

Chapter 468-100 WAC

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION

WAC

SUBPART A
GENERAL

468-100-001 Purpose.
468-100-002 Definitions and acronyms.
468-100-003 No duplication of payments.
468-100-004 Assurances, monitoring, and corrective action.
468-100-005 Manner of notices.
468-100-006 Administration of jointly funded projects.
468-100-007 Federal agency waiver of regulations.
468-100-008 Compliance with other laws and regulations.
468-100-009 Recordkeeping and reports.
468-100-010 Appeals.

SUBPART B
REAL PROPERTY ACQUISITION

468-100-101 Applicability of acquisition requirements.
468-100-102 Criteria for appraisals.
468-100-103 Review of appraisals.
468-100-104 Acquisition of tenant-owned improvements.
468-100-105 Certain litigation expenses.
468-100-106 Donations.

SUBPART C
GENERAL RELOCATION REQUIREMENTS

468-100-201 Purpose.
468-100-202 Applicability.
468-100-203 Relocation notices.
468-100-204 Availability of comparable replacement dwelling before displacement.
468-100-205 Relocation planning, advisory services, and coordination.
468-100-206 Eviction for cause.
468-100-207 General requirements—Claims for relocation payments.
468-100-208 Aliens not lawfully present in the United States.
468-100-209 Relocation payments not considered as income.

SUBPART D
PAYMENT FOR MOVING AND RELATED EXPENSES

468-100-301 Payment for actual reasonable moving and related expenses.
468-100-302 Fixed payment for moving expenses—Residential moves.
468-100-303 Related nonresidential eligible expenses.
468-100-304 Fixed payment for moving expenses—Nonresidential moves.
468-100-305 Discretionary utility relocation payments.
468-100-306 Reestablishment expenses—Nonresidential moves.

SUBPART E
REPLACEMENT HOUSING PAYMENTS

468-100-401 Replacement housing payment for one hundred eighty-day homeowner-occupants.
468-100-402 Replacement housing payment for ninety-day occupants.
468-100-403 Additional rules governing replacement housing payments.
468-100-404 Replacement housing of last resort.

SUBPART F
MOBILE HOMES

468-100-501 Applicability.
468-100-502 Replacement housing payment for one hundred eighty-day mobile home homeowner displaced from a

mobile home, and/or from the acquired mobile home site.
468-100-503 Replacement housing payments for ninety-day mobile home occupants.
468-100-504 Additional rules governing relocation payment to mobile home occupants.

SUBPART G
CERTIFICATION

468-100-601 Purpose.
468-100-602 Certification application.
468-100-603 Monitoring and corrective action.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

468-100-505 Additional rules governing relocation payment to mobile home occupants. [Statutory Authority: Chapter 8.26 RCW. WSR 89-17-048 (Order 121), § 468-100-505, filed 8/14/89, effective 9/14/89.] Repealed by WSR 06-02-068, filed 1/3/06, effective 2/3/06. Statutory Authority: Chapter 8.26 RCW.

SUBPART A

GENERAL

WAC 468-100-001 Purpose. (1) This chapter promulgates rules to implement chapter 8.26 RCW (Relocation assistance—Real property acquisition policy).

(2) **Conflicts:** In the event of any conflict between these regulations and the provisions of chapter 8.26 RCW or any other applicable law, the statutory provisions are controlling.

(3) Notwithstanding anything to the contrary in this chapter, any displacing agency, where otherwise authorized, may make any relocation assistance payment in an amount which exceeds the maximum amount for such payment authorized by this chapter, and may comply with regulations promulgated pursuant to other authority, if the making of such payment or compliance with such requirements is necessary under federal law or regulations to secure federal financial assistance.

[Statutory Authority: Chapter 8.26 RCW. WSR 06-02-068, § 468-100-001, filed 1/3/06, effective 2/3/06; WSR 89-17-048 (Order 121), § 468-100-001, filed 8/14/89, effective 9/14/89.]

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 out-buildings, 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 unlawful 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.

[Statutory Authority: Chapter 8.26 RCW. WSR 06-02-068, § 468-100-002, filed 1/3/06, effective 2/3/06. Statutory Authority: Chapter 8.26 RCW and WSR 89-17-048 (Order 121). WSR 01-02-027, § 468-100-002, filed

(10/11/07)

12/22/00, effective 1/22/01. Statutory Authority: Chapter 8.26 RCW. WSR 89-17-048 (Order 121), § 468-100-002, filed 8/14/89, effective 9/14/89.]

WAC 468-100-003 No duplication of payments. No person is entitled to receive any payment under this chapter if that person receives a payment under federal, state, or local law which is determined to have the same purpose and effect as such payment under this chapter. The agency shall avoid creating a duplication based on information obtained by the agency at the time the agency approves a payment under this chapter.

[Statutory Authority: Chapter 8.26 RCW. WSR 89-17-048 (Order 121), § 468-100-003, filed 8/14/89, effective 9/14/89.]

WAC 468-100-004 Assurances, monitoring, and corrective action. (1) **Assurances:** Prior to a state agency or local public agency commencement of any project phase that will result in real property acquisition or displacement that is subject to chapter 8.26 RCW, the agency shall prepare and adopt operating procedures. Such procedures shall:

(a) Assure that the agency will comply with chapter 8.26 RCW and this chapter;

(b) Contain specific reference to any state law which the agency believes provides an exception to RCW 8.26.180, 8.26.190, or this chapter;

(c) Include appropriate provisions to carry out this chapter in a manner that minimizes the opportunity for, and/or the appearance of fraud, waste, and mismanagement; and

(d) Shall be prefaced by a certification that the agency will carry out its responsibilities for real property acquisition and relocation assistance in accordance with chapter 8.26 RCW and this chapter. A statement such as the following would satisfy the certification requirement:

"The agency certifies that the agency will comply with chapter 8.26 RCW and chapter 468-100 WAC in connection with the acquisition of real property for, and relocation of persons displaced by, a program or project of the agency."

The agency shall maintain a record copy of such procedures available for public review at any reasonable time and location.

(2) **Temporary relocation:** In the case of a person that will not be displaced but is required to relocate temporarily because of the project, the provisions of WAC 468-100-204(3) shall apply.

(3) **Monitoring and corrective action:** The funding agency will monitor compliance with this chapter, and the acquiring agency and/or displacing agency shall take whatever corrective action is necessary to comply with chapter 8.26 RCW and this chapter. The funding agency may also apply sanctions in accordance with applicable program regulations.

[Statutory Authority: Chapter 8.26 RCW. WSR 06-02-068, § 468-100-004, filed 1/3/06, effective 2/3/06; WSR 89-17-048 (Order 121), § 468-100-004, filed 8/14/89, effective 9/14/89.]

WAC 468-100-005 Manner of notices. Notices which the agency is required to provide shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be con-

tacted for answers to questions or other needed help. Notices shall be personally served or sent by registered or certified first-class mail return receipt requested and documented in the agency's files.

[Statutory Authority: Chapter 8.26 RCW. WSR 06-02-068, § 468-100-005, filed 1/3/06, effective 2/3/06; WSR 89-17-048 (Order 121), § 468-100-005, filed 8/14/89, effective 9/14/89.]

WAC 468-100-006 Administration of jointly funded projects. Whenever two or more agencies provide financial assistance to an agency or agencies to carry out functionally or geographically related activities which will result in the acquisition of property or the displacement of a person, the funding agencies may by agreement designate one such agency as the cognizant agency. At a minimum, the agreement shall set forth the financially assisted activities which are subject to its terms and cite any policies and procedures, in addition to this chapter, that are applicable to the activities under the agreement. Under the agreement, the cognizant agency shall assure that the project is in compliance with the provisions of chapter 8.26 RCW and this chapter. All financially assisted activities under the agreement shall be deemed a project for the purposes of this chapter.

[Statutory Authority: Chapter 8.26 RCW. WSR 89-17-048 (Order 121), § 468-100-006, filed 8/14/89, effective 9/14/89.]

WAC 468-100-007 Federal agency waiver of regulations. The federal agency funding the project may, on a case-by-case or project basis, waive any requirement in this chapter not required by law if it determines that the waiver does not reduce any assistance or protection provided to an owner or displaced person under this chapter. Any request for a waiver by an acquiring or displacing agency shall be justified on a case-by-case or project basis.

[Statutory Authority: Chapter 8.26 RCW. WSR 06-02-068, § 468-100-007, filed 1/3/06, effective 2/3/06; WSR 89-17-048 (Order 121), § 468-100-007, filed 8/14/89, effective 9/14/89.]

WAC 468-100-008 Compliance with other laws and regulations. The implementation of this chapter shall be in compliance with all applicable laws and implementing regulations, including the following:

- (1) Section I of the Civil Rights Act of 1866 (42 U.S.C. 1982 et seq.).
- (2) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).
- (3) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended.
- (4) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).
- (5) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.).
- (6) Executive Order 12250 - Leadership and Coordination of Non-Discrimination Laws.
- (7) Executive Order 11063 - Equal Opportunity and Housing, as amended by Executive Order 12259.
- (8) Executive Order 11246 - Equal Employment Opportunity.
- (9) Executive Order 11625 - Minority Business Enterprise.

[Ch. 468-100 WAC p. 6]

(10) Executive Order 12259 - Leadership and Coordination of Fair Housing in Federal Programs.

(11) The Flood Disaster Protection Act of 1973 (Pub. L. 93-234).

(12) Executive Orders 11988, Flood Plain Management, and 11990, Protection of Wetlands.

(13) The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.).

[Statutory Authority: Chapter 8.26 RCW. WSR 89-17-048 (Order 121), § 468-100-008, filed 8/14/89, effective 9/14/89.]

WAC 468-100-009 Recordkeeping and reports. (1) Records: The agency shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this chapter. These records shall be retained for at least three years after each owner of a property and each person displaced from a property receives the final payment to which the person is entitled under this chapter.

(2) **Confidentiality of records:** Records maintained by an agency in accordance with this chapter are confidential regarding their use as public information, unless applicable law provides otherwise.

(3) **Reports:** The agency shall submit a report of its real property acquisition and displacement activities under this chapter if required by the federal agency funding the project. A report will not be required more frequently than every three years, or as the Uniform Act provides, unless the funding agency shows good cause.

[Statutory Authority: Chapter 8.26 RCW. WSR 06-02-068, § 468-100-009, filed 1/3/06, effective 2/3/06; WSR 89-17-048 (Order 121), § 468-100-009, filed 8/14/89, effective 9/14/89.]

WAC 468-100-010 Appeals. The displacing agency shall promptly review appeals in accordance with the requirements of applicable law and this chapter.

(1) **Actions which may be appealed:** A person may file written notice of an appeal with the displacing agency in any case in which the person believes that the agency has failed to properly determine the person's eligibility for, or the amount of, a payment required under WAC 468-100-105 or RCW 8.26.200, or a relocation payment required under this chapter.

(2) **Limitations:** A person is entitled to only such benefits as are specifically delineated in this chapter.

(3) **Form of notice:** The displacing agency shall consider a written appeal regardless of form. The appeal notice or letter should state what issues are being claimed, the reasons why the aggrieved person believes the claim should be allowed, and how the person believes he or she is otherwise aggrieved. The letter or notice should clearly identify the displacing agency's project and parcel of real property involved and should bear the signature and address of the aggrieved person or the person's authorized representative. The displacing agency may refuse to schedule any review or hearing on an appeal until these requirements have been complied with or may issue an order providing for dismissal of such appeal upon failure to comply within a reasonable time specified by the agency.

(4) **Time limit for initiating appeal:** The time limit shall be sixty days after the person receives written notification of the agency's determination on the person's claim.

(5) **Review of files by person making appeal:** The displacing agency shall permit a person to inspect and copy all materials pertinent to the person's appeal, except materials which are classified as confidential by the agency. The agency may, however, impose reasonable conditions on the person's right to inspect, consistent with applicable laws.

(6) **Hearing process:** Except as they may be inconsistent with the rules of this chapter, the department of transportation adopts the practice and procedure rules as set forth in chapter 468-10 WAC for appeals under this chapter. Where the rules of this chapter conflict with those of chapter 468-10 or 10-08 WAC, the rules of this chapter shall govern.

(7) **Discovery:** Discovery will be available in relocation appeals as follows: Any party to a relocation appeal may obtain discovery from any party by written interrogatories, written admissions, oral depositions, subpoena duces tecums, and written requests for production of documents. The procedures regarding these methods of discovery are found at CR 28 through 36 and 45(b) as now or hereafter amended and are hereby incorporated in this section.

[Statutory Authority: Chapter 8.26 RCW. WSR 06-02-068, § 468-100-010, filed 1/3/06, effective 2/3/06. Statutory Authority: RCW 47.01.101(5) and chapter 34.05 RCW. WSR 94-14-102 (Order 146), § 468-100-010, filed 7/6/94, effective 8/6/94. Statutory Authority: Chapter 8.26 RCW. WSR 89-17-048 (Order 121), § 468-100-010, filed 8/14/89, effective 9/14/89.]

SUBPART B

REAL PROPERTY ACQUISITION

WAC 468-100-101 Applicability of acquisition requirements. General:

(1) Except as provided in subsection (2) of this section, the requirements of RCW 8.26.180 through 8.26.200 apply to any agency acquisition of real property for a program or project where the agency's program or project is carried out under threat of eminent domain including amicable agreements. Whether or not the acquiring agency has or intends to use the power of eminent domain, the requirements of RCW 8.26.180 through 8.26.200 apply to any project or program where there is an intended, planned, or designated project area, and all, or substantially all, of the property within that area is eventually intended to be acquired.

(2) Provided it does not conflict with subsection (1) of this section, an agency may determine that the requirements of RCW 8.26.180 through 8.26.200 do not apply to:

(a) Voluntary transactions (defined in WAC 468-100-002(33)) if all of the following conditions are present:

(i) No specific site or property needs to be acquired, although the agency may limit its search for alternative sites to a general geographic area.

(ii) The property to be acquired is not part of an intended, planned, or designated project area where all, or substantially all, of the property within the area is eventually to be acquired.

(iii) The agency will not acquire the property in the event negotiations fail to result in an amicable agreement, and the owner is so informed in writing.

(b) The acquisition of real property from a federal, state, or local public agency, if the acquiring agency does not have the authority to acquire the property through condemnation.

(3) In those situations where an agency wishes to purchase more than one site within a geographic area on a "voluntary transaction" basis, all owners shall be treated similarly.

[Statutory Authority: Chapter 8.26 RCW. WSR 06-02-068, § 468-100-101, filed 1/3/06, effective 2/3/06; WSR 89-17-048 (Order 121), § 468-100-101, filed 8/14/89, effective 9/14/89.]

WAC 468-100-102 Criteria for appraisals. (1) **Standards of appraisal:** The format and level of documentation for an appraisal depend on the complexity of the appraisal problem. The agency shall develop minimum standards for appraisals consistent with established and commonly accepted appraisal practice for those acquisitions which, by virtue of their low value or simplicity, do not require the in-depth analysis and presentation necessary in a detailed appraisal. A detailed appraisal shall be prepared for all other acquisitions. A detailed appraisal shall reflect nationally recognized appraisal standards. An appraisal must contain sufficient documentation, including valuation data and the appraiser's analysis of that data, to support the appraiser's opinion of value. At a minimum, the appraisal shall contain the following items:

(a) The purpose and/or the function of the appraisal, a definition of the estate being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal.

(b) An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), including items identified as personal property, a statement of the known and observed encumbrances if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a five-year sales history of the property.

(c) All relevant and reliable approaches to value consistent with commonly accepted professional appraisal practices. When sufficient market sales data are available to reliably support the fair market value for the specific appraisal problem encountered, the agency, at its discretion, may require only the market approach. If more than one approach is utilized, there shall be an analysis and reconciliation of approaches to value that are sufficient to support the appraiser's opinion of value.

(d) A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.

(e) A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property.

(f) The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

(2) **Influence of the project on just compensation.** To the extent permitted by applicable law, the appraiser in his "before" valuation shall disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project,

other than that due to the physical deterioration within the reasonable control of the owner.

(3) **Owner retention of improvements:** If the owner of a real property improvement agrees and is permitted to obtain the right to remove it in whole or in part from the project site, the amount to be offered for the interest in the real property to be acquired shall be the amount determined to be just compensation for the owner's entire interest in the real property. The salvage value (defined in WAC 468-100-002(23)) of the improvement to be removed shall be deducted from the agency's payment.

(4) **Qualifications of appraisers:** The agency shall establish criteria for determining the minimum qualifications of appraisers. Appraiser qualifications shall be consistent with the level of difficulty of the appraisal assignment. The agency shall review the experience, education, training, and other qualifications of appraisers, including review appraisers, and utilize only those determined to be qualified.

(5) **Conflict of interest:** No appraiser or review appraiser shall have any interest, direct or indirect, in the real property being appraised for the agency that would in any way conflict with the preparation or review of the appraisal. Compensation for making an appraisal shall not be based on the amount of the valuation.

No person shall attempt to unduly influence or coerce an appraiser, review appraiser, or waiver valuation preparer regarding any valuation or other aspect of an appraisal, review or waiver valuation. Persons functioning as negotiators may not supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work.

No appraiser shall act as a negotiator for real property which that person has appraised, except that the agency may permit the same person to both appraise and negotiate an acquisition where the value of the acquisition is ten thousand dollars, or less.

[Statutory Authority: Chapter 8.26 RCW. WSR 07-21-057, § 468-100-102, filed 10/11/07, effective 11/11/07; WSR 06-02-068, § 468-100-102, filed 1/3/06, effective 2/3/06. Statutory Authority: Chapter 8.26 RCW and WSR 89-17-048 (Order 121). WSR 01-02-027, § 468-100-102, filed 12/22/00, effective 1/22/01. Statutory Authority: Chapter 8.26 RCW. WSR 89-17-048 (Order 121), § 468-100-102, filed 8/14/89, effective 9/14/89.]

WAC 468-100-103 Review of appraisals. The agency shall have an appraisal review process and, at a minimum:

(1) A qualified reviewing appraiser shall examine all appraisals to assure that they meet applicable appraisal requirements and shall, prior to acceptance, seek necessary corrections or revisions. The qualifications of the appraiser for each case depend on the complexity of the appraisal problem. The review appraiser shall determine whether the appraiser's documentation, including valuation data and analyses of that data, demonstrates the soundness of the appraiser's opinion of value.

(2) If the reviewing appraiser is unable to approve or recommend approval of an appraisal as an adequate basis for the estimate of just compensation, and it is determined that it is not practical to obtain an additional appraisal, the reviewing appraiser may develop appraisal documentation in accordance with WAC 468-100-102 to support an approved or recommended value. The agency may determine whether a sec-

ond review is needed if the first review appraiser establishes a value different from that in the appraisal report(s) on the property.

(3) The review appraiser's certification of the recommended or approved value of the property shall be set forth in a signed statement which identifies the appraisal reports reviewed and explains the basis for such recommendation or approval. Any damages or benefits to any remaining property shall also be identified in the statement. The level of explanation by the review appraiser depends on the complexity of the appraisal problem. The agency may accept a simple approval endorsement by the review appraiser in the case of a low value property requiring an uncomplicated valuation process.

[Statutory Authority: Chapter 8.26 RCW. WSR 89-17-048 (Order 121), § 468-100-103, filed 8/14/89, effective 9/14/89.]

WAC 468-100-104 Acquisition of tenant-owned improvements. (1) **Acquisition of improvements:** When

acquiring any interest in real property, the agency shall offer to acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property to be acquired or which the agency determines will be adversely affected by the use to which such real property will be put. This shall include any improvement of a tenant-owner who has the right or obligation to remove the improvement at the expiration of the lease term.

(2) **Improvements considered to be real property:** Any building, structure, or other improvement, which would be considered to be real property if owned by the owner of the real property on which it is located, shall be considered to be real property for purposes of WAC 468-100-101 through 468-100-106.

(3) **Appraisal and establishment of just compensation for tenant-owned realty improvements:** Just compensation for a tenant-owned realty improvement is the amount which the improvement contributes to the fair market value of the whole property or its salvage value, whichever is greater. (Salvage value is defined in WAC 468-100-002(23).)

(4) **Special conditions:** No payment shall be made to a tenant-owner to acquire any real property improvement or relocate any tenant-owned real estate fixture unless:

(a) The owner of the real property on which the improvement is located disclaims all interest in the tenant's realty improvement or fixture; and

(b) The tenant-owner, in consideration for the acquisition payment, assigns, transfers, and releases to the agency all of the tenant-owner's right, title, and interest in the realty improvement; and

(c) The payment does not result in the duplication of any compensation otherwise authorized by law.

(5) **Alternative compensation:** Nothing in WAC 468-100-101 through 468-100-106 shall be construed to deprive the tenant-owner of any right to reject payment under WAC 468-100-101 through 468-100-106 and to obtain payment for such property interests in accordance with other applicable law.

[Statutory Authority: Chapter 8.26 RCW. WSR 06-02-068, § 468-100-104, filed 1/3/06, effective 2/3/06; WSR 89-17-048 (Order 121), § 468-100-104, filed 8/14/89, effective 9/14/89.]

WAC 468-100-105 Certain litigation expenses. The owner of the real property shall be reimbursed for any reasonable expenses, including reasonable attorney, and expert witness fees, which the owner actually incurred because of a condemnation proceeding; pursuant to RCW 8.25.020 and 8.25.075.

[Statutory Authority: Chapter 8.26 RCW. WSR 89-17-048 (Order 121), § 468-100-105, filed 8/14/89, effective 9/14/89.]

WAC 468-100-106 Donations. Nothing in this chapter shall prevent a person, after being informed of the right to receive just compensation based on an appraisal of the real property, from making a gift or donation of real property or any part thereof, or any interest therein, or of any compensation paid therefor, to the agency. The agency shall obtain an appraisal of the real property and offer the full amount of just compensation due unless the owner, after being fully informed of such policy, releases the agency from these obligations. An appraisal is not required if the agency determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at two thousand five hundred dollars or less, based on a review of available data.

[Statutory Authority: Chapter 8.26 RCW. WSR 89-17-048 (Order 121), § 468-100-106, filed 8/14/89, effective 9/14/89.]

SUBPART C

GENERAL RELOCATION REQUIREMENTS

WAC 468-100-201 Purpose. WAC 468-100-201 through 468-100-209 prescribes general requirements governing the provision of relocation payments and other relocation assistance under the regulations in this chapter.

[Statutory Authority: Chapter 8.26 RCW. WSR 06-02-068, § 468-100-201, filed 1/3/06, effective 2/3/06; WSR 89-17-048 (Order 121), § 468-100-201, filed 8/14/89, effective 9/14/89.]

WAC 468-100-202 Applicability. These requirements apply to the relocation of any displaced person as defined in WAC 468-100-002(9). Any person who qualifies as a displaced person must be fully informed of his or her rights and entitlements to relocation assistance and payments provided by the Uniform Act and regulations.

[Statutory Authority: Chapter 8.26 RCW. WSR 06-02-068, § 468-100-202, filed 1/3/06, effective 2/3/06; WSR 89-17-048 (Order 121), § 468-100-202, filed 8/14/89, effective 9/14/89.]

WAC 468-100-203 Relocation notices. Written notices shall be furnished as required by WAC 468-100-005.

(1) **General information notice:** As soon as feasible, a person scheduled to be displaced shall be furnished with a general written description of the agency's relocation program which does at least the following:

(a) Informs the person that the person may be displaced for the project and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s).

(b) Informs the person that the person will be given reasonable relocation advisory services, including referrals to

replacement properties, help in filing payment claims, and other necessary assistance to help the person successfully relocate.

(c) Informs the person that the person will not be required to move without at least ninety days' advance written notice (see subsection (3) of this section), and informs any person to be displaced from a dwelling that the person cannot be required to move permanently unless at least one comparable replacement dwelling has been made available.

(d) Describes the person's right to appeal the agency's determination as to eligibility for, or the amount of, any relocation payment for which the person may be eligible.

(2) **Notice of relocation eligibility:**

(a) Eligibility for relocation assistance shall begin on the date of a notice of intent to acquire (defined in WAC 468-100-203(4)), the initiation of negotiations (defined in WAC 468-100-002(15)), or actual acquisition, whichever occurs first. When this occurs, the agency shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance in accordance with WAC 468-100-005.

(b) An occupant may subsequently be provided a notice of noneligibility if the agency determines the person will not be displaced. Such notice may be issued only if 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.

(3) **Ninety-day notice:**

(a) **General:** No lawful occupant shall be required to move unless the occupant has received at least ninety days advance written notice of the earliest date by which he or she may be required to move.

(b) **Timing of notice:** The displacing agency may issue the notice ninety days before it expects the person to be displaced or earlier.

(c) **Content of notice:** The ninety-day notice shall either state a specific date as the earliest date by which the occupant may be required to move, or state that the occupant will receive a further notice indicating, at least thirty days in advance, the specific date by which the occupant must move. If the ninety-day notice is issued before a comparable replacement dwelling is made available, the notice must state clearly that the occupant will not have to move earlier than ninety days after such a dwelling is made available. (See WAC 468-100-204(1).)

(d) Informs the person that any person who is an alien not lawfully present in the United States is ineligible for relocation advisory services and relocation payments, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child, as defined in WAC 468-100-208(8).

(e) **Urgent need:** In unusual circumstances, an occupant may be required to vacate the property on less than ninety days advance written notice if the agency determines that a ninety-day notice is impracticable, such as when the person's continued occupancy of the property would constitute a substantial danger to health or safety. A record of the agency's determination shall be included in the applicable case file.

(4) **Notice of intent to acquire:** A notice of intent to acquire is a displacing agency's written communication that is provided to a person to be displaced, including those to be

displaced by rehabilitation or demolition activities from property acquired prior to the commitment of federal financial assistance to the activity, which clearly sets forth that the agency intends to acquire the property. A notice of intent to acquire establishes eligibility for relocation assistance prior to the initiation of negotiations and/or prior to the commitment of federal financial assistance.

[Statutory Authority: Chapter 8.26 RCW. WSR 06-02-068, § 468-100-203, filed 1/3/06, effective 2/3/06. Statutory Authority: Chapter 8.26 RCW and WSR 89-17-048 (Order 121). WSR 01-02-027, § 468-100-203, filed 12/22/00, effective 1/22/01. Statutory Authority: Chapter 8.26 RCW. WSR 89-17-048 (Order 121), § 468-100-203, filed 8/14/89, effective 9/14/89.]

WAC 468-100-204 Availability of comparable replacement dwelling before displacement. No person to be displaced shall be required to move from the person's dwelling unless at least one comparable replacement dwelling (defined in WAC 468-100-002(6)) has been made available to the person.

(1) **Policy:** Three or more comparable replacement dwellings shall be made available unless such numbers are not available on the local housing market. When otherwise feasible, in accordance with WAC 468-100-205 (3)(b)(iii) and 468-100-403 (1)(d), comparable replacement dwellings to be made available to minority persons may include dwellings not located in an area of minority concentration. A comparable replacement dwelling will be considered to have been made available to a person, if:

- (a) The person is informed of its location; and
- (b) The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and
- (c) Subject to reasonable safeguards, the person is assured of receiving the relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease of the property.

(2) **Circumstances permitting waiver:** The funding agency may grant a waiver of the policy in subsection (1) of this section in any case where it is demonstrated that a person must move because of:

- (a) A major disaster as defined in Section 102(c) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5122); or
- (b) A presidentially declared national emergency; or
- (c) Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public.

(3) **Basic conditions of emergency move:** Whenever a person to be displaced is required to relocate from the displacement dwelling for a temporary period because of an emergency as described in subsection (2) of this section, for purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily-occupied dwelling. The agency shall:

- (a) Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe and sanitary dwelling;
- (b) Pay the actual reasonable out-of-pocket moving expenses and any reasonable increase in rent and utility costs incurred in connection with the temporary relocation; and

(c) Make available to the displaced person as soon as feasible, at least one comparable replacement dwelling.

(d) The person is entitled to be heard according to WAC 468-100-010 in the event of a grievance.

[Statutory Authority: Chapter 8.26 RCW. WSR 06-02-068, § 468-100-204, filed 1/3/06, effective 2/3/06; WSR 89-17-048 (Order 121), § 468-100-204, filed 8/14/89, effective 9/14/89.]

WAC 468-100-205 Relocation planning, advisory services, and coordination. (1) **Relocation planning:** During the early stages of development, state and federal-aid programs or projects shall be planned in such a manner that the problems associated with the displacement of individuals, families, businesses, farms, and nonprofit organizations are recognized and solutions are developed to minimize the adverse impacts of displacement. Such planning, where appropriate, shall precede any action by an agency that will cause displacement, and should include an evaluation of program resources available to carry out timely and orderly relocations. Planning may involve a relocation survey or study that may include the following:

(a) An estimate of the number of households to be displaced including information such as owner/tenant status, estimated value and rental rates of properties to be acquired, family characteristics, and special consideration of the impacts on minorities, the elderly, large families, and persons with disabilities when applicable.

(b) An estimate of the number of comparable replacement dwellings in the area (including price ranges and rental rates) that may be available to fulfill the needs of those households displaced. When an adequate supply of comparable housing is not expected to be available, the agency should consider housing of last resort actions.

(c) An estimate of the number, type and size of the businesses, farms, and nonprofit organizations to be displaced and the approximate number of employees that may be affected.

(d) An estimate of the availability of replacement business sites. When an adequate supply of replacement business sites is not expected to be available, the impacts of displacing the businesses should be considered and addressed. Planning for displaced businesses which are reasonably expected to involve complex or lengthy moving processes or small businesses with limited financial resources and/or few alternative relocation sites should include an analysis of business moving problems.

(e) Consideration of any special relocation advisory services that may be necessary from the displacing agency and other cooperating agencies.

(2) **Loans for planning and preliminary expenses:** In the event that an agency elects to consider using the duplicative provision in Section 215 of the Uniform Act which permits the use of project funds for loans to cover planning and other preliminary expenses for the development of additional housing, the lead agency will establish criteria and procedures for such use upon the request of the federal agency funding the program or project.

(3) **Relocation assistance advisory services:**

General: The agency shall carry out a relocation assistance advisory program which satisfies the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et

seq.), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), and Executive Order 11063 (27 FR 11527), and offers the services described in subsection (3) of this section. If the agency determines that a person occupying property adjacent to the real property acquired for the project is caused substantial economic injury because of such acquisition, it may offer the services to such person.

(4) **Services to be provided:** The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to:

(a) Determine, for nonresidential (businesses, farm, and nonprofit organizations) displacements, the relocation needs and preferences of each business (farm and nonprofit organization) to be displaced and explain the relocation payments and other assistance for which the business may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each business. At a minimum, interviews with the displaced business owners and operators should include the following items:

(i) The business's replacement site requirements, current lease terms and other contractual obligations and the financial capacity of the business to accomplish the move.

(ii) Determination of the need for outside specialists in accordance with WAC 468-100-301 (7)(k) that will be required to assist in planning the move, assistance in the actual move, and in the reinstallation of machinery and/or other personal property.

(iii) For businesses, an identification and resolution of personalty/realty issues. Every effort must be made to identify and resolve realty/personalty issues prior to, or at the time of, the appraisal of the property.

(iv) An estimate of the time required for the business to vacate the site.

(v) An estimate of the anticipated difficulty in locating a replacement property.

(vi) An identification of any advance relocation payments required for the move, and the agency's legal capacity to provide them.

(b) Determine, for residential displacements, the relocation needs and preferences of each person to be displaced and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each residential displaced person.

(i) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one comparable replacement dwelling is made available as set forth in WAC 468-100-204(1).

(ii) As soon as feasible, the agency shall inform the person in writing of the specific comparable replacement dwelling and the price or rent used for establishing the upper limit of the replacement housing payment (see WAC 468-100-403 (1) and (2)) and the basis for the determination, so that the person is aware of the maximum replacement housing payment for which the person may qualify.

(iii) Where feasible, housing shall be inspected prior to being made available to assure that it meets applicable stan-

dards. (See WAC 468-100-002(8).) If such an inspection is not made, the agency shall notify the person to be displaced that a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be DSS.

(iv) Whenever possible, minority persons shall be given reasonable opportunities to relocate to DSS replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require an agency to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling.

(v) The agency shall offer all displaced persons, transportation to inspect housing to which they are referred.

(vi) Any displaced person that may be eligible for government housing assistance at the replacement dwelling shall be advised of any requirements of such government housing assistance program that would limit the size of the replacement dwelling (see WAC 468-100-002 (6)(i)) as well as the long-term nature of such rent subsidy, and the limited (forty-two-month) duration of the relocation rental assistance payment.

(c) Provide, for nonresidential moves, current and continuing information on the availability, purchase prices, and rental costs of comparable and suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.

(d) Minimize hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available, and such other help as may be appropriate.

(e) Supply persons to be displaced with appropriate information concerning federal and state housing programs, disaster loans and other programs administered by the Small Business Administration, and other federal, state, and local programs offering assistance to persons to be displaced.

(f) Any person who occupies property acquired by an agency, when such occupancy began subsequent to the acquisition of the property, and the occupancy is permitted by a short-term rental agreement or an agreement subject to termination when the property is needed for a program or project, shall be eligible for advisory services, as determined by the agency.

(5) **Coordination of relocation activities:** Relocation activities shall be coordinated with project work and other displacement-causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and the duplication of functions is minimized.

[Statutory Authority: Chapter 8.26 RCW. WSR 06-02-068, § 468-100-205, filed 1/3/06, effective 2/3/06; WSR 89-17-048 (Order 121), § 468-100-205, filed 8/14/89, effective 9/14/89.]

WAC 468-100-206 Eviction for cause. (1) Eviction for cause must conform to applicable state and local law. Any person who occupies the real property and is not in unlawful occupancy on the date of the initiation of negotiations, is presumed to be entitled to relocation payments and other assistance set forth in this part unless the agency determines that:

(a) The person received an eviction notice prior to the initiation of negotiations and, as a result of that notice, is later evicted; or

(b) The person is evicted after the initiation of negotiations for serious or repeated violation of material terms of the lease or occupancy agreement; and

(c) In either case the eviction was not undertaken for the purpose of evading the obligation to make available the payments and other assistance set forth in this part.

(2) For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves, or if later, the date a comparable replacement dwelling is made available. This section applies only to persons who would otherwise have been displaced by the project.

[Statutory Authority: Chapter 8.26 RCW. WSR 06-02-068, § 468-100-206, filed 1/3/06, effective 2/3/06; WSR 89-17-048 (Order 121), § 468-100-206, filed 8/14/89, effective 9/14/89.]

WAC 468-100-207 General requirements—Claims for relocation payments. (1) **Documentation:** Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as, bills, certified prices, appraisals, or other evidence of such expenses. Payment for a low cost or uncomplicated move may be made without documentation of actual costs when payment is limited to the amount of the lowest acceptable bid or estimate obtained by the agency. A displaced person must be provided reasonable assistance necessary to complete and file any required claim for payment.

(2) **Expeditious payments:** The agency shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as feasible following receipt of sufficient documentation to support the claim.

(3) **Advance payments:** If a person demonstrates the need for an advance relocation payment in order to avoid or reduce a hardship, the agency shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

(4) Time for filing:

(a) All claims for a relocation payment shall be filed with the agency within eighteen months after:

(i) For tenants, the date of displacement;

(ii) For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

(b) This time period shall be waived by the agency for good cause.

(5) **Notice of denial of claim:** If the agency disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures for appealing that determination.

(6) **No waiver of relocation assistance:** A displacing agency shall not propose or request that a displaced person waive his or her rights or entitlements to relocation assistance and benefits provided by the Uniform Act and this regulation.

(7) **Expenditure of payments:** Payments, provided pursuant to this part, shall not be considered to constitute federal

financial assistance. Accordingly, this part does not apply to the expenditure of such payments by, or for, a displaced person.

[Statutory Authority: Chapter 8.26 RCW. WSR 06-02-068, § 468-100-207, filed 1/3/06, effective 2/3/06; WSR 89-17-048 (Order 121), § 468-100-207, filed 8/14/89, effective 9/14/89.]

WAC 468-100-208 Aliens not lawfully present in the United States. (1) Each person seeking relocation payments or relocation advisory assistance shall, as a condition of eligibility, certify:

(a) In the case of an individual, that he or she is either a citizen or national of the United States, or an alien who is lawfully present in the United States.

(b) In the case of a family, that each family member is either a citizen or national of the United States, or an alien who is lawfully present in the United States. The certification may be made by the head of the household on behalf of other family members.

(c) In the case of an unincorporated business, farm, or nonprofit organization, that each owner is either a citizen or national of the United States, or an alien who is lawfully present in the United States. The certification may be made by the principal owner, manager, or operating officer on behalf of other persons with an ownership interest.

(d) In the case of an incorporated business, farm, or nonprofit organization, that the corporation is authorized to conduct business within the United States.

(2) The certification provided pursuant to subsection (1)(a), (b) and (c) of this section shall indicate whether such person is either a citizen or national of the United States, or an alien who is lawfully present in the United States. Requirements concerning the certification in addition to those contained in this rule shall be within the discretion of the federal funding agency and, within those parameters, that of the displacing agency.

(3) In computing relocation payments under the Uniform Act, if any member(s) of a household or owner(s) of an unincorporated business, farm, or nonprofit organization is (are) determined to be ineligible because of a failure to be legally present in the United States, no relocation payments may be made to him or her. Any payment(s) for which such household, unincorporated business, farm, or nonprofit organization would otherwise be eligible shall be computed for the household, based on the number of eligible household members and for the unincorporated business, farm, or nonprofit organization, based on the ratio of ownership between eligible and ineligible owners.

(4) The displacing agency shall consider the certification provided pursuant to subsection (1) of this section to be valid, unless the displacing agency determines in accordance with subsection (6) of this section that it is invalid based on a review of an alien's documentation or other information that the agency considers reliable and appropriate.

(5) Any review by the displacing agency of the certifications provided pursuant to subsection (1) of this section shall be conducted in a nondiscriminatory fashion. Each displacing agency will apply the same standard of review to all such certifications it receives, except that such standard may be revised periodically.

(6) If, based on a review of an alien's documentation or other credible evidence, a displacing agency has reason to believe that a person's certification is invalid (for example a document reviewed does not on its face reasonably appear to be genuine), and that, as a result, such person may be an alien not lawfully present in the United States, it shall obtain the following information before making a final determination:

(a) If the agency has reason to believe that the certification of a person who has certified that he or she is an alien lawfully present in the United States is invalid, the displacing agency shall obtain verification of the alien's status from the local Bureau of Citizenship and Immigration (BCIS) Office. A list of local BCIS offices is available at <http://www.uscis.gov/graphics/fieldoffices/alphaa.htm>. Any request for BCIS verification shall include the alien's full name, date of birth and alien number, and a copy of the alien's documentation. (If an agency is unable to contact the BCIS, it may contact the FHWA in Washington, DC, Office of Real Estate Services or Office of Chief Counsel, for a referral to the BCIS.)

(b) If an agency has reason to believe that the certification of a person who has certified that he or she is a citizen or national is invalid, the displacing agency shall request evidence of United States citizenship or nationality from such person and, if considered necessary, verify the accuracy of such evidence with the issuer.

(7) No relocation payments or relocation advisory assistance shall be provided to a person who has not provided the certification described in this section or who has been determined to be not lawfully present in the United States, unless such person can demonstrate to the displacing agency's satisfaction that the denial of relocation benefits will result in an exceptional and extremely unusual hardship to such person's spouse, parent, or child who is a citizen of the United States, or is an alien lawfully admitted for permanent residence in the United States.

(8) For purposes of subsection (7) of this section, "exceptional and extremely unusual hardship" to such spouse, parent, or child of the person not lawfully present in the United States means that the denial of relocation payments and advisory assistance to such person will directly result in:

(a) A significant and demonstrable adverse impact on the health or safety of such spouse, parent, or child;

(b) A significant and demonstrable adverse impact on the continued existence of the family unit of which such spouse, parent, or child is a member; or

(c) Any other impact that the displacing agency determines will have a significant and demonstrable adverse impact on such spouse, parent, or child.

(9) The certification referred to in subsection (1) of this section may be included as part of the claim for relocation payments described in WAC 468-100-207.

[Statutory Authority: Chapter 8.26 RCW. WSR 06-02-068, § 468-100-208, filed 1/3/06, effective 2/3/06. Statutory Authority: Chapter 8.26 RCW and WSR 89-17-048 (Order 121). WSR 01-02-027, § 468-100-208, filed 12/22/00, effective 1/22/01. Statutory Authority: Chapter 8.26 RCW. WSR 89-17-048 (Order 121), § 468-100-208, filed 8/14/89, effective 9/14/89.]

(10/11/07)

WAC 468-100-209 Relocation payments not considered as income. No relocation payment received by a displaced person under this chapter may be considered as income for the purpose of determining the eligibility or extent of eligibility of any person for assistance under any state law or for the purposes of any income tax or any tax imposed under Title 82 RCW, and the payments shall not be deducted from any amount to which any recipient would otherwise be entitled under Title 74 RCW.

[Statutory Authority: Chapter 8.26 RCW. WSR 06-02-068, § 468-100-209, filed 1/3/06, effective 2/3/06. Statutory Authority: Chapter 8.26 RCW and WSR 89-17-048 (Order 121). WSR 01-02-027, § 468-100-209, filed 12/22/00, effective 1/22/01.]

SUBPART D

PAYMENT FOR MOVING AND RELATED EXPENSES

WAC 468-100-301 Payment for actual reasonable moving and related expenses. (1) General.

(a) Any owner-occupant or tenant who qualifies as a displaced person (defined at WAC 468-100-002(9)) and who moves from a dwelling (including a mobile home) or who moves from a business, farm or nonprofit organization is entitled to payment of his or her actual moving and related expenses, as the agency determines to be reasonable and necessary.

(b) A nonoccupant owner of a rented mobile home is eligible for actual cost reimbursement under this section to relocate the mobile home. If the mobile home is not acquired as real estate, but the homeowner-occupant obtains a replacement housing payment under one of the circumstances described in WAC 468-100-502 (1)(c), the homeowner-occupant is not eligible for payment for moving the mobile home, but may be eligible for a payment for moving personal property from the mobile home.

(2) **Moves from a dwelling.** A displaced person's actual, reasonable and necessary moving expenses for moving personal property from a dwelling may be determined based on the cost of one, or a combination of the following methods: Eligible expenses for moves from a dwelling include the expenses described in subsection (7)(a) through (g) of this section. Self-moves based on the lower of two bids or estimates are not eligible for reimbursement under this section.

(a) Commercial move - Moves performed by a professional mover.

(b) Self-move - Moves that may be performed by the displaced person in one or a combination of the following methods:

(i) Fixed residential moving cost schedule (described in WAC 468-100-302).

(ii) Actual cost move. Supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the cost paid by a commercial mover. Equipment rental fees should be based on the actual cost of renting the equipment but not exceed the cost paid by a commercial mover.

(3) **Moves from a mobile home.** A displaced person's actual, reasonable and necessary moving expenses for moving personal property from a mobile home may be determined based on the cost of one, or a combination of the fol-

lowing methods: Self-moves based on the lower of two bids or estimates are not eligible for reimbursement under this section. Eligible expenses for moves from a mobile home include those expenses described in subsection (7)(a) through (g) of this section (however, if the mobile home is not acquired but the owner obtains a replacement housing payment under one of the circumstances described in WAC 468-100-502, the owner is not eligible for payment for moving the mobile home). In addition to the items in subsection (1) of this section, the owner-occupant of a mobile home that is moved as personal property and used as the person's replacement dwelling, is also eligible for the moving expenses described in subsection (7)(h) through (j) of this section.

(a) Commercial move - Moves performed by a professional mover.

(b) Self-move - Moves that may be performed by the displaced person in one or a combination of the following methods:

(i) Fixed residential moving cost schedule (described in WAC 468-100-302).

(ii) Actual cost move. Supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the cost paid by a commercial mover. Equipment rental fees should be based on the actual cost of renting the equipment but not exceed the cost paid by a commercial mover.

(4) **Moves from a business, farm or nonprofit organization.** Personal property as determined by an inventory from a business, farm or nonprofit organization may be moved by one or a combination of the following methods: Eligible expenses for moves from a business, farm or nonprofit organization include those expenses described in subsection (7)(a) through (g) of this section and subsection (7)(k) through (r) of this section and WAC 468-100-303.

(a) Commercial move. Based on the lower of two bids or estimates prepared by a commercial mover. At the agency's discretion, payment for a low-cost or uncomplicated move may be based on a single bid or estimate.

(b) Self-move. A self-move payment may be based on one or a combination of the following:

(i) The lower of two bids or estimates prepared by a commercial mover or qualified agency staff person. At the agency's discretion, payment for a low-cost or uncomplicated move may be based on a single bid or estimate; or

(ii) Supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the rates paid by a commercial mover to employees performing the same activity and equipment rental fees should be based on the actual rental cost of the equipment but not to exceed the cost paid by a commercial mover.

(5) **Personal property only.** Eligible expenses for a person who is required to move personal property from real property but is not required to move from a dwelling (including a mobile home), business, farm or nonprofit organization include those expenses described in subsection (7)(a) through (g) and (r) of this section.

(6) **Advertising signs.** The amount of a payment for direct loss of an advertising sign, which is personal property, shall be the lesser of:

(a) The depreciated reproduction cost of the sign, as determined by the agency, less the proceeds from its sale; or

(b) The estimated cost of moving the sign, but with no allowance for storage.

(7) **Eligible actual moving expenses.**

(a) Transportation of the displaced person and personal property. Transportation costs for a distance beyond fifty miles are not eligible, unless the agency determines that relocation beyond fifty miles is justified.

(b) Packing, crating, unpacking, and uncrating of the personal property.

(c) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances and other personal property. For businesses, farms or nonprofit organizations this includes machinery, equipment, substitute personal property, and connections to utilities available within the building; it also includes modifications to the personal property, including those mandated by federal, state or local law, code or ordinance, necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property (expenses for providing utilities from the right of way to the building or improvement are excluded).

(d) Storage of the personal property for a period not to exceed twelve months, unless the agency determines that a longer period is necessary.

(e) Insurance for the replacement value of the property in connection with the move and necessary storage.

(f) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(g) Other moving-related expenses that are not listed as ineligible under subsection (8) of this section as the agency determines to be reasonable and necessary.

(h) The reasonable cost of disassembling, moving, and reassembling any appurtenances attached to a mobile home, such as porches, decks, skirting, and awnings, which were not acquired, anchoring of the unit, and utility "hookup" charges.

(i) The reasonable cost of repairs and/or modifications so that a mobile home can be moved and/or made decent, safe, and sanitary.

(j) The cost of a nonrefundable mobile home park entrance fee, to the extent it does not exceed the fee at a comparable mobile home park, if the person is displaced from a mobile home park or the agency determines that payment of the fee is necessary to effect relocation.

(k) Any license, permit, fees or certification required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, fees or certification.

(l) Professional services as the agency determines to be actual, reasonable and necessary for:

(i) Planning the move of the personal property;

(ii) Moving the personal property; and

(iii) Installing the relocated personal property at the replacement location.

(m) Relettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move.

(n) Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of:

(i) The fair market value in place of the item, as is for continued use, less the proceeds from its sale (to be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the agency determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the market value shall be based on the cost of the goods to the business, not the potential selling prices); or

(ii) The estimated cost of moving the item as is, but not including any allowance for storage; or for reconnecting a piece of equipment if the equipment is in storage or not being used at the acquired site. If the business or farm operation is discontinued, the estimated cost of moving the item shall be based on a moving distance of fifty miles.

(o) The reasonable cost incurred in attempting to sell an item that is not to be relocated.

(p) Purchase of substitute personal property. If an item of personal property, which is used as part of a business or farm operation, is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

(i) The cost of the substitute item, including installation costs of the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or

(ii) The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At the agency's discretion, the estimated cost for a low-cost or uncomplicated move may be based on a single bid or estimate.

(q) Searching for a replacement location. A business or farm operation is entitled to reimbursement for actual expenses, not to exceed two thousand five hundred dollars, as the agency determines to be reasonable, which are incurred in searching for a replacement location, including:

(i) Transportation;

(ii) Meals and lodging away from home;

(iii) Time spent searching, based on reasonable salary or earnings;

(iv) Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such sites;

(v) Time spent in obtaining permits and attending zoning hearings; and

(vi) Time spent negotiating the purchase of a replacement site based on a reasonable salary or earnings.

(r) Low value/high bulk. When the personal property to be moved is of low value and high bulk, and the cost of moving the property would be disproportionate to its value in the judgment of the displacing agency, the allowable moving cost payment shall not exceed the lesser of: The amount which would be received if the property were sold at the site or the replacement cost of a comparable quantity delivered to the new business location. Examples of personal property covered by this provision include, but are not limited to, stockpiled sand, gravel, minerals, metals and other similar items of personal property as determined by the agency.

(8) **Ineligible moving and related expenses.** A displaced person is not entitled to payment for:

(a) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership (however, this part does not preclude the computation under WAC 468-100-401 (2)(d)(iii));

(b) Interest on a loan to cover moving expenses;

(c) Loss of goodwill;

(d) Loss of profits;

(e) Loss of trained employees;

(f) Any additional operating expenses of a business or farm operation incurred because of operating in a new location except as provided in WAC 468-100-360 (1)(f);

(g) Personal injury;

(h) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the agency;

(i) Expenses for searching for a replacement dwelling;

(j) Physical changes to the real property at the replacement location of a business or farm operation except as provided in WAC 468-100-301 (7)(c) and 468-100-306(1);

(k) Costs for storage of personal property on real property already owned or leased by the displaced person; and

(l) Refundable security and utility deposits.

(9) **Notification and inspection (nonresidential).** The agency shall inform the displaced person, in writing, of the requirements of this section as soon as possible after the initiation of negotiations. This information may be included in the relocation information provided the displaced person as set forth in WAC 468-100-203. To be eligible for payments under this section, the displaced person must:

(a) Provide the agency reasonable advance notice of the approximate date of the start of the move or disposition of the personal property and an inventory of the items to be moved. However, the agency may waive this notice requirement after documenting its file accordingly.

(b) Permit the agency to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.

(10) **Transfer of ownership (nonresidential).** Upon request and in accordance with applicable law, the claimant shall transfer to the agency ownership of any personal property that has not been moved, sold, or traded-in.

[Statutory Authority: Chapter 8.26 RCW. WSR 06-02-068, § 468-100-301, filed 1/3/06, effective 2/3/06; WSR 89-17-048 (Order 121), § 468-100-301, filed 8/14/89, effective 9/14/89.]

WAC 468-100-302 Fixed payment for moving expenses—Residential moves. Any person displaced from a dwelling or a seasonal residence or a dormitory style room is entitled to receive a fixed moving cost payment as an alternative to a payment for actual moving and related expenses under WAC 468-100-301. This payment shall be determined according to the fixed residential moving cost schedule* approved by the Federal Highway Administration and published in the *Federal Register* on a periodic basis. The payment to a person with minimal personal possessions who is in occupancy of a dormitory style room or a person whose residential move is performed by an agency at no cost to the person shall be limited to the amount stated in the most recent edition of the fixed residential moving cost schedule.

*The fixed residential moving cost schedule is available at the following URL: <http://www.fhwa.dot.gov/realstate/fixsch96.htm>. Agencies are cautioned to ensure they are using the most recent edition.

[Statutory Authority: Chapter 8.26 RCW. WSR 06-02-068, § 468-100-302, filed 1/3/06, effective 2/3/06; WSR 89-17-048 (Order 121), § 468-100-302, filed 8/14/89, effective 9/14/89.]

WAC 468-100-303 Related nonresidential eligible expenses. The following expenses, in addition to those provided by WAC 468-100-301 for moving personal property, shall be provided if the agency determines that they are actual, reasonable and necessary:

(1) Connection to available nearby utilities from the right of way to improvements at the replacement site.

(2) Professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation including, but not limited to, soil testing, feasibility and marketing studies (excluding any fees or commissions directly related to the purchase or lease of such site). At the discretion of the agency a reasonable preapproved hourly rate may be established.

(3) Impact fees or one-time assessments for anticipated heavy utility usage, as determined necessary by the agency.

[Statutory Authority: Chapter 8.26 RCW. WSR 06-02-068, § 468-100-303, filed 1/3/06, effective 2/3/06; WSR 89-17-048 (Order 121), § 468-100-303, filed 8/14/89, effective 9/14/89.]

WAC 468-100-304 Fixed payment for moving expenses—Nonresidential moves. (1) **Business.** A displaced business may be eligible to choose a fixed payment in lieu of the payments for actual moving and related expenses, and actual reasonable reestablishment expenses provided by WAC 468-100-301, 468-100-303, and 468-100-306. Such fixed payment, except for payment to a nonprofit organization, shall equal the average annual net earnings of the business, as computed in accordance with subsection (5) of this section, but not less than one thousand dollars nor more than twenty thousand dollars. The displaced business is eligible for the payment if the agency determines that:

(a) The business owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move; and, the business vacates or relocates from its displacement site;

(b) The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the agency determines that it will not suffer a substantial loss of its existing patronage;

(c) The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the agency, and which are under the same ownership and engaged in the same or similar business activities;

(d) The business is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others;

(e) The business is not operated at the displacement site solely for the purpose of renting the site to others; and

(f) The business contributed materially (defined in WAC 468-100-002(7)) to the income of the displaced person during the two taxable years prior to displacement.

(2) **Determining the number of businesses.** In determining whether two or more displaced legal entities constitute a single business which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

(a) The same premises and equipment are shared;

(b) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;

(c) The entities are held out to the public, and to those customarily dealing with them, as one business; and

(d) The same person or closely related persons own, control, or manage the affairs of the entities.

(3) **Farm operation.** A displaced farm operation (defined in WAC 468-100-002(12)), may choose a fixed payment, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, in an amount equal to its average annual net earnings as computed in accordance with subsection (5) of this section, but not less than one thousand dollars nor more than twenty thousand dollars. In the case of a partial acquisition of land, which was a farm operation before the acquisition, the fixed payment shall be made only if the agency determines that:

(a) The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or

(b) The partial acquisition caused a substantial change in the nature of the farm operation.

(4) **Nonprofit organization.** A displaced nonprofit organization may choose a fixed payment of one thousand to twenty thousand dollars in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, if the agency determines that it cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test, unless the agency demonstrates otherwise. Any payment in excess of one thousand dollars must be supported with financial statements for the two twelve-month periods prior to the acquisition. The amount to be used for the payment is the average of two years annual gross revenues less administrative expenses.

(5) **Average annual net earnings of a business or farm operation.** The average annual net earnings of a business or farm operation are one-half of its net earnings before federal, state, and local income taxes during the two taxable years immediately prior to the taxable year in which it was displaced. If the business or farm was not in operation for the full two taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the two taxable years prior to displacement, projected to an annual rate. Average annual net earnings may be based upon a different period of time when the agency determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents. The displaced person shall furnish the agency proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence, which the agency determines is satisfactory.

[Statutory Authority: Chapter 8.26 RCW. WSR 06-02-068, § 468-100-304, filed 1/3/06, effective 2/3/06; WSR 89-17-048 (Order 121), § 468-100-304, filed 8/14/89, effective 9/14/89.]

WAC 468-100-305 Discretionary utility relocation payments. (1) Whenever a program or project undertaken by a displacing agency causes the relocation of a utility facility (WAC 468-100-002(31)) and the relocation of the facility creates extraordinary expenses for its owner, the displacing agency may, at its option, make a relocation payment to the owner for all or part of such expenses, if the following criteria are met:

(a) The utility facility legally occupies state or local government property, or property over which the state or local government has an easement or right of way;

(b) The utility facility's right of occupancy thereon is pursuant to state law or local ordinance specifically authorizing such use, or where such use and occupancy has been granted through a franchise, use and occupancy permit, or other similar agreement;

(c) Relocation of the utility facility is required by and is incidental to the primary purpose of the project or program undertaken by the displacing agency;

(d) There is no federal law, other than the Uniform Act, which clearly establishes a policy for the payment of utility moving costs that is applicable to the displacing agency's program or project; and

(e) State or local government reimbursement for utility moving costs or payment of such costs by the displacing agency is in accordance with state law.

(2) For the purposes of this section, the term extraordinary expenses means those expenses which, in the opinion of the displacing agency, are not routine or predictable expenses relating to the utility's occupancy of rights of way, and are not ordinarily budgeted as operating expenses, unless the owner of the utility facility has explicitly and knowingly agreed to bear such expenses as a condition for use of the property, or has voluntarily agreed to be responsible for such expenses.

(3) A relocation payment to a utility facility owner for moving costs under this section may not exceed the cost to functionally restore the service disrupted by the federally assisted program or project, less any increase in value of the new facility and salvage value of the old facility. The displacing agency and the utility facility owner shall reach prior agreement on the nature of the utility relocation work to be accomplished, the eligibility of the work for reimbursement, the responsibilities for financing and accomplishing the work, and the method of accumulating costs and making payment.

[Statutory Authority: Chapter 8.26 RCW. WSR 06-02-068, § 468-100-305, filed 1/3/06, effective 2/3/06; WSR 89-17-048 (Order 121), § 468-100-305, filed 8/14/89, effective 9/14/89.]

WAC 468-100-306 Reestablishment expenses—Non-residential moves. In addition to the payments available under WAC 468-100-301 and 468-100-303, a small business, as defined in WAC 468-100-002(24), farm or nonprofit organization is entitled to receive a payment, not to exceed fifty thousand dollars, for expenses actually incurred in relocating and reestablishing such small business, farm or nonprofit organization at a replacement site.

(10/11/07)

(1) Eligible expenses. Reestablishment expenses must be reasonable and necessary, as determined by the agency. They include, but are not limited to, the following:

(a) Repairs or improvements to the replacement real property as required by federal, state or local law, code or ordinance.

(b) Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.

(c) Construction and installation costs for exterior signing to advertise the business.

(d) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting.

(e) Advertisement of replacement location.

(f) Estimated increased costs of operation during the first two years at the replacement site for such items as:

(i) Lease or rental charges;

(ii) Personal or real property taxes;

(iii) Insurance premiums; and

(iv) Utility charges, excluding impact fees.

(g) Other items that the agency considers essential to the reestablishment of the business.

(2) Ineligible expenses. The following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible:

(a) Purchase of capital assets, such as, office furniture, filing cabinets, machinery, or trade fixtures.

(b) Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.

(c) Interest on money borrowed to make the move or purchase the replacement property.

(d) Payment to a part-time business in the home which does not contribute materially to the household income.

(e) Interior or exterior refurbishments at the replacement site which are for aesthetic purposes, except as provided in WAC 468-100-306 (1)(d).

[Statutory Authority: Chapter 8.26 RCW. WSR 06-02-068, § 468-100-306, filed 1/3/06, effective 2/3/06; WSR 04-08-041, § 468-100-306, filed 3/31/04, effective 5/1/04. Statutory Authority: Chapter 8.26 RCW and WSR 89-17-048 (Order 121). WSR 01-02-027, § 468-100-306, filed 12/22/00, effective 1/22/01. Statutory Authority: Chapter 8.26 RCW. WSR 89-17-048 (Order 121), § 468-100-306, filed 8/14/89, effective 9/14/89.]

SUBPART E

REPLACEMENT HOUSING PAYMENTS

WAC 468-100-401 Replacement housing payment for one hundred eighty-day homeowner-occupants. (1) **Eligibility:** A displaced person is eligible for the replacement housing payment for a one hundred eighty-day homeowner-occupant if the person:

(a) Has actually owned and occupied the displacement dwelling for not less than the one hundred eighty days immediately prior to the initiation of negotiations; and

(b) Purchases and occupies a DSS replacement dwelling within one year after the later of the following dates (except that the agency may extend such one-year period for good cause):

[Ch. 468-100 WAC p. 17]

(i) The date the displaced person receives final payment for the displacement dwelling or, in the case of condemnation, the date the full amount is deposited in the court; or

(ii) The date the person moves from the displacement dwelling; or

(iii) The date the displacing agency's obligation under WAC 468-100-204 is met.

(2) **Amount of payment:** The replacement housing payment for an eligible one hundred eighty-day homeowner-occupant may not exceed twenty-two thousand five hundred dollars (see also WAC 468-100-404). The payment under this section is limited to the amount necessary to relocate to a comparable replacement dwelling within one year from the date the displaced homeowner-occupant is paid for the displacement dwelling, or the date such person is initially offered a comparable replacement dwelling, whichever is later. The payment shall be the sum of:

(a) The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling (price differential), as determined in accordance with subsection (3) of this section; and

(b) The increased interest costs and other debt service costs to be incurred in connection with the mortgage(s) on the replacement dwelling (increased mortgage interest cost), as determined in accordance with subsection (4) of this section; and

(c) The necessary and reasonable expenses incidental to the purchase of the replacement dwelling (incidental purchase expense), as determined in accordance with subsection (5) of this section.

(3) **Price differential:**

(a) **Basic computation:** The price differential to be paid under subsection (2)(a) of this section is the amount which must be added to the acquisition cost of the displacement dwelling and site (see WAC 468-100-002(11)) to provide a total amount equal to the lesser of:

(i) The reasonable cost of a comparable replacement dwelling as determined in accordance with WAC 468-100-403(1); or

(ii) The purchase price of the DSS replacement dwelling actually purchased and occupied by the displaced person.

(b) **Owner retention/salvage of displacement dwelling:** If the owner retains ownership of, or obtains salvage rights to, the person's dwelling, moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling shall be the sum of:

(i) The cost of moving and restoring the dwelling to a condition comparable to that prior to the move; and

(ii) The cost of making the unit a DSS replacement dwelling (defined in WAC 468-100-002(8)); and

(iii) The current market value for residential use of the replacement dwelling site (based on any reasonable evaluation method determined by the agency), unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and

(iv) The retention/salvage value of the displacement dwelling, if such retention value is reflected in the "acquisition cost" used when computing the replacement housing payment.

(c) **Owner constructs replacement dwelling:** If the owner obtains a DSS replacement dwelling by contracting for or otherwise obtaining new construction, the purchase price of the replacement dwelling shall be the sum of:

(i) The cost necessary to construct a dwelling that is comparable to the displacement dwelling; and

(ii) The current fair market value for residential use of the replacement site (based on any reasonable evaluation method determined by the agency), unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site.

(4) **Increased mortgage interest costs:**

(a) The displacing agency shall determine the factors to be used in computing the amount to be paid to a displaced person under subsection (2)(b) of this section. The payment for increased mortgage interest costs shall be the amount which will reduce the mortgage balance on a new mortgage to an amount which could be amortized with the same monthly payment for principal and interest as that for the mortgage(s) on the displacement dwelling. In addition, payments shall include other debt service costs, if not paid as incidental costs, and shall be based only on bona fide mortgages that were valid liens on the displacement dwelling for at least one hundred eighty days prior to the initiation of negotiations. (b) through (f) of this subsection shall apply to the computation of the increased mortgage interest costs payment, which payment shall be contingent upon a mortgage being placed on the replacement dwelling.

(b) The payment shall be based on the unpaid mortgage balance(s) on the displacement dwelling; however, in the event the person obtains a smaller mortgage than the mortgage balance(s) computed in the buydown determination the payment will be prorated and reduced accordingly.

In the case of a home equity loan the unpaid balance shall be that balance which existed one hundred eighty days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.

(c) The payment shall be based on the remaining term of the mortgage(s) on the displacement dwelling or the term of the new mortgage, whichever is shorter.

(d) The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

(e) Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent:

(i) They are not paid as incidental expenses;

(ii) They do not exceed rates normal to similar real estate transactions in the area;

(iii) The agency determines them to be necessary; and

(iv) The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of such mortgage balance under this section.

(f) The displaced person shall be advised of the approximate amount of this payment and the conditions that must be met to receive the payment as soon as the facts relative to the person's current mortgage(s) are known and the payment shall be made available at or near the time of closing on the

replacement dwelling in order to reduce the new mortgage as intended.

(5) **Incidental purchase expenses:** The incidental purchase expenses to be paid for a one hundred eighty-day homeowner-occupant (under subsection (2)(c) of this section) or for downpayment assistance (under WAC 468-100-402 (3)(a)) are those necessary and reasonable costs actually incurred by the displaced person incident to the purchase of a replacement dwelling, and customarily paid by the buyer, including and are limited by such costs based on the cost of a comparable replacement dwelling pursuant to WAC 468-100-403(1):

(a) Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.

(b) Lender, FHA, or VA application and appraisal fees.

(c) Loan origination or assumption fees that do not represent prepaid interest.

(d) Professional home inspection, certification of structural soundness and termite inspection.

(e) Credit report.

(f) Owner's and mortgagee's evidence of title, e.g., title insurance, not to exceed the costs for a comparable replacement dwelling.

(g) Escrow agent's fee.

(h) State revenue or documentary stamps, sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling).

(i) Such other costs as the agency determines to be incidental to the purchase.

(6) **Rental assistance payment for one hundred eighty-day homeowner:** A one hundred eighty-day homeowner-occupant who could be eligible for a replacement housing payment under subsection (1) of this section but elects to rent a replacement dwelling, is eligible for a rental assistance payment. The amount of the rental assistance payment is based on a determination of market rent for the acquired dwelling compared to a comparable rental dwelling available on the market. The difference, if any, is computed in accordance with WAC 468-100-402 (2)(a), except that the limit of five thousand two hundred fifty dollars does not apply, and disbursed in accordance with WAC 468-100-402 (2)(c). Under no circumstances would the rental assistance payment exceed the amount that could have been received under WAC 468-100-401 (2)(a) had the one hundred eighty-day homeowner elected to purchase and occupy a comparable replacement dwelling.

[Statutory Authority: Chapter 8.26 RCW. WSR 06-02-068, § 468-100-401, filed 1/3/06, effective 2/3/06; WSR 89-17-048 (Order 121), § 468-100-401, filed 8/14/89, effective 9/14/89.]

WAC 468-100-402 Replacement housing payment for ninety-day occupants. (1) **Eligibility:** A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed five thousand two hundred fifty dollars for rental assistance, as computed in accordance with subsection (2) of this section, or downpayment assistance, as computed in accordance with subsection (3) of this section, if such displaced person:

(a) Has actually and lawfully occupied the displacement dwelling for at least ninety days immediately prior to the initiation of negotiations; and

(b) Has rented, or purchased, and occupied a DSS replacement dwelling within one year (unless the agency extends this period for good cause) after:

(i) For a tenant, the date the tenant moves from the displacement dwelling; or

(ii) For an owner-occupant, the later of:

(A) The date the owner-occupant receives final payment for the displacement dwelling, or in the case of condemnation, the date the full amount of the estimate of just compensation is deposited with the court; or

(B) The date the owner-occupant moves from the displacement dwelling.

(2) **Rental assistance payment:**

(a) **Amount of payment:** An eligible displaced person who rents a replacement dwelling is entitled to a payment not to exceed five thousand two hundred fifty dollars for rental assistance (see also WAC 468-100-404). Such payment shall be forty-two times the amount obtained by subtracting the base monthly rent or the fair market rent (in accordance with (b) of this subsection) of the displacement dwelling for a reasonable period prior to displacement, as determined by the agency, from the lessor of:

(i) The monthly rent and average monthly cost of utilities for a comparable replacement dwelling; or

(ii) The monthly rent and estimated average monthly utilities for the DSS replacement dwelling actually occupied by the displaced person.

(b) Base monthly rental for displacement dwelling. The base monthly rental for the displacement dwelling is the lesser of:

(i) The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by the agency. (For an owner-occupant, use the fair market rent for the displacement dwelling. For a tenant who paid little or no rent for the displacement dwelling, use the fair market rent, unless its use would result in a hardship because of the person's income or other circumstances); or

(ii) Thirty percent of the person's average gross household income. If the amount is classified as "low income" by the U.S. Department of Housing and Urban Development's Annual Survey of Income Limits for the Public Housing and Section 8 Programs*. The base monthly rental shall be established solely on the criteria in (b)(i) of this subsection for persons with income exceeding the survey's "low income" limits, for persons refusing to provide appropriate evidence of income, and for persons who are dependents. A full time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise; or

*The U.S. Department of Housing and Urban Development's Public Housing and Section 8 Program Income Limits are updated annually and are available on FHWA's web site at <http://www.fhwa.dot.gov/realstate/us/ualic.htm>

(iii) The total of the amounts designated for shelter and utilities if receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

(c) Manner of disbursement: A rental assistance payment may, at the agency's discretion, be disbursed in either a lump

sum or in installments. However, except as limited by WAC 468-100-403(6), the full amount vests immediately, whether or not there is any later change in the person's income or rent, or in the condition or location of the person's housing.

(3) Downpayment assistance payment:

(a) Amount of payment: An eligible displaced person who purchases a replacement dwelling is entitled to a downpayment assistance payment in the amount the person would receive under subsection (2) of this section if the person rented a comparable replacement dwelling. At the discretion of the agency, a downpayment assistance payment that is less than five thousand two hundred fifty dollars may be increased to any amount not to exceed five thousand two hundred fifty dollars. However, the payment to a displaced homeowner shall not exceed the amount the owner would receive under WAC 468-100-401(2) if he or she met the one hundred eighty-day occupancy requirement. An agency's discretion to provide the maximum payment shall be exercised in a uniform and consistent manner, so that eligible displaced persons in like circumstances are treated equally. A displaced person eligible to receive a payment as a one hundred eighty-day owner-occupant under WAC 468-100-401(1) is not eligible for this payment.

(b) Application of payment: The full amount of the replacement housing payment for downpayment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

[Statutory Authority: Chapter 8.26 RCW. WSR 06-02-068, § 468-100-402, filed 1/3/06, effective 2/3/06; WSR 89-17-048 (Order 121), § 468-100-402, filed 8/14/89, effective 9/14/89.]

WAC 468-100-403 Additional rules governing replacement housing payments. (1) **Determining cost of comparable replacement dwelling:** The upper limit of a replacement housing payment shall be based on the cost of a comparable replacement dwelling (defined in WAC 468-100-002(6)).

(a) **Three-comparable method:** If available, at least three comparable replacement dwellings shall be examined and the payment computed on the basis of the dwelling most nearly representative of, and equal to, or better than, the displacement dwelling.

(b) **Major exterior attribute:** If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site (e.g., the site is significantly smaller or does not contain a swimming pool or outbuildings), the value of such attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.

(c) **Remainder offer:** If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder is a remnant of the displacement dwelling site or a buildable residential lot, the agency may offer to purchase the entire property. If such an offer is made and the owner refuses to sell the remainder to the agency, the value attributable to that remainder, shall be added to the acquisition price paid for the displacement dwelling for purposes of computing the price differential.

(d) **Location:** To the extent feasible, comparable replacement dwellings shall be selected preferably from the neighborhood in which the displacement dwelling was

located or, if not otherwise feasible, from nearby or similar neighborhoods where housing costs are generally the same as in the displacement neighborhood. Where that is not possible dwellings may be selected from neighborhoods where housing costs are the same or higher.

(e) **Multiple occupants of one displacement dwelling:** If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the agency, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the agency determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

(f) **Deductions from relocation payments:** An agency shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. The agency shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

(g) **Mixed-use and multifamily properties:** If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for nonresidential purposes, and/or is located on a tract larger than a site that is typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered its acquisition cost when computing the price differential.

(h) **Insurance proceeds:** To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (fire, flood, etc.) shall be included in the acquisition cost of the displacement dwelling when computing the price differential. (Also see WAC 468-100-003.)

(2) **Inspection of replacement dwelling:** Before making a replacement housing payment or releasing a payment from escrow, the agency or its designated representative shall inspect the replacement dwelling and determine whether it is a DSS dwelling as defined in WAC 468-100-002(8).

(3) **Purchase of replacement dwelling:** A displaced person is considered to have met the requirement to purchase a replacement dwelling, if the person:

(a) Purchases a dwelling; or

(b) Purchases and rehabilitates a substandard dwelling;

or

(c) Relocates a dwelling which the person owns or purchases; or

(d) Constructs a dwelling on a site the person owns or purchases; or

(e) Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases; or

(f) Currently owns a previously purchased dwelling and site, valuation of which shall be on the basis of current fair market value.

(4) **Occupancy requirements for displacement or replacement dwelling:** No person shall be denied eligibility for a replacement housing payment solely because the person

is unable to meet the occupancy requirements set forth in this chapter for a reason beyond the person's control, including:

(a) A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the funding agency; or

(b) Another reason, such as a delay in the construction of the replacement dwelling, military reserve duty, or hospital stay, as determined by the agency.

(5) **Conversion of payment:** A displaced person who initially rents a replacement dwelling and receives a rental assistance payment under WAC 468-100-402(2) is eligible to receive a payment under WAC 468-100-401 or 468-100-402(3) if the person meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed one-year period. Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment computed under WAC 468-100-401 or 468-100-402(3).

(6) **Payment after death:** A replacement housing payment is personal to the displaced person and upon the person's death the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

(a) The amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid.

(b) The full payment shall be disbursed in any case in which a member of a displaced family dies and the other family member(s) continue to occupy a DSS replacement dwelling.

(c) Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

[Statutory Authority: Chapter 8.26 RCW. WSR 07-08-109, § 468-100-403, filed 4/4/07, effective 5/5/07; WSR 06-02-068, § 468-100-403, filed 1/3/06, effective 2/3/06; WSR 89-17-048 (Order 121), § 468-100-403, filed 8/14/89, effective 9/14/89.]

WAC 468-100-404 Replacement housing of last resort. (1) Determination to provide replacement housing of last resort. Whenever a program or project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants, as specified in WAC 468-100-401 or 468-100-403, as appropriate, the agency shall provide additional or alternative assistance under the provisions of this subpart. Any decision to provide last resort housing assistance must be adequately justified either:

(a) On a case-by-case basis, for good cause, which means that appropriate consideration has been given to:

(i) The availability of comparable replacement housing in the program or project area;

(ii) The resources available to provide comparable replacement housing; and

(iii) The individual circumstances of the displaced person; or

(b) By a determination that:

(i) There is little, if any, comparable replacement housing available to displaced persons within an entire program or project area; and, therefore, last resort housing assistance is necessary for the area as a whole;

(ii) A program or project cannot be advanced to completion in a timely manner without last resort housing assistance; and

(iii) The method selected for providing last resort housing assistance is cost effective, considering all elements, which contribute to total program or project costs.

(2) Basic rights of persons to be displaced. Notwithstanding any provision of this subpart, no person shall be required to move from a displacement dwelling unless comparable replacement housing is available to such person. No person may be deprived of any rights the person may have under the Uniform Act or this part. The agency shall not require any displaced person to accept a dwelling provided by the agency under these procedures (unless the agency and the displaced person have entered into a contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible.

(3) Methods of providing comparable replacement housing. Agencies shall have broad latitude in implementing this subpart, but implementation shall be for reasonable cost, on a case-by-case basis unless an exception to case-by-case analysis is justified for an entire project.

(a) The methods of providing replacement housing of last resort include, but are not limited to:

(i) A replacement housing payment in excess of the limits set forth in WAC 468-100-401 or 468-100-402. A replacement housing payment under this section may be provided in installments or in a lump sum at the agency's discretion.

(ii) Rehabilitation of and/or additions to an existing replacement dwelling.

(iii) The construction of a new replacement dwelling.

(iv) The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest-free.

(v) The relocation and, if necessary, rehabilitation of a dwelling.

(vi) The purchase of land and/or a replacement dwelling by the displacing agency and subsequent sale or lease to, or exchange with a displaced person.

(vii) The removal of barriers for persons with disabilities.

(b) Under special circumstances, consistent with the definition of a comparable replacement dwelling, modified methods of providing replacement housing of last resort permit consideration of replacement housing based on space and physical characteristics different from those in the displacement dwelling, including upgraded, but smaller replacement housing that is decent, safe, and sanitary and adequate to accommodate individuals or families displaced from marginal or substandard housing with probable functional obsolescence. In no event, however, shall a displaced person be required to move into a dwelling that is not functionally equivalent in accordance with WAC 468-100-002 (6)(b).

(c) The agency shall provide assistance under this subpart to a displaced person who is not eligible to receive a replacement housing payment under WAC 468-100-402 because of failure to meet the length of occupancy requirement when comparable replacement rental housing is not available at rental rates within the displaced person's finan-

cial means (see WAC 468-100-002 (6)(h)(iii)). Such assistance shall cover a period of forty-two months.

[Statutory Authority: Chapter 8.26 RCW. WSR 06-02-068, § 468-100-404, filed 1/3/06, effective 2/3/06.]

SUBPART F

MOBILE HOMES

WAC 468-100-501 Applicability. (1) General: This subpart describes the requirements governing the provision of relocation payments to a person displaced from a mobile home and/or mobile homesite who meets the basic eligibility requirements of this chapter. Except as modified by this subpart, such a displaced person is entitled to a moving expense payment in accordance with WAC 468-100-301 through 468-100-306 and a replacement housing payment in accordance with WAC 468-100-401 through 468-100-403 to the same extent and subject to the same requirements as persons displaced from conventional dwellings. Moving cost payments to persons occupying mobile homes are covered in WAC 468-100-301 (7)(a) through (j).

(2) Partial acquisition of mobile home park. The acquisition of a portion of a mobile home park property may leave a remaining part of the property that is not adequate to continue the operation of the park. If the agency determines that a mobile home located in the remaining part of the property must be moved as a direct result of the project, the occupant of the mobile home shall be considered to be a displaced person who is entitled to relocation payments and other assistance under this part.

[Statutory Authority: Chapter 8.26 RCW. WSR 06-02-068, § 468-100-501, filed 1/3/06, effective 2/3/06; WSR 89-17-048 (Order 121), § 468-100-501, filed 8/14/89, effective 9/14/89.]

WAC 468-100-502 Replacement housing payment for one hundred eighty-day mobile home homeowner displaced from a mobile home, and/or from the acquired mobile home site. (1) Eligibility: A displaced owner-occupant from a mobile home or site is entitled to a replacement housing payment, not to exceed twenty-two thousand five hundred dollars under WAC 468-100-401 if:

(a) The person occupied the mobile home on the displacement site for at least one hundred eighty days immediately before:

(i) The initiation of negotiations to acquire the mobile home, if the person owned the mobile home and the mobile home is real property;

(ii) The initiation of negotiations to acquire the mobile home site if the mobile home is personal property, but the person owns the mobile home site; or

(iii) The date of the agency's written notification to the owner-occupant that the owner is determined to be displaced from the mobile home as described in (c)(i) through (iv) of this subsection.

(b) The person meets the other basic eligibility requirements in WAC 468-100-401 (1)(b); and

(c) The agency acquires the mobile home as real estate, or acquires the mobile home site from the displaced owner, or the mobile home is personal property but the owner is dis-

placed from the mobile home because the agency determines that the mobile home:

(i) Is not, and cannot economically be made, decent, safe, and sanitary;

(ii) Cannot be relocated without substantial damage or unreasonable cost;

(iii) Cannot be relocated because there is no available comparable replacement site; or

(iv) Cannot be relocated because it does not meet mobile home park entrance requirements.

(2) Replacement housing payment computation for a one hundred eighty-day owner that is displaced from a mobile home. The replacement housing payment for an eligible displaced one hundred eighty-day owner is computed as described in WAC 468-100-401(2) incorporating the following, as applicable:

(a) If the agency acquires the mobile home as real estate and/or acquires the owned site, the acquisition cost used to compute the price differential payment is the actual amount paid to the owner as just compensation for the acquisition of the mobile home, and/or site, if owned by the displaced mobile homeowner.

(b) If the agency does not purchase the mobile home as real estate but the owner is determined to be displaced from the mobile home and eligible for a replacement housing payment based on subsection (1)(a)(iii) of this section, the eligible price differential payment for the purchase of a comparable replacement mobile home is the lesser of the displaced mobile homeowner's net cost to purchase a replacement mobile home (i.e., purchase price of the replacement mobile home less trade-in or sale proceeds of the displacement mobile home); or the cost of the agency's selected comparable mobile home less the agency's estimate of the salvage or trade-in value for the mobile home from which the person is displaced.

(c) If a comparable replacement mobile home site is not available, the price differential payment shall be computed on the basis of the reasonable cost of a conventional comparable replacement dwelling.

(3) **Rental assistance payment for a one hundred eighty-day owner-occupant that is displaced from a leased or rented mobile home site.** If the displacement mobile home site is leased or rented, a displaced one hundred eighty-day owner-occupant is entitled to a rental assistance payment computed as described in WAC 468-100-402. This rental assistance payment may be used to lease a replacement site; may be applied to the purchase price of a replacement site; or may be applied, with any replacement housing payment attributable to the mobile home, to the purchase of a replacement mobile home or conventional decent, safe and sanitary dwelling.

(4) **Owner-occupant not displaced from the mobile home.** If the agency determines that a mobile home is personal property and may be relocated to a comparable replacement site, but the owner-occupant elects not to do so, the owner is not entitled to a replacement housing payment for the purchase of a replacement mobile home. However, the owner is eligible for moving costs described in WAC 468-100-301 and any replacement housing payment for the purchase or rental of a comparable site as described in this section or WAC 468-100-503 as applicable.

[Statutory Authority: Chapter 8.26 RCW. WSR 06-02-068, § 468-100-502, filed 1/3/06, effective 2/3/06; WSR 89-17-048 (Order 121), § 468-100-502, filed 8/14/89, effective 9/14/89.]

WAC 468-100-503 Replacement housing payments for ninety-day mobile home occupants. A displaced tenant or owner-occupant of a mobile home is eligible for a replacement housing payment, not to exceed five thousand two hundred fifty dollars under WAC 468-100-402 if:

(1) The person actually occupied the displacement mobile home on the displacement site for at least the ninety days immediately prior to the initiation of negotiations;

(2) The person meets the other basic eligibility requirements in WAC 468-100-402(1); and

(3) The agency acquires the mobile home and/or mobile homesite, or the mobile home is not acquired by the agency but the owner or tenant is displaced from the mobile home because of one of the circumstances described in WAC 468-100-502 (1)(c).

[Statutory Authority: Chapter 8.26 RCW. WSR 06-02-068, § 468-100-503, filed 1/3/06, effective 2/3/06; WSR 89-17-048 (Order 121), § 468-100-503, filed 8/14/89, effective 9/14/89.]

WAC 468-100-504 Additional rules governing relocation payment to mobile home occupants. (1) **Replacement housing payment based on dwelling and site:** Both the mobile home and mobile homesite must be considered when computing a replacement housing payment. For example, a displaced mobile home occupant may have owned the displacement mobile home and rented the site or may have rented the displacement mobile home and owned the site. Also a person may elect to purchase a replacement mobile home and rent a replacement site, or rent a replacement mobile home and purchase a replacement site. In such cases, the total replacement housing payment shall consist of a payment for a dwelling and a payment for a site, each computed under the applicable section in WAC 468-100-401 through 468-100-403. However, the total replacement housing payment under WAC 468-100-401 through 468-100-403 shall not exceed the maximum payment (either twenty-two thousand five hundred dollars or five thousand two hundred fifty dollars) permitted under the subsection that governs the computation for the dwelling.

(2) Cost of comparable replacement dwelling:

(a) If a comparable replacement mobile home is not available, the replacement housing payment shall be computed on the basis of the reasonable cost of a conventional comparable replacement dwelling.

(b) If the agency determines that it would be practical to relocate the mobile home, but the owner-occupant elects not to do so, the agency may determine that, for purposes of computing the price differential under WAC 468-100-401(3), the cost of a comparable replacement dwelling is the sum of:

(i) The value of the mobile home;

(ii) The cost of any necessary repairs or modifications; and

(iii) The estimated cost of moving the mobile home to a replacement site.

(3) **General provisions:** WAC 468-100-403 also applies.

(10/11/07)

[Statutory Authority: Chapter 8.26 RCW. WSR 06-02-068, § 468-100-504, filed 1/3/06, effective 2/3/06; WSR 89-17-048 (Order 121), § 468-100-504, filed 8/14/89, effective 9/14/89.]

SUBPART G

CERTIFICATION

WAC 468-100-601 Purpose. This subpart permits a state agency to fulfill its responsibilities under the Uniform Act by certifying that it shall operate in accordance with state laws and regulations which shall accomplish the purpose and effect of the Uniform Act, in lieu of providing the assurances required by WAC 468-100-004.

[Statutory Authority: Chapter 8.26 RCW. WSR 06-02-068, § 468-100-601, filed 1/3/06, effective 2/3/06; WSR 89-17-048 (Order 121), § 468-100-601, filed 8/14/89, effective 9/14/89.]

WAC 468-100-602 Certification application. An agency wishing to proceed on the basis of a certification may request an application for certification from the Lead Agency Director, Office of Real Estate Services, HEPR-1, Federal Highway Administration, 400 Seventh St., S.W., Washington, D.C. 20590. The completed application for certification must be approved by the governor of the state, or the governor's designee, and must be coordinated with the federal funding agency, in accordance with application procedures.

[Statutory Authority: Chapter 8.26 RCW. WSR 06-02-068, § 468-100-602, filed 1/3/06, effective 2/3/06; WSR 89-17-048 (Order 121), § 468-100-602, filed 8/14/89, effective 9/14/89.]

WAC 468-100-603 Monitoring and corrective action.

(1) The federal lead agency shall, in coordination with other federal agencies, monitor from time to time state agency implementation of programs or projects conducted under the certification process and the state agency shall make available any information required for this purpose.

(2) The lead agency may require periodic information or data from affected federal or state agencies.

(3) A federal agency may, after consultation with the lead agency, and notice to and consultation with the governor, or his or her designee, rescind any previous approval provided under this subpart if the certifying state agency fails to comply with its certification or with applicable state law and regulations. The federal agency shall initiate consultation with the lead agency at least thirty days prior to any decision to rescind approval of a certification under this subpart. The lead agency will also inform other federal agencies, which have accepted a certification under this subpart from the same state agency, and will take whatever other action that may be appropriate.

(4) Section 103(b)(2) of the Uniform Act, as amended, requires that the head of the lead agency report biennially to the Congress on state agency implementation of Section 103. To enable adequate preparation of the prescribed biennial report, the lead agency may require periodic information or data from affected federal or state agencies.

[Statutory Authority: Chapter 8.26 RCW. WSR 06-02-068, § 468-100-603, filed 1/3/06, effective 2/3/06.]