

# Title 415 WAC

## RETIREMENT SYSTEMS, DEPARTMENT OF

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### **DISPOSITION OF CHAPTERS FORMERLY CODIFIED IN THIS TITLE**

#### **Chapter 415-116 ADMINISTRATIVE FEE RATE**

<b>415-116-010</b>	Purpose. [Statutory Authority: RCW 41.50.110, 41.26.070, 41.32.401 and 41.40.080. 91-13-029, § 415-116-010, filed 6/12/91, effective 7/13/91.] Repealed by 99-21-031, filed 10/14/99, effective 11/14/99. Statutory Authority: RCW 41.50.050.
<b>415-116-020</b>	Definitions. [Statutory Authority: RCW 41.50.110, 41.26.070, 41.32.401 and 41.40.080. 91-13-029, § 415-116-020, filed 6/12/91, effective 7/13/91.] Repealed by 99-21-031, filed 10/14/99, effective 11/14/99. Statutory Authority: RCW 41.50.050.
<b>415-116-030</b>	Administrative fee rate. [Statutory Authority: RCW 41.50.110, 41.26.070, 41.32.401 and 41.40.080. 91-13-029, § 415-116-030, filed 6/12/91, effective 7/13/91.] Repealed by 99-21-031, filed 10/14/99, effective 11/14/99. Statutory Authority: RCW 41.50.050.
<b>415-116-040</b>	Criteria for changing administrative fee rate. [Statutory Authority: RCW 41.50.110, 41.26.070, 41.32.401 and 41.40.080. 91-13-029, § 415-116-040, filed 6/12/91, effective 7/13/91.] Repealed by 99-21-031, filed 10/14/99, effective 11/14/99. Statutory Authority: RCW 41.50.050.
<b>415-116-050</b>	Current administrative fee rate. [Statutory Authority: RCW 41.50.110, 41.26.070, 41.32.401 and 41.40.080. 91-13-029, § 415-116-050, filed 6/12/91, effective 7/13/91.] Repealed by 99-21-031, filed 10/14/99, effective 11/14/99. Statutory Authority: RCW 41.50.050.

#### **Chapter 415-210 TEACHERS' RETIREMENT SYSTEM PLAN III—DEFINED CONTRIBUTION PLAN**

<b>415-210-020</b>	Contribution rate options for TRS Plan III members. [Statutory Authority: RCW 41.34.040 and 41.50.050. 97-01-013, § 415-210-020, filed 12/6/96, effective 12/27/96.] Repealed by 01-01-059, filed 12/12/00,
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effective 1/12/01. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW.

#### **Chapter 415-504 DEFINITIONS**

<b>415-504-010</b>	Accumulated deferrals. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-504-010, filed 7/29/96, effective 7/29/96.] Amended and decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-110.
<b>415-504-020</b>	Beneficiary. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-504-020, filed 7/29/96, effective 7/29/96.] Decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-120.
<b>415-504-030</b>	Compensation. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-504-030, filed 7/29/96, effective 7/29/96.] Decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-130.
<b>415-504-040</b>	Deferred compensation. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-504-040, filed 7/29/96, effective 7/29/96.] Decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-140.
<b>415-504-050</b>	Department. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-504-050, filed 7/29/96, effective 7/29/96.] Decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-150.
<b>415-504-060</b>	Eligible employee. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-504-060, filed 7/29/96, effective 7/29/96.] Decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-160.
<b>415-504-070</b>	Employee retirement benefits board. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-504-070, filed 7/29/96, effective 7/29/96.] Decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-170.
<b>415-504-080</b>	Employer. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-504-080, filed 7/29/96, effective 7/29/96.] Decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-180.
<b>415-504-090</b>	Participant. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-504-090, filed 7/29/96, effective 7/29/96.] Amended and decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-190.
<b>415-504-100</b>	Participation agreement. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-504-100, filed 7/29/96, effective 7/29/96.] Amended and decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-200.
<b>415-504-110</b>	Separation from service. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-504-110, filed 7/29/96, effective 7/29/96.] Amended and decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-210.

<b>Chapter 415-508 ADMINISTRATION</b>		
415-508-010	Administered by department. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-508-010, filed 7/29/96, effective 7/29/96.] Amended and decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-310.	
415-508-020	Department to adopt rules and regulations. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-508-020, filed 7/29/96, effective 7/29/96.] Decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-300.	
415-508-030	Department and employee retirement benefits board actions. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-508-030, filed 7/29/96, effective 7/29/96.] Decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-350.	
415-508-040	Department to maintain records of accounts. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-508-040, filed 7/29/96, effective 7/29/96.] Decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-330.	
415-508-050	Deferred compensation accounts. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-508-050, filed 7/29/96, effective 7/29/96.] Amended and decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-340.	
<b>Chapter 415-512 PARTICIPATION IN THE PLAN</b>		
415-512-010	Enrollment. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-512-010, filed 7/29/96, effective 7/29/96.] Amended and decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-410.	
415-512-015	Plan to plan transfers. [Statutory Authority: RCW 41.50.050. 98-20-047, § 415-512-015, filed 9/30/98, effective 10/31/98. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-512-015, filed 7/29/96, effective 7/29/96.] Amended and decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-415.	
415-512-020	Deferral limit. [Statutory Authority: RCW 41.50.050. 98-20-047, § 415-512-020, filed 9/30/98, effective 10/31/98. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-512-020, filed 7/29/96, effective 7/29/96.] Amended and decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-420.	
415-512-030	Catch-up provision. [Statutory Authority: RCW 41.50.050. 98-20-047, § 415-512-030, filed 9/30/98, effective 10/31/98. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-512-030, filed 7/29/96, effective 7/29/96.] Amended and decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-430.	
415-512-040	Department may disallow deferral. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-512-040, filed 7/29/96, effective 7/29/96.] Amended and decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-440.	
415-512-050	Modification of deferral or investment option(s). [Statutory Authority: RCW 41.50.050. 98-20-047, § 415-512-050, filed 9/30/98, effective 10/31/98. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, §	
	415-512-070	415-512-050, filed 7/29/96, effective 7/29/96.] Amended and decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-450.
	415-512-075	Suspension and reinstatement of deferrals. [Statutory Authority: RCW 41.50.050. 98-20-047, § 415-512-070, filed 9/30/98, effective 10/31/98. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-512-070, filed 7/29/96, effective 7/29/96.] Amended and decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-470.
	415-512-080	Investment options. [Statutory Authority: RCW 41.50.050. 98-20-047, § 415-512-075, filed 9/30/98, effective 10/31/98. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-512-075, filed 7/29/96, effective 7/29/96.] Amended and decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-475.
	415-512-085	Designation of beneficiaries. [Statutory Authority: RCW 41.50.050. 98-20-047, § 415-512-080, filed 9/30/98, effective 10/31/98. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-512-080, filed 7/29/96, effective 7/29/96.] Amended and decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-480.
	415-512-086	Distribution to participant after separation from service. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-512-085, filed 7/29/96, effective 7/29/96.] Amended and decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-485.
	415-512-087	Distribution in the event of death of participant. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-512-086, filed 7/29/96, effective 7/29/96.] Amended and decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-486.
	415-512-090	Distribution in event of death of beneficiary. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-512-087, filed 7/29/96, effective 7/29/96.] Amended and decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-487.
	415-512-095	Elections regarding distribution. [Statutory Authority: RCW 41.50.050. 98-20-047, § 415-512-090, filed 9/30/98, effective 10/31/98. Statutory Authority: RCW 41.50.780(1) and 41.50.050. 97-05-009, § 415-512-090, filed 2/7/97, effective 3/10/97. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-512-090, filed 7/29/96, effective 7/29/96.] Amended and decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-490.
	415-512-110	Domestic relations orders. [Statutory Authority: RCW 41.50.050. 98-20-047, § 415-512-095, filed 9/30/98, effective 10/31/98.] Amended and decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-495.
	415-524-010	Distribution of deferrals. [Statutory Authority: RCW 41.50.050. 98-20-047, § 415-512-110, filed 9/30/98, effective 10/31/98. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-512-110, filed 7/29/96, effective 7/29/96.] Amended and decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-500.

**Chapter 415-524  
UNFORESEEABLE EMERGENCY**

Unforeseeable emergency. [Statutory Authority: RCW 41.50.050. 98-20-047, § 415-524-010, filed 9/30/98,

	effective 10/31/98. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-524-010, filed 7/29/96, effective 7/29/96.] Amended and decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-510.	[Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-552-010, filed 7/29/96, effective 7/29/96.] Amended and decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-590.
415-528-010	<b>Chapter 415-528 LEAVE OF ABSENCE</b>  Leave of absence. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-528-010, filed 7/29/96, effective 7/29/96.] Decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-520.	415-556-010
415-532-010	<b>Chapter 415-532 AMENDMENT OR TERMINATION OF PLAN</b>  Termination of plan. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-532-010, filed 7/29/96, effective 7/29/96.] Amended and decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-530.	415-560-010
415-532-020	Amendment of plan. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-532-020, filed 7/29/96, effective 7/29/96.] Amended and decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-540.	415-564-010
415-536-010	<b>Chapter 415-536 RELATIONSHIP TO OTHER PLANS</b>  Retirement and Social Security not reduced. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-536-010, filed 7/29/96, effective 7/29/96.] Amended and decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-550.	415-564-020
415-540-010	<b>Chapter 415-540 TRANSFER IN LIEU OF CASH</b>  Assets in lieu of cash. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-540-010, filed 7/29/96, effective 7/29/96.] Amended and decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-560.	415-564-030
415-544-010	<b>Chapter 415-544 NONASSIGNABILITY CLAUSE</b>  Accumulated deferrals not assignable. [Statutory Authority: RCW 41.50.050. 98-20-047, § 415-544-010, filed 9/30/98, effective 10/31/98. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-544-010, filed 7/29/96, effective 7/29/96.] Amended and decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-570.	415-564-040
415-548-010	<b>Chapter 415-548 ASSETS</b>  Plan assets. [Statutory Authority: RCW 41.50.050. 98-20-047, § 415-548-010, filed 9/30/98, effective 10/31/98. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-548-010, filed 7/29/96, effective 7/29/96.] Decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-580.	415-564-050
415-552-010	<b>Chapter 415-552 PARTICIPATION BY DEPARTMENT OFFICERS AND EMPLOYEES AND MEMBERS OF THE EMPLOYEE RETIREMENT BENEFITS BOARD</b>  Participation by department officers and employees and members of the employee retirement benefits board.	415-568-010
		415-568-020

[Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-552-010, filed 7/29/96, effective 7/29/96.] Amended and decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-590.

#### Chapter 415-556 EMPLOYER PARTICIPATION

Employer contributions. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-556-010, filed 7/29/96, effective 7/29/96.] Amended and decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-600.

#### Chapter 415-560 INVESTMENT RESPONSIBILITY

Investment responsibility. [Statutory Authority: RCW 41.50.050. 98-20-047, § 415-560-010, filed 9/30/98, effective 10/31/98. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-560-010, filed 7/29/96, effective 7/29/96.] Decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-610.

#### Chapter 415-564 DEPARTMENT POWERS

Plan prevails. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-564-010, filed 7/29/96, effective 7/29/96.] Amended and decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-360.

Decision binding. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-564-020, filed 7/29/96, effective 7/29/96.] Amended and decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-370.

Department to interpret. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-564-030, filed 7/29/96, effective 7/29/96.] Decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-305.

Tax status not guaranteed. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-564-040, filed 7/29/96, effective 7/29/96.] Amended and decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-320.

Department may require court order. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-564-050, filed 7/29/96, effective 7/29/96.] Amended and decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-380.

Delegation of authority. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-564-060, filed 7/29/96, effective 7/29/96.] Decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-390.

#### Chapter 415-568 APPLICABLE LAW

Plan to conform to state law. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-568-010, filed 7/29/96, effective 7/29/96.] Decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-710.

Plan to conform to federal law. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-568-020, filed 7/29/96, effective 7/29/96.] Decodified by 00-11-104, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. Recodified as WAC 415-501-720.

**Chapter 415-610****DEPENDENT CARE ASSISTANCE SALARY REDUCTION PLAN**

- 415-610-010 Plan established. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-610-010, filed 7/29/96, effective 7/29/96.] Repealed by 01-21-091, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C.
- 415-610-015 Separate plan. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-610-015, filed 7/29/96, effective 7/29/96.] Repealed by 01-21-091, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C.
- 415-610-020 Interpretation. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-610-020, filed 7/29/96, effective 7/29/96.] Repealed by 01-21-091, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C.
- 415-610-030 General description of plan. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-610-030, filed 7/29/96, effective 7/29/96.] Repealed by 01-21-091, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C.

**Reviser's note:** Later promulgation, see chapter 415-600 WAC.

**Chapter 415-620**  
**DEFINITIONS**

- 415-620-010 Department. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-620-010, filed 7/29/96, effective 7/29/96.] Repealed by 01-21-091, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C.
- 415-620-015 Dependent care account. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-620-015, filed 7/29/96, effective 7/29/96.] Repealed by 01-21-091, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C.
- 415-620-020 Dependent care expenses. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-620-020, filed 7/29/96, effective 7/29/96.] Repealed by 01-21-091, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C.
- 415-620-025 Eligible employee. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-620-025, filed 7/29/96, effective 7/29/96.] Repealed by 01-21-091, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C.
- 415-620-030 Employer. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-620-030, filed 7/29/96, effective 7/29/96.] Repealed by 01-21-091, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C.
- 415-620-035 Internal Revenue Code. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-620-035, filed 7/29/96, effective 7/29/96.] Repealed by 01-21-091, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C.
- 415-620-040 Participant. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-620-040, filed 7/29/96, effective 7/29/96.] Repealed by 01-21-091, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C.
- 415-620-045 Plan. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-620-045, filed 7/29/96, effective 7/29/96.] Repealed by 01-21-091, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C.
- 415-620-050 Plan year. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-620-050, filed 7/29/96, effective 7/29/96.] Repealed by 01-21-091, filed 10/22/01, effective 11/22/01. Statutory Authority:

- 415-620-055 RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C.  
Qualifying person(s). [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-620-055, filed 7/29/96, effective 7/29/96.] Repealed by 01-21-091, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C.

**Reviser's note:** Later promulgation, see chapter 415-600 WAC.

**Chapter 415-630**  
**PARTICIPATION**

- 415-630-010 Participation in plan. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-630-010, filed 7/29/96, effective 7/29/96.] Repealed by 01-21-091, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C.  
Salary reduction agreement. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-630-020, filed 7/29/96, effective 7/29/96.] Repealed by 01-21-091, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C.  
May I change or revoke the terms of my salary reduction agreement (SRA) during the plan year? [Statutory Authority: RCW 41.50.050(5), 41.04.600-41.04.645, U.S.C. 125, 26 C.F.R. Part 1 (Tax Treatment of Cafeteria Plans). 01-11-053, § 415-630-025, filed 5/10/01, effective 5/15/01.] Repealed by 01-21-091, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C.  
What constitutes a qualifying change in status? [Statutory Authority: RCW 41.50.050(5), 41.04.600-41.04.645, U.S.C. 125, 26 C.F.R. Part 1 (Tax Treatment of Cafeteria Plans). 01-11-053, § 415-630-030, filed 5/10/01, effective 5/15/01. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-630-030, filed 7/29/96, effective 7/29/96.] Repealed by 01-21-091, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C.

**Reviser's note:** Later promulgation, see chapter 415-600 WAC.

**Chapter 415-640**  
**BENEFITS**

- 415-640-010 Plan benefits. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-640-010, filed 7/29/96, effective 7/29/96.] Repealed by 01-21-091, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C.  
Maximum benefits. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-640-020, filed 7/29/96, effective 7/29/96.] Repealed by 01-21-091, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C.  
Reduction of benefits. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-640-030, filed 7/29/96, effective 7/29/96.] Repealed by 01-21-091, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C.

**Reviser's note:** Later promulgation, see chapter 415-600 WAC.

**Chapter 415-650**  
**REIMBURSEMENT OF DEPENDENT CARE EXPENSES**

- 415-650-010 Submittal of claims. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-650-010, filed 7/29/96, effective 7/29/96.] Repealed by 01-21-091, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C.  
Payment of claims. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-650-020, filed 7/29/96, effective 7/29/96.] Repealed by 01-

## General Provisions

## Chapter 415-02

- 21-091, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C.
- 415-650-030 Report to participant. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-650-030, filed 7/29/96, effective 7/29/96.] Repealed by 01-21-091, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C.
- 415-650-040 Deadline for submitting claims. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-650-040, filed 7/29/96, effective 7/29/96.] Repealed by 01-21-091, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C.
- 415-650-050 Forfeiture of unexpended funds. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-650-050, filed 7/29/96, effective 7/29/96.] Repealed by 01-21-091, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C.

**Reviser's note:** Later promulgation, see chapter 415-600 WAC.

### Chapter 415-660 SOURCE OF REIMBURSEMENT

- 415-660-010 Salary reduction account. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-660-010, filed 7/29/96, effective 7/29/96.] Repealed by 01-21-091, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C.
- 415-660-020 Rights of participants. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-660-020, filed 7/29/96, effective 7/29/96.] Repealed by 01-21-091, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C.

**Reviser's note:** Later promulgation, see chapter 415-600 WAC.

### Chapter 415-670 TERMINATION OF PARTICIPATION

- 415-670-010 Termination of participation. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-670-010, filed 7/29/96, effective 7/29/96.] Repealed by 01-21-091, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C.

**Reviser's note:** Later promulgation, see chapter 415-600 WAC.

### Chapter 415-680 ADMINISTRATION

- 415-680-010 Administered by department. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-680-010, filed 7/29/96, effective 7/29/96.] Repealed by 01-21-091, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C.
- 415-680-020 Delegation of authority. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-680-020, filed 7/29/96, effective 7/29/96.] Repealed by 01-21-091, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C.
- 415-680-030 Proper proof. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-680-030, filed 7/29/96, effective 7/29/96.] Repealed by 01-21-091, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C.
- 415-680-040 Genuineness of documents. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-680-040, filed 7/29/96, effective 7/29/96.] Repealed by 01-21-091, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C.
- 415-680-050 Reliance on information. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-680-050, filed 7/29/96, effective 7/29/96.] Repealed by 01-

- 21-091, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C.
- 415-680-060 Condition of participation. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-680-060, filed 7/29/96, effective 7/29/96.] Repealed by 01-21-091, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C.
- 415-680-070 Decision binding. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-680-070, filed 7/29/96, effective 7/29/96.] Repealed by 01-21-091, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C.

**Reviser's note:** Later promulgation, see chapter 415-600 WAC.

### Chapter 415-690 TERMINATION OR AMENDMENT OF PLAN

- 415-690-010 Termination or amendment of plan. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-690-010, filed 7/29/96, effective 7/29/96.] Repealed by 01-21-091, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C.

**Reviser's note:** Later promulgation, see chapter 415-600 WAC.

### Chapter 415-695 MISCELLANEOUS

- 415-695-010 Communication to employees. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-695-010, filed 7/29/96, effective 7/29/96.] Repealed by 01-21-091, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C.
- 415-695-020 Nonassignability of rights. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-695-020, filed 7/29/96, effective 7/29/96.] Repealed by 01-21-091, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C.
- 415-695-030 No guarantee of tax consequences. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-695-030, filed 7/29/96, effective 7/29/96.] Repealed by 01-21-091, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C.
- 415-695-040 Indemnification of employer by participants. [Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-695-040, filed 7/29/96, effective 7/29/96.] Repealed by 01-21-091, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C.

**Reviser's note:** Later promulgation, see chapter 415-600 WAC.

### Chapter 415-02 WAC GENERAL PROVISIONS

#### WAC

- 415-02-010 Identification.
- 415-02-020 Authority.
- 415-02-030 Definitions.
- 415-02-050 State Environmental Policy Act—Interface.
- 415-02-060 What happens if I do not cash a warrant or check?
- 415-02-080 Identification of members.
- 415-02-100 Retiree insurance premium deductions for retirees—Enrollment requirements.
- 415-02-110 Determination of employee status.
- 415-02-120 Investigative subpoenas.
- 415-02-130 Will I receive retirement and account information?
- ACTUARIAL TABLES, SCHEDULES, AND FACTORS**
- 415-02-300 How does the department use actuarial tables, schedules, and factors?
- 415-02-320 Early retirement factors.

415-02-340	Monthly benefit per \$1.00 of accumulation for defined benefit plans.
415-02-360	What is the optional cost-of-living adjustment (COLA) for PERS Plan 1 and TRS Plan 1?
415-02-380	Survivor options factors.

(2) The director is empowered to propose rules pursuant to RCW 41.50.050.

[Statutory Authority: RCW 41.50.050. 00-10-016, § 415-02-020, filed 4/21/00, effective 5/22/00; Order 4, § 415-02-020, filed 7/27/77.]

#### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

415-02-040	Definition of Plan II. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-02-040, filed 2/15/78.] Repealed by 00-10-016, filed 4/21/00, effective 5/22/00. Statutory Authority: RCW 41.50.050.
415-02-070	Application of particular rules to Plan II members. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-02-070, filed 2/15/78.] Repealed by 00-10-016, filed 4/21/00, effective 5/22/00. Statutory Authority: RCW 41.50.050.
415-02-090	Actuarial tables, schedules, and factors. [Statutory Authority: RCW 41.04.050, 41.26.060, 41.32.150, 41.40.065 and 43.43.200. 88-17-053 (Order 88-14), § 415-02-090, filed 8/17/88; 87-07-013 (Order 87-1), § 415-02-090, filed 3/11/87; 86-13-022 (Order 86-2), § 415-02-090, filed 6/10/86; 86-07-026 (Order 86-1), § 415-02-090, filed 3/13/86; 84-20-043 (Order IV), § 415-02-090, filed 9/27/84.] Repealed by 91-02-019, filed 12/21/90, effective 1/21/91. Statutory Authority: RCW 41.50.050 and 41.26.060.
415-02-099	Purpose. [Statutory Authority: RCW 41.40.050, 41.26.060, 41.32.150, 41.40.065 and 43.43.200. 87-17-059 (Order DRS 87-06), § 415-02-099, filed 8/19/87.] Repealed by 96-03-100, filed 1/19/96, effective 2/19/96. Statutory Authority: RCW 41.50.050.

**WAC 415-02-010 Identification.** The department of retirement systems is a department of state government created by chapter 105, Laws of 1975-76 2nd ex. sess.

(1) The chief executive officer of the department of retirement systems is the director of retirement systems.

(2) Members of the public may obtain information, make submittals or requests, or obtain copies of agency decisions by addressing their requests or submittals to the director of the Department of Retirement Systems at P.O. Box 48380, Olympia, Washington, 98504. Upon receipt of such a request or submittal, the director shall forward the same to the proper officer or employee of the department of retirement systems for an appropriate response.

(3) Members of the public who wish to inspect and/or copy public records maintained by the agency pursuant to chapter 42.17 RCW shall do so in accordance with the methods and procedures established in chapter 415-06 WAC.

[Statutory Authority: RCW 41.50.050. 00-10-016, § 415-02-010, filed 4/21/00, effective 5/22/00; Order 4, § 415-02-010, filed 7/27/77.]

**WAC 415-02-020 Authority.** (1) The department is vested with the authority to administer, in accordance with chapter 105, Laws of 1975-76 2nd ex. sess., as now or hereafter amended, the Washington public employees' retirement system created by chapter 41.40 RCW, the Washington state teachers' retirement system created by chapters 41.32 and 41.34 RCW, the Washington school employees retirement system created by chapter 41.35 RCW, the Washington law enforcement officers' and fire fighters' retirement system, created by chapter 41.26 RCW, the Washington state patrol retirement system, created by chapter 43.43 RCW, the Washington judicial retirement system, created by chapter 2.10 RCW, and the judges retirement fund created by chapter 2.12 RCW.

**WAC 415-02-030 Definitions.** This section contains a central location for definitions of words and phrases used in the department of retirement system's rules. It also serves as a directory for finding definitions within the RCWs and WACs.

(1) **Accumulated contributions** means the sum of all contributions paid into a member's defined benefit account, including interest.

(2) **Appeal** means the proceeding through which a party obtains review of a department action in an adjudicative proceeding conducted under chapter 34.05 RCW (the Administrative Procedure Act) and chapter 415-08 WAC (the department's appeal rules).

(3) **Average final compensation** - is defined in RCW 41.32.010(30) (TRS); RCW 41.35.010(14) (SERS); RCW 41.40.010(17) (PERS); and RCW 43.43.120(15) (WSPRS).

(4) **Cafeteria plan** means a "qualified" employee benefit program under section 125 of the Internal Revenue Code, such as certain health and welfare plans.

(5) **Calendar month** refers to one of the twelve named months of the year, extending from the first day of the named month through the last day. For example: January 1st through January 31st is a calendar month. February 1st through February 29th is a calendar month in a leap year. March 13th through April 12th is *not* a calendar month.

(6) **Compensation earnable or earnable compensation** definitions can be found in RCW 41.32.010(10) and 41.32.345 (TRS); RCW 41.35.010(6) (SERS); and RCW 41.40.010(8) (PERS).

(7) **Contribution rate** is:

(a) For employees: The fraction (percent) of compensation a member contributes to a retirement system each month.

(b) For employers: The fraction (percent) of payroll a member's employer contributes to a retirement system each month. Contribution rates vary for the different systems and plans.

(8) **Deferred compensation** refers to the amount of the participant's compensation which the participant voluntarily defers from earnings before taxes.

(9) **Defined benefit plan** is a pension plan in which a lifetime retirement benefit is available, based on the member's service credit and compensation.

(10) **Defined contribution plan** is a plan in which part of members' or participants' earnings are deferred into an investment account in which tax is deferred until funds are withdrawn. The benefit is based on the contribution rate and the amount of return from the investment of the contributions. Members or participants receive the full market rate of return minus expenses. There is no guaranteed rate of return and the value of an account will increase or decrease based upon market fluctuations.

(11) **Department** means the department of retirement systems.

(12) **Dependent care assistance salary reduction plan (DCAP)** is a plan that allows an eligible employee of the state of Washington to set aside a "before tax" portion of his or her gross salary before federal income and Social Security taxes to be used for the reimbursement of dependent care expenses.

(13) **Director** means the director of the department of retirement systems.

(14) **Employee** means a worker who performs labor or services for a retirement systems employer under the control and direction of the employer as determined under WAC 415-02-110(2). An employee may be eligible to participate as a member of one of the state-administered retirement systems according to eligibility requirements specified under the applicable retirement system.

(15) **Employer** is defined in RCW 41.26.030(2) (LEOFF), 41.32.010(11) (TRS), 41.34.010(5) (Plan 3), 41.35.010(4) (SERS), and 41.40.010(4) (PERS).

(16) **Ex-spouse** refers to a person who is a party to a "dissolution order" as defined in RCW 41.50.500(3).

(17) **Final average salary** is defined in RCW 41.26.030(12) (LEOFF).

(18) **Gainsharing** is the process through which members of certain plans share in the extraordinary investment gains on earnings on retirement assets under chapters 41.31 and 41.31A RCW.

(19) **Independent contractor** means a contract worker who is not under the direction or control of the employer as determined under WAC 415-02-110 (2) and (3).

(20) **Member** means a person who is included in the membership of one of the retirement systems created by chapters 2.10, 2.12, 41.26, 41.32, 41.34, 41.35, 41.40, or 43.43 RCW.

(21) **Participant** means an eligible employee who participates in a deferred compensation or dependent care assistance plan.

(22) **Participation agreement** means an agreement that an eligible employee signs to become a participant in a deferred compensation or dependent care assistance plan.

(23) **Pension plan** is a plan that provides a lifelong post retirement payment of benefits to employees.

(24) **Petition** means the method by which a party requests a review of an administrative determination prior to an appeal to the director. The department's petitions examiner performs the review under chapter 415-04 WAC.

(25) **Plan 1** means the retirement plans in existence prior to the enactment of chapters 293, 294 and 295, Laws of 1977 ex. sess.

(26) **Plan 2** means the retirement plans established by chapters 293, 294 and 295, Laws of 1977 ex. sess., chapter 341, Laws of 1998, and chapter 329, Laws of 2001.

(27) **Plan 3** means the retirement plans established by chapter 239, Laws of 1995, chapter 341 Laws of 1998, and chapter 247 Laws of 2000.

(28) **Pop-up** is a term that the department uses to refer to the benefit available to a retiree where the survivor of a retiree receiving a benefit reduced by a survivor option predeceases the retiree. Example: Linda is receiving a retirement benefit reduced by a survivor option for her husband, Joe. Joe

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dies before Linda. Linda's monthly retirement allowance increases. The department refers to the increase as a "pop-up."

(29) **Portability** is the ability to use membership in more than one Washington state retirement system in order to qualify for retirement benefits. See chapters 41.54 RCW and 415-113 WAC.

(30) **Public record** is defined in RCW 42.17.020(36).

(31) **Restoration** is the process of restoring a member's service credit for prior periods.

(32) **Retirement system employer - see "employer."**

(33) **Rollover** means a distribution that is paid to or from an eligible retirement plan within the statutory time limit allowed.

(34) **Separation date** is the date a member ends employment in a position eligible for retirement or disability benefit coverage.

(35) **Split account** is the account the department establishes for a member or retiree's ex-spouse.

(36) **Surviving spouse** refers to a person who was married to the member at the time of the member's death and who is receiving or is eligible to receive a survivor benefit.

(37) **Survivor** means a person designated by the member to receive a monthly benefit allowance after the member dies.

(38) **Survivor benefit** is a feature of a retirement plan that provides continuing payments to a beneficiary after the death of a member or retiree.

(39) **The Uniform Services Employment and Reemployment Rights Act of 1994 (USERRA)** is the federal law that requires employers to reemploy and preserve job security, pension and welfare benefits for qualified employees who engage in military service.

[Statutory Authority: RCW 41.50.050(5). 02-23-037, § 415-02-030, filed 11/13/02, effective 1/1/03; 02-01-120, § 415-02-030, filed 12/19/01, effective 1/19/02. Statutory Authority: RCW 41.50.050. 00-10-016, § 415-02-030, filed 4/21/00, effective 5/22/00; 94-09-039, § 415-02-030, filed 4/19/94, effective 5/20/94; Order 4, § 415-02-030, filed 7/27/77.]

**WAC 415-02-050 State Environmental Policy Act—Interface.** The actions and activities of the department of retirement systems are not major actions significantly affecting the quality of the environment as described in chapter 43.21C RCW. All of the activities of the department are exempted from the threshold determination and environmental impact statement requirements of the State Environmental Policy Act (SEPA) by WAC 197-11-875.

The responsible official of the agency for the purposes of SEPA is the director.

[Statutory Authority: RCW 41.50.050. 00-10-016, § 415-02-050, filed 4/21/00, effective 5/22/00. Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-02-050, filed 2/15/78.]

**WAC 415-02-060 What happens if I do not cash a warrant or check?** (1) *Warrant for defined benefit retirement allowance.* A warrant for your monthly retirement allowance will be canceled if it is not cashed within the time frame set by RCW 43.08.062. If the warrant is canceled, the department will attempt to contact you for instructions. You

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will not earn interest on the warrant amount pending payment.

(2) *Warrant for defined benefit withdrawal.* When you request a withdrawal of some or all of your defined benefit accumulated contributions:

(a) Once the department issues the warrant you will stop receiving interest.

(b) Whether payable to you or to a qualified investment account, the warrant will be canceled if it is not cashed within the time frame set by RCW 43.08.062.

(c) After the department receives notice that the warrant has been canceled, the department will attempt to contact you and ask for further instructions.

(3) *Check for defined contribution distribution.* When you request a withdrawal of some or all of your defined contribution fund:

(a) The requested amount will be liquidated and the department's third-party recordkeeper will transfer the funds into a noninterest bearing account.

(b) You will not receive interest, earnings, or losses after the third-party recordkeeper processes your request.

(c) Whether you request that the refund check be sent directly to you or to a qualified investment account, the check will be canceled if it is not cashed within one hundred eighty days from the date on the check.

(d) If the check is canceled:

(i) The funds will continue to receive no interest, earnings, or losses while the recordkeeper waits to receive instructions from you; and

(ii) The department or the third-party recordkeeper will attempt to contact you and ask for further instructions.

[Statutory Authority: RCW 41.50.050(5), 43.08.062, 41.50.055(5), 41.50.260. 01-08-043, § 415-02-060, filed 3/30/01, effective 4/30/01. Statutory Authority: RCW 41.50.050. 00-10-016, § 415-02-060, filed 4/21/00, effective 5/22/00. Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-02-060, filed 2/15/78.]

**WAC 415-02-080 Identification of members.** The department is authorized by the Internal Revenue Code to solicit Social Security numbers. The department uses Social Security numbers as the identifying number for the member file to ensure that any amounts paid from retirement accounts are properly reported to the Internal Revenue Service (IRS) as required by law. Each member of the retirement system is required to supply his or her Social Security number to the department. Failure to do so will not cause the member to lose benefits, but may result in misreporting to the IRS which can lead to adverse tax consequences for the member.

[Statutory Authority: RCW 41.50.050. 00-10-016, § 415-02-080, filed 4/21/00, effective 5/22/00. Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-02-080, filed 2/15/78.]

**WAC 415-02-100 Retiree insurance premium deductions for retirees—Enrollment requirements.** The department will not accept requests by retirees of any of the systems which the department administers to deduct premiums for any kind of insurance from retirement allowances unless the provider has at least twenty-five such retirees enrolled in a withholding program. Any providers who have less than twenty-five retirees in their deduction program will have

twelve months in which to secure at least twenty-five participants. Failing to acquire the required minimum within twelve months will result in suspension of the deduction program for such provider. Any qualified provider who drops below twenty-five participants will be suspended if they remain under twenty-five participants for ninety days.

[Statutory Authority: RCW 41.50.050. 00-10-016, § 415-02-100, filed 4/21/00, effective 5/22/00. Statutory Authority: RCW 41.50.050(5) and 41.50.090. 84-24-017 (Order V), § 415-02-100, filed 11/28/84.]

#### **WAC 415-02-110 Determination of employee status.**

(1) An employee of a retirement system employer, other than a teachers' retirement system plan I retiree, who otherwise meets the eligibility criteria to participate in a state-administered retirement system is required to establish or continue membership in that system. An independent contractor is not eligible for active membership in any state-administered retirement system.

(2)(a) The department will review the entire relationship between the worker and the retirement system employer in order to determine whether a worker is an independent contractor or an employee. Generally, a worker is an employee if the employing individual or entity has the right to control and direct the work of the worker, not only as to the result to be accomplished, but also as to the means or methods by which the result is accomplished.

(b) Generally, a worker is an independent contractor if the employing entity has the right to control or direct only the result of the labor or services and not the means and methods accomplishing the labor or services.

(c) Whether or not the parties intend to establish an employer-employee relationship, or whether the parties regard the worker as being an independent contractor is not controlling. When the elements of direction and control are present in determining the means and methods of performing the worker's labor or service, any disclaimers to the contrary are not binding on the department for the purpose of determining employer-employee status. The terms of the contract and the actual arrangement under which the labor or services are performed will determine whether a worker is an employee or independent contractor.

(d) In evaluating whether the retirement system employer has direction or control over the means and methods of performing the worker's labor or services, no one factor is determinative. The department will apply several factors, including but not limited to the following:

(i) Is the worker required to comply with detailed work instructions or procedures about when, where and how the worker must perform services? An employer has control if the employer requires or has the right to require the worker to comply with instructions about the manner in which services must be performed.

(ii) Does the employing individual or entity provide free training for the worker, or have the right to train the worker? Typically, an employer would have the right to train an employee but not an independent contractor.

(iii) Are the worker's services an integral part of the employing individual's or entity's business operation? Usually the regular administrative work of a business is performed by employees rather than independent contractors.

Services outside the usual course of the employer's business may imply independent contractor status.

(iv) Is the worker required to perform the labor or services personally? While employees are typically required to personally perform labor or services, independent contractors are not necessarily required to perform personally, but may subcontract part or all of the required labor or services to another party.

(v) Does the employer hire, supervise or pay others to perform the same job as the worker? Usually a person who works the same job or performs the same function as performed by employees of the employer is an employee rather than an independent contractor.

(vi) Does the worker hire, supervise and pay others on the job under a contract to furnish labor and materials? Independent contractors may or may not be responsible for performing the contracted labor or services themselves, and usually have the right to hire and terminate their own employees who perform the contracted labor or services.

(vii) Does the worker perform continuing services for the retirement system employer? Independent contractors are typically hired for a job of relatively short-term or temporary duration and do not have a continuous relationship with or perform continuing services for the employing entity.

(viii) Are the worker's hours, routine or schedule set by the employing entity? The establishment of a set routine or schedule for the worker by the employer indicates employee status. Independent contractors are typically free to set their own hours of work.

(ix) Is the worker required to devote his or her full time to the business of a single employing individual or entity? A worker who is required to work full time for a single employer is likely to be an employee. Independent contractors are usually free to provide labor or services for two or more employing entities concurrently.

(x) Does the employing individual or entity require the worker to perform labor or services on the employer's premises? The employing entity is likely to have the right of control over the worker's method of work if the work is performed solely on the employer's premises, particularly if the worker could perform the required labor or services elsewhere.

(xi) Does the employing individual or entity require the worker to perform labor or services in a set sequence? A worker is likely to be an employee if the worker must perform work in an order or sequence set by the employer.

(xii) Is the worker required to provide regular, oral or written reports to the employer? Regular reports, for example weekly time sheets, are usually required of employees as opposed to independent contractors.

(xiii) Is the worker paid by unit of time (hour, week or month)? Employees are typically paid by unit of time while independent contractors are typically paid by the job (commission, bid, piecework or lump sum). Payment for labor or services upon completion of the performance of specific portions of a project or on the basis of an annual or periodic retainer usually indicates independent contractor status.

(xiv) Does the employing individual or entity reimburse the worker for the worker's job-related expenses? Independent contractors typically pay their own business or travel

expenses; the regular expenses they incur as part of providing labor or services are generally included in the stipulated contract payment and are not reimbursed by the employing entity.

(xv) Does the worker providing labor or services furnish the tools and supplies necessary for the performance of the contracted labor or service? Generally, an employer furnishes tools and supplies for their employees while independent contractors furnish their own.

(xvi) Has the worker invested in the equipment or facilities used in performing the labor or services? A significant investment by the worker in the equipment or facilities used in performing the labor or services usually indicates independent contractor status.

(xvii) Does the worker have a right to realize a profit or have a significant risk of loss as a result of the worker's services? Having the right to a profit or the risk of loss arising from the worker's services implies independent contractor status. The worker may be presumed to have assumed the risk of loss if the worker assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of a performance bond, warranties, errors, and omissions insurance or liability insurance relating to the labor or services provided.

(xviii) Does the worker perform services for several persons or firms concurrently? Performance of services for a number of different unrelated clients indicates independent contractor status.

(xix) Does the worker offer services to the general public on a regular or consistent basis? An individual actively advertising services to the general public and representing to the public that the labor and services are to be provided by an independently established business is typically an independent contractor. The following are evidence of "actively advertising":

(A) The worker uses commercial advertising or business cards as is customary in operating a similar business, or is a member of a trade association;

(B) The worker uses a telephone listing and service for the business that is separate from the worker's personal residence listing and service.

(xx) Does the employer have the right to discharge the worker at will? An employee is typically subject to discharge or layoff at the will of the employer.

(xxi) Does the worker have the right to terminate the employment relationship without incurring liability? The right to terminate the work relationship at will usually indicates employee status.

(3) Typically, an independent contractor works for an employing individual or entity as a specialist in an independently established occupation, profession, trade or business. While the right of control over the method or means of work is determinative, the department shall also consider the following factors in evaluating independent contractor status. The degree of importance of each factor varies depending on the labor or services to be performed and the context in which the labor or services are performed.

(a) Does the worker perform labor or services only pursuant to written contracts?

(b) Has the worker providing labor or services attained business registrations, professional occupation licenses or certificates required by state law or local government ordinances to perform the contracted labor or services?

(c) Has the worker providing labor or services:

(i) Purchased worker's compensation insurance and paid taxes required for an independent business;

(ii) Filed income tax returns in the name of an independent business; or

(iii) Filed a Schedule of Expenses for the type of business conducted or a Business Schedule C or Farm Schedule F as part of the personal income tax return for the previous year if the worker performed the labor or services as an independent contractor in previous years?

(d) Does the worker providing labor or services maintain a separate set of books or records that reflect all items of business income and expenses as an independently established business?

(e) Has the worker assumed financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of a performance bond, warranties, errors and omissions insurance or liability insurance relating to the labor or services to be provided?

(4) The burden of persuasion in claiming that a worker is an independent contractor or an employee is on the worker or employer making the claim.

[Statutory Authority: RCW 41.50.050. 94-09-039, § 415-02-110, filed 4/19/94, effective 5/20/94.]

**WAC 415-02-120 Investigative subpoenas.** (1) During the course of the administration of its duties, including, but not limited to, audit or investigation, the department may issue a subpoena under RCW 41.50.137. The department may direct the subpoena to any employer, member, person or entity (served party) who may possess information which is relevant and material to compel the party to:

(a) Appear and give testimony; and/or

(b) Produce any books, papers, correspondence, memoranda, or other documents, which the department deems relevant and material.

(2) The subpoena must:

(a) Identify "Washington state department of retirement systems" as the agency issuing the subpoena;

(b) Identify the name and address of the party subpoenaed;

(c) Specifically describe the information which is sought;

(d) State a reasonable time and place for the production of the information, but no later than twenty days after service; and

(e) Notify the served party that if the information is not produced, the department will apply to the superior court under RCW 34.05.588 for an appropriate order or other remedy.

(3) The subpoena may be served by:

(a) Delivering it personally; or

(b) Sending a copy by certified mail, return receipt requested.

[Statutory Authority: RCW 41.50.050. 00-10-016, § 415-02-120, filed 4/21/00, effective 5/22/00.]

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**WAC 415-02-130 Will I receive retirement and account information?** (1) DRS provides statements to all members who are currently employed and are being reported, and to inactive members who provide a mailing address.

(2) If you are a member of Plan 1 or 2, you will receive annual statements. The statements include, but are not limited to, the following information:

(a) Service credit;

(b) Contributions;

(c) Interest; and

(d) Various retirement information.

(3) For a member of Plan 3, you will receive two types of statements.

(a) The defined benefit portion of your plan will provide an annual statement of your accumulated service credit and various retirement information.

(b) The defined contribution portion of your plan will provide annual and quarterly statements. The statements include, but are not limited to, contributions and account activity.

(4) Statements are based on information provided to the department by your employer and are subject to correction.

[Statutory Authority: RCW 41.50.050(5) and 41.50.065. 02-03-120, § 415-02-130, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050. 00-10-016, § 415-02-130, filed 4/21/00, effective 5/22/00.]

## ACTUARIAL TABLES, SCHEDULES, AND FACTORS

**WAC 415-02-300 How does the department use actuarial tables, schedules, and factors?** (1) The department uses actuarial tables, schedules, and factors to calculate optional retirement allowances for members, retirees, and beneficiaries.

(2) The department adopted these tables, schedules, and factors upon the office of the state actuary's (OSA) recommendation, following OSA's investigation into the mortality, service, compensation, and other experience of retirement plan members, retirees, and beneficiaries.

(3) These tables, schedules, and factors may be amended from time to time, based upon subsequent actuarial investigation.

(4) The department uses the tables, schedules, and factors in effect at the time of the member's retirement to calculate the member's retirement allowance.

(5) The department will use these tables, schedules, and factors to process any payments when there is a death in service.

(6) The tables, schedules, and factors in this chapter apply to the calculation of retirement allowances for those who retire on or after September 1, 2002, (until subsequent amendment).

[Statutory Authority: RCW 41.50.050(5) and chapter 41.45 RCW. 02-18-048, § 415-02-300, filed 8/28/02, effective 9/1/02.]

**WAC 415-02-320 Early retirement factors.** (1) What are early retirement factors (ERF)? Early retirement factors (ERFs) are the factors the department uses to reduce your normal monthly benefit payments to reflect an earlier starting date of paying benefits and a longer payment schedule.<sup>1</sup>

<sup>1</sup> The actuarial reduction takes into account that (1), retirees who begin drawing benefits at a younger age generally receive benefits over a longer time, and (2), member and employer contributions intended to provide for the defined benefit at the typical retirement age will be adequate to fund only a smaller benefit at an earlier age.

(2) **What is a "normal" monthly benefit payment?** A "normal" monthly benefit payment is the amount you would receive if you met the plan-specific criteria as to age and length of service before you retire.

(3) **What happens if you die before becoming eligible for a normal monthly benefit payment?**

(a) Generally speaking, within the plans listed in the table in this section, the department may pay a monthly benefit to your surviving spouse or minor children. If you die before being eligible for retirement, or when you are eligible only for retirement with an actuarially reduced benefit, the department will reduce the benefit paid to your surviving spouse or minor children by the ERF corresponding to the amount of time between your age at death and the age at which you would have been eligible for an unreduced retirement benefit. (Exception: A TRS Plan 1 reduction is based on the earliest date a member would have first qualified if the member had continued in service.)

(b) There are differences among plans; please consult your plan for specific, detailed information.

LEOFF Plan 2:	RCW 41.26.460	WAC 415-104-211 and 415-104-215
PERS Plan 1:	RCW 41.40.188	WAC 415-108-324 and 415-108-326
PERS Plan 2:	RCW 41.40.660	WAC 415-108-324 and 415-108-326
PERS Plan 3:	RCW 41.40.845	WAC 415-108-324 and 415-108-326
SERS Plans 2/3:	RCW 41.35.220	WAC 415-110-324 and 415-110-326
TRS Plan 1:	RCW 41.32.530	WAC 415-112-710 to 415-112-727
TRS Plan 2:	RCW 41.32.785	WAC 415-112-710 to 415-112-727
TRS Plan 3:	RCW 41.32.851	WAC 415-112-710 to 415-112-727
WSPRS Plan 1:	RCW 43.43.278	WAC 415-103-215
WSPRS Plan 2:	RCW 43.43.271	WAC 415-103-225

#### (4) Examples

##### (a) Example (a) (early retirement):

Sandy, a PERS Plan 2 member, applies for retirement at age 56 years and one month with a total of 21.11 years of service. Her average final compensation (AFC) is \$3,500.00. PERS Plan 2 provides for two percent (.02) of AFC per year of service. Within PERS Plan 2, age 65 is the normal retirement age, but an actuarially reduced monthly retirement is available at an age as young as 55 if the member has at least 20 years of service credit. If Sandy retires now, she would be doing so eight years and eleven months early. According to the table, the ERF for retirement eight years and eleven months early is .4025. To determine the reduced monthly benefit, PERS will multiply Sandy's AFC of \$3,500 x .02 x 21.11 (service credit years) x .4025 (ERF). Sandy's monthly retirement benefit will be \$594.77.

##### (b) Example (b) (member's death):

Robert, a 56-year-old TRS Plan 1 active member, dies April 1, 2003, with 23.17 years of service. His AFC was \$3,171.74. TRS Plan 1 allows for normal retirement at age 55 with 25 years of service. Since Robert was not fully qualified for retirement, his wife, Karen, who is 58 years old, is eligible for an actuarially reduced benefit based on the earliest date Robert would have first qualified for the normal retirement benefit, reduced by the Option 2 survivor factor. Survivor factors are based on the age difference between the member and the survivor. Robert was over 55; if he had continued in service, he would be eligible for retirement in one year and ten months, when he would have completed 25 years of service. According to the actuary tables, the ERF for one year and ten months is .8530, and the Option 2 survivor factor for a beneficiary two years older is .913 (see WAC 415-02-380(11)). To determine the reduced monthly benefit to which Karen is entitled, TRS would multiply 23.17 (Robert's service credit years) x .02 x \$3,171.74 (AFC) x .8530 (ERF) x .913 (the Option 2 factor). Karen's monthly benefit will be \$1,144.65.

(5) **Table - Early retirement factors (ERF)** for these systems/plans: LEOFF Plan 2, WSP Plan 2, PERS Plan 1, TRS Plan 1, and WSP Plan 1 and 2 vested/terminated members:

Yrs Early	Month 0	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10	Month 11
0	1.000	.9933	.9866	.9799	.9732	.9665	.9598	.9531	.9464	.9397	.9330	.9263
1	.9200	.9133	.9066	.8999	.8932	.8865	.8798	.8731	.8664	.8597	.8530	.8463
2	.8400	.8333	.8266	.8199	.8132	.8065	.7998	.7931	.7864	.7797	.7730	.7663
3	.7600	.7558	.7516	.7474	.7432	.7390	.7348	.7306	.7264	.7222	.7180	.7138
4	.7100	.7058	.7016	.6974	.6932	.6890	.6848	.6806	.6764	.6722	.6680	.6638
5	.6600	.6558	.6516	.6474	.6432	.6390	.6348	.6306	.6264	.6222	.6180	.6138
6	.6100	.6058	.6016	.5974	.5932	.5890	.5848	.5806	.5764	.5722	.5680	.5638
7	.5600	.5558	.5516	.5474	.5432	.5390	.5348	.5306	.5264	.5222	.5180	.5138
8	.5100	.5067	.5034	.5001	.4968	.4935	.4902	.4869	.4836	.4803	.4770	.4737
9	.4700	.4667	.4634	.4601	.4568	.4535	.4502	.4469	.4436	.4403	.4370	.4337
10	.4300	.4267	.4234	.4201	.4168	.4135	.4102	.4069	.4036	.4003	.3970	.3937
11	.3900	.3867	.3834	.3801	.3768	.3735	.3702	.3669	.3636	.3603	.3570	.3537
12	.3500	.3467	.3434	.3401	.3368	.3335	.3302	.3269	.3236	.3203	.3170	.3137
13	.3100	.3083	.3066	.3049	.3032	.3015	.2998	.2981	.2964	.2947	.2930	.2913
14	.2900	.2883	.2866	.2849	.2832	.2815	.2798	.2781	.2764	.2747	.2730	.2713
15	.2700	.2683	.2666	.2649	.2632	.2615	.2598	.2581	.2564	.2547	.2530	.2513
16	.2500	.2483	.2466	.2449	.2432	.2415	.2398	.2381	.2364	.2347	.2330	.2313
17	.2300	.2283	.2266	.2249	.2232	.2215	.2198	.2181	.2164	.2147	.2130	.2113

Yrs Early	Month 0	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10	Month 11
18	.2100	.2092	.2084	.2076	.2068	.2060	.2052	.2044	.2036	.2028	.2020	.2012
19	.2000	.1992	.1984	.1976	.1968	.1960	.1952	.1944	.1936	.1928	.1920	.1912
20	.1900	.1892	.1884	.1876	.1868	.1860	.1852	.1844	.1836	.1828	.1820	.1812
21	.1800	.1792	.1784	.1776	.1768	.1760	.1752	.1744	.1736	.1728	.1720	.1712
22	.1700	.1692	.1684	.1676	.1668	.1660	.1652	.1644	.1636	.1628	.1620	.1612
23	.1600	.1592	.1584	.1576	.1568	.1560	.1552	.1544	.1536	.1528	.1520	.1512
24	.1500	.1492	.1484	.1476	.1468	.1460	.1452	.1444	.1436	.1428	.1420	.1412
25	.1400	.1392	.1384	.1376	.1368	.1360	.1352	.1344	.1336	.1328	.1320	.1312
26	.1300	.1292	.1284	.1276	.1268	.1260	.1252	.1244	.1236	.1228	.1220	.1212
27	.1200	.1192	.1184	.1176	.1168	.1160	.1152	.1144	.1136	.1128	.1120	.1112
28	.1100	.1092	.1084	.1076	.1068	.1060	.1052	.1044	.1036	.1028	.1020	.1012
29	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000
30	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000
31	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000
32	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000
33	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000
34	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000
35	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000
36	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000
37	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000
38	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000
39	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000
40	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000

(6) Table - Early retirement factors (ERF) for these systems/plans: PERS Plans 2 and 3, SERS Plans 2 and 3, TRS Plans 2 and 3, and PERS Plan 1 vested/terminated members:

Yrs Early	Month 0	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10	Month 11
0	1.000	.9925	.9850	.9775	.9700	.9625	.9550	.9475	.9400	.9325	.9250	.9175
1	.9100	.9025	.8950	.8875	.8800	.8725	.8650	.8575	.8500	.8425	.8350	.8275
2	.8200	.8125	.8050	.7975	.7900	.7825	.7750	.7675	.7600	.7525	.7450	.7375
3	.7300	.7250	.7200	.7150	.7100	.7050	.7000	.6950	.6900	.6850	.6800	.6750
4	.6700	.6650	.6600	.6550	.6500	.6450	.6400	.6350	.6300	.6250	.6200	.6150
5	.6100	.6050	.6000	.5950	.5900	.5850	.5800	.5750	.5700	.5650	.5600	.5550
6	.5500	.5450	.5400	.5350	.5300	.5250	.5200	.5150	.5100	.5050	.5000	.4950
7	.4900	.4850	.4800	.4750	.4700	.4650	.4600	.4550	.4500	.4450	.4400	.4350
8	.4300	.4275	.4250	.4225	.4200	.4175	.4150	.4125	.4100	.4075	.4050	.4025
9	.4000	.3975	.3950	.3925	.3900	.3875	.3850	.3825	.3800	.3775	.3750	.3725
10	.3700	.3675	.3650	.3625	.3600	.3575	.3550	.3525	.3500	.3475	.3450	.3425
11	.3400	.3375	.3350	.3325	.3300	.3275	.3250	.3225	.3200	.3175	.3150	.3125
12	.3100	.3075	.3050	.3025	.3000	.2975	.2950	.2925	.2900	.2875	.2850	.2825
13	.2800	.2783	.2766	.2749	.2732	.2715	.2698	.2681	.2664	.2647	.2630	.2613
14	.2600	.2583	.2566	.2549	.2532	.2515	.2498	.2481	.2464	.2447	.2430	.2413
15	.2400	.2383	.2366	.2349	.2332	.2315	.2298	.2281	.2264	.2247	.2230	.2213
16	.2200	.2183	.2166	.2149	.2132	.2115	.2098	.2081	.2064	.2047	.2030	.2013
17	.2000	.1983	.1966	.1949	.1932	.1915	.1898	.1881	.1864	.1847	.1830	.1813
18	.1800	.1792	.1784	.1776	.1768	.1760	.1752	.1744	.1736	.1728	.1720	.1712
19	.1700	.1692	.1684	.1676	.1668	.1660	.1652	.1644	.1636	.1628	.1620	.1612
20	.1600	.1592	.1584	.1576	.1568	.1560	.1552	.1544	.1536	.1528	.1520	.1512
21	.1500	.1492	.1484	.1476	.1468	.1460	.1452	.1444	.1436	.1428	.1420	.1412
22	.1400	.1392	.1384	.1376	.1368	.1360	.1352	.1344	.1336	.1328	.1320	.1312
23	.1300	.1292	.1284	.1276	.1268	.1260	.1252	.1244	.1236	.1228	.1220	.1212
24	.1200	.1192	.1184	.1176	.1168	.1160	.1152	.1144	.1136	.1128	.1120	.1112
25	.1100	.1092	.1084	.1076	.1068	.1060	.1052	.1044	.1036	.1028	.1020	.1012
26	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000
27	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000
28	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000
29	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000
30	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000
31	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000
32	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000
33	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000
34	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000
35	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000
36	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000
37	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000
38	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000

Yrs Early	Month 0	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10	Month 11
39	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000
40	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000
41	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000
42	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000
43	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000
44	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000
45	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000

[Statutory Authority: RCW 41.50.050(5) and chapter 41.45 RCW. 02-18-048, § 415-02-320, filed 8/28/02, effective 9/1/02.]

**WAC 415-02-340 Monthly benefit per \$1.00 of accumulation for defined benefit plans.** (1) How does the department use the information in the table called "monthly benefit per \$1.00 of accumulation for defined benefit plans"? The department uses this information to:

- (a) Determine what a future lifetime monthly benefit is worth in present-day dollars;
- (b) Determine the equivalent value of a lump sum when compared with monthly payments; and
- (c) Reduce the monthly retirement benefit in TRS Plan 1 if you take a lump sum cash out for some or all of your funds.<sup>2</sup>

<sup>2</sup>This option is only available in TRS Plan 1.

(2) What type of information is in this table? The information in this table reflects the expected duration of lifetime payments for recipients over a range of ages. These values differ by system and plan, and all reflect an assumed rate of return of 8.0%.<sup>3</sup>

<sup>3</sup>The younger a person is, the longer the anticipated lifetime of payments would be, and the greater the sum required to provide for these payments. Put another way, the amount of monthly lifetime benefit that a present-day dollar buys goes up as the remaining life expectancy of the recipient goes down.

### (3) Examples

#### (a) Example (a):

Celina is a 65-year-old PERS Plan 2 member who is eligible to receive \$45.00 per month. She wants to know how much money she could receive if she accepted a lump sum payment instead. Celina looks at the row in the table for age 65 in the PERS Plan 2 column and learns that \$0.0072458 per month for life is equivalent to one dollar in cash for this system, plan, and age class. Celina divides \$45.00 by 0.0072458 and learns that her lump sum payment would be \$6,210.49.

#### (b) Example (b):

Fred is a 58-year-old TRS Plan 1 member. The balance in Fred's account is \$124,934.00. Upon retirement, Fred chooses to withdraw the \$124,934.00 (as only members of TRS Plan 1 can do). From the row in the table for age 58 in the TRS Plan 1 column, Fred learns that \$0.0077573 per month for life is the equivalent to one dollar in cash for this system, plan, and age class. Fred multiplies the lump sum cash-out amount of \$124,934.00 by 0.0077573, and learns that his monthly retirement will be reduced by \$969.15 per month because of the lump sum cash out made at retirement.

(4) Table - Monthly benefit per \$1.00 of accumulation for defined benefit plans:

Based on the 1995-2000 actuarial experience study monthly benefit per \$1.00 of accumulation defined benefit (DB) single life pension:

Age	LEOFF 1	LEOFF 2	PERS 1	PERS 2/3	SERS 2/3	TRS 1	TRS 2/3	WSPRS 2
20	0.0039835	0.0043310	0.0065444	0.0043102	0.0042786	0.0065267	0.0042774	0.0043319
21	0.0039997	0.0043459	0.0065518	0.0043243	0.0042911	0.0065329	0.0042897	0.0043469
22	0.0040168	0.0043615	0.0065598	0.0043390	0.0043042	0.0065396	0.0043027	0.0043626
23	0.0040347	0.0043780	0.0065684	0.0043546	0.0043181	0.0065468	0.0043165	0.0043791
24	0.0040535	0.0043955	0.0065778	0.0043710	0.0043327	0.0065546	0.0043309	0.0043966
25	0.0040734	0.0044139	0.0065878	0.0043884	0.0043481	0.0065630	0.0043462	0.0044150
26	0.0040943	0.0044333	0.0065987	0.0044067	0.0043644	0.0065720	0.0043622	0.0044346
27	0.0041163	0.0044539	0.0066105	0.0044261	0.0043816	0.0065818	0.0043792	0.0044552
28	0.0041396	0.0044757	0.0066232	0.0044466	0.0043997	0.0065924	0.0043971	0.0044771
29	0.0041641	0.0044988	0.0066370	0.0044682	0.0044189	0.0066038	0.0044161	0.0045002
30	0.0041899	0.0045231	0.0066517	0.0044911	0.0044391	0.0066162	0.0044361	0.0045246
31	0.0042171	0.0045488	0.0066676	0.0045152	0.0044605	0.0066295	0.0044572	0.0045503
32	0.0042456	0.0045758	0.0066845	0.0045405	0.0044830	0.0066438	0.0044795	0.0045774
33	0.0042755	0.0046042	0.0067025	0.0045672	0.0045067	0.0066592	0.0045031	0.0046059
34	0.0043069	0.0046340	0.0067217	0.0045952	0.0045316	0.0066756	0.0045278	0.0046358
35	0.0043398	0.0046654	0.0067421	0.0046247	0.0045578	0.0066930	0.0045539	0.0046672
36	0.0043745	0.0046984	0.0067639	0.0046558	0.0045854	0.0067116	0.0045812	0.0047004
37	0.0044109	0.0047333	0.0067873	0.0046886	0.0046145	0.0067315	0.0046101	0.0047353
38	0.0044494	0.0047701	0.0068123	0.0047233	0.0046452	0.0067527	0.0046404	0.0047723
39	0.0044900	0.0048091	0.0068393	0.0047600	0.0046777	0.0067754	0.0046725	0.0048114
40	0.0045330	0.0048505	0.0068682	0.0047988	0.0047120	0.0067998	0.0047065	0.0048529
41	0.0045784	0.0048944	0.0068994	0.0048400	0.0047483	0.0068261	0.0047423	0.0048969
42	0.0046266	0.0049409	0.0069329	0.0048837	0.0047868	0.0068543	0.0047803	0.0049436
43	0.0046777	0.0049904	0.0069690	0.0049300	0.0048275	0.0068846	0.0048206	0.0049932
44	0.0047319	0.0050430	0.0070078	0.0049791	0.0048706	0.0069172	0.0048632	0.0050460
45	0.0047894	0.0050989	0.0070495	0.0050312	0.0049163	0.0069523	0.0049084	0.0051021
46	0.0048504	0.0051584	0.0070945	0.0050866	0.0049647	0.0069900	0.0049562	0.0051617

Age	LEOFF 1	LEOFF 2	PERS 1	PERS 2/3	SERS 2/3	TRS 1	TRS 2/3	WSPRS 2
47	0.0049153	0.0052218	0.0071429	0.0051455	0.0050161	0.0070305	0.0050070	0.0052253
48	0.0049844	0.0052894	0.0071953	0.0052082	0.0050707	0.0070740	0.0050609	0.0052932
49	0.0050581	0.0053617	0.0072519	0.0052752	0.0051287	0.0071210	0.0051183	0.0053657
50	0.0051368	0.0054390	0.0073132	0.0053466	0.0051905	0.0071717	0.0051793	0.0054432
51	0.0052210	0.0055218	0.0073796	0.0054231	0.0052564	0.0072265	0.0052444	0.0055264
52	0.0053104	0.0056098	0.0074510	0.0055044	0.0053265	0.0072858	0.0053139	0.0056147
53	0.0054060	0.0057042	0.0075283	0.0055914	0.0054014	0.0073500	0.0053881	0.0057094
54	0.0055084	0.0058054	0.0076121	0.0056846	0.0054813	0.0074191	0.0054671	0.0058110
55	0.0056182	0.0059141	0.0077029	0.0057845	0.0055668	0.0074939	0.0055515	0.0059201
56	0.0057354	0.0060302	0.0078008	0.0058912	0.0056581	0.0075749	0.0056420	0.0060367
57	0.0058601	0.0061539	0.0079058	0.0060049	0.0057557	0.0076627	0.0057388	0.0061608
58	0.0059937	0.0062865	0.0080192	0.0061265	0.0058600	0.0077573	0.0058422	0.0062940
59	0.0061368	0.0064287	0.0081415	0.0062566	0.0059712	0.0078589	0.0059524	0.0064368
60	0.0062900	0.0065812	0.0082732	0.0063959	0.0060901	0.0079685	0.0060703	0.0065898
61	0.0064540	0.0067444	0.0084149	0.0065448	0.0062172	0.0080866	0.0061963	0.0067538
62	0.0066294	0.0069191	0.0085668	0.0067036	0.0063529	0.0082138	0.0063311	0.0069292
63	0.0068167	0.0071058	0.0087294	0.0068729	0.0064976	0.0083506	0.0064751	0.0071168
64	0.0070165	0.0073050	0.0089030	0.0070531	0.0066517	0.0084970	0.0066285	0.0073169
65	0.0072307	0.0075186	0.0090893	0.0072458	0.0068158	0.0086537	0.0067919	0.0075315
66	0.0074600	0.0077474	0.0092891	0.0074517	0.0069903	0.0088208	0.0069657	0.0077614
67	0.0077052	0.0079921	0.0095028	0.0076715	0.0071765	0.0090000	0.0071514	0.0080073
68	0.0079692	0.0082556	0.0097332	0.0079076	0.0073755	0.0091921	0.0073497	0.0082721
69	0.0082539	0.0085400	0.0099823	0.0081620	0.0075879	0.0093974	0.0075612	0.0085580
70	0.0085622	0.0088479	0.0102523	0.0084366	0.0078162	0.0096186	0.0077883	0.0088676
71	0.0088938	0.0091793	0.0105419	0.0087308	0.0080615	0.0098577	0.0080327	0.0092008
72	0.0092539	0.0095393	0.0108558	0.0090487	0.0083261	0.0101166	0.0082964	0.0095628
73	0.0096446	0.0099300	0.0111955	0.0093919	0.0086093	0.0103939	0.0085784	0.0099559
74	0.0100684	0.0103538	0.0115628	0.0097624	0.0089142	0.0106939	0.0088826	0.0103824
75	0.0105280	0.0108135	0.0119604	0.0101627	0.0092422	0.0110180	0.0092104	0.0108451
76	0.0110267	0.0113124	0.0123914	0.0105960	0.0095951	0.0113678	0.0095637	0.0113472
77	0.0115688	0.0118547	0.0128599	0.0110662	0.0099757	0.0117460	0.0099450	0.0118933
78	0.0121597	0.0124460	0.0133705	0.0115778	0.0103875	0.0121558	0.0103575	0.0124885
79	0.0128051	0.0130919	0.0139278	0.0121352	0.0108344	0.0126012	0.0108049	0.0131389
80	0.0135111	0.0137984	0.0145368	0.0127433	0.0113202	0.0130863	0.0112914	0.0138505
81	0.0142843	0.0145725	0.0152030	0.0134074	0.0118492	0.0136157	0.0118211	0.0146303
82	0.0151240	0.0154130	0.0159279	0.0141293	0.0124242	0.0141938	0.0123986	0.0154769
83	0.0160353	0.0163252	0.0167162	0.0149136	0.0130497	0.0148256	0.0130286	0.0163958
84	0.0170241	0.0173149	0.0175726	0.0157650	0.0137302	0.0155137	0.0137139	0.0173927
85	0.0180966	0.0183884	0.0185016	0.0166876	0.0144701	0.0162628	0.0144589	0.0184740
86	0.0192583	0.0195513	0.0195059	0.0176841	0.0152736	0.0170771	0.0152680	0.0196456
87	0.0205119	0.0208062	0.0205851	0.0187541	0.0161432	0.0179605	0.0161446	0.0209102
88	0.0218550	0.0221507	0.0217347	0.0198932	0.0170791	0.0189147	0.0170905	0.0222656
89	0.0232781	0.0235752	0.0229444	0.0210916	0.0180779	0.0199388	0.0181048	0.0237021
90	0.0247625	0.0250609	0.0241977	0.0223336	0.0191323	0.0210275	0.0191823	0.0252008
91	0.0262789	0.0265782	0.0254717	0.0235975	0.0202301	0.0221705	0.0203134	0.0267317
92	0.0278427	0.0281429	0.0267640	0.0248804	0.0213620	0.0233525	0.0214834	0.0283116
93	0.0294384	0.0297392	0.0280581	0.0261661	0.0225126	0.0245532	0.0226729	0.0299249
94	0.0310505	0.0313517	0.0293389	0.0274402	0.0236656	0.0257646	0.0238739	0.0315562
95	0.0326651	0.0329665	0.0305940	0.0286908	0.0248057	0.0269704	0.0250708	0.0331914
96	0.0342704	0.0345719	0.0318149	0.0299099	0.0259197	0.0281559	0.0262493	0.0348186
97	0.0358572	0.0361585	0.0329987	0.0310951	0.0269980	0.0293096	0.0273986	0.0364281
98	0.0374173	0.0377185	0.0341503	0.0322517	0.0280348	0.0304239	0.0285118	0.0380114
99	0.0389423	0.0392433	0.0352857	0.0333956	0.0290309	0.0314979	0.0295884	0.0395582

[Statutory Authority: RCW 41.50.050(5) and chapter 41.45 RCW. 02-18-048, § 415-02-340, filed 8/28/02, effective 9/1/02.]

**WAC 415-02-360 What is the optional cost-of-living adjustment (COLA) for PERS Plan 1 and TRS Plan 1? (1)** At the time of retirement, if you are a PERS Plan 1 or TRS Plan 1 member, you can choose initially reduced retirement payment benefits that will provide you with annual cost of living adjustments in the future.

For more information, see:

PERS Plan 1: RCW 41.40.188 (1)(e); WAC 415-108-326(4)

TRS Plan 1: RCW 41.32.530 (1)(d); WAC 415-112-727(4)

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(2) By opting to receive a lower dollar amount at the beginning of your retirement, you will receive a progressively higher amount as the payments continue.

### (3) Examples

#### (a) Example (a):

Ernie, a TRS Plan 1 member, retires at age 55 with 30 years of service and chooses the COLA option. TRS Plan 1 provides two percent (.02) of average final compensation (AFC) per year of service. At the time he retires, Ernie's AFC is \$4,295.33. As shown in the "Plan 1 Optional COLA" table

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below, Ernie would receive 0.7408 of his normal retirement benefit as the starting amount of the COLA-protected benefit. TRS would calculate the benefit as follows: 30.00 (years of service credit) x .02 x \$4,295.33 (AFC) = \$2,577.20 (monthly benefit without the COLA option). TRS would then multiply \$2,577.20 x .7408 = \$1,909.19 (the COLA-protected starting benefit Ernie would receive).

**(b) Example (b):**

Tina is a PERS Plan 1 member with 30 years of service credit at age 52 and eight months. Because she has reached 30 years of service, there is no reduction for an early retirement. However, Tina chooses the optional COLA. Tina would

receive .7388 of her normal retirement benefit as the starting amount of the COLA-protected benefit. Her normal retirement benefit is \$2,295.00; her COLA-reduced benefit will be \$1,695.55.

**(4) Table - The optional cost-of-living adjustment (COLA) table is based on the 1995-2000 actuarial experience study.**

Use these factors to convert from standard option monthly benefit payments without a COLA to the same option with a COLA.

**Plan 1 Optional COLA**

Age	PERS 1 Factor	TRS 1 Factor	Age	PERS 1 Factor	TRS 1 Factor
20	0.6586	0.6554	61	0.7778	0.7662
21	0.6600	0.6566	62	0.7825	0.7708
22	0.6615	0.6580	63	0.7873	0.7754
23	0.6630	0.6593	64	0.7922	0.7801
24	0.6645	0.6607	65	0.7972	0.7849
25	0.6661	0.6622	66	0.8022	0.7897
26	0.6678	0.6638	67	0.8073	0.7946
27	0.6696	0.6654	68	0.8124	0.7996
28	0.6714	0.6670	69	0.8176	0.8046
29	0.6732	0.6687	70	0.8229	0.8097
30	0.6752	0.6705	71	0.8282	0.8149
31	0.6772	0.6723	72	0.8335	0.8201
32	0.6793	0.6742	73	0.8389	0.8253
33	0.6814	0.6762	74	0.8443	0.8306
34	0.6836	0.6783	75	0.8497	0.8359
35	0.6859	0.6804	76	0.8551	0.8413
36	0.6883	0.6826	77	0.8605	0.8467
37	0.6908	0.6849	78	0.8659	0.8521
38	0.6933	0.6872	79	0.8713	0.8575
39	0.6960	0.6896	80	0.8766	0.8628
40	0.6987	0.6921	81	0.8819	0.8682
41	0.7015	0.6947	82	0.8871	0.8735
42	0.7044	0.6974	83	0.8922	0.8788
43	0.7074	0.7002	84	0.8971	0.8840
44	0.7105	0.7031	85	0.9020	0.8891
45	0.7137	0.7060	86	0.9066	0.8941
46	0.7170	0.7091	87	0.9111	0.8989
47	0.7204	0.7122	88	0.9153	0.9036
48	0.7238	0.7154	89	0.9192	0.9080
49	0.7274	0.7188	90	0.9230	0.9123
50	0.7311	0.7222	91	0.9264	0.9162
51	0.7349	0.7256	92	0.9296	0.9200
52	0.7388	0.7293	93	0.9326	0.9234
53	0.7427	0.7331	94	0.9353	0.9266
54	0.7468	0.7369	95	0.9378	0.9296
55	0.7510	0.7408	96	0.9401	0.9323
56	0.7552	0.7448	97	0.9423	0.9348
57	0.7595	0.7489	98	0.9444	0.9372
58	0.7640	0.7531	99	0.9464	0.9394
59	0.7685	0.7574			
60	0.7731	0.7618			

[Statutory Authority: RCW 41.50.050(5) and chapter 41.45 RCW. 02-18-048, § 415-02-360, filed 8/28/02, effective 9/1/02.]

**WAC 415-02-380 Survivor options factors.** (1) What is a "surviving beneficiary"? A surviving beneficiary is a person you designate when you retire who will receive benefit payments for the duration of his or her life, beginning at your death.

(2) Will selecting a surviving beneficiary affect my retirement benefits? Yes. Retirees who select a surviving beneficiary retirement option receive smaller benefit payments upon retirement than those retirees who do not select this option.

(3) Does it matter if I am married? Yes. If you are married, you must provide your spouse's written consent to the option you select. If you are married, and you and your spouse do not give written consent to an option, the department will pay you a joint and fifty percent survivor benefit and record your spouse as the beneficiary. For details, please review:

LEOFF Plan 2:	RCW 41.26.460(2)	WAC 415-104-211 and 415-104-215
PERS Plan 1:	RCW 41.40.188(2)	WAC 415-108-324 and 415-108-326
PERS Plan 2:	RCW 41.40.660(2)	WAC 415-108-324 and 415-108-326
PERS Plan 3:	RCW 41.40.845(2)	WAC 415-108-324 and 415-108-326
SERS Plans 2/3:	RCW 41.35.220(2)	WAC 415-110-324 and 415-110-326
TRS Plan 1:	RCW 41.32.530(2)	WAC 415-112-710 to 415-112-727
TRS Plan 2:	RCW 41.32.785(2)	WAC 415-112-710 to 415-112-727
TRS Plan 3:	RCW 41.32.851(2)	WAC 415-112-710 to 415-112-727
WSPRS Plan 2:	RCW 43.43.271(2)	WAC 415-103-225

(4) Why does the surviving beneficiary's age matter? The surviving beneficiary's age is used in determining the amount of the payments. The younger the surviving beneficiary, the longer he or she is expected to receive payments. The monthly benefit must be reduced accordingly.

(5) What are the survivor options? The survivor options are described in detail within each plan. For details, please see the list in subsection (3) of this section.

To summarize:

- Option 2 - Joint and 100 percent survivorship
- Option 3 - Joint and 50 percent survivorship
- Option 4 - Joint and 66.67 percent survivorship

(6) Examples

(a) Example (a):

Kendra, a PERS Plan 2 member, chooses Option 3 (joint and 50 percent survivorship) at retirement. She names her nephew, Steve, as her surviving beneficiary. This means that Steve would receive half of Kendra's benefit amount after Kendra's death. Steve is 30 years younger than Kendra. PERS would use the survivor option factor table ("member older") to calculate the adjustment. With a 30-year age difference (member minus beneficiary), the value corresponding to PERS Plan 2 and Option 3 is 0.753. This value, 0.753, is multiplied against the amount Kendra would have received under Option 1. Kendra's retirement benefits will be reduced to about 75% of her Option 1 level.

(b) Example (b):

Mark, a LEOFF Plan 2 member, chooses Option 2 (joint and 100 percent survivorship) at retirement. He names his wife, Susan, as his surviving beneficiary. This means Susan would receive the same benefit amount Mark had received prior to his death. Mark is five years younger than Susan. LEOFF would use the survivor option factors table ("member younger") to calculate the adjustment for the age difference. With a 5-year age difference (member minus beneficiary), the value corresponding to LEOFF Plan 2 and Option 2 is 0.894. This value, 0.894, will be multiplied against the amount Mark would have received under Option 1. Mark's retirement benefits will be reduced to about 89 percent of his Option 1 level.

(7) Table - Member older (PERS and SERS)

Survivor option factor: Member older than beneficiary

Age difference: Member age minus beneficiary age

Age Difference	PERS 1 Opt. 2 100%	PERS 1 Opt. 3 50%	PERS 1 Opt. 4 66 2/3%	PERS 2/3 Opt. 2 100%	PERS 2/3 Opt. 3 50%	PERS 2/3 Opt. 4 66 2/3%	SERS 2/3 Opt. 2 100%	SERS 2/3 Opt. 3 50%	SERS 2/3 Opt. 4 66 2/3%
0	.870	.930	.909	.791	.883	.850	.799	.888	.857
1	.862	.926	.904	.778	.875	.840	.773	.872	.836
2	.857	.923	.900	.767	.868	.832	.760	.864	.826
3	.844	.915	.890	.758	.863	.825	.748	.856	.816
4	.840	.913	.887	.751	.858	.819	.741	.851	.811
5	.836	.910	.884	.743	.853	.813	.734	.846	.805
6	.831	.908	.881	.736	.848	.807	.726	.841	.799
7	.818	.900	.871	.728	.843	.801	.719	.836	.793
8	.814	.897	.867	.721	.838	.795	.712	.832	.787
9	.809	.895	.864	.713	.833	.789	.705	.827	.782
10	.805	.892	.861	.706	.828	.783	.698	.822	.776
11	.802	.890	.858	.699	.823	.777	.692	.818	.771
12	.787	.881	.847	.693	.818	.772	.685	.813	.766
13	.784	.879	.845	.686	.814	.766	.679	.809	.760
14	.780	.876	.842	.680	.809	.761	.673	.805	.755
15	.777	.874	.839	.673	.805	.756	.667	.800	.750
16	.773	.872	.836	.667	.801	.751	.662	.796	.746
17	.770	.870	.834	.662	.796	.746	.656	.792	.741
18	.767	.868	.832	.656	.792	.741	.651	.789	.737
19	.764	.866	.829	.651	.788	.736	.646	.785	.732
20	.762	.865	.827	.645	.785	.732	.641	.781	.728

Age Difference	PERS 1 Opt. 2 100%	PERS 1 Opt. 3 50%	PERS 1 Opt. 4 66 2/3%	PERS 2/3 Opt. 2 100%	PERS 2/3 Opt. 3 50%	PERS 2/3 Opt. 4 66 2/3%	SERS 2/3 Opt. 2 100%	SERS 2/3 Opt. 3 50%	SERS 2/3 Opt. 4 66 2/3%
21	.759	.863	.825	.640	.781	.728	.637	.778	.724
22	.756	.861	.823	.636	.777	.724	.632	.775	.720
23	.754	.860	.821	.631	.774	.720	.628	.771	.717
24	.752	.858	.820	.627	.771	.716	.624	.768	.713
25	.750	.857	.818	.622	.767	.712	.620	.765	.710
26	.748	.856	.817	.618	.764	.709	.616	.762	.707
27	.746	.855	.815	.615	.761	.705	.613	.760	.703
28	.744	.853	.814	.611	.758	.702	.609	.757	.700
29	.743	.852	.812	.607	.756	.699	.606	.755	.697
30	.741	.851	.811	.604	.753	.696	.603	.752	.695
31	.740	.850	.810	.601	.751	.693	.600	.750	.692
32	.738	.849	.809	.598	.748	.690	.597	.748	.690
33	.737	.849	.808	.595	.746	.688	.594	.745	.687
34	.736	.848	.807	.592	.744	.685	.592	.743	.685
35	.735	.847	.806	.589	.742	.683	.589	.741	.683
36	.734	.846	.805	.587	.740	.680	.587	.740	.680
37	.733	.846	.804	.584	.738	.678	.585	.738	.678
38	.732	.845	.804	.582	.736	.676	.582	.736	.677
39	.731	.844	.803	.580	.734	.674	.580	.734	.675
40	.730	.844	.802	.578	.732	.672	.578	.733	.673

(8) Table - Member younger (PERS and SERS)

Survivor option factors: Member younger than beneficiary

Age difference: Member age minus beneficiary age

Age Difference	PERS 1 Opt. 2 100%	PERS 1 Opt. 3 50%	PERS 1 Opt. 4 66 2/3%	PERS 2/3 Opt. 2 100%	PERS 2/3 Opt. 3 50%	PERS 2/3 Opt. 4 66 2/3%	SERS 2/3 Opt. 2 100%	SERS 2/3 Opt. 3 50%	SERS 2/3 Opt. 4 66 2/3%
-20	.958	.978	.971	.939	.969	.959	.949	.974	.965
-19	.955	.977	.970	.935	.967	.956	.946	.972	.963
-18	.952	.976	.968	.931	.964	.953	.942	.970	.961
-17	.949	.974	.966	.927	.962	.950	.938	.968	.958
-16	.947	.973	.964	.922	.959	.947	.934	.966	.955
-15	.944	.971	.962	.917	.957	.943	.930	.964	.952
-14	.940	.969	.959	.912	.954	.940	.926	.961	.949
-13	.937	.968	.957	.907	.951	.936	.921	.959	.946
-12	.934	.966	.955	.902	.948	.932	.917	.956	.943
-11	.930	.964	.953	.896	.945	.928	.912	.954	.939
-10	.927	.962	.950	.890	.942	.924	.907	.951	.936
-9	.923	.960	.948	.884	.938	.919	.901	.948	.932
-8	.920	.958	.945	.878	.935	.915	.896	.945	.928
-7	.916	.956	.942	.871	.931	.910	.890	.942	.924
-6	.912	.954	.940	.865	.927	.905	.885	.939	.920
-5	.908	.952	.937	.858	.924	.901	.879	.935	.916
-4	.901	.948	.931	.848	.918	.893	.873	.932	.911
-3	.896	.945	.928	.840	.913	.887	.863	.927	.905
-2	.889	.941	.923	.826	.905	.877	.853	.920	.897
-1	.879	.935	.916	.805	.892	.861	.834	.909	.883
0	.870	.930	.909	.791	.883	.850	.799	.888	.857

(9) Table - Member older (LEOFF Plan 2 and WSPRS Plan 2)

Survivor option factors: Member older than beneficiary

Age difference: Member age minus beneficiary age

Age Difference	LEOFF 2 Option 2 100%	LEOFF 2 Option 3 50%	LEOFF 2 Option 4 66 2/3%	WSP 2 Option 2 100%	WSP 2 Option 3 50%	WSP 2 Option 4 66 2/3%
0	0.870	0.930	0.909	0.870	0.930	0.909
1	0.865	0.927	0.905	0.865	0.927	0.905
2	0.860	0.924	0.902	0.860	0.924	0.902
3	0.855	0.922	0.898	0.855	0.922	0.898
4	0.850	0.919	0.894	0.850	0.919	0.894
5	0.845	0.916	0.891	0.845	0.916	0.891
6	0.840	0.913	0.887	0.840	0.913	0.887
7	0.835	0.910	0.883	0.835	0.910	0.883
8	0.830	0.907	0.880	0.830	0.907	0.880
9	0.825	0.904	0.876	0.825	0.904	0.876

Age Difference	LEOFF 2 Option 2 100%	LEOFF 2 Option 3 50%	LEOFF 2 Option 4 66 2/3%	WSP 2 Option 2 100%	WSP 2 Option 3 50%	WSP 2 Option 4 66 2/3%
10	0.821	0.902	0.873	0.821	0.902	0.873
11	0.816	0.899	0.870	0.816	0.899	0.870
12	0.812	0.896	0.866	0.812	0.896	0.866
13	0.808	0.894	0.863	0.808	0.894	0.863
14	0.803	0.891	0.860	0.803	0.891	0.860
15	0.799	0.888	0.857	0.799	0.888	0.857
16	0.795	0.886	0.854	0.795	0.886	0.854
17	0.792	0.884	0.851	0.792	0.884	0.851
18	0.788	0.881	0.848	0.788	0.881	0.848
19	0.784	0.879	0.845	0.784	0.879	0.845
20	0.781	0.877	0.842	0.781	0.877	0.842
21	0.777	0.875	0.840	0.777	0.875	0.840
22	0.774	0.873	0.837	0.774	0.873	0.837
23	0.771	0.871	0.835	0.771	0.871	0.835
24	0.768	0.869	0.832	0.768	0.869	0.832
25	0.765	0.867	0.830	0.765	0.867	0.830
26	0.763	0.865	0.828	0.763	0.865	0.828
27	0.760	0.864	0.826	0.760	0.864	0.826
28	0.757	0.862	0.824	0.757	0.862	0.824
29	0.755	0.860	0.822	0.755	0.860	0.822
30	0.753	0.859	0.820	0.753	0.859	0.820
31	0.750	0.857	0.818	0.750	0.857	0.818
32	0.748	0.856	0.817	0.748	0.856	0.817
33	0.746	0.855	0.815	0.746	0.855	0.815
34	0.744	0.853	0.814	0.744	0.853	0.814
35	0.742	0.852	0.812	0.742	0.852	0.812
36	0.741	0.851	0.811	0.741	0.851	0.811
37	0.739	0.850	0.809	0.739	0.850	0.809
38	0.737	0.849	0.808	0.737	0.849	0.808
39	0.736	0.848	0.807	0.736	0.848	0.807
40	0.734	0.847	0.806	0.734	0.847	0.806

## (10) Table - Member younger (LEOFF Plan 2 and WSPRS Plan 2)

Survivor option factors: Member younger than beneficiary

Age difference: Member age minus beneficiary age

Age Difference	LEOFF 2 Option 2 100%	LEOFF 2 Option 3 50%	LEOFF 2 Option 4 66 2/3%	WSP 2 Option 2 100%	WSP 2 Option 3 50%	WSP 2 Option 4 66 2/3%
-20	0.953	0.976	0.968	0.953	0.976	0.968
-19	0.950	0.974	0.966	0.950	0.974	0.966
-18	0.947	0.973	0.964	0.947	0.973	0.964
-17	0.944	0.971	0.962	0.944	0.971	0.962
-16	0.940	0.969	0.959	0.940	0.969	0.959
-15	0.937	0.967	0.957	0.937	0.967	0.957
-14	0.933	0.965	0.954	0.933	0.965	0.954
-13	0.929	0.963	0.952	0.929	0.963	0.952
-12	0.925	0.961	0.949	0.925	0.961	0.949
-11	0.921	0.959	0.946	0.921	0.959	0.946
-10	0.917	0.957	0.943	0.917	0.957	0.943
-9	0.913	0.954	0.940	0.913	0.954	0.940
-8	0.908	0.952	0.937	0.908	0.952	0.937
-7	0.904	0.949	0.934	0.904	0.949	0.934
-6	0.899	0.947	0.930	0.899	0.947	0.930
-5	0.894	0.944	0.927	0.894	0.944	0.927
-4	0.890	0.942	0.924	0.890	0.942	0.924
-3	0.885	0.939	0.920	0.885	0.939	0.920
-2	0.880	0.936	0.916	0.880	0.936	0.916
-1	0.875	0.933	0.913	0.875	0.933	0.913
0	0.870	0.930	0.909	0.870	0.930	0.909

## (11) Table - Member younger (TRS)

Survivor option factors: Member younger than beneficiary

Age difference: Member age minus beneficiary age

Age Difference	TRS 1 Option 2 100%	TRS 1 Option 3 50%	TRS 1 Option 4 66 2/3%	TRS 2/3 Option 2 100%	TRS 2/3 Option 3 50%	TRS 2/3 Option 4 66 2/3%
-20	0.968	0.984	0.979	0.952	0.975	0.967
-19	0.966	0.983	0.977	0.949	0.974	0.965
-18	0.964	0.982	0.976	0.945	0.972	0.963
-17	0.962	0.981	0.974	0.942	0.970	0.960
-16	0.960	0.979	0.973	0.938	0.968	0.958
-15	0.957	0.978	0.971	0.934	0.966	0.955
-14	0.955	0.977	0.969	0.929	0.963	0.952
-13	0.952	0.976	0.968	0.925	0.961	0.949
-12	0.950	0.974	0.966	0.921	0.959	0.946
-11	0.947	0.973	0.964	0.916	0.956	0.942
-10	0.944	0.971	0.962	0.911	0.953	0.939
-9	0.942	0.970	0.960	0.906	0.951	0.935
-8	0.939	0.968	0.958	0.900	0.948	0.931
-7	0.936	0.967	0.956	0.895	0.945	0.927
-6	0.933	0.965	0.954	0.889	0.941	0.923
-5	0.927	0.962	0.950	0.884	0.938	0.919
-4	0.923	0.960	0.947	0.877	0.934	0.914
-3	0.918	0.957	0.944	0.865	0.928	0.906
-2	0.913	0.955	0.941	0.855	0.922	0.899
-1	0.907	0.951	0.936	0.839	0.912	0.887
0	0.898	0.946	0.930	0.815	0.898	0.869

## (12) Table - Member older (TRS)

Survivor option factors: Member older than beneficiary

Age difference: Member age minus beneficiary age

Age Difference	TRS 1 Option 2 100%	TRS 1 Option 3 50%	TRS 1 Option 4 66 2/3%	TRS 2/3 Option 2 100%	TRS 2/3 Option 3 50%	TRS 2/3 Option 4 66 2/3%
0	0.898	0.946	0.930	0.815	0.898	0.869
1	0.892	0.943	0.925	0.801	0.889	0.858
2	0.888	0.941	0.922	0.790	0.883	0.849
3	0.877	0.935	0.915	0.781	0.877	0.842
4	0.873	0.932	0.912	0.772	0.871	0.835
5	0.869	0.930	0.909	0.765	0.867	0.830
6	0.858	0.924	0.901	0.758	0.862	0.824
7	0.855	0.922	0.898	0.751	0.858	0.819
8	0.851	0.920	0.896	0.744	0.853	0.813
9	0.848	0.918	0.893	0.737	0.849	0.808
10	0.845	0.916	0.891	0.730	0.844	0.802
11	0.842	0.914	0.889	0.724	0.840	0.797
12	0.839	0.912	0.887	0.717	0.835	0.792
13	0.836	0.911	0.884	0.711	0.831	0.787
14	0.824	0.904	0.875	0.705	0.827	0.782
15	0.821	0.902	0.873	0.699	0.823	0.777
16	0.819	0.900	0.871	0.694	0.819	0.773
17	0.816	0.899	0.869	0.688	0.815	0.768
18	0.814	0.897	0.868	0.683	0.812	0.764
19	0.812	0.896	0.866	0.678	0.808	0.760
20	0.809	0.895	0.864	0.673	0.805	0.755
21	0.807	0.893	0.863	0.668	0.801	0.751
22	0.805	0.892	0.861	0.664	0.798	0.748
23	0.803	0.891	0.860	0.660	0.795	0.744
24	0.802	0.890	0.858	0.655	0.792	0.740
25	0.800	0.889	0.857	0.651	0.789	0.737
26	0.798	0.888	0.856	0.648	0.786	0.734
27	0.797	0.887	0.855	0.644	0.783	0.731
28	0.796	0.886	0.854	0.640	0.781	0.728
29	0.794	0.885	0.853	0.637	0.778	0.725
30	0.793	0.885	0.852	0.634	0.776	0.722
31	0.792	0.884	0.851	0.631	0.774	0.719
32	0.791	0.883	0.850	0.628	0.771	0.717
33	0.790	0.882	0.849	0.625	0.769	0.714

Age Difference	TRS 1 Option 2 100%	TRS 1 Option 3 50%	TRS 1 Option 4 66 2/3%	TRS 2/3 Option 2 100%	TRS 2/3 Option 3 50%	TRS 2/3 Option 4 66 2/3%
34	0.789	0.882	0.848	0.622	0.767	0.712
35	0.788	0.881	0.848	0.620	0.765	0.710
36	0.787	0.881	0.847	0.617	0.763	0.708
37	0.786	0.880	0.846	0.615	0.762	0.706
38	0.785	0.880	0.846	0.613	0.760	0.704
39	0.785	0.879	0.845	0.611	0.758	0.702
40	0.784	0.879	0.845	0.609	0.757	0.700

[Statutory Authority: RCW 41.50.050(5) and chapter 41.45 RCW. 03-02-087, § 415-02-380, filed 12/31/02, effective 2/1/03; 02-18-048, § 415-02-380, filed 8/28/02, effective 9/1/02.]

## Chapter 415-04 WAC

### PETITION PROCEDURE

#### WAC

415-04-010	Definitions.
415-04-015	When can I use the petition process?
415-04-017	What is not covered by this chapter?
415-04-020	How do I file a petition for review?
415-04-025	Who may file a petition?
415-04-030	What should my petition include?
415-04-035	How much information do I need to provide in support of my petition?
415-04-037	If I petition for disability retirement benefits, who pays the cost of obtaining additional medical data?
415-04-040	What will the department do after receiving my petition?
415-04-050	How do I appeal a petition decision?

**WAC 415-04-010 Definitions.** Good reason means a strong reason for failing to respond to a request for information by the petition examiner. A good reason you may need more time to respond to the petition examiner's request for information may include, but is not limited to, the following examples:

(1) You could not provide information within the requested time period because you were in the hospital, which prevented you from responding; or

(2) The information that you need to submit is not readily accessible and requires additional time to obtain. If this is the case, you must explain why it will require more time to obtain this information.

[Statutory Authority: RCW 41.50.050(5), 41.50.050, 41.50.060. 01-18-018, § 415-04-010, filed 8/24/01, effective 9/24/01. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-04-010, filed 7/29/96, effective 7/29/96. Statutory Authority: RCW 41.50.050(5) and 34.05.250. 93-11-079, § 415-04-010, filed 5/18/93, effective 6/18/93; Order 4, § 415-04-010, filed 7/27/77.]

**WAC 415-04-015 When can I use the petition process?** You may use the petition process to request review of administrative decisions that address the following matters, including, but not limited to:

- (1) Service credits;
- (2) Service retirement benefits;
- (3) Membership in the retirement systems;
- (4) Disability benefits, except as otherwise provided by law;
- (5) Survivor benefits; and
- (6) Benefit increases provided by RCW 41.16.145 or 41.18.104.

(7) Deferred compensation accounts, except that review of decisions regarding payments due to unforeseeable emergency, are governed by WAC 415-08-015.

[Statutory Authority: RCW 41.50.050(5), 41.50.050, 41.50.060. 01-18-018, § 415-04-015, filed 8/24/01, effective 9/24/01.]

**WAC 415-04-017 What is not covered by this chapter?** You may not use the petition process to request review of administrative decisions that address the following matters, including, but not limited to:

(1) Overpayments if the procedures in RCW 41.50.135 or 41.50.138 apply.

(2) Deferred compensation plan payments because of an unforeseeable emergency (see WAC 415-08-015).

(3) Law enforcement officers' and fire fighters' (LEOFF) Plan 1 appeals of disability board decisions that the LEOFF administrator reviews. For more information about LEOFF Plan 1 disability board appeals, please refer to RCW 41.26.140 (reexaminations of disability beneficiaries), RCW 41.26.200 (right to appeal); WAC 415-104-035 (jurisdiction), WAC 415-104-045 (who can appeal, and deadline), WAC 415-104-050 (how DRS will handle the appeal), and WAC 415-104-060 (records reviewed on appeals).

[Statutory Authority: RCW 41.50.050(5), 41.50.060, 41.50.770, 41.50.780, 2001 c 42. 02-12-084, § 415-04-017, filed 6/4/02, effective 7/5/02. Statutory Authority: RCW 41.50.050(5), 41.50.050, 41.50.060. 01-18-018, § 415-04-017, filed 8/24/01, effective 9/24/01.]

#### WAC 415-04-020 How do I file a petition for review?

(1) You may request administrative review of an administrator's decision by filing a petition with the petition examiner.

(2) You must file the petition within one hundred twenty days from the date you received the administrator's decision.

(3) If you fail to file the petition within one hundred twenty days, you lose the right to judicial review, because of your failure to exhaust administrative remedies as required by RCW 34.05.534.

[Statutory Authority: RCW 41.50.050(5), 41.50.050, 41.50.060. 01-18-018, § 415-04-020, filed 8/24/01, effective 9/24/01. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-04-020, filed 7/29/96, effective 7/29/96. Statutory Authority: RCW 41.50.050(5) and 34.05.250. 93-11-079, § 415-04-020, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050. 91-19-064, § 415-04-020, filed 9/16/91, effective 10/17/91; Order 4, § 415-04-020, filed 7/27/77.]

**WAC 415-04-025 Who may file a petition?** You may file a petition if you are a member, current or former spouse, designated beneficiary or employer, and have a sufficient stake in the outcome of the petition proceeding.

[Statutory Authority: RCW 41.50.050(5), 41.50.050, 41.50.060. 01-18-018, § 415-04-025, filed 8/24/01, effective 9/24/01.]

#### **WAC 415-04-030 What should my petition include?**

Your petition should include:

- (1) A statement of what you want the department to do (relief requested) after considering the petition;
- (2) An explanation of why your request has merit;
- (3) All facts relating to the petition, including any relevant documents or sworn statements;
- (4) The name and address of your attorney, if applicable; and
- (5) Your name, address, phone number, fax number, e-mail address, and signature.

[Statutory Authority: RCW 41.50.050(5), 41.50.050, 41.50.060. 01-18-018, § 415-04-030, filed 8/24/01, effective 9/24/01. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-04-030, filed 7/29/96, effective 7/29/96.]

**WAC 415-04-035 How much information do I need to provide in support of my petition?** You bear the burden of convincing the petition examiner that you are entitled to the relief requested. You must provide sufficient information to outweigh the information that the plan administrator used in making the administrative determination that is being reviewed.

[Statutory Authority: RCW 41.50.050(5), 41.50.050, 41.50.060. 01-18-018, § 415-04-035, filed 8/24/01, effective 9/24/01.]

**WAC 415-04-037 If I petition for disability retirement benefits, who pays the cost of obtaining additional medical data?** If you petition the department for a disability retirement benefit and you need to provide additional medical data in support of your petition, you must pay any cost involved.

[Statutory Authority: RCW 41.50.050(5), 41.50.050, 41.50.060. 01-18-018, § 415-04-037, filed 8/24/01, effective 9/24/01.]

**WAC 415-04-040 What will the department do after receiving my petition?** (1) A petition examiner will review your petition.

(2) Within fourteen days from the date that you file a petition with the department, the petition examiner will determine whether you have a sufficient stake in the outcome of the proceeding to have the department consider the issues in your petition.

(a) If the petition examiner determines that you do not have a sufficient stake in the outcome, the petition examiner:

(i) May refer the matter back to the plan administrator for further investigation.

(ii) Will notify you of this decision within fourteen days of the date you file the petition. You may appeal this decision to the presiding officer under WAC 415-04-050.

(b) If the petition examiner determines that you do have a sufficient stake in the outcome, the petition examiner:

(i) Will notify interested parties, such as the member, current or former employer(s), designated beneficiaries, former spouse or the department, that you filed a petition;

(ii) Will request that the interested parties submit any written response to the petition no later than twenty days from the date of receipt of the notice;

(iii) May extend the time limit for response if the interested party shows a good reason to need more time.

(3) The petition examiner may request additional information at any time.

(4) The petition examiner will forward a copy of an interested party's response to you.

(a) You will have ten days to reply.

(b) The petition examiner may extend your time to respond if you demonstrate that you need more time for good reason.

(c) If an extension is not granted and you do not reply within ten days, you waive the right to reply.

(5) The petition examiner will issue a written decision within sixty days of:

(a) The end of your final period to reply under subsection (4) of this section; or

(b) Receipt of additional information from the department or the office of the attorney general necessary to make a decision.

(6) The written decision will include the findings of fact and conclusions of law necessary to decide the matter. The decision will be sent to you and to other interested parties.

(7) The petition examiner may refer the petition back to the plan administrator for an administrative determination without issuing a petition decision if:

(a) The petition adds new issues or facts that have not been addressed in the plan administrator's final determination; or

(b) The plan administrator did not have access to a petition decision or final order of the department that would have changed the outcome of the administrative determination.

[Statutory Authority: RCW 41.50.050(5), 41.50.050, 41.50.060. 01-18-018, § 415-04-040, filed 8/24/01, effective 9/24/01. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-04-040, filed 7/29/96, effective 7/29/96.]

**WAC 415-04-050 How do I appeal a petition decision?** (1) You may file an appeal of the petition decision with the department's director no later than sixty days after you receive the petition decision.

(2) You must follow the procedures in chapter 415-08 WAC in filing your appeal.

(3) If you fail to file your appeal within sixty days, you lose your right to judicial review, because of your failure to exhaust administrative remedies as required by RCW 34.05.534.

[Statutory Authority: RCW 41.50.050(5), 41.50.050, 41.50.060. 01-18-018, § 415-04-050, filed 8/24/01, effective 9/24/01. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-04-050, filed 7/29/96, effective 7/29/96.]

## **Chapter 415-06 WAC PUBLIC RECORDS**

### **WAC**

415-06-010

Purpose.

415-06-020

Definitions.

415-06-030

Public records officer.

415-06-040

Office hours.

415-06-050	Requests for public records.
415-06-060	Copying.
415-06-070	Exemptions.
415-06-080	Review of denials of public records requests.
415-06-090	Records index.
415-06-100	How do I contact the department?
415-06-110	Adoption of form.

**WAC 415-06-010 Purpose.** The purpose of this chapter shall be to ensure compliance by the department of retirement systems with the provisions of chapter 1, Laws of 1973, (Initiative 276), Disclosure—Campaign finances—Lobbying—Records; now codified as chapter 42.17 RCW.

[Order 4, § 415-06-010, filed 7/27/77.]

**WAC 415-06-020 Definitions.** (1) **Public records.** "Public record" includes any writing containing information relating to the conduct of governmental or the performance of any governmental or proprietary function prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.

(2) **Writing.** "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds; or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums and other documents.

(3) "Department" means the department of retirement systems.

(4) "Director" means the director of retirement systems.

[Order 4, § 415-06-020, filed 7/27/77.]

**WAC 415-06-030 Public records officer.** The department's records shall be in the charge of the public records officer designated by the department. The person so designated shall be located in the administrative office of the department. The public records officer shall be responsible for the following: The implementation of the departments rules and regulation regarding release of public records, coordinating the staff of the department in this regard, and generally insuring compliance by the staff with the public records disclosure requirements of chapter 1, Laws of 1973.

[Order 4, § 415-06-030, filed 7/27/77.]

**WAC 415-06-040 Office hours.** Public records shall be available for inspection and copying during the customary office hours of the department. For the purposes of this chapter, the customary office hours shall be from 9:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

[Order 4, § 415-06-040, filed 7/27/77.]

**WAC 415-06-050 Requests for public records.** In accordance with requirements of chapter 1, Laws of 1973 that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records may be inspected or copied or copies of such

records may be obtained, by members of the public, upon compliance with the following procedures:

(1) A request shall be made in writing upon a form prescribed by the department which shall be available at its administrative office. The form shall be presented to the public records officer; or to any member of the department's staff, if the public records office is not available, at the administrative office of the department during customary office hours. The request shall include the following information:

- (a) The name of the person requesting the records;
- (b) The time of day and calendar date on which the request was made;

(c) The nature of the request;

(d) If the matter requested is referenced within the current index maintained by the records officer, a reference to the requested record as it is described in such current index;

(e) If the requested matter is not identifiable by reference to the department's current index, an appropriate description of the record requested.

(2) In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer or staff member to whom the request is made, to assist the member of the public in appropriately identifying the public record requested.

[Order 4, § 415-06-050, filed 7/27/77.]

**WAC 415-06-060 Copying.** No fee shall be charged for the inspection of public records. The department shall charge a fee equal to the amount necessary to reimburse the department for its actual costs incident to any copying.

[Order 4, § 415-06-060, filed 7/27/77.]

**WAC 415-06-070 Exemptions.** (1) The department reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 415-06-050 is exempt under the provisions of section 31, chapter 1, Laws of 1973.

(2) In addition, pursuant to section 26, chapter 1, Laws of 1973, the department reserves the right to delete identifying details when it makes available or publishes any public record, in any cases when there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter 1, Laws of 1973. The public records officer will fully justify such deletion in writing.

(3) All denials of requests for public records must be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.

[Order 4, § 415-06-070, filed 7/27/77.]

**WAC 415-06-080 Review of denials of public records requests.** (1) Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement by the public records officer or other staff member which constituted or accompanied the denial.

(2) Immediately after receiving a written request for review of a decision denying a public record, the public records officer or other staff member denying the request shall refer it to the director or an assistant director of the department. The director or assistant shall immediately consider the matter and either affirm or reverse such denial as soon as legally possible. In any case, the request shall be returned with a final decision, within two business days following the original denial.

(3) Administrative remedies shall not be considered exhausted until the director has returned the petition with a decision or until the close of the second business day following denial of inspection, whichever occurs first.

[Order 4, § 415-06-080, filed 7/27/77.]

**WAC 415-06-090 Records index.** (1) Purpose. This rule is intended to implement RCW 42.17.260 (4)(a) and (b), which require state agencies to establish and implement a system of indexing for certain records maintained by state agencies.

(2) Responsibility for department's indexing system. The department's indexing system for records covered under this section is administered by the manager of the files unit. All record indices described in this section shall be located at the department's files unit.

(3) The department shall establish and implement a system of indexing for all records issued before July 1, 1990, for which the department has maintained an index. The department has maintained an index for the following records which have existed before July 1, 1990:

(a) "Final opinions" which include the director's final orders and other final orders in adjudicative proceedings concerning the department;

(b) "Statements and interpretations of law and policy" which include the department's "DRS notices" advising employers of the department's position regarding law and/or policy; and formal and informal opinions by the state attorney general's office, used by the department as the basis for administrative decisions;

(c) "Administrative staff manuals and instructions" which affect members of the public;

(d) "Planning policies and goals";

(e) "Factual reports and studies" by department staff, consultants, other governmental entities, and private organizations;

(f) "Correspondence" by the department in which the department determines or provides an opinion on the rights of state government, the public, subdivisions of state government, or any private party.

(4) The department shall establish and implement a system of indexing for the following records on or after July 1, 1990:

(a) "Final orders" which are issued in an adjudicative proceeding as defined by RCW 34.05.010(1) containing analyses or decisions of substantial importance to the department;

(b) "Declaratory orders" which are issued pursuant to RCW 34.05.240 containing analyses or decisions of substantial importance to the department;

(c) "Interpretive statements" which are a written expression of an opinion by the department, entitled "interpretive

statement" by the department's director, or his or her designee, and relating to the meaning of a statute or other provision of law, court decision, or agency order; and

(d) "Policy statements" which are a written description of the department's current policy, entitled "policy statement" by the department's director, or his or her designee, and implementing a statute or other provision of law, or court decision, or agency order.

(5) The system of indexing the records identified in WAC 415-06-090 (3) and (4) is as follows:

(a) An index will be organized in WAC 415-06-090 (3) and (4).

(b) Staff of the department's legal/legislative affairs unit will select the final orders and declaratory orders to be indexed reviewing all final orders and declaratory orders entered after June 30, 1990, and evaluating the substantial importance of the orders.

(c) Records will be indexed by a phrase describing the record's subject, issue or holding, and by citation of the law involved. Examples of phrases to be used are "service credit," "retirement benefits," "membership," and "contributions."

(6) Availability: The department record index shall be available to all persons in the same manner as public records available for inspection, under chapter 415-06 WAC.

[Statutory Authority: RCW 41.50.050 and 42.17.260 (4)(a) and (b). 91-19-061, § 415-06-090, filed 9/16/91, effective 10/17/91; Order 4, § 415-06-090, filed 7/27/77.]

#### **WAC 415-06-100 How do I contact the department?**

(1) Mailing address: Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380.

(2) Street address: 6835 Capitol Blvd., Tumwater, WA 98501.

(3) Phone numbers: (360) 664-7000 or toll-free (outside Olympia area) 1 (800) 547-6657, or TDD (for the hearing impaired) (360) 586-5450.

(4) E-mail address: recep@drs.wa.gov.

(5) Website: <http://www.wa.gov/drs>.

[Statutory Authority: RCW 41.50.050(5), 41.50.055(5), 34.05.220 (1)(b), 42.17.250. 01-18-017, § 415-06-100, filed 8/24/01, effective 9/24/01; Order 4, § 415-06-100, filed 7/27/77.]

**WAC 415-06-110 Adoption of form.** The director hereby adopts for use by all persons requesting inspection and/or copying or copies of the department records, the form attached hereto as Appendix A, entitled "Request for public record."

#### APPENDIX A

#### REQUEST FOR PUBLIC RECORDS

Name of Requestor:

Address:

Phone:

Date of Request:

Time of Request:

Nature of Request:

1. Index Reference . . . . .

2. If not identifiable by reference to the index, then describe the document(s) in detail . . . . .

. . . . .

. . . . .

. . . . .

Signature . . . . .

**APPENDIX A**  
**REQUEST FOR PUBLIC RECORDS**

**For Office Use Only:**

- (1) Request Granted  Record Withheld  Record Withheld In part
- (2) If withheld, name the exemption contained in section 31, chapter 1, Laws of 1973, which authorizes the withholding of the record or part of record: Subsection (1) ( ).
- (3) If withheld, briefly explain how the exemption applies to the record withheld.
- (4) If request granted, time. . . . . , day. . . . .

[Order 4, § 415-06-110, filed 7/27/77.]

**Chapter 415-08 WAC**  
**APPEALS**

**WAC**

415-08-010	Scope.
415-08-015	Appealing a denied request for an in-service deferred compensation withdrawal.
415-08-020	Time limit for filing appeals—Procedure.
415-08-023	Contents of the notice of appeal.
415-08-025	Presiding officer.
415-08-027	Parties may stipulate to the record on appeal.
415-08-030	Parties.
415-08-040	Representing another person before the presiding officer.
415-08-050	Appearance in certain proceedings may be limited to attorneys.
415-08-080	Withdrawal or substitution of representatives.
415-08-090	Ethical conduct required.
415-08-100	Appearance by former employee of agency or former member of attorney general's staff.
415-08-105	Prehearing and posthearing memoranda.
415-08-280	Discovery.
415-08-420	Presentation of evidence—Burden of proof.

**DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER**

415-08-060	Appearance and practice before the board—Solicitation of business unethical. [Order 4, § 415-08-060, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.
415-08-110	Appearance and practice before the board—Examiner duties and powers. [Order 4, § 415-08-110, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.
415-08-120	Informal conference—Purpose. [Order 4, § 415-08-120, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.
415-08-130	Informal conference—When held. [Order 4, § 415-08-130, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.
415-08-140	Informal conference—Agreements at informal conferences. [Order 4, § 415-08-140, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.
415-08-150	Prehearing conference—Purpose. [Order 4, § 415-08-150, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.
415-08-160	Prehearing conference—When held. [Order 4, § 415-08-160, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.
415-08-170	Computation of time. [Order 4, § 415-08-170, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effec-

415-08-180	tive 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.
415-08-190	Computation of time—Notice of hearing. [Order 4, § 415-08-180, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.
415-08-200	Computation of time—Upon whom served. [Order 4, § 415-08-190, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.
415-08-210	Computation of time—Service upon parties. [Order 4, § 415-08-200, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.
415-08-220	Computation of time—Method of service. [Order 4, § 415-08-210, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.
415-08-230	Computation of time—When service complete. [Order 4, § 415-08-220, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.
415-08-240	Computation of time—Filing with board. [Order 4, § 415-08-230, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.
415-08-250	Computation of time—Fees. [Order 4, § 415-08-240, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.
415-08-260	Computation of time—Proof of service. [Order 4, § 415-08-250, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.
415-08-270	Computation of time—Quashing. [Order 4, § 415-08-260, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.
415-08-290	Computation of time—Enforcement. [Order 4, § 415-08-270, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.
415-08-300	Computation of time—Documentary evidence. [Order 4, § 415-08-290, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.
415-08-310	Computation of time—Excerpts from documents. [Order 4, § 415-08-300, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.
415-08-320	Computation of time—Failure to supply prehearing information. [Order 4, § 415-08-310, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.
415-08-330	Computation of time—Agreements at prehearing conference. [Order 4, § 415-08-320, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.
415-08-340	Rules of evidence—Official notice—Matters of law. [Order 4, § 415-08-330, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.
415-08-350	Rules of evidence—Admissibility criteria. [Order 4, § 415-08-340, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.
415-08-360	Rules of evidence—Official notice—Material facts. [Order 4, § 415-08-350, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.
415-08-370	Rules of evidence—Tentative admission—Exclusion—Discontinuance—Objections. [Order 4, § 415-08-360, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.
415-08-380	Presumptions. [Order 4, § 415-08-370, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.
415-08-390	Presumptions—Additional evidence by presiding officer. [Order 4, § 415-08-380, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.

415-08-400	5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250. Expert or opinion testimony number and qualifications of witnesses. [Order 4, § 415-08-400, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.	(i) Review the agency's view of the matter, as expressed in the documentation denying your request for a withdrawal;
415-08-410	Expert or opinion testimony number and qualifications of witnesses—Written sworn statements. [Order 4, § 415-08-410, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.	(ii) Review the materials you have previously submitted, as well as any additional material you wish to submit;
415-08-430	Petitions for rule making, amendment or repeal—Who may petition. [Order 4, § 415-08-430, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.	(iii) Give each party an opportunity to be informed of the other's view of the matter;
415-08-440	Petitions for rule making, amendment or repeal—Requisites. [Order 4, § 415-08-440, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.	(iv) Make a decision on the request; and
415-08-450	Petitions for rule making, amendment or repeal—Agency must consider. [Order 4, § 415-08-450, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.	(v) Within ten days, give the parties a brief written statement of the reasons for the decision and information about any internal review available.
415-08-460	Petitions for rule making, amendment or repeal—Notice of disposition. [Order 4, § 415-08-460, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.	(b) If the presiding officer makes an unfavorable determination in your case, you may request an administrative review provided you do so within twenty-one days after you are served with the presiding officer's written determination. If you seek administrative review, the reviewing officer will be a different person than the presiding officer.
415-08-470	Declaratory rulings. [Order 4, § 415-08-470, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.	(c) If you do not seek administrative review, you may seek judicial review within thirty days after you are served with the written determination (see RCW 34.05.542).
415-08-480	Declaratory rulings—Forms. [Order 4, § 415-08-480, filed 7/27/77.] Repealed by 93-11-079, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 34.05.250.	(5) <b>Full adjudicative proceeding.</b> If the department conducts a full adjudicative proceeding, that proceeding will be governed by the Administrative Procedure Act (chapter 34.05 RCW), and rules adopted thereunder; and chapters 10-08 and 415-08 WAC. The department will be represented in the proceeding by an assistant attorney general.

[Statutory Authority: RCW 41.50.050(5), 41.50.060, 41.50.770, 41.50.780, 2001 c 42. 02-12-084, § 415-08-015, filed 6/4/02, effective 7/5/02. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-08-015, filed 7/29/96, effective 7/29/96.]

**WAC 415-08-010 Scope.** This chapter governs the procedure the department follows in conducting adjudicative proceedings under chapter 34.05 RCW. The department adopts the model rules of procedure contained in chapter 10-08 WAC to the extent that those provisions are not contrary to the provisions of this chapter. These rules shall govern all adjudicative proceedings before the department.

[Statutory Authority: RCW 41.50.050, 41.50.060 and 34.05.425. 96-11-036, § 415-08-010, filed 5/7/96, effective 6/7/96. Statutory Authority: RCW 41.50.050(5) and 34.05.250. 93-11-079, § 415-08-010, filed 5/18/93, effective 6/18/93; Order 4, § 415-08-010, filed 7/27/77.]

**WAC 415-08-015 Appealing a denied request for an in-service deferred compensation withdrawal.** WAC 415-501-510 and Section 457 of the Internal Revenue Code authorize distributions from the deferred compensation plan due to an unforeseeable emergency. If your application for a pay out is denied, you are entitled to have that decision reviewed.

(1) **Filing deadline.** You must apply for review in writing within sixty days of the date you receive the denial.

(2) **Contents of review application.** Your application must contain the items listed in WAC 415-08-023.

(3) **Type of proceeding.** Within twenty days of receipt of your application, the department will notify you in writing that it will conduct either:

(a) A brief adjudicative proceeding under RCW 34.05.482 through 34.05.494; or

(b) A full adjudicative proceeding under this chapter.

**(4) Brief adjudicative proceeding.**

(a) The director's designee will serve as presiding officer. The presiding officer will:

**WAC 415-08-020 Time limit for filing appeals—Procedure.** (1) Any party aggrieved by a petition decision rendered pursuant to chapter 415-04 WAC may appeal the decision by filing a notice of appeal within sixty days from the date such decision was communicated to the party.

(2) The appealing parties shall file the original and two copies of the notice of appeal with the department. The department will acknowledge receipt of the copies filed. The department's stamp placed upon such copies shall be prima facie evidence of the date of receipt. The department may thereafter require additional copies to be filed if necessary.

(3) If a party fails to file a timely appeal the party waives the right to judicial review due to failure to exhaust administrative remedies as required by RCW 34.05.534.

[Statutory Authority: RCW 41.50.050, 41.50.060 and 34.05.425. 96-11-036, § 415-08-020, filed 5/7/96, effective 6/7/96. Statutory Authority: RCW 41.50.050(5) and 34.05.250. 93-11-079, § 415-08-020, filed 5/18/93, effective 6/18/93; Order 4, § 415-08-020, filed 7/27/77.]

**WAC 415-08-023 Contents of the notice of appeal.** The notice of appeal must contain:

(1) The name and mailing address of the member or beneficiary, and the employer of the member;

(2) The name and legal residence of the appealing party, together with the mailing address of his or her representative, if any;

(3) In the case of disability claims:

(a) The date and nature of the accident, injury or disease, the place it occurred and location of the employer, in the case of disability claims; and

(b) If the injury or disease did not occur in the county where the member or beneficiary resides, the name of the county in which the appealing party desires to have the hearing held and a city or town most convenient within the county where the hearing is to be held;

(4) A statement identifying the decision appealed from and that portion of the decision considered to be unjust or unlawful;

(5) A clear and concise statement of facts in support of the grounds stated including, where applicable, a description of the physical facts constituting the claimant's present disability and how it is manifested;

(6) The type of relief sought, including specific dates at which time the appealing party believes the benefit accrued; and

(7) A statement that the appealing party has read the notice of appeal and believes the contents to be true, followed by his or her signature and the signature of his or her representative, if any.

[Statutory Authority: RCW 41.50.050, 41.50.060 and 34.05.425. 96-11-036, § 415-08-023, filed 5/7/96, effective 6/7/96.]

**WAC 415-08-025 Presiding officer.** The director will designate a presiding officer to issue an order. The director may issue a general or specific presiding officer designation.

(1) If the director designates a presiding officer to issue a final order, that person shall be a different person than director's designee under chapter 415-04 WAC.

(2) If the director designates a presiding officer to issue a proposed order the director, or a person designated by the director, will be the reviewing officer. In that event, the reviewing officer will issue a final order.

[Statutory Authority: RCW 41.50.050, 41.50.060 and 34.05.425. 96-11-036, § 415-08-025, filed 5/7/96, effective 6/7/96. Statutory Authority: RCW 41.50.050(5) and 34.05.250. 93-11-079, § 415-08-025, filed 5/18/93, effective 6/18/93.]

**WAC 415-08-027 Parties may stipulate to the record on appeal.** If the parties stipulate to a record, a hearing before the presiding officer may be waived by agreement of all parties. The presiding officer will then issue a final order on the stipulated record.

[Statutory Authority: RCW 41.50.050, 41.50.060 and 34.05.425. 96-11-036, § 415-08-027, filed 5/7/96, effective 6/7/96.]

**WAC 415-08-030 Parties.** The parties to an appeal shall be the appealing party or parties and the department. There is no obligation to serve notices, pleadings or correspondence upon any person who has not entered an appearance as a party. Service upon the representative of a party shall constitute service upon such party.

[Statutory Authority: RCW 41.50.050, 41.50.060 and 34.05.425. 96-11-036, § 415-08-030, filed 5/7/96, effective 6/7/96. Statutory Authority: RCW 41.50.050(5) and 34.05.250. 93-11-079, § 415-08-030, filed 5/18/93, effective 6/18/93; Order 4, § 415-08-030, filed 7/27/77.]

**WAC 415-08-040 Representing another person before the presiding officer.** Only the following persons may appear in a representative capacity before the presiding officer:

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(1) Attorneys at law duly qualified and entitled to practice before the supreme court of the state of Washington.

(2) Attorneys at law duly qualified and entitled to practice before the highest court of record of any other state, if the attorneys at law of the state of Washington are permitted to appear in a representative capacity before administrative agencies of such other state, and if not otherwise prohibited by our state law.

(3) A legal intern authorized to practice law pursuant to Admission to Practice Rule (APR) 9 of the state supreme court and subject to the limitations contained in said rule. A legal intern shall not appear without the presence of the supervising attorney except in *ex parte* matters and noncontested cases.

(4) A bona fide officer, partner, or full-time employee of an individual firm, association, partnership, or corporation who appears on behalf of the entity.

[Statutory Authority: RCW 41.50.050, 41.50.060 and 34.05.425. 96-11-036, § 415-08-040, filed 5/7/96, effective 6/7/96. Statutory Authority: RCW 41.50.050(5) and 34.05.250. 93-11-079, § 415-08-040, filed 5/18/93, effective 6/18/93; Order 4, § 415-08-040, filed 7/27/77.]

**WAC 415-08-050 Appearance in certain proceedings may be limited to attorneys.** In all hearings involving the taking of testimony and the formulation of a record subject to review by the courts, where the presiding officer determines that representation in such hearing requires a high degree of legal training, experience, and skill, the board or its examiner may limit those who may appear in a representative capacity to attorneys-at-law.

[Statutory Authority: RCW 41.50.050, 41.50.060 and 34.05.425. 96-11-036, § 415-08-050, filed 5/7/96, effective 6/7/96; Order 4, § 415-08-050, filed 7/27/77.]

**WAC 415-08-080 Withdrawal or substitution of representatives.** An attorney or other representative withdrawing from a case shall immediately so notify the presiding officer and all parties of record in writing, or shall state such withdrawal for the record at a conference or hearing. Any substitution of an attorney or representative shall be accomplished by written notification to the presiding officer and to all parties of record.

[Statutory Authority: RCW 41.50.050, 41.50.060 and 34.05.425. 96-11-036, § 415-08-080, filed 5/7/96, effective 6/7/96. Statutory Authority: RCW 41.50.050(5) and 34.05.250. 93-11-079, § 415-08-080, filed 5/18/93, effective 6/18/93; Order 4, § 415-08-080, filed 7/27/77.]

**WAC 415-08-090 Ethical conduct required.** All persons appearing in a representative capacity in proceedings before the presiding officer shall conform to the standards of ethical conduct required of attorneys before the courts of Washington. If any such person does not conform to such standards, the presiding officer may, in his/her discretion and depending on all the circumstances, admonish or reprimand such person, exclude such person from further participation in the proceedings and adjourn the same, or report the matter to the department.

[Statutory Authority: RCW 41.50.050, 41.50.060 and 34.05.425. 96-11-036, § 415-08-090, filed 5/7/96, effective 6/7/96. Statutory Authority: RCW 41.50.050(5) and 34.05.250. 93-11-079, § 415-08-090, filed 5/18/93, effective 6/18/93; Order 4, § 415-08-090, filed 7/27/77.]

**WAC 415-08-100 Appearance by former employee of agency or former member of attorney general's staff.** No former employee of the department or system or former member of the attorney general's staff may appear in a representative capacity on behalf of other parties in a formal proceeding wherein he or she previously took an active part as a representative of the department. No such former employee shall appear where to do so would violate RCW 42.52.080.

[Statutory Authority: RCW 41.50.050, 41.50.060 and 34.05.425. 96-11-036, § 415-08-100, filed 5/7/96, effective 6/7/96. Statutory Authority: RCW 41.50.050(5) and 34.05.250. 93-11-079, § 415-08-100, filed 5/18/93, effective 6/18/93; Order 4, § 415-08-100, filed 7/27/77.]

**WAC 415-08-105 Prehearing and posthearing memoranda.** A presiding officer shall grant all timely requests to submit prehearing and posthearing memoranda, and shall set a reasonable time for the submission of memoranda. The department reserves the right to file a brief in response to any posthearing brief submitted by another party.

[Statutory Authority: RCW 41.50.050, 41.50.060 and 34.05.425. 96-11-036, § 415-08-105, filed 5/7/96, effective 6/7/96. Statutory Authority: RCW 41.50.050(5) and 34.05.250. 93-11-079, § 415-08-105, filed 5/18/93, effective 6/18/93.]

**WAC 415-08-280 Discovery.** Any party may obtain discovery in the manner specified in Superior Court Civil Rule 26(a). The attendance of witnesses may be compelled by the use of a subpoena. Such discovery shall be governed generally by the procedures established by Superior Court Civil Rules 26-37, inclusive.

[Statutory Authority: RCW 41.50.050, 41.50.060 and 34.05.425. 96-11-036, § 415-08-280, filed 5/7/96, effective 6/7/96. Statutory Authority: RCW 41.50.050(5) and 34.05.250. 93-11-079, § 415-08-280, filed 5/18/93, effective 6/18/93; Order 4, § 415-08-280, filed 7/27/77.]

**WAC 415-08-420 Presentation of evidence—Burden of proof.** (1) The presiding officer shall determine the proper order of presentation of evidence.

(2) The person appealing or requesting a hearing shall have the burden of proof in the matter.

[Statutory Authority: RCW 41.50.050(5), 41.50.060, 41.50.770, 41.50.780, 2001 c 42. 02-12-084, § 415-08-420, filed 6/4/02, effective 7/5/02. Statutory Authority: RCW 41.50.050, 41.50.060 and 34.05.425. 96-11-036, § 415-08-420, filed 5/7/96, effective 6/7/96. Statutory Authority: RCW 41.50.050(5) and 34.05.250. 93-11-079, § 415-08-420, filed 5/18/93, effective 6/18/93; Order 4, § 415-08-420, filed 7/27/77.]

## Chapter 415-10 WAC

### PURCHASE OF SERVICE CREDIT AFTER STATUTORY DEADLINE RCW 41.50.165

#### WAC

415-10-010	Can I purchase service credit after the statutory deadline?
415-10-020	Definitions.
415-10-030	Calculation of cost to purchase service credit in certain plans.
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415-10-050	Restrictions on purchasing service credit.
415-10-060	Crediting service credit purchases.
415-10-070	Requesting an estimate—Requesting a bill.
415-10-080	If I purchase service credit under RCW 41.50.165, can I receive a refund of my payments?

- 415-10-090 If I reenter employment after separating from service and withdrawing my plan contributions, must I restore all periods of service?  
415-10-100 Can a Plan 3 member purchase service credit?

### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

- 415-10-110 Can I purchase SERS Plan 2 credit in SERS Plan 3? [Statutory Authority: Chapter 41.50 RCW. 00-22-049, § 415-10-110, filed 10/27/00, effective 11/27/00.] Repealed by 02-03-120, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050(5).

**WAC 415-10-010 Can I purchase service credit after the statutory deadline?** RCW 41.50.165 generally allows you to purchase service credit that you failed to establish or reestablish within the statutory deadline.

(1) **You must pay the actuarial value of the increase to your retirement benefit.** The actuarial value of the increase to your benefit means the cost to the retirement system trust fund of:

(a) Including the additional service credit in your retirement benefit calculation; and

(b) Beginning your retirement benefit at an earlier age, if applicable. This second factor applies only to PERS Plan 1, TRS Plan 1, and WSPRS Plans 1 and 2.

(2) **The valuation is based upon economic assumptions.** The cost to the retirement system trust fund for the increased value to your benefit is calculated based upon interest rate assumptions adopted by the pension funding council and actuarial factors adopted or approved by the state actuary.

[Statutory Authority: RCW 41.50.050(5) and 41.50.165. 02-03-120, § 415-10-010, filed 1/23/02, effective 3/1/02. Statutory Authority: Chapter 41.50 RCW. 00-22-049, § 415-10-010, filed 10/27/00, effective 11/27/00. Statutory Authority: RCW 41.50.050 and 41.50.165. 97-01-014, § 415-10-010, filed 12/6/96, effective 1/6/97.]

**WAC 415-10-020 Definitions.** As used in this chapter:

(1) **Average earnings** means:

(a) In PERS Plan 1, TRS Plan 1 or WSPRS Plan 1: The average of your two highest consecutive years of compensation as of the date of your service credit purchase.

(b) In Plan 2 or Plan 3: The average of your five highest consecutive years of compensation as of the date of your service credit purchase.

(c) In LEOFF Plan 1: The basic salary attached to your position at the date of your service credit purchase.

(2) **Factors:**

(a) "Factor 1" means the actuarial cost factor calculated by the state actuary and adopted by the department. The actual factor used varies depending upon the time between the date of payment and the projected date of retirement. Generally, the longer the gap between date of payment and date of retirement the lower the factor.

(b) "Factor 2" is the actuarial factor calculated by the state actuary based upon demographic differences between the membership of the different retirement systems. Those factors are: .00788 (PERS Plan 1); .00698 (TRS Plan 1); and .00908 (WSPRS Plan 1).

(c) "Factor 3" means the interest factor calculated by the state actuary and adopted by the department. This factor is

used only when the service credit purchase lowers the projected retirement age and is based upon the higher cost to the system of the earlier retirement.

(3) **LEOFF** means the law enforcement officers' and fire fighters' retirement system established under chapter 41.26 RCW.

(4) **PERS** means the public employees' retirement system established under chapter 41.40 RCW.

(5) **SERS** means the school employees' retirement system established under chapter 41.35 RCW.

(6) **Service credit being purchased** means the number of service credit months or service credit years you are purchasing.

(7) **TRS** means the teachers' retirement system established under chapter 41.32 RCW.

(8) **WSPRS** means the Washington state patrol retirement system established under chapter 43.43 RCW.

(9) **Years of earlier retirement** equals the number of years or fractions of years you will be able to retire earlier as a result of your purchase of service credit.

(10) **Years of service** equals the total anticipated years of service you will have accrued at retirement, including the additional service credit you purchase under this section.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.45 RCW. 02-03-120, § 415-10-020, filed 1/23/02, effective 3/1/02. Statutory Authority: Chapter 41.50 RCW. 00-22-049, § 415-10-020, filed 10/27/00, effective 11/27/00. Statutory Authority: RCW 41.50.050 and 41.50.165. 97-01-014, § 415-10-020, filed 12/6/96, effective 1/6/97.]

**WAC 415-10-030 Calculation of cost to purchase service credit in certain plans.** If you are a member of LEOFF Plan 1 or 2, PERS Plan 2 or 3, TRS Plan 2 or 3, or SERS Plan 2 or 3, the department will calculate the actuarial value of the service credit you purchase under RCW 41.50.165(2) using the following formula:

$$\text{Average Earnings} \times \text{Service Credit Being Purchased} \times \text{Factor 1} \\ = \text{Cost to purchase service credit}$$

[Statutory Authority: RCW 41.50.050(5) and 41.50.165. 02-03-120, § 415-10-030, filed 1/23/02, effective 3/1/02. Statutory Authority: Chapter 41.50 RCW. 00-22-049, § 415-10-030, filed 10/27/00, effective 11/27/00. Statutory Authority: RCW 41.50.050 and 41.50.165. 97-01-014, § 415-10-030, filed 12/6/96, effective 1/6/97.]

**WAC 415-10-040 Calculation of cost to purchase service credit for members of PERS Plan 1, TRS Plan 1 or WSPRS Plan 1 or 2.** If you are a member of PERS 1, TRS 1 or WSPRS Plan 1 or 2, the department will calculate the actuarial value of the service credit you purchase under RCW 41.50.165(2) using the following three part formula:

Part 1 Cost = Service Credit Being Purchased

$$\begin{array}{r} \times \\ \text{Average Earnings} \\ \times \\ \text{Factor 1} \end{array}$$

Part 2 Cost =

$$\begin{array}{r} \text{Years of Service} \\ \times \\ \text{Average Earnings} \\ \times \\ \text{Factor 2} \\ \times \\ \text{Years of Earlier Retirement} \\ \times \\ \text{Factor 3} \end{array}$$

Cost to purchase service credit = Part 1 Cost + Part 2 Cost.

The Part 1 Cost represents the cost of including the additional service in your retirement allowance calculation. The Part 2 Cost represents the cost of commencing your retirement allowance at the earliest possible age.

[Statutory Authority: RCW 41.50.050(5), chapter 41.45 RCW, and RCW 41.50.165. 02-23-037, § 415-10-040, filed 11/13/02, effective 1/1/03. Statutory Authority: Chapter 41.50 RCW. 00-22-049, § 415-10-040, filed 10/27/00, effective 11/27/00. Statutory Authority: RCW 41.50.050 and 41.50.165. 97-01-014, § 415-10-040, filed 12/6/96, effective 1/6/97.]

**WAC 415-10-050 Restrictions on purchasing service credit.** (1) You may not purchase service credit under RCW 41.50.165(2) if your deadline to establish or reestablish the service credit has not expired.

(2) If you are reestablishing credit you must purchase at least the service credit you earned in any one calendar month of employment.

(3) If you are establishing credit for the first time you must purchase the entire period of service. If you are not reestablishing credit canceled by a withdrawal of contributions, you must purchase the entire period of service.

(4) Your ability to purchase service credit may be limited by Internal Revenue Code restrictions. The department may limit the amount of service credit you may purchase in any calendar year in order to stay within the maximum employee contribution limits established by the Internal Revenue Code for 401(a) tax qualified plans.

(5) You may not make installment payments. If you purchase service credit under this section, you must make payment in a single lump-sum as determined by the department for each unit of service credit purchased.

(6) Purchasing service credit will not move you from one plan to another. Plan membership is based upon the date your retirement system membership was established. Purchasing prior service credit does not change the date you first established membership and therefore does not change your plan membership.

[Statutory Authority: Chapter 41.50 RCW. 00-22-049, § 415-10-050, filed 10/27/00, effective 11/27/00. Statutory Authority: RCW 41.50.050 and 41.50.165. 97-01-014, § 415-10-050, filed 12/6/96, effective 1/6/97.]

**WAC 415-10-060 Crediting service credit purchases.** If you do not purchase all of your previously withdrawn service credit, the department will recredit your purchased service beginning with the oldest month of service canceled by your withdrawal.

[Statutory Authority: RCW 41.50.050 and 41.50.165. 97-01-014, § 415-10-060, filed 12/6/96, effective 1/6/97.]

**WAC 415-10-070 Requesting an estimate—Requesting a bill.** (1) The department will provide you a service credit purchase estimate upon request. If, after receiving the estimate, you wish to purchase some or all of the available credit you must request a bill in writing. Your request must identify the amount of service credit you wish to purchase.

(2) Your bill will be based on a specific date of payment. The cost to purchase the service credit could change if you attempt to pay after the specific payment date listed on

the bill. If you do not make payment by the bill's due date but still wish to purchase service credit, you must request a new bill from the department.

[Statutory Authority: RCW 41.50.050 and 41.50.165. 97-01-014, § 415-10-070, filed 12/6/96, effective 1/6/97.]

**WAC 415-10-080 If I purchase service credit under RCW 41.50.165, can I receive a refund of my payments?** (1) You may receive a refund only after you separate from service and apply for withdrawal of your contributions. Your payments to purchase service credit under RCW 41.50.165(2) qualify as a part of your accumulated contributions. There are additional restrictions for TRS Plan 1, LEOFF Plan 2 and members of the Plan 3 systems as listed in subsections (2), (3), and (4) of this section.

(2) **Restrictions for TRS Plan 1 members.** At the time of retirement, RCW 41.32.498(2) prohibits you from withdrawing payments made to purchase service credit under RCW 41.50.165(2).

(3) **Restrictions for LEOFF Plan 2 members.** Payments made to purchase service credit under RCW 41.50.165(2) and interest on those payments will be refunded at one hundred percent. Those payments will not be included when calculating the one hundred fifty percent refund of contributions under RCW 41.26.540 (1)(b).

(4) **Restrictions for Plan 3 members of TRS, SERS and PERS.** When you apply for service credit under RCW 41.50.165(2), one-half of the amount due will go into your defined benefit plan and one-half will go into your defined contribution plan. As a member of any Plan 3 system, you may apply for a refund of your contributions from the **defined contribution** portion of your account upon separation from employment. Your refund will be based on the market value of your contributions, including earnings and losses, at the time you withdraw. The defined benefit portion will be paid when you are eligible to receive benefits.

#### **Example 1 (Market has gains):**

Joe restores 5 years of service credit at a total cost of \$10,000.00. One-half, or \$5,000.00, goes into Joe's defined contribution plan member account, and the other \$5,000.00 goes into the pension trust fund for his defined benefit plan. Joe separates two years later and applies for the withdrawal of his defined contribution account. While Joe was in service the market experienced gains. The value of Joe's defined contribution account is now \$6,000.00. Joe receives \$6,000.00 (minus applicable taxes and penalties). The defined benefit portion is not refundable but Joe will receive a one percent defined benefit allowance when he is eligible.

#### **Example 2 (Market has losses):**

Joe restores 5 years of service credit at a total cost of \$10,000.00. One-half, or \$5,000.00, goes into Joe's defined contribution plan member account, and the other \$5,000.00 goes into the pension trust fund for his defined benefit plan. Joe separates two years later and applies for the withdrawal of his defined contribution account. While Joe was in service the market suffered a loss. The value of Joe's defined contribution account is now \$4,000.00. Joe receives \$4,000.00

(minus applicable taxes and penalties). The defined benefit portion is not refundable but Joe will receive a one percent defined benefit allowance when he is eligible.

[Statutory Authority: RCW 41.50.050(5), 41.26.540, 41.32.498, 41.40.730, 41.40.830, 41.50.160, 41.50.165, 41.50.175. 02-03-120, § 415-10-080, filed 1/23/02, effective 3/1/02. Statutory Authority: Chapter 41.50 RCW. 00-22-049, § 415-10-080, filed 10/27/00, effective 11/27/00. Statutory Authority: RCW 41.50.050 and 41.50.165. 97-01-014, § 415-10-080, filed 12/6/96, effective 1/6/97.]

**WAC 415-10-090 If I reenter employment after separating from service and withdrawing my plan contributions, must I restore all periods of service?** If you separate from service, withdraw your plan contributions and then become reemployed with an employer and wish to restore your withdrawn contributions, you must restore all periods of service by repaying the accumulated contributions you withdrew plus interest, if applicable. This includes any payments you made under RCW 41.50.165(2) to purchase service credit plus any interest attributed to those payments.

[Statutory Authority: RCW 41.50.050 and 41.50.165. 97-01-014, § 415-10-090, filed 12/6/96, effective 1/6/97.]

**WAC 415-10-100 Can a Plan 3 member purchase service credit? (1) Transferring purchased Plan 2 credit under RCW 41.50.165(2) into Plan 3.** If you purchase Plan 2 service credit under this chapter and later enter Plan 3, that credit will also transfer to Plan 3.

(a) Fifty percent of the money you paid to purchase the service credit will be credited to the Plan 3 defined contribution account.

(b) The other fifty percent will be credited to the Plan 3 defined benefit plan established under RCW 41.32.831 for TRS Plan 3, RCW 41.35.600 for SERS Plan 3, and RCW 41.40.780 for PERS Plan 3.

(2) **Purchasing Plan 2 service credit after transferring to Plan 3.** You may purchase service credit initially available under Plan 2 after you transfer to Plan 3. The service will be credited in Plan 3. If you purchase Plan 2 service credit under this chapter, fifty percent of the money you pay to purchase the service credit will be credited to your Plan 3 defined contribution account. The other fifty percent will be credited to the Plan 3 defined benefit portion established under RCW 41.32.831 for TRS Plan 3, RCW 42.35.600 for SERS Plan 3 and RCW 41.40.780 for PERS Plan 3.

(3) **Not applicable for service earned after transferring to Plan 3.** Service you earn as a Plan 3 member is automatically recredited if you reenter membership and earn at least twelve service credit months. Plan 3 does not have any deadlines on establishing optional service. Because there are no deadlines for establishing or reestablishing service credit there is no provision for purchasing service credit earned in Plan 3 under RCW 41.50.165.

[Statutory Authority: RCW 41.50.050(5), 41.50.165, 41.50.175. 02-03-120, § 415-10-100, filed 1/23/02, effective 3/1/02. Statutory Authority: Chapter 41.50 RCW. 00-22-049, § 415-10-100, filed 10/27/00, effective 11/27/00. Statutory Authority: RCW 41.50.050 and 41.50.165. 97-01-014, § 415-10-100, filed 12/6/96, effective 1/6/97.]

**Chapter 415-100 WAC**  
**JUDICIAL RETIREMENT SYSTEM**

**WAC**

415-100-005	Purpose.
415-100-015	Scope.
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415-100-035	Retirement for service.
415-100-045	Definition of member.
415-100-051	Married member's benefit selection—Spousal consent required.
415-100-055	Retirement benefit options.
415-100-190	Actuarial recomputation of retirement allowance upon retirement following reemployment.

**DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER**

415-100-010	Definitions. [Statutory Authority: RCW 2.10.020, 41.50.050(6), and 41.50.090. 78-12-038 (Order V), § 415-100-010, filed 11/22/78.] Repealed by 87-07-014 (Order 87-02), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.
415-100-020	Public records. [Statutory Authority: RCW 2.10.020, 41.50.050(6), and 41.50.090. 78-12-038 (Order V), § 415-100-020, filed 11/22/78. Formerly chapter 290-48 WAC.] Repealed by 87-07-014 (Order 87-02), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.
415-100-040	Appeals—Disability retirement applications. [Statutory Authority: RCW 2.10.020, 41.50.050(6), and 41.50.090. 78-12-038 (Order V), § 415-100-040, filed 11/22/78. Formerly chapter 290-28 WAC.] Repealed by 87-07-014 (Order 87-02), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.
415-100-041	Background and purpose. [Statutory Authority: RCW 34.05.050 and 1990 c 249. 91-03-013, § 415-100-041, filed 1/7/91, effective 2/7/91.] Repealed by 96-01-047, filed 12/14/95, effective 1/14/96. Statutory Authority: RCW 2.10.146, 41.26.460, 41.32.530, 41.50.050, 41.32.785, 41.40.188 and 41.40.660.
415-100-050	Appeals to superior court—Notice of appeal. [Statutory Authority: RCW 2.10.020, 41.50.050(6), and 41.50.090. 78-12-038 (Order V), § 415-100-050, filed 11/22/78. Formerly chapter 290-28 WAC.] Repealed by 87-07-014 (Order 87-02), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.
415-100-060	Appeals to superior court—Certification of record. [Statutory Authority: RCW 2.10.020, 41.50.050(6), and 41.50.090. 78-12-038 (Order V), § 415-100-060, filed 11/22/78. Formerly chapter 290-28 WAC.] Repealed by 87-07-014 (Order 87-02), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.
415-100-100	Members. [Statutory Authority: RCW 2.10.020, 41.50.050(6), and 41.50.090. 78-12-038 (Order V), § 415-100-100, filed 11/22/78. Formerly WAC 290-16-010.] Repealed by 87-07-014 (Order 87-02), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.
415-100-110	Officers. [Statutory Authority: RCW 2.10.020, 41.50.050(6), and 41.50.090. 78-12-038 (Order V), § 415-100-110, filed 11/22/78. Formerly WAC 290-16-020.] Repealed by 87-07-014 (Order 87-02), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.
415-100-120	Function. [Statutory Authority: RCW 2.10.020, 41.50.050(6), and 41.50.090. 78-12-038 (Order V), § 415-100-120, filed 11/22/78. Formerly WAC 290-16-030.] Repealed by 87-07-014 (Order 87-02), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.
415-100-130	Duties. [Statutory Authority: RCW 2.10.020, 41.50.050(6), and 41.50.090. 78-12-038 (Order V), § 415-100-130, filed 11/22/78. Formerly WAC 290-16-040.] Repealed by 87-07-014 (Order 87-02), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.
415-100-140	Location. [Statutory Authority: RCW 2.10.020, 41.50.050(6), and 41.50.090. 78-12-038 (Order V), § 415-100-140, filed 11/22/78. Formerly WAC 290-16-050.] Repealed by 87-07-014 (Order 87-02), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.

415-100-150 Meetings. [Statutory Authority: RCW 2.10.020, 41.50.050(6), and 41.50.090. 78-12-038 (Order V), § 415-100-150, filed 11/22/78. Formerly WAC 290-16-060.] Repealed by 87-07-014 (Order 87-02), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.

415-100-160 Office of the chairman. [Statutory Authority: RCW 2.10.020, 41.50.050(6), and 41.50.090. 78-12-038 (Order V), § 415-100-160, filed 11/22/78. Formerly WAC 290-16-070.] Repealed by 87-07-014 (Order 87-02), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.

415-100-170 Business hours. [Statutory Authority: RCW 2.10.020, 41.50.050(6), and 41.50.090. 78-12-038 (Order V), § 415-100-170, filed 11/22/78. Formerly WAC 290-16-080.] Repealed by 87-07-014 (Order 87-02), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.

415-100-180 Correspondence. [Statutory Authority: RCW 2.10.020, 41.50.050(6), and 41.50.090. 78-12-038 (Order V), § 415-100-180, filed 11/22/78. Formerly WAC 290-16-090.] Repealed by 87-07-014 (Order 87-02), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.

**WAC 415-100-005 Purpose.** These rules are adopted to implement administration of chapter 2.10 RCW by the director of the department of retirement systems pursuant to RCW 2.10.052.

[Statutory Authority: RCW 41.50.050(5) and 41.50.090. 87-07-014 (Order 87-02), § 415-100-005, filed 3/11/87.]

**WAC 415-100-015 Scope.** These rules shall govern the unique aspects of the administration of chapter 2.10 RCW, Judicial retirement system.

[Statutory Authority: RCW 41.50.050(5) and 41.50.090. 87-07-014 (Order 87-02), § 415-100-015, filed 3/11/87.]

**WAC 415-100-025 Public records.** See chapter 415-06 WAC.

[Statutory Authority: RCW 41.50.050(5) and 41.50.090. 87-07-014 (Order 87-02), § 415-100-025, filed 3/11/87.]

**WAC 415-100-035 Retirement for service.** Any judge who voluntarily leaves service after having served an aggregate of fifteen years but prior to attaining age sixty shall be eligible to apply for and receive a service retirement allowance computed according to RCW 2.10.110 commencing upon his/her attainment of age sixty. Such allowance shall be computed in accordance with RCW 2.10.110 and 2.10.030 (9)(b).

[Statutory Authority: RCW 41.50.050(5) and 41.50.090. 87-07-02), § 415-100-035, filed 3/11/87.]

**WAC 415-100-045 Definition of member.** (1) "Member" means:

(a) A judge as defined in RCW 2.10.030(2), who elected to exchange survivor benefits, filed the requisite documents with the department pursuant to RCW 2.10.140(2), and is making contributions to the system; or

(b) A former judge as defined in RCW 2.10.030(2), who elected to exchange survivor benefits, filed the requisite documents with the department pursuant to RCW 2.10.140(2), and left accumulated contributions in the system; or

(c) A retiree.

(2) A retiree means any judge, as defined in RCW 2.10.030(2), in receipt of a retirement allowance or other benefit provided by chapter 2.10 RCW resulting from service rendered to an employer.

[Statutory Authority: RCW 2.10.146, 41.26.460, 41.32.530, 41.50.050, 41.32.785, 41.40.188 and 41.40.660. 96-01-047, § 415-100-045, filed 12/14/95, effective 1/14/96. Statutory Authority: RCW 34.05.050 and 1990 c 249. 91-03-013, § 415-100-045, filed 1/7/91, effective 2/7/91.]

**WAC 415-100-051 Married member's benefit selection—Spousal consent required.** The member, if married, must provide the spouse's written consent to the option selected under WAC 415-100-055. If a married member does not provide spousal consent, the department will pay the retired member a joint and one-half survivor benefit allowance and record the member's spouse as the survivor, in compliance with RCW 2.10.146(2). "Spousal consent" means that the married member's spouse consents to the retirement option selected by the member. (The spouse's notarized signature on a completed retirement application constitutes spousal consent.)

[Statutory Authority: RCW 2.10.146, 41.26.460, 41.32.530, 41.50.050, 41.32.785, 41.40.188 and 41.40.660. 96-01-047, § 415-100-051, filed 12/14/95, effective 1/14/96. Statutory Authority: RCW 34.05.050 and 1990 c 249. 91-03-013, § 415-100-051, filed 1/7/91, effective 2/7/91.]

**WAC 415-100-055 Retirement benefit options.** RCW 2.10.146, enables the department to provide retiring members with four retirement benefit options. The member must choose an option when applying for service or disability retirement.

(1) **Option One: Benefit option without survivor features (standard allowance).** The department pays the retiree a monthly retirement allowance based solely on the single life of the member, in accordance with RCW 2.10.146. When the retiree dies, all benefits cease. Any remaining balance of the retiree's accumulated contributions will be paid to:

(a) Such person or persons, trust, or organization as the judge has nominated by written designation duly executed and filed with the department of retirement systems; or

(b) If there is no such designated person or persons still living at the time of the judge's death, then to the surviving spouse; or

(c) The member's estate; or

(d) If there is neither such designated person or persons still living at the time of death nor a surviving spouse, then to the judge's legal representative.

(2) **Benefit options with a survivor feature.**

(a) A retiring member is allowed to select from several retirement options which create an actuarially equivalent benefit that includes a survivor feature. The survivor feature entitles the survivor to receive a monthly allowance after the retiree dies. If the member chooses one of the survivor options, the monthly benefit the member will receive is actu-

arily reduced to offset the cost of the survivor feature. After the retiree dies, the department pays the survivor an allowance for the duration of his or her life. If the retiree and the survivor both die before the retiree's accumulated contributions are exhausted, all benefits cease. Any remaining balance of the retiree's accumulated contributions will be paid to:

(i) Such person or persons, trust, or organization as the judge has nominated by written designation duly executed and filed with the department of retirement systems; or

(ii) If there is no such designated person or persons still living at the time of the judge's death, then to the surviving spouse; or

(iii) The member's estate; or

(iv) If there is neither such designated person or persons still living at the time of death nor a surviving spouse, then to the judge's legal representative.

(b) Option Two (joint and whole allowance). When the retiree dies, the department pays the survivor a monthly retirement allowance equal to the gross monthly allowance received by the retiree.

(c) Option Three (joint and one-half allowance). When the retiree dies, the department pays the survivor one-half of the amount of the retiree's gross monthly retirement allowance.

(d) Option Four (joint and two-thirds allowance).

(i) Option Four is available to members retiring on or after January 1, 1996.

(ii) When the retiree dies, the department pays the survivor two-thirds (66.667%) of the member's gross monthly retirement allowance.

(3) **Benefit increases when survivor predeceases retiree (pop-up provision).**

(a) This subsection applies to members retiring on or after January 1, 1996, who selected Option Two, Three, or Four.

(b) If the survivor dies before the retiree, the retiree's monthly retirement allowance will increase, effective the first day of the following month, to:

(i) The amount that would have been received had the retiree chosen Option One described in subsection (1) of this section; plus

(ii) Any cost-of-living adjustments received prior to the survivor's death based on original selection.

(c) Pop-up recalculation example.

Agnes retires in 1996 (Year 0). She would like Beatrice, her daughter, to receive a monthly allowance after Agnes dies. Therefore, Agnes selects a retirement benefit option with a survivor feature. As a result her monthly allowance is reduced from \$2,000 (standard allowance) to \$1,750. Unfortunately, Beatrice dies in January 2001 (Year 5). Under the pop-up provision, Agnes' monthly benefit will increase to the amount she would have received had she chosen Option One (standard allowance) plus her accumulated COLA's:

Year	Option One (Standard Allow.)	Survivor Option (2,3,4) plus COLAs	COLA incr. (3% max)	\$ Increase
0 (1996)	2,000.00	1,750.00	(ineligible)	0.00
1 (1997)		1,750.00	.02	35.00
2 (1998)		1,785.00	.03	53.55

Year	Option One (Standard Allow.)	Survivor Option (2,3,4) plus COLAs	COLA incr. (3% max)	\$ Increase
3 (1999)		1,838.55	.025	45.96
4 (2000)		1,884.51	.03	56.54
5 (2001)	2,000.00	1,941.05	—	—
Original Option One Benefit Amount \$2000		+ Total COLA's +\$191.05	Total COLA's 191.05	= New Benefit Amount =\$2,191.05*

\* In the future (i.e., Year 5), Agnes' COLA will be based on the increased benefit amount (\$2,191.05).

(d) If the survivor dies and the retiree's benefit increases under this subsection, and thereafter the retiree also dies before all contributions are exhausted, all benefits cease. Any remaining balance of the retiree's accumulated contributions will be paid to:

(a) Such person or persons, trust, or organization as the judge has nominated by written designation duly executed and filed with the department of retirement systems; or

(b) If there is no such designated person or persons still living at the time of the judge's death, then to the surviving spouse; or

(c) The member's estate; or

(d) If there is neither such designated person or persons still living at the time of death nor a surviving spouse, then to the judge's legal representative.

(4) **Survivor.** For the purposes of this section, "survivor" means a person nominated by the member to receive a monthly benefit allowance after the member dies. A member nominates the survivor at the time of retirement by filing a completed and notarized form provided by the department.

[Statutory Authority: RCW 41.50.050(5), 2.10.052, 2.10.070(6), 2.10.140 - [2.10.]146, 2.12.030, 01-13-009, § 415-100-055, filed 6/8/01, effective 7/9/01. Statutory Authority: RCW 2.10.146, 41.26.460, 41.32.530, 41.50.-050, 41.32.785, 41.40.188 and 41.40.660, 96-01-047, § 415-100-055, filed 12/14/95, effective 1/14/96. Statutory Authority: RCW 34.05.050 and 1990 c 249, 91-03-013, § 415-100-055, filed 1/7/91, effective 2/7/91.]

**WAC 415-100-190 Actuarial recomputation of retirement allowance upon retirement following reemployment.** (1) The purpose of this rule is to establish a method to actuarially recompute the retirement allowance of a plan member who retires, reenters employment causing his or her retirement allowance to be suspended, and then retires again.

(2) If a member initially retired at or after age sixty and reentered membership, upon the member's next retirement, the department shall recompute the member's retirement allowance pursuant to RCW 2.10.110. In recomputing the member's retirement allowance, the department shall include any additional service credit earned and any applicable increase in the member's average final compensation resulting from the member's reentry into membership. Under no circumstances shall a retiree receive a retirement allowance creditable to a month during which that individual earned service credit.

(3) If a retiree's retirement allowance is suspended under RCW 2.10.155 due to reemployment in an eligible position but the retiree does not reenter membership, upon the retiree's separation from such employment, the retiree shall receive an actuarially recomputed retirement allowance equal to the sum of:

(a) The amount of the monthly suspended retirement allowance; plus

(b) An actuarially computed increase based upon the retirement allowance payments the member did not receive due to reemployment including cost-of-living adjustments. The retiree may elect to receive the actuarially computed increase in either:

(i) An amount amortized over the expected term of the recomputed retirement allowance; or

(ii) A lump sum payment equal to the suspended retirement allowance plus interest.

[Statutory Authority: RCW 41.50.050, 94-11-008, § 415-100-190, filed 5/5/94, effective 6/5/94.]

## Chapter 415-103 WAC

### WASHINGTON STATE PATROL RETIREMENT SYSTEM (WSPRS)

#### WAC

415-103-010	WSPRS definitions.
415-103-100	Are payments I receive reportable compensation?
415-103-215	What are the WSPRS Plan 1 retirement benefit options?
415-103-225	What are the WSPRS Plan 2 retirement benefit options?
415-103-300	Actuarial tables, schedules, and factors.

**WAC 415-103-010 WSPRS definitions.** (1) General. The definitions in RCW 43.43.120 and 41.50.010 apply to this chapter. In case of conflict between definitions, RCW 43.43.120 will prevail.

#### (2) Membership.

(a) WSPRS Plan 1 refers to members of the Washington state patrol retirement system commissioned before January 1, 2003.

(b) WSPRS Plan 2 refers to members of the Washington state patrol retirement system commissioned on or after January 1, 2003.

[Statutory Authority: RCW 41.50.050(5) and chapter 43.43 RCW. 02-23-037, § 415-103-010, filed 11/13/02, effective 1/1/03. Statutory Authority: RCW 41.50.050(5), 43.43.142, 43.43.278, 43.43.280, 01-13-010, § 415-103-010, filed 6/8/01, effective 7/9/01.]

**WAC 415-103-100 Are payments I receive reportable compensation?** The following table will help you determine whether certain types of payments are reportable compensation. The department determines reportable compensation based upon the nature of the payment, not the name applied. See RCW 43.43.120(23).

Type of Payment	Commission Date: Prior to 7/1/01	Commission Date: On or after 7/1/01
Overtime related to RCW 47.46.040(4) earned prior to 7/1/01	Yes	No
Overtime related to RCW 47.46.040(4) earned on or after 7/1/01	No	No
Voluntary overtime earned prior to 7/1/01	Yes	No
Voluntary overtime earned on or after 7/1/01	No	No
Fringe benefits, including, but not limited to, any type of insurance, or contributions for insurance, such as medical, dental, or life insurance, for members and/or their dependents	No	No
Lump sum payments for:		
Deferred annual sick leave <sup>1</sup>	No	No
Unused accumulated annual leave - 240 hour maximum <sup>2</sup>	Yes	No
Holiday pay - 80 hour maximum	Yes	No

<sup>1</sup>See also RCW 41.04.340(4).

<sup>2</sup>See also RCW 43.43.263, 43.01.040 and 43.01.044.

[Statutory Authority: RCW 41.50.050(5) and chapter 43.43 RCW. 02-23-037, § 415-103-100, filed 11/13/02, effective 1/1/03.]

**WAC 415-103-215 What are the WSPRS Plan 1 retirement benefit options?** This section only applies to members commissioned before January 1, 2003 (WSPRS Plan 1).

(1) When retiring for service, a married member can choose either Option A (historic retirement option) under RCW 43.43.260 and 43.43.270 or Option B under RCW 43.43.278. Both options include a survivor feature that entitles the eligible surviving spouse and any eligible children to receive a monthly allowance after the retiree dies.

(2) **Option A (historic retirement option and survivor benefit).** The department pays the retiree a monthly retirement allowance in accordance with RCW 43.43.260 (Benefits). The department pays survivor benefits in accordance with RCW 43.43.270 (Retirement allowances).

(a) **Surviving spouse.** When the retiree dies, the department pays the retiree's surviving spouse a monthly retirement allowance equal to the gross monthly allowance then payable to the retiree, or an allowance equal to fifty percent of the average final salary (AFS) used to determine the retiree's benefit, whichever is less.

(b) **Surviving children when there is a surviving spouse.** If the retiree has a surviving spouse and surviving unmarried children under the age of eighteen years, each child shall be entitled to a benefit equal to five percent of the retiree's average final salary (AFS) at retirement. The combined benefits to the surviving spouse and all children cannot exceed sixty percent of the retiree's AFS.

(3) **Option B (actuarially equivalent retirement option and survivor benefit).** The department pays the retiree a monthly retirement allowance that is reduced by three percent from the benefit calculated under Option A. The department pays survivor benefits in accordance with RCW 43.43.278.

(a) **Surviving spouse.** When the retiree dies, the department pays the retiree's surviving spouse a monthly retirement allowance equal to the gross monthly allowance then payable to the retiree.

(b) **Surviving children when there is a surviving spouse.** If the retiree has a surviving spouse and surviving

unmarried children under the age of eighteen years, each surviving unmarried child under the age of eighteen years shall be entitled to a benefit equal to five percent of the retiree's average final salary (AFS) at retirement.

**(4) Benefits included in Option A and Option B.**

(a) **Cost-of-living adjustment.** The retiree's annual adjustment every July is based upon the provisions in RCW 43.43.260(5). The annual adjustment applies to the eligible surviving spouse and any eligible children, who receive a monthly allowance after the retiree dies.

(b) **Surviving spouse eligibility.** To be eligible for an allowance, the surviving spouse of a retiree must either:

(i) Have been married to the retiree prior to his or her retirement and continuously thereafter until the retiree's death; or

(ii) Have been married to the retiree for at least two years prior to the retiree's death.

(c) **Remarriage of surviving spouse.** If a surviving spouse who is receiving benefits under this subsection marries another member of WSPRS and that retiree dies before the spouse, the spouse will receive only the higher of the two survivors' allowances for which he or she qualifies. The surviving spouse cannot receive more than one survivor allowance at a time under this subsection.

(d) **Surviving children when there is no surviving spouse.** If there is no surviving spouse or the surviving spouse dies, the unmarried child or children under the age of eighteen years shall be entitled to a benefit equal to thirty percent of the retiree's AFS for one child and an additional ten percent of AFS for each additional child. The combined benefits to the surviving children cannot exceed sixty percent of the retiree's AFS. Benefit payments under this subsection will be divided equally among the children.

(e) **End of benefits.** All benefits end when the surviving spouse dies or the youngest unmarried child reaches age eighteen, whichever occurs last.

(f) **Distribution of remaining contributions.** Any remaining balance of the retiree's accumulated contributions will be paid to:

(i) The person(s), trust, organization, or retiree's estate specified by the retiree on the appropriate department designated form, duly executed and properly on file with the department on or before the retiree's death; or

(ii) To the retiree's legal representative, if no person or entity designated in (f)(i) of this subsection is living or in existence at the time of the retiree's death.

**(5) Pop-up provision.**

(a) This subsection only applies to members retiring on or after July 1, 2000, who select Option B.

(b) If the retiree and spouse divorce, or if the spouse dies before the retiree, the retiree's monthly retirement allowance increases, effective the first day of the following month, to:

(i) The amount that the retiree would have received had the retiree chosen Option A at retirement; plus

(ii) Any cost of living adjustments (COLA) the retiree received prior to the divorce or the spouse's death.

**(c) Pop-up recalculation example:**

Option B: Bob retired on August 1, 2000. His Option A benefit would have been \$3,000. He selected Option B so that his spouse, Linda, will receive his monthly allowance and COLA after he dies. As a result, his monthly allowance was reduced by three percent from \$3,000, the Option A, historic retirement and survivor benefit, to \$2,910. Bob's COLA for 2001 was \$87.30 (three percent of \$2,910) and for 2002 was \$89.92 (three percent of \$2,997.30).

Linda died in September 2002. Under the "pop-up" provision, Bob's monthly benefit increased in October 2002 to a total of \$3,177.22. His new benefit amount includes the \$3,000 he would have received had he originally chosen Option A, plus the total of the COLAs he received in 2001 (\$87.30) and 2002 (\$89.92). On July 1, 2003, Bob's COLA will be based on the average consumer price index to a maximum of three percent. See RCW 43.43.260(5).

(d) If a retiree whose benefit increases under this subsection dies and there is no eligible child, all benefit payments end. Any remaining balance of the retiree's accumulated contributions will be paid to:

(i) The person(s), trust, organization, or retiree's estate specified by the retiree on the appropriate department designated form, duly executed and properly on file with the department on or before the retiree's death; or

(ii) To the retiree's legal representative, if no person or entity designated in (d)(i) of this subsection is living or in existence at the time of the retiree's death.

(6) For more information see chapter 415-02 WAC starting with WAC 415-02-300 for the tables, schedules, and factors the department uses for calculating retirement allowances.

**(7) Terms used in this section:**

"Pop-up" - see WAC 415-02-030.

[Statutory Authority: RCW 41.50.050(5), 43.43.260, [43.43.]270, [43.43.]278, [43.43.]280(1). 02-23-037, § 415-103-215, filed 11/13/02, effective 1/1/03. Statutory Authority: RCW 41.50.050(5), 43.43.142, 43.43.278, 43.43.280. 01-13-010, § 415-103-215, filed 6/8/01, effective 7/9/01. Statutory Authority: RCW 43.43.278 and 41.50.050. 00-11-103, § 415-103-215, filed 5/18/00, effective 6/18/00.]

**WAC 415-103-225 What are the WSPRS Plan 2 retirement benefit options?** This section only applies to members commissioned on or after January 1, 2003 (WSPRS Plan 2). RCW 43.43.271 enables the department to provide retiring WSPRS Plan 2 members with an irrevocable choice of four retirement benefit options for receipt of their retirement benefit. The retiring member must choose an option when applying for service retirement:

**(1) Option One: Benefit option without survivor features (standard allowance).** The department will pay a monthly retirement allowance based solely on the single life of the retiree, as provided by RCW 43.43.260 (Benefits). When the retiree dies, all benefits end. Any remaining balance of the retiree's accumulated contributions will be paid to:

(a) The person(s), trust, organization, or retiree's estate specified by the retiree on the appropriate department designated form, duly executed and properly on file with the department on or before the retiree's death; or

(b) To the retiree's legal representative, if no person or entity designated in (a) of this subsection is living or in existence at the time of the retiree's death.

**(2) Benefit options with a survivor feature.**

(a) At retirement, a member may select a survivor option in lieu of the standard allowance. With a survivor option, the retiree's monthly benefit payment is actuarially reduced from the standard allowance to offset the cost of the survivor features. The retiree designates a person to receive a monthly benefit payment after the retiree dies. The designated person or "survivor beneficiary" will receive this monthly allowance for the remainder of his or her life. If the retiree and survivor beneficiary both die before the retiree's accumulated contributions have been exhausted, all monthly payments end. Any remaining balance of the retiree's accumulated contributions will be paid to:

(i) The person(s), trust, organization, or retiree's estate specified by the retiree on the appropriate department designated form, duly executed and properly on file with the department on or before the retiree's death; or

(ii) To the retiree's legal representative, if no person or entity designated in (a)(i) of this subsection is living or in existence at the time of the retiree's death.

**(b) Option Two (joint and whole allowance).** When the retiree dies, the department pays the survivor beneficiary a monthly benefit equal to the gross monthly allowance then payable to the retiree.

**(c) Option Three (joint and one-half allowance).** When the retiree dies, the department pays the survivor beneficiary a monthly benefit equal to one-half of the amount of the retiree's gross monthly retirement allowance then payable to the retiree.

**(d) Option Four (joint and two-thirds allowance).** When the retiree dies, the department pays the survivor beneficiary a monthly benefit equal to two-thirds of the retiree's gross monthly retirement allowance then payable to the retiree.

**(3) Pop-up provision.**

(a) This subsection only applies to retiring members who select a benefit option with a survivor feature (Option Two, Three, or Four).

(b) If the survivor beneficiary dies before the retiree, the retiree's monthly retirement allowance increases, effective the first day of the following month, to:

(i) The amount that the retiree would have received had the retiree chosen Option One; plus

(ii) Any cost-of-living adjustments (COLA) the retiree received prior to the survivor beneficiary's death based on the original selection.

(c) If a retiree whose benefit increases under this section dies, all benefit payments end. Any remaining balance of the retiree's accumulated contributions will be paid to:

(i) The person(s), trust, organization, or retiree's estate specified by the retiree on the appropriate department designated form, duly executed and properly on file with the department on or before the retiree's death; or

(ii) To the retiree's legal representative, if no person or entity designated in (c)(i) of this subsection is living or in existence at the time of the retiree's death.

**(4) Postretirement benefit options.**

(a) **Postretirement marriage option.** A retiree who chose the standard allowance (Option One) at the time of retirement, and then marries has a one time only option to choose a survivor option. The retiree may choose a survivor option that names his or her new spouse as the survivor beneficiary, provided:

(i) The retiree's monthly benefit is not subject to a property settlement agreement from a court decree of dissolution or legal separation;

(ii) The retiree makes the choice during the one year window, on or after the date of the first anniversary and before the second anniversary of the postretirement marriage;

(iii) The retiree provides the department with a copy of a marriage certificate as proof of the postretirement marriage and proof of the birthdate of the new spouse; and

(iv) The retiree properly and timely completes and files the correct forms with the department.

**(b) Postretirement survivor change.**

A retiree who chose a nonspouse as a survivor beneficiary at the time of retirement may remove that survivor designation one time only. The retiree may have the benefit adjusted to a standard allowance provided the retiree properly and timely completes and files the correct forms with the department.

(c) The change selected under (a) or (b) of this subsection will begin the first of the month following receipt of properly completed and filed paperwork with the department. The change becomes irrevocable on the date that the completed paperwork is received by the department.

(5) For more information, see chapter 415-02 WAC starting with WAC 415-02-300 for the tables, schedules, and factors the department uses for calculating retirement allowances.

**(6) Terms used in this section:**

"Pop-up" - see WAC 415-02-030.

[Statutory Authority: RCW 41.50.050(5), 43.43.260, [43.43.]271, [43.43.]280(1), [43.43.]295. 02-23-037, § 415-103-225, filed 11/13/02, effective 1/1/03.]

**WAC 415-103-300 Actuarial tables, schedules, and factors.** See chapter 415-02 WAC starting with WAC 415-02-300 for the tables, schedules, and factors the department uses for calculating optional retirement allowances of members of the Washington state patrol retirement system plan 2.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.45 RCW. 02-18-048, § 415-103-300, filed 8/28/02, effective 9/1/02.]

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415-104-379	Shift differential is LEOFF Plan II basic salary.	415-104-0111	Commissioned—Definition. [Statutory Authority: RCW 41.50.050. 95-16-053, § 415-104-0111, filed 7/25/95, effective 8/25/95.] Repealed by 02-18-046, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and chapter 41.26 RCW.
415-104-380	Disability payments.	415-104-0112	Director of public safety—Definition. [Statutory Authority: RCW 41.50.050. 95-16-053, § 415-104-0112, filed 7/25/95, effective 8/25/95.] Repealed by 02-18-046, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and chapter 41.26 RCW.
415-104-383	Employer taxes and contributions are not LEOFF Plan II basic salary.	415-104-0113	Elective employer—Definition. [Statutory Authority: RCW 41.50.050. 95-16-053, § 415-104-0113, filed 7/25/95, effective 8/25/95.] Repealed by 02-18-046, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and chapter 41.26 RCW.
415-104-385	Fringe benefits are not LEOFF Plan II basic salary.	415-104-0114	Full time—Definition. [Statutory Authority: RCW 41.50.050. 95-16-053, § 415-104-0114, filed 7/25/95, effective 8/25/95.] Repealed by 02-18-046, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and chapter 41.26 RCW.
415-104-387	Illegal payments are not LEOFF Plan II basic salary.	415-104-0115	Fully compensated—Definition. [Statutory Authority: RCW 41.50.050. 95-16-053, § 415-104-0115, filed 7/25/95, effective 8/25/95.] Repealed by 02-18-046, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and chapter 41.26 RCW.
415-104-390	Reimbursements or allowances in lieu of a reimbursement are not LEOFF Plan II basic salary.	415-104-0117	LEOFF employer—Definition. [Statutory Authority: RCW 41.50.050. 95-16-053, § 415-104-0117, filed 7/25/95, effective 8/25/95.] Repealed by 02-18-046, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and chapter 41.26 RCW.
415-104-393	Standby pay is not LEOFF Plan II basic salary.	415-104-0118	LEOFF Plan I elected official—Definition. [Statutory Authority: RCW 41.50.050. 95-16-053, § 415-104-0118, filed 7/25/95, effective 8/25/95.] Repealed by 02-18-046, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and chapter 41.26 RCW.
415-104-395	Termination or retirement bonuses are not LEOFF Plan II basic salary.	415-104-0120	Public safety officer—Definition. [Statutory Authority: RCW 41.50.050. 95-16-053, § 415-104-0120, filed 7/25/95, effective 8/25/95.] Repealed by 02-18-046, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and chapter 41.26 RCW.
415-104-397	Statutorily excluded payments are not LEOFF Plan II basic salary.	415-104-0112	Plan I and Plan II—Definition. [Statutory Authority: RCW 41.50.050. 95-16-053, § 415-104-0121, filed 7/25/95, effective 8/25/95.] Repealed by 02-18-046, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and chapter 41.26 RCW.
415-104-401	Cash outs of accrued leave or other forms of severance pay are not LEOFF Plan II basic salary.	415-104-0121	LEOFF—Definition. [Statutory Authority: RCW 41.50.050. 95-16-053, § 415-104-0122, filed 7/25/95, effective 8/25/95.] Repealed by 02-18-046,
415-104-405	Payments in lieu.	415-104-0122	effective 8/25/95.] Repealed by 02-18-046, filed
415-104-450	Designation of beneficiaries—Death benefit if a member dies before retirement.		
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415-104-020	Uniformed fire fighter position—Definition. [Statutory Authority: RCW 41.50.050. 96-04-003, § 415-104-0125, filed 1/24/96, effective 2/24/96.] Repealed by 02-18-046, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and chapter 41.26 RCW.	415-104-220	Processing applications. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-210, filed 2/15/78. Formerly WAC 297-30-020.] Repealed by 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.
415-104-030	Public records. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-020, filed 2/15/78.] Repealed by 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.	415-104-230	Recording. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-220, filed 2/15/78. Formerly WAC 297-30-030.] Repealed by 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.
415-104-105	Deductions from pension payments for insurance purposes. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-030, filed 2/15/78. Formerly WAC 297-60-010.] Repealed by 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.	415-104-240	Legal examination of application. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-230, filed 2/15/78. Formerly WAC 297-30-040.] Repealed by 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.
415-104-110	Election of LEOFF member to LEOFF retirement board. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-105, filed 2/15/78. Formerly WAC 297-10-010.] Repealed by 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.	415-104-250	Recommendation and conclusion. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-240, filed 2/15/78. Formerly WAC 297-30-050.] Repealed by 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.
415-104-120	Administration. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-110, filed 2/15/78.] Repealed by 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.	415-104-260	LEOFF retirement board decision on application. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-250, filed 2/15/78. Formerly WAC 297-30-060.] Repealed by 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.
415-104-140	Function. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-120, filed 2/15/78.] Repealed by 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.	415-104-270	Notification of member. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-260, filed 2/15/78. Formerly WAC 297-30-070.] Repealed by 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.
415-104-150	Location. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-140, filed 2/15/78. Formerly WAC 297-25-100.] Repealed by 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.	415-104-270	Miscellaneous applications. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-270, filed 2/15/78. Formerly WAC 297-30-080.] Repealed by 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.
415-104-160	Meetings. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-150, filed 2/15/78. Formerly WAC 297-25-020.] Repealed by 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.	415-104-300	Disability retirement applications—Appeals. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-300, filed 2/15/78. Formerly WAC 297-35-010.] Repealed by 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.
415-104-170	Office of the chairman. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-160, filed 2/15/78. Formerly WAC 297-25-030.] Repealed by 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.	415-104-310	Grievances. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-310, filed 2/15/78. Formerly WAC 297-35-020.] Repealed by 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.
415-104-180	Business hours. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-170, filed 2/15/78. Formerly WAC 297-25-030.] Repealed by 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.	415-104-320	Rules on appeals. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-320, filed 2/15/78. Formerly WAC 297-35-030.] Repealed by 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.
415-104-190	Correspondence. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-180, filed 2/15/78. Formerly WAC 297-25-040.] Repealed by 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.	415-104-400	Notice of appeal to the superior court. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-400, filed 2/15/78. Formerly WAC 297-45-010.] Repealed by 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.
415-104-200	Identification. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-190, filed 2/15/78. Formerly WAC 297-25-050.] Repealed by 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.	415-104-410	Certification of record. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-410, filed 2/15/78. Formerly WAC 297-45-020.] Repealed by 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.
415-104-201	Decision and order of the local disability board. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-200, filed 2/15/78. Formerly WAC 297-30-010.] Repealed by 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.	415-104-800	Continued LEOFF membership for members in state elective positions. [Statutory Authority: RCW 41.50.050(6). 81-07-017 (Order 81-2), § 415-104-800, filed 3/10/81.] Repealed by 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.
415-104-205	Background and purpose. [Statutory Authority: RCW 34.05.050 and 1990 c 249. 91-03-014, § 415-104-201, filed 1/7/91, effective 2/7/91.] Repealed by 96-01-047, filed 12/14/95, effective 1/14/96. Statutory Authority: RCW 2.10.146, 41.26.460, 41.32.530, 41.50.050, 41.32.785, 41.40.188 and 41.40.660.	415-104-810	Contributions and service credit for members in state elective positions. [Statutory Authority: RCW 41.50.050(6). 81-07-017 (Order 81-2), § 415-104-810, filed 3/10/81.] Repealed by 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.

415-104-820	Members in state elective positions—Entitlement to benefits. [Statutory Authority: RCW 41.50.050(6), 81-07-017 (Order 81-2), § 415-104-820, filed 3/10/81.] Repealed by 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.
415-104-830	Operation if in conflict with state law. [Statutory Authority: RCW 41.50.050(6), 81-07-017 (Order 81-2), § 415-104-830, filed 3/10/81.] Repealed by 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.

**WAC 415-104-005 Purpose.** These rules are adopted to implement administration of chapter 41.26 RCW by the director of the department of retirement systems pursuant to RCW 41.26.051.

[Statutory Authority: RCW 41.50.050(5) and 41.50.090. 87-07-016 (Order 87-4), § 415-104-005, filed 3/11/87.]

**WAC 415-104-011 Definitions.** All definitions in RCW 41.26.030 and WAC 415-02-030 apply to terms used in this chapter. Other terms relevant to the administration of chapter 41.26 RCW are defined in this chapter.

(1) **Commissioned** means that an employee is employed as an officer of a general authority Washington law enforcement agency and is empowered by that employer to enforce the criminal laws of the state of Washington.

(2) **Director of public safety** means a person who is employed on or after January 1, 1993, by a city or town on a full-time, fully compensated basis to administer the programs and personnel of a public safety department.

This definition applies only to cities or towns in which the population did not exceed ten thousand at the time the person became employed as a director of public safety.

(3) **Elective employer** means the employer of the LEOFF Plan 1 elected official during the member's leave of absence from the LEOFF employer for the purpose of serving in elective office.

(4) **Full-time employee** means an employee who is regularly scheduled to earn basic salary from an employer for a minimum of one hundred sixty hours each calendar month.

(5) **Fully compensated employee** means an employee who earns basic salary and benefits from an employer in an amount comparable to the salary received by other full-time employees of the same employer who:

- (a) Hold the same or similar rank; and
- (b) Are employed in a similar position.

(6) **LEOFF** means the law enforcement officers' and fire fighters' retirement system established by chapter 41.26 RCW.

(7) **LEOFF employer** means the employer, as defined in RCW 41.26.030, who employs the member as a law enforcement officer or fire fighter.

(8) **LEOFF Plan 1 elected official** means a LEOFF Plan 1 member who is a civil service employee on leave of absence because he or she has been elected or appointed to an elective public office and who chooses to preserve retirement rights as an active LEOFF member under the procedure described in this chapter.

**(9) Plan 1 and Plan 2.**

(a) "Plan 1" means the law enforcement officers' and fire fighters' retirement system providing the benefits and fund-

ing provisions covering persons who first became members of the system prior to October 1, 1977.

(b) "Plan 2" means the law enforcement officers' and fire fighters' retirement system providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977.

(10) **Public safety officer** means a person who is employed on or after January 1, 1993, on a full-time, fully compensated basis by a city or town to perform both law enforcement and fire fighter duties.

This definition applies only to cities or towns in which the population did not exceed ten thousand at the time the person became employed as a public safety officer.

(11) **Uniformed fire fighter position** means a position which may only be filled by uniformed personnel as that term is defined in RCW 41.56.030 (7)(e) as in effect on July 1, 1995. A position only qualifies as a uniformed fire fighter position if the employer has identified it as such for all purposes. An employer may designate a position as uniformed regardless of whether the employer is covered by public employees' collective bargaining under chapter 41.56 RCW.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.26 RCW. 02-18-046, § 415-104-011, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050. 95-16-053, § 415-104-011, filed 7/25/95, effective 8/25/95. Statutory Authority: RCW 41.50.050(5) and 41.04.120. 93-11-078, § 415-104-011, filed 5/18/93, effective 6/18/93.]

**WAC 415-104-015 Scope.** These rules shall govern the unique aspects of the administration of chapter 41.26 RCW, Law enforcement officers' and fire fighters' retirement system (LEOFF).

[Statutory Authority: RCW 41.50.050(5) and 41.50.090. 87-07-016 (Order 87-4), § 415-104-015, filed 3/11/87.]

**WAC 415-104-025 Public records.** See chapter 415-06 WAC.

[Statutory Authority: RCW 41.50.050(5) and 41.50.090. 87-07-016 (Order 87-4), § 415-104-025, filed 3/11/87.]

**WAC 415-104-035 Jurisdiction of director.** The director or the director's designee (director, designee or DRS) does not have authority to review local disability board findings or decisions regarding:

(1) Whether a member's disability was incurred in the line of duty under RCW 41.26.120 or not incurred in the line of duty under RCW 41.26.125; or

(2) A member's right to the employer's payment for medical services pursuant to RCW 41.26.030(22) and 41.26.150.

[Statutory Authority: RCW 41.50.050. 99-16-075, § 415-104-035, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 41.50.050(5) and 41.50.090. 87-07-016 (Order 87-4), § 415-104-035, filed 3/11/87.]

**WAC 415-104-045 Appeal of a local disability board decision.** Any person aggrieved by the decision of a local disability board may appeal the decision if it:

- (1) Denies disability leave;
- (2) Denies disability retirement; or
- (3) Cancels a previously granted disability retirement.

The written notice of appeal must be submitted to DRS within thirty days in accordance with RCW 41.26.200.

[Statutory Authority: RCW 41.50.050. 99-16-075, § 415-104-045, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 41.50.050(5) and 41.50.090. 87-07-016 (Order 87-4), § 415-104-045, filed 3/11/87.]

**WAC 415-104-050 Review of disability board action—Appeal of director's decision.** Under RCW 41.26.-120(3) and 41.26.125(3), DRS must review a disability board's order to grant a disability retirement allowance. DRS must:

- (1) Affirm (approve) the board's decision; or
- (2) Remand (send back) the case for further proceeding; or
- (3) Reverse (deny) the board's decision.

DRS must serve a copy of the decision on the applicant, employer, and disability board. DRS must notify the applicant of the right to file a notice for hearing (an appeal under RCW 41.26.200) if the DRS decision denies the disability retirement allowance.

[Statutory Authority: RCW 41.50.050. 99-16-075, § 415-104-050, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 41.50.050(5) and 41.50.090. 87-07-016 (Order 87-4), § 415-104-050, filed 3/11/87.]

**WAC 415-104-060 Records reviewed on appeals filed under RCW 41.26.200.** DRS will review the appeal based on the record established by the disability board and materials appearing in the records of the department of retirement systems. DRS must:

- (1) Affirm (approve) the board's decision; or
- (2) Remand (send back) the case for further proceeding; or
- (3) Reverse (deny) the board's decision.

[Statutory Authority: RCW 41.50.050. 99-16-075, § 415-104-060, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 41.50.050(5) and 41.50.090. 87-07-016 (Order 87-4), § 415-104-060, filed 3/11/87.]

**WAC 415-104-070 Parties to a de novo hearing.** The applicant, the employer, and the department are parties to a hearing held under RCW 41.26.221. The disability board may appear at such hearing only in support of the department's decision.

[Statutory Authority: RCW 41.50.050. 99-16-075, § 415-104-070, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 41.50.050(5) and 41.50.090. 87-07-016 (Order 87-4), § 415-104-070, filed 3/11/87.]

**WAC 415-104-080 The department can require an examination.** The department has discretion to require an applicant for disability retirement to undergo a mental and/or physical examination prior to the hearing to be held pursuant to RCW 41.26.221. The cost of such examination is the responsibility of the department.

[Statutory Authority: RCW 41.50.050. 99-16-075, § 415-104-080, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 41.50.050(5) and 41.50.090. 87-07-016 (Order 87-4), § 415-104-080, filed 3/11/87.]

**WAC 415-104-090 Notice of appeal to the superior court.** Any party aggrieved by a DRS final decision and order issued under RCW 41.26.211 may petition for judicial review within thirty days after the decision and order was mailed. Any party wishing to perfect a superior court appeal

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must comply with chapter 34.05 RCW, the Administrative Procedure Act.

[Statutory Authority: RCW 41.50.050. 99-16-075, § 415-104-090, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 41.50.050(5) and 41.50.090. 87-07-016 (Order 87-4), § 415-104-090, filed 3/11/87.]

## GENERAL ADMINISTRATION

**WAC 415-104-100 Certification of record.** The director or his/her designated representative shall promptly file with the clerk of the court a certified copy of the complete record of the hearing before the director which shall, upon being so filed, become the record in such case. Appeal shall lie from the judgment of the superior court to the court of appeals or the supreme court as in other cases.

[Statutory Authority: RCW 41.50.050(5) and 41.50.090. 87-07-016 (Order 87-4), § 415-104-100, filed 3/11/87. Statutory Authority: RCW 41.50.-050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-100, filed 2/15/78. Formerly WAC 297-20-010.]

**WAC 415-104-108 Actuarial tables, schedules, and factors.** See chapter 415-02 WAC starting with WAC 415-02-300 for the tables, schedules, and factors the department uses for calculating optional retirement allowances of members of the Washington state law enforcement officers' and fire fighters' retirement system.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.45 RCW. 02-18-048, § 415-104-108, filed 8/28/02, effective 9/1/02. Statutory Authority: RCW 41.50.050. 96-03-100, § 415-104-108, filed 1/19/96, effective 2/19/96. Statutory Authority: RCW 41.50.050 and 41.26.060. 91-19-063, § 415-104-108, filed 9/16/91, effective 10/17/91; 91-02-019, § 415-104-108, filed 12/21/90, effective 1/21/91.]

**WAC 415-104-111 Actuarial recomputation of retirement allowance upon retirement following reemployment.** (1) The purpose of this rule is to establish a method to actuarially recompute the retirement allowance of a Plan 2 member who retires, reenters employment causing his or her retirement allowance to be suspended, and then retires again. The actuarially recomputed retirement allowance shall:

(a) Include service credit the member earned following reestablishment of membership if any; and

(b) Account for the actuarial reduction applied to the member's initial retirement if the member initially retired prior to age fifty-three.

(2) If a Plan 2 retiree reenters membership, upon the individual's next retirement, the department shall reinstate and actuarially recompute the individual's retirement allowance pursuant to RCW 41.26.500 as follows:

(a) If the member first retired before age fifty-three, the department shall:

(i) Calculate the retirement allowance pursuant to RCW 41.26.420 using the retiree's total years of career service, including service earned prior to initial retirement and service earned after reentering membership;

(ii) Actuarially reduce the member's retirement allowance based on the present value of the retirement allowance payments the individual received during the initial retirement; and

(iii) Calculate any survivor option selected by the retiree based upon the monthly retirement allowance calculated pursuant to (a)(i) and (ii) of this subsection.

(b) If the member initially retired at or after age fifty-three, the department shall recompute the member's retirement allowance pursuant to RCW 41.26.500 and include any additional service credit earned and any applicable increase in the member's average final compensation resulting from the member's reentry into membership. Under no circumstances shall a retiree receive a retirement allowance creditable to a month during which that individual earned service credit.

(3) If a retiree's retirement allowance is suspended under RCW 41.26.500 due to reemployment but the retiree does not reenter membership, upon the retiree's separation from such employment, the retiree shall receive an actuarially recomputed retirement allowance equal to the sum of:

(a) The amount of the monthly suspended retirement allowance; plus

(b) An actuarially computed increase based upon the retirement allowance payment the member did not receive due to reemployment. The retiree may elect to receive the actuarially computed increase in either:

(i) An amount amortized over the expected term of the recomputed retirement allowance; or

(ii) A lump sum payment equal to the suspended retirement allowance plus interest.

[Statutory Authority: RCW 41.50.050(5), 41.26.470, 2001 c 261. 02-14-072, § 415-104-111, filed 6/28/02, effective 7/29/02. Statutory Authority: RCW 41.50.050. 94-09-040, § 415-104-111, filed 4/19/94, effective 5/20/94.]

**WAC 415-104-112 Interim retirement allowance—Employer final compensation report—Final computation of retirement allowance—Adjustment of retirement allowance for errors.** (1) At the time of a member's application for retirement, the department does not have all information necessary to make a final computation of the member's retirement allowance. The department shall compute an interim retirement allowance that shall be paid to the member until the department's final computation of the member's retirement allowance. The interim retirement allowance is an initial, estimated computation of the retiree's retirement allowance subject to adjustment by the department based upon subsequent review of information provided by the member's employer.

(2) In computing the interim retirement allowance, the department may, subject to later correction, consider only the amount of the member's salary actually reported by the employer up to the date of the interim computation, but may impute the member's earned service credit for the same period.

(3) Every employer of a member who applies for retirement shall provide the department with a final compensation report for that member. The report shall be completed on a form provided or approved by the department.

(4) Following the department's computation of the interim benefit and receipt of the employer final compensation report, earnings history, and any additional information requested by the department, the department will complete a

final computation of the member's retirement allowance. The department's final computation may increase, decrease, or leave unchanged the amount of the interim retirement allowance computed pursuant to subsection (1) of this section.

(5) Pursuant to RCW 41.50.130, either before or after the department's final computation of the member's retirement allowance as provided in subsection (4) of this section, the department may adjust a member's retirement allowance to correct any error in retirement system records. For purposes of this subsection, errors in retirement system records include, but are not limited to, the following:

(a) Applying an incorrect retirement allowance formula in computing the retirement allowance;

(b) Including service that is not creditable to the member;

(c) Including payments that do not constitute basic salary to a member in the member's retirement allowance computation, or excluding basic salary not reported by an employer;

(d) Benefit overpayments and underpayments;

(e) Including an individual in the membership of the retirement system or plan who is not entitled to such membership;

(f) Excluding an individual from membership in the retirement system or plan who is entitled to such membership.

[Statutory Authority: RCW 41.50.050. 99-16-075, § 415-104-112, filed 8/3/99, effective 9/3/99.]

## CESSATION OF DISABILITY

**WAC 415-104-115 Purpose and scope.** The purpose of WAC 415-104-125 through 415-104-175 is to implement the provisions of RCW 41.26.135 to be followed by the department of retirement systems. These rules apply only to disability retirees over age fifty who seek a determination that their disability has ceased.

[Statutory Authority: RCW 41.50.050(5) and 41.50.090. 87-07-016 (Order 87-4), § 415-104-115, filed 3/11/87.]

**WAC 415-104-125 DRS review of disability board order.** (1) Under the provisions of RCW 41.26.135, DRS must review a disability board determination that an applicant's disability has ceased pursuant to RCW 41.26.130(3). DRS must:

(a) Affirm (approve) the board's decision; or

(b) Remand (send back) the case for further proceedings; or

(c) Reverse (deny) the board's decision.

(2) A retiree aggrieved by a decision of the local disability board that the disability has not ceased may appeal the determination to the director. The written notice of appeal must be submitted to DRS within thirty days as provided by RCW 41.26.140(6).

[Statutory Authority: RCW 41.50.050. 99-16-075, § 415-104-125, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 41.50.050(5) and 41.50.090. 87-07-016 (Order 87-4), § 415-104-125, filed 3/11/87.]

**WAC 415-104-135 Notice for hearing.** A person aggrieved by:

(1) The director's decision on review of the local board determination; or

(2) The director's decision after review of the record on appeal must invoke the director's jurisdiction by filing a notice for hearing in accordance with RCW 41.26.211 and WAC 415-08-020 before they can appeal to the superior court. Such hearing shall be in accordance with RCW 41.26.221.

[Statutory Authority: RCW 41.50.050. 99-16-075, § 415-104-135, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 41.50.050(5) and 41.50.090. 87-07-016 (Order 87-4), § 415-104-135, filed 3/11/87.]

**WAC 415-104-145 Department examination.** The director or his representative, in his/her discretion, may require a disability retiree to undergo a mental and/or physical examination prior to the hearing to be held pursuant to RCW 41.26.221. The cost of such examination is the responsibility of the department.

[Statutory Authority: RCW 41.50.050. 99-16-075, § 415-104-145, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 41.50.050(5) and 41.50.090. 87-07-016 (Order 87-4), § 415-104-145, filed 3/11/87.]

**WAC 415-104-155 Burden of proof.** The retiree has the burden of proof in the proceedings before the disability board and the director.

[Statutory Authority: RCW 41.50.050(5) and 41.50.090. 87-07-016 (Order 87-4), § 415-104-155, filed 3/11/87.]

**WAC 415-104-165 Payment of benefits pending final determination.** The department will continue to pay monthly benefits when a disability board determines that a retiree's disability has ceased until there is a final determination from which no appeal is taken. The department will pay either the retiree's monthly service retirement allowance or monthly disability retirement allowance, whichever is less. Any retroactive adjustment required as the result of the final determination will be made after the appeal period has passed.

[Statutory Authority: RCW 41.50.050. 99-16-075, § 415-104-165, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 41.50.050(5) and 41.50.090. 87-07-016 (Order 87-4), § 415-104-165, filed 3/11/87.]

**WAC 415-104-175 Comparison of disability retirement allowance and service retirement allowance.** In comparing the disability retirement allowance and the service retirement allowance as required by RCW 41.26.130(3), the department must:

(1) Compute the service retirement allowance using a final average salary calculated as follows:

(a) The department shall first calculate the greatest basic salaries that were or would have been payable to such member during any consecutive twenty-four month period within such member's last ten years of service for which service credit is allowed;

(b) The department shall then divide the total basic salaries during the selected twenty-four month period by twenty-four to compute the final average salary.

(2) Compute the service retirement allowance. The service retirement allowance does not include any cost-of-living

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increases that would have been granted if the service retirement allowance had been in effect during the period of disability retirement.

(3) Compare the service retirement allowance to the monthly disability retirement allowance that the member was receiving on the date that the disability ceased.

[Statutory Authority: RCW 41.50.050. 99-16-075, § 415-104-175, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 41.50.050(5) and 41.50.090. 87-07-016 (Order 87-4), § 415-104-175, filed 3/11/87.]

## BENEFIT OPTIONS

**WAC 415-104-211 Married member's benefit selection—Spousal consent required.** (1) A member, if married, must provide the spouse's written consent to the option selected under WAC 415-104-215. If a married member does not provide spousal consent, the department will pay the retired member a joint and one-half survivor benefit allowance and record the member's spouse as the survivor, in compliance with RCW 41.26.460(2).

(2) Spousal consent is not needed to enforce a marital dissolution order requiring the department to pay an ex-spouse under RCW 41.50.790.

(3) "Spousal consent" means that the married member's spouse consents to the retirement option selected by the member. The spouse's notarized signature on a completed retirement application constitutes spousal consent.

[Statutory Authority: RCW 41.50.050. 99-16-075, § 415-104-211, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 2.10.146, 41.26.460, 41.32.530, 41.50.050, 41.32.785, 41.40.188 and 41.40.660. 96-01-047, § 415-104-211, filed 12/14/95, effective 1/14/96. Statutory Authority: RCW 34.05.050 and 1990 c 249. 91-03-014, § 415-104-211, filed 1/7/91, effective 2/7/91.]

**WAC 415-104-215 Retirement benefit options.** RCW 41.26.460 enables the department to provide retiring LEOFF Plan 2 members with four retirement benefit options. The member must choose an option when applying for service or disability retirement.

(1) **Option One: Benefit option without survivor features (standard allowance).** The department pays the retiree a monthly retirement allowance actuarially based solely on the single life of the member, in accordance with RCW 41.26.430 (service) or 41.26.470 (disability). When the retiree dies, all benefits cease. Any remaining balance of the retiree's accumulated contributions will be paid to:

(a) Such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or

(b) If there is no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or

(c) The member's estate; or

(d) If there is neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(2) **Benefit options with a survivor feature.**

(a) A retiring member is allowed to select from several retirement options which create an actuarially equivalent benefit that includes a survivor feature. The survivor feature

entitles the survivor to receive a monthly allowance after the retiree dies. If the member chooses one of the survivor options, the monthly benefit the member will receive is actuarially reduced to offset the cost of the survivor feature. After the retiree dies, the department pays the survivor an allowance for the duration of his or her life. If the retiree and the survivor both die before the retiree's accumulated contributions are exhausted, any remaining balance of the retiree's accumulated contributions will be paid to:

(i) Such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or

(ii) If there is no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or

(iii) The member's estate; or

(iv) If there is neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(b) Option Two (joint and whole allowance). When the retiree dies, the department pays the survivor a monthly retirement allowance equal to the gross monthly allowance received by the retiree.

(c) Option Three (joint and one-half allowance). When the retiree dies, the department pays the survivor one-half of

the amount of the retiree's gross monthly retirement allowance.

(d) Option Four (joint and two-thirds allowance).

(i) Option Four is available to members retiring on or after January 1, 1996.

(ii) When the retiree dies, the department pays the survivor two-thirds (66.667%) of the retiree's gross monthly retirement allowance.

(3) If a member retires on or after June 6, 1996, the department is required to pay an ex-spouse survivor benefits pursuant to a marital dissolution order that complies with RCW 41.50.790.

(4) **Benefit increases when survivor predeceases retiree (pop-up provision).**

(a) This subsection applies to members retiring on or after January 1, 1996, who select a benefit option with a survivor feature (Option Two, Three, or Four).

(b) If the survivor dies before the retiree, the retiree's monthly retirement allowance increases, effective the first day of the following month, to:

(i) The amount that would have been received had the retiree chosen Option One; plus

(ii) Any cost-of-living adjustments the retiree received prior to the survivor's death based on the original option selection.

(c) Pop-up recalculation example:

#### Plan Two:

Agnes retires in 1996 (Year 0). She would like Beatrice, her daughter, to receive a monthly allowance after Agnes dies. Therefore, Agnes selects a retirement benefit option with a survivor feature. As a result her monthly allowance is reduced from \$2,000 (standard allowance) to \$1,750. Unfortunately, Beatrice dies in January 2001 (Year 5). Under the "pop-up" provision, Agnes' monthly benefit will increase to \$2,191.05, the amount she would have received had she chosen Option One (standard allowance) plus her accumulated COLA's:

Year	Option One (Standard Allow.)	Survivor Option (2,3,4) plus COLAs	COLA incr. (3% max)	\$ Increase
0 (1996)	2,000.00	1,750.00	(inelig.)	0.00
1 (1997)		1,750.00	.02	35.00
2 (1998)		1,785.00	.03	53.55
3 (1999)		1,838.55	.025	45.96
4 (2000)		1,884.51	.03	56.54
5 (2001)	2,000.00	1,941.05	—	—
Total COLA's				191.05
Original Option One Benefit Amount \$2000		+ Total COLA's + \$191.05		= New Benefit Amount = \$2,191.05*

\* In the future (i.e., Year 5), Agnes' COLA will be based on the increased benefit amount (\$2,191.05).

(d) If the survivor dies and the retiree's benefit increases under this section, and thereafter the retiree also dies before all employee contributions are exhausted, any remaining balance of the retiree's accumulated contributions will be paid to:

(i) Such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or

(ii) If there is no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or

(iii) The member's estate; or

(iv) If there is neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(5) Any retiree who retired before January 1, 1996, and who elected to receive a benefit option with a survivor feature under subsection (2) of this section is entitled to receive a retirement allowance adjustment if the retiree meets the following conditions:

(a) The retiree's designated beneficiary predeceases or has predeceased the retiree; and

(b) The retiree provides the department proper proof of the designated beneficiary's death.

The retiree is not required to apply for the increased benefit provided in this subsection. The adjusted retirement

allowance will be effective on July 1, 1998, or the first day of the month following the date of death of the designated beneficiary, whichever comes last. The adjustment is computed as described in RCW 41.26.460 (3)(c) for Plan 2 retirees.

**(6) Postretirement benefit options.**

**(a) Postretirement marriage option.** Members who select the standard allowance (Option One) at the time of retirement and marry after retirement may subsequently select a survivor option with their new spouse as survivor beneficiary, provided that:

(i) The retiree's monthly benefit is not subject to a property settlement agreement from a court decree of dissolution or legal separation;

(ii) The selection is made either:

(A) During a one year window, on or after the date of the first anniversary and before the second anniversary of the postretirement marriage; or

(B) Before June 1, 2002, if the postretirement marriage occurred before June 1, 2001;

(iii) The retiree provides a marriage certificate as proof of the postretirement marriage and provides proof of the birthdate of the new spouse; and

(iv) A member may exercise this option one time only.

**(b) Removal of a nonspouse survivor option.** Members who selected a nonspouse as survivor beneficiary at the time of retirement may remove that survivor designation and have the benefit adjusted to a standard allowance. A member may exercise this option one time only.

(c) Selection (a) or (b) of this subsection will become effective the first of the month following the department's receipt of the required paperwork.

**(7) Survivor.** For the purposes of this provision, "survivor" means a person nominated by the member to receive a monthly benefit allowance after the member dies. A member nominates the survivor at the time of retirement by filing a completed and notarized form provided by the department.

[Statutory Authority: RCW 41.50.050(5), 41.26.460, 41.32.530, 41.32.785, 41.32.851, 41.35.220, 41.40.188, 41.40.660, 41.40.845. 01-10-045, § 415-104-215, filed 4/26/01, effective 6/1/01. Statutory Authority: RCW 41.50.050. 99-16-075, § 415-104-215, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 2.10.146, 41.26.460, 41.32.530, 41.50.050, 41.32.785, 41.40.188 and 41.40.660. 96-01-047, § 415-104-215, filed 12/14/95, effective 1/14/96. Statutory Authority: RCW 34.05.050 and 1990 c 249. 91-03-014, § 415-104-215, filed 1/7/91, effective 2/7/91.]

## MEMBERSHIP

**WAC 415-104-224 Purpose and scope of eligibility rules.** WAC 415-104-225 through 415-104-240 codify the department's existing interpretation of statutes and existing administrative practice regarding eligibility for membership in LEOFF Plan I and Plan II. The department has applied and will apply these rules to determine eligibility for service occurring prior to the effective dates of these sections.

[Statutory Authority: RCW 41.50.050. 95-16-053, § 415-104-224, filed 7/25/95, effective 8/25/95.]

**WAC 415-104-225 Am I a LEOFF member?** If you are employed by an employer as a full-time, fully compensated law enforcement officer or fire fighter, you are required to be a LEOFF member.

sated law enforcement officer or fire fighter, you are required to be a LEOFF member.

**(1) Law enforcement officers.**

(a) You are a law enforcement officer only if you are commissioned and employed on a full-time, fully compensated basis as a:

(i) City police officer;

(ii) Town marshal or deputy marshal;

(iii) County sheriff;

(iv) Deputy sheriff, if you passed a civil service exam for deputy sheriff and you possess all of the powers, and may perform any of the duties, prescribed by law to be performed by the sheriff;

(b) Effective January 1, 1994, "law enforcement officer" also includes commissioned persons employed on a full-time, fully compensated basis as a:

(i) General authority Washington peace officer under RCW 10.93.020(3);

(ii) Port district general authority law enforcement officer and you are commissioned and employed by a port district general authority law enforcement agency;

(iii) State university or college general authority law enforcement officer; or

(c) Effective January 1, 1993, "law enforcement officer" also includes commissioned persons employed on a full-time, fully compensated basis as a public safety officer or director of public safety of a city or town if, at the time you first became employed in this position, the population of the city or town did not exceed ten thousand. See RCW 41.26.030(3).

(d) If you meet the requirements of (a), (b) or (c) of this subsection, you qualify as a law enforcement officer regardless of your rank or status as a probationary or permanent employee.

(e) You are not a law enforcement officer if you are employed in either:

(i) A position that is clerical or secretarial in nature and you are not commissioned; or

(ii) A corrections officer position and the only training required by the Washington criminal justice training commission for your position is basic corrections training under WAC 139-10-210.

**(2) Fire fighters.** You are a fire fighter if you are employed in a uniformed fire fighter position by an employer on a full-time, fully compensated basis, and as a consequence of your employment, you have the legal authority and responsibility to direct or perform fire protection activities that are required for and directly concerned with preventing, controlling and extinguishing fires.

(a) "Fire protection activities" may include incidental functions such as housekeeping, equipment maintenance, grounds maintenance, fire safety inspections, lecturing, performing community fire drills and inspecting homes and schools for fire hazards. These activities qualify as fire protection activities only if the primary duty of your position is preventing, controlling and extinguishing fires.

(b) You are a fire fighter if you qualify as supervisory fire fighter personnel.

(c) If your employer requires fire fighters to pass a civil service examination, you must be actively employed in a position that requires passing such an examination in order to

qualify as a fire fighter unless you qualify as supervisory fire fighter personnel.

(d) You are a fire fighter if you meet the requirements of this section regardless of your rank or status as a probationary or permanent employee or your particular specialty or job title.

(e) You do not qualify for membership as a fire fighter if you are a volunteer fire fighter or resident volunteer fire fighter.

(3) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

- (a) "Commissioned" - WAC 415-104-011.
- (b) "Director of public safety" - WAC 415-104-011.
- (c) "Employer" - RCW 41.26.030.
- (d) "Fire fighter" - RCW 41.26.030.
- (e) "Full time" - WAC 415-104-011.
- (f) "Fully compensated" - WAC 415-104-011.
- (g) "Law enforcement officer" - RCW 41.26.030.
- (h) "Member" - RCW 41.26.030.
- (i) "Public safety officer" - WAC 415-104-011.
- (j) "Uniformed fire fighter position" - WAC 415-104-

011.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.26 RCW. 02-18-046, § 415-104-225, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050. 96-01-045, § 415-104-225, filed 12/14/95, effective 1/14/96; 95-16-053, § 415-104-225, filed 7/25/95, effective 8/25/95.]

**WAC 415-104-235 Can I terminate my status as a LEOFF member?** (1) Your membership in the retirement system is terminated if you:

- (a) Die;
- (b) Separate from service; or
- (c) Cease to be employed full time as a law enforcement officer or fire fighter.

(2) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

- (a) "Fire fighter" - RCW 41.26.030 and WAC 415-104-225(2).
- (b) "Full-time employee" - WAC 415-104-011.
- (c) "Law enforcement officer" - RCW 41.26.030 and WAC 415-104-225(1).
- (d) "Member" - RCW 41.26.030.
- (e) "Service" - RCW 41.26.030.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.26 RCW. 02-18-046, § 415-104-235, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050. 95-16-053, § 415-104-235, filed 7/25/95, effective 8/25/95.]

**WAC 415-104-245 Am I required to meet minimum medical and health standards in order to establish or reestablish Plan I membership?** (1) You may be required to meet minimum medical and health standards in order to establish or reestablish Plan I membership.

You are required to meet minimum medical and health standards codified in WAC 415-104-500 through 415-104-755, if you:

(a) Were first employed as a law enforcement officer or fire fighter on or after August 1, 1971, and before October 1, 1977; and

(b) Have been separated from service for more than six months for reasons other than a disability leave, a disability retirement, or an authorized leave of absence.

(2) If you are an elected sheriff or an appointed police or fire chief, you are exempt from the age requirement of the standards.

(3) If you are required to meet the minimum medical and health standards, your employer will enroll you in Plan I provisionally, depending on the results of your physical examination.

(a) If you are required to meet the minimum medical and health standards, your employer will begin reporting you in LEOFF Plan I from the first day of your employment. Your enrollment in Plan I, however, is provisional depending upon the results of your medical examination.

(b) Your employer is responsible for having you examined by a physician or surgeon appointed by the local disability board and for paying the cost of your examination. Your employer will send a copy of your examination report to the department along with a certification letter of whether you have met the standards.

(4) If you are denied Plan I membership because you did not meet minimum medical and health standards, you will enter membership in Plan II.

(a) The department will review your examination report and if you meet the minimum medical and health standards you will be reported in membership in Plan I.

(b) If you do not meet the standards, your employer must stop reporting you to the department in Plan I and report you in Plan II. The department will transfer your membership from Plan I to Plan II retroactively to the beginning of your term of employment.

(5) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

- (a) "Employer" - RCW 41.26.030.
- (b) "Fire fighter" - RCW 41.26.030.
- (c) "Full time" - WAC 415-104-0114.
- (d) "Fully compensated" - WAC 415-104-0115.
- (e) "Law enforcement officer" - RCW 41.26.030.
- (f) "Member" - RCW 41.26.030.
- (g) "Minimum medical and health standards" - WAC 415-104-500 through 415-104-755.
- (h) "Plan I and Plan II" - WAC 415-104-0121.

[Statutory Authority: RCW 41.50.050. 95-16-053, § 415-104-245, filed 7/25/95, effective 8/25/95.]

## BASIC SALARY

**WAC 415-104-298 Purpose and scope of basic salary rules.** WAC 415-104-299 through 415-104-405 codify the department's existing interpretation of statutes and existing administrative practice regarding classification of payments as basic salary in LEOFF Plan I and LEOFF Plan II. The department has applied and will apply these rules to determine the proper characterization of payments occurring prior to the effective dates of these sections.

[Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-298, filed 12/6/96, effective 1/6/97.]

**WAC 415-104-299 Basic salary table.** The following table is provided as a quick reference guide to help you characterize payments under LEOFF Plan I and LEOFF Plan II. Be sure to turn to the referenced rule to ensure that you have correctly identified the payment in question. The department determines basic salary based upon the nature of the payment, not the name applied to it. See WAC 415-104-311 (Plan 1) and WAC 415-104-360 (Plan 2).

Type of Payment	LEOFF I Basic Salary?	LEOFF II Basic Salary?
Additional Duty Pay	Yes - WAC 415-104-3205	Yes - WAC 415-104-360
Allowances (i.e. uniform)	No - WAC 415-104-3404	No - WAC 415-104-390
Basic Monthly Rate	Yes - WAC 415-104-3200	Yes - WAC 415-104-360
Cafeteria Plans	No - WAC 415-104-3303	Yes - WAC 415-104-367
Deferred Wages Attached to Position	Yes - WAC 415-104-3201(1)	Yes - WAC 415-104-363(1)
Deferred Wages not attached to a Position	No - WAC 415-104-3306	No - WAC 415-104-363(2)
Disability Payments	No - WAC 415-104-340	No - WAC 415-104-380
Education Attainment Pay	No - WAC 415-104-3301	Yes - WAC 415-104-375
Employer taxes/contributions	No - WAC 415-104-3401	No - WAC 415-104-383
Fringe Benefits	No - WAC 415-104-3402	No - WAC 415-104-385
Illegal Payments	No - WAC 415-104-3403	No - WAC 415-104-387
Leave Cash Outs/Severance	No - WAC 415-104-3304	No - WAC 415-104-401
Longevity	Yes - WAC 415-104-311	Yes - WAC 415-104-375
Overtime	No - WAC 415-104-3305	Yes - WAC 415-104-370
Paid Leave	Yes - WAC 415-104-3203	Yes - WAC 415-104-373
Payments in Lieu of Excluded Items	No - WAC 415-104-350	No - WAC 415-104-405
Performance Bonuses	No - WAC 415-104-3302	Yes - WAC 415-104-377
Retroactive Salary Increase	Yes - WAC 415-104-3202	Yes - WAC 415-104-365
Reimbursements	No - WAC 415-104-3404	No - WAC 415-104-390
Retirement or Termination Bonuses	No - WAC 415-104-3406	No - WAC 415-104-395
Shift Differential	Yes - WAC 415-104-3204	Yes - WAC 415-104-379
Special Salary or Wages	No - WAC 415-104-330	Yes - WAC 415-104-375
Standby Pay	No - WAC 415-104-3405	No - WAC 415-104-393
Tuition/Fee Reimbursement	No - WAC 415-104-3404	No - WAC 415-104-390
Worker's Compensation	Not Applicable	No - WAC 415-104-380

[Statutory Authority: RCW 41.50.050. 99-16-075, § 415-104-299, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-299, filed 12/6/96, effective 1/6/97.]

**WAC 415-104-301 What is basic salary? (1) Basic salary is the compensation used to determine LEOFF contributions and LEOFF retirement allowances.** A payment from an employer to a member does not qualify as basic salary unless it meets the statutory definition of basic salary in RCW 41.26.030(13) which is explained in greater detail in WAC 415-104-311 through 415-104-405.

**(2) The definition of basic salary is different for Plan I and Plan II.** WAC 415-104-311 through 415-104-350 define basic salary for Plan I. WAC 415-104-360 through 415-104-405 define basic salary for Plan II.

[Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-301, filed 12/6/96, effective 1/6/97.]

## LEOFF PLAN 1

**WAC 415-104-305 Definitions.** As used in WAC 415-104-299 through 415-104-405:

(1) "Salary or wages" means payments for services rendered by a law enforcement officer or fire fighter to an employer. Payments which are not for services rendered to an employer are not a salary or wage and do not qualify as basic salary.

(2) "Longevity pay" means a payment in addition to the basic monthly rate of pay that is:

(a) Based solely upon the length of employment with the employer; and

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(b) Paid to all law enforcement officers or fire fighters who have served for the same length of time with the employer.

(3) "Position" means the employment held at any particular time. The employment held is defined by the duties required of the employee as a condition of employment.

**Example:** An employer employs two police officers, one who has a high school diploma and one who has a college degree. Although both officers have the same duties, the employer designates the first officer as an "officer 1" and the second officer as an "officer 2." The distinction between the two levels is conditioned upon different levels of education. The second officer is paid at a higher rate. For purposes of determining basic salary, both officers occupy the same position because both have the same duties. The difference in their two rates of pay is an education premium which does not qualify as basic salary, see WAC 415-104-3302.

(4) "Attached to a position" means a payment conditioned on specific duties required of the person holding the position.

[Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-305, filed 12/6/96, effective 1/6/97.]

**WAC 415-104-311 How is basic salary for LEOFF Plan I determined?** (1) A payment is LEOFF Plan I basic salary if it is part of the basic monthly rate of salary or wages attached to the position or longevity pay. Special salary or wages are not part of the basic monthly rate and do not qualify as basic salary.

**(2) Basic salary is earned when the service is rendered, rather than when payment is made.**

**Example:** If a member works during July but does not receive payment for the work until August, the basic salary was earned during July and must be reported to the department as July earnings.

**(3) Salary characterizations are based upon the nature of the payment.** A payment is basic salary if it meets the criteria of subsection (1) of this section. The name given to the payment is not controlling in determining whether the payment is basic salary. The department determines whether a payment is basic salary by considering:

- (a) What the payment is for; and
- (b) Whether the reason for the payment brings it within the statutory definition of basic salary.

**Example:** A payment based upon educational attainment is not basic salary for LEOFF Plan I. Describing the payment as a "longevity" payment does not change the fact that the payment is for educational attainment. The payment will not be counted as basic salary despite being identified by the employer as a longevity payment.

(c) See the following sections for a discussion and examples of the following types of payments:

(i) "Salary or wages" - WAC 415-104-3200 through 415-104-3205;

(ii) "Special salary and wages" - WAC 415-104-330 through 415-104-3305;

(iii) "Payments excluded from basic salary because they are not a salary or wage" - WAC 415-104-340 through 415-104-3406.

[Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-311, filed 12/6/96, effective 1/6/97.]

**WAC 415-104-3200 Basic monthly rate is LEOFF Plan I basic salary.** The basic monthly rate of compensation paid by an employer to a member for services rendered is basic salary in Plan I. "Basic monthly rate" means the rate of salary or wages attached to a position excluding overtime or special salary or wages.

[Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-3200, filed 12/6/96, effective 1/6/97.]

**WAC 415-104-3201 Deferred payments.** (1) **Deferred payments attached to a position are basic salary.** If an employee defers a portion of his or her basic monthly rate of pay it is still basic salary. Deferred payments may include, but are not limited to: Member contributions to LEOFF; salaries or wages deferred pursuant to sections 401(k), 403(b), 414(h), 457, or other similar sections of the United States Internal Revenue Code.

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(2) **Deferred wages that are not attached to a position are special salary or wages excluded from LEOFF Plan I basic salary.**

(a) Employer matching payments are not basic salary. If a member acquires an additional payment that is conditioned upon taking some action in addition to providing services, the payment is based upon the additional action. It is not a salary or wage earned for services rendered. The payment is not basic salary.

**Example:** An employer offers to make a contribution to a deferred compensation plan only if the member elects to defer a portion of his or her salary. Because the member does not have an absolute right to receive the additional contribution for performing the duties required of his or her position, the payment is special salary or wages and is not basic salary.

(b) Additional deferred compensation offered to an individual is not basic salary. If an employer pays deferred compensation to a member in addition to the member's basic rate of pay, the payment is special salary or wages and does not qualify as basic salary.

[Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-3201, filed 12/6/96, effective 1/6/97.]

**WAC 415-104-3202 Retroactive basic salary increases attached to a position are LEOFF Plan I basic salary.** If a payment is part of the basic monthly rate of salary or wages attached to a position or is a longevity payment, it is basic salary even if the payment is retroactive. Payments upon reinstatement or in lieu of reinstatement are not considered retroactive basic salary increases. For treatment of those payments see WAC 415-104-3203(3).

[Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-3202, filed 12/6/96, effective 1/6/97.]

**WAC 415-104-3203 Paid leave is LEOFF Plan I basic salary.** Payments from an employer for authorized paid absences from work are basic salary.

**(1) Leave payments earned for services rendered:**

Most LEOFF members earn a certain number of leave hours per month, such as sick leave. The leave hours are earned by rendering service during the month the leave was accumulated. The payment a member receives when he or she uses an earned leave day is a deferred salary or wage for services previously rendered. It is basic salary.

**Example:** Assume a member accrues eight hours sick leave per month. The accrued leave in the member's sick leave balance is earned for personal services rendered during a payroll period. When the member is absent from work and uses the sick leave, the sick leave payment is basic salary.

Leave payments earned for services rendered are basic salary only to the extent that they are equivalent to the basic salary a member would have earned had the member been working. The portion of any leave payment that exceeds that amount is not basic salary.

**(2) Leave payments not earned for services rendered:** If an employer authorizes a period of paid leave but does not require the use of leave previously earned for services rendered, the payment is not a salary or wage for services rendered. However, RCW 41.26.197 authorizes service credit for all periods of paid leave. Because the periods are creditable, the pay received is considered basic salary to the extent that it is equal to the basic salary the member would have earned had he or she been working. The portion of a leave payment that exceeds that amount is not basic salary.

**Example:** An officer is placed on administrative leave with pay pending an investigation. Although the officer is not rendering services, the period is creditable as an authorized paid leave period under RCW 41.26.197.

**(3) Payments upon reinstatement or in lieu of reinstatement are paid leave and therefore qualify as basic salary.** The payment will count as basic salary for the payroll periods when the person would have earned the payment had he or she been working.

(a) In order for a payment in lieu of reinstatement to qualify as paid leave the person's termination date must occur after the payroll period(s) when the payment would have been earned.

(b) Payments under WAC 391-45-410 are basic salary for the period(s) covered by the reinstatement.

(c) Payments upon reinstatement or in lieu of reinstatement are basic salary only to the extent that they equal the basic salary a member would have earned had the member been working.

(4) **Union leave.** Periods of authorized leave to serve as an elected official of a labor organization which meet the requirements of RCW 41.26.197 qualify for service credit. The salary payments provided by the employer subject to reimbursement from the union qualify as basic salary for LEOFF Plan I to the extent that the payments do not exceed the basic salary for the highest paid job class covered by the collective bargaining agreement negotiated between the labor organization and the employer. The portion of any payment identified as paid leave in excess of that amount is not basic salary.

[Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-3203, filed 12/6/96, effective 1/6/97.]

**WAC 415-104-3204 Shift differential is LEOFF Plan I basic salary.** Additional payments to a member for working swing shift or night shift are attached to the duties of the position, e.g., working a nonstandard shift. Those payments are basic salary for LEOFF Plan I.

[Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-3204, filed 12/6/96, effective 1/6/97.]

**WAC 415-104-3205 Additional duty pay is LEOFF Plan I basic salary.** Salary or wages that a member receives for additional duty assignments are a part of the basic salary attached to the member's position. Those payments are basic salary for LEOFF Plan I.

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**Example:** A police officer is assigned to the bomb squad and receives an additional monthly payment for the hazardous duty assignment. The additional payment is for duties required by the employer as part of the member's position. It is attached to the position and is basic salary for LEOFF Plan I.

[Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-3205, filed 12/6/96, effective 1/6/97.]

#### **WAC 415-104-330 What are special salary or wages?**

(1) Special salary or wages for services rendered are payments that do not qualify as basic salary because the payment is based upon the attributes of the individual instead of being attached to the position. A payment is not attached to a position if it is not tied to specific duties required of all persons holding the position. Payments that are not attached to a position include but are not limited to the payments described in WAC 415-104-3302 and 415-104-3303.

(2) Longevity pay is not attached to a position because it is based upon the attributes of an individual. It is, however, specifically included as part of basic salary under RCW 41.26.030.

[Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-330, filed 12/6/96, effective 1/6/97.]

**WAC 415-104-3301 Educational premium payments are not LEOFF Plan I basic salary.** (1) If an employer provides additional salary based upon the member's level of education that payment is based upon the attributes of the individual and is not attached to the position. It is a special salary or wage and is not basic salary.

**Example:** An employer employs two different law enforcement officers in the position of sergeant. Although their duties are the same, one sergeant receives 3% more in salary than the other because she has a bachelor's degree which the other lacks. The additional 3% is not attached to the position because it is not attached to any additional duties. It is not basic salary for LEOFF Plan I.

(2) Payments conditioned upon acquiring and maintaining a designated certification such as emergency medical technician are a form of educational premium pay. The payment is based upon the attributes of the individual and is not attached to the position. It is a special salary or wage and is not basic salary.

[Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-3301, filed 12/6/96, effective 1/6/97.]

**WAC 415-104-3302 Performance bonuses are not LEOFF Plan I basic salary.** Payments to a member for meeting or exceeding performance goals set by the employer are not attached to a position and are not basic salary.

**Example:** An employer offers an annual bonus to members who do not have an accident for a year. The bonus is not part of the basic monthly rate of salary and is not basic salary for LEOFF Plan I.

[Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-3302, filed 12/6/96, effective 1/6/97.]

**WAC 415-104-3303 Cafeteria plans are not LEOFF Plan I basic salary.** Compensation paid under the provisions of a "cafeteria plan," "flexible benefits plan," or similar arrangement pursuant to section 125 of the United States Internal Revenue Code which give the member an absolute right to receive cash in lieu of the fringe benefits offered is a special salary or wage. Such compensation is not basic salary. If there is no cash option, the value of the fringe benefit is not a salary or wage and is not basic salary. See WAC 415-104-3402.

[Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-3303, filed 12/6/96, effective 1/6/97.]

**WAC 415-104-3304 Leave cash outs or other severance pay are not LEOFF Plan I basic salary.** (1) A cash out for unused accrued leave is a deferred salary or wage for services previously rendered. A payment in lieu of an accrual of leave qualifies as a leave cash out. The payment is not basic salary in LEOFF Plan I because it is a special salary or wage in addition to the basic monthly rate of salary or wages.

(2) Any other form of severance payment based upon termination is special salary or wages and is not included as basic salary in LEOFF Plan I.

[Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-3304, filed 12/6/96, effective 1/6/97.]

**WAC 415-104-3305 Overtime is not LEOFF Plan I basic salary.** Overtime, which is additional pay earned for working time in excess of regularly scheduled shift(s), is specifically excluded from basic salary for LEOFF Plan I by RCW 41.26.030 (13)(a). Overtime includes, but is not limited to:

(1) **Additional pay for working on a holiday.** If a member receives an extra payment because he or she worked on a scheduled holiday, the payment is overtime. The employer may make the additional payment when the holiday occurs or in a lump sum at some other time. In either case, the payment is not basic salary for LEOFF Plan I;

**Example:** A fire fighter works on Christmas day. In compensation for working a holiday, she is given the option of taking some other day off with pay or of receiving an extra day's pay in addition to her basic monthly rate of pay. If she opts for the extra day of pay, this payment is overtime and is not LEOFF Plan I basic salary. If she opts to take a day off, this is paid leave and qualifies as LEOFF Plan I basic salary.

(2) **Callback pay,** which is a special rate of pay some employers offer for being called back to work after the end of the member's regular shift;

(3) **Court pay,** which is an additional payment for appearing in court or performing other duties outside of a member's regularly scheduled shift.

[Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-3305, filed 12/6/96, effective 1/6/97.]

**WAC 415-104-3306 Deferred wages that are not attached to a position are not LEOFF Plan I basic salary.** See WAC 415-104-3201.

[Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-3306, filed 12/6/96, effective 1/6/97.]

**WAC 415-104-340 Disability payments are not LEOFF Plan I basic salary.** (1) Payments from an employer during periods of disability leave for a duty disability (RCW 41.26.120) or a nonduty disability (RCW 41.26.125) are not a payment from the employer for services rendered. The payment is not basic salary for LEOFF Plan I.

(2) Any payment from a third party such as an insurance company for a period of excused absence from work because of an injury or other disability is not a payment from an employer for services rendered. The payment is not basic salary for LEOFF Plan I.

[Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-340, filed 12/6/96, effective 1/6/97.]

**WAC 415-104-3401 Employer taxes and contributions are not LEOFF Plan I basic salary.** (1) Any employer payment of the employer or member portion of taxes imposed by the Federal Insurance Contribution Act (FICA) is not a salary or wage to a member and does not qualify as basic salary for LEOFF Plan I.

(2) Employer contributions to LEOFF are not a salary or wage and are not basic salary for LEOFF Plan I.

[Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-3401, filed 12/6/96, effective 1/6/97.]

**WAC 415-104-3402 Fringe benefits are not LEOFF Plan I basic salary.** Fringe benefits provided by an employer are not a salary or wage and therefore do not qualify as basic salary for LEOFF Plan I. Fringe benefits include but are not limited to:

(1) Any type of insurance such as medical, dental, or life insurance;

(2) Any contribution by an employer to meet the premium or charge for such plan or insurance; or

(3) Any payments by the employer into a private fund to provide health or welfare benefits for members and/or their dependents.

[Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-3402, filed 12/6/96, effective 1/6/97.]

**WAC 415-104-3403 Illegal payments are not LEOFF Plan I basic salary.** If an employer makes a payment without legal authority, that payment does not qualify as basic salary for LEOFF Plan I.

[Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-3403, filed 12/6/96, effective 1/6/97.]

**WAC 415-104-3404 Reimbursements or allowances in lieu of a reimbursement are not LEOFF Plan I basic salary.** (1) **Reimbursements.** If an employer reimburses a member for expenses incurred in providing services for the employer, the purpose of the payment is to pay the member back for out-of-pocket expenses. The payment is not compensation. It is not a salary or wage and is not basic salary for LEOFF Plan I.

**(2) Allowances.** An allowance paid in lieu of a specific reimbursement for expenses a member is expected to incur in providing services for the employer is characterized the same as a specific reimbursement. The purpose of the payment is to reimburse the member for anticipated out-of-pocket expenses. The payment is not compensation. It is not a salary or wage and does not qualify as basic salary for LEOFF Plan I.

**Example:** An employer provides an annual stipend for the purchase of a uniform or other clothing required for the performance of a member's duties. The payment is a reimbursement for expenses incurred or expected to be incurred and is not basic salary for LEOFF Plan I.

**(3) Payments based on additional certification or qualifications.** If a member receives payments based upon personal expenses incurred in maintaining a certification or qualification, the payment is reimbursement, not compensation. It is not a salary or wage and is not LEOFF Plan I basic salary.

[Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-3404, filed 12/6/96, effective 1/6/97.]

**WAC 415-104-3405 Standby pay is not LEOFF Plan I basic salary.** Payments to a member for time not actually worked when the member must be available to work if the need arises, are not a salary or wage for services rendered. Any such payment does not qualify as basic salary for LEOFF Plan I.

**Example:** Some employers provide payments to a member at less than the member's regular hourly rate in exchange for the member being available to come into work after his or her shift if called, although the member may not be called. Such payments, often referred to as "standby pay," are not basic salary for LEOFF Plan I.

[Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-3405, filed 12/6/96, effective 1/6/97.]

**WAC 415-104-3406 Retirement or termination bonuses are not LEOFF Plan I basic salary.** (1) **Payments based on notification of intent to retire.** An additional payment based fully or partially on notification of a member's intent to terminate or retire is in consideration for the notification. The payment is not a salary or wage for services rendered and is not basic salary for LEOFF Plan I.

(2) **Payments based on retirement eligibility.** Payments based fully or partially on retirement eligibility are specific to the member and are not attached to the position. These payments are not LEOFF Plan I basic salary.

[Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-3406, filed 12/6/96, effective 1/6/97.]

**WAC 415-104-350 Payments in lieu.** A payment or any other transfer in lieu of an item that does not qualify as basic salary is not basic salary for LEOFF Plan I.

[Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-350, filed 12/6/96, effective 1/6/97.]

(2003 Ed.)

## LEOFF PLAN 2

**WAC 415-104-360 How is basic salary for LEOFF Plan II determined?** (1) **What payments are included in LEOFF Plan II basic salary?** Other than the specific exclusions listed in WAC 415-104-397 and 415-104-401, a payment that is a salary or wage earned during a calendar month for personal services rendered by a member to an employer qualifies as LEOFF Plan II basic salary.

(a) Certain payments that are not for personal services rendered also qualify if there is a specific statutory provision identifying those payments as LEOFF Plan II basic salary. See WAC 415-104-373.

(b) Specific types of payments that qualify as LEOFF Plan II basic salary include, but are not limited to, the payments described in WAC 415-104-363(1) and 415-104-365 through 415-104-379.

(c) Other payments not specifically listed qualify as basic salary for LEOFF Plan II only if those payments are a salary or wage for services rendered.

(2) **Basic salary is earned when the service is rendered, rather than when payment is made.**

(3) **Salary characterizations are based upon the nature of the payment.** Whether a payment is basic salary depends upon whether the payment is earned as a salary or wage for services rendered. The name given to the payment is not controlling. The department determines whether a payment is basic salary by considering:

(a) What the payment is for; and

(b) Whether the reason for the payment brings it within the statutory definition of basic salary.

[Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-360, filed 12/6/96, effective 1/6/97.]

**WAC 415-104-363 Deferred wages.** (1) **If earned for services rendered, deferred wages are basic salary.** If a member earns salary or wages for services rendered during a payroll period but defers receipt of payment, those earnings are basic salary for LEOFF Plan II. Deferred wages include, but are not limited to:

(a) Member contributions to LEOFF;

(b) Salaries or wages deferred pursuant to sections 401(k), 403(b), 414(h), 457, or other similar sections of the United States Internal Revenue Code.

(2) **Deferred wages that a member does not have an absolute right to in exchange for rendering service to an employer are not basic salary.** If an employer offers additional payment that is conditioned on taking some action in addition to providing services, the payment is based upon the additional action and is not earned for services rendered. The payment does not qualify as basic salary for LEOFF Plan II.

**Example:** An employer offers to make a contribution to a deferred compensation plan on a member's behalf only if the member elects to defer a portion of his or her salary. Because the member does not have an absolute right to receive the contribution based solely on rendering service, the payment is not basic salary for LEOFF Plan II.

[Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-363, filed 12/6/96, effective 1/6/97.]

**WAC 415-104-365 Retroactive basic salary increases are LEOFF Plan II basic salary.** A retroactive salary increase received for a pay period that a member worked is a salary or wage for services rendered and is basic salary for LEOFF Plan II.

[Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-365, filed 12/6/96, effective 1/6/97.]

**WAC 415-104-367 Cafeteria plans.** Compensation received in any form under the provisions of a "cafeteria plan," "flexible benefits plan," or similar arrangement pursuant to section 125 of the United States Internal Revenue Code is basic salary for LEOFF Plan II if the member has an absolute right to receive cash or deferred payments in lieu of the fringe benefits offered. In such an instance, the fringe benefits are being provided in lieu of cash and are considered basic salary, just as the cash would be. If there is no cash option, the value of the fringe benefit is not a salary or wage and is not basic salary for LEOFF Plan II. See WAC 415-104-385.

[Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-367, filed 12/6/96, effective 1/6/97.]

**WAC 415-104-370 Overtime is LEOFF Plan II basic salary.** Overtime, additional pay earned for working time in excess of regularly scheduled shift(s), is a salary or wage for services rendered. Overtime payments are basic salary for LEOFF Plan II. Overtime includes, but is not limited to:

(1) **Additional pay for working on a holiday.** If a member receives an extra payment because he or she worked on a scheduled holiday, the payment is overtime. The employer may make the additional payment when the holiday occurs or in a lump sum at some other time. In either case, the payment is basic salary for LEOFF Plan II;

**Example:** A fire fighter works on Christmas day. As compensation for working a holiday, she is given the option of taking some other day off with pay or of receiving an extra day's pay. If she opts for the extra day of pay, this payment is overtime and is LEOFF Plan II basic salary. If she opts to take a day off, this is paid leave and qualifies as LEOFF Plan II basic salary.

(2) **Callback pay,** which is a special rate of pay some employers provide members for being called back to work after the end of the member's regular shift;

(3) **Court pay,** which is an additional payment for appearing in court or performing other duties outside of a member's regularly scheduled shift.

[Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-370, filed 12/6/96, effective 1/6/97.]

**WAC 415-104-373 Paid leave is LEOFF Plan II basic salary.** Payments received from an employer for authorized paid absences from work are basic salary for LEOFF Plan II. These payments may or may not be for services rendered. Paid leave is basic salary only to the extent that it is the equiv-

alent of the basic salary a member would have earned had the member been working. The portion of any payment identified as paid leave that exceeds that amount is not basic salary.

**(1) Leave payments earned for services rendered.**

Most LEOFF members earn a certain number of leave hours per month, such as sick leave. The leave hours are earned by rendering service during the month the leave was accumulated. The payment a member receives when he or she uses an earned leave day is a deferred salary or wage for services previously rendered. It is basic salary to the extent that it is equal to the basic salary the member would have earned had he or she been working.

**Example:** Assume a member accrues eight hours sick leave per month. The accrued leave in the member's sick leave balance is earned for personal services rendered during a payroll period. When the member is absent from work and uses the sick leave, the sick leave payment is basic salary.

**(2) Leave payments not earned for services rendered.**

If an employer authorizes a period of paid leave but does not require the use of leave previously earned for services rendered, the payment is not a salary or wage for services rendered. However, RCW 41.26.520 authorizes service credit for all periods of paid leave. Because the periods are creditable, the pay received is considered basic salary to the extent that it is equal to the basic salary the member would have earned had he or she been working.

**(3) Payments upon reinstatement or in lieu of reinstatement are paid leave and therefore qualify as basic salary.** The payment will count as basic salary for the payroll periods when the person would have earned the payment had he or she been working. In order for a payment in lieu of reinstatement to qualify as paid leave, the person's termination date must occur after the payroll period when the payment would have been earned. Because the periods are creditable, the pay received is considered basic salary to the extent that it is equal to the basic salary the member would have earned had he or she been working.

**(4) Union leave.** Periods of authorized leave to serve as an elected official of a labor organization which meet the requirements of RCW 41.26.520 qualify for service credit. The salary payments provided by the employer subject to reimbursement from the union qualify as basic salary for LEOFF Plan II to the extent that they do not exceed the highest paid job class covered by the collective bargaining agreement negotiated between the labor organization and the employer. The portion of any payment identified as paid leave in excess of that amount is not basic salary.

[Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-373, filed 12/6/96, effective 1/6/97.]

**WAC 415-104-374 LEOFF Plan 2 part-time leave of absence. (1) What are the LEOFF Plan 2 part-time leave rules for law enforcement officers?**

(a) You must be a current LEOFF Plan 2 *law enforcement* member;

(b) Your employer must authorize you to work part time and go on an unpaid part-time leave of absence;

(c) While in part-time work/part-time leave status, you cannot do any other work for pay for your employer; and

(d) When you return to full-time employment, the employment must be with the same employer who granted you the part-time leave.

**(2) May I purchase service credit for periods of part-time leave?**

(a) You may purchase service credit for any periods of any type of unpaid leave of absence, but only up to a *lifetime* maximum of two years of service credit.

(b) In purchasing service credit, you must pay the member, employer, and state contributions, plus interest. The contributions required will be based on the average of your basic salary at the time the employer granted your authorized leave of absence and your basic salary at the time you resumed full-time employment.

(c) You must complete the service credit purchase within five years of your return to full-time employment, or prior to your retirement, whichever is earlier.

(d) If you fail to complete the service credit purchase within five years of your return to full-time employment, you may purchase the service credit by paying the amount required under RCW 41.50.165(2) prior to retirement.

[Statutory Authority: RCW 41.50.050(5) and 41.26.520. 02-18-047, § 415-104-374, filed 8/28/02, effective 9/1/02.]

**WAC 415-104-375 Salary or wages not attached to a position are LEOFF Plan II basic salary.** A salary or wage for services rendered to an employer is basic salary for LEOFF Plan II regardless of whether the services are attached to a position.

**Example:** If an employee receives additional salary based upon his or her education, that additional salary is basic salary for LEOFF Plan II even if his or her position does not require that level of education. The payment of a higher salary based upon educational attainment is part of the total compensation for the services provided by the employee.

[Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-375, filed 12/6/96, effective 1/6/97.]

**WAC 415-104-377 Performance bonuses are LEOFF Plan II basic salary.** Payments you earn for meeting or exceeding performance goals set by your employer are a salary or wage for services rendered and qualify as basic salary for LEOFF Plan II. In order to qualify as basic salary, a performance bonus must be documented in an employer policy or specific agreement between the employer and member prior to earning the bonus.

**Example:** An employer offers an annual bonus to a member if he or she meets a certain performance goal, i.e., stays accident free for a year. If the member meets the goal and is paid the bonus, the bonus would be considered basic salary.

[Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-377, filed 12/6/96, effective 1/6/97.]

**WAC 415-104-379 Shift differential is LEOFF Plan**

**II basic salary.** Additional payments to a member for working swing shift or night shift are a salary or wage for services rendered. Those payments are basic salary for LEOFF Plan II.

[Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-379, filed 12/6/96, effective 1/6/97.]

**WAC 415-104-380 Disability payments.** (1) **Disability leave supplement.** Under certain circumstances, LEOFF II members are entitled to a disability leave supplement for periods of disability leave. See RCW 41.04.500 through 41.04.550.

(a) Employer contributions to the disability leave supplement under RCW 41.04.510(3) are not a salary or wage for services rendered and do not qualify as basic salary. Although the payments are paid leave, they are specifically excluded from basic salary by RCW 41.04.525.

(b) The member paid portion of the disability leave supplement is funded through use of the member's accumulated sick or vacation leave. This portion of the disability leave supplement is, therefore, basic salary, see WAC 415-104-373. The member will receive only partial service credit for the accumulated leave portion of the disability leave supplement.

(c) A member may apply to receive full service credit for some periods of duty disability under RCW 41.26.470(3).

(2) **Workers' compensation.** Payments made to a member under Title 51 RCW are neither a salary or wage for services rendered nor paid leave. The payments are not basic salary for LEOFF II. This is true whether the payments come from the workers' compensation trust fund or from an employers' self-insurance program authorized under Title 51 RCW.

(3) **Private insurance.** Some employers provide additional disability insurance as a supplement to workers' compensation. Any payment from a third party insurance company is neither paid leave nor payment for services rendered. It does not qualify as basic salary for LEOFF Plan II.

(4) **Disability leave banks.** If an employer maintains a disability leave bank which may be used to make salary replacement payments for members during periods of disability, such payments are paid leave and qualify as basic salary subject to the provisions of WAC 415-104-373: Provided, however, That if the leave provided to an employee is based upon leave earned by another employee then it is a form of shared leave and does not qualify as basic salary.

[Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-380, filed 12/6/96, effective 1/6/97.]

**WAC 415-104-383 Employer taxes and contributions are not LEOFF Plan II basic salary.** (1) Any payment by a member's employer of the employer portion of taxes imposed by the Federal Insurance Contribution Act is not a salary or wage and does not qualify as basic salary for LEOFF Plan II.

(2) Employer contributions to LEOFF Plan II are not a salary or wage paid to the member and do not qualify as basic salary.

[Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-383, filed 12/6/96, effective 1/6/97.]

**WAC 415-104-385 Fringe benefits are not LEOFF Plan II basic salary.** Fringe benefits are not a salary or wage and therefore do not qualify as basic salary for LEOFF Plan II. Fringe benefits include, but are not limited to:

(1) Any type of insurance such as medical, dental or life insurance;

(2) Any employer contribution to meet the premium or charge for such plan or insurance; or

(3) Any payments by the employer into a private fund to provide health or welfare benefits for the member (or the member and the member's dependents), except for compensation paid pursuant to a bona fide cafeteria plan, flexible benefit plan or similar arrangement as described in WAC 415-104-367.

[Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-385, filed 12/6/96, effective 1/6/97.]

**WAC 415-104-387 Illegal payments are not LEOFF Plan II basic salary.** If an employer disburses a payment that the employer does not have legal authority to make, that payment does not qualify as basic salary for LEOFF Plan II.

[Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-387, filed 12/6/96, effective 1/6/97.]

**WAC 415-104-390 Reimbursements or allowances in lieu of a reimbursement are not LEOFF Plan II basic salary.** (1) **Reimbursement.** If an employer reimburses a member for expenses incurred in providing services for the employer, the purpose of the payment is to pay the member back for out-of-pocket expenses. The payment is not compensation. It is not a salary or wage and is not basic salary for LEOFF Plan II.

(2) **Allowance.** An allowance paid in lieu of a specific reimbursement for expenses a member is expected to incur in providing services for the employer is characterized the same as a specific reimbursement. The purpose of the payment is to reimburse the member for out-of-pocket expenses. The payment is not compensation. It is not a salary or wage and does not qualify as basic salary for LEOFF Plan II.

**Example:** An employer provides an annual stipend for the purchase of a uniform or other clothing required for the performance of a members' duties. The payment is a reimbursement for expenses incurred or expected to be incurred and is not basic salary for LEOFF Plan II.

[Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-390, filed 12/6/96, effective 1/6/97.]

**WAC 415-104-393 Standby pay is not LEOFF Plan II basic salary.** Payments to a member for time not actually worked when the member must be available to work if the need arises, are not a salary or wage for services rendered. Any such payment does not qualify as basic salary for LEOFF Plan II.

**Example:** Some employers provide payments to a member at less than the member's regular hourly rate in

exchange for the member being available to come into work after his or her shift if called, although the member may not be called. Such payments, often referred to as "standby pay," are not basic salary for LEOFF Plan II.

[Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-393, filed 12/6/96, effective 1/6/97.]

**WAC 415-104-395 Termination or retirement bonuses are not LEOFF Plan II basic salary.** An additional payment based on notification of a member's intent to terminate or retire is in consideration for the notification of intent to retire or terminate. The payment is not a salary or wage for services rendered and is not basic salary for LEOFF Plan II.

[Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-395, filed 12/6/96, effective 1/6/97.]

**WAC 415-104-397 Statutorily excluded payments are not LEOFF Plan II basic salary.** Payments authorized by a statute that excludes the payment from the calculation of a public retirement allowance do not qualify as basic salary.

[Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-397, filed 12/6/96, effective 1/6/97.]

**WAC 415-104-401 Cash outs of accrued leave or other forms of severance pay are not LEOFF Plan II basic salary.** (1) A cash out from an employer for unused accrued leave, is a deferred salary or wage for services previously rendered. However, the payment is not basic salary because it is specifically excluded from the definition of basic salary in RCW 41.26.030 (13)(b).

(2) **Other forms of severance pay are not basic salary.** Any form of severance payment received from an employer upon termination, is not included as basic salary in LEOFF Plan II because it is excluded from the statutory definition of basic salary.

[Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-401, filed 12/6/96, effective 1/6/97.]

**WAC 415-104-405 Payments in lieu.** A payment or any other transfer in lieu of an item that does not qualify as basic salary, is not basic salary. The only exception is compensation paid pursuant to bona fide cafeteria plan, flexible benefit plan or similar arrangement as described in WAC 415-104-3302.

[Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-405, filed 12/6/96, effective 1/6/97.]

**WAC 415-104-450 Designation of beneficiaries—Death benefit if a member dies before retirement.** (1) As a member, you have the right to designate a beneficiary or beneficiaries to receive a benefit in the event of your death while you are an active member. You may change your beneficiary designation at any time by filing a change of beneficiary form with the department.

(2) As a member you may name:

(a) An organization or person, including your unborn or later adopted children. Unborn or later adopted children will not be included unless you specifically designate them as

beneficiaries on the form. You must state the date of birth for any living person you name as a beneficiary;

- (b) Your estate;
- (c) A trust in existence at the time of death. Before making distribution to the trust the department must receive:
  - (i) A copy of the trust document;
  - (ii) The name, address, telephone number of the current trustee; and
  - (iii) The tax identification number;
  - (d) A trust to be established under your last will.
- (3) You may name contingent beneficiaries in addition to primary beneficiaries.

#### **Examples:**

##### **EXAMPLE ONE.**

###### **Facts**

John, a member, completes a beneficiary designation form.

In the place on the form reserved for persons, he names his daughter Ann. He checks the box to indicate that Ann is a primary beneficiary.

In the place on the form reserved for trust/organizational beneficiaries, he lists the "Barbara Trust." His daughter Barbara is the trust beneficiary. He checks the box to indicate that the trust is a primary beneficiary.

###### **Result**

Subject to applicable statute, at John's death, the department will consider both the Barbara Trust and daughter Ann as primary beneficiaries. The department will require the name of the trustee, the tax identification number, a copy of the trust and other information specified in this rule before distribution to the trust.

##### **EXAMPLE TWO.**

###### **Facts**

John, a member, completes a beneficiary designation form.

In the place on the form reserved for persons, he names his daughter Ann. He checks the box to indicate that Ann is a primary beneficiary.

In the place on the form reserved for trust/organizational beneficiaries, he lists his daughter Barbara personally (no trust name is provided). He checks the box labeled "primary beneficiary." John misunderstands the form and rather than provide the names of the trustee or trust administrator, John writes the word "both" in the blank provided.

###### **Result**

At John's death, the department learns that John has created no trusts. Subject to existing statute, if the department receives no notice of competing claims to John's death benefit, the department will distribute the death benefit to Ann. If the department receives notice of competing claims, a court resolution may be required.

[Statutory Authority: RCW 41.50.050. 00-10-017, § 415-104-450, filed 4/21/00, effective 5/22/00.]

#### **MINIMUM MEDICAL AND HEALTH STANDARDS**

**WAC 415-104-500 Purpose.** The regulations contained in WAC 415-104-510 through 415-104-750 are adopted as the minimum medical and health standards which must be met or exceeded before a law enforcement officer or fire fighter may become a member of the retirement system contained in chapter 41.26 RCW as now existing or hereafter amended. Such regulations are adopted pursuant to chapter 41.26 RCW (chapter 257, Laws of 1971 1st ex. sess.) and are to be applied consistent with the provisions of that act. The minimum medical and health standards are not hiring standards. They relate only to membership in the LEOFF system.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-500, filed 2/15/78. Formerly WAC 297-50-010.]

#### **WAC 415-104-510 Minimum standards for membership—Physical examination.** (1) Requirements:

(a) Medical examination administered by a licensed physician or surgeon as set forth under provisions of chapter 18.71 RCW. Physician or surgeon to be appointed by the appropriate city or county disability board. Causes for rejection will be consistent with recommendations outlined in these standards.

(b) A medical history will be supplied by each applicant to the examining physician. The medical history will include information on past and present diseases, injuries, and operations.

(c) The applicant must possess normal vision. He must demonstrate normal visual functions and visual acuity not less than 20/100 vision in each eye without correction and corrected to 20/20 in the better eye and 20/30 in the lesser eye. He must possess normal color vision.

(d) Applicant must possess normal hearing. Hearing acuity level to be determined by audiometric hearing test.

(e) Applicant must be at least eighteen years of age, and shall not have reached forty-five years of age at the time of appointment.

(f) Retention on a permanent basis by the employer of the results of the physical examination on all applicants employed under these standards is required.

##### **(2) Procedure:**

(a) Completion of the report of medical history by the applicant.

(b) The physical examination will be conducted by a licensed physician or surgeon after a review of the report of medical history completed by the applicant.

(c) The physician shall record his findings on the report of medical history and shall note thereon, for evaluation by the hiring authority, any past or present physical defects, diseases, injuries, operations, or conditions of an abnormal or unusual nature and whether applicant is or is not qualified. Reports of medical history shall be typewritten or printed, and the summary of defects and diagnosis shall refer to the applicable section of these standards as cause for rejection.

(d) Physical examination reports shall be placed in permanent files by the employer and must be available for exam-

ination at any reasonable time by representatives of the retirement system board.

[Statutory Authority: RCW 41.50.050(5), 41.50.090 and 41.26.051. 84-03-047 (Order V), § 415-104-510, filed 1/18/84. Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-510, filed 2/15/78. Formerly WAC 297-50-020.]

**WAC 415-104-520 Abdomen and gastrointestinal system.** The following conditions of the abdomen and gastrointestinal system are causes for rejection of membership:

(1) **Cholecystectomy**, sequelae of, such as postoperative stricture of common bile duct, reforming of stones in hepatic or common bile ducts, or incisional hernia, or postcholecystectomy syndrome when symptoms are so severe as to interfere with normal performance of duty;

(2) **Cholecystitis**, acute or chronic, with or without cholelithiasis if diagnosis is confirmed by usual laboratory procedures or authentic medical records;

(3) **Cirrhosis**, regardless of the absence of manifestations such as jaundice, ascites or known esophageal varices, abnormal liver function tests with or without history of chronic alcoholism;

(4) **Fistula**, in ano;

(5) **Gastritis**, chronic hypertrophic, severe;

(6) **Hemorrhoids**:

(a) External hemorrhoids producing marked symptoms;

(b) Internal hemorrhoids, if large or accompanied with hemorrhage or protruding intermittently or constantly;

(7) **Hepatitis**, within the preceding six months, or persistence of symptoms after a reasonable period of time with objective evidence of impairment of liver function;

(8) **Hernia**:

(a) Hernia other than small asymptomatic umbilical or hiatal;

(b) History of operation for hernia within the preceding sixty days;

(9) **Intestinal obstruction**, or authenticated history of more than one episode, if either occurred during the preceding five years, or if resulting conditions remain which produces significant symptoms or requires treatment;

(10) **Megacolon**, of more than minimal degree, diverticulitis, regional enteritis, and ulcerative colitis. Irritable colon of more than moderate degree;

(11) **Pancreas**, acute or chronic disease of, if proven by laboratory tests, or authenticated medical records;

(12) **Rectum**, stricture or prolapse of;

(13) **Resection, gastric or of bowel; or gastroenterostomy**, but minimal intestinal resection in infancy or childhood is acceptable if the individual has been asymptomatic since the resection and if surgical consultation (to include upper and lower gastrointestinal series) gives complete clearance. For example: Intussusception or pyloric stenosis;

(14) **Scars**:

(a) Scars, abdominal, regardless of cause, which show hernial bulging or which interfere with movements;

(b) Scar pain associated with disturbance of function of abdominal wall or contained visceral;

(15) **Sinuses**, of the abdominal wall;

(16) **Splenectomy**, except when accomplished for the following:

(a) Trauma;

(b) Causes unrelated to diseases of the spleen;

(c) Hereditary spherocytosis;

(d) Disease involving the spleen when followed by correction of the condition for a period of at least two years;

(17) **Tumors**, see WAC 415-104-720 and 415-104-725;

(18) **Ulcer**:

(a) Ulcer of the stomach or duodenum if diagnosis is confirmed by x-ray examination, or authenticated history thereof;

(b) Authentic history of surgical operation(s) for gastric or duodenal ulcer;

(19) **Other congenital or acquired abnormalities and defects** which preclude satisfactory performance of duties or which require frequent and prolonged treatment.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-520, filed 2/15/78. Formerly WAC 297-50-030.]

**WAC 415-104-530 Blood and blood-forming tissue diseases.** The following conditions of the blood and blood-forming tissue diseases are causes for rejection of membership:

(1) **Anemia**:

(a) Blood loss anemia—until both condition and basic cause are corrected;

(b) Deficiency anemia, not controlled by medication;

(c) Abnormal destruction of RBC's: Hemolytic anemia;

(d) Faulty RBC construction: Hereditary hemolytic anemia, thalassemia and sickle cell anemia;

(e) Myelophthisic anemia: Myelomatosis, leukemia, Hodgkin's disease;

(f) Primary refractory anemia: Aplastic anemia, DiGuglielmo's syndrome;

(2) **Hemorrhagic states**:

(a) Due to changes in coagulation system (hemophilia, etc.);

(b) Due to platelet deficiency;

(c) Due to vascular instability;

(3) **Leukopenia**, chronic or recurrent, associated with increased susceptibility to infection;

(4) **Myeloproliferative disease** (other than leukemia):

(a) Myelofibrosis;

(b) Megakaryocytic myelosis;

(c) Polycythemia vera;

(5) **Splenomegaly until the cause is remedied**;

(6) **Thromboembolic disease** except for acute, nonrecurrent conditions.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-530, filed 2/15/78. Formerly WAC 297-50-040.]

**WAC 415-104-540 Dental.** The following dental conditions are causes for rejection of membership:

(1) **Diseases of the jaws or associated tissues**, which are not easily remediable and which will incapacitate the individual or prevent the satisfactory performance of duty;

(2) **Malocclusion**, severe, which interferes with the mastication of a normal diet;

(3) **Orthodontic appliances:** Individuals with orthodontic appliances attached to the teeth are administratively unacceptable so long as active treatment is required. Individuals with retainer orthodontic appliances who are not considered to require active treatment are administratively acceptable;

(4) **Oral tissues**, extensive loss of, in an amount that would prevent replacement of missing teeth with a satisfactory prosthetic appliance;

(5) Relationship between the mandible and maxilla of such a nature as to preclude future satisfactory prosthodontic replacement.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-540, filed 2/15/78. Formerly WAC 297-50-050.]

**WAC 415-104-550 Ears.** The following conditions of the ear are causes for rejection of membership:

(1) **Auditory canal:**

(a) Atresia or severe stenosis of the external auditory canal;

(b) Tumors of the external auditory canal except mild exostoses;

(c) Severe external otitis, acute or chronic;

(2) **Auricle:** Agenesis, severe; or severe traumatic deformity, unilateral or bilateral;

(3) **Mastoids:**

(a) Mastoiditis, acute or chronic;

(b) Residual or mastoid operation with marked external deformity which precludes or interferes with the wearing of a gas mask or helmet;

(c) Mastoid fistula;

(4) **Meniere's syndrome;**

(5) **Middle ear:**

(a) Acute or chronic suppurative otitis media. Individuals with a recent history of acute suppurative otitis media will not be accepted unless the condition is healed and a sufficient interval of time subsequent to treatment has elapsed to insure that the disease is in fact not chronic;

(b) Adhesive otitis media associated with hearing level by audiometric test of 20 db or more average for the speech frequencies (500, 1000, and 2000 cycles per second) in either ear regardless of the hearing level in the other ear;

(c) Acute or chronic serous otitis media;

(d) Presence of attic perforation in which presence of cholesteatoma is suspected;

(e) Repeated attacks of catarrhal otitis media; intact greyish, thickened drum(s);

(6) **Tympanic membrane:**

(a) Any perforation of the tympanic membrane;

(b) Severe scarring of the tympanic membrane associated with hearing level by audiometric test of 20 db or more average for the speech frequencies (500, 1000, and 2000 cycles per second) in either ear regardless of the hearing level in the other ear;

(7) **Other diseases and defects of the ear** which obviously preclude satisfactory performance of duty or which require frequent and prolonged treatment.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-550, filed 2/15/78. Formerly WAC 297-50-060.]

**WAC 415-104-555 Hearing.** The following hearing condition is cause for rejection of membership: Hearing acuity level by audiometric testing (regardless of conversational or whispered voice hearing acuity) greater than that described in WAC 415-104-560 (Table 1).

There is no objection to conducting the whispered voice test or the spoken voice test as a preliminary to conducting the audiometric hearing test.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-555, filed 2/15/78.]

**WAC 415-104-560 Table 1—Table of acceptable audiometric hearing level.**

Acceptable Audiometric Hearing Level (Present American Standard) For Appointment							
250	500	1000	2000	3000	4000	6000	8000
256	512	1024	2048	2896	4096	6144	8192
a. Both ears . . . (1)							
	Average of six readings in these speech frequencies not greater than 20 decibels with no level greater than 25 decibels. (divide by six)						
b. Better ear . . . (1)	15	15	15	(2)	30	(2)	(1)
Worse ear . . . (1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
(1) No requirement							
(2) Not yet standardized							

(1) "Better ear" is interpreted to mean the ear with better hearing at the frequency level being tested.  
 (2) Not yet standardized

Medical history report to contain ASA readings; consult table below:

CONVERSION TABLE			
ASA	Hz	ISO	Db
500	15	500	30
1000	15	1000	25
2000	15	2000	25
4000	30	4000	35

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-560, filed 2/15/78. Formerly WAC 297-50-070.]

**WAC 415-104-570 Endocrine and metabolic disorders.** The following endocrine and metabolic disorders or conditions are causes for rejection of membership:

(1) Adrenal gland, malfunction of, of any degree;

(2) Cretinism;

(3) Diabetes insipidus;

(4) Diabetes mellitus;

(5) Gigantism or acromegaly;

(6) Glycosuria, persistent, regardless of cause;

(7) Goiter:

(a) Simple goiter with definite pressure symptoms or so large in size as to interfere with the wearing of a uniform or firefighting equipment;

(b) Thyrotoxicosis;

- (8) **Gout;**
- (9) **Hyperinsulinism**, confirmed, symptomatic;
- (10) **Hyperparathyroidism and hypoparathyroidism;**
- (11) **Hypopituitarism**, severe;
- (12) **Myxedema**, spontaneous or postoperative with clinical manifestations and not based solely on low basal metabolic rate;
- (13) **Nutritional deficiency diseases**, (including spru, beriberi, pellagra, and scurvy) which are more than mild and not readily remediable or in which permanent pathological changes have been established;
- (14) **Other endocrine or metabolic disorders** which obviously preclude satisfactory performance of duty which require frequent and prolonged treatment.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-570, filed 2/15/78. Formerly WAC 297-50-080.]

**WAC 415-104-580 Upper extremities.** The following conditions of the upper extremities are causes for rejection of membership:

(1) **Limitation of motion:** An individual will be considered unacceptable if the joint ranges of motion are less than the measurements listed below;

- (a) **Shoulder:**
    - (i) Forward elevation to 90°;
    - (ii) Abduction to 90°;
  - (b) **Elbow:**
    - (i) Flexion to 100°;
    - (ii) Extension to 15°;
  - (c) **Wrist:** A total range of 15° (extension plus flexion);
  - (d) **Hand:** Pronation to the first quarter of the normal arc;
  - (e) **Fingers:** Inability to clench fist, pick up a pin or needle, and grasp an object;
- (2) **Hand and fingers:**
- (a) Absence (or loss) of more than 1/3 of the distal phalanx of either thumb;
  - (b) Absence or loss of distal and middle phalanx of an index, middle, or ring finger of either hand irrespective of the absence (or loss) of little finger;
  - (c) Absence of more than the distal phalanx of any two of the following fingers: index, middle, or ring finger, of either hand;
  - (d) Absence of hand or any portion thereof except for fingers as noted above;
  - (e) **Hyperdactyly;**
  - (f) Scars and deformities of the fingers and/or hand which impair circulation, are symptomatic, are so disfiguring as to make the individual objectionable in ordinary social relationships, or which impair normal function to such a degree as to interfere with the satisfactory performance of duty;

(3) **Wrist, forearm, elbow, arm, and shoulder:** Healed disease or injury of wrist, elbow, or shoulder with residual weakness or symptoms of such a degree as to preclude satisfactory performance of duty.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-580, filed 2/15/78. Formerly WAC 297-50-090.]

**WAC 415-104-584 Lower extremities.** See WAC 415-104-588. The following conditions of the lower extremities are causes for rejection of membership:

(1) **Limitation of motion:** An individual will be considered unacceptable if the joint ranges of motion are less than the measurements listed below;

- (a) **Hip:**
  - (i) Flexion to 90°;
  - (ii) Extension to 10° (beyond 0);
- (b) **Knee:**
  - (i) Full extension;
  - (b) Flexion to 90°;
- (c) **Ankle:**
  - (i) Dorsiflexion to 10°;
  - (ii) Plantar flexion to 10°;
- (2) **Foot and ankle:**
  - (a) Absence of one or more small toes of one or both feet, if function of the foot is poor or running or jumping is precluded, or absence of foot or any portion thereof except for toes as noted herein;
  - (b) Absence (or loss) of great toe(s) or loss of dorsal flexion thereof if function of the foot is impaired;
  - (c) Claw toes precluding the wearing of service boots;
  - (d) Clubfoot;
  - (e) Flatfoot, pronounced cases, with decided eversion of the foot and marked bulging of the inner border, due to inward rotation of the astragalus, regardless of the presence or absence of symptoms;
  - (f) Flatfoot, spastic;
  - (g) Hallux valgus, if severe and associated with marked exostosis or bunion;
  - (h) Hammer toe which interferes with the wearing of boots;
    - (i) Healed disease, injury, or deformity including hyperdactyly which precludes running, is accompanied by disabling pain, or which prohibits wearing of service boots;
    - (j) Ingrowing toe nails, if severe, and not remediable;
    - (k) Obliteration of the transverse arch associated with permanent flexion of the small toes;
    - (l) Pes cavus, with contracted plantar fascia, dorsiflexed toes, tenderness under the metatarsal heads, and callosity under the weight bearing areas;
  - (3) **Leg, knee, thigh, and hip:**
    - (a) Dislocated semilunar cartilage, loose or foreign bodies within the knee joint, or history of surgical correction of same if—
      - (i) Within the preceding six months;
      - (ii) Six months or more have elapsed since operation without recurrence, and there is instability of the knee ligaments in lateral or anteroposterior directions in comparison with the normal knee or abnormalities noted on x-ray, there is significant atrophy or weakness of the thigh musculature in comparison with the normal side, there is not acceptable active motion in flexion and extension, or there are other symptoms of internal derangement;
      - (b) Authentic history or physical findings of an unstable or internally deranged joint causing disabling pain or seriously limiting functions. Individuals with verified episodes of buckling or locking of the knee who have not undergone

satisfactory surgical correction or if, subsequent to surgery, there is evidence of more than mild instability of the knee ligaments in lateral and anteroposterior directions in comparison with the normal knee; weakness or atrophy of the thigh musculature in comparison with the normal side, or if the individual requires medical treatment of sufficient frequency to interfere with the performance of duty;

**(4) General:**

(a) Deformities of one or both lower extremities which have interfered with function to such a degree as to prevent the individual from following a physically active vocation in life or which would interfere with the satisfactory completion of prescribed training and performance of duty;

(b) Diseases or deformities of the hip, knee, or ankle joint which interfere with walking, running, or weight bearing;

(c) Pain in lower back or leg which is intractable and disabling to the degree of interfering with walking, running, and weight bearing;

(d) Shortening of a lower extremity resulting in any limp of noticeable degree.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-584, filed 2/15/78. Formerly WAC 297-50-090.]

**WAC 415-104-588 Miscellaneous extremities.** See also WAC 415-104-580 and 415-104-584. The following conditions of the miscellaneous extremities are causes for rejection of membership:

**(1) Arthritis:**

(a) Active or subacute arthritis, including Marie-Strumpell type;

(b) Chronic osteoarthritis or traumatic arthritis of isolated joints of more than minimal degree, which has interfered with the following of a physically active vocation in civilian life or which precludes the satisfactory performance of duty;

(c) Documented clinical history of rheumatoid arthritis;

(d) Traumatic arthritis of a major joint of more than minimal degree;

**(2) Disease of any bone or joint,** healed, with such resulting deformity or rigidity that function is impaired to such a degree that it will interfere with service;

**(3) Dislocation,** old unreduced; substantiated history of recurrent dislocations of major joints; instability of a major joint, symptomatic and more than mild; or if, subsequent to surgery, there is evidence of more than mild instability in comparison with the normal joint, weakness or atrophy in comparison with the normal side, or if the individual requires medical treatment of sufficient frequency to interfere with the performance of duty;

**(4) Fractures:**

(a) Malunited fractures that interfere significantly with function;

(b) Ununited fractures;

(c) Any old or recent fracture in which a plate, pin, or screws were used for fixation and left in place and which may be subject to easy trauma, i.e., as a plate tibia, etc;

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(5) Injury of a bone or joint within the preceding six weeks, without fracture or dislocation, of more than a minor nature;

(6) Muscular paralysis, contracture, or atrophy, if progressive or of sufficient degree to interfere with service;

(7) Myotonia congenita, confirmed;

(8) Osteomyelitis, active or recurrent, of any bone or substantiated history of osteomyelitis of any of the long bones unless successfully treated two or more years previously without subsequent recurrence or disqualifying sequelae as demonstrated by both clinical and x-ray evidence;

(9) Osteoporosis;

(10) Scars, extensive, deep or adherent, of the skin and soft issues or neuromas of an extremity which are painful, which interfere with muscular movements, which preclude the wearing of equipment, or that show a tendency to break down;

(11) Chondromalacia, manifested by verified history of joint effusion, interference with function, or residuals from surgery.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-588, filed 2/15/78. Formerly WAC 297-50-090.]

**WAC 415-104-590 Eyes.** The following conditions of the eye are causes for rejection of membership:

**(1) Lids:**

(a) Blepharitis, chronic, more than mild. Cases of acute blepharitis will be rejected until cured;

(b) Blepharospasm;

(c) Dacryocystitis, acute or chronic;

(d) Destruction of the lids, complete or extensive, sufficient to impair protection of the eye from exposure;

(e) Disfiguring cicatrices and adhesions of the eyelids to each other or to the eyeball;

(f) Growth or tumor of the eyelid other than small early basal cell tumors of the eyelid, which can be cured by treatment, and small nonprogressive symptomatic benign lesions;

(g) Marked inversion or eversion of the eyelids sufficient to cause unsightly appearance or watering of eyes (entropion or ectropion);

(h) Lagophthalmos;

(i) Ptosis interfering with vision;

(j) Trichiasis, severe;

**(2) Conjunctive:**

(a) Conjunctivitis, chronic, including vernal catarrh and trachoma. Individuals with acute conjunctivitis are unacceptable until the condition is cured;

(b) Pterygium:

(i) Pterygium recurring after three operative procedures;

(ii) Pterygium encroaching on the cornea in excess of three millimeters or interfering with vision;

**(3) Cornea:**

(a) Dystrophy, corneal, of any type including keratoconus of any degree;

(b) Keratitis, acute or chronic;

(c) Ulcer, corneal; history of recurrent ulcers or corneal abrasions (including herpetic ulcers);

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(d) Vascularization or opacification of the cornea from any cause which interferes with visual function or is progressive;

(4) **Uveal tract:** Inflammation of the uveal tract except healed traumatic choroiditis;

(5) **Retina:**

(a) Angiomatoses, phakomatoses, retinal cysts, and other congenito-hereditary conditions that impair visual function;

(b) Degenerations of the retina to include macular cysts, holes and other degenerations (hereditary as acquired degenerative changes) and other conditions affecting the macule. All types of pigmentary degenerations (primary and secondary);

(c) Detachment of the retina or history of surgery for same;

(d) Inflammation of the retina (retinitis or other inflammatory conditions of the retina to include Coat's disease, diabetic retinopathy, Earles' disease, and retinitis proliferans);

(6) **Optic nerve:**

(a) Congenito-hereditary conditions of the optic nerve or any other central nervous system pathology affecting the efficient function of the optic nerve;

(b) Optic neuritis, neuroretinitis, or secondary optic atrophy resulting therefrom or document history of attacks of retrobulbar neuritis;

(c) Optic atrophy (primary or secondary);

(d) Papilledema;

(7) **Lens:**

(a) Aphakia (unilateral or bilateral);

(b) Dislocation, partial or complete, of a lens;

(c) Opacities of the lens which interfere with vision or which are considered to be progressive;

(8) **Ocular mobility and motility:**

(a) Diplopia, documented, constant or intermittent from any cause or of any degree interfering with visual function (i.e., may suppress);

(b) Diplopia, monocular, documented, interfering with visual function;

(c) Myasthenia, with both eyes fixing, congenital or acquired;

(d) Strabismus of forty prism diopters or more, uncorrectable by lenses to less than forty diopters;

(e) Strabismus of any degree accompanied by documented diplopia;

(f) Strabismus, surgery for the correction of, within the preceding six months;

(9) **Miscellaneous defects and diseases:**

(a) Abnormal conditions of the eye or visual fields due to diseases of the central nervous system;

(b) Absence of an eye;

(c) Asthenopia severe;

(d) Exophthalmos, unilateral or bilateral;

(e) Glaucoma, primary or secondary;

(f) Hemianopsia of any type;

(g) Loss of normal pupillary reflex reactions to light or accommodation to distance or Adies syndrome;

(h) Loss of visual fields due to organic disease;

(i) Night blindness associated with objective disease of the eye. Verified congenital night blindness;

(j) Residuals of old contusions, lacerations, penetrations, etc., which impair visual function required for satisfactory performance of duty;

(k) Retained intra-ocular foreign body;

(l) Tumors, see WAC 415-104-590 (1)(f), 415-104-720, and 415-104-725;

(m) Any organic disease of the eye or adnexa not specified above which threatens continuity of vision or impairment of visual functions.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-590, filed 2/15/78. Formerly WAC 297-50-100.]

**WAC 415-104-595 Vision.** The following vision conditions are causes for rejection of membership:

(1) **Distant visual acuity** not less than 20/100 vision in each eye without correction and corrected to 20/20 in the better eye and 20/30 in the lesser eye within eight diopters of plus or minus refractive error;

(2) **Near visual acuity:** Near visual acuity of any degree which does not correct to at least J-6 in the better eye;

(3) **Refractive error:** Any degree of refractive error in spherical equivalent of over -8.00 or +8.00; or if ordinary spectacles cause discomfort by reason of ghost images, prismatic displacement, etc.; or if an ophthalmological consultation reveals a condition which is disqualifying;

(4) **Contact lens:** Complicated cases requiring contact lens for adequate correction of vision as keratoconus, corneal scars, and irregular astigmatism.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-595, filed 2/15/78. Formerly WAC 297-50-100.]

**WAC 415-104-600 Genitalia.** The following conditions of the genitalia are causes for rejection of membership:

(1) **Bartholinitis**, Bartholin's cyst;

(2) **Cervicitis**, acute or chronic manifested by leukorrhea;

(3) **Dysmenorrhea**, incapacitating to a degree which necessitates recurrent absences of more than a few hours from routine activities;

(4) **Endometriosis**, or confirmed history thereof;

(5) **Hemaphroditism**;

(6) **Menopausal syndrome**, either physiologic or artificial if manifested by more than mild constitutional or mental symptom, or artificial menopause if less than thirteen months have elapsed since cessation of menses. In all cases of artificial menopause, the clinical diagnosis will be reported; if accomplished by surgery, the pathologic report will be obtained and recorded;

(7) **Menstrual cycle**, irregularities of, including menorrhagia, if excessive; metrorrhagia; polymenorrhea; amenorrhea, except as noted in WAC 415-104-600(6);

(8) **New growths of the internal or external genitalia** except single uterine fibroid, subserous, asymptomatic, less than three centimeters in diameter, with no general enlargement of the uterus, see also WAC 415-104-720 and 415-104-725;

(9) **Oophoritis**, acute or chronic;

- (10) Ovarian cysts, persistent and considered to be of clinical significance;
- (11) Pregnancy;
- (12) Salpingitis, acute or chronic;
- (13) Testicle(s):
  - (a) Absence or nondescent of both testicles;
  - (b) Undiagnosed enlargement or mass of testicle or epididymis;
  - (c) Undescended testicle;
- (14) Urethritis, acute or chronic, other than gonorrhreal urethritis without complications;
- (15) Uterus:
  - (a) Cervical polyps, cervical ulcer, or marked erosion;
  - (b) Endocervicitis, more than mild;
  - (c) Generalized enlargement of the uterus due to any cause;
  - (d) Malposition of the uterus if more than mildly symptomatic;
- (16) Vagina:
  - (a) Congenital abnormalities or severe lacerations of the vagina;
  - (b) Vaginitis, acute or chronic, manifested by leukorrhea.
- (17) Varicocele or hydrocele, if large or painful;
- (18) Vulva:
  - (a) Leukoplakia;
  - (b) Vulvitis, acute or chronic.
- (19) Major abnormalities and defects of the genitalia such as a change of sex, a history thereof, or complications (adhesions, disfiguring scars, etc.) residual to surgical correction of these conditions.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-600, filed 2/15/78. Formerly WAC 297-50-110.]

**WAC 415-104-605 Urinary system.** See WAC 415-104-570(1), 415-104-720, and 415-104-725. The following conditions of the urinary system are causes for rejection of membership:

- (1) **Albuminuria** if persistent or recurrent including so-called orthostatic or functional albuminuria;
- (2) **Cystitis, chronic:** Individuals with acute cystitis are unacceptable until the condition is cured;
- (3) **Enuresis** determined to be a symptom of an organic defect not amendable to treatment, see also WAC 415-104-688;
- (4) **Epispadias or hypospadias** when accompanied by evidence of infection of the urinary tract or if clothing is soiled when voiding;
- (5) **Hematuria, cylindruria,** or other findings indicative of renal tract disease;
- (6) **Incontinence of urine;**
- (7) **Kidney:**
  - (a) Absence of one kidney, regardless of cause;
  - (b) Acute or chronic infections of the kidney;
  - (c) Cystic or polycystic kidney, confirmed history of;
  - (d) Hydronephrosis or pyonephrosis;
  - (e) Nephritis, acute or chronic;
  - (f) Pyelitis, pyelonephritis;

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(8) **Penis**, amputation of, if the resulting stump is insufficient to permit micturition in a normal manner;

(9) **Peyronie's disease;**

(10) **Prostate gland**, hyperthropy of, with urinary retention;

(11) **Renal calculus:**

(a) Substantiated history of bilateral renal calculus at any time;

(b) Verified history of renal calculus at any time with evidence of stone formation within the preceding twelve months, current symptoms or positive x-ray for calculus;

(12) **Skeneitis;**

(13) **Urethra:**

(a) Stricture of the urethra;

(b) Urethritis, acute or chronic, other than gonorrhreal urethritis without complications;

(14) **Urinary fistula;**

(15) **Other diseases and defects of the urinary system** which obviously preclude satisfactory performance of duty or which require frequent and prolonged treatment.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-605, filed 2/15/78. Formerly WAC 297-50-110.]

**WAC 415-104-610 Head.** The following conditions of the head are causes for rejection of membership:

(1) **Abnormalities** which are apparently temporary in character resulting from recent injuries until a period of three months has elapsed. These include severe contusions and other wounds of the scalp and cerebral concussion;

(2) **Deformities** of the skull in the nature of depressions, exostoses, etc., of a degree which would prevent the individual from the wearing of a gas mask or headgear;

(3) **Deformities of the skull of any degree** associated with evidence of disease of the brain, spinal cord, or peripheral nerves;

(4) **Depressed fractures near central sulcus** with or without convulsive seizures;

(5) **Loss or congenital absence** of the bony substance of the skull, except that the examiner may find individuals acceptable when—

(a) The area does not exceed 2.5 centimeters square, and does not overlie the motor cortex or a dural sinus;

(b) There is no evidence of alteration of brain function in any of its several spheres (intelligence, judgment, perception, behavior, motor control, sensory function, etc.);

(c) There is no evidence of bone degeneration, disease, or other complications of such a defect;

(6) **Unsightly deformities**, such as large birthmarks, large hairy moles, extensive scars, and mutilations due to injuries or surgical operations; ulcerational fistulae, atrophy, or paralysis of part of the face or neck.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-610, filed 2/15/78. Formerly WAC 297-50-120.]

**WAC 415-104-615 Neck.** The following conditions of the neck are causes for rejection of membership:

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(1) **Cervical ribs** if symptomatic, or so obvious that they are found on routine physical examination. (Detection based primarily on x-ray is not considered to meet this criterion);

(2) Congenital cysts of branchial cleft origin or those developing from the remnants of the thyroglossal duct, with or without fistulous tracts;

(3) **Fistula**, chronic draining, of any type;

(4) **Healed tuberculosis lymph nodes** when extensive in number or densely calcified;

(5) **Nonspastic contraction** of the muscles of the neck or cicatricial contracture of the neck to the extent that it interferes with the wearing of a uniform or equipment or is so disfiguring as to make the individual objectionable in common social relationships;

(6) **Spastic contraction** of the muscles of the neck, persistent, and chronic;

(7) **Tumor of thyroid or other structures of the neck**, see WAC 415-104-720 and 415-104-725.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-615, filed 2/15/78. Formerly WAC 297-50-120.]

**WAC 415-104-620 Heart.** The following conditions of the heart are causes for rejection of membership:

(1) **All organic valvular diseases of the heart**, including those improved by surgical procedures;

(2) **Coronary artery disease** or myocardial infarction, old or recent or true angina pectoris, at any time;

(3) **Electrocardiographic evidence** of major arrhythmias such as—

(a) Atrial tachycardia, flutter, or fibrillation, ventricular tachycardia or fibrillation;

(b) Conduction defects such as first degree atrio-ventricular block and right bundle branch block (These conditions occurring as isolated findings are not unfitting when cardiac evaluation reveals no cardiac disease.);

(c) Left bundle branch block, second and third degree aV block;

(d) Unequivocal electrocardiographic evidence of old or recent myocardial infarction; coronary insufficiency at rest or after stress; or evidence of heart muscle disease;

(4) **Hypertrophy or dilation of the heart** as evidenced by clinical examination or roentgenographic examination and supported by electrocardiographic examination. Care should be taken to distinguish abnormal enlargement from increased diastolic filling as seen in the well conditioned subject with a sinus bradycardia;

(5) **Myocardial insufficiency** (congestive circulatory failure, cardiac decompensation) obvious or covert, regardless of cause;

(6) **Paroxysmal tachycardia** within the preceding five years, or at any time if recurrent or disabling or if associated with electrocardiographic evidence of accelerated aV conduction (Wolff-Parkinson-White);

(7) **Pericarditis; endocarditis; or myocarditis**, history or finding of, except for a history of a single acute idiopathic or coxsackie pericarditis with no residuals;

(8) **Tachycardia** persistent with a resting pulse rate of 100 or more, regardless of cause.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-620, filed 2/15/78. Formerly WAC 297-50-130.]

**WAC 415-104-624 Vascular system.** The following conditions of the vascular system are causes for rejection of membership:

(1) **Congenital or acquired lesions of the aorta and major vessels**, such as syphilitic aortitis, demonstrable atherosclerosis which interferes with circulation, congenital or acquired dilatation of the aorta (especially is associated with other features of Marfan's syndrome), and pronounced dilatation of the main pulmonary artery;

(2) **Hypertension** evidenced by preponderant blood pressure readings of 150-mm or more systolic in an individual over thirty-five years of age or preponderant readings of 140-mm or more systolic in an individual thirty-five years of age or less. Preponderant diastolic pressure over 90-mm diastolic is cause for rejection at any age;

(3) **Marked circulatory instability** as indicated by orthostatic hypotension, persistent tachycardia, severe peripheral vasomotor disturbances, and sympatheticotonia;

(4) **Peripheral vascular disease** including Raynaud's phenomena, Buerger's disease (thromboangiitis obliterans), erythromelalgia, arteriosclerotic and diabetic vascular diseases. Special tests will be employed in doubtful cases;

(5) **Thrombophlebitis**:

(a) History of thrombophlebitis with persistent thrombus or evidence of circulatory obstruction or deep venous incompetence in the involved veins;

(b) Recurrent thrombophlebitis;

(6) **Varicose veins**, if more than mild, or if associated with edema, skin ulceration, or residual scars from ulceration.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-624, filed 2/15/78. Formerly WAC 297-50-130.]

**WAC 415-104-628 Heart and vascular system—Miscellaneous.** The following conditions of the heart and vascular system are causes for rejection of membership:

(1) **Aneurysm of the heart or major vessel**, congenital or acquired;

(2) **History and evidence of a congenital abnormality** which has been treated by surgery but with residual abnormalities or complications, for example: Patent ductus arteriosus with residual cardiac enlargement or pulmonary hypertension; resection of a coarctation of the aorta without a graft when there are other cardiac abnormalities or complications; closure of a secundum type atrial septal defect when there are residual abnormalities or complications;

(3) **Major congenital abnormalities and defects of the heart and vessels** unless satisfactorily corrected without residuals or complications. Uncomplicated dextrocardia and other minor asymptomatic anomalies are acceptable;

(4) **Substantiated history of rheumatic fever or chorea** within the previous two years, recurrent attacks of rheumatic fever or chorea at any time, or with evidence of residual cardiac damage.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-628, filed 2/15/78. Formerly WAC 297-50-130.]

**WAC 415-104-630 Height.** The following conditions are causes for rejection of membership:

(1) **Men:** Height below . . . inches or over . . . inches, as specified by hiring agency;

(2) **Women:** Height below . . . inches or over . . . inches, as specified by hiring agency.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-630, filed 2/15/78. Formerly WAC 297-50-140.]

**WAC 415-104-634 Weight.** The following conditions are causes for rejection of membership:

(1) **Weight related to height** which is below the minimum shown in WAC 415-104-650 (Table 2);

(2) **Weight related to age and height** which is in excess of the maximum shown in WAC 415-104-650 (Table 2) for all applicants.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-634, filed 2/15/78. Formerly WAC 297-50-140.]

**WAC 415-104-638 Body build.** The following conditions of body build are causes for rejection of membership:

(1) **Congenital malformation of bones and joints;**

(2) **Deficient muscular development** which would interfere with the completion of required training;

(3) **Evidence of congenital asthenia** (slender bones; weak thorax; visceroptosis, severe chronic constipation; or "drop heart" if marked in degree);

(4) **Obesity:** Even though the individual's weight is within the maximum shown in WAC 415-104-650 (Table 2) he will be reported as medically unacceptable when the medical and musculature, constitutes obesity of such a degree as to interfere with the satisfactory completion of prescribed training.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-638, filed 2/15/78. Formerly WAC 297-50-140.]

#### **WAC 415-104-640 Lungs and chest wall—General.**

The following conditions of the lungs and chest are causes for rejection of membership, until study indicates recovery without disqualifying sequelae:

(1) **Abnormal elevation of the diaphragm** on either side;

(2) **Acute abscess** of the lung;

(3) **Acute bronchitis** until the condition is cured;

(4) **Acute fibrinous pleurisy**, associated with acute nontuberculous pulmonary infection;

(5) **Acute mycotic disease** of the lung such as coccidioidomycosis and histoplasmosis;

(6) **Acute nontuberculous pneumonia;**

(7) **Foreign body in trachea or bronchus;**

(8) **Foreign body of the chest wall** causing symptoms;

(9) **Lobectomy**, history of, for a nontuberculous nonmalignant lesion with residual pulmonary disease. Removal of more than one lobe is cause for rejection regardless of the absence of residuals;

(10) **Other traumatic lesions** of the chest or its contents;

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(11) **Pneumothorax**, regardless of etiology or history thereof;

(12) **Recent fracture** of ribs, sternum, clavicle, or scapula;

(13) **Significant abnormal findings** on physical examination of the chest.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-640, filed 2/15/78. Formerly WAC 297-50-150.]

**WAC 415-104-644 Lungs and chest—Tuberculous lesions.** See also WAC 415-104-710. The following tubercular lesions of the lungs and chest are causes for rejection of membership:

(1) **Active tuberculosis** in any form or location;

(2) **Pulmonary tuberculosis**, active within the past five years;

(3) **Substantiated history or x-ray findings** of pulmonary tuberculosis of more than minimal extent at any time; or minimal tuberculosis not treated with a full year of approved chemotherapy or combined chemotherapy and surgery; or a history of pulmonary tuberculosis with reactivation, relapse, or other evidence of poor host resistance.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-644, filed 2/15/78. Formerly WAC 297-50-150.]

**WAC 415-104-648 Lungs and chest—Nontuberculous lesions.** The following nontubercular lesions of the lungs and chest are causes for rejection of membership:

(1) **Acute mastitis**, chronic cystic mastitis, if more than mild;

(2) **Bronchial asthma**, except for childhood asthma with a trustworthy history of freedom from symptoms since the twelfth birthday;

(3) **Bronchitis**, chronic with evidence of pulmonary function disturbance;

(4) **Bronchiectasis;**

(5) **Bronchopleura fistula;**

(6) **Bullous or generalized pulmonary emphysema;**

(7) **Chronic abscess of lung;**

(8) **Chronic fibrous pleuritis** of sufficient extent to interfere with pulmonary function or obscure the lung field in the roentgenogram;

(9) **Chronic mycotic diseases** of the lung including coccidioidomycosis; residual cavitation or more than a few small-sized inactive and stable residual modules demonstrated to be due to mycotic disease;

(10) **Empyema**, residual sacculation or unhealed sinuses of chest wall following operation for empyema;

(11) **Extensive pulmonary fibrosis** from any cause, producing dyspnea on exertion;

(12) **Foreign body of the lung or mediastinum** causing symptoms or active inflammatory reaction;

(13) **Multiple cystic disease** of the lung or solitary cyst which is large and incapacitating;

(14) **New growth on breast, history of mastectomy;**

(15) **Osteomyelitis** of rib, sternum, clavicle, scapula, or vertebra;

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(16) **Pleurisy with effusion** of unknown origin within the preceding five years;

(17) **Sarcoidosis**, see WAC 415-104-710;

(18) **Suppurative periostitis** of rib, sternum, clavicle, scapula, or vertebra.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-648, filed 2/15/78. Formerly WAC 297-50-150.]

#### **WAC 415-104-650 Table 2—Table of weight.**

**Table of Acceptable Weight (in Pounds)  
as Related to Age and Height for Applicants**

Height (Inches)	Minimum (regardless of age)	Maximum			
		19-20 years	21-24 years	25-30 years	31-35 years
60	94	163	173	173	173
61	96	171	176	175	175
62	98	174	178	178	177
63	100	178	182	181	180
64	102	183	184	185	185
65	104	187	190	191	190
66	106	191	196	197	196
67	109	196	201	202	201
68	112	202	207	208	207
69	115	208	213	214	212
70	118	214	219	219	218
71	122	219	224	225	223
72	125	225	231	232	230
73	129	231	239	238	237
74	135	237	246	246	243
75	140	243	253	253	251
76	143	248	260	260	257
77	147	254	267	267	264
78	149	260	275	273	271

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-650, filed 2/15/78. Formerly WAC 297-50-160.]

**WAC 415-104-660 Mouth.** The following conditions of the mouth are causes for rejection of membership:

(1) **Hard palate**, perforation of;

(2) **Harelip**, unless satisfactorily repaired by surgery;

(3) **Leukoplakia**, if severe;

(4) **Lips**, unsightly mutilations of, from wounds, burns, or disease;

(5) **Ranula**, if extensive, see also WAC 415-104-720 and 415-104-725.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-660, filed 2/15/78. Formerly WAC 297-50-180.]

**WAC 415-104-663 Nose and sinuses.** The following conditions of the nose and sinuses are causes for rejection of membership:

(1) **Allergic manifestations:**

(a) Chronic atrophic rhinitis;

(b) Hay fever if severe; or if not controllable by antihistamines or by desensitization, or both;

(2) **Choana, atresia, or stenosis of**, if symptomatic;

(3) **Nasal septum, perforation of:**

(a) Associated with interference of function, ulceration or crusting, and when the result of organic disease;

(b) If progressive;

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(c) If respiration is accompanied by a whistling sound;

(4) **Sinusitis, acute**;

(5) **Sinusitis, chronic**, when more than mild:

(a) Evidenced by any of the following: Chronic purulent nasal discharge, large nasal polyps, hyperplastic changes of the nasal tissues, or symptoms requiring frequent medical attention;

(b) Confirmed by transillumination or x-ray examination or both.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-663, filed 2/15/78. Formerly WAC 297-50-180.]

**WAC 415-104-666 Pharynx, trachea, esophagus, and larynx.** The following conditions of the pharynx, trachea, esophagus, and larynx are causes for rejection of membership:

(1) **Esophagus**, organic disease of, such as ulceration, varices, achalsia; peptic esophagitis; if confirmed by appropriate x-ray or esophagoscopic examinations;

(2) **Laryngeal paralysis**, sensory or motor, due to any cause;

(3) **Larynx**, organic disease of, such as neoplasm, polyps, granuloma, ulceration, and chronic laryngitis;

(4) **Plica dysphonia ventricularis**;

(5) **Tracheostomy or tracheal fistula**.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-666, filed 2/15/78. Formerly WAC 297-50-180.]

**WAC 415-104-668 Miscellaneous mouth, throat, and nose diseases.** The following miscellaneous mouth, throat, and nose diseases are causes for rejection of membership:

(1) **Aphonia**;

(2) **Deformities or conditions of the mouth, throat, pharynx, larynx, esophagus, and nose**, which interfere with mastication and swallowing of ordinary food, with speech, or with breathing;

(3) **Destructive syphilitic disease of the mouth, nose, throat, larynx, esophagus**, see WAC 415-104-730;

(4) **Pharyngitis and nasopharyngitis**, chronic, with positive history of objective evidence, if of such a degree as to result in excessive time lost in the fire or law enforcement environment.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-668, filed 2/15/78. Formerly WAC 297-50-180.]

**WAC 415-104-670 Neurological disorders.** The following neurological disorders are causes for rejection of membership:

(1) **Degenerative disorders**:

(a) Cerebellar and Friedreich's ataxia;

(b) Cerebral arteriosclerosis;

(c) Encephalomyelitis, residuals of, which preclude the satisfactory performance of duties;

(d) Huntington's chorea;

(e) Multiple sclerosis;

(f) Muscular atrophies and dystrophies of any type;

(2) **Miscellaneous**:

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(a) Congenital malformations if associated with neurological manifestations and meningocele even if uncomplicated;

(b) Migraine when frequent and incapacitating;

(c) Paralysis or weakness, deformity, coordination, pain, sensory disturbances of consciousness, or personality abnormalities regardless of cause which are of such a nature or degree as to preclude the satisfactory performance of duty;

(d) Tremors, spasmotic torticollis, athetosis or other abnormal movements more than mild;

(3) **Neurosypphilis of any form** (general paresis, tabes dorsalis, meningovascular syphilis);

(4) **Paroxysmal convulsive disorders**, disturbances of consciousness, all forms of psychomotor or temporal lobe epilepsy or history thereof except for seizures associated with toxic states or fever during childhood up to the age of twelve;

(5) **Peripheral nerve disorder:**

(a) Polyneuritis;

(b) Mononeuritis or neuralgia which is chronic or recurrent and of an intensity that is periodically incapacitating;

(c) Neurofibromatosis;

(6) **Spontaneous subarachnoid hemorrhage**, verified history of, unless cause has been surgically corrected.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-670, filed 2/15/78. Formerly WAC 297-50-190.]

**WAC 415-104-680 Psychoses.** The following psychotic conditions are causes for rejection of membership: Psychosis or authenticated history of a psychotic illness other than those of a brief duration associated with a toxic or infectious process.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-680, filed 2/15/78. Formerly WAC 297-50-200.]

**WAC 415-104-684 Psychoneuroses.** The following psychoneurotic conditions are causes for rejection of membership:

(1) **History of a psychoneurotic reaction which caused:**

(a) Hospitalization;

(b) Prolonged care by a physician;

(c) Loss of time from normal pursuits for repeated periods even if of brief duration, or

(d) Symptoms or behavior of a repeated nature which impaired school or work efficiency;

(2) **History of a brief psychoneurotic reaction or nervous disturbance** within the preceding twelve months which was sufficiently severe to require medical attention or absence from work or school for a brief period (maximum of seven days).

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-684, filed 2/15/78. Formerly WAC 297-50-200.]

**WAC 415-104-688 Personality disorders.** The following personality disorders are causes for rejection of membership:

(1) **Character and behavior disorders**, as evidenced by:

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(a) Frequent encounters with law enforcement agencies, or anti-social attitudes or behavior which, while not a cause for administrative rejection, are tangible evidence of an impaired characterological capacity to adapt to the service;

(b) Sexual deviant practices such as exhibitionism, transvestism, voyeurism, etc;

(c) Chronic alcoholism or alcohol addiction;

(d) Drug use or addiction;

(2) **Character and behavior disorders** where it is evident by history and objective examination that the degree of immaturity, instability, personality inadequacy, and dependency will seriously interfere with adjustment in the service as demonstrated by repeated inability to maintain reasonable adjustment in school, with employers and fellow workers, and other society groups;

(3) **Other symptomatic immaturity reactions** such as authenticated evidence of enuresis which is habitual or persistent, not due to an organic condition occurring beyond early adolescence (age twelve to fourteen) and stammering or stuttering of such a degree that the individual is normally unable to express himself clearly or to repeat commands;

(4) **Specific learning defects** secondary to organic or functional mental disorders.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-688, filed 2/15/78. Formerly WAC 297-50-200.]

**WAC 415-104-690 Skin and cellular tissues.** The following conditions of the skin and cellular tissues are causes for rejection of membership:

(1) **Acne:** Severe, when the face is markedly disfigured, or when extensive involvement of the neck, shoulders, chest, or back would be aggravated by or interfere with the wearing of required equipment;

(2) **Atopic dermatitis:** With active or residual lesions in characteristic areas (face and neck, antecubital and popliteal fossae, occasionally wrists and hands), or documented history thereof;

(3) **Cysts:** (a) Pilonidal cysts: If evidenced by the presence of a tumor mass or a discharging sinus;

(b) All other cysts. Of such a size or location as to interfere with the normal wearing of required equipment;

(4) **Dermatitis factitia;**

(5) **Dermatitis herpetiformis;**

(6) **Eczema:** Any type which is chronic and resistant to treatment;

(7) **Elephantiasis or chronic lymphedema;**

(8) **Epidermolysis bullosa; pemphigus;**

(9) **Fungus infections**, systemic or superficial types: If extensive and not amendable to treatment;

(10) **Furunculosis:** Extensive, recurrent, or chronic;

(11) **Hyperhidrosis** of hands or feet: Chronic or severe;

(12) **Ichthyosis:** Severe;

(13) **Leprosy:** Any type;

(14) **Leukemia cutis; mycosis fungoides, Hodgkins' disease;**

(15) **Lichen planus;**

(16) **Lupus erythematosus** (acute, subacute, or chronic) or any other dermatosis aggravated by sunlight;

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- (17) **Neurofibromatosis** (Von Recklinghausen's disease);
- (18) **Nevi or vascular tumors:** If extensive, unsightly, or exposed to constant irritation;
- (19) **Psoriasis** or verified history thereof;
- (20) **Radiodermatitis;**
- (21) **Scars** which are so extensive, deep, or adherent that they may interfere with the wearing of required equipment, or that show a tendency to ulcerate;
- (22) **Scleroderma:** Diffuse type;
- (23) **Tuberculosis**, see WAC 415-104-710;
- (24) **Warts, plantar**, which have materially interfered with the following of a useful vocation in civilian life;
- (25) **Urticaria:** Chronic;
- (26) **Xanthoma:** If disabling or accompanied by hypercholesterolemia or hyperlipemia;
- (27) **Any other chronic skin disorder** of a degree or nature which requires frequent outpatient treatment or hospitalization, interferes with the satisfactory performance of duty, or is so disfiguring as to make the individual objectionable in ordinary social relationships.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-690, filed 2/15/78. Formerly WAC 297-50-210.]

**WAC 415-104-700 Spine and sacroiliac joints.** The report of the medical history by the examining physician requires a full back x-ray (cervical-dorsal-lumbar-sacral). See WAC 415-104-588. The following conditions of the spine and sacroiliac joints are causes for rejection of membership:

- (1) **Arthritis**, see WAC 415-104-588(1);
- (2) **Complaint of disease or injury of the spine or sacroiliac joints** either with or without objective signs and symptoms which have prevented the individual from successfully following a physically active vocation in civilian life. Substantiation or documentation of the complaint without symptoms and objective signs is required;
- (3) **Deviation or curvature of spine** from normal alignment, structure, or function (scoliosis, kyphosis, or lordosis, spina bifida occulta, spondylolysis, etc.) if:
  - (a) Mobility and weight-bearing power is poor;
  - (b) More than moderate restriction of normal physical activities is required;
  - (c) Of such a nature as to prevent the individual from following a physically active vocation in civilian life;
  - (d) Of a degree which will interfere with the wearing of required equipment;
  - (e) Symptomatic, associated with positive physical finding(s) demonstrable by x-ray;
- (4) **Disease of the lumbosacral or sacroiliac joints** of a chronic type and obviously associated with pain referred to the lower extremities, muscular spasm, postural deformities and limitation of motion in the lumbar region of the spine;
- (5) **Granulomatous diseases** either active or healed;
- (6) **Healed fracture of the spine or pelvic bones** with associated symptoms which have prevented the individual from following a physically active vocation in civilian life or

which preclude the satisfactory performance of required duties;

(7) **Ruptured nucleus pulposus** (herniation of intervertebral disk) or history of operation for this condition;

(8) **Spondylolysis or spondylolisthesis** that is symptomatic or is likely to interfere with performance of duty or is likely to require assignment limitations.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-700, filed 2/15/78. Formerly WAC 297-50-220.]

**WAC 415-104-705 Scapulae, clavicles, and ribs.** See WAC 415-104-588. The following conditions of the scapulae, clavicles, and ribs are causes for rejection of membership:

(1) **Fractures**, until well healed, and until determined that the residuals thereof will not preclude satisfactory performance of required duties;

(2) **Injury within the preceding six weeks**, without fracture, or dislocation, of more than a minor nature;

(3) **Osteomyelitis** of rib, sternum, clavicle, scapula, or vertebra;

(4) **Prominent scapulae** interfering with function or with the wearing of required equipment.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-705, filed 2/15/78. Formerly WAC 297-50-220.]

**WAC 415-104-710 Systemic diseases.** The following systemic diseases are causes for rejection of membership:

- (1) **Dermatomyositis;**
- (2) **Lupus erythematosus**; acute, subacute, or chronic;
- (3) **Progressive systemic sclerosis;**
- (4) **Reiter's disease;**
- (5) **Sarcoidosis;**
- (6) **Scleroderma**, diffuse type;
- (7) **Tuberculosis:**
  - (a) Active tuberculosis in any form or location;
  - (b) Pulmonary tuberculosis;
  - (c) Confirmed history of tuberculosis of a bone or joint, genitourinary organs, intestines, peritoneum or mesenteric glands at any time;
  - (d) Meningeal tuberculosis; disseminated tuberculosis.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-710, filed 2/15/78. Formerly WAC 297-50-230.]

**WAC 415-104-715 Miscellaneous conditions and defects.** The following miscellaneous conditions and defects are causes for rejection of membership:

- (1) **Allergic manifestations:**
  - (a) Allergic rhinitis (hay fever), see WAC 415-104-570(2);
  - (b) Asthma, see WAC 415-104-670 (2)(c);
  - (c) Allergic dermatoses, see WAC 415-104-690;
  - (d) Visceral, abdominal, and cerebral allergy, if severe or not responsive to treatment;

(2) **Any acute pathological condition**, including acute communicable diseases, until recovery has occurred without sequelae;

(3) Any deformity which is markedly unsightly or which impairs general functional ability to such an extent as to prevent satisfactory performance of duty;

(4) Chronic metallic poisoning especially beryllium, manganese, and mercury. Undesirable residuals from lead, arsenic, or silver poisoning make the examinee medically unacceptable;

(5) Cold injury, residuals, of (example: frostbite, chilblain, immersion foot, or trench foot) such as deep seated acne, paresthesia, hyperhidrosis, easily traumatized skin, cyanosis, amputation of any digit or ankylosis;

(6) Positive tests for syphilis with negative TPI test unless there is a documented history of adequately treated lues or any of the several conditions which are known to give a false-positive S.T.S. (vaccinia, infectious hepatitis, immunizations, a typical pneumonia, etc.) or unless there has been a reversal to a negative S.T.S. during an appropriate follow-up period (three to six months);

(7) Filariasis; trypanosomiasis; amebiasis; schistosomiasis; (hookworm) associated with anemia, malnutrition, etc., if more than mild, and other similar worm or animal parasitic infestations, including the carrier states thereof;

(8) Heat pyrexia (heatstroke, sunstroke, etc.): Documented evidence of predisposition (includes disorders of sweat mechanism and previous serious episode), recurrent episodes requiring medical attention, or residual injury resulting therefrom (especially cardiac, cerebral, hepatic, and renal);

(9) Industrial solvent and other chemical intoxication, chronic including carbon bisulfide, trichlorethylene, carbon tetrachloride, and methyl cellosolve;

(10) Mycotic infection of internal organs;

(11) Myositis or fibrosis severe, chronic;

(12) Residuals of tropical fevers and various parasitic or protozoal infestations which in the opinion of the medical examiner preclude the satisfactory performance of duty.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-715, filed 2/15/78. Formerly WAC 297-50-230.]

**WAC 415-104-720 Tumors.** The following tumors are causes for rejection of membership:

(1) Any tumor of the:

- (a) Auditory canal, if obstructive;
- (b) Eye or orbit;
- (c) Kidney, bladder, testicle, or penis

(d) Central nervous system and its membranous coverings unless five years after surgery and no otherwise disqualifying residuals of surgery or original lesion;

(2) Benign tumors of the thyroid or other structures of the neck, including enlarged lymph nodes, if the enlargement is of such degree as to interfere with the wearing of required equipment;

(3) Benign tumors of the abdominal wall if sufficiently large to interfere with required duties;

(4) Benign tumors of bone likely to continue to enlarge, be subjected to trauma during service, or show malignant potential;

(5) Tongue, benign tumor of, if it interferes with function;

(6) Breast, thoracic contents, or chest wall tumors, of other than fibromata lipomata, and inclusion of sebaceous cysts which do not interfere with required duties;

(7) Tumors of the internal or external female genitalia.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-720, filed 2/15/78. Formerly WAC 297-50-240.]

#### **WAC 415-104-725 Malignant diseases and tumors.**

The following malignant diseases and tumors are causes for rejection of membership:

(1) Leukemia, acute or chronic;

(2) Malignant lymphomata;

(3) Malignant tumor of any kind, at any time, substantiated diagnosis of, even though surgically removed, confirmed by accepted laboratory procedures, except as noted in WAC 415-104-590 (1)(f).

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-725, filed 2/15/78. Formerly WAC 297-50-240.]

**WAC 415-104-730 Venereal diseases.** In general the finding of acute, uncomplicated venereal disease which can be expected to respond to treatment is not a cause for medical rejection of membership.

However, the following conditions are causes for rejection of membership:

(1) Chronic venereal disease which has not satisfactorily responded to treatment. The finding of a positive serologic test for syphilis following adequate treatment of syphilis is not in itself considered evidence of chronic venereal disease which has not responded to treatment. See WAC 415-104-715(6);

(2) Complications and permanent residuals of venereal disease if progressive, of such nature as to interfere with the satisfactory performance of duty, or if subject to aggravation in the performance of required duties;

(3) Neurosyphilis, see WAC 415-104-670 (1)(c).

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-730, filed 2/15/78. Formerly WAC 297-50-250.]

**WAC 415-104-740 Mental examination.** The following mental conditions are causes for rejection of membership:

(1) Psychosis or authenticated history of a psychotic illness other than those of a brief duration associated with a toxic or infectious process;

(2) A history of a psychoneurotic reaction which caused:

- (a) Hospitalization;
- (b) Prolonged care by a physician;
- (c) Loss of time from normal pursuits for repeated periods even if of brief duration;

(d) Symptoms or behavior of a repeated nature which impaired school or work efficiency;

(3) A history of a brief psychoneurotic reaction or nervous disturbance within the preceding twelve months

which was sufficiently severe to require medical attention or absence from work or school for a brief period;

(4) **Character or behavior (personality) disorders** as evidenced by:

(a) Frequent encounters with the law enforcement agencies, or antisocial attitudes or behavior which, while not a cause for rejection, are tangible evidence of an impaired characterological capacity to adapt to the demands of the service;

(b) Sexual deviant practice such as exhibitionism, transvestism, voyeurism, etc.;

(c) Chronic alcoholism or alcohol addiction;

(d) Drug addiction, including the use of drugs;

(5) **Character and behavior disorders** where it is evident by history and objective examination that the degree of immaturity, instability, personality inadequacy and dependency will seriously interfere with the performance of duties as demonstrated by repeated inability to maintain reasonable adjustment in school, with employers, and fellow workers and other social groups;

(6) **Other symptomatic immaturity reactions** such as authenticated evidence of neurosis which is habitual or persistent, not due to an organic condition occurring beyond early adolescence (age twelve to fourteen) and stammering and stuttering of such degree that the individual is normally unable to express himself clearly or to converse in a normal manner;

(7) **Specific learning defects** secondary to organic or functional mental disorders.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-740, filed 2/15/78. Formerly WAC 297-50-260.]

**WAC 415-104-745 Mental examination—Requirement.** All applicants must be screened by a licensed physician, who may at his discretion, request the assistance of a psychiatrist or clinical psychologist.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-745, filed 2/15/78. Formerly WAC 297-50-260.]

#### **WAC 415-104-750 Mental examination—Procedure.**

(1) Applicants will complete preliminary history forms as required by the examiner. The "report of medical history" completed by the applicant will be made available to the examiner.

(2) During the psychiatric interview, the examining physician will evaluate each individual sufficiently to eliminate those with symptoms of a degree that would impair their effective performance of duty.

(a) The applicant's behavior will be observed and an estimate made of his current mental status.

(b) Any evidence of disorganized or unclear thinking, or unusual thought control, or undue suspiciousness, or of apathy or "strangeness" will be noted.

(c) Any unusual emotional expression such as depression, expansiveness, withdrawal, or marked anxiety, which is out of keeping with the content of the interview will be noted and carefully evaluated.

(3) The results of the examination will be recorded and that record or a summary of recommendations will be forwarded to the hiring authority.

(4) The mental examination report will be retained in permanent files by the employing fire department and must be available for examination at any reasonable time by representatives of the retirement system board.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-750, filed 2/15/78. Formerly WAC 297-50-270.]

**WAC 415-104-755 Mental examination—Retention by employing department.** The employing fire department shall permanently retain the results of the mental examination as conducted by the examiner under WAC 415-104-750.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-104-755, filed 2/15/78. Formerly WAC 297-50-260.]

**WAC 415-104-782 Option to preserve LEOFF I retirement rights.** The following rules describe the process by which a LEOFF plan I member whose retirement rights are protected by RCW 41.04.120 may preserve retirement rights as an active LEOFF member while serving in an elective public office.

A LEOFF plan I member who is elected or appointed to elective office shall have the option to:

(1) Preserve his or her retirement rights as an active member of LEOFF plan I; or

(2) Be considered to be on normal leave of absence from the LEOFF I employer.

[Statutory Authority: RCW 41.50.050(5) and 41.04.120. 93-11-078, § 415-104-782, filed 5/18/93, effective 6/18/93.]

**WAC 415-104-783 Verification of eligibility for preservation of LEOFF plan I membership.** A LEOFF plan I elected official must provide the department with written verification of a leave of absence from the LEOFF employer for the express purpose of serving in the elective public office. The verification must state a beginning date and an ending date for the leave.

[Statutory Authority: RCW 41.50.050(5) and 41.04.120. 93-11-078, § 415-104-783, filed 5/18/93, effective 6/18/93.]

**WAC 415-104-784 Member contributions for LEOFF plan I elected officials.** A LEOFF plan I elected official must pay member contributions directly to the department. Such member contributions will be calculated on the salary for the rank the member held at the time of taking the leave of absence. The department will bill the LEOFF I elected official on a monthly basis. Payment of each month's bill is due to the department by the 15th day of the next month. Failure to pay contributions for two consecutive billing months will result in suspension of LEOFF I elected official status. Such status can be reinstated if overdue contributions are paid within ninety days after notice of suspension.

[Statutory Authority: RCW 41.50.050(5) and 41.04.120. 93-11-078, § 415-104-784, filed 5/18/93, effective 6/18/93.]

**WAC 415-104-785 Employer contributions for LEOFF plan I elected officials.** The elective employer shall pay employer contributions for the LEOFF plan I elected official. Such employer contributions will be calculated on the annual salary paid to the LEOFF I elected official for

employment in the elective office. The elective employer will be directly billed by the department for employer contributions for a LEOFF I elected official. The elective employer shall pay employer contributions for LEOFF I elected officials in a timely manner as provided under chapter 415-114 WAC.

[Statutory Authority: RCW 41.50.050(5) and 41.04.120. 93-11-078, § 415-104-785, filed 5/18/93, effective 6/18/93.]

## Chapter 415-105 WAC LOCAL DISABILITY BOARD PROCEDURES

### WAC

#### GENERAL PROVISIONS

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#### GENERAL PROVISIONS

**WAC 415-105-010 Preamble.** These rules are not intended to weaken the authority of the local disability board nor to prevent the disability board from adopting additional rules or procedures necessary for performing its duties.

[Statutory Authority: RCW 41.50.050. 99-16-075, § 415-105-010, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 41.26.115. 81-23-032 (Order 81-03), § 415-105-010, filed 11/16/81.]

**WAC 415-105-020 Purpose.** These rules are adopted under the authority of section 1, chapter 294, Laws of 1981 (RCW 41.26.115) to provide a basis for uniform administration of disability retirement matters. These rules must be followed by each disability board.

[Statutory Authority: RCW 41.50.050. 99-16-075, § 415-105-020, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 41.26.115. 81-23-032 (Order 81-03), § 415-105-020, filed 11/16/81.]

**WAC 415-105-030 Board doctor.** (1) Each board must appoint a board doctor. The board must not approve a disability retirement without prior examination of the applicant by the board doctor or a specialist selected by the board doctor. The board doctor must be a practicing physician licensed under the provisions of chapter 18.71 RCW; or, if the board doctor practices outside the state of Washington, then he/she

must be a physician licensed by the state in which he/she practices.

(2) The board doctor and any selected specialist must be knowledgeable about the normal, routine duties, functions and general demands of the position the applicant held at the time the applicant discontinued service.

(3) The board must furnish the examining physician with the applicant's job and/or position description. The board must inform the physician that the board's decision to grant or deny a disability retirement allowance is to be measured against the actual, normal, routine duties that the applicant performs.

(4) The board doctor or approved specialist will provide medical services requested by the board including examinations pursuant to RCW 41.26.120(1); 41.26.125(1); 41.26.130(5); and 41.26.150 (1)(a).

[Statutory Authority: RCW 41.50.050. 99-16-075, § 415-105-030, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 41.26.115. 81-23-032 (Order 81-03), § 415-105-030, filed 11/16/81.]

**WAC 415-105-040 Disability leave.** (1) The applicant must prove the existence of:

(a) A disabling condition; and

(b) Whether or not the condition was incurred in the line of duty.

(2) The application must include the name of each physician contacted by the applicant within the last six months for the disabling illness or injury. The applicant must advise each examining physician that:

(a) The board has requested the evaluation;

(b) Any reports of the evaluation will be reviewed by the board;

(c) That the doctor-patient privilege may not be invoked with respect to the evaluation; and

(d) The physician may be requested by the board to testify as to his or her findings.

(3) The disability board is authorized to demand the appearance of the applicant and to request the appearance of any other persons it deems appropriate.

(4) Following receipt of an application for disability benefits, the board must:

(a) Review the application and all relevant information about the applicant's fitness for duty;

(b) Consider the duties of the applicant's position; and

(c) Consider any other pertinent evidence.

The board must either grant or deny disability leave based on the evidence or continue the matter pending receipt of additional information.

(5) If the information before the board is insufficient to determine whether or not the applicant is disabled, the matter can be continued to the next regular meeting or set for consideration at a special meeting. The board must advise the applicant of:

(a) The additional information needed;

(b) The applicant's obligation to provide the additional information; and

(c) The date by which the information must be provided.

(6) The applicant may waive any or all of the disability leave granted pursuant to RCW 41.26.120(4) and 41.26.125(4).

(7) The board is not to use the minimum medical and health standards (MMHS) to determine whether or not an applicant is unfit for duty. The MMHS established pursuant to RCW 41.26.046 govern entry or reentry into LEOFF System membership and were provided only to safeguard the fiscal integrity of the pension system.

[Statutory Authority: RCW 41.50.050. 99-16-075, § 415-105-040, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 41.26.115. 81-23-032 (Order 81-03), § 415-105-040, filed 11/16/81.]

**WAC 415-105-050 Examination, review and determination.** (1) The board must have the applicant examined during the fifth or sixth month of disability leave. The examination is to be performed by the board doctor or a specialist selected by the board doctor. The board shall not approve the disability retirement without this examination unless:

- (a) The applicant establishes that the disabling condition will exist for at least six months; and
- (b) The applicant voluntarily waives disability leave.
- (2) Following receipt of the examination report, the board must:
  - (a) Review the medical evidence and all relevant information about the applicant's fitness for duty;
  - (b) Consider the duties of the applicant's position; and
  - (c) Consider any other pertinent evidence.

The board must either grant or deny disability retirement based on the evidence or return the applicant to duty for a reasonable period of trial service.

(3) If the board cannot determine with reasonable certainty whether or not the applicant is disabled, the board may issue a written order that the applicant is to return to duty for a reasonable period of trial service to determine the applicant's fitness for active duty.

(a) The length of the trial service period must be supported by medical evidence.

(b) During the period of trial service the applicant is to return to the same duties in the same position held at the time of discontinuance of service.

(c) If the applicant is found to be disabled, the board is not to grant a second six-month period of disability leave, but is to return the applicant to disability leave status for the remainder, if any, of the initial six-month leave period.

[Statutory Authority: RCW 41.50.050. 99-16-075, § 415-105-050, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 41.26.115. 87-07-015 (Order 87-3), § 415-105-050, filed 3/11/87; 81-23-032 (Order 81-03), § 415-105-050, filed 11/16/81.]

**WAC 415-105-060 Granting disability retirement.** (1) The applicant is required to prove that he or she is disabled and unable to perform with average efficiency the duties of the position held at the time of discontinuance of service.

(2) The board must determine, based on the evidence, that the applicant is disabled from performing his or her duties and the disability has been continuous since the beginning of the disability leave period.

(3) The board may make a finding of six months continuous disability prior to the actual conclusion of the six-month period if:

(a) The regular meeting of the board does not precede the end of the six-month disability leave period by more than forty days; and

(b) Medical evidence shows the disability is expected to continue through the full six-month period.

(4) The applicant is not entitled to a disability retirement allowance if:

(a) The employer advises the board that there is an available position for which the applicant is qualified and to which a person of the same grade or rank is normally assigned; and

(b) The board determines that the applicant is capable of discharging the duties of the position with average efficiency.

[Statutory Authority: RCW 41.50.050. 99-16-075, § 415-105-060, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 41.26.115. 87-07-015 (Order 87-3), § 415-105-060, filed 3/11/87; 81-23-032 (Order 81-03), § 415-105-060, filed 11/16/81.]

**WAC 415-105-070 Decision and order.** (1) After granting or denying a disability retirement allowance, the board must enter a written decision and order that includes:

(a) Appropriate findings of fact supported by credible evidence sufficient to sustain the decision; and

(b) Conclusions of law.

(2) When a disability retirement allowance is granted, the decision and order and all supporting documentation must be sent to the director of the department of retirement systems.

(a) The accompanying findings of fact shall include at least the following:

(i) The applicant's length of service with the employer and the position held at discontinuance of service;

(ii) The names of the examining physicians and the dates of the examinations;

(iii) The nature of the disability;

(iv) Whether or not the disability was incurred in the line of duty;

(v) Whether or not the disability was incurred in other employment;

(vi) Dates encompassing disability leave;

(vii) Dates related to authorized return to duty on a trial basis and the factual basis for the decision; and

(viii) Dates encompassing waiver of disability leave, if applicable, and that applicant established that the disability will be continuous for at least six months.

(b) The supporting documentation shall include a copy of at least the following:

(i) The application for disability benefits showing the applicant's current mailing address;

(ii) The job description accurately reflecting the duties of the position the applicant held at discontinuance of service;

(iii) Employer statement(s), if any, relevant to the applicant's position and/or fitness for duty;

(iv) All medical and other evidence considered by the board; and

(v) The minutes and/or transcript of all meetings at which the applicant's disability status was considered.

[Statutory Authority: RCW 41.50.050. 99-16-075, § 415-105-070, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 41.26.115. 87-07-015 (Order 87-3), § 415-105-070, filed 3/11/87; 81-23-032 (Order 81-03), § 415-105-070, filed 11/16/81.]

**WAC 415-105-072 Burden of proof to cancel disability allowance.** The disability board has the burden of proof in any proceeding to cancel a disability retirement allowance.  
 [Statutory Authority: RCW 41.50.050. 99-16-075, § 415-105-072, filed 8/3/99, effective 9/3/99.]

**WAC 415-105-074 Determination to cancel disability allowance.** The board need not rely solely on medical evidence in making its determination. To cancel a disability retirement allowance, the board must demonstrate that:

(1) The retiree is reasonably able to perform the ordinary duties of his or her former position or a position within the retiree's former rank with average efficiency; and

(2) There has been a material change in the circumstances upon which the retirement was based; and

(3) No other physical or mental disability now prevents the retiree from performing the ordinary duties of his or her position or rank.

The board may not cancel a disability retirement allowance based on a determination that the medical condition was incorrectly diagnosed at the time of the initial disability hearing. If the medical condition for which the retiree was granted disability retirement has improved, but the retiree is still not physically or mentally able to perform his or her duties with average efficiency, the retiree shall continue to receive the disability retirement allowance. The board must send a copy of all determinations and the examination reports and other evidence on which they are based to the department of retirement systems.

[Statutory Authority: RCW 41.50.050. 99-16-075, § 415-105-074, filed 8/3/99, effective 9/3/99.]

**WAC 415-105-080 Notice of denial of benefits and right to appeal.** (1) The board must immediately notify the applicant if the board:

(a) Denies disability leave or retirement; or

(b) Cancels a previously granted disability leave or retirement.

(2) The board must advise the applicant of his or her right to appeal the board's decision to the director of the department of retirement systems pursuant to RCW 41.26-200.

(3) Notification and advice must be in writing and served by personal service or mail unless the applicant or the applicant's authorized representative attends the meeting and is advised in person of the board's decision and the applicant's right to appeal.

[Statutory Authority: RCW 41.50.050. 99-16-075, § 415-105-080, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 41.26.115. 81-23-032 (Order 81-03), § 415-105-080, filed 11/16/81.]

**WAC 415-105-090 Reexamination after retirement.** (1) Every retiree under 49.5 years of age must be medically reexamined every six months by the board doctor or approved physician, except as provided in subsection (4) of this section.

(2) The retirement allowance of any retiree who fails to submit to a medical examination as required in subsection (1) of this section shall be discontinued until the retiree complies with the reexamination requirement. If the retiree continues

for one year to refuse to undergo reexamination, the board shall cancel his or her retirement allowance.

(3) If the retiree resides more than one hundred miles from his or her former employer, the board may authorize the retiree to be examined by a physician in the retiree's local area. The board must approve the local area physician and provide him or her with information about the purpose of the examination and the issues to be addressed in the physician's report to the board.

(4) If the board doctor or approved physician finds that no possibility exists for the retiree's recovery and return to duty, the board may determine that subsequent medical examinations are not required. The determination may be made at the time of retirement or at any time thereafter, but must be based on a current (within ninety days) recommendation of the examining physician. The board must notify the department of retirement systems when it makes a determination of permanent disability. A copy of the physician's report must accompany the notice.

(5) If the examination shows that the retiree is fit to perform the duties of the rank or position held at retirement, the retiree shall be entitled to a hearing before the board. The notification and hearing shall comply with the requirements of the Administrative Procedure Act, chapter 34.05 RCW. Unless the retiree waives his or her right to the hearing, the board must hold the hearing before it can cancel the disability retirement allowance.

[Statutory Authority: RCW 41.50.050. 99-16-075, § 415-105-090, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 41.26.115. 87-07-015 (Order 87-3), § 415-105-090, filed 3/1/87; 81-23-032 (Order 81-03), § 415-105-090, filed 11/16/81.]

## CESSATION OF DISABILITY

### WAC 415-105-100 Purpose—Age fifty and older.

These rules are adopted under RCW 41.26.115 to implement the provisions of RCW 41.26.130(3) and 41.26.135 and establish procedures to be followed by the applicant and the disability board. These rules apply only to a disability retiree age fifty and older who seeks a determination that his/her disability has ceased.

[Statutory Authority: RCW 41.50.050. 99-16-075, § 415-105-100, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 41.26.115. 87-07-015 (Order 87-3), § 415-105-100, filed 3/11/87.]

### WAC 415-105-110 Application to disability board—Age fifty and older.

(1) When a disability retiree over age fifty believes that his/her disability has ceased, he/she may make application to cancel the disability retirement allowance. Such application shall be made to the disability board that originally considered the application for disability retirement.

(2) The application must be in writing and contain the following information:

(a) The retiree's name, birthdate, Social Security number, mailing address, telephone number, former LEOFF employer, and the name and mailing address of the retiree's legal representative, if any;

(b) The nature of the disability and the date the disability ceased;

(c) The names, addresses and telephone numbers of all physicians and other health care practitioners who have been contacted by the retiree or his/her representative in the last year for medical care, consultation or evaluation;

(3) The application must be accompanied by the following documents:

(a) Copies of any written documents supporting the retiree's claim that his/her disability has ceased and that no other physical or mental disability now prevents the retiree from performing the ordinary duties of his/her position or rank;

(b) A copy of the local disability board order granting disability retirement if the original disability board order was summarily affirmed by the director or the LEOFF retirement board; or

(c) A copy of the director's order or the LEOFF retirement board's order if the director or the LEOFF retirement board entered the final order granting disability retirement.

[Statutory Authority: RCW 41.50.050. 99-16-075, § 415-105-110, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 41.26.115. 87-07-015 (Order 87-3), § 415-105-110, filed 3/11/87.]

**WAC 415-105-120 Burden of proof in disability board proceedings.** The retiree has the burden of proof in the proceedings before the disability board.

[Statutory Authority: RCW 41.50.050. 99-16-075, § 415-105-120, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 41.26.115. 87-07-015 (Order 87-3), § 415-105-120, filed 3/11/87.]

**WAC 415-105-130 Standard for determination.** To obtain a determination that a disability has ceased, the retiree must demonstrate that:

(1) He/she is reasonably able to perform the ordinary duties of his/her former position or position within his/her former rank with average efficiency; and

(2) There has been a material change in the circumstances upon which the original disability determination was based; and

(3) No other physical or mental disability now prevents the retiree from performing the ordinary duties of his/her position or rank.

A retiree may not obtain a determination that his/her disability has ceased by demonstrating that the medical condition was incorrectly diagnosed at the time of the initial disability hearing. The disability board need not rely solely on medical evidence in making its determination. If the medical condition for which the retiree was granted disability retirement has improved, but the retiree is still not physically or mentally able to perform his/her duties with average efficiency, he/she shall continue to receive a disability retirement allowance and shall not be entitled to service retirement.

[Statutory Authority: RCW 41.26.115. 87-07-015 (Order 87-3), § 415-105-130, filed 3/11/87.]

**WAC 415-105-140 Examination by board physician.** (1) Before acting on an application, the disability board shall have the retiree examined by the board doctor as provided in WAC 415-105-030. If the board doctor has seen the retiree before in any capacity except evaluation on behalf of the dis-

ability board, the board doctor must refer the retiree to another physician who has not seen the retiree in any capacity except evaluation on behalf of the disability board.

(2) Before the retiree is examined, the disability board must furnish the board doctor or other physician with a current job description for the rank or position held by the member at the time he/she was granted disability retirement and a copy of these regulations.

(3) The board doctor or other physician will examine the retiree to determine if he/she is able to perform with average efficiency the duties of the rank or position held by the retiree at the time of discontinuance of service and that he/she meets the requirements of WAC 415-105-130.

[Statutory Authority: RCW 41.50.050. 99-16-075, § 415-105-140, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 41.26.115. 87-07-015 (Order 87-3), § 415-105-140, filed 3/11/87.]

**WAC 415-105-150 Disability board order.** (1) The board must review the application, the medical evaluation by the board doctor, and any other relevant evidence. The board must determine whether the retiree has met the standards set out in WAC 415-105-130 and is physically and mentally capable of performing his/her duties with average efficiency.

(2) If the board determines that the retiree's disability has ceased, it shall enter its written decision and order including appropriate findings of fact and conclusions of law. The disability board must:

(a) Enter a decision which specifies the date the disability retirement allowance will cease;

(b) Immediately send a copy of the decision and order to the department of retirement systems.

[Statutory Authority: RCW 41.50.050. 99-16-075, § 415-105-150, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 41.26.115. 87-07-015 (Order 87-3), § 415-105-150, filed 3/11/87.]

## **CESSATION OF DISABILITY WHILE UNDER AGE FIFTY**

**WAC 415-105-160 Purpose—Under age fifty.** These rules are adopted under RCW 41.26.115 to implement the provisions of RCW 41.26.130(3) and establish procedures to be followed by the applicant and the disability board in cases in which the applicant is under age fifty and believes that his/her disability has ceased.

[Statutory Authority: RCW 41.50.050. 99-16-075, § 415-105-160, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 41.26.115. 87-07-015 (Order 87-3), § 415-105-160, filed 3/11/87.]

**WAC 415-105-170 Application to the disability board—Under age fifty.** A disability retiree under age fifty who believes that his/her disability has ceased may apply for a determination that the disability has ceased. The application must be:

(a) Made to the disability board which originally found the member to be disabled; and

(b) In writing; and

(c) Contain the information stated in WAC 415-105-110(2).

Thereafter, the rules and procedures stated in WAC 415-105-120 through 415-105-140 shall be in effect.

[Statutory Authority: RCW 41.50.050. 99-16-075, § 415-105-170, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 41.26.115. 87-07-015 (Order 87-3), § 415-105-170, filed 3/11/87.]

**WAC 415-105-180 Disability board hearing and order.** (1) The board must review the application, the medical evaluation of the board doctor, and any other relevant evidence. The board must then determine whether the retiree has met the standards set out in WAC 415-105-130 and is physically and mentally capable of performing his/her duties with average efficiency. If the board determines that the retiree's disability has ceased, both the retiree and the former employer shall be entitled to a notice and a hearing. Both the notice and the hearing shall comply with the requirements of chapter 34.05 RCW.

(2) After the hearing, the board must enter its written decision and order, including appropriate findings of fact and conclusions of law. The board order must either deny the retiree's application or cancel his/her disability retirement allowance and restore him/her to duty pursuant to RCW 41.26.140(2).

(3) Any person aggrieved by a determination or order of a disability board that the applicant's disability has not ceased may file an appeal with the director pursuant to RCW 41.26.140(6).

[Statutory Authority: RCW 41.50.050. 99-16-075, § 415-105-180, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 41.26.115. 87-07-015 (Order 87-3), § 415-105-180, filed 3/11/87.]

## Chapter 415-108 WAC PUBLIC EMPLOYEES' RETIREMENT SYSTEM WAC

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415-108-830	Actuarial recomputation of a Plan 2 or Plan 3 retirement allowance upon retirement following reemployment.	415-108-050	Appeal to superior court—Notice. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-108-050, filed 2/15/78. Formerly WAC 184-09-010.] Repealed by 99-21-031, filed 10/14/99, effective 11/14/99. Statutory Authority: RCW 41.50.050.
415-108-980	Will I receive a transfer payment when I transfer to Plan 3?	415-108-060	Appeal to superior court—Certification of record. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-108-060, filed 2/15/78. Formerly WAC 184-09-020.] Repealed by 99-21-031, filed 10/14/99, effective 11/14/99. Statutory Authority: RCW 41.50.050.
<b>DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER</b>			
415-108-0101	Level of union organization—Definition. [Statutory Authority: RCW 41.50.050. 95-16-053, § 415-108-0101, filed 7/25/95, effective 8/25/95.] Repealed by 01-21-090, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 35.21.730, 41.40.010(4), chapter 41.40 RCW.	415-108-100	Members. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-108-100, filed 2/15/78. Formerly WAC 184-01-010.] Repealed by 93-11-077, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 41.40.010 (4)(a).
415-108-0102	Normally—Definition. [Statutory Authority: RCW 41.50.050. 95-16-053, § 415-108-0102, filed 7/25/95, effective 8/25/95.] Repealed by 01-21-090, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 35.21.730, 41.40.010(4), chapter 41.40 RCW.	415-108-110	Administration—Officers. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-108-110, filed 2/15/78. Formerly WAC 184-01-020.] Repealed by 93-11-077, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 41.40.010 (4).
415-108-0103	Project position—Definition. [Statutory Authority: RCW 41.50.050. 95-16-053, § 415-108-0103, filed 7/25/95, effective 8/25/95.] Repealed by 01-21-090, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 35.21.730, 41.40.010(4), chapter 41.40 RCW.	415-108-120	Function. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-108-120, filed 2/15/78. Formerly WAC 184-01-030.] Repealed by 93-11-077, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 41.40.010 (4)(a).
415-108-0104	Report—Definition. [Statutory Authority: RCW 41.50.050. 95-16-053, § 415-108-0104, filed 7/25/95, effective 8/25/95.] Repealed by 01-21-090, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 35.21.730, 41.40.010(4), chapter 41.40 RCW.	415-108-130	Location. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-108-130, filed 2/15/78.] Repealed by 93-11-077, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 41.40.010 (4).
415-108-0105	Retirement plan—Definition. [Statutory Authority: RCW 41.50.050. 95-16-053, § 415-108-0105, filed 7/25/95, effective 8/25/95.] Repealed by 01-21-090, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 35.21.730, 41.40.010(4), chapter 41.40 RCW.	415-108-150	Meetings. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-108-150, filed 2/15/78. Formerly WAC 184-01-050.] Repealed by 93-11-077, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 41.40.010 (4)(a).
415-108-0106	Union—Definition. [Statutory Authority: RCW 41.50.050. 95-16-053, § 415-108-0106, filed 7/25/95, effective 8/25/95.] Repealed by 01-21-090, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 35.21.730, 41.40.010(4), chapter 41.40 RCW.	415-108-160	Office of chairman. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-108-160, filed 2/15/78. Formerly WAC 184-01-060.] Repealed by 93-11-077, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 41.40.010 (4).
415-108-0107	Union employer—Definition. [Statutory Authority: RCW 41.50.050. 95-16-053, § 415-108-0107, filed 7/25/95, effective 8/25/95.] Repealed by 01-21-090, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 35.21.730, 41.40.010(4), chapter 41.40 RCW.	415-108-180	Correspondence. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-108-180, filed 2/15/78. Formerly WAC 184-01-070.] Repealed by 99-21-031, filed 10/14/99, effective 11/14/99. Statutory Authority: RCW 41.50.050.
415-108-0108	Year—Definition. [Statutory Authority: RCW 41.50.050. 95-16-053, § 415-108-0108, filed 7/25/95, effective 8/25/95.] Repealed by 01-21-090, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 35.21.730, 41.40.010(4), chapter 41.40 RCW.	415-108-190	Nominations. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-108-190, filed 2/15/78. Formerly WAC 184-01-0700.] Repealed by 99-21-031, filed 10/14/99, effective 11/14/99. Statutory Authority: RCW 41.50.050.
415-108-0109	System acronyms—Definition. [Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-108-0109, filed 12/12/00, effective 1/12/01. Statutory Authority: RCW 41.50.050. 95-16-053, § 415-108-0109, filed 7/25/95, effective 8/25/95.] Repealed by 01-21-090, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 35.21.730, 41.40.010(4), chapter 41.40 RCW.	415-108-195	Identification. [Recodified as § 415-108-195. 97-19-035, filed 9/9/97, effective 9/9/97. Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-108-300, filed 2/15/78. Formerly WAC 184-03-120.] Repealed by 99-21-031, filed 10/14/99, effective 11/14/99. Statutory Authority: RCW 41.50.050.
415-108-0110	Reportable compensation—Definition. [Statutory Authority: RCW 41.50.050. 98-09-059, § 415-108-0110, filed 4/17/98, effective 5/18/98.] Repealed by 01-21-090, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 35.21.730, 41.40.010(4), chapter 41.40 RCW.	415-108-200	Disability and benefit claims. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-108-200, filed 2/15/78. Formerly WAC 184-03-010.] Repealed by 99-21-031, filed 10/14/99, effective 11/14/99. Statutory Authority: RCW 41.50.050.
415-108-0111	Annual leave—Definition. [Statutory Authority: RCW 41.50.050. 98-09-059, § 415-108-0111, filed 4/17/98, effective 5/18/98.] Repealed by 01-21-090, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 35.21.730, 41.40.010(4), chapter 41.40 RCW.	415-108-210	Disability and benefit claims—Acknowledgment and forms. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-108-210, filed 2/15/78. Formerly WAC 184-03-020.] Repealed by 99-21-031, filed 10/14/99, effective 11/14/99. Statutory Authority: RCW 41.50.050.
415-108-040	Appeals—Disability cases. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-108-040, filed 2/15/78. Formerly WAC 184-05-010.] Repealed by 02-12-084, filed 6/4/02, effective 7/5/02. Statutory Authority: RCW 41.50.050(5), 41.50.060, 41.50.770, 41.50.780, 2001 c 42. Later promulgation, see chapter 415-08 WAC.	415-108-220	Disability and benefit claims—Processing applications. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-108-220, filed 2/15/78. Formerly WAC 184-03-030.] Repealed by 99-21-031, filed 10/14/99, effective 11/14/99. Statutory Authority: RCW 41.50.050.
		415-108-230	Disability and benefit claims—Recording. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-108-230, filed 2/15/78. Formerly WAC 184-03-040.] Repealed by 99-21-031, filed 10/14/99, effective 11/14/99. Statutory Authority: RCW 41.50.050.
		415-108-240	Disability and benefit claims—Legal examination. [Statutory Authority: RCW 41.50.050(6) and

415-108-250	41.50.090. 78-03-023 (Order IV), § 415-108-240, filed 2/15/78. Formerly WAC 184-03-050.] Repealed by 99-21-031, filed 10/14/99, effective 11/14/99. Statutory Authority: RCW 41.50.050.	415-108-530	Calculation of retirement allowance pursuant to <i>Bowles v. Retirement Systems</i> —Eligibility—Procedure. [Statutory Authority: RCW 41.50.050 and Bowles v. Retirement Systems, 121 Wn.2d 52 (1993), 94-11-009, § 415-108-530, filed 5/5/94, effective 6/5/94.] Decodified by 97-19-035, filed 9/9/97, effective 9/9/97. Recodified as WAC 415-108-810.
415-108-260	Disability and benefit claims—Medical examination. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-108-250, filed 2/15/78. Formerly WAC 184-03-060.] Repealed by 99-21-031, filed 10/14/99, effective 11/14/99. Statutory Authority: RCW 41.50.050.	415-108-540	Interim retirement allowance—Employer final compensation report—Final computation of retirement allowance—Adjustment of retirement allowance for errors. [Statutory Authority: RCW 41.50.050 and Bowles v. Retirement Systems, 121 Wn.2d 52 (1993), 94-11-009, § 415-108-540, filed 5/5/94, effective 6/5/94.] Decodified by 97-19-035, filed 9/9/97, effective 9/9/97. Recodified as WAC 415-108-820.
415-108-270	Disability and benefit claims—Recommendation and conclusion. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-108-270, filed 2/15/78. Formerly WAC 184-03-080.] Repealed by 99-21-031, filed 10/14/99, effective 11/14/99. Statutory Authority: RCW 41.50.050.	415-108-580	Actuarial recomputation of retirement allowance upon retirement following reemployment. [Statutory Authority: RCW 41.50.050, 94-09-040, § 415-108-580, filed 4/19/94, effective 5/20/94.] Decodified by 97-19-035, filed 9/9/97, effective 9/9/97. Recodified as WAC 415-108-830.
415-108-280	Disability and benefit claims—Board decision on application. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-108-280, filed 2/15/78. Formerly WAC 184-03-090.] Repealed by 99-21-031, filed 10/14/99, effective 11/14/99. Statutory Authority: RCW 41.50.050.	415-108-671	Administration of early retirement. [Statutory Authority: RCW 41.50.050, 93-20-020, § 415-108-671, filed 9/24/93, effective 10/25/93.] Repealed by 99-12-041, filed 5/26/99, effective 6/26/99. Statutory Authority: RCW 41.50.050.
415-108-290	Disability and benefit claims—Notification of member. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-108-290, filed 2/15/78. Formerly WAC 184-03-100.] Repealed by 99-21-031, filed 10/14/99, effective 11/14/99. Statutory Authority: RCW 41.50.050.		
415-108-300	Identification. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-108-300, filed 2/15/78. Formerly WAC 184-03-120.] Decodified by 97-19-035, filed 9/9/97, effective 9/9/97. Recodified as WAC 415-108-195.		
415-108-320	Background and purpose. [Statutory Authority: RCW 34.05.050 and 1990 c 249. 91-03-015, § 415-108-320, filed 1/7/91, effective 2/7/91.] Repealed by 96-01-047, filed 12/14/95, effective 1/14/96. Statutory Authority: RCW 2.10.146, 41.26.460, 41.32.530, 41.50.050, 41.32.785, 41.40.188 and 41.40.660.		
415-108-322	Definitions for purposes of WAC 415-108-320 through 415-108-326. [Statutory Authority: RCW 34.05.050 and 1990 c 249. 91-03-015, § 415-108-322, filed 1/7/91, effective 2/7/91.] Repealed by 96-01-047, filed 12/14/95, effective 1/14/96. Statutory Authority: RCW 2.10.146, 41.26.460, 41.32.530, 41.50.050, 41.32.785, 41.40.188 and 41.40.660.		
415-108-450	Compensation earnable for Plan I PERS members. [Statutory Authority: RCW 41.40.010(8), 88-11-030 (Order 88-11), § 415-108-450, filed 5/13/88.] Repealed by 98-09-059, filed 4/17/98, effective 5/18/98. Statutory Authority: RCW 41.50.050.		
415-108-460	Compensation earnable for Plan II PERS members. [Statutory Authority: RCW 41.40.010(8), 88-11-030 (Order 88-11), § 415-108-460, filed 5/13/88.] Repealed by 98-09-059, filed 4/17/98, effective 5/18/98. Statutory Authority: RCW 41.50.050.		
415-108-461	Standby pay—Location restricted compensation. [Statutory Authority: RCW 41.50.050 and 41.40.020, 94-16-086, § 415-108-461, filed 8/1/94, effective 8/1/94.] Repealed by 96-01-046, filed 12/14/95, effective 1/14/96. Statutory Authority: RCW 41.50.050.		
415-108-462	Location restricted compensation—Employer policy. [Statutory Authority: RCW 41.50.050 and 41.40.020, 94-16-086, § 415-108-462, filed 8/1/94, effective 8/1/94.] Repealed by 96-01-046, filed 12/14/95, effective 1/14/96. Statutory Authority: RCW 41.50.050.		
415-108-490	Back pay award or settlement—Definition—Allocated by the department for retirement system purposes. [Statutory Authority: RCW 41.40.010(8) and 41.40.020, 87-17-061 (Order DRS 87-08), § 415-108-490, filed 8/19/87.] Repealed by 98-09-059, filed 4/17/98, effective 5/18/98. Statutory Authority: RCW 41.50.050.		
415-108-500	Public employees' retirement board. [Statutory Authority: RCW 41.40.120(17), 86-13-023 (Order 86-3), § 415-108-500, filed 6/10/86.] Decodified by 97-19-035, filed 9/9/97, effective 9/9/97. Recodified as WAC 415-108-730.		

**DEFINITIONS**

**WAC 415-108-010 Definitions in the public employees' retirement system.** All definitions in RCW 41.40.010 and WAC 415-02-030 apply to terms used in this chapter. Other terms relevant to the administration of chapter 41.40 RCW are defined in this chapter.

(1) **Annual leave** means leave provided by an employer for the purpose of taking regularly scheduled work time off with pay. Annual leave does not usually include leave for illness, personal business if in addition to and different from vacation leave, or other paid time off from work. However, if an employer authorizes only one type of leave, covering paid leave for vacation, illness, and any other excused absence from work, such leave will be considered annual leave for purposes of RCW 41.50.150.

(2) **Level of union organization** means a union or a lodge or division of a union.

(3) **Normally** as used in the definition of eligible position under RCW 41.40.010 means a position is eligible if it is expected to require at least five months of seventy or more hours of compensated service each month during each of two consecutive years. Once a position is determined to be eligible, it will continue to be eligible if it requires at least five months of seventy or more hours of compensated service during at least one year in any two-year period.

(4) **Project position** means a position, established by an employer, which has a specific goal and end date.

(5) **Public corporation** means a public corporation created under RCW 35.21.730. A public corporation may be admitted as an "employer" under the definition in RCW 41.40.010(4).

(6) **Report** means an employer's reporting of an employee's hours of service, compensation and contributions to the department on the monthly transmittal report.

(7) **Reportable compensation** means compensation earnable as that term is defined in RCW 41.40.010(8).

(8) **Retirement plan** as used in RCW 41.40.023 and in this chapter, means any plan operated wholly or in part by the

state or a political subdivision. This includes, but is not limited to:

- (a) The retirement systems listed under RCW 41.50.030;
- (b) The retirement systems of the cities of Seattle, Spokane and Tacoma; or
- (c) Any higher education plan authorized under RCW 28B.10.400.

(9) **System acronyms** used in this chapter are defined as follows:

- (a) "PERS" means the public employees' retirement system.
- (b) "TRS" means the teachers' retirement system.
- (c) "SERS" means the school employees' retirement system.

(10) **Union** means a labor guild, labor association, and/or labor organization.

(11) **Union employer** means a union or a union lodge or other division of a union which has verified that it meets the definition of a Plan 1 employer in RCW 41.40.010.

(12) **Year** means any twelve consecutive month period established and applied consistently by an employer to evaluate the eligibility of a specific position. The term may include, but is not limited to, a school year, calendar year or fiscal year.

**Example:** An employer has used the twelve consecutive month period from July 1 to June 30 to evaluate the eligibility of positions. When the employer hires a new employee to fill an existing position, the employer must continue to use the July 1 through June 30 period to define a year for the position.

**Example:** If the same employer in the above example hires a person to work in a project position beginning in November, the employer will use the twelve-month period beginning in November to evaluate the eligibility of the new position. The employer must consistently apply this twelve-month period to evaluate the eligibility of this position.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.40 RCW. 02-18-046, § 415-108-010, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5), 35.21.730, 41.40.010(4), chapter 41.40 RCW. 01-21-090, § 415-108-010, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050. 98-09-059, § 415-108-010, filed 4/17/98, effective 5/18/98; 95-16-053, § 415-108-010, filed 7/25/95, effective 8/25/95. Statutory Authority: RCW 41.50.050 and Bowles v. Retirement Systems, 121 Wn.2d 52 (1993). 94-11-009, § 415-108-010, filed 5/5/94, effective 6/5/94. Statutory Authority: RCW 41.50.050(5) and 41.40.010 (4)(a). 93-11-077, § 415-108-010, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-108-010, filed 2/15/78. Formerly WAC 184-01-025 and 184-01-035.]

## ADMINISTRATION

### WAC 415-108-020 Public records. See chapter 415-06 WAC.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-108-020, filed 2/15/78. Formerly WAC 184-20-010.]

**WAC 415-108-030 Statewide cities retirement system.** The former statewide cities retirement system has been merged into the Washington public employees retirement system pursuant to RCW 41.40.405, 41.40.406, and 41.40.407. The statutes and rules applying to the public employees

retirement system and the department of retirement systems (as provided in chapters 41.40 and 41.50 RCW and Title 415 WAC) govern the administration and operation of the former statewide cities retirement system.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-108-030, filed 2/15/78.]

**WAC 415-108-070 Excess contributions to employees' savings fund.** Pursuant to authority granted by RCW 41.40.330(2) this section shall cover all applications by members of the retirement system for permission to make excess contributions to the employees' savings fund.

The total contributions of a member of the state employees' retirement system to the employees' savings fund in any calendar year shall in no event exceed ten percent of the member's earnable compensation for that calendar year.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-108-070, filed 2/15/78. Formerly WAC 184-12-010.]

**WAC 415-108-170 Business hours.** The office of the department is open between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, except legal holidays.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-108-170, filed 2/15/78. Formerly WAC 184-01-060.]

**WAC 415-108-181 How does the department comply with Internal Revenue Code distribution rules?** (1) This section applies only to the public employees' retirement system (PERS) Plans 2 and 3.

(2) All benefits paid from the PERS Plans 2 and 3 retirement plans shall be distributed in accordance with the requirements of section 401 (a)(9) of the Federal Internal Revenue Code and the regulations under that section. In order to meet these requirements, these retirement plans shall be administered in accordance with the following provisions:

(a) Distribution of a member's benefit must begin by the later of the April 1 following the calendar year in which a participant attains age 70 1/2 or the April 1 of the year following the calendar year in which the member retires;

(b) The life expectancy of a member or the member's spouse may not be recalculated after the benefits commence;

(c) If a member dies before the distribution of the member's benefits has begun, distributions to beneficiaries must begin no later than December 31 of the calendar year immediately following the calendar year in which the member died;

(d) The amount of benefits payable to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of the Federal Internal Revenue Code; and

(e) If a member dies after the distribution of the member's benefits has begun, the remaining portion of the member's interest will be distributed at least as rapidly as under the method of distribution being used for the member as of the date of the member's death.

(3) A distributee may elect to have eligible rollover distributions paid in a direct rollover to an eligible retirement plan the distributee specifies, pursuant to section 401 (a)(31) of the Federal Internal Revenue Code.

[Statutory Authority: RCW 41.50.050(5), chapter 41.40 RCW and IRS regulations. 02-14-009, § 415-108-181, filed 6/20/02, effective 7/21/02.]

**WAC 415-108-182 What are the IRS limitations on maximum benefits and maximum contributions?** (1) This section applies only to the public employees' retirement system (PERS) Plans 2 and 3. Subject to the provisions of this section, benefits paid from, and employee contributions made to, these plans shall not exceed the maximum benefits and the maximum annual addition, respectively, as applicable under section 415 of the Federal Internal Revenue Code.

(2) A participant may not receive an annual benefit that exceeds the dollar amount specified in section 415 (b)(1)(A) of the Federal Internal Revenue Code, subject to the applicable adjustments in section 415 of the Federal Internal Revenue Code. For purposes of applying IRC 415(b) when a participant retires before age 62 or after age 65, the determination as to whether the benefit satisfies the IRC 415(b) limitations is made by comparing the equivalent annual benefit determined in Step 1 below with the age-adjusted dollar limit determined in Step 2 below.

Step 1: Under IRC 415 (b)(2)(B), determine the annual benefit in the form of a straight life annuity commencing at the same age that is actuarially equivalent to the plan benefit. In general, IRC 415 (b)(2)(E)(i) and (v) require that the equivalent annual benefit be the greater of (a) or (b) below.

(a) The equivalent annual benefit computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial equivalence for the particular form of benefit payable (plan rate and plan mortality table, or plan tabular factor, respectively).

(b) The equivalent annual benefit computed using a 5 percent interest rate assumption and the applicable mortality table.

This step does not apply to a benefit that is not required to be converted to a straight life annuity under IRC 415 (b)(2)(B), for example, a qualified joint and survivor annuity.

Step 2: Under IRC 415 (b)(2)(C) or (D), determine the IRC 415(b) dollar limitation that applies at the age the benefit is payable (age-adjusted dollar limit).

If the age at which the benefit is payable is less than 62, the age-adjusted dollar limit is determined by reducing the dollar limit on an actuarially equivalent basis. In general, IRC 415 (b)(2)(E)(i) and (v) require that the age-adjusted dollar amount be the lesser of (a) or (b) below.

(a) The equivalent amount computed using the plan rate and plan mortality table (or plan tabular factor) used for actuarial equivalence for early retirement benefits under the plan.

(b) The amount computed using 5 percent interest and the applicable mortality table described in Revenue Ruling 95-6. (This is used only to the extent described in Q & A 6 of Revenue Ruling 98-1, which provides that, for purposes of adjusting any limitation under IRC 415 (b)(2)(C) or (D), to the extent a forfeiture does not occur upon death, the mortality decrement may be ignored prior to age 62 and must be ignored after SSRA.)

If the age at which the benefit is payable is greater than age 65, the age-adjusted dollar limit is determined by increasing the IRC 415(b) dollar limitation on an actuarially equivalent basis. In general, IRC 415 (b)(2)(E)(i) and (v) require

that the increased age-adjusted dollar limit be the lesser of (a) or (b) below.

(a) The equivalent amount computed using the plan rate and plan mortality table (or plan tabular factor) used for actuarial equivalence for early retirement benefits under the plan.

(b) The equivalent amount computed using 5 percent interest and the applicable mortality table (used to the extent described in Q&A 6, as described in the prior paragraph).

The dollar limit will be reduced proportionally for less than ten years of participation.

The plan will satisfy the IRC 415(b) limitations only if the equivalent annual benefit determined in Step 1 is less than the age-adjusted dollar limit determined in Step 2.

(3) Effective for limitation years beginning after December 31, 2001, the maximum annual addition that may be contributed or allocated to a participant's account for any limitation year may not exceed the lesser of (a) \$40,000, as adjusted for increases in the cost-of-living under section 415(d) of the Federal Internal Revenue Code, or (b) one hundred percent of the member's compensation, within the meaning of section 415 (c)(3) of the Federal Internal Revenue Code, for the limitation year.

(4) Notwithstanding any other provision of law to the contrary, the department may modify a request by a participant to make a contribution to the retirement plans if the amount of the contributions would exceed the limits under section 415(c) or 415(n) of the Federal Internal Revenue Code. An eligible participant in a retirement plan, as defined by section 1526 of the Federal Taxpayer Relief Act of 1997, may purchase service credit as provided by state law in effect on August 5, 1997, without regard to the limitations of section 415 (c)(1) of the Federal Internal Revenue Code.

(5) Prior to January 1, 1998, the definition of compensation, earnable compensation or other similar term when used for purposes of determining compliance with section 415 of the Federal Internal Revenue Code does not include the amount of any elective deferral, as defined in section 402 (g)(3) of the Federal Internal Revenue Code, or any contribution which is contributed or deferred by the employer at the election of the employee and which is not includable in the gross income of the employee by reason of section 125 or 457 of the Federal Internal Revenue Code.

(6) For limitation years beginning on and after January 1, 1998, the definition of compensation, earnable compensation or other similar term when used for purposes of determining compliance with section 415 of the Federal Internal Revenue Code does include the amount of any elective deferral, as defined in section 402 (g)(3) of the Federal Internal Revenue Code, or any contribution which is contributed or deferred by the employer at the election of the employee and which is not includable in the gross income of the employee by reason of section 125 or 457 of the Federal Internal Revenue Code.

(7) For limitation years beginning on and after January 1, 2001, the definition of compensation, earnable compensation or other similar term when used for purposes of determining compliance with section 415 of the Federal Internal Revenue Code shall also include elective amounts that are not includable in the gross income of the employee by reason of section 132 (f)(4).

[Statutory Authority: RCW 41.50.050(5), chapter 41.40 RCW and IRS regulations. 02-14-009, § 415-108-182, filed 6/20/02, effective 7/21/02.]

**WAC 415-108-183 Assets for exclusive benefit of members and beneficiaries.** No assets of the public employees' retirement system Plans 2 and 3 may be used for or diverted to a purpose other than the exclusive benefit of the members and their beneficiaries at any time prior to the satisfaction of all liabilities with respect to members and their beneficiaries.

[Statutory Authority: RCW 41.50.050(5), chapter 41.40 RCW and IRS regulations. 02-14-009, § 415-108-183, filed 6/20/02, effective 7/21/02.]

## BENEFIT OPTIONS

**WAC 415-108-315 Can I specify who can receive my benefits if I die in service?** (1) You have the right to designate a beneficiary or beneficiaries to receive a benefit if you die while you are an active member. You may change your beneficiary designation at any time by filing a change of beneficiary form with the department.

(2) As a member you may name:

(a) An organization or person, including your unborn or later adopted children. Unborn or later adopted children will not be included unless you specifically designate them as beneficiaries on the form. You must state the date of birth for any living person you name as a beneficiary;

(b) Your estate; and/or

(c) A trust. Before making a distribution to any trust the department must receive:

- (i) A copy of the trust document;
- (ii) The name, address, and telephone number of the current trustee; and
- (iii) The tax identification number.

(3) You may name contingent beneficiaries in addition to primary beneficiaries.

(4) If you are a member of Plan 3, you may name the same or different beneficiaries for your defined benefit and defined contribution accounts.

### Examples:

#### EXAMPLE ONE.

##### Facts

John, a member, completes a beneficiary designation form.

In the place on the form reserved for persons, he names his daughter Ann. He checks the box to indicate that Ann is a primary beneficiary.

In the place on the form reserved for trust/organizational beneficiaries, he lists the "Barbara Trust." His daughter Barbara is the trust beneficiary. He checks the box to indicate that the trust is a primary beneficiary.

##### Result

Subject to applicable statute, at John's death, the department will consider both the Barbara Trust and daughter Ann as primary beneficiaries. The department will require the name of the trustee, the tax identification number, a copy of

the trust and other information specified in this rule before distribution to the trust.

#### EXAMPLE TWO.

##### Facts

John, a member, completes a beneficiary designation form.

In the place on the form reserved for persons, he names his daughter Ann. He checks the box to indicate that Ann is a primary beneficiary.

In the place on the form reserved for trust/organizational beneficiaries, he lists his daughter Barbara personally i.e., no trust name is provided. John checks the corresponding box to indicate a primary beneficiary designation. At John's death, the department learns that John has created no trusts.

##### Result

Because John has created no trust, the designation in the trust/organizational location on the form is void. Subject to existing law, the department will issue the death benefit to Ann unless it receives a notice of a competing claim. If the department receives notice of competing claims, a court resolution may be required.

[Statutory Authority: RCW 41.50.050(5), 41.40.270, 41.40.700, 41.40.835. 02-03-120, § 415-108-315, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050. 00-10-015, § 415-108-315, filed 4/21/00, effective 5/22/00.]

**WAC 415-108-324 I am married - do I need my spouse's consent on the retirement option I choose?** (1) If married, you must provide your spouse's written consent to the option you selected under WAC 415-108-326. If, as a married member, you do not provide spousal consent, the department will pay you as a retiree, a joint and one-half survivor benefit allowance and record your spouse as the survivor in compliance with RCW 41.40.188 (2)(a), 41.40.660 (2)(a), and 41.40.845 (2)(a).

(2) Spousal consent is not needed to enforce a marital dissolution order requiring the department to pay an ex-spouse under RCW 41.50.790.

(3) "Spousal consent" means that your spouse consents to the retirement option you selected. Your spouse's notarized signature on a completed retirement application constitutes spousal consent.

[Statutory Authority: RCW 41.50.050(5), 41.40.188(2), 41.40.660(2), 41.40.845(2). 02-03-120, § 415-108-324, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050. 99-14-008, § 415-108-324, filed 6/24/99, effective 7/25/99. Statutory Authority: RCW 2.10.146, 41.26.460, 41.32.530, 41.50.050, 41.32.785, 41.40.188 and 41.40.660. 96-01-047, § 415-108-324, filed 12/14/95, effective 1/14/96. Statutory Authority: RCW 34.05.050 and 1990 c 249. 91-03-015, § 415-108-324, filed 1/7/91, effective 2/7/91.]

**WAC 415-108-326 Retirement benefit options.** RCW 41.40.188 (Plan 1), RCW 41.40.660 (Plan 2), and RCW 41.40.845 (Plan 3) enable the department to provide retiring members with four retirement benefit options for receipt of the defined benefit portion of their retirement benefits. In addition, retiring Plan 1 members may select the COLA (cost-of-living adjustment) option. The retiring member must

choose an option(s) when applying for service or disability retirement:

(1) **Option One: Benefit option without survivor features (standard allowance).** The department will pay a monthly retirement allowance based solely on the single life of the member, as provided by RCW 41.40.185, 41.40.190, 41.40.230, 41.40.235, 41.40.250, 41.40.670, 41.40.820, or 41.40.825. When the retiree dies all benefits cease. Any remaining balance of the retiree's accumulated contributions will be paid to:

(a) Such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or

(b) If there is no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or

(c) The member's estate; or

(d) If there is neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

**(2) Benefit options with a survivor feature.**

(a) A retiring member is allowed to select from several retirement options which create an actuarially equivalent benefit that includes a survivor feature. The survivor feature entitles the survivor to receive a monthly allowance after the retiree dies. If the member chooses one of the survivor options, the monthly benefit the member will receive is actuarially reduced to offset the cost of the survivor feature. After the retiree dies, the department pays the survivor an allowance for the duration of his or her life. If the retiree and the survivor both die before the retiree's accumulated contributions are exhausted, all benefits cease. Any remaining balance of the retiree's accumulated contributions will be paid to:

(i) Such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or

(ii) If there is no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or

(iii) The member's estate; or

(iv) If there is neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(b) Option Two (joint and whole allowance). When the retiree dies, the department pays the survivor an allowance equal to the gross monthly allowance received by the retiree.

(c) Option Three (joint and one-half allowance). When the retiree dies, the department pays the survivor an allowance equal to one-half of the retiree's gross monthly retirement allowance.

(d) Option Four (joint and two-thirds allowance).

(i) Option Four is available to members retiring on or after January 1, 1996.

(ii) When the retiree dies, the department pays the survivor an allowance equal to two-thirds (66.667%) of the retiree's gross monthly retirement allowance.

(3) If a member retires on or after June 6, 1996, the department is required to pay an ex-spouse survivor benefits pursuant to a marital dissolution order that complies with RCW 41.50.790.

**(4) Supplemental COLA option for Plan 1 members.**

Retiring Plan 1 members may select an annual cost-of-living adjustment (COLA) option, in addition to their choice of retirement benefit options listed in subsections (1) and (2) of this section. Retiring members who choose this supplemental option will have their monthly retirement allowance actuarially reduced to offset the cost of annual adjustment.

**(5) Benefit increases when survivor predeceases retiree (pop-up provision).**

(a) This subsection applies to members retiring on or after January 1, 1996, who select a benefit option with a survivor feature (Option Two, Three, or Four).

(b) If the survivor dies before the retiree, the retiree's monthly retirement allowance increases, effective the first day of the following month, to:

(i) The amount that would have been received had the retiree chosen Option One; plus

(ii) Any cost-of-living adjustments the retiree received prior to the survivor's death based on the original option selection.

(c) Pop-up recalculation examples.

**Plan One:**

Lucinda retires from PERS Plan 1 in 1996 (Year 0). She would like Garth, her husband, to receive a monthly allowance when she dies. Therefore, Lucinda chooses one of the benefit options with a survivor feature. As a result, her monthly allowance is actuarially reduced from \$2,000 (standard allowance) to \$1,750. Unfortunately, Garth dies in January 2001 (Year 5). Under the "pop-up" provision, Lucinda's monthly benefit will increase to \$2,000, the amount she would have received had she chosen the Option One (standard allowance) plus any COLA's Lucinda had received based on her prior benefit allowance:

Original Option 1 Benefit Amount \$2,000.00	+	Total COLA's 0 (None accrued)	=	New Benefit Amt. \$2,000.00*
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**Plan Two:**

Agnes retires from PERS Plan 2 in 1996 (Year 0). Agnes would like Beatrice, her daughter, to receive a monthly allowance after Agnes dies. Therefore, Agnes selects a retirement benefit option with a survivor feature. As a result, her monthly allowance is reduced from \$2,000 (standard allowance) to \$1,750. Unfortunately, Beatrice dies in 2001 (Year 5). Under the "pop-up" provision, Agnes' monthly benefit will increase to \$2,191.05, the amount she would have received had she chosen Option One (standard allowance) plus her accumulated COLA's:

Year	Option One (Standard Allow.)	Survivor Option (2,3,4) plus COLAs	COLA incr. (3% max)	\$ Increase
0 (1996)	2,000.00	1,750.00	(ineligible)	0.00
1 (1997)		1,750.00	.02	35.00
2 (1998)		1,785.00	.03	53.55
3 (1999)		1,838.55	.025	45.96
4 (2000)		1,884.51	.03	56.54
5 (2001)	2,000.00	1,941.05	—	—

Total COLA's 191.05

Original Option One Benefit Amount \$2000	+ Total COLA's + \$191.05	= New Benefit Amount = \$2,191.05*
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\*In the future (i.e. Year 4), COLAs will be based on the increased benefit amount.

(d) If the survivor dies and the retiree's benefit increases under this section, and thereafter the retiree also dies before all employee contributions are exhausted, all benefits cease. Any remaining balance will be paid to:

(i) Such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or

(ii) If there is no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or

(iii) The member's estate; or

(iv) If there is neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(6) Any retiree who retired before January 1, 1996, and who elected to receive a benefit option with a survivor feature under subsection (2) of this section is entitled to receive a retirement allowance adjustment if the retiree meets the following conditions:

(a) The retiree's designated beneficiary predeceases or has predeceased the retiree; and

(b) The retiree provides to the department proper proof of the designated beneficiary's death. The retiree is not required to apply for the increased benefit provided by this subsection.

The adjusted retirement allowance will be effective on July 1, 1998, or the first of the month following the date of death of the designated beneficiary, whichever comes last. The adjustment is computed as described in RCW 41.40.188 (3)(c) for Plan 1 retirees or RCW 41.40.660 (3)(c) for Plan 2 retirees.

(7) **Survivor.** For the purposes of this provision, "survivor" means a person nominated by the member to receive a monthly benefit allowance after the member dies. A member nominates the survivor at the time of retirement by filing a completed and notarized form provided by the department.

#### (8) Postretirement benefit options.

(a) **Postretirement marriage option.** Members who select the standard allowance (Option One) at the time of retirement and marry after retirement may subsequently select a survivor option with their new spouse as survivor beneficiary, provided that:

(i) The retiree's monthly benefit is not subject to a property settlement agreement from a court decree of dissolution or legal separation;

(ii) The selection is made either:

(A) During a one year window, on or after the date of the first anniversary and before the second anniversary of the postretirement marriage; or

(B) Before June 1, 2002, if the postretirement marriage occurred before June 1, 2001;

(iii) The retiree provides a marriage certificate as proof of the postretirement marriage and provides proof of the birth date of the new spouse; and

(iv) A member may exercise this option one time only.

(b) **Removal of a nonspouse survivor option.** Members who selected a nonspouse as survivor beneficiary at the time of retirement may remove that survivor designation and have the benefit adjusted to a standard allowance. A member may exercise this option one time only.

(c) Selection (a) or (b) of this subsection will become effective the first of the month following the department's receipt of the required paperwork.

[Statutory Authority: RCW 41.50.050(5), 41.26.460, 41.32.530, 41.32.785, 41.32.851, 41.35.220, 41.40.188, 41.40.660, 41.40.845. 01-10-045, § 415-108-326, filed 4/26/01, effective 6/1/01. Statutory Authority: RCW 41.50.050. 99-14-008, § 415-108-326, filed 6/24/99, effective 7/25/99. Statutory Authority: RCW 2.10.146, 41.26.460, 41.32.530, 41.50.050, 41.32.785, 41.40.188 and 41.40.660. 96-01-047, § 415-108-326, filed 12/14/95, effective 1/14/96. Statutory Authority: RCW 34.05.050 and 1990 c 249. 91-03-015, § 415-108-326, filed 1/7/91, effective 2/7/91.]

**WAC 415-108-340 Actuarial tables, schedules, and factors.** See chapter 415-02 WAC starting with WAC 415-02-300 for the tables, schedules, and factors the department uses for calculating optional retirement allowances of members of the Washington state public employees' retirement system.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.45 RCW. 02-18-048, § 415-108-340, filed 8/28/02, effective 9/1/02; 02-03-120, § 415-108-340, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050. 96-03-100, § 415-108-340, filed 1/19/96, effective 2/19/96. Statutory Authority: RCW 41.50.050, 41.40.165, 41.40.020 and 41.40.022. 91-02-018, § 415-108-340, filed 12/21/90, effective 1/21/91.]

**WAC 415-108-400 Purpose and scope.** WAC 186-16-400 through 186-16-440 are hereby promulgated by the director in order to implement and give effect to the provisions of RCW 41.40.380 allowing a beneficiary of a retirement allowance to authorize deductions therefrom for payment of premiums due on any group life or disability insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington or

its political subdivisions, in accordance with rules and regulations that may be promulgated by the director.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-108-400, filed 2/15/78. Formerly WAC 184-16-010.]

**WAC 415-108-410 Definitions.** As used in WAC 186-16-400 through 186-16-440, unless a different meaning is plainly required by the context:

(a) "Group life insurance policy or plan" means a contract of group life insurance issued by an insurance carrier authorized to do business in the state of Washington which meets one of the group requirements set forth in chapter 48.24 RCW;

(b) "Group disability insurance policy or plan" means a group disability insurance contract issued by an insurance carrier authorized to do business in the state of Washington which meets the requirements of chapter 48.21 RCW, and the term shall also include a group health care service contract as issued pursuant to, and regulated by, the provisions of chapter 48.40 RCW;

(c) To the extent that they are defined by RCW 41.40.010, all other terms used in WAC 186-16-400 through 186-16-440 which are thereby defined shall be given the same meaning herein as is set forth in the cited statute.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-108-410, filed 2/15/78. Formerly WAC 184-16-020.]

**WAC 415-108-420 Scope of authority.** Any beneficiary of a retirement allowance payable for service or disability under the provisions of chapter 41.40 RCW may, in the manner provided for by WAC 415-108-430, authorize the director to deduct therefrom, on a monthly basis only, such amounts as are due as premiums on any group life or disability insurance policy or plan currently covering the beneficiary, issued to the employer by which he was employed prior to his retirement for the benefit of a group comprised of himself and his fellow public employees, under authority granted to the employer by act of the Washington legislature. The department and the director are not and will not be liable for any failure to make such deduction payments on time or in the proper amount.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-108-420, filed 2/15/78. Formerly WAC 184-16-030.]

**WAC 415-108-425 How do I determine if I have choice rights or transfer rights to PERS Plan 3? (1) Definitions:**

(a) "Concurrently employed" means you are employed at the same time, in eligible positions, by a Phase 1 employer and by a Phase 2 employer.

(b) "Exercising choice rights" means choosing Plan 2 or Plan 3 or defaulting into Plan 3.

(c) "Phase 1 employer" means state agencies and institutes of higher education.

(d) "Phase 2 employer" means all other employers.

(e) "Phase 1 transfer period" is the period from March 1, 2002, through and including August 31, 2002.

(f) "Phase 2 transfer period" is the period from September 1, 2002, through and including May 31, 2003.

(2003 Ed.)

(2) What determines if I have "choice rights" or "transfer rights"? Your current employment status and your employment history will be used to determine if you have choice rights or transfer rights. If your employment status changes, your rights must be reevaluated. A change in your employment status, such as separating from employment or becoming reemployed, may change your rights.

(3) What are "choice rights" and how are they applied? "Choice rights" refers to your right, within a ninety-day period, to make an irrevocable choice to become a member of Plan 2 or Plan 3.

(a) You will be reported in Plan 2 until you exercise choice rights.

(b) You must make a choice within ninety days of your first day of employment in an eligible position.

(c) You will be defaulted into Plan 3 if you continue employment past the ninety-day choice period without making a choice.

(d) You may exercise choice rights only once.

(4) Do I have "choice rights"?

(a) You have choice rights if your initial PERS membership began on or after March 1, 2002, with a Phase 1 employer in an eligible position.

(i) If you separate from employment and did not exercise your choice rights, you retain choice rights if you are reemployed in an eligible position with a Phase 1 employer.

(ii) If you separate from employment and did not exercise your choice rights, and you are not employed by a Phase 2 employer during Phase 2, you retain choice rights if you begin another period of employment in an eligible position with a Phase 2 employer after May 31, 2003.

(b) You have choice rights if your initial PERS membership began on or after September 1, 2002, with a Phase 2 employer in an eligible position. If you separate from employment and did not exercise your choice rights, you retain choice rights if you begin another period of employment in an eligible position with a Phase 1 or Phase 2 employer.

(5) What are "transfer rights" and how are they applied? "Transfer rights" refers to your right as a Plan 2 member to transfer into Plan 3 during an applicable transfer period to your employment type.

(a) You are not required to exercise transfer rights. If you have transfer rights, you will remain in Plan 2 unless you decide to transfer to Plan 3.

(b) If you do not transfer to Plan 3 during the Phase 1 or the Phase 2 transfer periods, you will not qualify to receive the additional transfer payment under RCW 41.40.795 or retroactive gainsharing payment under RCW 41.31A.040.

(6) Do I have transfer rights?

(a) You have transfer rights if you:

(i) Are a Plan 2 member;

(ii) Are employed in an eligible position by a Phase 1 employer during the Phase 1 transfer period; and

(iii) Were not eligible for choice rights under subsection (4)(a) of this section..

(b) You have transfer rights if you:

(i) Are a Plan 2 member;

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(ii) Are employed in an eligible position by a Phase 2 employer during the Phase 2 transfer period; and

(iii) Were not eligible for choice rights under subsection (4)(b) of this section.

**(7) What are "January transfer rights" and how are they applied?** "January transfer rights" refers to a Plan 2 member's right to transfer to Plan 3 during any January after the close of a transfer period.

(a) If you are employed by a Phase 1 employer, in an eligible position, the first January you can transfer is January 2003.

(b) If you are employed by a Phase 2 employer, in an eligible position, the first January you can transfer is January 2004.

(c) You must earn service credit in the January in which you transfer.

**(8) Do I have January transfer rights?**

(a) You have January transfer rights if you were eligible for transfer rights and did not transfer to PERS Plan 3 **during** the transfer period that applied to you.

(b) You have January transfer rights if you:

(i) Were employed in an eligible position with a Phase 1 employer **before** the Phase 1 transfer period, or were employed in an eligible position by a Phase 2 employer **before** the Phase 2 transfer period;

(ii) Were not employed by a Phase 1 employer **during** the Phase 1 transfer period;

(iii) Were not employed by a Phase 2 employer **during** the Phase 2 transfer period; and

(iv) Are employed by a Phase 1 employer in an eligible position that you began **after** the Phase 1 transfer period ended, or are employed by a Phase 2 employer in an eligible position that you began **after** the Phase 2 transfer period ended.

**(9) What happens after I become a Plan 3 member?**

Once you choose Plan 3 or default to Plan 3 or transfer to Plan 3, you will remain a Plan 3 member. You will not have any additional transfer rights or choice rights to exercise.

**(10) What rules apply to me if I am concurrently employed?** If you are, or become concurrently employed during the Phase 1 transfer period in an eligible position, you will have transfer rights but must wait until the Phase 2 transfer period to transfer. If you separate from one of the employers, your membership rights must be reevaluated.

**Examples:** *The examples are written, for the most part, for a Phase 1 employer. Use the Phase 2 transfer period (September 1, 2002, through and including May 31, 2003) to apply the rules to a Phase 2 employer.*

**Plan Choice Rights:**

**Example 1:** Pat starts working for a state agency in an eligible position (Phase 1 employer) as of:

A. April 1, 2002. Since Pat has not previously been a member of PERS, Pat has ninety days to make a **plan choice** for Plan 2 or Plan 3. See subsection (3)(b) of this section.

B. After forty-five days, Pat leaves service without making a choice, and then returns in an eligible position one year later. Pat has a new ninety day period in which to make his **plan choice**. See subsection (4)(a)(i) of this section.

C. Pat chooses Plan 3 within his ninety days. Pat is now a Plan 3 member regardless of future employment. See subsection (9) of this section.

D. Instead of choosing Plan 3, Pat lets his ninety day plan choice period go by without choosing Plan 2 or Plan 3. Pat is defaulted into Plan 3 and is now a Plan 3 member regardless of future employment. See subsections (3)(c) and (9) of this section.

**Transfer Rights:**

**Example 2:**

A. Chris has been a Plan 2 member since 1977. Chris is working at a state agency (Phase 1 employer) as of March 1, 2002. Since Chris was a member prior to the start of Plan 3, Chris has the right to **transfer** to Plan 3 in the transfer period (March 1, 2002, through August 31, 2002). See subsection (6)(a) of this section.

B. However, Chris **did not make a decision** to transfer prior to the close of the Phase 1 transfer period. If Chris remains employed for a Phase 1 employer, the right to transfer to Plan 3 is limited to January of each year. See subsection (8)(a) of this section.

C. In this variation, Chris was a Plan 2 member from March 1, 1987, through February 1, 2002. Chris returns on October 15, 2002, for a state agency (Phase 1 employer). Since Chris returned to service **after** the transfer period (March 1, 2002, through August 31, 2002), Chris only has the right to transfer to Plan 3 in January of each year. See subsection (8)(b) of this section.

**Irrevocable Choice Rule:**

**Example 3:** Mike starts working for a state agency (Phase 1 employer) as of April 1, 2002. Since Mike has not previously been a member of PERS, he has ninety days to make a **plan choice** for Plan 2 or Plan 3. Mike chooses Plan 3 within his ninety days. Mike is now a Plan 3 member regardless of future employment. See subsection (9) of this section.

**Example 4:** Pat starts working for a state agency (Phase 1 employer) as of April 1, 2002. Since Pat has not previously been a member of PERS, he has ninety days to make a **plan choice** for Plan 2 or Plan 3. Pat chooses Plan 2 within his ninety days. Pat is now a Plan 2 member who can no longer have a **plan choice** regardless of future employment. See subsection (3)(d) of this section.

**Concurrent Employment in Phase 1 and 2:**

**Example 5: Using example 2A,** Chris also accepts employment for a county (Phase 2 employer) on April 1, 2002, **prior to transferring** to Plan 3. Since Chris is concurrently employed at a Phase 1 and a Phase 2 employer, Chris must wait for the Phase 2 window before he can transfer to Plan 3. See subsection (10) of this section.

[Statutory Authority: RCW 41.50.050(5) and 41.40.785. 02-03-120, § 415-108-425, filed 1/23/02, effective 3/1/02.]

**WAC 415-108-430 Procedure.** Any beneficiary, who desires to authorize a retirement allowance deduction for payment of insurance premiums provided for by these rules, shall notify the retirement board of his intention in writing at least thirty days prior to the date upon which the first deduction is to be made and shall execute and file with the director a formal authorization on such form as may be hereinafter provided by the director.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-108-430, filed 2/15/78. Formerly WAC 184-16-040.]

**WAC 415-108-440 Revocability.** No authorization for a retirement allowance deduction for payment of insurance premiums, as made pursuant to WAC 186-16-400 through 186-16-440, shall be revocable except upon submission to the director of an express written revocation, which shall be first applicable to the retirement allowance deduction which would otherwise be made at the end of the calendar month

following the month within which the statement of revocation is filed.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-108-440, filed 2/15/78. Formerly WAC 184-16-050.]

## REPORTABLE COMPENSATION

**WAC 415-108-441 Purpose and scope of compensation earnable rules.** WAC 415-108-443 through 415-108-488 codify the department's interpretation of statutes and administrative practice regarding classification of payments as compensation earnable in PERS Plan 1, 2, or 3. These rules will be used to determine the proper characterization of pay-

ments occurring prior to and after the effective dates of these sections.

[Statutory Authority: RCW 41.50.050(5), 41.40.010(8), chapter 41.40 RCW. 02-03-120, § 415-108-441, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050. 98-09-059, § 415-108-441, filed 4/17/98, effective 5/18/98.]

### WAC 415-108-443 PERS reportable compensation

**table.** The following table will help you determine whether certain types of payments are reportable compensation under Plan 1, 2, or 3. Be sure to read the referenced rule to ensure that you have correctly identified the payment in question. The department determines compensation earnable based upon the nature of the payment, not the name applied. See WAC 415-108-445.

Type of Payment	PERS 1 Reportable Compensation?	PERS 2 or 3 Reportable Compensation?
Annual Leave Cash Outs	Yes - WAC 415-108-456	No - WAC 415-108-456
Assault Pay (State Emp.)	Yes - WAC 415-108-468	Yes - WAC 415-108-468
Base Rate	Yes - WAC 415-108-451	Yes - WAC 415-108-451
Car Allowances	No - WAC 415-108-485 <sup>1</sup>	No - WAC 415-108-485
Cafeteria Plans	Yes - WAC 415-108-455	Yes - WAC 415-108-455
Deferred Wages	Yes - WAC 415-108-459	Yes - WAC 415-108-459
Disability Payments	No - WAC 415-108-477	No - WAC 415-108-477
Disability: Salary lost while on disability leave	Yes - WAC 415-108-468 RCW 41.40.038	Yes - WAC 415-108-468 RCW 41.40.038
Employer Provided Vehicle	No - WAC 415-108-480 <sup>2</sup>	No - WAC 415-108-480
Employer taxes/contributions	No - WAC 415-108-459	No - WAC 415-108-459
Fringe Benefits	No - WAC 415-108-475	No - WAC 415-108-475
Illegal Payments	No - WAC 415-108-482	No - WAC 415-108-482
Legislative Leave	Yes - WAC 415-108-464	Yes - WAC 415-108-464
Longevity/Education Attainment Pay	Yes - WAC 415-108-451	Yes - WAC 415-108-451
Nonmoney Maintenance	Yes - WAC 415-108-470 <sup>3</sup>	No - WAC 415-108-470
Optional Payments	No - WAC 415-108-483	No - WAC 415-108-483
Payments in Lieu of Excluded Items	No - WAC 415-108-463	No - WAC 415-108-463
Performance Bonuses	Yes - WAC 415-108-453	Yes - WAC 415-108-453

<sup>1</sup>A portion of the value of an employer car allowance may be reportable, see WAC 415-108-485.

<sup>2</sup>A portion of the value of an employer provided vehicle may be reportable in Plan I only, see WAC 415-108-480.

<sup>3</sup>A portion of the value of nonmoney maintenance provided may be reportable in Plan I only, see WAC 415-108-470.

Type of Payment	PERS 1 Reportable Compensation?	PERS 2 or 3 Reportable Compensation?
Retroactive Salary Increase	Yes - WAC 415-108-457	Yes - WAC 415-108-457
Reimbursements	No - WAC 415-108-484	No - WAC 415-108-484
Reinstatement Payments	Yes - WAC 415-108-467	Yes - WAC 415-108-467
Retirement or Termination Bonuses	No - WAC 415-108-487	No - WAC 415-108-487
Severance Pay - Earned Over Time	Yes - WAC 415-108-458	No - WAC 415-108-458
Severance Pay - Not Earned Over Time	No - WAC 415-108-488	No - WAC 415-108-488
Shared Leave - State Emp.	Yes - WAC 415-108-468	Yes - WAC 415-108-468
Shared Leave - Local Government Employees	No - WAC 415-108-468	No - WAC 415-108-468

Sick Leave Cash Outs - State Employees	No - WAC 415-108-456	No - WAC 415-108-456
Sick Leave Cash Out - Local Government Employees	Yes - WAC 415-108-456	No - WAC 415-108-456
Standby Pay	Yes - WAC 415-108-469	Yes - WAC 415-108-469
Time Off with Pay	Yes - WAC 415-108-456 WAC 415-108-465	Yes - WAC 415-108-456 WAC 415-108-465
Union Leave <sup>4</sup>	Yes - WAC 415-108-466	Yes - WAC 415-108-466
Worker's Compensation	No - WAC 415-108-479	No - WAC 415-108-479

<sup>4</sup>Only specific types of union leave are reportable, see WAC 415-108-466.

[Statutory Authority: RCW 41.50.050(5), 41.40.010(8), chapter 41.40 RCW. 02-03-120, § 415-108-443, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050. 98-09-059, § 415-108-443, filed 4/17/98, effective 5/18/98.]

#### **WAC 415-108-445 What compensation can be reported? (1) Compensation earnable:**

(a) Compensation earnable must meet the definition in RCW 41.40.010(8) and:

- (i) Be earned as a salary or wage for personal services provided during a payroll period and be paid by an employer to an employee; or
- (ii) Qualify as compensation earnable under WAC 415-108-464 through 415-108-470.

(b) The department determines whether payments to an employee are compensation earnable based on the nature, not the name, of the payment. The department considers the reason for the payment and whether the reason brings the payment within the statutory definition of compensation earnable.

Example: "Longevity pay" conditioned on retirement is not for services provided and is therefore not compensation earnable.

(c) "Compensation earnable" is defined in very similar terms for all three PERS plans. Any differences among plans are specifically noted in WAC 415-108-443 through 415-108-488.

#### **(2) Reportable compensation:**

(a) Reportable compensation is the compensation paid by an employer to an employee that the employer must report to the department.

(b) An employer must report all of an employee's compensation earnable, as defined by RCW 41.40.010(8) and WAC 415-108-445(1), to the department.

(c) An employer must report compensation for the month in which it was earned. Compensation is earned when the service is provided, rather than when payment is made.

Example: A member is paid in July for work performed during June. The employer must report the compensation to the department as "June earnings."

[Statutory Authority: RCW 41.50.050(5) and 41.40.010(8). 02-18-045, § 415-108-445, filed 8/28/02, effective 9/28/02. Statutory Authority: RCW 41.50.050(5) and 41.40.010. 02-03-120, § 415-108-445, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050. 98-09-059, § 415-108-445, filed 4/17/98, effective 5/18/98.]

**WAC 415-108-451 Salary or wages.** Most employees receive a base rate of salary or wages expressed as an hourly or monthly rate of pay. This payment is for services rendered

and qualifies as reportable compensation. Two possible components of an employee's base rate are salary considerations based on longevity or educational attainment.

(1) A member who receives a salary increase based upon longevity or educational attainment receives a higher salary without working more hours. The higher salary indicates a higher level of performance due to greater experience or more education. The payment is therefore a payment for personal service and is reportable compensation.

(2) Simply attaching the label "longevity" to a payment does not guarantee that it will be reportable compensation. If a payment described as a longevity payment is actually based upon some other criteria, such as retirement or notification of intent to retire, the payment may not be reportable.

[Statutory Authority: RCW 41.50.050. 98-09-059, § 415-108-451, filed 4/17/98, effective 5/18/98.]

#### **WAC 415-108-453 Performance bonuses.**

Bonuses that are based upon meeting certain performance goals are earned for services rendered and are reportable compensation. If a bonus was earned over a specified period of time it should be prorated for reporting purposes.

Example: An employer pays each employee in the work group an additional \$100 if the work group had no work related accidents in the preceding year. Remaining accident free is a performance goal. Therefore the payment is for services rendered and qualifies as reportable compensation. The bonus should be prorated over each of the preceding twelve months during which it was earned.

[Statutory Authority: RCW 41.50.050. 98-09-059, § 415-108-453, filed 4/17/98, effective 5/18/98.]

**WAC 415-108-455 Cafeteria plans.** Compensation received in any form under the provisions of a "cafeteria plan," "flexible benefits plan," or similar arrangement pursuant to section 125 of the United States Internal Revenue Code is reportable compensation if the employee has an absolute right to receive cash or deferred cash payments in lieu of the fringe benefits offered. In such an instance, the fringe benefits are being provided in lieu of cash and are considered reportable compensation, just as the cash would be. If there is no cash option, the value of the fringe benefit is not a salary

or wage and is not reportable compensation, see WAC 415-108-475.

[Statutory Authority: RCW 41.50.050, 98-09-059, § 415-108-455, filed 4/17/98, effective 5/18/98.]

**WAC 415-108-456 Leave payments earned over time.** (1) **Sick and annual leave usage.**

(a) Leave accrues at a prescribed rate, usually a certain number of hours per month.

(b) You earn a leave day by providing service during the month the leave accrued.

(c) Sick leave and annual leave are accumulated over time and paid to you during a period of excused absence.

(d) When you use your accrued leave by taking a scheduled work day off with pay, the payment is deferred compensation for services previously provided.

(e) The payment is a salary or wage earned for services provided and is reportable.

(2) **Annual leave cash outs.** Annual leave cash outs, like payments for leave usage, are deferred compensation earned for services previously provided. Whether, and to what extent an annual leave cash out qualifies as reportable compensation depends upon the PERS plan to which you belong and the type of employer.

(a) **Plans 2 and 3:** Annual leave cash outs are not reportable compensation. Although the payments are for services provided, they are excluded from the definition of compensation earnable by statute. See RCW 41.40.010 (8)(b).

(b) **Plan 1, state government employees:** A cash out of up to thirty days of annual leave for state government employees is reportable compensation. See RCW 43.01.040. A cash out in excess of thirty days of annual leave:

(i) Qualifies as reportable compensation if the leave is authorized by a letter of necessity under RCW 43.01.040. Annual leave qualifies as authorized under a letter of necessity only if the leave was earned after the letter of necessity was issued;

(ii) Does not qualify as reportable compensation if the leave is earned between the date that you accrued thirty days of annual leave and your anniversary date under RCW 43.01.044.

(c) **Plan 1 employees not covered by (2)(b):** All annual leave cash outs received by PERS Plan 1 members who are not state employees qualify as reportable compensation.

(3) **Sick leave cash outs.** Sick leave cash outs are deferred compensation for services previously provided.

(a) Sick leave cash outs are excluded from the definition of compensation earnable for PERS Plan 2 or 3 members by statute. See RCW 41.40.010 (8)(b).

(b) Sick leave cash outs are reportable compensation for PERS Plan 1 members other than state, school district, and educational service district employees.

(c) Sick leave cash outs are excluded from reportable compensation for:

(i) State employees by RCW 41.04.340;

(ii) School district employees by RCW 28A.400.210; and

(iii) Educational service district employees by RCW 28A.310.490.

See RCW 41.40.010 (8)(a).

[Statutory Authority: RCW 41.50.050(5) and 41.40.010(8), 02-03-120, § 415-108-456, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050, 98-09-059, § 415-108-456, filed 4/17/98, effective 5/18/98.]

**WAC 415-108-457 Retroactive salary increases.** A retroactive salary payment to an employee who worked during the covered period is a payment of additional salary for services already rendered.

Note: A retroactive salary increase is not the same as a retroactive payment upon reinstatement or in lieu of reinstatement of a terminated or suspended employee. For treatment of back payments for periods where services were not rendered, see WAC 415-108-467.

(1) To qualify as reportable compensation under this section, the payment must be a bona fide retroactive salary increase. To ensure that is the case, the retroactive payment must be made pursuant to:

(a) An order or conciliation agreement of a court or administrative agency charged with enforcing federal, state, or local statutes, ordinances, or regulations protecting employment rights;

(b) A bona fide settlement of such a claim before a court or administrative agency;

(c) A collective bargaining agreement; or

(d) Action by the personnel resources board which expressly states the payments are retroactive.

(2) The payments will be deemed earned in the period in which the work was done.

[Statutory Authority: RCW 41.50.050, 98-09-059, § 415-108-457, filed 4/17/98, effective 5/18/98.]

**WAC 415-108-458 Severance pay earned over time.**

(1) **PERS Plan 1:** Severance pay earned over time is reportable compensation. Conversely, severance pay not earned over time is not reportable compensation (see WAC 415-108-488). The difference is that severance pay earned over time is deferred compensation for services previously provided.

Severance pay is earned over time if the employment contract(s) or compensation policies in effect at the beginning of a given period of employment specify that a certain amount of severance pay will be earned during that period in consideration for services provided.

Example: Mr. Jones is a PERS Plan 1 member employed as a city manager. Since the beginning of his term of employment with the city, his contract has specified that he will earn one week of severance pay for every year of his employment. The earned severance pay will be paid at the time of his separation. His severance pay is reportable compensation. When Mr. Jones retires, the two weeks severance pay that he earned during his two highest paid years (i.e., one week per year for two years) will be included in his PERS Plan 1 retirement calculation.

To the extent that severance pay qualifies as reportable compensation and is earned within your average final compensa-

tion period, the severance pay is excess compensation. See RCW 41.50.150.

(2) **PERS Plans 2 and 3:** All forms of severance pay are excluded from earnable compensation. See RCW 41.40.010 (8)(b).

[Statutory Authority: RCW 41.50.050(5) and 41.40.010(8). 02-03-120, § 415-108-458, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050. 98-09-059, § 415-108-458, filed 4/17/98, effective 5/18/98.]

**WAC 415-108-459 Payroll deductions.** Salary or wages for services rendered that are withheld from a member's pay still qualify as reportable compensation.

(1) **Retirement contributions.** Payments deducted from employee compensation for employee retirement contributions are reportable. Employer contributions are a fringe benefit and are not reportable, see WAC 415-108-475.

(2) **Tax withholding.** Payments withheld to satisfy federal tax obligations qualify as reportable compensation.

(3) **Voluntary deductions.** Payments deducted voluntarily, such as I.R.C. section 457 plan contributions or other authorized deductions, are reportable.

[Statutory Authority: RCW 41.50.050. 98-09-059, § 415-108-459, filed 4/17/98, effective 5/18/98.]

**WAC 415-108-463 Payments not for services rendered.** In general, payments cannot be reported to the retirement system unless they are for services rendered. However, the legislature has identified some types of compensation which are reportable even though they are not for services rendered.

(1) WAC 415-108-464 through 415-108-469 discuss all payments that are not for services rendered that nonetheless qualify as reportable compensation.

(2) WAC 415-108-475 through 415-108-488 discuss some payments that are not a salary or wage for services rendered and so do not qualify as reportable compensation. A payment not for services rendered other than those identified in WAC 415-108-464 through 415-108-469 is not reportable compensation even if it is not listed in WAC 415-108-475 through 415-108-488.

(3) A payment made in lieu of a payment that is not for services rendered (such as a payment made in lieu of a car allowance) will be treated in the same way that the original payment was treated. Such a payment is not for services rendered and is not reportable.

[Statutory Authority: RCW 41.50.050. 98-09-059, § 415-108-463, filed 4/17/98, effective 5/18/98.]

**WAC 415-108-464 Legislative leave.** If you take leave without pay from an eligible position to serve in the legislature, you may choose to participate in PERS as a legislator.

(1) **Plan 1:** Your reportable compensation is the salary you would have earned from your employer. You must pay employee contributions on this amount. Either you or your employer must pay employer contributions on the amount.

(2) **Plan 2 or 3:** You may choose your reportable compensation to be:

(a) The reportable compensation you would have earned from your employer; or

(b) Your actual reportable compensation for your legislative and nonlegislative service combined.

If you choose (2)(a) of this subsection and your reportable compensation is higher than it would have been under (2)(b) of this subsection, you must pay both employee and employer contributions on the excess amount.

[Statutory Authority: RCW 41.50.050(5) and 41.40.010(8). 02-03-120, § 415-108-464, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050. 98-09-059, § 415-108-464, filed 4/17/98, effective 5/18/98.]

**WAC 415-108-465 Is paid leave not earned over time reportable compensation for PERS?** RCW 41.40.175 and 41.40.710 identify payments received from the employer while on paid leave as reportable for PERS. Contributions are due on these payments to the extent they meet the following conditions:

(1) **The payment is equal to the salary that you normally earn in your position; and**

(2) **The payment is actually from the employer.** Payments from an employer that are conditioned upon reimbursement from a third party are payments from the third party. Because the payments are not from the employer, they are not reportable compensation. The only exception is union leave paid by the employer subject to reimbursement from the union under the conditions specified in RCW 41.40.175 (Plan 1), RCW 41.40.710 (Plan 2), RCW 41.40.805 (Plan 3), and WAC 415-108-466.

Example: Joe injures himself off the job and collects labor and industries payments instead of compensation from his employer. Because the payments are not from his employer, they are not reportable compensation.

[Statutory Authority: RCW 41.50.050(5) and 41.40.710. 02-03-120, § 415-108-465, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050. 98-09-059, § 415-108-465, filed 4/17/98, effective 5/18/98.]

**WAC 415-108-466 Do I receive reportable compensation for union leave?** If you take an authorized leave of absence to serve as an elected official of a labor organization and your employer pays you while you are on leave subject to reimbursement from the union, your pay qualifies as reportable compensation provided that all the conditions of RCW 41.40.175 (Plan 1), RCW 41.40.710 (Plan 2), or RCW 41.40.805 (Plan 3) as appropriate, are met.

[Statutory Authority: RCW 41.50.050(5), 41.40.010, 41.40.175, 41.40.710, 41.40.805. 02-03-120, § 415-108-466, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050. 98-09-059, § 415-108-466, filed 4/17/98, effective 5/18/98.]

**WAC 415-108-467 Reinstatement or payment instead of reinstatement.** (1) Payments to an employee are not earned for services rendered if an employer makes them for periods during which the employee was not employed and the payments are made either upon reinstatement or instead of reinstatement. Nonetheless, RCW 41.40.010(8) specifically designates these payments as reportable compensation. The payments are only reportable to the extent that they are equivalent to the salary the employee would have earned had he or she been working. The payment will be prorated over

the entire period that the employee was suspended, terminated, or otherwise absent from work.

(2) For purposes of subsection (1) of this section, "reinstatement" means that the employee is entitled to return to full employment rights by action of either:

(a) The employer; or

(b) A personnel board, personnel appeals board or court of law following a hearing.

[Statutory Authority: RCW 41.50.050(5), 41.40.020, 41.35.010(6), 41.40.010(8). 01-08-057, § 415-108-467, filed 4/2/01, effective 5/3/01. Statutory Authority: RCW 41.50.050. 98-09-059, § 415-108-467, filed 4/17/98, effective 5/18/98.]

**WAC 415-108-468 Compensation authorized by statute for periods of absence due to sickness or injury.** Compensation that a member receives for periods of absence due to sickness or injury are not payments for services rendered unless the payments are authorized pursuant to sick leave earned by the member for services rendered, see WAC 415-108-456. Certain specific types of payments for periods of absence due to sickness or injury have been included within the statutory definition of compensation earnable and therefore qualify as reportable compensation.

(1) **Assault pay** qualifies as reportable compensation only to the extent authorized by RCW 27.04.100, 72.01.045, and 72.09.240.

(2) **Imputed compensation for periods of duty disability** that a member would have received but for a disability occurring in the line of duty qualify as reportable compensation only to the extent authorized by RCW 41.40.038.

### (3) Shared leave.

(a) Compensation that a state employee receives due to participation in a leave sharing program to the extent authorized by RCW 41.04.650 through 41.04.670 qualifies as reportable compensation.

(b) Shared leave payments received by members who are not state employees, do not qualify as reportable compensation. Such payments are not for services rendered, nor are they specifically included within the statutory definition of compensation earnable.

[Statutory Authority: RCW 41.50.050. 98-09-059, § 415-108-468, filed 4/17/98, effective 5/18/98.]

**WAC 415-108-469 Standby pay.** Some employers pay employees for being on "standby." A member is on standby when not being paid for time actually worked and the employer requires the member to be prepared to report immediately for work if the need arises, although the need may not arise. Because the member is not actually working, the member is not rendering service. However, RCW 41.40.010(8) specifically identifies standby pay that meets the above requirements as reportable compensation. Although included in the definition of compensation earnable, time spent on standby is excluded from the definition of "service," see RCW 41.40.010(9).

[Statutory Authority: RCW 41.50.050. 98-09-059, § 415-108-469, filed 4/17/98, effective 5/18/98.]

**WAC 415-108-470 Nonmoney maintenance.** Are payments from my employer in any form other than money considered compensation earnable?

(1) **PERS Plan I members.**

(a) If your employer provides you with materials in lieu of reimbursement for your business expenses, the value of the materials is not compensation earnable.

(i) The value of employer-provided materials is not compensation earnable if you use the materials solely in connection with your employer's business.

(ii) "Materials" includes, but is not limited to, living quarters, food, board, equipment, clothing, laundry, transportation, fuel, and utilities.

Example: An employer provides an employee with uniforms which the employee must wear in performing services for his employer. Because the uniforms are to be used solely in connection with the employer's business, they do not qualify as nonmoney maintenance compensation. Therefore, the value of the uniforms is not compensation earnable.

(b) **The department presumes that your employer provides you materials solely in lieu of reimbursement for business expenses.** Unless you or your employer can show by corroborating evidence that your employer provided you materials in whole or in part as payment for your personal expenses, as opposed to business expenses, the value of the materials is not compensation earnable.

(c) **If your employer provides you with materials for your personal use, the value of that use is nonmoney maintenance compensation and is included in your earnable compensation.**

(i) "Nonmoney maintenance compensation" means the fair market value of any form of materials other than cash legally furnished by your employer to you or your dependents for personal use.

(ii) Nonmoney maintenance does not include any form of payment other than cash that is excludable from taxation under provisions of the Internal Revenue Code. This applies regardless of whether you or your employer reported the compensation to the Internal Revenue Service as taxable income.

(d) **Your use of employer-provided materials will qualify as nonmoney maintenance compensation if your employer substantiates that they were provided to you as payment for personal services.** In order for employer-provided materials to qualify as nonmoney maintenance compensation, your employer must:

(i) Establish and regularly update a written schedule reflecting the monthly fair market value of each item of employer-provided materials claimed as nonmoney maintenance compensation. Typically, the fair market value would be the cost of the item if it were acquired in a purchase or lease transaction;

(ii) Report the fair market value of employer-provided materials as nonmoney maintenance compensation to the department as compensation earnable. If you pay any amount to your employer in order to own or use the materials, your

employer must report as compensation earnable the amount by which the fair market value of the materials exceeds the amount of your payment;

(iii) Substantiate by adequate records or by other sufficient corroborating evidence the following:

(A) That the fair market value of each item of nonmoney maintenance compensation as reported to the department is accurate;

(B) That each item of nonmoney maintenance compensation is provided to you for your personal use as payment for your services to the employer; and

(C) That each item of nonmoney maintenance compensation is includable in your taxable income for federal income tax purposes.

**Example:** An employer leases an apartment for \$700.00 per month. The employer charges an employee \$300.00 per month to use the apartment for temporary living quarters. Because the employee uses the apartment for personal, rather than business, purposes, the amount by which the lease value exceeds the employee's payment is nonmoney maintenance compensation. The employer must report \$400.00 per month to the department as compensation earnable for the employee.

(e) **How to corroborate that your use of employer-provided materials qualifies as nonmoney maintenance compensation.** In addition to the records required under (d) of this subsection, you may provide the department with any oral or written evidence which you or your employer believe corroborates that your use of employer-provided materials qualifies as compensation earnable. However, oral evidence alone has considerably less value than written evidence. Written evidence prepared at or near the time your employer provides you with the item of compensation is generally much stronger than oral evidence or written evidence created years later.

(2) **PERS Plan II members.** If you are a PERS Plan II member, you are not entitled to count the value of any nonmoney maintenance compensation you receive from your employer as compensation earnable.

[Statutory Authority: RCW 41.50.050. 95-22-006, § 415-108-470, filed 10/18/95, effective 11/18/95. Statutory Authority: RCW 41.40.010(8) and 41.40.020. 87-17-061 (Order DRS 87-08), § 415-108-470, filed 8/19/87.]

**WAC 415-108-475 Fringe benefits.** Payments made by an employer to a third party to provide benefits for an employee are not part of the employee's salary or wage. Those payments are not reportable compensation. Examples of these types of payments are insurance premiums (other than those made under bona fide cafeteria plans, see WAC 415-108-455) and matching and nonmatching employer contributions to a benefit plan.

**Note:** Mandatory salary deferrals are salary, not benefits. Such payments are reportable see WAC 415-108-459.

**Example:** An employer makes matching payments to employees who participate in a deferred compensation plan. This is not a mandatory salary deferral for purposes of PERS reportable com-

pensation. Since the employer matching payment (employer match) is made contingent upon employee plan participation, it is not payment for services rendered. Therefore, it is a fringe benefit that is not reportable compensation under PERS.

[Statutory Authority: RCW 41.50.050. 99-14-008, § 415-108-475, filed 6/24/99, effective 7/25/99; 98-09-059, § 415-108-475, filed 4/17/98, effective 5/18/98.]

**WAC 415-108-477 Disability insurance.** Disability insurance payments are paid to persons for periods when they are unable to work. Because no services are rendered in exchange for these payments, they are not reportable compensation. This is true whether the payments come directly from the employer or from an insurance company.

[Statutory Authority: RCW 41.50.050. 98-09-059, § 415-108-477, filed 4/17/98, effective 5/18/98.]

**WAC 415-108-479 Workers' compensation.** Workers' compensation is paid to persons for periods when they are unable to work. Workers' compensation payments, like disability insurance, are not payments for services rendered and are not reportable compensation.

**Example:** Some employees on unpaid disability leave submit their workers' compensation payments to their employer who then issues the employee a check for the same amount through the payroll system. This exchange of payments does not change the character of the workers' compensation payment. Whether the payments come from the department of labor and industries, a self-insured employer, or have the appearance of coming from the employer, workers' compensation payments are not payments for services rendered and do not qualify as reportable compensation.

**Note:** A member may elect to make contributions and receive service credit for periods of disability covered by industrial insurance, see RCW 41.40.038.

[Statutory Authority: RCW 41.50.050. 98-09-059, § 415-108-479, filed 4/17/98, effective 5/18/98.]

**WAC 415-108-480 Vehicles—Does the value of my use of an employer vehicle qualify as compensation earnable?** (1) **PERS Plan 1 members:**

(a) Use of an employer vehicle for business purposes does not qualify as compensation earnable. If your employer's established policy prohibits the use of an employer vehicle for nonbusiness uses, all use of the vehicle will be deemed business use.

(b) Use of an employer vehicle for nonbusiness purposes qualifies as compensation earnable if:

(i) Your employer reports your personal use of the vehicle to the IRS as taxable income under IRC Section 61 and Treas. Reg. Section 1.61-21; or

(ii) Your employer maintains monthly records of your personal use. These records must contain:

(A) Your employer's authorization of your personal use;

(B) The distance normally commuted each day during the month, if you use the vehicle to commute;

(C) The dates, mileage, and itinerary of each personal trip other than a commute trip;

(D) Your total mileage for the month; and

(E) The ratio of personal mileage to total mileage, expressed as a percent.

(c) The department presumes that your use of an employer vehicle is solely for business purposes. If you used an employer vehicle for personal use, your employer must report the value of this use as compensation earnable on a monthly basis. Monthly compensation earnable is the lesser of the following:

(i) Fair Market Lease Value x Percentage of Personal Use

(ii) Miles of Personal Use x IRS Mileage Rate.

The IRS Mileage Rate is the mileage rate adopted by the Internal Revenue Service for use by taxpayers in computing the value of the use of a vehicle.

(2) **PERS Plan 2 and 3 members.** If you are a member of PERS Plan 2 or 3, you are not entitled to count any of the value of an employer-provided vehicle as compensation earnable.

[Statutory Authority: RCW 41.50.050(5) and 41.40.010. 02-03-120, § 415-108-480, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050. 95-22-006, § 415-108-480, filed 10/18/95, effective 11/18/95. Statutory Authority: RCW 41.40.010(8) and 41.40.020. 87-17-061 (Order DRS 87-08), § 415-108-480, filed 8/19/87.]

**WAC 415-108-482 Illegal payments.** Payments made by an employer in excess of the employer's legal authority are not reportable.

Example: School districts are prohibited from increasing an employee's salary to include a payment in lieu of a fringe benefit per RCW 28A.400.220. If a district increased a person's salary instead of providing a fringe benefit, the payment would be illegal and should not be reported.

[Statutory Authority: RCW 41.50.050. 98-09-059, § 415-108-482, filed 4/17/98, effective 5/18/98.]

**WAC 415-108-483 Optional payments.** If an employee can receive an additional payment only on the condition of taking an action other than providing service to the employer, the payment is not for services rendered and is not reportable compensation.

Example: An employer offers to make a contribution to a deferred compensation plan on behalf of an employee only if the employee agrees to defer a portion of his or her salary. Because the employee does not have a right to receive the contribution based solely on the rendering of service, the employer payment is not reportable compensation.

[Statutory Authority: RCW 41.50.050. 98-09-059, § 415-108-483, filed 4/17/98, effective 5/18/98.]

**WAC 415-108-484 Reimbursements for expenses.** Reimbursements are not earned for services rendered and thus are not reportable compensation. Typical reimbursement payments include mileage reimbursements for use of a pri-

vate car on employer business, see WAC 415-108-485, or meal and lodging reimbursements for business trips.

[Statutory Authority: RCW 41.50.050. 98-09-059, § 415-108-484, filed 4/17/98, effective 5/18/98.]

**WAC 415-108-485 Vehicle allowances—Are vehicle allowances earnable compensation?** (1) If your employer provides you any payment or allowance in lieu of a reimbursement for expenses you incur or expect to incur in performing services for your employer, the payment or allowance is not compensation earnable. Your vehicle allowance does not qualify as compensation earnable if you receive the allowance in lieu of reimbursement for expenses that you incur or expect to incur in using your own vehicle for business purposes.

(2) The department presumes that any vehicle allowance provided to you by your employer is a payment in lieu of reimbursement for expenses and is not compensation earnable. If the contract authorizing your vehicle allowance states that it is provided solely in lieu of reimbursement for expenses that you incur or expect to incur in using your own vehicle for business purposes, the department's presumption is not rebuttable.

(3) Your vehicle allowance may qualify as compensation earnable to the extent that it exceeds your actual expenses. If your employer documents that your vehicle allowance exceeds the actual expenses you incur in driving your own vehicle for business purposes, the excess amount is compensation earnable. Your employer must maintain monthly contemporaneous records documenting the following:

(a) The dates, if any, on which you used a privately owned vehicle in performing services for your employer;

(b) The miles you drove the vehicle on each of these trips; and

(c) Your itinerary for each of these trips.

(4) How to determine what amount of your vehicle allowance, if any, is reportable as compensation earnable. If your employer documents that your vehicle allowance exceeds the actual expenses you incur in using your own vehicle for business purposes, your employer must report to the department as compensation earnable:

#### Your Vehicle Allowance LESS (Miles X IRS Rate)

(a) "Miles" above means the number of miles you drove a privately owned vehicle for business purposes during the month.

(b) "IRS rate" above means the Internal Revenue Service mileage rate for use by taxpayers computing the value of the use of a vehicle.

(5) Your vehicle allowance qualifies as compensation earnable if you also receive a separate reimbursement for each occasion you use your own vehicle for business purposes. If, in addition to your vehicle allowance, you receive a separate reimbursement for vehicle expenses for each occasion that you use a privately owned vehicle for business purposes, your vehicle allowance is compensation earnable.

**(6) Any part of your vehicle allowance that qualifies as earnable compensation is excess compensation.** If any part of your vehicle allowance is included in the calculation of your retirement allowance, your employer will be billed for excess compensation under RCW 41.50.150. Your employer's bill will equal the total estimated cost of the portion of your retirement allowance payment attributable to your vehicle allowance.

[Statutory Authority: RCW 41.50.050. 99-14-008, § 415-108-485, filed 6/24/99, effective 7/25/99; 95-22-006, § 415-108-485, filed 10/18/95, effective 11/18/95.]

**WAC 415-108-487 Retirement bonus or incentive.** A payment made to an employee as a bonus or incentive when retiring or terminating is not a payment for services rendered. Rather, the payment is made in exchange for an employee's promise or notification of intent to retire or terminate. A retirement or termination bonus or incentive is not reportable compensation.

**Example:** A collective bargaining agreement authorizes a city to pay employees a higher salary during the last two years of employment if the employee gives written notice of his or her intent to retire or terminate. Because the payment is in exchange for the agreement to retire or terminate and not for services, the payment is not reportable compensation.

[Statutory Authority: RCW 41.50.050. 98-09-059, § 415-108-487, filed 4/17/98, effective 5/18/98.]

**WAC 415-108-488 Severance pay not earned over time—Contract buy outs.** Severance pay that is not earned over time is not earned for services rendered and is not reportable. An example of severance pay not earned over time is a payment negotiated as part of termination agreement.

**Example:** At the time of an employee's termination the employer agrees to pay a lump sum payment equal to two months salary. The employer identifies this payment as "severance pay." Because the payment was not earned for services rendered, it is not reportable compensation and will not be included in the retirement calculation.

For treatment of severance pay earned over time, see WAC 415-108-458.

[Statutory Authority: RCW 41.50.050. 98-09-059, § 415-108-488, filed 4/17/98, effective 5/18/98.]

**WAC 415-108-491 Salary imputed to periods of unpaid leave.** In some circumstances specified in statute, a member may choose to establish service credit for periods of unpaid leave. The salary imputed to a member for purposes of calculating contributions owing for such periods of leave is not reportable compensation. Depending on the type of leave, the imputed compensation may or may not be included as average final compensation in calculating a member's retirement allowance.

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**(1) Authorized unpaid leave.** RCW 41.40.710 provides Plan 2 members with an option to establish service credit for periods of unpaid leave. RCW 41.40.805 provides Plan 3 members with an option to establish service credit for periods of unpaid leave. RCW 41.40.038 provides members with an option to establish service credit for periods of disability covered by industrial insurance. Salary imputed to members in order to calculate contributions for such periods is not reportable compensation and can not be included as average final compensation in calculating a member's retirement allowance.

**(2) Military leave.** For Plan 2 and Plan 3, salary imputed to a member for purposes of calculating contributions owing for periods of interrupted military service is not reportable compensation. Federal law requires that if a member chooses to purchase credit for such periods of military service, and that period falls in the member's average final compensation period, the member is entitled to have the imputed salary he or she would have earned during the period of absence used in the calculation of his or her average final compensation.

[Statutory Authority: RCW 41.50.050(5), 41.40.038, 41.40.170, 41.40.710, 41.40.805. 02-03-120, § 415-108-491, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050. 98-09-059, § 415-108-491, filed 4/17/98, effective 5/18/98.]

**WAC 415-108-510 Treatment of cash payments made in lieu of unused leave—First-in-first-out accounting method for determining when leave earned—Forms of leave deemed excess compensation—Conversions.** (1) Cash compensation in lieu of unused annual or sick leave may be considered compensation earnable for Plan 1 members subject to the provisions of RCW 41.40.010 (8)(a) and WAC 415-108-456. Employers may not limit the inclusion of cash compensation paid in lieu of unused annual or sick leave as compensation earnable in conflict with RCW 41.40.010 (8)(a). Provisions of collective bargaining agreements, employment and administrative policies or other rules applied by an employer that conflict with RCW 41.40.010 (8)(a) and rules adopted thereunder are without legal effect.

(2) When an employer provides cash compensation in lieu of unused annual or sick leave, the department applies a first-in-first-out accounting method to determine when the compensated leave was earned, and when or whether the leave was used or cashed out, with the following exceptions:

(a) As otherwise provided in *Bowles v. Department of Retirement Systems*, 121 Wn.2d 52 (1993); and

(b) The employer has in place a regulation, charter provision, ordinance, collective bargaining agreement, or other comparable written policy statement which clearly delineates when the cashed out leave was accrued, or a different method of accounting for the accrual and use of leave, and, if applicable, compensation for unused leave and the same such method is consistently applied in each instance and for all purposes.

Any employer's policy which is not consistent for all purposes which is contained in a regularly negotiated labor agreement in effect on the effective date of this section will be honored until the expiration date of the agreement not including any extensions at which time it will be brought into

compliance with this section. Any employer's policy which is not consistent for all purposes which is established by the employer shall be brought into compliance within sixty days of the effective date of this section. In the event an employer fails to come into full compliance with this section by the dates established herein, the department will treat cashed out leave on the same basis as the employer has established for using leave.

(3) A cash out of leave which is not annual leave as defined under WAC 415-108-010, shall be treated by the department as "any other form of leave" under RCW 41.50.-150(2). The department shall bill the employer for any such leave cash out as excess compensation under RCW 41.50.-150.

(4) For purposes of determining average final compensation and excess compensation, hours of leave earned by a member shall be considered for all purposes in the form in which it was earned. The department shall disregard any conversion of leave by an employer from one form to another and bill the employer for the amount converted as excess compensation pursuant to RCW 41.50.150.

[Statutory Authority: RCW 41.50.050. 99-14-008, § 415-108-510, filed 6/24/99, effective 7/25/99. Statutory Authority: RCW 41.50.050 and Bowles v. Retirement Systems, 121 Wn.2d 52 (1993). 94-11-009, § 415-108-510, filed 5/5/94, effective 6/5/94. Statutory Authority: RCW 41.40.010(8) and 41.40.020. 87-17-061 (Order DRS 87-08), § 415-108-510, filed 8/19/87.]

## MEMBERSHIP

**WAC 415-108-520 Membership exceptions—Student and spouse of student.** (1) A person employed by a Washington state institution of higher education or community college (employer), who is employed at such institution or college primarily for the purpose of furthering her/his education or the education of the person's spouse, is excepted from membership in PERS when:

(a) The person is a full-time student or the spouse of a full-time student; and

(b) The person is employed at the same institution where she/he is a full-time student or where the person's spouse is a full-time student; and

(c) The person determines her/his employment is primarily an incident to and in furtherance of her/his education or training, or the education or training of the person's spouse.

(2) For purposes of this section, RCW 41.40.023(7) shall be administered as follows:

(a) When a person begins employment in a PERS eligible position, a determination shall be made by the person as to whether the provisions of this section apply. If this section applies to the person, she/he shall determine her/his membership status as either being excepted from membership in PERS, or being a member of PERS, based upon whether employment at the institution of higher education or community college is primarily as an incident to and in furtherance or her/his education or training, or the education or training of the person's spouse. The person shall notify the employer in writing of her/his determination of membership status no later than two months after commencing employment in a PERS eligible position. Based upon the provisions herein and the written notification of status, the person shall either be

excepted from membership in PERS or become a member of PERS. In the event that no written notification of status is provided to the employer, based upon the provisions of this section, the employer shall make the presumption:

(i) That the person shall remain a member of PERS where the person is employed in a PERS eligible position and is a member of PERS at the time the person, or his or her spouse, becomes a full-time student;

(ii) That the person shall be excepted from PERS membership where the person or the person's spouse is a full-time student at the time of becoming employed in a PERS eligible position.

(b) A person employed in a PERS eligible position at the time of becoming a full-time student or becoming the spouse of a full-time student, shall remain a member of PERS; except, at the time of becoming a full-time student or becoming the spouse of a full-time student, the person may elect to waive her/his membership in PERS, based upon the provisions of this section excepting membership. The person must provide written notification of the waiver to the employer. If the person elects to waive membership in PERS, she/he cannot later elect membership in PERS unless there is a change of status of the person or of the person's spouse, as set forth below, and the employer has received written notification from the person of the change of status.

(c) A person who is a full-time student or who is the spouse of a full-time student at the time of becoming employed in a PERS eligible position, shall not be eligible for membership in PERS; except, at the time of becoming employed in a PERS eligible position, the person may elect to become a member of PERS, based upon the person's determination that the provisions of this section excepting membership do not apply. The person must provide written notification of the election to be a member of PERS to the employer. If the person elects to become a member of PERS, she/he cannot later waive PERS membership unless there is a change of status of the person or of the person's spouse, as set forth below, and the employer has received written notification from the person of the change of status.

(d) For purposes of this section, status is defined as:

(i) Student status - is full-time student, part-time student or nonstudent. Part-time student and nonstudent status do not meet the threshold for exception from PERS; only full-time student status meets the threshold;

(ii) Employment status - is employment in a PERS eligible position, employment in a PERS ineligible position, or unemployment. Unemployment refers to termination of employment from a Washington state institution of higher education or community college employer;

(iii) Marital status - is single, married, widowed or divorced.

(3) The department shall rely upon the institutions of higher education and community college employers to:

(a) Notify each person, at the time of hire, of the provisions of this section;

(b) Request all written notifications from persons electing membership or waiving membership under this section;

(c) Retain and make available to the department upon request, all written notifications electing membership or

waiving membership on a sixty-four year record retention schedule.

(4) It is recommended, but not required, that no less than annually employers provide notice that employees are required to notify the employer of any change in status as set forth in this section.

[Statutory Authority: RCW 41.50.050. 99-14-008, § 415-108-520, filed 6/24/99, effective 7/25/99; 91-21-083, § 415-108-520, filed 10/18/91, effective 12/31/91.]

**WAC 415-108-550 Elected officials—Eligibility and application for retirement service membership.** (1) For purposes of this section and WAC 415-108-570, and pursuant to RCW 41.40.023, 41.40.010 (25)(b), 41.40.010 (9)(a) and 41.40.035, "elected" officials means individuals elected to any state, local or political subdivision office or individuals appointed to any vacant elective office.

(2) Pursuant to RCW 41.40.023 (3)(a), elected officials are exempted from retirement system membership but may apply for membership during the official's current term of elected office. To apply for membership, the official shall submit a written application directly to the department. If the department approves the application, the elected official is entitled to establish membership and service credit retroactive to the first day of the official's current term of elected service. To establish such membership, the official shall pay the required employee contributions for the official's current term of elected service with interest as determined by the department.

(3) Upon establishing membership for the official's current term of elected office, the official is entitled to establish membership and service credit retroactive to the first day of any previous elected term or terms of office. To exercise this option, the official shall apply to the department pursuant to subsection (2) of this section. If the department approves the application, the official shall:

(a) Pay the required employee contributions for such previous term or terms of elected service with interest as determined by the department; and

(b) Pay the required employer contributions for such previous term or terms of elected service with interest as determined by the department. The employer may, at its discretion, pay the required employer contributions plus interest in lieu of the employee making payment of this amount.

(4) If an official is employed in an eligible position at the time of election to office and will hold multiple positions concurrently, the official may:

(a) Apply to the department to participate in membership pursuant to the official's elected position as provided in subsection (3) of this section; or

(b) Choose not to participate pursuant to the official's elected position while continuing membership through the nonelected position.

(5) Except as provided under RCW 41.40.023 (3)(b), once an elected official has exercised the option of becoming a member of the retirement system the official shall be a member until the official separates from all eligible public employment pursuant to RCW 41.40.150. An official does not separate from public employment when that official's term of office ends and the official commences another term

of office in the same or a different position for the same employer without a break in service. An official does not separate from service if the official resigns from the official's elected position and is later reappointed to the same position during the same term.

(6) This section codifies the department's long-standing administrative practice in relation to elected officials. The department will apply this section to service by elected officials which occurred prior to the effective date of this section.

[Statutory Authority: RCW 41.50.050. 94-12-014, § 415-108-550, filed 5/23/94, effective 6/23/94.]

**WAC 415-108-560 Appointed officials—Eligibility and application for retirement service membership.** (1) For purposes of this section and WAC 415-108-570, and pursuant to RCW 41.40.023, 41.40.010 (25)(b), 41.40.010 (9)(a) and 41.40.035, "appointed" officials means only those individuals appointed directly by the governor to any position, including but not limited to agency directorships and memberships on a state committee, board or commission.

(2) An individual must be a gubernatorial appointee or be appointed to serve in a position that meets the requirements of RCW 41.40.010 (25)(a) in order to be eligible for membership and service credit.

(3) Pursuant to RCW 41.40.023 (3)(a), appointed officials are exempted from retirement system membership but may apply for membership during the official's current appointed term of office. To apply for membership, the official shall submit a written application directly to the department. If the department approves the application the official is entitled to establish membership and service credit retroactive to the first day of the official's current term of appointed service. To establish such membership, the official shall pay the required employee contributions for the official's current term of appointed service with interest as determined by the department.

(4) Upon establishing membership for the official's current term of appointed service, the official is entitled to establish membership retroactive to the first day of any previous elected term or terms of office. To exercise this option, the official shall apply to the department pursuant to subsection (3) of this section. If the department approves the application the official shall:

(a) Pay the required employee contributions for such previous term or terms of elected service with interest as determined by the department; and

(b) Pay the required employer contributions for such previous term or terms of elected service with interest as determined by the department. The employer may, at its discretion, pay the required employer contributions plus interest in lieu of the employee making payment of this amount.

(c) "Current term of appointed service" includes an appointed official's entire current term of service. If the official has not been appointed to a position with a set term of office, "current term of appointed service" includes all uninterrupted service in the official's current appointed position.

(5) If an appointed official is employed in an eligible position at the time of appointment to office and will hold the two positions concurrently the official may:

(a) Apply to the department to participate in membership pursuant to the appointed position as provided in subsection (3) of this section; or

(b) Choose not to participate pursuant to the official's appointed position while continuing membership through the nonappointive position.

(6) Once an appointed official has exercised the option of becoming a member of the retirement system either at the start of the official's initial term or at a successive term, the official shall be a member until the official separates from all eligible public employment pursuant to RCW 41.40.150. An appointed official does not separate from public employment when that official's term of office ends and the official commences another term of office in the same or a different position for the same employer without a break in service. An appointed official does not separate from service if the official resigns from the appointed position and is later reappointed to the position during the same term.

(7) This section codifies the department's long-standing administrative practice in relation to appointed officials. The department will apply this section to service by appointed officials which occurred prior to the effective date of this section.

[Statutory Authority: RCW 41.50.050. 94-12-014, § 415-108-560, filed 5/23/94, effective 6/23/94.]

**WAC 415-108-570 As an elected or appointed official, what are my requirements for service credit?** (1)(a) As a Plan 1 elected or appointed official, you may receive one month of service credit for each month during which you earn compensation pursuant to your elected or appointed position.

(b) If you are a Plan 1 member who was appointed by the governor prior to July 1, 1976, to serve as a member of any committee, board or commission, you may receive one month of service credit for each month during which you earn compensation pursuant to your appointed positions.

(c) If you are a Plan 1 member who was appointed or reappointed by the governor on or after July 1, 1976, to serve as a member of any committee, board or commission, you may receive one month of service credit for each month during which you are compensated for at least seventy total hours of work.

(d) If you are a Plan 1 member who served in a governor-appointed position as a member of any committee, board or commission on or after September 1, 1991, you may receive one-quarter month of service credit for each month during which you are compensated for less than seventy total hours of work.

(2)(a) If you are a Plan 2 or Plan 3 member who was elected to office by statewide election, you may receive one month of service credit for each month during which you earn compensation pursuant to your elected position.

(b) Except for Plan 2 or Plan 3 elected officials covered under (a) of this subsection, if you are elected to office or appointed by the governor to a position prior to September 1, 1991, you may receive service credit only for months during which you are compensated:

(i) In excess of ninety times the state hourly minimum wage in effect at the time you provide the service; and

(ii) For ninety or more total hours of work.

(c) On or after September 1, 1991, except for Plan 2 or Plan 3 elected officials covered under (a) of this subsection, if you were elected to office or appointed by the governor to a position, you may earn:

(i) One month of service credit for each month during which you are compensated:

(A) For ninety or more total hours of work; and

(B) In excess of ninety times the state hourly minimum wage in effect at the time you provide the service; or

(ii) One-half month of service credit for each month during which you are compensated:

(A) For less than ninety hours but equal to or more than seventy total hours of work; and

(B) In excess of ninety times the state hourly minimum wage in effect at the time you provide the service; or

(iii) One-quarter month of service credit for each month during which you are compensated:

(A) For less than seventy total hours of work; and

(B) In excess of ninety times the state hourly minimum wage in effect at the time you provide the service.

(3) This section codifies the department's long-standing administrative practice in relation to elected and appointed officials. The department will apply this section to service by elected and appointed officials which occurred prior to the effective date of this section.

[Statutory Authority: RCW 41.50.050(5) and 41.40.023. 02-03-120, § 415-108-570, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050. 94-12-014, § 415-108-570, filed 5/23/94, effective 6/23/94.]

**WAC 415-108-620 Requirements for a union to be a PERS I union employer.** (1) In order to establish or maintain status as a PERS I union employer, a union must satisfy the following requirements:

(a) Verify that at least forty percent of the members of the level of union organization are employees of an employer: Provided however, That employees of the union organization are not to be considered in the forty percent determination; and

(b) Beginning on the effective date of this rule, annually complete and submit the verification form set forth in WAC 415-108-660 to the department.

(2) Unions which have reported members prior to the effective date of this rule shall be deemed to have met the requirements of this rule with respect to those members.

[Statutory Authority: RCW 41.50.050(5) and 41.40.010 (4)(a). 93-11-077, § 415-108-620, filed 5/18/93, effective 6/18/93.]

**WAC 415-108-630 Calculation and verification of PERS membership requirement.** (1) Calculation - Unions applying for union employer status must provide the department with the information specified in WAC 415-108-660.

Each union employer is required to submit to the department the form provided in WAC 415-108-660 in verifying compliance with WAC 415-108-620 on or after November 1 and no later than December 31 of each year.

(2) Union employer status will lapse on January 1 if a union does not submit verification by December 31 of the preceding year. The union may regain union employer status by subsequently submitting verification of compliance with WAC 415-108-620 (1)(a). The union shall be responsible for

applicable retroactive employer contributions plus interest for any period of lapsed employer status.

(3) Unions submitting timely verification of qualifications for union employer status are considered Plan I union employers for the succeeding calendar year (January 1 to December 31).

[Statutory Authority: RCW 41.50.050(5) and 41.40.010 (4)(a). 93-11-077, § 415-108-630, filed 5/18/93, effective 6/18/93.]

**WAC 415-108-640 Effect of meeting union verification requirements.** (1) Plan 1 union employer status applies only to the level of union organization that meets the requirements of WAC 415-108-620(1). Therefore, if only a single union lodge of a union with multiple lodges has been verified to meet the requirements of WAC 415-108-620(1), only that union lodge is a Plan 1 union employer.

(2) Plan 1 members who are employed by union employers shall have an irrevocable option to reenter membership. You lose this option if you do not reenter PERS Plan 1 when you begin working in an eligible position with the union employer. The union employer must notify you, as its new employee, of the option to reenter Plan 1. Failure of the union employer to notify you shall not prevent your loss of the right to participate in Plan 1 under this section. Union employers and their Plan 1 employees who choose to reenter membership will be subject to the same statutory and regulatory requirements as other Plan 1 nonstate agency employers and employees.

(3) Plan 1 union employers employing persons who have previously established Plan 1 membership must report you for participation in the retirement system if you choose to reenter membership under RCW 41.40.023.

(4) Union employers shall have all new employees state on a written form whether they have ever been a Plan 1 member.

(5)(a) Upon first establishing union employer status the union must pay the required retroactive contributions and interest as determined by the department under RCW 41.40.363 or 41.40.057, as applicable for union elective officials and employees who choose to become a member under RCW 41.40.023 and are eligible for Plan 1.

(b) If employer and employee contributions have been submitted in error and the union subsequently establishes retroactive union employer status for the period in question, the contributions on deposit with the retirement system will be considered valid to the extent that the periods of erroneous contributions coincide with periods for which the union has established union employer status.

(6) Notwithstanding any provisions of WAC 415-108-620 Plan 1 retirees who enter into employment with a union employer in an eligible position are subject to the provisions of RCW 41.40.150 (5)(a).

(7) A union employer may not report employees for participation in Plan 2 or Plan 3.

[Statutory Authority: RCW 41.50.050(5), 41.40.010 (4)(a), 41.40.057, 41.40.363. 02-03-120, § 415-108-640, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050(5) and 41.40.010 (4)(a). 93-11-077, § 415-108-640, filed 5/18/93, effective 6/18/93.]

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**WAC 415-108-650 Effect on unions seeking to maintain union employer status if verification requirement is not met.** (1) A union employer which does not verify that it meets the criteria for union employer status shall not report any employee hired during that succeeding calendar year for retirement system participation. A union employee who previously terminated retirement system membership under RCW 41.40.150 cannot reestablish retirement system membership during a year the hiring union failed to maintain union employer status.

(2) The failure of a union employer to meet the requirements of WAC 415-108-620 and 415-108-630 will not terminate the retirement system participation of employees already employed in an eligible position with the union employer as of December 31 of the preceding year.

[Statutory Authority: RCW 41.50.050(5) and 41.40.010 (4)(a). 93-11-077, § 415-108-650, filed 5/18/93, effective 6/18/93.]

**WAC 415-108-660 Plan I union employer verification form.** Unions must use the following form to verify compliance with the requirements of WAC 415-108-620.

I certify under the penalty of perjury under the laws of the state of Washington that the following is true and correct:

<p>_____, verifies that on the date of Name of Union the _____</p>	<p>(Must be a Date in November or December)</p>	<p>Identify Level of Union Organiza- tion (i.e. Lodge) (hereinafter referred to as "organization")</p>
possessed the following membership characteristics:		
A.	Total number of organization members	_____
B.	Total number of organization members who are employees of a public employee retirement sys- tem (PERS) employer other than this union	_____
C.	Percentage of organization members who are employees of a public employee retirement system employer other than this union (B ÷ A x 100)	_____ %
D.	The percentage identified in "C" is equal to or greater than 40%	_____ yes _____ no

If the answer to "D" is yes, then the organization is eligible to participate in PERS with regard to PERS Plan I union employees employed in an eligible position during the succeeding calendar year. Such employees shall remain eligible for participation while employed with the organization regardless of whether the organization continues to meet the requirements of WAC 415-108-620 and 415-108-630.

If the answer to "D" is no then the level of union organization identified above is not eligible to participate in the public employees' retirement system with regard to union employees employed in an eligible position during the succeeding calendar years.

Signature of Local/Division President or Person Designated  
in Writing by President as Having Authority to Verify

[Statutory Authority: RCW 41.50.050(5) and 41.40.010 (4)(a). 93-11-077, § 415-108-660, filed 5/18/93, effective 6/18/93.]

**WAC 415-108-679 Purpose and scope of eligibility rules.** WAC 415-108-680 through 415-108-728 codify the department's existing interpretation of statutes regarding eligibility for membership in all three PERS plans.

[Statutory Authority: RCW 41.50.050(5) and 41.40.010, 02-03-120, § 415-108-679, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050, 95-16-053, § 415-108-679, filed 7/25/95, effective 8/25/95.]

**WAC 415-108-680 Am I eligible for membership? (1) You are eligible for membership if you are employed in an eligible position.** Your position is eligible under RCW 41.40.010 if the position, as defined by your employer, normally requires at least five months of seventy or more hours of compensated service per month during each year.

(2) If you leave an eligible position to serve in a project position, you may retain eligibility. If you are a member and you leave employment in an eligible position to serve in a project position, the project position is eligible if:

(a) The position, as defined by the employer, normally requires at least five months of seventy or more hours of compensated service each month; or

(b) The position requires at least seventy hours per month and you take the position with the understanding that you are expected to return to your permanent eligible position at the completion of the project.

(3) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Eligible position" - RCW 41.40.010.

(b) "Employer" - RCW 41.40.010.

(c) "Member" - RCW 41.40.010.

(d) "Membership" - RCW 41.40.023.

(e) "Normally" - WAC 415-108-0102.

(f) "Project position" - WAC 415-108-010.

(g) "Year" - WAC 415-108-010.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.40 RCW, 02-18-046, § 415-108-680, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050, 95-16-053, § 415-108-680, filed 7/25/95, effective 8/25/95.]

**WAC 415-108-690 How is my membership eligibility evaluated? (1) Your eligibility to participate as a member of PERS is based on your position.**

In evaluating whether your position is eligible for membership, your employer will determine only whether the position meets the criteria of an eligible position under RCW 41.40.010(25) and WAC 415-108-680(1). Your employer will not consider your membership status or individual circumstances unless you:

(a) Leave employment in an eligible position to serve in a project position (See WAC 415-108-680(2)); or

(b) Work in both a PERS and TRS position during the same school year (See WAC 415-108-728).

(2) **Your employer will evaluate your position's eligibility for a particular year at the beginning of the year.** This is normally a calendar year unless your employer has determined and supports a different twelve-month period for its year.

(3) **Your employer or the department may reclassify your position's eligibility based upon your actual work**

history. If your employer declares your position to be ineligible at the beginning of a year and by the end of the year, you have actually worked five or more months of seventy or more hours, your employer will, at that time, review your position's eligibility. If at the end of the first year:

(a) Your employer believes your position meets the requirements for an eligible position and declares the position as eligible, you will enter membership and your employer will report you to the department effective from the date your employer declares the position as eligible; or

(b) Your employer believes that the position will not meet the criteria for an eligible position during the next year, your employer may continue to define your position as ineligible. However, if during the next year the position actually requires you to again work seventy or more hours each month for at least five months, the department will declare your position as eligible. You will enter membership in the retirement system.

(i) Except as provided in (b)(ii) of this subsection, your employer will report you to the department effective from the first month of the first year in which your position required you to work for seventy or more hours.

(ii) If:

(A) Your employer has monitored the work history of your position for PERS eligibility;

(B) Has notified you in writing when you entered the position that the position was not considered eligible; and

(C) The months of employment in a twelve-month period required by the position are determined by the occurrence or nonoccurrence of natural disasters such as forest fires;

You will enter membership prospectively.

(4) **The department will not reclassify your position's eligibility until history of the position shows that it meets the criteria for an eligible or ineligible position.**

(a) If your employer has declared your position ineligible, the department will not reclassify your position as eligible until history of the position shows a period of two consecutive years of at least five months of seventy or more hours of compensated employment each month.

(b) If your employer has declared your position ineligible, the position must continue to fail to meet the requirements of an eligible position or reclassification of your position will occur as stated in subsection (3)(b) of this section.

(5) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Eligible position" - RCW 41.40.010.

(b) "Employer" - RCW 41.40.010.

(c) "Ineligible position" - RCW 41.40.010.

(d) "Membership" - RCW 41.40.023.

(e) "Project position" - WAC 415-108-010.

(f) "Report" - WAC 415-108-010.

(g) "Year" - WAC 415-108-010.

[Statutory Authority: RCW 41.50.050(5), 41.40.010, 41.40.023, 02-03-120, § 415-108-690, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050, 95-16-053, § 415-108-690, filed 7/25/95, effective 8/25/95.]

**WAC 415-108-700 Can I qualify for membership if I work in more than one ineligible position with the same employer? (1) All of your monthly work for an employer counts as one position.** If you are employed with the same employer in two ineligible positions during a year which, when combined, equate to an eligible position and your employer expects you to continue in this employment for a second consecutive year, your employer will report the total hours you work in both positions to the department as an eligible position.

**Example:** A person normally works for one employer as a cook for forty hours each month and as a bus driver for forty hours each month. The person is eligible for membership because he works a total of eighty hours each month for at least five months each year and this is the normal pattern of his employment.

**Example:** A person normally works for one employer for forty hours each month as a cook. For one year only, she takes on extra duties by also working forty hours per month as a bus driver. Although she worked eighty hours each month for five or more months during one year, she is not eligible for membership because these hours are not the normal pattern of her employment.

**Example:** A person works for one employer for forty hours each month as a cook and also works for another employer for forty hours each month as a bus driver. The person is not eligible for membership because he cannot combine the hours of employment with these separate employers to establish membership.

**(2) You may be reported in TRS if you work in two positions and one position is covered under TRS. See WAC 415-108-728.**

**(3) Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

- (a) "Eligible position" - RCW 41.40.010.
- (b) "Employer" - RCW 41.40.010.
- (c) "Ineligible position" - RCW 41.40.010.
- (d) "Membership" - RCW 41.40.023.
- (e) "Normally" - WAC 415-108-010.
- (f) "Report" - WAC 415-108-010.
- (g) "Year" - WAC 415-108-010.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.40 RCW. 02-18-046, § 415-108-700, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050. 95-16-053, § 415-108-700, filed 7/25/95, effective 8/25/95.]

**WAC 415-108-710 How will returning to work affect my PERS monthly benefit? (1) You may work for an employer after retirement and continue to receive your retirement allowance if:**

- (a) You are employed in an ineligible position no sooner than one calendar month after your retirement accrual date;
- (b) You are an active member of a higher education retirement plan and are employed no sooner than one calendar month after your retirement benefit accrues;
- (c) You are employed as a bona fide independent contractor as defined by WAC 415-02-110;

(d) You are employed as an elected or appointed official directly by the governor under RCW 41.40.150(4) no sooner than one month after your retirement benefit accrues and do not reenter membership;

(e) Your only employment is as an elected official of a city or town and you end your PERS membership under RCW 41.40.023 (3)(b); or

(f) You are employed in an eligible position:

(i) No sooner than one calendar month after your retirement benefit accrues; and

(ii) The time you work does not exceed the "work limit" defined in subsection (2) of this section.

**(2) What is the work limit for eligible positions?**

(a) Plan 1 retiree working for an employer as defined in RCW 41.40.010 (4)(a): Fifteen hundred hours in a calendar year; or

(b) Plan 2 or 3 retiree working in an eligible position as defined in RCW 41.32.010, 41.35.010, or 41.40.010, or as a fire fighter or law enforcement officer, as defined in RCW 41.26.030: Eight hundred sixty-seven hours in a calendar year.

(c) The Plan 1 limits will be applied to retirees from both a Plan 1 and a Plan 2 or 3 in another pension plan.

(d) The TRS Plan 1 rules will be applied to retirees from both TRS Plan 1 and PERS Plan 1.

**(3) What happens if I work more than the work limit?**

(a) The department will suspend your retirement allowance effective the day after the day in which you exceed the work limit. All hours worked for all covered employers in eligible positions are considered in determining the work limit.

(b) You have the option to return to membership in PERS if you are otherwise eligible. The option to return to membership is prospective from the first day of the month following the month in which you request to return to membership.

**(4) How will the suspension of benefits affect my retirement allowance?**

(a) The department will:

(i) Prorate your retirement allowance for the month during which you exceeded the work limit; and

(ii) Suspend all future retirement allowances while you are working until the next calendar year except that it will:

(iii) Adjust for any overpayments made to you for the month(s) in which you exceeded the work limit, as required by RCW 41.50.130.

(b) If you separate from service, your retirement allowance will resume effective the first day of the month following the date of separation.

**(5) Can I return to PERS membership?**

(a) If you are a PERS retiree, you may choose to return to membership if you are employed by a PERS employer and meet the eligibility criteria. If you return to membership the department will stop your retirement allowance effective from the first of the month during which you return to employment. Membership will be prospective under RCW 41.40.023(12).

(b) If you reenter membership and later choose to retire again, the department will recalculate your retirement allowance under the applicable statutes and regulations.

(c) If you are a retiree from another retirement system that the department administers, and are eligible to enter PERS membership, you may choose to return to membership. The option to return to membership is prospective from the first day of the month following the month in which you request to return to membership.

**Example 1:**

Kirk is a PERS Plan 2 retiree. He separates from service on August 15th. His accrual date (retirement) is effective September 1st. Kirk returns to work in a PERS Plan 2 eligible position on January 2nd of the following year. On June 1st he realizes that on or about July 8th, he is going to exceed his eight hundred sixty-seven hour limit for the year. On July 5th he notifies his employer in writing that he chooses to reenter PERS Plan 2 membership.

On July 12th, Kirk works his eight hundred sixty-eighth hour. He is no longer eligible for his PERS Plan 2 retirement benefit as of July 12th. The retirement benefit is stopped for the remainder of July. On August 1st, Kirk is returned to membership and resumes making retirement contributions.

**Example 2:**

Kristal is a PERS Plan 1 retiree. She separated from service on June 20th. Her accrual date (retirement) is effective July 1st. She begins working in a PERS eligible position the following January. By October 1st, Kristal has exceeded the fifteen hundred hour work limit, and her benefit is suspended. Kristal separates from service on November 15th and her benefit is reinstated December 1st. Kristal qualifies to begin another fifteen hundred hour work period on January 1st.

**Example 3:**

Millie is a PERS Plan 2 retiree. She separated from service on June 20th. Her accrual date (retirement) is effective July 1st. She begins working in a PERS eligible position on February 1st of the following year. By September 1st, Millie has worked eight hundred sixty-seven hours and continues to work. Millie's benefit is suspended from September 2nd until January 1st if she continues to work.

(6) **How soon can I return to work as a retiree?** If you return to work sooner than one full calendar month after your accrual date under RCW 41.40.037, your retirement allowance will be reduced by 5.5% for every eight hours worked each month, until you separate for one full calendar month. See RCW 41.40.037.

**Example 4:**

John's last day of work is September 15th. His accrual date is October 1st. If John wants to return to work after he retires, he will need to wait until at least November 1st to avoid receiving the daily percentage reduction in his retirement allowance.

**Example 5:**

Tony's last day of work is September 15th. His accrual date is October 1st. Tony returns to work for five work days between October 10th and October 17th. His October retirement allowance will be reduced by five and one-half percent for every eight hours worked in October (RCW 41.40.037); this will be reflected in Tony's November benefit. Tony does

not return to work. On December 1st, Tony will qualify to return to work under the work limits described in subsection (2) of this section.

**Example 6:**

Ruth's last day of work is September 15th. Her accrual date is October 1st. She returns to work on October 10th and continues working. Ruth's retirement benefit will be reduced by 5.5% for each eight hours she works. Under RCW 41.40.037, Ruth's benefit reduction will accrue up to one hundred sixty hours per month. If she stops working, Ruth's full retirement benefit will resume after she remains separated for one full calendar month. Any benefit reduction over one hundred percent will be applied to Ruth's allowance in subsequent months.

(7) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed:

(a) "Accrual date" - RCW 41.40.193, 41.40.680, 41.40.801.

(b) "Eligible position" - RCW 41.40.037(2).

(c) "Employer" - RCW 41.40.010(4).

(d) "Ineligible position" - RCW 41.40.010.

(e) "Law enforcement officer" - RCW 41.26.030.

(f) "Membership" - RCW 41.40.023.

(g) "Report" - WAC 415-108-010.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.40 RCW. 02-18-046, § 415-108-710, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5), 41.04.270, 41.26.030, 41.32.010, 41.32.025, 41.32.480, 41.32.500, 41.32.570, 41.32.765, 41.32.795, 41.32.802, 41.32.855, 41.32.860, 41.32.862, 41.35.010, 41.35.030, 41.35.060, 41.35.450, 41.35.640, 41.40.010, 41.40.023, 41.40.037, 41.40.150, 41.40.193, 41.40.680, 41.40.750, 41.40.801. 02-02-060, § 415-108-710, filed 12/28/01, effective 1/1/02. Statutory Authority: RCW 41.50.050. 95-16-053, § 415-108-710, filed 7/25/95, effective 8/25/95.]

**WAC 415-108-720 Participation—Can I be excluded from participating in membership even if I am employed in an eligible position?** (1) You may be exempt from participating in membership even if you meet eligibility criteria. Even if you are employed in an eligible position you are exempt from participating in PERS if your individual circumstances qualify you for one of the exceptions to membership under RCW 41.40.023.

(2) **If you work for a PERS employer after you retire, you are subject to post-retirement employment restrictions even if you are excluded from participating in membership.** If you become employed in an eligible position after you retire, you are subject to the post-retirement employment restrictions under RCW 41.40.150, 41.40.690, and 41.40.850 even if you are excluded from membership.

(3) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Eligible position" - RCW 41.40.010.

(b) "Employer" - RCW 41.40.010.

(c) "Ineligible position" - RCW 41.40.010.

(d) "Membership" - RCW 41.40.023.

[Statutory Authority: RCW 41.50.050(5), 41.40.023, 41.40.150, 41.40.690. 02-03-120, § 415-108-720, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050. 95-16-053, § 415-108-720, filed 7/25/95, effective 8/25/95.]

**WAC 415-108-725 If I have retired from another retirement plan or am eligible to retire, am I excluded from participating in PERS?** (1) If you have retired or are eligible to retire from another retirement system authorized by the laws of this state you cannot participate in PERS membership unless:

(a) You established membership in PERS prior to March 1, 1976; or

(b) You accrued less than fifteen years of service credit in the other retirement plan.

(2) If you are receiving a disability allowance from any retirement system administered by the department you can not participate in PERS unless you established membership in PERS prior to March 1, 1976.

(3) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Membership" - RCW 41.40.023.

(b) "Retirement plan" - WAC 415-108-010.

(c) "Service" - RCW 41.40.010.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.40 RCW. 02-18-046, § 415-108-725, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050. 95-16-053, § 415-108-725, filed 7/25/95, effective 8/25/95.]

**WAC 415-108-726 Can I earn service credit in PERS and another retirement plan at the same time?** (1)(a) Yes. You may earn service credit in PERS and any of the following First Class City Retirement Systems (FCCRS) at the same time if:

(i) You work for a PERS employer and an employer covered by a retirement system of the city of Seattle, Spokane or Tacoma (FCCRS); and

(ii) You cannot report service for the FCCRS in PERS;

(b) The combined service credit under PERS and the retirement system listed in (a) of this subsection may not exceed one month of service for a calendar month of employment.

(c) To qualify for PERS service credit, it is up to the employee to initiate the process by applying under subsection (2) of this section.

**Example:** A member works part time for the City of Seattle and part time for the University of Washington (UW). She may receive partial service credit in PERS for the UW service since she cannot report the time she works for Seattle under PERS.

**Note:** The combined service credit under PERS and the City of Seattle Retirement System may not exceed one month of service for a calendar month of employment. To receive PERS service credit she must apply to the department.

## (2) How do I apply?

(a) To apply for membership and service credit under subsection (1) of this section you must send the department an application. The application is a statement that you want membership and/or service credit in PERS. Include:

(i) Your name;

(ii) Your SSN;

(iii) All period(s) of service that you want to receive service credit for;

(iv) All PERS and non-PERS employer(s) that you worked for during the periods of service referenced in (a)(iii) of this subsection.

(b) After the department receives your application, it will contact your employer(s) to verify how much service credit you have earned. When the department receives the necessary information, it will determine how much service credit you will receive. At that time the department will send you a bill for member contributions and interest that must be paid in order to establish the service credit.

## (3) When should I submit my payment?

You should pay contributions and interest required under subsection (2)(b) of this section within twenty-four consecutive months from the last day of the calendar year for which you claim service credit. After that date, you must pay the actuarial cost of purchasing the service credit under RCW 41.40.104 and 41.50.165.

## (4) What if I worked before this WAC became effective?

If you worked for a PERS employer and for one of the retirement systems listed in subsection (1) of this section, before this WAC became effective, you have until December 31, 2000, to apply in order to purchase service credit by paying member contributions plus interest. After December 31, 2000, you must pay the actuarial cost of purchasing the service credit under RCW 41.40.104 and 41.50.165.

(5) You may participate in PERS if you are concurrently employed, as described in WAC 415-113-200, in a SERS position.

(6) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Membership" - RCW 41.40.023.

(b) "Retirement plan" - WAC 415-108-010.

(c) "Service" - RCW 41.40.010.

(d) "Normally" - WAC 415-108-010.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.40 RCW. 02-18-046, § 415-108-726, filed 8/28/02, effective 9/30/02. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-108-726, filed 12/12/00, effective 1/12/01. Statutory Authority: RCW 41.50.050. 99-22-043, § 415-108-726, filed 10/29/99, effective 11/29/99; 95-16-053, § 415-108-726, filed 7/25/95, effective 8/25/95.]

**WAC 415-108-727 Can I transfer service credit earned as a cadet in the public employees' retirement system to the Washington state patrol retirement system Plans 1 or 2?** (1) A PERS Plan 1 or Plan 2 member may transfer cadet service under RCW 41.40.092.

(2) A person who becomes a PERS Plan 3 member cannot transfer service credit earned as a cadet in PERS, regardless of when the credit was earned.

[Statutory Authority: RCW 41.50.050(5), 41.40.092, 43.43.120(6), 43.43.130. 02-23-037, § 415-108-727, filed 11/13/02, effective 1/1/03. Statutory Authority: RCW 41.50.050(5) and 41.40.092. 02-03-120, § 415-108-727, filed 1/23/02, effective 3/1/02.]

**WAC 415-108-728 If I work in both a PERS position and TRS position during the same school year, which system will I be in?** (1) If you work in both a PERS and TRS position during the same year, your membership status and the nature of your positions will determine the system your employer will report you in. You will be reported in either PERS or TRS according to the following table:

#### Former TRS Plan 1 Members <sup>1/</sup>

Type of Employment <sup>2/</sup>	Type of Employer(s)	System You Will Be Reported In
A substitute or less than full-time teaching position and a PERS-eligible position	Same employer	PERS - for both positions.
	Separate TRS employers	PERS - for PERS position only. Your substitute part-time position is not reported unless you qualify for and elect to establish TRS membership under RCW 41.32.240. If you elect to establish TRS membership, your employers will report you in TRS for both positions. Any previously reported service credit and compensation in PERS will be transferred to TRS.
	A TRS employer and non-TRS employer	PERS - for PERS position only. Your substitute part-time position is not reported unless you qualify for and elect to establish TRS membership under RCW 41.32.240. If you elect to establish TRS membership, you must elect either to: <ol style="list-style-type: none"> <li>1. Have your TRS service reported in PERS and receive service credit in PERS for both positions; or</li> <li>2. Have your TRS service reported in TRS and not receive service credit for the PERS position.</li> </ol>
A full-time teaching position and an eligible PERS position	Same employer	TRS - for both positions.
	Separate TRS employers	TRS - for both positions.
	A TRS employer and non-TRS employer	You must elect to: <ol style="list-style-type: none"> <li>1. Have your TRS service reported in PERS and receive service credit in PERS for both positions; or</li> <li>2. Have your TRS service reported in TRS and not receive service credit for the PERS position.</li> </ol>

#### TRS Plan 1 Members

Type of Employment <sup>2/</sup>	Type of Employer(s)	System You Will Be Reported In
A full-time or less than full-time TRS position and an eligible PERS position	Same employer	TRS - for both positions.
	Separate TRS employers	TRS - for both positions.
	A TRS employer and non-TRS employer	You must elect either to: <ol style="list-style-type: none"> <li>1. Have your TRS service reported in PERS and receive service credit in PERS for both positions; or</li> <li>2. Have your TRS service reported in TRS and not receive service credit for PERS position.</li> </ol>
A full-time or less than full-time TRS position and an ineligible PERS position	Same employer	TRS - for both positions.
	Separate TRS employers	TRS - for both positions.
	A TRS employer and non-TRS employer	TRS - for the TRS position only; your ineligible PERS position is not reportable.

#### TRS Plan 2 Members

Type of Employment <sup>2/</sup>	Type of Employer(s)	System You Will Be Reported In
An eligible TRS position and an ineligible PERS position	Same employer	TRS - for both positions.
	Separate TRS employers	TRS - for TRS position only; your ineligible PERS position is not reported.
	A TRS employer and non-TRS employer	TRS - for TRS position only; your ineligible PERS position is not reported.

Type of Employment <sup>2/</sup>	Type of Employer(s)	System You Will Be Reported In
An eligible TRS position and an eligible PERS position	Same employer	TRS - for both positions.
	Separate TRS employers	TRS - for both positions. <sup>3/</sup>
	A TRS employer and non-TRS employer	You must elect either to: 1. Have your TRS service reported in PERS and receive service credit in PERS for both positions; or 2. Have your TRS service reported in TRS and not receive service credit for the PERS position.

**PERS Members**

Type of Employment <sup>2/</sup>	Type of Employer(s)	System You Will Be Reported In
An eligible PERS position and an ineligible TRS or substitute position	Same employer	PERS - for both positions.
	Separate TRS employers	PERS - for the PERS position only, unless you qualify for and elect to establish membership in TRS at the end of the school year under WAC 415-112-125(1). If you elect to establish TRS membership, your employers will report you in TRS for both positions. Any previously reported service credit and compensation in PERS will be transferred to TRS.
	A TRS employer and non-TRS employer	PERS - for the PERS position only. You will not be reported for the TRS position unless you elect to either: 1. Have your TRS service reported in PERS and receive service credit in PERS for both positions; or 2. Have your TRS service reported in TRS and not receive service credit for the PERS position.

**Neither TRS Nor PERS Member**

Type of Employment <sup>2/</sup>	Type of Employer(s)	System You Will Be Reported In
An ineligible TRS and an ineligible PERS position	Same employer	TRS - for both positions if the positions combined, qualify as an eligible position.
	Separate employers, TRS or non-TRS	Neither position reported.
A substitute teaching position and an ineligible PERS position	Same employer	Neither position reported. However, if you qualify, you may elect to establish membership in TRS at the end of the school year for your substitute teaching position under RCW 41.32.013 and WAC 415-112-140.
	Separate employers, TRS or non-TRS	Neither position reported. However, if you qualify, you may elect to establish membership in TRS at the end of the school year for your substitute teaching position under RCW 41.32.013 and WAC 415-112-140.

<sup>1/</sup> "Former TRS 1 member", as used here, means you terminate your membership by withdrawing your contributions.<sup>2/</sup> Means during the same school year.<sup>3/</sup> EXAMPLE: A TRS 2 member teaches in an eligible position and during the summer, she works for a state agency in an eligible position under PERS. Because the member has established membership in TRS 2 through employment as a teacher, her state agency employer must report her service and compensation from the PERS position to the Department in TRS 2.

EXAMPLE: A TRS 2 member is employed concurrently by School District A in an eligible TRS position and by School District B in an eligible PERS position. Because he is a TRS 2 member, School District B employer must report his service and compensation from the PERS position to the Department in TRS 2. If the member terminates his employment in the TRS position with School District A, School District B will report him in PERS for the PERS position.

**(2) Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

- (a) "Eligible position" - RCW 41.40.010.
- (b) "Employer" - RCW 41.40.010 (PERS); RCW 41.32.-010 (TRS).
- (c) "Ineligible position" - RCW 41.40.010.
- (d) "Member" - RCW 41.40.010.

(e) "Membership" - RCW 41.40.023.

(f) "Report" - WAC 415-108-010.

(g) "Service" - RCW 41.40.010.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.40 RCW. 02-18-046, § 415-108-728, filed 8/28/02, effective 9/30/02. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-108-728, filed 12/12/00, effective 1/12/01. Statutory Authority: RCW 41.50.050. 95-16-053, § 415-108-728, filed 7/25/95, effective 8/25/95.]

**WAC 415-108-730 Membership for city managers.** The purpose of the WAC is to implement the provisions of RCW 41.40.120(17) relating to city managers.

Effective immediately and until December 31, 1986 any current member described in RCW 41.40.120(17) may, at his/her option, elect to withdraw from membership in the retirement system provided by chapter 41.40 RCW. Such election is to be made in writing on a form provided for that purpose by the department. Persons making this election will be refunded the contributions and related interest which were credited while in their current position. The effect of such a withdrawal will be to terminate and cancel the service credit acquired while in that position. Such action is final and no service credit may ever be obtained in the future for the period cancelled.

Effective immediately any person described in RCW 41.40.120(17) who is employed in one of the positions described shall not become a member of the system provided by chapter 41.40 RCW unless within thirty days of employment in such position he/she shall submit in writing on a form, provided by the department, a waiver of his/her right to be excluded and requesting his/her inclusion in the system. Such a person may not then subsequently withdraw from the system except as provided by RCW 41.40.260 or 41.40.730 as appropriate.

[Recodified as § 415-108-730, 97-19-035, filed 9/9/97, effective 9/9/97. Statutory Authority: RCW 41.40.120(17). 86-13-023 (Order 86-3), § 415-108-500, filed 6/10/86.]

**WAC 415-108-800 When does a member of the public employees' retirement system (PERS) enter retirement status?** A member of PERS enters retirement status when he or she:

- (1) Has separated from service as defined in RCW 41.40.010(41);
- (2) Has no written agreement to return to employment prior to entering "retiree status"; and
- (3) Has applied for retirement, the accrual date has been determined under RCW 41.40.193, 41.40.680, or 41.40.801, and the benefit begins to accrue.

Example: Sally is eligible for retirement on July 1st. She submits an application on June 1st with a July 1st retirement date. Her last day of employment is June 30th and she does not have an agreement to return to work.

Sally's retirement date (accrual date) is July 1st and the benefit begins to accrue. The first retirement payment will be paid at the end of July. Sally entered "retiree status" effective July 1st.

[Statutory Authority: RCW 41.50.050(5), 41.04.270, 41.26.030, 41.32.010, 41.32.025, 41.32.480, 41.32.500, 41.32.570, 41.32.765, 41.32.795, 41.32.802, 41.32.855, 41.32.860, 41.32.862, 41.35.010, 41.35.030, 41.35.060, 41.35.450, 41.35.640, 41.40.010, 41.40.023, 41.40.037, 41.40.150, 41.40.193, 41.40.680, 41.40.750, 41.40.801. 02-02-060, § 415-108-800, filed 12/28/01, effective 1/1/02.]

## SERVICE RETIREMENT

**WAC 415-108-810 Calculation of retirement allowance pursuant to *Bowles v. Retirement Systems*—Eligibility—Procedure.** Pursuant to *Bowles v. Retirement Systems*,

(2003 Ed.)

121 Wn.2d 52 (1993), the department is required to calculate certain Plan I members' retirement allowances without regard to percentage or ceiling limitations on leave cash outs. *Bowles v. Retirement Systems* does not change the terms contained in collective bargaining agreements negotiated by employers and employees or leave policies promulgated by employers, nor does it apply to state and school district employees who cash out sick leave pursuant to RCW 28A.400.210 or 41.04.340, or annual leave pursuant to RCW 43.01.040 through 43.01.044.

(1) Certain Plan I members' retirement allowances shall be calculated pursuant to this section if they meet the following criteria:

(a) Retire on or after March 11, 1993, from Plan I, or be a surviving spouse or beneficiary of a member who retired or died after March 11, 1993; and

(b) Have average final compensation that is:

(i) Based on employment with a nonstate agency or political subdivision employer; and

(ii) Subject to employer percentage or ceiling limitations on leave cash outs.

(c) If a person meets the eligibility requirements for calculation under (a) and (b) of this subsection, the department shall determine whether the person is entitled to the calculation provided under subsection (2) of this section.

(2) For persons who are eligible under subsection (1) of this section, the department shall calculate the retirement allowance as follows:

(a) Calculate average final compensation twice:

(i) First, by including the amount of leave actually cashed out that is accruable within the member's two year average final compensation period, not taking into consideration any employer percentage or ceiling cash out limitations; and

(ii) Second, by including accrued leave as specified in (a)(i) of this subsection but taking into consideration any employer percentages and ceiling cash out limitations.

(b) Calculate the difference between the retirement allowance under (a)(i) and (ii) of this subsection. The department shall calculate the present value of this difference using its actuarial tables and retain eight percent of the present value of this amount to restore pension fund moneys expended in paying *Bowles* plaintiff class attorney fees. Each member's *Bowles* attorney fee payment shall be made in a one-time deduction from the member's first retirement allowance payment after the final computation of the member's benefit; and

(c) Pursuant to RCW 41.50.150, assess the member's employer for any additional excess compensation added to the member's retirement allowance.

[Recodified as § 415-108-810, 97-19-035, filed 9/9/97, effective 9/9/97. Statutory Authority: RCW 41.50.050 and *Bowles v. Retirement Systems*, 121 Wn.2d 52 (1993). 94-11-009, § 415-108-530, filed 5/5/94, effective 6/5/94.]

**WAC 415-108-815 What is the minimum dollar limit used to determine a Plan 3 lump sum benefit payment?**

(1) The minimum dollar limit under RCW 41.40.815 for determining if a lump sum payment may be received instead

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of a monthly benefit is increased to \$119.41 as of March 1, 2002.

(2) The limit established in subsection (1) of this section will be increased each January 1st by three percent beginning January 1, 2003.

[Statutory Authority: RCW 41.50.050(5) and 41.40.815. 02-03-120, § 415-108-815, filed 1/23/02, effective 3/1/02.]

**WAC 415-108-820 Interim retirement allowance—Employer final compensation report—Final computation of retirement allowance—Adjustment of retirement allowance for errors.** (1) At the time of a member's application for retirement, the department does not have all information necessary to make a final computation of the member's retirement allowance. Based upon estimates of the retiree's compensation and earned service credit through the date of retirement, the department shall compute an interim retirement allowance made payable to the member in the interim between the member's date of retirement and the department's final computation of the member's retirement allowance. The interim retirement allowance is an initial, estimated computation of the retiree's retirement allowance subject to adjustment by the department based upon subsequent review of information provided by the member's employer.

(2) In computing the interim retirement allowance, the department shall, subject to later correction, consider only the amount of the member's salary actually reported by the employer up to the date of the interim computation, but shall impute the member's earned service credit for the same period.

(3) Every employer of a member who applies for retirement shall provide the department with a final compensation report for that member. The report shall be completed on a form provided or approved by the department.

(4) Following the department's computation of the interim benefit and receipt of the employer final compensation report, leave cash out information for Plan I retirees, earnings history, and copies of the employment contract and employer compensation policies, the department shall complete a final computation of the member's retirement allowance. The department's final computation may either increase or decrease the amount of the interim retirement allowance computed pursuant to subsection (1) of this section.

(5) Pursuant to RCW 41.50.130, following the department's final computation of the member's retirement allowance as provided in subsection (4) of this section, the department may subsequently adjust a member's retirement allowance to correct any error in retirement system records. For purposes of this subsection, errors in retirement system records include, but are not limited to, the following:

(a) Applying an incorrect retirement allowance formula in computing the retirement allowance;

(b) Including service that is not creditable to the member;

(c) Including payments that do not constitute earnable compensation to a member in the member's retirement allowance computation, or excluding earnable compensation not reported by an employer;

(d) Benefit overpayments and underpayments;

(e) Including an individual in the membership of the retirement system who is not entitled to such membership.

[Recodified as § 415-108-820, 97-19-035, filed 9/9/97, effective 9/9/97. Statutory Authority: RCW 41.50.050 and Bowles v. Retirement Systems, 121 Wn.2d 52 (1993). 94-11-009, § 415-108-540, filed 5/5/94, effective 6/5/94.]

**WAC 415-108-830 Actuarial recomputation of a Plan 2 or Plan 3 retirement allowance upon retirement following reemployment.** (1) This rule establishes a method to actuarially recompute the retirement allowance of a Plan 2 or Plan 3 member who retires, reenters employment causing the retirement allowance to be suspended, and then retires again. The actuarially recomputed retirement allowance shall:

(a) Include service credit the member earned following reestablishment of membership if any; and

(b) Account for the actuarial reduction applied to the member's initial retirement if the member initially retired prior to age sixty-five.

(2) If a Plan 2 or Plan 3 retiree reenters membership, upon the individual's next retirement, the department shall reinstate and actuarially recompute the individual's retirement allowance pursuant to RCW 41.40.690 as follows:

(a) If the member first retired before age sixty-five, the department shall:

(i) Calculate the retirement allowance pursuant to RCW 41.40.620 using the retiree's total years of career service, including service earned prior to initial retirement and service earned after reentering membership;

(ii) Actuarially reduce the member's retirement allowance based on the present value of the retirement allowance payments the individual received during the initial retirement; and

(iii) Calculate any survivor option selected by the retiree based upon the monthly retirement allowance calculated pursuant to (a)(i) and (ii) of this subsection.

(b) If the member initially retired at or after age sixty-five, the department shall recompute the member's retirement allowance pursuant to RCW 41.40.620 and include any additional service credit earned and any applicable increase in the member's average final compensation resulting from the member's reentry into membership. Under no circumstances shall a retiree receive a retirement allowance creditable to a month during which that individual earned service credit.

(3) If a Plan 2 or Plan 3 retiree's retirement allowance is suspended under RCW 41.40.690 or 41.40.850 due to reemployment but the retiree does not reenter membership, upon the retiree's separation from such employment, the retiree shall receive an actuarially recomputed retirement allowance equal to the sum of:

(a) The amount of the monthly suspended retirement allowance; plus

(b) An actuarially computed increase based upon the retirement allowance payments the member did not receive due to reemployment. The retiree may elect to receive the actuarially computed increase in either:

(i) An amount amortized over the expected term of the recomputed retirement allowance; or

(ii) A lump sum payment equal to the suspended retirement allowance plus interest.

[Statutory Authority: RCW 41.50.050(5), 41.40.620, 41.40.690. 02-03-120, § 415-108-830, filed 1/23/02, effective 3/1/02; Recodified as § 415-108-830. 97-19-035, filed 9/9/97, effective 9/9/97. Statutory Authority: RCW 41.50.050. 94-09-040, § 415-108-580, filed 4/19/94, effective 5/20/94.]

**WAC 415-108-980 Will I receive a transfer payment when I transfer to Plan 3? (1) PERS Plan 3 will be implemented on March 1, 2002.** If you transfer from PERS Plan 2 to PERS Plan 3 during the Phase 1 transfer period and establish service credit in June 2002, or transfer during the Phase 2 transfer period and establish service credit in either June 2002 or February 2003, you will receive a transfer payment to be added to your member account on or after June 1, 2003, once the department receives the transfer information from your employer. The transfer period and payment amount you will receive is based upon your employer type and your account balance as of March 1, 2002.

(a) You will receive a payment of one hundred and ten percent of your **transfer basis** if you are employed in an eligible position by a Phase 1 employer and you transfer to Plan 3 during the Phase 1 transfer period. State agencies and institutes of higher education are Phase 1 employers.

(b) You will receive a payment of one hundred and eleven percent of your **transfer basis** if you are employed in an eligible position by a Phase 2 employer and you transfer to Plan 3 during the Phase 2 transfer period. All other employers are Phase 2 employers.

(2) Your **transfer basis** is your total accumulated contributions (and interest) on March 1, 2002, less fifty percent of any contributions you made under RCW 41.50.165(2).

(3) If you request to transfer but die before payment is made, the transfer payment will be paid immediately to your defined contribution account. These moneys will be distributed when payment is made from your account to your estate, or the person or persons, trust or organization you nominated by the most recent written beneficiary designation filed with the department.

#### Examples:

##### Phase 1 Employer (110%) (state agencies and institutes of higher education)

- Al works for a Phase 1 employer and makes \$2,000 a month.
- On March 1, 2002, Al's defined benefit (DB) account balance is \$10,000.
- On June 1, 2002, Al transfers to PERS Plan 3 and chooses contribution rate option A (5%).
- On June 1, 2002, the department transfers approximately \$10,185 to Al's new defined contribution (DC) account. The transfer amount is the sum of:

- ◆ Al's \$10,000 account balance on March 1, 2002;
- ◆ Approximately \$50 in contributions between March 1st and June 1st; and
- ◆ Approximately \$135 in interest in Plan 2 at 5.5% annually, compounded quarterly.
- Al continues working for his Phase 1 employer through June 2003, including the month of June 2002.

- In June 2003, after he receives his transfer payment, Al will have approximately **\$22,385** in his DC account. Here is how:

- ◆ In June 2002, when Al transferred to Plan 3, he started with approximately \$10,185 in his DC account.
- ◆ He then made twelve monthly contributions of \$100 (5% of a \$2,000 salary, June 2002 through May 2003) for a total of \$1,200.
- ◆ In June 2003, he receives a transfer payment of \$11,000 (110% of \$10,000, his account balance on March 1, 2002).
- ◆ The total is approximate because it will depend on earnings or losses on the investments of the original amount transferred the previous year, and the contributions made to date.

##### Phase 2 Employer (111%) (local government)

- Peggy works for a Phase 2 employer and makes \$2,000 a month.
- On March 1, 2002, Peggy's defined benefit (DB) account balance is \$10,000.
- On November 1, 2002, Peggy transfers to PERS Plan 3 and chooses contribution rate option A (5%).
- On November 1, 2002, the department transfers approximately \$10,560 to Peggy's new defined contribution (DC) account. The transfer amount is the sum of:

- ◆ Peggy's \$10,000 account balance on March 1, 2002;
- ◆ Approximately \$140 in contributions between March 1st and November 1st;
- ◆ Approximately \$420 in interest in Plan 2 at 5.50% annually, compounded quarterly.
- Peggy continues working for her Phase 2 employer through June 2003, including the month of February 2003\*.

\* A Phase 2 employee can establish service credit in either June 2002 or February 2003.

- In June 2003, after she receives her transfer payment, Peggy will have approximately **\$22,360** in her DC account. Here is how:

- ◆ In November 2002, when Peggy transferred to Plan 3, she started with approximately \$10,560 in her DC account.
- ◆ She then made monthly contributions of \$100 (5% of a \$2,000 salary) for a total of \$700.
- ◆ In June 2003, she receives a transfer payment of \$11,100 (111% of \$10,000, her account balance on March 1, 2002).
- ◆ The total is approximate because it will depend on earnings or losses on the investments of the original amount transferred the previous year, and the contributions made to date.

#### (4) Terms defined:

Phase 1 employer: WAC 415-108-425.

Phase 2 employer: WAC 415-108-425.

Phase 1 transfer period: WAC 415-108-425.

Phase 2 transfer period: WAC 415-108-425.

Service: RCW 41.40.010 (9)(b).

Transfer basis: RCW 41.40.795 (1)(b).

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415-110-0111	Annual leave—Definition. [Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW, 01-01-059, § 415-110-0111, filed 12/12/00, effective 1/12/01.] Repealed by 02-18-046, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and chapter 41.35 RCW.		
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	<b>WAC 415-110-010 Definitions.</b> All definitions in RCW 41.35.010 and WAC 415-02-030 apply to terms used in this chapter. Other terms relevant to the administration of chapter 41.35 RCW are defined in this chapter.		
	(1) <b>Annual leave</b> means leave provided by an employer for the purpose of taking regularly scheduled work time off		

with pay. Annual leave does not include leave for illness, personal business if in addition to and different than vacation leave, or other paid time off from work. However, if an employer authorizes only one type of leave to provide paid leave for vacation and illness as well as any other excused absence from work, such leave will be considered annual leave for purposes of RCW 41.50.150.

(2) **Normally** as used in the definition of eligible position under RCW 41.35.010 means a position is eligible if it is expected to require at least five months of seventy or more hours of compensated service each month during each of two consecutive years. Once a position is determined to be eligible, it will continue to be eligible if it requires at least five months of seventy or more hours of compensated service during at least one year in any two-year period.

(3) **Project position** means a position, established by an employer, that has a specific goal and end date.

(4) **Report** means an employer's reporting of an employee's hours of service, compensation and contributions to the department on the monthly transmittal report.

(5) **Reportable compensation** means compensation earnable as that term is defined in RCW 41.35.010(6).

(6) **System acronyms** used in this chapter are defined as follows:

(a) "PERS" means the public employees' retirement system.

(b) "SERS" means the school employees' retirement system. (c) "TRS" means the teachers' retirement system.

(7) **Year** means any twelve consecutive month period established and applied consistently by an employer to evaluate the eligibility of a specific position. The term may include, but is not limited to, a school year, calendar year, or fiscal year.

**Example:** An employer has used the twelve consecutive month period from September 1 to August 31 to evaluate the eligibility of positions. When the employer hires a new employee to fill an existing position, the employer must continue to use the September 1 through August 31 period to define a year for the position.

**Example:** If the same employer in the above example hires a person to work in a project position beginning in November, the employer will use the twelve-month period beginning in November to evaluate the eligibility of the new position. The employer must consistently apply this twelve-month period to evaluate the eligibility of this position.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.35 RCW. 02-18-046, § 415-110-010, filed 8/28/02, effective 9/30/02. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-010, filed 12/12/00, effective 1/12/01.]

## ADMINISTRATION

**WAC 415-110-020 Public records.** See chapter 415-06 WAC.

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-020, filed 12/12/00, effective 1/12/01.]

(2003 Ed.)

**WAC 415-110-030 Statewide cities retirement system.** Pursuant to RCW 41.35.130, the statutes and rules applying to the school employees' retirement system and the department of retirement systems (as provided in chapters 41.35 and 41.50 RCW and Title 415 WAC) govern the administration and operation of the former statewide cities retirement system.

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-030, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-040 Appeals—Disability cases.** Appeals will be governed by the provisions of chapter 415-08 WAC as now existing or hereafter amended.

Any person aggrieved by any final decision must, before he/she appeals to a superior court, file a notice of appeal with the director personally or by mail, within sixty days from the date such decision was communicated to such person. The notice of appeal must contain the information required by WAC 415-08-020 as now existing or hereafter amended.

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-040, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-050 How does the department comply with Internal Revenue Code distribution rules?** (1) This section applies only to the school employees' retirement system (SERS) Plans 2 and 3.

(2) All benefits paid from the SERS Plans 2 and 3 retirement plans shall be distributed in accordance with the requirements of section 401 (a)(9) of the Federal Internal Revenue Code and the regulations under that section. In order to meet these requirements, these retirement plans shall be administered in accordance with the following provisions:

(a) Distribution of a member's benefit must begin by the later of the April 1 following the calendar year in which a participant attains age 70 1/2 or the April 1 of the year following the calendar year in which the member retires;

(b) The life expectancy of a member or the member's spouse may not be recalculated after the benefits commence;

(c) If a member dies before the distribution of the member's benefits has begun, distributions to beneficiaries must begin no later than December 31 of the calendar year immediately following the calendar year in which the member died;

(d) The amount of benefits payable to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of the Federal Internal Revenue Code; and

(e) If a member dies after the distribution of the member's benefits has begun, the remaining portion of the member's interest will be distributed at least as rapidly as under the method of distribution being used for the member as of the date of the member's death.

(3) A distributee may elect to have eligible rollover distributions paid in a direct rollover to an eligible retirement plan the distributee specifies, pursuant to section 401 (a)(31) of the Federal Internal Revenue Code.

[Statutory Authority: RCW 41.50.050(5), chapter 41.35 RCW and IRS regulations. 02-14-009, § 415-110-050, filed 6/20/02, effective 7/21/02.]

**WAC 415-110-060 What are the IRS limitations on maximum benefits and maximum contributions?** (1) This section applies only to the school employees' retirement system (SERS) Plans 2 and 3. Subject to the provisions of this section, benefits paid from, and employee contributions made to, these plans shall not exceed the maximum benefits and the maximum annual addition, respectively, as applicable under section 415 of the Federal Internal Revenue Code.

(2) A participant may not receive an annual benefit that exceeds the dollar amount specified in section 415 (b)(1)(A) of the Federal Internal Revenue Code, subject to the applicable adjustments in section 415 of the Federal Internal Revenue Code. For purposes of applying IRC 415(b) when a participant retires before age 62 or after age 65, the determination as to whether the benefit satisfies the IRC 415(b) limitations is made by comparing the equivalent annual benefit determined in Step 1 below with the age-adjusted dollar limit determined in Step 2 below.

Step 1: Under IRC 415 (b)(2)(B), determine the annual benefit in the form of a straight life annuity commencing at the same age that is actuarially equivalent to the plan benefit. In general, IRC 415 (b)(2)(E)(i) and (v) require that the equivalent annual benefit be the greater of (a) or (b) below.

(a) The equivalent annual benefit computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial equivalence for the particular form of benefit payable (plan rate and plan mortality table, or plan tabular factor, respectively).

(b) The equivalent annual benefit computed using a 5 percent interest rate assumption and the applicable mortality table.

This step does not apply to a benefit that is not required to be converted to a straight life annuity under IRC 415 (b)(2)(B), for example, a qualified joint and survivor annuity.

Step 2: Under IRC 415 (b)(2)(C) or (D), determine the IRC 415(b) dollar limitation that applies at the age the benefit is payable (age-adjusted dollar limit).

If the age at which the benefit is payable is less than 62, the age-adjusted dollar limit is determined by reducing the dollar limit on an actuarially equivalent basis. In general, IRC 415 (b)(2)(E)(i) and (v) require that the age-adjusted dollar amount be the lesser of (a) or (b) below.

(a) The equivalent amount computed using the plan rate and plan mortality table (or plan tabular factor) used for actuarial equivalence for early retirement benefits under the plan.

(b) The amount computed using 5 percent interest and the applicable mortality table described in Revenue Ruling 95-6. (This is used only to the extent described in Q & A 6 of Revenue Ruling 98-1, which provides that, for purposes of adjusting any limitation under IRC 415 (b)(2)(C) or (D), to the extent a forfeiture does not occur upon death, the mortality decrement may be ignored prior to age 62 and must be ignored after SSRA.)

If the age at which the benefit is payable is greater than age 65, the age-adjusted dollar limit is determined by increasing the IRC 415(b) dollar limitation on an actuarially equivalent basis. In general, IRC 415 (b)(2)(E)(i) and (v) require that the increased age-adjusted dollar limit be the lesser of (a) or (b) below.

(a) The equivalent amount computed using the plan rate and plan mortality table (or plan tabular factor) used for actuarial equivalence for early retirement benefits under the plan.

(b) The equivalent amount computed using 5 percent interest and the applicable mortality table (used to the extent described in Q&A 6, as described in the prior paragraph).

The dollar limit will be reduced proportionally for less than ten years of participation.

The plan will satisfy the IRC 415(b) limitations only if the equivalent annual benefit determined in Step 1 is less than the age-adjusted dollar limit determined in Step 2.

(3) Effective for limitation years beginning after December 31, 2001, the maximum annual addition that may be contributed or allocated to a participant's account for any limitation year may not exceed the lesser of (a) \$40,000, as adjusted for increases in the cost-of-living under section 415(d) of the Federal Internal Revenue Code, or (b) one hundred percent of the member's compensation, within the meaning of section 415 (c)(3) of the Federal Internal Revenue Code, for the limitation year.

(4) Notwithstanding any other provision of law to the contrary, the department may modify a request by a participant to make a contribution to the retirement plans if the amount of the contributions would exceed the limits under section 415(c) or 415(n) of the Federal Internal Revenue Code. An eligible participant in a retirement plan, as defined by section 1526 of the Federal Taxpayer Relief Act of 1997, may purchase service credit as provided by state law in effect on August 5, 1997, without regard to the limitations of section 415 (c)(1) of the Federal Internal Revenue Code.

(5) Prior to January 1, 1998, the definition of compensation, earnable compensation or other similar term when used for purposes of determining compliance with section 415 of the Federal Internal Revenue Code does not include the amount of any elective deferral, as defined in section 402 (g)(3) of the Federal Internal Revenue Code, or any contribution which is contributed or deferred by the employer at the election of the employee and which is not includable in the gross income of the employee by reason of section 125 or 457 of the Federal Internal Revenue Code.

(6) For limitation years beginning on and after January 1, 1998, the definition of compensation, earnable compensation or other similar term when used for purposes of determining compliance with section 415 of the Federal Internal Revenue Code does include the amount of any elective deferral, as defined in section 402 (g)(3) of the Federal Internal Revenue Code, or any contribution which is contributed or deferred by the employer at the election of the employee and which is not includable in the gross income of the employee by reason of section 125 or 457 of the Federal Internal Revenue Code.

(7) For limitation years beginning on and after January 1, 2001, the definition of compensation, earnable compensation or other similar term when used for purposes of determining compliance with section 415 of the Federal Internal Revenue Code shall also include elective amounts that are not includable in the gross income of the employee by reason of section 132 (f)(4).

[Statutory Authority: RCW 41.50.050(5), chapter 41.35 RCW and IRS regulations. 02-14-009, § 415-110-060, filed 6/20/02, effective 7/21/02.]

**WAC 415-110-070 Assets for exclusive benefit of members and beneficiaries.** No assets of the school employees' retirement system Plans 2 and 3 may be used for or diverted to a purpose other than the exclusive benefit of the members and their beneficiaries at any time prior to the satisfaction of all liabilities with respect to members and their beneficiaries.

[Statutory Authority: RCW 41.50.050(5), chapter 41.35 RCW and IRS regulations. 02-14-009, § 415-110-070, filed 6/20/02, effective 7/21/02.]

## BENEFIT OPTIONS

**WAC 415-110-315 Designation of beneficiaries—Death benefit if a member dies before retirement.** This section applies to Plan 2 members' defined benefit or Plan 3 members' defined contribution distribution.

(1) As a member, you have the right to designate a beneficiary or beneficiaries to receive a benefit in the event of your death while you are an active member. You may change your beneficiary designation at any time by filing a change of beneficiary form with the department.

(2) You may name:

(a) An organization or person, including your unborn or later adopted children. Unborn or later adopted children will not be included unless you specifically designate them as beneficiaries on the form. You must state the date of birth for any living person you name as a beneficiary;

(b) Your estate;

(c) A trust in existence at the time of death. Before making distribution to any trust the department must receive:

(i) A copy of the trust document;

(ii) The name, address, telephone number of the current trustee; and

(iii) The tax identification number;

(d) A trust to be established under your last will.

(3) You may name contingent beneficiaries in addition to primary beneficiaries.

### Examples:

#### EXAMPLE ONE.

##### Facts

John, a member, completes a beneficiary designation form.

In the place on the form reserved for persons, he names his daughter Ann. He checks the box to indicate that Ann is a primary beneficiary.

In the place on the form reserved for trust/organizational beneficiaries, he lists the "Barbara Trust." His daughter Barbara is the trust beneficiary. He checks the box to indicate that the trust is a primary beneficiary.

##### Result

Subject to applicable statute, at John's death, the department will consider both the Barbara Trust and daughter Ann as primary beneficiaries. The department will require the name of the trustee, the tax identification number, a copy of the trust and other information specified in this rule before distribution to the trust.

(2003 Ed.)

#### EXAMPLE TWO.

##### Facts

John, a member, completes a beneficiary designation form.

In the place on the form reserved for persons, he names his daughter Ann. He checks the box to indicate that Ann is a primary beneficiary.

In the place on the form reserved for trust/organizational beneficiaries, he lists his daughter Barbara personally (no trust name is provided). He checks the box labeled "primary beneficiary." John misunderstands the form and rather than provide the names of the trustee or trust administrator, John writes the word "both" in the blank provided.

##### Result

At John's death, the department learns that John has created no trusts. Subject to existing statute, if the department receives no notice of competing claims to John's death benefit, the department will distribute the death benefit to Ann. If the department receives notice of competing claims, a court resolution may be required.

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-315, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-320 Determining SERS Plan 3 defined benefit retirement eligibility.** This WAC provides eligibility terms for retirement from the defined benefit component of SERS Plan 3.

(1) Definition. Qualified service credit—For purposes of this section, the following types of service credit may be used to qualify for retirement:

(a) SERS Plan 3 service credit;

(b) Service credit earned in a dual member system, but only in combination with SERS Plan 3 service credit (chapter 41.54 RCW); or

(c) Up to forty-five days of sick leave (RCW 41.35.010).

(2) Members must be age 65 to retire with an unreduced defined benefit. SERS Plan 3 members can retire with an unreduced defined benefit at age 65 if they have accumulated the following amounts of qualified service credit:

(a) Ten service credit years;

(b) Five service credit years, including twelve service credit months after attaining age 54; or

(c) Five service credit years by September 1, 2000, under Plan 2.

(3) Members may retire with a reduced benefit after attaining age 55. A SERS Plan 3 member who has attained age 55 may retire with an actuarially reduced defined benefit (RCW 41.35.680) if they have accumulated at least ten years of qualified service credit.

(4) Members may use only qualified service credit to receive a retirement benefit from the SERS Plan 3 defined benefit component.

(5) To be eligible to receive a retirement benefit, SERS Plan 3 members must:

(a) Submit a completed, signed, and notarized SERS Plan 3 retirement application; and

(b) Terminate employment with all retirement system employers from which they are claiming service credit. Ter-

mination from non-SERS system employers is required in cases where a member is using dual member rules to qualify for retirement (chapter 41.54 RCW).

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-320, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-324 Married member's benefit selection—Spousal consent required.** (1) The member, if married, must provide the spouse's written consent to the option selected under WAC 415-110-326. If a married member does not provide spousal consent, the department will pay the retired member a joint and one-half survivor benefit allowance and record the member's spouse as the survivor in compliance with chapter 41.35 RCW and RCW 41.35.220(2).

(2) Spousal consent is not needed to enforce a marital dissolution order requiring the department to pay an exspouse under RCW 41.50.790.

(3) "Spousal consent" means that the married member's spouse consents to the retirement option selected by the member. The spouse's notarized signature on a completed retirement application constitutes spousal consent.

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-324, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-326 Retirement benefit options.** RCW 41.35.220 enables the department to provide retiring members with four retirement benefit options. The retiring member must choose an option when applying for service or disability retirement:

(1) **Option One: Benefit option without survivor features (standard allowance).** The department will pay a monthly retirement allowance based solely on the single life of the member, as provided by RCW 41.35.420, 41.35.440, 41.35.680, or 41.35.690. When the retiree dies all benefits cease. Any remaining balance of the retiree's accumulated contributions will be paid to:

(a) Such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(b) If there is no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or

(c) The member's estate; or

(d) If there is neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(2) **Benefit options with a survivor feature.**

(a) A retiring member is allowed to select from several retirement options which create an actuarially equivalent benefit that includes a survivor feature. The survivor feature entitles the survivor to receive a monthly allowance after the retiree dies. If the member chooses one of the survivor options, the monthly benefit the member will receive is actuarially reduced to offset the cost of the survivor feature. After

the retiree dies, the department pays the survivor an allowance for the duration of his or her life. If the retiree and the survivor both die before the retiree's accumulated contributions are exhausted, all benefits cease. Any remaining balance will be paid to:

(i) Such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(ii) If there is no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or

(iii) The member's estate; or

(iv) If there is neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(b) **Option Two (joint and whole allowance).** When the retiree dies, the department pays the survivor an allowance equal to the gross monthly allowance received by the retiree.

(c) **Option Three (joint and one-half allowance).** When the retiree dies, the department pays the survivor an allowance equal to one-half of the retiree's gross monthly retirement allowance.

(d) **Option Four (joint and two-thirds allowance).**

When the retiree dies, the department pays the survivor an allowance equal to two-thirds (66.667%) of the retiree's gross monthly retirement allowance.

(3) The department is required to pay an ex-spouse survivor benefits pursuant to a marital dissolution order that complies with RCW 41.50.790.

(4) **Benefit increases when survivor predeceases retiree (pop-up provision).**

(a) This subsection applies to retiring members who select a benefit option with a survivor feature (Option Two, Three, or Four).

(b) If the survivor dies before the retiree, the retiree's monthly retirement allowance increases, effective the first day of the following month, to:

(i) The amount that would have been received had the retiree chosen Option One; plus

(ii) Any cost-of-living adjustments the retiree received prior to the survivor's death based on the original option selection.

(c) **Pop-up recalculation examples.**

Plan two:

Agnes retires from SERS Plan 2 in 2006 (Year 0). Agnes would like Beatrice, her daughter, to receive a monthly allowance after Agnes dies. Therefore, Agnes selects a retirement benefit option with a survivor feature. As a result, her monthly allowance is reduced from \$2,000 (standard allowance) to \$1,750. Unfortunately, Beatrice dies in 2011 (Year 5). Under the "pop-up" provision, Agnes' monthly benefit will increase to \$2,191.05, the amount she would have received had she chosen option one (standard allowance) plus her accumulated COLAs:

Year	Option One (Standard Allow.)	Survivor Option (2, 3, 4) plus COLAs	COLA incr. (3% max)	\$ Increase
0 (2006)	2,000.00	1,750.00	(ineligible)	0.00
1 (2007)		1,750.00	.02	35.00
2 (2008)		1,785.00	.03	53.55

Year	Option One (Standard Allow.)	Survivor Option (2, 3, 4) plus COLAs	COLA incr. (3% max)	\$ Increase
3 (2009)		1,838.55	.025	45.96
4 (2010)		1,884.51	.03	56.54
5 (2011)	2,000.00	1,941.05	-	-
			Total COLAs	191.05
Original Option One Benefit Amount \$2000		+ Total COLAs + \$191.05	= New Benefit Amount = \$2,191.05*	

\* In the future (i.e. Year 4), COLAs will be based on the increased benefit amount.

(d) If the survivor dies and the retiree's benefit increases under this subsection, and thereafter the retiree also dies before all employee contributions are exhausted, all benefits cease. Any remaining balance will be paid to:

(i) Such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or

(ii) If there is no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or

(iii) The member's estate; or

(iv) If there is neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(5) **Survivor.** For the purposes of this provision, "survivor" means a person nominated by the member to receive a monthly benefit allowance after the member dies. A member nominates the survivor at the time of retirement by filing a completed and notarized form provided by the department.

(6) **Postretirement benefit options.**

(a) **Postretirement marriage option.** Members who select the standard allowance (Option One) at the time of retirement and marry after retirement may subsequently select a survivor option with their new spouse as survivor beneficiary, provided that:

(i) The retiree's monthly benefit is not subject to a property settlement agreement from a court decree of dissolution or legal separation;

(ii) The selection is made either:

(A) During a one year window, on or after the date of the first anniversary and before the second anniversary of the postretirement marriage; or

(B) Before June 1, 2002, if the postretirement marriage occurred before June 1, 2001;

(iii) The retiree provides a marriage certificate as proof of the postretirement marriage and provides proof of the birthdate of the new spouse; and

(iv) A member may exercise this option one time only.

(b) **Removal of a nonspouse survivor option.** Members who selected a nonspouse as survivor beneficiary at the time of retirement may remove that survivor designation and have the benefit adjusted to a standard allowance. A member may exercise this option one time only.

(c) Selection (a) or (b) of this subsection will become effective the first of the month following the department's receipt of the required paperwork.

[Statutory Authority: RCW 41.50.050(5), 41.26.460, 41.32.530, 41.32.785, 41.32.851, 41.35.220, 41.40.188, 41.40.660, 41.40.845. 01-10-045, § 415-110-326, filed 4/26/01, effective 6/1/01. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-326, filed 12/12/00, effective 1/12/01.]

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**WAC 415-110-340 Actuarial tables, schedules, and factors.** See chapter 415-02 WAC starting with WAC 415-02-300 for the tables, schedules, and factors the department uses for calculating optional retirement allowances of members of the Washington state school employees' retirement system.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.45 RCW. 02-18-048, § 415-110-340, filed 8/28/02, effective 9/1/02. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-340, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-400 Retirement allowance deduction for payment of insurance premiums.** (1) **Definitions.** Unless a different meaning is plainly required by the context:

(a) "Group life insurance policy or plan" means a contract of group life insurance issued by an insurance carrier authorized to do business in the state of Washington which meets one of the group requirements set forth in chapter 48.24 RCW;

(b) "Group disability insurance policy or plan" means a group disability insurance contract issued by an insurance carrier authorized to do business in the state of Washington which meets the requirements of chapter 48.21 RCW, and the term shall also include a group health care service contract as issued pursuant to, and regulated by, the provisions of chapter 48.40 RCW.

(2) **Scope.** Any beneficiary of a retirement allowance payable for service or disability under the provisions of chapter 41.35 RCW may authorize the director to deduct from his or her retirement allowance, on a monthly basis only, the premiums on any group life or disability insurance policy or plan currently covering the beneficiary, issued to the employer by which the retiree was employed prior to retirement. The department and the director are not and will not be liable for any failure to make such deduction payments on time or in the proper amount.

(3) **Procedure.** Any beneficiary, who desires to authorize a retirement allowance deduction as provided by this section, shall notify the department of his or her intention in writing at least thirty days prior to the date that the first deduction is to be made and shall file with the department a formal authorization on such form as may be provided by the department.

(4) **Revocability.** You must submit to the department an express written statement of revocation to revoke an authorization for a retirement allowance deduction for payment of insurance premiums under this section. Such a revocation shall be applicable to the first retirement allowance deduction which would otherwise be made at the end of the calendar

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month following the month in which the statement of revocation is filed.

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-400, filed 12/12/00, effective 1/12/01.]

## REPORTABLE COMPENSATION

**WAC 415-110-441 Purpose and scope of compensation earnable rules.** WAC 415-110-443 through 415-110-488 codify the department's existing interpretation of statutes and existing administrative practice regarding classification of payments as compensation earnable in SERS Plan 2 and SERS Plan 3. The department has applied and will apply these rules to determine the proper characterization of payments occurring prior to the effective dates of these sections.

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-441, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-443 Reportable compensation table.** The following table is provided as a quick reference guide to help you characterize payments under SERS Plan 2 and SERS Plan 3. Be sure to turn to the referenced rule to ensure that you have correctly identified the payment in question. The department determines compensation earnable based upon the nature of the payment, not the name applied.

Type of Payment	SERS Plan 2 and Plan 3 Reportable Compensation
Annual Leave Cash Outs	No - WAC 415-110-456
Assault Pay	No - WAC 415-110-468
Base Rate	Yes - WAC 415-110-451
Car Allowances	No - WAC 415-110-485
Cafeteria Plans	Yes - WAC 415-110-455
Deferred Wages	Yes - WAC 415-110-459
Disability Payments	No - WAC 415-110-477
Disability Retirees	No - RCW 41.35.440/RCW 41.35.690 (until requirements are met)
Disability: Salary lost while on disability leave	Yes - WAC 415-110-468 RCW 41.35.070
Employer Provided Vehicle	No - WAC 415-110-480
Employer Contributions	No - WAC 415-110-459
Fringe Benefits	No - WAC 415-110-475
Illegal Payments	No - WAC 415-110-482
Legislative Leave	Yes - WAC 415-110-464
Longevity/Education Attainment Pay	Yes - WAC 415-110-451
Nonmoney Maintenance	No - WAC 415-110-470
Optional Payments	No - WAC 415-110-483
Payments in Lieu of Excluded Items	No - WAC 415-110-463
Performance Bonuses	Yes - WAC 415-110-453
Retroactive Salary Increase	Yes - WAC 415-110-457
Reimbursements	No - WAC 415-110-484
Reinstatement Payments	Yes - WAC 415-110-467
Retirement or Termination Bonuses	No - WAC 415-110-487
Severance Pay - Earned Over Time	No - WAC 415-110-458

Severance Pay - Not Earned Over Time	No - WAC 415-110-488
Shared Leave - School/ ESD Employees	Yes - WAC 415-110-468
Sick Leave Cash Outs - School/ESD Employees	No - WAC 415-110-456
Standby Pay	Yes - WAC 415-110-469
Time Off With Pay	Yes - WAC 415-110-456 WAC 415-110-465
Union Leave	Yes - WAC 415-110-466 <sup>1/</sup>
Worker's Compensation	No - WAC 415-110-479

<sup>1/</sup> Only specific types of union leave are reportable. See WAC 415-110-466.

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-443, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-445 What compensation can be reported?** In order for payments to be subject to retirement system contributions and included in the calculation of a member's retirement benefit, those payments must meet the definition of compensation earnable in RCW 41.35.010.

(1) **Payments for personal services rendered.** To determine whether a payment meets this definition and can be reported, ask the following questions:

(a) Was the payment earned as a salary or wage for personal services rendered during a fiscal year? If the answer is no, the payment is not reportable. If the answer is yes, ask question (b).

(b) Was the payment paid by an employer to an employee? If the answer is no, the payment is not reportable. If the answer is yes, report the payment.

(2) **Payments included that are not for personal services rendered.** The legislature has included certain specific payments within the definition of compensation earnable even though those payments are not for personal services rendered by the employee to the employer. (See WAC 415-110-464 through 415-110-469.)

(3) **Reportable compensation is earned when the service is rendered, rather than when payment is made.**

Example: If a member works during September but does not receive payment for the work until October, the reportable compensation was earned during September and must be reported to the department as September earnings.

(4) **Salary characterizations are based upon the nature of the payment.** A payment is reportable compensation if it meets the criteria of subsection (1) or (2) of this section. The name given to the payment or the document authorizing it is not controlling in determining whether the payment is reportable compensation. The department determines whether a payment is reportable compensation by considering:

(a) What the payment is for; and

(b) Whether the reason for the payment brings it within the statutory definition of compensation earnable.

Example: A payment conditioned upon retirement is not reportable compensation. Attaching the label "longevity" to the payment does not change the fact that the payment is conditioned on retirement. Such a payment is not for services rendered and

will not be counted as reportable compensation despite being identified by the employer as a longevity payment.

**(5) Differences in reportable compensation between plans.** WAC 415-110-445 through 415-110-488 define reportable compensation for each of the two SERS plans. The characterization of payments as reportable compensation or not reportable compensation in WAC 415-110-455 through 415-110-488 is the same for both SERS Plan 2 and SERS Plan 3.

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-445, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-451 Salary or wages.** Most employees receive a base rate of salary or wages expressed as an hourly or monthly rate of pay. This payment is for services rendered and qualifies as reportable compensation. Two possible components of an employee's base rate are salary considerations based on longevity or educational attainment.

(1) A member who receives a salary increase based upon longevity or educational attainment receives a higher salary without working more hours. The higher salary indicates a higher level of performance due to greater experience or more education. The payment is therefore a payment for personal service and is reportable compensation.

(2) Simply attaching the label "longevity" to a payment does not guarantee that it will be reportable compensation. If a payment described as a longevity payment is actually based upon some other criteria, such as retirement or notification of intent to retire, the payment may not be reportable.

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-451, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-453 Performance bonuses.** Bonuses that are based upon meeting certain performance goals are earned for services rendered and are reportable compensation. If a bonus was earned over a specified period of time, it should be prorated for reporting purposes.

Example: An employer pays each employee in the work group an additional \$100 if the work group had no work related accidents in the preceding year. Remaining accident free is a performance goal. Therefore, the payment is for services rendered and qualifies as reportable compensation. The bonus should be prorated over each of the preceding twelve months during which it was earned.

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-453, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-455 Cafeteria plans.** Compensation received in any form under the provisions of a "cafeteria plan," "flexible benefits plan," or similar arrangement pursuant to section 125 of the United States Internal Revenue Code is reportable compensation if the employee has an absolute right to receive cash or deferred cash payments in lieu of the fringe benefits offered. In such an instance, the fringe benefits are being provided in lieu of cash and are considered reportable compensation, just as the cash would be. If there is no cash option, the value of the fringe benefit is not a salary

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or wage and is not reportable compensation, see WAC 415-110-475.

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-455, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-456 Leave payments earned over time.** (1) **Sick and annual leave usage.** Sick leave and annual leave is accumulated over time and paid to a person during a period of excused absence. Leave accrues at a prescribed rate, usually a certain number of hours per month. The employee earns a leave day by rendering service during the month the leave accrued. When the employee uses his or her accrued leave by taking a scheduled work day off with pay, the payment is deferred compensation for services previously rendered. The payment is a salary or wage earned for services rendered and is reportable.

(2) **Annual leave cash outs.** Annual leave cash outs are not reportable compensation for SERS Plan 2 and SERS Plan 3 members. Although annual leave cash outs, like payments for leave usage, are deferred compensation earned for services previously rendered, they are excluded from the definition of compensation earnable by statute, see RCW 41.35.010 (6)(a).

(3) **Sick leave cash outs.** Sick leave cash outs are excluded from the definition of compensation earnable for SERS Plan 2 and SERS Plan 3 members by statute.

Sick leave cash outs are excluded from reportable compensation for:

- (i) School district employees by RCW 28A.400.210; and
- (ii) Educational service district employees by RCW 28A.310.490. See RCW 41.35.010 (6)(a).

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-456, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-457 Retroactive salary increases.** A retroactive salary payment to an employee who worked during the covered period is a payment of additional salary for services already rendered.

Note: A retroactive salary increase is not the same as a retroactive payment upon reinstatement or in lieu of reinstatement of a terminated or suspended employee. For treatment of back payments for periods where services were not rendered, see WAC 415-110-467.

(1) To qualify as reportable compensation under this section, the payment must be a bona fide retroactive salary increase. To ensure that is the case, the retroactive payment must be made pursuant to:

(a) An order or conciliation agreement of a court or administrative agency charged with enforcing federal, state, or local statutes, ordinances, or regulations protecting employment rights;

(b) A bona fide settlement of such a claim before a court or administrative agency;

(c) A collective bargaining agreement; or

(d) Action by the personnel resources board which expressly states the payments are retroactive.

(2) The payments will be deemed earned in the period in which the work was done.

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-457, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-458 Severance pay earned over time.** All forms of severance pay are excluded from earnable compensation and are not reportable for Plan 2 or Plan 3 by RCW 41.35.010 (6)(a).

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-458, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-459 Payroll deductions.** Salary or wages for services rendered that are withheld from a member's pay still qualify as reportable compensation.

(1) **Retirement contributions.** Payments deducted from employee compensation for employee retirement contributions are reportable. Employer contributions are a fringe benefit and are not reportable, see WAC 415-110-475.

(2) **Tax withholding.** Payments withheld to satisfy federal tax obligations qualify as reportable compensation.

(3) **Voluntary deductions.** Payments deducted voluntarily, such as I.R.C. section 457 plan contributions or other authorized deductions, are reportable.

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-459, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-463 Payments not for services rendered.** In general, payments cannot be reported to the retirement system unless they are for services rendered. However, the legislature has identified some types of compensation which are reportable even though they are not for services rendered.

(1) WAC 415-110-464 through 415-110-469 discuss all payments that are not for services rendered that nonetheless qualify as reportable compensation.

(2) WAC 415-110-475 through 415-110-488 discuss some payments that are not a salary or wage for services rendered and so do not qualify as reportable compensation. A payment not for services rendered other than those identified in WAC 415-110-464 through 415-110-469 is not reportable compensation even if it is not listed in WAC 415-110-475 through 415-110-488.

(3) A payment made in lieu of a payment that is not for services rendered (such as a payment made in lieu of a car allowance) will be treated in the same way that the original payment was treated. Such a payment is not for services rendered and is not reportable.

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-463, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-464 Legislative leave.** If a SERS member takes a leave without pay from an eligible position to serve in the legislature, the member may elect to participate in SERS as a legislator.

(1) The employee may choose between:

(a) The reportable compensation he or she would have earned had the member not served in the legislature; or

(b) The actual reportable compensation for nonlegislative public employment and the legislative service combined.

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(2) If the member selects option (a) of this subsection, he or she is responsible for paying the additional employer and employee contributions to the extent the reportable compensation reported is higher than it would have been under (b) of this subsection.

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-464, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-465 Paid leave not earned over time.** If paid leave is not based upon earned leave accumulated over time, the payment is not a deferred payment for services previously rendered. Further, the member on leave is not currently rendering services in exchange for the payment. However, RCW 41.35.470 and 41.35.650 identify payments received from the employer while on paid leave as reportable for SERS. Contributions are due on these payments to the extent they meet the following conditions:

(1) The payment is equal to the salary for the position that the person is on leave from;

(2) The payment is actually from the employer. Payments from an employer that are conditioned upon reimbursement from a third party are payments from the third party. Because the payments are not from the employer, they are not reportable compensation. The only exception is union leave paid by the employer subject to reimbursement from the union under the conditions specified in RCW 41.35.470 (Plan 2) and RCW 41.35.650 (Plan 3) and WAC 415-110-466.

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-465, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-466 Union leave.** If a member takes an authorized leave of absence to serve as an elected official of a labor organization and the employer pays the member on leave subject to reimbursement from the union, the person's pay qualifies as reportable compensation provided that all the conditions of RCW 41.35.470 (Plan 2) and RCW 41.35.650 (Plan 3) as appropriate, are met.

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-466, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-467 Reinstatement or payment instead of reinstatement.** (1) Payments to an employee are not earned for services rendered if an employer makes them for periods during which the employee was not employed and the payments are made either upon reinstatement or instead of reinstatement. Nonetheless, RCW 41.35.010(6) specifically designates these payments as reportable compensation. The payments are only reportable to the extent that they are equivalent to the salary the employee would have earned had he or she been working. The payment will be prorated over the entire period that the employee was suspended, terminated, or otherwise absent from work.

(2) For purposes of subsection (1) of this section, "reinstatement" means that the employee is entitled to return to full employment rights by action of either:

(a) The employer; or

(b) A personnel board, personnel appeals board or court of law following a hearing.

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[Statutory Authority: RCW 41.50.050(5), 41.40.020, 41.35.010(6), 41.40.010(8). 01-08-057, § 415-110-467, filed 4/2/01, effective 5/3/01. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-467, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-468 Compensation authorized by statute for periods of absence due to sickness or injury.** Compensation that a member receives for periods of absence due to sickness or injury are not payments for services rendered unless the payments are authorized pursuant to sick leave earned by the member for services rendered, see WAC 415-110-456. Certain specific types of payments for periods of absence due to sickness or injury have been included within the statutory definition of compensation earnable and therefore qualify as reportable compensation.

(1) **Assault pay** qualifies as reportable compensation only to the extent authorized by RCW 27.04.100, 72.01.045, and 72.09.240.

(2) **Imputed compensation for periods of duty disability** that a member would have received but for a disability occurring in the line of duty qualify as reportable compensation only to the extent authorized by RCW 41.35.070.

**(3) Shared leave.**

(a) Compensation that an employee, as defined in RCW 41.04.655, receives due to participation in a leave sharing program to the extent authorized by RCW 41.04.650 through 41.04.670 qualifies as reportable compensation.

(b) Shared leave payments received by members who are not state employees, do not qualify as reportable compensation. Such payments are not for services rendered, nor are they specifically included within the statutory definition of compensation earnable.

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-468, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-469 Standby pay.** Some employers pay employees for being on "standby." A member is on standby when not being paid for time actually worked and the employer requires the member to be prepared to report immediately for work if the need arises, although the need may not arise. Because the member is not actually working, the member is not rendering service. However, RCW 41.35.010(6) specifically identifies standby pay that meets the above requirements as reportable compensation. Although included in the definition of compensation earnable, time spent on standby is excluded from the definition of "service," see RCW 41.35.010(7).

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-469, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-470 Nonmoney maintenance.** Are payments from my employer in any form other than money considered compensation earnable? If you are a SERS Plan 2 or Plan 3 member, you are not entitled to count the value of any nonmoney maintenance compensation you receive from your employer as compensation earnable.

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-470, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-475 Fringe benefits.** Payments made by an employer to a third party to provide benefits for an employee are not part of the employee's salary or wage. Those payments are not reportable compensation. Examples of these types of payments are insurance premiums (other than those made under bona fide cafeteria plans, see WAC 415-110-455) and matching and nonmatching employer contributions to a benefit plan.

**Note:** Mandatory salary deferrals are salary, not benefits. Such payments are reportable, see WAC 415-110-459.

**Example:** An employer makes matching payments to employees who participate in a deferred compensation plan. This is not a mandatory salary deferral for purposes of SERS reportable compensation. Since the employer matching payment (employer match) is made contingent upon employee plan participation, it is not payment for services rendered. Therefore, it is a fringe benefit that is not reportable compensation under SERS.

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-475, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-477 Disability insurance.** Disability insurance payments are paid to persons for periods when they are unable to work. Because no services are rendered in exchange for these payments, they are not reportable compensation. This is true whether the payments come directly from the employer or from an insurance company.

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-477, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-479 Workers' compensation.** Workers' compensation is paid to persons for periods when they are unable to work. Workers' compensation payments, like disability insurance, are not payments for services rendered and are not reportable compensation.

**Example:** Some employees on unpaid disability leave submit their workers' compensation payments to their employer who then issues the employee a check for the same amount through the payroll system. This exchange of payments does not change the character of the workers' compensation payment. Whether the payments come from the department of labor and industries, a self-insured employer, or have the appearance of coming from the employer, workers' compensation payments are not payments for services rendered and do not qualify as reportable compensation.

**Note:** A member may elect to make contributions and receive service credit for periods of disability covered by industrial insurance, see RCW 41.35.070.

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-479, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-480 Vehicles—Does the value of my use of an employer vehicle qualify as compensation earnable?** You are not entitled to count any of the value of an employer-provided vehicle as compensation earnable.

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-480, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-482 Illegal payments.** Payments made by an employer in excess of the employer's legal authority are not reportable.

Example: School districts are prohibited from increasing an employee's salary to include a payment in lieu of a fringe benefit per RCW 28A.400.220. If a district increased a person's salary instead of providing a fringe benefit, the payment would be illegal and should not be reported.

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-482, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-483 Optional payments.** If an employee can receive an additional payment only on the condition of taking an action other than providing service to the employer, the payment is not for services rendered and is not reportable compensation.

Example: An employer offers to make a contribution to a deferred compensation plan on behalf of an employee only if the employee agrees to defer a portion of his or her salary. Because the employee does not have a right to receive the contribution based solely on the rendering of service, the employer payment is not reportable compensation.

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-483, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-484 Reimbursements for expenses.** Reimbursements are not earned for services rendered and thus are not reportable compensation. Typical reimbursement payments include mileage reimbursements for use of a private car on employer business, see WAC 415-110-485, or meal and lodging reimbursements for business trips.

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-484, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-485 Vehicle allowances—Are vehicle allowances earnable compensation?** (1) If your employer provides you any payment or allowance in lieu of a reimbursement for expenses you incur or expect to incur in performing services for your employer, the payment or allowance is not compensation earnable. Your vehicle allowance does not qualify as compensation earnable if you receive the allowance in lieu of reimbursement for expenses that you incur or expect to incur in using your own vehicle for business purposes.

(2) The department presumes that any vehicle allowance provided to you by your employer is a payment in lieu of reimbursement for expenses and is not compensation earnable. If the contract authorizing your vehicle allowance states that it is provided solely in lieu of reimbursement for expenses that you incur or expect to incur in using your own vehicle for business purposes, the department's presumption is not rebuttable.

(3) Your vehicle allowance may qualify as compensation earnable to the extent that it exceeds your actual expenses. If your employer documents that your vehicle allowance exceeds the actual expenses you incur in driving

your own vehicle for business purposes, the excess amount is compensation earnable. Your employer must maintain monthly contemporaneous records documenting the following:

(a) The dates, if any, on which you used a privately owned vehicle in performing services for your employer;

(b) The miles you drove the vehicle on each of these trips; and

(c) Your itinerary for each of these trips.

(4) How to determine what amount of your vehicle allowance, if any, is reportable as compensation earnable.

If your employer documents that your vehicle allowance exceeds the actual expenses you incur in using your own vehicle for business purposes, your employer must report to the department as compensation earnable:

#### Your Vehicle Allowance LESS (Miles X IRS Rate)

(a) "Miles" above means the number of miles you drove a privately owned vehicle for business purposes during the month.

(b) "IRS rate" above means the Internal Revenue Service mileage rate for use by taxpayers computing the value of the use of a vehicle.

(5) Your vehicle allowance qualifies as compensation earnable if you also receive a separate reimbursement for each occasion you use your own vehicle for business purposes. If, in addition to your vehicle allowance, you receive a separate reimbursement for vehicle expenses for each occasion that you use a privately owned vehicle for business purposes, your vehicle allowance is compensation earnable.

(6) Any part of your vehicle allowance that qualifies as earnable compensation is excess compensation. If any part of your vehicle allowance is included in the calculation of your retirement allowance, your employer will be billed for excess compensation under RCW 41.50.150. Your employer's bill will equal the total estimated cost of the portion of your retirement allowance payment attributable to your vehicle allowance.

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-485, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-487 Retirement bonus or incentive.** A payment made to an employee as a bonus or incentive when retiring or terminating is not a payment for services rendered. Rather, the payment is made in exchange for an employee's promise or notification of intent to retire or terminate. A retirement or termination bonus or incentive is not reportable compensation.

Example: A collective bargaining agreement authorizes a school district to pay employees a higher salary during the last two years of employment if the employee gives written notice of his or her intent to retire or terminate. Because the payment is in exchange for the agreement to retire or terminate and not for services, the payment is not reportable compensation.

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-487, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-488 Severance pay not earned over time—Contract buy outs.** Severance pay that is not earned over time is not earned for services rendered and is not reportable. An example of severance pay not earned over time is a payment negotiated as part of termination agreement.

Example: At the time of an employee's termination the employer agrees to pay a lump sum payment equal to two months' salary. The employer identifies this payment as "severance pay." Because the payment was not earned for services rendered, it is not reportable compensation and will not be included in the retirement calculation.

For treatment of severance pay earned over time, see WAC 415-110-458.

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-488, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-491 Salary imputed to periods of unpaid leave.** In some circumstances specified in statute, a member may elect to establish service credit for periods of unpaid leave. The salary imputed to a member for purposes of calculating contributions owing for such periods of leave is not reportable compensation. Depending on the type of leave, the imputed compensation may or may not be included as average final compensation in calculating a member's retirement allowance.

(1) Authorized unpaid leave. RCW 41.35.470 (Plan 2) and RCW 41.35.650 (Plan 3) provides members with an option to establish service credit for periods of unpaid leave. RCW 41.35.070 provides members with an option to establish service credit for periods of disability covered by industrial insurance. Salary imputed to members in order to calculate contributions for such periods is not reportable compensation and can not be included as average final compensation in calculating a member's retirement allowance.

(2) Military leave. Salary imputed to a member for purposes of calculating contributions owing for periods of interrupted military service is not reportable compensation. Federal law requires that if a member elects to purchase credit for such periods of military service, and that period falls in the member's average final compensation period, the member is entitled to have the imputed salary he or she would have earned during the period of absence used in the calculation of his or her average final compensation.

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-491, filed 12/12/00, effective 1/12/01.]

## MEMBERSHIP

**WAC 415-110-550 Elected officials—Eligibility for retirement service membership.** (1) For purposes of this section and WAC 415-110-570, and pursuant to RCW 41.35.030 and 41.35.010, "elected" officials means:

(a) Individuals who are elected or appointed to any vacant elective office at a school district or educational service district; or

(b) Active SERS members who become elected or appointed to any state elective position.

(2003 Ed.)

(2) An active member of SERS who is elected to a state elective position may elect to continue membership in SERS or apply for membership in PERS pursuant to RCW 41.40.023(3).

(3) An active member of SERS who is elected or appointed to a nonstate elective position for an employer other than a school district or educational service district, does not have the option to continue membership in SERS pursuant to such elected service. However, the member may apply for membership in PERS pursuant to RCW 41.40.023(3).

(4) Pursuant to RCW 41.35.030 (2)(a), elected officials are exempted from retirement system membership but may apply for membership during the official's current term of elected office. To apply for membership, the official shall submit a written application directly to the department. If the department approves the application, the elected official is entitled to establish membership and service credit retroactive to the first day of the official's current term of elected service. To establish such membership, the official shall pay the required employee contributions for the official's current term of elected service with interest as determined by the department.

(5) Upon establishing membership for the official's current term of elected office, the official is entitled to establish membership and service credit retroactive to the first day of any previous elected term or terms of office. The official will be required to establish membership for all consecutive terms of office. To exercise this option, the official shall apply to the department pursuant to subsection (4) of this section. If the department approves the application, the official shall:

(a) Pay the required employee contributions for such previous term or terms of elected service with interest as determined by the department; and

(b) Pay the required employer contributions for such previous term or terms of elected service with interest as determined by the department. The employer may, at its discretion, pay the required employer contributions plus interest in lieu of the employee making payment of this amount.

(6) If an official is employed in an eligible position at the time of election to office and will hold multiple positions concurrently the official may:

(a) Apply to the department to participate in membership pursuant to the official's elected position as provided in subsection (4) of this section; or

(b) Choose not to participate pursuant to the official's elected position while continuing membership through the nonelected position.

(7) Except as provided under RCW 41.35.030, once an elected official has exercised the option of becoming a member of the retirement system the official shall be a member until the official separates from all eligible public employment. An official does not separate from public employment when that official's term of office ends and the official commences another term of office in the same or a different position for the same employer without a break in service. An official does not separate from service if the official resigns from the official's elected position and is later reappointed to the same position during the same term.

(8) The department will apply this section to service by elected officials which occurred prior to the effective date of this section.

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-550, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-560 Appointed officials—Eligibility and application for retirement service membership.** (1) For purposes of this section and WAC 415-110-570, and pursuant to RCW 41.35.030 and 41.35.010, "appointed" officials means only those individuals who are active SERS members or were previously active SERS members and are appointed directly by the governor to any position, including but not limited to, agency directorships and memberships on a state committee, board or commission.

(2) An individual must be a gubernatorial appointee or be appointed to serve in a position that meets the requirements of RCW 41.35.010 in order to be eligible for membership and service credit.

(3) Pursuant to RCW 41.35.030, appointed officials are exempted from retirement system membership but may apply for membership during the official's current appointed term of office. To apply for membership, the official shall submit a written application directly to the department. If the department approves the application, the official is entitled to establish membership and service credit retroactive to the first day of the official's current term of appointed service. To establish such membership, the official shall pay the required employee contributions for the official's current term of appointed service with interest as determined by the department.

(4) Upon establishing membership for the official's current term of appointed service, the official is entitled to establish membership retroactive to the first day of any previous elected term or terms of office. To exercise this option, the official shall apply to the department pursuant to subsection (3) of this section. If the department approves the application, the official shall:

(a) Pay the required employee contributions for such previous term or terms of elected service with interest as determined by the department; and

(b) Pay the required employer contributions for such previous term or terms of elected service with interest as determined by the department. The employer may, at its discretion, pay the required employer contributions plus interest in lieu of the employee making payment of this amount.

(c) "Current term of appointed service" includes an appointed official's entire current term of service. If the official has not been appointed to a position with a set term of office, "current term of appointed service" includes all uninterrupted service in the official's current appointed position.

(5) If an appointed official is employed in an eligible position at the time of appointment to office and will hold the two positions concurrently, the official may:

(a) Apply to the department to participate in membership pursuant to the appointed position as provided in subsection (3) of this section; or

(b) Choose not to participate pursuant to the official's appointed position while continuing membership through the nonappointive position.

(6) Once an appointed official has exercised the option of becoming a member of the retirement system either at the start of the official's initial term or at a successive term, the official shall be a member until the official separates from all eligible public employment. An appointed official does not separate from public employment when that official's term of office ends and the official commences another term of office in the same or a different position for the same employer without a break in service. An appointed official does not separate from service if the official resigns from the appointed position and is later reappointed to the position during the same term.

(7) The department will apply this section to service by appointed officials which occurred prior to the effective date of this section.

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-560, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-570 Elected and appointed officials—Requirements for service credit.** (1) SERS members who were elected to office by statewide election and elect membership in SERS pursuant to WAC 415-110-550, may receive one month of service credit for each month during which they earn compensation pursuant to their elected positions.

(2) Except for officials covered under subsection (1) of this section, members who were elected to office or appointed by the governor to positions and elect membership in SERS pursuant to WAC 415-110-550 or 415-110-560, may receive service credit only for months during which they are compensated:

(a) In excess of ninety times the state hourly minimum wage in effect at the time they render the service; and

(b) For ninety or more total hours of work.

(3) On or after September 1, 1991, except for officials covered under subsection (1) of this section, members who were elected to office or appointed by the governor to positions and elect membership in SERS pursuant to WAC 415-110-550 or 415-110-560, may earn:

(a) One month of service credit for each month during which they are compensated:

(i) For ninety or more total hours of work; and

(ii) In excess of ninety times the state hourly minimum wage in effect at the time they render the service; or

(b) One-half month of service credit for each month during which they are compensated:

(i) For less than ninety hours but equal to or more than seventy total hours of work; and

(ii) In excess of ninety times the state hourly minimum wage in effect at the time they render the service; or

(c) One-quarter month of service credit for each month during which they are compensated:

(i) For less than seventy total hours of work; and

(ii) In excess of ninety times the state hourly minimum wage in effect at the time they render the service.

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-570, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-679 Purpose and scope of eligibility rules.** WAC 415-110-680 through 415-110-728 codify the department's existing interpretation of statutes and existing

administrative practice regarding eligibility for membership in Plan 2 and Plan 3. The department has applied and will apply these rules to determine eligibility for service occurring prior to effective dates of these sections.

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-679, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-680 Am I eligible for membership? (1)** You are eligible for membership if you are employed in an eligible position. Your position is eligible under RCW 41.35.010 if the position, as defined by your employer, normally requires at least five months of seventy or more hours of compensated service per month during each year.

(2) If you leave an eligible position to serve in a project position, you may retain eligibility. If you are a member and you leave employment in an eligible position to serve in a project position, the project position is eligible if:

(a) The position, as defined by the employer, normally requires at least five months of seventy or more hours of compensated service each month; or

(b) The position requires at least seventy hours per month and you take the position with the understanding that you are expected to return to your permanent eligible position at the completion of the project.

(3) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

- (a) "Eligible position" - RCW 41.35.010.
- (b) "Employer" - RCW 41.35.010.
- (c) "Member" - RCW 41.35.010.
- (d) "Membership" - RCW 41.35.030.
- (e) "Normally" - WAC 415-110-010.
- (f) "Project position" - WAC 415-110-010.
- (g) "Year" - WAC 415-110-010.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.35 RCW. 02-18-046, § 415-110-680, filed 8/28/02, effective 9/30/02. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-680, filed 12/12/00, effective 1/12/01.]

#### **WAC 415-110-690 How is my eligibility evaluated?**

(1) Your eligibility is based on your position. In evaluating whether your position is eligible, your employer will determine only whether the position meets the criteria of an eligible position under RCW 41.35.010. Your employer will not consider your membership status or individual circumstances unless you:

(a) Leave employment in an eligible position to serve in a project position (see WAC 415-110-680); or

(b) Work in both a SERS and TRS position during the same school year (see WAC 415-110-728).

(2) Your employer will evaluate your position's eligibility for a particular year at the beginning of the year.

(3) Your employer or the department may reclassify your position's eligibility based upon your actual work history. If your employer declares your position to be ineligible at the beginning of a year and by the end of the year, you have actually worked five or more months of seventy or more hours, your employer will, at that time, review your position's eligibility. If at the end of the first year:

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(a) Your employer believes your position meets the requirements for an eligible position and declares the position as eligible, you will enter membership and your employer will report you to the department effective from the date your employer declares the position as eligible; or

(b) Your employer believes that the position will not meet the criteria for an eligible position during the next year, your employer may continue to define your position as ineligible. However, if during the next year the position actually requires you to again work seventy or more hours each month for at least five months, the department will declare your position as eligible. You will enter membership in the retirement system.

(i) Except as provided in (b)(ii) of this subsection, your employer will report you to the department effective from the first month of the first year in which your position required you to work for seventy or more hours.

(ii) If:

(A) Your employer has monitored the work history of your position for eligibility;

(B) Has notified you in writing when you entered the position that the position was not considered eligible; and  
You will enter membership prospectively.

(4) The department will not reclassify your position's eligibility until history of the position shows that it meets the criteria for an eligible position. If your employer has declared your position ineligible, the department will not reclassify your position as eligible until history of the position shows a period of two consecutive years of at least five months of seventy or more hours of compensated employment each month.

(5) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

- (a) "Eligible position" - RCW 41.35.010.
- (b) "Employer" - RCW 41.35.010.
- (c) "Ineligible position" - RCW 41.35.010.
- (d) "Membership" - RCW 41.35.030.
- (e) "Project position" - WAC 415-110-010.
- (f) "Report" - WAC 415-110-010.
- (g) "Year" - WAC 415-110-010.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.35 RCW. 02-18-046, § 415-110-690, filed 8/28/02, effective 9/30/02. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-690, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-700 Can I qualify for membership if I work in more than one ineligible position with the same employer? (1) All of your monthly work for an employer counts as one position.** If you are employed with the same employer in two ineligible positions during a year which, when combined, equate to an eligible position and your employer expects you to continue in this employment for a second consecutive year, your employer will report the total hours you work in both positions to the department as an eligible position.

Example: A person normally works for one employer as a cook for forty hours each month and as a bus driver for forty hours each month. The person is eligible for membership because he works a total of eighty hours each month for at least five months

each year and this is the normal pattern of his employment.

**Example:** A person normally works for one employer for forty hours each month as a cook. For one year only, she takes on extra duties by also working forty hours per month as a bus driver. Although she worked eighty hours each month for five or more months during one year, she is not eligible for membership because these hours are not the normal pattern of her employment.

**Example:** A person works for one employer for forty hours each month as a cook and also works for another employer for forty hours each month as a bus driver. The person is not eligible for membership because he cannot combine the hours of employment with these separate employers to establish membership.

**(2) You may be reported in TRS if you work in two positions and one position is covered under TRS. See WAC 415-110-728.**

**(3) Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

- (a) "Eligible position" - RCW 41.35.010.
- (b) "Employer" - RCW 41.35.010.
- (c) "Ineligible position" - RCW 41.35.010.
- (d) "Membership" - RCW 41.35.030.
- (e) "Normally" - WAC 415-110-010.
- (f) "Report" - WAC 415-110-010.
- (g) "Year" - WAC 415-110-010.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.35 RCW. 02-18-046, § 415-110-700, filed 8/28/02, effective 9/30/02. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-700, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-710 How will returning to work affect my SERS monthly benefit? (1) You may work for an employer after retirement and continue to receive your retirement allowance if:**

- (a) You are employed in an ineligible position no sooner than one calendar month after your retirement accrual date;
- (b) You are an active member of a higher education retirement plan and are employed no sooner than one calendar month after your retirement benefit accrues;
- (c) You are employed as a bona fide independent contractor as defined by WAC 415-02-110;
- (d) You are employed as an elected or appointed official directly by the governor under RCW 41.40.150(4) no sooner than one calendar month after your retirement benefit accrues and do not reenter membership;
- (e) Your only employment is as an elected official of a city or town and you end your SERS membership under RCW 41.35.030; or
- (f) You are employed in an eligible position:
  - (i) No sooner than one calendar month after your retirement benefit accrues; and
  - (ii) The time you work does not exceed the "work limit" defined in subsection (2) of this section.

**(2) What is the work limit for eligible positions?**

- (a) Plan 2 or 3 retiree working in an eligible position as defined in RCW 41.32.010, 41.35.010, or 41.40.010, or as a

fire fighter or law enforcement officer, as defined in RCW 41.26.030: Eight hundred sixty-seven hours in a calendar year.

(b) Retirees from both a Plan 1 in another pension plan and SERS Plan 2 or 3: The Plan 1 limits of the other plan will be applied.

**(3) What happens if I work more than the work limit?**

(a) The department will suspend your retirement allowance effective the day after the day in which you exceed the work limit. All hours worked for all covered employers in eligible positions are considered in determining the work limit.

(b) You have the option to return to membership in SERS if you are otherwise eligible. The option to return to membership is prospective from the first day of the month following the month in which you request to return to membership.

**(4) How will the suspension of benefits affect my retirement allowance?**

(a) The department will:

(i) Prorate your retirement allowance for the month during which you exceeded the work limit; and

(ii) Suspend all future retirement allowances while working, until the next calendar year except that it will:

(iii) Adjust for any overpayments made to you for the month(s) in which you exceeded the work limit, as required by RCW 41.50.130.

(b) If you separate from service, your retirement allowance will resume effective the first day of the month following the date of separation.

**(5) Can I return to SERS membership?**

(a) If you are a SERS retiree, you may choose to return to membership if you are employed by a SERS employer and meet the eligibility criteria. If you return to membership the department will stop your monthly retirement allowance effective from the first of the month during which you return to employment. Membership will be prospective under RCW 41.35.060(3).

(b) If you reenter membership and later choose to retire again, the department will recalculate your retirement allowance under the applicable statutes and regulations.

(c) If you are a retiree from another retirement system that the department administers, and are eligible to enter SERS membership, you may choose to return to membership. The option to return to membership is prospective from the first day of the month following the month in which you request to return to membership.

**Example 1:**

Phil is a SERS Plan 2 retiree. He separates from service on August 15th. His accrual date (retirement) is effective September 1st. Phil returns to work in a SERS Plan 2 eligible position on January 2nd of the following year. On June 1st he realizes that on or about July 8th, he is going to exceed his eight hundred sixty-seven hour limit for the year. On July 5th he notifies his employer in writing that he chooses to reenter SERS Plan 2 membership.

On July 12th, Phil works his eight hundred sixty-eighth hour. He is no longer eligible for his SERS Plan 2 retirement allowance as of July 12th. The retirement benefit is stopped

for the remainder of July. On August 1st, Phil is returned to membership and resumes making retirement contributions.

**Example 2:**

Tami is a SERS Plan 2 retiree. She separated from service on June 20th. Her accrual date (retirement) is effective July 1st. She begins working in a SERS eligible position on February 1st of the following year. By September 1st, Tami has worked eight hundred sixty-seven hours. Tami's benefit is suspended from September 2nd until January 1st if she continues to work.

(6) **How soon can I return to work as a retiree?** If you return to work sooner than one full calendar month after your accrual date, your retirement allowance will be reduced by 5.5% for every eight hours worked each month, until you separate for one full calendar month. See RCW 41.35.060.

**Example 3:**

Steve's last day of work is September 15th. His accrual date is October 1st. If Steve wants to return to work after he retires, he will need to wait until at least November 1st to avoid receiving the daily percentage reduction in his retirement allowance.

**Example 4:**

Tim's last day of work is September 15th. His accrual date is October 1st. Tim returns to work for five eight-hour work days between October 10th and October 17th. His October retirement allowance will be reduced by five and one-half percent for every eight hours worked in October (RCW 41.35.060). Tim does not return to work. On December 1st, he will qualify for his full retirement benefit. Tim will also qualify to return to work under the work limits described in subsection (2) of this section.

**Example 5:**

Paige's last day of work is September 15th. Her accrual date is October 1st. She returns to work on October 10th and continues working. Paige's retirement benefit will be reduced by 5.5% for each eight hours she works. Paige's benefit reduction will accrue up to one hundred sixty hours per month. If she stops working, her full retirement allowance will resume after she remains separated for one full calendar month. Any benefit reduction over one hundred percent will be applied to Paige's allowance in subsequent months.

(7) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed:

- (a) "Accrual date" - RCW 41.35.450, 41.35.640.
- (b) "Eligible position" - RCW 41.35.060(2).
- (c) "Employer" - RCW 41.35.010(4).
- (d) "Ineligible position" - RCW 41.35.010(23).
- (e) "Law enforcement officer" - RCW 41.26.030.
- (f) "Member" - RCW 41.35.010(5).

[Statutory Authority: RCW 41.50.050(5), 41.04.270, 41.26.030, 41.32.010, 41.32.025, 41.32.480, 41.32.500, 41.32.570, 41.32.765, 41.32.795, 41.32.802, 41.32.855, 41.32.860, 41.32.862, 41.35.010, 41.35.030, 41.35.060, 41.35.450, 41.35.640, 41.40.010, 41.40.023, 41.40.037, 41.40.150, 41.40.193, 41.40.680, 41.40.750, 41.40.801. 02-02-060, § 415-110-710, filed 12/28/01, effective 1/1/02. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-710, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-720 Participation—Can I be excluded from participating in membership even if I am employed in an eligible position?** (1) You may be exempt from participating in membership even if you meet eligibility criteria. Even if you are employed in an eligible position you are exempt from participating in SERS if your individual circumstances qualify you for one of the exceptions to membership under RCW 41.35.030.

(2) **If you work for a SERS employer after you retire, you are subject to postretirement employment restrictions, even if you are excluded from participating in membership.** If you become employed in an eligible position after you retire, you are subject to the postretirement employment restrictions under RCW 41.35.230 even if you are excluded from membership.

(3) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

- (a) "Eligible position" - RCW 41.35.010.
- (b) "Employer" - RCW 41.35.010.
- (c) "Ineligible position" - RCW 41.35.010.
- (d) "Membership" - RCW 41.35.030.

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-720, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-725 If I have retired from another retirement plan or am eligible to retire, am I excluded from participating in SERS?** (1) If you have retired or are eligible to retire from another retirement system authorized by the laws of this state, you cannot participate in SERS membership unless you accrued less than fifteen years of service credit in the other retirement plan.

(2) **If you are receiving a disability allowance from any retirement system administered by the department, you cannot participate in SERS.**

(3) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

- (a) "Membership" - RCW 41.35.030.
- (b) "Retirement plan" - WAC 415-110-010.
- (c) "Service" - RCW 41.35.010.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.35 RCW. 02-18-046, § 415-110-725, filed 8/28/02, effective 9/30/02. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-725, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-728 If I work in both a SERS position and TRS position during the same school year, which system will I be in?** (1) If you work in both a SERS and TRS position during the same year, your membership status and the nature of your positions will determine the system your employer will report you in. You will be reported in either SERS or TRS according to the following table:

Former TRS Plan 1 Members<sup>1/</sup>

Type of Employment <sup>2/</sup>	Type of Employer(s)	System You Will Be Reported In
A substitute or less than full-time teaching position and a SERS-eligible position	Same SERS employer	SERS - for both positions.
	Separate SERS employers	SERS - for SERS position only. Your substitute part-time position is not reported unless you qualify for and elect to establish TRS membership under RCW 41.32.240. If you elect to establish TRS membership, your employers will report you in TRS for both positions. Any previously reported service credit and compensation in SERS will be transferred to TRS.
A full-time teaching position and an eligible SERS position	Same employer	TRS - for both positions.
	Separate SERS employers	TRS - for both positions.

## TRS Plan 1 Members

Type of Employment <sup>2/</sup>	Type of Employer(s)	System You Will Be Reported In
A full-time or less than full-time TRS position and an eligible SERS position	Same employer	TRS - for both positions.
	Separate SERS employers	TRS - for both positions.
A full-time or less than full-time TRS position and an ineligible SERS position	Same employer	TRS - for both positions.
	Separate SERS employers	TRS - for both positions.

## TRS Plan 2 or 3 Members

Type of Employment <sup>2/</sup>	Type of Employer(s)	System You Will Be Reported In
An eligible TRS position and an ineligible PERS position	Same employer	TRS - for both positions.
	Separate SERS employers	TRS - for TRS position only; your ineligible SERS position is not reported.
An eligible TRS position and an eligible SERS position	Same employer	TRS - for both positions.
	Separate SERS employers	TRS - for both positions. <sup>3/</sup>

## SERS Members

Type of Employment <sup>2/</sup>	Type of Employer(s)	System You Will Be Reported In
An eligible SERS position and an ineligible TRS or substitute position	Same employer	SERS - for both positions.
	Separate SERS employers	SERS - for the SERS position only, unless you qualify for and elect to establish membership in TRS at the end of the school year under WAC 415-112-125(1). If you elect to establish TRS membership, your employers will report you in TRS for both positions. Any previously reported service credit and compensation in SERS will be transferred to TRS.

## Neither TRS Nor SERS Member

Type of Employment <sup>2/</sup>	Type of Employer(s)	System You Will Be Reported In
An ineligible TRS and an ineligible SERS position	Same employer	TRS - for both positions if the positions combined, qualify as an eligible position.
	Separate SERS employers	Neither position reported.
A substitute teaching position and an ineligible SERS position	Same employer	Neither position reported. However, if you qualify, you may elect to establish membership in TRS at the end of the school year for your substitute teaching position under RCW 41.32.013 and WAC 415-112-140.
	Separate SERS employers	Neither position reported. However, if you qualify, you may elect to establish membership in TRS at the end of the school year for your substitute teaching position under RCW 41.32.013 and WAC 415-112-140.

<sup>1/</sup> "Former TRS 1 member," as used here, means you terminate your membership by withdrawing your contributions.

<sup>2/</sup> Means during the same school year.

<sup>3/</sup> EXAMPLE: A TRS 2 member is employed concurrently by School District A in an eligible TRS position and by School District B in an eligible SERS position. Because he is a TRS 2 member, School District B employer must report his service and compensation from the SERS position to the department in TRS 2. If the member terminates his employment in the TRS position with School District A, School District B will report him in SERS for the SERS position.

**(2) Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Eligible position" - RCW 41.35.010 (SERS); RCW 41.32.010 (TRS).

(b) "Employer" - RCW 41.35.010 (SERS); RCW 41.32.-010 (TRS).

(c) "Ineligible position" - RCW 41.35.010 (SERS); RCW 41.32.010 (TRS).

(d) "Member" - RCW 41.35.010 (SERS); RCW 41.32.-010 (TRS).

(e) "Membership" - RCW 41.35.030 (SERS).

(f) "Report" - WAC 415-110-010.

(g) "Service" - RCW 41.35.010 (SERS); RCW 41.32.-010 (TRS).

[Statutory Authority: RCW 41.50.050(5) and chapter 41.35 RCW. 02-18-046, § 415-110-728, filed 8/28/02, effective 9/30/02. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-728, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-800 When does a member of the school employees' retirement system (SERS) enter retirement status?** A member of the SERS enters retirement status when he or she:

(1) Has separated from service as defined in RCW 41.35.010(36);

(2) Has no written agreement to return to public employment prior to entering "retiree status"; and

(3) Has applied for retirement, the accrual date has been determined under RCW 41.35.450 or 41.35.640, and the benefit begins to accrue.

Example: Doug is eligible for retirement on July 1st. He submits an application on June 1st with a July 1st retirement date. His last day of employment is June 30th and he does not have an agreement to return to work.

Doug's retirement date (accrual date) is July 1st, and the benefit begins to accrue. The first retirement payment will be paid at the end of July. Doug entered "retiree status" effective July 1st.

[Statutory Authority: RCW 41.50.050(5), 41.04.270, 41.26.030, 41.32.010, 41.32.025, 41.32.480, 41.32.500, 41.32.570, 41.32.765, 41.32.795, 41.32.802, 41.32.855, 41.32.860, 41.32.862, 41.35.010, 41.35.030, 41.35.060, 41.35.450, 41.35.640, 41.40.010, 41.40.023, 41.40.037, 41.40.150, 41.40.193, 41.40.680, 41.40.750, 41.40.801. 02-02-060, § 415-110-800, filed 12/28/01, effective 1/1/02.]

**WAC 415-110-815 What is the minimum dollar limit used to determine a Plan 3 lump sum benefit payment?**

(1) The minimum dollar limit under RCW 41.35.670 for determining if a lump sum payment may be received instead of a monthly benefit is increased to \$119.41 as of March 1, 2002.

(2) The limit established in subsection (1) of this section will be increased each January 1st by three percent beginning January 1, 2003.

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[Statutory Authority: RCW 41.50.050(5) and 41.35.670. 02-03-120, § 415-110-815, filed 1/23/02, effective 3/1/02.]

## SERVICE RETIREMENT

### WAC 415-110-820 Interim retirement allowance—Final computation of retirement allowance—Adjustment of retirement allowance for errors.

(1) At the time of a member's application for retirement, the department does not have all information necessary to make a final computation of the member's retirement allowance. Based upon estimates of the retiree's compensation and earned service credit through the date of retirement, the department shall compute an interim retirement allowance made payable to the member in the interim between the member's date of retirement and the department's final computation of the member's retirement allowance. The interim retirement allowance is an initial, estimated computation of the retiree's retirement allowance subject to adjustment by the department based upon subsequent review of information provided by the member's employer.

(2) In computing the interim retirement allowance, the department shall, subject to later correction, consider only the amount of the member's salary actually reported by the employer up to the date of the interim computation, but shall impute the member's earned service credit for the same period.

(3) Following the department's computation of the interim benefit and receipt earnings history, the department shall complete a final computation of the member's retirement allowance. The department's final computation may either increase or decrease the amount of the interim retirement allowance computed pursuant to subsection (1) of this section.

(4) Pursuant to RCW 41.50.130, following the department's final computation of the member's retirement allowance as provided in subsection (3) of this section, the department may subsequently adjust a member's retirement allowance to correct any error in retirement system records. For purposes of this subsection, errors in retirement system records include, but are not limited to, the following:

(a) Applying an incorrect retirement allowance formula in computing the retirement allowance;

(b) Including service that is not creditable to the member;

(c) Including payments that do not constitute earnable compensation to a member in the member's retirement allowance computation, or excluding earnable compensation not reported by an employer;

(d) Benefit overpayments and underpayments;

(e) Including an individual in the membership of the retirement system who is not entitled to such membership.

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-820, filed 12/12/00, effective 1/12/01.]

**WAC 415-110-830 Actuarial recomputation of retirement allowance upon retirement following reemployment.** (1) The purpose of this rule is to establish a method to actuarially recompute the retirement allowance of a Plan 2 member or the defined benefit retirement allowance of a Plan 3 member who retires, reenters employment causing his or her retirement allowance to be suspended, and then retires again. The actuarially recomputed retirement allowance shall:

(a) Include service credit the member earned following reestablishment of membership if any; and

(b) Account for the actuarial reduction applied to the member's initial retirement if the member initially retired prior to age sixty-five.

(2) If a Plan 2 or Plan 3 retiree reenters membership, upon the individual's next retirement, the department shall reinstate and actuarially recompute the individual's retirement allowance pursuant to RCW 41.35.230 (Plan 2) or RCW 41.35.640 (Plan 3) as follows:

(a) If the member first retired before age sixty-five, the department shall:

(i) Calculate the retirement allowance pursuant to RCW 41.35.400 (Plan 2) or RCW 41.35.620 (Plan 3) using the retiree's total years of career service, including service earned prior to initial retirement and service earned after reentering membership;

(ii) Actuarially reduce the member's retirement allowance based on the present value of the retirement allowance payments the individual received during the initial retirement; and

(iii) Calculate any survivor option selected by the retiree based upon the monthly retirement allowance calculated pursuant to (a)(i) and (ii) of this subsection.

(b) If the member initially retired at or after age sixty-five, the department shall recompute the member's retirement allowance pursuant to RCW 41.35.400 (Plan 2) or RCW 41.35.620 (Plan 3) and include any additional service credit earned and any applicable increase in the member's average final compensation resulting from the member's reentry into membership. Under no circumstances shall a retiree receive a retirement allowance creditable to a month during which that individual earned service credit.

(3) If a retiree's retirement allowance is suspended under RCW 41.35.450 or 41.35.640 due to reemployment but the retiree does not reenter membership, upon the retiree's separation from such employment, the retiree shall receive an actuarially recomputed retirement allowance equal to the sum of:

(a) The amount of the monthly suspended retirement allowance; plus

(b) An actuarially computed increase based upon the retirement allowance payments the member did not receive due to reemployment. The retiree may elect to receive the actuarially computed increase in either:

(i) An amount amortized over the expected term of the recomputed retirement allowance; or

(ii) A lump sum payment equal to the suspended retirement allowance plus interest.

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-830, filed 12/12/00, effective 1/12/01.]

## MEMBERSHIP CONVERSION

**WAC 415-110-910 Conversion of service from PERS to SERS.** (1) You will be converted from the public employees' retirement system (PERS) to the school employees' retirement system (SERS) if:

(a) You were employed with a school district or educational service district in an eligible position as of September 1, 2000;

(b) You participated and then separated in PERS prior to September 1, 2000, and became reemployed in an eligible position at a school district or educational service district after September 1, 2000;

(c) You are a participating member in PERS and move to a SERS employer after September 1, 2000;

(d) You retired out of PERS Plan 2 and:

(i) Returned to PERS covered employment and became an active PERS member; and

(ii) Were a member as of September 1, 2000, at a school district or educational service district; or

(e) You retired out of PERS Plan 2 and:

(i) Returned to PERS covered employment and became an active PERS member;

(ii) Separated from your PERS position; and

(iii) Became employed in an eligible SERS position prior to applying for reretirement in PERS.

(2) What happens to my existing PERS service and account history when I am converted from PERS to SERS membership? All of your PERS service and account history with any PERS employer will be moved to SERS.

(3) How many times will my PERS service be moved to SERS? Your PERS service shall be moved to SERS only once pursuant to subsection (1) of this section. After you have been converted from PERS to SERS, subsequent reenrollment(s) into SERS shall not cause any additional conversions of any PERS service. Any future eligible employment in PERS shall be reported into PERS and any future eligible employment in SERS shall be reported into SERS.

Example: Employed in PERS prior to conversion. Joe has 15 years of service in PERS. He has been employed by a school district for the last 5 years. Joe previously was employed by a county for 10 years.

**Conversion from PERS to SERS.** Since Joe is employed with the school district on September 1, 2000, his PERS service is moved to SERS service. Both his 5 years of service with the school district and his 10 years of service with the county are moved to SERS. Joe's PERS account now has zero service credit and contributions; Joe's SERS account now has 15 years of service credit and contributions.

**Return to PERS service.** After another year of service with the school district, Joe separates employment with 16 years of credit in SERS and returns to employment with the county. Joe's 16 years of service remains in SERS and he begins to accrue service in PERS, starting from zero, for his new employment with the county.

**Return to SERS employment.** Joe works for the county for 5 years. He now has 5 years of service credit in PERS and he still has 16 years of service credit in SERS. Joe separates employment from the county and goes back to work in a SERS covered position with an educational service district. Joe's PERS employer will stop reporting him and the educational service district will begin reporting Joe into SERS. He will begin accumulating service in SERS starting at 16 years. The 5 years of service that Joe rendered at the county stays in PERS.

(4) **If I am a PERS Plan 2 retiree and become employed in an eligible SERS position, will my service be converted from PERS to SERS?** Except as allowed in subsection (1)(d) and (e) of this section, a PERS Plan 2 retiree will not have any of his or her service, account or retirement history converted to SERS.

[Statutory Authority: RCW 41.50.050(5), 41.35.005-[41.35.]030, 41.40.070. 02-03-120, § 415-110-910, filed 1/23/02, effective 3/1/02. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-910, filed 12/12/00, effective 1/12/01.]

## Chapter 415-111 WAC

### PLAN 3—DEFINED CONTRIBUTION PLANS

#### WAC

#### ADMINISTRATION

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415-111-110	Member and employer responsibility.
415-111-111	Monitoring deferral limits.

#### INVESTMENT OPTIONS

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415-111-220	How do I choose a defined contribution rate?
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415-111-400	Optional service credit purchase rules.
415-111-410	Submitting a beneficiary designation for Plan 3 members.
415-111-440	Gainsharing.
415-111-450	How does a court-ordered division of property affect my Plan 3 account?

#### ADMINISTRATION

**WAC 415-111-100 To whom does this chapter apply?** This chapter applies only to members of Plan 3 retirement systems created under chapters 41.32 (TRS), 41.35 (SERS) and 41.40 (PERS) RCW.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.34 RCW. 02-03-120, § 415-111-100, filed 1/23/02, effective 3/1/02. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-111-100, filed 12/12/00, effective 1/12/01.]

**WAC 415-111-110 Member and employer responsibility.** (1) **What am I responsible for as a Plan 3 member?** As a Plan 3 member your responsibilities include, but are not limited to:

- (a) Adhering to time frames;
- (b) Making investment decisions for your defined contribution account;

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(c) Reviewing account information provided on statements, such as quarterly statements, and notifying the correct organization of any errors;

(d) Filling out the correct form for a requested action;

(e) Correctly completing the appropriate form for a requested action and submitting the form to the correct organization as directed on each form; and

(f) Monitoring to ensure contributions do not exceed Internal Revenue Code limits (see WAC 415-111-111).

(2) **What can happen if I do not fulfill my Plan 3 responsibilities?** If you do not fulfill your responsibilities, the consequences may include, but are not limited to:

(a) You may not qualify for certain benefits, such as the transfer payment;

(b) You may have a delay in the correction of errors on your account;

(c) You may have a delay in the processing of your request for a defined contribution withdrawal; or

(d) You may have a delay in the investment of your account as directed.

(3) **What responsibilities do employers have?** Employers' responsibilities include, but are not limited to:

(a) Adhering to Plan 3 administrative requirements, including the respective roles of employers and employees, communicated to employers by the department in written materials and formal training;

(b) Maintaining a supply of Plan 3 forms;

(c) Reporting an employee's Plan 3 transfer decision as soon as possible after receipt of the appropriate form from the employee;

(d) Submitting to DRS the form on which the member made the Plan 3 transfer decision as soon as possible after receipt of the appropriate form;

(e) Reporting an employee's contribution rate decision as soon as possible after receipt of the appropriate form from the employee;

(f) Reporting an employee's investment program as soon as possible after receipt of the appropriate form from the employee;

(g) Monitoring to ensure that a member's contributions do not exceed Internal Revenue Code limits (see WAC 415-111-111); and

(h) Submitting contributions to the department as soon as reasonable and at least in accordance with RCW 41.50.120, "reasonableness" will be based on the facts and circumstances.

#### Example

Assume the following:

- An employer has one payroll system;
- Payroll checks are issued semimonthly;

■ At the same time checks are cut, the payroll department produces a data tape of employee contributions that has to be checked for accuracy, and checking the tape takes four days;

■ Once the accuracy of the data tape is confirmed, a check for the aggregate amount of employee contributions is sent by the employer to DRS; and

■ The entire process, from the cutting of payroll checks to the cutting of the aggregate employee contribution check takes eight days.

In this situation, eight days is a "reasonable" period of time.

**(4) What can happen if my employer does not fulfill its responsibilities?**

(a) If your employer does not fulfill its responsibilities, the consequences may include, but are not limited to:

- (i) Your employer may have to make your member account whole;
- (ii) Your employer may be subject to penalties assessed by the department; or
- (iii) Your employer may be subject to penalties assessed by the Internal Revenue Service.

(b) If the department determines that an employer has erred in its administrative role, such that an employee incurs an investment loss, the department will determine the amount of loss and bill the employer.

[Statutory Authority: RCW 41.50.050(5), 41.50.112, 41.50.145, chapter 41.34 RCW. 02-03-120, § 415-111-110, filed 1/23/02, effective 3/1/02. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-111-110, filed 12/12/00, effective 1/12/01.]

**WAC 415-111-111 Monitoring deferral limits.** (1) **Can contributions in Plan 3 affect my deferral limits in other tax-deferred plans?** Yes. Contributions to Plan 3 reduce your taxable income; this may affect your deferral limits if you participate in another tax deferred program that has a maximum contribution based on a percentage of your taxable income. You should consult with the Internal Revenue Service, a tax advisor, or a financial advisor regarding all questions of federal or state tax implications arising from participation in Plan 3.

(2) **Who is responsible for ensuring that I do not exceed my tax deferral limits?** Both your employer and you are responsible for ensuring that you do not exceed your tax deferral limits:

(a) Employers are responsible for monitoring to ensure that the contributions you make to your employer-sponsored tax deferred plan(s) do not exceed the limits under the Internal Revenue Code.

(b) You are responsible for monitoring to ensure that the total contributions you make to all of your tax deferred plan(s) do not exceed the limits under the Internal Revenue Code if you participate in a tax deferred program(s) outside of your employer sponsored plan(s).

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-111-111, filed 12/12/00, effective 1/12/01.]

## INVESTMENT OPTIONS

**WAC 415-111-210 Investment program election.** You must choose between two investment programs: The total allocation portfolio, managed by the Washington state investment board, and a self-directed investment program. You may contribute to only one of these programs at a time. However, you may maintain accounts in both investment programs and transfer money between investment programs.

Pursuant to WAC 415-111-110, you bear the responsibility for completing the correct form for making an investment program election and submitting it to your employer as directed on the form.

**(1) Where do I get the form to make my election?**

Your employer must provide the appropriate form to elect an investment program if you are enrolling into Plan 3, transferring from Plan 2 to Plan 3, or changing your investment program.

**(2) When do I have to choose an investment program?** If you are a new member or are reenrolling, you must select one of the investment programs (the total allocation portfolio or the self-directed investment program) within ninety calendar days from your date of hire in an eligible position. However, if you are transferring from Plan 2 to Plan 3, you must select an investment program when you transfer. The ninety-day period does not apply to a member transferring from Plan 2 to Plan 3.

If it is determined you should be reported into Plan 3 membership retroactively, the ninety-day period starts from the date it is discovered, as determined by the department, that you should have been reported.

**(3) What happens if I do not make an investment program election?** You will be assigned to the default investment program described in subsection (4) of this section, if:

(a) You are a new employee or changing your employer and do not make an investment program election within the ninety-day election period described in subsection (2) of this section; or

(b) You are transferring from Plan 2 to Plan 3 and do not make an investment program election at the time of transfer.

**(4) What is the default investment program?** The default investment program is the total allocation portfolio of the Washington state investment board.

**(5) Can I change my investment program?** Once you have made an initial investment election or been directed into the default program, you may change your investment program at any time by submitting the appropriate form to your employer.

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-111-210, filed 12/12/00, effective 1/12/01.]

**WAC 415-111-220 How do I choose a defined contribution rate?** (1) **Contribution rates:** If you are a member of the Teachers' Retirement System Plan 3, the School Employees' Retirement System Plan 3, or the Public Employees' Retirement System Plan 3, you are required to contribute from your compensation according to one of the following rate structures:

	Option A	Contribution Rate
All ages		5.0% fixed
<b>Option B</b>		
Up to age 35		5.0%
Age 35 to 44		6.0%
Age 45 and above		7.5%
<b>Option C</b>		
Up to age 35		6.0%
Age 35 to 44		7.5%

Age 45 and above	8.5%
<b>Option D</b>	
All ages	7.0%
<b>Option E</b>	
All ages	10.0%
<b>Option F</b>	
All ages	15.0%

(2) **How do I make the choice?** Under WAC 415-111-110, it is your responsibility to complete the correct form for choosing a contribution rate and submitting the form in a timely manner to your employer as directed on the form.

(3) **Where do I get the form to make my choice?** Your employer must provide the appropriate form to choose a contribution rate if you are enrolling in Plan 3 or transferring from Plan 2 to Plan 3.

(4) **When do I have to choose?** You must irrevocably choose a contribution rate within ninety calendar days from your date of hire in an eligible position. However, if you are transferring from Plan 2 to Plan 3, you must choose a contribution rate at the same time you transfer. The ninety-day period does not apply to a member transferring from Plan 2 to Plan 3.

#### (5) When do contributions begin?

(a) Once you choose a contribution rate, contributions will begin the first day of the pay cycle in which you make the choice.

(b) If the employer advises the department that you should be reported into Plan 3 membership retroactively, the ninety-day period starts from the date it is discovered that you should have been reported. The department will decide which date to use.

(6) **What if I work for more than one employer?** If you are a Plan 3 member working in eligible positions for more than one employer, you may select a different contribution rate with each employer.

(7) **What happens if I do not make a choice?** Under RCW 41.34.040, you will be irrevocably assigned to Option A if:

(a) You are a new employee or changing your employer, and do not choose a contribution rate within the ninety-day election period described in subsection (4) of this section; or

(b) You are transferring from Plan 2 to Plan 3 and do not choose a contribution rate at the time of transfer. Contributions required under subsection (a) or (b) will begin the first day of the pay cycle in which you are assigned to Option A.

(8) **Can I change my contribution rate?** Once you elect a contribution rate or are defaulted into Option A, you cannot change your contribution rate unless you change employers. Each time you change employers, you will be allowed the ninety-day period described in subsection (4) of this section to choose a new contribution rate.

[Statutory Authority: RCW 41.34.040, 41.50.050(5). 01-15-038, § 415-111-220, filed 7/13/01, effective 7/26/01. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-111-220, filed 12/12/00, effective 1/12/01.]

### WAC 415-111-230 Self-directed investment program allocation.

This section applies only to members who elect

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the self-directed investment program pursuant to WAC 415-111-210.

(1) **What is an allocation?** An allocation is a set of instructions defining which self-directed investment program funds you wish your money to be invested in. The amount you allocate to each fund must be designated as a whole percentage. The sum of the percentages that you allocate must equal one-hundred percent.

Example: Martha has elected the self-directed program as her investment manager and is contributing \$150 per month. Martha decides to invest into three different funds with the following amounts: \$30 invested in fund #1, \$45 invested in fund #2 and \$75 invested in fund #3. To accomplish this she must establish the following allocation:

Allocation to fund #1	20%
Allocation to fund #2	30%
Allocation to fund #3	50%
Total Allocation	100%

(2) **How do I establish an allocation?** You must establish your allocation by contacting the department's designated recordkeeper. Once established, you may change your allocation at any time by contacting the department's designated recordkeeper.

(3) **What happens if I do not designate an allocation?** If you do not provide an allocation prior to any of your investment money being received by the department's designated recordkeeper, or if you provide an allocation where the sum of the allocated portions does not equal one-hundred percent, your investment money will be directed into the default fund such that:

(a) If your total allocations do not equal one-hundred percent, (i) the department will determine the percentage that is unallocated, and (ii) direct the unallocated percentage into the default fund.

Example: Ralph designates the following allocation: 33% fund #1, 33% fund #2, and 33% fund #3. Since the total allocation equals 99%, the unallocated 1% will be directed into the default fund.

(b) If the total allocations exceed one-hundred percent, the entire allocation will be directed into the default fund.

Example: Chris designates the following allocations: 38% into fund #1, 40% into fund #2, and 10% into fund #3 and 15% into fund #4. Since the total allocation equals 103%, all of Chris' investment money will be directed into the default fund.

(c) If no allocation is provided, the entire allocation will be directed into the default fund: Provided, That if the member previously participated in the self-directed investment program, the member's most recent allocation will be used. If that allocation includes a fund or funds that are no longer available, the portion of your investment money allocated to the unavailable fund(s) will be directed into the default fund.

Example: Lew is a new member and elects the self-directed investment program, but does not establish an allocation. All of Lew's investment money will be directed into the default fund.

Example: Linda becomes reemployed in an eligible position and elects to participate in the self-directed invest-

ment program again, but does not provide an allocation.

Linda previously participated in the self-directed investment program and had the following allocation:

10% in Fund #1  
10% in Fund #2  
30% in Fund #3  
25% in Fund #4  
25% in Fund #5

Since she did not establish a new allocation, her previous allocation will be used. However, fund #2 is no longer available so that part of her allocation will be directed into the default fund. A new allocation will be established for Linda as follows:

10% in Fund #1  
10% in Default Fund  
30% in Fund #3  
25% in Fund #4  
25% in Fund #5

**(4) What is the default fund?** The default fund for the self-directed investment program is the Money Market Fund.

**(5) Can I change my allocation?** Once you have established an allocation or been directed into the default fund, you may change your allocation at any time by contacting the department's designated recordkeeper.

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-111-230, filed 12/12/00, effective 1/12/01.]

**WAC 415-111-310 Defined contribution account distribution (withdrawal).** **(1) How do I receive a distribution (withdrawal) of funds from my defined contribution account?** Except as otherwise allowed by RCW 41.34.070, before you can receive a distribution of funds from your defined contribution account:

- (a) You must separate from all eligible employment;
- (b) The department must receive the notice of separation from your employer(s) through the retirement transmittal system; and
- (c) You must submit the appropriate, completed form requesting a defined contribution distribution to the department's designated recordkeeper as directed on the form. See WAC 415-111-110.

**(2) Can I still receive my defined contribution distribution if I have returned to work before receiving my funds?** If you return to work in an eligible position after all the criteria in subsection (1) of this section are met, you may receive distribution from your defined contribution account.

**(3) What are my options for distributing my defined contribution funds?** You have the following options for distributions from your Plan 3 defined contribution account. Options for both the WSIB and the SELF-directed investment programs are combined where applicable.

**(a) Lump sum cash distribution. In either program,** you may request the entire amount of your funds in a single lump-sum payment.

**(b) Direct rollover. In either program,** you may have some or all of your funds rolled over to an eligible retirement

plan or individual retirement account (IRA). If you choose a partial rollover, the remaining funds that were not rolled over will be distributed to you as a lump sum, unless you create a personal payment schedule under (d) of this subsection.

**(c) Scheduled payments. In either program,** subject to the distribution requirements of IRC section 401 (a)(9), you may request that your funds be distributed in equal payments over a specified period of time, or that a specific dollar amount be paid on a monthly basis until the account is exhausted. You may also request equal payments over your lifetime or the lifetimes of you and your beneficiary. Scheduled payments for the WSIB program are made monthly only. Scheduled payments for the SELF-directed program are made monthly, quarterly, semi-annually and annually. Both programs have a minimum payment requirement of one hundred dollars per month.

**(d) Personalized payment plan. In either program,** you may create a personalized payment plan using any part of one or more of the distribution options provided in (a), (b), and (c) of this subsection (see examples below).

**(e) Annuity purchase. For the SELF-directed program only,** you may request to have your funds used to purchase an annuity from an insurance company which pays a benefit for your lifetime or the lifetimes of you and your beneficiary.

**(4) Market fluctuations.** Your defined contribution account is subject to actual investment earnings (both gains and losses). These gains or losses will be used to adjust the value of your account. The defined contribution payment plans are subject to the same market fluctuations. As a result, the funding of your selected payment plan may last longer than anticipated due to market gains, or end earlier than anticipated due to market losses.

**EXAMPLE (WSIB - Partial rollover with payments until account exhausted):**

Pat has \$10,000 in the WSIB investment program. Pat wants to rollover \$2,000 of the total to an IRA, but does not want to receive the remainder of the account in a lump sum payment as provided by the partial direct rollover option. Pat selects the personalized payment schedule option and requests to do a partial rollover of \$2,000 and receive the remaining \$8,000 in equal monthly payments until the account is exhausted.

**EXAMPLE (Self - Partial rollover with payments for fixed period):**

Chris has \$10,000 in the self-directed investment program. Chris wants to rollover \$3,000 of the total to an IRA, but does not want to receive the remainder of the account in a lump sum payment as provided by the partial direct rollover option. Chris selects the personalized payment schedule option and requests to do a partial rollover of \$3,000 and receive the remaining \$7,000 in quarterly payments of \$250 over the next 7 years (28 quarters).

<b>Summary of Distribution Options</b>	
<b>SELF</b>	<b>WSIB</b>
Lump Sum Cash Distribution	Lump Sum Cash Distribution
Direct Rollover	Direct Rollover
-entire account	-entire account
-partial amount	-partial amount

-remaining funds can be distributed in a lump-sum payment or by a personalized payment schedule (see below).	-remaining funds can be distributed in a lump-sum payment or by a personalized payment schedule (see below).
<b>Scheduled Payments</b>	<b>Scheduled Payments</b>
-equal payments -monthly, quarterly, semi-annual or annual -specified period of time, or -until the account is exhausted -payments can be combined life expectancy of you and a beneficiary.	-equal payments -monthly payments only  -specified period of time, or -until the account is exhausted -payments can be combined life expectancy of you and a beneficiary.
<b>Annuity Purchase</b>	<b>Not available for WSIB program</b>
-purchase an annuity from an insurance company -set up to pay benefits for -your lifetime, or -lifetimes of you and your beneficiary	
<b>In addition to the above, you may set up:</b>	<b>In addition to the above, you may set up:</b>
<b>Personalized Payment Plan</b>	<b>Personalized Payment Plan</b>
-customized for your needs -available for options above.	-customized for your needs -available for options above.

**(5) Minimum required distribution.** Beginning on April 1 of the calendar year following the year in which you turn age 70 1/2, you are required to withdraw a minimum amount from your defined contributions annually. If you are still working at age 70 1/2, distribution will be required to begin immediately upon retirement.

[Statutory Authority: RCW 41.50.050(5) and 41.34.070. 02-03-120, § 415-111-310, filed 1/23/02, effective 3/1/02. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-111-310, filed 12/12/00, effective 1/12/01.]

#### **WAC 415-111-400 Optional service credit purchase rules. (1) Statutory deadline dates.**

(a) When you are purchasing service credit available from participation as a former member of Plan 2, you will be subject to the statutory deadline date as if you were in Plan 2. The transfer of membership from Plan 2 to Plan 3 will not change a statutory deadline date for purchasing service credit while you were a member of Plan 2.

(b) When you are a Plan 3 member purchasing Plan 3 service credit, you are not subject to a statutory deadline date.

(2) **Interest on purchase cost.** When purchasing service credit as a Plan 3 member, you will not be required to pay interest on member contributions. When paying employer contributions, you will be required to pay interest on those contributions.

#### **(3) Allocation of purchase money.**

(a) Member contributions will be applied to your defined contribution account when paid. Paid member contributions are not refundable, except as a withdrawal of defined contributions under RCW 41.34.070 and WAC 415-111-310.

(b) Employer contributions and interest on employer contributions that you pay will be allocated to the fund described in RCW 41.50.075(3) and shall not be refundable.

[Statutory Authority: RCW 41.50.050(5), 41.32.810, 41.32.865, 41.35.470, 41.35.650, 41.40.710, 41.40.805. 02-03-120, § 415-111-400, filed 1/23/02, effective 3/1/02.]

(2003 Ed.)

**WAC 415-111-410 Submitting a beneficiary designation for Plan 3 members.** (1) You may designate or change a beneficiary for your defined contribution account at any time. When received by the department, the most recent beneficiary designation supercedes all prior beneficiaries and will be used for your Plan 3 defined contribution account.

(2) If you designate a beneficiary as a Plan 2 member and move to Plan 3, the Plan 2 beneficiary designation will be used as your Plan 3 defined contribution account beneficiary.

(3) The beneficiary you designate for your defined contribution account can be different from the beneficiary you designate when you apply for your defined benefit retirement.

[Statutory Authority: RCW 41.50.050(5), 41.40.835, 41.40.845. 02-03-120, § 415-111-410, filed 1/23/02, effective 3/1/02.]

#### **WAC 415-111-440 Gainsharing. (1) What is gainsharing?**

(a) When the average of investment returns on the net assets held in the Plan 2 and 3 pension funds exceeds ten percent over a four-year period, the amount in excess of ten percent is called extraordinary gains.

(b) A portion of the extraordinary gains is paid to qualified Plan 3 members, retirees and designated survivors and is called gainsharing. The amount a person receives is calculated based on total service credit.

(c) Gainsharing payments are made in January of even-numbered years.

(d) Gainsharing is based on fiscal years (July 1 - June 30). If the retirement fund does not earn in excess of ten percent over the four-year period, there is no gainsharing payment.

(e) A gainsharing payment is credited to an investment program according to the investment allocations that you have on file. Gainsharing payments appear on your first quarter statement in even-numbered years.

#### **(2) Are my survivors eligible for my gainshare payments if I die?**

(a) If you die in-service and your surviving spouse or eligible child or children choose to receive a monthly retirement allowance, they will be eligible to receive gainsharing payments. If you do not have a surviving spouse or minor child or children, your account will no longer receive gainsharing payments.

(b) If you die as the beneficiary receiving a survivorship benefit from a death-in-service member with gainsharing payments, your gainsharing payments will continue to your minor child or children until they reach the age of majority or die. If you do not have any minor children, your account will no longer receive gainsharing payments.

(c) If you die after retirement and you chose a survivorship benefit, the gainsharing payment will continue to your survivor. If you did not choose a survivorship benefit, your account will no longer receive gainsharing payments.

**(3) What happens if I die before the first payment is made?** If you have qualified for a gainsharing payment, but die prior to the payment being made, the payment will be paid to your estate, or the person or persons, trust, or organization

you nominated by the most recent written designation filed with the department.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.31A RCW. 02-03-120, § 415-111-440, filed 1/23/02, effective 3/1/02.]

**WAC 415-111-450 How does a court-ordered division of property affect my Plan 3 account?** (1) The department will honor orders that provide for a property division of your retirement benefit only if the order:

- (a) Is entered by a court of competent jurisdiction;
- (b) Is filed with the department within ninety days of the order's entry by the court;
- (c) Establishes the right of a separated or former spouse to a portion of your retirement benefit;
- (d) Provides the name and date of birth of the separated or former spouse; and
- (e) Incorporates the following statutory language in RCW 41.50.670(2) in which the first paragraph pertains to your defined benefit account and the second paragraph pertains to your defined contribution account (emphasis added):

If . . . . . (the obligor) receives **periodic retirement payments** as defined in RCW 41.50.500, the department of retirement systems shall pay to . . . . . (the obligee) . . . . . dollars from such payments or . . . . . percent of such payments. If the obligor's debt is expressed as a percentage of his or her periodic retirement payment and the obligee does not have a survivorship interest in the obligor's benefit, the amount received by the obligee shall be the percentage of the periodic retirement payment that the obligor would have received had he or she selected a standard allowance.

If . . . . . (the obligor) requests or has requested a **withdrawal of accumulated contributions** as defined in RCW 41.50.500, or becomes eligible for a lump sum death benefit, the department of retirement systems shall pay to . . . . . (the obligee) . . . . . dollars plus interest at the rate paid by the department of retirement systems on member contributions. Such interest to accrue from the date of this order's entry with the court of record.

(2) You must provide the address and Social Security number of both you and your separated or former spouse to the department before the department will honor a domestic relations order (DRO). This information can be submitted in a cover letter, in another document, or by other means arranged with the department.

(3) **Periodic retirement payments under RCW 41.50.670(2) (paragraph 1).** If the property division order requires the department to pay a portion of your "periodic retirement payments" to your separated or former spouse, the department will pay the required portion out of your periodic defined benefit payments.

(a) If you die before periodic retirement payments begin, the department's obligation to pay a portion of your periodic payments to your separated or former spouse ceases.

(b) If your separated or former spouse dies before your periodic retirement payments begin, the department will pay you the full amount of your periodic retirement allowance.

(4) **Distribution (withdrawal) of accumulated contributions or lump sum death benefit under RCW 41.50.670(2) (paragraph 2).** If the property division order

requires the department to pay a portion of a distribution of "accumulated contributions" or a portion of a "lump sum death benefit" to your spouse or former spouse, the department will pay the required portion (if any) out of your defined contribution member account, subject to the provisions in this rule.

**(5) Provisions for management of accounts:**

(a) When the property division order is filed with the department, the department will create a separate account and transfer the amount specified in the order from your defined contribution member account into the new account.

(b) Your separated or former spouse assumes the responsibility to manage the separate account, consistent with the requirements in subsection (7) of this section, but may not contribute to the account.

(c) You retain the responsibility to manage the funds remaining in your defined contribution account, and may continue to contribute to the account.

(d) If your separated or former spouse dies before you request a distribution, the money in the separate account will be transferred back into your defined contribution account.

**(6) Distribution provisions.**

(a) When you request a distribution from your defined contribution account:

(i) The money in your defined contribution account will be disbursed to you pursuant to your distribution choice.

(ii) Your separated or former spouse (if living) must begin distribution(s) from the separate account pursuant to the distribution options in WAC 415-111-310. (However, if your separated or former spouse has died prior to your request for distribution, the money in the separate account will have been transferred back into your defined contribution account under subsection (5)(d).)

(iii) If you die before the money in your defined contribution account is fully disbursed, the balance of the account will be paid to your designated beneficiary(ies).

(iv) If your separated or former spouse dies before the money in the separate account is fully disbursed, the balance of the separate account will be paid to the beneficiary(ies) designated by your separated or former spouse for the separate account.

(b) If you die before receiving a distribution from your defined contribution account:

(i) Your beneficiary(ies) must apply for the lump sum death benefit from your defined contribution account; and

(ii) The money in your defined contribution account must be paid to at least one of your designated beneficiary(ies); then

(iii) Your separated or former spouse (if living) must begin distribution(s) from the separate account pursuant to the distribution options in WAC 415-111-310. (However, if your separated or former spouse has predeceased you, the money in the separate account will have been transferred back into your defined contribution account under subsection (5)(d).)

**(7) In managing the separate account pursuant to subsection (4)(b) of this section, your separated or former spouse may:**

(a) Transfer money between investment programs (state-managed or self-directed); and

(b) Transfer money among the investment options in the self-directed program (SELF).

(8) If you and your former spouse filed a property division order with the department while you were a member of Plan 2 and you later transfer to Plan 3, at the time of your transfer, the department will create a separate account. The department will comply with the property division order as provided in this rule.

[Statutory Authority: RCW 41.50.050(5), 41.50.060, 41.50.770, 41.50.780, 2001 c 42. 02-12-084, § 415-111-450, filed 6/4/02, effective 7/5/02. Statutory Authority: RCW 41.50.050(5), 41.50.670 through 41.50.720. 02-03-120, § 415-111-450, filed 1/23/02, effective 3/1/02.]

## Chapter 415-112 WAC TEACHERS' RETIREMENT SYSTEM

### **WAC**

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			<b>DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER</b>
		415-112-010	Description of teachers' retirement system. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-010, filed 2/15/78. Formerly WAC 462-04-010.] Repealed by 99-21-031, filed 10/14/99, effective 11/14/99. Statutory Authority: RCW 41.50.050.
		415-112-0151	Contract period—Definition. [Statutory Authority: RCW 41.50.050. 95-16-053, § 415-112-0151, filed 7/25/95, effective 8/25/95.] Repealed by 02-18-046,

415-112-0152	filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and chapter 41.32 RCW. Day—Definition. [Statutory Authority: RCW 41.50.050. 97-01-015, § 415-112-0152, filed 12/6/96, effective 1/6/97; 95-16-053, § 415-112-0152, filed 7/25/95, effective 8/25/95.] Repealed by 99-21-031, filed 10/14/99, effective 11/14/99. Statutory Authority: RCW 41.50.050.	415-112-411	WAC 462-24-020.] Repealed by 97-03-016, filed 1/6/97, effective 2/6/97. Statutory Authority: RCW 41.50.050.
415-112-0154	Ineligible position—Definition. [Statutory Authority: RCW 41.50.050. 95-16-053, § 415-112-0154, filed 7/25/95, effective 8/25/95.] Repealed by 02-18-046, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and chapter 41.32 RCW.	415-112-414	Earnable compensation for Plan II TRS members. [Statutory Authority: RCW 41.32.010(11). 88-11-031 (Order 88-12), § 415-112-411, filed 5/13/88.] Repealed by 97-03-016, filed 1/6/97, effective 2/6/97. Statutory Authority: RCW 41.50.050.
415-112-0156	Pension benefit—Definition. [Statutory Authority: RCW 41.50.050. 95-16-053, § 415-112-0156, filed 7/25/95, effective 8/25/95.] Repealed by 02-18-046, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and chapter 41.32 RCW.	415-112-420	Back pay award or settlement—Definition—Allocated by the department for retirement system purposes. [Statutory Authority: RCW 41.32.010(11) and 41.32.160. 87-17-060 (Order DRS 87-07), § 415-112-414, filed 8/19/87.] Repealed by 97-03-016, filed 1/6/97, effective 2/6/97. Statutory Authority: RCW 41.50.050.
415-112-0157	Public educational institution—Definition. [Statutory Authority: RCW 41.50.050. 95-16-053, § 415-112-0157, filed 7/25/95, effective 8/25/95.] Repealed by 02-18-046, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and chapter 41.32 RCW.	415-112-510	Determining the earnable compensation. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-420, filed 2/15/78. Formerly WAC 462-24-030.] Repealed by 99-21-031, filed 10/14/99, effective 11/14/99. Statutory Authority: RCW 41.50.050.
415-112-0158	Public school—Definition. [Statutory Authority: RCW 41.50.050. 95-16-053, § 415-112-0158, filed 7/25/95, effective 8/25/95.] Repealed by 02-18-046, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and chapter 41.32 RCW.	415-112-535	Eligibility for retirement with less than five years of Washington service credit. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-510, filed 2/15/78. Formerly WAC 462-28-010.] Repealed by 00-10-015, filed 4/21/00, effective 5/22/00. Statutory Authority: RCW 41.50.050.
415-112-0159	Qualified to teach—Definition. [Statutory Authority: RCW 41.50.050. 95-16-053, § 415-112-0159, filed 7/25/95, effective 8/25/95.] Repealed by 02-18-046, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and chapter 41.32 RCW.	415-112-540	Definitions for administering RCW 41.32.570. [Statutory Authority: RCW 41.50.050 and 41.32.570. 91-21-084, § 415-112-535, filed 10/18/91, effective 11/18/91.] Repealed by 93-20-021, filed 9/24/93, effective 10/25/93. Statutory Authority: RCW 41.32.345 and 41.50.050.
415-112-0160	Reportable compensation—Definition. [Statutory Authority: RCW 41.50.050. 97-03-016, § 415-112-0160, filed 1/6/97, effective 2/6/97.] Repealed by 02-18-046, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and chapter 41.32 RCW.	415-112-540	How will returning to work affect my TRS Plan 1 monthly pension? [Statutory Authority: RCW 41.50.050. 00-11-053, § 415-112-540, filed 5/12/00, effective 6/12/00; 97-01-015, § 415-112-540, filed 12/6/96, effective 1/6/97. Statutory Authority: RCW 41.50.050 and 41.32.570. 91-21-084, § 415-112-540, filed 10/18/91, effective 11/18/91. Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-540, filed 2/15/78. Formerly WAC 462-28-040.] Repealed by 02-02-060, filed 12/28/01, effective 1/1/02. Statutory Authority: RCW 41.50.050(5), 41.04.270, 41.26.030, 41.32.010, 41.32.025, 41.32.480, 41.32.500, 41.32.570, 41.32.765, 41.32.795, 41.32.802, 41.32.855, 41.32.860, 41.32.862, 41.35.010, 41.35.030, 41.35.060, 41.35.450, 41.35.640, 41.40.010, 41.40.023, 41.40.037, 41.40.150, 41.40.193, 41.40.680, 41.40.750, 41.40.801.
415-112-0161	School year—Definition. [Statutory Authority: RCW 41.50.050(5), 41.32.010, 41.32.498. 01-23-053, § 415-112-0161, filed 11/20/01, effective 12/21/01. Statutory Authority: RCW 41.50.050. 95-16-053, § 415-112-0161, filed 7/25/95, effective 8/25/95.] Repealed by 02-18-046, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and chapter 41.32 RCW.	415-112-545	How can I qualify for an additional three hundred fifteen hours of service without having my TRS Plan 1 monthly pension reduced? [Statutory Authority: RCW 41.50.050. 00-11-053, § 415-112-545, filed 5/12/00, effective 6/12/00; 97-01-015, § 415-112-545, filed 12/6/96, effective 1/6/97.] Repealed by 02-02-060, filed 12/28/01, effective 1/1/02. Statutory Authority: RCW 41.50.050(5), 41.04.270, 41.26.030, 41.32.010, 41.32.025, 41.32.480, 41.32.500, 41.32.570, 41.32.765, 41.32.795, 41.32.802, 41.32.855, 41.32.860, 41.32.862, 41.35.010, 41.35.030, 41.35.060, 41.35.450, 41.35.640, 41.40.010, 41.40.023, 41.40.037, 41.40.150, 41.40.193, 41.40.680, 41.40.750, 41.40.801.
415-112-0162	Service in an administrative or supervisory capacity—Definition. [Statutory Authority: RCW 41.50.050. 95-16-053, § 415-112-0162, filed 7/25/95, effective 8/25/95.] Repealed by 02-18-046, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and chapter 41.32 RCW.	415-112-561	Administration of early retirement. [Statutory Authority: RCW 41.50.050. 93-20-020, § 415-112-561, filed 9/24/93, effective 10/25/93.] Repealed by 99-12-041, filed 5/26/99, effective 6/26/99. Statutory Authority: RCW 41.50.050.
415-112-0163	Service in an instructional capacity—Definition. [Statutory Authority: RCW 41.50.050. 95-16-053, § 415-112-0163, filed 7/25/95, effective 8/25/95.] Repealed by 02-18-046, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and chapter 41.32 RCW.	415-112-720	Background and purpose. [Statutory Authority: RCW 34.05.050 and 1990 c 249. 91-03-016, § 415-112-720, filed 1/7/91, effective 2/7/91.] Repealed by 96-01-047, filed 12/14/95, effective 1/14/96. Statutory Authority: RCW 2.10.146, 41.26.460, 41.32.530, 41.50.050, 41.32.785, 41.40.188 and 41.40.660.
415-112-0165	Spousal consent—Definition. [Statutory Authority: RCW 41.50.050. 95-16-053, § 415-112-0165, filed 7/25/95, effective 8/25/95.] Repealed by 02-18-046, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and chapter 41.32 RCW.	415-112-720	Definitions for purposes of WAC 415-112-720 through 415-112-727. [Statutory Authority: RCW 34.05.050 and 1990 c 249. 91-03-016, § 415-112-722, filed 1/7/91, effective 2/7/91.] Repealed by 93-20-021, filed 9/24/93, effective 10/25/93. Statutory Authority: RCW 41.32.345 and 41.50.050.
415-112-0167	System acronyms—Definition. [Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-112-0167, filed 12/12/00, effective 1/12/01. Statutory Authority: RCW 41.50.050. 95-16-053, § 415-112-0167, filed 7/25/95, effective 8/25/95.] Repealed by 02-18-046, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and chapter 41.32 RCW.	415-112-722	Mandatory selection of investment program. [Statutory Authority: RCW 41.50.050. 00-10-015, § 415-112-950, filed 4/21/00, effective 5/22/00.] Repealed by 01-01-059, filed 12/12/00, effective 1/12/01. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW.
415-112-030	Appeals—Forms and procedures. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-030, filed 2/15/78. Formerly WAC 462-08-010.] Repealed by 99-21-031, filed 10/14/99, effective 11/14/99. Statutory Authority: RCW 41.50.050.	415-112-722	[Title 415 WAC—p. 128]
415-112-110	Teachers' retirement system—employees eligible for membership. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-110, filed 2/15/78. Formerly WAC 462-16-020.] Repealed by 99-21-031, filed 10/14/99, effective 11/14/99. Statutory Authority: RCW 41.50.050.	415-112-950	(2003 Ed.)
415-112-410	Earnable compensation for Plan I TRS members. [Statutory Authority: RCW 41.32.010(11). 88-11-031 (Order 88-12), § 415-112-410, filed 5/13/88. Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-410, filed 2/15/78. Formerly	415-112-950	

**WAC 415-112-015 Definitions.** (1) All definitions in RCW 41.32.010 and WAC 415-02-030 apply to terms used in this chapter. Other terms relevant to the administration of chapter 41.32 RCW are defined in this chapter.

(2) "**Annual leave**" means leave provided by an employer for the purpose of taking regularly scheduled work time off with pay. Annual leave does not usually include leave for illness, personal business if in addition to and different than vacation leave, or other paid time off from work. However, if an employer authorizes only one type of leave, covering paid leave for vacation, illness, and any other excused absence from work, such leave will be considered annual leave for purposes of RCW 41.50.150.

(3) **Contract period** for Plan 1 members as used in RCW 41.32.345 means the period from July 1 to June 30 of the following year.

(4) **Ineligible position** means a position which does not qualify as an eligible position under RCW 41.32.010.

(5) **Pension benefit** means that portion of a retiree's monthly retirement allowance that is funded by the state of Washington and the retiree's former employer or employers.

(6) **Public educational institution** means a school district, the state school for the deaf, the state school for the blind, educational service districts, institutions of higher education, or community colleges.

(7)(a) **Public school** as defined in RCW 41.32.010 includes school districts, educational service districts, the state school for the deaf, and the state school for the blind but does not include the office of the superintendent of public instruction.

(b) As applied to other TRS employers, "public school" means an institution, fifty percent or more of whose employees are "qualified to teach," whose primary function is to educate students. See subsection (8) of this section.

(8) **Qualified to teach** as used under RCW 41.32.010 means either:

(a) Having the authority to provide instruction at a common school as defined under RCW 28A.150.020 pursuant to:

(i) A valid teaching certificate issued by the office of the superintendent of public instruction under WAC 180-75-055; or

(ii) A permit to teach issued by lawful authority of this state under RCW 28A.405.010; or

(b) Being employed under a contract to teach with an institution of higher education as defined in RCW 28A.150.-020.

(9) **Reportable compensation** means earnable compensation as that term is defined in RCW 41.32.010(10).

(10)(a) **School year** for Plan 1 members means the fiscal year running from July 1 to June 30.

(b) "School year" for Plan 2 and 3 members means the twelve-month period from September 1 of one year to August 31 of the following year.

(11) **Service in an administrative or supervisory capacity** as used under RCW 41.32.010 and in this chapter:

(a) Means:

(i) Service in a managerial role relating to the administration of a public school; or

(ii) Service involving the exercise of direction over employees of the public school.

(b) Includes, but is not limited to, service as: Principal, assistant principal, superintendent, assistant superintendent, personnel manager and business manager.

(12) **Service in an instructional capacity** means a qualified teacher performing services as a classroom teacher.

(13) **Spousal consent** requires written evidence that the married member's spouse consents to the retirement option selected by the member. The spouse's notarized signature on the retirement application, duly executed and filed with the department, shall constitute "spousal consent."

(14) **System acronyms** used in this chapter are defined as follows:

- "PERS" means the public employees' retirement system.

- "SERS" means the school employees' retirement system.

- "TRS" means the teachers' retirement system.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.32 RCW. 02-18-046, § 415-112-015, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050. 95-16-053, § 415-112-015, filed 7/25/95, effective 8/25/95. Statutory Authority: RCW 41.50.050 and Bowles v. Retirement Systems, 121 Wn.2d 52 (1993). 94-11-009, § 415-112-015, filed 5/5/94, effective 6/5/94. Statutory Authority: RCW 41.32.345 and 41.50.050. 93-20-021, § 415-112-015, filed 9/24/93, effective 10/25/93.]

#### **WAC 415-112-020 Public records. See chapter 415-06 WAC.**

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-020, filed 2/15/78. Formerly WAC 462-05-001.]

#### **WAC 415-112-040 Actuarial tables, schedules, and factors. See chapter 415-02 WAC starting with WAC 415-02-300 for the tables, schedules, and factors the department uses for calculating optional retirement allowances of members of the Washington state teachers' retirement system.**

[Statutory Authority: RCW 41.50.050(5) and chapter 41.45 RCW. 02-18-048, § 415-112-040, filed 8/28/02, effective 9/1/02. Statutory Authority: RCW 41.50.050. 96-03-100, § 415-112-040, filed 1/19/96, effective 2/19/96. Statutory Authority: RCW 41.50.050 and 41.32.140. 91-19-065, § 415-112-040, filed 9/16/91, effective 10/17/91; 91-02-020, § 415-112-040, filed 12/21/90, effective 1/21/91.]

#### **WAC 415-112-050 How does the department comply with Internal Revenue Code distribution rules?** (1) This section applies only to the teachers' retirement system (TRS) Plans 2 and 3.

(2) All benefits paid from the TRS Plans 2 and 3 retirement plans shall be distributed in accordance with the requirements of section 401 (a)(9) of the Federal Internal Revenue Code and the regulations under that section. In order to meet these requirements, these retirement plans shall be administered in accordance with the following provisions:

(a) Distribution of a member's benefit must begin by the later of the April 1 following the calendar year in which a participant attains age 70 1/2 or the April 1 of the year following the calendar year in which the member retires;

(b) The life expectancy of a member or the member's spouse may not be recalculated after the benefits commence;

(c) If a member dies before the distribution of the member's benefits has begun, distributions to beneficiaries must begin no later than December 31 of the calendar year immediately following the calendar year in which the member died;

(d) The amount of benefits payable to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of the Federal Internal Revenue Code; and

(e) If a member dies after the distribution of the member's benefits has begun, the remaining portion of the member's interest will be distributed at least as rapidly as under the method of distribution being used for the member as of the date of the member's death.

(3) A distributee may elect to have eligible rollover distributions paid in a direct rollover to an eligible retirement plan the distributee specifies, pursuant to section 401(a)(31) of the Federal Internal Revenue Code.

[Statutory Authority: RCW 41.50.050(5), chapter 41.32 RCW and IRS regulations. 02-14-009, § 415-112-050, filed 6/20/02, effective 7/21/02.]

**WAC 415-112-060 What are the IRS limitations on maximum benefits and maximum contributions?** (1) This section applies only to the teachers' retirement system (TRS) Plans 2 and 3. Subject to the provisions of this section, benefits paid from, and employee contributions made to, these plans shall not exceed the maximum benefits and the maximum annual addition, respectively, as applicable under section 415 of the Federal Internal Revenue Code.

(2) A participant may not receive an annual benefit that exceeds the dollar amount specified in section 415(b)(1)(A) of the Federal Internal Revenue Code, subject to the applicable adjustments in section 415 of the Federal Internal Revenue Code. For purposes of applying IRC 415(b) when a participant retires before age 62 or after age 65, the determination as to whether the benefit satisfies the IRC 415(b) limitations is made by comparing the equivalent annual benefit determined in Step 1 below with the age-adjusted dollar limit determined in Step 2 below.

Step 1: Under IRC 415(b)(2)(B), determine the annual benefit in the form of a straight life annuity commencing at the same age that is actuarially equivalent to the plan benefit. In general, IRC 415(b)(2)(E)(i) and (v) require that the equivalent annual benefit be the greater of (a) or (b) below.

(a) The equivalent annual benefit computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial equivalence for the particular form of benefit payable (plan rate and plan mortality table, or plan tabular factor, respectively).

(b) The equivalent annual benefit computed using a 5 percent interest rate assumption and the applicable mortality table.

This step does not apply to a benefit that is not required to be converted to a straight life annuity under IRC 415(b)(2)(B), for example, a qualified joint and survivor annuity.

Step 2: Under IRC 415(b)(2)(C) or (D), determine the IRC 415(b) dollar limitation that applies at the age the benefit is payable (age-adjusted dollar limit).

If the age at which the benefit is payable is less than 62, the age-adjusted dollar limit is determined by reducing the

dollar limit on an actuarially equivalent basis. In general, IRC 415(b)(2)(E)(i) and (v) require that the age-adjusted dollar amount be the lesser of (a) or (b) below.

(a) The equivalent amount computed using the plan rate and plan mortality table (or plan tabular factor) used for actuarial equivalence for early retirement benefits under the plan.

(b) The amount computed using 5 percent interest and the applicable mortality table described in Revenue Ruling 95-6. (This is used only to the extent described in Q & A 6 of Revenue Ruling 98-1, which provides that, for purposes of adjusting any limitation under IRC 415(b)(2)(C) or (D), to the extent a forfeiture does not occur upon death, the mortality decrement may be ignored prior to age 62 and must be ignored after SSRA.)

If the age at which the benefit is payable is greater than age 65, the age-adjusted dollar limit is determined by increasing the IRC 415(b) dollar limitation on an actuarially equivalent basis. In general, IRC 415(b)(2)(E)(i) and (v) require that the increased age-adjusted dollar limit be the lesser of (a) or (b) below.

(a) The equivalent amount computed using the plan rate and plan mortality table (or plan tabular factor) used for actuarial equivalence for early retirement benefits under the plan.

(b) The equivalent amount computed using 5 percent interest and the applicable mortality table (used to the extent described in Q&A 6, as described in the prior paragraph).

The dollar limit will be reduced proportionally for less than ten years of participation.

The plan will satisfy the IRC 415(b) limitations only if the equivalent annual benefit determined in Step 1 is less than the age-adjusted dollar limit determined in Step 2.

(3) Effective for limitation years beginning after December 31, 2001, the maximum annual addition that may be contributed or allocated to a participant's account for any limitation year may not exceed the lesser of (a) \$40,000, as adjusted for increases in the cost-of-living under section 415(d) of the Federal Internal Revenue Code, or (b) one hundred percent of the member's compensation, within the meaning of section 415(c)(3) of the Federal Internal Revenue Code, for the limitation year.

(4) Notwithstanding any other provision of law to the contrary, the department may modify a request by a participant to make a contribution to the retirement plans if the amount of the contributions would exceed the limits under section 415(c) or 415(n) of the Federal Internal Revenue Code. An eligible participant in a retirement plan, as defined by section 1526 of the Federal Taxpayer Relief Act of 1997, may purchase service credit as provided by state law in effect on August 5, 1997, without regard to the limitations of section 415(c)(1) of the Federal Internal Revenue Code.

(5) Prior to January 1, 1998, the definition of compensation, earnable compensation or other similar term when used for purposes of determining compliance with section 415 of the Federal Internal Revenue Code does not include the amount of any elective deferral, as defined in section 402(g)(3) of the Federal Internal Revenue Code, or any contribution which is contributed or deferred by the employer at the election of the employee and which is not includable in the gross income of the employee by reason of section 125 or 457 of the Federal Internal Revenue Code.

(6) For limitation years beginning on and after January 1, 1998, the definition of compensation, earnable compensation or other similar term when used for purposes of determining compliance with section 415 of the Federal Internal Revenue Code does include the amount of any elective deferral, as defined in section 402 (g)(3) of the Federal Internal Revenue Code, or any contribution which is contributed or deferred by the employer at the election of the employee and which is not includable in the gross income of the employee by reason of section 125 or 457 of the Federal Internal Revenue Code.

(7) For limitation years beginning on and after January 1, 2001, the definition of compensation, earnable compensation or other similar term when used for purposes of determining compliance with section 415 of the Federal Internal Revenue Code shall also include elective amounts that are not includable in the gross income of the employee by reason of section 132 (f)(4).

[Statutory Authority: RCW 41.50.050(5), chapter 41.32 RCW and IRS regulations. 02-14-009, § 415-112-060, filed 6/20/02, effective 7/21/02.]

**WAC 415-112-070 Assets for exclusive benefit of members and beneficiaries.** No assets of the teachers' retirement system Plans 2 and 3 may be used for or diverted to a purpose other than the exclusive benefit of the members and their beneficiaries at any time prior to the satisfaction of all liabilities with respect to members and their beneficiaries.

[Statutory Authority: RCW 41.50.050(5), chapter 41.32 RCW and IRS regulations. 02-14-009, § 415-112-070, filed 6/20/02, effective 7/21/02.]

## MEMBERSHIP

**WAC 415-112-100 Minimum requirement for membership.** With respect to members of TRS Plan 1 only, ninety calendar days of employment within a fiscal year as a full-time teacher, or the equivalent of ninety days of service within a fiscal year as a teacher employed on a part-time, occasional, hourly, or daily basis, shall be required, together with necessary contributions, before membership in the teachers' retirement system is established and before the

director may approve an application for cancellation of exemption, for the granting of additional credit for previous service, or for the payment of any benefit.

[Statutory Authority: RCW 41.50.050. 99-14-008, § 415-112-100, filed 6/24/99, effective 7/25/99. Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-100, filed 2/15/78. Formerly WAC 462-16-010.]

**WAC 415-112-119 Purpose and scope of eligibility rules.** WAC 415-112-120 through 415-112-155 codifies the department's existing interpretation of statutes and existing administrative practice regarding eligibility for membership in TRS Plan I and Plan II. The department has applied and will apply these rules to determine eligibility for service occurring prior to the effective dates of these sections.

[Statutory Authority: RCW 41.50.050. 95-16-053, § 415-112-119, filed 7/25/95, effective 8/25/95.]

**WAC 415-112-120 Am I eligible to establish membership?** (1) **You must be a teacher.** You are eligible to establish membership as provided under WAC 415-112-125 only if you work as a teacher. You are a teacher if you are qualified to teach and work for a public school in an instructional, administrative or supervisory capacity.

(2) **Nonteaching positions.** Positions which do not require service in an instructional, administrative or supervisory capacity include, but are not limited to, the following: Custodian, groundskeeper, bus driver, cafeteria worker, library technician, administrative assistant, and payroll clerk.

[Statutory Authority: RCW 41.50.050. 95-16-053, § 415-112-120, filed 7/25/95, effective 8/25/95.]

**WAC 415-112-125 If I am eligible, how can I establish membership?** (1) **If you met the conditions in the following table, you established TRS membership.** Your plan status depends upon the date you established membership, as indicated in the following table:

Period of Service	Type of Employment	Plan
Prior to 10/01/77 <sup>1/</sup>	If you were contracted to teach full-time you were mandated into membership.  If you were employed under a less than full-time contract and you exercised your option to establish membership prior to 10/01/77, you had the option to apply for membership under RCW 41.32.240, if you worked 90 or more full-time days <sup>2/</sup> during a fiscal year.	Plan 1
10/01/77 through 06/06/90	If you were contracted to teach full-time you were required to be a member.  If you were employed as a substitute teacher or under a less than full-time contract, you have the option to apply for membership under RCW 41.32.240 if you worked a minimum of 90 full-time days <sup>2/</sup> during a school year, provided 1 month had at least 90 hours.	Plan 2
6/07/90 through 08/31/91	You must have been employed in an eligible position as defined in Section 2, Chapter 274, Laws of 1990, (requiring two or more consecutive months of at least 90 hours of compensated employment each month during a school year).  For substitute teachers: If you met the above criteria, you may apply for membership and service credit under RCW 41.32.013 and WAC 415-112-140.	Plan 2

Period of Service	Type of Employment	Plan
9/01/91 forward	You must be employed in an eligible position (requiring at least 5 months of 70 hours or more of compensated employment each month during a school year).  For substitute teachers: If you meet the above criteria, you may apply for membership/service credit under RCW 41.32.013 and WAC 415-112-140.	Plan 2
7/01/96	You must be employed in an eligible position (requiring at least 5 months of 70 hours or more of compensated employment each month during the school year).  For substitute teachers: If you meet the above criteria, you may apply for membership/service credit under RCW 41.32.013 and WAC 415-112-140.	Plan 3

<sup>12</sup> If you previously established Plan 1 membership as detailed above, you may reestablish Plan 1 membership after October 1, 1977.

<sup>22</sup> "Ninety days of employment," under RCW 41.32.240 and this section means either:

- (a) Ninety full-time calendar days, or the equivalent, during a school year if you were employed as a teacher under a contract; or
- (b) Ninety full-time days of actual, compensated service, or the equivalent, during a school year if you were employed as a substitute teacher.
- (c) The "equivalent" of a full-time day of employment under (a) and (b) of this subsection is the sum of partial days which, when added together, equals one full-time day.

**(2) Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

- (a) "Member" - RCW 41.32.010.
- (b) "Eligible position" - RCW 41.32.010.
- (c) "Employer" - RCW 41.32.010.
- (d) "Full-time" - RCW 41.32.240
- (e) "Service" - RCW 41.32.010.
- (f) "Substitute teacher" - RCW 41.32.010.
- (g) "Teacher" - RCW 41.32.010.
- (h) "School year" - WAC 415-112-015.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.32 RCW. 02-18-046, § 415-112-125, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050. 00-10-015, § 415-112-125, filed 4/21/00, effective 5/22/00; 95-16-053, § 415-112-125, filed 7/25/95, effective 8/25/95.]

**WAC 415-112-130 If I separate from, and then reenter employment, can I continue to participate in TRS? (1)**  
If you are a TRS Plan 1 member, you will participate in TRS Plan 1 if you become reemployed with a TRS employer. If you are a Plan 1 member and have separated from service without withdrawing contributions, you will participate in the system again if you become reemployed with a TRS employer, even if you are not working as a teacher.

**(2) If you terminate TRS Plan 1 membership, you will not reenter TRS Plan 1 unless you requalify for membership or repay withdrawn contributions as a dual member.** If you were a Plan 1 member and have terminated your membership, you can reestablish your membership and be eligible to participate in the system again only if you:

- (a) Become reemployed as a teacher in a position or positions meeting the membership eligibility criteria under RCW 41.32.240 and WAC 415-112-125(1); or
- (b) Repaid withdrawn contributions as a dual member under portability. See RCW 41.54.020(2).

**(3) If you have service credit in TRS Plan 2, you will only reestablish membership if you work as a teacher in an eligible position.** If you were a Plan 2 member who separated from service, you will reestablish membership and be eligible to participate in the system again only if you:

- (a) Become reemployed as a teacher; and

(b) Render service in a position or positions meeting the membership eligibility criteria under WAC 415-112-125(1) or 415-112-140(1).

**(4) If you have service credit in TRS Plan 3, you will only reestablish membership if you work as a teacher in an eligible position.** If you were a Plan 3 member who separated from service, you will reestablish membership and be eligible to participate in the system again only if you:

- (a) Become reemployed as a teacher; and
- (b) Render service in a position or positions meeting the membership eligibility criteria under WAC 415-112-125(1) or 415-112-140(1).

**(5) Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

- (a) "Dual member" - RCW 41.54.010 and WAC 415-113-041.
- (b) "Eligible position" - RCW 41.32.010.
- (c) "Employer" - RCW 41.32.010.
- (d) "Member" - RCW 41.32.010.
- (e) "Service" - RCW 41.32.010.
- (f) "Service in an administrative or supervisory capacity" - WAC 415-112-015.
- (g) "Service in an instructional capacity" - WAC 415-112-0163.
- (h) "Teacher" - RCW 41.32.010.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.32 RCW. 02-18-046, § 415-112-130, filed 8/28/02, effective 9/30/02. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-112-130, filed 12/12/00, effective 1/12/01. Statutory Authority: RCW 41.50.050. 95-16-053, § 415-112-130, filed 7/25/95, effective 8/25/95.]

**WAC 415-112-135 Can I be a member if I work as an educational staff associate? (1) You are eligible for membership if you are certificated and employed as an educational staff associate.** You are a teacher for purposes of TRS membership if you:

(a) Possess a valid educational staff associate certificate issued by the office of the superintendent of public instruction under WAC 180-75-055(3); and

- (b) Serve in an educational staff associate position.

**(2) Positions which qualify as an educational staff associate.** "Educational staff associate," includes but is not

limited to a person employed by a public school in any of the following positions: Communications disorder specialist, occupational therapist, physical therapist, reading resource technician, school counselor, school nurse, school psychologist, school social worker and school librarian.

**(3) If you were enrolled in PERS before June 7, 1984, based on your employment as an educational staff associate, you may remain in PERS.** If you were enrolled in the PERS prior to June 7, 1984, based on employment as an educational staff associate, you will remain in PERS unless you choose either to:

(a) Transfer your membership to TRS within the time limits established in RCW 41.32.032; or

(b) Terminate your membership in PERS by withdrawing your accumulated contributions.

**(4) If you were enrolled in PERS prior to June 7, 1984, based on employment as an educational staff associate and converted to SERS you may maintain your SERS membership.** If you were enrolled in the PERS prior to June 7, 1984, based on employment as an educational staff associate, and were converted to SERS membership under RCW 41.40.750, you will remain in SERS unless you choose either to:

(a) Transfer your membership to TRS within the time limits established in RCW 41.32.032; or

(b) Terminate your membership in SERS Plan 2 by withdrawing your accumulated contributions.

**(5) Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Member" - RCW 41.32.010.

(b) "Employer" - RCW 41.32.010.

(c) "Public school" - RCW 41.32.010 and WAC 415-112-015.

(d) "Service" - RCW 41.32.010.

(e) "Teacher" - RCW 41.32.010.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.32 RCW. 02-18-046, § 415-112-135, filed 8/28/02, effective 9/30/02. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-112-135, filed 12/12/00, effective 1/12/01. Statutory Authority: RCW 41.50.050. 95-16-053, § 415-112-135, filed 7/25/95, effective 8/25/95.]

**WAC 415-112-140 Am I eligible for membership and service credit as a substitute teacher?** (1) You may apply for membership and service credit in TRS as a substitute teacher if you meet eligibility criteria.

(a) **TRS Plan 1.**

(i) If you are a former Plan 1 member, you may apply to reestablish Plan 1 membership if you work ninety or more full-time days during a school year as a teacher.

(ii) If you are a Plan 1 member, you may apply to the department for service credit in Plan 1 as a substitute teacher if you work a minimum of twenty full-time days during a school year.

(b) **TRS Plan 2.**

(i) You may apply to the department for membership in Plan 2 if you:

(A) Work at least seventy hours for five or more months during a school year; or

(B) Worked at least ninety hours for two consecutive months during the school year of September 1, 1990, through August 31, 1991.

(ii) If you have previously established membership in Plan 2 and have not withdrawn your contributions, you may apply to the department for service credit based on any compensated employment you earn as a substitute teacher during a school year.

(c) **TRS Plan 3.**

(i) You may apply to the department for membership in Plan 3 if you:

(A) Began employment after July 1, 1996; and

(B) Work at least seventy hours for five or more months during a school year.

(ii) If you have established membership in Plan 3, either by transferring from Plan 2 or establishing membership after July 1, 1996, you may apply to the department for service credit based on any compensated employment you earn as a substitute teacher during a school year.

**(2) To apply, you must submit your employer's quarterly reports to the department at the end of a year.**

(a) To apply for membership and service credit as a substitute teacher, you must submit your employer's quarterly reports to the department no earlier than:

(i) June 30 of the year for which you are applying for Plan 1 service credit; or

(ii) August 31 of the year for which you are applying for Plan 2 or Plan 3 service credit.

(b) Your employer cannot report your service and earnings history as a substitute teacher to the department through the retirement system monthly reporting system unless you are also employed in a separate, eligible position with the same employer.

**(3) Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Member" - RCW 41.32.010.

(b) "Service" - RCW 41.32.010.

(c) "Substitute teacher" - RCW 41.32.010.

(d) "Teacher" - RCW 41.32.010.

[Statutory Authority: RCW 41.50.050. 00-10-015, § 415-112-140, filed 4/21/00, effective 5/22/00; 95-16-053, § 415-112-140, filed 7/25/95, effective 8/25/95.]

**WAC 415-112-145 Can I terminate my status as a member?** (1) If you are a TRS Plan 1 member, you will remain a member until you:

(a) Die;

(b) Retire for service or disability; or

(c) Withdraw your accumulated contributions.

(2) If you are a TRS Plan 2 member, you will remain a member until you:

(a) Die;

(b) Retire for service or disability; or

(c) Separate from service as a teacher in an eligible position.

(3) If you are a TRS Plan 3 member, you will remain a member until you:

(a) Die; or

(b) Retire for service or disability.

- (4) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.
- (a) "Eligible position" - RCW 41.32.010.
  - (b) "Member" - RCW 41.32.010.
  - (c) "Service" - RCW 41.32.010.
  - (d) "Teacher" - RCW 41.32.010.

[Statutory Authority: RCW 41.50.050. 00-10-015, § 415-112-145, filed 4/21/00, effective 5/22/00; 95-16-053, § 415-112-145, filed 7/25/95, effective 8/25/95.]

**WAC 415-112-155 If I work in both a TRS position and PERS position during the same school year, which system will I be in?** (1) If you work in both a TRS and PERS position during the same school year, your membership status and the nature of your positions will determine the system your employer will report you in. You will be reported in either TRS or PERS according to the following tables:

**Former TRS Plan 1 Members<sup>14</sup>**

Type of Employment <sup>24</sup>	Type of Employer(s)	System You Will Be Reported In
A substitute or less than full-time teaching position and a PERS-eligible position	Same employer	PERS - for both positions.
	Separate TRS employers	PERS - for PERS position only. Your substitute part-time position is not reported unless you qualify for and elect to establish TRS membership under RCW 41.32.240. If you elect to establish TRS membership, your employers will report you in TRS for both positions. Any previously reported service credit and compensation in PERS will be transferred to TRS.
	A TRS employer and non-TRS employer	PERS - for PERS position only. Your substitute part-time position is not reported unless you qualify for and elect to establish TRS membership under RCW 41.32.240. If you elect to establish TRS membership, you must elect either to: 1. Have your TRS service reported in PERS and receive service credit in PERS for both positions; or 2. Have your TRS service reported in TRS and not receive service credit for the PERS position.
A full-time teaching position and an eligible PERS position	Same employer	TRS - for both positions.
	Separate TRS employers	TRS - for both positions.
	A TRS employer and non-TRS employer	You must elect to: 1. Have your TRS service reported in PERS and receive service credit in PERS for both positions; or 2. Have your TRS service reported in TRS and not receive service credit for the PERS position.

**TRS Plan 1 Members**

Type of Employment <sup>24</sup>	Type of Employer(s)	System You Will Be Reported In
A full-time or less than full-time TRS position and an eligible PERS position	Same employer	TRS - for both positions.
	Separate TRS employers	TRS - for both positions.
	A TRS employer and non-TRS employer	You must elect either to: 1. Have your TRS service reported in PERS and receive service credit in PERS for both positions; or 2. Have your TRS service reported in TRS and not receive service credit for the PERS position.
A full-time or less than full-time TRS position and an ineligible PERS position	Same employer	TRS - for both positions.
	Separate TRS employers	TRS - for both positions.
	A TRS employer and non-TRS employer	TRS - for the TRS position only; your ineligible PERS position is not reportable.

## TRS Plan 2 Members

Type of Employment <sup>21</sup>	Type of Employer(s)	System You Will Be Reported In
An eligible TRS position and an ineligible PERS position	Same employer	TRS - for both positions.
	Separate TRS employers	TRS - for TRS position only; your ineligible PERS position is not reported.
	A TRS employer and non-TRS employer	TRS - for TRS position only; your ineligible PERS position is not reported.
An eligible TRS position and an eligible PERS position	Same employer	TRS - for both positions.
	Separate TRS employers	TRS - for both positions. <sup>22</sup>
	A TRS employer and non-TRS employer	You must elect either to: 1. Have your TRS service reported in PERS and receive service credit in PERS for both positions; or 2. Have your TRS service reported in TRS and not receive service credit for the PERS position.

## PERS Members

Type of Employment <sup>21</sup>	Type of Employer(s)	System You Will Be Reported In
An eligible PERS position and an ineligible TRS or substitute position	Same employer	PERS - for both positions.
	Separate TRS employers	PERS - for the PERS position only, unless you qualify for and elect to establish membership in TRS at the end of the school year under WAC 415-112-125 (1). If you elect to establish TRS membership, your employers will report you in TRS for both positions. Any previously reported service credit and compensation in PERS will be transferred to TRS.
	A TRS employer and non-TRS employer	PERS - for the PERS position only. You will not be reported for the TRS position unless you elect to either: 1. Have your TRS service reported in PERS and receive service credit in PERS for both positions; or 2. Have your TRS service reported in TRS and not receive service credit for the PERS position.

## Neither TRS Nor PERS Member

Type of Employment <sup>21</sup>	Type of Employer(s)	System You Will Be Reported In
An ineligible TRS and an ineligible PERS position	Same employer	TRS - for both positions if the positions combined, qualify as an eligible position.
	Separate employers, TRS or non-TRS	Neither position reported.
A substitute teaching position and an ineligible PERS position	Same employer	Neither position reported. However, if you qualify, you may elect to establish membership in TRS at the end of the school year for your substitute teaching position under RCW 41.32.013 and WAC 415-112-140.
	Separate employers, TRS or non-TRS	Neither position reported. However, if you qualify, you may elect to establish membership in TRS at the end of the school year for your substitute teaching position under RCW 41.32.013 and WAC 415-112-140.

<sup>21</sup> "Former TRS 1 member", as used here, means you terminate your membership by withdrawing your contributions.<sup>22</sup> Means during the same school year.<sup>23</sup> EXAMPLE: A TRS 2 member teaches in an eligible position and during the summer, she works for a state agency in an eligible position under PERS. Because the member has established membership in TRS 2 through employment as a teacher, her state agency employer must report her service and compensation from the PERS position to the Department in TRS 2.

EXAMPLE: A TRS 2 member is employed concurrently by School District A in an eligible TRS position and by School District B in an eligible PERS position. Because he is a TRS 2 member, School District B employer must report his service and compensation from the PERS position to the Department in TRS 2. If the member terminates his employment in the TRS position with School District A, School District B will report him in PERS for the PERS position.

**(2) Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Eligible position" - RCW 41.32.010 (TRS); RCW 41.40.010 (PERS).

(b) "Employer" - RCW 41.40.010 (PERS); RCW 41.32.010 (TRS).

(c) "Full time" - RCW 41.32.240.

(d) "Ineligible position" - WAC 415-112-015 (TRS); RCW 41.40.010 (PERS).

(e) "Member" - RCW 41.40.010.

(f) "Membership" - RCW 41.40.023.

(g) "Report" - WAC 415-108-0104.

(h) "Service" - RCW 41.40.010.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.32 RCW. 02-18-046, § 415-112-155, filed 8/28/02, effective 9/30/02. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-112-155, filed 12/12/00, effective 1/12/01. Statutory Authority: RCW 41.50.050. 00-10-015, § 415-112-155, filed 4/21/00, effective 5/22/00; 95-16-053, § 415-112-155, filed 7/25/95, effective 8/25/95.]

**WAC 415-112-156 If I work in both a TRS position and SERS position during the same school year, which system will I be in?** (1) If you work in both a TRS and SERS position during the same year, your membership status and the nature of your positions will determine the system your employer will report you in. You will be reported in either TRS and SERS according to the following table:

#### Former TRS Plan 1 Members<sup>1</sup>

Type of Employment <sup>2</sup>	Type of Employer(s)	System You Will Be Reported In
A substitute or less than full-time teaching position and a SERS-eligible position	Same SERS employer	SERS - for both positions.
	Separate SERS employers	SERS - for SERS position only. Your substitute part-time position is not reported unless you qualify for and elect to establish TRS membership under RCW 41.32.240. If you elect to establish TRS membership, your employers will report you in TRS for both positions. Any previously reported service credit and compensation in SERS will be transferred to TRS.
A full-time teaching position and an eligible SERS position	Same employer	TRS - for both positions.
	Separate SERS employers	TRS - for both positions.

#### TRS Plan 1 Members

Type of Employment <sup>2</sup>	Type of Employer(s)	System You Will Be Reported In
A full-time or less than full-time TRS position and an eligible SERS position	Same employer	TRS - for both positions.
	Separate SERS employers	TRS - for both positions.
A full-time or less than full-time TRS position and an ineligible SERS position	Same employer	TRS - for both positions.
	Separate SERS employers	TRS - for both positions.

#### TRS Plan 2 or 3 Members

Type of Employment <sup>2</sup>	Type of Employer(s)	System You Will Be Reported In
An eligible TRS position and an ineligible SERS position	Same employer	TRS - for both positions.
	Separate SERS employers	TRS - for TRS position only; your ineligible SERS position is not reported.
An eligible TRS position and an eligible SERS position	Same employer	TRS - for both positions.
	Separate SERS employers	TRS - for both positions. <sup>3</sup>

#### SERS Members

Type of Employment <sup>2</sup>	Type of Employer(s)	System You Will Be Reported In
An eligible SERS position and an ineligible TRS or substitute position	Same employer	SERS - for both positions.
	Separate SERS employers	SERS - for the SERS position only, unless you qualify for and elect to establish membership in TRS at the end of the school year under WAC 415-112-125 (1). If you elect to establish TRS membership, your employers will report you in TRS for both positions. Any previously reported service credit and compensation in SERS will be transferred to TRS.

**Neither TRS Nor SERS Member**

Type of Employment <sup>2/</sup>	Type of Employer(s)	System You Will Be Reported In
An ineligible TRS and an ineligible SERS position	Same employer	TRS - for both positions if the positions combined, qualify as an eligible position.
	Separate SERS employers	Neither position reported.
A substitute teaching position and an ineligible SERS position	Same employer	Neither position reported. However, if you qualify, you may elect to establish membership in TRS at the end of the school year for your substitute teaching position under RCW 41.32.013 and WAC 415-112-140.
	Separate SERS employers	Neither position reported. However, if you qualify, you may elect to establish membership in TRS at the end of the school year for your substitute teaching position under RCW 41.32.013 and WAC 415-112-140.

<sup>1/</sup> "Former TRS 1 member," as used here, means you terminate your membership by withdrawing your contributions.

<sup>2/</sup> Means during the same school year.

<sup>3/</sup> EXAMPLE: A TRS 2 member is employed concurrently by School District A in an eligible TRS position and by School District B in an eligible SERS position. Because he is a TRS 2 member, School District B employer must report his service and compensation from the SERS position to the department in TRS 2. If the member terminates his employment in the TRS position with School District A, School District B will report him in SERS for the SERS position.

**(2) Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Eligible position" - RCW 41.35.010 (SERS); RCW 41.32.010 (TRS).

(b) "Employer" - RCW 41.35.010 (SERS); RCW 41.32.-010 (TRS).

(c) "Ineligible position" - RCW 41.35.010 (SERS); RCW 41.32.010 (TRS).

(d) "Member" - RCW 41.35.010 (SERS); RCW 41.32.-010 (TRS).

(e) "Membership" - RCW 41.35.030 (SERS).

(f) "Report" - WAC 415-110-010 (SERS).

(g) "Service" - RCW 41.35.010 (SERS); RCW 41.32.-010 (TRS).

[Statutory Authority: RCW 41.50.050(5) and chapter 41.32 RCW. 02-18-046, § 415-112-156, filed 8/28/02, effective 9/30/02. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-112-156, filed 12/12/00, effective 1/12/01.]

## SERVICE CREDIT

**WAC 415-112-200 Establishing credit for previous service.** (1) Additional credit for previous creditable service may be established or reestablished only by a member of the teachers' retirement system. If a member interrupts Washington public school service but does not terminate his membership in the teachers' retirement system, and subsequently renders creditable service such as military service, professional preparation, or other creditable service for which service credit is not established with the teachers' retirement system, he must return to Washington public school service for twenty or more days within a fiscal year in order to establish additional credit for any such creditable service.

(2) Once a member becomes eligible to establish or reestablish additional credit for previous service, he retains the right to establish or reestablish such additional credit while his membership is in effect and whether or not he is continuously employed in Washington public school service, provided he applies to the department, submits satisfactory proof

of his service, and makes the required initial payment within the time limit established by law.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-200, filed 2/15/78. Formerly WAC 462-20-005.]

**WAC 415-112-210 Withdrawal before final date for establishing additional credit.** Any member who withdraws from the teachers' retirement system within the period provided by law for establishing additional service credit may, upon returning to membership, have another opportunity to establish credit for previous creditable service, subject to the laws in effect when his membership is reestablished.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-210, filed 2/15/78. Formerly WAC 462-20-010.]

**WAC 415-112-220 Withdrawal before making final payment to establish additional credit.** A member who has completed arrangements to establish or reestablish additional credit for previous service, but who withdraws before the final payment is due and before making the final payment may, upon returning to membership, have another opportunity to establish such additional credit, subject to the laws in effect when he returns to membership.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-220, filed 2/15/78. Formerly WAC 462-20-015.]

**WAC 415-112-230 Failure to make final payment to establish credit.** When you enter into an arrangement to establish or reestablish additional credit for previous service and fail to make the final payment within the time limit established by law, such arrangement is terminated, and any payments made for such service credit shall be returned.

[Statutory Authority: RCW 41.50.050(5) and 41.32.310. 03-02-087, § 415-112-230, filed 12/31/02, effective 2/1/03. Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-230, filed 2/15/78. Formerly WAC 462-20-020.]

**WAC 415-112-240 Service credit to be retroactive.** Service rendered during the ninety days of employment or

the ninety days of service required to establish membership after July 1, 1964, shall qualify as creditable service after membership has been established, except as to Plan II members.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-240, filed 2/15/78. Formerly WAC 462-20-025.]

**WAC 415-112-250 Can I receive service credit for leave with pay?** (1) Plan 1 members: If you are otherwise eligible, you will receive service credit for any time on or after July 1, 1960, during which you were on official leave from your position, provided that you were listed as employed by your employer and were receiving compensation for the time of your leave.

(2) Plan 2 members: You may receive service credit in accordance with RCW 41.32.810(1).

(3) Plan 3 members: You may receive service credit in accordance with RCW 41.32.865(1).

[Statutory Authority: RCW 41.50.050(5), 41.32.267, 41.32.810, 41.32.850. 02-03-120, § 415-112-250, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-250, filed 2/15/78. Formerly WAC 462-20-030.]

**WAC 415-112-260 Credit for service in higher institutions.** Service credit for teaching in public higher educational institutions shall be evaluated under the same rules and regulations as apply to service credit in public common schools.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-260, filed 2/15/78. Formerly WAC 462-20-035.]

**WAC 415-112-270 Evaluating credit for professional preparation.** If a TRS Plan 1 member is otherwise eligible, professional preparation credit may be allowed for additional study at an institution of higher learning, or at a commercial or technical school where the courses supplement the member's professional preparation. Thirty-six quarter hours of credit, or the equivalent, shall be considered a year's work. Any less credits shall be evaluated as a fractional part of a year.

[Statutory Authority: RCW 41.50.050. 99-14-008, § 415-112-270, filed 6/24/99, effective 7/25/99. Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-270, filed 2/15/78. Formerly WAC 462-20-040.]

**WAC 415-112-280 Credit for teaching United States military personnel.** A member who accepts teaching or educational employment involving service to United States military personnel may be allowed service credit for the same upon application after his return to Washington public school employment and payment of annuity fund contributions within the time limit provided by law, but the service for which credit is requested must be supervised and/or paid for by a public educational institution, and such service rendered for an employer located outside the state of Washington shall be subject to the limitations which govern the granting of credit for out-of-state service.

Military service credits for Plan II members will be governed by the provisions of chapter 293, Laws of 1977 ex. sess.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-280, filed 2/15/78. Formerly WAC 462-20-045.]

**WAC 415-112-290 Credit for out-of-state service.** (1)

A TRS Plan 1 member who leaves Washington public school service and terminates his membership in the teachers' retirement system by lapsation or withdrawal and who subsequently returns to service and membership may establish or reestablish only such credit for out-of-state service as may be credited under the laws in effect at the time when he reestablishes membership.

(2) Effective July 1, 1964, a new or former TRS Plan 1 member who returns to membership after his former membership was cancelled by lapsation or withdrawal may not establish or reestablish out-of-state prior service credit of any kind, including out-of-state prior service credit for teaching, professional preparation, or military service.

(3) Out-of-state membership service credit, regardless of when the service was rendered, may be established or reestablished after July 1, 1964, within the limitations of existing law, only if the out-of-state service was rendered while the member was on official leave of absence granted by a state of Washington employer.

[Statutory Authority: RCW 41.50.050. 99-14-008, § 415-112-290, filed 6/24/99, effective 7/25/99. Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-290, filed 2/15/78. Formerly WAC 462-20-055.]

**WAC 415-112-300 Red Cross service.** Service credit shall not be allowed for service with the National Red Cross organization.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-300, filed 2/15/78. Formerly WAC 462-20-060.]

**WAC 415-112-310 Civilian Conservation Corps service.** Service credit shall not be allowed for service as a teacher or educational advisor in the Civilian Conservation Corps camps.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-310, filed 2/15/78. Formerly WAC 462-20-065.]

**WAC 415-112-320 Service as a Peace Corps volunteer.** A member of the teachers' retirement system who serves as a Peace Corps volunteer shall not be considered as employed in public school teaching service and shall, therefore, not be eligible under RCW 41.32.300 and 41.32.320 to establish out-of-state service credit for service rendered as a Peace Corps volunteer.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-320, filed 2/15/78. Formerly WAC 462-20-070.]

**WAC 415-112-330 Calculating service credit for Plan 1 K-12 employees.** For Plan 1 members who are employed by a school district, a school year will consist of one hundred eighty days. One year of service credit will be granted to a Plan 1 member who is employed as a classroom teacher for one hundred forty-four or more days during a school year. A fractional year of credit will be granted to a Plan 1 member who is employed for at least twenty days but less than one hundred forty-four days during a school year.

The fraction will use days employed as the numerator and one hundred eighty as the denominator.

(1) If there is no contract, bargaining agreement or employer policy indicating how many hours are in a work day, a Plan 1 classroom teacher will be granted one day of credit for every seven hours of compensated employment.

(2) If there is no contract, bargaining agreement or employer policy indicating how many hours are in a work day, Plan 1 K-12 employees other than school district classroom teachers will earn one day of credit for every eight hours of compensated employment.

[Statutory Authority: RCW 41.50.050. 00-10-015, § 415-112-330, filed 4/21/00, effective 5/22/00; 97-09-037, § 415-112-330, filed 4/14/97, effective 5/15/97. Statutory Authority: RCW 41.50.050 and 41.32.570. 91-21-084, § 415-112-330, filed 10/18/91, effective 11/18/91. Statutory Authority: RCW 41.32.270 and 41.32.010 (11)(a)(ii). 88-17-052 (Order 88-13), § 415-112-330, filed 8/17/88.]

**WAC 415-112-335 Calculating service credit for part-time community and technical college employees.** Most community and technical colleges employ academic employees under contracts expressed in terms of a certain number of contact hours, which are usually limited to actual time spent in the classroom. Most academic positions require more time to be spent providing services to the college than are reflected in the contact hours. However, actual hours worked are not submitted by the academic employees nor recorded by the college. This subsection adopts a method for estimating hours of work in order to determine membership eligibility and service credit in plan I and plan II. This estimate is to be used solely for that purpose. The estimate is not a representation by the department of actual hours worked and is not to be used as a basis for calculating other benefits or salary for technical college and community college academic employees.

(1) **Plan I.** In order to estimate the number of days worked by a TRS I technical college or community college faculty academic employee for a particular month, the college will:

(a) Determine the number of working days in the month as defined by the college's adopted academic calendar;

(b) Determine the part-time workload for the employee. The part-time workload is the percentage of the part-time employees' weekly in-class teaching hours to the weekly in-class teaching hours required of a full-time instructor in that employee's discipline at the college; and

(c) Multiply the number of working days in the month by the academic employee's part-time workload.

The resulting number is an estimate of days worked by the academic employee during the month. The college will report this estimate to the department for the sole purpose of determining plan I service credit and/or membership eligibility.

(2) **Plan II.** Determining service credit for plan II requires the college to estimate hours worked rather than days worked. To estimate hours worked, the college uses the steps described in subsection (1) of this section and takes two additional steps:

(a) Determine the number of hours in a full-time work day. In the absence of a definition of the number of hours in

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a full-time work day in the collective bargaining agreement or elsewhere, the college will use seven hours;

(b) Multiply the estimated days worked as determined in subsection (1) of this section by the number of hours in a full-time work day.

The resulting number is an estimate of hours worked by the academic employee during the month. The college will report this estimate to the department for the sole purpose of determining plan II service credit and/or membership eligibility.

(3) **Definitions.** "In-class teaching hours" means contact classroom and lab hours in which full-time or part-time academic employees are performing contractually assigned teaching duties. The in-class teaching hours shall not include any duties performed in support of, or in addition to, those contractually assigned in-class teaching hours.

[Statutory Authority: RCW 41.50.050. 97-09-037, § 415-112-335, filed 4/14/97, effective 5/15/97.]

## EARNABLE COMPENSATION—MEMBER CONTRIBUTIONS

**WAC 415-112-400 When does the employer deduct salary for retirement contributions?** If the teacher or member is entitled to have salary deducted for retirement contributions, the employer must make the deductions when the teacher or member starts work.

(1) **Plan 1.**

(a) The employer must deduct salary for retirement contributions for a teacher who has not been a member if:

(i) The teacher is employed full time (at least four-fifths of a school day or full time assignment); and

(ii) The teacher's employment contract calls for at least ninety days of employment in a school year.

(b) The employer must also deduct the salary of each teacher who is a member employed full time if their employment contract calls for at least twenty days of employment in a school year.

(c) If a teacher who is not a member is employed for less than ninety days in a school year, the teacher will fail to establish membership. The employer must refund the teacher's salary deductions for retirement when he or she terminates employment as a teacher. The member must file a refund application with the department before he or she can receive the refund.

(d) If a member is employed by an employer for less than twenty days in a school year, the employer must refund all salary deductions for retirement based on service during that year at the time the member terminates for the year. The member must file a refund application with the department before he or she can receive the refund.

(2) **Plan 2 and Plan 3:** The employer must deduct contributions for a teacher if the teacher is employed in an eligible position.

[Statutory Authority: RCW 41.50.050(5) and 41.32.270. 02-03-120, § 415-112-400, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050. 99-14-008, § 415-112-400, filed 6/24/99, effective 7/25/99. Statutory Authority: RCW 41.50.050(6). 79-10-024 (Order 79-02), § 415-112-400, filed 9/10/79. Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-400, filed 2/15/78. Formerly WAC 462-24-010.]

**WAC 415-112-412 Are nonmoney payments from my employer considered compensation earnable? (1) TRS Plan 1 members:**

(a) **If your employer provides you with materials in lieu of reimbursement for your business expenses, the value of the materials is not earnable compensation.**

(i) The value of employer-provided materials is not earnable compensation if you use the materials solely in connection with your employer's business.

(ii) "Materials" includes, but is not limited to, living quarters, food, board, equipment, clothing, laundry, transportation, fuel, and utilities:

**Example:** An employer provides an employee with uniforms which the employee must wear in performing services for his employer. Because the uniforms are to be used solely in connection with the employer's business, they do not qualify as nonmoney maintenance compensation. Therefore, the value of the uniforms is not earnable compensation.

(b) **The department presumes that your employer provides you materials solely in lieu of reimbursement for business expenses.** Unless you or your employer can show by corroborating evidence that your employer provided you materials in whole or in part as payment for your personal expenses, as opposed to business expenses, the value of the materials is not earnable compensation.

(c) **If your employer provides you with materials for your personal use, the value of that use is nonmoney maintenance compensation and is included in your earnable compensation.**

(i) "Nonmoney maintenance compensation" means the fair market value of materials legally provided by your employer to you or your dependents for personal use.

(ii) Nonmoney maintenance compensation does not include any form of compensation other than cash that is excludable from taxation under provisions of the Internal Revenue Code. This applies regardless of whether you or your employer reported the compensation to the Internal Revenue Service as taxable income.

(d) **Your use of employer-provided materials will qualify as nonmoney maintenance compensation if your employer substantiates that they were provided to you as payment for personal services.** In order for employer-provided materials to qualify as nonmoney maintenance compensation, your employer must:

(i) Establish and regularly update a written schedule reflecting the monthly fair market value of each item of employer-provided materials claimed as nonmoney maintenance compensation. Typically, the fair market value would be the cost of the item if it were acquired in a purchase or lease transaction;

(ii) Report the fair market value of employer-provided materials as nonmoney maintenance compensation to the department as earnable compensation. If you pay any amount to your employer in order to own or use the materials, your employer must report as earnable compensation the amount

by which the fair market value of the materials exceeds the amount of your payment;

(iii) Substantiate by adequate records, or by other sufficient corroborating evidence the following:

(A) That the fair market value of each item of nonmoney maintenance compensation as reported to the department is accurate;

(B) That each item of nonmoney maintenance compensation is provided to you for your personal use as payment for your services to the employer; and

(C) That each item of nonmoney maintenance compensation is includable in your taxable income for federal income tax purposes.

**Example:** An employer leases an apartment for \$700.00 per month. The employer charges an employee \$300.00 per month to use the apartment for temporary living quarters. Because the employee uses the apartment for personal, rather than business, purposes, the amount by which the lease value exceeds the employee's payment is nonmoney maintenance compensation. The employer must report \$400.00 per month to the department as earnable compensation for the employee.

(e) **How to corroborate that your use of employer-provided materials qualifies as nonmoney maintenance compensation.** In addition to the records required under (d) of this subsection, you may provide the department with any evidence which you or your employer believe confirms that your use of employer-provided materials qualifies as earnable compensation. However, verbal evidence alone has considerably less value than written evidence. Written evidence prepared at or near the time your employer provides you with the item of compensation is generally much stronger than verbal evidence or written evidence created years later.

(2) **TRS Plan 2 and Plan 3 members.** If you are a TRS Plan 2 or Plan 3 member, you are not entitled to count the value of any nonmoney maintenance compensation you receive from your employer as earnable compensation.

[Statutory Authority: RCW 41.50.050(5) and 41.32.010 (10)(b). 02-03-120, § 415-112-412, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050. 95-22-006, § 415-112-412, filed 10/18/95, effective 11/18/95. Statutory Authority: RCW 41.32.010(11) and 41.32.160. 87-17-060 (Order DRS 87-07), § 415-112-412, filed 8/19/87.]

**WAC 415-112-413 Vehicles—Does the value of my use of an employer vehicle qualify as earnable compensation? (1) TRS Plan 1 members:**

(a) Use of an employer vehicle for business purposes does not qualify as compensation earnable. If your employer's established policy prohibits the use of an employer vehicle for nonbusiness uses, all use of the vehicle will be deemed business use.

(b) Use of an employer vehicle for nonbusiness purposes qualifies as compensation earnable if:

(i) Your employer reports the value of this use as compensation earnable on a monthly basis. Monthly compensation earnable is the lesser of the following:

(A) Fair Market Lease Value x Percentage of Personal Use; or

(B) Miles of Personal Use x IRS Mileage Rate. The IRS Mileage Rate is the mileage rate adopted by the Internal Revenue Service for use by taxpayers in computing the value of the use of a vehicle; and

(ii) Your employer reports your personal use of the vehicle to the IRS as taxable income under IRC Section 61 and Treas. Reg. Section 1.61-21; or

(iii) Your employer maintains monthly records of your personal use.

These records must contain:

(A) Your employer's authorization of your personal use;  
(B) The distance normally commuted each day during the month, if you use the vehicle to commute;

(C) The dates, mileage, and itinerary of each personal trip other than a commute trip; and

(D) Your total mileage for the month.

(E) The ratio of personal mileage to total mileage, expressed as a percent.

(c) The department presumes that your use of an employer vehicle is solely for business purposes.

(2) **TRS Plan 2 and Plan 3 members.** If you are a member of TRS Plan 2 or Plan 3, you are not entitled to count any of the value of an employer-provided vehicle as earnable compensation.

[Statutory Authority: RCW 41.50.050(5), 41.32.010(10), IRC Section 61.02-03-120, § 415-112-413, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050. 95-22-006, § 415-112-413, filed 10/18/95, effective 11/18/95. Statutory Authority: RCW 41.32.010(11) and 41.32.160. 87-17-060 (Order DRS 87-07), § 415-112-413, filed 8/19/87.]

**WAC 415-112-41301 Vehicle allowances—Are vehicle allowances earnable compensation?** (1) If your employer provides you any payment or allowance in lieu of a reimbursement for expenses you incur or expect to incur in performing services for your employer, the payment or allowance is not earnable compensation. Your vehicle allowance does not qualify as earnable compensation if you receive the allowance in lieu of reimbursement for expenses that you incur or expect to incur in using your own vehicle for business purposes.

(2) The department presumes that any vehicle allowance provided to you by your employer is a payment in lieu of reimbursement for expenses and is not earnable compensation. If the contract authorizing your vehicle allowance states that it is provided solely in lieu of reimbursement for expenses that you incur or expect to incur in using your own vehicle for business purposes, the department's presumption is not rebuttable.

(3) Your vehicle allowance may qualify as earnable compensation to the extent that it exceeds your actual expenses. If your employer documents that your vehicle allowance exceeds the actual expenses you incur in driving your own vehicle for business purposes, the excess amount is earnable compensation. Your employer must maintain monthly contemporaneous records documenting the following:

(a) The dates, if any, on which you used a privately owned vehicle in performing services for your employer;

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(b) The miles you drove the vehicle on each of these trips; and

(c) Your itinerary for each of these trips.

(4) **How to determine what amount of your vehicle allowance, if any, is reportable as earnable compensation.** If your employer documents that your vehicle allowance exceeds the actual expenses you incur in using your own vehicle for business purposes, your employer must report to the department as earnable compensation:

Your Vehicle Allowance LESS (Miles X IRS Rate)

(a) "Miles" above means the number of miles you drove a privately owned vehicle for business purposes during the month.

(b) "IRS rate" above means the Internal Revenue Service mileage rate for use by taxpayers computing the value of the use of a vehicle.

(5) **Your vehicle allowance qualifies as earnable compensation if you also receive a separate reimbursement for each occasion you use your own vehicle for business purposes.** If, in addition to your vehicle allowance, you receive a separate reimbursement for vehicle expenses for each occasion that you use a privately owned vehicle for business purposes, your vehicle allowance is earnable compensation.

(6) **Any part of your vehicle allowance that qualifies as earnable compensation is excess compensation.** If any part of your vehicle allowance is included in the calculation of your retirement allowance, your employer will be billed for excess compensation under RCW 41.50.150. Your employer's bill will equal the total estimated cost of the portion of your retirement allowance payment attributable to your vehicle allowance.

[Statutory Authority: RCW 41.50.050. 99-14-008, § 415-112-41301, filed 6/24/99, effective 7/25/99; 95-22-006, § 415-112-41301, filed 10/18/95, effective 11/18/95.]

**WAC 415-112-415 Treatment of cash payments made in lieu of unused leave—First-in-first-out accounting method for determining when leave earned—Forms of leave deemed excess compensation—Conversions.** (1) Cash compensation in lieu of unused annual leave may be considered earnable compensation for Plan I members subject to the provisions of RCW 41.32.010 (10)(a) and WAC 415-112-4605. Employers may not limit the inclusion of cash compensation paid in lieu of unused annual leave as compensation earnable in conflict with RCW 41.32.010 (10)(a). Provisions of collective bargaining agreements, employment and administrative policies or other rules applied by an employer that conflict with RCW 41.32.010 (10)(a) and rules adopted thereunder are without legal effect.

(2) When an employer provides cash compensation in lieu of unused annual leave, the department applies a first-in-first-out accounting method to determine when the compensated leave was earned and when or whether the leave was used or cashed out, unless the employer has in place a regulation, charter provision, ordinance, collective bargaining agreement, or other comparable written policy statement which clearly delineates when the cashed out leave was

accrued, or a different method of accounting for the accrual and use of leave, and, if applicable, compensation for unused leave and the same such method is consistently applied in each instance and for all purposes.

Any employer's policy which is not consistent for all purposes which is contained in a regularly negotiated labor agreement in effect on the effective date of this section will be honored until the expiration date of the agreement not including any extensions at which time it will be brought into compliance with this section. Any employer's policy which is not consistent for all purposes which is established by the employer shall be brought into compliance within sixty days of the effective date of this section. In the event an employer fails to come into full compliance with this section by the dates established herein, the department will treat cashed out leave on the same basis as the employer has established for using leave.

(3) A cash out of leave which is not annual leave as defined under WAC 415-112-015, shall be treated by the department as "any other form of leave" under RCW 41.50.150(2). The department shall bill the employer for any such leave cash out as excess compensation under RCW 41.50.150.

(4) For purposes of determining average final compensation and excess compensation, hours of leave earned by a member shall be considered for all purposes in the form in which it was earned. The department shall disregard any conversion of leave by an employer of one form to another and bill the employer for the amount converted as excess compensation pursuant to RCW 41.50.150.

[Statutory Authority: RCW 41.50.050 and 41.32.010(10), 00-13-001, § 415-112-415, filed 6/7/00, effective 7/8/00. Statutory Authority: RCW 41.50.050, 94-23-049, § 415-112-415, filed 11/10/94, effective 12/11/94. Statutory Authority: RCW 41.50.050 and Bowles v. Retirement Systems, 121 Wn.2d 52 (1993), 94-11-009, § 415-112-415, filed 5/5/94, effective 6/5/94. Statutory Authority: RCW 41.32.010(11) and 41.32.160, 87-17-060 (Order DRS 87-07), § 415-112-415, filed 8/19/87.]

**WAC 415-112-430 Computing the average earnable compensation.** In computing a member's average earnable compensation, the computations shall include only the service during which a member was employed for salary or wages by a state of Washington employer and for which he established Washington membership service credit with the teachers' retirement system. This excludes out-of-state service, military service and professional preparation or other service for which credit may have been established but for which no salary or wages were paid to the member by a state

of Washington employer. Contributions based on sabbatical leave, paid sick leave, or other leave paid for by a state of Washington employer and for which credit has been established with the teachers' retirement system shall be included in computing the earnable compensation.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090, 78-03-023 (Order IV), § 415-112-430, filed 2/15/78. Formerly WAC 462-24-040.]

#### **WAC 415-112-440 Withdrawal of contributions.** (1)

A member who is employed in the public schools of this state for consecutive school years shall be considered as employed during the summer months and, therefore, may not qualify for withdrawal of his accumulated contributions. Termination of Washington public school employment at the close of a school year with one employer to accept employment with another Washington public school employer for the ensuing school year shall not qualify a member for withdrawal of his accumulated contributions.

(2) A member who is on official leave of absence from a Washington public school employer shall not be considered to have terminated his employment and, therefore, shall not be eligible to qualify for withdrawal of his accumulated contributions.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090, 78-03-023 (Order IV), § 415-112-440, filed 2/15/78. Formerly WAC 462-24-050.]

**WAC 415-112-444 Purpose and scope of earnable compensation rules.** WAC 415-112-445 through 415-112-491 codify the department's existing interpretation of statutes and existing administrative practice regarding classification of payments as earnable compensation in TRS Plan I, TRS Plan II and TRS Plan III. The department has applied and will apply these rules to determine the proper characterization of payments occurring prior to the effective dates of these sections.

[Statutory Authority: RCW 41.50.050, 97-03-016, § 415-112-444, filed 1/6/97, effective 2/6/97.]

#### **WAC 415-112-445 Reportable compensation table.**

The following table is provided as a quick reference guide to help you characterize payments under Plan I, Plan II and Plan III. Be sure to turn to the referenced rule to ensure that you have correctly identified the payment in question. The department determines earnable compensation based upon the nature of the payment, not the name applied to it, see WAC 415-112-450.

Type of Payment	TRS I Reportable Compensation?	TRS II/III Reportable Compensation?
Annual Leave Cash Outs	Yes - WAC 415-112-4605	No - WAC 415-112-4605
Base Contract	Yes - WAC 415-112-4601	Yes - WAC 415-112-4601
Car Allowances	No - WAC 415-112-41301 <sup>1</sup>	No - WAC 415-112-41301
Cafeteria Plans	Yes - WAC 415-112-4604	Yes - WAC 415-112-4604
Deferred Wages	Yes - WAC 415-112-4609	Yes - WAC 415-112-4609
Disability Payments	No - WAC 415-112-482	No - WAC 415-112-482
Employer Provided Vehicle	No - WAC 415-112-413 <sup>2</sup>	No - WAC 415-112-413
Evening/Summer School	Yes - WAC 415-112-4601	Yes - WAC 415-112-4601
Extracurricular Contracts	Yes - WAC 415-112-4601	Yes - WAC 415-112-4601
Employer taxes/contributions	No - WAC 415-112-4609	No - WAC 415-112-4609

Fringe Benefits	No - WAC 415-112-480	No - WAC 415-112-480
Illegal Payments	No - WAC 415-112-485	No - WAC 415-112-485
Legislative Leave	Yes - WAC 415-112-471	Yes - WAC 415-112-471
Longevity/Education Attainment Pay	Yes - WAC 415-112-4601	Yes - WAC 415-112-4601
Nonmoney Maintenance	Yes - WAC 415-112-412 <sup>3</sup>	No - WAC 415-112-412
Optional Payments	No - WAC 415-112-487	No - WAC 415-112-487
Payments in Lieu of Excluded Items	No - WAC 415-112-470	No - WAC 415-112-470
Performance Bonuses	Yes - WAC 415-112-4603	Yes - WAC 415-112-4603
Retroactive Salary Increase	Yes - WAC 415-112-4607	Yes - WAC 415-112-4607

<sup>1</sup>A portion of the value of an employer car allowance may be reportable in Plan I only, see WAC 415-112-41301.

<sup>2</sup>A portion of the value of an employer provided vehicle may be reportable in Plan I only, see WAC 415-112-413.

<sup>3</sup>A portion of the value of nonmoney maintenance provided may be reportable in Plan I only, see WAC 415-112-412.

Type of Payment	TRS I Reportable Compensation?	TRS II/III Reportable Compensation?
Reimbursements	No - WAC 415-112-489	No - WAC 415-112-489
Reinstatement Payments	Yes - WAC 415-112-477	Yes - WAC 415-112-477
Retirement or Termination Bonuses	No - WAC 415-112-490	No - WAC 415-112-490
Severance Pay - Earned Over Time	Yes - WAC 415-112-4608	No - WAC 415-112-4608
Severance Pay - Not Earned Over Time	No - WAC 415-112-491	No - WAC 415-112-491
Sick Leave Cash Outs	No - WAC 415-112-4605	No - WAC 415-112-4605
Supplemental Contracts	Yes - WAC 415-112-4601	Yes - WAC 415-112-4601 <sup>4</sup>
Time Off with Pay	Yes - WAC 415-112-473 WAC 415-112-4605	Yes - WAC 415-112-473 WAC 415-112-4605
Union Leave <sup>5</sup>	Yes - WAC 415-112-475	Yes - WAC 415-112-475
Worker's Compensation	No - WAC 415-112-483	No - WAC 415-112-483

<sup>4</sup> Reportable only if member is employed in an eligible position.

<sup>5</sup> Only specific types of union leave are reportable, see WAC 415-112-475.

[Statutory Authority: RCW 41.50.050. 98-09-059, § 415-112-445, filed 4/17/98, effective 5/18/98; 97-03-016, § 415-112-445, filed 1/6/97, effective 2/6/97.]

**WAC 415-112-450 What compensation can be reported?** In order for payments to be subject to retirement system contributions and included in the calculation of a member's retirement benefit, those payments must meet the definition of earnable compensation in RCW 41.32.010(10).

(1) **Payments for services rendered.** To determine whether a payment meets this definition and can be reported, ask the following questions:

(a) Was the payment earned as a salary or wage for services rendered during a fiscal year? If the answer is no, the payment is not reportable. If the answer is yes, ask question (b).

(b) Was the payment paid by an employer to an employee? If the answer is no, the payment is not reportable. If the answer is yes, you may report the payment.

(2) **Payments included that are not for services rendered.** The legislature has included certain specific payments within the definition of earnable compensation even though those payments are not for services rendered by the employee to the employer. (See WAC 415-112-472 through 415-112-477.)

(3) **Reportable compensation is earned when the service is rendered, rather than when payment is made.**

**Example:** If a member works during June but does not receive payment for the work until July, the earnable compensation was earned during June and must be reported to the department as June earnings.

(4) **Salary characterizations are based upon the nature of the payment.** A payment is reportable compensation if it meets the criteria of subsection (1) or (2) of this section. The name given to the payment or the document authorizing it is not controlling in determining whether the payment is reportable compensation. The department determines whether a payment is reportable compensation by considering:

(a) What the payment is for; and

(b) Whether the reason for the payment brings it within the statutory definition of earnable compensation.

**Example:** A payment conditioned upon retirement is not reportable compensation. Attaching the label "longevity" to the payment does not change the fact that the payment is conditioned on retirement. Such a payment is not for services rendered and will not be counted as reportable compensation despite being identified by the employer as a longevity payment.

**(5) Differences in reportable compensation between plans.** WAC 415-112-450 through 415-112-491 define reportable compensation for each of the three TRS plans.

(a) "Earnable compensation" is defined in very similar terms for both TRS Plan I and TRS Plan II. The characterization of payments as reportable compensation or not reportable compensation in WAC 415-112-450 through 415-112-491 is the same for both TRS Plan I and TRS Plan II except as specifically noted.

(b) "Earnable compensation" is defined identically for TRS Plan II and TRS Plan III. The characterization of payments as reportable compensation or not reportable compensation in WAC 415-112-450 through 415-112-491 is the same for both TRS Plan II and TRS Plan III.

[Statutory Authority: RCW 41.50.050. 97-03-016, § 415-112-450, filed 1/6/97, effective 2/6/97.]

**WAC 415-112-460 Payments for services rendered.** WAC 415-112-4601 through 415-112-4609 discuss types of payments for services rendered. Each of the payment types are reportable compensation for TRS Plan 1. Certain types of payments for services rendered are excepted from reportable compensation for TRS Plan 2 and Plan 3, see WAC 415-112-4605.

[Statutory Authority: RCW 41.50.050. 00-10-015, § 415-112-460, filed 4/21/00, effective 5/22/00; 97-03-016, § 415-112-460, filed 1/6/97, effective 2/6/97.]

**WAC 415-112-4601 Contract salary payments.** (1) **Base contract.** The base contract establishes the payment for teaching or administrative services provided during each day of the district's school year. For classroom teachers, the base contract authorizes the salary for providing basic education services per RCW 28A.405.200. For administrators and principals, other items may be included. Because services are rendered in exchange for this payment, it is reportable compensation. This does not mean that a payment is reportable compensation solely because it is authorized in an employee's base contract. Rather than relying on the name of a payment or the document where it is authorized, you must evaluate whether services were rendered in exchange for the payment.

(2) **Evening or summer school contracts.** Evening or summer school payments are for additional time worked. These payments are often authorized in a supplemental contract. These payments are for services rendered and are reportable compensation.

(3) **Supplemental or TRI contracts under RCW 28A.400.200.** A school district may compensate an employee for additional time, responsibility or incentives with a supplemental contract.

(a) If the payment is for additional time, then it is for services rendered and qualifies as reportable compensation.

(b) If the payment is for additional responsibility (i.e., additional service which does not specifically require more time) within the regularly scheduled working day, then it is also for services rendered and is reportable. Examples of additional responsibility include payments linked to extra enrollment or additional duties outside the scope of the base contract.

(c) If the payment is made as an incentive, then it is also for services rendered and is reportable compensation. Incentive payments include payments for meeting performance goals specified by the employer.

(4) **Longevity or educational attainment.** Salaries for all teachers and most administrators are determined by looking at the individual's teaching experience and educational attainment.

(a) A member who receives a salary increase based upon longevity or educational attainment receives a higher salary without working more hours. The higher salary indicates a higher level of service due to greater experience or more education. The payment is therefore a payment for additional service and is reportable compensation.

(b) Simply attaching the label "longevity" to a payment does not guarantee that it will be reportable compensation. If a payment described as a longevity payment is actually based upon some other criteria, such as retirement or notification of intent to retire, the payment may not be reportable.

[Statutory Authority: RCW 41.50.050. 97-03-016, § 415-112-4601, filed 1/6/97, effective 2/6/97.]

**WAC 415-112-4603 Performance bonuses.** Bonuses that are based upon meeting certain performance goals or having to work under unusual conditions, such as over enrollment, are earned for services rendered and are reportable compensation.

[Statutory Authority: RCW 41.50.050. 97-03-016, § 415-112-4603, filed 1/6/97, effective 2/6/97.]

**WAC 415-112-4604 Cafeteria plans.** Compensation received in any form under the provisions of a "cafeteria plan," "flexible benefits plan," or similar arrangement pursuant to section 125 of the United States Internal Revenue Code is reportable compensation if the employee has an absolute right to receive cash or deferred cash payments in lieu of the fringe benefits offered. In such an instance, the fringe benefits are being provided in lieu of cash and are considered reportable compensation, just as the cash would be. If there is no cash option, the value of the fringe benefit is not a salary or wage and is not reportable compensation, see WAC 415-112-480.

[Statutory Authority: RCW 41.50.050. 97-03-016, § 415-112-4604, filed 1/6/97, effective 2/6/97.]

**WAC 415-112-4605 Leave payments earned over time.** (1) **Sick, annual, and personal leave usage.** Sick leave, annual leave, and personal leave is accumulated over time and paid to a person during a period of excused absence. Leave accrues at a prescribed rate, usually a certain number of hours per month. The employee earns a leave day by rendering service during the month the leave was accumulated. When the employee uses his or her accrued leave by taking a scheduled work day off with pay, the payment is deferred compensation for services previously rendered. The payment is a salary or wage earned for services rendered and is reportable.

(2) **Annual leave cash outs.** Annual leave and personal leave cash outs, like payments for leave usage, are deferred compensation earned for services previously rendered.

(a) Plan 1. Annual leave and personal leave cash outs are reportable for TRS Plan 1.

(b) Plan 2 and Plan 3. Although the payments are for services rendered, annual leave and personal leave cash outs are excluded from the definition of reportable compensation in TRS Plan 2 and TRS Plan 3, see RCW 41.32.010 (10)(b).

(3) **Sick leave cash outs.** Sick leave cash outs are deferred compensation for services previously rendered. However, these payments are statutorily excluded from reportable compensation for all TRS Plans. See RCW 41.32.010(10), 41.04.340, 28A.400.210 and 28A.310.490.

[Statutory Authority: RCW 41.50.050. 00-10-015, § 415-112-4605, filed 4/21/00, effective 5/22/00; 97-03-016, § 415-112-4605, filed 1/6/97, effective 2/6/97.]

**WAC 415-112-4607 Retroactive salary increases.** A retroactive salary payment to an employee who worked during the covered period is a payment of additional salary for services already rendered.

**Note:** A retroactive salary increase is not the same as a retroactive payment upon reinstatement or in place of reinstatement of a terminated or suspended employee. For treatment of back payments for periods where services were not rendered, see WAC 415-112-477.

(1) To qualify as reportable compensation under this section, the payment must be a bona fide retroactive salary increase. To ensure that is the case, the retroactive payment must be made pursuant to:

(a) An order or conciliation agreement of a court or administrative agency charged with enforcing federal, state, or local statutes, ordinances, or regulations protecting employment rights;

(b) A bona fide settlement of such a claim before a court or administrative agency; or

(c) A collective bargaining agreement.

(2) The payments will be deemed earned in the period in which the work was done.

[Statutory Authority: RCW 41.50.050. 97-03-016, § 415-112-4607, filed 1/6/97, effective 2/6/97.]

#### **WAC 415-112-4608 Severance pay earned over time.**

(1) **Plan 1.** Severance pay must be earned over time in the same manner as annual leave or sick leave in order to be deferred compensation for services previously rendered and to be reportable in Plan 1. Severance pay is earned over time if the employment contract(s) entered into at the beginning of the period of employment specify that a certain amount of severance pay will be earned in the coming year in consideration for services rendered.

**Example:** Mr. Jones is a TRS Plan 1 member employed as a school administrator. Since the beginning of his term of employment with the district, his contract has specified that he will earn one week of severance pay for every year of his employment. The earned severance pay will be paid at the time of

his separation. His severance pay is reportable compensation. When Mr. Jones retires, the two weeks severance pay that he earned during his two highest paid years (i.e., one week per year for two years) will be included in his TRS Plan 1 retirement calculation.

(2) **Plans 2 and 3.** All forms of severance pay are excluded from earnable compensation for Plans 2 and 3 by RCW 41.32.010(10).

(3) Severance pay that is not earned over time is not earned for services rendered and is not reportable in Plan 1, 2, or 3, see WAC 415-112-491.

[Statutory Authority: RCW 41.50.050. 00-10-015, § 415-112-4608, filed 4/21/00, effective 5/22/00; 98-09-059, § 415-112-4608, filed 4/17/98, effective 5/18/98; 97-03-016, § 415-112-4608, filed 1/6/97, effective 2/6/97.]

**WAC 415-112-4609 Payroll deductions.** Salary or wages for services rendered that are withheld from a member's pay still qualify as reportable compensation.

(1) **Retirement contributions.** Payments deducted from employee compensation for employee retirement contributions are reportable. Employer contributions are a fringe benefit and are not reportable, see WAC 415-112-480.

(2) **Tax withholding.** Payments withheld to satisfy federal tax obligations qualify as reportable compensation.

(3) **Voluntary deductions.** Payments deducted voluntarily, such as 403(b) plan contributions or other authorized deductions, are reportable.

[Statutory Authority: RCW 41.50.050. 98-09-059, § 415-112-4609, filed 4/17/98, effective 5/18/98; 97-03-016, § 415-112-4609, filed 1/6/97, effective 2/6/97.]

**WAC 415-112-470 Payments not for services rendered.** In general, payments cannot be reported to the retirement system unless they are for services rendered. However, the legislature has identified some types of compensation (in RCW 41.32.010 and 41.32.267) which are reportable even though they are not for services rendered.

(1) WAC 415-112-472 through 415-112-477 discuss all payments that are not for services rendered that nonetheless qualify as reportable compensation.

(2) WAC 415-112-480 through 415-112-491 discuss some payments that are not for services rendered and so do not qualify as reportable compensation. A payment not for services rendered other than those identified in WAC 415-112-472 through 415-112-477 is not reportable compensation even if it is not listed in WAC 415-112-480 through 415-112-491.

(3) A payment made in lieu of a payment that is not for services rendered (such as a payment made in lieu of a car allowance) will be treated in the same way that the original payment was treated. Such a payment is not for services rendered and is not reportable.

[Statutory Authority: RCW 41.50.050. 97-03-016, § 415-112-470, filed 1/6/97, effective 2/6/97.]

**WAC 415-112-471 Legislative leave.** If an employee takes a leave without pay to serve in the legislature, the mem-

ber is entitled to service and reportable compensation credit for the period.

(1) **Plan 1.** The salary the employee would have earned is reportable compensation if the employee serves at least five years in the legislature. Employer contributions are not required on this imputed payment. Employee contributions are required.

(2) **Plan 2 and Plan 3.** The employee may choose between:

(a) The reportable compensation he or she would have earned had the member not served in the legislature; or

(b) The actual reportable compensation received for teaching plus the legislative reportable compensation.

If the employee selects option (a), he or she is responsible for paying the additional employer and employee contributions to the extent the reportable compensation reported is higher than it would have been under (b) of this subsection.

[Statutory Authority: RCW 41.50.050. 00-10-015, § 415-112-471, filed 4/21/00, effective 5/22/00; 97-03-016, § 415-112-471, filed 1/6/97, effective 2/6/97.]

**WAC 415-112-473 Paid leave not earned over time.** If paid leave is not based upon earned leave accumulated over time, the payment is not a deferred payment for services previously rendered. Further, the member on leave is not currently rendering services in exchange for the payment. However, RCW 41.32.267, 41.32.810 and 41.32.865 identify payments received from the employer while on paid leave as reportable for TRS. Contributions are due on these payments to the extent they meet the following conditions:

(1) The payment is equal to the salary for the position that the person is on leave from;

(2) The payment is actually from the employer. Payments from an employer that are conditioned upon reimbursement from a third party are payments from the third party. Because the payments are not from the employer, they are not reportable compensation. The only exception is union leave paid by the employer subject to reimbursement from the union under the conditions specified in RCW 41.32.267 (Plan 1), 41.32.810 (Plan 2), 41.32.865 (Plan 3), and WAC 415-112-475.

[Statutory Authority: RCW 41.50.050. 00-10-015, § 415-112-473, filed 4/21/00, effective 5/22/00; 97-03-016, § 415-112-473, filed 1/6/97, effective 2/6/97.]

**WAC 415-112-475 Union leave.** If a member takes an authorized leave of absence to serve as an elected official of a labor organization and the employer pays the member on leave subject to reimbursement from the union, the person's pay qualifies as reportable compensation provided that all the conditions of RCW 41.32.267 (Plan 1), RCW 41.32.810 (Plan 2), or RCW 41.32.865 (Plan 3), as appropriate, are met.

[Statutory Authority: RCW 41.50.050. 00-10-015, § 415-112-475, filed 4/21/00, effective 5/22/00; 97-03-016, § 415-112-475, filed 1/6/97, effective 2/6/97.]

**WAC 415-112-477 Reinstatement or payment instead of reinstatement.** (1) Payments to an employee are not earned for services rendered if an employer makes them for periods during which the employee was not employed and

the payments are made either upon reinstatement or instead of reinstatement. Nonetheless, RCW 41.32.010(10) specifically designates these payments as reportable compensation. The payments are only reportable to the extent that they are equivalent to the salary the employee would have earned had he or she been working. The payment will be prorated over the entire period that the employee was suspended, terminated, or otherwise absent from work.

(2) For purposes of subsection (1) of this section, "reinstatement" means that the employee is entitled to return to full employment rights by action of either:

(a) The employer; or

(b) A personnel board, personnel appeals board or court of law following a hearing.

[Statutory Authority: RCW 41.50.050. 00-10-015, § 415-112-477, filed 4/21/00, effective 5/22/00; 97-03-016, § 415-112-477, filed 1/6/97, effective 2/6/97.]

**WAC 415-112-480 Fringe benefits.** Payments made by an employer to a third party to provide benefits for an employee are not part of the employee's salary or wage. Those payments are not reportable compensation. Examples of these types of payments are insurance premiums (other than those made under bona fide cafeteria plans, see WAC 415-112-4604) and employer retirement contributions.

[Statutory Authority: RCW 41.50.050. 97-03-016, § 415-112-480, filed 1/6/97, effective 2/6/97.]

**WAC 415-112-482 Disability insurance.** Disability insurance payments are paid to persons for periods when they are unable to work. Because no services are rendered in exchange for these payments, they are not reportable compensation. This is true whether the payments come directly from the employer or from an insurance company.

[Statutory Authority: RCW 41.50.050. 97-03-016, § 415-112-482, filed 1/6/97, effective 2/6/97.]

**WAC 415-112-483 Workers' compensation.** Workers' compensation is paid to persons for periods when they are unable to work. Workers' compensation payments, like disability insurance, are not payments for services rendered and are not reportable compensation.

**Example:** Some employees on unpaid disability leave submit their workers' compensation payments to their employer who then issues the employee a check for the same amount through the payroll system. This exchange of payments does not change the character of the workers' compensation payment. Whether the payments come from the department of labor and industries, a self-insured employer, or have the appearance of coming from the employer, workers' compensation payments are not payments for services rendered and do not qualify as reportable compensation.

[Statutory Authority: RCW 41.50.050. 97-03-016, § 415-112-483, filed 1/6/97, effective 2/6/97.]

**WAC 415-112-485 Illegal payments.** Payments made by an employer in excess of the employer's legal authority are not reportable.

**Example:** School districts are prohibited from increasing an employee's salary to include a payment in lieu of a fringe benefit per RCW 28A.400.220. If a district increased a person's salary instead of providing a district car, the payment would be illegal and could not be reported.

[Statutory Authority: RCW 41.50.050. 97-03-016, § 415-112-485, filed 1/6/97, effective 2/6/97.]

**WAC 415-112-487 Optional payments.** If an employee can receive an additional payment only on the condition of taking an action other than providing service to the employer, the payment is not for services rendered and is not reportable compensation.

**Example:** An employer offers to make a contribution to a deferred compensation plan on behalf of an employee only if the employee agrees to have a portion of his or her salary deferred. Because the employee does not have a right to receive the contribution based solely on the rendering of service, the payment is not reportable compensation.

[Statutory Authority: RCW 41.50.050. 97-03-016, § 415-112-487, filed 1/6/97, effective 2/6/97.]

**WAC 415-112-489 Reimbursements for expenses.** Reimbursements are not earned for services rendered and thus are not reportable compensation. Typical reimbursement payments include mileage reimbursements for use of a private car on employer business, see WAC 415-112-41301, or meal and lodging reimbursements for business trips.

[Statutory Authority: RCW 41.50.050. 97-03-016, § 415-112-489, filed 1/6/97, effective 2/6/97.]

**WAC 415-112-490 Retirement bonus or incentive.** A payment made to an employee as a bonus or incentive when retiring or terminating is not a payment for services rendered. Rather, the payment is made in exchange for an employee's promise or notification of intent to retire or terminate. A retirement or termination bonus or incentive is not reportable compensation.

**Example:** A collective bargaining agreement authorizes a school district to pay employees a higher salary during the last two years of employment if the employee gives written notice of his or her intent to retire. Because the payment is in exchange for the agreement to retire and not for services, the payment is not reportable compensation.

[Statutory Authority: RCW 41.50.050. 97-03-016, § 415-112-490, filed 1/6/97, effective 2/6/97.]

**WAC 415-112-491 Severance pay not earned over time—Contract buy out.** Severance pay that is not earned over time is not earned for services rendered and is not reportable. An example of severance pay not earned over time is a payment negotiated as part of termination agreement.

(2003 Ed.)

**Example:** At the time of an administrator's termination, the school district agrees to pay him a lump sum payment equal to two months salary. The school district identifies this payment as "severance pay." Because the payment was not earned for services rendered, it is not reportable compensation and will not be included in his retirement calculation.

[Statutory Authority: RCW 41.50.050. 97-03-016, § 415-112-491, filed 1/6/97, effective 2/6/97.]

## SERVICE RETIREMENT

**WAC 415-112-500 Minimum service required for retirement.** In qualifying a member for a retirement allowance the minimum service requirement of "five years of credit for public school service in this state" as set forth in RCW 41.32.470 shall not include credit for professional preparation or credit for military service, but shall be limited to credit for Washington public school service.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-500, filed 2/15/78. Formerly WAC 462-28-005.]

**WAC 415-112-515 When does a member of the teachers' retirement system (TRS) enter retirement status?** A member of TRS enters retirement status when he or she:

- (1) Has separated from service or employment as defined in RCW 41.32.010(48);
- (2) Has no written agreement to return to employment; and
- (3) Has applied for retirement, the accrual date has been determined under WAC 415-112-520, RCW 41.32.795, or 41.32.855, and the benefit begins to accrue.

**Example:** Judy is eligible for retirement on July 1st. She submits an application on June 1st with a July 1st retirement date. Her last day of employment is June 30th and she does not have an agreement to return to work.

Judy's retirement date (accrual date) is July 1st and the benefit begins to accrue. The first retirement payment will be paid at the end of July. Judy entered "retiree status" effective July 1st.

[Statutory Authority: RCW 41.50.050(5), 41.04.270, 41.26.030, 41.32.010, 41.32.025, 41.32.480, 41.32.500, 41.32.570, 41.32.765, 41.32.795, 41.32.802, 41.32.855, 41.32.860, 41.32.862, 41.35.010, 41.35.030, 41.35.060, 41.35.450, 41.35.640, 41.40.010, 41.40.023, 41.40.037, 41.40.150, 41.40.193, 41.40.680, 41.40.750, 41.40.801. 02-02-060, § 415-112-515, filed 12/28/01, effective 1/1/02. Statutory Authority: RCW 41.50.050. 99-14-008, § 415-112-515, filed 6/24/99, effective 7/25/99. Statutory Authority: RCW 41.50.050 and 41.32.570. 91-21-084, § 415-112-515, filed 10/18/91, effective 11/18/91.]

**WAC 415-112-520 Date from which service retirement allowance accrues. When does my retirement allowance become payable?**

(1) The department must receive proof and payment to establish membership or additional service credit before your retirement allowance will be payable. After the department receives the necessary proof and payment and approves your application for service retirement, your retirement allowance is payable on:

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- (a) July 1 following your final year of service if you established a full year of Washington service credit for the year in which you retired; or
- (b) The first of the month following the month that you terminated public school service.

(2) If you terminate public school employment before you are eligible for a service retirement allowance, you may later qualify for a deferred retirement allowance based on your age if you are not employed in public education. If you qualify, your retirement allowance is payable on the date you reach the minimum age required to start receiving payments.

[Statutory Authority: RCW 41.50.050, 99-14-008, § 415-112-520, filed 6/24/99, effective 7/25/99. Statutory Authority: RCW 41.50.050(6) and 41.50.090, 78-03-023 (Order IV), § 415-112-520, filed 2/15/78. Formerly WAC 462-28-020.]

**WAC 415-112-525 How soon can I return to work as a retiree?** (1) If you return to work sooner than one full calendar month after your accrual date, your retirement allowance will be reduced by 5.5% for every seven hours worked during the month until you separate from all employment for one full calendar month. See RCW 41.32.570 (TRS Plan 1), 41.32.802 (TRS Plan 2), or 41.32.862 (TRS Plan 3).

**Example 1:**

Dave's last day of work is September 15th. He has no agreement to return to work. His accrual date is October 1st. If Dave wants to return to work after he retires, he will need to wait until at least November 1st to avoid receiving the daily percentage reduction in his retirement allowance.

**Example 2:**

Brian's last day of work is September 15th. He has no agreement to return to work. His accrual date is October 1st. Brian subsequently is asked to work for five seven-hour work days between October 10th and October 17th. On November 1st, Brian's retirement allowance will be reduced by five and one-half percent for every seven hours worked during October. (RCW 41.32.570.) On December 1st, he will qualify for his full retirement benefit. Brian will also qualify to return to work under the work limits described in WAC 415-112-540(2).

**Example 3:**

Joe's last day of work is September 15th. He has no agreement to return to work. His accrual date is October 1st. Joe then returns to work on October 10th and continues working. Joe's retirement benefit will be reduced by 5.5% for each seven hours he works. Joe's benefit reduction will accrue up to one hundred forty hours per month. If he stops working, his full retirement benefit will resume after he remains separated for one full calendar month. Any benefit reduction over one hundred percent will be applied to Joe's allowance in subsequent months.

(2) If you have a written agreement to return to work before your accrual date, and in fact return to work, you have not entered retirement status. See WAC 415-112-515. In this case, you are not a retiree, and the 5.5% reduction in subsection (1) of this section does not apply.

**Example 4:**

Teri's last day of work is September 15th. Her accrual date would ordinarily be on October 1st. However, on September 18th, Teri signed an agreement to work for one day in

October. Teri signed the agreement prior to her accrual date. Under WAC 415-112-515 she is not a retiree, and not eligible for her retirement benefits. In addition, the 5.5% reduction does not apply. Teri's accrual date will now be November 1st, as long as she did not have any other agreements to work.

**Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed:

(a) "Accrual date" - WAC 415-112-520; RCW 41.32-795, 41.32.855.

(b) "Eligible position" - RCW 41.40.010, 41.32.010 (37)(a), 41.35.010(22).

(c) "Employer" - RCW 41.32.010(11).

[Statutory Authority: RCW 41.50.050(5), 41.04.270, 41.26.030, 41.32.010, 41.32.025, 41.32.480, 41.32.500, 41.32.570, 41.32.765, 41.32.795, 41.32.802, 41.32.855, 41.32.860, 41.32.862, 41.35.010, 41.35.030, 41.35.060, 41.35.450, 41.35.640, 41.40.010, 41.40.023, 41.40.037, 41.40.150, 41.40.193, 41.40.680, 41.40.750, 41.40.801. 02-02-060, § 415-112-525, filed 12/28/01, effective 1/1/02.]

**WAC 415-112-530 Balance of monthly payment due on date of death.** In the event of death between allowance payment dates of an individual receiving a monthly retirement allowance, the proportionate amount accrued to and including the date of death shall be paid to the designated beneficiary or to the decedent's estate.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090, 78-03-023 (Order IV), § 415-112-530, filed 2/15/78. Formerly WAC 462-28-035.]

**WAC 415-112-541 How will returning to work affect my TRS Plan 1 monthly pension?** This section implements RCW 41.32.570, which limits employment for TRS Plan 1 retirees with public educational institutions to fifteen hundred hours regardless of the nature of service.

(1) You may return to any type of service with a public education institution for up to fifteen hundred hours per school year as defined in WAC 415-112-015 without affecting your TRS Plan 1 monthly pension under RCW 41.32.570, provided you have been retired from service for one full calendar month (see WAC 415-112-520 and 415-112-525 for more information).

(a) Your employer must notify the department when you return to work. Your employer must report hours and compensation.

(b) If you are a TRS Plan 1 retiree and you work more than fifteen hundred hours during a fiscal year, the department will suspend your monthly pension. The pension is suspended until the first of the next fiscal year or termination of your employment, whichever comes first.

(c) The TRS Plan 1 limits will be applied to retirees from both TRS Plan 1 and a Plan 2 or 3 in another pension plan.

(d) The TRS Plan 1 limits will be applied to retirees from both TRS Plan 1 and PERS Plan 1.

(e) If you are a TRS Plan 1 retiree working for a public education institution as a bona fide independent contractor as determined under WAC 415-02-110, you are not considered an employee of the institution and are not subject to the work limitations.

(2) If the department suspends your benefit because of your reemployment, the department will reinstate the original amount of your pension, less deductions to recover any over-

payment, effective the day following your termination of employment, or at the beginning of the next fiscal year, whichever comes first.

(3) You must repay any monthly pension payment that you receive in excess of the amounts allowed under this section.

(4) You may choose to return to membership if you are employed by a public education institution and are otherwise eligible. Membership will be prospective from the month in which you opt into membership.

(5) Defined terms used. Definitions for the following term used in this section may be found in the section listed.

Public educational institution: WAC 415-112-015.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.32 RCW. 02-18-046, § 415-112-541, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5), 41.04.270, 41.26.030, 41.32.010, 41.32.025, 41.32.480, 41.32.500, 41.32.570, 41.32.765, 41.32.795, 41.32.802, 41.32.855, 41.32.860, 41.32.862, 41.35.010, 41.35.030, 41.35.060, 41.35.450, 41.35.640, 41.40.010, 41.40.023, 41.40.037, 41.40.150, 41.40.193, 41.40.680, 41.40.750, 41.40.801. 02-02-060, § 415-112-541, filed 12/28/01, effective 1/1/02.]

**WAC 415-112-542 How will returning to work affect my TRS Plan 2 or Plan 3 monthly retirement allowance?** This section implements RCW 41.32.802 and 41.32.862, which limit employment for TRS Plan 2 or Plan 3 retirees employed in an eligible position to eight hundred sixty-seven hours per calendar year.

(1) You may return to any eligible position for up to eight hundred sixty-seven hours per calendar year without affecting your monthly retirement allowance.

(a) Your employer must notify the department when you return to work and report hours and compensation.

(b) Your monthly retirement benefit is suspended effective the day after the day in which you exceed the work limit, unless you are also a member of any Plan 1, in which case the Plan 1 limits will apply.

(c) Your monthly retirement benefit is reinstated at the beginning of the next calendar year or the first day of the month following your termination from employment whichever comes first.

(d) You may choose to return to membership if you are employed by a public school and are otherwise eligible. Membership will be prospective from the month in which you opt into membership.

(e) If you are a TRS Plan 2 or Plan 3 retiree working as a bona fide independent contractor as determined under WAC 415-02-110, you are not considered an employee and are not subject to the work limitations.

(f) If you are working as an on-call substitute teacher you are working in an ineligible position and not subject to the work limitations of RCW 41.32.802 and 41.32.862.

(2) You must repay any monthly pension payment that you receive in excess of the amounts allowed under this section.

(3) Defined terms used. Definitions for the following terms used in this section may be found in the sections listed.

(a) Eligible position: RCW 41.32.570 (2)(b).

(b) Substitute teacher: RCW 41.32.010(36).

[Statutory Authority: RCW 41.50.050(5), 41.04.270, 41.26.030, 41.32.010, 41.32.025, 41.32.480, 41.32.500, 41.32.570, 41.32.765, 41.32.795, 41.32.-

802, 41.32.855, 41.32.860, 41.32.862, 41.35.010, 41.35.030, 41.35.060, 41.35.450, 41.35.640, 41.40.010, 41.40.023, 41.40.037, 41.40.150, 41.40.-193, 41.40.680, 41.40.750, 41.40.801. 02-02-060, § 415-112-542, filed 12/28/01, effective 1/1/02.]

**WAC 415-112-550 Peace Corps volunteers not employed in public education.** In administering the provisions of RCW 41.32.570, retired teachers who serve as volunteers in the Peace Corps of the United States shall not be considered as employed in a public educational institution and shall, therefore, continue to receive pension payments while engaged as Peace Corps volunteers.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-550, filed 2/15/78. Formerly WAC 462-28-045.]

## DISABILITY BENEFITS

**WAC 415-112-600 Eligibility for temporary disability benefits.** A member of the teachers' retirement system shall be covered for benefits under the temporary disability program only while employed on a full-time basis. Full-time employment during one school year shall afford disability protection until the beginning of the regular school term of the following school year.

[Statutory Authority: RCW 41.50.050. 99-14-008, § 415-112-600, filed 6/24/99, effective 7/25/99. Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-600, filed 2/15/78. Formerly WAC 462-32-010.]

**WAC 415-112-610 Payment of temporary disability benefits due upon death of a member.** Any disability benefits which have accrued and are payable upon the death of a member who had applied for or who had qualified for a temporary disability allowance, shall be paid to the deceased member's designated beneficiary as recorded and filed with the department in connection with his application for temporary disability benefits, or to his estate.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-610, filed 2/15/78. Formerly WAC 462-32-020.]

**WAC 415-112-620 Date from which disability retirement allowances accrue.** (1) A member who qualifies directly for a disability retirement allowance without first qualifying for temporary disability benefits shall receive a retirement allowance to be effective in accordance with WAC 415-112-520 governing service retirement.

(2) If a member qualifies for a disability retirement allowance after having first qualified for temporary disability benefits, the effective date of his disability retirement allowance shall be the first of the month following termination of his temporary disability allowance, and shall otherwise be consistent with WAC 415-112-520 which governs service retirement.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-620, filed 2/15/78. Formerly WAC 462-32-050.]

**WAC 415-112-630 Employment of persons retired for disability.** The provisions of RCW 41.32.570 with regard to service in public education by a retired teacher shall apply equally to teachers retired for disability.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-630, filed 2/15/78. Formerly WAC 462-32-060.]

## SURVIVOR BENEFITS

**WAC 415-112-700 Determining dependency under RCW 41.32.520.** To qualify as a dependent of a deceased member under the authority of RCW 41.32.520 the individual must provide proof of the following conditions:

(1) The beneficiary must receive one-half or more of their financial support from the deceased member. Such support must have been continuous prior to death and in effect at the time of the member's death.

(2) The term "financial support" shall include the cost of food, clothing, shelter, education, medical and dental expenses, and other similar expenses.

[Statutory Authority: RCW 41.50.050. 99-14-008, § 415-112-700, filed 6/24/99, effective 7/25/99. Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-700, filed 2/15/78. Formerly WAC 462-36-010.]

**WAC 415-112-705 Designation of beneficiaries—Death benefit if a member dies before retirement.** (1) As a member, you have the right to designate a beneficiary or beneficiaries to receive a benefit in the event of your death while you are an active member. You may change your beneficiary designation at any time by filing a change of beneficiary form with the department.

(2) As a member you may name:

(a) An organization or person, including your unborn or later adopted children. Unborn or later adopted children will not be included unless you specifically designate them as beneficiaries on the form. You must state the date of birth for any living person you name as a beneficiary;

(b) Your estate;

(c) A trust in existence at the time of death. Before making distribution to any trust the department must receive:

(i) A copy of the trust document;

(ii) The name, address, telephone number of the current trustee; and

(iii) The tax identification number;

(d) A trust to be established under your last will.

(3) You may name contingent beneficiaries in addition to primary beneficiaries.

### Examples:

#### EXAMPLE ONE.

##### Facts

John, a member, completes a beneficiary designation form.

In the place on the form reserved for persons, he names his daughter Ann. He checks the box to indicate that Ann is a primary beneficiary.

In the place on the form reserved for trust/organizational beneficiaries, he lists the "Barbara Trust." His daughter Barbara is the trust beneficiary. He checks the box to indicate that the trust is a primary beneficiary.

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## Result

Subject to applicable statute, at John's death, the department will consider both the Barbara Trust and daughter Ann as primary beneficiaries. The department will require the name of the trustee, the tax identification number, a copy of the trust and other information specified in this rule before distribution to the trust.

### EXAMPLE TWO.

##### Facts

John, a member, completes a beneficiary designation form.

In the place on the form reserved for persons, he names his daughter Ann. He checks the box to indicate that Ann is a primary beneficiary.

In the place on the form reserved for trust/organizational beneficiaries, he lists his daughter Barbara personally (no trust name is provided). He checks the box labeled "primary beneficiary." John misunderstands the form and rather than provide the names of the trustee or trust administrator, John writes the word "both" in the blank provided.

## Result

At John's death, the department learns that John has created no trusts. Subject to existing statute, if the department receives no notice of competing claims to John's death benefit, the department will distribute the death benefit to Ann. If the department receives notice of competing claims, a court resolution may be required.

[Statutory Authority: RCW 41.50.050. 00-10-015, § 415-112-705, filed 4/21/00, effective 5/22/00.]

**WAC 415-112-710 When are survivor benefits payable?** (1) If there is a named beneficiary, monthly survivor benefits under RCW 41.32.520(1) are payable on the later of the following two dates:

(a) The day after the member's death; or

(b) The beneficiary's fiftieth birthday.

(2) If there is no named beneficiary, the survivor retirement allowance under RCW 41.32.520(2) is payable on:

(a) July 1st of the first fiscal year after the member's death if the deceased established a full year of service credit for their final year of service; or

(b) The day after the death of a member eligible for retirement.

In all cases the rate of the annuity benefit will be computed as of the day after the member's death.

[Statutory Authority: RCW 41.50.050. 99-14-008, § 415-112-710, filed 6/24/99, effective 7/25/99. Statutory Authority: RCW 41.50.050(6) and 41.50.090. 78-03-023 (Order IV), § 415-112-710, filed 2/15/78. Formerly WAC 462-36-020.]

**WAC 415-112-725 Married member's benefit selection—Spousal consent required.** (1) If married, you must provide your spouse's written consent to the option you selected under WAC 415-112-727. If, as a married member you do not provide spousal consent, the department will pay you, as a retiree, a joint and one-half survivor benefit allow-

ance and record your spouse as the survivor, in compliance with RCW 41.32.530(2), 41.32.785(2), and 41.32.851(2).

(2) The department will comply with a dissolution order, consistent with the terms of RCW 41.50.790, that requires it to pay an ex-spouse of a Plan 1 or Plan 2 member, whether or not the member's spouse has consented.

(3) "Spousal consent" means that your spouse consents to the retirement option selected by you. Your spouse's notarized signature on a completed retirement application constitutes spousal consent.

[Statutory Authority: RCW 41.50.050(5), 41.32.530(2), 41.32.785(2), 41.32.851(2). 02-03-120, § 415-112-725, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050. 99-14-008, § 415-112-725, filed 6/24/99, effective 7/25/99. Statutory Authority: RCW 2.10.146, 41.26.460, 41.32.530, 41.50.050, 41.32.785, 41.40.188 and 41.40.660. 96-01-047, § 415-112-725, filed 12/14/95, effective 1/14/96. Statutory Authority: RCW 34.05.050 and 1990 c 249. 91-03-016, § 415-112-725, filed 1/7/91, effective 2/7/91.]

**WAC 415-112-727 Retirement benefit options.** RCW 41.32.530 (Plan 1), RCW 41.32.785 (Plan 2) and RCW 41.32.851 (Plan 3) enable the department to provide retiring members with four retirement benefit options for receipt of the defined benefit portion of their retirement benefits. In addition, retiring Plan 1 members may select the COLA (cost-of-living adjustment) option. The retiring member must choose an option(s) when applying for service or disability retirement.

**(1) Option One: Benefit options without survivor feature (standard allowance).**

(a) Maximum benefit allowance. Plan 1 retirees may elect to receive the maximum benefit possible which is based on a single life annuity. The maximum benefit allowance does not include a survivor allowance or beneficiary payment. When the retiree dies, all benefits cease. Any remaining balance in employee contributions is retained by the retirement fund.

(b) Option One (standard allowance). The department pays a monthly retirement allowance based on a reduced single life annuity of the member, as provided in RCW 41.32.480 (Plan 1 - Service), RCW 41.32.550 (Plan 1 - Disability), RCW 41.32.765 (Plan 2 - Service), RCW 41.32.790 (Plan 2 - Disability), RCW 41.32.875 (Plan 3 - Service), or RCW 41.32.880 (Plan 3 - Disability). When the retiree dies, all benefits cease. Any remaining balance of the member's accumulated contributions will be paid to:

(i) Such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(ii) If there is no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or

(iii) The member's estate; or

(iv) If there is neither such designated person nor persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

**(2) Benefit options with a survivor feature.**

(a) A retiring member is allowed to select from several retirement options which create an actuarially equivalent benefit that includes a survivor feature. The survivor feature entitles the survivor to receive a monthly allowance after the

retiree dies. If the member chooses one of the survivor options, the monthly benefit the member will receive is actuarially reduced to offset the cost of the survivor feature. After the retiree dies, the department pays the survivor an allowance for the duration of his or her life. If the retiree and the survivor both die before the retiree's accumulated contributions are exhausted, all benefits cease. Any remaining balance will be paid to:

(i) Such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(ii) If there is no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or

(iii) The member's estate; or

(iv) If there is neither such designated person nor persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(b) Option Two (joint and whole allowance). When the retiree dies, the department pays the survivor a retirement allowance equal to the gross monthly allowance received by the retiree.

(c) Option Three (joint and one-half allowance). When the retiree dies, the department pays the survivor an allowance equal to one-half of the retiree's gross monthly retirement allowance.

(d) Option Four (joint and two-thirds allowance).

(i) Option Four is available to members retiring on or after January 1, 1996.

(ii) When the retiree dies, the department pays the survivor an allowance equal to two-thirds (66.667%) of the retiree's gross monthly retirement benefit allowance.

(3) If a member retires on or after June 6, 1996, the department is required to pay an ex-spouse survivor benefits pursuant to a marital dissolution order that complies with RCW 41.50.790.

**(4) Supplemental COLA option for Plan 1 members.**

Retiring Plan 1 members may select an annual cost-of-living adjustment (COLA) option in addition to their choice of retirement benefit options listed above in subsections (1) and (2) of this section. Retiring members who choose this supplemental option will have their monthly retirement allowance actuarially reduced to offset the cost of annual adjustment.

**(5) Benefit increases when survivor predeceases retiree (pop-up provision).**

(a) This subsection applies to members retiring on or after January 1, 1996, who select Option Two, Three, or Four.

(b) Plan 1 members. If the survivor dies before the retiree, the retiree's monthly retirement allowance increases, effective the first day of the following month, to:

(i) The amount that would have been received had the retiree chosen the maximum benefit;

(ii) Minus any reduction in the maximum allowance resulting from a withdrawal of contributions;

(iii) Plus any cost-of-living adjustments the retiree received prior to the survivor's death based on the original option selection.

(c) Plan 2 and Plan 3 members. If the survivor dies before the retiree, the retiree's monthly retirement allowance increases, effective the first day of the following month, to:

(i) The amount that would have been received had the retiree chosen the standard allowance; plus

**Plan One:**

Lucinda retires from TRS Plan 1 in 1996 (Year 0) with \$55,000 in accumulated contributions. As a TRS 1 member she is allowed to withdraw some or all of her contributions when she retires. She decides to withdraw \$5,000 so she and Garth, her husband, can take a cruise. This will actuarially reduce Lucinda's maximum benefit from \$2,000 per month to \$1,963.86. Lucinda would also like her husband Garth to receive a monthly allowance after she dies. Therefore, Lucinda chooses one of the benefit options with a survivor feature. As a result, her monthly allowance is further actuarially reduced from \$1,963.86 to \$1,846.03. Unfortunately, Garth dies in January 2001 (Year 5). Under the "pop-up" provision, Lucinda's monthly benefit will increase to \$1,963.86, the amount she would have received had she chosen the maximum benefit (after reduction for her withdrawals). If Lucinda selected the COLA option or if she has otherwise become eligible for a COLA, the accumulated COLAs (based on the prior benefit allowance) will be added to the \$1,963.86\*.

**Plan Two:**

Agnes retires from TRS Plan 2 in 1996 (Year 0). She would like Beatrice, her daughter, to receive a monthly allowance after Agnes dies. Therefore, Agnes selects a retirement benefit option with a survivor feature. As a result her monthly allowance is reduced from \$2,000 (standard allowance) to \$1,750. Unfortunately, Beatrice dies in January 2001 (Year 5). Under the "pop-up" provision, Agnes' monthly benefit will increase to the amount she would have received had she chosen Option One (standard allowance) plus her accumulated COLA's:

Year	Option One (Standard Allowance)	Survivor Option (2,3,4) plus COLAs	COLA incr. (3% max)	\$ Increase
0 (1996)	2,000.00	1,750.00	(inelig.)	0.00
1 (1997)		1,750.00	.02	35.00
2 (1998)		1,785.00	.03	53.55
3 (1999)		1,838.55	.025	45.96
4 (2000)		1,884.51	.03	56.54
5 (2001)	2,000.00	1,941.05	—	—
Total COLA's				191.05
Original Option One Benefit Amount \$2000		+ Total COLA's	= New Benefit Amount	
		+ \$191.05	= \$2,191.05*	

\*In the future (i.e., 2001 or Year 5), COLAs will be based on the increased benefit amount.

(e) If the survivor dies and the retiree's benefit increases under this subsection, and thereafter the retiree also dies before all accumulated contributions are exhausted, all benefits cease. Any remaining balance of the member's accumulated contributions will be paid to:

(i) Such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(ii) If there is no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or

(iii) The member's estate; or

(iv) If there is neither such designated person nor persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(6) Any retiree who retired before January 1, 1996, and who elected to receive a reduced retirement allowance under subsection (2) of this section is entitled to receive a retirement allowance adjustment if the retiree meets the following conditions:

(a) The retiree's designated beneficiary predeceases or has predeceased the retiree; and

(ii) Any cost-of-living adjustments the retiree received prior to the survivor's death based on the original option selection.

(d) Pop-up recalculation example.

(b) The retiree provides the department proper proof of the designated beneficiary's death. The retiree is not required to apply for the increased benefit provided in this subsection.

The adjusted retirement allowance will be effective on July 1, 1998, or the first day of the month following the date of death of the designated beneficiary, whichever comes last. The adjustment is computed as described in RCW 41.32.530 (3)(c) for Plan 1 retirees or RCW 41.32.785 (3)(c) for Plan 2 retirees.

(7) **Survivor.** For the purposes of this provision, "survivor" means a person nominated by the member to receive a monthly benefit allowance after the member dies. A member nominates the survivor at the time of retirement by filing a completed and notarized form provided by the department.

**(8) Postretirement benefit options.**

(a) **Postretirement marriage option.** Members who select the maximum option (Plan 1 only) or the standard allowance (Option One) at the time of retirement and marry after retirement may subsequently select a survivor option with their new spouse as survivor beneficiary, provided that:

(i) The retiree's monthly benefit is not subject to a property settlement agreement from a court decree of dissolution or legal separation;

(ii) The selection is made either:

(A) During a one year window, on or after the date of the first anniversary and before the second anniversary of the postretirement marriage; or

(B) Before June 1, 2002, if the postretirement marriage occurred before June 1, 2001;

(iii) The retiree provides a marriage certificate as proof of the postretirement marriage and provides proof of the birthdate of the new spouse; and

(iv) A member may exercise this option one time only.

(b) **Removal of a nonspouse survivor option.** Members who selected a nonspouse as survivor beneficiary at the time of retirement may remove that survivor designation and have the benefit adjusted to a standard allowance. A member may exercise this option one time only.

(c) Selection (a) or (b) of this subsection will become effective the first of the month following the department's receipt of the required paperwork.

[Statutory Authority: RCW 41.50.050(5), 41.26.460, 41.32.530, 41.32.785, 41.32.851, 41.35.220, 41.40.188, 41.40.660, 41.40.845. 01-10-045, § 415-112-727, filed 4/26/01, effective 6/1/01. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-112-727, filed 12/12/00, effective 1/12/01. Statutory Authority: RCW 41.50.050. 99-14-008, § 415-112-727, filed 6/24/99, effective 7/25/99. Statutory Authority: RCW 2.10.146, 41.26.460, 41.32.530, 41.50.050, 41.32.785, 41.40.188 and 41.40.660. 96-01-047, § 415-112-727, filed 12/14/95, effective 1/14/96. Statutory Authority: RCW 34.05.050 and 1990 c 249. 91-03-016, § 415-112-727, filed 1/7/91, effective 2/7/91.]

**WAC 415-112-800 Scope.** WAC 415-112-800 through 415-112-820 govern the application of RCW 41.32.010 (10)(a)(ii), as amended by section 1, chapter 265, Laws of 1987 and by section 2, chapter 265, Laws of 1987, and shall apply only to persons who became members prior to October 1, 1977.

[Statutory Authority: RCW 41.50.050. 99-14-008, § 415-112-800, filed 6/24/99, effective 7/25/99. Statutory Authority: Chapter 41.32 RCW as amended by 1987 c 265. 87-20-082 (Order 87-09), § 415-112-800, filed 10/7/87.]

**WAC 415-112-810 Bona fide employee.** The purpose of WAC 415-112-800 through 415-112-830 is to implement the intent of the legislature that section 2, chapter 265, Laws of 1987 not be used to unfairly inflate a member's retirement allowance. The department shall apply section 2, chapter 265, Laws of 1987 only to members who are bona fide part-time employees. A member will be deemed a bona fide part-time employee only if the member has received less than one year of service credit and only as necessary to ensure that a member who receives fractional years of service credit receives benefits proportional to those received by members who have received full time service credit.

[Statutory Authority: RCW 41.32.345 and 41.50.050. 93-20-021, § 415-112-810, filed 9/24/93, effective 10/25/93. Statutory Authority: Chapter 41.32 RCW as amended by 1987 c 265. 87-20-082 (Order 87-09), § 415-112-810, filed 10/7/87.]

#### **WAC 415-112-820 Bona fide part-time position—**

**How determined.** (1) In order for a Plan I member to be considered a bona fide part-time employee for two consecutive fiscal years and to elect to have his or her earnable compensation adjusted under RCW 41.32.345, the Plan I member

must be employed for each of the two consecutive fiscal years:

(a) Under contract for an entire school year if the member is employed by a school district, or an educational service district;

(b) Under contract during three academic quarters of a fiscal year if the member is employed by an institution of higher education, the state school for the deaf or the state school for the blind;

(c) By one or more employers for at least twenty days but less than one hundred forty-four days during the fiscal year;

(d) In an instructional position, which is a position in which more than seventy-five percent of the member's time, including office hours, is spent as a classroom instructor, a librarian, or a counselor.

(2) In addition to the factors listed in subsection (1) of this section, in the case of a member who elects to have earnable compensation defined as provided in section 2, chapter 265, Laws of 1987, the department will determine whether the member held a bona fide part-time position during the years used to compute benefits, and what earnable compensation the member would have received if employed on a regular full-time basis in the same position under section 2, chapter 265, Laws of 1987. The department may consider, but not be limited to considering, the following factors:

(a) The salary schedule and related workload provisions, if any, adopted pursuant to RCW 28A.405.200 by the school district by which the member was employed;

(b) The salary schedule, workload provisions, or related documents, used by the community college district by which the member was employed, including salary schedules or workload provisions contained in a collective bargaining agreement negotiated pursuant to chapter 28B.52 RCW;

(c) Whether the member's position is included on the employing district's salary schedule, in workload provisions, or in a collective bargaining agreement, and whether the member's position has duties, responsibilities, workload requirements, or methods of pay similar to those of positions found in the district's schedule, provisions, or collective bargaining agreement;

(d) When the member's position was created, and how long the position was held by the member;

(e) Whether the member has previously retired under the provisions of chapter 41.32 RCW.

(3) Upon the department's request, employers shall provide to the department information addressing the factors listed in subsection (1) of this section and such further information as the department may request.

(4) If a member is employed by more than one employer, all of the member's employment will be combined for purposes of determining whether the member has met the criteria of subsection (1) of this section.

[Statutory Authority: RCW 41.32.345 and 41.50.050. 93-20-021, § 415-112-820, filed 9/24/93, effective 10/25/93. Statutory Authority: Chapter 41.32 RCW as amended by 1987 c 265. 87-20-082 (Order 87-09), § 415-112-820, filed 10/7/87.]

**WAC 415-112-830 Adjusting earnable compensation earned in a bona fide part-time position.** The department will use the following method to determine earnable compen-

sation for members of Plan I employed in a bona fide part-time positions as determined under WAC 415-112-820, who elect to have their earnable compensation determined under RCW 41.32.345. The purpose of the calculation is to determine what a member would have earned in his or her position if employed on a regular full-time basis for the same contract period under their same classification.

(1) The member's employer or employers will provide written verification of the following:

(a) The number of hours in a full school day for the member's employer. In the absence of an indication in employment contracts or elsewhere concerning what constitutes one day of employment, the department will designate seven hours as the length of a school day;

(b) The number of work days in a school year under a regular full-time contract. As provided in RCW 41.32.345 (3)(a), only work days identified in contracts adopted pursuant to RCW 28A.405.200 shall be counted under this subsection. Days worked pursuant to supplemental contracts authorized by RCW 28A.405.240 and 28A.400.200(4) are not considered days required under a regular full-time contract;

(c) The number of hours in a school year ((a) of this subsection multiplied by (b) of this subsection).

(d) If a bona fide part-time employee was employed by more than one employer during the school year in question, the department will average the number of hours in a full school day and the number of school days in a year in order to determine the average number of hours in a school year for purposes of applying this section.

(2) The member's employer will provide the following written information regarding the bona fide part-time employment of the Plan I member during each of the two consecutive years for which the member elects to have his or her compensation adjusted under RCW 41.32.345:

(a) Total hours worked by the employee under all employment contracts;

(b) Total earnable compensation earned under all employment contracts entered into by the employee;

(c) If applicable, the percent or portion of a full-time contract worked by the employee; and

(d) Net average hourly wage earned by the employee ((b) of this subsection divided by (a) of this subsection).

(3) To determine the member's adjusted earnable compensation under RCW 41.32.345 the department will multiply the member's average hourly wage as determined in subsection (2) of this section by the number of hours in a school year as determined by subsection (1) of this section. The product equals the compensation the member would have received in the same position if employed on a regular full-time basis for the same contract period.

[Statutory Authority: RCW 41.32.345 and 41.50.050. 93-20-021, § 415-112-830, filed 9/24/93, effective 10/25/93.]

**WAC 415-112-840 Actuarial recomputation of retirement allowance upon retirement following reemployment.** (1) The purpose of this rule is to establish a method to actuarially recompute the retirement allowance of a Plan II member who retires, reenters employment causing his or her retirement allowance to be suspended, and then

retires again. The actuarially recomputed retirement allowance shall:

(a) Include service credit the member earned following reestablishment of membership if any; and

(b) Account for the actuarial reduction applied to the member's initial retirement if the member initially retired prior to age sixty-five.

(2) If a Plan II retiree reenters membership, upon the individual's next retirement, the department shall reinstate and actuarially recompute the individual's retirement allowance pursuant to RCW 41.32.800 as follows:

(a) If the member first retired before age sixty-five, the department shall:

(i) Calculate the retirement allowance pursuant to RCW 41.32.760 using the retiree's total years of career service, including service earned prior to initial retirement and service earned after reentering membership;

(ii) Actuarially reduce the member's retirement allowance based on the present value of the retirement allowance payments the individual received during the initial retirement; and

(iii) Calculate any survivor option selected by the retiree based upon the monthly retirement allowance calculated pursuant to (a)(i) and (ii) of this subsection.

(b) If the member initially retired at or after age sixty-five, the department shall recompute the member's retirement allowance pursuant to RCW 41.32.800 and include any additional service credit earned and any applicable increase in the member's average final compensation resulting from the member's reentry into membership. Under no circumstances shall a retiree receive a retirement allowance creditable to a month during which that individual earned service credit.

(3) If a retiree's retirement allowance is suspended under RCW 41.32.800 due to reemployment but the retiree does not reenter membership, upon the retiree's separation from such employment, the retiree shall receive an actuarially recomputed retirement allowance equal to the sum of:

(a) The amount of the monthly suspended retirement allowance; plus

(b) An actuarially computed increase based upon the retirement allowance payments the member did not receive due to reemployment. The retiree may elect to receive the actuarially computed increase in either:

(i) An amount amortized over the expected term of the recomputed retirement allowance; or

(ii) A lump sum payment equal to the suspended retirement allowance plus interest.

[Statutory Authority: RCW 41.50.050. 94-09-040, § 415-112-840, filed 4/19/94, effective 5/20/94.]

**WAC 415-112-850 Interim retirement allowance—Employer final compensation report—Final computation of retirement allowance—Adjustment of retirement allowance for errors.** (1) At the time of a member's application for retirement, the department does not have all information necessary to make a final computation of the member's retirement allowance. Based upon estimates of the retiree's compensation and earned service credit through the date of retirement, the department shall compute an interim retirement allowance made payable to the member in the interim

between the member's date of retirement and the department's final computation of the member's retirement allowance. The interim retirement allowance is an initial, estimated computation of the retiree's retirement allowance subject to adjustment by the department based upon subsequent review of information provided by the member's employer.

(2) In computing the interim retirement allowance, the department shall, subject to later correction, consider both the amount of salary projected by the member for periods of employment through the date of the member's retirement and the amount of salary as previously reported by the employer.

(3) Every employer of a member who applies for retirement shall provide the department with a final compensation report for that member. The report shall be completed on a form provided or approved by the department.

(4) Following the department's computation of the interim benefit and receipt of the employer final compensation report, the department shall complete a final computation of the member's retirement allowance. In computing the final computation of the member's retirement allowance, the department may also require the employer to provide the department with leave cash out information for Plan I retirees, earnings history, and copies of the employment contract or contracts and employer compensation policies. The department's final computation may either increase or decrease the amount of the interim retirement allowance computed pursuant to subsection (1) of this section.

(5) Pursuant to RCW 41.50.130, following the department's final computation of the member's retirement allowance as provided in subsection (4) of this section, the department may subsequently adjust a member's retirement allowance to correct any error in retirement system records. For purposes of this subsection, errors in retirement system records include, but are not limited to, the following:

(a) Applying an incorrect retirement allowance formula in computing the retirement allowance;

(b) Including service that is not creditable to the member;

(c) Including payments that do not constitute earnable compensation to a member in the member's retirement allowance computation, or excluding earnable compensation not reported by an employer;

(d) Benefit overpayments and underpayments;

(e) Including an individual in the membership of the retirement system who is not entitled to such membership.

[Statutory Authority: RCW 41.50.050 and Bowles v. Retirement Systems, 121 Wn.2d 52 (1993). 94-11-009, § 415-112-850, filed 5/5/94, effective 6/5/94.]

**WAC 415-112-920 TRS Plan 3 defined benefit retirement eligibility.** (1) Definition: Qualified service credit. Members may use only qualified service credit to receive a retirement benefit from the TRS Plan 3 defined benefit plan. The following types of service credit may be used to qualify for retirement:

(a) TRS Plan 3 service credit;

(b) Service credit earned in a dual member system, but only in combination with TRS Plan 3 service credit under chapter 41.54 RCW;

(c) Up to forty-five days of sick leave under RCW 41.32.010;

(d) Service earned in an out-of-state retirement system that covers public school teachers under RCW 41.32.065.

(2) Members must be age sixty-five to retire with an unreduced defined benefit if they have earned the following amounts of qualified service credit:

(a) Ten service credit years; or

(b) Five service credit years which must include twelve service credit months after attaining age fifty-four; or

(c) Five service credit years by July 1, 1996, earned as a TRS Plan 2 member.

(3) Members may retire at age fifty-five with an actuarially reduced defined benefit under RCW 41.32.875 if they have accumulated at least ten years of qualified service credit.

(4) TRS Plan 3 retirement application.

A member must:

(a) Meet the above-stated age and service credit requirements; and

(b) Submit a complete, signed and notarized TRS Plan 3 retirement application; and

(c) Terminate employment with all retirement system employers from which they are claiming service credit. Termination from non-TRS system employers is required if a member is using dual membership rules to qualify for retirement under chapter 41.54 RCW.

[Statutory Authority: RCW 41.50.050. 00-10-015, § 415-112-920, filed 4/21/00, effective 5/22/00.]

## Chapter 415-113 WAC PORTABILITY OF PUBLIC EMPLOYMENT BENEFITS

### WAC

415-113-005

Purpose and scope.

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415-113-030 Definitions for purposes of chapter 415-113 WAC.

### ELIGIBILITY FOR DUAL MEMBER BENEFITS

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415-113-010

Background and purpose. [Statutory Authority: RCW 34.05.350 and 1990 c 192 § 5(4). 90-22-038, § 415-113-010, filed 11/1/90, effective 12/2/90.] Repealed by 95-

	03-001, filed 1/4/95, effective 2/4/95. Statutory Authority: RCW 41.50.050.
415-113-020	Authority to assess costs of portability. [Statutory Authority: RCW 34.05.350 and 1990 c 192 § 5(4). 90-22-038, § 415-113-020, filed 11/1/90, effective 12/2/90.] Repealed by 95-03-001, filed 1/4/95, effective 2/4/95. Statutory Authority: RCW 41.50.050.
415-113-0301	Accumulated contributions—Definition. [Statutory Authority: RCW 41.50.050, 95-03-001, § 415-113-0301, filed 1/4/95, effective 2/4/95.] Repealed by 02-18-046, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and chapter 41.54 RCW.
415-113-0302	Average compensation—Definition. [Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-113-0302, filed 12/12/00, effective 1/12/01. Statutory Authority: RCW 41.50.050, 99-22-043, § 415-113-0302, filed 10/29/99, effective 11/29/99; 95-03-001, § 415-113-0302, filed 1/4/95, effective 2/4/95.] Repealed by 02-18-046, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and chapter 41.54 RCW.
415-113-0303	Dual member system—Definition and system acronyms. [Statutory Authority: RCW 41.50.050(5) and 41.54.010. 02-03-120, § 415-113-0303, filed 1/23/02, effective 3/1/02. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-113-0303, filed 12/12/00, effective 1/12/01. Statutory Authority: RCW 41.50.050, 99-22-043, § 415-113-0303, filed 10/29/99, effective 11/29/99; 95-03-001, § 415-113-0303, filed 1/4/95, effective 2/4/95.] Repealed by 02-18-046, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and chapter 41.54 RCW.
415-113-0304	First class city retirement systems—Definition. [Statutory Authority: RCW 41.50.050, 95-03-001, § 415-113-0304, filed 1/4/95, effective 2/4/95.] Repealed by 02-18-046, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and chapter 41.54 RCW.
415-113-0305	Member participant—Definition. [Statutory Authority: RCW 41.50.050, 99-22-043, § 415-113-0305, filed 10/29/99, effective 11/29/99; 95-03-001, § 415-113-0305, filed 1/4/95, effective 2/4/95.] Repealed by 02-18-046, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and chapter 41.54 RCW.
415-113-0306	Multiple system benefit—Definition. [Statutory Authority: RCW 41.50.050, 96-20-004, § 415-113-0306, filed 9/19/96, effective 10/20/96; 95-03-001, § 415-113-0306, filed 1/4/95, effective 2/4/95.] Repealed by 02-18-046, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and chapter 41.54 RCW.
415-113-0307	Multiple system participant—Definition. [Statutory Authority: RCW 41.50.050, 95-03-001, § 415-113-0307, filed 1/4/95, effective 2/4/95.] Repealed by 02-18-046, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and chapter 41.54 RCW.
415-113-0308	Multiple system retiree—Definition. [Statutory Authority: RCW 41.50.050, 95-03-001, § 415-113-0308, filed 1/4/95, effective 2/4/95.] Repealed by 02-18-046, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and chapter 41.54 RCW.
415-113-0309	Nonmember participant—Definition. [Statutory Authority: RCW 41.50.050, 99-22-043, § 415-113-0309, filed 10/29/99, effective 11/29/99; 95-03-001, § 415-113-0309, filed 1/4/95, effective 2/4/95.] Repealed by 02-18-046, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and chapter 41.54 RCW.
415-113-0310	System acronyms—Definition. [Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-113-0310, filed 12/12/00, effective 1/12/01. Statutory Authority: RCW 41.50.050, 99-22-043, § 415-113-0310, filed 10/29/99, effective 11/29/99; 95-03-001, § 415-113-0310, filed 1/4/95, effective 2/4/95.] Repealed by 02-03-120, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050(5).
415-113-040	Additional costs. [Statutory Authority: RCW 34.05.350 and 1990 c 192 § 5(4). 90-22-038, § 415-113-040, filed 11/1/90, effective 12/2/90.] Repealed by 95-03-001, filed 1/4/95, effective 2/4/95. Statutory Authority: RCW 41.50.050.
415-113-050	Election to participate. [Statutory Authority: RCW 34.05.350 and 1990 c 192 § 5(4). 90-22-038, § 415-113-050, filed 11/1/90, effective 12/2/90.] Repealed by 95-03-001, filed 1/4/95, effective 2/4/95. Statutory Authority: RCW 41.50.050.

415-113-060 Reimbursement of additional costs. [Statutory Authority: RCW 34.05.350 and 1990 c 192 § 5(4). 90-22-038, § 415-113-060, filed 11/1/90, effective 12/2/90.] Repealed by 95-03-001, filed 1/4/95, effective 2/4/95. Statutory Authority: RCW 41.50.050.

#### WAC 415-113-005 Purpose and scope. (1) Purpose.

The rules adopted in this chapter further define and clarify the application of the portability statutes, chapter 41.54 RCW. Chapter 41.54 RCW allows:

(a) Service in dual member systems to be combined to determine service retirement eligibility; and

(b) Compensation earned in one dual member system to be used to calculate a retirement allowance in another designated system.

(2) Scope. This chapter shall apply to the retirement systems listed in RCW 41.50.030, except for LEOFF Plan 1. This chapter must be read to be consistent with the statutory provisions of chapter 41.54 RCW and the statutory provisions governing the dual member systems. These rules may be used by the first class city retirement systems but do not mandatorily apply to them. These rules do apply to all dual member benefits calculated and paid by the department, even if one of the member's systems is a first class city retirement system.

[Statutory Authority: RCW 41.50.050, 99-22-043, § 415-113-005, filed 10/29/99, effective 11/29/99; 95-03-001, § 415-113-005, filed 1/4/95, effective 2/4/95.]

## DEFINITIONS

**WAC 415-113-030 Definitions for purposes of chapter 415-113 WAC.** (1) All definitions in RCW 41.54.010 and WAC 415-02-030 apply to terms used in this chapter. Other terms relevant to the administration of chapter 41.54 RCW are defined in this chapter.

(2) **Average compensation** means the compensation used by a particular retirement system to calculate a dual member's service retirement allowance. The actual meaning of the term varies depending upon the retirement system. With respect to each dual member system, "average compensation" means:

(a) **First class city retirement systems:** Final compensation as defined in RCW 41.28.010;

(b) **LEOFF Plan 2:** Final average salary as defined in RCW 41.26.030 (12)(b);

(c) **PERS:** Average final compensation as defined in RCW 41.40.010(17);

(d) **SERS:** Average final compensation as defined in RCW 41.35.010(14);

(e) **Statewide cities retirement systems:** Final compensation as defined in 41.44.030(14).

(f) **TRS:**

(i) Plan 1: Average earnable compensation as defined in RCW 41.32.497 and 41.32.498;

(ii) Plans 2 and 3: Average final compensation as defined in RCW 41.32.010(30); and

(g) **WSPRS:** Average final salary as defined in RCW 43.43.120(15).

(3) **Dual member system** refers to the state and city retirement systems admitted to participate under chapter 41.54 RCW. These systems include:

(a) First class city retirement systems of Seattle, Tacoma and Spokane;

(b) Law enforcement officers' and fire fighters' retirement system (LEOFF) Plan 2;

(c) Public employees' retirement system (PERS) Plans 1, 2 and 3;

(d) School employees' retirement system (SERS) Plans 2 and 3;

(e) Statewide cities employees' retirement system (SCERS);

(f) Teachers' retirement system (TRS) Plans 1, 2 and 3; and

(g) Washington state patrol retirement system (WSPRS) Plans 1 and 2.

(4) **First class city retirement systems** means the retirement systems for the non-LEOFF member employees of the cities of Seattle, Spokane and Tacoma authorized by chapter 41.28 RCW.

**(5) Member participant.**

(a) For all dual member systems administered by the department other than TRS Plan 1, "member participant" means a person who is employed for compensation in a dual member system qualifying position and is admitted into the membership of the system.

(b) For TRS Plan 1, "member participant" includes persons meeting the definition of (a) of this subsection and also includes members who are not employed for compensation but have accumulated contributions standing to their credit with TRS.

(c) This definition may not apply to first class city systems. See RCW 41.54.061 and WAC 415-113-005. If you have a question, you should contact the appropriate first class city system.

(6) **Multiple system benefit** means retirement allowances from two or more dual member systems calculated under chapter 41.54 RCW.

(7) **Multiple system participant** means a person who is a participant in two or more dual member systems.

(8) **Multiple system retiree** means a person who chooses to retire under the provisions of chapter 41.54 RCW.

(9)(a) **Nonmember participant** means a person who is no longer employed in a dual member system qualifying position but has not withdrawn his or her accumulated employee contributions.

(b) This definition does not apply to TRS Plan 1. A TRS Plan 1 member who meets the criteria of (a) of this subsection is a member participant.

(c) This subsection applies only to the retirement systems listed in RCW 41.50.030.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.54 RCW. 02-18-046, § 415-113-030, filed 8/28/02, effective 9/30/02. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-113-030, filed 12/12/00, effective 1/12/01. Statutory Authority: RCW 41.50.050. 95-03-001, § 415-113-030, filed 1/4/95, effective 2/4/95. Statutory Authority: RCW 34.05.350 and 1990 c 192 § 5(4). 90-22-038, § 415-113-030, filed 11/1/90, effective 12/2/90.]

## ELIGIBILITY FOR DUAL MEMBER BENEFITS

**WAC 415-113-041 Am I a dual member?** You must meet all of the following criteria to be a dual member:

(1) **You must be a participating member of a dual member system.** You must be a current member participant in at least one of the systems listed in WAC 415-113-030 to be a dual member. You may have established dual member status if you are or were a member participant in one of those systems on or after:

(a) July 1, 1988, for current or former members of all plans of PERS, SERS, TRS, SCERS or WSPRS;

(b) July 25, 1993, for current or former members of LEOFF Plan 2; or

(c) January 1, 1994, for current or former members of a first class city retirement system;

(2) **You must also be a former or current member of at least one other system listed in WAC 415-113-030.**

(3) **You must not have been retired for service from a retirement system.** You are not a dual member if you have ever been retired for service from any retirement system administered by the department of retirement systems or a first class city retirement system.

(4) If you are receiving a disability retirement allowance or disability leave benefits from a dual member system or LEOFF Plan 1, you cannot be a dual member.

(a) If you have received a lump sum disability benefit from PERS Plan 2 or 3, SERS Plan 2 or 3, TRS Plan 2 or 3 or LEOFF Plan 2 you are in receipt of a disability benefit unless the department has found that you are no longer disabled.

(b) You are not receiving a disability retirement allowance or disability leave benefits if you:

(i) Previously received disability benefits and the department has subsequently found that you are no longer disabled, and has terminated your disability benefit; or

(ii) Retired for disability from service from WSPRS Plan 1 or 2.

**Example 1:** A former PERS Plan 1 member who has never been retired and becomes a member participant in TRS Plan 2 through employment with a TRS employer becomes a dual member.

**(5) Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Dual member" - RCW 41.54.010(4).

(b) "Dual member system" - WAC 415-113-030.

(c) "Member participant" - WAC 415-113-030.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.54 RCW. 02-18-046, § 415-113-041, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5), 41.54.010, 41.54.061. 02-03-120, § 415-113-041, filed 1/23/02, effective 3/1/02. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-113-041, filed 12/12/00, effective 1/12/01. Statutory Authority: RCW 41.50.050. 99-22-043, § 415-113-041, filed 10/29/99, effective 11/29/99; 95-03-001, § 415-113-041, filed 1/4/95, effective 2/4/95.]

**WAC 415-113-042 What can terminate my status as a dual member?** (1) If you terminate your status as a participating member, you also terminate your status as a dual member. If you are no longer a member participant in

any dual member system, you are no longer a dual member. If you later become a member of a dual member system, you again become a dual member.

**Example 2:** Upon separation from TRS Plan 2 eligible employment, the person in Example 1 (see WAC 415-113-041) is no longer a member of TRS Plan 2 nor a dual member.

(2) **If you retire, you are no longer a dual member.** When you retire from any or all dual member systems, you are no longer a dual member except for the purpose of receiving a deferred retirement allowance under RCW 41.54.030(3) and WAC 415-113-070.

(3) **If you terminate dual membership, you may still be eligible to receive a multiple system benefit if otherwise eligible.** The accrual date of your retirement allowance will vary depending upon the provisions of the particular system. You can find the accrual dates of different dual member systems in the following provisions:

- (a) LEOFF 2: RCW 41.26.490;
- (b) PERS 1: RCW 41.40.193;
- (c) PERS 2: RCW 41.40.680;
- (d) PERS 3: RCW 41.40.801;
- (e) SERS 2: RCW 41.35.450;
- (f) SERS 3: RCW 41.35.640;
- (g) TRS 1: WAC 415-112-520;
- (h) TRS 2: RCW 41.32.795;
- (i) TRS 3: RCW 41.32.855.

(4) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

- (a) "Dual member" - RCW 41.54.010(4), WAC 415-113-041.
- (b) "Dual member system" - WAC 415-113-030.
- (c) "Member participant" - WAC 415-113-030.
- (d) "Multiple system benefit" - WAC 415-113-030.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.54 RCW. 02-18-046, § 415-113-042, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5), 41.54.010, 41.54.030. 02-03-120, § 415-113-042, filed 1/23/02, effective 3/1/02. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-113-042, filed 12/12/00, effective 1/12/01. Statutory Authority: RCW 41.50.050. 99-22-043, § 415-113-042, filed 10/29/99, effective 11/29/99; 95-03-001, § 415-113-042, filed 1/4/95, effective 2/4/95.]

**WAC 415-113-045 Can I reestablish service credit in a prior system?** (1) **You may reestablish service credit terminated by a withdrawal of contributions from a prior system.** If you repay contributions you withdrew from a prior dual member system plus interest from the date of withdrawal you will recover the service terminated by the withdrawal. To qualify, you must repay the contributions plus interest within twenty-four consecutive months from the date you became a dual member.

(a) The twenty-four-month restoration period continues to run even if you terminate dual member status.

(b) If you terminate your dual member status but later become a dual member again, you have twenty-four consecutive months from the date you regain dual member status to repay withdrawn contributions.

**Example 3:** A person becomes a dual member on January 1, 1994. She has until December 31, 1995, to restore any previously withdrawn contributions for service credit in a prior system regardless of whether she subsequently loses her status as a dual member.

**Example 4:** A person becomes a dual member on January 1, 1994, separates from membership on January 1, 1995, and then reenters membership on January 1, 1996. He has until December 31, 1997, twenty-four consecutive months from the date he regained dual member status, to restore withdrawn contributions in any prior system.

(c) **If you have previous service in LEOFF Plan 2 or a first class city system:**

(i) If you were a dual member on July 25, 1993, and you used to be a member of LEOFF Plan 2, you have until July 24, 1995, to repay your withdrawn contributions.

(ii) If you were a dual member on January 1, 1994, and you used to be a member of a first class city retirement system, you have until December 31, 1995, to repay your withdrawn contributions.

**Example 5:** A person is a member participant in PERS Plan 2 and has previous service in LEOFF Plan 2. LEOFF Plan 2 was newly admitted to participate under the portability provisions of chapter 41.54 RCW on July 25, 1993. Therefore, the person has until July 24, 1995, to restore her prior LEOFF Plan 2 service.

(2) **You may reestablish TRS Plan 1 membership.** If a PERS member restores withdrawn TRS Plan 1 contributions under this section he or she:

- (a) Reestablishes membership in TRS Plan 1; and
- (b) Will participate prospectively in TRS Plan 1 if employed by a state agency, school district or other TRS employer.

(3) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

- (a) "Dual member" - RCW 41.54.010(4), WAC 415-113-041.
- (b) "Dual member system" - WAC 415-113-030.
- (c) "First class city retirement system" - WAC 415-113-030.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.54 RCW. 02-18-046, § 415-113-045, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050. 99-22-043, § 415-113-045, filed 10/29/99, effective 11/29/99; 95-03-001, § 415-113-045, filed 1/4/95, effective 2/4/95.]

**WAC 415-113-055 Am I eligible for a multiple system benefit?** To be eligible for a multiple system benefit, you must meet the criteria listed in this section.

(1) **You may retire for service or disability.** You may retire with a multiple system benefit if you retire from all systems for service. You may also retire with a disability retirement from your current system, other than a benefit provided by RCW 41.40.220 or WSPRS, and a service retirement from your prior system.

(2) **You must retire from all systems.** You may only retire with a multiple system benefit if you retire from all dual member systems that you participate in.

**(3) Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

- (a) "Accumulated contributions" - WAC 415-113-030.
- (b) "Dual member system" - WAC 415-113-030.
- (c) "Multiple system benefit" - WAC 415-113-030.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.54 RCW. 02-18-046, § 415-113-055, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050. 96-20-004, § 415-113-055, filed 9/19/96, effective 10/20/96; 95-03-001, § 415-113-055, filed 1/4/95, effective 2/4/95.]

**WAC 415-113-057 Am I required to retire with a multiple system benefit? You are not required to retire with a multiple system benefit.** You may elect to retire from a system or systems without the benefits or restrictions of chapter 41.54 RCW. If you choose to retire from more than one system without receiving a multiple system benefit, you are not subject to the maximum benefit limitation of RCW 41.54.070 and WAC 415-113-090(1).

**(1) Waiver of benefits.** If you decide not to receive a multiple system benefit, you waive the right to:

- (a) Substitute your base salary between retirement systems for purposes of calculating a retirement allowance; or
- (b) Combining your service from each system for purposes of determining retirement eligibility.

**(2) You are not required to retire with a multiple system benefit even if you repaid contributions as a dual member.** If you repaid previously withdrawn contributions from a prior dual member system under RCW 41.54.020, you may still elect to retire from one or more systems without receiving a multiple system benefit.

**(3) If you decline a multiple system benefit, you may withdraw your contributions.** If you elect to retire without receiving a multiple system benefit, you may withdraw your accumulated contributions from a system in lieu of receiving a retirement allowance, provided that withdrawal is otherwise permissible under the systems' provisions.

**(4) Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

- (a) "Accumulated contributions" - WAC 415-113-030.
- (b) "Base salary" - RCW 41.54.010(1).
- (c) "Dual member" - RCW 41.54.010(4), WAC 415-113-030.
- (d) "Dual member system" - WAC 415-113-030.
- (e) "Multiple system benefit" - WAC 415-113-030.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.54 RCW. 02-18-046, § 415-113-057, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050. 95-03-001, § 415-113-057, filed 1/4/95, effective 2/4/95.]

## CALCULATING YOUR DUAL MEMBER BENEFIT

**WAC 415-113-059 Can I combine service from different systems to qualify for increased benefits? (1) You may combine service to determine retirement eligibility.** You may combine your service in all systems for the sole purpose of determining your eligibility for a disability or service retirement allowance from your current system and a service retirement allowance from your prior system.

**(2) You may not combine service for any other purpose.** You may not combine your service in all systems to

qualify for additional benefits offered by a particular system. Those additional benefits include but are not limited to:

(a) PERS Plan 1 military service. You may not combine service from other systems to qualify for military service credit in PERS Plan 1 under RCW 41.40.170.

(b) LEOFF Plan 2 post-separation benefits. You may not combine your accrued service under both systems for purposes of qualifying for:

- (i) A LEOFF Plan 2 indexed retirement allowance under RCW 41.26.530(2); or

(ii) A refund of one hundred fifty percent of the LEOFF Plan 2 member's accumulated contributions under RCW 41.26.540.

**(3) Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed: "System" - RCW 41.54.010(6).

[Statutory Authority: RCW 41.50.050. 99-22-043, § 415-113-059, filed 10/29/99, effective 11/29/99; 96-20-004, § 415-113-059, filed 9/19/96, effective 10/20/96; 95-03-001, § 415-113-059, filed 1/4/95, effective 2/4/95.]

**WAC 415-113-065 Can I substitute salary from one system to another? (1) You can substitute base salary between systems.**

(a) If you choose to retire with a multiple system benefit, you may substitute your base salary under one dual member system for your includable compensation in a second dual member system for purposes of computing a retirement allowance from the second system. Using the substituted salary, the department will compute your average compensation under each system's own requirements.

**Example 6:** At retirement, Sandy is a member participant in PERS Plan 2 and has prior creditable service in TRS Plan 1. She earned her highest compensation during her PERS Plan 2 service. Sandy's PERS Plan 2 retirement allowance will be based on her PERS Plan 2 average compensation. For purposes of computing her TRS average compensation and retirement allowance, Sandy may substitute her PERS Plan 2 base salary earned over two consecutive fiscal years for her earnable compensation in TRS.

**Example 7:** At retirement, Pat is a member participant in TRS Plan 1 and has prior creditable service in PERS Plan 1. He earned his highest compensation during his membership in TRS Plan 1 and received a sick-leave cashout. Pat may substitute his base salary earned while a member in TRS Plan 1 for his PERS Plan 1 compensation earnable. However, because Pat may substitute only his base salary from TRS Plan 1 for his compensation earnable in PERS, his PERS average compensation will not include the cashout payments from his TRS employer.

(b) If you do not have sufficient service credit months in one dual member system to complete an average compensation period under that system, the department will substitute the appropriate number of months of base salary from another system to complete the average compensation period.

**Example 8:** Tim has creditable service in TRS Plan 1 and PERS Plan 2. He retires at age sixty-five after accruing twenty-four months of service in PERS Plan 2. Under PERS Plan 2, a member's average compensation period is the member's highest consecutive sixty-month period of compensation. To compute Tim's PERS Plan 2 retirement allowance, the department will substitute his highest consecutive thirty-six service credit months of TRS base salary to complete the PERS sixty-month average compensation period.

(2) **Adjusted full-time salary is not base salary.** A multiple system retiree's adjusted full-time salary under RCW 41.32.345 shall not constitute base salary for purposes of computing the retiree's multiple system benefit.

(3) **Includable compensation defined.** For purposes of this chapter, "includable compensation" means:

- (a) Earnable compensation under TRS Plan 1, 2 or 3 as defined in RCW 41.32.010(10);
- (b) Compensation earnable under PERS Plan 1, 2 or 3 as defined in RCW 41.40.010(8);
- (c) Basic salary under LEOFF Plan 2 as defined in RCW 41.26.030 (13)(b);
- (d) Monthly salary under WSPRS Plan 1 or 2 as defined in RCW 43.43.120(23); and
- (e) Compensation earnable under SERS Plan 2 or 3 as defined in RCW 41.35.010(6).

(4) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

- (a) "Average compensation" - WAC 415-113-030.
- (b) "Base salary" - RCW 41.54.010(1).
- (c) "Dual member system" - WAC 415-113-030.
- (d) "Member participant" - WAC 415-113-030.
- (e) "Multiple system benefit" - WAC 415-113-030.
- (f) "Multiple system retiree" - WAC 415-113-030.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.54 RCW. 02-18-046, § 415-113-065, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and 41.54.030. 02-03-120, § 415-113-065, filed 1/23/02, effective 3/1/02. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-113-065, filed 12/12/00, effective 1/12/01. Statutory Authority: RCW 41.50.050. 99-22-043, § 415-113-065, filed 10/29/99, effective 11/29/99; 95-03-001, § 415-113-065, filed 1/4/95, effective 2/4/95.]

**WAC 415-113-070 If I retire as a dual member, must I receive benefits from both systems immediately?** (1) If you qualify to retire in one system but not the second system, you may nonetheless choose to retire *from both systems* and receive a multiple system benefit.

(2) If you retire with a multiple system benefit, before you have become eligible in a second system(s), you must either:

- (a) Take an actuarial reduction in the retirement allowance you receive from the second system(s); or
- (b) Defer receipt of your retirement allowance in the second system(s) under RCW 41.54.030(3).

(3) If you take an actuarial reduction under subsection (2)(a) of this section, the reduction will account for the difference between your age at the time you begin to receive the retirement allowance and the earliest age when you would be

fully eligible based on your combined service. You are "fully eligible" when you meet the age and service qualifications for retirement for each system.

(4) If you defer receipt of your retirement allowance under subsection (2)(b) of this section:

(a) You will retain dual member status for the sole purpose of receiving a deferred retirement allowance from the second system(s); and

(b) You may not subsequently withdraw accumulated contributions from the second system(s).

**Example 9:** A sixty-two year old dual member of PERS Plan 1 and TRS Plan 2 retires. He chooses to receive PERS Plan 1 benefits but defers receipt of a TRS Plan 2 retirement allowance. If he becomes reemployed in a TRS Plan 2 eligible position, he will reenter TRS Plan 2 membership if otherwise eligible and terminate his dual member status, but he will continue to receive his PERS Plan 1 retirement allowance until he works more than the work-limit in a calendar year under WAC 415-108-710. The member's eligibility to retire from TRS Plan 2 will be based solely on his accrued service credit in TRS Plan 2 and his TRS Plan 2 retirement allowance will be based solely on his compensation while he was a member participant in TRS Plan 2.

**Example 10:** Assume the retiree in Example 9 above became reemployed in a PERS position rather than a TRS Plan 2 position. He could work in this position up to the work-limit in a calendar year under WAC 415-108-710 without having his PERS retirement allowance suspended. If the retiree works over the work-limit:

- The department would suspend his retirement allowance until the next calendar year. He would remain a dual member. He would be able to retire in TRS 2 if otherwise eligible;
- The retiree could choose to reenter PERS Plan 1 membership at any time, if otherwise eligible, and terminate his dual member status. His choice for membership is not retroactive. The effect on the person's right to a TRS Plan 2 benefit is the same as in Example 9. See WAC 415-108-710.

**(5) If you defer your retirement allowance and die before you begin receiving the allowance, your survivor may receive a continuing benefit.** If you defer receipt of your retirement allowance from a system and die before you choose to begin receiving the allowance:

(a) Your surviving spouse, if any, must choose to receive either:

(i) A joint and one hundred percent survivor option from the deferred system. If your surviving spouse selects this option, your base salary under one system may be substituted for your includable compensation in the deferred system to compute the survivor retirement allowance from the deferred system; or

(ii) A refund of your accumulated contributions from the deferred system.

(b) If you do not have a surviving spouse, the department will pay your accumulated contributions from the deferred system to:

- (i) Your designated beneficiary or beneficiaries; or
- (ii) Your estate, if there are no living beneficiaries.

(6) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

- (a) "Dual member system" - WAC 415-113-030.
- (b) "Includable compensation" - WAC 415-113-065(3).
- (c) "Member participant" - WAC 415-113-030.
- (d) "Multiple system participant" - WAC 415-113-030.
- (e) "Nonmember participant" - WAC 415-113-030.
- (f) "System" - RCW 41.54.010(6).

[Statutory Authority: RCW 41.50.050(5) and chapter 41.54 RCW. 02-18-046, § 415-113-070, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and 41.54.030. 02-03-120, § 415-113-070, filed 1/23/02, effective 3/1/02. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-113-070, filed 12/12/00, effective 1/12/01. Statutory Authority: RCW 41.50.050. 99-22-043, § 415-113-070, filed 10/29/99, effective 11/29/99; 96-20-004, § 415-113-070, filed 9/19/96, effective 10/20/96; 95-03-001, § 415-113-070, filed 1/4/95, effective 2/4/95.]

**WAC 415-113-080 Can I retire retroactively? You may retire retroactively.** If you retire from all dual member systems, your retirement allowance from a prior system will be retroactive back to your accrual date under the prior system.

(1) **Accrual date determined.** The department will determine your accrual date in each system by combining your total service and applying the statute or rule designating accrual dates in the particular system. Your accrual date for purposes of this section is the date that your combined service first makes you eligible for an unreduced benefit.

**Example 11:** A person is a fifty-five year old member participant in PERS Plan 2 and a nonmember participant in LEOFF Plan 2. The person decides not to retire from LEOFF Plan 2 until he is eligible to retire with full benefits from PERS Plan 2 at age sixty-five. Upon retirement, he will be entitled to a LEOFF Plan 2 retirement allowance effective on his accrual date under LEOFF Plan 2 (i.e., age fifty-five).

**Example 12:** A person with twenty years of prior service in TRS Plan 1 becomes a member participant in PERS Plan 2 on her fifty-fourth birthday. By combining her service in both systems under chapter 41.54 RCW, she will become eligible to retire under TRS Plan 1 at age fifty-nine with twenty-five total years of service. Assume she retires from

both systems at age sixty-five. Her TRS Plan 1 retirement allowance will be effective back to the date it accrued under TRS Plan 1 (i.e., the first of month following the month she turns fifty-nine).

(2) **You cannot use salary earned after your accrual date in calculating your retroactive benefit.** If you retire retroactively from a prior system, the department will not use any of the salary you earned after your accrual date to compute your benefit from the prior system.

**Example 13:** A PERS Plan 1 member receives a salary of \$3,000 per month. She has 30 years of service credit at age 50 and is eligible to retire with an unreduced (full) benefit.

Subsequently, she is offered a TRS Plan 3 covered position at a monthly salary of \$3,500. If she accepts the TRS Plan 3 position, will she be able to use its higher monthly salary of \$3,500 as base salary to calculate her PERS Plan 1 retirement benefit when she does retire? No, she will not. The TRS Plan 3 salary would have been earned after the PERS Plan 1 accrual date: The date that she first became eligible to retire with an unreduced benefit under PERS Plan 1 rules.

(3) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

- (a) "Dual member system" - WAC 415-113-030.
- (b) "Member participant" - WAC 415-113-030.
- (c) "Nonmember participant" - WAC 415-113-030.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.54 RCW. 02-18-046, § 415-113-080, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050. 99-22-043, § 415-113-080, filed 10/29/99, effective 11/29/99; 95-03-001, § 415-113-080, filed 1/4/95, effective 2/4/95.]

**WAC 415-113-082 Could retroactive retirement cancel my membership in a subsequent system?** (1) If you retire retroactively from a prior system, you could cancel your membership in a subsequent system. If your membership in a subsequent system would have been prohibited under RCW 41.04.270 but for your status as a dual member, and you retire retroactively from a prior system, the department will cancel your membership and refund your contributions in the subsequent system under RCW 41.54.020(1). Your retroactive retirement from a prior system may cancel your membership in a subsequent system according to the following table:

How much service did you earn in your prior system?	Were you eligible to retire in the prior system before you became a member of your subsequent system?	Will retroactive retirement from your prior system cancel your membership in subsequent system?
15 years or more	No	No (See Example 13)
15 years or more	Yes	Yes, unless you retire from both the prior and subsequent system under RCW 41.54.030(2). (See Example 14)
Less than 15 years	No	No (See Example 15)

How much service did you earn in your prior system?	Were you eligible to retire in the prior system before you became a member of your subsequent system?	Will retroactive retirement from your prior system cancel your membership in subsequent system?
Less than 15 years	Yes	No (See Example 15)

See RCW 41.54.020(1) and RCW 41.04.270.

**Example 14:** A nonmember participant in LEOFF Plan 2 who has accrued sixteen years of service in LEOFF Plan 2 became a member of PERS Plan 2 at age fifty-four. Because she became a member participant of PERS Plan 2 at age fifty-four, prior to attaining retirement eligibility under LEOFF Plan 2 (i.e., age fifty-five), she may later retire retroactively from LEOFF Plan 2, subject to LEOFF Plan 2 criteria, while continuing membership in PERS Plan 2.

**Example 15:** A nonmember participant in LEOFF Plan 2 with sixteen years of accrued service became a member of PERS Plan 2 at age fifty-five. If he attempts to retire from LEOFF Plan 2 while continuing membership in PERS Plan 2, the department will cancel his PERS Plan 2 membership and refund his PERS contributions. However, if he retires from both systems, he is entitled to retain the benefits of his PERS Plan 2 membership.

**Example 16:** Assume either of the retirees in Examples 13 and 14 above had accrued less than fifteen years of service in LEOFF Plan 2. In this case, RCW 41.04.270 would not apply to prevent the retirees from establishing PERS Plan 2 membership. Either person could retire retroactively from the LEOFF Plan 2 without canceling membership and participation in PERS Plan 2.

(2) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

- (a) "Dual member" - RCW 41.54.010(4), WAC 415-113-041.
- (b) "Member participant" - WAC 415-113-030.
- (c) "Nonmember participant" - WAC 415-113-030.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.54 RCW. 02-18-046, § 415-113-082, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050. 99-22-043, § 415-113-082, filed 10/29/99, effective 11/29/99; 95-03-001, § 415-113-082, filed 1/4/95, effective 2/4/95.]

**WAC 415-113-084 How will my benefit be computed if I retire retroactively from LEOFF Plan 2? (1) Computation of your retroactive LEOFF Plan 2 retirement allowance.** If you retire with a multiple system benefit and one of your retirement allowances is a retroactive LEOFF Plan 2 allowance, the department will compute your LEOFF Plan 2 allowance based upon the greater of:

(a) Your LEOFF Plan 2 final average salary, substituting some or all of your base salary under the second system which you earned prior to the date your LEOFF Plan 2 retirement allowance began to accrue (i.e., age fifty-five); or

(b) An indexed retirement allowance under RCW 41.26.530(2) using your LEOFF Plan 2 average compensation.

**Example 17:** A person who is a nonmember participant of LEOFF Plan 2 and a member participant of PERS Plan 2 retires from both systems at age sixty-five. If he had accrued twenty-one years of creditable service in LEOFF Plan 2, the multiple system retiree's LEOFF Plan 2 retirement allowance may be based upon either: His substituted PERS Plan 2 base salary which he earned prior to attaining retirement eligibility in LEOFF at age fifty-five; or the LEOFF Plan 2 indexed retirement allowance under RCW 41.26.530(2) using his LEOFF Plan 2 average compensation. The department will use the method which results in the largest retirement allowance.

(2) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

- (a) "Member participant" - WAC 415-113-030.
- (b) "Multiple system benefit" - WAC 415-113-030.
- (c) "Multiple system retiree" - WAC 415-113-030.
- (d) "Nonmember participant" - WAC 415-113-030.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.54 RCW. 02-18-046, § 415-113-084, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050. 99-22-043, § 415-113-082, filed 10/29/99, effective 11/29/99; 95-03-001, § 415-113-084, filed 1/4/95, effective 2/4/95.]

**WAC 415-113-090 What is the maximum retirement benefit that I may receive under chapter 41.54 RCW? (1)** Your multiple system benefit may not exceed the highest maximum benefit which you would be permitted to receive under any one of the dual member systems from which you are retiring if all of your service had been provided in one system. See RCW 41.54.070.

(2) **The department will compute your maximum multiple system benefit in the following order:**

(a) **Calculate the maximum benefit you could receive under each system.** The department will compute your maximum benefit according to the benefit limitation provisions of each system as if you had earned your total career service and compensation in that system. In computing your maximum benefit under each system, the department will:

- (i) Apply the provisions of each system governing the calculation of your average compensation in that system; and
- (ii) Assume you earned all of your career service with your last employer for purposes of determining any limitations on the inclusion of leave cashouts in your average compensation.

**Example 18:** A multiple system retiree retires from TRS Plan 1 state employment with prior creditable PERS Plan 1 service. His PERS employer pays him an accrued sick leave cashout at ter-

mination. Because a sick leave cashout from a state agency employer is not includable as TRS earnable compensation, the department will not include the cashout in the retiree's average compensation for purposes of computing either his PERS Plan 1 or TRS Plan 1 maximum benefit.

**Example 19:** A multiple system retiree retires from PERS Plan 1 local government employment and receives a sick leave cashout. Because a sick leave cashout from a local government employer may be included as earnable compensation, the department will include the sick leave cashout to compute the retiree's maximum benefits under both PERS Plan 1 and TRS Plan 1.

**(b) Determine your retirement allowances from each system.** After computing your maximum benefit, the department will determine the retirement allowances to which you are entitled from each system under chapter 41.54 RCW before making any reduction under RCW 41.54.070. If applicable, the department will then reduce the amount of your retirement allowances provided by either of the dual member systems for:

- (i) Your status as a nonmember participant of WSPRS Plan 1 or 2 pursuant to RCW 43.43.280(2); or
- (ii) Your choice to retire early from a Plan 2 system under RCW 41.40.630(2), 41.32.765(2), 41.35.420(2), and 41.26.430(2) or Plan 3 system under RCW 41.32.875(2), 41.35.680(2), and 41.40.820(2).

**(c) Compute your total multiple system benefit.** Upon computing your retirement allowances from each system and making any applicable reductions under (b) of this subsection, the department will add the systems' allowances to compute your total multiple system benefit.

**(d) Compare your total multiple system benefit with your maximum benefit and, if necessary, proportionately reduce your retirement allowances.** The department will then compare your total multiple system benefit with your maximum benefit calculated in (a) of this subsection. If your total multiple system benefit exceeds your maximum benefit, the department will proportionately reduce your retirement allowances provided by each system as follows:

(i) Calculate what proportion your total multiple system benefit is provided by each system separately; and

(ii) Proportionately reduce the benefit provided by each system to account for the excess of your total multiple system benefit over your maximum benefit.

**Example 20:** A person with twenty-nine years of prior service in TRS Plan 1 and one year of subsequent service in PERS Plan 2 retires from both systems at age sixty-five. The retiree's TRS Plan 1 average compensation is thirty thousand dollars. The TRS Plan 1 maximum benefit is sixty percent of average compensation. The retiree's maximum TRS benefit is eighteen thousand dollars or one thousand five hundred dollars per month. The retiree's PERS Plan 2 average compensation is twenty-eight thousand dollars. The retiree's maximum PERS 2 benefit is sixteen thou-

sand eight hundred dollars or one thousand four hundred dollars per month. The retiree's maximum benefit is the higher of the two amounts, one thousand five hundred dollars per month.

Assume the retiree's accrued service is such that her actual TRS Plan 1 monthly benefit is one thousand four hundred fifty dollars and her PERS Plan 2 monthly benefit is one hundred dollars. The retiree's total multiple system benefit is the sum of her TRS Plan 1 and PERS Plan 2 benefits, or one thousand five hundred fifty dollars. Because the retiree's total multiple system benefit exceeds her maximum benefit by fifty dollars, the department would proportionately reduce her TRS Plan 1 and PERS Plan 2 benefits. Her TRS Plan 1 benefit is 29/30 of her total service or ninety-seven percent, and her PERS Plan 2 benefit is 1/30 of total service, or three percent. The department would reduce her TRS Plan 1 benefit by ninety-seven percent of the overage, or forty-eight dollars and fifty cents ( $50 \times .97$ ) and her PERS Plan 2 benefit by three percent of the overage, or one dollar and fifty cents ( $50 \times .03$ ).

**(3) If you select a benefit payment option, the department will reduce your multiple system benefit to account as appropriate.** After making any applicable maximum benefit reductions, the department will further reduce your benefit if you choose:

- (a) To withdraw your accumulated contributions at the time you retire from TRS Plan 1;
- (b) A survivor benefit option; or
- (c) A cost-of-living adjustment (COLA) option.

**(4) Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

- (a) "Average compensation" - WAC 415-113-030.
- (b) "Dual member" - RCW 41.54.010(4), WAC 415-113-041.
- (c) "Dual member system" - WAC 415-113-030.
- (d) "First class city system" - WAC 415-113-030.
- (e) "Member participant" - WAC 415-113-030.
- (f) "Multiple system benefit" - WAC 415-113-030.
- (g) "Multiple system retiree" - WAC 415-113-030.
- (h) "Nonmember participant" - WAC 415-113-030.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.54 RCW. 02-18-046, § 415-113-090, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and 41.54.070. 02-03-120, § 415-113-090, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050. 99-22-043, § 415-113-090, filed 10/29/99, effective 11/29/99; 96-20-004, § 415-113-090, filed 9/19/96, effective 10/20/96; 95-03-001, § 415-113-090, filed 1/4/95, effective 2/4/95.]

**WAC 415-113-100 Am I eligible for a lump sum retirement allowance?** (1) If you retire with a multiple system benefit and one of your retirement allowances is less than fifty dollars per month, you may receive a lump sum payment as allowed under RCW 41.54.090.

(2) Unless you are retiring from TRS Plan 1, the department will use your standard retirement allowance to deter-

mine your eligibility for lump sum cashouts under RCW 41.54.090.

(3) If you are retiring from TRS Plan 1, the department will use your maximum retirement allowance under TRS Plan 1 to determine your eligibility for lump sum cashouts under RCW 41.54.090.

(4) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed: "Multiple system benefit" - WAC 415-113-030.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.54 RCW. 02-18-046, § 415-113-100, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050. 99-22-043, § 415-113-100, filed 10/29/99, effective 11/29/99; 95-03-001, § 415-113-100, filed 1/4/95, effective 2/4/95.]

**WAC 415-113-200 SERS and PERS concurrent employment.** For the purposes of this section and pursuant to RCW 41.35.005, 41.35.010, 41.40.010, and 41.54.100, "concurrent employment" refers to simultaneous employment in an eligible SERS Plan 2 or Plan 3 position and an eligible PERS Plan 2 or Plan 3 position.

If a member has been concurrently employed at any time, this section governs the calculation of service credit, average final compensation, and retirement benefits attributable to all periods of PERS employment, SERS employment, and concurrent employment.

(1) **Can I participate in SERS and PERS at the same time?** Yes, you may participate in SERS and PERS at the same time when employed concurrently in a PERS eligible position and a SERS eligible position. Your SERS employer will report your SERS eligible service in SERS. Your PERS employer will report your PERS eligible service in PERS.

(2) **Will the factors used to calculate my defined benefit be different because of concurrent employment in SERS and PERS?** No, the department will calculate your service credit and average final compensation as if all of your employment was reported in one system. These two factors are used to calculate your defined benefit.

(3) **Will the amount of my benefit be different because of concurrent employment?**

(a) If you are concurrently employed in SERS Plan 2 and PERS Plan 2, the amount of your benefit from SERS and PERS combined will be the same as if all of your service had been reported and you received a benefit in one system, because:

(i) SERS Plan 2 and PERS Plan 2 both use identical two-percent benefit formulas; and

(ii) Your total service credit and average final compensation will not be different than if all of your service had been reported in one system pursuant to subsection (2) of this section.

(b) If you are concurrently employed in SERS Plan 3 and PERS Plan 2, the amount of your benefit may be larger or smaller than if all of your service had been reported in one system:

(i) SERS Plan 3 uses a one-percent defined benefit formula and has a defined contribution component. You are responsible for the investment of your defined contribution component, which is subject to investment gains or losses; therefore, the dollar value of your total benefit may be greater

or less than what you would have received if all of your service had been reported in one defined benefit system.

(ii) The allocation of your service credit while concurrently employed, as described in subsection (4) of this section, may also affect the dollar value of your benefit.

(4) **How is my service credit granted while concurrently employed?** As a concurrently employed member, you are entitled to exactly the same amount of service credit for your SERS and PERS service combined that you would have received had all of your service been reported in one system.

To calculate your service credit the department will:

(a) Combine your SERS and PERS service to determine the amount of service credit you would have earned had all of your service been reported in one system.

(b) Calculate and grant service credit in SERS based only on your reported SERS service.

(c) Calculate and grant service credit in PERS by subtracting the amount of service credit granted for SERS in (b) of this subsection from the amount of service credit calculated in (a) of this subsection that you would have earned had all of your service been reported in one system (see example 1):

(i) For any month in which you receive one month of service credit in SERS for a calendar month of employment, you will not receive any PERS service credit in that month.

(ii) The combined service credit in SERS and PERS may not exceed one month of service for a calendar month of employment.

(d) Adjust the SERS service credit at the conclusion of each school year in accordance with the provisions of RCW 41.35.180. This adjustment may cause changes in the combined SERS/PERS service credit and/or changes in the PERS service credit. (See example 2).

**Example 1: Monthly computation of concurrent employment service credit.**

#### Part-time SERS and part-time PERS.

(a) During a month, a member works 80 hours at a school district and 100 hours at a county. If all of the service had been reported in one system, the maximum the member could have earned is one service credit for that month. The member will be granted .5 service credit in SERS based on the 80 hours of service reported in SERS and will receive .5 service credit in PERS based on subtracting the .50 service credit in SERS from the maximum of 1.00 service credit.

(b) During a month, a member works 65 hours at a school district and 30 hours at a county. If all of the service had been reported in one system, the maximum the member could have earned is one service credit for that month. The member will be granted .25 service credit in SERS based on the 65 hours of service reported in SERS and will receive .75 service credit in PERS based on subtracting the .25 service credit in SERS from the maximum of 1.00 service credit.

#### Full-time SERS and part-time PERS.

During a month, a member works 172 hours for an educational service district and works 30

hours for a state agency. If all of the service had been reported in one system, the maximum the member could have earned is one service credit for that month. The member will be granted one month of service credit in SERS based on the 172 hours of service reported in SERS and will receive 0.0 service credit in PERS (even though they worked 30 hours) based on subtracting the 1.00 service credit in SERS from the maximum of 1.00 service credit.

#### Part-time SERS and full-time PERS.

During a month, a member works 40 hours for a school district and 180 hours for a city. If all of the service had been reported in one system, the maximum the member could have earned is one service credit for that month. The member will be granted .25 service credit in SERS based on the 40 hours of service reported in SERS and will receive .75 service credit in PERS based on subtracting the .25 service credit in SERS from the maximum of 1.00 service credit.

#### Example 2: Application of the educational service credit rules and the effects on concurrent employment service credit computation.

During September, October, and November a member works 60 hours, 30 hours, and 70 hours in SERS and works 90 hours, 30 hours, and 60 hours in PERS, respectively. Based on these hours, the member would have been

granted .25, .25, and .50 service credits in SERS and .75, 0.0, and .50 in PERS. The member's service credit calculated on a monthly basis through November is shown in Table 1 below.

At the end of the school year, the educational service credit rules (RCW 41.35.180) are applied. The application of these rules may cause one or more months of SERS service credit to change. A change in the SERS service credit for any given month may cause the combined SERS/PERS service credit to change. See Table 2, second line. The PERS service credit would then need to be recalculated for any month that the SERS service credit changed.

The members service for the entire school year is shown in Table 2 below. Applying the educational service credit rules, the member is now entitled to six service credit months in SERS for the school year (.50 in each month of September through August) based on working a total of 750 hours for the year. Thus, the service credit in September would be changed to .50 service credit in SERS and .50 credit in PERS. The service credit in October would be changed to .50 service credit in SERS and would remain at 0.0 service credit in PERS. November's service credit calculation is not affected by the application of the educational service credit rules.

**Table 1: Month by Month Determination**

	HOURS			SERVICE CREDIT		
	Combined PERS/SERS	SERS	PERS	Combined PERS/SERS	SERS	PERS
Sept	150	60	90	1	0.25	0.75
Oct	60	30	30	.25	.25	0.00
Nov	130	70	60	1	0.50	0.50

**Table 2: After RCW 41.35.180 Adjustment**

	HOURS			SERVICE CREDIT		
	Combined PERS/SERS	SERS	PERS	Combined PERS/SERS	SERS	PERS
Sept	150	60	90	1	0.5	0.5
Oct	60	30	30	0.5	0.5	0
Nov	130	70	60	1	0.5	0.5
Dec	120	60	60	1	0.5	0.5
Jan	140	70	70	1	0.5	0.5
Feb	160	90	70	1	0.5	0.5
Mar	130	60	70	1	0.5	0.5
Apr	140	70	70	1	0.5	0.5
May	130	70	60	1	0.5	0.5
Jun	130	70	60	1	0.5	0.5
Jul	80	40	40	0.5	0.5	0
Aug	120	60	60	1	0.5	0.5
		750		11	6	5

**(5) How is my average final compensation calculated if I have been concurrently employed?** Your average final compensation will be calculated by combining all compensation earnable and service credit from all periods of SERS employment, PERS employment, and concurrent employment and then determining your highest consecutive sixty service credit months prior to your retirement, termination, or death. If an authorized leave occurs during the highest consecutive sixty service credit months, amounts earned during the period of leave will not be used in the calculation of average final compensation, except under RCW 41.40.710(2), 41.35.470(2) or 41.35.650(2).

**(6) How is my defined benefit in each system calculated?** A retirement allowance will be calculated using the appropriate formula for each system and plan as described in chapters 41.40 and 41.35 RCW, except that:

(a) The PERS service credit granted under subsection (4) of this section will be used in the PERS calculation and the SERS service credit granted under subsection (4) of this section will be used in the SERS calculation; and

(b) The average final compensation calculated under subsection (5) of this section will be used as the average final compensation for both PERS and SERS.

[Statutory Authority: RCW 41.50.050(5), chapters 41.32, 41.34, 41.35, 41.40, and 41.50 RCW. 02-03-120, § 415-113-200, filed 1/23/02, effective 3/1/02. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-113-200, filed 12/12/00, effective 1/12/01.]

## Chapter 415-114 WAC ASSESSMENT OF INTEREST CHARGES ON OVERDUE RECEIVABLES

### WAC

415-114-100	Purpose.
415-114-200	Definitions.
415-114-400	Assessment of interest charge.
415-114-700	Erroneous charges of interest.

### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

415-114-010	Purpose. [Statutory Authority: Chapter 34.05 RCW, RCW 41.50.050 and 41.50.120. 91-13-049, § 415-114-010, filed 6/14/91, effective 7/15/91; 91-11-061, § 415-114-010, filed 5/16/91, effective 6/16/91.] Repealed by 91-19-062, filed 9/16/91, effective 10/17/91. Statutory Authority: RCW 41.50.050, 41.50.120 and chapter 34.05 RCW.
415-114-020	Definitions. [Statutory Authority: Chapter 34.05 RCW, RCW 41.50.050 and 41.50.120. 91-13-049, § 415-114-020, filed 6/14/91, effective 7/15/91; 91-11-061, § 415-114-020, filed 5/16/91, effective 6/16/91.] Repealed by 91-19-062, filed 9/16/91, effective 10/17/91. Statutory Authority: RCW 41.50.050, 41.50.120 and chapter 34.05 RCW.
415-114-030	What is considered an overdue payment of an obligation owed to the department. [Statutory Authority: Chapter 34.05 RCW, RCW 41.50.050 and 41.50.120. 91-13-049, § 415-114-030, filed 6/14/91, effective 7/15/91; 91-11-061, § 415-114-030, filed 5/16/91, effective 6/16/91.] Repealed by 91-19-062, filed 9/16/91, effective 10/17/91. Statutory Authority: RCW 41.50.050, 41.50.120 and chapter 34.05 RCW.
415-114-040	Assessment of interest charge. [Statutory Authority: Chapter 34.05 RCW, RCW 41.50.050 and 41.50.120. 91-13-049, § 415-114-040, filed 6/14/91, effective 7/15/91; 91-11-061, § 415-114-040, filed 5/16/91, effective 6/16/91.] Repealed by 91-19-062, filed 9/16/91, effective 10/17/91. Statutory Authority: RCW 41.50.050, 41.50.120 and chapter 34.05 RCW.

415-114-050	Assessment of interest charge on accrued obligations. [Statutory Authority: Chapter 34.05 RCW, RCW 41.50.050 and 41.50.120. 91-13-049, § 415-114-050, filed 6/14/91, effective 7/15/91; 91-11-061, § 415-114-050, filed 5/16/91, effective 6/16/91.] Repealed by 91-19-062, filed 9/16/91, effective 10/17/91. Statutory Authority: RCW 41.50.050, 41.50.120 and chapter 34.05 RCW.
415-114-055	Assessment of interest charge on debit balance forward. [Statutory Authority: Chapter 34.05 RCW, RCW 41.50.050 and 41.50.120. 91-13-049, § 415-114-055, filed 6/14/91, effective 7/15/91.] Repealed by 91-19-062, filed 9/16/91, effective 10/17/91. Statutory Authority: RCW 41.50.050, 41.50.120 and chapter 34.05 RCW.
415-114-060	Billing of interest charges. [Statutory Authority: Chapter 34.05 RCW, RCW 41.50.050 and 41.50.120. 91-13-049, § 415-114-060, filed 6/14/91, effective 7/15/91; 91-11-061, § 415-114-060, filed 5/16/91, effective 6/16/91.] Repealed by 91-19-062, filed 9/16/91, effective 10/17/91. Statutory Authority: RCW 41.50.050, 41.50.120 and chapter 34.05 RCW.
415-114-070	Erroneous charges of interest. [Statutory Authority: Chapter 34.05 RCW, RCW 41.50.050 and 41.50.120. 91-13-049, § 415-114-070, filed 6/14/91, effective 7/15/91.] Repealed by 91-19-062, filed 9/16/91, effective 10/17/91. Statutory Authority: RCW 41.50.050, 41.50.120 and chapter 34.05 RCW.
415-114-300	What is considered an overdue payment of an obligation owed to the department. [Statutory Authority: RCW 41.50.050, 41.50.120 and chapter 34.05 RCW. 91-19-062, § 415-114-300, filed 9/16/91, effective 10/17/91.] Repealed by 98-24-083, filed 12/1/98, effective 1/1/99. Statutory Authority: RCW 41.50.050, 41.50.120 and 41.50.125.
415-114-500	Assessment of interest charge on accrued obligations. [Statutory Authority: RCW 41.50.050, 41.50.120 and chapter 34.05 RCW. 91-19-062, § 415-114-500, filed 9/16/91, effective 10/17/91.] Repealed by 98-24-083, filed 12/1/98, effective 1/1/99. Statutory Authority: RCW 41.50.050, 41.50.120 and 41.50.125.
415-114-550	Assessment of interest charge on debit balance forward. [Statutory Authority: RCW 41.50.050, 41.50.120 and chapter 34.05 RCW. 91-19-062, § 415-114-550, filed 9/16/91, effective 10/17/91.] Repealed by 98-24-083, filed 12/1/98, effective 1/1/99. Statutory Authority: RCW 41.50.050, 41.50.120 and 41.50.125.
415-114-600	Billing of interest charges. [Statutory Authority: RCW 41.50.050, 41.50.120 and chapter 34.05 RCW. 91-19-062, § 415-114-600, filed 9/16/91, effective 10/17/91.] Repealed by 98-24-083, filed 12/1/98, effective 1/1/99. Statutory Authority: RCW 41.50.050, 41.50.120 and 41.50.125.

**WAC 415-114-100 Purpose.** These rules relate to the implementation of RCW 41.50.120 and 41.50.125 which provide the department of retirement systems the authority to assess interest on the overdue unpaid balance of a receivable owed to the department. These rules are intended to encourage payment in a timely manner.

[Statutory Authority: RCW 41.50.050, 41.50.120 and 41.50.125. 98-24-083, § 415-114-100, filed 12/1/98, effective 1/1/99. Statutory Authority: RCW 41.50.050, 41.50.120 and chapter 34.05 RCW. 91-19-062, § 415-114-100, filed 9/16/91, effective 10/17/91.]

**WAC 415-114-200 Definitions.** As used in this chapter, unless a different meaning is plainly required by the context:

- (1) "Department" - refers to the department of retirement systems established pursuant to chapter 41.50 RCW as now existing or hereafter amended;
- (2) "Receivable" - refers to an amount owed to DRS, where there is a legal obligation to pay DRS and DRS has a legal obligation to collect the amount owed. That includes, but is not limited to, amounts owed to trust funds administered by the department of retirement systems;

(3) "Close of business day" - refers to 5:00 p.m. of a business day;

(4) "Overdue receivable" - refers to a receivable with an unpaid balance at the close of business three business days after the due date;

(5) "Employer receivable" - refers to a receivable which is owed by any one of the employers within the retirement systems and programs administered by the department as defined in RCW 41.50.030;

(6) "Member receivable" - refers to a receivable which is owed by any one of the current or previous members of the retirement systems and programs administered by the department as defined in RCW 41.50.030, or is owed by a member's beneficiary, legal owner payee, or other agent in conjunction with the member's account;

(7) "Administrative receivable" - refers to any receivable owed the department which is not considered an employer receivable or a member receivable.

[Statutory Authority: RCW 41.50.050, 41.50.120 and 41.50.125. 98-24-083, § 415-114-200, filed 12/1/98, effective 1/1/99. Statutory Authority: RCW 41.50.050, 41.50.120 and chapter 34.05 RCW. 91-19-062, § 415-114-200, filed 9/16/91, effective 10/17/91.]

**WAC 415-114-400 Assessment of interest charge.** The first calendar day that the receivable is overdue, interest will be charged, based on the due date.

A 1% per month simple interest charge will be assessed against an employer's overdue balance. Interest charges for other receivables will be determined by the director of the department of retirement systems. For member receivables, interest will be based on the long-term investment return assumption adopted under RCW 41.45.030. These rates approximate interest lost to trust funds because the receivables have not been paid in a timely manner.

Assessed interest will appear on the monthly accounts receivable statement issued by the department.

[Statutory Authority: RCW 41.50.050, 41.50.120 and 41.50.125. 98-24-083, § 415-114-400, filed 12/1/98, effective 1/1/99. Statutory Authority: RCW 41.50.050, 41.50.120 and chapter 34.05 RCW. 91-19-062, § 415-114-400, filed 9/16/91, effective 10/17/91.]

**WAC 415-114-700 Erroneous charges of interest.** If the department erroneously charges interest, the department will credit the account within sixty days of the date that the erroneous bill is corrected. The credit will equal all erroneous interest charged. Those who believe they have been charged interest in error must submit written justification of their claim within ninety days of the interest charge.

[Statutory Authority: RCW 41.50.050, 41.50.120 and 41.50.125. 98-24-083, § 415-114-700, filed 12/1/98, effective 1/1/99. Statutory Authority: RCW 41.50.050, 41.50.120 and chapter 34.05 RCW. 91-19-062, § 415-114-700, filed 9/16/91, effective 10/17/91.]

## Chapter 415-115 WAC ASSESSMENT OF AN ADDITIONAL ADMINISTRATIVE FEE

### WAC

415-115-010

Purpose.

415-115-020

Definitions.

415-115-030

Assessment of additional administrative fee.

415-115-040

What is considered an untimely report.

415-115-050	What is considered an inaccurate report.
415-115-060	Deficiencies in reporting.
415-115-080	Determination of additional administrative fee.
415-115-090	Maximum additional administrative fee allowable for the public employees', teachers', and law enforcement officers' and fire fighters' retirement systems.
415-115-100	Maximum additional administrative fee allowable for the judges, judicial, and Washington state patrol retirement systems.
415-115-120	Reconsideration of additional administrative fee billing.

### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

415-115-070	Evaluation of reports and assessment of additional administrative fee. [Statutory Authority: RCW 41.50.050 and 41.50.110 (3)(c). 95-12-058, § 415-115-070, filed 6/2/95, effective 7/3/95. Statutory Authority: Chapter 43.05 [34.05] RCW, RCW 41.50.050 and 41.50.110(3). 91-13-030, § 415-115-070, filed 6/12/91, effective 7/13/91.] Repealed by 99-12-041, filed 5/26/99, effective 6/26/99. Statutory Authority: RCW 41.50.050.
415-115-110	Billing of the additional administrative fee. [Statutory Authority: Chapter 43.05 [34.05] RCW, RCW 41.50.050 and 41.50.110(3). 91-13-030, § 415-115-110, filed 6/12/91, effective 7/13/91.] Repealed by 93-16-032, filed 7/29/92, effective 8/29/92. Statutory Authority: RCW 41.50.050 and 41.50.110(3).

**WAC 415-115-010 Purpose.** These rules relate to the implementation of RCW 41.50.110(3) which provides the department of retirement systems the authority to assess additional administrative fees related to increased costs incurred by the department in processing deficient reports. These rules are intended to encourage employers to report timely and accurate member information.

[Statutory Authority: Chapter 43.05 [34.05] RCW, RCW 41.50.050 and 41.50.110(3). 91-13-030, § 415-115-010, filed 6/12/91, effective 7/13/91.]

**WAC 415-115-020 Definitions.** As used in this chapter, unless a different meaning is plainly required by the context:

(1) "Department" refers to the department of retirement systems established pursuant to chapter 41.50 RCW as now existing or hereafter amended.

(2) "Employers" refers to all employers within the retirement systems administered by the department, as defined in RCW 41.50.030.

(3) "Reports" refers to the department of retirement systems transmittal report sent each month by employers to the department.

(4) "Close of business" refers to 5:00 p.m. of a business day.

(5) "Standard administrative fee" for employers in the public employees', school employees', teachers', and law enforcement officers' and fire fighters' retirement systems refers to the administrative fee provided for under RCW 41.50.110; for employers in the judges, judicial, and Washington state patrol retirement systems refers to the biennial appropriation that the department receives for administering each system.

(6) "Additional administrative fee" refers to the fee provided for under RCW 41.50.110(3) which is related to increased costs incurred by the department in processing deficient reports.

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-115-020, filed 12/12/00, effective 1/12/01. Statutory Authority:

Chapter 43.05 [34.05] RCW, RCW 41.50.050 and 41.50.110(3). 91-13-030, § 415-115-020, filed 6/12/91, effective 7/13/91.]

**WAC 415-115-030 Assessment of additional administrative fee.** (1) An employer who fails to submit timely and accurate reports to the department will be assessed an additional fee related to the increased costs incurred by the department to process the deficient reports.

(2) Every month, the department will determine the amount of the fee to be assessed by evaluating the timeliness and accuracy of the reports submitted by employers in the preceding month. If those reports are either untimely or inaccurate, the department will assess an additional administrative fee. This additional administrative fee will not exceed fifty percent of the standard administrative fee.

[Statutory Authority: RCW 41.50.050 and 41.50.110 (3)(c). 95-12-058, § 415-115-030, filed 6/2/95, effective 7/3/95. Statutory Authority: Chapter 43.05 [34.05] RCW, RCW 41.50.050 and 41.50.110(3). 91-13-030, § 415-115-030, filed 6/12/91, effective 7/13/91.]

**WAC 415-115-040 What is considered an untimely report.** Reports for a calendar month, or any portion thereof, are due on or before the 15th day of the following calendar month. Reports are considered overdue if not received by the close of business on the third business day after the 15th of the following calendar month.

[Statutory Authority: Chapter 43.05 [34.05] RCW, RCW 41.50.050 and 41.50.110(3). 91-13-030, § 415-115-040, filed 6/12/91, effective 7/13/91.]

**WAC 415-115-050 What is considered an inaccurate report.** Reports are inaccurate if they cannot be processed or if they contain errors.

[Statutory Authority: RCW 41.50.050 and 41.50.110 (3)(c). 95-12-058, § 415-115-050, filed 6/2/95, effective 7/3/95. Statutory Authority: Chapter 43.05 [34.05] RCW, RCW 41.50.050 and 41.50.110(3). 91-13-030, § 415-115-050, filed 6/12/91, effective 7/13/91.]

**WAC 415-115-060 Deficiencies in reporting.** Any report which is overdue or which is inaccurate is considered a deficient report. Each day a report is late, each report which cannot be processed, or each error contained in a report constitutes a single deficiency in reporting. Employers are notified of reporting deficiencies each month through the department of retirement systems transmittal edit report.

[Statutory Authority: RCW 41.50.050 and 41.50.110 (3)(c). 95-12-058, § 415-115-060, filed 6/2/95, effective 7/3/95. Statutory Authority: Chapter 43.05 [34.05] RCW, RCW 41.50.050 and 41.50.110(3). 91-13-030, § 415-115-060, filed 6/12/91, effective 7/13/91.]

**WAC 415-115-080 Determination of additional administrative fee.** The department will determine the additional administrative fee that may be assessed to employers who have submitted untimely or inaccurate reports. This fee will be determined as follows:

(1) The department will base the additional administrative fee on costs incurred for processing late or inaccurate reports. Costs related to processing deficient data may include, but are not limited to, costs of personnel, equipment, services and facilities.

(2) The department will determine the total number of deficiencies reported by all employers during each month.

(3) Based upon the costs identified in subsection (1) of this section, the department will determine the additional administrative fee to be charged per deficiency.

(4) The department will determine the additional administrative fee to charge each employer. The total fee shall be an amount equal to the per deficiency fee determined under subsection (3) of this section multiplied by the deficiencies reported by an employer.

(5) From time to time, the department may review and adjust the charge calculated under subsection (3) of this section.

(6) Additional administrative fees are due and payable the 15th day of the calendar month following the month that the statement is dated.

[Statutory Authority: RCW 41.50.050 and 41.50.110 (3)(c). 95-12-058, § 415-115-080, filed 6/2/95, effective 7/3/95. Statutory Authority: RCW 41.50.050 and 41.50.110(3). 92-16-032 § 415-115-080, filed 7/29/92, effective 8/29/92. Statutory Authority: Chapter 43.05 [34.05] RCW, RCW 41.50.050 and 41.50.110(3). 91-13-030, § 415-115-080, filed 6/12/91, effective 7/13/91.]

**WAC 415-115-090 Maximum additional administrative fee allowable for the public employees', teachers', and law enforcement officers' and fire fighters' retirement systems.** The maximum additional administrative fee that may be charged to employers in the public employees' retirement system, the school employees' retirement system, the teachers' retirement system, and the law enforcement officers' and fire fighters' retirement system for any six-month period shall not exceed fifty percent of the standard administrative fee due for that six-month period. In instances where the standard administrative fee rate changes during the six-month period, the new standard administrative fee rate will be applied beginning with the month in which the new rate becomes effective. The maximum additional administrative fee that may be assessed is determined as follows:

(1) If the additional administrative fee as determined in accordance with WAC 415-115-080 is less than fifty percent of the standard administrative fee, the additional administrative fee is the maximum fee allowable.

(2) If the additional administrative fee as determined in accordance with WAC 415-115-080 is greater than or equal to fifty percent of the standard administrative fee, fifty percent of the standard administrative fee is the maximum fee allowable.

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-115-090, filed 12/12/00, effective 1/12/01. Statutory Authority: Chapter 43.05 [34.05] RCW, RCW 41.50.050 and 41.50.110(3). 91-13-030, § 415-115-090, filed 6/12/91, effective 7/13/91.]

**WAC 415-115-100 Maximum additional administrative fee allowable for the judges, judicial, and Washington state patrol retirement systems.** The standard administrative fee for employers in the judges retirement system, the judicial retirement system, and the Washington state patrol retirement system for a six-month period is one-fourth of the biennial appropriation the department receives for administering each system. The maximum additional administrative

fee that may be charged to employers in the judges, judicial, and Washington state patrol retirement systems for any six-month period shall not exceed fifty percent of the standard administrative fee due for that six-month period. The maximum additional administrative fee that may be assessed is determined as follows:

1) If the additional administrative fee as determined in accordance with WAC 415-115-080 is less than fifty percent of the standard administrative fee, the additional administrative fee is the maximum fee allowable.

2) If the additional administrative fee as determined in accordance with WAC 415-115-080 is greater than or equal to fifty percent of the standard administrative fee, fifty percent of the standard administrative fee is the maximum fee allowable.

[Statutory Authority: Chapter 43.05 [34.05] RCW, RCW 41.50.050 and 41.50.110(3). 91-13-030, § 415-115-100, filed 6/12/91, effective 7/13/91.]

**WAC 415-115-120 Reconsideration of additional administrative fee billing.** (1) An employer who has received a billing for untimely or inaccurate reporting under this chapter may request a reconsideration of the billing. The employer must request reconsideration within six months of the date that the billing was issued by the department. The employer must state the reason why, and present evidence that, the specific assessment was not untimely or inaccurate.

(2) In instances where an additional administrative fee has been assessed incorrectly, the department will credit the employer's account in the amount of the incorrect assessment. An employer must provide suitable verification of the incorrectness of the assessment. An employer will be credited only for those reporting deficiencies charged to the employer for which the employer is not responsible.

[Statutory Authority: RCW 41.50.050 and 41.50.110 (3)(c). 95-12-058, § 415-115-120, filed 6/2/95, effective 7/3/95. Statutory Authority: Chapter 43.05 [34.05] RCW, RCW 41.50.050 and 41.50.110(3). 91-13-030, § 415-115-120, filed 6/12/91, effective 7/13/91.]

## Chapter 415-200 WAC EMPLOYEE RETIREMENT BENEFITS BOARD

### WAC

415-200-020	Regular board meetings.
415-200-030	Plan 3 external administrators.
415-200-040	Self-directed investment—Expenses paid by members.
415-200-050	Recusal of board members—Beneficial interest in transaction.
415-200-060	Recusal of board members—Beneficial interest in entity engaged in transaction with the board.
415-200-070	Recusal of board members—Disclosure of reason for recusal.

**WAC 415-200-020 Regular board meetings.** The regular meetings of the employee retirement benefits board are held on the fourth Tuesday of each month beginning at 9:00 a.m. at the offices of the State Investment Board, 2424 Heritage Court S.W., Olympia, Washington 98504-0916.

[Statutory Authority: RCW 41.50.086 and 41.50.050. 96-23-025, § 415-200-020, filed 11/13/96, effective 12/14/96.]

**WAC 415-200-030 Plan 3 external administrators.** The employee retirement benefits board may obtain external

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investment management services to assist with the provision of self-direct investment options. External administrator and investment management services will be obtained through competitive procurement processes to ensure the teachers' retirement system Plan 3, school employees' retirement system Plan 3 and the public employees' retirement system Plan 3 members receive quality services and competitive pricing. The department of retirement systems may select external administrators to assist with the administration of the defined contribution portion of Plan 3 systems.

[Statutory Authority: RCW 41.50.050(5) and 41.50.088. 02-03-120, § 415-200-030, filed 1/23/02, effective 3/1/02. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-200-030, filed 12/12/00, effective 1/12/01. Statutory Authority: RCW 41.50.088 and 41.32.060. 97-16-039, § 415-200-030, filed 7/30/97, effective 7/30/97.]

**WAC 415-200-040 Self-directed investment—Expenses paid by members.** RCW 41.34.060 allows members of the teachers' retirement system plan 3 and school employees' retirement system plan 3 to elect to self-direct their investments. Members electing to self-direct their investments must pay the expenses caused by the self-directed investment program.

**(1) Assessment of member expenses for self-directed investment.** Each month, the third-party administrator will allocate self-directed investment expenses to each participating member. The expenses allocated to members shall include:

- (a) External third party administrator costs;
- (b) External investment manager and consultant costs; and
- (c) State investment board investment management operating expenses, in the case of investment options provided through the state investment board.

Each category of expense shall be expressed in terms of basis points. A basis point is equal to one-hundredth of one percent. The administrator will determine the participating member's monthly fee by multiplying the average monthly value of each participating member's self-directed account assets by the basis points for each expense category.

**(2) Adoption of expense charge.** The expense charges used to calculate self-directed investment fees for participating members shall be established in a memorandum of understanding, interagency agreement, and/or contract. Each expense charge shall be reviewed and approved at a regularly scheduled meeting of the employee retirement benefits board, with opportunity for public testimony. No expense charge may be included in a memorandum of understanding, interagency agreement, and/or contract until such charge has been approved by the employee retirement benefits board. No expense charge which has been approved may be changed unless such change has been approved by the board.

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-200-040, filed 12/12/00, effective 1/12/01. Statutory Authority: RCW 41.50.088 and 41.32.060. 97-16-039, § 415-200-040, filed 7/30/97, effective 7/30/97.]

**WAC 415-200-050 Recusal of board members—Beneficial interest in transaction.** (1) When a member of the board is beneficially interested, directly or indirectly, in a

contract, sale, lease, purchase or grant that may be made by, through, or is under the supervision of the board, in whole or in part, or when the member accepts, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in such contract, sale, lease, purchase or grant, the member shall:

(a) Recuse him or herself from the board discussion regarding the specific contract, sale, lease, purchase or grant;

(b) Recuse him or herself from the board vote on the specific contract, sale, lease, purchase or grant; and

(c) Refrain from attempting to influence the remaining board members in their discussion and vote regarding the specific contract, sale, lease, purchase or grant.

(2) The prohibition against discussion set forth in subsection (1)(a) and (c) of this section shall not prohibit the member of the board from using his or her general expertise to educate and provide general information on the subject area to the other members.

(3) Under subsection (1) of this section, "any other person" has a beneficial interest in a contract, sale, lease, purchase or grant when the other person bids or otherwise seeks to be awarded the contract, sale, lease, purchase or grant.

**Example:** The board is composed in part of individuals who are employed by companies which provide investment options to retirement plans. The board is in the process of selecting investment options for the defined contribution portion of the Teachers' Retirement System Plan 3. A company which employs one of the board members has bid on the contract. The board member who is employed by the bidding company may use his general expertise to educate and provide general information to the board regarding investments and defined contribution retirement plans in general. The member is prohibited from participating in the board discussion and analysis implementing the criteria for selecting an investment company, and is prohibited from participating in the board vote to select the company.

**Example:** The board has a contract with an investment company to provide investment options for the defined contribution portion of Teachers' Retirement System Plan 3 (TRS Plan 3). The board's contract with the investment company is almost expired, and the board must seek proposals from investment companies for the next contract period. The board issues a request for proposal to various investment companies, including Investment Company "A." Approximately one year ago, a board member worked for Investment Company "A" and received compensation from that company. The board member subsequently retired. The board member is not required to recuse herself from selecting the investment company for TRS Plan 3. Investment Company "A" did not have a beneficial interest in the board's contract until it bid on the contract. Therefore, Investment Company "A" was not beneficially interested in the contract when the board member received the compensation. However, if the board member received compensation from Investment Company "A" after it bid on the contract, the board member would be required to disclose the fact that she received the compensa-

tion from the bidder, and to recuse herself from the board's specific discussion and the vote awarding the contract.

[Statutory Authority: RCW 41.50.086. 98-01-109, § 415-200-050, filed 12/17/97, effective 1/17/98.]

**WAC 415-200-060 Recusal of board members—Beneficial interest in entity engaged in transaction with the board.** (1) When a member of the board either owns a beneficial interest in or is an officer, agent, employee or member of an entity or individual which is engaged in a transaction involving the board, the member shall:

(a) Recuse him or herself from the board discussion regarding the specific transaction;

(b) Recuse him or herself from the board vote on the specific transaction; and

(c) Refrain from attempting to influence the remaining board members in their discussion and vote regarding the specific transaction.

(2) The prohibition against discussion and voting set forth in subsection (1)(a) and (c) of this section shall not prohibit the member of the board from using his or her general expertise to educate and provide general information on the subject area to the other members.

(3)(a) "Transaction involving the board" means a proceeding, application, submission, request for a ruling or other determination, contract, claim, case, or other similar matter that the member in question believes, or has reason to believe:

(i) Is, or will be, the subject of board action; or

(ii) Is one to which the board is or will be a party; or

(iii) Is one in which the board has a direct and substantial proprietary interest.

(b) "Transaction involving the board" does not include the following: Preparation, consideration, or enactment of legislation, including appropriation of moneys in a budget, or the performance of legislative duties by a member; or a claim, case, lawsuit, or similar matter if the member did not participate in the underlying transaction involving the board that is the basis for the claim, case, or lawsuit. Rule making is not a "transaction involving the board."

(4) "Board action" means any action on the part of the board, including, but not limited to:

(a) A decision, determination, finding, ruling, or order; and

(b) A grant, payment, award, license, contract, transaction, sanction, or approval, or the denial thereof, or failure to act with respect to a decision, determination, finding, ruling, or order.

**Example:** The board selects investment options for the deferred compensation program. The board currently has a contract with Investment Company "B" which allows program participants to purchase Company "B's" stock. The board is in the process of determining whether to renew Company "B's" contract. One of the board members owns fifty shares of Company "B" stock. That board member must recuse herself from the board's discussion and vote regarding whether to renew Company "B's" contract. The board member also must refrain from attempting to influence

**Example:** the remaining board members in their discussion and vote regarding the contract renewal.

The board selects investment options for the deferred compensation program. The board is in the process of obtaining proposals from mutual fund companies to provide mutual fund options to program participants. Mutual Fund Company "C" bids on the contract. A board member owns one hundred shares of Mutual Fund "C," but does not have any management powers in the mutual fund company. The board member does not have a beneficial interest in Mutual Fund Company "C." RCW 42.52.010(4). The board member thus is not required to recuse himself from the board's discussion and vote on the mutual fund contract.

[Statutory Authority: RCW 41.50.086. 98-01-109, § 415-200-060, filed 12/17/97, effective 1/17/98.]

**WAC 415-200-070 Recusal of board members—Disclosure of reason for recusal.** If recusal occurs pursuant to WAC 415-200-050 or 415-200-060, the member of the board shall disclose to the public the reasons for his or her recusal from any board action whenever recusal occurs. The board staff shall record each recusal and the basis for the recusal.

[Statutory Authority: RCW 41.50.086. 98-01-109, § 415-200-070, filed 12/17/97, effective 1/17/98.]

## Chapter 415-501 WAC DEFERRED COMPENSATION PLAN

### WAC

#### DEFERRED COMPENSATION PLAN ESTABLISHED

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#### DEFINITIONS

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415-501-305 Department to interpret.

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415-501-340 Deferred compensation accounts.  
415-501-350 Department and employee retirement benefits board actions.

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415-501-520	Leave of absence.
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	<b>RELATIONSHIP TO OTHER PLANS</b>
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	<b>EMPLOYER PARTICIPATION</b>
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415-501-610	Investment responsibility.
	<b>APPLICABLE LAW</b>
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415-501-720	Plan to conform to federal law.
	<b>DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER</b>
415-501-120	Beneficiary. [Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, recodified as § 415-501-120, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050 and 41.50.780(11), 96-16-020, § 415-504-020, filed 7/29/96, effective 7/29/96.] Repealed by 02-01-121, filed 12/19/01, effective 1/1/02. Statutory Authority: RCW 41.50.050(5), 41.50.030(2), 41.50.088(2), 41.50.770, and 41.50.780, 26 U.S.C. (Internal Revenue Code) and related tax regulations.
415-501-130	Compensation. [Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, recodified as § 415-501-130, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050 and 41.50.780(11), 96-16-020, § 415-504-030, filed 7/29/96, effective 7/29/96.] Repealed by 02-01-121, filed 12/19/01, effective 1/1/02. Statutory Authority: RCW 41.50.050(5), 41.50.030(2), 41.50.088(2), 41.50.770, and 41.50.780, 26 U.S.C. (Internal Revenue Code) and related tax regulations.
415-501-140	Deferred compensation. [Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, recodified as § 415-501-140, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050 and 41.50.780(11), 96-16-020, § 415-504-040, filed 7/29/96, effective 7/29/96.] Repealed by 02-01-121, filed 12/19/01, effective 1/1/02. Statutory Authority: RCW 41.50.050(5), 41.50.030(2), 41.50.088(2), 41.50.770, and 41.50.780, 26 U.S.C. (Internal Revenue Code) and related tax regulations.
415-501-150	Department. [Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, recodified as §

	415-501-150, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-504-050, filed 7/29/96, effective 7/29/96.] Repealed by 02-01-121, filed 12/19/01, effective 1/1/02. Statutory Authority: RCW 41.50.050(5), 41.50.030(2), 41.50.088(2), 41.50.770, and 41.50.780, 26 U.S.C. (Internal Revenue Code) and related tax regulations.	RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-512-090, filed 7/29/96, effective 7/29/96.] Repealed by 02-01-121, filed 12/19/01, effective 1/1/02. Statutory Authority: RCW 41.50.050(5), 41.50.030(2), 41.50.088(2), 41.50.770, and 41.50.780, 26 U.S.C. (Internal Revenue Code) and related tax regulations.
415-501-160	Eligible employee. [Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, recodified as § 415-501-160, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-504-060, filed 7/29/96, effective 7/29/96.] Repealed by 02-01-121, filed 12/19/01, effective 1/1/02. Statutory Authority: RCW 41.50.050(5), 41.50.030(2), 41.50.088(2), 41.50.770, and 41.50.780, 26 U.S.C. (Internal Revenue Code) and related tax regulations.	RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, amended and recodified as § 415-501-500, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050. 98-20-047, § 415-512-110, filed 9/30/98, effective 10/31/98. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-512-110, filed 7/29/96, effective 7/29/96.] Repealed by 02-01-121, filed 12/19/01, effective 1/1/02. Statutory Authority: RCW 41.50.050(5), 41.50.030(2), 41.50.088(2), 41.50.770, and 41.50.780, 26 U.S.C. (Internal Revenue Code) and related tax regulations.
415-501-170	Employee retirement benefits board. [Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, recodified as § 415-501-170, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-504-070, filed 7/29/96, effective 7/29/96.] Repealed by 02-01-121, filed 12/19/01, effective 1/1/02. Statutory Authority: RCW 41.50.050(5), 41.50.030(2), 41.50.088(2), 41.50.770, and 41.50.780, 26 U.S.C. (Internal Revenue Code) and related tax regulations.	DEFERRED COMPENSATION PLAN ESTABLISHED
415-501-180	Employer. [Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, recodified as § 415-501-180, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-504-080, filed 7/29/96, effective 7/29/96.] Repealed by 02-01-121, filed 12/19/01, effective 1/1/02. Statutory Authority: RCW 41.50.050(5), 41.50.030(2), 41.50.088(2), 41.50.770, and 41.50.780, 26 U.S.C. (Internal Revenue Code) and related tax regulations.	<b>WAC 415-501-010 Deferred compensation plan established.</b> In accordance with the provisions of RCW 41.50.030(2), 41.50.088(2), 41.50.770, and 41.50.780, and as provided in Section 457 of the Internal Revenue Code, the state of Washington hereby establishes the deferred compensation plan for employees of the state of Washington and approved political subdivisions of the state of Washington, hereinafter referred to as the "plan." Nothing contained in this plan shall be deemed to constitute an employment agreement between the participant and the employer and nothing contained herein shall be deemed to give a participant any right to be retained in the employ of the employer.
415-501-190	Participant. [Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, amended and recodified as § 415-501-190, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-504-090, filed 7/29/96, effective 7/29/96.] Repealed by 02-01-121, filed 12/19/01, effective 1/1/02. Statutory Authority: RCW 41.50.050(5), 41.50.030(2), 41.50.088(2), 41.50.770, and 41.50.780, 26 U.S.C. (Internal Revenue Code) and related tax regulations.	[Statutory Authority: RCW 41.50.050(5), 41.50.030(2), 41.50.088(2), 41.50.770, and 41.50.780, 26 U.S.C. (Internal Revenue Code) and related tax regulations. 02-01-121, § 415-501-010, filed 12/19/01, effective 1/1/02. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, § 415-501-010, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-501-010, filed 7/29/96, effective 7/29/96.]
415-501-200	Participation agreement. [Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, amended and recodified as § 415-501-200, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-504-100, filed 7/29/96, effective 7/29/96.] Repealed by 02-01-121, filed 12/19/01, effective 1/1/02. Statutory Authority: RCW 41.50.050(5), 41.50.030(2), 41.50.088(2), 41.50.770, and 41.50.780, 26 U.S.C. (Internal Revenue Code) and related tax regulations.	<b>WAC 415-501-020 Separate plan.</b> The provisions in chapter 415-501 WAC apply only to the deferred compensation plan and not to any other plan administered by the department.
415-501-210	Separation from service. [Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, amended and recodified as § 415-501-210, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-504-110, filed 7/29/96, effective 7/29/96.] Repealed by 02-01-121, filed 12/19/01, effective 1/1/02. Statutory Authority: RCW 41.50.050(5), 41.50.030(2), 41.50.088(2), 41.50.770, and 41.50.780, 26 U.S.C. (Internal Revenue Code) and related tax regulations.	[Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, § 415-501-020, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-501-020, filed 7/29/96, effective 7/29/96.]
415-501-300	Department to adopt rules and regulations. [Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, recodified as § 415-501-300, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-508-020, filed 7/29/96, effective 7/29/96.] Repealed by 02-01-121, filed 12/19/01, effective 1/1/02. Statutory Authority: RCW 41.50.050(5), 41.50.030(2), 41.50.088(2), 41.50.770, and 41.50.780, 26 U.S.C. (Internal Revenue Code) and related tax regulations.	<b>DEFINITIONS</b>
415-501-490	Elections regarding distribution. [Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, amended and recodified as § 415-501-490, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050. 98-20-047, § 415-512-090, filed 9/30/98, effective 10/31/98. Statutory Authority: RCW 41.50.780(1) and 41.50.050. 97-05-009, § 415-512-090, filed 2/7/97, effective 3/10/97. Statutory Authority:	<b>WAC 415-501-110 Definitions.</b> (1) <b>Accumulated deferrals.</b> Compensation deferred under the plan, adjusted by income received, increases or decreases in investment value, fees, and any prior distributions made.

(2) **Beneficiary.** A beneficiary of a participant, a participant's estate, or any other person whose interest in the plan is derived from the participant.

(3) **Compensation.** All payments made to a public employee by the employer as remuneration for services rendered.

(4) **Deferred compensation.** The amount of the participant's compensation which the participant and the employer shall mutually agree (prior to the date on which such compensation is earned) will be deferred.

**(5) Department.** The department of retirement systems created by RCW 41.50.020.

**(6) Eligible employee.** Any person who is employed by and receives any type of compensation from the employer for whom services are provided, and who is a full-time, permanent part-time working half-time, or more, or career seasonal employee of the employer, whether or not covered by civil service; an elected or appointed official of the executive branch of the government, including any full-time member of a board, commission, or committee; a justice of the supreme court, or a judge of the court of appeals or of a superior court; or a member of the state legislature.

**(7) Eligible rollover distribution.** A distribution to a participant of any or all funds from an eligible retirement plan unless it is:

(a) One in a series of substantially equal annuity payments;

(b) One in a series of substantially equal installment payments payable over ten years or more;

(c) Required to meet minimum distribution requirements of the plan; or

(d) Distributed for hardship or unforeseeable emergency from a 457 plan.

**(8) Employee retirement benefits board.** The board created by RCW 41.50.086.

**(9) Employer.**

(a) The state of Washington; and

(b) Approved political subdivisions of the state of Washington.

**(10) Normal retirement age.** The range of ages between:

(a) The earliest age at which an eligible participant has the right to receive retirement benefits without actuarial adjustment under any employer-authorized plan; and

(b) Age seventy and one-half.

**(11) Participant.** An eligible employee who has submitted a participation agreement that is approved by DRS.

**(12) Participation agreement.** The agreement executed by an eligible employee pursuant to WAC 415-501-410, in which the eligible employee chooses to become a plan participant.

**(13) Severance of employment.** Termination of employment with an employer.

[Statutory Authority: RCW 41.50.050(5), 41.50.030(2), 41.50.088(2), 41.50.770, and 41.50.780, 26 U.S.C. (Internal Revenue Code) and related tax regulations. 02-01-121, § 415-501-110, filed 12/19/01, effective 1/1/02. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, amended and recodified as § 415-501-110, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-504-010, filed 7/29/96, effective 7/29/96.]

**WAC 415-501-305 Department to interpret.** The department is authorized to construe this plan and resolve any ambiguity in the plan. The plan and any form or other document used in administering the plan shall be interpreted, and this plan shall be administered, so as to comply with Section 457 of the Internal Revenue Code and the regulations of the treasury department promulgated thereunder.

[Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, recodified as § 415-501-305, filed 5/18/00, effective 6/18/00. Statutory

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Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-564-030, filed 7/29/96, effective 7/29/96.]

## ADMINISTRATION

**WAC 415-501-310 Administered by department.** The department shall administer the plan in accordance with Section 457 of the Internal Revenue Code to maintain an eligible deferred compensation plan.

[Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, amended and recodified as § 415-501-310, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-508-010, filed 7/29/96, effective 7/29/96.]

**WAC 415-501-315 Employer responsibility.** The employer as plan sponsor has responsibilities including, but not limited to, monitoring for deferral limits and determining employees' eligibility to participate.

The department's administration of the plan does not replace the employer's responsibilities as the plan sponsor.

[Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, § 415-501-315, filed 5/18/00, effective 6/18/00.]

**WAC 415-501-320 Tax status not guaranteed.** The department does not:

(1) Represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will occur because of the participant's participation in this plan;

(2) Assume any liability for a participant's compliance with the Internal Revenue Code.

The participant should consult with his/her own representative regarding all questions of federal or state income, payroll, personal property or other tax consequences arising from participation in this plan.

[Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, amended and recodified as § 415-501-320, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-564-040, filed 7/29/96, effective 7/29/96.]

**WAC 415-501-330 Department to maintain records of accounts.** To facilitate an orderly administration of the plan, the department shall maintain or cause to be maintained a deferred compensation ledger account with respect to each participant.

[Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, recodified as § 415-501-330, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-508-040, filed 7/29/96, effective 7/29/96.]

**WAC 415-501-340 Deferred compensation accounts.** All deferred compensation hereunder shall be paid into a special fund created in the treasury of the state of Washington called the "deferred compensation principal account." All costs of administration and staffing of the plan, expenses of the department, and such other amounts determined by the department and permitted by law, shall be paid as necessary out of the deferred compensation administrative account. Amounts in the deferred compensation principal account may be invested pursuant to RCW 41.50.770. All accumulated deferrals payable to participants or their respec-

tive beneficiary or beneficiaries shall be paid from the deferred compensation principal account unless otherwise paid.

[Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, amended and recodified as § 415-501-340, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-508-050, filed 7/29/96, effective 7/29/96.]

**WAC 415-501-350 Department and employee retirement benefits board actions.** Every action taken by the department and employee retirement benefits board shall be presumed to be fair and reasonable exercise of the authority vested in or the duties imposed upon it. The department officers and employees and members of the employee retirement benefits board shall be deemed to have exercised reasonable care, diligence, and prudence, and to have acted impartially as to all persons interested, unless the contrary is proven by affirmative evidence.

[Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, recodified as § 415-501-350, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-508-030, filed 7/29/96, effective 7/29/96.]

## DEPARTMENT POWERS

**WAC 415-501-360 Plan prevails.** In the event any form or other document used in administering this plan conflicts with the terms of the plan, the terms of the plan shall prevail.

[Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, amended and recodified as § 415-501-360, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-564-010, filed 7/29/96, effective 7/29/96.]

**WAC 415-501-370 Decision binding.** The department is authorized to determine any matters concerning the rights of any participant under this plan and such determination shall be binding on the participant and any beneficiary thereof.

A participant or beneficiary may file a petition for review under chapter 415-04 WAC or an application under WAC 415-08-015(2) for review of a decision to deny an application for distribution pursuant to WAC 415-501-510.

[Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, amended and recodified as § 415-501-370, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-564-020, filed 7/29/96, effective 7/29/96.]

**WAC 415-501-380 Department may require court order.** The department or the employer, if in doubt concerning the correctness of their action in making a distribution of accumulated deferrals, may suspend distribution until satisfied as to the correctness of the distribution or the person to receive the distribution or to allow the filing in any state court of competent jurisdiction of a civil action seeking a determination of the amounts to be paid and the persons to receive them. The department and the employer shall comply with the final orders of the court in any such suit; and the participant, for the participant and the participant's beneficiary or beneficiaries, consents to be bound thereby. Whenever distribution of accumulated deferrals is suspended pursuant to this

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section, the time for a participant or beneficiary making any choice under WAC 415-501-485 or 415-501-491 through 415-501-494 shall not begin until amount(s) and person(s) entitled are determined either by a written agreement of all parties concerned or by a court judgment that has become final.

[Statutory Authority: RCW 41.50.050(5), 41.50.030(2), 41.50.088(2), 41.50.770, and 41.50.780, 26 U.S.C. (Internal Revenue Code) and related tax regulations. 02-01-121, § 415-501-380, filed 12/19/01, effective 1/1/02. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, amended and recodified as § 415-501-380, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-564-050, filed 7/29/96, effective 7/29/96.]

**WAC 415-501-390 Delegation of authority.** The department may delegate its functions to be performed under this plan to any designee with legal authority to perform such functions.

[Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, recodified as § 415-501-390, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-564-060, filed 7/29/96, effective 7/29/96.]

## PARTICIPATION IN THE PLAN

**WAC 415-501-410 Enrollment.** (1) An eligible employee may become a participant by executing a participation agreement. Compensation will be deferred for any calendar month only if a participation agreement providing for such deferral is executed by the participant and approved by the department or its designee before the beginning of such month.

(2) In signing the participation agreement, the participant elects to participate in this plan and consents to the employer deferring the amount specified in the participation agreement from the participant's gross compensation for each month. The amount specified shall continue until changed or suspended pursuant to WAC 415-501-450 or 415-501-470 of this plan.

[Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, amended and recodified as § 415-501-410, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-512-010, filed 7/29/96, effective 7/29/96.]

**WAC 415-501-415 Transfers into plan from eligible retirement plans.** (1) **Ability to transfer in.** A participant may transfer pretax contributions into the department's deferred compensation plan:

(a) Through a direct transfer of an eligible rollover distribution from an individual retirement account (IRA) or from a former employer's retirement plan; or

(b) Through a direct transfer from another 457 plan maintained by a participating political subdivision while the participant remains employed by the political subdivision.

(2) Distributions from the plan attributable to amounts transferred into the plan from non-457 plans may be subject to an additional 10% tax on early distributions. The department will keep a separate accounting of funds rolled into the plan from non-457 eligible retirement plans for this purpose.

(3) **Rollover application.** To transfer money into a deferred compensation account, a participant must complete

the appropriate form. Forms are available through the department or on its website (<http://www.wa.gov/drs/dcp/>).

[Statutory Authority: RCW 41.50.050(5), 41.50.030(2), 41.50.088(2), 41.50.770, and 41.50.780, 26 U.S.C. (Internal Revenue Code) and related tax regulations. 02-01-121, § 415-501-415, filed 12/19/01, effective 1/1/02. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, amended and recodified as § 415-501-415, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050. 98-20-047, § 415-512-015, filed 9/30/98, effective 10/31/98. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-512-015, filed 7/29/96, effective 7/29/96.]

**WAC 415-501-416 Transfers from plan into other eligible retirement plans.** (1) **Ability to transfer out.** Subject to the rules of the receiving plan, a participant may transfer funds from the department's deferred compensation plan:

(a) Through a rollover of an eligible rollover distribution into an individual retirement account (IRA) or another employer-sponsored retirement plan after separation from service;

(b) Through a direct transfer into another IRC section 457 plan after the participant severs employment;

(c) Through a direct transfer into another 457 plan maintained by a participating political subdivision made while the participant remains employed by the political subdivision; or

(d) To purchase eligible service credit under WAC 415-501-417.

(2) **Ability of surviving spouse to transfer out.** As a beneficiary, the surviving spouse of a participant may transfer eligible rollover distributions from the participant's account into his or her own eligible retirement plan.

(3) Funds that are transferred into a non-457 plan will be governed by the rules of the receiving plan.

(4) **Rollover application.** To transfer money from a deferred compensation account, a participant or the surviving spouse of a participant must complete the appropriate form. Forms are available through the department or on its website (<http://www.wa.gov/drs/dcp/>).

[Statutory Authority: RCW 41.50.050(5), 41.50.030(2), 41.50.088(2), 41.50.770, and 41.50.780, 26 U.S.C. (Internal Revenue Code) and related tax regulations. 02-01-121, § 415-501-416, filed 12/19/01, effective 1/1/02.]

**WAC 415-501-417 Using deferred compensation funds to purchase service credit.** (1) **What is allowed.** Subject to the requirements of the receiving retirement plan, a participant may make a direct transfer of funds from his or her deferred compensation account to purchase, restore, or reinstate eligible service credit in any government retirement plan.

(2) **Who is eligible.** Any plan participant may transfer funds, whether or not employed at the time of the transfer.

(3) **How to request a transfer.**

(a) A participant may request a transfer by submitting a completed form to the department.

(b) Forms are available through DRS or on its website (<http://www.wa.gov/drs/dcp/>).

(4) **Tax consequences.** Participants are advised to consult with a tax professional regarding the tax consequences of this transaction.

[Statutory Authority: RCW 41.50.050(5), 41.50.030(2), 41.50.088(2), 41.50.770, and 41.50.780, 26 U.S.C. (Internal Revenue Code) and related tax regulations. 02-01-121, § 415-501-417, filed 12/19/01, effective 1/1/02.]

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**WAC 415-501-420 Annual deferral limits.** (1) Except as provided in WAC 415-501-430 (catch-up provisions), the maximum that a participant may defer under the plan for any taxable year shall not exceed the lesser of:

(a) One hundred percent of the participant's includible compensation; or

(b) The annual deferral amount in the following table:

For taxable year beginning in calendar year:	Annual deferral amount:
2001	\$8,500
2002	\$11,000
2003	\$12,000
2004	\$13,000
2005	\$14,000
2006	\$15,000
Beginning January 1, 2007	\$15,000 plus cost-of-living adjustments, if any, established by the IRS under 26 USC 457

(2) "Includible compensation" for purposes of this section means includible compensation as defined in IRC Section 457 (e)(5), and as further defined by Treasury Department Regulation 1.457-2 (e)(2) interpreting that section, and is determined without regard to community property laws.

[Statutory Authority: RCW 41.50.050(5), 41.50.030(2), 41.50.088(2), 41.50.770, and 41.50.780, 26 U.S.C. (Internal Revenue Code) and related tax regulations. 02-01-121, § 415-501-420, filed 12/19/01, effective 1/1/02. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, amended and recodified as § 415-501-420, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050. 98-20-047, § 415-512-020, filed 9/30/98, effective 10/31/98. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-512-020, filed 7/29/96, effective 7/29/96.]

**WAC 415-501-430 "Catch-up" provisions.** Two "catch-up" options allow a participant to defer more than the annual deferral limit set forth in WAC 415-501-420. A participant may not use both catch-up provisions during the same taxable year.

(1) **Age fifty and over:** A participant may defer a higher amount during any plan year in which the participant is age fifty or older. The maximum a participant may defer each year shall be the sum of:

(a) The annual deferral amount in WAC 415-501-420 for the current taxable year; and

(b) The lesser of:

(i) Compensation available for deferral; or

(ii) The amount in the following table:

For taxable year beginning in calendar year:	Annual deferral amount:
2002	\$1,000
2003	\$2,000
2004	\$3,000
2005	\$4,000
2006	\$5,000
Beginning January 1, 2007	\$5,000 plus cost-of-living adjustments, if any, established by the IRS under 26 USC 414

(2) **Three years before normal retirement age:** A participant may defer a higher amount during a period of three

consecutive years immediately preceding any taxable year the participant reaches normal retirement age as defined in WAC 415-501-110(10). The maximum a participant may defer during each of the three years shall be the lesser of:

- (a) Twice the annual deferral amount under WAC 415-501-420(1); or
- (b) The sum of:
  - (i) The annual deferral amount in WAC 415-501-420(1); plus
  - (ii) The portion of the participant's annual deferral amount for any prior taxable year that the participant has not previously used under WAC 415-501-420 or this subsection.

(3) For purposes of subsection (2)(b)(ii) of this section, a prior taxable year shall be taken into account only if:

- (a) It begins after December 31, 1978;
- (b) The participant was eligible to participate in the plan during any portion of the taxable year, or eligible to participate in an eligible 457 plan sponsored by another entity; and
- (c) Compensation deferred under the plan during the taxable year (if any) was subject to a deferral limit under WAC 415-501-420.

[Statutory Authority: RCW 41.50.050(5), 41.50.030(2), 41.50.088(2), 41.50.770, and 41.50.780, 26 U.S.C. (Internal Revenue Code) and related tax regulations. 02-01-121, § 415-501-430, filed 12/19/01, effective 1/1/02. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, amended and recodified as § 415-501-430, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050. 98-20-047, § 415-512-030, filed 9/30/98, effective 10/31/98. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-512-030, filed 7/29/96, effective 7/29/96.]

**WAC 415-501-440 Department may disallow deferral.** The participant acknowledges the right of the department to disallow deferral of compensation under the plan in excess of the limitations in WAC 415-501-420 and 415-501-430. However, the department shall have no duty to assure that amounts deferred are in compliance with such limitations.

[Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, amended and recodified as § 415-501-440, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-512-040, filed 7/29/96, effective 7/29/96.]

**WAC 415-501-450 Modification of deferral or investment option(s).** Deferral or investment option(s) may be changed. A participant may change his/her deferral or investment option(s) through the methods established by the department. (A beneficiary or beneficiaries entitled to receive accumulated deferrals may also change investment options.) Deferral changes may be made only in:

- (1) Whole dollar increments or;
- (2) Whole percentages if percentage deferrals are allowed for the participant's employer.

A change in the deferral amount shall be effective for any calendar month only if the participant notifies the department or its designee of the change through the methods available, prior to the month for which the change is requested and prior to the established payroll cutoff date, for the participant's employer, for which the change will occur.

[Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, amended and recodified as § 415-501-450, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050. 98-20-047, § 415-512-050, filed 9/30/98, effective 10/31/98. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-512-050, filed 7/29/96, effective 7/29/96.]

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**WAC 415-501-470 Suspension and reinstatement of deferrals. Suspension.** A participant may at any time, through the methods established by the department, direct that his or her deferrals cease. The direction to cease deferrals must be provided to the department or its designee no later than the last day of the month prior to the month during which the deferrals are to cease; however, accumulated deferrals shall be paid only as provided in this chapter.

**Reinstatement.** A participant may reinstate deferrals at any time, except after having ceased deferrals as part of an unforeseeable emergency distribution request. A participant who has directed the cessation of deferrals as part of an unforeseeable emergency distribution request cannot resume deferrals sooner than six months after his or her deferrals ceased. Deferrals will begin the month immediately following the month that the resumption of deferrals is requested.

[Statutory Authority: RCW 41.50.050(5), 41.50.030(2), 41.50.088(2), 41.50.770, and 41.50.780, 26 U.S.C. (Internal Revenue Code) and related tax regulations. 02-01-121, § 415-501-470, filed 12/19/01, effective 1/1/02. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, amended and recodified as § 415-501-470, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050. 98-20-047, § 415-512-070, filed 9/30/98, effective 10/31/98. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-512-070, filed 7/29/96, effective 7/29/96.]

**WAC 415-501-475 Investment options.** Each participant shall designate on his/her participation agreement the investment option(s) in which the participant wishes to have funds invested. The investment option(s) shall be selected from those options made available for this purpose from time to time by the state investment board after consultation with the employee retirement benefits board.

Nothing in this section shall require the state investment board to invest any amount in the investments selected. The state investment board may open, change or close investment options according to its investment policy, or change investment managers for any investment option. When an investment option is closed or substantially changed, the state investment board may transfer the funds invested in that option to the investment option that, in the board's judgment, most closely represents the investment characteristics of the investment option being closed or changed.

[Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, amended and recodified as § 415-501-475, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050. 98-20-047, § 415-512-075, filed 9/30/98, effective 10/31/98. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-512-075, filed 7/29/96, effective 7/29/96.]

**WAC 415-501-480 Designation of beneficiaries.** Each participant shall have the right to designate a beneficiary or beneficiaries to receive accumulated deferrals in the event of the participant's death. If no such designation is in effect on a participant's death, the beneficiary shall be the surviving spouse. If there be no such surviving spouse, then the beneficiary shall be the participant's estate. A participant may change his/her beneficiary designation at any time by filing the appropriate form with the department.

The participant may name:

(1) A designated organization or person (including without limitation his/her unborn or later adopted children). If unborn or later adopted children are to be included, the desig-

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nation must so indicate. The date of birth must be furnished for any living person who is named as a beneficiary.

(2) His or her estate.

(3) A trust which is in existence, or which is to be established under the participant's last will. For an existing trust, the participant must provide a copy of the trust document and the name, address, and telephone number of the current trustee, and the tax identification number.

The participant may name contingent beneficiaries in addition to primary beneficiaries.

[Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, amended and recodified as § 415-501-480, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050. 98-20-047, § 415-512-080, filed 9/30/98, effective 10/31/98. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-512-080, filed 7/29/96, effective 7/29/96.]

**WAC 415-501-485 Distribution to participant.** Distribution from the plan is governed by IRC Sections 401 (a)(9) and 457(d), and these rules to the extent they are not inconsistent with the Internal Revenue Code. The options for distribution are set forth in the *DCP Distribution Booklet*. The booklet will be mailed to the participant upon notification from the employer of severance from service.

(1) **Date of distribution.** A participant may choose the date on which to begin distribution from his or her deferred compensation account, subject to the requirements in (a) through (c) of this subsection. The department must receive the election form at least thirty days prior to the date distribution is to begin.

(a) **Earliest date.** Distribution to a participant may not begin prior to the participant's severance from employment with the following three exceptions:

(i) A distribution for an unforeseeable emergency under WAC 415-501-510;

(ii) A voluntary in-service distribution under subsection (4) of this section; or

(iii) A distribution from non-457 funds that were rolled into the deferred compensation account.

(b) **Latest date.** Distribution to a participant must begin on or before April 1st of the calendar year following the latter of:

(i) The calendar year in which the participant reaches age seventy and one-half; or

(ii) The calendar year in which the participant retires.

(c) If a participant does not make a timely choice of distribution date, the department will begin distribution in accordance with the minimum distribution requirements in IRC Section 401 (a)(9).

(2) **Method of distribution.** The participant may choose a distribution method (amount and frequency) from the payment options outlined in the *DCP Distribution Booklet*. Payment options include a lump sum payment, periodic payments, or an annuity purchase.

(a) Periodic payments must be at least fifty dollars per month (if paid monthly) or six hundred dollars per year.

(b) Beginning at age seventy and one-half, payment must be in an amount to satisfy minimum distribution requirements in IRC Section 401 (a)(9).

(3) If the participant is rehired and reenrolls in the department's deferred compensation plan, the department

will stop distribution to the participant and/or void any choices of distribution date and method made prior to reenrollment.

(4) **Voluntary in-service distribution.** An active participant may choose to receive an in-service distribution of the total amount payable to the participant under the plan if the following requirements are met:

(a) The total amount payable to the participant does not exceed five thousand dollars;

(b) The participant has not previously received an in-service distribution; and

(c) The participant's deferrals have been suspended during the preceding two-year period ending on the date of the in-service distribution.

[Statutory Authority: RCW 41.50.050(5), 41.50.030(2), 41.50.088(2), 41.50.770, and 41.50.780, 26 U.S.C. (Internal Revenue Code) and related tax regulations. 02-01-121, § 415-501-485, filed 12/19/01, effective 1/1/02. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, amended and recodified as § 415-501-485, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-512-085, filed 7/29/96, effective 7/29/96.]

**WAC 415-501-486 Distribution in the event of participant's death.** If the participant dies before the entire deferred compensation account has been distributed, accumulated deferrals shall be paid to the beneficiary or beneficiaries designated by the participant pursuant to WAC 415-501-480. If no beneficiary is designated or if the designated beneficiary does not survive the participant by a period of thirty days, then accumulated deferrals shall be paid to the participant's surviving spouse, if any. If the participant has no surviving spouse, accumulated deferrals shall be paid to the participant's estate. Provisions regarding distribution to various classes of beneficiaries are set forth in WAC 415-501-491 through 415-501-494.

[Statutory Authority: RCW 41.50.050(5), 41.50.030(2), 41.50.088(2), 41.50.770, and 41.50.780, 26 U.S.C. (Internal Revenue Code) and related tax regulations. 02-01-121, § 415-501-486, filed 12/19/01, effective 1/1/02. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, amended and recodified as § 415-501-486, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-512-086, filed 7/29/96, effective 7/29/96.]

**WAC 415-501-487 Distribution in the event of beneficiary's death.** If a beneficiary becomes entitled to receive accumulated contributions under WAC 415-501-486 but dies before the participant's account is fully distributed, accumulated deferrals shall become payable to the beneficiary's estate in the second month following the notification of the beneficiary's death, unless benefits are being paid under an annuity purchased by the participant. If benefits were being paid under an annuity, distribution shall be governed by the terms of the annuity contract.

[Statutory Authority: RCW 41.50.050(5), 41.50.030(2), 41.50.088(2), 41.50.770, and 41.50.780, 26 U.S.C. (Internal Revenue Code) and related tax regulations. 02-01-121, § 415-501-487, filed 12/19/01, effective 1/1/02. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, amended and recodified as § 415-501-487, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-512-087, filed 7/29/96, effective 7/29/96.]

**WAC 415-501-491 Distribution to a beneficiary, if distribution to the participant has previously begun.** If a participant dies after distribution has begun but before the entire account has been exhausted, the participant's beneficiary(ies) must receive distribution at least as rapidly as was being paid to the participant. The options for distribution are set forth in the department's *DCP Distribution Booklet*. The booklet will be mailed to beneficiaries upon the notification of the death of a participant.

(1) **Date of distribution.** A beneficiary must choose a distribution date that is not less than ninety days from the date the department receives notification of the participant's death.

(2) **Method of distribution.** Subject to the requirements of (a) through (d) of this subsection, the beneficiary may choose a distribution method (amount and frequency) from the payment options outlined in the *DCP Distribution Booklet*. Payment options include a lump sum payment or periodic payments.

(a) The beneficiary must choose an amount and frequency that allows for distribution of the entire DCP account during the beneficiary's projected life expectancy.

(b) Distribution must continue in an amount that is at least equivalent to the amount previously received by the participant.

(c) Periodic payments must be at least fifty dollars per month (if paid monthly) or six hundred dollars per year.

(d) Life expectancies will be computed by the Department of the Treasury and set forth in IRS Regulation 1.72-9.

[Statutory Authority: RCW 41.50.050(5), 41.50.030(2), 41.50.088(2), 41.50.770, and 41.50.780, 26 U.S.C. (Internal Revenue Code) and related tax regulations. 02-01-121, § 415-501-491, filed 12/19/01, effective 1/1/02.]

**WAC 415-501-492 Distribution to a beneficiary, if distribution to the participant has not begun.** If a participant dies before distribution has begun, the participant's beneficiaries will receive payment of the account according to the provisions of this section. The options for distribution are set forth in the *DCP Distribution Booklet*. The booklet will be mailed to beneficiaries upon the notification of death of a participant.

(1) **Date of distribution.** Subject to the requirements of this subsection, a beneficiary may choose the date on which to begin distribution from the participant's DCP account. The department must receive the election form at least thirty days prior to the date distribution is to begin.

(a) Distribution to a beneficiary must begin on or before April 1st of the calendar year following the latter of:

(i) The calendar year in which the participant would have reached age seventy and one-half; or

(ii) The calendar year in which the participant dies.

(b) The choice of distribution date may be further limited as set forth in subsection (2)(c) of this section. If a beneficiary does not make a timely choice of distribution date, the department will begin distribution in accordance with the minimum distribution requirements in IRC 401 (a)(9).

(2) **Method of distribution.** Subject to the requirements in subsection (1) of this section, beneficiaries may choose the following methods to receive distribution.

(a) **Spouse as beneficiary.** A spouse-beneficiary may choose to receive distribution over his or her projected life expectancy. Distributions must begin not later than:

(i) December 31st of the year following the year of the participant's death; or

(ii) December 31st of the year following the year the participant would have reached age seventy and one-half.

(b) **Nonspouse as beneficiary.** A nonspouse-beneficiary may choose to receive distribution over his or her lifetime, if the distributions begin not later than December 31st of the year following the year of the participant's death.

(c) **Five-year rule.** If a beneficiary does not begin distribution within the requirements of (a) or (b) of this subsection, distribution of the **entire** account must be completed within five years of the participant's death.

(d) Regardless of the method of distribution chosen, periodic distributions made by the department must be at least fifty dollars per month (if paid monthly) or six hundred dollars per year.

[Statutory Authority: RCW 41.50.050(5), 41.50.030(2), 41.50.088(2), 41.50.770, and 41.50.780, 26 U.S.C. (Internal Revenue Code) and related tax regulations. 02-01-121, § 415-501-492, filed 12/19/01, effective 1/1/02.]

**WAC 415-501-493 Distribution to an organization, estate, or trust as beneficiary.** If the participant's beneficiary is an organization, estate, or trust, the department will make the distribution as a lump sum in the second month following the notification of the participant's death.

[Statutory Authority: RCW 41.50.050(5), 41.50.030(2), 41.50.088(2), 41.50.770, and 41.50.780, 26 U.S.C. (Internal Revenue Code) and related tax regulations. 02-01-121, § 415-501-493, filed 12/19/01, effective 1/1/02.]

**WAC 415-501-494 Distribution to minor beneficiaries.** (1) The department will distribute deferred compensation funds on behalf of a minor beneficiary only if it receives proof that the minor has either a court-appointed guardian or a custodian designated in compliance with RCW 11.114.030.

(2) If the department does not receive the proof in subsection (1) of this section, or if the guardian or custodian is unable or unwilling to serve, the department will request a court of competent jurisdiction to establish a guardianship under chapters 11.88 and 11.92 RCW. The department will make this request no sooner than one hundred eighty days after notification of the participant's death, regardless of the amount at issue.

(3) After a guardianship or custodianship has been established, either by prior designation or by court order, the department will transfer the deferred compensation funds to the named guardian or custodian.

(4) If a participant has more than one minor beneficiary, a separate custodianship must be established for each minor. Each minor's interest must be determined in accordance with the governing instrument and applicable law. Only one person may be the custodian for each minor.

(5) Written confirmation from the guardian or custodian that the funds have been delivered discharges the department from further liability for the deferred compensation funds transferred to the guardian or custodian on behalf of the minor.

(6) The custodian may choose a deferred compensation distribution date and method on behalf of the minor, consistent with the requirements of this chapter.

[Statutory Authority: RCW 41.50.050(5), 41.50.030(2), 41.50.088(2), 41.50.770, and 41.50.780, 26 U.S.C. (Internal Revenue Code) and related tax regulations. 02-01-121, § 415-501-494, filed 12/19/01, effective 1/1/02.]

**WAC 415-501-495 Domestic relations orders.** (1) The department will honor certain domestic relations orders (DRO) entered by a court of competent jurisdiction.

(2) The department will honor a DRO only if it:

(a) Establishes a right of a spouse or former spouse to a portion of a participant's deferred compensation account pursuant to a division of property;

(b) Clearly states either the dollar amount or a percentage of the account to be transferred to the account of the spouse or former spouse from the participant's account; and

(c) Provides the name and date of birth of the participant and the spouse or former spouse.

(3) You must provide the address and Social Security number of both you and your separated or former spouse to the department before the department will honor a DRO. This information can be submitted in a cover letter, in another document, or by other means arranged with the department.

(4) To implement a DRO, the department will establish a separate account for the spouse or former spouse in the amount specified in subsection (2)(b) of this section. The amount will initially be invested in the savings pool. Thereafter, the spouse or former spouse may provide investment instructions under WAC 415-501-450.

(5) The participant's spouse or former spouse may choose a method of distribution, including a direct rollover.

(6) If a DRO filed with the department prior to January 1, 2002, provides that distribution to the former spouse is not available until the participant separates from service, the department will comply with the express terms of the order unless it is subsequently amended.

[Statutory Authority: RCW 41.50.050(5), 41.50.060, 41.50.770, 41.50.780, 2001 c 42. 02-12-084, § 415-501-495, filed 6/4/02, effective 7/5/02. Statutory Authority: RCW 41.50.050(5), 41.50.030(2), 41.50.088(2), 41.50.770, and 41.50.780, 26 U.S.C. (Internal Revenue Code) and related tax regulations. 02-01-121, § 415-501-495, filed 12/19/01, effective 1/1/02. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, amended and recodified as § 415-501-510, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050. 98-20-047, § 415-524-010, filed 9/30/98, effective 10/31/98. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-524-010, filed 7/29/96, effective 7/29/96.]

## UNFORESEEABLE EMERGENCY

**WAC 415-501-510 Unforeseeable emergency.** (1)

**Distribution request.** Notwithstanding any other provisions in plan chapter 415-501 WAC, in the event of an unforeseeable emergency, a participant may request the department to distribute all or a portion of accumulated deferrals. If the request is approved by the department, distribution will be made within sixty days following such an approval. The amount paid shall be limited strictly to that amount reasonably necessary to satisfy the emergency need.

For purposes of this plan, an unforeseeable emergency shall be severe financial hardship to the participant resulting from:

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(a) A sudden and unexpected illness or accident of the participant or of a dependent (as defined in Section 152(a) of the Internal Revenue Code) of the participant,

(b) Loss of the participant's property due to casualty, or

(c) Other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant. The circumstances that will constitute an unforeseeable emergency will depend upon the facts of each case, but, in any case, distribution shall not be made to the extent that such hardship is or may be relieved:

(i) Through reimbursement or compensation by insurance or otherwise;

(ii) By liquidation of the participant's assets, to the extent liquidation of such assets would not itself cause severe financial hardship; or

(iii) By cessation of deferrals under the plan.

Examples of what shall not be considered to be unforeseeable emergencies include the need to send a participant's child to college or the desire to purchase a home.

A divorce does not constitute an "unforeseeable emergency" or "severe financial hardship."

**(2) Applications for review.** All applications for review of decisions on requests for distribution of accumulated deferrals due to an unforeseeable emergency shall follow the procedure established in WAC 415-08-015.

**(3) Mandatory suspension.** Unforeseeable emergency requests received by the department, whether approved or denied, will cause a mandatory suspension of the participant as established in WAC 415-501-470.

[Statutory Authority: RCW 41.50.050(5), 41.50.770 and 41.50.780, 02-02-059, § 415-501-510, filed 12/28/01, effective 1/1/02. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, amended and recodified as § 415-501-510, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050. 98-20-047, § 415-524-010, filed 9/30/98, effective 10/31/98. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-524-010, filed 7/29/96, effective 7/29/96.]

## LEAVE OF ABSENCE

**WAC 415-501-520 Leave of absence.** If a participant is on an approved leave of absence from the employer, participation in this plan shall continue.

[Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, recodified as § 415-501-520, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-528-010, filed 7/29/96, effective 7/29/96.]

## AMENDMENT OR TERMINATION OF PLAN

**WAC 415-501-530 Termination of plan.** The employer or the department may at any time terminate this plan. Upon such termination, accumulated deferrals will be paid pursuant to this chapter. The participants' deferrals will cease.

[Statutory Authority: RCW 41.50.050(5), 41.50.030(2), 41.50.088(2), 41.50.770, and 41.50.780, 26 U.S.C. (Internal Revenue Code) and related tax regulations. 02-01-121, § 415-501-530, filed 12/19/01, effective 1/1/02. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, amended and recodified as § 415-501-530, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-532-010, filed 7/29/96, effective 7/29/96.]

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**WAC 415-501-540 Amendment of plan.** The department may amend the provisions of this plan at any time: Provided, however, That no amendment shall affect the rights of participants or their beneficiaries regarding accumulated deferrals at the time of the amendment.

[Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, amended and recodified as § 415-501-540, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-532-020, filed 7/29/96, effective 7/29/96.]

## RELATIONSHIP TO OTHER PLANS

**WAC 415-501-550 Retirement and Social Security not reduced.** It is intended that, pursuant to Section 457 of the Internal Revenue Code, the amount of deferred compensation will not be considered as current compensation for purposes of federal income taxation. Such amounts will, however, be included as compensation in determining benefits or rights under the employer's group insurance, other retirement plans and FICA. Distributions under this plan will supplement retirement and death benefits payable under the employer's group insurance and other retirement plans.

[Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, amended and recodified as § 415-501-550, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-536-010, filed 7/29/96, effective 7/29/96.]

## TRANSFER IN LIEU OF CASH

**WAC 415-501-560 Assets in lieu of cash.** Upon the occurrence of any event requiring the distribution of accumulated deferrals under this plan, the department may, in its sole discretion, elect to honor a request from the participant to substitute the transfer in kind and assignment of any asset which the employer has acquired, at fair market value.

[Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, amended and recodified as § 415-501-560, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-540-010, filed 7/29/96, effective 7/29/96.]

## NONASSIGNABILITY CLAUSE

**WAC 415-501-570 Accumulated deferrals not assignable.** Neither the participant, nor the participant's beneficiary or beneficiaries, nor any other designee, has any right to sell, assign, transfer, commute, or otherwise convey the right to receive any distributions under the plan. These distributions and right thereto are nonassignable and nontransferable. Unpaid accumulated deferrals are not subject to attachment, garnishment, or execution and are not transferable by operation of law in event of bankruptcy or insolvency, except to the extent otherwise required by law. In the event of any attempt to assign or transfer, the state investment board and the department will have no liability.

[Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, amended and recodified as § 415-501-570, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050. 98-20-047, § 415-544-010, filed 9/30/98, effective 10/31/98. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-544-010, filed 7/29/96, effective 7/29/96.]

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## ASSETS

**WAC 415-501-580 Plan assets.** Despite any contrary provision of the plan, in accordance with Section 457(g) of the Internal Revenue Code, all compensation deferred under the plan, all property and rights purchased with such compensation, and all income attributable to such compensation, property, or rights shall be held in trust for the exclusive benefit of participants and beneficiaries under the plan. Any trust under the plan shall be established under the laws of Washington.

All amounts of compensation deferred under the plan shall be transferred to a trust established under the plan within a period that is not longer than is reasonable for the proper administration of the accounts of participants. Under RCW 41.50.780(4) the state investment board is made trustee of state deferred compensation plan assets.

[Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, recodified as § 415-501-580, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050. 98-20-047, § 415-548-010, filed 9/30/98, effective 10/31/98. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-548-010, filed 7/29/96, effective 7/29/96.]

## PARTICIPATION BY DEPARTMENT OFFICERS AND EMPLOYEES AND MEMBERS OF THE EMPLOYEE RETIREMENT BENEFITS BOARD

**WAC 415-501-590 Participation by department officers and employees and members of the employee retirement benefits board.** Department officers and employees and members of the employee retirement benefits board, who are otherwise eligible, may participate in the plan under the same terms and conditions as apply to other participants; but such officers, employees, or board members shall not participate in any department or board action uniquely affecting their own participation.

[Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, amended and recodified as § 415-501-590, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-552-010, filed 7/29/96, effective 7/29/96.]

## EMPLOYER PARTICIPATION

**WAC 415-501-600 Employer contributions.** The employer may, pursuant to WAC 415-501-450 or 415-501-470, add additional deferred compensation for services to be rendered by the employee to the employer during any calendar month, provided:

(1) The employee has elected to have such additional compensation deferred, invested, and distributed, pursuant to this plan, prior to the calendar month in which the compensation is earned; and

(2) Such additional deferred compensation, when added to all other deferred compensation under the plan, does not exceed the maximum deferral permitted by this chapter.

[Statutory Authority: RCW 41.50.050(5), 41.50.030(2), 41.50.088(2), 41.50.770, and 41.50.780, 26 U.S.C. (Internal Revenue Code) and related tax regulations. 02-01-121, § 415-501-600, filed 12/19/01, effective 1/1/02. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, amended and recodified as § 415-501-600, filed 5/18/00, effective

(2003 Ed.)

6/18/00. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-556-010, filed 7/29/96, effective 7/29/96.]

## INVESTMENT RESPONSIBILITY

**WAC 415-501-610 Investment responsibility.** Action by the state investment board as plan trustee or by the department as plan administrator will not be considered an endorsement or guarantee of any investment. Such action will not be considered to attest to the financial soundness or the suitability of any investment for the purpose of meeting future obligations.

[Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, recodified as § 415-501-610, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050.98-20-047, § 415-560-010, filed 9/30/98, effective 10/31/98. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-560-010, filed 7/29/96, effective 7/29/96.]

## APPLICABLE LAW

**WAC 415-501-710 Plan to conform to state law.** This plan shall be construed under the laws of the state of Washington.

[Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, recodified as § 415-501-710, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-568-010, filed 7/29/96, effective 7/29/96.]

**WAC 415-501-720 Plan to conform to federal law.** This plan is intended to be an eligible state deferred compensation plan within the meaning of Section 457 of the Internal Revenue Code, and Treasury Department Regulation 1.457-2(a), and shall be interpreted accordingly.

[Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. 00-11-104, recodified as § 415-501-720, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050 and 41.50.780(11). 96-16-020, § 415-568-020, filed 7/29/96, effective 7/29/96.]

## Chapter 415-600 WAC

### DEPENDENT CARE ASSISTANCE SALARY REDUCTION PROGRAM OVERVIEW

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- 415-600-630 What if I receive more reimbursement than I should?

**WAC 415-600-010 Dependent care assistance salary reduction program established.** Chapter 415-600 WAC covers the Washington state department of retirement systems (DRS) dependent care assistance salary reduction program (DCAP). The authority for DCAP is provided by RCW 41.04.600 through 41.04.645, and sections 125 and 129 of the Internal Revenue Code.

[Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C. 01-21-091, § 415-600-010, filed 10/22/01, effective 11/22/01.]

**WAC 415-600-020 What is DCAP?** The dependent care assistance salary reduction program (DCAP) allows you to set aside a "before tax" portion of your gross earnings to use for eligible dependent care expenses. DCAP reduces the amount of federal withholding and Social Security taxes (OASDI and Medicare or FICA) taken from each paycheck. Salary reduced under the program continues to be included as regular compensation for the purpose of computing state retirement benefits. The amount that may be reduced from your salary and excluded from your income is subject to annual fixed dollar and earned income limitations. When you incur eligible dependent care expenses you will be reimbursed from the amount set aside, consistent with these rules. If any portion of the amount set aside is not used by the end of the plan year, the unused amount will be forfeited.

[Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C. 01-21-091, § 415-600-020, filed 10/22/01, effective 11/22/01.]

**WAC 415-600-030 DCAP is a separate program.** The provisions in chapter 415-600 WAC apply only to the dependent care assistance salary reduction program and not to any other program that the department of retirement systems administers.

[Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C. 01-21-091, § 415-600-030, filed 10/22/01, effective 11/22/01.]

**WAC 415-600-040 Interpretation of DCAP.** The dependent care assistance salary reduction program is intended to qualify as a dependent care assistance salary reduction program under sections 125 and 129 of the Internal Revenue Code (IRC) and is to be interpreted in a manner consistent with the requirements of those sections. In case of a discrepancy between the sections in this chapter and the IRC, the IRC takes precedence.

[Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C. 01-21-091, § 415-600-040, filed 10/22/01, effective 11/22/01.]

## DEFINITIONS

**WAC 415-600-110 Definitions used in DCAP.** (1) **Dependent care account** means a bookkeeping account containing the salary reduction amounts attributable to a participant, less reimbursement for the participant's dependent care expenses.

(2) **Dependent care expenses** means amounts paid for services which, if paid by the employee, would be considered employment related expenses under Internal Revenue Code Section 21 (b)(2) and WAC 415-600-310.

(3) **Eligible employee** means state of Washington employees, officers, and elected officials.

(4) **Employer** means the state of Washington.

(5) **Incurred expenses** means expenses for services that have already been provided.

(6) **Internal Revenue Code (IRC)** means Title 26 of the United States Code (U.S.C.). Reference to a specific provision of the code includes such provision, any associated regulations, and any comparable provision of future legislation that amends, supplements, or supersedes such provision. Copies of the applicable IRC sections are available in law libraries and from the department of retirement systems (DRS). You can also obtain them by searching United States government references on the Internet.

(7) **Participant** means an eligible employee who has submitted a DCAP salary reduction agreement that is approved by DRS.

(8) **Program** means this dependent care assistance salary reduction program (DCAP).

(9) **Plan year** means January 1 through December 31.

(10) **Qualifying person** means:

(a) A dependent of the participant who is twelve years old or younger, for whom the participant is entitled to a deduction under IRC Section 151(c); or

(b) A dependent or spouse of the participant who is mentally or physically incapable of self-care; or

(c) A child of a divorced or separated participant, who is twelve years old or younger, if the participant has custody of the child, even if the participant has released an exemption under IRC Section 152 (e)(2).

[Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C. 01-21-091, § 415-600-110, filed 10/22/01, effective 11/22/01.]

## PARTICIPATION AND TERMINATION

**WAC 415-600-210 How do I enroll in DCAP?** (1) You enroll in the dependent care salary reduction assistance program (DCAP) by submitting a completed salary reduction agreement (SRA) form to the department of retirement systems (DRS).

(2) SRA forms are available through DRS or its website at <http://www.wa.gov/drs/forms/>.

(3) You may enroll in DCAP:

(a) During the open-enrollment period;

(b) Within sixty days of becoming an eligible employee; or

(c) At any time you have a qualifying change in status as set forth in WAC 415-600-240.

(4) The open enrollment period is the month of November for the following plan year.

(5) The enrollment process is complete on the date DRS approves your completed SRA.

[Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C. 01-21-091, § 415-600-210, filed 10/22/01, effective 11/22/01.]

**WAC 415-600-220 What is a salary reduction agreement?** (1) The salary reduction agreement (SRA) is a contract between you and your employer in which you agree to place a specified amount of future wages into a dependent care account.

(2) The agreement must contain:

(a) Your Social Security number;

(b) The names and birth dates of the dependents you will cover with DCAP; and

(c) Medical, family and other information DRS needs to administer DCAP.

Except as provided in WAC 415-600-230, an SRA agreement cannot be changed.

[Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C. 01-21-091, § 415-600-220, filed 10/22/01, effective 11/22/01.]

**WAC 415-600-230 May I change the terms of my SRA during the plan year?** The salary reduction agreement (SRA) cannot be changed during the plan year unless you have a qualifying change in status as defined in WAC 415-600-240. If you have experienced a qualifying change in status and need to change or revoke your SRA, you must fill out a new SRA form and submit it to DRS. Such changes require approval by DRS. An explanation of the requested change may be required.

[Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C. 01-21-091, § 415-600-230, filed 10/22/01, effective 11/22/01.]

**WAC 415-600-240 What is a qualifying change in status?** The following are changes in status for purposes of DCAP:

(1) Marriage;

(2) Divorce or legal separation;

(3) Death of a spouse or dependent;

(4) Addition of a dependent to the eligible employee's household, such as the birth or adoption of a child;

(5) Termination of spouse's employment;

(6) Employment of an unemployed spouse;

(7) A change in the work hours of the eligible employee or spouse that significantly alters the need for dependent care;

(8) A change in dependent care provider;

(9) A change in dependent care provider cost (does not apply to relatives); or

(10) No longer use dependent care services.

[Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C. 01-21-091, § 415-600-240, filed 10/22/01, effective 11/22/01.]

**WAC 415-600-250 How much may I set aside in my dependent care account each plan year?** (1) The maximum amount that you may set aside during a plan year is:

(a) Two thousand five hundred dollars, if you are married and filing separately; or

(b) Five thousand dollars, otherwise. However, the total set aside by you and your spouse may not exceed five thousand dollars.

(2) If you are not married, the amount set aside may not exceed your earned income.

(3) If you are married, the amount set aside may not exceed the lesser of your earned income or your spouse's earned income.

[Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C. 01-21-091, § 415-600-250, filed 10/22/01, effective 11/22/01.]

**WAC 415-600-260 What is "earned income" for purposes of DCAP?** (1) Except as set forth in subsection (2) of this section, earned income for DCAP purposes includes wages, salaries, tips and other employee compensation, plus the amount of the taxpayer's net earnings from self-employment for the taxable year.

(2) If your spouse is either a full-time student or physically or mentally incapable of self-care, your spouse's earned income is deemed to be:

(a) Two hundred dollars per month, if you have one qualifying person for whom care is provided; or

(b) Four hundred dollars per month, if you have two or more qualifying persons for whom care is provided.

[Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C. 01-21-091, § 415-600-260, filed 10/22/01, effective 11/22/01.]

**WAC 415-600-270 May DRS limit the maximum salary reduction for highly compensated employees?** (1) DRS may decrease the salary reduction amount of certain participants to the extent necessary to ensure that the program does not discriminate in favor of "highly compensated employees." "Highly compensated employees" are determined by the nondiscrimination test in Internal Revenue Code sections 125 and 129 and any other applicable provisions of law.

(2) The amounts set aside by highly compensated employees who are subject to the particular nondiscrimination requirement shall be decreased pro rata.

[Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C. 01-21-091, § 415-600-270, filed 10/22/01, effective 11/22/01.]

**WAC 415-600-280 How will DRS process my salary reduction?** The salary reduction will be taken in equal amounts for each pay period during that portion of the plan year in which you participate.

[Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C. 01-21-091, § 415-600-280, filed 10/22/01, effective 11/22/01.]

**WAC 415-600-290 When does my participation in DCAP terminate?** (1) Your participation in DCAP terminates on:

(a) December 31 of the plan year, unless you reenroll during the open-enrollment period;

(b) The date you refuse a request for updated information, as set forth in subsection (2) of this section;

(c) The date the program is terminated by state or federal action; or

(d) The date you revoke your salary reduction agreement under WAC 415-600-230.

(2) You shall be deemed to have refused a request for updated information thirty days after a letter requesting such information is mailed to you by certified mail, return receipt requested. The letter must notify you of the consequences of a failure to provide such information.

[Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C. 01-21-091, § 415-600-290, filed 10/22/01, effective 11/22/01.]

## DEPENDENT CARE EXPENSES

**WAC 415-600-310 Do my expenses qualify for DCAP reimbursement?** (1) You may be reimbursed for dependent care expenses for the well-being and protection of a qualifying person, provided that the expenses are incurred to enable you and your spouse to be gainfully employed.

(a) Only expenses incurred on days you work may be reimbursed.

(b) If you are married, only expenses incurred on days you and your spouse both work may be reimbursed, provided that:

(i) If your spouse is a full-time student, expenses incurred on days you work and your spouse attends school may be reimbursed.

(ii) If your spouse is physically or mentally incapable of self-care, expenses incurred on days you work may be reimbursed.

(2) You may be reimbursed only for expenses incurred during the plan year for which you are enrolled. If you enroll after January 1 of the plan year, you may be reimbursed only for expenses incurred from the date DRS approves your salary reduction agreement.

(3) Only the cost of care may be reimbursed. The following expenses may be reimbursed, subject to the limitations stated in subsection (4) of this section.

(a) Expenses for care of a qualifying person in the participant's home, including feeding, administration of medicine, general supervision, and incidental household services; and

(b) Expenses for care of the following qualifying persons outside the participant's home:

(i) A dependent of the participant, age twelve or younger, with respect to whom the participant is entitled to a federal tax deduction.

(ii) Any other qualifying person who regularly spends eight hours or more per day in the participant's home.

(4) The following limitations apply to the reimbursement of expenses:

(a) Expenses for food, clothing, and entertainment are reimbursable ONLY IF these expenses cannot be separated from the cost of care.

(b) Expenses for care in a dependent care center (as defined in Internal Revenue Code (IRC) Section 21(b)) are reimbursable ONLY IF the facility complies with all federal, state, and local laws and regulations.

(c) Expenses for schooling are reimbursable ONLY IF:

- (i) The schooling is at a prekindergarten level; and
  - (ii) The expenses cannot reasonably be separated from the cost of care.
  - (d) Payments to a person for whom you or your spouse may claim a dependency exemption for federal income tax purposes are not reimbursable.
  - (e) Payments to a nondependent child, as defined in IRC Section 151 (c)(3), are not reimbursable unless the child will be age nineteen or older by December 31 of the plan year.
  - (f) Summer camp expenses, when the child stays overnight, are not reimbursable.
  - (g) Amounts paid by an employer of your spouse or by an educational institution where your spouse is enrolled as a student are not reimbursable.
- [Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C. 01-21-091, § 415-600-310, filed 10/22/01, effective 11/22/01.]

## REIMBURSEMENT OF DEPENDENT CARE EXPENSES

**WAC 415-600-410 How do I request reimbursement for DCAP expenses?** (1) You must use the DRS reimbursement claim forms to submit claims for dependent care expenses.

(2) DRS will mail a supply of reimbursement claim forms to you upon confirmation of your enrollment. You can obtain additional forms by phone or on the DRS website, at <http://www.wa.gov/drs/forms/>.

(3) You may submit reimbursement claim forms as often as you wish.

(4) The reimbursement claim form must be completed, signed, and accompanied by bills, invoices, receipts, or a statement signed by the provider. The department cannot accept canceled checks or credit card statements as verification. All documentation must show the amounts of dependent care expenses and periods of service for which you seek reimbursement.

(5) DRS must receive claims for expenses incurred during a given plan year on or before March 31 of the following year.

[Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C. 01-21-091, § 415-600-410, filed 10/22/01, effective 11/22/01.]

**WAC 415-600-420 How does DRS process DCAP reimbursement claims?** (1) DRS reviews DCAP claims each week during the plan year.

(2) If funds are available in your dependent care account at the time the claim is reviewed, DRS will reimburse your claim.

(3) If funds are not available at the time your claim is reviewed, DRS will reimburse your claim when money becomes available in your dependent care account. You do not need to resubmit your claim.

(4) You will not be reimbursed for claims that exceed the amount that you set aside for the plan year. You may not resubmit these claims in subsequent plan years.

(5) Unpaid expenses are never your employer's responsibility.

[Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C. 01-21-091, § 415-600-420, filed 10/22/01, effective 11/22/01.]

**WAC 415-600-430 How will I know how much money is available in my dependent care account?** (1) DRS will send you a quarterly statement showing your account activities and balance for the quarter.

(2) Shortly after March 31 following the close of a plan year, DRS will send you a written statement showing the reductions from salary and amounts reimbursed through the end of the plan year.

[Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C. 01-21-091, § 415-600-430, filed 10/22/01, effective 11/22/01.]

**WAC 415-600-440 What happens to the balance of my DCAP account at the end of the plan year?** If funds remain in your dependent care account after all timely claims for the plan year have been reimbursed, you will forfeit these funds. Unused funds cannot be carried forward to your dependent care account for the subsequent plan year.

[Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C. 01-21-091, § 415-600-440, filed 10/22/01, effective 11/22/01.]

**WAC 415-600-450 What happens to the money in my dependent care account if I terminate employment?** You may be reimbursed for dependent care expenses incurred during the remainder of the plan year to the extent you have money in your dependent care account. In the event of death, your personal representative may submit claims on your behalf.

[Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C. 01-21-091, § 415-600-450, filed 10/22/01, effective 11/22/01.]

## DCAP ADMINISTRATION

**WAC 415-600-510 DCAP administration.** (1) **Administered by department:** The department of retirement systems (DRS) shall administer DCAP.

(2) **Delegation of authority:** DRS may delegate functions to be performed under this program to any designee with legal authority to perform such functions.

(3) **Reliance upon documents:** DRS and the employer may rely upon any document believed by them to be valid.

(4) **Reliance on information:** In administering the program, DRS may rely conclusively on all tables, valuations, certificates, opinions, and reports which are provided by its accountants, counsel, and other professionals.

(5) **Binding nature of decisions:** The DCAP program administrator is authorized to decide any matters concerning your rights under DCAP. Such decision shall be binding. If you disagree with the decision, you may write to the DRS director for consideration.

(6) **Program amendments:** DRS may amend DCAP at any time if the amendment does not affect the rights of the participants to receive eligible reimbursement.

(7) **Communication:** DRS will provide reasonable notification of the availability and terms of the program to eligible employees.

(8) **Program document:** The DCAP program document consists of chapter 415-600 WAC and RCW 41.04.600 through 41.04.645.

[Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C. 01-21-091, § 415-600-510, filed 10/22/01, effective 11/22/01.]

**WAC 415-600-520 What are the limits on my rights under DCAP?** (1) You have no claim to any asset of your employer, except as expressly provided by DCAP.

(2) The establishment of any administrative practice shall not vest you with any right not expressly provided by DCAP.

[Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C. 01-21-091, § 415-600-520, filed 10/22/01, effective 11/22/01.]

## MISCELLANEOUS

**WAC 415-600-610 Can my rights be assigned or attached?** Your right to receive any reimbursement cannot be assigned or attached.

[Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C. 01-21-091, § 415-600-610, filed 10/22/01, effective 11/22/01.]

**WAC 415-600-620 Who is responsible for determining my tax liability?** You are solely responsible for determining your tax liability under DCAP.

[Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C. 01-21-091, § 415-600-620, filed 10/22/01, effective 11/22/01.]

**WAC 415-600-630 What if I receive more reimbursement than I should?** If you receive money from DCAP that is not eligible for reimbursement of dependent care expenses as defined in WAC 415-600-110(2), you must indemnify the employer as follows. You shall pay the employer the amount of federal income tax and Social Security tax that the employer would otherwise have withheld and paid on the money as regular compensation.

[Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C. 01-21-091, § 415-600-630, filed 10/22/01, effective 11/22/01.]