

**WSR 25-04-050
PROPOSED RULES
DEPARTMENT OF
RETIREMENT SYSTEMS**

[Filed January 30, 2025, 10:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-17-140.

Title of Rule and Other Identifying Information: Revising WAC regarding cafeteria plans to improve clarity.

Hearing Location(s): On March 13, 2025, at 3:00 p.m., via Microsoft Teams <https://www.drs.wa.gov/sitemap/rules/#proposed-rule-hearings>, Meeting ID 290 521 081 326, Passcode Vs3fq9gy; or Phone 833-322-1218, Code 978 591 233#.

Date of Intended Adoption: March 20, 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 February 24, 2025, 8:00 a.m., by March 7, 2025, 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 March 11, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Some DRS WAC regarding cafeteria plans include language regarding deferred payments, while IRS requirements say that cafeteria plans cannot include deferred compensation. The language in these DRS WAC does not actually conflict with IRS requirements, because "deferred payments" and "deferred compensation" have different legal meanings within the context of the tax code. However, to avoid confusion, DRS will revise language in WAC 415-104-367, 415-106-290, 415-108-455, 415-110-455, and 415-112-4604.

Reasons Supporting Proposal: To reduce potential confusion between IRS requirements and language in existing WAC.

Statutory Authority for Adoption: RCW 41.50.050.

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

Name of Proponent: DRS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and 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.

January 30, 2025
Bianca Stoner
Rules Coordinator

OTS-6038.1

AMENDATORY SECTION (Amending WSR 97-01-016, filed 12/6/96, effective 1/6/97)

WAC 415-104-367 Cafeteria plans. Compensation received in any form under the provisions of a "cafeteria plan," "flexible benefits plan," or similar arrangement pursuant to section 125 of the United States Internal Revenue Code is basic salary for LEOFF Plan II if the member has an absolute right to receive cash (~~or deferred payments~~) in lieu of the fringe benefits offered. In such an instance, the fringe benefits are being provided in lieu of cash and are considered basic salary, just as the cash would be. If there is no cash option, the value of the fringe benefit is not a salary or wage and is not basic salary for LEOFF Plan II. See WAC 415-104-385.

OTS-6039.1

AMENDATORY SECTION (Amending WSR 08-02-046, filed 12/27/07, effective 1/27/08)

WAC 415-106-290 Is compensation applied toward cafeteria plans reportable compensation? Compensation you receive and apply toward a benefit plan under Internal Revenue Code (IRC) section 125 is reportable compensation if you have an absolute right to receive cash (~~or deferred cash payments~~) instead of participating in the plan. If there is no cash option, the value of participating in the plan is not reportable compensation. See WAC 415-106-295.

OTS-6040.1

AMENDATORY SECTION (Amending WSR 98-09-059, filed 4/17/98, effective 5/18/98)

WAC 415-108-455 Cafeteria plans. Compensation received in any form under the provisions of a "cafeteria plan," "flexible benefits plan," or similar arrangement pursuant to section 125 of the United States Internal Revenue Code is reportable compensation if the employee has an absolute right to receive cash (~~or deferred cash payments~~) in lieu of the fringe benefits offered. In such an instance, the fringe benefits are being provided in lieu of cash and are considered reportable compensation, just as the cash would be. If there is no cash option, the value of the fringe benefit is not a salary or wage and is not reportable compensation, see WAC 415-108-475.

OTS-6041.1

AMENDATORY SECTION (Amending WSR 01-01-059, filed 12/12/00, effective 1/12/01)

WAC 415-110-455 Cafeteria plans. Compensation received in any form under the provisions of a "cafeteria plan," "flexible benefits plan," or similar arrangement pursuant to section 125 of the United States Internal Revenue Code is reportable compensation if the employee has an absolute right to receive cash (~~(or deferred cash payments)~~) in lieu of the fringe benefits offered. In such an instance, the fringe benefits are being provided in lieu of cash and are considered reportable compensation, just as the cash would be. If there is no cash option, the value of the fringe benefit is not a salary or wage and is not reportable compensation, see WAC 415-110-475.

OTS-6042.1

AMENDATORY SECTION (Amending WSR 05-12-108, filed 5/27/05, effective 6/27/05)

WAC 415-112-4604 Is compensation applied toward cafeteria plans earnable compensation? Compensation you receive and apply toward a benefit plan under I.R.C. Section 125 may be earnable compensation. If you have an absolute right to receive cash (~~(or deferred cash payments)~~) instead of the fringe benefit, the payment is earnable compensation. If you have no cash option, the value of the fringe benefit is not earnable compensation. Also see WAC 415-112-480.