

WAC 468-100-002 Definitions and acronyms. Definitions: Certain terms used in this chapter are defined as follows:

(1) **Agency:** The term agency means the federal agency, state, state agency, or person that acquires real property or displaces a person.

(a) Acquiring agency. The term acquiring agency means a state agency, as defined in (d) of this subsection, which has the authority to acquire property by eminent domain under state law, and a state agency or person that does not have such authority.

(b) Displacing agency. The term displacing agency means any federal agency carrying out a program or project, and any state, state agency, or person carrying out a program or project with the federal financial assistance that causes a person to be a displaced person.

(c) Federal agency. The term federal agency means any department, agency, or instrumentality in the executive branch of the government, any wholly owned government corporation, the architect of the capitol, the federal reserve banks and branches thereof, and any person who has the authority to acquire property by eminent domain under federal law.

(d) State agency. The term state agency means any department, agency or instrumentality of a state or of a political subdivision of a state, any department, agency, or instrumentality or two or more states or of two or more political subdivisions of a state or states, and any person who has the authority to acquire property by eminent domain under state law.

(2) **Alien not lawfully present in United States:** Means an alien who is not "lawfully present" in the United States as defined in Public Law 104-193 and includes:

(a) An alien present in the United States who has not been admitted or paroled into the United States pursuant to the Immigration and Nationality Act and whose stay in the United States has not been authorized by the United States Attorney General; and

(b) An alien who is present in the United States after the expiration of the period of stay authorized by the United States Attorney General or who otherwise violates the terms and conditions of admission, parole or authorization to stay in the United States.

(3) **Appraisal:** Means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

(4) **Business:** Means any lawful activity, except a farm operation, that is conducted:

(a) Primarily for the purchase, sale, lease, and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property; or

(b) Primarily for the sale of services to the public; or

(c) Primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or

(d) By a nonprofit organization that has established its nonprofit status under applicable federal or state law.

(5) **Citizen:** The term citizen for purposes of this part includes both citizens of the United States and noncitizen nationals.

(6) **Comparable replacement dwelling:** Means a dwelling that meets the additional rules in WAC 468-100-403 and which is:

(a) Decent, safe, and sanitary according to the definition in subsection (8) of this section.

(b) Functionally equivalent to the displacement dwelling. The term functionally equivalent means that it performs the same function, and provides the same utility. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present. Generally, the functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used. However, in determining whether a replacement is functionally equivalent to the displacement dwelling, the agency may consider reasonable tradeoffs for specific features when the replacement unit is equal to or better than the displacement dwelling.

(c) Adequate in size to accommodate the occupants.

(d) Located in an area that is not subject to unreasonable adverse environmental conditions.

(e) In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and is reasonably accessible to the person's place of employment. Comparables may be used from neighborhoods similar to that of the acquired dwelling.

(f) On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The replacement site need not include either a special improvement or a major exterior attribute such as outbuildings, swimming pools, or greenhouses in accordance with WAC 468-100-403 (1)(b).

(g) Currently available to the displaced person on the private market except as provided in subsection (6)(i) of this section.

(h) Within the financial means of the displaced person.

(i) For a one hundred eighty-day owner-occupant described at WAC 468-100-401, a comparable dwelling is considered to be within the displacee's financial means.

(ii) For a ninety-day tenant-occupant described at WAC 468-100-402, a comparable dwelling is considered to be within the displacee's financial means if after application of the rental assistance payment, described in said section, the displacee's portion of the monthly rent plus utilities would be thirty percent or less of his total monthly income from all sources.

(iii) For a displaced person who is not eligible to receive a replacement housing payment under WAC 468-100-402 due to failure to meet the length of occupancy requirements, comparable housing is considered to be within the displacee's financial means if the acquiring agency pays that portion of the monthly housing costs of a replacement dwelling which exceeds the person's base monthly rent for the displacement dwelling as described in WAC 468-100-402 (2)(b). Such rental assistance must be paid under WAC 468-100-404, replacement housing of last resort.

(i) For a person receiving government housing assistance before displacement, a dwelling that may reflect similar government housing assistance. In such cases any requirements of the government housing assistance program relating to the size of the replacement dwelling shall apply.

(7) **Contribute materially:** Means that during the two taxable years prior to the taxable year in which displacement occurs, or during such other period as the agency determines to be more equitable, a business or farm operation:

(a) Had average annual gross receipts of at least five thousand dollars; or

(b) Had average annual net earnings of at least one thousand dollars; or

(c) Contributed at least thirty-three and one-third percent of the owner's or operator's average annual gross income from all sources.

(d) If the application of the above criteria creates an inequity or hardship in any given case, the agency may approve the use of other criteria as determined appropriate.

(8) **Decent, safe, and sanitary (DSS) dwelling:** Means a dwelling that meets local housing and occupancy codes. However, any of the following standards that are not met by the local code shall apply, unless waived for good cause by the agency funding the project. The dwelling shall:

(a) Be structurally sound, weather-tight, and in good repair.

(b) Contain a safe electrical wiring system adequate for lighting and other electrical devices.

(c) Contain a heating system capable of sustaining a healthful temperature (of approximately seventy degrees Fahrenheit) for a displaced person except in those areas where local climatic conditions do not require such a system.

(d) Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. The number of persons occupying each habitable room used for sleeping purposes shall not exceed that permitted by local housing codes or, in the absence of local codes, the policies of the displacing agency. In addition, the displacing agency shall follow the requirements for separate bedrooms for children of the opposite gender included in local housing codes or in the absence of local housing codes, the policies of such agencies.

(e) There shall be a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator.

(f) Contains unobstructed egress to safe, open space at ground level. If the replacement dwelling unit is on the second story or above, with access directly from or through a common corridor, the common corridor must have at least two means of egress.

(g) For a displaced person with a disability, be free of any barriers that would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

(9) **Displaced person:**

(a) **General:** Means any person who moves from the real property or moves his or her personal property from the real property. This includes a person who occupies the real property prior to its acquisition, but who does not meet the length of occupancy requirements of the Uniform Act:

(i) As a direct result of the agency's acquisition of, or the initiation of negotiation for, or the acquisition of, such real property in whole or in part for a project; or

(ii) As a direct result of a written order from the acquiring agency to vacate such real property for a project; or

(iii) As a direct result of the agency's acquisition of, or written order to vacate for a project, other real property on which the person conducts a business or farm operation; or

(iv) As a direct result of a voluntary transaction by the owner pursuant to WAC 468-100-101 (2) (a), thereby displacing a tenant.

(b) **Persons not displaced:** The following is a nonexclusive listing of persons who do not qualify as a displaced person under this chapter.

(i) A person who moves before the initiation of negotiations except one who is required to move for reasons beyond his or her control as explained in WAC 468-100-403(4), unless the agency determines that the person was displaced as a direct result of the program or project; or

(ii) A person who initially enters into occupancy of the property after the date of its acquisition for the project; or

(iii) A person who has occupied the property for the purpose of obtaining assistance under the Uniform Act; or

(iv) A person whom the agency determines is not required to relocate permanently as a direct result of a project. Such determination shall be made by the agency in accordance with any guidelines established by the federal agency funding the project; or

(v) An owner-occupant who moves as a result of an acquisition of real property or as a result of the rehabilitation or demolition of the real property. However, the displacement of a tenant as a direct result of any acquisition, rehabilitation or demolition for a federal or federally assisted project is subject to this part; or

(vi) A person whom the agency determines is not displaced as a direct result of a partial acquisition; or

(vii) A person who, after receiving a notice of relocation eligibility, is notified in writing that he or she will not be displaced for a project. Such written notification shall not be issued unless the person has not moved and the agency agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility as described in WAC 468-100-203 (2) (b); or

(viii) An owner-occupant who voluntarily sells his or her property pursuant to WAC 468-100-101 (2) (a) after being informed in writing that if a mutually satisfactory agreement of sale cannot be reached, the agency will not acquire the property. In such cases, however, any resulting displacement of a tenant is subject to the regulations in this part; or

(ix) A person who retains the right of use and occupancy of the real property for life following its acquisition by the agency; or

(x) A person who retains the right of use and occupancy of the real property for a fixed term after its acquisition for a program or project receiving federal financial assistance from the Department of Interior; or

(xi) An owner who retains the right of use and occupancy of the real property for a fixed term after its acquisition by the Department of Interior under Public Law 93-477 or Public Law 93-303, except that such owner remains a displaced person for purposes of subpart D of this code; or

(xii) A person who is determined to be in unlawful occupancy prior to or after the initiation of negotiations, or a person who has been evicted for cause, under applicable state law, in accordance with WAC 468-100-206. However, advisory assistance may be provided to un-

lawful occupants at the option of the agency in order to facilitate the project; or

(xiii) A person who is not lawfully present in the United States and who has been determined to be ineligible for relocation assistance in accordance with WAC 468-100-208; or

(xiv) Tenants required to move as a result of the sale of their dwelling to a person using downpayment assistance provided under the American Dream Downpayment Initiative (ADDI) authorized by Section 102 of the American Dream Downpayment Act (Pub. L., 108-186; codified at 42 U.S.C. 12821).

(10) **Dwelling:** Means the place of permanent or customary and usual residence of a person, as determined by the agency according to local custom or law, including a single family house; a single family unit in a two-family, multifamily, or multipurpose property; a unit of a condominium or cooperative housing project; a nonhousekeeping unit; a mobile home; or any other residential unit.

(11) **Dwelling site:** The term dwelling site means a land area that is typical in size for similar dwellings located in the same neighborhood or rural area.

(12) **Farm operation:** Means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(13) **Federal financial assistance:** Means any grant, loan, or contribution, except a federal guarantee or insurance.

(14) **Household income:** The term household income means total gross income received for a twelve-month period from all sources (earned and unearned) including, but not limited to, wages, salary, child support, alimony, unemployment benefits, workers compensation, Social Security, or the net income from a business. It does not include income received or earned by dependant children and full-time students under eighteen years of age.

(15) **Initiation of negotiations:** Means the date of delivery of the initial written offer by the agency to the owner or the owner's representative to purchase real property for a project for the amount determined to be just compensation, unless applicable agency program regulations specify a different action to serve this purpose. However:

(a) If the agency issues a notice of its intent to acquire the real property, and a person moves after that notice, but before delivery of the initial written purchase offer, the "initiation of negotiations" means the date the person moves from the property.

(b) In the case of a permanent relocation to protect the public health and welfare under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (Pub. L. 96-510, or "Superfund"), the "initiation of negotiations" means the formal announcement of such relocation or the federal or federally-coordinated health advisory where the federal government later decides to conduct a permanent relocation.

(c) In the case of permanent relocation of a tenant as a result of an acquisition of real property described in WAC 468-100-101 (2)(a)(i) through (iii), the initiation of negotiations means the actions described in this section, except that such initiation of negotiations does not become effective, for the purposes of establishing eligibility for relocation assistance for such tenants under this part, until there is a written agreement between the agency and the owner to purchase the real property.

- (16) **Lead agency:** Means the department of transportation acting through the Federal Highway Administration.
- (17) **Mobile home:** The term mobile home includes manufactured homes and recreational vehicles used as residences.
- (18) **Mortgage:** Means any of such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the state in which the real property is located, together with the credit instruments, if any, secured thereby.
- (19) **Nonprofit organization:** The term nonprofit organization means an organization that is incorporated under the applicable laws of a state as a nonprofit organization, and exempt from paying federal income taxes under Section 501 of the Internal Revenue Code (26 U.S.C. 501).
- (20) **Owner of a dwelling:** A person is considered to have met the requirement to own a dwelling if the person purchases or holds any of the following interests in real property acquired for a project:
- (a) Fee title, a life estate, a land contract, a ninety-nine-year lease, or a lease including any options for extension, with at least fifty years to run from the date of acquisition; or
 - (b) An interest in a cooperative housing project which includes the right to occupy a dwelling; or
 - (c) A contract to purchase any of the interests or estates described in (a) or (b) of this subsection; or
 - (d) Any other interests, including a partial interest, which in the judgment of the agency warrants consideration as ownership.
- (21) **Person:** Means any individual, family, partnership, corporation, or association.
- (22) **Program or project:** The phrase program or project means any activity or series of activities undertaken by a federal agency or with federal financial assistance received or anticipated in any phase of any undertaking in accordance with the federal funding agency guidelines.
- (23) **Salvage value:** Means the probable sale price of an item, if offered for sale to knowledgeable buyers with the requirement that it will be removed from the property at the buyer's expense, (i.e., not eligible for relocation assistance). This includes items for reuse as well as items with components that can be reused or recycled when there is no reasonable prospect of sale except on this basis.
- (24) **Small business:** Means any business having not more than five hundred employees working at the site being required or permanently displaced by a program or project, which site is the location of economic activity. Sites operated solely by outdoor advertising signs, displays, or devices do not qualify as a business for purposes of WAC 468-100-306.
- (25) **State:** Means any department, commission, agency, or instrumentality of the state of Washington.
- (26) **Tenant:** Means a person who has the temporary use and occupancy of real property owned by another.
- (27) **Uneconomic remnant:** Means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the acquiring agency has determined has little or no value.
- (28) **Uniform Act:** Means the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894; 42 U.S.C. 4601 et seq.; Pub. L. 91-646), and amendments thereto.

(29) **Unlawful occupant:** A person who occupies without property right, title or payment of rent or a person legally evicted, with no legal rights to occupy a property under state law. An agency, at its discretion, may consider such person to be in lawful occupancy.

(30) **Utility costs:** The term utility costs means expenses for electricity, gas, other heating and cooking fuels, water and sewer.

(31) **Utility facility:** The term utility facility means any electric, gas, water, steam power, or materials transmission or distribution system; any transportation system; any communications system, including cable television; and any fixtures, equipment, or other property associated with the operation, maintenance, or repair or any such system. A utility facility may be publicly, privately, or cooperatively owned.

(32) **Utility relocation:** The term utility relocation means the adjustment of a utility facility required by the program or project undertaken by the displacing agency. It includes removing and reinstalling the facility, including necessary temporary facilities; acquiring necessary right of way on a new location; moving, rearranging or changing the type of existing facilities; and taking any necessary safety and protective measures. It shall also mean constructing a replacement facility that has the functional equivalency of the existing facility and is necessary for the continued operation of the utility service, the project economy, or sequence of project construction.

(33) **Voluntary transaction:** Means a donation, exchange, market sale, or other type of agreement entered into without compulsion on the part of the agency.

(34) **Waiver valuation:** The term waiver valuation means the valuation process used and the product produced when the agency determines that an appraisal is not required, pursuant to WAC 468-100-102 appraisal waiver provisions.

Acronyms: The following acronyms are commonly used in the implementation of programs subject to this regulation.

BCIS: Bureau of Citizenship of Immigration Service.

DSS: Decent, safe and sanitary.

FEMA: Federal Emergency Management Agency.

FHA: Federal Housing Association.

FHWA: Federal Highway Administration.

FIRREA: Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

HLR: Housing of last resort.

HUD: U.S. Department of Housing and Urban Development.

MIDP: Mortgage interest differential payment.

RHP: Replacement housing payment.

STURAA: Surface Transportation and Uniform Relocation Act Amendments of 1987.

URA: Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

USDOT: U.S. Department of Transportation.

USPAP: Uniform Standards of Professional Appraisal Practice.

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