

WSR 22-10-060  
PROPOSED RULES  
DEPARTMENT OF  
RETIREMENT SYSTEMS

[Filed May 2, 2022, 11:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-06-091.

Title of Rule and Other Identifying Information: Amending WAC 415-02-060 What happens if I do not cash a warrant or check?, 415-02-150 How is regular interest awarded and credited to Plan 1 and Plan 2 accounts?, and 415-02-510 How can a property division dissolution order give my ex-spouse an interest in my Plan 1 or 2 retirement account?

Hearing Location(s): On June 7, 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. Zoom link <https://us02web.zoom.us/j/88626236508>, Meeting ID 886 2623 6508, Dial-in 253-215-8782.

Date of Intended Adoption: June 8, 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 May 30, 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 May 30, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DRS is establishing, by rule, a new process for periodically assessing the rate of regular interest. Additionally, DRS is establishing a new daily interest methodology for all regular interest credited to member account balances beginning July 1, 2022.

Reasons Supporting Proposal: Aligns DRS' rules with discretionary changes being made to the methodology for determining the rate of regular interest and the methodology by which regular interest will be calculated and applied to member accounts. Addresses problem in DRS' prior rule related to daily interest accrual.

Statutory Authority for Adoption: RCW 41.50.050.

Statute Being Implemented: Chapter 41.50 RCW.

Rule is necessary because of federal court decision, *Fowler v. Guerin*, 899 F.3d 1112 (9th Cir. 2018) (plaintiffs stated a takings claim for withheld daily interest).

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: DRS has consulted with tax counsel to ensure compliance with Internal Revenue Service regulations.

Name of Proponent: DRS, governmental.

Name of Agency Personnel Responsible for Implementation: Candice Myrum, DRS, P.O. Box 48380, Olympia, WA 98504-8380, 360-664-7124.

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.

May 2, 2022  
Rubi Reaume  
Rules Coordinator

## OTS-3735.2

AMENDATORY SECTION (Amending WSR 01-08-043, filed 3/30/01, effective 4/30/01)

### **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 (~~((and the department's third-party recordkeeper will transfer the funds into a noninterest bearing account))~~).

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

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

**OTS-3736.2**

AMENDATORY SECTION (Amending WSR 18-07-063, filed 3/15/18, effective 4/15/18)

**WAC 415-02-150 How is regular interest ((awarded and)) credited to Plan 1 and Plan 2 individual accounts?** ((-1) You are required to make contributions to your retirement plan each pay period.

~~(2) Your contributions are tracked in an individual account in your name.~~

~~(3) If the amount in your individual account on the last day of a quarter is more than zero dollars, the department will calculate an amount of regular interest to be credited to your account on the last day of the quarter using the following formula:~~

$$1/4 \times R \times B$$

~~Regular interest will be credited consistent with this subsection, whether or not you are in active service.~~

~~(a) In the formula in subsection (3) of this section, "R" represents the rate of regular interest. The director has the statutory authority to set the rate of regular interest. Consistent with that authority, the rate of regular interest is set at 5.5 percent per year, until changed by the director consistent with his or her discretionary authority.~~

~~(b) In the formula in subsection (3) of this section, "B" represents the balance in your individual account at the close of business on the last day of the prior quarter. "B" may be equal to zero dollars.~~

~~(4) The calculated amount of regular interest will be credited to your individual account on the last day of the quarter. The total amount in your individual account (i.e., all your member contributions plus all the regular interest that has been credited to the account) are your "accumulated contributions."~~

~~(5) Your individual account does not "earn" or accrue regular interest on a day by day basis.~~

~~(6) Example: Jon had \$50,000 in his PERS Plan 2 individual account at the end of the day on September 30, 2017 (the last day of the third quarter). He has \$50,200 in his PERS Plan 2 individual account on December 31, 2017, immediately before regular interest for fourth quarter is credited. For fourth quarter, the regular interest to be credited to his account is calculated as follows:~~

$$1/4 \times 5.5\% \times \$50,000 = \$687.50$$

~~This regular interest is credited to his individual account for a total of \$50,887.50 (\$50,200.00 + \$687.50) at the end of the day on December 31, 2017.~~

~~(a) If Jon transfers from PERS Plan 2 to PERS Plan 3 on January 25, 2018, he receives no additional regular interest for the period from January 1 through January 25.~~

~~(b) If Jon separates from service on February 15, 2018, and withdraws the amount in his individual account, he receives no additional regular interest for the period from January 1 through February 15.~~

~~(7) This rule applies retroactively to November 3, 1977, to all Plan 1 and Plan 2 individual accounts in the public employees' retirement system, teachers' retirement system, law enforcement officers' and fire fighters' retirement system, school employees' retirement system, and public safety employees' retirement system, and prospectively for the Washington state patrol retirement system Plan 1 and Plan 2.)~~

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:

<u>3/11</u>	<u>\$100</u>
<u>3/27</u>	<u>\$100</u>
<u>4/10</u>	<u>\$100</u>
<u>4/26</u>	<u>\$100</u>
<u>5/12</u>	<u>\$100</u>
<u>5/27</u>	<u>\$100</u>
<u>6/11</u>	<u>\$100</u>
<u>6/25</u>	<u>\$100</u>
<u>7/11</u>	<u>\$100</u>

(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:

$$\underline{.055 * 16/365 * 100 = \$0.2411}$$

(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:

$$\underline{.055 * 4/365 * 200 = \$0.1205}$$

(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:

$$\underline{.055 * 10/365 * 200.36 = \$0.3019}$$

(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:

$$\underline{.055 * 16/365 * 300.36 = \$0.7242}$$

(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:

$$\underline{.055 * 16/365 * 400.36 = \$0.9653}$$

(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:

$$\underline{.055 * 15/365 * 500.36 = \$1.1310}$$

(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:

$$\underline{.055 * 15/365 * 600.36 = \$1.3570}$$

(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:

$$\underline{.055 * 14/365 * 700.36 = \$1.4775}$$

(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 41.50.033 and 41.50.050. WSR 18-07-063, § 415-02-150, filed 3/15/18, effective 4/15/18.]

## OTS-3737.2

AMENDATORY SECTION (Amending WSR 06-18-009, filed 8/24/06, effective 9/24/06)

**WAC 415-02-510 How can a property division dissolution order give my ex-spouse an interest<sup>1</sup> in my Plan 1 or 2 retirement account?**

(1) **Who may use this section?**

(a) 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.

(b) You **MAY** use this section if you are a **vested** member of LEOFF Plan 2, PERS Plan 1 or 2, PSERS, SERS Plan 2, TRS Plan 1 or 2, or WSPRS Plan 2. If you are splitting your retirement account with your ex-spouse, use WAC 415-02-520.

(2) **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(15).)

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 regular interest at the rate paid by the department of retirement systems on member contributions. Such regular interest to accrue from the date of this order's entry with the court of record.

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

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

(b) 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.

(c) 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.

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

(a) 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.

(b) 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.

(c) If you die before your ex-spouse, payments to your ex-spouse stop unless the department accepted the order at least (~~(thirty)~~) 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.

(d) 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:

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

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

**(5) 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.

(6) **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.

~~(7) ((How much is the fee the department charges for making payments directly to my ex-spouse? See RCW 41.50.680 and WAC 415-02-500(11) for information.~~

~~(8))~~ **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.

~~((9))~~ **(8) 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.

~~((10))~~ **(9) 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:

<sup>1</sup> 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(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.]