Chapter 415-02 WAC
GENERAL PROVISIONS

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WAC

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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. WSR 78-03-023 (Order IV), § 415-02-040, filed 2/15/78.] Repealed by WSR 00-10-016, filed 4/21/00, effective 5/22/00.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. WSR 78-03-023 (Order IV), § 415-02-070, filed 2/15/78.] Repealed by WSR 00-10-016, filed 4/21/00, effective 5/22/00.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. WSR 88-17-053 (Order 88-14), § 415-02-090, filed 8/17/88; WSR 87-07-013 (Order 87-1), § 415-02-090, filed 3/11/87; WSR 86-13-022 (Order 86-2), § 415-02-090, filed 6/10/86; WSR 86-07-026 (Order 86-1), § 415-02-090, filed 3/13/86; WSR 84-20-043 (Order IV), § 415-02-090, filed 9/27/84.] Repealed by WSR 91-02-019, filed 12/21/90, effective 1/21/91.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. WSR 87-17-059 (Order DRS 87-06), § 415-02-099, filed 8/19/87.] Repealed by WSR 96-03-100, filed 1/19/96, effective 2/19/96. Statutory Authority: RCW 41.50.050.

415-02-170 How is my benefit affected if I return to work and am impacted by more than one annual hourly limit? [Statutory Authority: RCW 41.50.050, 2022 c 110, 2023 c 99, and 2023 c 410. WSR 23-24-091, § 415-02-170, filed 12/5/23, effective 12/7/23.] Repealed by WSR 24-10-022, filed 4/22/24, effective 4/23/24. Statutory Authority: RCW 41.50.050, 2022 c 110, 2023 cc 99 and 410.

415-02-390 Total allocation portfolio (TAP) annuity factors. [Statutory Authority: RCW 41.50.050(5). WSR 10-16-086, § 415-02-390, filed 7/30/10, effective 9/1/10.] Repealed by WSR 13-18-034, filed 8/28/13, effective 10/1/13. Statutory Authority: RCW 41.50.050(5).

415-02-720 What does the department charge for processing split payments? [Statutory Authority: RCW 41.50.050(5) and 41.50.680. WSR 10-14-072, § 415-02-720, filed 7/1/10, effective 8/1/10. Statutory Authority: RCW 41.50.050(5), 41.50.600, 41.50.680, 26.18.110(4), 26.23.060(9), 74.20A.080(15). WSR 04-04-040, § 415-02-720, filed 1/29/04, effective 3/1/04.] Repealed by WSR 23-01-003, filed 12/7/22, effective 1/7/23. Statutory Authority: RCW 41.50.050.

GENERAL RULES AFFECTING MULTIPLE PLANS AND SYSTEMS

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 42.56 RCW shall do so in accordance with the methods and procedures established in chapter 415-06 WAC.

[Statutory Authority: RCW 41.50.050(5). WSR 08-20-068, § 415-02-010, filed 9/25/08, effective 10/26/08. Statutory Authority: RCW 41.50.050. WSR 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 has the authority, in accordance with RCW 41.50.030, as now or hereafter amended, to administer the:

(a) Washington public employees' retirement system created by chapter 41.40 RCW;

(b) Washington public safety employees' retirement system created by chapter 41.37 RCW;

(c) Washington state teachers' retirement system created by chapter 41.32 RCW;

(d) Washington school employees' retirement system created by chapter 41.35 RCW;

(e) Washington law enforcement officers' and firefighters' retirement system created by chapter 41.26 RCW;

(f) Washington state patrol retirement system created by chapter 43.43 RCW;

(g) Washington judicial retirement system created by chapter 2.10 RCW; and

(h) Judges retirement fund created by chapter 2.12 RCW.

(2) The director is authorized to adopt rules pursuant to RCW 41.50.050.

[Statutory Authority: RCW 41.50.050(5). WSR 06-18-009, § 415-02-020, filed 8/24/06, effective 9/24/06. Statutory Authority: RCW 41.50.050. WSR 00-10-016, § 415-02-020, filed 4/21/00, effective 5/22/00; Order 4, § 415-02-020, filed 7/27/77.]

WAC 415-02-030 Definitions. This section contains definitions of words and phrases commonly used in the department of retirement systems' rules. It also serves as a directory for finding definitions within the RCW and WAC.

(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 (TRS); RCW 41.35.010 (SERS); RCW 41.40.010 (PERS); and RCW 41.37.010 (PSERS).

(4) **Average final salary** for WSPRS is defined in RCW 43.43.120.

(5) **Cafeteria plan** means a "qualified" employee benefit program under IRC section 125, such as certain health and welfare plans.

(6) **Calendar month.**

(a) Refers to one of the 12 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.

(b) Exception: For the purpose of administering the break in employment required by RCW 41.32.570, 41.32.802, 41.32.862, 41.35.060, 41.37.050 and 41.40.037 for retirees returning to work, one calendar month means 30 consecutive calendar days. For example: Kim's retirement date is August 1st. August 31st would be the earliest Kim could return to work and meet the requirement for a one calendar month break in employment.

(7) **Compensation earnable or earnable compensation** definitions can be found in RCW 41.32.010 and 41.32.345 (TRS); RCW 41.35.010 (SERS); RCW 41.37.010 (PSERS); and RCW 41.40.010 (PERS).

(8) **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.

(9) **Deferred compensation** refers to the amount of the participant's compensation, which the participant voluntarily defers from earnings before taxes to a deferred compensation program.

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

(11) **Defined contribution plan** is a plan in which part of members' or participants' earnings are deferred into investment accounts in which tax is deferred until funds are withdrawn. The benefit is based on the contributions 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.

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

(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 (LEOFF), 41.32.010 (TRS), 41.34.020 (Plan 3), 41.35.010 (SERS), 41.37.010 (PSERS) and 41.40.010 (PERS).

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

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

(18) **First employed by an eligible employer in an eligible position** means, for purposes of plan default, first employment with an employer, in an eligible position, with which a member has fully exhausted their plan choice rights.

(19) **HERPs** mean higher education retirement plans described in chapter 28B.10 RCW, which are non-DRS retirement plans offered by institutions of higher education, such as, but not limited to, University of Washington retirement plan (UWRP) and Western Washington University retirement plan (WWURP).

(20) **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).

(21) **IRC** means the Federal Internal Revenue Code of 1986, as subsequently amended.

(22) **Indexed retirement allowance** means a defined benefit retirement allowance from an indexed retirement plan, payable to a member who separates after having completed at least 20 service credit years, that is increased by 0.0025 percent, compounded for each month from the date of separation to the date that the retirement allowance commences.

(23) **Indexed retirement plan** means one of the following retirement plans, which are administered by the department of retirement systems and provide an indexed retirement allowance: Law Enforcement Officers' and Firefighters Retirement System Plan 2 (RCW 41.26.530), Public Employees' Retirement System Plan 3 (RCW 41.40.790), School Employees' Retirement System Plan 3 (RCW 41.35.620), and Teachers' Retirement System Plan 3 (RCW 41.32.840).

(24) **JRF** means the judges' retirement fund created by chapter 2.12 RCW.

(25) **JRS** means the Washington judicial retirement system created by chapter 2.10 RCW.

(26) **LEOFF** means the Washington law enforcement officers' and firefighters' retirement system created by chapter 41.26 RCW.

(27) **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, 41.37, 41.40, or 43.43 RCW.

(28) **Nonadministrative position or nonadministrative capacity** refers to retirees returning to work:

(a) In a position at a school district, charter school, educational service district, state school for the deaf, state school for the blind, or tribal school which:

(i) Does not require an administrative certification, as defined by the office of the superintendent of public instruction, (currently positions requiring the certification include: Principal, vice principal, program administrator, conditional administrator, superintendent or program administrator certifications); or

(ii) Does not evaluate staff.

(b) In a position at a state agency or a public institution of higher education as a nonadministrative licensed nurse whose primary responsibility is to provide nursing care as described under WAC 415-106-010(7).

(29) **Normal retirement** means qualifying for retirement based on the standard age and service credit requirements as specified in RCW 2.10.100 (JRS), 2.12.020 (JRF), 41.26.090 (LEOFF Plan 1), 41.26.430(1) (LEOFF Plan 2), 41.32.470 (TRS Plan 1), 41.32.765(1) (TRS Plan 2), 41.32.875(1) (TRS Plan 3), 41.35.420(1) (SERS Plan 2), 41.35.680(1) (SERS Plan 3), 41.37.210(1) (PSERS), 41.40.180 (PERS Plan 1), 41.40.630(1) (PERS Plan 2), 41.40.820(1) (PERS Plan 3), or 43.43.250 (WSPRS).

(30) **Participant** means an eligible employee who participates in a deferred compensation plan.

(31) **Participation agreement** means an agreement that an eligible employee signs to become a participant in a deferred compensation plan.

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

(33) **PERS** means the Washington public employees' retirement system created by chapter 41.40 RCW.

(34) **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.

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

(36) **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.

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

(38) **Plan choice rights** refers to a member's right, within a 90-day period, to make an irrevocable choice to become a member of Plan 2 or Plan 3 or be defaulted into a plan after the full 90-day period has expired.

(a) A member will be reported in Plan 2 until plan choice rights have been exercised.

(b) A member must make a choice within 90 calendar days (computed as described in RCW 1.12.040) from the first day of employment in an eligible position.

(c) A member will be defaulted into a plan if they continue employment in an eligible position past the 90-day plan choice period without making a choice.

(d) A member may exercise plan choice rights only once per system.

(e) Once a member makes a plan choice, that choice cannot be changed, even if the member is still within 90 days of hire.

(39) **Plan year** is the 12-month period that begins on January 1st and ends on December 31st of the same calendar year.

(40) **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.

(41) **PSERS** means the Washington public safety employees' retirement system created by chapter 41.37 RCW.

(42) **Public record** is defined in RCW 42.56.010.

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

(44) **Retirement system employer - See "employer."**

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

(46) **Separation date** is the date a member ends employment in a position eligible for retirement.

(47) **SERS** means the Washington school employees' retirement system created by chapter 41.35 RCW.

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

(49) **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.

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

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

(52) **TRS** means the Washington state teachers' retirement system created by chapter 41.32 RCW.

(53) **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.

(54) **WSPRS** means the Washington state patrol retirement system created by chapter 43.43 RCW.

[Statutory Authority: RCW 41.50.050, 2022 c 110, 2023 c 99, and 2023 c 410. WSR 23-24-091, § 415-02-030, filed 12/5/23, effective 12/7/23. Statutory Authority: RCW 41.50.050. WSR 22-13-053, § 415-02-030, filed 6/8/22, effective 7/9/22; WSR 21-16-020, § 415-02-030, filed 7/23/21, effective 8/23/21; WSR 20-13-064, § 415-02-030, filed 6/15/20, effective 7/16/20; WSR 20-01-079, § 415-02-030, filed 12/11/19, effective 1/11/20. Statutory Authority: RCW 41.50.050(5). WSR 16-17-047, § 415-02-030, filed 8/11/16, effective 9/11/16; WSR 16-08-008, § 415-02-030, filed 3/24/16, effective 4/24/16; WSR 10-24-099, §

415-02-030, filed 12/1/10, effective 1/1/11. Statutory Authority: RCW 41.50.050(5) and 41.04.640. WSR 09-01-021, § 415-02-030, filed 12/8/08, effective 1/8/09. Statutory Authority: RCW 41.50.050(5). WSR 06-18-009, § 415-02-030, filed 8/24/06, effective 9/24/06. Statutory Authority: RCW 41.50.050(5), 41.40.010(42), 41.40.037. WSR 04-04-037, § 415-02-030, filed 1/29/04, effective 3/1/04. Statutory Authority: RCW 41.50.050(5). WSR 02-23-037, § 415-02-030, filed 11/13/02, effective 1/1/03; WSR 02-01-120, § 415-02-030, filed 12/19/01, effective 1/19/02. Statutory Authority: RCW 41.50.050. WSR 00-10-016, § 415-02-030, filed 4/21/00, effective 5/22/00; WSR 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. WSR 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. WSR 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 will not earn regular interest on the warrant amount pending reissue of your 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 regular 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.

(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 180 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. WSR 22-13-052, § 415-02-060, filed 6/8/22, effective 7/9/22. Statutory Authority: RCW 41.50.050(5), 43.08.062, 41.50.055(5), 41.50.260. WSR 01-08-043, § 415-02-060, filed 3/30/01, effective 4/30/01. Statutory Authority: RCW 41.50.050. WSR 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. WSR 78-03-023 (Order IV), § 415-02-060, filed 2/15/78.]

WAC 415-02-075 Is my retirement account subject to correction after retirement or separation from service? (1) **When can the department correct a member's record?** The department can correct your retirement account at any time when an error has been discovered.

(2) **What will happen if I have been underpaid?**

(a) If the underpayment is related to an on-going monthly benefit, the department will correct all future payments and compute the additional amount due from prior payments and pay you in a lump sum.

Example 1:

Chris retired September 1st and Chris' monthly retirement benefit was initially determined to be $2,500. In November, Chris' former employer reported additional earnings. The department used that additional reporting to recalculate Chris' benefit, which is now set at $2,525 per month. Chris will receive the new amount for the November and future monthly benefits. Chris will also receive a payment of $50 to cover the additional $25 amount for September and October.

(b) If the underpayment is related to a one-time payment, the additional amount will be paid once identified.

Example 2:

When separating from employment, Sandy chose to withdraw all retirement contributions instead of receiving an on-going benefit at retirement age. After the withdrawal, Sandy's employer submitted $130 of additional retirement contributions that had been deducted from Sandy's paycheck. The department will pay that $130 to Sandy.

(3) **What will happen if I have been overpaid?**

(a) If the overpayment is related to an on-going monthly benefit, the department will correct the payment amount for all future months. Except for overpayments caused by incorrect employer reporting in LEOFF Plan 2, an invoice will be created for the amount of the overpayment and you will normally have at least 90 days to return the amount of the overpayment to the department. If you cannot make payment in full within those 90 days, you can contact the department to discuss a payment plan which would allow deductions from your monthly benefit. Or you may choose to have your benefit permanently, actuarially reduced to pay the overpayment. Repayment options will be provided on the invoice you receive. If you do not establish a payment plan (which will include interest) or make payment in full by the invoice due date, the department will apply the actuarial reduction and permanently reduce your monthly benefit.

If you or the department identify that your full monthly benefit payment was in error (for example you were not eligible to retire), the department may ask your bank to reverse the payment (depending on the timing and banking rules) and return the funds to pay your invoice.

Example 3:

Pat retired July 1st, with a calculated retirement benefit of $3,000 per month. However, Pat used vacation leave until August 15th, and so, Pat was not separated from employment and eligible to retire until September 1st. Once Pat's employer provided the department with their final reporting on Pat, the department invoiced Pat for $6,000 representing the July and August pension payments (2 x $3,000).

(b) If the overpayment is not related to an on-going monthly benefit payment, the department will invoice you and expect payment in full within 90 days and will apply interest to any balance outstanding after those 90 days have elapsed.

(c) In the event of a LEOFF Plan 2 overpayment caused by an employer's incorrect reporting, the employer will be liable for the overpayment.

(4) **What will happen if an overpayment is received by someone other than a member or beneficiary?** The overpayment will be a debt from the person or entity to the department and the department will invoice accordingly, unless the overpayment was caused by incorrect reporting by an employer in LEOFF Plan 2, in which case the employer will be invoiced.

Example 4:

J. Smith passed on June 3rd, but with no knowledge of the death, the department deposited the on-going benefit into J. Smith's bank account on the last business day of June. When notified of the death during July, the department requested J. Smith's bank return the June deposit. Banking rules require the department request the deposit amount in full regardless of how much may be ultimately due to an estate.

The department will invoice J. Smith's estate for the June payment and any deductions taken from that payment (such as medical payments) but will apply any amounts received back from the bank or deduction vendors against that invoice. The department will calculate the amount owed to the estate for the month of death and pay J. Smith's estate for those days (three days of 30 for the month of June). Since J. Smith's June payment was $5,000, the estate will be entitled to $500 after all other amounts have been collected back by the department. Any amounts the department cannot collect will be a debt of the estate.

(5) **Is there any limit on how much of an overpayment the department may collect?**

(a) The department will calculate the total overpayment amount but may only collect three years back from the point of discovery of an error, unless the overpayment was caused by incorrect reporting from an employer in LEOFF Plan 2, which reduces the collection period to one year prior to discovery.

(b) In cases of fraud, the department may collect the entire overpayment amount.

Example 5:

Jordan retired April 1, 2018. In October 2021, the department discovered their former employer removed erroneous earnings from Jordan's account, causing the department to recalculate Jordan's monthly benefit. After adjusting Jordan's benefit to the correct amount, the monthly overpayment amount was determined to be $57 per month for 42 months for a total of $2,394. The department will only invoice Jordan for three years back from the date of discovery in October 2021 for a total of $2,052 (36 months x $57).

(6) **How much can the department reduce my benefit to collect an overpayment?**

(a) Your monthly benefit cannot be reduced by more than half of the corrected benefit.

(b) If half of your corrected monthly benefit is less than the full actuarial reduction necessary to recover the overpayment you received, the department will reduce your benefit by half and may put a claim against your estate.

[Statutory Authority: RCW 41.50.[0]50 and 2024 c 304 s 301 through 303. WSR 25-03-027, s 415-02-075, filed 1/7/25, effective 1/8/25. Statutory Authority: RCW 41.50.130. WSR 23-07-043, § 415-02-075, filed 3/8/23, effective 4/8/23.]

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. WSR 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. WSR 78-03-023 (Order IV), § 415-02-080, filed 2/15/78.]

WAC 415-02-100 Can I have my insurance premiums deducted from my retirement allowance? (1) The department will accept requests by retirees to deduct insurance premiums from retirement allowances if the retiree's insurance provider has at least 25 such retirees enrolled in a deduction program and has an established agreement with the department.

(2) The department may suspend deductions if the provider has fewer than 25 participants and remains under 25 participants for more than 90 days.

(3) This rule applies to all retirement systems administered by the department.

[Statutory Authority: SECURE Act 2.0, P.L. 117-328, and RCW 41.50.050. WSR 23-22-111, § 415-02-100, filed 10/31/23, effective 11/2/23. Statutory Authority: RCW 41.50.050(5). WSR 07-22-026, § 415-02-100, filed 10/26/07, effective 11/26/07; WSR 06-21-001, § 415-02-100, filed

10/4/06, effective 11/4/06. Statutory Authority: RCW 41.50.050. WSR 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. WSR 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. WSR 94-09-039, § 415-02-110, filed 4/19/94, effective 5/20/94.]

WAC 415-02-115 How is separation determined for retirement eligibility? (1) **Have I separated from service?** All retirement plans administered by the department of retirement systems require a separation from service before you are eligible to begin receiving retirement benefits. This is consistent with Internal Revenue Service (IRS) requirements for distributions from qualified retirement plans. In accordance with the IRS interpretation, you have separated from service only when you have ended the employment relationship without any reasonable expectation between you and your employer that you will return to work for the same employer in any capacity (including in an eligible or ineligible position or as an independent contractor).

(2) **How will the department determine if separation from service occurred?** The department will examine the facts and circumstances on a case-by-case basis to determine whether separation occurred. No single factor is determinative. Factors to be considered may include, without limitation, the following:

(a) Was there a prior agreement between you and your employer that you would return to work for that employer? If there was an understanding between you and your employer that you would perform services for that employer at a later date, you have not separated from service. Such understanding may be written or unwritten; it may be contractual or noncontractual in nature.

(b) How long was your absence? If your absence from work was less than thirty days, the department will presume that separation did not occur unless the employer provides enough information to disprove the presumption. An absence from work longer than thirty days is not sufficient proof that separation did occur if other factors indicate that an agreement existed for you to return to work for the same employer.

(c) Did your employer conduct a competitive hiring process to fill your vacated position?

(d) Were your actions and your employer's actions consistent with the expectation that your absence from work was total and permanent? For example: Was access to the employer's facilities, computer systems, and your personal email and voice mail accounts terminated? Were your leave accruals cashed out? Did you remove all of your personal belongings from the employer's premises?

(3) **If I terminate from my position with an understanding that I will return to service with the same employer in an ineligible position or as an independent contractor, will I have separated from service?** No. If, at the time of your termination, there was an understanding between you and your employer that you would return to work for that employer in any capacity, including in an ineligible position or

as an independent contractor, you have not separated from service and are not eligible to retire.

(4) **What happens if I begin to receive retirement benefits and then it is determined that separation from service did not occur?** If you begin to receive retirement benefits without a valid separation from service, you have received a benefit overpayment that must be repaid to the department pursuant to RCW 41.50.130 and/or 41.50.139.

(5) **May I contest the department's decision?** If the department determines, based on a review of the circumstances, that you did not separate from service, you may petition for review under chapter 415-04 WAC.

(6) **Examples:**

(a) **Example 1.** Mary has met the age and service requirements for retirement eligibility. Aaron is hired to fill the position she will be leaving. Mary submits her retirement application and leaves her job. Shortly thereafter, Aaron resigns and leaves abruptly, causing a vacancy at a critical time. After a separation of only three weeks, Mary returns to perform the work until the position can be filled again. Has a separation occurred?

Yes, if there are no other facts to the contrary, Mary separated from service and is eligible to retire. At the time of her termination, neither Mary nor her employer expected that she would return to employment. However, if Mary returns to work before thirty days have passed, this may cause her monthly retirement benefit to be reduced based on the requirements of her plan.

(b) **Example 2.** Robert is leaving his position as a police officer. Before leaving, he agrees to return to work for the same employer in a capacity that is not eligible for membership in the law enforcement officers' and firefighters' retirement system (LEOFF). He will begin his new position following a six week absence. Has a separation occurred?

No, Robert did not separate from service because there was an agreement that he would return to work for the same employer. Without a valid separation from service, Robert is not eligible to begin receiving LEOFF retirement benefits.

(7) **Is there a difference between "separation from service" and "separation from employment"?** Some of the retirement plans require "separation from service" in order to receive a monthly benefit. Others require "separation from employment." The department interprets these two statutory terms identically for purposes of eligibility for retirement. In this rule the term "separation from service" refers both to:

(a) The requirements for "separation from service" in RCW 41.40.193, 41.32.480, 41.26.090, and 41.26.490; and

(b) The requirements for "separation from employment" in RCW 41.40.680, 41.40.801; 41.32.795, 41.32.855; 41.35.450, 41.35.640; and 41.37.240.

[Statutory Authority: RCW 41.50.050(5). WSR 16-12-052, § 415-02-115, filed 5/25/16, effective 6/25/16.]

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. WSR 00-10-016, § 415-02-120, filed 4/21/00, effective 5/22/00.]

WAC 415-02-130 Will I receive retirement account information? (1) Your total service credit, earned by calendar month, is available in accordance with RCW 41.50.065 via a personal account on the DRS website. DRS will remind you of the availability of service credit information in your online account with an annual notification on the DRS website.

The department will provide you with a paper copy of your service credit upon request.

(2) Service credit is based on information provided to DRS by your employer, and is subject to correction.

[Statutory Authority: RCW 41.50.050 and 41.50.065. WSR 18-14-072, § 415-02-130, filed 6/29/18, effective 7/30/18. Statutory Authority: RCW 41.50.050(5) and 41.50.065. WSR 12-12-047, § 415-02-130, filed 6/1/12, effective 7/2/12; WSR 02-03-120, § 415-02-130, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050. WSR 00-10-016, § 415-02-130, filed 4/21/00, effective 5/22/00.]

WAC 415-02-140 What is excess compensation and how is the employer's excess compensation billing calculated? (1) **What is excess compensation?** Excess compensation refers to certain payments from an employer to an employee when the payment is used in the calculation of the employee's retirement allowance. The following payments are excess compensation when they are reportable compensation and used in the calculation of the employee's retirement allowance:

(a) A cash out of unused annual leave in excess of two hundred forty hours;

(b) A cash out of other forms of leave, including sick leave and holiday leave;

(c) A payment for a personal expense, if the payment qualifies as reportable compensation in the employee's own retirement system;

(d) That portion of any payment, such as an overtime or incentive payment, that exceeds twice the employee's regular rate of pay for the period of time that the overtime or incentive payment applies; and

(e) A termination or severance payment.

(2) **How does the payment of excess compensation affect employers?** The department determines how much an employee's retirement benefit will increase as a result of the excess compensation, and bills the employer or employers for the present value of that increase.

(a) If an employee cashes out annual leave while working concurrently for two or more employers and the total cash-outs result in excess compensation, each employer's billing will be based on:

(i) The number of hours cashed out by that employer in relation to the total number of hours cashed out by all employers; and

(ii) The hourly rate paid by that employer.

Example: Brian, a PERS 1 member, separated from employment at Agency A and Agency B at the same time. He cashed out 75 hours of annual leave from Agency A and 225 hours from Agency B, resulting in a total of 300 hours that will be used in the calculation of his average final compensation (AFC). A cash-out of unused annual leave in excess of two hundred forty hours is excess compensation (see subsection (1)(a) of this section). Therefore, sixty hours of the cash-out is excess compensation. (300 hours - 240 hours = 60 hours of excess compensation.)

Employer	Total hours cashed out	Percentage of total hours cashed out	Excess compensation billing will be based on:
Agency A	75 hours	25% (75/300)	15 hours (60 hours of excess compensation hours x 25% = 15 hours) at the hourly rate paid by Agency A.
Agency B	225 hours	75% (225/300)	45 hours (60 hours of excess compensation hours x 75% = 45 hours) at the hourly rate paid by Agency B.

(b) If an employee cashes out annual leave from two or more **successive** employers during his/her AFC period and the total cash-outs result in excess compensation, the department will:

(i) Determine the hours cashed out sequentially (employer by employer);

(ii) Identify the employer at the time the cumulative total cashed out exceeded two hundred forty hours, resulting in excess compensation; and

(iii) Bill the employer, identified in (b)(ii) of this subsection, and any subsequent employers during the AFC period, for the number of excess compensation hours each cashed out.

Example: Deborah is a TRS 1 member who changed employment three times during her AFC period.

1. When Deborah separated employment from School District A, she cashed out 156 hours of annual leave;

2. When she separated employment from School District B, she cashed out 96 hours of annual leave; and

3. When she separated from School District C, she cashed out an additional 48 hours of annual leave.

School District	Annual Leave Cash-out	Rationale and Determination
A 7/1/03 - 6/30/04	156	The department will not bill School District A because excess compensation did not result from the 156 hours of annual leave Deborah cashed out at School District A.
B 7/1/04 - 2/28/05	96	The cumulative total of the annual leave cashed out by School District A and School District B exceeds 240 hours, and results in 12 hours of excess compensation[1]. School District B's excess compensation billing will be based on 12 hours at the hourly rate paid by School District B.
C 3/1/05 - 6/30/05	48	Since the cumulative total exceeded 240 hours prior to Deborah's employment with School District C, all of the leave cashed out by Agency C is excess compensation. School District C's excess compensation billing will be based on 48 hours at the hourly rate paid by School District C.

[1] 156 hours (cashed out by School District A) plus 96 hours (cashed out by Agency B) = 252 hours. A cash-out of unused annual leave in excess of two hundred forty hours is excess compensation (subsection (1)(a) of this section). 252 hours - 240 hours = 12 hours of excess compensation.

(3) **How is the excess compensation billing calculated?** To determine the amount of each employer's excess compensation billing, the department:

(a) Determines the increased amount of the employee's monthly retirement allowance that will result from the increase in the AFC, based on a standard benefit allowance (benefit option one);

(b) Determines the actuarial factor, based on the employee's age and retirement plan, from WAC 415-02-340; and

(c) Divides the amount of the monthly benefit increase in (a) of this subsection by the actuarial factor in (b) of this subsection.

If two or more employers are responsible for an employee's excess compensation, the department will calculate the bill for each employer individually, based solely on the excess compensation attributed to that employer. See subsection (2)(a) and (b) of this section.

(4) **Examples:**

(a) **Example 1: Excess compensation arising from cash out of sick leave (PERS Plan 1):**

Denise is a 59 year-old PERS Plan 1 member working for a public utility district. She will retire with thirty years of service, and will cash out $8,000 in sick leave. Denise earned her two highest years of pay during her last two years of employment; therefore, the department will use these years to compute her AFC.

Year 1 - $59,000 Salary

Year 2 - $61,000 Salary + $8,000 sick leave cash out

Q: Did Denise receive excess compensation?
A: Yes. Under subsection (1)(b) of this section, the $8,000 sick leave cash out is excess compensation.

Q: Will the excess compensation increase Denise's retirement allowance?
A: Yes. Denise's retirement allowance will increase by $200/month as shown:

Without the excess compensation (cash out):

AFC	=	$59,000 + $61,000 = $120,000 $120,000/24 = $5,000/month
Retirement allowance	=	2% x 30 years x $5,000 = $3,000/month

With the excess compensation (cash out):

AFC	=	$59,000 + $61,000 + $8,000 = $128,000 $128,000/24 = $5,333.33/month
Retirement allowance	=	2% x 30 years x $5,333.33 =$3,200/ month

Difference in retirement allowances:

$3,200/month - $3,000/month = $200/month

Q: What is the employer's excess compensation billing?
A: The employer must pay $24,565.50, as shown:

Using an annuity factor of 0.0081415[1]:

$$\frac{\$200/\text{month}}{0.0081415} = \$24,565.50$$

[1]Based on Denise's age of 59. The factor can be found in the table in WAC 415-02-340.

(b) **Example 2: Excess compensation arising from cash out of leave (TRS Plan 1):**
George is a TRS Plan 1 member who has 28 years of service and is retiring at age 55 from a school district. The collective bargaining agreement provides two days of personal holiday leave per year and allows for the cash out at retirement of any unused balance of personal holiday leave. Personal leave days are defined as "other forms of leave" under subsection (1)(b) of this section. The following example shows the computation of excess compensation:

Year 1 - $52,500 Salary

Year 2 - $54,000 Salary + $900 for four days of personal leave cash out

Q: Did George receive excess compensation?
A: Yes. Under subsection (1)(b) of this section, the $900 leave cash out is excess compensation.

Q: Will the excess compensation increase George's retirement allowance?
A: Yes. George's retirement allowance will increase by $21/month as shown:

Without the excess compensation (cash out):

AFC	=	$52,500 + $54,000 = $106,500 $106,500/24 = $4,437.50/month
Retirement allowance	=	2% x 28 years x $4,437.50 =$2,485/ month

With the excess compensation (cash out):

AFC	=	$52,500 + $54,000 + $900 = $107,400 $107,400/24 = $4,475/month
Retirement allowance	=	2% x 28 years x $4,475 = $2,506/month

Difference in retirement allowances:

$2,506/month - $2,485/month = $21/month

Q: What is the employer's excess compensation billing?
A: The employer must pay $2,802.28, as shown:

Using an annuity factor of 0.0074939[2]:

$$\frac{\$21/\text{month}}{0.0074939} = \$2,802.28$$

[2]Based on George's age of 55. The factor can be found in the table in WAC 415-02-340.

(c) **Example 3: Excess compensation from bonus.**
Susan is retiring at age 65 in PERS Plan 2. Susan's employer awarded her a $15,083.33 bonus for work she did on a special project in February. The department will compute Susan's excess compensation as follows:

Year 1	-	$59,000 Salary
Year 2	-	$59,000 Salary
Year 3	-	$59,000 Salary
Year 4	-	$59,000 Salary
Year 5	-	$76,083.33 (includes a $15,083.33 bonus for services provided in the month of February).

Q: Did Susan receive excess compensation?
A: Yes. Under subsection (1)(d) of this section, the portion of the bonus that exceeds twice the employee's regular rate of pay for that period ($4,916.67) is excess compensation, as shown:

Regular monthly rate:	$61,000/12 = $5,083.33/month
Twice February's monthly rate:	2 x $5,083.33 = $10,166.66
Excess compensation:	$15,083.33 - $10,166.66 = $4,916.67

Q: Will the excess compensation increase Susan's retirement allowance?
A: Yes. It increases by $49.16/month, as shown:

Without excess compensation (portion of bonus):

AFC	=	$59,000 + $59,000 + $59,000 + $59,000 +$76,083.33 - $4,916.67 = $307,166.66 $307,166.66/60 = $5,119.44/month
Retirement allowance	=	2% x 30 years x $5,119.44 = $3,071.67/ month

With the excess compensation (portion of bonus):

AFC	=	$59,000 + $59,000 + $59,000 + $59,000 + $76,083.33 = $312,083.33 $312,083.33/60 = $5,201.39/month
Retirement allowance	=	2% x 30 years x $5,201.39 = $3,120.83/ month

Difference in retirement allowances:

$3,120.83/month - $3,071.67/month = $49.16/month

Q: What is the employer's excess compensation billing?
A: The employer must pay $6,784.62, as shown:

Using an annuity factor of 0.0072458:

$$\frac{\$49.16/\text{month}}{0.0072458} = \$6,784.62$$

[Statutory Authority: RCW 41.50.050(5) and 41.50.150. WSR 05-12-107, § 415-02-140, filed 5/27/05, effective 6/27/05; WSR 03-06-043, § 415-02-140, filed 2/27/03, effective 4/1/03.]

WAC 415-02-150 How is regular interest credited to Plan 1 and Plan 2 individual accounts? The director has the statutory authority to set the terms of regular interest and modify those terms consistent with RCW 41.50.033. This rule summarizes how regular interest is credited to Plan 1 and Plan 2 individual accounts effective July 1, 2022.

(1) You are required to make contributions to your retirement plan each pay period.

(2) The department maintains an individual account in your name. In your individual account, the department tracks your contributions and the regular interest credited to your account consistent with this rule. Taken together, your contributions plus the regular interest that has been credited to your account are defined to be your accumulated contributions.

(3) Amounts in your individual account (both contributions and previously credited regular interest) accrue regular interest daily at the rate currently in effect. As long as your individual account is in existence, regular interest will continue to accrue, regardless of whether or not you are in active employment.

(4) Regular interest is calculated and credited to your account periodically.

(a) In WSPRS, regular interest is calculated and credited monthly, on the last day of the month. (If you withdraw your accumulated contributions mid-month, the department will calculate and credit your account with the regular interest accrued during the partial month prior to your withdrawal.)

(b) In all other plans 1 and 2, regular interest is calculated and credited quarterly. (If you withdraw your accumulated contributions or transfer your accumulated contributions to another plan mid-quarter, the department will calculate and credit your account with the regular interest accrued during the partial quarter prior to your withdrawal or transfer.)

(c) Because regular interest is calculated on both your contributions and previously credited regular interest, regular interest is compound interest.

(5) Rate of regular interest. The director has the statutory authority to set the rate of regular interest.

(a) During each odd year, the director will consider whether to change the rate of regular interest.

(b) If the rate is to be changed, the new rate will be effective July 1st of the following even year.

(c) In setting the rate, the director will consider the inflation assumption published by the Office of the State Actuary in the bi-annual Economic Experience Study and adopted by the Pension Funding Council.

(6) Example 1. For illustration purposes only, examples will assume the rate of regular interest is 5.5 percent per year. John begins PERS Plan 2 employment. John's employer submits the following contributions to PERS Plan 2:

3/11	$100
3/27	$100
4/10	$100
4/26	$100
5/12	$100
5/27	$100
6/11	$100
6/25	$100
7/11	$100

(a) On March 31st, regular interest of $0.36 is credited to John's account. This is calculated as follows (except where noted, calculations are rounded to four decimal places):

(i) $0.2411 on the account balance of $100 from 3/12 to 3/27. That is $100 for 16 days, the regular interest for this balance is:

.055 * 16/365 * 100 = $0.2411

(ii) $0.1205 on the account balance of $200 from 3/28 to 3/31. That is $200 for four days, the regular interest for this balance is:

.055 * 4/365 * 200 = $0.1205

(iii) The total regular interest credited for the first quarter is $0.36 ($0.2411 + $0.1205 = $0.3616 which rounds to $0.36).

(iv) The balance in John's account on March 31st, is $200.36 - New Contributions ($200) + Regular Interest ($0.36).

(b) On June 30th, regular interest of $6.56 is credited to John's account. This is calculated as follows:

(i) $0.3019 on the account balance of $200.36 from 4/1 to 4/10. That is $200.36 for 10 days, the regular interest for this balance is:

.055 * 10/365 * 200.36 = $0.3019

(ii) $0.7242 on the account balance of $300.36 from 4/11 to 4/26. That is $300.36 for 16 days, the regular interest for this balance is:

.055 * 16/365 * 300.36 = $0.7242

(iii) $0.9653 on the account balance of $400.36 from 4/27 to 5/12. That is $400.36 for 16 days, the regular interest for this balance is:

.055 * 16/365 * 400.36 = $0.9653

(iv) $1.1310 on the account balance of $500.36 from 5/13 to 5/27. That is $500.36 for 15 days, the regular interest for this balance is:

.055 * 15/365 * 500.36 = $1.1310

(v) $1.3570 on the account balance of $600.36 from 5/28 to 6/11. That is $600.36 for 15 days, the regular interest for this balance is:

.055 * 15/365 * 600.36 = $1.3570

(vi) $1.4775 on the account balance of $700.36 from 6/12 to 6/25. That is $700.36 for 14 days, the regular interest for this balance is:

.055 * 14/365 * 700.36 = $1.4775

(vii) $0.6030 on the account balance of $800.36 from 6/26 to 6/30. That is $800.36 for five days, the regular interest for this balance is:

.055 * 5/365 * 800.36 = $0.6030

(viii) The total regular interest credited for the second quarter is $6.56 ($0.3019 + $0.7242 + $0.9653 + $1.1310 + $1.3570 + $1.4775 + $0.6030 = $6.5599 which rounds to $6.56).

(ix) The account balance on June 30th is $806.92 - March 31st Balance ($200.36) + New Contributions ($600) + Regular Interest ($6.56).

(7) Example 2. John terminates PERS Plan 2 employment on July 1st, after making one contribution for the third quarter. He chooses to withdraw the amount in his individual account. On July 17th, he receives a warrant for $907.74, calculated as follows:

(a) John receives $2.16 in regular interest for the period from July 1st through July 17th.

(i) $1.3375 on the account balance of $806.92 from 7/1 to 7/11. That is $806.92 for 11 days, the regular interest for this balance is:

.055 * 11/365 * $806.92 = $1.3375

(ii) $0.8200 on the account balance of $906.92 from 7/12 to 7/17. That is $906.92 for six days, the regular interest for this balance is:

.055 * 6/365 * $906.92 = $0.8200

(iii) The total regular interest credited for the third quarter is $2.16 ($1.3375 + $0.8200 = $2.1575 which rounds to $2.16).

(b) The total withdrawal is $909.08 - June 30th Balance ($806.92) + New Contributions ($100) + Regular Interest ($2.16).

[Statutory Authority: RCW 41.50.050. WSR 22-13-052, § 415-02-150, filed 6/8/22, effective 7/9/22. Statutory Authority: RCW 41.50.033 and 41.50.050. WSR 18-07-063, § 415-02-150, filed 3/15/18, effective 4/15/18.]

WAC 415-02-160 Will postretirement employment performed during a period of emergency affect my retirement benefit? During a period of emergency proclaimed by the governor under RCW 43.06.010(12) regarding the COVID-19 pandemic, and for which the governor has waived or suspended applicable statutory limitations, public service employment performed by a retiree shall not cause a suspension or reduction of retirement benefits.

For the purpose of this section, a "period of emergency" includes only the following: COVID-19 pandemic, for the period covered by the governor's proclamation.

[Statutory Authority: RCW 41.50.050. WSR 20-16-006, § 415-02-160, filed 7/22/20, effective 8/22/20.]

WAC 415-02-173 How is my benefit affected if I return to work and am impacted by more than one annual hourly limit? (1) **How is my benefit affected if I return to work in positions with two different employers that qualify for more than one annual hourly limit?**

If you return to work in more than one position, and the positions have different annual hourly limits, you will be limited to the highest annual hourly limit for all positions combined.

Examples: Don is retired from teachers' retirement system (TRS) 2 and returned to work as a teacher. Don's nonadministrative TRS position at a school district has an annual limit of 1,040 hours. While working at the school district Don also takes a position at a state agency. The state agency position is a public employees' retirement system (PERS) position and is subject to an annual limit of 867 hours. Don's annual hourly limit remains at 1,040 hours. Don later separates from the TRS nonadministrative school district position and Don's annual hourly limit of 1,040 hours remains in effect for the remainder of the current calendar year. Don's limit will be 867 hours the following year if he continues in the PERS position.

Pat is a 2008 ERF retiree, who returned to work as a driver for the department of transportation (DOT) in a PERS position with an annual limit of 867 hours. Pat gets a second job, working as a bus driver for a school district. The nonadministrative position in the school employees' retirement system (SERS) is subject to an annual limit of 1,040 hours. Pat's benefit is governed by the highest limit, in this case the SERS bus driver position at the school district. Pat's annual limit will be 1,040 hours in a calendar year.

(2) **If I receive pension payments from more than one DRS administered retirement system, and each system has different annual hourly limits, how will my benefit be affected?**

If you are retired from multiple DRS systems, each of your benefits will be affected according to rules of the respective system.

Example: Alex retired from two systems, PERS and SERS, and returned to work as a bus driver in a SERS-eligible position at a school district after the mandatory 30-day break. Alex's two benefits will be impacted differently.

• PERS - To qualify for the 1,040-hour annual hourly limit in PERS, you need a 100-day break in service. Alex only has a 30-day break before returning to work, so Alex's PERS benefit will be subject to an 867-hour limit.

• SERS - Alex's SERS benefit does not require the 100-day break. So, Alex's annual hourly limit for the SERS benefit will be 1,040 hours.

[Statutory Authority: RCW 41.50.050, 2022 c 110, 2023 cc 99 and 410. WSR 24-10-022, § 415-02-173, filed 4/22/24, effective 4/23/24; WSR 23-24-091, § 415-02-173, filed 12/5/23, effective 12/7/23.]

WAC 415-02-175 May I establish service credit for the time I was on an unpaid authorized leave of absence? (1) **Will I get service credit for the time I was on an unpaid authorized leave of absence?** You will receive service credit for the period of time you are on an

unpaid authorized leave of absence, up to a maximum of 24 service credit months during your entire working career, provided all of the following apply:

(a) You are a member of LEOFF Plan 2, PERS Plan 2 or 3, PSERS, SERS Plan 2 or 3, or TRS Plan 2 or 3;

(b) Your leave of absence was authorized by your employer;

(c) You resumed employment according to the requirements in subsection (3) of this section, unless you are a member of LEOFF Plan 2; and

(d) You establish the service credit for the period of leave according to the provisions in this section.

(2) **How does an unpaid authorized leave of absence affect my retirement?** If you establish service credit for the period of time you were on an unpaid authorized leave of absence:

(a) It will be used as part of your total service credit to determine retirement eligibility and pension; but

(b)(i) Except as noted in (b)(ii) of this subsection, the period of time you were on leave will not be included in your average final compensation period.

Example:
Joseph has the following earnable compensation prior to retirement:

YR 1	$30,000
YR 2	$35,000
YR 3	$40,000
YR 4	$45,000
YR 5	$50,000
YR 6	Unpaid leave of absence for entire year
YR 7	$55,000

Joseph's AFC period will be YR 2, YR 3, YR 4, YR 5, and YR 7.

(ii) This provision does not apply to interruptive military service. If you establish service credit for a period of interruptive military service and that period falls in your AFC period, you are entitled to have the salary you would have earned during that time period used in the calculation of your AFC.

(3) **Do I qualify to establish this service credit?** As a requirement for establishing this service credit, you must resume employment within the same retirement system you left, unless you are a LEOFF Plan 2 member and retire instead of returning to work.

(a) After resuming employment, you may request, and pay for, service credit whether you are a contributing member or whether you become inactive.

(b) If you are a law enforcement officer in LEOFF Plan 2 and took a part-time unpaid leave of absence while you worked part-time, you may request service credit. In this case, you may only request part-time service credit for the portion of time you were on unpaid leave of absence.

(4) **How do I request this service credit?** If you wish to establish this service credit, you must contact the department. The department will obtain written verification from your employer confirming the months of your authorized leave of absence and your salary for the months preceding and following the leave.

(5) **How does the department determine the cost of establishing this service credit?**

(a) In order to establish service credit for the period of time you were on leave of absence, you must pay the employee and employer retirement contributions, plus applicable interest. LEOFF Plan 2 members must also pay the contributions normally paid by the state.

(b) The amount of the employee and employer contributions is calculated as follows:

(i) For TRS members, the salary upon which contributions are calculated is determined by averaging the salary earned for the school year, as defined in RCW 28A.150.040, prior to your unpaid leave of absence and the salary earned in the school year after you returned to work. If you were on leave of absence for less than the entire school year, that year's salary will be prorated according to the number of months you were on leave of absence.

(ii) For law enforcement officers in LEOFF Plan 2 who took a part-time unpaid leave of absence while working part-time, the salary upon which contributions are calculated is determined by:

(A) Averaging your basic salary during the last full month of employment before your part-time leave of absence, and your basic salary during the first full month after you return to full-time employment; and

(B) Multiplying the monthly salary determined according to (b)(ii)(A) of this subsection by the number of months you were on leave.

(C) For members retiring directly from an authorized leave of absence instead of returning to work, the basic salary at the time that the authorized leave of absence was granted will be adjusted for any cost-of-living or other pay increases provided to similar jobs or job classes during each month of the leave period.

(iii) For members of other systems, the salary upon which contributions are calculated is determined by:

(A) Averaging the compensation earned during the last full month of employment before your leave of absence, and the compensation you earned during the first full month after you returned to work; and

(B) Multiplying the monthly salary determined according to (b)(iii)(A) of this subsection by the number of months you were on leave.

If you worked part-time prior to the leave of absence, partial month wages will be used to estimate your average salary. In this case, you may only establish part-time service credit for the period of time you were on leave of absence.

(6) **What is the payment process for establishing this service credit?**

(a) You may purchase this service credit in one payment, or make payments at any time until the deadline expires.

(b) Interest will accrue on the unpaid balance until payment is made in full.

(c) The department will accept funds that have been rolled over from a tax deferred retirement account for the purchase of the service credit. However, the amount you may roll over is limited to the purchase price of the service credit. If the rollover amount does not cover the entire purchase price, you must pay the additional amount within 30 days of the rollover. If the balance is not paid within 30 days, the rollover funds will be returned to the original financial institution.

(d) If you took more than one authorized leave of absence, the department will bill you separately for each occurrence. Service credit will be granted for each occurrence only after the bill for that period is paid in full.

(7) **What is the deadline for establishing this service credit?** Except as provided in subsection (9) of this section:

(a) If you are a member of LEOFF Plan 2, PERS Plan 2, PSERS, or SERS Plan 2, payment in full must be received within five years from the initial date of your return to an eligible position, or prior to your retirement, whichever occurs first.

(b) If you are a member of PERS Plan 3 or SERS Plan 3, payment in full must be received prior to your retirement.

(c) If you are a member of TRS Plan 2 or 3, payment in full must be received by August 31st of the fifth school year, as defined in RCW 28A.150.040, after you return to employment or prior to your retirement, whichever comes first. The school year during which you return to work will be counted as year one.

(8) **What if I do not make payment in full by the deadline?**

(a) If you are a Plan 2 member or a PSERS member and do not make payment in full by the deadline, the amount you paid will be refunded to you.

(b) If you are a Plan 3 member and do not make payment by the deadline, the portion of your payments that were:

(i) Employer contributions will be refunded to you; and

(ii) Employee contributions will be deposited into your defined contribution account and available to you only upon separation from service.

(c) If you are a Plan 2 member or a PSERS member, the department will refund partial payments prior to the deadline upon your request.

(d) If you are a PERS Plan 2, SERS Plan 2, or TRS Plan 2 member and transfer to Plan 3 prior to making payment in full:

(i) The department will refund any partial payments; and

(ii) You must reapply under Plan 3 if you still wish to establish this service credit.

(9) **What is the exception to the deadline?** After your initial deadline has passed, you retain the right to establish this service credit until the date of your retirement. However, the purchase price will be equal to the full actuarial value of the increase in benefit that results from the purchased service credit. The department will use the two-part formula in WAC 415-10-030 to determine actuarial value.

(10) **What state law applies to establishing service credit for an unpaid authorized leave of absence?**

(a) PERS Plan 2: RCW 41.40.710;
(b) PERS Plan 3: RCW 41.40.805;
(c) TRS Plan 2: RCW 41.32.810;
(d) TRS Plan 3: RCW 41.32.865;
(e) SERS Plan 2: RCW 41.35.470;
(f) SERS Plan 3: RCW 41.35.650;
(g) LEOFF Plan 2: RCW 41.26.520;
(h) PSERS: RCW 41.37.260;
(i) Deadline extension: RCW 41.50.165.

[Statutory Authority: RCW 41.50.050 and 2025 c 112. WSR 26-10-011, s 415-02-175, filed 4/27/26, effective 4/28/26. Statutory Authority: RCW 41.50.050(5). WSR 14-06-053, § 415-02-175, filed 2/27/14, effective 10/1/14. Statutory Authority: RCW 41.50.050(5), 41.40.710, 41.40.805,

41.32.810, 41.32.865, 41.35.470, 41.35.650, 41.26.520, 41.37.260. WSR 06-18-009, § 415-02-175, filed 8/24/06, effective 9/24/06. Statutory Authority: RCW 41.50.050(5), 41.40.710, 41.40.805, 41.32.810, 41.32.865, 41.35.470, 41.35.650, 41.26.520, 41.50.165. WSR 04-20-005, § 415-02-175, filed 9/23/04, effective 10/24/04.]

WAC 415-02-177 May I purchase additional service credit? (1) **What is the option for purchasing additional service credit?** The following statutes provide an option for eligible members to purchase additional service credit that provides a guaranteed, lifetime increase to their monthly retirement benefit:

(a) RCW 41.26.199 for LEOFF Plan 1 members;
(b) RCW 41.26.432 for LEOFF Plan 2 members;
(c) RCW 41.40.034 for PERS Plan 1, 2, and 3 members;
(d) RCW 41.37.265 for PSERS Plan 2 members;
(e) RCW 41.35.183 for SERS Plan 2 and 3 members;
(f) RCW 41.32.066 for TRS Plan 1, 2, and 3 members; and
(g) RCW 43.43.233 for WSPRS Plan 1 and 2 members.

(2) **Am I eligible to purchase additional service credit?**

(a) You may purchase additional service credit if you are eligible to retire from one or more of the following plans and you elect a monthly benefit rather than a lump sum payment:

(i) LEOFF Plan 1 or 2 under RCW 41.26.090 or 41.26.430;
(ii) PERS Plan 1, 2, or 3 under RCW 41.40.180, 41.40.630, or 41.40.820;
(iii) PSERS Plan 2 under RCW 41.37.210;
(iv) SERS Plan 2 or 3 under RCW 41.35.420 or 41.35.680;
(v) TRS Plan 1, 2, or 3 under RCW 41.32.480, 41.32.765, or 41.32.875; or
(vi) WSPRS Plan 1 or 2 under RCW 43.43.250.

(b) If you retire as a result of a disability, you may purchase additional service credit if you meet the requirements in (a) of this section.

(3) **How much additional service credit may I purchase?** If you are eligible, you may purchase from one to 60 months of additional service credit in whole month increments.

(4) **May I use the additional purchased service credit to qualify for normal retirement or an early retirement?** No. You may not use the purchased service credit to qualify for normal retirement or to qualify for an early retirement.

(5) **When must I apply to purchase additional service credit?** You must submit your request to purchase additional service credit to the department at the same time you submit your application for retirement.

(6) **How much will my monthly retirement benefit increase if I purchase additional service credit?** The increase in your monthly retirement benefit will be calculated using the benefit formula for your system and plan, with a reduction for early retirement, if applicable.

Example 1 (PERS Plan 2): John is a member of PERS Plan 2. He applies for retirement, effective the first month after his 62nd birthday and chooses to purchase an additional 60 months (five years) of service credit. His average final compensation (AFC) is $4,000 per month. For illustration purposes in this example only, we will use .7240000 as the corresponding early retirement factor (ERF) for retiring three years early (actuarial factors change periodically). As

a result, John's monthly benefit will increase by $289.60 per month, calculated as follows:

Amount of increase	=	2% x additional service credit years x AFC x ERF
	=	2% x 5 years x $4,000 x .7240000
	=	$289.60

Example 2 (TRS Plan 3): Jane is a member of TRS Plan 3. She applies for retirement, effective the first month after her 62nd birthday and chooses to purchase an additional 60 months (five years) of service credit. Her AFC is $4,000 per month. For illustration purposes in this example only, we will use .7240000 as the corresponding ERF for retiring three years early (actuarial factors change periodically). As a result, Jane's monthly retirement benefit will increase by $144.80 per month, calculated as follows:

Amount of increase	=	1% x additional service credit years x AFC x ERF
	=	1% x 5 years x $4,000 x .7240000
	=	$144.80

Example 3 (LEOFF Plan 2): Jim is a member of LEOFF Plan 2. He applies for retirement, effective the first month after his 53rd birthday and chooses to purchase an additional 60 months (five years) of service credit. His final average salary (FAS) is $4,000 per month. No ERF is needed for this calculation as Jim has already reached normal retirement age for LEOFF Plan 2. Jim's monthly retirement benefit will increase by $400 per month, calculated as follows:

Amount of increase	=	2% x additional service credit years x FAS
	=	2% x 5 years x $4,000
	=	$400

(7) **How is the cost of the additional purchased service credit calculated?** The cost to purchase additional service credit is calculated by dividing the amount of the increase in subsection (6) of this section by the age-based annuity factor in effect at the time of retirement. (See WAC 415-02-340 for more information.)

Example. In subsection (6) of this section, Example 1, it was determined that John's retirement benefit would increase by $289.60 per month. For illustration purposes in this example only, we will use .0065016 as the annuity factor for John's retirement date (actuarial factors change periodically). As a result, John's cost to purchase the five years of additional service credit would be $44,542.88, calculated as follows:

Cost	=	Amount of increase ÷ age-based annuity factor
	=	$289.60 ÷ .0065016
	=	$44,542.88

(8) **How and when do I pay for the additional service credit?** The department will generate a bill to you for the cost of the additional service credit.

(a) Payment may be made with an eligible rollover, a direct rollover or a trustee-to-trustee transfer, if allowed by the transferring plan. Payment may also be made with after-tax dollars, such as money from a personal savings account.

(b) DRS can accept a rollover of pretax dollars from your DCP account. To purchase additional service credit with Roth dollars, you must request a distribution first, then pay the bill with a check.

(c) Payment must be made in full within 90 days after the bill issue date.

(9) **When will my benefit increase be effective?** The increase in your benefit will be effective the day after the department receives your full payment.

Example 1: If your full payment is received on August 31st, your benefit increase will be effective for the entire month of September and every month thereafter.

Example 2: If your full payment is received August 13th, your August benefit payment will be prorated to provide an increase for the days from August 14th through August 31st. Your September benefit and future monthly payments will reflect the entire monthly increase from purchasing the additional service credit.

(10) **If I choose a benefit option with a survivor feature, will my survivor's monthly benefit reflect the additional purchased service credit?** Yes. Depending upon the rules for your retirement system and plan and the benefit option you choose at retirement, your survivor's monthly benefit will be a percentage of the gross monthly retirement benefit you were receiving at the time of your death. Since the additional service you purchased is included in the calculation of your monthly benefit, the survivor option you designate for your monthly benefit will also be applied to the benefit from the purchased service credit. You cannot choose a different survivor. If you choose a benefit option with a survivor feature and your survivor dies before you, your monthly retirement benefit will increase to the amount it would have been had you not selected a survivor option.

(11) **Will I receive a cost of living adjustment (COLA) on the portion of my benefit that is based on the additional purchased service credit?**

(a) For all systems and plans, except as noted in (b) of this subsection, your COLA will be based on your gross monthly retirement benefit, including the increase due to the purchased service credit.

(b) If you retire from PERS Plan 1 or TRS Plan 1 and you do not elect the optional auto COLA, you will not receive a COLA on the additional purchased service credit amount.

(12) **If I purchase additional service credit and then return to work, how will my retirement benefit be affected?** Your entire retirement benefit, including the amount attributable to purchased service credit, is subject to the return to work provisions of your system and plan. The following rules describe the impact on your benefit if you return to work as a retiree of the referenced systems and plans:

PERS Plans 1, 2, and 3:	WAC 415-108-710
TRS Plan 1:	WAC 415-112-541
TRS Plans 2 and 3:	WAC 415-112-542
SERS Plans 2 and 3:	WAC 415-110-710
PSERS Plan 2:	WAC 415-106-700
LEOFF Plan 2:	WAC 415-104-111

(13) **If I retire and purchase less than 60 months of additional service credit, may I purchase more at a later time?** No. You may not purchase additional months of service credit from the same plan unless you return to membership and retire again from the same system and plan. You must meet the eligibility requirements provided in subsection (2) of this section at the time you retire again. You may not

purchase more than a total of 60 months of service credit regardless of how many times you retire again from the same system and plan.

(14) **May I purchase service credit from more than one retirement plan?**

(a) If you are a dual member under chapter 415-113 WAC, Portability of public employment benefits, and you combine service credit to retire as a dual member, you may purchase up to 60 months of additional service credit from each of your dual member plans.

(b) If you retire from more than one plan, but are not a dual member under chapter 415-113 WAC, you may purchase up to 60 months of additional service credit from each plan in which you meet the eligibility requirements in subsection (2) of this section.

(15) **How are the funds I paid to purchase the additional service credit treated upon my death (and the death of my survivor, if applicable)?**

(a) Plans 1 and 2. The amount paid to purchase the additional service credit is credited to your individual account as part of your accumulated contributions. Distribution of accumulated contributions after your death (and the death of your survivor, if any) is governed by the statutes and rules applicable to your plan. See:

(i) WAC 415-108-326 for PERS Plan 1 and 2;
(ii) WAC 415-112-504(9) for TRS Plan 1;
(iii) WAC 415-112-505(7) for TRS Plan 2;
(iv) WAC 415-110-610(7) for SERS Plan 2;
(v) WAC 415-106-600(7) for PSERS Plan 2;
(vi) WAC 415-103-215 for WSPRS Plan 1;
(vii) WAC 415-103-225(7) for WSPRS Plan 2;
(viii) WAC 415-104-202 for LEOFF Plan 1; or
(ix) WAC 415-104-215(7) for LEOFF Plan 2.

(b) Plan 3. If you and your survivor (if you selected a survivor option) die before the amount of your purchased service credit has been paid back to you in your monthly retirement benefit, the difference will be refunded to your designated beneficiary.

[Statutory Authority: RCW 41.50.050, 41.50.770, and SECURE Act 2.0 § 603. WSR 23-18-025, § 415-02-177, filed 8/25/23, effective 9/25/23. Statutory Authority: RCW 41.50.050. WSR 18-01-020, § 415-02-177, filed 12/8/17, effective 1/8/18. Statutory Authority: RCW 41.50.050(5). WSR 16-04-048, § 415-02-177, filed 1/27/16, effective 2/27/16; WSR 13-18-034, § 415-02-177, filed 8/28/13, effective 10/1/13; WSR 13-06-025, § 415-02-177, filed 2/27/13, effective 4/1/13; WSR 10-16-086, § 415-02-177, filed 7/30/10, effective 9/1/10. Statutory Authority: RCW 41.50.050(5), 2006 c 214, and RCW 41.26.432. WSR 06-16-043, § 415-02-177, filed 7/26/06, effective 8/26/06.]

WAC 415-02-178 May I purchase an annuity? (1) **Am I eligible to purchase an annuity?** You are eligible to purchase a defined benefit plan annuity at the time of retirement if you are a member of TRS (RCW 41.32.067), WSPRS (RCW 43.43.315), LEOFF Plan 1 (RCW 41.26.105), LEOFF Plan 2 (RCW 41.26.463), PERS (RCW 41.40.131), SERS (RCW 41.35.235), or PSERS Plan 2 (RCW 41.37.295). This annuity provides a lifetime increase to your monthly benefit. (For purchasing an annuity from your Plan 3 defined contribution account, refer to WAC 415-111-320.)

(2) **Can I purchase an annuity if I take a lump sum payment?** You may not purchase an annuity if you elect a lump sum payment instead of a monthly benefit.

(3) **Are there limits to the annuity amount I may purchase?** There is no maximum limit on the purchase amount. If you are a LEOFF or WSPRS member the minimum purchase amount is $25,000. If you are a PERS, SERS, or PSERS member, the minimum purchase amount is $5,000. There is no minimum required for TRS members.

(4) **When can I apply to purchase an annuity?** You must submit your request to purchase an annuity to the department at the time you apply for retirement.

(5) **How much will my monthly benefit increase if I purchase an annuity?** The increase in your monthly benefit will be calculated using the following formula:

Purchase Annuity Amount x Annuity Factor = Increase to Monthly Benefit

The annuity factor is determined by your age on the later of your retirement date or the date your retirement application is submitted to the department.

Example: John is a member of LEOFF Plan 2. He applies for retirement and requests to purchase an annuity for $45,000. For illustration purposes in this example only, we will use 0.0051025 as the corresponding annuity factor (factors change periodically). John's monthly benefit will increase by $229.61 per month, calculated as follows:

Purchase Annuity Amount x Annuity Factor = Increase to Monthly Benefit

$45,000 x 0.0051025 = $229.61

(6) **How and when do I pay for the annuity?** The department will generate a bill to you for the cost of the annuity after we receive your request to purchase.

(a) For all TRS members, payment may be made by making a one-time personal payment (however, IRS regulations limit the amount of after-tax dollars you may use); and you may roll over funds from another tax-deferred retirement account. To purchase the annuity with Roth dollars, you must request a distribution first, then pay the bill with a check.

(b) For LEOFF, WSPRS, PERS, SERS, and PSERS members, the annuity must be purchased by rolling over funds from an "eligible retirement plan" which is a tax qualified plan offered by a governmental employer (like the state of Washington's deferred compensation program) or rolling over tax-deferred funds that originated with a governmental employer. You cannot use a Roth balance (if applicable) for this payment. You can only use dollars from your pretax balance. The annuity payment is taxable income when you receive it.

(c) For PERS Plan 1 or TRS Plan 1 members, Post-30 year contributions withheld under the provisions of RCW 41.40.191 or 41.32.4986 respectively, may not be used to purchase the annuity.

(d) Payment must be made in full by 90 days after the later of your retirement date or bill issue date. Your annuity will begin once your payment is received and your retirement is processed. The effective date for the start of this benefit is the later of your retirement date or the payment in full date plus one day.

(7) **What are the survivor options for my annuity?** The survivor option you designate for your retirement benefit will also be used for your annuity purchase, with the exception of WSPRS Plan 1 Option A and LEOFF Plan 1.

If you are a WSPRS Plan 1 member who chose Option A or you are a LEOFF Plan 1 member, your annuity will be paid for your lifetime only. Under these two survivor options, even though the retirement benefit

may be paid over two lifetimes, there is no actuarial reduction. No actuarial reduction can be applied to the annuity, therefore the annuity can only be treated as if a single life option was chosen.

If you choose a benefit option with a survivor feature and your survivor dies before you, your monthly annuity payment will increase to the amount it would have been had you not selected a survivor option.

(8) **Will I receive a cost of living adjustment (COLA) on the portion of my benefit that is based on the purchased annuity?** If you are eligible for an annual COLA adjustment on your monthly benefit, you will receive the same COLA percentage on this annuity.

(9) **If I purchase an annuity and then return to work, how will the annuity portion of my benefit be affected?** You will continue to receive the annuity portion of your monthly benefit payment even if you return to work, or return to membership.

(10) **If I retire then return to membership and reretire, may I purchase another annuity?** Yes. You may purchase another annuity when you reretire provided you are reretiring from an eligible plan that allows an annuity purchase.

(11) **May I purchase an annuity from more than one retirement plan?**

(a) If you are a dual member under chapter 415-113 WAC, Portability of public employment benefits, and you combine service credit to retire as a dual member, you may purchase an annuity from each dual member plan that allows an annuity purchase.

(b) If you are not a dual member and retire separately from more than one plan you may purchase an annuity from each eligible plan that allows an annuity purchase.

(12) **What happens to my annuity upon my death (and the death of my survivor, if applicable)?**

System Plan	Benefit Option	Annuity Payment Upon Death
TRS 1	Maximum Option	At the time of your death the annuity payment stops.
TRS 1, TRS 2, TRS 3, LEOFF 2, WSPRS 2, PERS 1, PERS 2, PERS 3, SERS 2, SERS 3, and PSERS 2	Option 1 (single life)	At the time of your death the annuity payments stop. The original amount you paid for your annuity, less any payments you have received, will be paid to your designated beneficiary.
WSPRS 1	Option A	
LEOFF 1	Automatic Survivor	
TRS 1, TRS 2, TRS 3, LEOFF 2, WSPRS 2, PERS 1, PERS 2, PERS 3, SERS 2, SERS 3, and PSERS 2	Option 2, 3, 4 (joint life)	At the time of your death, payments will continue to your survivor. At the time of your survivor's death, the original amount you paid for your annuity, less any payments you and your survivor have received, will be paid to your designated beneficiary.
WSPRS 1	Option B (joint life)	

[Statutory Authority: RCW 41.50.050, 41.50.770, and SECURE Act 2.0 § 603. WSR 23-18-025, § 415-02-178, filed 8/25/23, effective 9/25/23. Statutory Authority: RCW 41.50.050. WSR 21-22-047, § 415-02-178, filed 10/28/21, effective 11/28/21; WSR 20-01-145, § 415-02-178, filed 12/17/19, effective 1/17/20. Statutory Authority: RCW 41.50.050(5). WSR 17-07-021, § 415-02-178, filed 3/7/17, effective 4/7/17; WSR 16-04-048, § 415-02-178, filed 1/27/16, effective 2/27/16.]

WAC 415-02-180 Is it possible to receive more than one month of service credit in a single retirement plan for a calendar month? You may not receive more than one month of service credit for a calendar month, or twelve months of service credit during a service credit year, in any one retirement plan.

This includes, but is not limited to, receiving more than one month of service credit during a calendar month for:

(1) Working in two or more positions covered by the same retirement system;

(2) Military service and service as an employee in the same month;

(3) Purchasing service credit for a period of paid or unpaid leave that occurred during the same month you earned service credit for service as an employee;

(4) Serving as an elected or appointed official during the same month you earned service credit for service as an employee; or

(5) Working more than the minimum number of hours required to earn one month of service credit.

EXAMPLE: Mary, a PERS 1 member, worked full time for the department of retirement systems continuously for five years from January 1, 1996, through December 31, 2000. During the same period, she worked evenings and Saturdays (full time) in a PERS eligible position for the department of licensing. Mary earned a total of five years of service credit, which is the maximum service credit a member may earn in a five-year period.

[Statutory Authority: RCW 41.50.050(5). WSR 05-13-045, § 415-02-180, filed 6/9/05, effective 7/10/05.]

WAC 415-02-200 Can I transfer former LEOFF Plan 1 service? If you are a member of PERS, TRS, SERS, or WSPRS, and you have previously established service credit in LEOFF Plan 1, you may ***irrevocably*** choose to transfer your LEOFF Plan 1 service to your current retirement system and plan subject to the following conditions:

(1) The choice to transfer service must be filed in writing with the department no later than one year from the date you become employed by a PERS, TRS, SERS, or WSPRS employer in an eligible position.

(2) If you transfer your service credit under this section:

(a) You will forfeit (lose) all rights to benefits as a LEOFF Plan 1 member and will be permanently excluded from membership.

(b) Your transferred service will ***not apply*** to the eligibility requirements for military service credit as defined in RCW 41.40.170(3) for PERS Plan 1 or in RCW 43.43.260(3) for WSPRS Plan 1.

(3) When you transfer your service credit under this section to your current retirement system and plan, DRS will transfer:

(a) All of your accumulated LEOFF Plan 1 contributions;

(b) An amount sufficient to ensure that the employer contribution rate in your current system and plan will not increase because of the transfer; and

(c) All applicable months of LEOFF Plan 1 service credit, as defined in RCW 41.26.030.

(4) If you previously withdrew contributions from LEOFF Plan 1, you:

(a) May restore the contributions, together with interest as determined by the director, and recover the service represented by the contributions for the sole purpose of transferring service under this section;

(b) Must restore the contributions before the transfer can occur; and

(c) Must complete the restoration within the time limitations specified in subsection (1) of this section.

(5) If you do not meet the time limitations of subsection (1) of this section, you may restore any withdrawn contributions and transfer service under this section by paying the amount required under subsection (3)(b) of this section less any employee contributions transferred.

(6) **Terms used:**

LEOFF - Law enforcement officers' and firefighters' retirement system.

PERS - Public employees' retirement system.

SERS - School employees' retirement system.

TRS - Teachers' retirement system.

WSPRS - Washington state patrol retirement system.

[Statutory Authority: RCW 41.50.050. WSR 21-16-020, § 415-02-200, filed 7/23/21, effective 8/23/21. Statutory Authority: RCW 41.50.050(5), 41.26.195. WSR 04-04-038, § 415-02-200, filed 1/29/04, effective 3/1/04.]

WAC 415-02-210 What is an indexed retirement allowance? If you are a member of an indexed retirement plan as defined in WAC 415-02-030 and have at least 20 years of service credit when you leave employment, your pension benefit will increase by three percent for each year you delay receiving it, up to your full retirement age. The increased amount is referred to as an indexed retirement allowance.

(1) **How will my indexed retirement allowance be calculated?** If there is a period of at least one month between your separation from employment in the plan and your date of retirement, the department will calculate your indexed retirement allowance in the following way:

Using the average salary, increase the retirement allowance from the date both of the following have occurred and end on the last day of the month prior to attainment of the full retirement age.

(a) Separation from the retirement plan; and

(b) Accrual of 20 years of service credit.

Example: A PERS Plan 3 member separates December 24, 2017, with 23 years of service credits at age 63 and defers receiving their retirement until age 65, January 1, 2019. This member will receive indexing starting January 2018 through December 2018 (12 months of indexing).

(2) **What if I return to service after completing 20 years of service credit?** If you separate with at least 240 months of service credits, wait to retire, then return to membership before retiring, the indexing of your retirement benefit will be calculated two ways, with the higher of the two being used for your retirement calculation.

(a) Method 1: Use the average salary from the first separation after you attained 20 years of service credit. Indexing would apply to the number of calendar months starting from the first separation date. Indexing ends the month prior to the chosen retirement date or attain-

ment of the full retirement age whichever is sooner, and excludes the months of re-employment following the first separation date.

(b) Method 2: Use the highest average salary based on all earnings throughout the entire employment period. Indexing would apply from the last separation date to the end of the month prior to the chosen retirement date or full retirement age, whichever is sooner.

Example: You are a member of a single DRS retirement system who separates with at least 240 months of service credits, waits to retire, then returns to membership before retiring. You now have 20 years of service credits on your inactive employment period, and will have at least two separation dates. DRS will calculate the benefit in the following two ways and provide you the higher of the two results:

Method 1 - System AFC/FAS with Interruptive Indexing.

• Use the AFC/FAS from the first separation after you attained 20 years of service credit excluding months when you were reemployed.

Method 2 - System AFC/FAS without Interruptive Indexing.

• Use the highest AFC/FAS based on all earnings, where indexing only be allowed from the last separation date to the retirement date.

(3) If your separation from employment occurs on the first of the month, that month will be included in the months indexed between separation and retirement. Any separation date after the first of the month will have indexing begin the following month.

[Statutory Authority: RCW 41.50.050. WSR 22-15-007, § 415-02-210, filed 7/6/22, effective 8/6/22.]

WAC 415-02-250 Retiree medical accounts established under Internal Revenue Code (IRC) section 401(h). RCW 41.26.470(10), 41.26.510(5), and 43.43.285 (2)(b) authorizes LEOFF Plan 2 and WSPRS Plan 1/2 to provide reimbursement to eligible retirees and/or to their eligible survivors for certain medical insurance premiums. These reimbursements are authorized by IRC section 401(h), subject to the IRC and federal regulations.

(1) **How is the money to fund these benefits held by the state?** Pursuant to IRC section 401(h), there is established a retiree medical account within the trust fund of each of the respective plans. The money to fund the foregoing reimbursements for medical insurance premiums is held in these "retiree medical accounts." The assets in each of these retiree medical accounts shall be accounted for separately from other trust funds. There are no individual member accounts within a retiree medical account.

(2) **How are the assets in the retiree medical accounts invested?** The assets in the retiree medical accounts are commingled with other trust fund accounts for investment purposes. Portions of the investment expenses and investment earnings for the commingled investments are allocated to the retiree medical accounts on a reasonable basis.

(3) **How are assets in the retiree medical accounts used?**

(a) Assets in the retiree medical accounts are held in trust for the exclusive benefit of eligible retirees and their eligible survivors.

(b) The assets of the respective retiree medical accounts shall be used only for the payment of the benefits provided in RCW 41.26.470(10), 41.26.510(5), and 43.43.285 (2)(b), and the expenses of administering these sections. Assets in the retiree medical accounts

may not be used for any other retirement benefit provided by chapters 41.26 and 43.43 RCW or any other purpose.

(c) If any individual forfeits an interest in the benefits provided in RCW 41.26.470(10), 41.26.510(5), and 43.43.485 (2)(b), the money in the retiree medical account shall be used to provide benefits to those who remain eligible.

(d) Upon satisfaction of all liabilities under RCW 41.26.470(10), 41.26.510(5), and 43.43.285 (2)(b), any assets in a retiree medical account that are not used as provided in (b) of this subsection shall be transferred to the department of retirement systems' (DRS) expense fund for the benefit of employers, as required by IRC section 401(h)(5).

(e) These benefits are subordinate to the retirement benefits provided by the plan.

(4) **How are the retiree medical accounts funded?**

(a) The retiree medical accounts are funded by designated retirement contributions, appropriations, and any other sources. The funding structure and the process for determining the contributions for the accounts are set out in chapter 41.45 RCW, in particular RCW 41.45.050, 41.45.060, 41.45.0604, 41.45.0631, and 41.45.070.

(b) At no time shall the contributions to a retiree medical account plus the contributions to its respective plan for the one-time duty-related death benefit be in excess of twenty-five percent of the total contributions to its respective plan (not including contributions to fund past service credits). This comparison is made by comparing the cumulative contributions that have been made after the effective date of the retiree medical account.

(c) DRS will review the total contributions annually to ensure that the twenty-five percent limit has not been exceeded.

(5) In adopting this section, DRS intends to comply in all respects with IRC sections 401(a) and 401(h) and to preserve the status of LEOFF Plan 2 and WSPRS Plan 1/2 as tax-qualified governmental plans under section 401(a) and 414(d) of the Internal Revenue Code.

[Statutory Authority: RCW 41.50.050(5) and chapter 43.43 RCW. WSR 11-18-017, § 415-02-250, filed 8/26/11, effective 9/26/11.]

WAC 415-02-260 What happens to my monthly retirement benefit when I die? If a survivor benefit will not be paid on your account, a prorated portion of your defined benefit for the month of your death will be paid to your estate. Any contributions that have not been paid in retirement benefits will be paid to your beneficiary. If your named beneficiaries have all predeceased you, remaining contributions will be paid to your estate. Amounts you owe the department, if any, will be subtracted from your account prior to payments being made to your beneficiary or estate.

[Statutory Authority: RCW 41.50.050. WSR 21-10-036, § 415-02-260, filed 4/28/21, effective 5/29/21.]

WAC 415-02-261 What happens if a beneficiary disclaims a lump sum benefit? (1) A beneficiary may disclaim a payment in writing with the department as prescribed by the department. If the beneficiary was a primary beneficiary and there are other living primary beneficiaries, the disclaimed benefit will be split among the other primary

beneficiaries in the same proportion (rounded) awarded by the member or retiree.

(2) General formula: A member has *n* beneficiaries, with each beneficiary receiving a percentage and the total percentage equal to 100. When one beneficiary disclaims their benefit, there are then *n-1* beneficiaries. The sum of these percentages is now less than 100. To determine the new percentages, divide the original percentage for each beneficiary by the new total of the remaining percentages.

Example: Chris has listed three people as primary beneficiaries: Tom at 34 percent, Carl at 33 percent, and Wilma at 33 percent. Chris passed away. Tom disclaims the benefit with the department. Carl and Wilma each receive 50 percent of the contributions.

Example: Chris has listed three people as primary beneficiaries: Tom at 50 percent, Carl at 25 percent, and Wilma at 25 percent. Chris passed away. Carl disclaims the benefit with the department. Tom receives 67 percent and Wilma 33 percent of the contributions.

Example: Chris has listed four people as primary beneficiaries: Tom at 40 percent, Carl at 30 percent, Wilma at 20 percent, and Liam at 10 percent. Chris passed away. Carl disclaims their 30 percent of the benefit with the department. Tom receives 57 percent (40 divided by 70), Wilma receives 29 percent (20 divided by 70) and Liam receives 14 percent (10 divided by 70) of the contributions.

Example: Chris has listed four people as primary beneficiaries with the following percentages: Person A with "a" percent, person B with "b" percent, person C with "c" percent, and person D with "d" percent.

Chris passed away. Person B disclaims the benefit with the department. Person A receives a/(a+c+d), person C receives c/(a+c+d), and person D receives d/(a+c+d).

(3) If the primary beneficiary disclaims the benefit and there are no other primary beneficiaries, the benefit will pass to the contingent beneficiary designation made by the member or retiree. If there are no contingents, it will pass to the estate of the retiree or per the succession in law for the retirement system and plan of the member.

[Statutory Authority: RCW 41.50.050. WSR 23-07-044, § 415-02-261, filed 3/8/23, effective 4/8/23.]

ACTUARIAL FACTORS AND SCHEDULES

WAC 415-02-300 How does the department adopt and use actuarial factors? (1) The department uses actuarial factors for, but not limited to, benefit calculations, annuitizing benefits, and calculating cost to purchase service credit for members, retirees, and beneficiaries.

(2) The department adopts actuarial 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) The actuarial factors may be amended from time to time, based upon subsequent actuarial investigations.

(a) Prior to any amendment, the department will post OSA's recommended changes on its website. The process and timeline for public comment before adoption of the new factors will also be posted.

(b) If the department adopts new factors, they will be available in the department's systems before the effective date, so that benefit estimates can be provided to assist members in retirement planning.

(c) Actuarial factors displayed on the department's website will be updated with new factors when they become effective.

[Statutory Authority: RCW 41.50.050(5). WSR 13-18-034, § 415-02-300, filed 8/28/13, effective 10/1/13; WSR 10-16-086, § 415-02-300, filed 7/30/10, effective 9/1/10. Statutory Authority: RCW 41.50.050(5) and chapter 41.45 RCW. WSR 02-18-048, § 415-02-300, filed 8/28/02, effective 9/1/02.]

WAC 415-02-310 How does the department use my age in calculating benefits? This section provides an overview of the several different ways in which the department uses age in calculating benefits. The department may use your age to determine your retirement date, early retirement factors to apply, survivor factors, or cost-of-living (COLA) adjustment factors.

(1) **Present value:** The department uses a rounding method to determine your age when calculating what your future lifetime monthly benefit is worth in present-day dollars. If the number of months in your age is under six months, the department will round down. If the number is six months or more, the department will round up. See WAC 415-02-340 for more information about the present value calculations.

Example 1:

At the time that the department is calculating Sharon's age in making a present value calculation, Sharon is 55 years, 5 months and 26 days old. The department will round down and use 55 as Sharon's age.

Example 2:

At the time that the department is calculating Donna's age in making a present value calculation, Donna is 54 years and 7 months old. The department will round up and use 55 as Donna's age.

(2) **Early retirement:** The department uses the difference between the date you are eligible for normal retirement and your date of actual retirement to calculate any actuarial reduction to your benefit. See WAC 415-02-320 for more information about early retirement.

(a) **Step 1: The department determines the date you are eligible for normal retirement.**

(i) **All plans** (except for LEOFF Plan 1, TRS Plan 1, WSPRS Plans 1 and 2, JRF and JRS): You can retire the first day of the month following your meeting the age requirement for retirement if you are otherwise eligible.

Example: Jake was born on May 12, 1941. On May 12, 2006, Jake reached age 65 and met the age requirement for retirement. Provided that he is otherwise eligible, Jake's retirement date is June 1, 2006.

(ii) **LEOFF Plan 1, TRS Plan 1, WSPRS Plans 1 and 2, JRF, and JRS:** If a retirement date other than the first of the month is allowed, you can retire on the day you meet the age requirement, or the following day (depending on the plan).

Example: If Jake is a member of this type of plan, he could retire May 12th or 13th, 2006 (his birthday or the day after his birthday).

(b) **Step 2:** The department determines the difference between the date you are eligible for normal retirement and your date of actual retirement as follows:

(i) **Example 1:**

Date of eligibility for normal retirement	06/01/06
Date of actual retirement	08/01/02
Determination of full years:	08/01/02 to 07/31/05 is 3 years
Determination of full months:	08/01/05 to 05/31/06 is 10 months
Difference is:	3 years, 10 months

(ii) **Example 2:**

Date of eligibility for normal retirement	05/13/06
Date of actual retirement	08/01/02
Determination of full years:	08/01/02 to 07/31/05 is 3 years
Determination of full months:	08/01/05 to 04/30/06 is 9 months
Additional days are not considered:	05/01/06 to 05/13/06 are not considered
Difference is:	3 years, 9 months

(c) **Step 3: Determine the early retirement factor.** The department uses the difference calculated in step 2 to determine the early retirement factor used to calculate your benefit as described in WAC 415-02-320.

(3) **Optional COLA factor for PERS Plan 1 and TRS Plan 1.** The department uses the rounding method described in the "present value" subsection in this section to calculate your age when determining the optional COLA factor. See WAC 415-02-360 for a description of the optional COLA factor calculation.

(4) **Calculating age to use in determining the survivor option factor.** At retirement, if you select a survivor option, the department must calculate the difference between your age and your survivor beneficiary's age. See WAC 415-02-380 for more information about survivor options.

(a) **Step 1:** The department calculates your age and your survivor beneficiary's age at the time of your retirement.

(b) **Step 2:** The department rounds the ages, using the same method described in the "present value" subsection in this section.

(c) **Step 3:** The department subtracts your survivor beneficiary's age from your age.

Example:

Member's age:	60
Minus survivor beneficiary's age:	49
	11

Result: The department will use the survivor option factor for a survivor beneficiary who is 11 years younger than the member.

Example:

Member's age:	65
Minus survivor beneficiary's age:	67
	-2

Result: The department will use the survivor option factor for a survivor beneficiary who is two years older than the member.

(5) **Terms used**

(a) JRF - Judicial retirement fund.

(b) JRS - Judicial retirement system.

(c) LEOFF - Law enforcement officers' and firefighters' retirement system.

(d) PERS - Public employees' retirement system.

(e) SERS - School employees' retirement system.

(f) TRS - Teachers' retirement system.

(g) WSPRS - Washington state patrol retirement system.

[Statutory Authority: RCW 41.50.050(5). WSR 10-16-086, § 415-02-310, filed 7/30/10, effective 9/1/10. Statutory Authority: RCW 41.50.050(5) and chapter 41.45 RCW. WSR 08-20-068, § 415-02-310, filed 9/25/08, effective 10/26/08; WSR 03-06-044, § 415-02-310, filed 2/27/03, effective 4/1/03.]

WAC 415-02-320 Early retirement factors. (1) **What are early retirement factors?** Early retirement factors (ERFs) are actuarial factors used by the department to reduce a monthly retirement benefit when that payment begins before the member has qualified for normal retirement based on age and service. This reduction offsets the cost to the plan of paying the monthly benefit for a longer time.

(2) **In what situations will the department use an ERF?**

(a) The department will use an ERF to reduce a monthly benefit in any of the following situations, subject to the law governing your plan, and subject to the exceptions in (b) of this subsection:

(i) You choose to retire early.

(ii) You retire due to a disability before you are eligible for normal retirement.

(iii) You die before you are eligible for normal retirement, and your beneficiary is eligible for a monthly benefit.

(b) An ERF is not used in the following circumstances, although another method may be used to reduce benefits as required by the laws governing each plan:

(i) You meet your plan's requirements for "alternate early retirement";

(ii) You meet PSERS requirements for "early retirement";

(iii) You retire for service or due to a disability, from PERS Plan 1 or TRS Plan 1;

(iv) You are a member of LEOFF Plan 1;

(v) You retire due to a duty-related disability from LEOFF Plan 2;

(vi) You retire due to a disability or die before retirement from WSPRS Plan 1; or

(vii) You retire due to a disability from WSPRS Plan 2.

(c) The following table shows the law governing plans that use an ERF:

	Early Retirement	Disability Retirement	Death Prior to Retirement
LEOFF Plan 1:	N/A	N/A	N/A
LEOFF Plan 2:	RCW 41.26.430	RCW 41.26.470	RCW 41.26.510
PERS Plan 1:	N/A	N/A	RCW 41.40.270
PERS Plan 2:	RCW 41.40.630	RCW 41.40.670	RCW 41.40.700

	Early Retirement	Disability Retirement	Death Prior to Retirement
PERS Plan 3:	RCW 41.40.820	RCW 41.40.825	RCW 41.40.835
PSERS:	N/A	RCW 41.37.230	RCW 41.37.250
SERS Plan 2:	RCW 41.35.420	RCW 41.35.440	RCW 41.35.460
SERS Plan 3:	RCW 41.35.680	RCW 41.35.690	RCW 41.35.710
TRS Plan 1:	N/A	N/A	RCW 41.32.520
TRS Plan 2:	RCW 41.32.765	RCW 41.32.790	RCW 41.32.805
TRS Plan 3:	RCW 41.32.875	RCW 41.32.880	RCW 41.32.895
WSPRS Plan 1:	RCW 43.43.280	N/A	N/A
WSPRS Plan 2:	RCW 43.43.280	N/A	RCW 43.43.295

(3) **How does the department determine the number of years on which to base the ERF?** The calculation varies among plans:

(a) ERFs are based on the number of years between the age at which you retire, or die, and the age at which you would have qualified for normal retirement based on age and service.

Example - 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. A PERS Plan 2 member must be age 65 to retire with an unreduced benefit (i.e., normal retirement), but is eligible to retire with an actuarially reduced benefit (i.e., early retirement) at age 55 with 20 years of service credit.

The difference between Sandy's age now (56) and the age at which she would have qualified for normal retirement (age 65) is 8 years and 11 months. For illustration purposes in this example only, we will use 0.3987 as the corresponding ERF for retiring 8 years and 11 months early (actuarial factors change periodically). As a result, Sandy's monthly benefit will be $589.16. The department will use the following formula to determine Sandy's monthly benefit: $3,500 (AFC) x .02 x 21.11 (service credit years) x 0.3987 (ERF).

(b) WSPRS Plan 2 only: The ERF used to calculate your survivor's monthly benefit if you die before retirement is based on the number of years between the age at which you die and age fifty-five (55) or when you could have attained twenty-five (25) years of service, whichever is less. See RCW 43.43.295.

Example - Early retirement: The survivor benefit, in this example, will also have a reduction applied for 100% joint and survivor option, based on the difference between John's age and his survivor's age.

John, a WSPRS Plan 2 member dies prior to retirement. John is age 40 and has 15 years of service at the time of his death. John's Average Final Salary (AFS) is $4,000. John's surviving spouse, Emily, is also age 40.

Since John would have attained 25 years of service before he would have attained age 55, the ERF used to calculate Emily's benefit will be based on the 10 years it would have taken John to reach 25 years of service. For illustration purposes in this example only, we will use 0.403 as the corresponding ERF for retiring 10 years early, and 0.889 as the corresponding joint and survivor (J&S) factor (actuarial factors change periodically). As a result, Emily will receive a monthly benefit of $429.92. The department will use the following formula to determine Emily's monthly benefit: $4,000 (AFS) x .02 x 15 (service credit years) x 0.403 (ERF) x 0.889 (J&S).

(c) TRS Plan 1 only: The ERF used to calculate your survivor's monthly benefit if you die before retirement is based on the number of years between the age at which you die and the age at which you would have first become eligible to retire under RCW 41.32.480. See RCW 41.32.520.

Example - Death before retirement: Robert, a 56 year-old TRS Plan 1 member, died with 23.17 years of service credit. His AFC is $3,171.74.

TRS Plan 1 provides an unreduced benefit (i.e., normal retirement) at age 55 with 25 years of service credit.

Robert's wife, Karen, is two years younger than Robert. Karen will receive an actuarially reduced benefit based on the date Robert would have first qualified for an unreduced benefit (i.e., normal retirement). If Robert had continued in service, he would have met eligibility requirements in one year and 10 months, when he earned 25 years of service credit. For illustration purposes in this example only, we will use 0.8410 as the corresponding ERF for retiring one year and 10 months early, and 0.918 as the corresponding J&S Option 2 factor (actuarial factors change periodically). As a result, Karen's monthly benefit will be $1,134.73.

The department will use the following formula to determine Karen's monthly benefit: 23.17 (Robert's service credit years) x .02 x $3,171.74 (AFC) x 0.8410 (ERF) x 0.918 (the Option 2 factor).

[Statutory Authority: RCW 41.50.050(5). WSR 13-18-034, § 415-02-320, filed 8/28/13, effective 10/1/13; WSR 10-16-086, § 415-02-320, filed 7/30/10, effective 9/1/10. Statutory Authority: RCW 41.50.050(5), chapter 41.45 RCW. WSR 06-18-009, § 415-02-320, filed 8/24/06, effective 9/24/06; WSR 02-18-048, § 415-02-320, filed 8/28/02, effective 9/1/02.]

WAC 415-02-325 2008 Early retirement factors. (1) **What are the 2008 early retirement factors?** In chapter 491, Laws of 2007, the legislature created optional early retirement factors (ERFs) for members retiring on or after September 1, 2008. Referred to as the 2008 ERFs, these optional factors are available to Plan 2 and Plan 3 members of the following retirement systems: Public employees' retirement system (PERS); school employees' retirement system (SERS); and teachers' retirement system (TRS). The 2008 ERFs provided a higher retirement benefit than the three percent ERFs, but imposed stricter return to work rules. Effective January 1, 2024, the stricter return to work rules were removed and eligible retirees who retired under the three percent ERFs will have or have had their benefit recalculated under the 2008 ERFs.

(2) **If I retire before age 65 using the 2008 ERFs, how will my benefit be calculated?** Your normal (age 65) retirement benefit will be multiplied by the factor shown in the following table, based on your age at the time of your early retirement.

Retirement Age	2008 Early Retirement Factor
55	0.80
56	0.83
57	0.86
58	0.89

Retirement Age	2008 Early Retirement Factor
59	0.92
60	0.95
61	0.98
62	1.00
63	1.00
64	1.00
65	1.00

(3) **Am I eligible for the 2008 ERFs?** Plan 2 and Plan 3 members of PERS, SERS, and TRS, who entered membership prior to May 1, 2013, must be at least age 55 and have at least 30 service credit years to be eligible for retirement using the 2008 ERFs.

(4) **What are the return to work rules if I retire under the 2008 ERFs?**

Please refer to WAC 415-108-710, 415-110-710, and 415-112-525 for specific system rules.

[Statutory Authority: RCW 41.50.050, 2022 c 110, 2023 c 99, and 2023 c 410. WSR 23-24-091, § 415-02-325, filed 12/5/23, effective 12/7/23. Statutory Authority: RCW 41.50.050. WSR 20-01-079, § 415-02-325, filed 12/11/19, effective 1/11/20. Statutory Authority: RCW 41.50.050(5). WSR 17-04-050, § 415-02-325, filed 1/26/17, effective 2/26/17.]

WAC 415-02-340 Monthly benefit per $1.00 of accumulation for defined benefit plans. (1) **What does the phrase "monthly benefit per $1.00 of accumulation for defined benefit plans" mean?** It refers to an actuarially equivalent value that the department uses 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;

(c) Determine the cost of purchasing additional service credit as described in WAC 415-02-177(7); and

(d) For TRS Plan 1 only: Determine the reduction in the monthly retirement benefit if some or all of the accumulated contributions in a member's individual account are withdrawn at retirement pursuant to RCW 41.32.498.

(2) **What information is used to determine the "monthly benefit per $1.00 of accumulation for defined benefit plans" values?** The values, which change periodically, are based on the expected duration of lifetime payments for recipients over a range of ages. These values differ by system and plan.

The younger a person is at retirement, the longer the anticipated lifetime of payments would be, and the greater the sum required to provide for these payments. The amount of monthly lifetime benefit that a present-day dollar buys increases as the remaining life expectancy of the recipient decreases.

(a) **Example:**

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 would receive if she accepted a lump sum payment instead. For illustration purposes in this example only, we will assume that $.0069798 per month for life has a present day cash value of one dollar ($1.00) for Celi-

na's system, plan, and age class. Celina divides $45.00 by .0069798 and learns that her lump sum payment would be $6,447.18.

(b) **Example:**

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 and still receive a monthly benefit). For illustration purposes in this example only, we will assume that $.0077298 per month for life has a present day cash value of one dollar ($1.00) for Fred's system, plan, and age class. Fred multiplies $124,934.00 by .0077298, and learns that his monthly retirement benefit will be reduced by $965.71 per month if he withdraws his account balance.

[Statutory Authority: RCW 41.50.050(5). WSR 13-18-034, § 415-02-340, filed 8/28/13, effective 10/1/13; WSR 10-16-086, § 415-02-340, filed 7/30/10, effective 9/1/10. Statutory Authority: RCW 41.50.050(5), chapter 41.45 RCW. WSR 06-18-009, § 415-02-340, filed 8/24/06, effective 9/24/06; WSR 02-18-048, § 415-02-340, filed 8/28/02, effective 9/1/02.]

WAC 415-02-345 TRS Plan 1 Option 1 benefit factors. What is a TRS Plan 1 Option 1 benefit factor? At the time of retirement, a TRS Plan 1 member may choose to receive an Option 1, standard benefit, which is a slightly reduced lifetime monthly benefit. This option allows the final unpaid monthly benefit and any remaining balance of contributions to be paid in a lump sum to the retiree's estate or named beneficiary at the time of the retiree's death. The reduction to the monthly benefit is based on an Option 1 factor and is applied against the annuity portion of the monthly benefit. The actuarial factor that is used is determined by the age of the member at the time of retirement (actuarial factors change periodically). For more information about the Option 1 standard benefit, see RCW 41.32.530 (1)(a).

[Statutory Authority: RCW 41.50.050(5). WSR 13-18-034, § 415-02-345, filed 8/28/13, effective 10/1/13; WSR 10-16-086, § 415-02-345, filed 7/30/10, effective 9/1/10; WSR 03-24-051, § 415-02-345, filed 11/26/03, effective 1/1/04.]

WAC 415-02-350 What are cost-of-living adjustments (COLA) and how are they calculated? (1) **What is a cost-of-living adjustment (COLA)?** The value of a retiree's, beneficiary's, or ex-spouse's monthly benefit may change in the years after retirement because of inflation or other factors. A COLA automatically adjusts benefits based on the cost of living changes.

(2) **What retirement plans include COLAs?** With one exception, all retirement plans administered by the department provide one or more of the types of COLAs listed in subsection (3) of this section. The judges retirement fund (chapter 2.12 RCW) does not provide a COLA.

RETIREMENT SYSTEM	PLAN	COLA TYPE	STATUTE
JUDICIAL		Base	RCW 2.10.170
LEOFF	Plan 1	Base	RCW 41.26.240
LEOFF	Plan 2	Base	RCW 41.26.440

RETIREMENT SYSTEM	PLAN	COLA TYPE	STATUTE
PSERS		Base	RCW 41.37.160
PERS	Plan 1	Uniform	RCW 41.40.197
PERS	Plan 1	Optional	RCW 41.40.188 (1)(c)
PERS	Plan 2	Base	RCW 41.40.640
PERS	Plan 3	Base	RCW 41.40.840
SERS	Plans 2 and 3	Base	RCW 41.35.210
TRS	Plan 1	Uniform	RCW 41.32.489
TRS	Plan 1	Optional	RCW 41.32.530 (1)(d)
TRS	Plan 2	Base	RCW 41.32.770
TRS	Plan 3	Base	RCW 41.32.845
WSPRS	Plans 1 and 2	Base	RCW 43.43.260

(3) **What are the types of COLAs?**

(a) **Optional COLA**

The optional COLA is an option you may select at retirement. If you choose this option, your monthly retirement benefit will be actuarially reduced at retirement, and you will receive an automatic adjustment in your monthly retirement benefit each year for the rest of your life. The optional COLA has no age requirement and is limited to a maximum of three percent of your monthly benefit.

(b) **Base COLA**

The base COLA is applied in July (April for LEOFF Plan 1) of each year and adjusts the benefit based on the change in the Consumer Price Index for the Seattle-Tacoma-Bremerton, Washington area for all plans except the Judicial Retirement System which is based on the U.S. City Average. Base COLAs are limited to a maximum of three percent of the monthly benefit for all affected plans except LEOFF Plan 1. During a calendar year, the base COLA is payable to:

(i) Retirees who have been retired for at least one year by July 1st of each year (April 1st for LEOFF Plan 1); and

(ii) Beneficiaries or eligible ex-spouses who receive benefit payments from an account that, by July 1st, has paid a monthly benefit for at least one year (April 1st for LEOFF Plan 1).

(c) **Uniform COLA**

The uniform COLA is an annual adjustment to the benefit, based on years of service. The annual adjustment for the uniform COLA is independent from any other COLA. During a calendar year, it is payable to:

(i) Retirees who, by July 1st, have received a retirement benefit for at least one year and who, by December 31st, will have reached age sixty-six or older;

(ii) Beneficiaries and eligible ex-spouses who receive benefit payments from an account that, by July 1st, has paid a monthly benefit for at least one year and who, by December 31st, will have reached age sixty-six or older; and

(iii) Retirees, beneficiaries, or eligible ex-spouses of any age whose retirement benefit is calculated under the minimum formula.

(4) **Who is responsible for determining the amount of the COLA?** The office of the state actuary (OSA) bases the percentages of the COLAs on the Consumer Price Index. The Index is based on wages earned by urban wage earners and clerical workers in the Seattle-Tacoma-Bremer-

ton, Washington area. OSA provides this information to the department annually.

[Statutory Authority: RCW 41.50.050(5). WSR 10-16-086, § 415-02-350, filed 7/30/10, effective 9/1/10; WSR 08-20-068, § 415-02-350, filed 9/25/08, effective 10/26/08; WSR 08-01-079, § 415-02-350, filed 12/17/07, effective 1/17/08. Statutory Authority: RCW 41.50.050(5), 2.10.170, 41.26.240, 41.26.440, 41.37.160, 41.40.197, 41.40.188 (1)(c), 41.40.640, 41.40.840, 41.35.210, 41.32.489, 41.32.530 (1)(d), 41.32.770, 41.32.845, 43.43.260. WSR 06-18-009, § 415-02-350, filed 8/24/06, effective 9/24/06. Statutory Authority: RCW 41.50.050(5) and chapter 41.45 RCW. WSR 03-06-044, § 415-02-350, filed 2/27/03, effective 4/1/03.]

WAC 415-02-360 What is the optional cost-of-living adjustment (COLA) for PERS Plan 1 and TRS Plan 1? (1) PERS Plan 1 and TRS Plan 1 members can choose to receive an initially reduced retirement benefit in order to receive an annual cost-of-living adjustment in the future. With this optional COLA, the member's monthly retirement benefit is actuarially reduced at the time of retirement. Thereafter, the monthly benefit of the member (and subsequently their beneficiary) is adjusted annually, based on changes in the consumer price index (CPI), up to the statutory maximum. For more information, see:

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

TRS Plan 1: RCW 41.32.530 (1)(d); WAC 415-112-504

(2) **Examples**

(a) Ernie is a member of TRS Plan 1. He retires at age 55 with 30 years of service and chooses the Single Life Option (no survivor beneficiary). His average final compensation (AFC) is $4,295.33 per month.

(i) If he **does not** choose the optional COLA, his monthly benefit will be $2,577.20 (2% x 30 x $4,295.33).

(ii) If he **does** choose the optional COLA, his initial monthly benefit will be reduced. For illustration purposes in this example only, we will use 0.7396 as the optional COLA factor for Ernie's age at retirement (actuarial factors change periodically). As a result, Ernie's initial monthly benefit will be reduced to $1,909.19 (.7396 x $2,577.20). This monthly amount may increase each year with changes in the CPI.

(b) Tina is a member of PERS Plan 1. She retires with 30 years of service credit at age 52 and 8 months. Because she has 30 years of service, there is no reduction for an early retirement. Tina chooses the Single Life Option (no survivor beneficiary). Her average final compensation (AFC) is $3,825.00 per month.

(i) If she **does not** choose the optional COLA, her monthly benefit will be $2,295.00 (2% x 30 x $3,825.00).

(ii) If she **does** choose the optional COLA, her initial monthly benefit will be reduced. For illustration purposes in this example only, we will use 0.7375 as the optional COLA factor for Tina's age at retirement (actuarial factors change periodically). As a result, Tina's initial monthly benefit will be reduced to $1,692.56 (.7375 x $2,295.00). This monthly amount may increase each year with changes in the CPI.

[Statutory Authority: RCW 41.50.050(5). WSR 13-18-034, § 415-02-360, filed 8/28/13, effective 10/1/13; WSR 10-16-086, § 415-02-360, filed 7/30/10, effective 9/1/10. Statutory Authority: RCW 41.50.050(5) and

chapter 41.45 RCW. WSR 08-20-068, § 415-02-360, filed 9/25/08, effective 10/26/08; WSR 02-18-048, § 415-02-360, filed 8/28/02, effective 9/1/02.]

WAC 415-02-370 Factors for establishing or restoring service credit. RCW 41.50.165(2) and chapter 415-10 WAC allow you to establish or restore service credit by paying the actuarial value of the resulting increase in your monthly retirement allowance. This section describes what the factors take into consideration when the department uses actuarial factors to calculate the lump sum costs. See also chapter 415-10 WAC.

What are the factors and how are they used in calculating the lump sum costs of establishing or restoring service credit? For each system and plan there is a two-dimensional "age and service" table of actuarial factors which are used to calculate the cost of establishing or restoring service credit.

The department will calculate the actuarial value of the service credit you purchase using the following formula:

Total Cost = Part 1 Cost + Part 2 Cost

Part 1: Annual Average Salary x Service Credit Years to Purchase x Factor 1

Part 2: Annual Average Salary x Current Service Credit Years x (Factor 1 – Factor 2)

Factor 1 takes into consideration your current age and service credit, *including* the service credit you are purchasing.

Factor 2 takes into consideration your current age and service credit, *excluding* the service credit you are purchasing.

[Statutory Authority: RCW 41.50.050(5). WSR 14-06-053, § 415-02-370, filed 2/27/14, effective 10/1/14; WSR 13-18-034, § 415-02-370, filed 8/28/13, effective 10/1/13. Statutory Authority: RCW 41.50.050(5), 41.50.165. WSR 06-18-009, § 415-02-370, filed 8/24/06, effective 9/24/06; WSR 03-15-006, § 415-02-370, filed 7/3/03, effective 8/3/03.]

WAC 415-02-380 How will my retirement benefit be affected if I choose a survivor option? If you choose a survivor benefit option, your benefit will be affected as described in this section.

(1) **What is a survivor benefit option?** A survivor benefit option will pay a lifetime monthly benefit to your survivor beneficiary after your death.

(2) **What is a survivor beneficiary?** A survivor beneficiary is the person you designate to receive a lifetime monthly benefit after your death.

(3) **What benefit options are available?** All available benefit options, including survivor benefit options, are described in detail for each system and plan in the following state laws and agency rules:

LEOFF Plan 1:	RCW 41.26.164	WAC 415-104-202
LEOFF Plan 2:	RCW 41.26.460	WAC 415-104-215
PERS Plan 1:	RCW 41.40.188	WAC 415-108-326
PERS Plan 2:	RCW 41.40.660	WAC 415-108-326
PERS Plan 3:	RCW 41.40.845	WAC 415-108-326
PSERS:	RCW 41.37.170	WAC 415-106-600
SERS Plans 2 and 3:	RCW 41.35.220	WAC 415-110-610

TRS Plan 1:	RCW 41.32.530	WAC 415-112-504
TRS Plan 2:	RCW 41.32.785	WAC 415-112-505
TRS Plan 3:	RCW 41.32.851	WAC 415-112-505
WSPRS Plan 1:	RCW 43.43.278	WAC 415-103-215
WSPRS Plan 2:	RCW 43.43.271	WAC 415-103-225

(4) **How will selecting a survivor benefit option affect my monthly retirement benefit?** If you select a survivor benefit option your monthly retirement benefit will be reduced to offset the cost of potentially paying the benefit for a longer period of time. The reduction will be based on survivor option factors that are available on the DRS website.

(5) **Does my survivor beneficiary's age affect how much my monthly retirement benefit will be reduced?** Yes. Your survivor beneficiary's age is used in determining the amount of your monthly retirement benefit and the benefit of your survivor beneficiary. The younger the survivor beneficiary, the longer they are expected to receive a benefit. Your monthly benefit will be reduced accordingly.

(a) **Example:**

Kendra, a PERS Plan 2 member, chooses Option 3 (joint and 50 percent survivorship) at retirement. Her monthly Option 1 nonsurvivor benefit amount, which would stop at the time of her death, is $2,000.00. She names her nephew, Steve, as her survivor beneficiary. This means, if Kendra dies before Steve, Steve will receive a monthly benefit equal to half the amount Kendra was receiving. Steve is 30 years younger than Kendra. The department will reduce Kendra's monthly retirement benefit using the survivor option factor for a member who is 30 years older than the beneficiary. For illustration purposes in this example only, we will use 0.776 as the corresponding Option 3 benefit factor (actuarial factors change periodically). As a result, Kendra's Option 3 monthly benefit amount will be $1,552.00 ($2,000.00 x 0.776).

(b) **Example:**

Mark, a LEOFF Plan 2 member, chooses Option 2 (joint and 100 percent survivorship) at retirement. His monthly Option 1 nonsurvivor benefit amount, which would stop at the time of his death, is $2,000.00. He names his wife, Susan, as his survivor beneficiary. This means, if Mark dies before Susan, Susan will receive a monthly benefit equal to the amount Mark was receiving. Mark is five years younger than Susan. The department will reduce Mark's monthly retirement benefit using the survivor option factor for a member who is five years younger than the beneficiary. For illustration purposes in this example only, we will use 0.898 as the corresponding Option 2 benefit factor (actuarial factors change periodically). As a result, Mark's Option 2 monthly benefit amount will be $1,796.00 ($2,000.00 x 0.898).

(6) **What if my survivor beneficiary passes away before I do?** If you are receiving a reduced benefit with a survivor option and your survivor passes away before you do, you may request to have your benefit increased to the Option 1 nonsurvivor amount. Your benefit increase will be effective the first of the month following your survivor's passing. DRS may require a copy of your survivor's certified death certificate.

(a) **How will my new benefit amount be calculated?**

(i) If you retired on or after January 1, 1996, and are not a member of LEOFF Plan 1, or if you are a member of WSPRS Plan 1 regardless of your retirement date, your new benefit amount will be calculated as follows:

Your original Option 1 nonsurvivor benefit amount
+ the sum of Cost of Living Adjustments (COLAs) added
to your benefit prior to your survivor's death

(ii) If you retired prior to January 1, 1996, and are not a member of WSPRS Plan 1, or if you are a member of LEOFF Plan 1 regardless of your retirement date, your new benefit amount will be calculated as follows:

Benefit Amount ÷ the Administrative Factor

The "benefit amount" is your retirement benefit as of July 1, 1998, or as of the date of your survivor's death, whichever is later.

The "administrative factor" is the rate that was used to calculate your reduced benefit for the continuing survivor option. If you retired prior to January 1, 1996, the administrative factor is the rate that was in effect on July 1, 1998, and is available for reference on the DRS website.

(b) If you are a PERS Plan 1 member receiving "state-funded long-term care services" as defined in RCW 41.40.189, you are not eligible for the increase described in this subsection if it would make you ineligible for the state-funded long-term care services. You must notify DRS to waive the increase if this applies to you.

[Statutory Authority: RCW 41.50.050. WSR 20-06-040, § 415-02-380, filed 2/27/20, effective 3/29/20. Statutory Authority: RCW 41.50.050(5). WSR 13-18-034, § 415-02-380, filed 8/28/13, effective 10/1/13; WSR 10-16-086, § 415-02-380, filed 7/30/10, effective 9/1/10. Statutory Authority: RCW 41.50.050(5), 41.26.164, 41.26.460, 41.40.188, 41.40.660, 41.40.845, 41.37.170, 41.35.220, 41.32.530, 41.32.785, 41.32.851, 43.43.271. WSR 06-18-009, § 415-02-380, filed 8/24/06, effective 9/24/06. Statutory Authority: RCW 41.50.050(5). WSR 05-23-062, § 415-02-380, filed 11/14/05, effective 12/15/05. Statutory Authority: RCW 41.50.050(5), 41.26.162, 41.26.164, chapter 41.45 RCW. WSR 03-12-014, § 415-02-380, filed 5/27/03, effective 7/1/03. Statutory Authority: RCW 41.50.050(5) and chapter 41.45 RCW. WSR 03-02-087, § 415-02-380, filed 12/31/02, effective 2/1/03; WSR 02-18-048, § 415-02-380, filed 8/28/02, effective 9/1/02.]

WAC 415-02-385 Judicial benefit multiplier actuarial factors. If you are a justice of the Washington supreme court or a judge in the court of appeals, superior court, district court, or municipal court and are an eligible member of the public employees' retirement system Plans 1, 2, or 3, you may purchase an increase on the benefit multiplier on past judicial service credit earned before becoming a judicial benefit multiplier (JBM) program member. The cost formula for purchasing the increase is equal to five percent of your salary earned for each month of increase, plus five and one-half percent annual interest, accumulated monthly, or the actuarial cost, whichever is less. See WAC 415-108-350.

(1) **How does the department use the judicial benefit multiplier actuarial factors?** The department uses the judicial benefit multiplier actuarial factors to determine the actuarial equivalent value of the increase to the benefit resulting from the higher benefit multiplier. The factor is based on the age of the member at the time the bill for the higher benefit multiplier is created. For more information about the JBM program, please see WAC 415-108-350.

(2) **What is the actuarial calculation to increase the benefit multiplier on past judicial service credit?** The actuarial formula to determine the cost to increase past judicial service to the higher benefit multiplier is:

Months to Increase × Average Final Compensation × 12 × Actuarial Factor = Cost

(3) **JBM actuarial factor table.** The actuarial factor table is available on the DRS website at www.drs.wa.gov.

[Statutory Authority: RCW 41.50.050, 2.14.115, 41.32.581, 41.32.584, 41.32.587, 41.40.124, 41.40.127, 41.40.404, 41.40.408, 41.40.760, 41.40.763, 41.40.767, 41.40.770, 41.40.870, 41.40.873, 41.40.877, 41.40.880, 41.45.200, 41.45.203, and 41.45.207. WSR 24-01-024, § 415-02-385, filed 12/8/23, effective 1/8/24.]

PROPERTY DIVISION IN DISSOLUTION ORDERS

WAC 415-02-500 Property division in dissolution orders[1]. This section applies to all retirement plans that the department administers. This section also directs you to additional sections as needed for your particular situation.

(1) **What can a court do?** A court can enter a dissolution order dividing your retirement account in either of the following ways:

(a) Awarding an interest[2] in your account to your ex-spouse by using WAC 415-02-510 or 415-02-530; or

(b) Splitting[3] your account into two separate accounts (one for you and one for your ex-spouse) by using WAC 415-02-520 or 415-02-540, but only if you are vested at the time the dissolution order is entered. "Vested" is defined in subsection (15) of this section.

(2) **Which section should I use?** Consult the following table for direction to the section to use in developing your property division dissolution order. Different sections are provided depending on whether your property division dissolution order is going to provide an interest to your ex-spouse or whether you are splitting your retirement account with your ex-spouse.

If you are in this system and plan:	And the following is true:	Use this section:
Any	You need general information and rules about drafting dissolution orders related to your retirement plan and system.	415-02-500
JRF, JRS, LEOFF Plan 1, and WSPRS Plan 1	You are drafting a dissolution order. (We recommend that you contact the department for assistance because some exceptions may apply.)	415-02-510

If you are in this system and plan:	And the following is true:	Use this section:
LEOFF Plan 2, PERS Plan 1 or 2, PSERS, SERS Plan 2, and TRS Plan 1 or 2, WSPRS Plan 2	You are drafting a dissolution order that will be entered **before you are vested**.	415-02-510
	You **are** vested and you are drafting a dissolution order that splits your benefit into two separate accounts (for you and your ex-spouse).	415-02-520
PERS Plan 3, SERS Plan 3, and TRS Plan 3	You are drafting a dissolution order that will be entered **before you are vested**.	415-02-530
	You are vested and you are drafting a dissolution order that splits your benefit into two separate accounts (for you and your ex-spouse).	415-02-540
PERS Plan 2, SERS Plan 2, and TRS Plan 2	The department has already accepted your property division order, and you are considering a transfer to Plan 3.	415-02-550

(3) **What are the requirements for dissolution orders and amendments that provide for a property division of my retirement account?** The order must:

(a) Be entered by a court of competent jurisdiction and enforceable in Washington state;

(b) Be filed with the department within 90 days of the court's entry of the order;

(c) Establish the right of your ex-spouse to a portion of your retirement;

(d) Provide the name and date of birth of your ex-spouse;

(e) Incorporate the applicable language in this section and one of the following: WAC 415-02-510, 415-02-520, 415-02-530, or 415-02-540; and

(f) Indicate which WAC section was used in support of the order.

(4) **What else, besides a copy of the dissolution order, must my ex-spouse and I provide to the department?** You must provide addresses and Social Security numbers for both you and your ex-spouse before the department will honor a dissolution order or amendment. This information can be submitted in a cover letter, in another document, or by other means arranged with the department.

(5) **I belong to more than one retirement plan. Does the order have to be written any differently?** The order must include specific provisions for each plan.

(a) Example for providing an **interest** to an ex-spouse (RCW 41.50.670 and WAC 415-02-510): Paul belongs to both TRS Plan 2 and PERS Plan 3. His preretirement dissolution order gives an interest in

his retirement accounts to his ex-spouse. The order should include the language provided in:

(i) WAC 415-02-510 to divide Paul's TRS Plan 2 monthly retirement allowance or accumulated contributions.

(ii) WAC 415-02-530 to divide Paul's PERS Plan 3 monthly retirement allowance and/or accumulated contributions.

(b) Example for **splitting** an account with an ex-spouse: Mary is vested in both TRS Plan 2 and PERS Plan 3. Her preretirement dissolution order provides for splitting her retirement accounts with her ex-spouse. The order should include the language provided in:

(i) WAC 415-02-520 for preretirement splits to divide Mary's TRS Plan 2 retirement account.

(ii) WAC 415-02-540 for preretirement splits to divide Mary's PERS Plan 3 monthly retirement allowance and/or defined contributions.

(6) **What happens if my ex-spouse misses the 90-day deadline for filing a copy of the dissolution order with the department?**

(a) RCW 41.50.670 requires the "obligee" (ex-spouse) to file a copy of the dissolution order with the department within 90 days of the order's entry with the court of record.

(b) The department will accept an order after the 90-day deadline but will not make retroactive payments or split your defined contribution account retroactively.

(7) **How will the department divide the "after-tax" and "tax-deferred" dollars in my retirement account between my ex-spouse and me?** Depending on your plan and how long you have been a member, your retirement account may include both "after-tax" and "tax-deferred" dollars. The department will divide the "after-tax" and "tax-deferred" dollars based on the amount(s) awarded to your ex-spouse, unless the dissolution order states otherwise.

Example: At the time of John's marriage dissolution, he had $50,000 total contributions in his retirement account with $20,000 in after-taxed dollars and $30,000 in tax-deferred dollars. The dissolution order awards 50% of his accumulated contributions to his ex-spouse, Susan. Therefore, the department will give Susan $10,000 of after-tax dollars and $15,000 of tax-deferred dollars.

(8) **If I am in a retirement plan that offers survivor options, can the court order me to name my ex-spouse as my survivor beneficiary?** Yes. To do so, the dissolution order must include the language in RCW 41.50.790(1).

(9) **Is there a minimum benefit amount that the department will pay to my ex-spouse if the property division dissolution order splits my retirement account with my ex-spouse?** The answer is different depending on if the department accepts the property division dissolution order **BEFORE** or **AFTER** you retire.

(a) **BEFORE** retirement split: Yes. If the court order splits your account with your ex-spouse, and your ex-spouse's monthly payment will be less than the minimum monthly dollar amount for your retirement plan, the department may make a lump sum payment instead of monthly payments. The lump sum payment will be equal to the present value of the monthly payments. The department will **NOT** make the lump sum payment until your ex-spouse meets the age requirement for a normal retirement for your system and plan.

(b) **AFTER** retirement split: No. The department will pay the amount specified in the dissolution order as the ex-spouse's monthly payment

amount even if it is less than the minimum monthly dollar amount for your system and plan.

(10) **Is there a maximum payment amount that the department will pay to my ex-spouse?** Yes. A court may not order the department to pay more than 75 percent of your monthly retirement allowance to your ex-spouse. See RCW 41.50.670(4).

(11) **What happens to my account if I return to retirement system membership?** Please contact the department for information if you are in this situation.

(12) **What language should the property division order use to divide my deferred compensation program (DCP) account?** Refer to WAC 415-501-495 or contact DCP for information about your DCP account and your marriage dissolution.

(13) **How do I contact the department for additional assistance?** Contact information is available in WAC 415-06-100 (How do I contact the department?). Any release of information to someone besides the member requires a signed information release form or a subpoena duces tecum.

(14) **Where can I find examples of completed property division dissolution orders?** Following are examples of the required language from the statutes and WAC sections that must be used in a dissolution order. The information in ***bold italics*** will be dictated by your own circumstances.

(a) **Example 1.** Jane Doe, a nonvested member of PERS Plan 2, and her husband, John Doe, decide to divorce. **WAC 415-02-510** governs dissolution orders of nonvested members of PERS Plan 2. Jane and John complete the paragraphs in RCW 41.50.670(2) and WAC 415-02-510(2) as follows:

***Defined Benefits*:** RCW 41.50.670(2), paragraph two, and WAC 415-02-510(2)	If ***Jane Doe*** (the obligor) receives periodic retirement payments as defined in RCW 41.50.500, the department of retirement systems shall pay to ***John Doe*** (the obligee), ***N/A*** dollars from such payments or ***a fraction where the numerator is equal to 24 (the number of months in which service credit was earned while the marital community was in existence), and the denominator is equal to the number of months of service credit earned by the obligor at the time of retirement X 50*** 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.

***Accumulated Contributions*:** RCW 41.50.670(2), paragraph three, and WAC 415-02-510(2)	If ***Jane Doe*** (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 ***John Doe*** (the obligee) ***$5,700*** dollars plus interest at the rate paid by the Department of Retirement Systems on member contributions. Such interest will accrue from the date of this order's entry with court of record.

(b) **Example 2:** Binh Nguyen (a TRS Plan 3 retiree) and his wife, Lan Nguyen, are obtaining a property division dissolution order that splits his retirement account. When he retired, Binh had selected Lan to receive survivor benefits. WAC 415-02-540 applies, and the couple completes the required paragraphs.

***Defined Benefits*:** WAC 415-02-540 (13)	The Department of Retirement Systems (department) shall create a **defined benefit account** for ***Lan Nguyen*** (ex-spouse) in the ***Teachers' Retirement System Plan 3*** (name of retirement system and plan) and pay him or her ***$350*** (amount) for his or her life. To pay for this benefit, ***Binh Nguyen***'s (member's) **monthly defined benefit** payment will be reduced for life. This provision shall become effective no more than 30 days after the department's acceptance of the order.
***Defined Contributions*:** WAC 415-02-540(9)	The Department of Retirement Systems (department) shall split ***Binh Nguyen***'s (member's) **defined contribution account** in the ***Teachers' Retirement System Plan 3*** (name of retirement system and plan) and create a separate account for ***Lan Nguyen*** (ex-spouse). The amount of ***$25,000*** (amount) shall be transferred from ***Binh Nguyen***'s (member's) **defined contribution account** to ***Lan Nguyen***'s (ex-spouse's) new account. This provision shall become effective no more than 30 days after the department's acceptance of the order.

(15) **Terms used:**

(a) Department's acceptance - The department's determination that a dissolution order fully complies with the department's requirements and with chapter 41.50 RCW.

(b) Dissolution order - RCW 41.50.500.

(c) Obligee - RCW 41.50.500(5).

(d) Obligor - RCW 41.50.500(6).

(e) Plan 3 - WAC 415-111-100.

(f) Vested - The status of a member who has the amount of service credit required by the member's system and plan for a service retirement when the age requirement is met.

Footnotes for section:

1 "Dissolution order" means any judgment, decree, or order of spousal maintenance, property division, or court-approved property settlement incident to a decree of divorce, dissolution, invalidity, or legal separation issued by the superior court of the state of Washington or a judgment, decree, or other order of spousal support issued by a court of competent jurisdiction in another state or country, that has been registered or otherwise made enforceable in this state. RCW 41.50.500(3) (2002).

2 When a court awards an interest in your retirement account, the department is required to pay a portion of your monthly retirement allowance or a portion of your contributions to your ex-spouse.

3 When a court splits your retirement account, the department will establish a separate account for your ex-spouse. Once the account has been established, your account and your ex-spouse's account are not tied in any way.

[Statutory Authority: RCW 41.50.050. WSR 23-01-003, § 415-02-500, filed 12/7/22, effective 1/7/23. Statutory Authority: RCW 41.50.050(5) and 41.50.680. WSR 10-14-072, § 415-02-500, filed 7/1/10, effective 8/1/10. Statutory Authority: RCW 41.50.050(5), 41.50.670, 41.50.680, 41.50.790. WSR 06-18-009, § 415-02-500, filed 8/24/06, effective 9/24/06. Statutory Authority: RCW 41.50.050(5), 41.50.500, [41.50.]670-[41.50.]710, [41.50.]790 and 2002 c 158. WSR 03-12-014, § 415-02-500, filed 5/27/03, effective 7/1/03.]

WAC 415-02-510 How can a property division dissolution order give my ex-spouse an interest[1] in my Plan 1 or 2 retirement account? (1) **Who uses this section?** You ***MUST*** use this section if you are a member of LEOFF Plan 1, WSPRS Plan 1, JRF or JRS, or a **nonvested** member of LEOFF Plan 2, PERS Plan 1 or 2, PSERS, SERS Plan 2, TRS Plan 1 or 2, or WSPRS Plan 2.

(2) **Dividing a defined monthly retirement benefit (defined benefit).** Your defined monthly retirement benefit may be divided between you and your ex-spouse.

(a) **What language must the property division dissolution order or amendment include?** The order must include the language in RCW 41.50.670(2), provided below. The order or amendment must state either a specific dollar amount or percentage of the benefit. It cannot state both. (See example in WAC 415-02-500(14).)

> 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 con-

tributions. Such interest to accrue from the date of this order's entry with the court of record.

(b) **How will my account be affected if the department accepts the property division dissolution order *BEFORE* I retire?**

(i) Your ex-spouse will not receive any payments from the department until you terminate your employment or retire.

(ii) If you terminate your employment and request a withdrawal of your accumulated contributions, the department will pay your ex-spouse his or her share when you receive your payment. If you terminate your employment and do not request a withdrawal of contributions, your ex-spouse will be unable to receive his or her share until you withdraw your accumulated contributions.

(iii) If you die before retirement, the department will pay your ex-spouse his or her share of your accumulated contributions in a lump-sum payment.

(c) **How will my account be affected if the department accepts the property division dissolution order *AFTER* I retire?**

(i) If included in the dissolution order, the department will begin paying your ex-spouse his or her portion of your monthly retirement allowance the first month after the department has accepted the order.

(ii) If your ex-spouse dies before you, the portion of your monthly retirement allowance that was being paid to your ex-spouse will be paid to you.

(iii) If you die before your ex-spouse, payments to your ex-spouse stop unless the department accepted the order at least 30 days before you retired and the order required the department to name your ex-spouse as a survivor beneficiary (if allowed by your retirement system and plan). See RCW 41.50.700(1) and 41.50.790.

(iv) If you are a member of LEOFF Plan 1 or WSPRS Plan 1 and if one of the provisions in RCW 41.50.700(3) applies:

(A) Your ex-spouse may be eligible to receive payments for the life of your surviving spouse; or

(B) If you are a member of LEOFF Plan 1, your ex-spouse may be eligible to receive payments for his or her lifetime.

(d) **Is there a maximum payment amount that a property division dissolution order can award to my ex-spouse?** Yes. See RCW 41.50.670(4) and WAC 415-02-500(10) for information.

(e) **If the property division dissolution order directs the department to make payments to my ex-spouse, how will the payments be made?** The department will make the required payments as specified in the dissolution order directly to your ex-spouse.

(f) **What happens if I transfer to Plan 3 after the department has accepted my property division dissolution order or most recent amendment?** See WAC 415-02-550 for information.

(g) **Can I amend my existing order to remove my ex-spouse as my survivor beneficiary?** Yes. To remove your ex-spouse as your survivor beneficiary, you must submit a "conformed copy" of the court order splitting your account. A conformed copy is a copy of the order that has been signed by the judge or commissioner on or after July 1, 2003, and filed with the court. Removing your ex-spouse as survivor beneficiary will change your retirement benefit. See WAC 415-02-520(9) for the language that must be used.

(3) **Terms used:**

(a) Department's acceptance - That the department's determination that a dissolution order fully complies with the department's requirements and with chapter 41.50 RCW.

(b) Dissolution order - RCW 41.50.500.

(c) Obligee - RCW 41.50.500(5).

(d) Obligor - RCW 41.50.500(6).

(e) Plan 3 - WAC 415-111-100.

(f) Vested - The status of a member who has the amount of service credit required by the member's system and plan for a service retirement when the age requirement is met.

Footnote to section:

[1] When a court awards an interest in your retirement account, the department is required to pay a portion of your monthly retirement allowance or a portion of your contributions to your ex-spouse.

[Statutory Authority: RCW 41.50.050. WSR 23-01-003, § 415-02-510, filed 12/7/22, effective 1/7/23; WSR 22-13-052, § 415-02-510, filed 6/8/22, effective 7/9/22. Statutory Authority: RCW 41.50.050(5), 41.50.670, 41.50.680, 41.50.790. WSR 06-18-009, § 415-02-510, filed 8/24/06, effective 9/24/06. Statutory Authority: RCW 41.50.050(5), 41.50.500, [41.50.]670-[41.50.]710, [41.50.]790 and 2002 c 158. WSR 03-12-014, § 415-02-510, filed 5/27/03, effective 7/1/03.]

WAC 415-02-520 How can my Plan 1 or 2 retirement account be split[1] by a property division dissolution order? (1) **Who uses this section?** Vested members of LEOFF Plan 2, PERS Plan 1 or 2, PSERS, TRS Plan 1 or 2, SERS Plan 2, or WSPRS Plan 2 who have or will have a property division dissolution order or amendment dated on or after July 1, 2003[2]. If you are not a vested member, use WAC 415-02-510.

(2) **What are the rules for splitting my account?** If you and your ex-spouse are eligible, the department will split ***your*** retirement account into two separate accounts—one for you, and one for your ex-spouse. The rules for splitting your account are different depending on whether your dissolution order or most recent amendment is dated ***BEFORE*** or ***AFTER*** retirement.

(3) **How will my account be affected if the department accepts the property division dissolution order *BEFORE* my retirement?**

(a) The department will split your retirement account into two completely separate accounts and create an account for your ex-spouse under his or her Social Security number for the amount awarded in the dissolution order.

(b) The department will pay each of you out of your separate accounts either a monthly allowance or a withdrawal of contributions.

(c) If you retire and receive a monthly retirement allowance, your monthly retirement allowance will have a permanent reduction to offset the amount awarded as a monthly payment to your ex-spouse.

(d) Your monthly retirement allowance will be payable over your lifetime, and your ex-spouse's monthly payment will be payable over your ex-spouse's lifetime.

(e) You will have the right to choose a benefit option with a survivor feature. See WAC 415-02-320.

(f) Your ex-spouse will not have the right to choose a benefit option with a survivor feature, but may name a beneficiary to receive any final death payment that may be due.

(g) If you terminate employment, any decision you make about your accumulated contributions will have no effect upon your ex-spouse's separate account.

(h) When you or your ex-spouse dies, there will be no impact to the other person's retirement account because the accounts are independent from one another.

(i) Your ex-spouse may begin receiving monthly payments when your ex-spouse reaches retirement age for your retirement plan, or the first day of the month following the department's acceptance of the order, whichever is later. The minimum age for an ex-spouse to begin receiving a benefit from:

(A) TRS Plan 1 and PERS Plan 1 is age 60;

(B) PERS Plan 2, PSERS, SERS Plan 2, and TRS Plan 2 it is age 65;

(C) LEOFF Plan 2 is age 53; and

(D) WSPRS Plan 2 is age 55.

Your age or retirement eligibility has no effect on when your ex-spouse is eligible to begin receiving a monthly payment. Your ex-spouse must apply for his or her monthly payment according to the rules for your system and plan.

(j) Your ex-spouse may withdraw his or her share of the accumulated contributions at any time before receiving a monthly payment. Regardless of whether your ex-spouse withdraws or receives a monthly payment, your monthly retirement allowance will be permanently reduced to account for your ex-spouse's share of your retirement account.

(4) **Is there a limit to the amount of contributions I can award to my ex-spouse?** Yes. The amount of contributions awarded to your ex-spouse cannot be greater than the **percentage** of your monthly retirement allowance used to determine the amount of the monthly payment awarded to your ex-spouse.

Example:	
Accumulated contributions earned during the marriage period:	$50,000
Member's monthly retirement allowance:	$1,000
Percentage of member's monthly retirement allowance awarded to ex-spouse:	50%
Monthly payment awarded to ex-spouse:	$500 (50% of $1,000)
Contributions awarded to ex-spouse:	**$25,000 (50% of 50,000)**

(5) **What happens if my retirement account was split and then I retire early?**

(a) If you are eligible and decide to retire early, or must retire early because of a disability, your retirement plan may require that your monthly retirement allowance be reduced by an early retirement factor (ERF) or by some other method. See WAC 415-02-320.

(b) To determine the reduction to your monthly retirement allowance (when an ERF is used) because of your preretirement split, the adjustment to the amount awarded to your ex-spouse in the dissolution order will be reduced by the ERF used to reduce your monthly retirement allowance.

***Example*:** You are a member of PERS Plan 2 and retire for disability two years before you are eligible for a service retirement. The dissolution order awarded your ex-spouse a monthly payment of $500.

Your monthly retirement allowance before ERF is applied:	$2,500	
ERF (factor for retiring two years early)	0.82	
Your base allowance:	$2,050	($2500 x 0.82 ERF)

Adjustment for divorce split:	- $410	(ex-spouse's $500 x 0.82 (ERF))
The monthly retirement allowance you will receive:	**$1640**	($2050 - $410)

Your ex-spouse will receive the full monthly amount ($500) that was awarded to him or her in the dissolution order, regardless of your benefit amount.

(6) **What language must be used for a property division dissolution order or amendment that is accepted by the department *BEFORE* my retirement?**

(a) The order must include the language provided below. Do ***not*** use the language in RCW 41.50.670(2). The exact dollar amount of your ex-spouse's monthly payment must be specified. Do not use formulas or percentages.

> The Department of Retirement Systems (department) shall create an account for _____ (ex-spouse) in the _____ (name of retirement system and plan) and transfer $____ from _____'s (member's) accumulated contributions account into _____'s (ex-spouse's) account. If _____ (ex-spouse) does not withdraw the contributions and becomes eligible, the department will pay him or her $_____ (amount) as a monthly payment for his or her life. If _____ (member) retires and receives a monthly retirement benefit payment, the payment will be permanently reduced to account for _____'s (ex-spouse's) monthly payment. This provision shall become effective as soon as administratively possible after the department's acceptance of the order.

(b) If you are a member of PERS Plan 1 or TRS Plan 1, the amount of service credit awarded to your ex-spouse must be specified in the order if he or she is awarded a portion of gainsharing payments and cost-of-living adjustments. Because gainsharing payments and cost-of-living adjustments are based on service credit, the following paragraph must be included:

> If _____ (ex-spouse) receives a monthly retirement payment, the department shall use ____ (number) months of service credit to calculate future gainsharing payments, if any, and cost-of-living adjustments when he or she becomes eligible.

(7) **How will my account be affected if the department accepts the property division dissolution order *AFTER* my retirement?**

(a) The department will split your retirement account ***only if*** you selected your ex-spouse to receive survivor benefits at the time you retired. If you did not select your ex-spouse to receive survivor benefits at the time you retired, you cannot use this section. You ***must*** use WAC 415-02-510.

(b) If you selected your ex-spouse to receive survivor benefits at the time you retired, the rules in subsection (3)(a) through (d) of this section will apply.

(c) At the time the department splits your account, your ex-spouse will be removed as the survivor beneficiary on your account.

(d) Regardless of his or her age, your ex-spouse will begin receiving a monthly payment the first month after the department has accepted the dissolution order.

(8) **If the property division dissolution order is dated *AFTER* my retirement, how will my monthly retirement allowance be calculated after the split?**

(a) The dissolution order must state the exact dollar amount your ex-spouse is to receive as his or her separate monthly payment. The following describes how the new amount of your monthly retirement allowance will be calculated, assuming your ex-spouse was awarded a monthly payment of $1,000 in the dissolution order.

Step 1 The department will determine the single life benefit of your current monthly retirement allowance by dividing your current monthly allowance by the survivor option factor (see WAC 415-02-380) in effect at the time of the split.

Example:
Current monthly retirement allowance = $1679.38
Option factor = 0.9400000
Single life benefit amount = $1679.38/0.9400000 = $1786.57

Step 2 The single life benefit ($1786.57) is divided by your annuity factor (see WAC 415-02-360) to determine the current present value of the single life benefit amount. The annuity factor the department uses is the factor for your age as of the date of the split.

Example:
Your age at time of the split = 61 years old
Annuity factor for age 61 = 0.0084149
Present value of single life benefit = $1786.57/0.0084149 = $212,310.31

Step 3 The department then determines the present value of your ex-spouse's share by dividing your ex-spouse's monthly payment (as awarded in the dissolution order) by your ex-spouse's annuity factor. The annuity factor is the factor for your ex-spouse's age as of date of the split.

Example:
Ex-spouse's monthly benefit amount = $1000
Ex-spouse's age at time of the split = 67
Annuity factor for age 67 = 0.0095028
Present value of your ex-spouse's monthly benefit = $1000/0.0095028 = $105,232.14

Step 4 Next, the department subtracts your ex-spouse's present value from the single life benefit present value. The result is the present value of the benefit you will receive.

Example:
Present value of single life benefit = $212,310.31
Less present value of ex-spouse's benefit = -105,232.14
Your present value = $107,078.17

Step 5 The department determines the amount of your new monthly retirement allowance by multiplying your present value by your annuity factor.

Example:
Your present value = $107,078.17
Annuity factor = 0.0084149
Your new monthly retirement allowance = $107,078.17 x 0.0084149 = $901.05

(b) The department determines the percentage of the total present value each of you will receive by dividing each of your present value amounts by the single life benefit present value amount.

Example:

Your percentage of the single life benefit present value: $107,078.17/$212,310.31 = .5043

Your ex-spouse's percentage of the single life benefit present value: $105,232.14/$212,310.31 = .4957

(9) **What language must be used in a property division dissolution order or amendment that is accepted by the department *AFTER* my retirement?**

(a) The order must include the language provided below. Do ***not*** use the language in RCW 41.50.670(2). The exact dollar amount of your ex-spouse's monthly benefit must be specified. Do not use formulas or percentages.

> The Department of Retirement Systems (department) shall create an account for _____ (ex-spouse) in the _____ (name of retirement system and plan) and pay him or her $ _____ (amount) as a monthly benefit payment for his or her life. To pay for this benefit, _____'s (retiree's) monthly retirement benefit payment will be reduced for his or her life. If (retiree) has any unused contributions remaining in his or her account, $_____ (amount) shall be transferred to _____'s (ex-spouse's) account. This provision shall become effective as soon as administratively possible after the department's acceptance of the order.

(b) If the member is in PERS Plan 1 or TRS Plan 1, the amount of service credit awarded to the ex-spouse must be specified in the order if he or she is entitled to a portion of gainsharing payments and cost-of-living adjustments. Because gainsharing payments and cost-of-living adjustments are based on service credit, the following paragraph must be included:

> If _____ (ex-spouse) receives a monthly retirement payment, the department shall use _____ (number) months of service credit to calculate future gainsharing payments, if any, and cost-of-living adjustments when he or she becomes eligible.

(10) **Is there a maximum payment amount that the department will pay to my ex-spouse?** Yes. See RCW 41.50.670(4) or WAC 415-02-500(10) for information.

(11) **May I amend an existing order that awarded an interest in my account to my ex-spouse under WAC 415-02-520, and remove my ex-spouse as my survivor beneficiary?** Yes. To remove your ex-spouse as your survivor beneficiary, you must submit a "conformed copy" of the court order splitting your account. A conformed copy is a copy of the order that has been signed by the judge or commissioner on or after July 1, 2003, and filed with the court. Removing your ex-spouse as your survivor beneficiary will change the amount of your monthly retirement allowance. See WAC 415-02-520(9) for the language that must be used.

Example:

Julio and May were married when Julio retired. Julio chose benefit Option 2 (joint and 100 percent survivorship) when he retired, and named May as his survivor beneficiary. Two years after Julio's retire-

ment, the couple divorced. The court awarded "100 percent of retirement benefits" to Julio. Julio later learned that this award did not change the survivor option. Julio may return to court and obtain an order stating that May is to receive "$0" as the dollar amount for her separate monthly benefit. The order must use the language in WAC 415-02-520(9) and be signed by the court no sooner than July 1, 2003.

(12) **What happens if I transfer to Plan 3 after the property division dissolution order has been filed with the department?** See WAC 415-02-550 for information.

(13) **Terms used:**

(a) Department's acceptance - The department's determination that a dissolution order fully complies with the department's requirements and RCW 41.50.500.

(b) Dissolution order - RCW 41.50.500.

(c) Plan 3 - WAC 415-111-100.

(d) Vested - The status of a member who has the amount of service credit required by the member's system and plan for a service retirement when the age requirement is met.

Footnotes to section:

[1] When a court splits your retirement account, the department will establish a separate account for your ex-spouse. Once the account is established, your account and your ex-spouse's account are not tied in any way.

[2] If your ex-spouse was not listed as your survivor beneficiary at retirement, then no postretirement property division dissolution order (or postretirement amendment) may split your retirement account using WAC 415-02-520.

[Statutory Authority: RCW 41.50.050. WSR 23-01-003, § 415-02-520, filed 12/7/22, effective 1/7/23. Statutory Authority: RCW 41.50.050(5), 41.50.670, 41.50.680, 41.50.790. WSR 06-18-009, § 415-02-520, filed 8/24/06, effective 9/24/06. Statutory Authority: RCW 41.50.050(5), 41.50.500, 41.50.670 et seq., 41.50.790. WSR 04-09-043, § 415-02-520, filed 4/14/04, effective 5/15/04; WSR 03-24-049, § 415-02-520, filed 11/26/03, effective 1/1/04. Statutory Authority: RCW 41.50.050(5), 41.50.500, [41.50.]670-[41.50.]710, [41.50.]790 and 2002 c 158. WSR 03-12-014, § 415-02-520, filed 5/27/03, effective 7/1/03.]

WAC 415-02-530 How can a property division dissolution order give my ex-spouse an interest[1] in part of my Plan 3 retirement account? (1) You ***MUST*** use this section if you are a member of TRS Plan 3, PERS Plan 3 or SERS Plan 3 and do not have enough service credit to receive a service retirement from the defined benefit portion of your retirement plan when you meet the age requirement.

(2) Dividing a defined monthly retirement benefit (defined benefit). Your defined monthly retirement benefit may be divided between you and your ex-spouse.

(a) **What language must the property division dissolution order or amendment include to pay a portion of my defined monthly retirement benefit to my ex-spouse?** The order must use the language in RCW 41.50.670(2), provided below. The order or amendment must state either a specific dollar amount or percentage of the benefit. It cannot state both.

> 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.

(b) **How will the defined benefit portion of my retirement account be affected if the department accepts the property division dissolution order *BEFORE* I retire?**

(i) Your ex-spouse will not receive any payments from your defined benefit portion until you retire.

(ii) If you or your ex-spouse dies before you retire, the portion of your defined benefit account awarded to your ex-spouse in the dissolution order ends.

(c) **How will the defined benefit portion of my retirement account be affected if the department accepts the property division dissolution order *AFTER* I retire?**

(i) If included in the dissolution order, the department will begin paying your ex-spouse his or her portion of your defined benefit payment the first month after the department has accepted the order.

(ii) If your ex-spouse dies before you, the portion of your defined benefit payment being paid to him or her will be paid to you.

(iii) If you die before your ex-spouse, payments to your ex-spouse stop unless the department accepted the order at least 30 days before you retired and it required the department to name your ex-spouse as a survivor beneficiary. See RCW 41.50.700(1) and 41.50.790.

(d) **Is there a maximum payment amount of the defined benefit portion of my retirement account that the property division dissolution order can award to my ex-spouse?** Yes. See RCW 41.50.670(4) and WAC 415-02-500(10) for information.

(e) **If the property division dissolution order directs the department to make payments to my ex-spouse, how will the payments be made?** The department will make the required payments as specified in the dissolution order directly to your ex-spouse.

(3) **Can I amend my existing order to remove my ex-spouse as my survivor beneficiary?** Yes. To remove your ex-spouse as your survivor beneficiary, you must submit a "conformed copy" of the court order splitting your account. A conformed copy is a copy of the order that has been signed by the judge or commissioner on or after July 1, 2003, and filed with the court. Removing your ex-spouse as survivor beneficiary will change your retirement benefit. See WAC 415-02-540 (9) and (14) for the language that must be used.

(4) **Dividing a defined contribution account.** Your accumulated defined contribution account may be divided between you and your ex-spouse.

(a) **What language must be used in a property division dissolution order to award a portion of my defined contribution account to my ex-spouse?** The order must include the language provided in the following paragraph. The exact dollar amount to transfer to your ex-spouse's defined contribution account must be specified. Do not use formulas or percentages. (See example in WAC 415-02-500 (14)(b)).

> The Department of Retirement Systems (department) shall split _____ (member's) **defined contribution account** in the _____ (name of retirement system and plan) and create a separate account for _____ (ex-spouse). The amount of $_____ (amount) shall be transferred from

_____'s (member's) **defined contribution account** to _____'s (ex-spouse's) new account. This provision shall become effective as soon as administratively possible after the department's acceptance of the order.

(b) **Can my entire defined contribution account balance be awarded to my ex-spouse?** Yes, using the language provided in the following paragraph:

The Department of Retirement Systems (department) shall transfer _____ (member's) entire defined contribution account in the (name of retirement system) to a separate account for _____ (ex-spouse). This provision shall become effective as soon as administratively possible after the department's acceptance of the order.

(c) **If the department accepts the property division dissolution order *BEFORE* I retire, how will the department divide my defined contribution account with my ex-spouse?**

(i) The amount the dissolution order awards to ***your ex-spouse*** will be deducted from ***your*** account and set up in a separate account for your ex-spouse. Upon acceptance of the order, the department will affect the transfer of the specified amount as soon as administratively possible. The amount in your ex-spouse's separate account will be subject to market gains and losses after the transfer.

(ii) ***You*** and ***your ex-spouse*** will manage your individual portions of the account independently from one another.

(iii) ***You*** must continue to contribute to your account during your employment.

(iv) ***Your ex-spouse*** may not contribute to his or her account.

(d) **If the department accepts the property division dissolution order *AFTER* I retire, how will the department divide my defined contribution account with my ex-spouse?** If your defined contribution account has not been exhausted at the time the department accepts the dissolution order, the department will divide the remaining funds as specified in the dissolution order according to subsections (3) and (4) of this section.

(e) **What options does my ex-spouse have in managing his or her separate defined contribution account?** Your ex-spouse may:

(i) Transfer money between the state-managed (WSIB) or the self-directed (SELF) investment programs; and

(ii) Transfer money among the investment options in the SELF-directed program.

(iii) If ***you*** die ***before*** a distribution has been made from your defined contribution account, your beneficiary(ies) must apply for a lump sum distribution of the funds in your account.

(iv) If ***you*** die ***before*** a distribution has been made from your defined contribution account, your ex-spouse must begin receiving distribution of his or her funds at that time according to the distribution options in WAC 415-111-310.

(v) If ***your ex-spouse*** dies ***before*** a distribution has been made from his or her defined contribution account, your ex-spouse's beneficiary(ies) must apply for a lump sum distribution of the funds in his or her account.

(vi) If ***you*** die ***after*** you begin receiving funds from your defined contribution account but before your funds have been exhausted, the remaining balance of the funds will be disbursed to your designated beneficiary(ies).

(vii) If ***your ex-spouse*** dies ***after*** receiving funds from his or her account but before the funds have been exhausted, the remaining balance of the funds will be disbursed to your ex-spouse's designated beneficiary.

(5) **Terms used:**

(a) Department's acceptance - Order that fully complies with the department of retirement systems' requirements and chapter 41.50 RCW.

(b) Dissolution order - RCW 41.50.500.

(c) Ex-spouse - WAC 415-02-030.

(d) Obligee - RCW 41.50.500(5).

(e) Obligor - RCW 41.50.500(6).

(f) Plan 3 retirement systems - WAC 415-111-100.

(g) Split accounts - WAC 415-02-030.

(h) Survivor benefits - WAC 415-02-030.

Footnote to section:

[1] When a court awards an interest in your retirement account, the department is required to pay a portion of your monthly retirement benefit payments or a portion of your contributions to your ex-spouse.

[Statutory Authority: RCW 41.50.050. WSR 23-01-003, § 415-02-530, filed 12/7/22, effective 1/7/23. Statutory Authority: RCW 41.50.050(5), 41.50.500, [41.50.]670-[41.50.]710, [41.50.]790 and 2002 c 158. WSR 03-12-014, § 415-02-530, filed 5/27/03, effective 7/1/03.]

WAC 415-02-540 How can my Plan 3 retirement account be split[1] by a property division dissolution order? (1) **Who may use this section?** You may use this section if:

(a) You are a member of TRS Plan 3, SERS Plan 3 or PERS Plan 3;

(b) You have enough service credit to receive a defined benefit payment when you meet the age requirement for your system; and

(c) You have or will have a property division dissolution order or amendment dated on or after July 1, 2003[2]. If your ex-spouse will be receiving an interest in your account, use WAC 415-02-530.

(2) **What are the rules for splitting my account?** If you and your ex-spouse are eligible, the department will split both portions of ***your*** retirement account (defined benefit and defined contributions) into two separate accounts - one for you, and one for your ex-spouse. The rules for splitting your account are different depending on whether your dissolution order or most recent amendment is dated ***before*** or ***after*** retirement.

(3) **How will the defined benefit portion of my retirement account be affected if the department accepts the property division dissolution order *BEFORE* I retire?**

(a) The department will split ***your*** defined benefit account into two completely separate accounts and create an account for your ex-spouse for the amount awarded in the defined benefit portion of the dissolution order under your ex-spouse's Social Security number.

(b) The department will pay each of you a defined benefit, when eligible, out of your separate accounts.

(c) The amount awarded to your ex-spouse as his or her defined benefit payment will be a permanent reduction to your defined benefit payment amount.

(d) Your defined benefit payment will be payable over your lifetime, and your ex-spouse's defined benefit payment will be payable over his or her lifetime.

(e) You will have the right to pick a survivor option for your defined benefit payment for your own account.

(f) Your ex-spouse will not have the right to pick a survivor option for his or her defined benefit payment but may name a beneficiary to receive any final death payment that may be due.

(g) You may begin receiving your defined benefit payment when eligible according to the rules for your system.

(h) Your ex-spouse may begin receiving monthly payments when he or she reaches age 65, or the first day of the month following the department's acceptance of the order, whichever is later. Your ex-spouse must apply for retirement according to the rules for your system and plan. Your age or retirement eligibility has no effect on when your ex-spouse is eligible to begin receiving his or her monthly benefit.

(i) When you or your ex-spouse dies, there will be no impact to the other person's retirement account, because the accounts are independent from one another.

(4) **What happens to my defined benefit if my account was split and then I retire early?**

(a) If you are eligible and decide to retire early, or must retire early because of a disability, your monthly retirement benefit payment will be reduced by an early retirement factor (ERF). See WAC 415-02-320.

(b) To determine the reduction to your benefit because of your preretirement split (see subsection (3)(c) of this section), the adjustment to the amount awarded to your ex-spouse in the dissolution order will be reduced by the ERF used to reduce your benefit.

Example: You are a member of TRS Plan 3 and retire for disability five years before you are eligible for a service retirement. The dissolution order awarded your ex-spouse a monthly benefit of $250.

Your defined benefit before ERF is applied:	$1,000	
ERF (factor for retiring two years early)	0.61	
Your base benefit:	$610	($1,000 x 0.61 ERF)
Adjustment for divorce split:	-$152.50	(ex-spouse's $250 x 0.61 (ERF))
The defined benefit you will receive:	**$457.50**	($610 - $152.50)

Your ex-spouse will receive the full monthly amount ($250) that was awarded to him or her in the dissolution order, regardless of your benefit amount.

(5) **What language must be used in a property division dissolution order that the department accepts *BEFORE* I retire to pay a portion of my monthly defined benefit payment to my ex-spouse?** The order must use the language provided below. Do not use the language in RCW 41.50.670(2). The exact dollar amount of your ex-spouse's defined monthly benefit payment must be specified. Do not use formulas or percentages.

> The Department of Retirement Systems (department) shall create a **defined benefit monthly account** for _____ (ex-spouse) in the _____ (name of retirement system and plan). When _____ (ex-spouse) becomes eligible for monthly payments, [s]he (upon application) will begin to receive $_____ per month for the remainder of his/her lifetime. When _____ (member) becomes eligible for monthly payments, [s]he (upon application) will begin to receive the calculated monthly benefit less the amount herein specified for

_____ (ex-spouse). This provision shall become effective as soon as administratively possible after the department's acceptance of the order.

(6) **If ordered in the dissolution order, how will the department split my preretirement defined contribution account?**

(a) The amount the dissolution order awards to your ex-spouse will be deducted from your defined contribution account and set up in a separate account for your ex-spouse under his or her Social Security number. Upon acceptance of the order, the department will affect the transfer of the specified amount as soon as administratively possible. The amount in your ex-spouse's separate account will be subject to market gains and losses after the transfer.

(b) You and your ex-spouse will manage your separate accounts independently from one another.

(c) You must continue to contribute to your account during your employment.

(d) Your ex-spouse may not contribute to his or her account.

(7) **What options does my ex-spouse have in managing his or her separate defined contribution account?** Your ex-spouse may:

(a) Transfer money between investment programs (state-managed (WSIB) or self-directed (SELF)); and

(b) Transfer money among the investment options in the SELF-directed program.

(8) **How will the department make distributions to my ex-spouse and me out of our defined contribution accounts?**

(a) ***You*** must be separated from employment before funds in your account can be distributed according to your distribution choice.

(b) ***Your ex-spouse*** may begin receiving distribution of the funds in his or her account at any time according to his or her distribution choice.

(c) Both you and your ex-spouse will have the same distribution options as outlined in WAC 415-111-310.

(d) If ***you*** die before a distribution has been made from your defined contribution account, your beneficiary(ies) must apply for a lump sum death benefit from your account.

(e) If ***your ex-spouse*** dies before a distribution has been made from his or her account, your ex-spouse's beneficiary(ies) must apply for a lump sum death payment from his or her account.

(f) If ***you*** die after you begin receiving funds but before the funds in your account have been exhausted, the balance will be paid to your designated beneficiary(ies).

(g) If ***your ex-spouse*** dies after receiving funds but before the funds in his or her account have been exhausted, the balance will be paid to your ex-spouse's designated beneficiary(ies).

(9) **What language must be used in a property division dissolution order to award a portion of my defined contribution account to my ex-spouse?** The order must include the language provided in the following paragraph. The exact dollar amount to transfer to your ex-spouse's defined contribution account must be specified. Do not use formulas or percentages. (See example in WAC 415-02-500 (14)(b)).

The Department of Retirement Systems (department) shall split _____ (member's) **defined contribution account** in the _____ (name of retirement system and plan) and create a separate account for _____ (ex-spouse). The amount of $_____ (amount) shall be transferred from _____'s (member's) **defined contribution account** to _____'s (ex-spou-

se's) new account. This provision shall become effective as soon as administratively possible after the department's acceptance of the order.

(10) **Can my entire defined contribution account balance be awarded to my ex-spouse?** Yes, using the language provided in the following paragraph:

The Department of Retirement Systems (department) shall transfer _____ (member's) entire defined contribution account in the (name of retirement system) to a separate account for _____ (ex-spouse). This provision shall become effective as soon as administratively possible after the department's acceptance of the order.

(11) **Can I amend an existing order that has awarded an interest in my account to my ex-spouse under WAC 415-02-530 and remove my ex-spouse as my survivor beneficiary?** Yes. To remove your ex-spouse as your survivor beneficiary, you must submit a "conformed copy" of the court order splitting your account. A conformed copy is a copy of the order that has been signed by the judge or commissioner on or after July 1, 2003, and filed with the court. Removing your ex-spouse as survivor beneficiary will change your retirement benefit. See WAC 415-02-540 (9) and (14) for the language that must be used.

Example:

Julio and May were married when Julio retired. Julio chose survivor Option 2 (joint and 100 percent survivorship) when he retired. This meant that if Julio died, May would receive monthly survivor benefits. Two years after Julio's retirement, the couple divorced. The court awarded "100 percent of retirement benefits" to Julio. Julio later learned that this award did not change the survivor option. Julio can return to court and obtain an order stating that May is to receive "$0" as the dollar amount for her separate monthly benefit. The order must use the language in WAC 415-02-540 and be signed by the court no sooner than July 1, 2003.

(12) **If the dissolution order or amendment is dated *AFTER* my retirement, how will my defined monthly retirement benefit payment be split?**

(a) The department will split your defined monthly retirement benefit payment ***only if*** you selected your ex-spouse to receive a survivor benefit at the time you retired. If you did not select your ex-spouse to receive a survivor benefit at the time you retired, you cannot use this section. You ***must*** use WAC 415-02-530.

(b) If you selected your ex-spouse to receive survivor benefits at the time you retired, the rules in subsection (3)(a) through (f) of this section will apply.

(c) At the time the department splits your account, your ex-spouse will be removed as the survivor beneficiary on your account.

(d) Regardless of his or her age, your ex-spouse will begin receiving a monthly benefit payment the first month after the department accepts the property division dissolution order.

(13) **If the dissolution order or amendment is dated *AFTER* my retirement, how will my monthly retirement benefit be calculated after the split?**

(a) The dissolution order must state the exact dollar amount your ex-spouse is to receive as his or her separate monthly benefit. The following describes how the new amount of your benefit will be calcu-

lated assuming your ex-spouse was awarded a monthly benefit of $600 in the dissolution order.

Step 1 The department will determine the single life benefit of your current monthly benefit payment by dividing your currently monthly benefit payment by the survivor option factor (see WAC 415-02-380) in effect at the time of the split.

Example:
Currently monthly benefit = $1200
Option factor = 0.865
Single life benefit amount = $1200/0.865 = $1387.28

Step 2 The single life benefit ($1387.28) is divided by your annuity factor (see WAC 415-02-340) to determine the current present value of the single life benefit amount. The annuity factor the department uses is the factor for your age as of the date of the split.

Example:
Your age at time of the split = 61 years old
Annuity factor for age 61 = 0.0065448
Present value of single life benefit = $1387.28/0.0065448 = $211,966.75

Step 3 The department then determines the present value of your ex-spouse's share by dividing your ex-spouse's monthly benefit amount (as awarded in the dissolution order) by your ex-spouse's annuity factor. The annuity factor is the factor for your ex-spouse's age as of date of the split.

Example:
Ex-spouse's monthly benefit amount = $600
Ex-spouse's age at time of the split = 67
Annuity factor for age 67 = 0.0076715
Present value of your ex-spouse's monthly benefit =$600/0.0076715 = $78,211.56

Step 4 Next, the department subtracts your ex-spouse's present value from the single life benefit present value. The result is the present value of the benefit you will receive.

Example:
Present value of single life benefit = $211,966.75
Less present value of ex-spouse's benefit = -78,211.56
Your present value = $133,755.19

Step 5 The department determines your new monthly benefit amount by multiplying your present value by your annuity factor.

Example:
Your present value = $133,755.19
Annuity factor = 0.0065448
Your new monthly benefit amount = $133,755.19 x 0.0065448 = $875.40

(b) The department determines the percentage of the total present value each of you will receive by dividing each of your present value amounts by the single life benefit present value amount.

Example:
Your percentage of the single life benefit present value:
$133,755.19/$211,966.75 = .6310
Your ex-spouse's percentage of the single life benefit present value:
$78,211.56/$211,966.75 = .3690

(14) **What language must the postretirement property division dissolution order or most recent amendment include to split my monthly defined benefit payment with my ex-spouse?** Do not use the language in RCW 41.50.670(2). The order must include the language provided in the following paragraph. The exact dollar amount of your ex-spouse's monthly benefit payment must be specified. Do not use formulas or percentages. (See example in WAC 415-02-500 (14)(b).)

> The Department of Retirement Systems (department) shall create a **defined benefit account** for _____ (ex-spouse) in the _____ (name of retirement system and plan) and pay him or her $_____ (amount) for his or her life. To pay for this benefit, _____ (member's) **monthly defined benefit** payment will be reduced for life. This provision shall become effective as soon as administratively possible after the department's acceptance of the order.

(15) **How will the department split my postretirement defined contribution account?** If your defined contribution account has not been fully disbursed at the time of the dissolution order, the department will split the remaining portion of your defined contribution according to the provisions of subsections (6) through (9) of this section.

(16) **Is there a maximum payment that a property division dissolution order can award to my ex-spouse?** Yes. See RCW 41.50.670(4) and WAC 415-02-500(10) for information.

(17) **Terms used:**

(a) Department's acceptance - A dissolution order that fully complies with the department of retirement systems' requirements and chapter 41.50 RCW.
(b) Dissolution order - RCW 41.50.500.
(c) Ex-spouse - WAC 415-02-030.
(d) Split accounts - WAC 415-02-030.
(e) Survivor benefits - WAC 415-02-030.
(f) Plan 3 retirement systems - WAC 415-111-100.
(g) TRS - Teachers' retirement system.

Footnotes to section:

1 When a court splits your retirement account, the department will establish a separate account for your ex-spouse. Once the account is established, your account and your ex-spouse's account are not tied in any way.
2 If an ex-spouse was not listed as the member's survivor beneficiary at retirement, then no postretirement property division order (or postretirement amendment) may split the member's retirement account using WAC 415-02-540.

[Statutory Authority: RCW 41.50.050. WSR 23-01-003, § 415-02-540, filed 12/7/22, effective 1/7/23. Statutory Authority: RCW 41.50.050(5), 41.50.500, [41.50.]670 et seq., [41.50.]790. WSR 03-24-049, § 415-02-540, filed 11/26/03, effective 1/1/04. Statutory Authority: RCW 41.50.050(5), 41.50.500, [41.50.]670-[41.50.]710,

[41.50.]790 and 2002 c 158. WSR 03-12-014, § 415-02-540, filed 5/27/03, effective 7/1/03.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

WAC 415-02-550 What happens to my defined contributions if I transfer to Plan 3 *after* the department of retirement systems accepts my property division dissolution order? (1) **Who may use this section?** You may use this section if you were a member of PERS Plan 2, SERS Plan 2, or TRS Plan 2 and ***first*** obtained a property division dissolution order using the language in RCW 41.50.670(2) and WAC 415-02-510 or 415-02-520, and ***then*** transfer to Plan 3.[1]

(2) **What happens if the property division dissolution order (using the language in RCW 41.50.670(2) and WAC 415-02-510) *did not* split my account?** Refer to WAC 415-02-530 for information about your defined benefit account and about your and your ex-spouse's defined contribution accounts after you transfer to Plan 3.

(3) **What happens if the property dissolution order used the language in WAC 415-02-520 and *did* split my account?**

(a) Your ***ex-spouse's*** **account will remain in Plan 2.** Your ex-spouse is ineligible to transfer to Plan 3.

(b) The balance of your accumulated contributions remaining in your Plan 2 account after it was split will be transferred to your Plan 3 defined contributions account. (Refer to chapter 415-111 WAC for information about your defined contribution account.)

(4) **Terms used:**

(a) Dissolution order - RCW 41.50.500.
(b) Ex-spouse - WAC 415-02-030.
(c) PERS - Public employees' retirement system.
(d) Plan 3 retirement systems - WAC 415-111-100.
(e) SERS - School employees' retirement system.
(f) Split accounts - WAC 415-02-030.
(g) TRS - Teachers' retirement system.

Footnote to section:

[1] The section does not apply to retirees, because retirees cannot transfer to Plan 3.

[Statutory Authority: RCW 41.50.050(5). WSR 16-08-008, § 415-02-550, filed 3/24/16, effective 4/24/16. Statutory Authority: RCW 41.50.050(5), 41.50.500, 41.50.670, 41.50.710, and 41.50.790. WSR 08-10-025, § 415-02-550, filed 4/25/08, effective 5/26/08. Statutory Authority: RCW 41.50.050(5), 41.50.500, [41.50.]670-[41.50.]710, [41.50.]790 and 2002 c 158. WSR 03-12-014, § 415-02-550, filed 5/27/03, effective 7/1/03.]

TAXES AND FEES

WAC 415-02-700 Are fallen heroes' survivor benefits nontaxable? (1) **What is the fallen heroes tax exemption?** The department makes survivor benefit annuity payments to qualified survivor beneficiaries of public safety officers killed in the line of duty. All or part of the annuity benefit paid may be nontaxable under applicable federal law[1]. ***Lump sum payments do not qualify*** for nontaxable treatment under this provision of law.

(a) **Who is covered?** Deceased public safety officers who were members of LEOFF, PERS, PSERS and WSPRS. If the deceased officer was a member of another plan, please contact the department or your tax advisor to discuss the matter.

(b) **What time period is covered?**

MEMBER'S DATE OF DEATH	SURVIVOR BENEFIT PAYMENT DATE
On or after January 1, 1997	On or after January 1, 1997
On or before December 31, 1996	On or after January 1, 2002

(2) **Can I rely on the department's determination of whether the payments are nontaxable?** No.

(a) The department does not guarantee that payments should or should not be designated as exempt from federal income tax.

(b) The department does not guarantee that it was correct in withholding or not withholding taxes from survivor benefit payments to you.

(c) The department does not:

(i) Represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will occur because of its nontaxable determination; or

(ii) Assume any liability for your compliance with the Internal Revenue Code.

(d) You should consult with your own tax advisor regarding all questions of federal or state income, payroll, personal property or other tax consequences regarding any payments you receive from the department.

(3) **How will the department determine whether to withhold or not withhold from your survivor benefit annuity payment for income tax purposes?**

(a) If you receive survivor benefit annuity payments because of the death of a public safety officer killed in the line of duty, and you are the public safety officer's spouse, ex-spouse, or child, the department will not withhold taxes ***on the portion*** of your survivor benefit payments attributable to the officer's service as a public safety officer.

(b) The department will compare the service credits associated with the member's employment as a public safety officer to the member's overall service credit to determine the portion of the survivor benefit payment that qualifies.

(c) **Examples:** In the following examples, assume that the plan administrator has determined that the death of the member qualifies under the fallen heroes tax exemption provision. Assume that the monthly survivor benefit payable is $2000.

Example 1. Joe was employed as a law enforcement officer. He spent his entire career in law enforcement from July 1, 1976, until his death on June 10, 2003 (324 months).

Total service credit = 324 months
Service credit as public safety officer = 324 months
324 / 324 = 1.0
1.0 x $2,000 = $2,000
$2,000 is not subject to withholding

Example 2. Brian was employed as a research analyst for a state agency from July 1, 1976, to May 30, 1995 (227 months service credit). He was employed in a public safety officer position for another state

agency from June 1, 1995, until his death on June 10, 2003 (97 months service credit).

Total service credit = 324 months
Service credit as public safety officer = 97 months
97 / 324 = .299383
.299383 x $2,000 = $598.77
$598.77 is not subject to withholding

Example 3. Susan was hired on July 1, 1976, as a research analyst for a state agency. She terminated that employment on May 30, 1995 (227 months service credit). Susan was hired into a public safety officer position on June 1, 2003, for another state agency. She died on June 4, 2003.

Total service credit = 227.25 months
Service credit as public safety officer = .25 months
.25 / 227.25 = .001100
.001100 x $2,000 = $2.20
$2.20 is not subject to withholding

(d) **What are the exceptions?** Subsection (3)(a) of this section shall not apply with respect to the death of any public safety officer if:

(i) The death was caused by the intentional misconduct of the officer or by the officer's intention to bring about his or her own death;

(ii) The officer was voluntarily intoxicated at the time of death;

(iii) The officer was performing his or her duties in a grossly negligent manner at the time of death; or

(iv) The payment is to an individual whose actions were a substantial contributing factor to the death of the officer.

(4) **Who will decide whether to withhold money for income tax from your survivor benefit payments?**

(a) The plan administrator will make the decision.

(b) If you disagree with the plan administrator's decision, you may petition for review under chapter 415-04 WAC.

(5) **What types of evidence will the department use in making the decision regarding whether to withhold taxes from the survivor payments?**

(a) Cause of death stated on the certified death certificate;

(b) Facts surrounding the public safety officer's death;

(c) The deceased public safety officer's job description;

(d) The deceased's membership records;

(e) Materials that the survivor submits for consideration; and

(f) Any other relevant evidence.

(6) **Examples:**

(a) **Police officer:** Charles is a police officer who works for a police department in a large Washington city. He receives a call to report to duty because a riot has started downtown. Charles drives to the riot scene and is killed getting out of his car from a bullet fired by a rioter. The department will not withhold taxes on survivor benefit payments.

(b) **Firefighter:** Elaine is a firefighter who attends a barbecue party on the Fourth of July. During the party, the barbecue falls over and the garage catches on fire. Elaine grabs a hose and puts out the fire, but dies from smoke inhalation in the process. The department would review the evidence and circumstances to determine whether Elaine would be considered to be "on duty" at the time of her death.

If Elaine was not on duty, the department will withhold taxes on survivor benefit payments.

(c) **Park ranger:** Bobbi is a park ranger employed by the state parks and recreation commission. Her job duties include administration, development, maintenance, and visitor services, in addition to law enforcement, within a state park or park area. She is required to have knowledge of fire prevention and suppression methods and equipment. Although Bobbi is commissioned to enforce laws, her principal job functions do not include criminal law enforcement or crime control. The department would withhold taxes on payments to her survivors unless Bobbi was actually engaged in crime control, enforcement of criminal law, or fire suppression at the time of her death.

(7) **Definitions used;[2] these definitions apply to this WAC section *ONLY*.**

(a) **Chaplain -** Any individual serving as an officially recognized or designated member of a legally organized fire department or legally organized police department, or an officially recognized or designated public employee of a legally organized fire or police department who was responding to a fire, rescue, or police emergency.

(b) **Child -** Any natural, illegitimate, adopted, or posthumous child or stepchild of a deceased public safety officer who, at the time of the public safety officer's death, is:

(i) Eighteen years of age or under;

(ii) Over eighteen years of age and a student as defined in Section 8101 of Title 5, United States Code; or

(iii) Over eighteen years of age and incapable of self-support because of physical or mental disability;

(c) **Firefighter -** An individual serving as an officially recognized or designated member of a legally organized fire department and an officially recognized or designated public employee member of a rescue squad or ambulance crew.

(d) **Intoxication -** A disturbance of mental or physical faculties:

(i) Resulting from the introduction of alcohol into the body as evidenced by:

(A) A postmortem blood alcohol level of .20 per centum or greater; or

(B) A postmortem blood alcohol level of at least .10 per centum but less than .20 per centum unless the department receives convincing evidence that the public safety officer was not acting in an intoxicated manner immediately prior to his death; or

(ii) Resulting from drugs or other substances in the body.

(e) **Law enforcement officer -** An individual involved in crime and juvenile delinquency control or reduction, or enforcement of the laws, including, but not limited to, police, corrections, probation, parole, and judicial officers.

(f) **Line of duty** means:

(i) Any action which an officer whose primary function is crime control or reduction, enforcement of the criminal law, or suppression of fires is obligated or authorized by rule, regulations, condition of employment or service, or law to perform, including those social, ceremonial, or athletic functions to which the officer is assigned, or for which the officer is compensated, by the public agency he or she serves. For other officers, "line of duty" means any action the officer is so obligated or authorized to perform in the course of controlling or reducing crime, enforcing the criminal law, or suppressing fires; and

(ii) Any action which an officially recognized or designated public employee member of a rescue squad or ambulance crew is obligated or authorized by rule, regulation, condition of employment or service, or law to perform.

(g) **Public agency -** Any unit of government that meets the definition of "employer" in any retirement plan that the department administers.

(h) **Public safety officer:**

(i) Regardless of full-time or part-time status, an individual serving a public agency in an official capacity as a law enforcement officer, firefighter, chaplain, or member of a rescue squad or ambulance crew; or

(ii) An individual who is performing official duties in cooperation with the Federal Emergency Management Agency in an area, if those official duties:

(A) Are related to a major disaster or emergency that has been, or is later, declared to exist with respect to the area under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.); and

(B) Are determined by the head of the agency to be hazardous duties.

(i) **Rescue -** The provision of first response emergency medical treatment, transportation of persons in medical distress and under emergency conditions to medical care facilities, or search and rescue assistance in locating and extracting from danger persons lost, missing, or in imminent danger of bodily harm.

Footnotes to section:

1 The "Omnibus Crime Control and Safe Streets Act of 1968," Act June 19, 1969, P.L. 90-351, which appears generally as 42 USCS §§ 3701 et seq., including Title 26 U.S.C. Sec. 101(h) as amended by the Fallen Hero Survivor Benefit Fairness Act of 2001.

2 These definitions duplicate, as closely as possible, those in 42 USCS § 3796b (2003), the applicable federal definition section. Provisions not applicable to any plans administered by the department have been deleted.

[Statutory Authority: RCW 41.50.050(5), 41.04.393. WSR 06-18-009, § 415-02-700, filed 8/24/06, effective 9/24/06; WSR 03-18-031, § 415-02-700, filed 8/26/03, effective 10/1/03.]

WAC 415-02-710 What is the $150,000 death benefit? (1) **What is the $150,000 death benefit?** This is a benefit consistent with workers' compensation law, Title 51 RCW. The benefit may be nontaxable under applicable federal law. It is payable to LEOFF, PERS, PSERS, SERS, TRS, and WSPRS beneficiaries if the member died as a result of:

(a) An injury sustained in the course of employment; or

(b) An occupational disease or infection that arose naturally and proximately out of employment.

(2) **Who is covered?** Deceased members of LEOFF, PERS, PSERS, SERS, TRS, and WSPRS. If the deceased was a member of another plan, please contact the department.

(3) **Who will determine eligibility for the benefit?** The Washington state department of labor and industries (L&I) will determine eligibility consistent with Title 51 RCW and applicable retirement statutes in chapter 41.26 RCW (LEOFF), chapter 41.40 RCW (PERS), chapter 41.37 RCW (PSERS), chapter 41.35 RCW (SERS), chapter 41.32 RCW (TRS), or chapter 43.43 RCW (WSPRS).

(4) **Who will receive the $150,000 death benefit?**

(a) ***LEOFF Plan 2, PERS, PSERS, SERS, TRS, and WSPRS Plan 2***: The person(s) the member designated as his or her beneficiary(ies) for his or her retirement plan will receive the benefit ***unless*** the member designated a ***different*** beneficiary(ies) for the $150,000 death benefit. If the member did not designate a beneficiary for either the plan or death benefit, then the member's death benefit shall be paid to the member's surviving spouse as if in fact the spouse had been nominated by written designation, or if there is no surviving spouse, then to the member's estate.

(b) ***LEOFF Plan 1 and WSPRS Plan 1***: In these plans, the member's surviving spouse is automatically the beneficiary for the member's retirement plan. The member may designate a different person(s) for the $150,000 death benefit. If the member did not designate a beneficiary for either the plan or death benefit, then the member's death benefit shall be paid to the member's surviving spouse as if in fact the spouse had been nominated by written designation, or if there is no surviving spouse, then to the member's estate.

(5) **How do I apply for the benefit?** To apply:

(a) Obtain an application from the department.

(b) Submit a correctly completed application to the department. The department will submit the application to L&I.

(6) **How will I receive the benefit?** L&I will notify you and the department of approval or disapproval of eligibility. If you are approved, you may choose to have the department send the lump sum payment directly to you or to your bank.

(7) **How will DRS treat the $150,000 payment for tax purposes?**

(a) The department will treat the payment as nontaxable.

(b) The department does not guarantee that payments should or should not be designated as exempt from federal income tax.

(c) The department does not guarantee that it was correct in withholding or not withholding taxes from the death benefit payment.

(d) The department does not:

(i) Represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will occur because of its nontaxable determination; or

(ii) Assume any liability for your compliance with the Internal Revenue Code.

(e) You should consult with your own tax advisor regarding all questions of federal or state income, payroll, personal property or other tax consequences regarding any payments you receive from the department.

[Statutory Authority: RCW 41.50.050(5), 41.04.017, 41.26.048, 41.32.053, 41.35.115, 41.40.0931, 41.40.0932, 43.43.285. WSR 08-11-102, § 415-02-710, filed 5/20/08, effective 6/20/08; WSR 06-18-009, § 415-02-710, filed 8/24/06, effective 9/24/06. Statutory Authority: RCW 41.50.050(5), 41.04.017, 41.26.048, 41.32.053, 41.35.115, 41.40.0932, 43.43.285. WSR 03-24-050, § 415-02-710, filed 11/26/03, effective 1/1/04.]

WAC 415-02-740 What are the IRS limitations on maximum benefits and maximum contributions? (1) **Basic Internal Revenue Code (IRC) section 415 limitations.** Subject to the provisions of this section, benefits paid from, and employee contributions made to, the plan shall not exceed the maximum benefits and the maximum annual addition, respec-

tively, as applicable under IRC section 415. This rule applies retroactively beginning on January 1, 2009, except as otherwise stated.

(2) **Definitions.** As used in this section:

(a) "IRC section 415(b) limit" refers to the limitation on benefits established by IRC section 415(b);

(b) "IRC section 415(c) limit" refers to the limitation on annual additions established by IRC section 415(c); and

(c) Limitation year is the calendar year.

(3) **Basic IRC section 415(b) limitation.** Before January 1, 1995, a member may not receive an annual benefit that exceeds the limits specified in IRC section 415(b), subject to the applicable adjustments in that section. On and after January 1, 1995, a member may not receive an annual benefit that exceeds the dollar amount specified in IRC section 415 (b)(1)(A), subject to the applicable adjustments in IRC section 415(b) and subject to any additional limits that may be specified in this section. In no event shall a member's annual benefit payable in any limitation year from this plan be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to IRC section 415(d) and the regulations thereunder.

(4) **Annual benefit definition.** For purposes of IRC section 415(b), the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to the after-tax employee contributions (except pursuant to IRC section 415(n)) and to all rollover contributions as defined in IRC section 415 (b)(2)(A). The "benefit attributable" shall be determined in accordance with treasury regulations.

(5) **Adjustments to basic IRC section 415(b) limitation for form of benefit.** If the benefit under this plan is other than a straight life annuity with no ancillary benefit, then the benefit shall be adjusted so that it is the equivalent of the straight life annuity, using factors prescribed in treasury regulations.

If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the IRC section 415(b) limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount (determined using the assumptions specified in Treasury Regulation section 1.415 (b)-1 (c)(2)(ii)) that takes into account the additional benefits under the form of benefits as follows:

(a) For a benefit paid in a form to which IRC section 417 (e)(3) does not apply (generally, a monthly benefit), the actuarially equivalent straight life annuity benefit that is the greater of (or the reduced IRC section 415(b) limit applicable at the annuity starting date which is the "lesser of" when adjusted in accordance with the following assumptions):

(i) The annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the form of benefit to the member; or

(ii) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a five percent interest assumption (or the applicable statutory interest assumption); and

(A) For years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation section 1.417 (e)-1(d)(2)

(Revenue Ruling 2001-62 or any subsequent revenue ruling modifying the applicable provisions of Revenue Ruling 2001-62); or

(B) For years after December 31, 2008, the applicable mortality tables described in section 417 (e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417 (e)(3)(B) of the Internal Revenue Code).

(b) For a benefit paid in a form to which IRC section 417 (e)(3) applies (generally, a lump sum benefit), the actuarially equivalent straight life annuity benefit that is the greatest of (or the reduced IRC section 415(b) limit applicable at the annuity starting date which is the "least of" when adjusted in accordance with the following assumptions):

(i) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;

(ii) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a five and one-half percent interest assumption (or the applicable statutory interest assumption); and

(A) For years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation section 1.417 (e)-1 (d)(2) (Revenue Ruling 2001-62 or any subsequent revenue ruling modifying the applicable provisions of Revenue Ruling 2001-62); or

(B) For years after December 31, 2008, the applicable mortality tables described in section 417 (e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417 (e)(3)(B) of the Internal Revenue Code).

(iii) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation section 1.417 (e)-1 (d)(3) (the thirty-year treasury rate (prior to January 1, 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate in effect for the first day of the plan year with a one-year stabilization period)); and

(A) For years prior to January 1, 2009, the applicable mortality rate for the distribution under Treasury Regulation section 1.417 (e)-1 (d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent revenue ruling modifying the applicable provisions of Revenue Ruling 2001-62), divided by 1.05; or

(B) For years after December 31, 2008, the applicable mortality tables described in section 417 (e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417 (e)(3)(B) of the Internal Revenue Code), divided by 1.05.

(6) **Benefits not taken into account for IRC section 415(b) limit.** For purposes of this section, the following benefits shall not be taken into account in applying these limits:

(a) Any ancillary benefit which is not directly related to retirement income benefits;

(b) That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity; and

(c) Any other benefit not required under IRC section 415 (b)(2) and treasury regulations thereunder to be taken into account for purposes of the limitation of IRC section 415 (b)(1).

(7) **Other adjustments in IRC section 415(b) limitation.**

(a) In the event the member's retirement benefits become payable before age sixty-two, the limit prescribed by this section shall be reduced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of IRC section 415(b), so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a one hundred sixty thousand dollar (as adjusted) annual benefit beginning at age sixty-two.

(b) In the event the member's benefit is based on at least fifteen years of service as a full-time employee of any police or fire department or on fifteen years of military service, the adjustments provided for in (a) of this subsection shall not apply.

(c) The reductions provided for in (a) of this subsection shall not be applicable to preretirement disability benefits or preretirement death benefits.

(8) **Less than ten years of participation adjustment for IRC section 415(b) limitation.** The maximum retirement benefits payable to any member who has completed less than ten years of participation shall be the amount determined under subsection (3) of this section multiplied by a fraction, the numerator of which is the member's years of participation and the denominator of which is ten.

(a) The reduction provided by this subsection cannot reduce the maximum benefit below ten percent.

(b) The reduction provided by this subsection shall not be applicable to preretirement disability benefits or preretirement death benefits.

(c) For purposes of this subsection, a member's "years of participation" equal the amount of service credit used in the computation of the member's retirement allowance, except as follows. Service credit purchased pursuant to RCW 41.26.199 (LEOFF Plan 1), RCW 41.26.432 (LEOFF Plan 2), RCW 41.32.066 (TRS), RCW 41.35.183 (SERS), RCW 41.37.265 (PSERS), RCW 41.40.034 (PERS), and RCW 43.43.233 (WSPRS) is **not** included in a member's "years of participation."

(9) **Effect of cost-of-living adjustment (COLA) without a lump sum component on IRC section 415(b) testing.** Effective on and after January 1, 2009, for purposes of applying the IRC section 415(b) limit to a member with no lump sum benefit, the following will apply:

(a) A member's applicable IRC section 415(b) limit will be applied to the member's annual benefit in the member's first limitation year without regard to any automatic COLAs;

(b) To the extent that the member's annual benefit equals or exceeds the limit, the member will no longer be eligible for COLA increases until such time as the benefit plus the accumulated increases are less than the IRC section 415(b) limit; and

(c) Thereafter, in any subsequent limitation year, a member's annual benefit, including any automatic COLA increases, shall be tested under the then applicable IRC section 415(b) limit including any adjustment to the IRC section 415 (b)(1)(A) dollar limit under IRC section 415(d), and the treasury regulations thereunder.

(10) **Effect of COLA with a lump sum component on IRC section 415(b) testing.** On and after January 1, 2009, with respect to a member who receives a portion of the member's annual benefit in a lump sum, a member's applicable limit will be applied taking into consideration

COLA increases as required by IRC section 415(b) and applicable treasury regulations.

(11) **IRC section 415(c) limit.** After-tax member contributions or other annual additions with respect to a member may not exceed the lesser of forty thousand dollars, as adjusted pursuant to IRC section 415(d), or one hundred percent of the member's compensation.

(a) Annual additions are defined to mean the sum (for any year) of employer contributions to a defined contribution plan, member contributions, and forfeitures credited to a member's individual account. Member contributions are determined without regard to rollover contributions and to picked-up employee contributions that are paid to a defined benefit plan.

(b) For purposes of applying the IRC section 415(c) limits only and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a limitation year, except as noted below and as permitted by Treasury Regulation section 1.415 (c)-2, or successor regulation; provided; however, that member contributions picked up under IRC section 414(h) shall not be treated as compensation.

(c) Unless another definition of compensation that is permitted by Treasury Regulation section 1.415 (c)-2, or successor regulation, is specified by the plan, compensation will be defined as wages within the meaning of IRC section 3401(a) and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under IRC sections 6041(d), 6051 (a)(3), and 6052 and will be determined without regard to any rules under IRC section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in IRC section 3401 (a)(2)).

(i) However, for limitation years beginning on and after January 1, 1998, compensation will also include amounts that would otherwise be included in compensation but for an election under IRC sections 125(a), 402 (e)(3), 402 (h)(1)(B), 402(k), or 457(b). For limitation years beginning on and after January 1, 2001, compensation will also include any elective amounts that are not includible in the gross income of the employee by reason of IRC section 132 (f)(4).

(ii) For limitation years beginning on and after January 1, 2009, compensation for the limitation year will also include compensation paid by the later of two and one-half months after an employee's severance from employment or the end of the limitation year that includes the date of the employee's severance from employment if:

(A) The payment is regular compensation for services during the employee's regular working hours, or compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the employee while the employee continued in employment with the employer; or

(B) The payment is for unused accrued bona fide sick, vacation or other leave that the employee would have been able to use if employment had continued.

Any payments not described in (c)(ii) of this subsection are not considered compensation if paid after severance from employment, even if they are paid within two and one-half months following severance from employment, except for payments to the individual who does not currently perform services for the employer by reason of qualified

military service (within the meaning of IRC section 414 (u)(1)) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service.

(iii) Back pay, within the meaning of Treasury Regulation section 1.415 (c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

(iv) Beginning January 1, 2009, to the extent required by IRC sections 3401(h) and 414 (u)(12), an individual receiving a differential wage payment (as defined in section 3401 (h)(2) of the Internal Revenue Code) from an employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under section 415(c) of the Internal Revenue Code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

(v) An employee who is in qualified military service (within the meaning of IRC section 414 (u)(1)) shall be treated as receiving compensation from the employer during such period of qualified military service equal to:

(A) The compensation the employee would have received during such period if the employee were not in qualified military service, determined based on the rate of pay the employee would have received from the employer but for the absence during the period of qualified military service; or

(B) If the compensation the employee would have received during such period was not reasonably certain, the employee's average compensation from the employer during the twelve month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

(vi) If the annual additions for any member for a plan year exceed the limitation under IRC section 415(c), the excess annual addition will be corrected as permitted under the Employee Plans Compliance Resolution System (or similar IRS correction program).

(vii) For limitation years beginning on or after January 1, 2009, a member's compensation for purposes of this subsection shall not exceed the annual limit under IRC section 401 (a)(17).

(12) **Service purchases under IRC section 415(n).** Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under the plan, then the requirements of IRC section 415(n) will be treated as met only if:

(a) The requirements of IRC section 415(b) are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of IRC section 415(b); or

(b) The requirements of IRC section 415(c) are met, determined by treating all such contributions as annual additions for purposes of IRC section 415(c).

(c) For purposes of applying this subsection, the plan will not fail to meet the reduced limit under IRC section 415 (b)(2)(C) solely by reason of this subsection and will not fail to meet the percentage limitation under IRC section 415 (c)(1)(B) solely by reason of this subsection.

(d) For purposes of this subsection the term "permissive service credit" means service credit:

(i) Recognized by the plan for purposes of calculating a member's benefit under the plan;

(ii) Which such member has not received under the plan; and

(iii) Which such member may receive only by making a voluntary additional contribution, in an amount determined under the plan, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may include service credit for periods for which there is no performance of service, and, notwithstanding (d)(ii) of this subsection, may include service credited in order to provide an increased benefit for service credit which a member is receiving under the plan.

(e) The plan will fail to meet the requirements of this section if:

(i) More than five years of nonqualified service credit are taken into account for purposes of this subsection; or

(ii) Any nonqualified service credit is taken into account under this subsection before the member has at least five years of participation under the plan.

(f) For purposes of (e) of this subsection, effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" means permissive service credit other than that allowed with respect to:

(i) Service (including parental, medical, sabbatical, and similar leave) as an employee of the government of the United States, any state or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in IRC section 415 (k)(3));

(ii) Service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in (f)(i) of this subsection) of an education organization described in IRC section 170 (b)(1)(A)(ii) which is a public, private, or sectarian school which provides elementary or secondary education through grade twelve, or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed;

(iii) Service as an employee of an association of employees who are described in (f)(i) of this subsection; or

(iv) Military service, other than qualified military service under section 414(u), recognized by the plan.

(g) In the case of service described in (f)(i), (ii), or (iii) of this subsection, such service will be nonqualified service if recognition of such service would cause a member to receive a retirement benefit for the same service under more than one plan.

(h) In the case of a trustee-to-trustee transfer after December 31, 2001, to which IRC section 403 (b)(13)(A) or 457 (e)(17)(A) applies, without regard to whether the transfer is made between plans maintained by the same employer:

(i) The limitations of (e) of this subsection will not apply in determining whether the transfer is for the purchase of permissive service credit; and

(ii) The distribution rules applicable under federal law to the plan will apply to such amounts and any benefits attributable to such amounts.

(i) For an eligible member, the limitation of IRC section 415 (c)(1) shall not be applied to reduce the amount of permissive service

credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of the plan as in effect on August 5, 1997. For purposes of this subsection (12)(i), an eligible member is an individual who first became a member in the plan before January 1, 1998.

(13) **Modification of contributions for IRC sections 415(c) and 415(n) purposes.** Notwithstanding any other provision of law to the contrary, the department may modify a request by a member to make a contribution to the plan if the amount of the contribution would exceed the limits provided in IRC section 415 by using the following methods:

(a) If the law allows, the department may establish either a lump sum or a periodic payment plan for the member to avoid a contribution in excess of the limits under IRC sections 415(c) or 415(n).

(b) If payment pursuant to (a) of this subsection will not avoid a contribution in excess of the limits imposed by IRC sections 415(c) or 415(n), the department may either reduce the member's contribution to an amount within the limits of those sections or refuse the member's contribution.

(14) **Repayments of cash outs.** Any repayment of contributions, including interest thereon, to the plan with respect to an amount previously refunded upon a forfeiture of service credit under the plan or another governmental plan maintained by the state or a local government within the state shall not be taken into account for purposes of IRC section 415, in accordance with applicable treasury regulations.

(15) **Participation in other qualified plans: Aggregation of limits.**

(a) The IRC section 415(b) limit with respect to any member who at any time has been a member in any other defined benefit plan as defined in IRC section 414(j) maintained by the member's employer shall apply as if the total benefits payable under all such defined benefit plans in which the member has been a member were payable from one plan.

(b) The IRC section 415(c) limit with respect to any member who at any time has been a member in any other defined contribution plan as defined in IRC section 414(i) maintained by the member's employer shall apply as if the total annual additions under all such defined contribution plans in which the member has been a member were payable from one plan.

(16) **Reduction of benefits priority.** Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the member's defined benefit component under any defined benefit plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be determined by the plan and the plan administrator of such other plans; and next, by reducing the member's defined contribution component benefit under any defined benefit plans; and next by reducing or allocating excess forfeitures for defined contribution plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be established by the plan and the plan administrator for such other plans provided; however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the plan and the plan administrator of all other plans covering such member.

(17) **Technical and Miscellaneous Revenue Act of 1988 (TAMRA) election.** This subsection applies only to those plans for which it has been approved by the IRS. This subsection applies retroactively beginning on January 1, 1990, only to participants who first became participants in the system before January 1, 1990. For purposes of this subsection, these participants are referred to as "qualified participants." For a qualified participant, the 415(b) limit shall not be less than the accrued benefit of the participant under the plan determined without regard to any amendment of the plan made after October 14, 1987.

(18) **Ten thousand dollar limit; less than ten years of service.** Notwithstanding anything in this section to the contrary, the retirement benefit payable with respect to a member shall be deemed not to exceed the limit set forth in this subsection if the benefits payable, with respect to such member under this plan and under all other qualified defined benefit pension plans to which the member's employer contributes, do not exceed ten thousand dollars for the applicable limitation year and for any prior limitation year and the employer has not at any time maintained a qualified defined contribution plan in which the member participated, provided, however, that if the member has completed less than ten years of service with the employer, the limit under this section shall be a reduced limit equal to ten thousand dollars multiplied by a fraction, the numerator of which is the number of the member's years of service and the denominator of which is ten, and such that the fraction so calculated may not be less than one-tenth.

[Statutory Authority: RCW 41.50.050(5). WSR 12-21-036, § 415-02-740, filed 10/10/12, effective 11/10/12; WSR 10-24-099, § 415-02-740, filed 12/1/10, effective 1/1/11.]

WAC 415-02-750 How does the department comply with Internal Revenue Code distribution rules? (1) All benefits paid from the retirement plan shall be distributed in accordance with a reasonable and good faith interpretation of the requirements of section 401 (a)(9) of the Internal Revenue Code, as applicable to a governmental plan within the meaning of section 414(d) of the Internal Revenue Code. In order to meet these requirements, the retirement plan shall be administered in accordance with the following provisions:

(a) If a plan member separates from service prior to attaining eligibility for a future benefit and the balance of the member's accumulated contributions is less than $1,000, the department may initiate a refund of the member's accumulated contributions following written notification to the member.

(i) A refund of the accumulated contributions initiated by the department under the terms of this section shall terminate all rights to benefits in the retirement plan.

(ii) If the member is reemployed in an eligible position, service credits earned prior to the refund may be restored upon repayment according to the provisions of the plan.

(b) Distribution of a member's benefit must begin by the later of April 1st following the calendar year in which a member attains age seventy and one-half or April 1st of the year following the calendar year in which the member retires;

(c) Unless distributed in a lump sum, the member's entire interest must be distributed over the member's life or the lives of the member and a designated beneficiary, or over a period not extending

beyond the life expectancy of the member or of the member and designated beneficiary;

(d) The life expectancy of a member or the member's spouse or beneficiary may not be recalculated after the benefits commence;

(e) If a member dies before the required distribution of the member's benefits has begun, the member's entire interest must be either:

(i) Distributed (in accordance with federal regulations) over the life or life expectancy of the designated beneficiary, with the distributions beginning no later than December 31st of the calendar year following the calendar year of the member's death; or

(ii) Distributed within five years of the member's death.

(f) The amount of an annuity paid to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of section 401 (a)(9)(G) of the Internal Revenue Code, and the minimum distribution incidental benefit rule under Treasury Regulation section 1.401 (a)(9)-6, Q&A 2; and

(g) 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.

(2) The retirement system pursuant to a valid dissolution order as defined in RCW 41.50.500 may establish separate benefits for a member and nonmember.

(3) The death and disability benefits provided by the plan are limited by the incidental benefit rule set forth in section 401 (a)(9)(G) of the Internal Revenue Code and Treasury Regulation section 1.401-1 (b)(1)(i) or any successor regulation thereto. As a result, the total death or disability benefits payable may not exceed twenty-five percent of the cost for all of the members' benefits received from the plan.

[Statutory Authority: RCW 41.50.050 and 41.50.180. WSR 21-22-048, § 415-02-750, filed 10/28/21, effective 11/28/21. Statutory Authority: RCW 41.50.050(5). WSR 10-24-099, § 415-02-750, filed 12/1/10, effective 1/1/11.]

WAC 415-02-751 How does the department comply with Internal Revenue Code rollover rules? (1) 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.

(2) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the distributee with the following exceptions:

(a) Any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more;

(b) Any distribution to the extent such distribution is required under section 401 (a)(9) of the Internal Revenue Code;

(c) The portion of any distribution that is not includible in gross income; and

(d) Any other distribution that is reasonably expected to total less than two hundred dollars during the year.

Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in section 408 (a) or (b) of the Internal Revenue Code, or to a qualified defined contribution plan described in section 401(a) of the Internal Revenue Code, that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible, or on or after January 1, 2007, to a qualified defined benefit plan described in section 401(a) of the Internal Revenue Code or to an annuity contract described in section 403(b) of the Internal Revenue Code, that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible.

Effective January 1, 2002, the definition of eligible rollover distribution also includes a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Internal Revenue Code.

(3) "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover distribution:

(a) An individual retirement account described in section 408(a) of the Internal Revenue Code;

(b) An individual retirement annuity described in section 408(b) of the Internal Revenue Code;

(c) An annuity plan described in section 403(a) of the Internal Revenue Code;

(d) A qualified trust described in section 401(a) of the Internal Revenue Code;

(e) Effective January 1, 2002, an annuity contract described in section 403(b) of the Internal Revenue Code;

(f) Effective January 1, 2002, a plan eligible under section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into such 457(b) plan from this plan; or

(g) Effective January 1, 2008, a Roth IRA described in section 408A of the Internal Revenue Code.

(4) "Distributee" means an employee or former employee. It also includes the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Internal Revenue Code. Effective January 1, 2007, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by section 401 (a)(9)(E) of the Internal Revenue Code. However, a nonspouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity will be treated as an "inherited" individual retirement account or annuity.

(5) "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the distributee.

[Statutory Authority: RCW 41.50.050(5). WSR 12-21-036, § 415-02-751, filed 10/10/12, effective 11/10/12; WSR 10-24-099, § 415-02-751, filed 12/1/10, effective 1/1/11.]

WAC 415-02-752 How does the department comply with Internal Revenue Code compensation limit rules? (1) As used in this section, the term "eligible member" means a person who first became a member of the plan prior to the plan year beginning after December 31, 1995. Pursuant to section 13212 (d)(3)(A) of OBRA '93, and the regulations issued under that section, eligible members are not subject to the limits of section 401 (a)(17) of the Internal Revenue Code, and the maximum compensation used in computing employee and employer contributions to or benefits due from the plan for eligible members shall be the maximum amount allowed by the plan to be so used on July 1, 1993. The limits referenced in subsections (2) and (3) of this section apply only to years beginning after December 31, 1995, and only to individuals who first became plan members in plan years beginning on and after January 1, 1996.

(2) Effective with respect to plan years beginning on and after January 1, 1996, and before January 1, 2002, the annual compensation of a plan member (who is not an eligible member) which exceeds one hundred fifty thousand dollars (as adjusted for cost-of-living increases under section 401 (a)(17)(B) of the Internal Revenue Code) shall be ignored for purposes of computing employee and employer contributions to or benefits due from the plan. Effective only for the 1996 plan year, in determining the compensation of an employee eligible for consideration under this provision, the rules of section 414 (g)(6) of the Internal Revenue Code shall apply, except that in applying such rules, the term "family" shall include only the spouse of the member and any lineal descendants of the employee who have not attained age nineteen before the close of the year.

(3) Effective with respect to plan years beginning on and after January 1, 2002, the annual compensation of a plan member (who is not an eligible member) which exceeds two hundred thousand dollars (as adjusted for cost-of-living increases in accordance with section 401 (a)(17)(B) of the Internal Revenue Code) may not be used in determining benefits or contributions due for any plan year. Annual compensation means compensation during the plan year or such other consecutive twelve-month period over which compensation is otherwise determined under the plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If the determination period consists of fewer than twelve months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is twelve. If the compensation for any prior determination period is used in determining a plan member's contributions or benefits for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period. The determination period for testing contributions is the calendar year.

[Statutory Authority: RCW 41.50.050(5). WSR 10-24-099, § 415-02-752, filed 12/1/10, effective 1/1/11.]

WAC 415-02-753 How does the department comply with Internal Revenue Code vesting rules? (1) In addition to protections provided by state law, a plan member shall be one hundred percent vested in all plan benefits upon attainment of the normal retirement age and service requirements.

(2) A plan member shall be one hundred percent vested in his or her accumulated contributions at all times.

(3) The plan may only be terminated by action of the legislature and employer contributions must be paid in accordance with state law. In the event the legislature took action to terminate a plan, in whole or in part, or discontinue employer contributions to the plan, any applicable state law and constitutional protections would apply to accrued benefits. In such event, pursuant to federal rules, a plan member's accrued benefit under the plan in nonforfeitable to the extent funded.

[Statutory Authority: RCW 41.50.050(5). WSR 10-24-099, § 415-02-753, filed 12/1/10, effective 1/1/11.]

WAC 415-02-754 How does the department comply with Internal Revenue Code definitely determinable benefit rules? (1) In conformity with section 401 (a)(8) of the Internal Revenue Code, any forfeitures of benefits by members or former members of the plan will not be used to pay benefit increases. However, such forfeitures shall be used to reduce employer contributions.

(2) In conformity with section 401 (a)(25) of the Internal Revenue Code, actuarial equivalence for purposes of calculating benefit options is determined using the following assumptions and without employer discretion:

Interest rate: Five percent; and

(a) For years prior to January 1, 2009, the mortality table specified in Revenue Ruling 2001-62 or any subsequent revenue ruling modifying the applicable provisions of Revenue Ruling 2001-62; or

(b) For years after December 31, 2008, the applicable mortality tables described in section 417 (e)(3)(B) of the Internal Revenue Code, Notice 2008-85, or any subsequent Internal Revenue Service guidance implementing section 417 (e)(3)(B) of the Internal Revenue Code.

[Statutory Authority: RCW 41.50.050(5). WSR 10-24-099, § 415-02-754, filed 12/1/10, effective 1/1/11.]

WAC 415-02-755 How does the department comply with Internal Revenue Code USERRA rules? Effective December 12, 1994, notwithstanding any other provisions of state law, contributions, benefits and service credit with respect to qualified military service are governed by section 414(u) of the Internal Revenue Code and the Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994.

Effective with respect to deaths occurring on and after January 1, 2007, while a member is performing qualified military service (as defined in chapter 43 of Title 38 of the United States Code), to the extent required by section 401 (a)(37) of the Internal Revenue Code, survivors of a member of a retirement system are entitled to any additional benefits that the system would provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed.

In any event, a deceased member's period of qualified service must be counted for vesting purposes.

[Statutory Authority: RCW 41.50.050(5). WSR 10-24-099, § 415-02-755, filed 12/1/10, effective 1/1/11.]

WAC 415-02-756 How does the department comply with Internal Revenue Code exclusive benefit rules? No assets of the retirement system 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). WSR 10-24-099, § 415-02-756, filed 12/1/10, effective 1/1/11.]