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July 14, 2017

Margaret C. Daun, Corporation Counsel
Office of Corporation Counsel
Milwaukee County
901 N. 9th Street
Milwaukee, WI 53233

Re: Corrective Actions Regarding Overpayment of Benefits

Dear Ms. Daun:

Pursuant to your request, this letter discusses certain issues related to the identification and correction of benefit miscalculations in the Employees' Retirement System of the County of Milwaukee ("ERS"). Specifically, you have asked for our review of the following¹:

1. What changes to the ERS Ordinance and Rules are recommended for consideration by the County Board and Pension Board with respect to –
 - Authorization of the County to make corrective payments when recoupment efforts fail;
 - Objective overpayment recoupment thresholds and mitigating factors; and
 - *De minimis* overpayment forgiveness.

¹ Please note that a number of other highly relevant legal questions currently under review are outlined at the conclusion of this correspondence. Our response to these questions may impact which, if any, of the recommendations put forth in this and its companion correspondence the County Board and/or Pension Board elect to adopt. Responses to these questions will be provided as soon as practicable, but no later than prior to the September cycle for County Board committee meetings.

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2. What interest rate should be used to calculate overpayment recoupments?
3. Does a statute of limitations apply to ERS' recoupment of overpayments?
4. Can overpayments be settled/forgiven as follows: (i) ERS shall waive the member or beneficiary's outstanding repayment obligation (with certain exceptions noted below) in existence as of January 1, 2018;² (ii) ERS shall waive the member or beneficiary's obligation to repay any overpayment discovered after January 1, 2018, so long as it relates to a retirement prior to January 1, 2018 (with certain exceptions noted below); and (iii) if the member or beneficiary wishes to accept the overpayment settlement/forgiveness, the member or beneficiary shall agree in writing to accept the revised calculation in all respects, waive all rights to challenge any determination (including the revised calculation) related to their ERS benefit, and release from liability all related parties.³

DISCUSSION

1. Recommended Changes to Board Ordinance and Rules.

Under separate cover are proposed revisions of ERS Ordinance and Rules to address each of the following items.

- Overpayment recoupment thresholds and mitigating factors.

In developing possible repayment structures, we have considered alternatives based primarily on one of three factors: amount of overpayment; amount of monthly benefit; or pensioner income.

- *Repayment Schedule Based on Overpayment Amount*

Wisconsin Employee Trust Funds ("ETF") utilizes a repayment schedule based on the total size of the pensioner's overpayment.⁴ The ETF schedule, which applies until the overpayment is fully repaid, is as follows:

² The County Board can select any date it chooses. However, selecting a date earlier than January 1, 2018, may not provide ERS staff sufficient time to address the operational elements of a settlement/forgiveness policy.

³ The County Board is free to select any or all of (i), (ii), or (iii). If the above-described or another version of a settlement/forgiveness policy is adopted, our opinion is that the waiver of claims by the member or beneficiary, as articulated in sub (iii), is an essential component of such a policy.

⁴ ETF Accounts Receivable Policy Effective September 1, 2014.

Overpayment Amount	Monthly Payment
Less than \$2.00	Do not pursue
\$2.01 - \$99.99	Attempt initial recovery only; write off
\$100.00 - \$999.99	\$100.00
\$1,000.00 - \$1,999.99	\$150.00
\$2,000.00 - \$2,999.99	\$175.00
\$3,000.00 - \$3,999.99	\$200.00
\$4,000.00 - \$4,999.99	\$225.00
\$5,000.00 - \$5,999.99	\$250.00
\$6,000.00 - \$6,999.99	\$275.00
\$7,000.00 - \$8,999.99	\$300.00
\$9,000.00 - \$10,999.99	\$325.00
\$11,000.00 - \$12,999.99	\$350.00
\$13,000.00 - \$14,999.99	\$375.00
\$15,000.00 - \$16,999.99	\$400.00
\$17,000.00 - \$18,999.99	\$425.00
\$19,000.00 - \$20,999.99	\$450.00
\$21,000.00 - \$22,999.99	\$475.00
\$23,000.00 - \$24,999.99	\$500.00
\$25,000.00 – Up	2% of initial overpayment amount

- *Repayment Schedule based on Amount of Monthly Benefit*

The approach above does not take into account the potential impact on pensioners with lower value annuities. Accordingly, a second approach would base the repayment on the value of the pensioner’s monthly benefit, but cap the monthly reduction. We would propose a two-tiered repayment rule (either through direct payment or benefit offset). First, with respect to a pensioner whose correct benefit is less than the maximum annual benefit payable by the Pension Benefit Guaranty Corporation⁵ (“PBGC”) determined as of the age and date of calculation (currently \$5,369.32 for a straight life annuity and \$4,832.39 for a 50% joint and survivor annuity beginning at ag 65), the monthly repayment obligation would not exceed 10% of the corrected monthly benefit. There would be no time limitation on the duration of the repayment.

Second, with respect to any pensioner whose correct benefit equals or exceeds the PBGC threshold, such repayment must be made in equal installments over a

⁵ The PBGC is a federal agency created by the Employee Retirement Income Security Act of 1974 (ERISA) to protect pension benefits in private-sector defined benefit plans.

period not to exceed the lesser of: (i) the number of months in which the pensioner received the overpayment; or (ii) 72.

- *Repayment Schedule based on Pensioner Annual Income*

A final approach would differentiate between pensioners based on annual income. All pensioners with overpayments would have a presumptive repayment schedule over a period not to exceed the lesser of: (i) the number of months in which the pensioner received the overpayment; or (ii) 72, with amounts to be paid in equal installments.

If, however, a pensioner's total household annual income was less than a threshold amount (e.g. \$29,640, the ceiling of the lowest state tax bracket), the repayment amount would be capped at ten percent (10%) of the corrected monthly benefit and could be of unlimited duration. This approach would require the additional administrative step of verifying the pensioner's income. It could, however, represent the best balance between securing timely payment while assuring that the pensioner is not put in undue hardship.

- *Mitigating Factors*

A departure from any of the above three thresholds could be applied, in the judgment of RPS staff or the Pension Board on appeal, based on numerous factors, including but not limited to: (1) the financial status of the pensioner or his/her household; (2) the amount of the overpayment; (3) the amount of benefit payments; (4) the culpability of the retiree, if any, in the circumstances that gave rise to the overpayment; (5) extraordinary medical or long-term care expenses; and (6) whether the pensioner supports claimed dependents⁶. This allows the Pension Board or RPS staff to depart from the express thresholds if a retiree

⁶ Please note that the Pension Board Rule 1050 already establishes similar subjective factors to guide the initial determination of the monthly repayment amount. However, to date, no objective standards or rules exist for fixing the initial monthly repayment amount. Therefore, in this memorandum, we recommend establishing such objective thresholds that shall apply in all cases, except where a member or beneficiary provides acceptable proof regarding a mitigating factor which ERS staff or the Pension Board believes is relevant and material enough to merit a reduction to the objectively-established monthly repayment amount.

affirmatively establishes a financial hardship. (For example, in the case of a benefit paid to an incapacitated retiree or a retiree's minor beneficiary.)

It is our recommendation that the objective recoupment thresholds, as well as the delegation of authority to RPS staff and the Pension Board to depart from them based on specified factors, should be set forth expressly by Ordinance.

- *De minimis* Overpayment Forgiveness.

A proposed amendment to ERS Ordinance Section 8.17 to add Section 8.17(d) would allow for the forgiveness of overpayments if such overpayment is less than \$2.00 per month. This amount is consistent with the forgiveness standard as set forth in Wisc. Stat. § 40.08(7)(a). We note that the approximate value of a \$2.00 per month annuity over a period of 72 months (the presumptive statute of limitations discussed below) at a rate of five percent (the recommended overpayment interest rate) is approximately \$165. This amount is consistent with the *de minimis* waiver threshold of \$100 as set forth in the IRS Employee Plans' Compliance Resolution System ("EPCRS") (of course, this is an alternative *de minimis* threshold that the County Board may select). Rev. Proc. 2016-51. The County Board may elect a higher dollar amount, but we caution that *de minimis* overpayments waived by ERS represent an assumed funding obligation of the County. Accordingly, we recommend that this be set forth expressly by Ordinance.

- General Authorization to Waive Repayment and Overpayments.

A proposed amendment to ERS Ordinance Section 3.1(2)(b) would establish an obligation of the County to cover the overpayments only where: (i) attempts at recoupment (though member repayment or offset) have failed; or (ii) repayment has been waived due to the *de minimis* exception, settlement with the pensioner, or settlement with the IRS. Again, we recommend that this be set forth expressly by Ordinance.

2. Appropriate Interest Rate to Calculate Overpayment Recoupments.

We believe that the current five percent (5%) rate utilized to compute actuarial equivalent forms of benefits for purposes of the limits of Section 415 of the Internal Revenue Code is an appropriate rate for purposes of calculating the interest accrued on the repayment obligation. We further advise that the interest should not be compounded.

As you know, for ERS to maintain its tax qualified status under the Internal Revenue Code, any correction of operational defects must be made consistent with the EPCRS, Rev. Proc.

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2016-51. Relative to overpayments, EPCRS requires that the amounts repaid consist of both the overpayments and “applicable interest.” See Section 6.04, Rev. Proc. 2016-51.

Prior to issuing Rev. Proc. 2016-51, the IRS specifically requested recommendations on “overpayment of benefits for benefit calculation errors,” Rev. Proc. 2015-27. While there were numerous comments submitted by interested parties, the IRS did not specifically designate a means of calculating appropriate interest in its publication of Rev. Proc. 2016-51. Therefore, plan sponsors are left to conclude that any reasonable interest formulation would be acceptable as a proper definition of “appropriate interest.”

After review of numerous suggestions made to the IRS, we recommend the formulation proposed by the American Society of Pension Plan Actuaries (“ASPPA”)⁷. In ASPPA’s comment recommendation, it states that one potential reasonable calculation would be “the rate that is used for benefit calculation . . . that typically limits lump sums when Section 415 applies.” Under the ERS, such rate may fluctuate, but the default rate is five percent (5%). ERS Ordinance Section 201.24 (12.3).

We have consulted with the ERS’ outside actuary to determine whether he believed this was a reasonable rate assumption. He confirmed that a consistent single rate assumption, not subject to fluctuation, was appropriate and would create less opportunity for errors in determining the overpayment interest. Accordingly, we believe that the utilization of a five percent (5%) interest rate would be reasonable for purposes of assessing interest on overpayments and would be consistent with the general guidance and criteria of “appropriate interest” as set forth under the EPCRS.⁸

As a final note, if an Ordinance specifying an interest rate is adopted, we recommend that it expressly state that it shall only apply to overpayments or underpayments newly discovered after the Ordinance takes effect. Put another way, a new Ordinance establishing an interest rate should not be applied retroactively to repayments already paid back to ERS, nor should it be applied prospectively to adjust payment plans already in place (i.e., to alter monthly offsets that are ongoing at the time of adoption). It is our understanding that ERS counsel is in discussions with the IRS regarding the appropriate rate to be used with respect to overpayments disclosed as part of the EPCRS filing.⁹ Thus, it is possible that the IRS will mandate a different interest rate with respect to those overpayments already disclosed to the IRS.

⁷ ASPPA letter to Robert Choi, Director, Employee Plans, Internal Revenue Service, November 3, 2015.

⁸ We note that Wisconsin ETF provides that overpayments are subject to correction with interest accruing at a rate of 7.2% per year. (ETF Accounts Receivable Policy Effective September 1, 2014 attached).

⁹ Please note that we have been advised that over the course of the EPCRS filing (both 2008 and 2014 iterations), typically 5% has been applied (at times with simple interest and at other times with compounding interest) to overpayments and 8% to underpayments. We therefore also advise that the County Board may consider formalizing

3. Applicable Statute of Limitations.

The ERS Ordinance does not contain a statute of limitations on recovery of overpayments. ERS can recover pension overpayments made within the past six years (at a minimum) because Wisconsin recognizes pension plans as contractual obligations and the statute of limitations for breach of contract is six years.

The ERS Ordinance does not contain an expressed statute of limitations.¹⁰ However, Wisconsin contract law provides significant guidance on this issue.

Under Wisconsin law, pension plans create a contractual obligation by the employer to pay pension benefits to employees who meet the applicable requirements. *Voigt v. S. Side Laundry & Dry Cleaners, Inc.*, 24 Wis.2d 114, 116, 128 N.W.2d 411, 412 (Wis. 1964). Courts consider pension plans as unilateral offers made by employers to their employees, and the conditions of such an offer are important to determine how an employee may accept the offer and give rise to a binding bilateral contract. *Schwegel v. Milwaukee Cty.*, 360 Wis.2d 654, 675, 859 N.W.2d 78, 88 (Wis. 2015). No bilateral contract exists when only one party is subject to a legal obligation arising from a promise. *Id.*; see also *Paulson v. Olson Implement Co.*, 107 Wis.2d 510, 517, 319 N.W.2d 855, 858 n.6 (Wis. 1982).

In the pension context, the condition of acceptance of the unilateral offer is typically the employee's retirement. *Wisconsin Fed'n of Nurses & Health Professionals, Local 5001, et al. v. Milwaukee Cty.*, 351 Wis.2d 421, 432, 839 N.W.2d 869, 874 (Wis. Ct. App. 2013). When an employee retires, fulfilling the condition of acceptance, the contract becomes bilateral. *Schwegel*, 859 N.W.2d at 88; *Compton v. Shopko Stores, Inc.*, 93 Wis.2d 613, 625, 287 N.W.2d 720, 725 (Wis. 1980). Once a bilateral contract exists, and the pension plan commences payment, any dispute over the amount of that payment can be brought as a breach of contract. *Welter v. City of Milwaukee*, 214 Wis.2d 485, 496-97, 571 N.W.2d 459, 465 (Wis. Ct. App. 1997); *Jensen v. Janesville Sand & Gravel Co.*, 141 Wis.2d 521, 526, 415 N.W.2d 559, 561 (Wis. Ct. App. 1987).

However, a pension plan provided by an employer is part of a contract of employment, and an action may be brought for its breach. *Welter*, 571 N.W.2d at 465; *Jensen*, 415 N.W.2d at 561. Breach of contract actions in Wisconsin have a statute of limitations of six years. Wisc. Stat. §893.43(1) ("...[Action] upon any contract, obligation, or liability, express or

by an Ordinance amendment that the interest rate that shall apply to both over- and underpayments be 5% simple interest.

¹⁰ By contrast, the Wisconsin ETF provides for recoupment for a period of seven years (7) years. Wisc. Stat. § 40.08(10). This is also a reasonable option for the County Board's consideration, if it wishes to specify a definitive statute of limitations.

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implied...shall be commenced within 6 years after the cause of action accrues or be barred.”); *see Welter*, 571 N.W.2d at 465 (“The plaintiffs, on the other hand, contend that the applicable statute of limitations is the one specified in §893.43....[we] agree with the plaintiffs.”). Because Wisconsin courts have characterized incorrect pension payments as breaches of contract, ERS should be allowed to bring suit to recover overpayments within the past six years. *See Policemen's Annuity & Ben. Fund, City of Milwaukee v. City of Milwaukee*, 246 Wis.2d 196, 211, 630 N.W.2d 236, 243 (Wis. Ct. App. 2001) (“...each improper payment triggered the statute of limitations, rendering the current action timely filed.”).

We further note that because pension plans are bilateral contracts, the statute of limitations accrues for every individual inaccurate payment under the ERS. *Welter*, 571 N.W.2d at 465 (“Receipt of a pension installment payment that is less than that required by contract is a separate breach of that contract.”). The right to receive pension payments is a continuing right under the terms of the contract; therefore, a new statute of limitations accrues every time a new installment comes due. *Jensen*, 415 N.W.2d at 561; *see also Policeman's Annuity*, 630 N.W.2d at 243 (“...each improper payment triggered the statute of limitations...”). Accordingly, each monthly pension overpayments triggers its own statute of limitations that lasts at least six years. *See id.*

As noted above, the ERS Ordinance does not set forth an expressed statute of limitations. We further understand that ERS has been successful in collecting repayments attributed to overpayments for a period longer than six years. Therefore, if the County does not take any action via Ordinance amendment, courts may or may not continue to permit ERS to collect overpayments older than six years. Alternatively, the County could choose to amend the Ordinance to establish a definitive limitations period. The advantage of setting forth the limitations period by statute is that the County may similarly limit actions against ERS for alleged underpayment of pension benefits.

If a definitive limitations period is established by Ordinance, please note that the County would be responsible for contributing the overpayment amount that is not collectible from the member or beneficiary due to the application of this limitation provision.

4. Settlement of Overpayments for Retirements prior to January 1, 2018

ERS may agree to waive any future repayment obligations with respect to a member who has retired prior to January 1, 2018¹¹ pursuant to a written settlement under which the pensioner waives any right to challenge the recalculation.

¹¹ The County Board can select any date it chooses. However, selecting a date earlier than January 1, 2018, may not provide ERS staff sufficient time to address the operational elements of a settlement/forgiveness policy.

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Adoption by the County Board of an appropriately-drafted Ordinance would allow ERS to waive future repayment obligations (including those in litigation) with respect to any member that retires prior to January 1, 2018. In exchange for relieving this obligation, the pensioner must: (i) agree to accept the newly-calculated benefit; and (ii) execute of a written release waiving all claims of any type related to the pension benefit against ERS, the County, County Supervisors, Pension Board and ERS Staff. Under this proposal, the County would assume the payment obligation for all forgiven payments.

If a pensioner had retired and commenced repayment, the settlement would forgive only those payments that are yet to be made (i.e., the amount still outstanding as of January 1, 2018). Repayments or recoupments made prior to January 1, 2018, or the executed settlement, whichever is later, would not be returned.¹² This offer would not be available to any member or beneficiary for whom the overpayment was the direct or indirect result of his or her fraud, misrepresentation or omission of material facts.

We believe that such a settlement would be permissible with an appropriate amendment to the ERS Ordinance. From a tax-qualification standpoint, the Ordinance should specify that ERS must be “made whole” though County contributions – a permissible correction under EPCRS – for any forgiven overpayment amount (including interest).

The settlement would represent a valid contractual agreement between the County/ERS and the member/beneficiary. The forgiveness of the indebtedness and corresponding waiver of potential claims represents valid consideration on the part of each party. Moreover, it is arguable that such solution is consistent with the presumptive goal of a fiscally sound, fair and efficient resolution these issues. The costs incurred by the County in assuming the overpayment obligations may or may not be less than its costs in defending numerous lawsuits over the overpayment determinations and repayment calculations.

ADDITIONAL ISSUES UNDER REVIEW FOR SEPTEMBER CYCLE

As a final note, it is our understanding that a number of additional issues have been raised following the issuance of Baker Tilly Agreed-Upon Procedures Report of June 27, 2017 (AUP Report). These issues, to be addressed in a follow-up analysis, include:

- Can the County establish some “materiality” threshold with respect to the form of errors subject to review?

¹² For example, assume Member A received overpayments totally \$9,800 but had fully repaid the amount as of May 2017. She would not be offered any settlement opportunity and the \$9,800 would not be returned. Assume Member B had received overpayments totaling \$9,800, had begun repayments and as of January 1, 2018 has an outstanding balance of \$5,300. Member B would be offered a settlement forgiving the \$5,300 outstanding; however, the \$4,500 repaid as of January 1, 2018 would not be returned.

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- Is it proper to consider the paucity of documentation and the extraordinary cost to obtain the required documentation in many cases? Relatedly, can the Pension Board or County adopt a rule stating that if a document is missing and it is not “readily available” (or some other standard), a calculation will be presumed correct as to past and future benefit payments?
- In response to a request for a recalculation, what are the options for ERS staff? Must they do the recalculation? Can ERS charge the member for the cost of the recalculation? Relatedly, can a Rule be implemented mandating that if a pensioner requests a recalculation, the pensioner must agree that she will accept such calculation as accurate and waive all rights/claims related recalculated benefit amount both as to the past and future?
- Can the Pension Board or County Board adopt Rules or Ordinance amendments which clarify and memorialize the accepted ERS Staff interpretations of current provisions that are susceptible to more than one interpretation?

* * *

I hope this letter has been responsive to your concerns. If you have any additional questions regarding this analysis, please do not hesitate to contact me.

Sincerely,



John A. Nixon

JAN/stm

cc: Amy Pechacek, Interim Director, ERS
ERS Pension Board
County of Milwaukee Board
Jerry Heer, Director of Audits



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Accounts Receivable Policy

Effective September 1, 2014

Employee Trust Fund (ETF) administered benefits can be overpaid for a variety of reasons. These reasons include, but are not limited to: receipt of other benefits that should have been offset from an ETF administered benefit, incorrect reporting from the participant or employer, reinstatement to state service, timing issues related to reporting death of an annuitant, etc. ETF has the authority and obligation to pursue collection of these overpayments under Wis. Stats. 40.08.

ETF will actively and consistently pursue all overpaid benefits using one of three recovery processes. The appropriate process is determined based on the status of the recipient: annuitant, death and all others. The specific program areas will compute benefit overpayments and issue letters to participants and annuitants explaining the amounts owed and appropriate next steps to resolve the overpayment. The collections unit will assume responsibility for following up with the member in regard to setting up repayment options including benefit deductions and/or installment payments.

A. Information Technology

Members will receive a letter from the appropriate program area explaining how an overpayment was calculated. Some letters are manually created by a user, others are system generated, depending on the type of account receivable created. Sometime after the letter is sent, the receivable will be recorded in FMIS which will issue a one-time invoice to the member. The invoice will allow the member the opportunity to pay in full or in part, any amount due the department. Additionally, monthly statements will be mailed to members until their entire receivable balance reaches \$0. The statement will reflect all amounts owed for all programs for the particular member. The statement will also allow the member the opportunity to pay in full or in part. The statement will reflect any payments applied since the last notification from the department as well as any cyclical interest assessed, if applicable. Upon request the department will issue notices to members when their account is paid in full.

FMIS will be used to record receivable amounts, apply payments, track installment agreements, as well as track communication with members regarding their outstanding balance.

ETF's Benefits Payment System (BPS) and Lump Sum Payment System (LSPS) will be the systems of record which will initiate receivable amounts to be created in FMIS. There are

occasions which require manual account receivable entry, which will be calculated by the program area, and entered directly into FMIS by collection staff.

CALLS and Step 2000 will also be utilized for purposes of historical documentation and research.

B. Payment Options

The amount of the payment will be determined based on the chart below. If a participant requests reduced payments (hardship), the collections area will determine a reduced amount based on discussions with the participant. Conversations and alternative agreements will be documented in FMIS. In hardship cases, an important consideration will be a possible future means of recovery by considering factors such as: life insurance, death benefit, amount in WRS account, age of participant, etc. (Note: See exceptions for lump sums and death benefits under s. 40.08(7)(a).)

If multiple overpayments exist for a participant, undesignated payments will be applied to the oldest receivable first. Participants will receive monthly statements showing the current overpayment balance including any payments made and interest assessed since the prior month's statement. These statements provide consistent periodic notifications to the member detailing how their balance is increasing due to monthly interest assessed.

Amounts less than \$2.00 will be written off every 30 days by collections staff. Amounts from \$2.01 - \$99.99 will have initial recovery attempts only. After 90 days of no payment or unsuccessful recovery, these amounts will be written off by collection staff if there is no future means to collect the receivable.

In instances where there are multiple receivables for one member and any one item is below \$100, those items will not be written off. Additionally, if there is a future means of recovery in instances where there's an accounts receivable less than \$100, those items will not be written off. Collections staff will review all items on a monthly basis for analysis and recommendation for write off.

Overpayment Amount	Monthly Payment
Less than \$2.00	Do not pursue
\$2.01 - \$99.99	Attempt initial recovery only; write off
\$100.00 - \$999.99	\$100.00
\$1,000.00 - \$1,999.99	\$150.00
\$2,000.00 - \$2,999.99	\$175.00
\$3,000.00 - \$3,999.99	\$200.00
\$4,000.00 - \$4,999.99	\$225.00
\$5,000.00 - \$5,999.99	\$250.00
\$6,000.00 - \$6,999.99	\$275.00
\$7,000.00 - \$8,999.99	\$300.00
\$9,000.00 - \$10,999.99	\$325.00
\$11,000.00 - \$12,999.99	\$350.00
\$13,000.00 - \$14,999.99	\$375.00
\$15,000.00 - \$16,999.99	\$400.00

\$17,000.00 - \$18,999.99	\$425.00
\$19,000.00 - \$20,999.99	\$450.00
\$21,000.00 - \$22,999.99	\$475.00
\$23,000.00 - \$24,999.99	\$500.00
\$25,000.00 - Up	2% of initial overpayment amount

C. Unpaid Balances - DOR Referral

ETF has established an agreement and data exchange with DOR to utilize their State Debt Collection Initiative and to utilize DOR for collection efforts rather than contracting with a collection agency. Accounts must be more than 90 days overdue with no active negotiations or payment plans in place (or more than 90 days since the last payment) before we can refer to DOR. A dunning letter "warning letter" **must** be sent to the debtor at least 30 days prior to the referral. Collections staff will create these letters in FMIS and a copy will be imaged into the member's Step 2000 folder.

Note: We do **not** refer overpayments of deceased participants. (DOR will not recover from estates.) We should **not** refer overpayments if the participant has a WRS account. (There is a future means of recovery that can be handled internally at ETF)

It is very important that once an account is referred to DOR, ETF does not independently pursue further collection efforts. The collections professional will mark an indicator in FMIS to indicate that the item was referred over to DOR, which will prevent any further notices for that member be issued. For receivables referred to DOR, participant questions relating to the collection efforts being made on the debt should be referred to DOR at 608-266-7879 or e-mail at delnqtax@revenue.wi.gov. Any questions relating to the cause or nature of the debt should be answered by ETF. ETF has set up a spreadsheet for each area to use. It may be possible that a member has more than one open balance and one of those items will be referred to DOR. Collections professionals will still be able to collect payments for all open items that were not referred to DOR.

Collection professionals will also be responsible for running a query from FMIS to update the Wisconsin Employee Benefit System (WEBS) to show that the outstanding account receivable item was referred over to DOR. That way other staff members from other units will be able to see the status of the balance. This could be used if the member was to contact another unit or if they applied for their benefit.

D. Bankruptcy

ETF will continue to refer bankruptcy cases to DOJ through the Secretary's Office designee. The Secretary's Office designee will communicate with collections staff as to the appropriate action necessary, if any, to suspend contact with members or their representatives in these situations.

E. Third Party Administrators

When appropriate, ETF or its Third Party Administrator will request Minnesota Life deduct applicable amounts from life insurance claims and send the checks to ETF's Office of Trust Finance. Minnesota Life will then pay remaining life insurance proceeds (if any) to recipient's estate/beneficiary.

Explanation letters will not be issued to the member until ETF has confirmation from Minnesota Life about any possible deduction from the members life insurance.

F. Alternate Collection Methods

Write-Offs: All overpayments (and underpayments) will be written off per ss. 40.08(7). Overpayments that have no future means of recovery (ie; no active account or current annuity to offset against) and that have been uncollectible for two years shall be written off. (Note: This is only if we have no other present or future means of recovery).

DOR will attempt to collect debts for a period of 5 years after which they will be referred back to ETF and be written off

Wage Action: We currently utilize "wage action" through DOA (State employers on Central Payroll) for Disability overpayments. We send DOA a courtesy email letting them know we will pursue wage actions directly with employers for all the benefits we administer. State employers on central payroll may then decide to utilize DOA or pay ETF directly. We do not anticipate a large increase in DOA's workload as the majority of overpayments will not be for working individuals. Employers were notified via email of our new policy/process.

Cases Referred to DOJ: Cases of fraud or greater than \$10,000 will be considered on a case by case basis for referral to DOJ. DOJ will be instructed to contact us when recovery costs are greater than 50% of the overpayment amount. The Secretary's Office designee will monitor DOJ costs for cases referred to DOJ.

Recovery From an Inactive WRS Account: We do not have statutory authority to recover from an inactive WRS Account. We must wait until an application for benefits has been filed.

Claims Against an Estate: ETF can bring a court action against an estate. There is a \$3 fee for filing claims against estates which can be added to the amount of the claim. Filing deadlines do apply. Local rules and fees may apply. To be cost effective, ETF will not file a claim against an estate for overpayments under \$500. The Collections Unit will monitor CCAP for an open estate. Claims over \$500 in which the estate has filed for probate will be referred to ETF Legal Services.

G. Interest

Interest will be assessed 180 days after the date of the overpayment notification until the overpayment is paid in full at the assumed rate of interest, currently 7.2% annually.

Exceptions to the interest policy may be considered on a case-by-case basis. Bureau Directors and above will have discretion under the *ETF Settlement Authority for Managers and Supervisors Policy* to waive interest in cases where extenuating circumstances warrant such an action in order to resolve complaints or appeals at the most appropriate level.

Authority for waiving interest is based on Wis. Stat. ss. 40.01 (1) and (2), concerning the purposes of the public employee trust fund, ss. 40.03 (2) (m), (v) and (w), regarding the Secretary's settlement authority, and s. 40.08 (4), concerning voluntary repayment by the participant, retention of payments, and assessment of interest.

General criteria to consider will include:

- ETF's role in the situation that resulted in the overpayment. In general, this discretion is reserved for those situations where ETF failed the member by making an error, not providing timely or accurate information, etc.
- The length of time over which the situation that resulted in the overpayment has continued. In general, the longer the period of time that has elapsed since the situation occurred, the more likely that this discretion may be warranted.
- The amount of the overpayment. In general, the greater the overpayment, the more likely that this discretion may be warranted.
- Other extenuating circumstances.

This discretion is limited to the waiving of interest only. Any discussions or requests by the member for a compromise, to reduce the overpayment or settle for a lesser amount, etc. must be referred to the Special Consultant to the Deputy Secretary by the collections area of OTF for resolution. Once approved, interest will not accrue as long as the member continues to make the agreed upon payments within the agreed upon timeframe(s). If the member fails to comply with the agreement, interest will immediately begin to accrue on the unpaid balance.

Information pertaining to a decision to waive interest (such as the date of the decision, participant's name, criteria upon which the waiver was based, a brief description of the situation, and the name of the person who made the decision) will be forwarded to the Office of Legal Services which will maintain a record of such decisions. The record will have a format similar to the following and will be distributed to managers on a monthly basis:

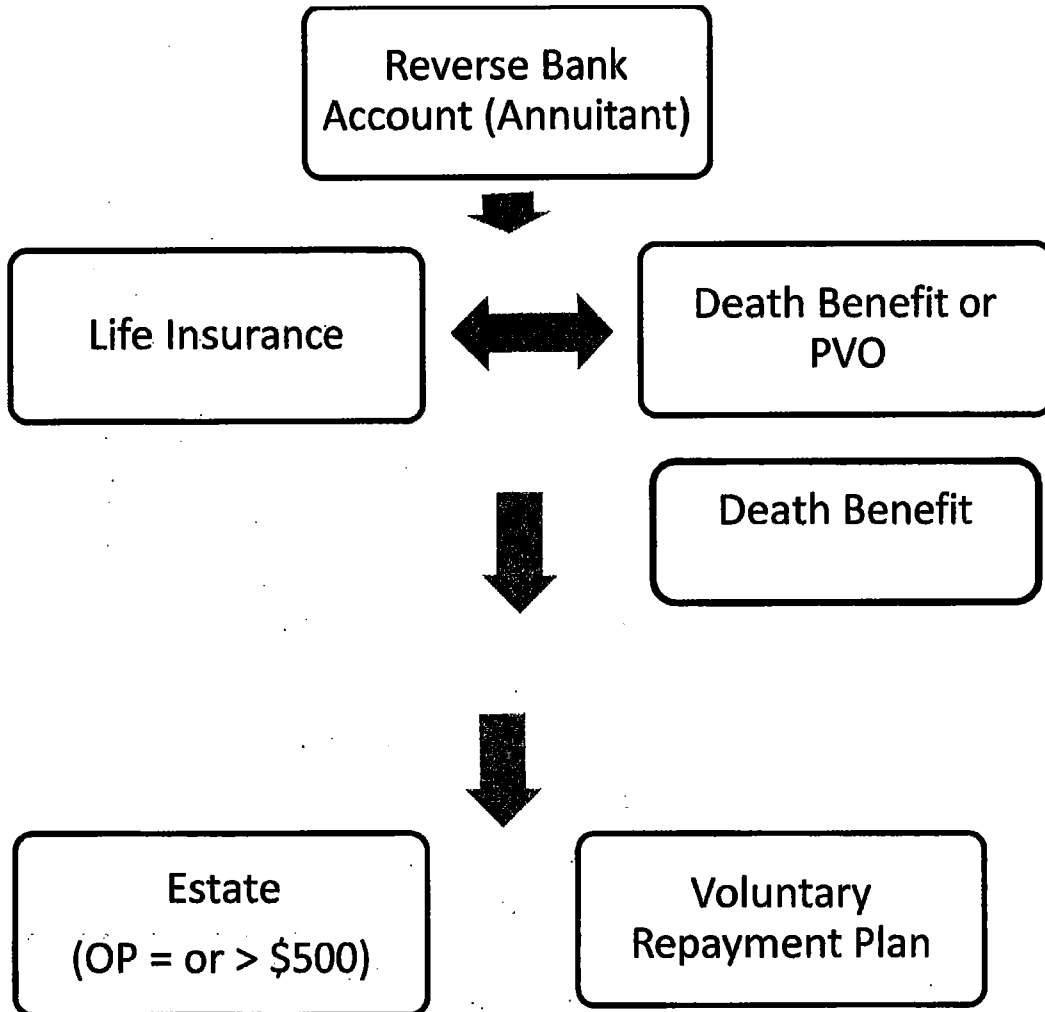
File #	Status	Member Last Name	Member First Name	Category of Overpayment	Date ETF Rec'd Member Request	Date Request Approved	Manager Who Approved Request	Criteria for Approving Request	Brief Description of Situation
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When preparing the monthly record, the General Counsel will contact the Special Consultant to the Deputy Secretary as well as the appropriate manager to clarify any questions that may exist.

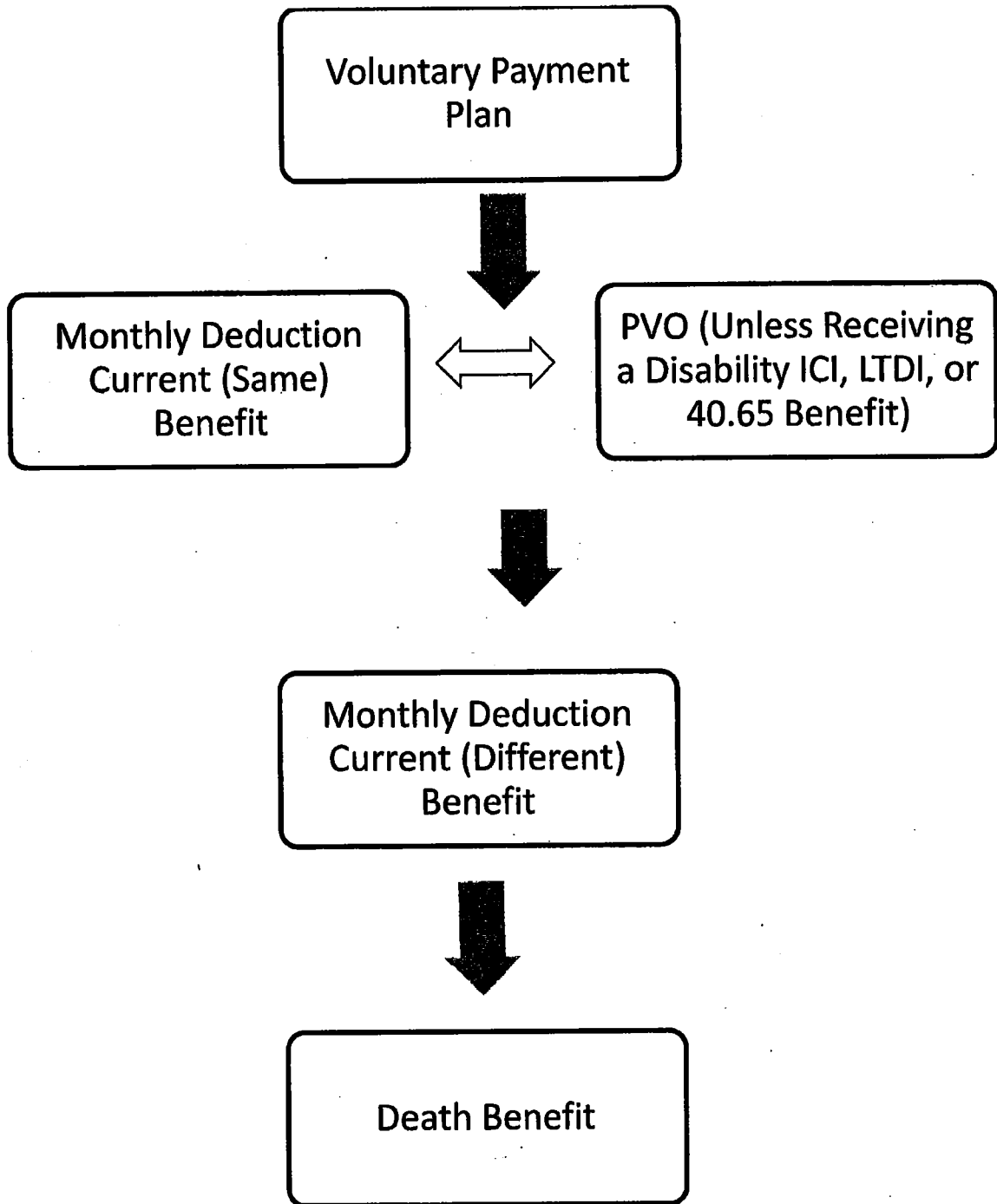
Collections staff will be able to stop interest on a particular item for a member once it has gone through the chain of command. Collection professionals will also have the knowledge to write off receivables in FMIS if approved by the above personnel.

Three Processes

Overpayment Recovery Process for Deaths



Overpayment Recovery Process for Annuities



Recovery Process For All Others

