



# RULE-MAKING ORDER PERMANENT RULE ONLY

## CR-103P (December 2017) (Implements RCW 34.05.360)

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STATE OF WASHINGTON  
FILED

DATE: June 15, 2020

TIME: 4:53 PM

WSR 20-13-064

**Agency:** Department of Retirement Systems

**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: PERS, SERS and TRS default retirement plan** – To implement Chapter 313, Laws of 2019 (SB 5360), changing the default retirement plan for new members in PERS, SERS and TRS who do not make a plan choice selection within ninety days of hire, and to clarify provisions for new members with a break in service during their plan choice period.

**Citation of rules affected by this order:**

New:

Repealed:

Amended: WAC 415-02-030, 415-108-425

Suspended:

**Statutory authority for adoption:** RCW 41.50.050

**Other authority:**

**PERMANENT RULE (Including Expedited Rule Making)**

Adopted under notice filed as WSR 20-10-097 on May 6, 2020 (date).

Describe any changes other than editing from proposed to adopted version: None. The text being adopted is identical to the text as proposed.

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

Name:

Address:

Phone:

Fax:

TTY:

Email:

Web site:

Other:

**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Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	<u>2</u>	Repealed	___

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

New	___	Amended	___	Repealed	___
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**The number of sections adopted on the agency's own initiative:**

New	___	Amended	___	Repealed	___
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	___	Amended	___	Repealed	___
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**The number of sections adopted using:**

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	___	Repealed	___

**Date Adopted:** June 15, 2020

**Name:** Tracy Guerin

**Title:** Director

**Signature:**



**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 and WAC.

(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 investment accounts in which tax is deferred until funds are withdrawn. The benefit is based on the contributions 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 guaranteed 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) **First employed by an eligible employer in an eligible position** means, for purposes of plan default, first employment with an employer, in an eligible position, with which a member has fully exhausted their plan choice rights.

(19) **HERPs** mean higher education retirement plans described in chapter 28B.10 RCW, which are non-DRS retirement plans offered by institutions of higher education, such as, but not limited to, University of Washington retirement plan (UWRP) and Western Washington University retirement plan (WWURP).

~~((19))~~ (20) **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))~~ (21) **IRC** means the Federal Internal Revenue Code of 1986, as subsequently amended.

~~((21))~~ (22) **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.

~~((22))~~ (23) **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).

~~((23))~~ (24) **JRF** means the judges' retirement fund created by chapter 2.12 RCW.

~~((24))~~ (25) **JRS** means the Washington judicial retirement system created by chapter 2.10 RCW.

~~((25))~~ (26) **LEOFF** means the Washington law enforcement officers' and firefighters' retirement system created by chapter 41.26 RCW.

~~((26))~~ (27) **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.

~~((27))~~ (28) **Nonadministrative position or nonadministrative capacity** refers to retirees returning to work in a position at a school

district, charter school, educational service district, state school for the deaf, state school for the blind, or tribal school which:

(a) Does not require an administrative certification, as defined by the office of the superintendent of public instruction, (currently positions requiring the certification include: Principal, vice principal, program administrator, conditional administrator, superintendent or program administrator certifications); or

(b) Does not evaluate staff.

~~((28))~~ (29) Normal retirement means qualifying for retirement based on the standard age and service credit requirements as specified in RCW 2.10.100 (JRS), 2.12.020 (JRF), 41.26.090 (LEOFF Plan 1), 41.26.430(1) (LEOFF Plan 2), 41.32.470 (TRS Plan 1), 41.32.765(1) (TRS Plan 2), 41.32.875(1) (TRS Plan 3), 41.35.420(1) (SERS Plan 2), 41.35.680(1) (SERS Plan 3), 41.37.210(1) (PSERS), 41.40.180 (PERS Plan 1), 41.40.630(1) (PERS Plan 2), 41.40.820(1) (PERS Plan 3), or 43.43.250 (WSPRS).

~~((29))~~ (30) Participant means an eligible employee who participates in a deferred compensation plan.

~~((30))~~ (31) Participation agreement means an agreement that an eligible employee signs to become a participant in a deferred compensation plan.

~~((31))~~ (32) Pension plan is a plan that provides a lifelong post retirement payment of benefits to employees.

~~((32))~~ (33) PERS means the Washington public employees' retirement system created by chapter 41.40 RCW.

~~((33))~~ (34) 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.

~~((34))~~ (35) Plan 1 means the retirement plans in existence prior to the enactment of chapters 293, 294 and 295, Laws of 1977 ex. sess.

~~((35))~~ (36) 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.

~~((36))~~ (37) Plan 3 means the retirement plans established by chapter 239, Laws of 1995, chapter 341, Laws of 1998, and chapter 247, Laws of 2000.

~~((37))~~ (38) Plan choice rights refers to a member's right, within a ninety-day period, to make an irrevocable choice to become a member of Plan 2 or Plan 3 or be defaulted into a plan after the full ninety-day period has expired.

(a) A member will be reported in Plan 2 until plan choice rights have been exercised.

(b) A member must make a choice within ninety calendar days (computed as described in RCW 1.12.040) from the first day of employment in an eligible position.

(c) A member will be defaulted into a plan if they continue employment in an eligible position past the ninety-day plan choice period without making a choice.

(d) A member may exercise plan choice rights only once per system.

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

~~((38))~~ (40) 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.

~~((39))~~ (41) **PSERS** means the Washington public safety employees' retirement system created by chapter 41.37 RCW.

~~((40))~~ (42) **Public record** is defined in RCW 42.17.020(41).

~~((41))~~ (43) **Restoration** is the process of restoring a member's service credit for prior periods.

~~((42))~~ (44) **Retirement system employer - See "employer."**

~~((43))~~ (45) **Rollover** means a distribution that is paid to or from an eligible retirement plan within the statutory time limit allowed.

~~((44))~~ (46) **Separation date** is the date a member ends employment in a position eligible for retirement.

~~((45))~~ (47) **SERS** means the Washington school employees' retirement system created by chapter 41.35 RCW.

~~((46))~~ (48) **Split account** is the account the department establishes for a member or retiree's ex-spouse.

~~((47))~~ (49) **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.

~~((48))~~ (50) **Survivor beneficiary** means a person designated by the member to receive a monthly benefit allowance after the member dies.

~~((49))~~ (51) **Survivor benefit** is a feature of a retirement plan that provides continuing payments to a designee after the death of a member or retiree.

~~((50))~~ (52) **TRS** means the Washington state teachers' retirement system created by chapter 41.32 RCW.

~~((51))~~ (53) **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.

~~((52))~~ (54) **WSPRS** means the Washington state patrol retirement system created by chapter 43.43 RCW.

**WAC 415-108-425 How do I determine if I have plan choice rights or transfer rights to PERS Plan 3? (1) Definitions:**

(a) "**Concurrently employed**" means you are employed at the same time, in eligible positions, by a Phase 1 employer and by a Phase 2 employer.

(b) "**Exercising plan choice rights**" means choosing Plan 2 or Plan 3 or defaulting into a plan ((3)).

(c) "**Phase 1 employer**" means state agencies and institutes of higher education.

(d) "**Phase 2 employer**" means all other employers.

(e) "**Phase 1 transfer period**" is the period from March 1, 2002, through and including August 31, 2002.

(f) "**Phase 2 transfer period**" is the period from September 1, 2002, through and including May 31, 2003.

(2) **What determines if I have "plan choice rights" or "transfer rights"?** Your current employment status and your employment history will be used to determine if you have plan choice rights (refer to WAC 415-02-030 for definition) or transfer rights. If your employment status changes, your rights must be reevaluated. A change in your employment status, such as separating from employment or becoming reemployed, may change your rights.

(3) (~~What are "choice rights" and how are they applied? "Choice rights" refers to your right, within a ninety-day period, to make an irrevocable choice to become a member of Plan 2 or Plan 3.~~

~~(a) You will be reported in Plan 2 until you exercise choice rights.~~

~~(b) You must make a choice within ninety days of your first day of employment in an eligible position.~~

~~(c) You will be defaulted into Plan 3 if you continue employment past the ninety-day choice period without making a choice.~~

~~(d) You may exercise choice rights only once.~~

~~(4)) **Do I have "plan choice rights"?**~~

(a) You have plan choice rights if your initial PERS membership began on or after March 1, 2002, with a Phase 1 employer in an eligible position.

(i) If you separate from employment and did not exercise your plan choice rights, you retain plan choice rights if you are reemployed in an eligible position with a Phase 1 employer.

(ii) If you separate from employment and did not exercise your plan choice rights, and you are not employed by a Phase 2 employer during Phase 2, you retain plan choice rights if you begin another period of employment in an eligible position with a Phase 2 employer after May 31, 2003.

(b) You have plan choice rights if your initial PERS membership began on or after September 1, 2002, with a Phase 2 employer in an eligible position. If you separate from employment and did not exercise your plan choice rights, you retain plan choice rights if you begin another period of employment in an eligible position with a Phase 1 or Phase 2 employer.

(c) You have plan choice rights if you transferred from membership in PERS to membership in the school employees' retirement system and then became employed in an eligible PERS position on or after

March 1, 2002, with a Phase 1 employer or on or after September 1, 2002, with a Phase 2 employer.

~~((5))~~ (4) **What are "transfer rights" and how are they applied?** "Transfer rights" refers to your right as a Plan 2 member to transfer into Plan 3 during an applicable transfer period to your employment type.

(a) You are not required to exercise transfer rights. If you have transfer rights, you will remain in Plan 2 unless you decide to transfer to Plan 3.

(b) If you do not transfer to Plan 3 during the Phase 1 or the Phase 2 transfer periods, you will not qualify to receive the additional transfer payment under RCW 41.40.795 or retroactive gainsharing payment under RCW 41.31A.040.

~~((6))~~ (5) **Do I have transfer rights?**

(a) You have transfer rights if you:

(i) Are a Plan 2 member;

(ii) Are employed in an eligible position by a Phase 1 employer during the Phase 1 transfer period; and

~~((4))~~ (3) (a) or (c) of this section.

(b) You have transfer rights if you:

(i) Are a Plan 2 member;

(ii) Are employed in an eligible position by a Phase 2 employer during the Phase 2 transfer period; and

~~((4))~~ (3) (b) or (c) of this section.

~~((7))~~ (6) **What are "January transfer rights" and how are they applied?** "January transfer rights" refers to a Plan 2 member's right to transfer to Plan 3 during any January after the close of a transfer period.

(a) If you are employed by a Phase 1 employer, in an eligible position, the first January you can transfer is January 2003.

(b) If you are employed by a Phase 2 employer, in an eligible position, the first January you can transfer is January 2004.

(c) You must earn service credit in the January in which you transfer.

~~((8))~~ (7) **Do I have January transfer rights?**

(a) You have January transfer rights if you were eligible for transfer rights and did not transfer to PERS Plan 3 **during** the transfer period that applied to you.

(b) You have January transfer rights if you:

(i) Were employed in an eligible position with a Phase 1 employer **before** the Phase 1 transfer period, or were employed in an eligible position by a Phase 2 employer **before** the Phase 2 transfer period;

(ii) Were not employed by a Phase 1 employer **during** the Phase 1 transfer period;

(iii) Were not employed by a Phase 2 employer **during** the Phase 2 transfer period; and

(iv) Are employed by a Phase 1 employer in an eligible position that you began **after** the Phase 1 transfer period ended, or are employed by a Phase 2 employer in an eligible position that you began **after** the Phase 2 transfer period ended.

~~((9))~~ (8) **What happens after I become a ~~((Plan-3))~~ member of a plan by choice, transfer or default?** Once you choose ~~((Plan-3 or default to Plan 3 or transfer to Plan 3, you will remain a Plan 3 member))~~, transfer, or default into a plan, you will remain a member of

that plan regardless of whether you change employers. You will not have any additional transfer rights or plan choice rights to exercise.

~~((10))~~ (9) **What rules apply to me if I am concurrently employed?** If you are, or become concurrently employed during the Phase 1 transfer period in an eligible position, you will have transfer rights but must wait until the Phase 2 transfer period to transfer. If you separate from one of the employers, your membership rights must be reevaluated.

**Examples:** *The examples are written, for the most part, for a Phase 1 employer. Use the Phase 2 transfer period (September 1, 2002, through and including May 31, 2003) to apply the rules to a Phase 2 employer.*

Plan Choice Rights:
<b>Example 1:</b> Pat starts working for a state agency in an eligible position (Phase 1 employer) as of:
<b>A.</b> April 1, 2002. Since Pat has not previously been a member of PERS, Pat has ninety days to make a <b>plan choice</b> for Plan 2 or Plan 3. See subsection <del>(3)</del> <del>((b))</del> of this section.
<b>B.</b> After forty-five days, Pat leaves service without making a choice, and then returns in an eligible position one year later. Pat has a new ninety day period in which to make <del>(his)</del> a <b>plan choice</b> . See subsection <del>((4))</del> <u>(3)</u> (a)(i) of this section.
<b>C.</b> Pat chooses Plan 3 within <del>(his)</del> ninety days. Pat is now a Plan 3 member regardless of future employment. See subsection <del>((9))</del> <u>(8)</u> of this section.
<b>D.</b> Instead of choosing Plan 3, Pat lets <del>(his)</del> the ninety day plan choice period go by <del>((with out))</del> without choosing Plan 2 or Plan 3. Pat is defaulted into a plan <del>(3)</del> and is now a <del>(Plan 3)</del> member of that plan regardless of future employment. See subsection <del>((s-3)(e) and (9))</del> <u>(8)</u> of this section.
Transfer Rights:
<b>Example 2:</b>
<b>A.</b> Chris has been a Plan 2 member since 1977. Chris is working at a state agency (Phase 1 employer) as of March 1, 2002. Since Chris was a member prior to the start of Plan 3, Chris has the right to <b>transfer</b> to Plan 3 in the transfer period (March 1, 2002, through August 31, 2002). See subsection <del>((6))</del> <u>(5)</u> (a) of this section.
<b>B.</b> However, Chris <b>did not make a decision</b> to transfer prior to the close of the Phase 1 <b>transfer period</b> . If Chris remains employed for a Phase 1 employer, the right to transfer to Plan 3 is limited to January of each year. See subsection <del>((8))</del> <u>(7)</u> (a) of this section.
<b>C.</b> In this variation, Chris was a Plan 2 member from March 1, 1987, through February 1, 2002. Chris returns on October 15, 2002, for a state agency (Phase 1 employer). Since Chris returned to service <b>after</b> the transfer period (March 1, 2002, through August 31, 2002), Chris only has the right to transfer to Plan 3 in January of each year. See subsection <del>((8))</del> <u>(7)</u> (b) of this section.

Irrevocable Choice Rule:

**Example 3:** Mike starts working for a state agency (Phase 1 employer) as of April 1, 2002. Since Mike has not previously been a member of PERS, ~~((he))~~ Mike has ninety days to make a **plan choice** for Plan 2 or Plan 3. Mike chooses Plan 3 within ~~((his))~~ ninety days. Mike is now a Plan 3 member regardless of future employment. See subsection ~~((9))~~ (8) of this section.

**Example 4:** Pat starts working for a state agency (Phase 1 employer) as of April 1, 2002. Since Pat has not previously been a member of PERS, ~~((he))~~ Pat has ninety days to make a **plan choice** for Plan 2 or Plan 3. Pat chooses Plan 2 within ~~((his))~~ ninety days. Pat is now a Plan 2 member who can no longer have a **plan choice** regardless of future employment. See subsection ~~((3)(d))~~ (8) of this section.

Concurrent Employment in Phase 1 and 2:

**Example 5: Using example 2A,** Chris also accepts employment for a county (Phase 2 employer) on April 1, 2002, **prior to transferring** to Plan 3. Since Chris is concurrently employed at a Phase 1 and a Phase 2 employer, Chris must wait for the Phase 2 window ~~((before he can))~~ to transfer to Plan 3. See subsection ~~((10))~~ (9) of this section.