



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) January 1, 2017 (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: DCP Automatic Enrollment: Recent legislation, ESSB 5435, will require state agencies to automatically enroll new full-time employees into the state's Deferred Compensation Program (DCP) unless the employee opts out. This rule-making action revises the DCP rules to include administrative details. Local employers will continue to have the option to make DCP available to their employees, and may also elect to provide automatic enrollment. DCP enrollment will remain optional for eligible current employees and new employees who are not covered by the automatic enrollment provisions.

Citation of existing rules affected by this order:

Repealed:
 Amended: WAC 415-501-110, 415-501-315, 415-501-420, 415-501-450, 415-501-475, 415-501-480
 Suspended:

Statutory authority for adoption: 41.50.050 (5)

Other authority :

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 16-21-075 on October 18, 2016 (date).
 Describe any changes other than editing from proposed to adopted version: No changes, the text being adopted is identical to the proposed text.

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:

November 28, 2016

NAME (TYPE OR PRINT)

Tracy Guerin

SIGNATURE

TITLE

Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: November 28, 2016

TIME: 4:24 PM

WSR 16-24-013

**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	Repealed	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	Repealed	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>1</u>	Amended	<u>2</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>
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The number of sections adopted in the agency's own initiative:

	New	<u>0</u>	Amended	<u>4</u>	Repealed	<u>0</u>
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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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 415-501-110 Definitions. (1) **Accumulated deferrals.** Compensation deferred under the plan, adjusted by income received, increases or decreases in investment value, fees, and any prior distributions made.

(2) **Automatic enrollment.** A process of enrolling newly hired full-time employees as of January 1, 2017. See WAC 415-501-400 for details.

(3) **Beneficiary.** The person or entity entitled to receive benefits under the plan after the death of a participant.

~~((3))~~ (4) **Compensation.** All payments made to a participant by the employer as remuneration for services rendered.

~~((4))~~ (5) **Deferred compensation.** The amount of the participant's compensation that is deferred (~~under a participation agreement~~). See WAC 415-501-400, 415-501-410 and 415-501-450.

~~((5))~~ (6) **Deferred compensation ((plan)) program or plan.** A plan that allows employees of the state of Washington and approved political subdivisions of the state of Washington to defer a portion of their compensation according to the provisions of Section 457(b) of the Internal Revenue Code.

~~((6))~~ (7) **Department.** The department of retirement systems created by RCW 41.50.020 or its designee.

~~((7))~~ (8) **Eligible employee.** Any person who is employed by and receives any type of compensation from a participating employer for whom services are provided, and who is:

(a) A full-time, part-time, or career seasonal employee of Washington state, a county, a municipality, or other political subdivision of the state, whether or not covered by civil service;

(b) An elected or appointed official of the executive branch of the government, including a full-time member of a board, commission, or committee;

(c) A justice of the supreme court, or a judge of the court of appeals or of a superior or district court; or

(d) A member of the state legislature or of the legislative authority of a county, city, or town.

~~((8))~~ (9) **Eligible rollover distribution.** A distribution to a participant of any or all funds from an eligible retirement plan unless it is:

(a) One in a series of substantially equal annuity payments;

(b) One in a series of substantially equal installment payments payable over ten years or more;

(c) Required to meet minimum distribution requirements of the plan; or

(d) Distributed for hardship or unforeseeable emergency from a 457 plan.

~~((9))~~ (10) **Employer.**

(a) The state of Washington; and

(b) Approved political subdivisions of the state of Washington.

~~((10))~~ (11) **Normal retirement age.** An age designated by the participant for purposes of the three-year catch-up provision described in WAC 415-501-430(2). The participant may choose a normal retirement age between:

(a) The earliest age at which an eligible participant has the right to receive retirement benefits without actuarial or similar reduction from his/her retirement plan with the same employer; and

(b) Age seventy and one-half.

~~((11))~~ **(12) Participant.** An eligible employee who:

(a) ~~((Who has submitted a participation agreement that is approved by the department; and~~

~~(b) Who either:~~

~~(i))~~ Is currently deferring compensation under the plan; or

~~((ii))~~ (b) Has previously deferred compensation and has not received a distribution of his/her entire benefit under the plan.

~~((12))~~ **(13) Participation agreement.** The agreement executed by an eligible employee to enroll in the plan through methods established by the department. Includes the participant's authorization to defer compensation through payroll deductions pursuant to WAC 415-501-410 and 415-501-450.

~~((13))~~ **(14) You,** as used in this chapter, means a participant as defined in subsection ~~((11))~~ **(12)** of this section.

AMENDATORY SECTION (Amending WSR 04-22-053, filed 10/29/04, effective 11/29/04)

WAC 415-501-315 What are my employer's responsibilities? An employer has responsibilities including, but not limited to, determining employees' eligibility to participate, reporting and paying deferrals to the department, and monitoring for deferral limits ~~((and determining employees' eligibility to participate))~~.

The department's administration of the plan does not replace the employer's responsibilities.

AUTOMATIC ENROLLMENT

NEW SECTION

WAC 415-501-400 What is automatic enrollment? Effective January 1, 2017, state agencies and higher education employers must automatically enroll new full-time employees into the deferred compensation program (DCP). Students who work at a college or university and retirees who return to employment are exempt from automatic enrollment. Local employers, including school districts, may use the automatic enrollment provisions by submitting a resolution to the department.

For state employees and some higher education employees, full-time status is defined in WAC 357-01-174. For employees not covered under WAC 357-01-174, the definition of "full time" is at the employer's discretion.

The default deferral amount is three percent of your taxable compensation, but you may change your deferral amount at any time (see WAC 415-501-450 for details).

The default investment is the Retirement Strategy Fund that assumes retirement at age sixty-five. You may change your investments at any time (see WAC 415-501-475 for details).

If you are automatically enrolled in DCP, you will receive a mailed notification of automatic enrollment. If you want to alter your automatic enrollment, here are some actions you can take:

(1) Opt out: To prevent the three percent deferral from being deducted from your paycheck, opt out within thirty days of the date on the automatic enrollment notification. To do so, change the three percent default deduction to zero through your established online account or by contacting the DCP record keeper.

(2) Suspend enrollment and remove your contributions: Following your automatic enrollment, you may withdraw DCP deferrals that have been taken from your paycheck. To do so, change the three percent default deduction to zero and request a permissible withdrawal request form. The completed withdrawal request must be received by the DCP record keeper within ninety days of your first payroll contribution under this section. You will receive a distribution of your contributions, plus or minus earnings. These distributions are not eligible for rollover. If you do not request a permissible withdrawal within ninety days from your first payroll contribution, your contributions will be subject to the provisions for distributions described in WAC 415-501-485.

(3) Change your contribution: Adjust your contributions to a smaller or larger whole percentage or select a specific whole dollar amount. With DCP, you may change your contribution amount at any time. Changing your contribution within the first ninety days of automatic enrollment verifies your participation in the program, making you no longer eligible for permissible withdrawal.

(4) Change your investment selection: Select another DCP investment option. With DCP, you can change your investment options at any time.

(5) Reenroll: If you opt out, you may reenroll in DCP at any time (see WAC 415-501-410).

AMENDATORY SECTION (Amending WSR 14-10-045, filed 4/30/14, effective 6/1/14)

WAC 415-501-420 What are the ((annual)) deferral limits? (1) The minimum deferral is ((fifteen dollars per semi-monthly payroll period,)) thirty dollars ((for monthly payroll periods)) per month or one percent of monthly compensation.

(2) Except as provided in WAC 415-501-430 (catch-up provisions) and WAC 415-501-435 (uniformed service make-up contributions), the maximum annual deferral limit is the smaller of:

(a) One hundred percent of your includible compensation as defined in IRC Section 457 (e)(5), and Treasury Regulation 1.457.2(g), and determined without regard to community property laws; or

(b) The annual deferral limit established each year by the Internal Revenue Service. The annual deferral limit is published on the department's deferred compensation program web site.

AMENDATORY SECTION (Amending WSR 14-10-045, filed 4/30/14, effective 6/1/14)

WAC 415-501-450 May I change my deferral amount? You may change the amount of your deferred compensation through the methods established by the department. Changes ~~((may))~~ must be made ~~((only))~~ in a whole dollar increment~~((s))~~ or whole percentage.

A change in the amount will be effective for any calendar month only if you notify the department of the change, through the methods available, prior to the month for which the change is requested and prior to your employer's established "cutoff date" for the payroll in which the change will occur.

AMENDATORY SECTION (Amending WSR 16-12-050, filed 5/25/16, effective 6/25/16)

WAC 415-501-475 ~~((May I choose how I want))~~ How will my deferred compensation be invested? (1) ~~((Yes-))~~ When you enroll, you may select one or more of the investment options offered.

(2) The department will invest one hundred percent of your future contributions in the Retirement Strategy Fund that assumes you will retire at age sixty-five if any of the following occurs during the enrollment process.

(a) An investment option is not selected.

(b) The total ~~((percentage))~~ does not equal one hundred percent when multiple investment options are selected.

(c) You are automatically enrolled into DCP.

(3) In general, you may change the investment of your accumulated deferrals, the investment of your future deferrals, or both, through the methods established by the department. However, if necessary to protect the performance results of the DCP program, the department has the right to:

(a) Limit the number of times you change investment options;

(b) Limit the frequency of the changes;

(c) Limit the manner of making changes; or

(d) Impose other restrictions.

In addition, changes must be consistent with any restrictions on trading imposed by the investment options involved.

(4) Beneficiaries over age eighteen and former spouses may change the investment options through the methods established by the department once a separate account has been established for them. The guardian of a minor beneficiary may change the investment options on the minor's account if authorized by the order of guardianship.

AMENDATORY SECTION (Amending WSR 04-22-053, filed 10/29/04, effective 11/29/04)

WAC 415-501-480 How do I designate my beneficiaries? You have the right to designate a beneficiary or beneficiaries to receive your accumulated deferrals in the event of your death. You may change your

beneficiary designation at any time online, or by filing a beneficiary change form with the department. The change will take effect upon the department's receipt of the beneficiary change form.

You may name:

(1) An organization or person, including unborn or later adopted children. However, unborn or later adopted children must be specifically designated as beneficiaries on the form. You must indicate the date of birth for any living person you name as a beneficiary.

(2) Your estate.

(3) An existing trust or a trust that is to be established under your last will. For an existing trust, you must provide a copy of the trust document and the name, address and telephone number of the current trustee.

You may name contingent beneficiaries in addition to primary beneficiaries.