



PROPOSED RULE MAKING

CR-102 (July 2022)
(Implements RCW 34.05.320)
Do **NOT** use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: December 28, 2022

TIME: 11:26 AM

WSR 23-02-028

Agency: Department of Social and Health Services, Economic Services Administration

- Original Notice**
- Supplemental Notice to WSR** _____
- Continuance of WSR** _____

- Preproposal Statement of Inquiry was filed as WSR 22-21-071 ; or**
- Expedited Rule Making--Proposed notice was filed as WSR _____; or**
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or**
- Proposal is exempt under RCW _____.**

Title of rule and other identifying information: (describe subject) The department is proposing amendments to WAC 388-450-0015, What types of income are not used by the department to figure out my benefits?, 388-470-0045, How do my resources count toward the resource limits for cash assistance?, and 388-470-0055, How do my resources count toward the resource limit for basic food?

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
February 7, 2023	10:00 a.m.	Office Building 2 DSHS Headquarters 1115 Washington Olympia, WA 98504 Or virtually	Public parking at 11 th and Jefferson. A map is available at: https://www.dshs.wa.gov/office-of-the-secretary/drivingdirections-office-bldg-2 Due to the COVID pandemic, hearings are being held virtually. Please see the DSHS website for the most up to date information.

Date of intended adoption: No earlier February 8, 2023 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: DSHS Rules Coordinator
Address: PO Box 45850, Olympia, WA 98504
Email: DSHSRPAURulesCoordinator@dshs.wa.gov
Fax: 360-664-6185
Other:
By (date) February 7, 2023, at 5:00 pm.

Assistance for persons with disabilities:

Contact Shelley Tencza, DSHS Rules Consultant
Phone: 360-664-6036
Fax: 360-664-6185
TTY: 711 Relay Service
Email: Tencza@dshs.wa.gov
Other:
By (date) January 24, 2023, at 5:00 pm

Purpose of the proposal and its anticipated effects, including any changes in existing rules: Proposed amendments clarify how the Washington Working Families Tax Credit will be treated for purposes of cash and food assistance program eligibility.

Reasons supporting proposal: See above.

Statutory authority for adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.300, 74.04.510, 74.08.090, and 74.08A.120

Statute being implemented: N/A.

Is rule necessary because of a:

- Federal Law? Yes No
- Federal Court Decision? Yes No
- State Court Decision? Yes No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

Type of proponent: Private Public Governmental

Name of proponent: (person or organization) Department of Social and Health Services

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Gary Fryer	PO Box 45470, Olympia, WA 98504-5470	253-720-5306
Implementation:	Gary Fryer	PO Box 45470, Olympia, WA 98504-5470	253-720-5306
Enforcement:	Gary Fryer	PO Box 45470, Olympia, WA 98504-5470	253-720-5306

Is a school district fiscal impact statement required under [RCW 28A.305.135](#)?

Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

Is a cost-benefit analysis required under [RCW 34.05.328](#)?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

No: Please explain: This amendment is exempt as allowed under RCW 34.05.328(5)(b)(vii) which states in part, "[t]his section does not apply to...rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

Regulatory Fairness Act and Small Business Economic Impact Statement

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

(1) Identification of exemptions:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.061](#) because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description: .

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by [RCW 34.05.313](#) before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of [RCW 15.65.570\(2\)](#) because it was adopted by a referendum.

- This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(3\)](#). Check all that apply:
- | | |
|---|---|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> RCW 34.05.310 (4)(g)
(i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(4\)](#) (does not affect small businesses).

This rule proposal, or portions of the proposal, is exempt under [RCW 34.05.328\(5\)\(b\)\(vii\)](#).

Explanation of how the above exemption(s) applies to the proposed rule: These amendments do not impact small businesses. They only impact DSHS clients.

(2) Scope of exemptions: *Check one.*

- The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.
- The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):
- The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

(3) Small business economic impact statement: *Complete this section if any portion is not exempt.*

If any portion of the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. _____
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Date: December 22, 2022	Signature: 
Name: Katherine I. Vasquez	
Title: DSHS Rules Coordinator	

WAC 388-450-0015 What types of income are not used by the department to figure out my benefits? (1) We do not count the following types of income when we determine your cash assistance and basic food benefits:

(a) Bona fide loans as defined in WAC 388-470-0045, except certain student loans as specified under WAC 388-450-0035;

(b) Federal income tax refunds, ~~((and))~~ earned income tax credit (EITC), and Washington's working families tax credit (WFTC) payments in the month received;

(c) Federal economic stimulus payments that are excluded for federal and federally assisted state programs;

(d) Federal ~~((twenty-five dollar))~~ \$25 supplemental weekly unemployment compensation payment authorized by the American Recovery and Reinvestment Act of 2009;

(e) Title IV-E and state foster care maintenance payments if you choose not to include the foster child in your assistance unit;

(f) Energy assistance payments;

(g) Educational assistance we do not count under WAC 388-450-0035;

(h) Native American benefits and payments we do not count under WAC 388-450-0040;

(i) Income from employment and training programs we do not count under WAC 388-450-0045;

(j) Money withheld from a benefit to repay an overpayment from the same income source;

(k) Legally obligated child support payments received by someone who gets temporary assistance for needy families (TANF) or state family assistance (SFA) benefits;

(l) One-time payments issued under the Department of State or Department of Justice reception and replacement programs, such as voluntary agency (VOLAG) payments;

(m) Payments we are directly told to exclude as income under state or federal law;

(n) Payments made to someone outside of the household for the benefits of the assistance unit using funds that are not owed to the household; and

(o) Distributions for qualified disability expenses from an achieving a better life experience (ABLE) account;

(2) For basic food only:

(a) We do not count the total monthly amount of all legally obligated current or back child support payments paid by the assistance unit to someone outside of the assistance unit for:

(i) A person who is not in the assistance unit; or

(ii) A person who is in the assistance unit to cover a period of time when they were not living with the member of the assistance unit responsible for paying the child support on their behalf; and

(b) We do count money withheld because you were overpaid for not meeting requirements of a federal, state, or local means tested programs such as temporary assistance for needy families (TANF), state family assistance (SFA), aged, blind, or disabled (ABD) cash assistance, pregnant women assistance (PWA), and supplemental security income (SSI).

WAC 388-470-0045 How do my resources count toward the resource limits for cash assistance? (1) We count the following resources toward your assistance unit's resource limits for cash assistance to decide if you are eligible for benefits under WAC 388-470-0005:

(a) Liquid resources not specifically excluded in subsection (2) of this section, including but not limited to:

- (i) Cash on hand;
- (ii) Money in checking or savings accounts;
- (iii) Money market accounts or certificates of deposit (CD) less any withdrawal penalty;
- (iv) Available retirement funds or pension benefits less any withdrawal penalty;
- (v) Stocks, bonds, annuities, or mutual funds less any early withdrawal penalty;
- (vi) Available trusts or trust accounts;
- (vii) Lump sum payments as described in chapter 388-455 WAC; and
- (viii) Any funds retained beyond the month of receipt from conversion of federally protected rights or extraction of exempt resources by members of a federally recognized tribe that are in the form of countable resources;

(b) The cash surrender value (CSV) of whole life insurance policies;

(c) The CSV over \$1,500 (~~(dollars)~~) of revocable burial insurance policies or funeral agreements;

(d) The amount of a child's irrevocable educational trust fund that is over \$4,000 (~~(dollars)~~) per child;

(e) Funds withdrawn from an individual development account (IDA) if they were removed for a purpose other than those specified in RCW 74.08A.220;

(f) Any real property like a home, land, or building not specifically excluded in this section;

(g) The equity value of vehicles as described in WAC 388-470-0070;

(h) Resources of a sponsor as described in WAC 388-470-0060;

(i) Sales contracts; and

(j) Personal property that is not:

- (i) A household good;
- (ii) Needed for self-employment; or
- (iii) Of great sentimental value due to personal attachment or hobby interest.

(2) The following types of liquid resources do not count when we determine your eligibility:

(a) Bona fide loans, including student loans;

(b) Basic food benefits;

(c) Income tax refunds for 12 months from the date of receipt;

(d) Earned income tax credit (EITC) in the month received and for up to 12 months;

(e) Advance earned income tax credit payments;

(f) Washington's working families tax credit (WFTC);

~~((f))~~ (g) Federal economic stimulus payments that are excluded for federal and federally assisted state programs;

~~((g))~~ (h) Individual development accounts (IDAs) established under RCW 74.08A.220;

~~((h))~~ (i) Retroactive cash benefits or TANF/SFA benefits resulting from a court order modifying a department decision;

~~((i))~~ (j) Underpayments received under chapter 388-410 WAC;

~~((j))~~ (k) Educational benefits that are excluded as income under WAC 388-450-0035;

~~((k))~~ (l) The income and resources of an SSI recipient;

~~((l))~~ (m) A bank account jointly owned with an SSI recipient if SSA already counted the money for SSI purposes;

~~((m))~~ (n) Foster care payments provided under Title IV-E, state foster care maintenance payments, or both;

~~((n))~~ (o) Adoption support payments;

~~((o))~~ (p) All funds in an achieving a better life experience (ABLE) account;

~~((p))~~ (q) Self-employment accounts receivable that the client has billed to the customer but has been unable to collect; and

~~((q))~~ (r) Resources specifically excluded by federal law.

(3) The following types of real property do not count when we determine your eligibility:

(a) Your home and the surrounding property that you, your spouse, or your dependents live in;

(b) A house you do not live in, if you plan to return to the home and are out of the home because of:

(i) Employment;

(ii) Training for future employment;

(iii) Illness; or

(iv) Natural disaster or casualty;

(c) Indian lands held jointly with a tribe or land that can be sold only with the approval of the Bureau of Indian Affairs; and

(d) Property that:

(i) You are making a good faith effort to sell;

(ii) You intend to build a home on, if you do not already own a home;

(iii) Produces income consistent with its fair market value, even if used only on a seasonal basis; or

(iv) A household member needs for employment or self-employment.

(4) Property excluded under subsection (3)(d)(iv) of this section used by a self-employed farmer or fisher retains its exclusion for one year after the household member stops farming or fishing.

(5) If you deposit excluded liquid resources into a bank account with countable liquid resources, we do not count the excluded liquid resources for six months from the date of deposit.

(6) If you sell your home, you have 90 days to reinvest the sale proceeds into an exempt resource.

(7) If you do not reinvest within 90 days, we will determine whether there is good cause to allow more time. If we determine you have good cause, we will give you more time based on your circumstances. If you do not have good cause, we will count your sale proceeds as a resource. Some examples of good cause include:

(a) Closing on your new home is taking longer than anticipated;

(b) You are unable to find a new home that you can afford;

(c) Someone in your household is receiving emergent medical care;

(d) Your children are in school and moving would require them to change schools.

WAC 388-470-0055 How do my resources count toward the resource limit for basic food? (1) For basic food, if your assistance unit (AU) is not categorically eligible (CE) under WAC 388-414-0001, we count the following resources toward your AU's resource limit to decide if you are eligible for benefits under WAC 388-470-0005:

(a) Liquid resources easily changed into cash, including but not limited to:

- (i) Cash on hand;
- (ii) Money in checking or savings accounts;
- (iii) Money market accounts or certificates of deposit (CD) less any withdrawal penalty;
- (iv) Stocks, bonds, annuities, or mutual funds less any early withdrawal penalty;
- (v) Available trusts or trust accounts; and
- (vi) Lump sum payments, which is money owed to you from a past period of time that you get but do not expect to get on a continuing basis;

(b) Nonliquid resources, personal property, and real property not specifically excluded in subsection (2) of this section;

(c) Vehicles as described in WAC 388-470-0075; and

(d) The resources of a sponsor as described in WAC 388-470-0060.

(2) The following resources do not count toward the resource limit described in WAC 388-470-0005(8):

(a) Your home and the surrounding property that you, your spouse, or your dependents live in;

(b) A home you do not live in, if you plan to return to the home and are out of the home because of one or more of the following circumstances:

- (i) Employment;
- (ii) Training for future employment;
- (iii) Illness; or
- (iv) Natural disaster or casualty;
- (c) Property that:
 - (i) You are making a good faith effort to sell;
 - (ii) You intend to build a home on, if you do not already own a home;
 - (iii) Produces income consistent with its fair market value, even if used only on a seasonal basis;

(iv) Is essential to the employment or self-employment of a household member;

(v) Is essential for the maintenance or use of an income-producing vehicle; or

(vi) Has an equity value equal to or less than half of the resource limit as described in WAC 388-470-0005;

(d) Household goods;

(e) Personal effects;

(f) Life insurance policies, including policies with cash surrender value (CSV);

(g) One burial plot per household member;

(h) One funeral agreement per household member, up to \$1,500 ((dollars));

(i) Pension plans or retirement funds not specifically counted in subsection (1) of this section;

(j) Sales contracts, if the contract is producing income consistent with its fair market value;

(k) Government payments issued for the restoration of a home damaged in a disaster;

(l) Indian lands held jointly with a tribe or land that can be sold only with the approval of the Bureau of Indian Affairs;

(m) Nonliquid resources that have a lien placed against them;

(n) Earned income tax credits (EITC) or Washington's working families tax credit (WFTC) for 12 months, if you were a basic food recipient when you got the EITC or WFTC and you remain on basic food for all 12 months (~~(i)~~

~~(i) For 12 months, if you were a basic food recipient when you got the EITC and you remain on basic food for all twelve months; or~~

~~(ii) The month you get it and the month after, if you were not getting basic food when you got the EITC);~~

(o) Energy assistance payments or allowances;

(p) The resources of a household member who gets supplemental security income (SSI), temporary assistance for needy families (TANF), state family assistance (SFA), aged, blind, or disabled (ABD) cash assistance, or pregnant women assistance (PWA) benefits;

(q) Retirement funds or accounts that are tax exempt under the Internal Revenue Code;

(r) Education funds or accounts in a tuition program under Title 26 U.S.C. Sec. 529 or 530 of the federal Internal Revenue Code of 1986, as amended;

(s) All funds in an achieving a better life experience (ABLE) account;

(t) Resources specifically excluded by federal law; and

(u) Federal income tax refunds for 12 months whether or not you were receiving basic food assistance at the time you got the refund.

(3) Property excluded under subsection (2)(c)(iv) of this section used by a self-employed farmer or fisher retains its exclusion for one year after the household member stops farming or fishing.

(4) If you deposit excluded liquid resources into a bank account with countable liquid resources, we do not count the excluded liquid resources for six months from the date of deposit. Exception: Federal tax refunds are not counted for 12 months even when mixed with countable resources.

(5) If you sell your home, you have 90 days to reinvest the sale proceeds into an exempt resource. If you do not reinvest within 90 days, we will determine whether there is good cause to allow more time. If we determine you have good cause, we will give you more time based on your circumstances. If you do not have good cause, we will count the sale proceeds as a resource. Some examples of good cause include:

(a) Closing on your new home is taking longer than anticipated;

(b) You are unable to find a new home that you can afford;

(c) Someone in your household is receiving emergent medical care;

(d) Your children are in school and moving would require them to change schools.