



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

Agency: Department of Retirement Systems

Permanent Rule Only

Effective date of rule:

Permanent Rules

- 31 days after filing.
- Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes
 - No
- If Yes, explain:

Purpose: When a member in certain retirement plans (LEOFF 2, PERS 3, SERS 3, TRS 3) has at least 20 years of service credit, and leaves employment, their defined benefit increases by approximately three percent for each year they delay receiving it. These rules clarify how the department applies this benefit when the member retires from more than one retirement plan. This revision also removes references to gainsharing from WAC 415-02.

Citation of existing rules affected by this order:

Repealed: WAC 415-113-084 How will my benefit be computed if I retire retroactively from LEOFF Plan 2?
 Amended: WAC 415-02-030 Definitions; WAC 415-02-550 What happens to my defined contributions if I transfer to Plan 3 after the department of retirement systems accepts my property division dissolution order?
 Suspended:

Statutory authority for adoption: 41.50.050 (5)

Other authority :

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR **16-05-036** on **February 9, 2016** (date).
 Describe any changes other than editing from proposed to adopted version: None.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: _____ phone () _____
 Address: _____ fax () _____
 e-mail _____

Date adopted:

March 24, 2016

NAME (TYPE OR PRINT)

Marcie Frost

SIGNATURE

TITLE

Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: March 24, 2016

TIME: 3:09 PM

WSR 16-08-008

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Federal rules or standards:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Recently enacted state statutes:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

The number of sections adopted at the request of a nongovernmental entity:

	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
--	-----	----------	---------	----------	----------	----------

The number of sections adopted in the agency's own initiative:

	New	<u>1</u>	Amended	<u>2</u>	Repealed	<u>1</u>
--	-----	----------	---------	----------	----------	----------

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

	New	<u>1</u>	Amended	<u>2</u>	Repealed	<u>1</u>
--	-----	----------	---------	----------	----------	----------

The number of sections adopted using:

Negotiated rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Pilot rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Other alternative rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

WAC 415-02-030 Definitions. This section contains definitions of words and phrases commonly used in the department of retirement systems' rules. It also serves as a directory for finding definitions within the RCW((s)) and WAC((s)).

(1) **Accumulated contributions** means the sum of all contributions paid into a member's defined benefit account, including interest.

(2) **Appeal** means the proceeding through which a party obtains review of a department action in an adjudicative proceeding conducted under chapter 34.05 RCW (the Administrative Procedure Act) and chapter 415-08 WAC (the department's appeal rules).

(3) **Average final compensation** is defined in RCW 41.32.010(30) (TRS); RCW 41.35.010(14) (SERS); RCW 41.40.010(17) (PERS); and RCW 41.37.010(14) (PSERS).

(4) **Average final salary** for WSPRS is defined in RCW 43.43.120(15).

(5) **Cafeteria plan** means a "qualified" employee benefit program under IRC section 125, such as certain health and welfare plans.

(6) **Calendar month.**

(a) Refers to one of the twelve named months of the year, extending from the first day of the named month through the last day. For example: January 1st through January 31st is a calendar month. February 1st through February 29th is a calendar month in a leap year. March 13th through April 12th is **not** a calendar month.

(b) Exception: For the purpose of administering the break in employment required by RCW 41.32.570, 41.32.802, 41.32.862, 41.35.060, 41.37.050 and 41.40.037 for retirees returning to work, one calendar month means thirty consecutive calendar days. For example: Kim's retirement date is August 1st. August 31st would be the earliest Kim could return to work and meet the requirement for a one calendar month break in employment.

(7) **Compensation earnable or earnable compensation** definitions can be found in RCW 41.32.010(10) and 41.32.345 (TRS); RCW 41.35.010(6) (SERS); RCW 41.37.010(6) (PSERS); and RCW 41.40.010(8) (PERS).

(8) **Contribution rate** is:

(a) For employees: The fraction (percent) of compensation a member contributes to a retirement system each month.

(b) For employers: The fraction (percent) of payroll a member's employer contributes to a retirement system each month. Contribution rates vary for the different systems and plans.

(9) **Deferred compensation** refers to the amount of the participant's compensation, which the participant voluntarily defers from earnings before taxes to a deferred compensation program.

(10) **Defined benefit plan** is a pension plan in which a lifetime retirement allowance is available, based on the member's service credit and compensation.

(11) **Defined contribution plan** is a plan in which part of members' or participants' earnings are deferred into ((an)) investment accounts in which tax is deferred until funds are withdrawn. The benefit is based on the contributions ((rate)) and the amount of return from the investment of the contributions. Members or participants receive the full market rate of return minus expenses. There is no guar-

anteed rate of return and the value of an account will increase or decrease based upon market fluctuations.

(12) **Department** means the department of retirement systems.

(13) **Director** means the director of the department of retirement systems.

(14) **Employee** means a worker who performs labor or services for a retirement systems employer under the control and direction of the employer as determined under WAC 415-02-110(2). An employee may be eligible to participate as a member of one of the state-administered retirement systems according to eligibility requirements specified under the applicable retirement system.

(15) **Employer** is defined in RCW 41.26.030(2) (LEOFF), 41.32.010(11) (TRS), 41.34.020(5) (Plan 3), 41.35.010(4) (SERS), 41.37.010(4) (PSERS) and 41.40.010(4) (PERS).

(16) **Ex-spouse** refers to a person who is a party to a "dissolution order" as defined in RCW 41.50.500(3).

(17) **Final average salary for LEOFF** is defined in RCW 41.26.030(12).

(18) ~~((Gainsharing is the process through which members of certain plans share in the extraordinary investment gains on earnings on retirement assets under chapters 41.31 and 41.31A RCW.~~

~~((19)))~~ **Independent contractor** means a contract worker who is not under the direction or control of the employer as determined under WAC 415-02-110 (2) and (3).

~~((20)))~~ (19) **IRC** means the Federal Internal Revenue Code of 1986, as subsequently amended.

~~((21)))~~ (20) **Indexed retirement allowance** means a defined benefit retirement allowance from an indexed retirement plan, payable to a member who separates after having completed at least twenty service credit years, that is increased by twenty-five one-hundredths of one percent, compounded for each month from the date of separation to the date that the retirement allowance commences.

(21) Indexed retirement plan means one of the following retirement plans, which are administered by the department of retirement systems and provide an indexed retirement allowance: Law Enforcement Officers' and Firefighters Retirement System Plan 2 (RCW 41.26.530), Public Employees' Retirement System Plan 3 (RCW 41.40.790), School Employees' Retirement System Plan 3 (RCW 41.35.620), and Teachers' Retirement System Plan 3 (RCW 41.32.840).

(22) JRF means the judges' retirement fund created by chapter 2.12 RCW.

~~((22)))~~ (23) **JRS** means the Washington judicial retirement system created by chapter 2.10 RCW.

~~((23)))~~ (24) **LEOFF** means the Washington law enforcement officers' and firefighters' retirement system created by chapter 41.26 RCW.

~~((24)))~~ (25) **Member** means a person who is included in the membership of one of the retirement systems created by chapters 2.10, 2.12, 41.26, 41.32, 41.34, 41.35, 41.37, 41.40, or 43.43 RCW.

~~((25)))~~ (26) **Participant** means an eligible employee who participates in a deferred compensation ~~((or dependent care assistance))~~ plan.

~~((26)))~~ (27) **Participation agreement** means an agreement that an eligible employee signs to become a participant in a deferred compensation ~~((or dependent care assistance))~~ plan.

~~((27)))~~ (28) **Pension plan** is a plan that provides a lifelong post retirement payment of benefits to employees.

((+28+)) (29) **PERS** means the Washington public employees' retirement system created by chapter 41.40 RCW.

((+29+)) (30) **Petition** means the method by which a party requests a review of an administrative determination prior to an appeal to the director. The department's petitions examiner performs the review under chapter 415-04 WAC.

((+30+)) (31) **Plan 1** means the retirement plans in existence prior to the enactment of chapters 293, 294 and 295, Laws of 1977 ex. sess.

((+31+)) (32) **Plan 2** means the retirement plans established by chapters 293, 294 and 295, Laws of 1977 ex. sess., chapter 341, Laws of 1998, and chapter 329, Laws of 2001.

((+32+)) (33) **Plan 3** means the retirement plans established by chapter 239, Laws of 1995, chapter 341, Laws of 1998, and chapter 247, Laws of 2000.

((+33+)) (34) **Plan year** is the twelve-month period that begins on January 1st and ends on December 31st of the same calendar year.

((+34+)) (35) **Portability** is the ability to use membership in more than one Washington state retirement system in order to qualify for retirement benefits. See chapters 41.54 RCW and 415-113 WAC.

((+35+)) (36) **PSERS** means the Washington public safety employees' retirement system created by chapter 41.37 RCW.

((+36+)) (37) **Public record** is defined in RCW 42.17.020(41).

((+37+)) (38) **Restoration** is the process of restoring a member's service credit for prior periods.

((+38+)) (39) **Retirement system employer - See "employer."**

((+39+)) (40) **Rollover** means a distribution that is paid to or from an eligible retirement plan within the statutory time limit allowed.

((+40+)) (41) **Separation date** is the date a member ends employment in a position eligible for retirement or disability benefit coverage.

((+41+)) (42) **SERS** means the Washington school employees' retirement system created by chapter 41.35 RCW.

((+42+)) (43) **Split account** is the account the department establishes for a member or retiree's ex-spouse.

((+43+)) (44) **Surviving spouse** refers to a person who was married to the member at the time of the member's death and who is receiving or is eligible to receive a survivor benefit.

((+44+)) (45) **Survivor beneficiary** means a person designated by the member to receive a monthly benefit allowance after the member dies.

((+45+)) (46) **Survivor benefit** is a feature of a retirement plan that provides continuing payments to a beneficiary after the death of a member or retiree.

((+46+)) (47) **TRS** means the Washington state teachers' retirement system created by chapter 41.32 RCW.

((+47+)) (48) **The Uniform Services Employment and Reemployment Rights Act of 1994 (USERRA)** is the federal law that requires employers to reemploy and preserve job security, pension and welfare benefits for qualified employees who engage in military service.

((+48+)) (49) **WSPRS** means the Washington state patrol retirement system created by chapter 43.43 RCW.

WAC 415-02-550 What happens to my defined contributions if I transfer to Plan 3 after the department of retirement systems accepts my property division dissolution order? (1) Who may use this section? You may use this section if you were a member of PERS Plan 2, SERS Plan 2, or TRS Plan 2 and **first** obtained a property division dissolution order using the language in RCW 41.50.670(2) and WAC 415-02-510 or 415-02-520, and **then** transfer to Plan 3.¹

(2) What happens if the property division dissolution order (using the language in RCW 41.50.670(2) and WAC 415-02-510) did not split my account? Refer to WAC 415-02-530 for information about your defined benefit account and about your and your ex-spouse's defined contribution accounts after you transfer to Plan 3.

(3) What happens if the property dissolution order used the language in WAC 415-02-520 and did split my account?

(a) Your **ex-spouse's** account will remain in Plan 2. Your ex-spouse is ineligible to transfer to Plan 3.

(b) The balance of your accumulated contributions remaining in your Plan 2 account after it was split will be transferred to your Plan 3 defined contributions account. (Refer to chapter 415-111 WAC for information about your defined contribution account.)

(4) (~~How will gainsharing be applied to my account?~~ Gainsharing is not applied to Plan 2 member accounts. If gainsharing is applied after you have transferred to Plan 3, only you will receive the gain-sharing amount.

~~(5))~~ **Terms used:**

(a) Dissolution order - RCW 41.50.500.

(b) Ex-spouse - WAC 415-02-030.

(c) (~~Gainsharing - Chapter 41.31 RCW (Plan 1); chapter 41.31A RCW (Plan 3); WAC 415-02-030; 415-111-440.~~

~~(d))~~ PERS - Public employees' retirement system.

~~((e))~~ (d) Plan 3 retirement systems - WAC 415-111-100.

~~((f))~~ (e) SERS - School employees' retirement system.

~~((g))~~ (f) Split accounts - WAC 415-02-030.

~~((h))~~ (g) TRS - Teachers' retirement system.

Footnote to section:

¹The section does not apply to retirees, because retirees cannot transfer to Plan 3.

NEW SECTION

WAC 415-113-066 How does service credit from more than one retirement system affect my indexed retirement allowance? (1) **May I combine service credit from more than one retirement system to receive an indexed retirement allowance?** If you are a dual member, you may combine service credit from any dual member system to be eligible for an indexed retirement allowance.

(2) **How will my indexed retirement allowance be calculated?** If there is a period of at least one month between your separation from employment in an indexed retirement plan and your date of retirement, the department will calculate your indexed retirement allowance in the following two ways and use the higher of the two results:

(a) Method 1: Use the average compensation from the indexed retirement plan. Index the retirement allowance (for the indexed retirement plan only) from the date both of the following have occurred, to the date of retirement:

(i) Separation from the indexed retirement plan; and

(ii) Accrual of twenty years of service from one or more of the systems in which service credit was earned.

(b) Method 2: Use the highest average compensation from any of the systems in which service credit was earned. Index the retirement allowance (for the indexed retirement plan only) from the date both of the following have occurred, to the date of retirement:

(i) Separation from all systems; and

(ii) Accrual of twenty years of service from one or more of the systems in which service credit was earned.

(3) **Defined terms used.** Definitions for the following terms used in this section may be found in the WAC sections listed in (a) through (e) of this subsection:

(a) "Average compensation" - WAC 415-113-030

(b) "Dual member" - WAC 415-113-041

(c) "Dual member system" - WAC 415-113-030

(d) "Indexed retirement allowance" - WAC 415-02-030

(e) "Indexed retirement plan" - WAC 415-02-030

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 415-113-084 How will my benefit be computed if I
retire retroactively from LEOFF Plan 2?