

**WSR 22-05-063  
PROPOSED RULES  
DEPARTMENT OF  
RETIREMENT SYSTEMS**

[Filed February 11, 2022, 9:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-11-097.

Title of Rule and Other Identifying Information: WAC 415-111-110 Member and employer responsibility.

Hearing Location(s): On March 22, 2022, at 10:00 a.m. The hearing will be conducted by Zoom. See <https://www.drs.wa.gov/sitemap/rules/#proposed-rule-hearings> for details. Join Zoom meeting <https://us02web.zoom.us/j/89934962268?pwd=dHUrL0dmZTlSOTBBVGN2ZEFZYjgyZz09>, phone 253-215-8782, Meeting ID 899 3496 2268, Passcode 338767.

Date of Intended Adoption: March 23, 2022.

Submit Written Comments to: Rubi Reaume, Department of Retirement Systems (DRS), P.O. Box 48380, Olympia, WA 98504-8380, email [drs.rules@drs.wa.gov](mailto:drs.rules@drs.wa.gov), by March 21, 2022.

Assistance for Persons with Disabilities: Contact Rubi Reaume, phone 360-664-7311, TTY 711, email [drs.rules@drs.wa.gov](mailto:drs.rules@drs.wa.gov), by March 14, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To clarify how DRS will determine if a Plan 3 member has experienced a loss of investment earnings resulting from their employer's delay in the submittal of contributions, and how such a loss will be calculated.

Reasons Supporting Proposal: To provide employers and members expectations on what to expect when contributions are delayed.

Statutory Authority for Adoption: RCW 41.50.050.

Statute Being Implemented: RCW 41.34.040.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DRS, governmental.

Name of Agency Personnel Responsible for Implementation: Mike Ricchio, DRS, P.O. Box 48380, Olympia, WA 98504-8380, 360-664-7227.

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 is not voluntarily made applicable by 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: DRS' rules only impact members and beneficiaries of the state retirement systems and participating public employers, and do not affect small businesses.

February 11, 2022  
Rubi Reaume  
Rules Coordinator

**OTS-3520.1**

AMENDATORY SECTION (Amending WSR 02-03-120, filed 1/23/02, effective 3/1/02)

**WAC 415-111-110 Member and employer responsibility.** (1) **What am I responsible for as a Plan 3 member?** As a Plan 3 member your responsibilities include, but are not limited to:

- (a) Adhering to time frames;
- (b) Making investment decisions for your defined contribution account;
- (c) Reviewing account information provided on statements, such as quarterly statements, and notifying the correct organization of any errors;
- (d) Filling out the correct form for a requested action;
- (e) Correctly completing the appropriate form for a requested action and submitting the form to the correct organization as directed on each form; and
- (f) Monitoring to ensure contributions do not exceed Internal Revenue Code limits (see WAC 415-111-111).

(2) **What can happen if I do not fulfill my Plan 3 responsibilities?** If you do not fulfill your responsibilities, the consequences may include, but are not limited to:

- (a) You may not qualify for certain benefits, such as the transfer payment;
- (b) You may have a delay in the correction of errors on your account;
- (c) You may have a delay in the processing of your request for a defined contribution withdrawal; or
- (d) You may have a delay in the investment of your account as directed.

(3) **What responsibilities do employers have?** Employers' responsibilities include, but are not limited to:

- (a) Adhering to Plan 3 administrative requirements, including the respective roles of employers and employees, communicated to employers by the department in written materials and formal training;
- (b) Maintaining a supply of Plan 3 forms;
- (c) Reporting an employee's Plan 3 transfer decision as soon as possible after receipt of the appropriate form from the employee;
- (d) Submitting to DRS the form on which the member made the Plan 3 transfer decision as soon as possible after receipt of the appropriate form;
- (e) Reporting an employee's contribution rate decision as soon as possible after receipt of the appropriate form from the employee;
- (f) Reporting an employee's investment program as soon as possible after receipt of the appropriate form from the employee;
- (g) Monitoring to ensure that a member's contributions do not exceed Internal Revenue Code limits (see WAC 415-111-111); and
- (h) Submitting contributions to the department as soon as reasonable and at least in accordance with RCW 41.50.120, "reasonableness" will be based on the facts and circumstances.

#### Example

Assume the following:

- An employer has one payroll system;
- Payroll checks are issued semimonthly;
- At the same time checks are cut, the payroll department produces a data tape of employee contributions that has to be checked for accuracy, and checking the tape takes four days;

■ Once the accuracy of the data tape is confirmed, a check for the aggregate amount of employee contributions is sent by the employer to DRS; and

■ The entire process, from the cutting of payroll checks to the cutting of the aggregate employee contribution check takes eight days. In this situation, eight days is a "reasonable" period of time.

**(4) What can happen if my employer does not fulfill its responsibilities?**

(a) If your employer does not fulfill its responsibilities, the consequences may include, but are not limited to:

(i) Your employer may have to make your member account whole;

(ii) Your employer may be subject to penalties assessed by the department; or

(iii) Your employer may be subject to penalties assessed by the Internal Revenue Service.

(b) If the department determines that an employer has erred in its administrative role, such that an employee incurs an investment loss, the department will determine the amount of loss and bill the employer.

**(5) How will the department determine the amount of loss I have incurred?**

(a) If your employer has not taken contributions from your pay, the department will determine that you have not incurred a loss because you have had access to the funds.

(b) If your employer has deducted contributions from your pay and not submitted them timely to the department, the loss will be calculated as:

(i) The difference between the number of shares your contributions would have purchased if they had been submitted in alignment with your employer's normal payroll cycle and the number of shares your contributions purchase at the time they are added to your account.

(ii) If the delay results in additional shares for you, those shares will stay in your account.

(iii) In computing the loss, the department will use your current investment allocation.

[Statutory Authority: RCW 41.50.050(5), 41.50.112, 41.50.145, chapter 41.34 RCW. WSR 02-03-120, § 415-111-110, filed 1/23/02, effective 3/1/02. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. WSR 01-01-059, § 415-111-110, filed 12/12/00, effective 1/12/01.]