

WSR 24-10-052
PROPOSED RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed April 25, 2024, 2:29 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-05-038.

Title of Rule and Other Identifying Information: Higher education retirement plan supplemental benefit fund.

Hearing Location(s): On June 24, 2024, at 11:00 a.m. The hearing will be conducted through Microsoft Teams, <https://www.drs.wa.gov/sitemap/rules/#proposed-rule-hearings>, Meeting ID 211 933 096 598, Passcode JPCsbd; or by phone 833-322-1218, Code 558 924 078#.

Date of Intended Adoption: June 28, 2024.

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 June 20, 2024.

Assistance for Persons with Disabilities: Contact Bianca Stoner, phone 360-664-7291, TTY 711, email drs.rules@drs.wa.gov, by June 20, 2024.

Statutory Authority for Adoption: RCW 41.50.050 and 41.50.280.

Statute Being Implemented: RCW 41.50.280.

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 DRS is not voluntarily making it applicable to 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).

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.

April 25, 2024
Bianca Stoner
Rules Coordinator

OTS-5270.1

AMENDATORY SECTION (Amending WSR 12-10-057, filed 5/1/12, effective 6/1/12)

WAC 415-700-010 The higher education retirement plan (HERP) supplemental benefit fund. RCW 28B.10.423 establishes a higher education retirement plan supplemental benefit fund, in the custody of the state

treasurer, for the purpose of funding future higher education retirement plan supplemental benefits.

(1) **Who finances the HERP supplemental benefit fund?** Higher education employers pay into the HERP supplemental benefit funds at an employer contribution rate as established in RCW 28B.10.423 on the salaries paid to employees participating in their HERP.

(2) **Who are the higher education employers?** For the purpose of this section, higher education employers, as defined by chapter 28B.10 RCW includes:

- (a) All state universities;
- (b) All regional universities;
- (c) All state colleges;
- (d) All community and technical colleges;
- (e) The state board for community and technical colleges; and
- (f) Any other higher education entities granted authority for

HERP coverage under chapter 28B.10 RCW.

(3) **How are the assets in the HERP supplemental benefit funds invested?** The Washington state investment board (WSIB) is responsible for investing HERP supplemental benefit funds assets. For investment purposes, the assets may be commingled with other trust fund accounts in the commingled trust fund (CTF).

(4) **How are assets in the HERP supplemental benefit funds used?** Assets in the HERP supplemental benefit funds are held in trust for the purpose of funding future higher education retirement plan supplemental benefits. Assets will remain in ~~((this fund until the legislature authorizes distribution(s)))~~ these funds until criteria set by the legislature are met as described in subsection (11) of this section.

(5) **What role does the department of retirement systems (department) have in administering the HERP supplemental benefit fund?** The department will:

- (a) Collect employer HERP contributions from higher education employers;
- (b) Deposit HERP contributions into the HERP supplemental benefit fund;
- (c) Provide buy/sell investment information to WSIB; and
- (d) ~~((Account for the fund's assets, including each employer's contributions and the earnings on those contributions.))~~ Provide funding for distributions as outlined in subsection (12) of this section.

(6) **What information will higher education employers be responsible for reporting to the department?** Each higher education employer will be responsible for reporting the total HERP salaries paid and the contributions owed on those salaries. HERP salaries include the salaries paid to all employees participating in the employer's higher education retirement plan, regardless of employee eligibility for the supplemental benefit portion of the plan. Additional information on monthly funding for benefit payments will be required from each employer after they meet the distribution requirements in subsection (11) of this section.

(7) **Are HERP salaries reportable as they are earned or as they are paid?** HERP salaries are reportable as they are paid.

(8) **When are HERP reports and payment of HERP contributions due to the department?** Reporting and payments of HERP salaries and contributions should coincide with the employer's payroll periods. HERP reports and contribution payments for a calendar month are due on or before the 15th day of the calendar month following payment of the HERP salaries. ~~((Reports and contribution payments are considered overdue~~

~~if not received by the close of business on the third business day after the due date.))~~

Example: A higher education employer pays \$50,000 in HERP salaries on January 10th. The same employer pays another \$50,000 in HERP salaries on January 25th. The employer must report the HERP salaries paid for both payrolls and make payment of the contributions due on the total combined \$100,000 HERP salaries to the department by February 15th.

(9) **Does the department charge interest on overdue payments of contributions for the HERP supplemental benefit funds?** Yes. The department charges interest on overdue contributions to the HERP supplemental benefit funds at the rate of one percent per month simple interest. Interest is charged for each day the payment is overdue. Assessed interest will appear on the employer's monthly accounts receivable statement from the department.

(10) **Can the department charge employers an administrative expense fee for the HERP supplemental benefit funds?** Yes. RCW 41.50.110 authorizes the department to charge employers an administrative expense fee for expenses related to the administration of the HERP supplemental benefit funds.

(11) The pension funding council, in consultation with the state actuary, shall determine when each HERP supplemental benefit fund has become sufficiently funded to allow benefit payments to be made from the fund. Disbursements from that fund may then begin as of July 1st of the following fiscal year. To begin those payments, the relevant higher education employer must provide monthly gross payment amounts the employer needs to fund those benefits to the department within the timelines directed by the department. Employers may also be required to provide periodic cash projections to allow the department to coordinate with the state investment board on cash liquidity needs.

(12) Based on the information provided by each employer under subsection (11) of this section, the department will transfer monthly, or direct the transfer, from the relevant HERP supplemental benefit fund to the fund the employer uses to pay supplemental benefits.

(13) If any higher education employer fails to provide the information necessary for the department to coordinate cash flows for their supplement fund's benefit payments, that employer will remain responsible for funding the payment of those benefits to their members.