

WSR 24-23-041
PROPOSED RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed November 14, 2024, 2:22 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-17-144.

Title of Rule and Other Identifying Information: Invoicing law enforcement officers' and firefighters' (LEOFF) Plan 2 employers for benefit overpayments directly related to erroneous reporting of member information.

Hearing Location(s): On January 2, 2025, at 1:00 p.m., through Microsoft Teams, <https://www.drs.wa.gov/sitemap/rules/#proposed-rule-hearings>, Meeting ID 286 016 251 59, Passcode JJQymH; or phone 833-322-1218, Code 364 394 432#.

Date of Intended Adoption: January 6, 2025.

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, beginning December 11, 2024, 8:00 a.m., by December 31, 2024, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Bianca Stoner, phone 360-664-7291, TTY 711, email drs.rules@drs.wa.gov, by December 24, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Revising WAC 415-02-075 to clarify when repaying overpaid LEOFF Plan 2 benefits is the employer's responsibility versus the retiree's responsibility.

Reasons Supporting Proposal: The revisions will bring these WAC into alignment with the requirements of sections 301 through 303, chapter 304, Laws of 2024.

Statutory Authority for Adoption: RCW 41.50.050 and sections 301 through 303, chapter 304, Laws of 2024.

Statute Being Implemented: Sections 301 through 303, chapter 304, Laws of 2024.

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

Name of Proponent: DRS, governmental.

Name of Agency Personnel Responsible for Enforcement: 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.

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.

November 14, 2024
Bianca Stoner
Rules Coordinator

OTS-5908.1

AMENDATORY SECTION (Amending WSR 23-07-043, filed 3/8/23, effective 4/8/23)

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 if 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. Except for overpayments caused by incorrect employer reporting in LE-OFF Plan 2, 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.

(c) In the event of a LEOFF Plan 2 overpayment caused by an employer's incorrect reporting, the employer will be liable for the overpayment.

(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, unless the overpayment was caused by incorrect reporting by an employer in LEOFF Plan 2, in which case the employer will be invoiced.

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, unless the overpayment was caused by incorrect reporting from an employer in LEOFF Plan 2, which reduces the collection period to one year prior to discovery.

(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((~~r~~)) and may put a claim against your estate.