy sheriff employe whose membership in the Employees' Retirement System initially began prior to January 1, 1982, but whose pre-1982 service credit was terminated pursuant to section 2.11. This rule shall not apply to a member whose service on or after January 1, 2001 is solely in a position for which membership in the Employees' Retirement System is optional.
- (b) *General rule*. A member's annual normal pension benefit shall equal:
 - (1) All years of pension service credit earned on or after January 1, 2001, other than as an elected official, multiplied by two (2) percent of the member's final average salary; plus
 - (2) All years of pension service credit earned prior to January 1, 2001, other than as an elected official, multiplied by one and a half (1 1/2) percent of the member's final average salary; except that
 - (3) For each year of pension service credit earned after January 1, 2001, the multiplier applied to eight (8) years of pension service credit earned prior to January 1, 2001, other than as an elected official, shall be increased from one and a half percent to two (2) percent.
 - (4) For a member with partial years of pension service credit on or after January 1, 2001, the member shall have the multiplier applied to a proportionate number of pre-2001 years of pension service credit increased from one and a half (1 1/2) percent to two (2) percent.
- (c) *Service as an elected official*. A member who is an elected official shall receive an annual normal pension benefit equal to:
 - (1) All years of pension service credit earned on or after January 1, 2001 as an elected official multiplied by two and a half (2 1/2) percent of the member's final average salary; plus
 - (2) All years of pension service credit earned prior to January 1, 2001 as an elected official multiplied by two (2) percent of the member's final

average salary; except that

- (3) For each year of pension service credit earned on or after January 1, 2001, the multiplier applied to eight (8) years of pension service credit earned prior to January 1, 2001 as an elected official shall be increased from two (2) percent to two and half (21/2) percent.
 - (4) For a member with partial years of pension service credit on or after January 1, 2001, the member shall have the multiplier applied to a proportionate number of pre-2001 years of pension service credit increased from two (2) percent to two and half (21/2) percent.
- (d) *Multiple job capacities.* If a member has service in a job capacity described in rule 707(b) and in a job capacity described in rule 707(c) above, his annual pension benefit shall be the sum of the amounts of the member's annual pension benefit calculated under both rule 707(b) and rule 707(c).

708. Pension benefit calculations after January 1, 2001-Nonrepresented deputy sheriffs whose initial membership began on or after July 1, 1995.

- (a) *Applicability of rule.* This rule 708 shall apply to any nonrepresented deputy sheriff employe whose initial continuous membership in the Employees' Retirement System began on or after July 1, 1995, and who accrues pension service credit on or after January 1, 2001. This rule shall also apply to any nonrepresented deputy sheriff employe whose membership in the Employees' Retirement System initially began prior to July 1, 1995, but whose pre-July 1, 1995 service credit was terminated pursuant to section 2.11.
- (b) *General rule.* A member's annual normal pension benefit shall equal:
 - (1) All years of pension service credit earned on or after January 1, 2001 as a nonrepresented deputy sheriff multiplied by two and half (21/2) percent of the member's final average salary; plus
 - (2) All years of pension service credit earned prior to January 1, 2001 as a nonrepresented deputy sheriff multiplied by two (2) percent of the member's final average salary; except that
 - (3) For each year of pension service credit earned on or after January 1, 2001, the multiplier applied to eight (8) years of pension service credit earned prior to January 1, 2001 as a nonrepresented deputy sheriff shall be increased from two (2) percent to two and a half (21/2) percent, and for each partial year of pension service credit earned on or after January 1, 2001, the multiplier for pre-2001 years of pension service credit shall be increased from two (2) percent to two and a half (21/2) percent on a proportionate basis.
- (c) *Multiple job capacities.* If a member has earned service credit in a job capacity

other than that described in this rule 708, the member's annual pension benefit shall be the sum of the amounts of the member's annual pension benefit calculated under both this rule 708 and the pension benefit calculated for the other job capacity.

709. Pension benefit calculations after January 1, 2001-Optional members.

- (a) *General rule.* The normal retirement benefit under section 5.1 for service earned as an "optional member," which is service earned in a position for which membership in the Employees' Retirement System is optional and for which the member elects to become a member, either at the member's commencement of employment in such position or through the "buy in" procedure described in rule 207, shall equal:
 - (1) Service credit on or after January 1, 2001. All years of pension service credit earned on or after January 1, 2001 as an optional member, multiplied by an amount equal to two (2) percent of the member's final average salary; plus
 - (2) Service credit before January 1, 2001 and on or after January 1, 1982. All years of pension service credit earned prior to January 1, 2001, but on or after January 1, 1982 as an optional member, multiplied by an amount equal to one and a half (1 1/2) percent of the member's final average salary; plus
 - (3) Service credit before January 1, 1982. All years of pension service credit earned prior to January 1, 1982 as an optional member, multiplied by an amount equal to two (2) percent of the member's final average salary.
- (b) *Ineligibility for benefit enhancements.* Service on or after January 1, 2001 in a position for which membership is optional shall not count as service that qualifies the member for the benefit enhancements described in rules 705 and 707.
- (c) *Service credit other than as an optional member.* If a member earns pension service credit in a position other than a position for which membership is optional, the member's normal pension benefit shall be calculated by adding the benefit earned in an optional position to the benefit that the member earned in a non-optional position.

710. Dual eligibility for benefit enhancements.

If a member qualifies for the application of both the "bonus" described in rule 705 or rule 706 and the retroactive increased benefit multiplier described in rule 707(b)(3) and (4), rule 707(c)(3) and (4) or rule 708(b)(3), the member's benefit shall include the application of both benefit enhancements.

711. Back DROP pension benefit.

- (a) *Eligibility.* Any member whose application to retire is filed and effective on or after January 1, 2001, and who elects a normal pension pursuant to section 4.1 or an early pension pursuant to section 4.2 shall be eligible to elect to receive the retroactive deferred retirement option program, or "back DROP," pension benefit described in section 5.16.
- (b) *Form of benefit.* A member who elects to receive a back DROP pension benefit shall, upon completing an application for a retirement benefit:
 - (1) Receive a lump sum DROP benefit, which, at the member's election, shall be paid to the member in a single lump sum, or, if permitted by the Internal Revenue Code and corresponding regulations, shall be "rolled over" to an individual retirement account ("IRA"), or, when allowable, to another tax qualified retirement plan; and
 - (2) Receive the member's early or normal monthly pension (referred to in section 5.16(3)(b) as the "monthly DROP benefit"). The member's monthly pension benefit shall be calculated in accordance with sections 5.1, 5.2 and 5.15, except that years of pension service credit and earnable compensation on and after the "back DROP date" will not be taken into account. The monthly pension benefit received by the member will reflect the annual increases required by section 5.7, with such increases beginning on the one-year anniversary of the member's back DROP date and continuing on each subsequent anniversary.
- (c) *Lump sum DROP benefit.* The "lump sum DROP benefit," or "total DROP benefit" as it is described in section 5.16, equals the sum of the monthly pension payments (calculated pursuant to section (b)(2) above) that the member would have received had the member's pension commenced on the "back DROP date" and been paid through the date the member is removed from the county payroll due to actual retirement (after exhausting all accrued time balances as documented by an ETCR form), including annual increases in accordance with section 5.7. The "lump sum DROP benefit" shall also include interest, compounded monthly at a rate equal to the actuarial funding rate of the Employees' Retirement System of the County of Milwaukee, that would have accrued to an account had the member's monthly pension commenced on his back DROP date and been allocated to that account.
- (d) *Back DROP date:* The "back DROP date" is a date selected by the member that is not earlier than the earliest date that the member was eligible to retire and receive a benefit pursuant to section 4.1 or section 4.2 and that is not later than one (1) year prior to the date the member elects to leave active county service. For purposes of this rule and section 5.16, the requirement that the back drop date be at least one (1) year prior to the date the member leaves active county service shall be interpreted as one (1) calendar year. The back DROP date shall be the

date immediately following the date selected by the member as the last date to be included in the calculation of the member's final average salary and pension service credit.

- (e) *Application of benefit enhancement provisions.* When calculating a member's normal or early monthly pension payment, the provisions of section 5.15 shall apply even if a member elects to receive a back DROP benefit with a "back DROP date" prior to January 1, 2001.

712. Benefit limitation.

Pursuant to section 5.1, the annual pension payable to a member shall not exceed eighty (80) percent of his final average salary. For the purposes of calculating this benefit limitation, a member's final average salary shall be determined in accordance with section 2.8 and rule 112. In addition, for the purposes of applying this benefit limitation, neither the benefit increases that a member may receive as a result of the operation of sections 5.7 and 5.17, nor the "lump sum DROP benefit," or "total DROP benefit," as it is described in section 5.16, shall be considered part of the "pension payable" to the member.

713. Lump sum back DROP interest rate.

- (a) Pursuant to section 201.24(5.16) and Rule 711(c), the lump sum back DROP interest rate shall equal the rate used by the ERS actuary as the assumed rate of return for funding purposes.
- (b) The retirement office shall use the actuarial assumed rate of return for the year of the member's actual retirement as the applicable interest rate for all months in the back DROP period. For these purposes, the "back DROP period" shall be the time period between the back DROP date and the date of actual retirement.

DEFERRED RETIREMENT

803. Withdrawal of employe contributions permitted.

The member who applied for a deferred retirement allowance may withdraw any part of the accumulated annuity savings to his credit, but such withdrawal shall automatically terminate any right to a deferred retirement allowance.

805. Resignation is not "fault or delinquency" on member's part.

An accepted resignation from his position by a member shall not be considered "fault or delinquency on his part" within the meaning of section 5(6)(a)2 of the retirement act.

807. Fault and delinquency.

- (a) *General rule.* Pursuant to section 201.24(4.5) of the General Ordinances of Milwaukee County, a member forfeits his right to a deferred vested pension benefit if his employment with the county is terminated due to fault or

delinquency on his part.

- (b) *Fault or delinquency standard.* Until section 201.24(4.5) is amended to provide otherwise or the pension board adopts other rules, for purposes of section 201.24(4.5), a member's employment is considered to be terminated for fault or delinquency on his part if it is terminated due to conduct resulting in a felony offense charge if the circumstances of the charge substantially relate to the circumstances of the member's particular job and the member is ultimately convicted of such felony offense.
- (c) *Determination.* Upon application for a deferred vested pension benefit by a member who has been, or who the pension board reasonably believes may be, convicted of a felony offense described in Rule 807(b), the pension board shall review the member's application and determine at a meeting whether the member's employment was terminated due to fault or delinquency pursuant to Rule 807(b). The applicant may appear at the meeting and may be represented at the meeting by counsel. The pension board may delay a decision on any application until pending felony charges are resolved.
- (d) *Suspension of benefits.* In the event a member is convicted of a felony offense described in paragraph 807(b) after benefit payments have commenced, the pension board shall review the member's retirement and suspend further payment of benefits if it determines that the member's employment was terminated due to fault or delinquency on his part pursuant to Rule 807(b). In its discretion, the pension board may seek repayment of benefits already distributed to the member.
- (e) *Hearing examiner.* The pension board may refer the determination under Rule 807(c) to a hearing examiner in the same manner as set forth in section 201.24(4.9)(11) of the General Ordinances of Milwaukee County.

EMPLOYEES' CONTRIBUTIONS

901. Contribution based on gross salary.

The employe contribution described in this rule 901 shall apply solely for periods prior to December 24, 1967.

The biweekly employe contribution shall represent the percentage of his gross biweekly earnable compensation shown in the following table opposite his age at his nearest birthday at the time of his entrance into the system. The deduction shall be made from each biweekly compensation provided such compensation exceeds the withholding tax, Blue Cross deduction, and full employe annuity contribution.

EMPLOYEE CONTRIBUTION TABLE (1)

Age*	<i>For Enrollments Prior to 12/31/58</i>				<i>For Enrollments Subsequent to 12/31/58</i>			
	<i>Other Than Deputy Sheriffs</i>		<i>Deputy Sheriffs</i>		<i>Other Than Deputy Sheriffs</i>		<i>Deputy Sheriffs</i>	
	Men	Women	Men	Women	Men	Women	Men	Women
20	5.0%	5.7%	6.9%	7.8%	5.6%	6.2%	6.9%	8.4%
21	5.0	5.7	6.9	7.8	5.6	6.2	6.9	8.5
22	5.0	5.7	7.0	7.8	5.6	6.2	7.0	8.6
23	5.0	5.7	7.0	7.9	5.6	6.3	7.0	8.6
24	5.1	5.7	7.1	7.9	5.7	6.3	7.1	8.7
25	5.1	5.7	7.1	8.1	5.7	6.3	7.1	8.8
26	5.1	5.7	7.3	8.1	5.7	6.4	7.3	8.9
27	5.1	5.9	7.3	8.3	5.8	6.4	7.3	8.9
28	5.2	5.9	7.4	8.3	5.8	6.4	7.4	9.0
29	5.2	5.9	7.4	8.3	5.9	6.5	7.4	9.1
30	5.2	6.0	7.6	8.5	5.9	6.6	7.6	9.2
31	5.2	6.0	7.6	8.5	6.0	6.6	7.6	9.3
32	5.4	6.1	7.7	8.7	6.0	6.7	7.7	9.4
33	5.4	6.1	7.7	8.7	6.1	6.8	7.7	9.6
34	5.6	6.3	7.9	8.9	6.2	6.9	7.9	9.7
35	5.6	6.3	7.9	9.0	6.3	6.9	7.9	9.8
36	5.6	6.3	8.2	9.2	6.3	7.0	8.2	10.0
37	5.9	6.5	8.2	9.2	6.4	7.1	8.2	10.1
38	5.9	6.5	8.4	9.4	6.5	7.3	8.4	10.2
39	5.9	6.7	8.4	9.5	6.6	7.4	8.4	10.4
40	6.1	6.7	8.6	9.7	6.7	7.5	8.6	10.5
41	6.2	7.0	8.6	9.7	6.9	7.6	8.6	10.7
42	6.2	7.0	8.9	10.0	7.0	7.7	8.9	10.8
43	6.4	7.3	8.9	10.0	7.1	7.9	8.9	11.0
44	6.4	7.3	9.1	10.3	7.2	8.0	9.1	11.1
45	6.6	7.5	9.1	10.3	7.3	8.1	9.1	11.3
46	6.6	7.5	9.4	10.6	7.4	8.3	9.4	11.5
47	6.8	7.7	9.4	10.6	7.6	8.4	9.4	11.6
48	6.8	7.7	9.7	10.9	7.7	8.6	9.7	11.8
49	7.2	7.9	9.7	10.9	7.8	8.7	9.7	12.0
50	7.2	8.1	9.9	11.2	8.0	8.9	9.9	12.1
51	7.4	8.1	10.1	11.3	8.1	9.0	10.1	12.3
52	7.4	8.4	10.1	11.5	8.3	9.2	10.1	12.5
53	7.6	8.5	10.4	11.7	8.4	9.4	10.4	12.7
54	7.6	8.7	10.4	11.8	8.6	9.5	10.4	12.9
55	7.9	8.8	10.6	12.0	8.7	9.7	10.6	13.1
56	7.9	9.1	10.8	12.2	8.9	9.9	10.8	13.2
57	8.1	9.1			9.0	10.0		
58	8.4	9.3			9.2	10.3		
59 & over	8.4	9.5			9.4	10.4		

*Age to nearest birthday on date of enrollment.

(1) If employe is under group B (social security) the above rates are two (2) percent less on salary subject to social security tax, unless employe signs a waiver of this two-percent decrease.

902. Reasonable estimate of compensation where biweekly amounts are not uniform.

In those cases where an employe's compensation is not anticipated to be uniform for each biweekly period, a reasonable estimate of his biweekly compensation is to be used for application of the biweekly percentage of contribution. Such estimate should be reasonably in line with the actual compensation paid and should be adjusted if and when it gets out of line. If the employe is engaged in work similar in nature and compensation as he was in the preceding year, his actual average biweekly compensation of the preceding year, adjusted in respect of any known increase or decrease for the current year, may be deemed to be a reasonable estimate for the current year.

903. Contribution amount not final until confirmed.

Contributions and changes in contributions shall not be made unless certified by the director of audits.

904. Compensation to include amount for maintenance.

Compensation for the purpose of determining contribution shall include maintenance furnished the employe at such values as same is shown on the payroll but shall not include an allowance for use of the employe's personal auto.

905. No contribution on certain compensation and optional on some.

No contributions shall be made on compensation earned under the conditions stated in rule 308(a) but will be permitted under the conditions stated in rule 308(b) at the option of the employe provided that the employe notifies the secretary in writing of his election of this option.

GENERAL REGULATIONS

1001. Action of board final after one year.

All actions of the board affecting the status of rights of any individual employe or his beneficiaries shall be considered to be final after expiration of one (1) year from the date such action was taken.

1002. Receipt for filing may be demanded.

Any person filing any document or paper with the secretary of the annuity and pension board may demand and receive a receipt showing the date and time of filing, but in the absence of such receipt, the date and time stamped on the document by the secretary shall be considered as conclusive.

1003. Equal month retirement allowance.

Retirement allowances shall be payable in equal calendar monthly installments or in ratably smaller amounts for original and final payments if such payments are for a shorter period than the calendar month.

1004. Member leaving service may request statement of annuity savings and service credits.

The secretary shall upon request issue a statement showing annuity savings and creditable service to any member who separates from county service.

1005. Location of office.

The general offices of the annuity and pension board shall be located in the office of the director of audits and no papers shall be considered to be legally filed until received at this office.

1006. Time for election to board and effective date.

The election for employe-members to the annuity and pension board shall be held in the month of February of each year, and the employe-member elected shall commence his term on March 1 next following his election.

1007. Hospital and surgical-medical insurance deductions.

Retirement members may assign a portion of their retirement allowance for the regular monthly payment of the prevailing subscription fees for the Comprehensive Group Contract of associated Hospital Service, Inc., of Wisconsin and the surgical-medical service contract of Surgical Care, an agency of the Medical Society of Milwaukee County, Wisconsin, with the understanding that the same be remitted on behalf of such members to Associated Hospital Service, Inc., at its office in Milwaukee, Wisconsin.

1008. Increase in members' contributions.

A member may make additional contributions in an amount sufficient to provide an additional annuity which together with his prospective retirement allowance shall not exceed one-half of his final average salary, provided that the amount of such additional contributions shall not exceed his regular contributions in any calendar year. Additional contributions when made on a payroll deduction basis shall be stated in terms of an increased percentage deduction and processed in the same manner as regular annuity savings payroll deductions are processed. Such additional contributions cannot be increased within less than one (1) year from the effective date of the original application or from the effective date of any subsequent revision thereof. Such additional contributions can be decreased only upon giving at least ninety (90) days' notice prior to the effective date of such decrease.

1009. Social security estimate for survivor's benefit offset.

To compute survivors' pensions payable under s. 6.4 of the Pension Law, the secretary may estimate the social security benefits using the best information available. The survivors of a deceased member will be requested to submit the determination of actual benefits by the Social Security Administration to the employe retirement manager. If such information is not furnished within six (6) months of the date survivors' benefits commence, the director may suspend benefits until the information is furnished. If the actual benefits determined by the Social Security Administration differ from the estimate, a retroactive adjustment will be made.

1010. Reports by accidental disability pensioners.

- (a) Members receiving an ordinary disability pension are not required to file an annual statement of earned income.
- (b) Each member receiving an accidental disability pension shall, on or before June 1 of each year, file with the secretary a statement of earned income and shall provide to ERS a signed authorization allowing ERS to obtain copies of state and federal tax returns from the respective governments. The secretary may also request that the member provide complete copies of the member's federal and state income tax returns for the same year. The secretary, for reasonable cause shown, may extend the filing date.
- (c) In the event a member fails to provide the requested statement or authorization as required, the secretary shall forward the member's name and the facts of the member's noncompliance to the Pension Board. Upon referral, the Board may, in its discretion, suspend the member's pension or take whatever other action it deems appropriate in order to obtain the documentation. Upon receipt of the required documents, the Secretary shall pay to the member, without interest, all prior suspended pension payments, subject to the adjustment, if any, required by Ordinance section 201.24(10.2).
- (d) Members receiving an accidental disability pension are not required to file an annual statement of earned income for years after the year in which the member reaches age seventy (70).

1011. Eligibility investigations.

The secretary of the pension board is authorized to have investigations conducted as to the eligibility or continued eligibility of any applicant or recipient of any benefits available under the retirement system. The secretary may enlist the assistance of the corporation counsel, the sheriff's department or other resources as required.

1012. Accidental disability eligibility reapplications.

An applicant for an accidental disability retirement or an ordinary disability retirement whose application shall be rejected by denial thereof shall not be eligible to reapply again for the same type of disability benefit for at least twelve (12) full months from the date of denial or any

subsequent determination by the pension board following a hearing as prescribed under section 201.24(4.7) of the General Ordinances. The pension board may waive this rule upon a showing of good cause in individual cases and permit an application to be processed.

1012(a). Accidental and ordinary disability/worker's compensation (W/C) offset.

In applying the W/C offset provision as provided by section 201.24(11.9), County General Ordinances, it shall be the policy of the employee's retirement system to offset certain awards, whether or not the accidental beneficiary receives payments, under the following conditions:

- If the department of industry, labor and human relations (DILHR) issues a partial or permanent total award at the request of the disability beneficiary.
- If the department of industry, labor and human relations (DILHR) issues a partial or permanent total award at the request of the county corporation counsel as the administrator of the county's W/C program.

1013. Optional forms of payment.

(1) *Available forms.* In addition to the forms of payment provided by section 201.24(7.1) of the Ordinances, the following forms of payment shall be permitted pursuant to section 201.24(7.2) of the Milwaukee County Code of General Ordinances. Payment shall be made on the last business day of the month:

(a) *Option 4. Twenty-five (25) percent co-pensioner option.* This form of benefit provides a reduced monthly benefit payable to the member for his or her lifetime with monthly payments continuing upon the death of the member for the life of a designated beneficiary in an amount equal to twenty-five (25) percent of the amount that had been paid to the member during his or her lifetime. Benefit payments shall be made as follows:

[1] During the month of the member's death, the beneficiary and the member's estate will each receive a pro rata portion of the member's lifetime benefit payment payable for the month of the member's death.

[2] Benefit payments will commence to the beneficiary as of the first day of the month following the month in which the member dies.

The amount of the benefit shall be computed pursuant to tables supplied by the actuary to the board. This form of benefit is available without approval of the board.

(b) *Option 5. Seventy-five (75) percent co-pensioner option.* This form of benefit provides a reduced monthly benefit payable to the member for his or her lifetime with monthly payments continuing upon the death of the member for the life of a designated beneficiary in an amount equal to

seventy-five (75) percent of the amount that had been paid to the member during his or her lifetime. Benefit payments shall be made as follows:

- [1] During the month of the member's death, the beneficiary and the member's estate will each receive a pro rata portion of the member's lifetime benefit payment payable for the month of the member's death.
- [2] Benefit payments will commence to the beneficiary as of the first day of the month following the month in which the member dies. Benefit payments to the beneficiary shall continue until the beneficiary dies.

The amount of the benefit shall be computed pursuant to tables supplied by the actuary to the board. This form of benefit is available without approval of the board.

- (c) *Option 6. Ten-year certain annuity.* This form of benefit provides a reduced monthly benefit payable to the member for his or her lifetime. If a member who is receiving this form of benefit dies before receiving one hundred twenty (120) monthly payments, then monthly payments in the amount payable at the time of the member's death shall continue to the member's designated beneficiary until a total of one hundred twenty (120) payments have been made in the aggregate to the member and his or her designated beneficiary (or, if the member's designated beneficiary has predeceased the member or dies before a total of one hundred twenty (120) payments have been made, then to the member's spouse, or, if none, then to the member's estate). The amount of the benefit shall be computed pursuant to tables supplied by the actuary to the board. This form of benefit is available without approval of the board.
- (d) *Option 7. Any other form.* A member may apply to the board to receive his or her benefits in any other form permitted by section 201.24(7.2) of the Milwaukee County Code of General Ordinances. The board will generally deny any such request on the grounds that the standard six (6) optional forms of benefit set forth in section 201.24(7.1) and in Rule 1013(a)(1), (2) and (3) provide sufficient options to members and that any other form of benefit subjects the system to unnecessary administrative expense and burden. Further, pursuant to Rule 1021, the board will not grant any request for a lump sum benefit. However, the board, in its sole discretion, reserves the right to determine whether to approve a member's application for a benefit under this Rule 1013(a)(4). The board shall review such requests pursuant to Rule 1035. The board or, where board responsibility has been delegated to others, such delegates shall have complete authority to determine the standard of proof required in any case and to apply and interpret this Rule 1013(a)(4). The decision of the board or its delegates shall be binding upon all persons dealing with the system

or claiming any benefit hereunder, except to the extent that such decision may be determined to be arbitrary or capricious by a court having jurisdiction over such matter. A member shall be required to pay all costs incurred by the system to evaluate each form of benefit requested by the member.

- (2) *Beneficiary designation.* If a member elects a form of benefit under which benefits may continue to a beneficiary after the member's death, then the member shall be required to designate a beneficiary in writing on forms approved by the board and submitted to the board at the time the member elects such a form of benefit.
 - (a) A member being paid a benefit pursuant to Option 1 listed in section 201.24(7.1) or Option 6 listed in this Rule 1013(l)(c) may change the designation of the named beneficiary at any time. A member being paid a benefit pursuant to Options 2 or 3 listed in section 201.24(7.1) or Options 4 or 5 listed in this Rule 1013(1)(a) and (b) may not change the designation of the named beneficiary after the later of: (1) the member's retirement effective date or, (2) if the member is an emergency retirement applicant, the date on which the member permanently elects a benefit option and designates a beneficiary.
- (3) *Actuarial equivalent.* The forms of benefit under section 201.24(7.2) of the Milwaukee County Code of General Ordinances and Rule 1013 shall be the actuarial equivalent of a member's pension as calculated pursuant to Rule 1014.
- (4) *Lump sum distribution request.* Pursuant to Rule 1021, a request for any form of benefit that constitutes a lump sum benefit will not be granted.
- (5) *Changes to Form of Benefit.* A member may not change the form of benefit he or she elects after the later of: (1) the member's retirement effective date or, (2) if the member is an emergency retirement applicant, the date on which the member permanently elects a benefit option and designates a beneficiary.

1014. Actuarial equivalent.

"Actuarial Equivalent," as used in section 201.24(2.13) of the Milwaukee County Code of General Ordinances shall have the following meaning:

- (a) *Lump Sum Payment Under Rule 1013(a)(4).* For purposes of calculating a single lump sum distribution under Rule 1013(a)(4), the term "actuarial equivalent" shall mean an alternative form or time of payment having the same actuarial present value when computed on the basis of:
 - (1) *Mortality Table.* The applicable Code section 417(e)(3) mortality table, and
 - (2) *Interest Rate.* An interest rate that is the greater of [a] 8-1/2 (8.5) percent

or [b] the interest rate calculated by assuming the System's overall rate of return in the ten (10) calendar years preceding the calendar year in which a lump sum distribution is calculated and dividing by ten (10).

- (b) *Converting Maximum Annual Benefit Limitation - PreAge 62.* For purposes of calculating the reduced dollar limit on annual benefits payable for a member who begins benefits prior to age sixty-two (62), as required by section 201.24(12.3), the term "actuarial equivalent" shall mean an amount having the same actuarial present value when computed on the basis of:
 - (1) *Mortality Table.* The mortality table specified by the Internal Revenue Service in Revenue Ruling 2007-67, or any successor revenue ruling thereto. Effective as of December 31, 2012, the mortality table is the 2013 Applicable Mortality Table, and
 - (2) *Interest Rate.* An interest rate of five (5) percent compounded annually.

- (c) *All Other Purposes.* For all purposes under section 20 1.24(2.13) of the Milwaukee County Code of General Ordinances other than those specifically noted elsewhere in this Rule 1014, the term "actuarial equivalent" shall mean an alternative form or time of payment having the same actuarial present value when computed on the basis of:
 - (1) *Mortality Table.* The RP-2000 Blue Collar Mortality Table (Male/Female 50/50) with generational mortality improvements for healthy participants and RP-2000 Disabled Mortality Table with generational mortality improvements for participants determined to be disabled under the Ordinances and Rules, and
 - (2) *Interest Rate.* An interest rate of eight (8) percent compounded annually.

[Rule Amended December 2012]

1015. Forfeiture rule.

Section 201.24(2.11) of the Milwaukee County Code of General Ordinances provides that a member's service credit under the system shall be forfeited if he is absent from service more than five (5) years (except for military service or authorized leave of absence) in a period of ten (10) consecutive years after last becoming a member. The forfeiture rule of section 201.24(2.11) shall apply only to those members who, at the time they terminate county employment, are not vested in or eligible to receive a pension under section 201.24(4.1), 201.24(4.2), 201.24(4.3), 201.24(4.4) or 201.24(4.5). A member will not forfeit service credit pursuant to section 201.24(2.11) if, at the time he terminates county employment, he is vested in or eligible to receive a pension under section 201.24(4.1), 201.24(4.2), 201.24(4.3), 201.24(4.4) or 201.24(4.5).

1016. Claims appeal procedure.

- (a) *Process for members to request review of claim denial.* If the retirement system manager or staff denies a member's application for a pension benefit, either in whole or in part, the member may appeal the retirement system manager's or staff's decision by submitting a written request for review of the decision to the board's administrative office no later than one hundred twenty (120) days after the date the denial notice is received by the member. The retirement system manager or staff shall provide the member with a copy of this rule with the denial notice. The written request for review must include the member's reason for disputing or disagreeing with the initial decision. If a member files a timely written request for review, he may:
- (i) Submit additional materials for consideration by the board, including a written request for review. The board's decision may be delayed pending receipt of such requested information or may be issued in the absence of such requested information if the member does not respond to the request for additional information. The board's written decision will explain the reasons for the decision and will refer to provisions of the Milwaukee County Code of Ordinances and rules on which it is based; ;
 - (ii) Review, upon request, documents under the control of the board which are relevant to the member's claim; and
 - (iii) Attend the board meeting at which the claim appeal will be reviewed.
- (b) *Decision on review.* The board will review a member's timely written request for review and shall issue a written decision following the board's review of the denied claim within one hundred twenty (120) days of the date the board receives the member's written request for review or, if special circumstances require a delay in the decision, the member will receive a notice of the reasons for the delay within the same period. The board shall be entitled to request additional information from the member to the extent necessary and appropriate to respond to the member's request for review. The board's decision may be delayed pending receipt of such requested information or may be issued in the absence of such requested information if the member does not respond to the request for additional information. The board's written decision will explain the reasons for the decision and will refer to the provisions of the Milwaukee County Code of General Ordinances and rules on which it is based.
- (c) *Decision on appeal shall be final.* All questions or controversies, of whatsoever character, arising in any manner or between any parties or persons in connection with the system, whether as to any claim for benefits, or as to the construction of language or meaning of the Milwaukee County Code of Ordinances or rules, or as to any writing, decision, instrument or account in connection with the operation of the system or otherwise, shall be submitted to the board or, where board responsibility has been delegated to others, to such delegates for decision. The

board's decision on any such matters, including with respect to a member's request for a review, shall be final and binding upon all persons dealing with the board or the system or claiming any benefit thereunder, except to the extent that such decision may be determined to be arbitrary or capricious by a court having jurisdiction over such matter.

1017. Domestic relations orders.

Pursuant to section 201.24(11.7) of the Milwaukee County Code of General Ordinances, a member's pension benefit cannot be assigned, alienated, levied upon or subject to other legal process. However, the board will comply with a domestic relations order ("DRO") that directs the board to pay all or a portion of a member's pension benefit to a former spouse or child ("alternate payee"), provided the DRO satisfies the requirements outlined in subsection (1) below.

- (1) *Requirements for a valid DRO.* The DRO must satisfy the following requirements:
 - (a) *DRO must specify certain facts.* The DRO must clearly specify certain facts:
 - [i] the name, address and social security number of the member and the alternate payee;
 - [ii] the amount or percentage of the member's benefits to be paid by the system to the alternate payee;
 - [iii] the number of payments or period to which such DRO applies;
 - [iv] the name of the system to which the DRO applies; and
 - [v] the date as of which such DRO is effective.
 - (b) *No payment until member in pay status.* The DRO must be an income assignment order that directs the board to pay to the alternate payee a portion of a member's monthly pension benefit that is in pay status. The DRO may not require the board or the system to make payment to an alternate payee on behalf of a member prior to the date that the member is actually receiving pension benefits from the system.
 - (c) *Purpose of payments.* Payment under the DRO shall be made solely for the purpose of providing alimony, maintenance or child support to a former spouse and/or child. The DRO cannot require payment to persons other than a member's former spouse or child and cannot be made for the purpose of a property division pursuant to a divorce.
 - (d) *Income Withholding Support Orders.* Notwithstanding the foregoing, a valid income withholding support order issued by a support enforcement agency of a governmental agency qualifies as a DRO for purposes of this Rule and shall be treated as satisfying subsection (1)(a) above. A support order received by ERS shall be reviewed to confirm that subsections (b) and (c) are satisfied.

(2) *Procedures upon receipt of a DRO.*

- (a) Upon receipt of a DRO, the board shall notify each person named in the DRO (at the address specified in the DRO) that a DRO has been received. The board may provide a copy of Rule 1017 to each party.
- (b) If the board determines that the DRO complies with the applicable requirements of this Rule 1017, the board shall notify the persons named in the DRO and/or any representatives designated in writing by such persons.
- (c) If the board determines that a DRO does not comply with the applicable requirements under Rule 1017, the board shall notify all parties that a determination has been made that the board cannot comply with the DRO. The notice shall describe the board's basis for determining that the DRO does not comply with Rule 1017.
- (d) The board hereby delegates to the Retirement Office the authority to perform the duties described in this subsection (2).

(3) *Payment procedure.* If a DRO satisfies the requirements of subsection (a) above, the board will make the payment to an alternate payee pursuant to the DRO by submitting a payment to the clerk of court having jurisdiction over the DRO or to the appropriate governmental child support collection agency.

1018. Offset for worker's compensation benefits.

Section 11.9 of the Retirement Act requires the board to offset a member's disability pension by amounts paid or payable to the member under the provisions of any state worker's compensation or similar law on account of the same disability for which the disability pension is granted. The board hereby affirms the intent and operation of section 11.9. The board shall offset a member's disability pension by any amounts that accrue to the member on and after the effective date of the pension under the provisions of any state worker's compensation or similar law on account of the same disability, regardless of when such amounts are actually paid. The offset will apply with respect to amounts paid or payable as salary continuation or injury pay in lieu of benefits under a state worker's compensation or similar law. A member's pension shall not be offset by amounts paid by worker's compensation (or similar law) in the form of health care or transportation expenses.

1019. Determination of earnable compensation and service.

A member's eligibility for a pension is based on his service with the county. The amount of a member's pension benefit is based on his earnable compensation and service with the county. For purposes of determining a member's eligibility for a pension and calculating the amount of a member's pension benefit, the board will rely on the compensation and service information provided by the county, and shall not independently verify a member's earnable compensation or service for any periods of county employment.

1020. Election of employee members of board.

The following procedures shall apply when conducting the election of the employee members of the pension board. The pension board shall have the discretion to interpret and amend these procedures in any manner that is consistent with ordinance section 201.24(8.2).

- (1) *Candidate qualification.* To be a candidate for the employee member of the pension board, an individual must be an employee of the County of Milwaukee who is currently a member of ERS.
- (2) *Election process timeline.* The regular term for an elected employee member shall begin as of March 1 of an applicable year and last for three (3) years. Special election timelines and different term effective dates shall apply in the event of a vacancy in this position as provided in subsection (9) of this rule. In years during which an election of an employee member occurs, the following timeline shall apply, provided that, if the date of any deadline falls on a weekend or holiday, the deadline shall be extended until 4:30 p.m. of the next business day.
 - (a) *Notice of election and ability to seek nomination.* The retirement office shall send, by mail or electronic communication, a notice of election and ability to seek nomination to employees in the first week of December for a regular election or in the first week of a month when it is first feasible to do so for a special election. In the event a regular election and special election are being held concurrently, the notice described in this section shall make clear that an employee member nominee may only declare candidacy for one (1) of the elections.
 - (b) *Nomination deadline.* Complete nomination papers must be received in the retirement office by 4:30 p.m. on January 2 or, for a special election, the first day of the month following the month when the notice in subsection (2)(a) was distributed.
 - (c) *Notice of candidates for primary election and date of primary election.* The combined 300-word resumes and statements of candidates shall be communicated to employees by January 31 or by the last day of the month established by subsection (2)(b) for a special election.
 - (d) *Primary election date.* A primary election shall be held by February 15 for a regular election or the fifteenth day of the month following the month established by subsection (2)(c) for a special election. If only two (2) candidates file valid nomination papers, this primary election shall be the final election.
 - (e) *Notice of candidates for final election and date of final election.* The retirement office shall inform the candidates of the results of the primary election and post the results of the primary election, if any, as soon as practicable following tabulation of the votes.

- (f) *Final election.* If necessary, the final election shall be held before the last business day of February for a regular election or the last day of the month established by subsection (2)(d) for a special election. Notice of the results of the final election will be given to the candidates and posted in various departments as soon as practicable following tabulation of the votes.
 - (g) *Commencement of service.* Service begins as of March 1 for a member elected pursuant to a regular election. Service begins as of the first day of the month following the final election for a member elected pursuant to a special election, with the expectation that the member would be available to attend the regularly scheduled Pension Board meeting for that month.
- (3) *Nomination of candidates.* To begin the nomination process, an eligible individual must register as a candidate, prove eligibility for candidacy to the Retirement Office and request nomination papers from the retirement office.
- (a) *Nomination requirements.* To earn a nomination as a candidate for an employee member position on the pension board and be placed on the ballot for the election, an eligible individual must obtain one hundred (100) signatures from persons eligible to be candidates for employee member of the pension board. An eligible individual's representative(s) may circulate the nomination papers and collect signatures on behalf of the eligible individual. The potential candidate or candidate's representative(s) must obtain the requisite number of signatures from other employees eligible to run for employee pension board membership. Upon receiving the required number of signatures for nomination, the candidate or representative(s) shall sign and date the nomination papers, have them notarized and return the nomination papers to the retirement office. The individual may also present, along with the nomination papers, a resume and statement, limited to three hundred (300) words, detailing the candidate's qualifications for the position at that time.
 - (b) *Nomination papers.* The pension board shall approve the form of the nomination papers and any changes to the nomination papers. These papers shall require the signatory to include, at a minimum, his or her employment location and years of county service to date. In the event that a regular election and a special election are taking place concurrently, the candidate must fill out specific nomination papers for either the regular election or the special election but not both. If a candidate is nominated for both the regular election and the special election, the candidate will become ineligible for both elections.
- (4) *Campaigning.* In the time period between the nomination deadline and either of the applicable election dates, a candidate may campaign for the position of pension board member. Mailing labels will not be available for candidates to

send mailings to eligible voters. The communication of candidates' resumes and statements to eligible voters shall be made according to the timeline described in subsection (2)(c), as applicable. Candidates must comply with any applicable campaign laws. Candidates should seek counsel regarding these requirements prior to beginning their campaigns.

- (5) *Election format.* If only one (1) candidate files approved nomination papers, no election will be held and that candidate shall be certified as the winner of the trustee position. If only two (2) candidates file approved nomination papers for an election, no primary election will be held. Instead, a final election will be held according to the timeline described in subsection (2)(d) above and will determine the employee member representative on the pension board. If more than two (2) candidates file approved nomination papers for an election, a primary election will be held according to the timeline described in subsections (2)(d) and (f) above. Following the primary election, the two (2) candidates receiving the highest number of votes in the primary election shall have their names placed on the ballot for the final election. However, if one (1) candidate receives more than fifty-five (55) percent of the votes cast in the primary election, there will be no final election. If necessary, the final election shall be held according to the timeline described in subsections (2)(e) and (f) above. If a paper ballot is used, positions on the ballot for the primary election and the final election will be determined by random drawing. The drawing will take place in the Retirement Office before one (1) or more witnesses. Attendance of the candidates at the ballot position drawing is optional. If an electronic or telephonic ballot is used, positions on the ballot for any election shall be randomly alternated by the software program.
- (6) *Voting.*
 - (a) *Eligibility to vote.* ERS and OBRA members who are on the Milwaukee County payroll as of the second pay period prior to the election are eligible to vote.
 - (b) *Voting procedure.* All elections shall be conducted by use of a computer-based internet system and a telephonic system, unless the pension board specifically decides to use a paper ballot process for a designated election. Voters shall be given the option to vote by either one of these methods, but the system shall be designed to limit an eligible voter to one (1) vote per election. If a paper ballot is used, voting shall take place in person at times and places and over such number of days as are established by the retirement office. The pension board reserves the right to grant special accommodations for those with extenuating circumstances. If a telephonic or a computer-based internet ballot system is used, the retirement office shall send notice, by mail or electronic communication, of the primary or final election to all eligible voters, with instructions for the methods of voting, with voter identification and password, according to the timeline

set forth in subsection (2) above. If a ballot system other than paper is used, write-in votes are not allowed and will not be accepted.

- (c) *Validity of votes.* An eligible individual may only cast one (1) vote per election. If an individual attempts to cast more than one (1) vote, all of the individual's votes will be declared invalid.

(7) *Election results.*

- (a) *Determination of outcome.* In the case of a primary election, the two (2) candidates receiving the highest number of votes will progress to the final election. However, if one (1) of the candidates receives more than fifty-five (55) percent of the votes cast in a primary election, that candidate shall be declared one (1) of the employee members of the pension board. If no candidate receives more than fifty-five (55) percent of the votes cast in the primary election, the candidate receiving the highest number of votes in the final election shall be the winner of that election. In the result of a tie in either the primary or general election, the retirement office shall break the tie in accordance with s. 5.01(4), Wis. Stats.

- (b) *Certification and announcement of results.* As soon as possible after completion of both the primary election and the final election, the retirement office shall certify the election results to the pension board chairperson. The retirement office will then announce to the public the election results, including the number of votes received by each candidate. If no election is held because only one (1) candidate filed approved nomination papers, the retirement office shall certify that fact to the pension board chairperson and announce to the public that such candidate will be the new trustee.

(8) *Administration of election.* The retirement office shall oversee and administer the election process. As a result, the retirement office shall take the following actions:

- (a) Compliance with the applicable election laws as determined by corporation counsel.
- (b) Compliance with applicable election policies of the pension board.
- (c) Acceptance and confirmation of validity of nomination papers.
- (d) Tabulation of votes. In the result of a tie, the retirement office shall break the tie in accordance with s. 5.01(4), Wis. Stats.
- (e) Announcement of election results.
- (f) Handling complaints or disputes with the election process.

The retirement office shall take all other actions necessary and within its power to administer this election. The retirement office may assign responsibility for various actions to various other parties.

- (9) *Special election.* In the event a vacancy exists in an employee member position, the pension board shall determine the need for and timing of a special election. A special election may be necessary to elect an employee member in the event of the resignation, removal or death of a sitting employee member. If an employee member terminates employment with Milwaukee County, that member shall not remain an employee member of the pension board. If a special election becomes necessary, the retirement office shall follow similar election procedures to conduct the special election as are used to elect the employee member during the regular election. The pension board shall establish alternative timelines appropriate for conducting the special election in a timely manner. These timelines shall be based upon the timeline used for a regular election. If the date of any deadline falls on a weekend or holiday, the deadline shall be extended until 4:30 p.m. of the next business day.

1021. Lump sum benefits denied.

- (a) *Lump sum distribution defined.* For purposes of this rule, "lump sum distribution" refers to a distribution in any form that is not a monthly payment for either the member's or beneficiary's life or for ten (10) years certain or that is not a back DROP benefit, as determined in the sole discretion of the board.
- (b) The pension board, in the exercise of its sole discretion as set forth in section 201.24(7.2), will not grant any request for a lump sum benefit, on the grounds that the forms of benefit set forth in section 201.24(7.1) and in Rule 1013(a)(1), (2), (3) and (4) provide sufficient options to members, that any other form of benefit subjects the system to unnecessary administrative expense and burden and that, in any given case, a request for a lump sum benefit is either not in the interest of the member or of the system.

1023. Determination of final average salary in reciprocity cases.

If a member's pension is calculated pursuant to the reciprocity rule described in section 201.24(11.41), then the member's final average salary for purposes of calculating his pension shall be determined in accordance with Wis. Stats. § 40.30(4)(b). Specifically, the final average salary as defined in section 201.24(2.8), increased by the percentage increase in the "national average wage index" between the date the member terminates employment covered by the system and the date the member terminates all employment covered by any of the governmental retirement systems in Wisconsin. The "national average wage index" for this purpose means, for any particular calendar year, the average of the total wages for such particular calendar year, as computed by the commissioner of social security.

1024. County-City transfers.

In those cases where a member is entitled to receive a pension from both the system and

the Employee's Retirement System of the City of Milwaukee ("city system") under section 201.24(11.4), the pension board shall not determine the portion of the system's contribution towards the member's pension pursuant to section 201.24(11.4(a)(4)). Instead, the pension board shall determine the portion of the system's contribution towards the member's pension in the circumstance as follows: such contribution shall be prorated upon the basis of the dollar amount of the benefit the member earned under the system (as determined in section 201.24(11.4(a)(1)(County portion)) to the total dollar amount of the benefit the member is entitled to under both the system and the city system.

1025. Accidental disability retirement pensioner reexamination.

Sections 201.24(10.1), (10.2), (10.3) and (10.4) of the Milwaukee County Code of General Ordinances authorize the board to periodically audit and reexamine members who are receiving accidental disability retirement ("ADR") pensions. The board shall use the following procedures when conducting reexaminations of ADR pensioners.

- (a) *Exclusion of certain pensioners from reexamination.* The board will not review an ADR pensioner if: (i) the pensioner is eligible for a normal pension that equals or exceeds the ADR pension; (ii) the pensioner has converted from an ADR pension to a normal pension; (iii) the pensioner has attained normal retirement age; or (iv) the board has previously reviewed the pensioner and determined that the pensioner did not have the possibility of future recovery. If an ADR pensioner does not qualify for one (1) or more of these exclusions, the pensioner is eligible for periodic review.
- (b) *Evaluation of eligible ADR pensioners.* The board may review any eligible ADR pensioner to determine whether the pensioner remains disabled. Pursuant to section 201.24(10.1) of the Milwaukee County Code of General Ordinances, the board will not order a review of a pensioner more often than annually for the first five (5) years of the pensioner's disability, or more often than once in every three-year period thereafter. When evaluating a pensioner's disability, the board may conduct a medical examination, a vocational examination, or both. The board will evaluate the continuing condition of the member's disability according to the standard for disability applied to the pensioner when the pensioner was initially declared disabled.
- (c) *Notice of examination.* The board will notify eligible ADR pensioners when they will be subject to medical review. In this notice, the board will describe the reexamination process for the pensioner and inform the pensioner of the pending medical and/or vocational evaluations. The board's notice will also include the deadline for completing the review, noted in section (d) below, and procedures following the completion of the board's evaluation.
- (d) *Deadline for completing examination.* The pensioner must complete the reexamination process within ninety (90) days of the date of the notice of examination. If a pensioner fails to complete the reexamination, the board will discontinue and then terminate the pension pursuant to section 201.24(10.1) of the

Milwaukee County Code of General Ordinances.

- (e) *Reviewing parties.* The board will choose an appropriate entity to conduct each part of the ADR pensioner's review. If the ADR pensioner's home address is not located in the State of Wisconsin, the board will provide for the pensioner to be reviewed by the medical expert for the governmental retirement system in the pensioner's current community, county or state. In all cases, the board is responsible for the expense of examination.
- (f) *Determination of recovery.* The examiners will review each ADR pensioner according to the disability standard under which the pensioner was originally deemed disabled. The board shall then, based on the evaluations, determine if the pensioner continues to qualify for receipt of a disability pension. If the board determines that an ADR pensioner has not recovered from his or her disability, the ADR pension will continue uninterrupted. If the board determines that an ADR pensioner has recovered from his or her disability, the pensioner will be entered into the county's layoff-recall system to attempt to assist the pensioner in returning to work.
- (g) *Procedure for terminating ADR pension upon recovery from disability.* If the board determines that an ADR pensioner has recovered from his or her disability:
 - (i) The board will notify the pensioner that: a) the pensioner will be placed on the county's layoff-recall list in an effort to return the pensioner to county employment; b) the pensioner has the right to appeal the board's determination that the pensioner is no longer disabled; and c) the pensioner may seek employment outside the county;
 - (ii) The board will enter the pensioner into the county's layoff-recall system;
 - (iii) The pensioner will continue to receive an ADR pension while in the layoff-recall system;
 - (iv) Upon the county finding an appropriate job for the pensioner, the board will notify the pensioner of the open position and offer the job to the pensioner;
 - (v) The pensioner will have 30 days to accept the county's offer of employment; and
 - (vi) If the pensioner does not accept the offer of county employment:
 - a. The pensioner's ADR pension will be terminated pursuant to Milwaukee County Code of General Ordinances section 201.24(10.2); and
 - b. The pensioner may appeal the board's determination that the offered employment is appropriate for the pensioner.

1026. Appeal procedures related to disability retirement determinations.

Sections 201.24(4.3) and 201.24(4.4) of the General Ordinances authorize the board to grant disability retirement pensions to eligible members. Rule 1025 provides the board with a procedure for conducting reexaminations of members receiving accidental disability retirement pensions, as authorized by section 201.24(10.1) of the General Ordinances. In the event the board either denies a disability pension application or, upon reexamination of a pensioner conducted pursuant to rule 1025, decides that the pensioner no longer qualifies as disabled, the board shall allow the affected member to file a petition for an appeal of the board's decision. The board shall use the following procedures in the appeals process.

- (a) *Appealable pension board determinations.* A member may appeal a board determination that:
 - (i) A member does not qualify for a disability benefit under sections 201.24(4.3) and (4.4) of the General Ordinances; or
 - (ii) Upon reexamination pursuant to rule 1025, an ADR pensioner is no longer disabled according to the applicable disability standards.
- (b) *Filing of appeal.* The board shall provide the member with a written notice of the board's determination. The member must file a written appeal with the board within thirty (30) days of the date of this notice.
- (c) *Role of examiner.* Pursuant to section 201.24(4.9)(11) of the General Ordinances, the board may authorize an examiner to hold hearings, make rulings, consider evidence, swear witnesses and make findings of fact, conclusions of law and issue orders related to a member's appeal of the board's denial of benefits. The board may also use an examiner to conduct any appeal resulting from a board determination related to a disability pensioner's reexamination. The board may use an "appeals officer" selected by corporation counsel and approved by the board as the examiner on each appeal. For the purposes of this rule, the term "appeals officer" means: any current or former Milwaukee County Circuit Court Judge; an arbitrator; a former officer or executive of the county; or any other similar person deemed unbiased and qualified by corporation counsel and the board.
- (d) *Hearing.* The board, with the assistance of corporation counsel, shall coordinate a hearing date with the pensioner and the examiner. The member filing the petition shall appear in person and may be represented at the hearing by counsel. If the member elects counsel to appear at the hearing, the member shall identify his counsel in writing prior to the hearing. Corporation counsel will represent the board and present its position at the hearing.

In presiding over the hearing, the appeals officer shall consider all relevant evidence, which may include, but is not limited to, testimony of witnesses, oral arguments or written briefs. In considering evidence, the appeals officer may be guided by, but is not bound by, formal rules of evidence. The appeals officer

may, in his sole discretion, elect to admit hearsay evidence, provided such testimony has probative value. After considering all evidence, the appeals officer shall issue a written order, including findings of fact and conclusions of law, that affirms or reverses the board's original decision.

- (e) *Petition from order.* Any party dissatisfied with the findings, conclusions or order of the appeals officer may file a written petition with the board as a body. The aggrieved party must file this written petition within twenty (20) days of the date the appeals officer's written order was mailed to the member or his attorney.
- (f) *Board review of petition.* Upon receiving a written petition for review, the board shall review the findings, conclusions and order of the appeals officer and shall affirm, set aside or modify the decision of the appeals officer, or remand the petition with directions to the appeals officer to take additional testimony, within forty-five (45) days after the filing of the petition.
- (g) *Appeal to circuit court.* If the board affirms the decision of the appeals officer, the board must provide written notice to the member of the decision and inform the member of his right to contest the board's decision by filing a lawsuit in Milwaukee County Circuit Court. The member must file any such lawsuit within thirty (30) days of the date of the board's determination.

1027. Disability pension start date.

- (1) *Effective Date.* A member who is eligible for a disability pension pursuant to section 201.24(4.3) or section 201.24(4.4) of the General Ordinances of Milwaukee County shall be entitled to receive his disability pension benefits effective as of the date of the member's disability application, or if later, the day after the last day for which the member is entitled to compensation for employment with the County. If the member's disability application is approved following the effective date established in the preceding sentence, the disability benefit shall be deemed to have commenced as of the effective date established in the preceding sentence. In that event, the member's initial disability pension benefit payment shall include benefits for which the member would have been eligible during the period from the established effective date to the date of initial payment. If disability ceases prior to the member's normal retirement date, the last disability pension payment shall be made on the last day of the month in which the disability ceases.
- (2) *Application/Beneficiary Designation.*
 - (a) *Temporary Designation.* A member who files an application for a disability pension shall, upon filing such application, designate a temporary beneficiary to receive the applicable benefit upon the member's death prior to the approval of the member's disability application and designation of a permanent form of benefit and beneficiary. Subsequent to approval of the member's disability application, the member shall elect a

permanent form of benefit and, if applicable, designate a permanent beneficiary.

(b) *Disability Application Superseded - Permanent Designation.* Subsequent to the Pension Board's approval of the member's disability and upon submission to the Retirement Office of a disability applicant's properly completed retirement paperwork for processing:

(i) the beneficiary selected in the member's retirement paperwork shall supersede that designated in the disability application (as provided in (2)(a) above); and

(ii) the permanent form of benefit paid to the member and, if applicable, the member's beneficiary shall be that designated on the member's retirement paperwork.

It shall be in the sole discretion of the Retirement Office and the Pension Board to determine whether and when the applicant's retirement paperwork was properly completed.

(c) *Death Following Disability.*

(i) In the event a member, whose disability application is approved by the Pension Board, dies prior to electing a permanent form of benefit or beneficiary (as described in (2)(b) above), the beneficiary named on the disability application (i.e., the "temporary designation" as described in (2)(a) above) shall become irrevocable and such beneficiary shall be entitled to receive a 100% survivor annuity as described in Ordinance section 201.24(7.1).

(ii) If a member does not elect a beneficiary on his or her disability application, then upon the member's death prior to the member's permanent election (as described in (2)(b) above), the member's spouse, or if none, the individual or entity described in Wisconsin Statute section 852.01 governing intestate succession shall be entitled to receive a 100% survivor annuity as described in Ordinance section 201.24(7.1). However, if under Wisconsin Statute section 852.01, multiple individuals are deemed to be the member's beneficiaries, only the oldest member of such group shall be entitled to receive the member's benefit. For purposes of this subsection (c)(ii), the Retirement Office and the Pension Board shall have sole authority and discretion to determine the member's beneficiary under Wisconsin Statute section 852.01.

(3) *Payment of Disability Benefits in the Event of Death Prior to Approval or Commencement of Disability Payments.*

- (a) If a member submits a disability application and dies before the Pension Board can review his or her application, the Pension Board may review the disability application after the member's death and approve or deny the member's application.
- (b) In the event a member, whose disability application is approved by the Pension Board, dies prior to commencement of disability benefit payments, the disability benefit payments due to a member for the period commencing with the member's effective date (as established in subsection (1) above) and ending on the date of death shall be paid to the member's estate. Following the member's death, survivor payments will commence to the member's beneficiary.

1028. Ordinary disability retirement pensioner reexamination.

Sections 201.24(10.1), (10.2), (10.3) and (10.4) of the Milwaukee County Code of General Ordinances authorize the board to periodically audit and reexamine members who are receiving ordinary disability retirement ("ODR") pensions. The board shall use the following procedures when conducting reexaminations of ODR pensioners.

- (a) *Exclusion of certain pensioners from reexamination.* The board will not review an ODR pensioner if: (i) The pensioner has attained normal retirement age; or (ii) the board has previously reviewed the pensioner and determined that the pensioner did not have the possibility of future recovery. If an ODR pensioner does not qualify for one (1) or more of these exclusions, the pensioner is eligible for periodic review.
- (b) *Evaluation of eligible ODR pensioners.* The board may review any eligible ODR pensioner to determine whether the pensioner remains disabled. Pursuant to section 201.24(10.1) of the Milwaukee County Code of General Ordinances, the board will not order a review of a pensioner more often than annually for the first five (5) years of the pensioner's disability, or more often than once in every three-year period thereafter. When evaluating a pensioner's disability, the board may conduct a medical examination, a vocational examination, or both. The board will evaluate the continuing condition of the member's disability according to the standard for disability applied to the pensioner when the pensioner was initially declared disabled.
- (c) *Notice of examination.* The board will notify eligible ODR pensioners when they will be subject to medical review. In this notice, the board will describe the reexamination process for the pensioner and inform the pensioner of the pending medical and/or vocational evaluations. The board's notice will also include the deadline for completing the review, noted in section (d) below, and procedures following the completion of the board's evaluation.
- (d) *Deadline for completing examination.* The pensioner must complete the reexamination process within ninety (90) days of the date of the notice of

examination. If a pensioner fails to complete the reexamination, the board will discontinue and then terminate the pension pursuant to section 201.24(10.1) of the Milwaukee County Code of General Ordinances.

- (e) *Reviewing parties.* The board will choose an appropriate entity to conduct each part of the ODR pensioner's review. If the ODR pensioner's home address is not located in the State of Wisconsin, the board will provide for the pensioner to be reviewed by the medical expert for the governmental retirement system in the pensioner's current community, county or state. In all cases, the board is responsible for the expense of examination.
- (f) *Determination of recovery.* The examiners will review each ODR pensioner according to the disability standard described in section 201.24(4.4) of the Milwaukee County Code of General Ordinances. The board shall then, based on the evaluations, determine if the pensioner continues to qualify for receipt of a disability pension.

If the board determines that an ODR pensioner has not recovered from his or her disability, the ODR pension will continue uninterrupted. If the board determines that an ODR pensioner has recovered from his or her disability, the pensioner will be entered into the county's layoff-recall system to attempt to assist the pensioner in returning to work.

- (g) *Procedure for terminating ODR pension upon recovery from disability.* If the board determines that an ODR pensioner has recovered from his or her disability:
 - (i) The board will notify the pensioner that: a) The pensioner will be placed on the county's layoff-recall list in an effort to return the pensioner to county employment; b) the pensioner has the right to appeal the board's determination that the pensioner is no longer disabled, pursuant to the procedure described in rule 1026; and c) the pensioner may seek employment outside the county;
 - (ii) The board will enter the pensioner into the county's layoff-recall system;
 - (iii) The pensioner will continue to receive an ODR pension while in the layoff-recall system;
 - (iv) Upon the county finding an appropriate job for the pensioner, the board will notify the pensioner of the open position and offer the job to the pensioner;
 - (v) The pensioner will have thirty (30) days to accept the county's offer of employment;
 - (vi) If the pensioner does not accept the offer of county employment:
 - a. The pensioner's ODR pension will be terminated pursuant to

Milwaukee County Code of General Ordinances section 201.24(10.2); and

- b. The pensioner may appeal the board's determination that the offered employment is appropriate for the pensioner, pursuant to the procedure described in rule 1026.

1030. Termination benefit funding.

- (a) To fund the benefit described in section 5.17, the county shall, in conjunction with its actuary, estimate the annual cost of the lump sum benefit described in section 5.17 based on data as of the beginning of each fiscal year. The county shall estimate the amount necessary to fund this benefit through use of the benefit formula described in section 5.17. The county shall fund the entire estimated cost of this benefit on April 1 each year (or the first of such month after which the information is known).
- (b) The cost of this benefit shall be determined regardless of and separate from any surplus funding in the Retirement System. No amounts used to fund pension benefits from the retirement system shall be used to fund this benefit.
- (c) Any deficit with respect to the payment of the benefit described in section 5.17 that arises from the prior year's estimate shall be added to the required funding contribution for the current year. Likewise, any surplus funding of the section 5.17 benefit that exists as a result of the prior year's estimated funding of that benefit shall be subtracted from the amount necessary to fund the current year's section 5.17 benefit. Separate accounting shall be done for this benefit.

1031. Sick pay benefit-Single payment.

- (a) No member shall receive a benefit payment from the retirement system that is attributable to accrued sick allowance if the payment causes the member to have received total benefit payments attributable to accrued sick allowance, whether received from the county directly, from the retirement system directly, or from the retirement system as an eligible rollover distribution, in excess of the value of the member's accrued sick allowance from the county on retirement.
- (b) The value of the member's accrued sick allowance on retirement shall be calculated by multiplying the total number of accrued and unused sick hours on retirement by the stated value of one hour of accrued sick allowance as in effect on the date of the member's retirement from the county.

1032. Effective dates—Sick pay benefits.

Notwithstanding anything within section 201.24 of the General Ordinances of Milwaukee County or these rules to the contrary, all provisions of the retirement system related to the payment of a member's accrued sick allowance through the retirement system, including, but not limited to, Ordinance section 201.24(5.17) and rule 1030, and except for rule 1031, shall be

effective as of the first date on which each of the following events has occurred:

- (a) Section 201.24(5.17) has been adopted by the county board;
- (b) Section 17.184 has been amended by the county board to be coordinated with section 201.24(5.17); and
- (c) The Internal Revenue Service has issued a favorable private letter ruling which concludes, to the satisfaction of the pension board, that:
 - (1) Benefit payments made pursuant to section 201.24(5.17) are eligible rollover distributions under section 402(c) of the Internal Revenue Code;
 - (2) Benefit payments made pursuant to section 201.24(5.17) are not considered deferred compensation pursuant to section 457 of the Internal Revenue Code; and
 - (3) Benefit payments made pursuant to section 201.24(5.17) shall be considered "annual benefits" for the purposes of section 415 of the Internal Revenue Code rather than "annual additions" for the purposes of section 415 of the Internal Revenue Code.

1033. Waiver of Benefits

- (a) *Waiver.* Notwithstanding anything to the contrary within section 201.24 of the Milwaukee County Code of General Ordinances, a member may, in accordance with this Rule 1033, waive the member's right to all or part of the benefit otherwise payable to the member. The member may also waive the member's right to elect to receive the benefit payable to the member in a certain form of benefit described in section 201.24 of the Milwaukee County Code of General Ordinances or these rules. The acceptance of an executed waiver provides the retirement system with additional assets and allows the Pension Board to better project the estimated actuarial cost of providing benefits to members. Any executed waiver which is accepted by the Pension Board irrevocably relinquishes the member's property and contract rights to benefits or to a form of benefit, as described in the applicable executed waiver.
- (b) *Conditions of Waiver.* For a waiver to be accepted by the Pension Board as a valid and binding waiver, all of the conditions listed below must be satisfied. The failure to satisfy one of the conditions shall invalidate the waiver ab initio.
 - (1) The member shall represent that he or she has executed the waiver knowingly and willingly. The member shall also represent that he or she has had ample opportunity to review and understand the provisions of the waiver and the effect of the waiver on the member's benefits. The member shall further represent that he or she has had an opportunity to review and discuss the waiver with legal counsel or other financial or personal advisors, if the member so desires.

- (2) The waiver shall be executed in a form and manner approved by the Pension Board when the waiver is accepted, using only the waiver documents approved by the Pension Board which may be amended from time to time.
- (3) The waiver shall state that it is irrevocable.
- (c) *Effect of Waiver.* Any opinions to the Pension Board regarding the tax, legal and other effects of a waiver may not be relied upon by the member in connection with determining the impact of a member's execution of a benefit waiver on that member's financial, tax or other similar circumstances.
- (d) *Acceptance of Waiver.* Waivers must be accepted by the Pension Board at a public meeting of that body before such waiver may take effect. Upon the Pension Board's acceptance of a waiver, the waiver shall be considered effective, retroactive to the date the member executed the waiver. The Pension Board shall accept waivers at the Pension Board's periodic meetings in the same manner as the Pension Board approves retirements granted to members.

1034. Election of retiree member of board.

The following procedures shall apply when conducting the election of the retiree member of the Pension Board. The Pension Board shall have the discretion to interpret and amend these procedures in any manner that is consistent with Ordinance section 201.24(8.2).

- (1) *Candidate Qualification.* To be a candidate for the retiree member of the Pension Board, an individual must be a retiree of ERS. A "retiree" is a person who:
 - (a) previously worked as a Milwaukee County employee;
 - (b) earned retirement benefits as an active member in ERS;
 - (c) retired directly from County employment or as a deferred vested retiree;
 - (d) as of the date of the nomination deadline, has begun to receive pension benefits; and
 - (e) is currently receiving an ongoing monthly benefit from ERS. For these purposes, a "retiree" does not include a beneficiary of a former County employee who receives a survivor annuity benefit after the former County employee's death.
- (2) *Election Process Timeline.* The initial term for the elected retiree member shall begin as of November 1, 2004. Subsequent regular terms shall begin as of November 1 of an applicable year. Special election timelines and different term effective dates shall apply in the event of a vacancy in this position as provided in section (9) of this Rule. In years during which a regular election of the retiree member would occur, the following timeline shall apply, provided that, if the date

of any deadline falls on a weekend or holiday, the deadline shall be extended until 5 p.m. of the next business day.

- (a) *Notice of Election and Ability to Seek Nomination.* The Retirement Office shall send this Notice to retirees with monthly checks or automatic deposit notices by May 31 for a renewal term or the end of the month it is first feasible to do so for a special election.
 - (b) *Nomination Deadline.* Complete nomination papers must be received in the Retirement Office by 5 p.m. on the last day of the following month.
 - (c) *Notice of Candidates for Primary Election and Date of Primary Election.* The Retirement Office shall send resumes and statements of candidates for the primary election and the ballot for the primary election, if necessary, to retirees with monthly checks or automatic deposit notices by the end of the following month. If only two candidates file valid nomination papers, the ballot for the final election shall be sent.
 - (d) *Primary Election Date.* If necessary, a primary election shall be held. Votes must be received in the Retirement Office by 5 p.m. on the last day of the following month. If only two candidates file valid nomination papers, this shall be the deadline for the final election.
 - (e) *Notice of Candidates for Final Election and Date of Final Election.* The Retirement Office shall send results of the primary election, resumes of candidates for the final election, if necessary, and the ballot for the final election to retirees with monthly checks or automatic deposit notices by the end of the following month.
 - (f) *Final Election.* If necessary, the final election shall be held. Votes must be received in the Retirement Office by 5 p.m. on the last day of the following month.
 - (g) *Commencement of Service.* Service begins on the first day of the following month, with the expectation that the retiree member would be available to attend the regularly scheduled Pension Board meeting for that month.
- (3) *Nomination of Candidates.* To begin the nomination process, an eligible individual must register as a candidate, prove eligibility for candidacy to the Retirement Office and request nomination papers from the Retirement Office.
- (a) *Nomination Requirements.* To earn a nomination and be placed on the ballot for the retiree member election, an eligible individual must obtain 15 signatures. An eligible individual's representative may circulate the nomination papers and collect signatures on behalf of the eligible individual. The potential candidate or representative must obtain the requisite number of signatures from other retirees eligible to run for

Pension Board membership. Upon receiving the required number of signatures for nomination, the candidate or representative shall sign and date the nomination papers, have them notarized and return the nomination papers to the Retirement Office. The individual shall also present, along with the nomination papers, a resume and statement, limited to 300 words, detailing the candidate's qualifications for the position at that time.

- (b) *Nomination Papers.* The nomination papers should be designed by the Retirement Office, and the Pension Board shall approve the nomination papers and any changes to the nomination papers. These papers shall require the signatory to include, at a minimum, his or her retirement location and years of County service.
- (4) *Campaigning.* In the time period between the nomination deadline and either of the applicable election dates, a candidate may campaign for the position of retiree Pension Board member. Mailing labels will not be available for candidates to send mailings to eligible voters. Mailing of candidates' resumes and statements will be made by the Retirement Office as part of the mailing of monthly benefit checks or monthly automatic deposit notices according to the timeline described in sections (2)(c) and (e) above, as applicable. Candidates must comply with any applicable campaign laws. Candidates should seek counsel regarding these requirements prior to beginning their campaigns.
- (5) *Election Format.* If only two candidates file approved nomination papers, no primary election will be held. Instead, a final election will be held according to the timeline described in sections (2)(c) and (d) above and will determine the retiree member representative on the Pension Board. If more than two candidates file approved nomination papers, a primary election will be held according to the timeline described in sections (2)(c) and (d) above. Following the primary election, the two candidates receiving the highest number of votes in the primary election shall have their names placed on the ballot for the final election. However, if one candidate receives more than 55% of the votes cast in the primary election, there will be no final election. If necessary, the final election shall be held according to the timeline described in sections (2)(e) and (f) above. Positions on the ballot for the primary election and the final election will be determined by random drawing. The drawing will be conducted by the Secretary of the Pension Board and will take place in the Retirement Office before one or more witnesses. Attendance of the candidates at the ballot position drawing is optional with the candidates.
- (6) *Voting.* All primary and final elections shall be conducted by computer-based internet and/or telephone voting. The Retirement Office shall send notice of the election or primary election, if any, and a secure passcode and instructions for voting for that election to all eligible voters according to the timeline described in section (2)(c) above. If necessary, the Retirement Office shall send notice of the final election and a passcode and instructions for voting for that election to all

eligible voters according to the timeline described in section (2)(e) above. Write-in votes are not allowed in either the primary or general election and will not be accepted.

(7) *Election Results.*

- (a) *Determination of Outcome.* In the case of a primary election, the two candidates receiving the highest number of votes will progress to the final election. However, if one of the candidates receives more than 55% of the votes cast in the primary election, that candidate shall be declared the retiree member of the Pension board. In the event that no candidate receives more than 55% of the votes cast in the primary election, the candidate receiving the highest number of votes in the final election shall be the winner of that election. In the result of a tie in either the primary or general election, the Retirement Office shall break the tie in accordance with Wisconsin Statutes section 5.01(4).
- (b) *Certification and Announcement of Results.* As soon as possible after completion of both the primary election and the final election, the Retirement Office shall certify the election results to the Pension Board Chairperson. The Retirement Office will then announce to the public the election results, including the number of votes received by each candidate.

(8) *Administration of Election.* The Retirement Office shall oversee and administer the election process. As a result, the Retirement Office shall take the following actions:

- (a) Compliance with the applicable election laws as determined by Corporation Counsel.
- (b) Compliance with applicable election policies of the Pension Board.
- (c) Acceptance and confirmation of validity of nomination papers.
- (d) Tabulation of votes. In the result of a tie, the Retirement Office shall break the tie in accordance with Wisconsin Statutes section 5.01(4).
- (e) Announcement of election results.
- (f) Handling complaints or disputes with the election process.

The Retirement Office shall take all other actions necessary and within its power to administer this election. The Retirement Office may assign responsibility for various actions to various other parties.

(9) *Special Election.* In the event a vacancy exists in the retiree member position, the Retirement Office shall conduct a special election. A special election may be necessary to elect the retiree member in the event of the resignation, removal or

death of a sitting retiree member. If a special election becomes necessary, the Retirement Office shall follow the same election procedures to conduct the special election as are used to elect the retiree member during the regular election. To maintain the same three-year term length and two consecutive term limit, the Pension Board may need to modify the retiree member's date of termination and the successor member's beginning date. The Pension Board shall establish alternative timelines appropriate for conducting the special election in a timely manner. These timelines shall be based upon the timeline used for a regular election. For a special election, the deadline for each step of the process shall be the end of the month following the month in which the prior step is completed. If the date of any deadline falls on a weekend or holiday, the deadline shall be extended until 5 p.m. of the next business day.

1035. Option 7 benefit requests.

The following procedures shall govern the pension board's review of applications for Option 7 benefits:

- (a) *Option 7 benefit defined.* For purposes of this Rule 1035, "Option 7 benefit" refers to a retirement benefit that is in a form permitted by section 201.24(7.2) and Rule 1013(a)(4), that is the actuarial equivalent of the benefit otherwise payable, that is not provided for by section 201.24(7.1) or Rule 1013(a)(1), (2) or (3) and that is not a lump sum distribution as that term is defined in Rule 1021.
- (b) *Eligibility to apply for an Option 7 benefit.* A member shall be eligible to apply for an Option 7 benefit pursuant to section 201.24(7.2) and Rule 1013(a)(4) if the member is eligible for a normal pension, an early pension, or a deferred vested pension pursuant to sections 201.24(5.1), (5.2) and (5.5), respectively. An Option 7 benefit shall not be an available option for the distribution of any disability pension offered through ERS.
- (c) *Member application.* An eligible member shall apply for an Option 7 benefit by making an application on the form approved by the pension board. As required by Rule 1013(a)(4), the member shall be required to pay the system all costs related to the calculation of an Option 7 benefit.

[Amended effective June 20, 2012]

- (d) *Member signature.* The application shall be personally signed by the member. Applications signed by a guardian, conservator or other representative of an incapacitated member shall not be valid.
- (e) *Spousal consent.* If the member is married at the time the application is made, the member's spouse must sign the application, giving the spouse's written consent to the receipt of an Option 7 benefit. This requirement shall be waived if the member documents the inability to obtain the spouse's signature for one (1) of the following reasons only:

- (1) The spouse is incompetent and a copy of the court order appointing the spouse's guardian is submitted with the application. The guardian's signature shall be required on the application in lieu of the spouse's signature.
 - (2) The member certifies, on a form provided by the pension board, that the member does not now know and has not known the whereabouts of the spouse for at least the one hundred eighty (180) days immediately prior to the date the application is signed.
- (f) *Pension board discretion.* The determination of whether to approve an application for an Option 7 benefit is solely within the discretion of the pension board as set forth in section 201.24(7.2) and Rule 1013(a)(4). Consistent with Rule 1013, the decision of the pension board regarding any application shall be final and binding, unless it is found to be arbitrary and capricious by a court. In making this determination, the pension board will weigh three (3) competing interests:
- (1) The individual applicant's interests in receiving a distribution in the form of the applicant's choice;
 - (2) The individual applicant's interests in receiving a distribution in a form that the individual has the capacity and fiscal responsibility to manage, even if that is not the form of the applicant's choice; and
 - (3) The interests of the system members as a group in not having plan assets depleted by adverse selection.

If it chooses, the pension board may delegate any or all of its responsibilities in making the Option 7 benefit determination to a committee. Each decision of this committee shall be effective on the date specified by the committee once ratified by the pension board.

- (g) *Minimum percentage of Option 7 benefits.* The pension board will generally deny Option 7 benefit requests that provide for a survivorship benefit of less than twenty-five (25) percent. However, the pension board reserves the right to exercise its discretion in approving any Option 7 benefit.
- (h) *Submission of evidence.* In order to have sufficient information to make its determination, the pension board shall require that the applicant submit evidence of the following: (i) a bona fide retirement purpose for the application and benefit form requested; and (ii) the applicant's good health. In addition, the pension board may require that the applicant submit evidence of any or all of the following: (i) the applicant's fiscal responsibility; and/or (ii) the absence of undue influence in the applicant's decision to elect an Option 7 benefit.
- (1) *Bona fide retirement purpose.* Any member applying for an Option 7 benefit must submit evidence of a bona fide retirement purpose for the

application and the particular benefit form requested. On its own, eligibility of a beneficiary for retiree health benefits shall not be considered a valid reason to approve an Option 7 benefit request. The member shall also explain why an Option 7 benefit is necessary and none of the other optional forms of benefit provided by ERS is sufficient to meet his or her retirement needs.

(2) *Good health.* Any member applying for an Option 7 benefit must submit evidence that he or she is in good health. "Good health," as used in section 201.24(7.2), is defined as a state of physical and mental well-being. Good health includes the capacity to make rational decisions. Good health also includes the absence of diseases or conditions that, from a medical standpoint, may result in a significant shortening of life expectancy. In submitting evidence of good health, the following procedures shall be followed:

(A) *Medical history and evaluation.* The member shall be required to undergo an examination by a physician. This physician could be either the member's regular attending physician, if the member has one, or a medical board physician. As part of the exam, the member and the physician shall complete a medical history and evaluation of the patient, including the physician's opinion of whether the applicant is in "good health" as defined above. The attending physician's opinion of whether the applicant is in "good health" is merely a factor to be considered by the pension board, and is not determinative of the pension board's ultimate decision of whether to grant the Option 7 benefit request. The cost of this initial examination and completion of the medical history and evaluation shall be borne by the member.

(B) *Review by medical board.* The medical history and evaluation, if required, shall be returned to the attention of the secretary of the pension board. The secretary of the pension board shall, in turn, forward the medical history and evaluation to the medical board pursuant to section 201.24(8.12) for review. If, after review, the medical board believes that the medical history and evaluation is complete and sufficient on its face, it shall return the document with this opinion to the secretary of the pension board.

If, however, after review of the medical history and evaluation submitted by the member, the medical board believes that confirming or additional information is necessary, then the member shall be required to undergo a subsequent medical examination conducted by the medical board. The costs of such examination shall be borne by the system.

(C) *Authorization to disclose.* In advance of the subsequent medical examination, the applicant shall be required to execute an

authorization to disclose any and all information and records which relate to the applicant's medical condition to the medical board and the pension board. This authorization shall apply to medical information and records for the five (5) years preceding the date of the application and any records accumulated during the application period and as a result of the application itself.

- (D) *Copies of medical records.* Upon receipt of the authorization to disclose records, the medical board may request copies of the member's medical records. The cost of obtaining such medical records shall be borne by the system.
- (E) *Subsequent medical examination.* The medical board shall conduct the subsequent medical examination of the applicant. If the applicant fails to attend an appointment for the subsequent medical examination without canceling the appointment in time to avoid any cancellation fee, the applicant shall be responsible to pay such fee. If an applicant cancels more than one (1) appointment for an independent medical examination, the pension board may, within its discretion, determine that the member is not acting in good faith, and may cancel the member's application for an Option 7 benefit.
- (F) *Medical board's opinion and evaluation.* Following the subsequent medical examination, the medical board shall provide a medical opinion and evaluation in a format determined by the medical board and the pension board. The medical opinion and evaluation shall include the medical board's opinion of whether the applicant is in "good health" and the reasons underlying the opinion. The medical board's opinion of whether the applicant is in "good health" is merely a factor to be considered by the pension board, and is not determinative of the pension board's ultimate decision of whether to grant the Option 7 benefit request.
- (G) *Specialists and second opinions.* Within its discretion, the medical board may determine that it is appropriate for the applicant to undergo further medical examination by a specialist and/or for an additional opinion. The costs of any such examination(s) shall be borne by the system. The physician or specialist conducting such examination shall also prepare a medical opinion and evaluation as discussed in subparagraph (F) above.
- (H) *Confidentiality of medical records and reports.* Any medical records or information obtained in the application process shall be released only to members of the medical board and the pension board for the purpose of evaluating the member's request for an Option 7 benefit. Such records shall be handled, accessed and

stored in accordance with applicable medical confidentiality standards. Such records shall not be considered "open records" available to the general public.

- (I) *Actuarial estimates.* Upon receipt of the member's application for an Option 7 benefit, the Secretary of the pension board shall contact the actuary and request a copy of a report showing the value of the applicant's requested benefit in comparison to a ten-year certain annuity. The pension board shall review this information and take it into consideration in evaluating the possible shortening of an applicant's life expectancy if an applicant cannot demonstrate "good health."
 - (J) *Other evidence.* If, in the pension board's discretion, more information is necessary to determine the health status of the applicant, then the pension board may require the submission of additional medical information as it may specify for the pension board's review.
- (3) *Fiscal responsibility.* Depending on the benefit form requested, the applicant may be required to prove to the satisfaction of the pension board that he or she is fiscally responsible enough to manage the Option 7 benefit to cover the member's financial needs throughout the period of retirement. If the pension board determines that such evidence is necessary, the following procedures shall be followed:
- (A) *Declaration of financial responsibility.* The applicant shall execute a declaration of financial solvency stating:
 - (i) Whether he or she has ever filed for personal bankruptcy or financial reorganization under either state or federal law, and if so, when;
 - (ii) That he or she is currently financially solvent (i.e., that personal assets at least equal personal liabilities);
 - (iii) That he or she has no plans to file for personal bankruptcy or financial reorganization under either state or federal law in the foreseeable future;
 - (iv) That he or she has an investment plan ready to be implemented upon receipt of the Option 7 benefit; and
 - (v) That he or she understands the consequences of electing to receive benefits in the form requested.
 - (B) *Credit report.* The applicant shall execute an authorization on a form provided by the pension board to allow the pension board to

obtain a report on the member's credit history. The system shall bear the cost of obtaining such credit report, if the pension board deems it necessary to do so.

- (C) *Other evidence.* If, in the pension board's discretion, more information is necessary to determine the fiscal responsibility of the applicant, then the pension board may require the submission of additional financial information as it may specify for the pension board's review.
- (4) *Absence of undue influence.* Depending on the form of benefit requested, the applicant may be required to prove to the satisfaction of the pension board that the applicant is not under undue influence in making the application to receive an Option 7 benefit. The pension board may require that the applicant submit to a personal interview with the board or its designees. The pension board may also require the applicant to provide such other information as it deems necessary for the pension board's review as to the issue of undue influence.
- (i) *Pension board determination.*
 - (1) *Scheduling the review.* The member's request for an Option 7 benefit shall be placed on the agenda for a regular business meeting of the pension board scheduled following the date upon which the pension board has received all of the following necessary items for review which are complete in all respects:
 - (A) The application for Option 7 benefit;
 - (B) Evidence of a bona fide retirement purpose and good health;
 - (C) Any evidence of fiscal responsibility or absence of undue influence as determined to be necessary by the pension board; and
 - (D) Any additional information the pension board has requested in connection with the application.
 - (2) *Member attendance.* The member shall be invited to attend the meeting at which the member's request for an Option 7 benefit is to be reviewed. The member should be prepared to respond to questions placed by the pension board about the evidence required for the Option 7 benefit application.
 - (3) *Standards of proof.* The pension board's determination is made on a case-by-case basis in weighing the evidence presented as it affects the competing interests which must be considered by the pension board as outlined in subparagraph (f) of these procedures. No one (1) piece of evidence is likely to determine whether an Option 7 benefit request will be granted or denied. In any individual case, some evidence may weigh in

favor of granting the request, whereas others may weigh against it. In reviewing the application and supporting materials presented by a member, the pension board need only find that a preponderance of the evidence supports each requirement in order to justify granting an Option 7 benefit request or fails to support any requirement in order to justify denying an Option 7 benefit request. The determination of the pension board in granting or denying an Option 7 benefit request shall be final and binding, unless it is found to be arbitrary and capricious by a court.

- (4) *Decision and record.* The pension board shall take the information presented at the business meeting under advisement. If the pension board does not render a written decision granting the Option 7 benefit within sixty (60) days following the meeting, it shall be deemed denied. The pension board shall keep a written record of its evaluation along with the application record.
- (j) *Invalidation of application.*
- (1) *Incomplete application void.* If any of the documents necessary to the Option 7 benefit application procedure as described in this rule are not received by the pension board within one hundred eighty (180) days following the date the application for an Option 7 benefit is received by the pension board, the application shall be canceled and void. If the member still wishes to request an Option 7 benefit, a new application must be filed and the process begun anew.
 - (2) *Material omissions or misrepresentations.* If it comes to the attention of the pension board that the member may have made omissions or misrepresentations in the application process which are material to the decision on granting an Option 7 benefit request, the pension board has the discretion to cancel the member's application. The pension board also has the discretion to refuse a new application from such member.
 - (3) *Death prior to pension board approval.* If the member's death occurs prior to the time the Option 7 benefit request has been approved by the board, the Option 7 benefit application shall be canceled and void. No benefits shall be payable on account of the member's death, except such death and/or survivor benefits as may be available based on the member's status, pursuant to one (1) or more parts of section 201.24.
 - (4) *Withdrawal of application.* A member may cancel his or her Option 7 benefit request by submitting such cancellation in writing to the pension board. The member may begin a new application process subsequent to withdrawal of an application.

1036. Buy back applications.

- (a) A member who terminates and withdraws his membership account and who then

later returns to active county employment may restore the ERS service credits previously earned by buying back those credits through the buy back program.

- (b) A member may buy back prior service credit and have that service credit restored if:
 - (1) The member renders two (2) years of service with the county subsequent to resuming active county employment; and
 - (2) Within the two-year period after the member returns to active county employment, the member redeposits the amount withdrawn from the membership account with interest thereon to date of redeposit.
- (c) Interest on the buy back repayment shall be calculated in accordance with Rule 404.
- (d) A member may submit an application to participate in the buy back program at any time during the two (2) years following the member's resumption of active county employment. However, full repayment of the withdrawn amount, along with the calculated interest amount, must occur within two (2) years of the member's resumption of employment, regardless of when the member applies for participation in the buy back program.
- (e) If the member does not elect to restore prior service credit by participating in the buy back program within the two-year period following resumption of employment, the member's prior service credits shall be permanently canceled.
- (f) The pension board, in its own sole discretion, may expand the repayment period solely for the purpose of compliance with applicable federal, state or municipal laws.

1037. Default procedure for eligible rollover distributions.

- (a) *Default procedure.* If a distributee fails to elect a direct rollover of an eligible rollover distribution prior to the date that the payment of the eligible rollover distribution would otherwise be scheduled to commence, the eligible rollover distribution shall be paid directly to the distributee in a lump sum. The pension board, through the retirement office, shall withhold the amount required by the Internal Revenue Code, as amended, from the eligible rollover distribution paid directly to a distributee for purposes of federal income tax withholding.
- (b) *Notification.* ERS, through the retirement office, shall provide a distributee who is eligible for an eligible rollover distribution with a notice that complies with Internal Revenue Code section 402(f) and includes a description of the default procedures described in (a). The retirement office shall provide this notice no earlier than ninety (90) days and no later than thirty (30) days before the distributee's distribution date.

1038. Manner of benefits payments.

The employees' retirement system of the County of Milwaukee shall, to the extent feasible, make payments of any retirement benefits due to members who retire effective on or after July 1, 2007; or to the beneficiaries of those members, by means of direct deposit to an account with a financial institution that is a participant of the automated clearing house designated by the member or beneficiary.

1039. Information furnished by member.

The pension board shall have the right to require, as a condition precedent to the payment of any benefit, an individual applying for a benefit under the system to provide all information which the pension board or retirement office reasonably deems necessary to authenticate the identity, status or eligibility of the individual, including:

- (1) As proof of identity: a U.S. Passport; an original or certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal; a certification of birth abroad issued by the Department of State (Form FS-545 or Form DS-1350); a U.S. social security card issued by the Social Security Administration; a driver's license or ID card issued by a state or outlying possession of the United States, provided it contains a photograph or information such as name, date of birth, gender, height, eye color and address;
- (2) As proof of marriage: an original marriage certificate; a copy of a public record of marriage certified by the custodian of record; a copy of the member's tax returns for the three (3) preceding years that indicate the member filed the return as married;
- (3) As proof of age:
 - (a) An original or certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal;
 - (b) A U.S. Passport; or
 - (c) With special permission of the Pension Board or ERS Manager, one or more of the following:
 - (i) Certified copy of individual report from U.S. Federal Census Bureau;
 - (ii) Original or certified copy of a school record, in which age as of a certain date or date of birth has been reflected in the normal course of record keeping, certified by the custodian of such record;
 - (iii) Original or certified copy of military record;

- (iv) Original green card, visa or other immigration papers issued by the U.S. Immigration and Naturalization Service, or its successor;
- (v) Original or certified copy of Certificate of Citizenship, Naturalization Certificate, or their successors;
- (vi) Original or certified copy of a vaccination record in which age as of a certain date or date of birth has been reflected in the normal course of record keeping, certified by the custodian of such record;
- (vii) Original baptismal certificate or statement as to the date of birth shown by a church record as reflected in the normal course of record keeping, certified by the custodian of such record;
- (viii) Original or certified copy of marriage record in which age as of a certain date or date of birth has been reflected in the normal course of record keeping;
- (ix) Original or certified copy of notification of registration of birth in a public registry of vital statistics;
- (x) Original insurance policy which has been in force for at least ten years in which age as of a certain date or date of birth has been reflected in the normal course of record keeping;
- (xi) Original or copy of hospital birth record, certified by the custodian of such record;
- (xii) Original or copy of non U.S. church or government record in which age as of a certain date or date of birth has been reflected in the normal course of record keeping, certified by the custodian of such record;
- (xiii) Signed statement from a physician or midwife who was in attendance at birth, as to the date of birth shown on their records;
- (xiv) Other evidence, such as a statement signed by person(s) who have knowledge of the date of birth, voting records, or other such documents;

The Retirement Office, in its discretion, may request additional proof of age if the document submitted by a member is not convincing proof;

- (4) Or such other documents determined to be acceptable by the Pension Board.

The Retirement Office shall retain the original or certified copy submitted by the member for its records. The Retirement Office shall not photocopy an original or certified copy of a member's birth certificate nor any other vital record in violation of Wisconsin Statute

section 69.24. For purposes of this Rule, "vital record" shall have the meaning set forth in Wisconsin Statute section 69.01(26), which includes, as relevant to this Rule, marriage documents, death certificates, or certificates of divorce or annulment.

The Retirement Office may photocopy and retain photocopies of other documents submitted by a member pursuant to this Rule to authenticate the member's identity, status or eligibility. No benefit for which the Pension Board or Retirement Office requires any such information shall be payable until the Retirement Office receives such information.

1040. Approval of retirements.

The Pension Board hereby delegates to the Manager of the Employees Retirement System the authority to approve the retirement pensions of members in accordance with the applicable laws, ordinances and collective bargaining agreements incorporated therein. At the Pension Board's regularly scheduled meetings and at such other times as the Pension Board or its Chairman requests, the Manager shall provide a tabular report to the Pension Board of the retirements granted since the Manager's prior report. The report shall include details concerning the member's retirement date, type of retirement, monthly annuity, backdrop (if any), option selected, employment position and years of service. The report shall indicate those retirements that are based on the "Rule of 75." In the event the Manager has any question, or is aware of any dispute, concerning a member's retirement pension, the Manager shall request Pension Board action prior to payment of that member's retirement pension. Notwithstanding the preceding, the Pension Board may, at its discretion, review, amend or overturn approvals of retirements, either on a retroactive or prospective basis. [NOTE: requirements revised October 2011.]

1041. Election of chairperson and vice chairperson.

- (1) (a) In the event the chairperson resigns the position of chair, or in the event the chairperson's membership on the board is terminated for any reason, the vice chairperson shall serve as the acting chairperson until a chairperson is elected. The board shall hold an election to select the chairperson at the next meeting.
- (b) In the event the chairperson of the board serves until the end of his or her term, whether a full or partial term, and then is re-elected or re-appointed for a new term, the pension board shall hold an election for chairperson from among its members at the next board meeting following the chairperson's re-election or confirmation of appointment as a member.
- (c) A member of the board may at any time make a motion to hold an election for the chairperson or vice chairperson. If the motion passes, an election shall be held at the next board meeting.
- (2) (a) The pension board hereby establishes the position of vice chairperson of the board. The vice chairperson shall perform the duties of the chairperson whenever the chairperson is unable to do so.

- (b) Whenever an election of chairperson is called for by subsection (1), then, at that same meeting and subsequent to electing a chairperson, the board shall elect a vice chairperson.
 - (c) In the event the vice chairperson resigns the position of vice chair, or in the event the vice chairperson's membership on the board is terminated for any reason, the board shall elect a vice chairperson at its next meeting.
- (3) Any election of chairperson or vice chairperson provided for in subsection (1) or (2) shall be governed by the following provisions:
- (a) A member may nominate himself or herself for the position of chairperson or vice chairperson.
 - (b) Nominations for either position shall not require a second.
 - (c) The election for either position shall be conducted by roll call vote in alphabetical order by last name, except that the acting chairperson shall vote last.
 - (d) Any vote for election is governed by section 201.24(8.5) of the ordinances.
- (4) A member may serve as chair or vice chair for any length of time, subject only to the limitations on membership set forth in section 201.24(8.2) of the ordinances.

1042. Board membership--Disqualification.

- (1) If a board member ceases to meet any of the qualifications required when the member was elected or appointed, the individual's membership on the board is immediately terminated. When a board member knows, or has reason to believe, that he or she no longer meets the qualifications for his or her board membership, a member shall immediately notify the secretary of the board. Upon learning that a member no longer meets the qualifications for his or her board membership, the board shall schedule an election to replace an elected member or shall notify the authority that appointed that member.

1043. Contact with investment managers.

- (1) In the event any person or entity contacts a member of the pension board, an employee of the retirement system or counsel to the retirement system to discuss the provision of any investment services to the retirement system or pension board by that person or entity, the individual contacted shall inform the person or entity that the individual is not authorized to receive such a contact. The individual contacted shall direct the person or entity to contact the investment consultant for the pension board and may provide contact information for the investment consultant.

- (2) Unless directed otherwise by the pension board, the investment consultant for the pension board is authorized, as the consultant deems appropriate, to communicate with, and evaluate information received from, any such person or entity.
- (3) This rule does not apply to contacts with persons or entities under contract with the pension board or retirement system at the time of the contact, with respect to the services under contract.

1044. Signature authority of chairperson and vice chairperson.

The chairperson and vice chairperson of the pension board are authorized to execute any contract previously approved by the pension board at a pension board meeting at which a quorum was present, to execute any similarly related document and to take any actions necessary to execute such documents on behalf of the pension board.

1045. Calculation of Final Average Salary under Section 2.8.

- (1) For the purpose of calculating final average salary under §201.24(2.8), whenever a member's final average salary means "the average annual earnable compensation for the three (3) consecutive years of service during which the member's earnable compensation was the highest," the member's final average salary shall be calculated based on the member's earned compensation during the seventy-eight (78) consecutive pay periods during which the member's earned compensation was the highest.
- (2) For the purpose of calculating final average salary under §201.24(2.8), whenever a member's final average salary means "the average annual earnable compensation for the five (5) consecutive years of service during which the member's earnable compensation was the highest," the member's final average salary shall be calculated based on the member's earned compensation during the one hundred and thirty (130) consecutive pay periods during which the member's earned compensation was the highest.

[Adopted June 20, 2012]

1046. Calculation of Option 6 Benefits with a BackDROP

Effective June 20, 2012, a member electing an Option 6 form of benefit under Rule 1013 who also elects a backDROP under Ordinance section 201.24(5.16) shall have his or her benefit calculated as follows: The ten-year certain period will commence on the individual's retirement date. The amount of the member's monthly benefit the backDROP payment and monthly payment purposes will equal an actuarially adjusted certain benefit for the number of years in the backDROP period plus ten, creating an actuarially equivalent benefit which guarantees ten years of payments after the individual's retirement date.

[Adopted June 20, 2012]

1047. Application for emergency retirement.

- (1) *Designation of Beneficiary/Form of Benefit Payable.* A member who files an application for emergency retirement shall, upon filing such application, designate a temporary beneficiary to receive the applicable pension benefit upon the member's death prior to the election of a permanent form of benefit. In the event of the member's death following the effective date of the member's emergency retirement and prior to the completion of the member's retirement paperwork, the beneficiary named on the emergency retirement application shall become irrevocable and such beneficiary shall receive a 100% survivor annuity as described in Ordinance section 201.24(7.1).

- (2) *Time to Complete Retirement Paperwork.* A member who files an application for emergency retirement shall have three (3) months from the member's Retirement Effective Date, as defined in Rule 1049, to complete all of his or her retirement paperwork, as determined by the Retirement Office. If the Retirement Office does not receive completed retirement paperwork within three (3) months of the Retirement Effective Date, the Retirement Office will commence benefit payments for that individual based on the following default options: i) if the member has designated a beneficiary on the emergency retirement application, the member shall receive a 100% survivor annuity; or ii) if no beneficiary is designated on the emergency retirement application, the member shall receive a 100% survivor annuity and the member's beneficiary shall be the member's spouse or, if none, the member's next of kin determined in accordance with Wisconsin statute section 852.01 governing intestate succession. Notwithstanding the foregoing, the Retirement Office shall contact the member to request any information it may require to determine whether there is an ascertainable beneficiary under Wisconsin statute section 825.01. If the Retirement Office does not receive the required information within thirty (30) days of such request, the member shall receive a normal pension with no beneficiary or survivor benefit under Ordinance section 201.24(5.1). A member who receives a default option, including a normal pension under Ordinance section 201.24(5.1), shall not be eligible for any other pension benefit, including, but not limited to, a backDROP payment. The Retirement Office may, if required by the Retirement Office's administrative necessity, extend the three (3) month time period for receipt of completed retirement paperwork.
 - (a) The Retirement Office shall provide a final written notice of the requirement that completed retirement paperwork be received by the Retirement Office. This notice shall include a request for any information required to determine whether there is an ascertainable beneficiary under Wisconsin statute section 825.01. This notice shall be provided to the member at least thirty (30) days before the three (3) month deadline stated in subsection (2) above.

 - (b) In the case of members who applied for emergency retirement and, as of January 16, 2013, for whom the Retirement Office has not received completed retirement paperwork within three (3) months of the member's Retirement Effective Date, the Retirement Office shall notify, in writing,

such members that the Retirement Office must receive completed retirement paperwork within thirty (30) days of receipt of this notice. This notice shall include a request for any information required to determine whether there is an ascertainable beneficiary under Wisconsin statute section 825.01. If the member does not contact the Retirement Office within 30 days and the member's completed retirement paperwork is not received by the Retirement Office within 90 days, the member shall receive a 100% survivor annuity and the member's beneficiary shall be that designated on the emergency retirement application. If no beneficiary is designated during the emergency retirement process, the member shall receive a 100% survivor annuity and the member's beneficiary shall be the member's spouse or, if none, the member's next of kin determined in accordance with Wisconsin statute section 852.01 governing intestate succession. Notwithstanding the foregoing, the Retirement Office shall contact the member to request any information it may require to determine whether there is an ascertainable beneficiary under Wisconsin statute section 825.01. If the Retirement Office does not receive the required information within thirty (30) days of such request, the member shall receive a normal pension with no beneficiary or survivor benefit under Ordinance section 201.24(5.1).

- (c) If the Retirement Office does not receive completed retirement paperwork from the member within thirty (30) days, the member shall receive no further notice from the Retirement Office regarding the member's benefit.
- (3) Death Following Emergency Retirement. In the event of the member's death following the effective date of the member's emergency retirement and prior to the completion of the member's retirement paperwork, the beneficiary named on the emergency retirement application shall become irrevocable and such beneficiary shall receive a 100% survivor annuity as described in Ordinance section 201.24(7.1).
- (a) If a member does not select a beneficiary on the emergency retirement application, then upon the member's death, the 100% survivor annuity shall be paid to the member's spouse or, if none, in accordance with Wisconsin statute section 852.01 governing intestate succession. However, if under section 852.01 multiple beneficiaries would receive the member's benefit, only the oldest member of such group shall receive the benefit. The determination of the member's beneficiary under the intestate statute shall be in the sole discretion of the Retirement Office and the Pension Board.
 - (b) Benefit payments shall be calculated as if the member retired as an emergency retiree, elected a 100% survivor annuity on the emergency retirement application and immediately died. The survivor benefit will continue to the designated or default survivor.

- (4) *Ineligible for BackDROP.* Any beneficiary, named or unnamed, of a member who files an application for emergency retirement shall not be eligible to receive a backDROP payment the member would have otherwise received under Ordinance section 201.24(5.16) if such member dies prior to submitting the retirement paperwork to the Retirement Office. A member who receives a default option described in subsection (2) above shall not be eligible for a backDROP payment, even if requested at the time the member applied for emergency retirement.
- (5) *Emergency Retirement Application Superseded.* Upon submission of an emergency retirement applicant's properly completed retirement paperwork to the Retirement Office for processing, the form of benefit and beneficiary selected in the applicant's retirement paperwork shall supersede that designated in the application for emergency retirement or the default election. Following submission of the applicant's properly completed retirement paperwork to the Retirement Office, the form of benefit paid to the member or beneficiary shall be that designated on the applicant's retirement paperwork. It shall be in the sole discretion of the Retirement Office and the Pension Board to determine whether and when the applicant's retirement paperwork was properly completed.

[Adopted October 2012]

1048. Effect of subsequent designation of beneficiary

The valid designation of a beneficiary(ies) to receive amounts payable upon the member's death shall revoke any prior designations of a beneficiary(ies) made with respect to the same benefit. The revocation shall only be effective as to the particular benefit described in the designation.

[Adopted September 19, 2012]

1049. Retirement Effective Date

- (1) *Active Members.* For a member who retires directly from active service, Retirement Effective Date means the day after the day the member terminates County employment. An active member will elect a proposed Retirement Effective Date when the member completes a retirement application. This will be the member's Retirement Effective Date unless the member continues in County employment past the proposed Retirement Effective Date. If this occurs, the member's initial retirement application is void and the member must complete a new retirement application with a new proposed Retirement Effective Date.
- (2) *Emergency Retirement.* For members who retire pursuant to the emergency retirement procedures, the member's Retirement Effective Date will be the day after the day the member terminates County employment. An emergency retiree elects a proposed Retirement Effective Date as part of the emergency retirement procedures. This will be the member's Retirement Effective Date unless the member continues in County employment past the proposed Retirement Effective Date. If this occurs, the member's emergency retirement request is void and the

member must complete a new retirement application with a new proposed Retirement Effective Date.

(3) *Deferred Vested Members.*

- (a) *Generally.* For deferred vested members who have submitted an application for retirement as required by Ordinance section 201.24(4.5), Retirement Effective Date means the later of:
- (i) the first day of the month following the member's normal retirement date or, if authorized by the Pension Board, a date after the member has attained age 55; or
 - (ii) the first day of the month following the day all required paperwork is received by the Retirement Office.

A deferred vested member may elect a proposed Retirement Effective Date on the member's retirement application based on the above criteria. However, if the Retirement Office has not received all required paperwork by the proposed Retirement Effective Date, the member's Retirement Effective Date will be changed to the first day of the month following the month that the Retirement Office receives all required paperwork.

Notwithstanding the foregoing, if a member has requested that his or her pension benefit be calculated pursuant to Ordinance section 201.24(11.41) and s. 40.30, Wis. Stats., then the Retirement Office may adjust the member's Retirement Effective Date as necessary to comply with the 60-day commencement requirement of s. 40.30, Wis. Stats. The member's Retirement Effective Date shall be the date specified by the Retirement Office in this circumstance. However, it remains the member's responsibility to submit the necessary paperwork in a timely manner sufficient to comply with s. 40.30, Wis. Stats. If a member fails to submit the necessary paperwork in a timeframe and manner that will allow the Retirement Office to complete processing within the 60-day period described in s. 40.30, Wis. Stats., then the member may lose his or her ability to have his or her pension benefit calculated under s. 40.30, Wis. Stats.

- (b) *Modification.* If, after filing an application for retirement under Ordinance section 201.24(4.5) but before ERS has commenced benefit payments to the member, a deferred vested member desires to modify the form of benefit or beneficiary designated on his or her retirement application, such member shall be permitted to make one (1) such modification within the requirements provided by this Rule. In order to be effective, a deferred vested member's amended application must be received by the Retirement Office prior to the last business day of the month before ERS commences benefit payments.

A deferred vested member who desires to modify his or her form of benefit or designated beneficiary under this Rule shall make such modification on the application form designated by the Retirement Office for receipt of a deferred vested pension. The amended application must be signed by the member and submitted to the Retirement Office to become effective.

A deferred vested member's Retirement Effective Date following a modification under this Rule shall be the later of:

- (i) the first day of the month following the date on which the deferred vested member's initial complete application for retirement was received by the Retirement Office; or
- (ii) the date following the day the required paperwork modifying the member's form of benefit or designated beneficiary is received and confirmed as complete by the Retirement Office.

[Rule Regarding Deferred Vested Members Amended November 2012]

1050. Offset

- (1) *Recalculation/Cessation of Benefit.* Upon discovery of a payment in error, a determination shall be made regarding whether a benefit should have been paid under the Ordinances and Rules.
 - (a) If the benefit should not have been paid, then the benefit shall cease, and a letter shall be sent to the member or beneficiary explaining the error and requesting repayment of the overpayment, plus interest from the date paid.
 - (b) If a benefit should have been paid but in a different amount, the member's and/or beneficiary's benefit shall be recalculated to reflect the accurate amount under the Ordinances and Rules. The corrected benefit amount shall be paid to the member and/or beneficiary going forward, and any necessary reduction to recover the overpayment shall be made in accordance with section (2) below.
 - (c) Eligible individuals may appeal these determinations pursuant to Rule 1016.
- (2) *Offset.* If a member and/or beneficiary receives benefits exceeding those to which the individual(s) is or are entitled under the Ordinances and Rules, future benefit payments to a member and/or beneficiary from ERS may be reduced until the amount of the overpayment, plus interest from the date paid, has been recovered by ERS. This right of offset shall not limit the rights of ERS to recover such overpayments in any other manner.

- (a) *Amount of Offset.* If the Retirement Office determines that an offset is appropriate, the Retirement Office shall reduce the affected individual's ERS benefit payments by up to 100% until ERS has fully recovered the amount of the overpayment, plus interest from the date paid. This reduction shall begin at the time indicated in subsections (c) and (d) below.

In determining the amount of the offset, the Retirement Office, and the Pension Board on appeal, should consider all of the following factors:

- (i) The reason for the overpayment (e.g., fraud, miscalculation, mistake). If the individual played a part in receiving the overpayment, the percentage of offset could be greater.
 - (ii) The life expectancy of the individual. The overpayment should be recovered, if possible, before the death of the last beneficiary.
 - (iii) The amount of the benefit versus the overpayment to be recovered (e.g., if it is a smaller benefit and larger overpayment, the offset would need to be greater).
 - (iv) The financial resources available to the individual to satisfy the amount of the overpayment, plus interest, from resources other than the individual's ERS benefit.
- (b) *Interest Rate.* The interest rate payable on the overpayment shall be at the rate specified in and pursuant to Rule 403.
 - (c) *Offset Procedures.* Upon discovery of an overpayment, the Retirement Office shall notify the affected individual in writing and explain the nature and amount of the overpayment. The following information shall also be included in the notice:
 - (i) a request that the individual repay the overpayment in a lump sum payment;
 - (ii) a statement that if the member declines to repay the overpayment in a lump sum, ERS intends to reduce the amount of the individual's future benefit payments until the overpayment amount, plus interest, has been recovered;
 - (iii) the effective date of the offset;
 - (iv) the amount that was overpaid;
 - (v) the total recovery amount (i.e., the overpayment plus interest from the date paid);

- (vi) if applicable, the corrected benefit amount that the member is entitled to receive;
 - (vii) a statement regarding the tax treatment of the overpayment (e.g., if a portion of the overpayment was rolled over, favorable tax treatment may not be available);
 - (viii) the reduced benefit amount that will be paid to the individual after the offset is applied;
 - (ix) a statement that the individual may appeal the Retirement Office's decision pursuant to the process described in subsection (d) below.
- (d) *Appeals.*
- (i) *Initial Appeal Process.* The member may appeal the offset decision and amount of the offset to the Pension Board at the Pension Board meeting immediately following the notice of offset at which it is possible to schedule the appeal (or the Pension Board could call a special meeting). If the member appeals to the Pension Board, the offset will not commence until a decision regarding the offset has been made by the Pension Board. If the Pension Board determines that the offset is correct and consistent with this Rule, ERS will implement the offset as soon as administratively possible. If the member does not appeal under this initial appeal process, the Retirement Office will commence the offset as of the date specified in the notice.
 - (ii) *Rule 1016 Appeal Process.* After the initial decision of the Pension Board, the individual subject to offset may appeal to the Pension Board as described in Rule 1016. The individual may appeal under Rule 1016 regardless of whether the member utilized the initial appeal. However, if the offset commenced as of the date described in the notice, the offset will continue unless and until the Pension Board determines on appeal that the offset is improper. If the offset is determined to be improper, the individual will be repaid the amount previously withheld.
 - (iii) *No Appeal for Subsequent Offset.* If a beneficiary's payments are offset to recover an overpayment made to a member, the beneficiary shall not have an independent right to appeal if the member utilized the appeal rights granted by this Rule or Rule 1016.

[Adopted September 19, 2012]

1051. Benefits Payable Upon the Death of a Member in Active Service

- (1) If a member dies in active service and the member's beneficiary(ies) is otherwise eligible to receive the lump sum death benefit under Ordinance section 201.24(6.3), the member's beneficiary(ies) shall receive both the lump sum death benefit pursuant to Ordinance section 201.24(6.3) and a refund of the balance of the member's Membership Account as of the date of the member's death under Ordinance section 201.24(3.5).
- (2) The lump sum benefit under Ordinance section 201.24(6.3) and described in subsection (1) of this Rule shall not be payable unless a member dies in active service.
- (3) Members may designate different beneficiaries to receive the death benefit under Ordinance section 201.24(6.3) and the membership account refund under Ordinance section 201.24(3.5).

[Adopted October 17, 2013]

LEGISLATIVE HISTORY

All actions effective upon passage by the pension board at the pension board meeting cited.

Pension Board Rules. Repealed and recreated - Oct. 1, 1948, p_ 1204, 1206-16.

DEFINITIONS

110. Created - Sept. 12, 1986, p. 5375.

111. Created - April 23, 1997.

112. Created - Jan. 1, 2001.

MEMBERSHIP

202. Repealed - Jan. 14, 1971, p. 3037; Repeal rescinded - July 16, 1971, p. 3083.; Amended - July 20, 2005, J. Proc.

202(b). Repealed and recreated - Aug. 26, 1960, p. 1941; Amended - Sept. 10, 1970, p. 3017.

202(c). Repealed and recreated - Aug. 26, 1960, p. 1941.

202(e). Amended - March 30, 1972, p. 3156.

202(g). Repealed and recreated - Dec. 15, 1964, p. 2135; Amended - Sept. 26, 1968, p. 2766.

203(a). Repealed - July 16, 1971, p. 3083.

203(c). Repealed and recreated - Dec. 4, 1957, p. 1870-71.

203(f). Repealed and recreated - July 27, 1951, p. 1291.

203(g). Repealed - July 16, 1971, p. 3083.

203(h). Repealed - July 16, 1971, p. 3083.

203(i). Repealed - July 16, 1971, p. 3083.

206. Created - Oct. 6, 1949, p. 1231.

207. Created - Jan. 24, 1997; Amended - Oct. 1, 1998; July 20, 2005, J. Proc.

SERVICE CREDITS

301. Repealed and recreated - March 21, 1980, p. 5067-70.

302. Repealed and recreated - March 21, 1980, p. 5067-70.

303. Renumbered from 304 and repealed and recreated - March 21, 1980, p. 5067-70.
304. Renumbered 303 and new 304 renumbered from 307 and repealed and recreated – March 21, 1980, p. 5067-70; Amended - April 23, 1997.
305. Renumbered from 308 and repealed and recreated - March 21, 1980, p. 5067-70.
306. Renumbered from 309 and repealed and recreated - March 21, 1980, p. 5067-70.
307. Repealed and recreated – Nov. 17, 1999.
308. Renumbered 305 - March 21, 1980, p. 5067-70.
309. Renumbered 306 - March 21, 1980, p. 5067-70.

INTEREST CREDITED TO ANNUITY SAVINGS ACCOUNT

401. Amended - Jan. 22, 1997.
402. Amended - Jan. 22, 1997.
- 402(c). Created - July 27, 1951, p. 1292.
403. Amended - Jan. 22, 1997.
- 403(c). Repealed - May 1, 1969, p. 2962.
- 403(d). Repealed - July 27, 1951, p. 1293.
404. Added - Jan. 22, 1997; Amended – Jan. 1, 2005, J. Proc.

FINAL AVERAGE SALARY

601. Amended - March 21, 1980, p. 5067-70.
604. Repealed - March 21, 1980, p. 5067-70. .

RETIREMENT and DEATH BENEFIT ELIGIBILITY

705. Created - Jan. 1, 2001.
706. Created - Jan. 1, 2001.
707. Created - Jan. 1, 2001.
708. Created -Jan. 1, 2001.
709. Created - Jan. 1, 2001.

710. Created - Jan. 1, 2001.

711. Created - Jan. 1, 2001.

711(b)(2). Amended – March 17, 2010.

711(d). Amended – March 17, 2010.

712. Created – Jan. 1, 2001

713. Created – Nov. 13, 2003, J. Proc.; Amended – effective Nov. 18, 2009.

DEFERRED RETIREMENT

801. Repealed – Dec. 9, 1988, p. 5495.

802. Repealed – Dec. 9, 1988, p. 5495.

804. Repealed – Feb. 7, 1986, p. 5342.

806. Added – April 23, 1997; Repealed – May 19, 2010.

807. Created – Jan. 17, 2007, J. Proc.

EMPLOYEES' CONTRIBUTIONS

901. Employee contribution table: subsection on "other employees." Repealed and recreated – July 27, 1951, p. 1284; Amended – May 21, 1997.

GENERAL REGULATIONS

1007. Created – May 6, 1953, p. 1346.

1008. Created – May 6, 1953, p. 1346.

1009. Created – Nov. 16, 1973, p. 3303.

1010. Repealed and recreated – Sept. 12, 1986, p. 5374; Amended – Feb. 14, 2007, J. Proc.; March 17, 2010.

1011. Created – Sept. 12, 1986, p. 5374.

1012. Created – Sept. 12, 1986, p. 5375.

1012(a). Created – Oct. 21, 1988, p. 5483.

1013. Added – Jan. 24, 1996; Amended – Nov. 15, 2006, J. Proc.; Sept. 16, 2009; May 19, 2010.

1013(d). Created – Jan. 1, 2000.

1014. Added – Jan. 24, 1996; Amended – July 23, 2001; Dec. 2002.
1015. Added – Dec. 11, 1996.
1016. Added – Sept. 25, 1996; Amended – July 9, 2003, J. Proc.
1017. Added – Sept. 25, 1996.
1018. Added – Nov. 5, 1997.
1019. Added – Nov. 5, 1997.
1020. Added – Nov. 5, 1997; Amended – effective May 21, 2008; Dec. 15, 2010
1021. Created – Jan. 1, 2000; Amended – Nov. 15, 2006, J. Proc.
1023. Added – Dec. 1, 1997.
1024. Added – Dec. 1, 1997.
1025. Created – March 8, 2000.
1026. Created – April 12, 2000.
1027. Created – Sept. 13, 2000.
1028. Created – Sept. 13, 2000.
1030. Created – July 23, 2001.
1031. Created – 2001.
1032. Created – Sept. 18, 2001.
1033. Created – April 2002.
1034. Created – Nov. 14, 2007, J. Proc.; Amended – Dec. 15, 2010.
1035. Created – Dec. 15, 2004, J. Proc.
1036. Created – Jan. 1, 2005, J. Proc.
1037. Created – March 16, 2005, J. Proc.
1038. Created – Feb. 14, 2007, J. Proc.
1039. Created – Sept. 19, 2007, J. Proc.
1040. Created – Oct. 17, 2007, J. Proc.

1041. Created – Feb. 11, 2009, J. Proc.

1042. Created – Feb. 11, 2009, J. Proc.

1043. Created – Dec. 16, 2009, J. Proc.

1044. Created – Jan. 20, 2010.

MANAGEMENT OF FUNDS

1101. Repealed – March 21, 1980, p. 5067—70.

1102. Repealed – March 21, 1980, p. 5067—70.

1103. Repealed – March 21, 1980, p. 5067—70.

1104. Repealed – March 21, 1980, p. 5067—70.

EXHIBIT 14-5

EXHIBIT 2

Power of Attorney and Declaration of Representative

▶ Type or print. ▶ See the separate instructions.

OMB No. 1545-0150
For IRS Use Only
 Received by: _____
 Name _____
 Telephone _____
 Function _____
 Date _____

Part 1 Power of Attorney

Caution: Form 2848 will not be honored for any purpose other than representation before the IRS.

1 Taxpayer information. Taxpayer(s) must sign and date this form on page 2, line 9.

Taxpayer name(s) and address County of Milwaukee 901 North 9th Street, Room 210-C Milwaukee, WI 53233, WI 53233	Social security number(s) _____ Daytime telephone number 414-278-4242	Employer identification number 39-6005720 Plan number (if applicable) 001
--	--	--

hereby appoint(s) the following representative(s) as attorney(s)-in-fact:

2 Representative(s) must sign and date this form on page 2, Part II.

Name and address Steven D. Huff Reinhart Boerner Van Deuren s.c. 1000 North Water Street, Suite 2100 Milwaukee, WI 53202	CAF No. 4005-05754R Telephone No. 414-298-1000 Fax No. 414-298-8097 Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> FAX No. <input type="checkbox"/>
Name and address Gregory A. Storm Reinhart Boerner Van Deuren s.c. 1000 North Water Street, Suite 2100 Milwaukee, WI 53202	CAF No. Not Assigned Telephone No. 414-298-1000 Fax No. 414-298-8097 Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> FAX No. <input type="checkbox"/>
Name and address Alicia R. Mohn Reinhart Boerner Van Deuren s.c. 1000 North Water Street, Suite 2100 Milwaukee, WI 53202	CAF No. 0304-98289R Telephone No. 414-298-1000 Fax No. 414-298-8097 Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> FAX No. <input type="checkbox"/>

to represent the taxpayer(s) before the Internal Revenue Service for the following tax matters:

3 Tax matters

Type of Tax (Income, Employment, Excise, etc.) or Civil Penalty (see the instructions for line 3)	Tax Form Number (1040, 941, 720, etc.)	Year(s) or Period(s) (see the instructions for line 3)
Qualification of Pension Plan		N/A
Under Voluntary Correction Program		

4 Specific use not recorded on Centralized Authorization File (CAF). If the power of attorney is for a specific use not recorded on CAF, check this box. See the instructions for Line 4. **Specific uses not recorded on CAF**

5 Acts authorized. The representatives are authorized to receive and inspect confidential tax information and to perform any and all acts that I (we) can perform with respect to the tax matters described on line 3, for example, the authority to sign any agreements, consents, or other documents. The authority does not include the power to receive refund checks (see line 6 below), the power to substitute another representative or add additional representatives, the power to sign certain returns, or the power to execute a request for disclosure of tax returns or return information to a third party. See the line 5 instructions for more information.

Exceptions. An unenrolled return preparer cannot sign any document for a taxpayer and may only represent taxpayers in limited situations. See **Unenrolled Return Preparer** on page 1 of the instructions. An enrolled actuary may only represent taxpayers to the extent provided in section 10.3(d) of Treasury Department Circular No. 230 (Circular 230). An enrolled retirement plan administrator may only represent taxpayers to the extent provided in section 10.3(e) of Circular 230. See the line 5 instructions for restrictions on tax matters partners. In most cases, the student practitioner's (levels k and l) authority is limited (for example, they may only practice under the supervision of another practitioner).

List any specific additions or deletions to the acts otherwise authorized in this power of attorney: To take any and all actions necessary and to sign any and all documents to qualify the Employees' Retirement System of the County of Milwaukee with the Internal Revenue Service under the Voluntary Correction Program, including full delegation to another

6 Receipt of refund checks. If you want to authorize a representative named on line 2 to receive, **BUT NOT TO ENDORSE OR CASH**, refund checks, initial here _____ and list the name of that representative below.
 Name of representative to receive refund check(s) ▶ _____

- 7 Notices and communications.** Original notices and other written communications will be sent to you and a copy to the first representative listed on line 2.
- a** If you also want the second representative listed to receive a copy of notices and communications, check this box
- b** If you do not want any notices or communications sent to your representative(s), check this box
- 8 Retention/revocation of prior power(s) of attorney.** The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same tax matters and years or periods covered by this document. If you **do not** want to revoke a prior power of attorney, check here.
- YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.**

9 Signature of taxpayer(s). If a tax matter concerns a joint return, **both** husband and wife must sign if joint representation is requested, otherwise, see the instructions. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the authority to execute this form on behalf of the taxpayer.

▶ IF NOT SIGNED AND DATED, THIS POWER OF ATTORNEY WILL BE RETURNED.

Signature: DA Arena Date: 9.17.08 Title (if applicable): Dir. of EB, Dept. of Adm. Services

Print Name: David Arena PIN Number: County of Milwaukee Print name of taxpayer from line 1 if other than individual

Signature: _____ Date: _____ Title (if applicable): _____

Print Name: _____ PIN Number:

Part II Declaration of Representative

Caution: Students with a special order to represent taxpayers in qualified Low Income Taxpayer Clinics or the Student Tax Clinic Program (levels k and l), see the instructions for Part II.

Under penalties of perjury, I declare that:

- I am not currently under suspension or disbarment from practice before the Internal Revenue Service;
- I am aware of regulations contained in Circular 230 (31 CFR, Part 10), as amended, concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries, and others;
- I am authorized to represent the taxpayer(s) identified in Part I for the tax matter(s) specified there; and
- I am one of the following:
 - a Attorney - a member in good standing of the bar of the highest court of the jurisdiction shown below.
 - b Certified Public Accountant - duly qualified to practice as a certified public accountant in the jurisdiction shown below.
 - c Enrolled Agent - enrolled as an agent under the requirements of Circular 230.
 - d Officer - a bona fide officer of the taxpayer's organization.
 - e Full-Time Employee - a full-time employee of the taxpayer.
 - f Family Member - a member of the taxpayer's immediate family (for example, spouse, parent, child, brother, or sister).
 - g Enrolled Actuary - enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the Internal Revenue Service is limited by section 10.3(d) of Circular 230).
 - h Unenrolled Return Preparer - the authority to practice before the Internal Revenue Service is limited by Circular 230, section 10.7(c)(1)(viii). You must have prepared the return in question and the return must be under examination by the IRS. See **Unenrolled Return Preparer** on page 1 of the instructions.
 - k Student Attorney - student who receives permission to practice before the IRS by virtue of their status as a law student under section 10.7(d) of Circular 230.
 - l Student CPA - student who receives permission to practice before the IRS by virtue of their status as a CPA student under section 10.7(d) of Circular 230.
 - r Enrolled Retirement Plan Agent - enrolled as a retirement plan agent under the requirements of Circular 230 (the authority to practice before the Internal Revenue Service is limited by section 10.3(e)).

▶ IF THIS DECLARATION OF REPRESENTATIVE IS NOT SIGNED AND DATED, THE POWER OF ATTORNEY WILL BE RETURNED. See the Part II instructions.

Designation - Insert above letter (a-r)	Jurisdiction (state) or identification	Signature	Date
a	Wisconsin	<i>Steven D Huff</i>	9/17/08
a	Wisconsin	<i>Gregory Abcon</i>	9/19/08
a	Wisconsin	<i>Alicia R Mohr</i>	9/19/08

Power of Attorney and Declaration of Representative

▶ Type or print. ▶ See the separate instructions.

OMB No. 1545-0150
For IRS Use Only
 Received by: _____
 Name _____
 Telephone _____
 Function _____
 Date _____

Part 1 Power of Attorney

Caution: Form 2848 will not be honored for any purpose other than representation before the IRS.

1 Taxpayer information. Taxpayer(s) must sign and date this form on page 2, line 9.

Taxpayer name(s) and address Employees' Retirement System of the County of Milwaukee 901 North 9th Street, Room 210-C Milwaukee, WI 53233, WI 53233	Social security number(s) _____ Daytime telephone number 414-278-4242	Employer identification number 39-6005720 Plan number (if applicable) 001
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Name and address Steven D. Huff Reinhart Boerner Van Deuren s.c. 1000 North Water Street, Suite 2100 Milwaukee, WI 53202	CAF No. 4005-05754R Telephone No. 414-298-1000 Fax No. 414-298-8097 Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> FAX No. <input type="checkbox"/>
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Name and address Alicia R. Mohn Reinhart Boerner Van Deuren s.c. 1000 North Water Street, Suite 2100 Milwaukee, WI 53202	CAF No. 0304-98289R Telephone No. 414-298-1000 Fax No. 414-298-8097 Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> FAX No. <input type="checkbox"/>

to represent the taxpayer(s) before the Internal Revenue Service for the following tax matters:

3 Tax matters

Type of Tax (Income, Employment, Excise, etc.) or Civil Penalty (see the instructions for line 3)	Tax Form Number (1040, 941, 720, etc.)	Year(s) or Period(s) (see the instructions for line 3)
Qualification of Pension Plan		
Under Voluntary Correction Program		

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Exceptions. An unenrolled return preparer cannot sign any document for a taxpayer and may only represent taxpayers in limited situations. See **Unenrolled Return Preparer** on page 1 of the instructions. An enrolled actuary may only represent taxpayers to the extent provided in section 10.3(d) of Treasury Department Circular No. 230 (Circular 230). An enrolled retirement plan administrator may only represent taxpayers to the extent provided in section 10.3(e) of Circular 230. See the line 5 instructions for restrictions on tax matters partners. In most cases, the student practitioner's (levels k and l) authority is limited (for example, they may only practice under the supervision of another practitioner).

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Name of representative to receive refund check(s) ▶ _____

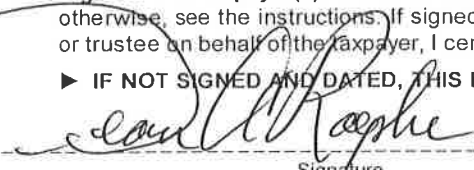
7 Notices and communications. Original notices and other written communications will be sent to you and a copy to the first representative listed on line 2.

- a If you also want the second representative listed to receive a copy of notices and communications, check this box
- b If you do not want any notices or communications sent to your representative(s), check this box

8 Retention/revocation of prior power(s) of attorney. The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same tax matters and years or periods covered by this document. If you do not want to revoke a prior power of attorney, check here **YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.**

9 Signature of taxpayer(s). If a tax matter concerns a joint return, both husband and wife must sign if joint representation is requested, otherwise, see the instructions. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the authority to execute this form on behalf of the taxpayer.

▶ **IF NOT SIGNED AND DATED, THIS POWER OF ATTORNEY WILL BE RETURNED.**


17 Sept 2008
Chairman

Signature _____ Date _____ Title (if applicable) _____
 Dean Roepke Employees' Retirement System of the Cty. of Milwaukee
 Print Name PIN Number Print name of taxpayer from line 1 if other than individual

Signature _____ Date _____ Title (if applicable) _____
 Print Name PIN Number

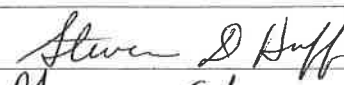
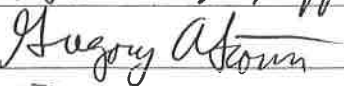
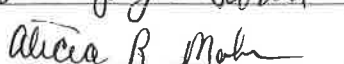
Part II Declaration of Representative

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Under penalties of perjury, I declare that:

- I am not currently under suspension or disbarment from practice before the Internal Revenue Service;
- I am aware of regulations contained in Circular 230 (31 CFR, Part 10), as amended, concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries, and others;
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 - c Enrolled Agent - enrolled as an agent under the requirements of Circular 230.
 - d Officer - a bona fide officer of the taxpayer's organization.
 - e Full-Time Employee - a full-time employee of the taxpayer.
 - f Family Member - a member of the taxpayer's immediate family (for example, spouse, parent, child, brother, or sister).
 - g Enrolled Actuary - enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the Internal Revenue Service is limited by section 10.3(d) of Circular 230).
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 - l Student CPA - student who receives permission to practice before the IRS by virtue of their status as a CPA student under section 10.7(d) of Circular 230.
 - r Enrolled Retirement Plan Agent - enrolled as a retirement plan agent under the requirements of Circular 230 (the authority to practice before the Internal Revenue Service is limited by section 10.3(e)).

▶ **IF THIS DECLARATION OF REPRESENTATIVE IS NOT SIGNED AND DATED, THE POWER OF ATTORNEY WILL BE RETURNED.** See the Part II instructions.

Designation - Insert above letter (a-r)	Jurisdiction (state) or identification	Signature	Date
a	Wisconsin		9/17/08
a	Wisconsin		9/17/08
a	Wisconsin		9/17/08