

**WSR 25-09-022**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**RETIREMENT SYSTEMS**

[Filed April 7, 2025, 1:55 p.m., effective May 8, 2025]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Revising WAC regarding cafeteria plans to improve clarity and reduce potential confusion between the Internal Revenue Service (IRS) requirements and language in existing WAC. Specifically, some department of retirement systems (DRS) WAC regarding cafeteria plans include language about deferred payments, while the IRS requirements say that cafeteria plans cannot include deferred compensation.

The language in these DRS WAC does not actually conflict with the IRS requirements, because "deferred payments" and "deferred compensation" have different legal meanings within the context of the tax code. However, these phrases sound similar, so to avoid confusion, DRS is revising the language in the applicable WAC (WAC 415-104-367, 415-106-290, 415-108-455, 415-110-455, and 415-112-4604).

Citation of Rules Affected by this Order: Amending WAC 415-104-367, 415-106-290, 415-108-455, 415-110-455, and 415-112-4604.

Statutory Authority for Adoption: RCW 41.50.[0]50.

Adopted under notice filed as WSR 25-04-050 on January 30, 2025.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 5, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 5, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 5, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 7, 2025.

Kathryn Leathers  
Director

**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.