

WSR 23-03-036  
PROPOSED RULES  
DEPARTMENT OF  
RETIREMENT SYSTEMS

[Filed January 9, 2023, 11:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-21-120.

Title of Rule and Other Identifying Information: Retirement account correction after retirement or separation from service, creating WAC 415-02-075.

Hearing Location(s): On February 22, 2023, at 11:00 a.m., Zoom <https://us02web.zoom.us/j/87329443267>, Meeting ID 873 2944 3267, Dial In 1-253-215-8782. See <https://www.drs.wa.gov/sitemap/rules/#proposed-rule-hearings> for details.

Date of Intended Adoption: February 23, 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](mailto:drs.rules@drs.wa.gov), by February 22, 2023.

Assistance for Persons with Disabilities: Contact Bianca Stoner, phone 360-664-7291, TTY 711, email [drs.rules@drs.wa.gov](mailto:drs.rules@drs.wa.gov), by February 15, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Clarifies when the department can correct a member's record in cases where the member has been underpaid or overpaid.

Reasons Supporting Proposal: More clearly defines process for members.

Statutory Authority for Adoption: RCW 41.50.130.

Statute Being Implemented: RCW 41.50.130.

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

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 DRS.

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).

Scope of exemption for rule proposal:

Is fully exempt.

January 9, 2023  
Bianca Stoner  
Rules Coordinator

OTS-4203.2

NEW SECTION

**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 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. 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.

(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.

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.

(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.

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