

**WSR 24-10-055
PROPOSED RULES
DEPARTMENT OF
RETIREMENT SYSTEMS**

[Filed April 25, 2024, 4:11 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-06-054.

Title of Rule and Other Identifying Information: In-service distributions and required minimum distributions.

Hearing Location(s): On June 10, 2024, at 2:00 p.m. The hearing will be conducted through Microsoft Teams, <https://www.drs.wa.gov/sitemap/rules/#proposed-rule-hearings>, Meeting ID 233 368 226 401, Passcode Ca9o7B; or by phone 833-322-1218, Code 405 430 002#.

Date of Intended Adoption: June 12, 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 6, 2024.

Assistance for Persons with Disabilities: Contact Bianca Stoner, phone 360-664-7291, TTY 711, email drs.rules@drs.wa.gov, by June 6, 2024.

Statutory Authority for Adoption: RCW 41.50.050; the SECURE Act of 2019 (P.L. 116-94), and the SECURE Act of 2022 (P.L. 117-328).

Statute Being Implemented: The SECURE Act of 2019 (P.L. 116-94) and the SECURE Act of 2022 (P.L. 117-328).

Rule is necessary because of federal law, [no information supplied by agency].

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 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-5255.2

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

WAC 415-111-310 Defined contribution account distribution (withdrawal). (1) **What are the requirements to request a distribution (withdrawal) of funds from my defined contribution account?**

- (a) You must separate from all eligible employment;
- (b) The department must receive the notice of separation from your employer(s); and
- (c) The department's recordkeeper must receive a completed request for a defined contribution distribution from your account. See WAC 415-111-110.

(2) **Can I receive a special exception distribution?**

(a) If you are terminally ill and eligible, the department's recordkeeper will arrange for payment to you within 10 workdays. To be eligible for a special exception payment:

- (i) You must separate from all eligible employment;
- (ii) The department must receive the notice of separation from your employer(s);
- (iii) The department's recordkeeper must receive documentation verifying your terminal illness; and
- (iv) The department's recordkeeper must receive a completed request for a defined contribution distribution from your account (see WAC 415-111-110).

(b) If you have an unforeseeable emergency, the department's recordkeeper will consider your request for a special exception payment and arrange for payment to you whenever possible. To be eligible for consideration:

- (i) You must separate from all eligible employment;
- (ii) The department must receive the notice of separation from your employer(s);
- (iii) The department's recordkeeper must receive documentation verifying and explaining your unforeseeable emergency. The recordkeeper will consider only unforeseeable emergencies. An unforeseeable emergency is defined as a severe financial hardship resulting from:
 - (A) An accident or serious illness of you or an immediate family member;
 - (B) The need to pay for medical expenses for you or a dependent;
 - (C) Imminent foreclosure or eviction from your primary residence;
 - (D) The need to pay for funeral expenses of a spouse or immediate family member; or
 - (E) Loss of property due to casualty.

(iv) The department's recordkeeper must receive a completed request for a defined contribution distribution from your account (see WAC 415-111-110).

(c) Depending on which program you are invested in, self-directed or WSIB Total Allocation Portfolio (TAP), the recordkeeper will distribute your special exception payment as specified in the table below, less any applicable tax withholding.

	Terminal Illness	Unforeseeable Emergency
Self-Directed	Up to 100% of the balance in the account within 10 days after approvals are completed.	Up to 100% of the balance in the account within 10 days after approvals are completed.

	Terminal Illness	Unforeseeable Emergency
WSIB Total Allocation Portfolio (TAP)	Up to 100% of the balance in the account based on the most recent valuation within 10 days after approvals are completed.	Up to 80% of the balance in the account distributed as a lump sum payment through the normal month-end distribution process. If 100% liquidation is requested, the remaining balance in the account will be disbursed after the final valuation has been made.

(3) **Can I still receive my defined contribution distribution if I have returned to work before receiving my funds?** If all the criteria in subsection (1) of this section are met prior to DRS being notified of you being rehired, you may receive distribution from your defined contribution account.

(4) **What are my options for distributing my defined contribution funds?** You have the following options for distributions from your Plan 3 defined contribution account. Options for both the WSIB and the self-directed investment programs are combined where applicable.

(a) **Lump sum cash distribution. In either program,** you may request the entire amount of your funds in a single lump-sum payment.

(b) **Direct rollover. In either program,** you may have some or all of your funds rolled over to an eligible retirement plan or individual retirement account (IRA). If you choose a partial rollover, the remaining funds that were not rolled over will be distributed to you as a lump sum, unless you create a personal payment schedule under (d) of this subsection.

(c) **Scheduled payments. In either program,** subject to the distribution requirements of IRC Section 401 (a)(9), you may request that your funds be distributed in equal payments over a specified period of time, or that a specific dollar amount be paid on a monthly basis until the account is exhausted. You may also request equal payments over your lifetime or the lifetimes of you and your beneficiary. Scheduled payments for the WSIB program are made monthly only. Scheduled payments for the self-directed program may be made monthly, quarterly, semiannually or annually.

(d) **Personalized payment plan. In either program,** you may create a personalized payment plan using any part of one or more of the distribution options provided in (a), (b), and (c) of this subsection (see examples below).

(e) **Annuity purchase.** You may purchase an annuity that pays a benefit for your lifetime or the lifetimes of you and your joint annuitant. See WAC 415-111-320 for information about purchasing an annuity.

EXAMPLE (WSIB - Partial rollover with payments until account exhausted) :

Pat has \$10,000 in the WSIB investment program. Pat wants to rollover \$2,000 of the total to an IRA, but does not want to receive

the remainder of the account in a lump sum payment as provided by the partial direct rollover option. Pat selects the personalized payment schedule option and requests to do a partial rollover of \$2,000 and receive the remaining \$8,000 in equal monthly payments of \$125 until the account is exhausted (approximately 64 months).

EXAMPLE (Self - Partial rollover with payments for fixed period):

Chris has \$10,000 in the self-directed investment program. Chris wants to rollover \$3,000 of the total to an IRA, but does not want to receive the remainder of the account in a lump sum payment as provided by the partial direct rollover option. Chris selects the personalized payment schedule option and requests to do a partial rollover of \$3,000 and receive the remaining \$7,000 in quarterly payments of \$250 over the next 7 years (28 quarters).

Summary of Distribution Options	
SELF	WSIB
Lump Sum Cash Distribution or Direct Rollover	Lump Sum Cash Distribution or Direct Rollover
<ul style="list-style-type: none"> - Entire account - Partial amount - Remaining funds can be distributed in a lump-sum payment or by a personalized payment schedule (see below). 	<ul style="list-style-type: none"> - Entire account - Partial amount - Remaining funds can be distributed in a lump-sum payment or by a personalized payment schedule (see below).
Scheduled Payments	Scheduled Payments
<ul style="list-style-type: none"> - Equal payments - Monthly, quarterly, semiannual or annual - Specified period of time, or - Until the account is exhausted - Payments can be combined life expectancy of you and a beneficiary. 	<ul style="list-style-type: none"> - Equal payments - Monthly payments only - Specified period of time, or - Until the account is exhausted - Payments can be combined life expectancy of you and a beneficiary.
	Annuity Purchase
	<ul style="list-style-type: none"> - Purchase an annuity, administered by the state of Washington - Set up to pay benefits for - Your lifetime, or - Lifetimes of you and your joint annuitant.
In addition to the above, you may set up:	In addition to the above, you may set up:
Personalized Payment Plan	Personalized Payment Plan
<ul style="list-style-type: none"> - Customized for your needs - Available from options above. 	<ul style="list-style-type: none"> - Customized for your needs - Available from options above.

(5) **Market fluctuations.** Your defined contribution account is subject to actual investment earnings (both gains and losses). These gains or losses impact the value of your account. The defined contri-

bution payment plans are subject to the same market fluctuations. As a result, the funding of your selected payment plan may last longer than anticipated due to market gains, or end earlier than anticipated due to market losses.

(6) **Minimum required distribution.** No later than April 1st of the calendar year following the year in which you turn ~~((age 72))~~ the age designated in Internal Revenue Code (IRC) Section 401 (a) (9), you are required to withdraw a minimum amount from your defined contributions annually. ~~((Prior to January 2020, required minimum distributions began at age 70.5.))~~ Subsequent withdrawals must be taken by December 31st of each year. If you are still working at ~~((age 72))~~ the designated age for a required minimum distribution, distribution is required to begin by April 1st the year following separation.

Calculation. Your required distribution is calculated each year based on your account balance as of December 31st of the prior year.

(7) See RCW 41.34.070 for additional information.

OTS-5256.1

AMENDATORY SECTION (Amending WSR 23-18-025, filed 8/25/23, effective 9/25/23)

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))~~ 59.5 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))~~ attain the required minimum distribution age as designated in Internal Revenue Code Section 401 (a) (9); 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))~~ the age in which you must receive a required minimum distribution as designated in Internal Revenue Code Section 401 (a) (9) 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.