



# 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: October 17, 2023

TIME: 2:15 PM

WSR 23-21-089

Agency: Employment Security Department

☒ Original Notice

☐ Supplemental Notice to WSR

☐ Continuance of WSR

☒ Preproposal Statement of Inquiry was filed as WSR 22-22-028; 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: WAC 192-100-070 Conditional payments and WAC 192-120-050 Conditional payment of benefits

### Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
November 21, 2023	9:00 AM PST	Zoom Meeting ID: 811 7064 7138 Passcode: 849377 Call in: +12532050468,,81170647138#,,, *,849377# US +12532158782,,81170647138#,,, *,849377# US (Tacoma)	Join Zoom meeting: <a href="https://esd-wa.gov.zoom.us/j/81170647138?pwd=aWluV2kvK3BSbERZMmd2bkhTL21tQT09">https://esd-wa.gov.zoom.us/j/81170647138?pwd=aWluV2kvK3BSbERZMmd2bkhTL21tQT09</a>

Date of intended adoption: November 22, 2023 (Note: This is NOT the effective date)

### Submit written comments to:

Name: Stephanie Frazee  
Address: P.O. Box 9046, Olympia, WA 98507-9046  
Email: [rules@esd.wa.gov](mailto:rules@esd.wa.gov)  
Phone: 425-465-0313  
Fax: 844-652-7096  
Other:  
By: November 21, 2023

### Assistance for persons with disabilities:

Contact: Teresa Eckstein  
Phone: 360-507-9890  
Fax: 360-507-9890  
TTY: Relay 711  
Email: [Teresa.eckstein@esd.wa.gov](mailto:Teresa.eckstein@esd.wa.gov)  
Other:  
By: November 14, 2023

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** WAC 192-100-070 currently defines a conditional payment as an unemployment benefit paid after an individual has already received one benefit payment but "during a period in which the Department questions [the individual's] continued eligibility for benefits." More clarity is needed to objectively define the beginning and end of this period during which the Department is questioning the individual's continued eligibility for benefits. This rulemaking will also combine the definitions in WAC 192-100-070 and WAC 192-120-050 into a single rule, WAC 192-100-070.

**Reasons supporting proposal:** This proposal is necessary to provide clarity to claimants regarding the circumstances under which the Department pays benefits on a conditional basis.

**Statutory authority for adoption:** RCW 50.12.010, RCW 50.12.040, RCW 50.20.170.

**Statute being implemented:** RCW 50.20.170.

<b>Is rule necessary because of a:</b>		
Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If yes, CITATION:		
<b>Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:</b> None.		
<b>Type of proponent:</b> <input type="checkbox"/> Private <input type="checkbox"/> Public <input checked="" type="checkbox"/> Governmental		
<b>Name of proponent:</b> Employment Security Department		
<b>Name of agency personnel responsible for:</b>		
Name	Office Location	Phone
Drafting: Stephanie Frazee	Olympia, WA	425-465-0313
Implementation: J.R. Richards	Olympia, WA	360-463-1079
Enforcement: J.R. Richards	Olympia, WA	360-463-1079
<b>Is a school district fiscal impact statement required under <a href="#">RCW 28A.305.135</a>?</b>		
		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If yes, insert statement here:		
<p>The public may obtain a copy of the school district fiscal impact statement by contacting:</p> <p>Name:</p> <p>Address:</p> <p>Phone:</p> <p>Fax:</p> <p>TTY:</p> <p>Email:</p> <p>Other:</p>		
<b>Is a cost-benefit analysis required under <a href="#">RCW 34.05.328</a>?</b>		
<input checked="" type="checkbox"/> Yes: A preliminary cost-benefit analysis may be obtained by contacting: Name: Stephanie Frazee Address: P.O. Box 9046, Olympia, WA 98507-9046 Phone: 425-465-0313 Fax: 844-652-7096 TTY: Relay 771 Email: rules@esd.wa.gov Other: https://esd.wa.gov/newsroom/rulemaking/		
<input type="checkbox"/> No: Please explain:		
<b>Regulatory Fairness Act and Small Business Economic Impact Statement</b>		
Note: The <a href="#">Governor's Office for Regulatory Innovation and Assistance (ORIA)</a> provides support in completing this part.		
<b>(1) Identification of exemptions:</b>		
This rule proposal, or portions of the proposal, <b>may be exempt</b> from requirements of the Regulatory Fairness Act (see <a href="#">chapter 19.85 RCW</a> ). For additional information on exemptions, consult the <a href="#">exemption guide published by ORIA</a> . Please check the box for any applicable exemption(s):		
<input type="checkbox"/> This rule proposal, or portions of the proposal, is exempt under <a href="#">RCW 19.85.061</a> 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:		
<input type="checkbox"/> This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by <a href="#">RCW 34.05.313</a> before filing the notice of this proposed rule.		
<input type="checkbox"/> This rule proposal, or portions of the proposal, is exempt under the provisions of <a href="#">RCW 15.65.570(2)</a> because it was adopted by a referendum.		

<input type="checkbox"/> This rule proposal, or portions of the proposal, is exempt under <a href="#">RCW 19.85.025(3)</a> . Check all that apply:	
<input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(b) (Internal government operations)	<input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(e) (Dictated by statute)
<input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(c) (Incorporation by reference)	<input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(f) (Set or adjust fees)
<input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(d) (Correct or clarify language)	<input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(g) ((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)
<input type="checkbox"/> This rule proposal, or portions of the proposal, is exempt under <a href="#">RCW 19.85.025(4)</a> (does not affect small businesses).	
<input type="checkbox"/> This rule proposal, or portions of the proposal, is exempt under RCW _____.	
Explanation of how the above exemption(s) applies to the proposed rule:	
<b>(2) Scope of exemptions:</b> <i>Check one.</i> <input type="checkbox"/> The rule proposal is fully exempt ( <i>skip section 3</i> ). Exemptions identified above apply to all portions of the rule proposal. <input type="checkbox"/> The rule proposal is partially exempt ( <i>complete section 3</i> ). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using <a href="#">this template from ORIA</a> ): <input type="checkbox"/> The rule proposal is not exempt ( <i>complete section 3</i> ). No exemptions were identified above.	
<b>(3) Small business economic impact statement:</b> <i>Complete this section if any portion is not exempt.</i> If any portion of the proposed rule is <b>not exempt</b> , does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?	
<input checked="" type="checkbox"/> No      No costs are anticipated as a result of the rulemaking.	
<input type="checkbox"/> 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:	
<b>Date:</b> October 17, 2023  <b>Name:</b> Joy Adams  <b>Title:</b> Acting Director Employment System Policy & Integrity	<b>Signature:</b> 