WSR 23-15-122
PROPOSED RULES
DEPARTMENT OF
RETIREMENT SYSTEMS
[Filed July 19, 2023, 10:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-09-057.

Title of Rule and Other Identifying Information: Roth for deferred compensation program (DCP).

Hearing Location(s): On August 22, 2023, at 3:00 p.m., virtually through [Microsoft] Teams, https://www.drs.wa.gov/sitemap/rules/#proposed-rule-hearings, ID 289 830 267 574, Passcode 5hkZDA; or dial-in number 833-322-1218, ID 426 127 880#.

Date of Intended Adoption: August 25, 2023.

Submit Written Comments to: Bianca Stoner, Department of Retirement Systems (DRS), P.O. Box 48380, Olympia, WA 98504-8380, email drs.rules@drs.wa.gov, by August 17, 2023.

Assistance for Persons with Disabilities: Contact Bianca Stoner, phone 360-664-7291, TTY 711, email drs.rules@drs.wa.gov, by August 17, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In accordance with EHB 1752 from the 2022 legislative session, DRS is required to offer a Roth option within DCP no later than December 2023. Chapters 415-02 and 415-501 WAC require changes to clarify how DRS will administer DCP once Roth is included. DRS must also make additional changes to implement the requirements of Section 603 of the federal SECURE Act 2.0.

Reasons Supporting Proposal: Implementing EHB 1752 and Section 603 of the SECURE Act 2.0.

Statutory Authority for Adoption: RCW 41.50.050, 41.50.770; and Section 603 of the SECURE Act 2.0.

Statute Being Implemented: RCW 41.50.770; and Section 603 of the SECURE Act 2.0.

Rule is necessary because of federal law, SECURE Act 2.0 of 2022, part of the Consolidated Appropriations Act of 2023 (P.L. 117-328).

Name of Proponent: DRS, governmental.

Name of Agency Personnel Responsible for Implementation: Seth Miller, DRS, P.O. Box 48380, Olympia, WA 98504-8380, 360-664-7304.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(a)(i) does not apply to this proposed rule and DRS is not voluntarily making it applicable to the agency.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: Rules from DRS only affect members and beneficiaries of the state retirement systems and participating public employers. As a result, the rules do not affect small businesses.

Scope of exemption for rule proposal:

Is fully exempt.

July 19, 2023
Bianca Stoner
Rules Coordinator

OTS-4567.1

AMENDATORY SECTION (Amending WSR 18-01-020, filed 12/8/17, effective 1/8/18)

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 ((~~sixty~~)) 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 ((~~sixty~~)) 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 ((~~sixty~~)) 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 ((~~sixty~~)) 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. ((~~However, IRS regulations limit the amount of after-tax dollars you may use to purchase additional service credit.~~))

(b) <u>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.</u>

(c) Payment must be made in full within ((~~ninety~~)) 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 ((~~sixty~~)) 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 ((~~sixty~~)) 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 ((~~sixty~~)) 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 ((~~sixty~~)) 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. 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.]

AMENDATORY SECTION (Amending WSR 21-22-047, filed 10/28/21, effective 11/28/21)

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); ((~~or~~)) 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-thirty~~)) 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 ((~~ninety~~)) 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. 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.]

OTS-4568.4

AMENDATORY SECTION (Amending WSR 16-24-013, filed 11/28/16, effective 1/1/17)

WAC 415-501-110 Definitions. (1) **Accumulated deferrals.** Compensation deferred under the plan, adjusted by income received, increases or decreases in investment value, fees, and any prior distributions made.

(2) **Automatic enrollment.** A process of enrolling newly hired full-time employees as of January 1, 2017. See WAC 415-501-400 for details.

(3) **Beneficiary.** The person or entity entitled to receive benefits under the plan after the death of a participant.

(4) **Compensation.** All payments made to a participant by the employer as remuneration for services rendered.

(5) **Contributions.** The amount of deferred compensation that you contribute monthly, which can be pretax, taxed, or a combination of both.

(6) **Deferred compensation.** The amount of the participant's compensation that is deferred. Pretax and taxed contributions are both considered deferred compensation. See WAC 415-501-400, 415-501-410, and 415-501-450.

((~~(6)~~)) (7) **Deferred compensation program or plan.** A plan that allows employees of the state of Washington and approved political subdivisions of the state of Washington to defer a portion of their compensation according to the provisions of Section 457(b) of the Internal Revenue Code.

((~~(7)~~)) (8) **Department.** The department of retirement systems created by RCW 41.50.020 or its designee.

((~~(8)~~)) (9) **Eligible employee.** Any person who is employed by and receives any type of compensation from a participating employer for whom services are provided, and who is:

(a) A full-time, part-time, or career seasonal employee of Washington state, a county, a municipality, or other political subdivision of the state, whether or not covered by civil service;

(b) An elected or appointed official of the executive branch of the government, including a full-time member of a board, commission, or committee;

(c) A justice of the supreme court, or a judge of the court of appeals or of a superior or district court; or

(d) A member of the state legislature or of the legislative authority of a county, city, or town.

((~~(9)~~)) (10) **Eligible rollover distribution.** A distribution to a participant of any or all funds from an eligible retirement plan unless it is:

(a) One in a series of substantially equal annuity payments;

(b) One in a series of substantially equal installment payments payable over ((~~ten~~)) 10 years or more;

(c) Required to meet minimum distribution requirements of the plan; or

(d) Distributed for hardship or unforeseeable emergency from a 457 plan.

((~~(10)~~)) (11) **Employer.**

(a) The state of Washington; and

(b) Approved political subdivisions of the state of Washington.

((~~(11)~~)) (12) **In-plan conversion.** Allows you to take all or a portion of the funds in your pretax account and convert it to a Roth account.

(13) **Normal retirement age.** An age designated by the participant for purposes of the three-year catch-up provision described in WAC 415-501-430(2). The participant may choose a normal retirement age between:

(a) The earliest age at which an eligible participant has the right to receive retirement benefits without actuarial or similar reduction from his/her retirement plan with the same employer; and

(b) Age ((~~seventy and one-half~~)) 70 1/2.

((~~(12)~~)) (14) **Participant.** An eligible employee who:

(a) Is currently deferring compensation under the plan; or

(b) Has previously deferred compensation and has not received a distribution of his/her entire benefit under the plan.

((~~(13)~~)) (15) **Participation agreement.** The agreement executed by an eligible employee to enroll in the plan through methods established by the department. Includes the participant's authorization to defer compensation through payroll deductions pursuant to WAC 415-501-410 and 415-501-450.

((~~(14)~~)) (16) **Qualified distribution.** A distribution of funds from a designated Roth account that is not subject to further taxation. A qualified distribution may only occur:

(a) After a five-taxable-year period of participation in the Roth account; and

(b) If the distribution is made: (i) On or after attainment of age 59 1/2, (ii) becoming permanently disabled, or (iii) death.

(17) **Roth account.** A form of deferred compensation in which funds are subject to federal income tax at the time of contribution.

(18) **You**, as used in this chapter, means a participant as defined in subsection ((~~(12)~~)) (14) of this section.

[Statutory Authority: RCW 41.50.050(5). WSR 16-24-013, § 415-501-110, filed 11/28/16, effective 1/1/17; WSR 16-12-050, § 415-501-110, filed 5/25/16, effective 6/25/16; WSR 14-10-045, § 415-501-110, filed 4/30/14, effective 6/1/14. Statutory Authority: RCW 41.50.050(5), 41.50.780(10), and 41.50.770. WSR 05-15-045, § 415-501-110, filed 7/11/05, effective 8/11/05; WSR 04-22-053, § 415-501-110, filed 10/29/04, effective 11/29/04. Statutory Authority: RCW 41.50.050(5), 41.50.030(2), 41.50.088(2), 41.50.770, and 41.50.780, 26 U.S.C. (Internal Revenue Code) and related tax regulations. WSR 02-01-121, § 415-501-110, filed 12/19/01, effective 1/1/02. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. WSR 00-11-104, amended and recodified as § 415-501-110, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050 and 41.50.780(11). WSR 96-16-020, § 415-504-010, filed 7/29/96, effective 7/29/96.]

AMENDATORY SECTION (Amending WSR 16-24-013, filed 11/28/16, effective 1/1/17)

WAC 415-501-315 What are my employer's responsibilities? An employer has responsibilities including, but not limited to, determining employees' eligibility to participate, reporting and paying deferrals to the department, and monitoring for deferral limits. Employer contributions must be reported to the department separately from employee contributions.

The department's administration of the plan does not replace the employer's responsibilities.

[Statutory Authority: RCW 41.50.050(5). WSR 16-24-013, § 415-501-315, filed 11/28/16, effective 1/1/17. Statutory Authority: RCW 41.50.050(5), 41.50.780(10), and 41.50.770. WSR 04-22-053, § 415-501-315, filed 10/29/04, effective 11/29/04. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. WSR 00-11-104, § 415-501-315, filed 5/18/00, effective 6/18/00.]

AMENDATORY SECTION (Amending WSR 16-24-013, filed 11/28/16, effective 1/1/17)

WAC 415-501-400 What is automatic enrollment? Effective January 1, 2017, state agencies and higher education employers must automatically enroll new full-time employees into the deferred compensation program (DCP). Students who work at a college or university and retirees who return to employment are exempt from automatic enrollment. Local employers, including school districts, may use the automatic enrollment provisions by submitting a resolution to the department.

For state employees and some higher education employees, full-time status is defined in WAC 357-01-174. For employees not covered under WAC 357-01-174, the definition of "full time" is at the employer's discretion.

The default deferral amount is pre-tax with a rate of three percent of your taxable compensation((~~, but~~)). You may change ((~~your deferral amount~~)) these at any time (see WAC 415-501-450 for details).

The default investment is the Retirement Strategy Fund that assumes ((~~retirement~~)) you will retire at age ((~~sixty-five~~)) 65. You may change your investments at any time (see WAC 415-501-475 for details).

If you are automatically enrolled in DCP, you will receive a mailed notification of automatic enrollment. If you want to alter your automatic enrollment, here are some actions you can take:

(1) Opt out: To prevent the three percent deferral from being deducted from your paycheck, opt out within ((~~thirty~~)) 30 days of the date on the automatic enrollment notification. To do so, change the three percent default deduction to zero through your established online account or by contacting the DCP record keeper.

(2) Suspend enrollment and remove your contributions: Following your automatic enrollment, you may withdraw DCP deferrals that have been taken from your paycheck. To do so, change the three percent default deduction to zero and request a permissible withdrawal request form. The completed withdrawal request must be received by the DCP record keeper within ((~~ninety~~)) 90 days of your first payroll contribution under this section. You will receive a distribution of your contributions, plus or minus earnings. These distributions are not eligible for rollover. If you do not request a permissible withdrawal within ((~~ninety~~)) 90 days from your first payroll contribution, your contributions will be subject to the provisions for distributions described in WAC 415-501-485.

(3) Change your contribution: Adjust your contributions to a smaller or larger whole percentage or select a specific whole dollar amount. With DCP, you may change your contribution amount at any time.

Changing your contribution within the first ((~~ninety~~)) 90 days of automatic enrollment verifies your participation in the program, making you no longer eligible for permissible withdrawal.

(4) Change your investment selection: Select another DCP investment option. With DCP, you can change your investment options at any time.

(5) Reenroll: If you opt out, you may reenroll in DCP at any time (see WAC 415-501-410).

[Statutory Authority: RCW 41.50.050(5). WSR 16-24-013, § 415-501-400, filed 11/28/16, effective 1/1/17.]

AMENDATORY SECTION (Amending WSR 16-12-050, filed 5/25/16, effective 6/25/16)

WAC 415-501-410 How do I enroll in the plan? (1) As an eligible employee, you may enroll in the plan by executing a participation agreement according to methods established by the department.

(2) By executing the participation agreement, you authorize your employer to reduce your gross compensation each month by a specific amount. This amount will be contributed to your deferred compensation account. Your employer will reduce your compensation by the specified amount until you change the amount (WAC 415-501-450).

(3) Deferrals from your compensation will start during the calendar month after the month your participation agreement is approved by the department.

(4) Reenrollment. If you transfer from a state agency to another state agency without a separation of employment, your deferred compensation program (DCP) enrollment will be automatically transferred to the new state agency. Your contributions will automatically continue. For nonstate participants, if you separate from employment with a DCP employer (break in service) and return to employment with a DCP employer, you must reenroll in the program if you want to resume contributions to DCP. Depending on the employer you return to, you may be subject to the automatic enrollment under WAC 415-501-400.

[Statutory Authority: RCW 41.50.050(5). WSR 16-12-050, § 415-501-410, filed 5/25/16, effective 6/25/16; WSR 14-10-045, § 415-501-410, filed 4/30/14, effective 6/1/14. Statutory Authority: RCW 41.50.050(5), 41.50.780(10), and 41.50.770. WSR 04-22-053, § 415-501-410, filed 10/29/04, effective 11/29/04. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. WSR 00-11-104, amended and recodified as § 415-501-410, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050 and 41.50.780(11). WSR 96-16-020, § 415-512-010, filed 7/29/96, effective 7/29/96.]

AMENDATORY SECTION (Amending WSR 20-24-108, filed 12/1/20, effective 1/1/21)

WAC 415-501-415 May I move funds into the plan from an eligible retirement plan? (1) **Rollover.** If you established your deferred compensation account through your own employment with a participating employer, you may roll pretax contributions into the plan from an individual retirement account (IRA) or from another eligible retirement plan. Your DCP account also accepts rollovers-in from designated Roth accounts within eligible retirement plans, but not from Roth IRAs. If your account was established as a beneficiary following the original account owner's death, or as a result of a domestic relations order as described in WAC 415-501-495, you are not eligible to roll additional funds into the account.

(a) The plan will keep a separate accounting of all funds rolled into the plan.

(b) Distributions of money rolled into the plan may be subject to an additional ((~~ten~~)) 10 percent tax on early distributions.

(2) **Plan-to-plan transfer.** You may transfer money into the plan from another eligible governmental Section 457(b) plan maintained by a political subdivision, subject to the following conditions:

(a) The political subdivision also participates in DCP;

(b) The transferor plan allows direct plan-to-plan transfers; and

(c) You are employed by the political subdivision at the time of the transfer.

(3) **Rollover/transfer application.** You must complete the appropriate form to transfer or roll money into your deferred compensation account. Forms are available through the department or on its website.

[Statutory Authority: RCW 41.50.050. WSR 20-24-108, § 415-501-415, filed 12/1/20, effective 1/1/21. Statutory Authority: RCW 41.50.050(5), 41.50.780(10), and 41.50.770. WSR 04-22-053, § 415-501-415, filed 10/29/04, effective 11/29/04. Statutory Authority: RCW 41.50.050(5), 41.50.030(2), 41.50.088(2), 41.50.770, and 41.50.780, 26 U.S.C. (Internal Revenue Code) and related tax regulations. WSR 02-01-121, § 415-501-415, filed 12/19/01, effective 1/1/02. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. WSR 00-11-104, amended and recodified as § 415-501-415, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050. WSR 98-20-047, § 415-512-015, filed 9/30/98, effective 10/31/98. Statutory Authority: RCW 41.50.050 and 41.50.780(11). WSR 96-16-020, § 415-512-015, filed 7/29/96, effective 7/29/96.]

AMENDATORY SECTION (Amending WSR 04-22-053, filed 10/29/04, effective 11/29/04)

WAC 415-501-416 May I move funds from the plan into another eligible retirement plan? (1) **Rollover.** Subject to the rules of the receiving plan, you may roll pretax contributions into an individual retirement account (IRA) or another eligible retirement plan after separation from service. You also have the option of rolling out dollars from your Roth 457(b) account to a Roth IRA or another employer plan with designated Roth accounts (such as a 457, 401(k), or 403(b) that accepts Roth rollovers).

(2) **Plan-to-plan transfer.** You may transfer money:

(a) Through a plan-to-plan transfer into another eligible governmental Section 457(b) plan after you terminate employment, if the receiving plan allows the transfer and you are employed by the sponsor of the receiving plan.

(b) Through a plan-to-plan transfer into another eligible governmental Section 457(b) plan maintained by a political subdivision if the receiving plan allows the transfer and you are employed by the political subdivision both before and after the transfer.

(c) Through a plan-to-plan transfer to purchase service credit in a governmental Section 401(a) plan.

Transferred funds are governed by the rules of the receiving plan.

(3) Subject to the rules of the receiving plan, if your spouse becomes eligible to receive a distribution as beneficiary, your spouse may roll an eligible rollover distribution from his/her deferred compensation account into an eligible retirement plan in which he or she is a member.

(4) **Rollover/transfer application.** You or your spouse must complete the appropriate form to transfer or roll money over from your deferred compensation account. Forms are available through the department or on its website.

[Statutory Authority: RCW 41.50.050(5), 41.50.780(10), and 41.50.770. WSR 04-22-053, § 415-501-416, filed 10/29/04, effective 11/29/04. Statutory Authority: RCW 41.50.050(5), 41.50.030(2), 41.50.088(2), 41.50.770, and 41.50.780, 26 U.S.C. (Internal Revenue Code) and related tax regulations. WSR 02-01-121, § 415-501-416, filed 12/19/01, effective 1/1/02.]

<u>NEW SECTION</u>

WAC 415-501-418 May I transfer pretax and Roth balances within the plan? An in-plan conversion allows you to convert your pretax balance to your Roth account within the plan. This conversion results in the amount being reported as income in the year of conversion which may result in a tax liability for you. There are no taxes withheld by the recordkeeper at the time of the in-plan conversion. Once it is completed, the in-plan conversion cannot be reversed. There is no limit to the number of times an in-plan conversion can be done.

[]

<u>AMENDATORY SECTION</u> (Amending WSR 16-24-013, filed 11/28/16, effective 1/1/17)

WAC 415-501-420 What are the deferral limits? (1) The minimum deferral <u>for DCP</u> is<u>:</u>

<u>(a) T</u>hirty dollars per month ((~~or one percent~~))<u>; or</u>

<u>(b) A whole percentage</u> of monthly compensation <u>for each deferral type (Roth and pretax). This means if you were contributing to both options, you would be contributing at least one percent to Roth and one percent to pretax, or at least $30 as a combined minimum for both</u>.

(2) Except as provided in WAC 415-501-430 (catch-up provisions) and WAC 415-501-435 (uniformed service make-up contributions), the maximum annual deferral limit is the smaller of:

(a) One hundred percent of your ((~~includible~~)) <u>includable</u> compensation as defined in IRC Section 457 (e)(5), and Treasury Regulation 1.457.2(g), and determined without regard to community property laws; or

(b) The annual deferral limit established each year by the Internal Revenue Service. The annual deferral limit is published on the department's deferred compensation program website.

[Statutory Authority: RCW 41.50.050(5). WSR 16-24-013, § 415-501-420, filed 11/28/16, effective 1/1/17; WSR 14-10-045, § 415-501-420, filed 4/30/14, effective 6/1/14. Statutory Authority: RCW 41.50.050(5), 41.50.780(10), and 41.50.770. WSR 04-22-053, § 415-501-420, filed 10/29/04, effective 11/29/04. Statutory Authority: RCW 41.50.050(5), 41.50.030(2), 41.50.088(2), 41.50.770, and 41.50.780, 26 U.S.C. (Internal Revenue Code) and related tax regulations. WSR 02-01-121, § 415-501-420, filed 12/19/01, effective 1/1/02. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. WSR 00-11-104, amended and recodified as § 415-501-420, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050. WSR 98-20-047, § 415-512-020, filed 9/30/98, effective 10/31/98. Statutory Authority: RCW 41.50.050 and 41.50.780(11). WSR 96-16-020, § 415-512-020, filed 7/29/96, effective 7/29/96.]

<u>AMENDATORY SECTION</u> (Amending WSR 14-10-045, filed 4/30/14, effective 6/1/14)

WAC 415-501-430 Are there exceptions to the annual deferral limits? As allowed by the Internal Revenue Service, you may defer more than the annual deferral limit if you qualify to use one of the "catch up" provisions described in this section. You may not use both catch-up provisions during the same taxable year. <u>The same annual limits apply for both Roth and pretax deferrals. These limits are combined totals even if you contribute to both.</u>

(1) **Age ((~~fifty~~)) <u>50</u> and over**: You may defer a higher amount ((~~during~~)) <u>in</u> any year ((~~in which~~)) <u>that</u> you are age ((~~fifty~~)) <u>50</u> or older. The maximum you may defer each year is the sum of the annual deferral amount for the current taxable year plus the ((~~over fifty~~)) <u>age 50 and over</u> catch up amount established by the IRS under 26 U.S.C. <u>Section</u> 414<u>(v). Beginning January 2024, the catch-up amounts must be contributed to a Roth account if you made more than $145,000 in wages from your DCP employer in the prior calendar year. If you made $145,000 or less in wages from your DCP employer in the prior calendar year, then you have the option to contribute the catch-up amounts as Roth deferrals. Beginning January 2025, the $145,000 amount will be adjusted annually for inflation</u>.

(2) **Three years before normal retirement age**: You may defer a higher amount during a period of three consecutive years immediately preceding the taxable year in which you reach normal retirement age as defined in WAC 415-501-110 (10). The maximum you may defer during each of the three years is the lesser of:

(a) Twice the annual deferral limit; or

(b) The sum of the annual deferral limit for the applicable years, plus the portion of the annual deferral limit for any prior taxable year that you have not previously used.

(i) For years prior to 2002, amounts you deferred under certain other plans must be considered in determining the unused amount, consistent with Treasury Regulation 1.457-4 (c)(3)(iv).

(ii) A prior taxable year may be taken into account only if:

(A) It begins after December 31, 1978;

(B) You were eligible, during any portion of the taxable year, to participate in the plan; and

(C) Compensation deferred under the plan during that year, if any, was subject to a deferral limit under WAC 415-501-420.

Three-year catch-up example one: At age 64, Pat, a PERS 2 member, declares their normal retirement age of 66 and begins deferring the higher annual limit. Pat's intention is to retire at age 65 so that they can use the higher catch-up amounts in their final year of employment.

After a year, at age 65, Pat decides that they would like to work another year until age 66. Since Pat already declared age 66, the higher limit amount cannot be used beyond the year they turn 65. They cannot change their declared normal retirement age to 67 and continue with the higher deferral amounts for a third year.

Though Pat cannot change the normal retirement age once declared, there is no issue with working beyond the normal retirement age. They will only be able to defer the standard limit amount for their age, not the special three-year catch-up amounts in the year of their declared normal retirement age or beyond.

Three-year catch-up example two: At age 60, Alex has 30 years of service and declares their normal retirement age of 63 and begins to defer the higher annual limit. At age 62, they decide to retire and at the time of retirement defer their vacation leave cash out. This is acceptable as long as their deferrals for the year are not in excess of the catch-up limit. The declared age of 63 allows for catch-up deferrals in the calendar years that Alex was 60, 61, and 62; retiring prior to age 63 does not affect the years the higher deferral amounts are allowed.

[Statutory Authority: RCW 41.50.050(5). WSR 14-10-045, § 415-501-430, filed 4/30/14, effective 6/1/14. Statutory Authority: RCW 41.50.050(5), 41.50.780(10), and 41.50.770. WSR 04-22-053, § 415-501-430, filed 10/29/04, effective 11/29/04. Statutory Authority: RCW 41.50.050(5), 41.50.030(2), 41.50.088(2), 41.50.770, and 41.50.780, 26 U.S.C. (Internal Revenue Code) and related tax regulations. WSR 02-01-121, § 415-501-430, filed 12/19/01, effective 1/1/02. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. WSR 00-11-104, amended and recodified as § 415-501-430, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050. WSR 98-20-047, § 415-512-030, filed 9/30/98, effective 10/31/98. Statutory Authority: RCW 41.50.050 and 41.50.780(11). WSR 96-16-020, § 415-512-030, filed 7/29/96, effective 7/29/96.]

AMENDATORY SECTION (Amending WSR 14-10-045, filed 4/30/14, effective 6/1/14)

WAC 415-501-435 May I make deferrals that were missed during periods of uniformed service? (1) **Does the plan have a military make-up provision?** Participants meeting certain eligibility requirements are allowed to make up contributions that were missed during periods of absence from employment due to uniformed service, based on federal laws and regulations of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA, 38 U.S.C. Sections 4301 through 4335).

(2) **What constitutes uniformed service?** For the purposes of this rule, uniformed service includes: The Army, Navy, Air Force, Marines, Coast Guard, the commissioned corps of the Public Health Service, the reserve components of the foregoing services, the National Guard, the National Disaster Medical System, and any other category of persons designated as such by the President in a time of war or emergency. Service includes active duty, active duty for training, initial active duty for training, inactive duty training, examination to determine fitness for duty, funeral honors duty, and full-time National Guard duty. Service may be voluntary or involuntary.

(3) **What is the time limit for making up missed deferrals?** Make-up deferrals must be made within a period not exceeding three times the period of uniformed service, but in no case more than five years. This is referred to as the statutory period. The period begins the day you return to work. Missed deferrals can only be made while you are employed by your original employer. If you leave that employer but return to that employer within the statutory period, you may continue to make up deferrals until the end of the statutory period.

(4) **What is the limit on military make-up contributions?** You may contribute up to the maximum contributions for each calendar year that included absence from employment for uniformed service. In addition, you may contribute up to the maximum for the current calendar year.

EXAMPLE:

John is employed from January to June 2008, and defers $5,000 into his DCP account during that time. John is on leave for uniformed service from July 2008 through December 2009, one and one-half years. He returns to employment with this original employer in January 2010.

The deferral limits for this period are as follows: **2008** - $15,500; **2009** - $16,500; **2010** - $16,500; **2011** - $16,500; **2012** - $17,000; **2013** - $17,500; and **2014** - $17,500. John's statutory period for make-up contributions is four and one-half years (through June 2014).

Upon his return to employment, during 2010: For 2010, John may defer $16,500 out of his regular salary (subject to limitations for includable compensation). During 2010, he may also defer:

• Up to $10,500 allocable to 2008 ($15,500 less $5,000 previously deferred); and
• Up to $16,500 allocable to 2009.

He decides to contribute $16,500 for 2010, and $5,000 for 2008.

During 2011. For 2011, John may defer $16,500 out of his regular salary. During 2011, he may also defer:

• Up to $5,500 for 2008 ($15,500 less $10,000 total previously deferred).
• Up to $16,500 for 2009.

(5) **How are make-up deferrals made?** Make-up deferrals are made through payroll deductions after you return to employment. Make-up contributions may ((~~not~~)) be paid using ((~~after-tax payments~~)) <u>pretax or Roth dollars</u>.

(6) **What conditions must be met to qualify for this provision?** You must not have been released from the uniformed service under dishonorable or other punitive conditions, as set forth in 38 U.S.C. Section 4304. In addition, you must return to employment with your original employer within the time frame specified in USERRA (38 U.S.C. Section 4312) based on your length of service.

[Statutory Authority: RCW 41.50.050(5). WSR 14-10-045, § 415-501-435, filed 4/30/14, effective 6/1/14.]

AMENDATORY SECTION (Amending WSR 16-24-013, filed 11/28/16, effective 1/1/17)

WAC 415-501-475 How will my deferred compensation be invested? (1) When you enroll, you may select one or more of the investment options offered. Initially, you will need to select the same investment option(s) for both Roth and pretax if you contribute to both at enrollment. After you have enrolled, you may select different investments for your Roth and pretax contributions through your online account.

(2) The department will invest ((~~one hundred~~)) 100 percent of your future contributions in the Retirement Strategy Fund that assumes you will retire at age ((~~sixty-five~~)) 65 if any of the following occurs during the enrollment process.

(a) An investment option is not selected.

(b) The total does not equal ((~~one hundred~~)) 100 percent when multiple investment options are selected.

(c) You are automatically enrolled into DCP.

(3) In general, you may change the investment of your accumulated deferrals, the investment of your future deferrals, or both, through the methods established by the department. However, if necessary to protect the performance results of the DCP program, the department has the right to:

(a) Limit the number of times you change investment options;

(b) Limit the frequency of the changes;

(c) Limit the manner of making changes; or

(d) Impose other restrictions.

In addition, changes must be consistent with any restrictions on trading imposed by the investment options involved.

(4) Beneficiaries over age ((~~eighteen~~)) 18 and former spouses may change the investment options through the methods established by the department once a separate account has been established for them. The guardian of a minor beneficiary may change the investment options on the minor's account if authorized by the order of guardianship.

[Statutory Authority: RCW 41.50.050(5). WSR 16-24-013, § 415-501-475, filed 11/28/16, effective 1/1/17; WSR 16-12-050, § 415-501-475, filed 5/25/16, effective 6/25/16; WSR 14-10-045, § 415-501-475, filed 4/30/14, effective 6/1/14. Statutory Authority: RCW 41.50.050(5), 41.50.780(10). WSR 05-22-109, § 415-501-475, filed 11/2/05, effective 12/3/05. Statutory Authority: RCW 41.50.050(5), 41.50.780(10), and 41.50.770. WSR 04-22-053, § 415-501-475, filed 10/29/04, effective 11/29/04. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. WSR 00-11-104, amended and recodified as § 415-501-475, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050. WSR 98-20-047, § 415-512-075, filed 9/30/98, effective 10/31/98. Statutory Authority: RCW 41.50.050 and 41.50.780(11). WSR 96-16-020, § 415-512-075, filed 7/29/96, effective 7/29/96.]

AMENDATORY SECTION (Amending WSR 16-24-013, filed 11/28/16, effective 1/1/17)

WAC 415-501-480 How do I designate my beneficiaries? You have the right to designate a beneficiary or beneficiaries to receive your accumulated deferrals in the event of your death. You may change your beneficiary designation at any time online, or by filing a beneficiary change form with the department. The change will take effect upon the department's receipt of the beneficiary change form. Your designated beneficiary or beneficiaries must be the same for your entire DCP account (both pretax and Roth balances).

You may name:

(1) An organization or person, including unborn or later adopted children. However, unborn or later adopted children must be specifically designated as beneficiaries on the form. You must indicate the date of birth for any living person you name as a beneficiary.

(2) Your estate.

(3) An existing trust or a trust that is to be established under your last will. For an existing trust, you must provide a copy of the trust document and the name, address and telephone number of the current trustee.

You may name contingent beneficiaries in addition to primary beneficiaries.

[Statutory Authority: RCW 41.50.050(5). WSR 16-24-013, § 415-501-480, filed 11/28/16, effective 1/1/17. Statutory Authority: RCW 41.50.050(5), 41.50.780(10), and 41.50.770. WSR 04-22-053, § 415-501-480, filed 10/29/04, effective 11/29/04. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. WSR 00-11-104, amended and recodified as § 415-501-480, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050. WSR 98-20-047, § 415-512-080, filed 9/30/98, effective 10/31/98. Statutory Authority: RCW 41.50.050 and 41.50.780(11). WSR 96-16-020, § 415-512-080, filed 7/29/96, effective 7/29/96.]

AMENDATORY SECTION (Amending WSR 22-17-049, filed 8/11/22, effective 9/11/22)

WAC 415-501-485 How do I obtain a distribution? Distribution from the plan is governed by Internal Revenue Code Sections 401 (a)(9) and 457(d); the treasury regulations interpreting these sections; and these rules to the extent they are not inconsistent with the Internal Revenue Code. The options for distribution are available from the department's recordkeeper.

(1) **Date of distribution.** You may choose the date on which to begin distribution from your deferred compensation account, subject to the requirements in (a) through (c) of this subsection; however, in order for earnings on Roth contributions to be tax-free at time of distribution, the requirements for a qualified distribution must be satisfied.

(a) **Earliest date.** You may not begin distribution prior to your termination of employment, with the following exceptions:

(i) A distribution for an unforeseeable emergency under WAC 415-501-510;

(ii) A voluntary in-service distribution under subsection (4) of this section;

(iii) A distribution from funds that were rolled into the deferred compensation account (may be subject to tax penalties); or

(iv) An in-service distribution in any calendar year in which you will reach age 70.5 or more.

(b) **Latest date.** You must begin distribution on or before April 1st of the calendar year following the latter of:

(i) The calendar year in which you reach age 72; or

(ii) The calendar year in which you retire.

(c) If you do not choose a distribution date, the department will begin distribution according to the minimum distribution requirements in IRC Section 401 (a)(9).

(2) **Method of distribution.** Payment options include a lump sum payment, partial lump sum payment, or installment payments.

Beginning at age 72 or when you terminate employment, whichever comes later, payment must be in an amount to satisfy minimum distribution requirements in IRC Section 401 (a)(9).

(3) **Voluntary in-service distribution at any age.** You may choose to withdraw the total amount payable to you under the plan while you are employed if the following three requirements are met:

(a) Your entire account value does not exceed $5,000;

(b) You have not previously received an in-service distribution; and

(c) You have made no deferrals during the two-year period ending on the date of the in-service distribution.

(4) **Unforeseeable emergencies.** See WAC 415-501-510.

(5) **Rehire.** If you submit an immediate lump sum or partial distribution request and the request is received in good order prior to being rehired, your distribution will be processed even if you become rehired with a DCP employer. If you are receiving installment payments or have requested to receive installment payments and then return to employment with a DCP employer, your payments from your DCP account will cease. You may request a distribution when you are again eligible consistent with these rules.

[Statutory Authority: RCW 41.50.050. WSR 22-17-049, § 415-501-485, filed 8/11/22, effective 9/11/22. Statutory Authority: RCW 41.50.030 and 41.50.050. WSR 21-07-044, § 415-501-485, filed 3/11/21, effective 4/11/21. Statutory Authority: RCW 41.50.050. WSR 20-17-006, § 415-501-485, filed 8/5/20, effective 9/5/20. Statutory Authority: RCW 41.50.050(5). WSR 14-10-045, § 415-501-485, filed 4/30/14, effective 6/1/14. Statutory Authority: RCW 41.50.780(10). WSR 06-04-058, § 415-501-485, filed 1/27/06, effective 2/27/06. Statutory Authority: RCW 41.50.050(5), 41.50.780(10), and 41.50.770. WSR 04-22-053, § 415-501-485, filed 10/29/04, effective 11/29/04. Statutory Authority: RCW 41.50.050(5), 41.50.030(2), 41.50.088(2), 41.50.770, and 41.50.780, 26 U.S.C. (Internal Revenue Code) and related tax regulations. WSR 02-01-121, § 415-501-485, filed 12/19/01, effective 1/1/02. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. WSR 00-11-104, amended and recodified as § 415-501-485, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050 and 41.50.780(11). WSR 96-16-020, § 415-512-085, filed 7/29/96, effective 7/29/96.]

AMENDATORY SECTION (Amending WSR 22-17-049, filed 8/11/22, effective 9/11/22)

WAC 415-501-510 May I withdraw some or all of my accumulated deferrals in the event of an unforeseeable emergency? (1) Notwithstanding any other provisions in this chapter, you may request all or a portion of your accumulated deferrals if:

(a) You are terminally ill. The department's recordkeeper will arrange for payment to you within 10 business days following application. To be eligible, the department's recordkeeper must receive documentation verifying your terminal illness along with your application.

(b) You have a qualifying unforeseeable emergency. The department's recordkeeper will distribute payment to you typically within 60 business days following application. To be eligible, the department's recordkeeper must receive documentation verifying your unforeseeable emergency, along with your application. The amount paid will be limited strictly to that amount reasonably necessary to satisfy the emergency need.

(c) If you have Roth deferrals, you may be taxed on earnings if the Roth withdrawal does not meet the definition of a qualified distribution (see WAC 415-501-110(16)).

(2) For purposes of this plan, an unforeseeable emergency is severe financial hardship resulting from:

(a) A personal illness or accident or the illness or injury of a spouse or dependent who meets the definition in Section 152(a) of the Internal Revenue Code;

(b) Loss of your property due to casualty, including the need to rebuild a home following damage not otherwise covered by homeowner's insurance, e.g., as a result of natural disaster; or

(c) Other similar extraordinary and unforeseeable circumstances arising as a result of events beyond your control, such as:

(i) The imminent foreclosure of or eviction from your primary residence due to circumstances that were beyond your control;

(ii) The need to pay medical expenses, including nonrefundable deductibles as well as the cost of prescription drug medication; or

(iii) The need to pay funeral expenses of a participant's or beneficiary's spouse or dependent (as defined in Section 152(a) of the Internal Revenue Code without regard to Sections 152 (b)(1), (2), and (d)(1)).

(3) The circumstances that constitute an unforeseeable emergency depend upon the facts of each case, but, in no case will the ((~~department~~)) department's recordkeeper approve a distribution request if the financial hardship is or may be relieved:

(a) Through reimbursement or compensation by insurance or otherwise; or

(b) By liquidation of your assets, to the extent liquidation of such assets would not itself cause severe financial hardship; or

(c) By cessation of deferrals under the plan.

(4) Examples: The following types of occurrences are not considered unforeseeable emergencies: Sending your child to college or purchasing a home.

(5) If the ((~~department~~)) department's recordkeeper denies your request for distribution, you may request a review of that decision according to the provisions of WAC 415-08-015.

[Statutory Authority: RCW 41.50.050. WSR 22-17-049, § 415-501-510, filed 8/11/22, effective 9/11/22; WSR 20-17-006, § 415-501-510, filed

8/5/20, effective 9/5/20. Statutory Authority: RCW 41.50.050(5). WSR 14-10-045, § 415-501-510, filed 4/30/14, effective 6/1/14. Statutory Authority: RCW 41.50.050(5), 41.50.780(10), and 41.50.770. WSR 04-22-053, § 415-501-510, filed 10/29/04, effective 11/29/04. Statutory Authority: RCW 41.50.050(5), 41.50.770 and 41.50.780. WSR 02-02-059, § 415-501-510, filed 12/28/01, effective 1/1/02. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. WSR 00-11-104, amended and recodified as § 415-501-510, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050. WSR 98-20-047, § 415-524-010, filed 9/30/98, effective 10/31/98. Statutory Authority: RCW 41.50.050 and 41.50.780(11). WSR 96-16-020, § 415-524-010, filed 7/29/96, effective 7/29/96.]

AMENDATORY SECTION (Amending WSR 04-22-053, filed 10/29/04, effective 11/29/04)

WAC 415-501-600 Is my employer allowed to contribute to my deferred compensation account? The employer may, pursuant to WAC 415-501-450, add additional deferred compensation for services you provided to the employer during any calendar month, provided:

(1) You elected to have such additional compensation deferred pursuant to this plan, prior to the calendar month in which the compensation is earned; ((~~and~~))

(2) Such additional deferred compensation, when added to all other deferred compensation under the plan, does not exceed the maximum deferral permitted by this chapter; and

(3) Your employer's contributions will be pretax.

[Statutory Authority: RCW 41.50.050(5), 41.50.780(10), and 41.50.770. WSR 04-22-053, § 415-501-600, filed 10/29/04, effective 11/29/04. Statutory Authority: RCW 41.50.050(5), 41.50.030(2), 41.50.088(2), 41.50.770, and 41.50.780, 26 U.S.C. (Internal Revenue Code) and related tax regulations. WSR 02-01-121, § 415-501-600, filed 12/19/01, effective 1/1/02. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. WSR 00-11-104, amended and recodified as § 415-501-600, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050 and 41.50.780(11). WSR 96-16-020, § 415-556-010, filed 7/29/96, effective 7/29/96.]