

Title 154 WAC

DEFERRED COMPENSATION, COMMITTEE FOR

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filed 6/10/83; 82-13-043 (Order 82-3), § 154-20-020, filed 6/11/82.] Repealed by 89-11-010 (Order 89-03), filed 5/8/89. Statutory Authority: RCW 41.04.260.

Chapter 154-01 WAC PLAN ESTABLISHED

WAC
154-01-010 Plan established.

WAC 154-01-010 Plan established. In accordance with the provisions of RCW 41.04.250 et seq., and as provided in Section 457 of the Internal Revenue Code, the state of Washington hereby establishes the deferred compensation plan for employees of the state of Washington and approved political subdivisions of the state of Washington, hereinafter referred to as the "plan." Nothing contained in this plan shall be deemed to constitute an employment agreement between the participant and the employer and nothing contained herein shall be deemed to give a participant any right to be retained in the employ of the employer.

[Statutory Authority: RCW 41.04.260. 84-23-022 (Order 84-4), § 154-01-010, filed 11/13/84; 82-13-043 (Order 82-3), § 154-01-010, filed 6/11/82.]

Chapter 154-04 WAC DEFINITIONS

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Chapter 154-16 BENEFITS ON RETIREMENT

- 154-16-010 Normal retirement. [Statutory Authority: RCW 41.04.260. 83-13-044 (Order 83-2), § 154-16-010, filed 6/10/83; 82-13-043 (Order 82-3), § 154-16-010, filed 6/11/82.] Repealed by 89-11-010 (Order 89-03), filed 5/8/89. Statutory Authority: RCW 41.04.260.
- 154-16-020 Upon death of participant. [Statutory Authority: RCW 41.04.260. 83-13-044 (Order 83-2), § 154-16-020, filed 6/10/83; 82-13-043 (Order 82-3), § 154-16-020, filed 6/11/82.] Repealed by 89-11-010 (Order 89-03), filed 5/8/89. Statutory Authority: RCW 41.04.260.

Chapter 154-20 BENEFITS ON TERMINATION OF SERVICES OR DEATH PRIOR TO RETIREMENT

- 154-20-010 Termination of services. [Statutory Authority: RCW 41.04.260. 83-13-044 (Order 83-2), § 154-20-010, filed 6/10/83; 82-13-043 (Order 82-3), § 154-20-010, filed 6/11/82.] Repealed by 89-11-010 (Order 89-03), filed 5/8/89. Statutory Authority: RCW 41.04.260.
- 154-20-020 Death of participant. [Statutory Authority: RCW 41.04.260. 83-13-044 (Order 83-2), § 154-20-020,

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

- 154-04-040 Normal retirement age. [Statutory Authority: RCW 41.04.260. 88-12-028 (Order 88-1), § 154-04-040, filed 5/25/88; 83-13-044 (Order 83-2), § 154-04-040, filed 6/10/83; 82-13-043 (Order 82-3), § 154-04-040, filed 6/11/82.] Repealed by 89-11-010 (Order 89-03), filed 5/8/89. Statutory Authority: RCW 41.04.260.
- 154-04-060 Termination of services. [Statutory Authority: RCW 41.04.260. 82-13-043 (Order 82-3), § 154-04-060, filed 6/11/82.] Repealed by 89-11-010 (Order 89-03), filed 5/8/89. Statutory Authority: RCW 41.04.260.

154-04-090 Includible compensation. [Statutory Authority: RCW 41.04.260. 84-23-022 (Order 84-4), § 154-04-090, filed 11/13/84; 83-13-044 (Order 83-2), § 154-04-090, filed 6/10/83; 82-13-043 (Order 82-3), § 154-04-090, filed 6/11/82.] Repealed by 89-11-010 (Order 89-03), filed 5/8/89. Statutory Authority: RCW 41.04.260.

WAC 154-04-010 Employer. "Employer" means:

(1) The state of Washington, one of the fifty states of the United States, as described in Section 1.457-2 (c)(1) of the final regulations promulgated under Section 457 of the Internal Revenue Code; and

(2) Approved political subdivisions of the state of Washington.

[Statutory Authority: RCW 41.04.260. 84-23-022 (Order 84-4), § 154-04-010, filed 11/13/84; 83-13-044 (Order 83-2), § 154-04-010, filed 6/10/83; 82-13-043 (Order 82-3), § 154-04-010, filed 6/11/82.]

WAC 154-04-020 Compensation. "Compensation" means all payments made to a public employee by the employer as remuneration for services rendered.

[Statutory Authority: RCW 41.04.260. 82-13-043 (Order 82-3), § 154-04-020, filed 6/11/82.]

WAC 154-04-030 Deferred compensation. "Deferred compensation" means the amount of the participant's compensation which the participant and the employer shall mutually agree (prior to the date on which such compensation is earned) will be deferred.

[Statutory Authority: RCW 41.04.260. 82-13-043 (Order 82-3), § 154-04-030, filed 6/11/82.]

WAC 154-04-035 Amounts deferred. "Amounts deferred" means compensation deferred under the plan; plus income attributable to compensation so deferred.

[Statutory Authority: RCW 41.04.260. 83-13-044 (Order 83-2), § 154-04-035, filed 6/10/83.]

WAC 154-04-050 Participation agreement. "Participation agreement" means the agreement executed and filed by an eligible employee with the employer pursuant to WAC 154-12-010, in which the eligible employee elects to become a participant in the plan.

[Statutory Authority: RCW 41.04.260. 83-13-044 (Order 83-2), § 154-04-050, filed 6/10/83; 82-13-043 (Order 82-3), § 154-04-050, filed 6/11/82.]

WAC 154-04-065 Separation from service. "Separation (or separates) from service" means "separation from service" as that term is interpreted for purposes of Section 402 (e)(4)(A)(iii) of the Internal Revenue Code and refers to the severance of the participant's employment with the employer. A participant will be deemed to have severed his or her employment as of the date of his or her last payroll.

[Statutory Authority: RCW 41.04.260. 89-11-010 (Order 89-03), § 154-04-065, filed 5/8/89.]

WAC 154-04-070 Participant. "Participant" means any eligible employee of the employer who executes a participation agreement with the committee assenting to

the provisions of this plan, once the agreement has been approved by the committee or its designee.

[Statutory Authority: RCW 41.04.260. 83-13-044 (Order 83-2), § 154-04-070, filed 6/10/83; 82-13-043 (Order 82-3), § 154-04-070, filed 6/11/82.]

WAC 154-04-075 Beneficiary. "Beneficiary" means a beneficiary of a participant, a participant's estate, or any other person whose interest in the plan is derived from the participant.

[Statutory Authority: RCW 41.04.260. 83-13-044 (Order 83-2), § 154-04-075, filed 6/10/83.]

WAC 154-04-080 Committee. "Committee" means the committee for deferred compensation appointed pursuant to RCW 41.04.260.

[Statutory Authority: RCW 41.04.260. 82-13-043 (Order 82-3), § 154-04-080, filed 6/11/82.]

WAC 154-04-100 Eligible employee. "Eligible employee" means any person who is employed by and receives any type of compensation from the employer for whom services are rendered, and who is a full-time, permanent part-time working half-time, or more, or career seasonal employee of the employer, whether or not covered by civil service; an elected or appointed official of the executive branch of the government, including any full-time member of a board, commission, or committee; a justice of the supreme court, or a judge of the court of appeals or of a superior court; or a member of the state legislature.

[Statutory Authority: RCW 41.04.260. 83-13-044 (Order 83-2), § 154-04-100, filed 6/10/83; 82-13-043 (Order 82-3), § 154-04-100, filed 6/11/82.]

WAC 154-04-110 Deferred compensation revolving fund. "Deferred compensation revolving fund" means the special fund created in the treasury of the state of Washington pursuant to RCW 41.04.260 into which shall be paid all deferred compensation hereunder and from which shall be paid as necessary costs of administration and staffing of the plan, expenses of the committee, and such other amounts determined by the committee and permitted by law; and benefits payable hereunder to participants or their respective beneficiary or beneficiaries unless otherwise paid.

[Statutory Authority: RCW 41.04.260. 82-13-043 (Order 82-3), § 154-04-110, filed 6/11/82.]

Chapter 154-08 WAC ADMINISTRATION

WAC

154-08-010	Administered by committee.
154-08-020	Committee to adopt rules and regulations.
154-08-030	Committee action fair and reasonable.
154-08-040	Committee to maintain records of accounts.
154-08-050	Deferred compensation revolving fund.

WAC 154-08-010 Administered by committee. This plan shall be administered by the committee which shall

represent the employer in all matters concerning the administration of this plan.

[Statutory Authority: RCW 41.04.260. 82-13-043 (Order 82-3), § 154-08-010, filed 6/11/82.]

WAC 154-08-020 Committee to adopt rules and regulations. The committee shall have full power and authority to adopt rules and regulations for the administration of the plan, and to interpret, alter, amend, or revoke any rules and regulations so adopted.

[Statutory Authority: RCW 41.04.260. 82-13-043 (Order 82-3), § 154-08-020, filed 6/11/82.]

WAC 154-08-030 Committee action fair and reasonable. Every action taken by the committee shall be presumed to be fair and reasonable exercise of the authority vested in or the duties imposed upon it. The committee and its individual members shall be deemed to have exercised reasonable care, diligence and prudence and to have acted impartially as to all persons interested, unless the contrary be proven by affirmative evidence.

[Statutory Authority: RCW 41.04.260. 82-13-043 (Order 82-3), § 154-08-030, filed 6/11/82.]

WAC 154-08-040 Committee to maintain records of accounts. To facilitate an orderly administration of the plan, the committee shall maintain or cause to be maintained a deferred compensation ledger account with respect to each participant.

[Statutory Authority: RCW 41.04.260. 82-13-043 (Order 82-3), § 154-08-040, filed 6/11/82.]

WAC 154-08-050 Deferred compensation revolving fund. All deferred compensation hereunder shall be paid into the deferred compensation revolving fund. All costs of administration and staffing of the plan, expenses of the committee, and such other amounts determined by the committee and permitted by law, shall be paid as necessary out of the deferred compensation revolving fund. Amounts in the deferred compensation revolving fund may be invested pursuant to RCW 41.04.250 as directed by the committee. All benefits payable to participants or their respective beneficiary or beneficiaries shall be paid from the deferred compensation revolving fund unless otherwise paid.

[Statutory Authority: RCW 41.04.260. 82-13-043 (Order 82-3), § 154-08-050, filed 6/11/82.]

Chapter 154-12 WAC PARTICIPATION IN THE PLAN

WAC

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154-12-040	Committee may disallow deferral.
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154-12-086	Distribution in the event of death of participant.
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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

154-12-060	Revocation of deferral. [Statutory Authority: RCW 41.04.260. 87-18-022 (Order 87-1), § 154-12-060, filed 8/26/87; 82-13-043 (Order 82-3), § 154-12-060, filed 6/11/82.] Repealed by 89-11-010 (Order 89-03), filed 5/8/89. Statutory Authority: RCW 41.04.260.
154-12-100	Investment mode election. [Statutory Authority: RCW 41.04.260. 83-13-044 (Order 83-2), § 154-12-100, filed 6/10/83; 82-13-043 (Order 82-3), § 154-12-100, filed 6/11/82.] Repealed by 89-11-010 (Order 89-03), filed 5/8/89. Statutory Authority: RCW 41.04.260.
154-12-105	Change of investment mode. [Statutory Authority: RCW 41.04.260. 83-13-044 (Order 83-2), § 154-12-105, filed 6/10/83.] Repealed by 84-17-033 (Order 84-2), filed 8/8/84. Statutory Authority: RCW 41.04.260.

WAC 154-12-010 Enrollment. (1) An eligible employee may become a participant by executing a participation agreement. Compensation will be deferred for any calendar month only if a participation agreement providing for such deferral is executed by the participant and approved by the committee or its designee before the beginning of such month.

(2) In signing the participation agreement, the participant elects to participate in this plan and consents to the employer deferring the amount specified in the participation agreement from the participant's gross compensation for each pay period. The dollar amount deferred ("deferred compensation") must equal at least thirty dollars per month. Once a participant has specified an amount of deferral, such specification shall continue unless changed or revoked pursuant to WAC 154-12-050 or 154-12-070 of this plan. Participants must have at least one monthly deferral.

[Statutory Authority: RCW 41.04.260. 89-20-021, § 154-12-010, filed 9/27/89, effective 10/28/89; 89-11-010 (Order 89-03), § 154-12-010, filed 5/8/89; 83-13-044 (Order 83-2), § 154-12-010, filed 6/10/83; 82-13-043 (Order 82-3), § 154-12-010, filed 6/11/82.]

WAC 154-12-015 Acceptance of interplan transfers. Pursuant to Section 1.457-(2)(k) of the final regulations promulgated under section 457 of the code:

(1) Transfers to the plan. If a participant was formerly a participant in an eligible state deferred compensation plan (within the meaning of section 457 of the code and the regulations thereunder), and if such a plan permits the direct transfer of the participant's interest therein to the plan, then the plan shall accept assets representing the value of such interest; provided, however, the committee may require in its sole discretion that some or all of such interest be transferred in cash or its equivalent. Such amount shall be held, accounted for, administered, and otherwise treated in the same manner

as compensation deferred by the participant under the plan except that:

(a) Only the amount, if any, transferred to the plan which was deferred under the transferor plan in the taxable year when transfer occurs shall be treated as compensation deferred under the plan in such year.

(b) Such amount shall remain subject to, and shall be administered in accordance with, any irrevocable elections made under the transferor plan with respect to such amount.

(2) Transfers from the plan. The amounts credited to the account of a former participant in the plan may be transferred to another eligible state deferred compensation plan (within the meaning of section 457 of the code and the regulations thereunder) and in which the former participant currently participates, and if such plan provides for the acceptance of such amounts; provided, however, that if a participant terminates his service with the participating employer in order to accept employment with the entity sponsoring such plan and if such plan accepts transferred amounts, then payment of benefits under the plan will not commence, regardless of any other provision of this plan, and the deferrals will automatically be transferred to such plan.

(3) Application for transfer. If the conditions in subsections (1) and (2) of this section are met and the participant wishes to transfer his/her account, he/she shall complete any application form and/or other documents as may be required by the committee.

(4) Administrative rules. The committee shall prescribe such rules consistent with the provisions of subsections (1) and (2) of this section concerning plan-to-plan transfers as in its sole judgment it deems desirable for the orderly administration of the plan.

[Statutory Authority: RCW 41.04.260. 89-20-021, § 154-12-015, filed 9/27/89, effective 10/28/89; 88-12-028 (Order 88-1), § 154-12-015, filed 5/25/88; 87-18-022 (Order 87-1), § 154-12-015, filed 8/26/87; 84-23-022 (Order 84-4), § 154-12-015, filed 11/13/84; 83-13-044 (Order 83-2), § 154-12-015, filed 6/10/83.]

WAC 154-12-020 Deferral limitation. (1) Except as provided in WAC 154-12-030, relating to catch-up, the maximum that may be deferred under the plan for any taxable year of a participant shall not exceed the lesser of seven thousand five hundred dollars or thirty-three and one-third percent of the participant's includible compensation, each reduced:

(a) By any amount excludable from the participant's gross income for that taxable year under Section 403(b) of the Internal Revenue Code; and

(b) By any amount:

(i) Excluded from gross income under Section 402 (a)(8) or 402 (h)(1)(B) of the Internal Revenue Code (relating to a participant's elective deferrals to simplified employee pensions) for that taxable year;

(ii) For which a deduction is allowable for that taxable year by reason of a contribution to an organization described in Section 501 (c)(18) of the Internal Revenue Code (relating to pension trusts created before June 25, 1959, forming part of a plan for payment of benefits under a pension plan funded only by contributions of employees); or

(iii) Which is deferred by a participant under Section 401(k) of the Internal Revenue Code (relating to qualified cash or deferred arrangement) during that taxable year; and

(c) By any amount the participant contributes to any other Section 457 of the Internal Revenue Code plan (relating to deferred compensation plan(s)) during the taxable year.

(2) "Includible compensation" for purposes of this section means includible compensation as defined in Section 457 (e)(5) of the Internal Revenue Code and as further defined by Treasury Department Regulation 1.457-2 (e)(2) interpreting that section, and is determined without regard to community property laws. Includible compensation for a taxable year includes only compensation from the employer that is attributable to services performed for the employer and that is includible in the participant's gross income for the taxable year for federal income tax purposes. Accordingly, a participant's includible compensation for a taxable year does not include an amount payable by the employer that is excludable from the employee's gross income under:

(a) Section 457 of the Internal Revenue Code;

(b) Section 403(b) of the Internal Revenue Code (relating to annuity contracts purchased by Section 501 (c)(3) of the Internal Revenue Code organizations or public schools);

(c) Section 105(d) of the Internal Revenue Code (relating to wage continuation plans);

(d) Section 911 of the Internal Revenue Code (relating to citizens or residents of the United States living abroad);

(e) Section 402 (a)(8) or 402 (h)(1)(B) of the Internal Revenue Code (relating to simplified employee pensions);

(f) Section 501 (c)(18) of the Internal Revenue Code (relating to certain pension trusts); or

(g) Section 401(k) of the Internal Revenue Code (relating to qualified cash or deferred arrangements).

(3) In computing includible compensation, total gross compensation as shown on state earnings statements must be reduced by:

(a) Section 414(h) of the Internal Revenue Code, before tax contributions to retirement plans (including those described in RCW 41.04.440, 41.04.445, and 41.04.450); and

(b) Any Section 125 of the Internal Revenue Code contributions to cafeteria plans (including those which include such items as dependent care salary reduction plans) before excluding the items listed in subsection (2)(a) through (g) of this section.

[Statutory Authority: RCW 41.04.260. 89-11-010 (Order 89-03), § 154-12-020, filed 5/8/89; 88-12-028 (Order 88-1), § 154-12-020, filed 5/25/88; 84-23-022 (Order 84-4), § 154-12-020, filed 11/13/84; 83-13-044 (Order 83-2), § 154-12-020, filed 6/10/83; 82-13-043 (Order 82-3), § 154-12-020, filed 6/11/82.]

WAC 154-12-030 Catch-up provision. For one or more of the participant's last three taxable years ending before attaining normal retirement age under the plan, the maximum deferral shall be the lesser of:

(1) Fifteen thousand dollars for the taxable year, reduced in the same manner as the seven thousand five hundred dollars limitation is reduced in WAC 154-12-020, or

(2) The sum of:

(a) The limitations established for purposes of WAC 154-12-020 of the plan for the taxable year (determined without regard to this section), plus

(b) So much of the limitation established under WAC 154-12-020 for taxable years before the taxable year as has not theretofore been used under WAC 154-12-020 or 154-12-030. A prior taxable year shall be taken into account only if:

(i) It begins after December 31, 1978;

(ii) The participant was eligible to participate in the plan during all or any portion of the taxable year, and;

(iii) Compensation deferred (if any) under the plan during the taxable year was subject to a maximum limitation (as established under WAC 154-12-020).

A prior taxable year includes a taxable year in which the participant was eligible to participate in an eligible plan sponsored by another entity. In no event can the participant elect to have the catch-up provision apply more than once whether or not the full catch-up had been utilized.

"Normal retirement age," as used in chapters 154-01 through 154-68 WAC, means the range of ages:

Ending not later than age seventy and one-half; and

Beginning not earlier than the earliest age at which the participant has the right to retire under a state authorized pension for which the participant is eligible without consent of the state and under which the participant will receive immediate retirement benefits without actuarial adjustment due to retirement prior to some later specified age in a state authorized pension plan.

Provided, however, if the participant elects to defer amounts in excess of the maximum deferral allowed by WAC 154-12-020 but within the limited catch-up permitted by this section, the participant thereby establishes a date (i.e., a specific "normal retirement age"):

Before which date, amounts deferred can be paid to the participant only under the unforeseeable emergency exception in WAC 154-24-010 (even if the participant separates from service); and

After which date, if the participant separates from service or has separated from service, amounts deferred must be paid out as described in WAC 154-12-090 (1)(b).

This catch-up provision may not be used in the year in which the participant attains age seventy and one-half, and may not be used in any year thereafter.

[Statutory Authority: RCW 41.04.260. 89-11-010 (Order 89-03), § 154-12-030, filed 5/8/89; 88-12-028 (Order 88-1), § 154-12-030, filed 5/25/88; 84-23-022 (Order 84-4), § 154-12-030, filed 11/13/84; 83-13-044 (Order 83-2), § 154-12-030, filed 6/10/83; 82-13-043 (Order 82-3), § 154-12-030, filed 6/11/82.]

WAC 154-12-040 Committee may disallow deferral.

The participant acknowledges the right of the committee to disallow deferral of compensation under the plan in excess of the limitations in WAC 154-12-020 and 154-12-030. However, the committee shall have no duty to

assure that amounts deferred are in compliance with such limitations.

[Statutory Authority: RCW 41.04.260. 89-11-010 (Order 89-03), § 154-12-040, filed 5/8/89; 82-13-043 (Order 82-3), § 154-12-040, filed 6/11/82.]

WAC 154-12-050 Modification of deferral. A participant may change his/her deferral not more than four times in any calendar year. Changes in the amount of deferral must equal at least ten dollars or more per month.

An increase (or an increase and a change in investment option(s) which are effective the same date) shall not be counted as a change. Only a decrease in the amount of deferral, a transfer, or a change in investment option(s) not accompanied by an increase, shall be counted as a change.

Any combination of a decrease, a transfer, or a change in investment option(s) effective the same date, shall be considered one change.

A change (whether counted as such or not) shall be effective for any calendar month only if the participant signs a new participation agreement and it is approved by the committee or its designee before the beginning of that calendar month. All participation agreements indicating changes in investment option(s) must be filed with the committee no later than fifteen days prior to the established pay date for which the change will occur. The committee reserves the right to defer the effective date of any change.

During the payout process, the committee may periodically liquidate mutual fund shares in amounts necessary to meet distribution requirements for a six-month period.

[Statutory Authority: RCW 41.04.260. 89-11-010 (Order 89-03), § 154-12-050, filed 5/8/89; 87-18-022 (Order 87-1), § 154-12-050, filed 8/26/87; 86-16-025 (Order 86-1), § 154-12-050, filed 7/30/86; 84-17-033 (Order 84-2), § 154-12-050, filed 8/8/84; 82-13-043 (Order 82-3), § 154-12-050, filed 6/11/82.]

WAC 154-12-070 Suspension and reinstatement of deferrals. **SUSPENSION.** A participant may at any time direct that deferrals under the participant's participation agreement cease by completing the proper form and filing it with the committee no later than the last day of the payroll period prior to the payroll period during which the deferrals are to cease; however, accrued benefits shall only be paid as provided in WAC 154-12-080 through 154-12-110.

REINSTATEMENT. A participant who has directed the cessation of deferrals may resume deferrals for any calendar month commencing no sooner than six months after such deferrals ceased by executing a new participation agreement to defer compensation. The six-month waiting period shall not apply to participants who are on leave without pay as discussed in WAC 154-28-010.

[Statutory Authority: RCW 41.04.260. 89-11-010 (Order 89-03), § 154-12-070, filed 5/8/89; 87-18-022 (Order 87-1), § 154-12-070, filed 8/26/87; 82-13-043 (Order 82-3), § 154-12-070, filed 6/11/82.]

WAC 154-12-075 Investment options. Each participant shall designate on his/her participation agreement the investment option(s) in which he/she wishes to have funds invested. The investment option(s) shall be selected from those options made available for this purpose from time to time by the committee, in its sole discretion.

The committee may make available as options for investment:

(1) A fixed rate investment or pool of investments including deposits with a credit union, savings and loan association, mutual savings bank and fixed annuities;

(2) Specified mutual fund shares, shares of an investment company, or variable annuities; or

(3) Fixed or variable life insurance, or other options permitted by law and selected by the committee. In the event that a selected investment option experiences a loss, the participant's benefits payable hereunder shall likewise reflect a loss, rather than income, for the period.

Nothing in this section shall require the employer to invest any amount in the investments selected and whether or not the employer so invests, no participant shall have any right, title, or interest in the amounts deferred or assets so invested.

[Statutory Authority: RCW 41.04.260. 89-11-010 (Order 89-03), § 154-12-075, filed 5/8/89.]

WAC 154-12-080 Designation of beneficiaries. Each participant shall have the right to designate a beneficiary or beneficiaries to receive any benefit to which said participant may be entitled in the event of death prior to the complete distribution of benefits. If no such designation is in effect on a participant's death, the beneficiary shall be the surviving spouse. If there be no such surviving spouse, then the beneficiary shall be the participant's estate. A participant may change his/her beneficiary designation at any time by filing a change of beneficiary form with the committee. A participant may also change his/her beneficiary designation by completing the beneficiary designation portion of a participation agreement form.

The participant may name:

(1) A designated organization or person (including without limitation his/her unborn or later adopted children). If unborn or later adopted children are to be included, the designation must so indicate. The date of birth must be furnished for any living person who is named and who is under the age of eighteen.

(2) His or her estate;

(3) A trust which is in existence, or which is to be established under the participant's last will. For an existing trust, the participant must provide the name of the trust and the date it was established.

The participant may name contingent beneficiaries in addition to primary beneficiaries.

[Statutory Authority: RCW 41.04.260. 89-11-010 (Order 89-03), § 154-12-080, filed 5/8/89; 82-13-043 (Order 82-3), § 154-12-080, filed 6/11/82.]

WAC 154-12-085 Distribution to participant after separation from service. After separation from service,

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an amount equal to the sum of all compensation theretofore deferred under the plan, together with investment income or loss thereon to the date of payment, calculated in accordance with WAC 154-12-107 shall be paid to the participant in one or more installments as elected by the participant pursuant to WAC 154-12-090.

[Statutory Authority: RCW 41.04.260. 89-11-010 (Order 89-03), § 154-12-085, filed 5/8/89.]

WAC 154-12-086 Distribution in the event of death of participant. Should the participant die at any time, whether before or after separation from service, an amount shall be paid to the beneficiary or beneficiaries designated by the participant pursuant to WAC 154-12-080 which is equal to the sum of all compensation theretofore deferred under the plan, together with investment income or loss thereon to the date of payment, calculated in accordance with WAC 154-12-107. The amount shall be paid out as provided in WAC 154-12-080 through 154-12-110. If no beneficiary is designated as provided in the participation agreement, or if the designated beneficiary does not survive by a period of thirty days, then a lump sum or series of payments shall be paid, in accordance with WAC 154-12-080 through 154-12-110, to the surviving spouse, or if none, a lump sum shall be paid to the estate of the participant.

[Statutory Authority: RCW 41.04.260. 89-11-010 (Order 89-03), § 154-12-086, filed 5/8/89.]

WAC 154-12-087 Distribution in event of death of beneficiary. In the event a beneficiary survives the participant by thirty days and becomes entitled to receive benefits, the remaining amount deferred shall become payable to the beneficiary's estate on the twenty-fifth day of the second month following the beneficiary's death, unless benefits are being paid in the form of an annuity, in which case the disposition of the remaining amount shall be determined by the annuity contract. Such annuity contracts shall be issued pursuant to the rules set forth in WAC 154-12-110.

[Statutory Authority: RCW 41.04.260. 89-11-010 (Order 89-03), § 154-12-087, filed 5/8/89.]

WAC 154-12-090 Elections regarding distribution. Each participant (or in the event of death, each beneficiary other than an organization, an estate, or a trust) shall elect when his/her payout will begin and the payout period.

(1) Election regarding time of payment. The election regarding the time when payment will begin shall be made when a participant separates from service (or dies having separated from service and having previously elected when payment will begin).

Once made, the election regarding when payout will begin is irrevocable as to the participant or beneficiary making the election. The election regarding when payment will begin:

(a) By a participant who separates from service other than by reason of death, and who has not used catch-up, must be made not later than the earlier of:

(i) Sixty days after separation from service; or

(ii) January 31st following the year of separation; payment may begin on the central payroll date nearest the twenty-fifth day of the month following the month in which an election is filed with the committee on forms provided for that purpose, and payment must begin within the time prescribed by WAC 154-12-110;

(b) By a participant who separates from service other than by reason of death and who has used the catch-up provision in WAC 154-12-030, will be deemed to have been made by use of catch-up; payment will begin on the central payroll date nearest the twenty-fifth day of the month following the month in which he/she separates from service having reached normal retirement age.

(c) By a beneficiary, other than an organization, estate or trust, where the participant was not already receiving payments, must be made not later than the earlier of:

(i) Sixty days after the participant's death; or

(ii) The January 31st following the year in which the participant died; payment may begin on the central payroll date nearest the twenty-fifth day of the month following the month in which an election is filed with the committee on forms provided for that purpose, and payment must begin within the time prescribed by WAC 154-12-110.

(2) Election regarding method of payment. The participant (beneficiary) who makes an election regarding the date payment will begin, may also elect the period over which payments will be made. The payout period election may be made either at the time he/she elects a beginning date for payout or at any time not later than sixty days prior to the date payout is to begin. Once having made this election, the participant (or beneficiary, other than an organization, estate, or trust) may change the payout period election not later than sixty days prior to the date payout is to begin. Such a beneficiary may also make this election where the participant was already receiving payments but, as provided in WAC 154-12-110 (3)(a), must receive distribution at least as rapidly as it was being distributed to the participant. Such a beneficiary must make the payout period election not later than sixty days after the death of the participant and payout will be suspended following the participant's death until the beneficiary either makes a payout period election or begins receiving payment as provided in subsection (4) of this section. Provided, if the participant was receiving payout in the form of an annuity contract, then the successor's right shall be limited by the terms of that contract.

(3) How elections are made. A participant or beneficiary makes elections allowed under this section by completing and filing applicable payment request forms with the committee. As described in subsection (1)(b) of this section, a participant who uses the catch-up provision is deemed to have made an irrevocable election regarding the time payment will begin.

(4) Consequences in absence of a timely election regarding time of payment. Absent a timely election

regarding when payout is to begin, payout will begin on the central payroll date nearest the twenty-fifth day of the month following the month in which the election period ends, and will be made, in a lump sum if the amounts deferred as of the end of the election period are less than twenty-five thousand dollars or, if the amounts deferred are twenty-five thousand dollars or more, in equal monthly installments over a period of one hundred twenty months or such lesser period:

(a) As may be necessary under the minimum payout requirements of Section 457 (d)(2)(B)(i)(I) of the Internal Revenue Code, requiring amounts to be paid not later than as determined under Section 401 (a)(9)(G) of the Internal Revenue Code; or

(b) As may be necessary under Section 457 (d)(2)(B)(i)(II) of the Internal Revenue Code, requiring amounts not distributed to the participant during his/her life to be distributed at least as rapidly as they were being distributed as of the participant's death.

(5) Consequences in absence of a timely election regarding method of payment. In the absence of a timely election regarding the period of time over which payment will be made, payment will be made in the manner described in subsection (4) of this section.

(6) Payment to an organization, estate, or trust. Any amount payable to an organization, estate, or trust shall be paid in a lump sum as prescribed in WAC 154-12-110(3).

[Statutory Authority: RCW 41.04.260. 89-11-010 (Order 89-03), § 154-12-090, filed 5/8/89; 83-13-044 (Order 83-2), § 154-12-090, filed 6/10/83; 82-13-043 (Order 82-3), § 154-12-090, filed 6/11/82.]

WAC 154-12-107 Amounts deferred reduced by costs. For purposes of determining the amount of benefits payable to a participant or the participant's beneficiary or beneficiaries under the plan, the amounts deferred shall be reduced by costs of the plan paid from the deferred compensation revolving fund pursuant to WAC 154-08-050, and any investment income which would otherwise have been earned thereon and any amounts paid previously, including any amounts paid pursuant to WAC 154-24-010 by reason of an unforeseeable emergency.

[Statutory Authority: RCW 41.04.260. 89-11-010 (Order 89-03), § 154-12-107, filed 5/8/89.]

WAC 154-12-110 Distribution of deferrals. (1) General rule. Assuming a timely election is allowed and has been made pursuant to WAC 154-12-090, payment will be made in at least annual, substantially nonincreasing amounts. Payments are also subject to the limitations in subsections (2) through (5) of this section.

(2) Distribution to participant. A participant must either:

(a) Receive his/her entire interest prior to the latest of:

(i) The March 1st immediately following the close of the plan year in which the participant attains age seventy and one-half; or

(ii) The March 1st immediately following the close of the plan year in which the participant separates from service with the employer; or

(b) Begin receiving his/her interest not later than the time specified in (a) of this subsection and receive it over a period not longer than either:

(i) The life of the participant;

(ii) The life of the participant and a beneficiary designated by the participant;

(iii) The life expectancy of the participant; or

(iv) The life expectancy of the participant and a designated beneficiary.

However, if the participant has used the catch-up provision in WAC 154-12-030, the date before which the participant must receive, or begin to receive payment is the March 1st immediately following the year established by use of catch-up as his/her normal retirement age as defined in WAC 154-12-030.

Payment must be sufficiently rapid to satisfy the requirements of Section 457 (d)(2)(B)(i)(I) and Section 401 (a)(9)(G) of the Internal Revenue Code. Provided, that until tables are issued by the Secretary of the Treasury, if provision is made for the payment of a portion of the benefits to a beneficiary, the amount payable to the participant actuarially must exceed two-thirds of the maximum amount payable to the participant had no provision been made for payments to the beneficiary (determined as of the commencement of the distribution).

Once payments to a participant begin, the participant may accelerate the payment schedule only in the event of an unforeseeable emergency (and subject to the provisions of WAC 154-24-010 regarding such emergencies).

(3) Distribution to beneficiaries.

(a) When distribution begins prior to the participant's death, then payout must be made at least as rapidly as it was being made to the participant. When the beneficiary is an organization, estate or trust, then payment will be payable in a lump sum on the twenty-fifth day of the second month following the participant's death.

(b) When distribution does not begin prior to the participant's death, and is to be made:

(i) To an organization, estate or trust, then payment will be payable in a lump sum on the twenty-fifth day of the second month following the participant's death;

(ii) To a living beneficiary designated by the participant other than the participant's surviving spouse, and, by election, not to begin within one year of the participant's death, then payment must be made within five years of the participant's death;

(iii) To a living beneficiary designated by the participant other than the participant's surviving spouse, and, by election, beginning within one year of the participant's death, then payment must be made within fifteen years of the participant's death;

(iv) To the participant's surviving spouse, whether as designated beneficiary, or by default, then payment must begin prior to the March 1st immediately following the later of the close of the plan year in which the participant would have attained age seventy and one-half or, if

later, the year in which the participant separated from service, and payment may be made over the lifetime of the surviving spouse or over a period not longer than the life expectancy of the surviving spouse. Provided, if the participant used the catch-up provision in WAC 154-12-030, then payment must begin prior to the March 1st immediately following the year in which the participant attained (or would have attained) normal retirement age as defined in WAC 154-12-030.

(4) For purposes of this section, life expectancies will be computed by use of the expected return multiples in Treasury Department Regulation 1.72-9 or, if distribution is to be effected through a contract issued by an insurance company, by use of the mortality tables of such company. Where payment is being made over the joint lives of the participant and the participant's surviving spouse, the life expectancy of the participant and the participant's surviving spouse may be recalculated annually.

(5) Notwithstanding anything in this plan to the contrary, distributions from the plan will be made in compliance with the minimum distribution rules of Section 457 (d)(2) of the Internal Revenue Code, and in compliance with Treasury Department Regulations issued under Sections 401 (a)(9) and 457 (d)(2) of the Internal Revenue Code.

[Statutory Authority: RCW 41.04.260. 89-11-010 (Order 89-03), § 154-12-110, filed 5/8/89; 88-12-028 (Order 88-1), § 154-12-110, filed 5/25/88; 83-13-044 (Order 83-2), § 154-12-110, filed 6/10/83; 82-13-043 (Order 82-3), § 154-12-110, filed 6/11/82.]

Chapter 154-24 WAC UNFORESEEABLE EMERGENCY

WAC

154-24-010 Unforeseeable emergency.

WAC 154-24-010 Unforeseeable emergency. Notwithstanding any other provisions in plan chapters 154-01 through 154-68 WAC, in the event of an unforeseeable emergency, a participant may request the committee to pay benefits. If the application for payment is approved by the committee, payment will be made within sixty days following such an approval. Benefits to be paid shall be limited strictly to that amount reasonably necessary to satisfy emergency need.

For purposes of this plan, an unforeseeable emergency shall be severe financial hardship to the participant resulting from:

(1) A sudden and unexpected illness or accident of the participant or of a dependent (as defined in Section 152(a) of the Internal Revenue Code) of the participant,

(2) Loss of the participant's property due to casualty, or

(3) Other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant. The circumstances that will constitute an unforeseeable emergency will depend upon the facts of each case, but, in any case, payment shall not be made to the extent that such hardship is or may be relieved (a) through reimbursement or compensation

by insurance or otherwise; (b) by liquidation of the participant's assets, to the extent liquidation of such assets would not itself cause severe financial hardship; or (c) by cessation of deferrals under the plan. Examples of what shall not be considered to be unforeseeable emergencies include the need to send a participant's child to college or the desire to purchase a home.

[Statutory Authority: RCW 41.04.260. 89-11-010 (Order 89-03), § 154-24-010, filed 5/8/89; 88-12-028 (Order 88-1), § 154-24-010, filed 5/25/88; 82-13-043 (Order 82-3), § 154-24-010, filed 6/11/82.]

Chapter 154-28 WAC LEAVE OF ABSENCE

WAC
154-28-010 Leave of absence.

WAC 154-28-010 Leave of absence. If a participant is on an approved leave of absence from the employer, participation in this plan shall continue.

[Statutory Authority: RCW 41.04.260. 82-13-043 (Order 82-3), § 154-28-010, filed 6/11/82.]

Chapter 154-32 WAC AMENDMENT OR TERMINATION OF PLAN

WAC
154-32-010 Termination of plan.
154-32-020 Amendment of plan.

WAC 154-32-010 Termination of plan. The employer or the committee may at any time terminate this plan. Upon such termination, benefits will be paid to each participant pursuant to chapter 154-12 WAC of the plan. Each participant's full compensation on a non-deferred basis will thereupon be restored.

[Statutory Authority: RCW 41.04.260. 89-11-010 (Order 89-03), § 154-32-010, filed 5/8/89; 82-13-043 (Order 82-3), § 154-32-010, filed 6/11/82.]

WAC 154-32-020 Amendment of plan. The committee may also amend the provisions of this plan at any time: *Provided, however,* That no amendment shall affect the rights of participants or their beneficiaries to the receipt of payment of benefits, to the extent of any compensation deferred before the time of the amendment and investment income or loss thereon accrued to the date of the amendment, calculated in accordance with WAC 154-12-107 and 154-12-075.

[Statutory Authority: RCW 41.04.260. 89-11-010 (Order 89-03), § 154-32-020, filed 5/8/89; 82-13-043 (Order 82-3), § 154-32-020, filed 6/11/82.]

Chapter 154-36 WAC RELATIONSHIP TO OTHER PLANS

WAC
154-36-010 Retirement and Social Security not reduced.

(1989 Ed.)

WAC 154-36-010 Retirement and Social Security not reduced. It is intended that, pursuant to Section 457 of the Internal Revenue Code, the amount of deferred compensation will not be considered as current compensation for purposes of federal income taxation. Such amounts will, however, be included as compensation in determining benefits or rights under the employer's group insurance, other retirement plans and FICA. Payments under this plan will supplement retirement and death benefits payable under the employer's group insurance and other retirement plans.

[Statutory Authority: RCW 41.04.260. 82-13-043 (Order 82-3), § 154-36-010, filed 6/11/82.]

Chapter 154-40 WAC TRANSFER IN LIEU OF BENEFITS

WAC
154-40-010 Assets in lieu of cash.

WAC 154-40-010 Assets in lieu of cash. Upon the occurrence of any event requiring the payment of benefits under this plan, the committee may, in its sole discretion, elect to honor a request from the participant to substitute the transfer in kind and assignment of any asset which the employer has acquired, at fair market value.

[Statutory Authority: RCW 41.04.260. 82-13-043 (Order 82-3), § 154-40-010, filed 6/11/82.]

Chapter 154-44 WAC NONASSIGNABILITY CLAUSE

WAC
154-44-010 Benefits not assignable.

WAC 154-44-010 Benefits not assignable. It is agreed that neither the participant, nor the participant's beneficiary or beneficiaries, nor any other designee, shall have any right to commute, sell, assign, transfer, or otherwise convey the right to receive any payments hereunder, which payments and right thereto are expressly declared to be nonassignable and nontransferable; and in the event of attempt to assign or transfer, the employer shall have no further liability hereunder, nor shall any unpaid benefits be subject to attachment, garnishment or execution, or be transferable by operation of law in event of bankruptcy, insolvency, except to the extent otherwise required by law.

[Statutory Authority: RCW 41.04.260. 82-13-043 (Order 82-3), § 154-44-010, filed 6/11/82.]

Chapter 154-48 WAC ASSETS

WAC
154-48-010 Plan assets.

[Title 154 WAC—p 9]

WAC 154-48-010 Plan assets. All amounts of compensation deferred under the plan, all property and rights to property (including rights as a beneficiary of a contract providing life insurance protection) purchased with such amounts, and all income attributable to such amounts, property or rights to property shall remain (until paid or made available to the participant or the participant's beneficiary or beneficiaries under the plan) solely the property and rights of the employer, (without being restricted to the benefits under the plan) and shall be subject only to the claims of general creditors of the employer.

[Statutory Authority: RCW 41.04.260. 83-13-044 (Order 83-2), § 154-48-010, filed 6/10/83; 82-13-043 (Order 82-3), § 154-48-010, filed 6/11/82.]

Chapter 154-52 WAC

PARTICIPATION BY COMMITTEE MEMBERS

WAC
154-52-010 Participation by committee members.

WAC 154-52-010 Participation by committee members. Members of the committee, who are otherwise eligible, may participate in the plan under the same terms and conditions as apply to other participants but an individual member shall not participate in any committee action taken with respect to that member's participation.

[Statutory Authority: RCW 41.04.260. 82-13-043 (Order 82-3), § 154-52-010, filed 6/11/82.]

Chapter 154-56 WAC

EMPLOYER PARTICIPATION

WAC
154-56-010 Employer contributions.

WAC 154-56-010 Employer contributions. The employer may, pursuant to a changed or new participation agreement filed by a participant as specified in WAC 154-12-050 or 154-12-070, add additional deferred compensation for services to be rendered by the employee to the employer during any calendar month, provided:

- (1) The employee has elected to have such additional compensation deferred, invested, and distributed, pursuant to this plan, prior to the calendar month in which the compensation is earned; and
- (2) Such additional deferred compensation, when added to all other deferred compensation under the plan, does not exceed the maximum deferral permitted by chapter 154-12 WAC.

[Statutory Authority: RCW 41.04.260. 82-13-043 (Order 82-3), § 154-56-010, filed 6/11/82.]

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Chapter 154-60 WAC INVESTMENT RESPONSIBILITY

WAC
154-60-010 Investment responsibility.

WAC 154-60-010 Investment responsibility. The employer may, but is not required to, invest funds held pursuant to participation agreements between participants and the employer in accordance with the requests made by each participant. The committee shall retain the right to approve or disapprove such investment requests. Any action by the committee in investing funds, or approving of any such investment of funds, shall not be considered to be either an endorsement or guarantee of any investment, nor shall it be considered to attest to the financial soundness or the suitability of any investment for the purpose of meeting future obligations.

[Statutory Authority: RCW 41.04.260. 82-13-043 (Order 82-3), § 154-60-010, filed 6/11/82.]

Chapter 154-64 WAC COMMITTEE POWERS

WAC
154-64-010 Plan prevails.
154-64-020 Decision binding.
154-64-030 Committee to interpret.
154-64-040 Tax status not guaranteed.
154-64-050 Committee may require court order.
154-64-060 Delegation of authority.

WAC 154-64-010 Plan prevails. In the event any form or other document used in administering this plan, including but not limited to enrollment forms and marketing materials, conflict with the terms of the plan, the terms of the plan shall prevail.

[Statutory Authority: RCW 41.04.260. 82-13-043 (Order 82-3), § 154-64-010, filed 6/11/82.]

WAC 154-64-020 Decision binding. The committee is authorized to determine any matters concerning the rights of any participant under this plan and such determination shall be binding on the participant and any beneficiary thereof.

[Statutory Authority: RCW 41.04.260. 82-13-043 (Order 82-3), § 154-64-020, filed 6/11/82.]

WAC 154-64-030 Committee to interpret. The committee is authorized to construe this plan and resolve any ambiguity in the plan. The plan and any form or other document used in administering the plan shall be interpreted, and this plan shall be administered, so as to comply with Section 457 of the Internal Revenue Code and the regulations of the treasury department promulgated thereunder.

[Statutory Authority: RCW 41.04.260. 82-13-043 (Order 82-3), § 154-64-030, filed 6/11/82.]

WAC 154-64-040 Tax status not guaranteed. The committee does not represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will occur because of the participant's participation in this plan. The participant should consult with the participant's own representative regarding all questions of federal or state income, payroll, personal property or other tax consequences arising from participation in this plan.

[Statutory Authority: RCW 41.04.260. 82-13-043 (Order 82-3), § 154-64-040, filed 6/11/82.]

WAC 154-64-050 Committee may require court order. The committee or the employer, if in doubt concerning the correctness of their action in making a payment of a benefit, may suspend that benefit until satisfied as to the correctness of the payment or the person to receive the payment or to allow the filing in any state court of competent jurisdiction of a civil action seeking a determination of the benefits to be paid and the persons to receive them. The committee and the employer shall comply with the final orders of the court in any such suit and the participant, for the participant and the participant's beneficiary or beneficiaries, consents to be bound thereby.

[Statutory Authority: RCW 41.04.260. 82-13-043 (Order 82-3), § 154-64-050, filed 6/11/82.]

WAC 154-64-060 Delegation of authority. The committee may delegate its functions to be performed under this plan to any designee with legal authority to perform such functions.

[Statutory Authority: RCW 41.04.260. 82-13-043 (Order 82-3), § 154-64-060, filed 6/11/82.]

**Chapter 154-68 WAC
APPLICABLE LAW**

WAC

- 154-68-010 Plan to conform to state law.
- 154-68-020 Plan to conform to federal law.

WAC 154-68-010 Plan to conform to state law. This plan shall be construed under the laws of the state of Washington.

[Statutory Authority: RCW 41.04.260. 82-13-043 (Order 82-3), § 154-68-010, filed 6/11/82.]

WAC 154-68-020 Plan to conform to federal law. This plan is intended to be an eligible state deferred compensation plan within the meaning of Section 457 of the Internal Revenue Code, and Treasury Department Regulation 1.457-2(a), and shall be interpreted accordingly.

[Statutory Authority: RCW 41.04.260. 89-11-010 (Order 89-03), § 154-68-020, filed 5/8/89; 83-13-044 (Order 83-2), § 154-68-020, filed 6/10/83; 82-13-043 (Order 82-3), § 154-68-020, filed 6/11/82.]

(1989 Ed.)

**Chapter 154-110 WAC
DEPENDENT CARE ASSISTANCE SALARY
REDUCTION PLAN**

WAC

- 154-110-010 Plan established.
- 154-110-015 Separate plan.
- 154-110-020 Interpretation.
- 154-110-030 General description of plan.

WAC 154-110-010 Plan established. In accordance with the provisions of RCW 41.04.260(5) and 41.04.600 through 41.04.645, and consistent with sections 125 and 129 of the Internal Revenue Code, the state of Washington through the committee for deferred compensation, establishes a dependent care assistance salary reduction plan.

[Statutory Authority: RCW 41.04.640. 88-11-028 (Resolution No. 88-2), § 154-110-010, filed 5/11/88.]

WAC 154-110-015 Separate plan. The provisions in chapters 154-110 through 154-200 WAC apply only to the dependent care assistance salary reduction plan and not to any other plan administered by the committee. The provisions in chapters 154-01 through 154-68 WAC do not apply to the dependent care assistance salary reduction plan.

[Statutory Authority: RCW 41.04.640. 88-11-028 (Resolution No. 88-2), § 154-110-015, filed 5/11/88.]

WAC 154-110-020 Interpretation. This plan is intended to qualify as a dependent care assistance salary reduction plan under sections 125 and 129 of the Internal Revenue Code, as amended from time to time, and is to be interpreted in a manner consistent with the requirements of those sections.

[Statutory Authority: RCW 41.04.640. 88-11-028 (Resolution No. 88-2), § 154-110-020, filed 5/11/88.]

WAC 154-110-030 General description of plan. The dependent care assistance salary reduction plan subsidizes the cost of dependent care, enabling employees to be gainfully employed. The plan allows an eligible employee of the state of Washington to set aside a "before tax" portion of the employee's gross salary (i.e., before federal income and Social Security taxes) to be used to reimburse that employee's dependent care expenses.

The amount which may be reduced from salary and excluded from income is subject to annual fixed dollar and earned income limitations. The participant must incur and obtain reimbursement in an amount at least equal to the amount of salary reduction for the plan year or the unused portion of the amount excluded is forfeited.

Salary reduced under the plan continues to be included as regular compensation for the purpose of computing state benefits and is only excluded for purposes of computing federal income and Social Security taxes (OASI or FICA).

[Statutory Authority: RCW 41.04.640. 88-11-028 (Resolution No. 88-2), § 154-110-030, filed 5/11/88.]

**Chapter 154-120 WAC
DEFINITIONS**

WAC

154-120-010	Committee.
154-120-015	Dependent(s).
154-120-020	Dependent care expenses.
154-120-025	Dependent care account.
154-120-030	Eligible employee.
154-120-035	Employer.
154-120-040	Internal Revenue Code.
154-120-045	Participant.
154-120-050	Plan.
154-120-055	Plan year.

WAC 154-120-010 Committee. "Committee" means the committee for deferred compensation.

[Statutory Authority: RCW 41.04.640. 88-11-028 (Resolution No. 88-2), § 154-120-010, filed 5/11/88.]

WAC 154-120-015 Dependent(s). "Dependent(s)" means:

(1) An individual with respect to whom the participant is entitled to a dependency exemption under Internal Revenue Code section 151(c) and who is:

- (a) Under the age of thirteen; or
 - (b) Physically or mentally incapable of self-care (regardless of age); or
- (2) The spouse of a participant, if such spouse is physically or mentally incapable of self-care.

[Statutory Authority: RCW 41.04.640. 89-11-011 (Order 89-04) § 154-120-015, filed 5/8/89; 88-11-028 (Resolution No. 88-2), § 154-120-015, filed 5/11/88.]

WAC 154-120-020 Dependent care expenses. "Dependent care expenses" means amounts paid for the care of a dependent in the participant's home (including amounts paid for related household services) or for care at a dependent care facility which meets all applicable requirements of state and local law or is exempt from such requirements under state or local law, except that the following items shall not be considered dependent care expenses:

- (1) Amounts paid to a person with respect to whom the participant or participant's spouse is entitled to claim an exemption for Federal Income Tax purposes;
- (2) Amounts paid to a child of the participant who is eighteen years of age or younger;
- (3) Amounts paid by an employer of the spouse or by an educational institution where the spouse is an enrolled student.

[Statutory Authority: RCW 41.04.640. 88-11-028 (Resolution No. 88-2), § 154-120-020, filed 5/11/88.]

WAC 154-120-025 Dependent care account. "Dependent care account" means a bookkeeping account containing the salary reduction amounts attributable to a participant, less reimbursements of the participant's dependent care expenses.

[Statutory Authority: RCW 41.04.640. 88-11-028 (Resolution No. 88-2), § 154-120-025, filed 5/11/88.]

[Title 154 WAC—p 12]

WAC 154-120-030 Eligible employee. "Eligible employee" means any elected official, officer, or employee of the employer.

[Statutory Authority: RCW 41.04.640. 88-11-028 (Resolution No. 88-2), § 154-120-030, filed 5/11/88.]

WAC 154-120-035 Employer. "Employer" means the state of Washington.

[Statutory Authority: RCW 41.04.640. 88-11-028 (Resolution No. 88-2), § 154-120-035, filed 5/11/88.]

WAC 154-120-040 Internal Revenue Code. "Internal Revenue Code" means the Internal Revenue Code of 1986, Title 26 U.S.C. Reference to a specific provision of the code shall include such provision, any valid regulations promulgated thereunder, and any comparable provision of future legislation that amends, supplements, or supersedes such provision.

[Statutory Authority: RCW 41.04.640. 88-11-028 (Resolution No. 88-2), § 154-120-040, filed 5/11/88.]

WAC 154-120-045 Participant. "Participant" means any eligible employee who elects, in lieu of cash compensation, to enter a salary reduction agreement with the committee pursuant to this plan for a particular plan year and adheres to the requirements of the plan.

[Statutory Authority: RCW 41.04.640. 88-11-028 (Resolution No. 88-2), § 154-120-045, filed 5/11/88.]

WAC 154-120-050 Plan. "Plan" means this dependent care assistance salary reduction plan.

[Statutory Authority: RCW 41.04.640. 88-11-028 (Resolution No. 88-2), § 154-120-050, filed 5/11/88.]

WAC 154-120-055 Plan year. "Plan year" means January 1 through December 31 except that the first plan year will commence August 1, 1988, and end December 31, 1988.

[Statutory Authority: RCW 41.04.640. 88-11-028 (Resolution No. 88-2), § 154-120-055, filed 5/11/88.]

**Chapter 154-130 WAC
PARTICIPATION**

WAC

154-130-010	Participation in plan.
154-130-020	Salary reduction agreement.
154-130-030	Changes in family status.

WAC 154-130-010 Participation in plan. An eligible employee may elect to become a participant by entering a salary reduction agreement during the open enrollment period or within thirty days of becoming an eligible employee, or at any time as a result of a qualifying change in family status set forth in WAC 154-130-030. For the first plan year the open enrollment period will be from July 1 through July 26, 1988, and for succeeding plan years will be the month of November. A participant may first incur reimbursable dependent care expenses on the first day of the month following completion of the salary reduction agreement, but in no

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event prior to August 1, 1988. Salary reduction agreement forms are available through the employee's benefits, payroll or personnel authority. The enrollment process shall be deemed complete on the date the employee's payroll authority receives a completed salary reduction agreement form from the employee.

[Statutory Authority: RCW 41.04.640. 88-11-028 (Resolution No. 88-2), § 154-130-010, filed 5/11/88.]

WAC 154-130-020 Salary reduction agreement. The salary reduction agreement is a contract whereby the employee elects irrevocably to forgo future wage payments from the employer in an amount equal to the maximum elected for the plan year. The reduction will be taken in equal amounts for each pay period during the plan year or, in the case of an employee who becomes eligible during the plan year, the remaining portion of the plan year. The agreement will require a participant to provide the Social Security number of the participant and the participant's spouse, if any, names and birth dates of dependents regarding whom reimbursement of dependent care expenses will be sought, and medical, family, and other information deemed necessary by the committee for the operation of the plan. Pursuant to federal income tax regulations, once a salary reduction agreement has been entered for a plan year it may not be revoked except in the event of a change in family status as defined in WAC 154-130-030. A participant who separates from service and returns to service with the employer during the same plan year may participate upon return only to the extent allowed by Treasury Department regulations promulgated under sections 125 and 129 of the Internal Revenue Code.

[Statutory Authority: RCW 41.04.260. 89-20-022, § 154-130-020, filed 9/27/89, effective 10/28/89. Statutory Authority: RCW 41.04.640. 88-11-028 (Resolution No. 88-2), § 154-130-020, filed 5/11/88.]

WAC 154-130-030 Changes in family status. A participant is permitted to revoke a salary reduction agreement after the period of coverage has commenced and to enter a new salary reduction agreement regarding the remainder of the plan year if both the revocation and new election are on account of and consistent with any of the following changes in family status:

- (1) Marriage;
- (2) Divorce or legal separation;
- (3) Death of a spouse or dependent;
- (4) Birth or adoption of a child or addition of a dependent to the eligible employee's household;
- (5) Termination of employment of a spouse;
- (6) Employment of an unemployed spouse; and
- (7) A change in the eligible employee's or eligible employee's spouse's working hours which significantly alters the need for dependent care, e.g., a shift from full time to part time, part time to full time, or a change to or from leave without pay status.

(8) Such other events that the committee determines will permit a change or revocation of an election during a plan year under regulations and rulings of the Internal Revenue Service.

An eligible employee may also become a participant in the plan on the basis of a change in family status.

[Statutory Authority: RCW 41.04.260. 89-20-022, § 154-130-030, filed 9/27/89, effective 10/28/89. Statutory Authority: RCW 41.04.640. 88-11-028 (Resolution No. 88-2), § 154-130-030, filed 5/11/88.]

Chapter 154-140 WAC BENEFITS

WAC

- 154-140-010 Plan benefits.
- 154-140-020 Maximum benefits.
- 154-140-030 Reduction of benefits.

WAC 154-140-010 Plan benefits. Benefits under the plan include and are limited to the reimbursement of dependent care expenses. Such expenses must be incurred during the plan year. They are deemed to be incurred at the time the services to which the expenses relate are rendered. Only expenses which meet the criteria specified under section 129 of the Internal Revenue Code are eligible for reimbursement. Reimbursement of such expenses is limited to the participant's dependent care account balance.

[Statutory Authority: RCW 41.04.640. 88-11-028 (Resolution No. 88-2), § 154-140-010, filed 5/11/88.]

WAC 154-140-020 Maximum benefits. The portion of salary a participant may exclude from gross income for federal income tax purposes is subject to the following maximums set forth in subsections 129(a) and (b) of the Internal Revenue Code:

(1) The amount excluded from the federal gross income of a participant for any taxable year may not exceed the earned income of the participant, if not married, or if married, the lesser of the "earned income" of the participant or the "earned income" of the participant's spouse. (If the spouse is a full-time student or is physically or mentally incapable of self-care, the spouse is deemed to have earned income of two hundred dollars per month if the participant has one dependent for whom care is provided and four hundred dollars per month if the participant has two or more dependents for whom care is provided.) "Earned income" for these purposes, is defined in section 32(c)(2) of the Internal Revenue Code as "(i) wages, salaries, tips and other employee compensation, plus (ii) the amount of the taxpayer's net earnings from self-employment for the taxable year...."

(2) In no event may the maximum amount excluded from the federal gross income of the participant for any taxable year exceed five thousand dollars (two thousand five hundred dollars in the case of a married participant filing separately).

[Statutory Authority: RCW 41.04.640. 88-11-028 (Resolution No. 88-2), § 154-140-020, filed 5/11/88.]

WAC 154-140-030 Reduction of benefits. The committee may reduce the salary reduction amount of a participant and the corresponding benefit payable to

such participant to the extent necessary to assure that the plan does not discriminate in favor of highly-compensated employees in violation of sections 89, 125, or 129 of the Internal Revenue Code, or any other applicable provision of law. Any such reduction of benefits shall be made on a reasonable and nondiscriminatory basis. The discrimination testing day, to the extent one is required by sections 89, 125, or 129 of the Internal Revenue Code, shall be May 31 of each plan year.

[Statutory Authority: RCW 41.04.260. 89-20-022, § 154-140-030, filed 9/27/89, effective 10/28/89. Statutory Authority: RCW 41.04.640. 88-11-028 (Resolution No. 88-2), § 154-140-030, filed 5/11/88.]

Chapter 154-150 WAC REIMBURSEMENT OF DEPENDENT CARE EXPENSES

WAC

154-150-010	Submittal of claims.
154-150-020	Payment of claims.
154-150-030	Report to participant.
154-150-040	Deadline for submitting claims.
154-150-050	Forfeiture of unexpended funds.

WAC 154-150-010 Submittal of claims. Claims for reimbursement of dependent care expenses must be submitted to the committee on reimbursement forms provided by the committee through the agency benefits, payroll or personnel authority. The reimbursement form shall be completed, signed, and accompanied by bills, invoices, receipts, cancelled checks, or a statement signed by the provider of the services showing the amounts of dependent care expenses for which reimbursement is sought.

[Statutory Authority: RCW 41.04.640. 88-11-028 (Resolution No. 88-2), § 154-150-010, filed 5/11/88.]

WAC 154-150-020 Payment of claims. The committee will review and reimburse claims at least monthly during the plan year to the extent funds are available in the participant's dependent care account. After all funds in a participant's account are expended, any claims remaining at the plan year end will be cancelled. In no event can these claims be resubmitted the next plan year, nor are any unpaid claims the employer's liability.

[Statutory Authority: RCW 41.04.640. 88-11-028 (Resolution No. 88-2), § 154-150-020, filed 5/11/88.]

WAC 154-150-030 Report to participant. On or before January 31 following the end of the plan year, the committee shall send each participant a written statement showing the reductions from salary and amounts reimbursed through the end of the plan year.

[Statutory Authority: RCW 41.04.640. 88-11-028 (Resolution No. 88-2), § 154-150-030, filed 5/11/88.]

WAC 154-150-040 Deadline for submitting claims. Claims for expenses incurred during a given plan year must be submitted so that they are received by the committee not later than March 31 following the end of the plan year.

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[Statutory Authority: RCW 41.04.640. 88-11-028 (Resolution No. 88-2), § 154-150-040, filed 5/11/88.]

WAC 154-150-050 Forfeiture of unexpended funds. Any funds remaining in a dependent care account after all timely submitted claims have been paid for the plan year will be forfeited. Such balance cannot be carried forward to a subsequent plan year and shall not be available to the participant in any form or manner, but shall remain the property of the state.

[Statutory Authority: RCW 41.04.640. 88-11-028 (Resolution No. 88-2), § 154-150-050, filed 5/11/88.]

Chapter 154-160 WAC SOURCE OF REIMBURSEMENT

WAC

154-160-010	Salary reduction account.
154-160-020	Rights of participants.

WAC 154-160-010 Salary reduction account. Reimbursement of eligible expenses under this plan shall be from the salary reduction account in the state treasury. A participant shall have no rights to any particular assets of the employer, or to any assets except as provided by the plan. A participant's right to reimbursement under the plan shall be limited to the amount of salary reduction of the participant under the plan as reflected in the participant's dependent care account.

[Statutory Authority: RCW 41.04.640. 88-11-028 (Resolution No. 88-2), § 154-160-010, filed 5/11/88.]

WAC 154-160-020 Rights of participants. The establishment of any account hereunder or of any other administrative practice shall not vest any participant with title in the assets of the state or entitle such participant to benefits, except as expressly provided by the plan.

[Statutory Authority: RCW 41.04.640. 88-11-028 (Resolution No. 88-2), § 154-160-020, filed 5/11/88.]

Chapter 154-170 WAC TERMINATION OF PARTICIPATION

WAC

154-170-010	Termination of participation.
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WAC 154-170-010 Termination of participation. (1) A participant shall cease to be a participant upon the occurrence of any of the following:

- (a) The end of the plan year, unless the employee has reenrolled during an open enrollment period;
- (b) The date the participant ceases to be an eligible employee;
- (c) The date the participant refuses a request for updated information;
- (d) The date the plan is terminated.

(2) A participant who terminates participation shall be entitled to reimbursement only for dependent care expenses incurred within the current plan year, and only

if the participant (or personal representative of such participant in the event of death) submits a claim for such reimbursement which is received by the committee on or before March 31 following the close of the plan year. No reimbursement shall exceed the balance in the participant's dependent care account for the plan year in which the expenses were incurred.

(3) For purposes of this section, the date a participant shall be deemed to have refused a request for updated information shall be thirty days after a letter requesting such information and notifying the participant of the consequences of failure to provide such information is mailed certified mail, return receipt requested, to such participant.

[Statutory Authority: RCW 41.04.640. 88-11-028 (Resolution No. 88-2), § 154-170-010, filed 5/11/88.]

Chapter 154-180 WAC ADMINISTRATION

WAC

154-180-010	Administered by committee.
154-180-020	Delegation of authority.
154-180-030	Proper proof.
154-180-040	Genuineness of documents.
154-180-050	Reliance on information.
154-180-060	Condition of participation.
154-180-070	Decision binding.

WAC 154-180-010 Administered by committee. This plan shall be administered by the committee.

[Statutory Authority: RCW 41.04.640. 88-11-028 (Resolution No. 88-2), § 154-180-010, filed 5/11/88.]

WAC 154-180-020 Delegation of authority. The committee may delegate functions to be performed under this plan to any designee with legal authority to perform such functions.

[Statutory Authority: RCW 41.04.640. 88-11-028 (Resolution No. 88-2), § 154-180-020, filed 5/11/88.]

WAC 154-180-030 Proper proof. In any case in which the employer, or the committee is required under the plan to take action upon the occurrence of any event, they will be under no obligation to take such action unless and until satisfactory evidence of such occurrence has been received by them.

[Statutory Authority: RCW 41.04.640. 88-11-028 (Resolution No. 88-2), § 154-180-030, filed 5/11/88.]

WAC 154-180-040 Genuineness of documents. The committee and the employer and their respective officers and employees, will be entitled to rely upon any notice, request, consent, invoice, draft, letter, telegram, or other paper or document believed by them or any of them to be genuine and to have been signed or sent by the participant or other person at the participant's request.

[Statutory Authority: RCW 41.04.640. 88-11-028 (Resolution No. 88-2), § 154-180-040, filed 5/11/88.]

WAC 154-180-050 Reliance on information. In administering the plan, the committee will be entitled to

the extent permitted by law to rely conclusively on all tables, valuations, certificates, opinions, and reports which are furnished by accountants, counsel, consultants, or other experts employed or engaged by the committee in good faith.

[Statutory Authority: RCW 41.04.640. 88-11-028 (Resolution No. 88-2), § 154-180-050, filed 5/11/88.]

WAC 154-180-060 Condition of participation. Participants are required, as a condition of participation, to provide the committee with medical, family, and other information deemed necessary by the committee for the operation of the plan.

[Statutory Authority: RCW 41.04.640. 88-11-028 (Resolution No. 88-2), § 154-180-060, filed 5/11/88.]

WAC 154-180-070 Decision binding. The committee is authorized to determine any matters concerning the rights of any participant under this plan and such determination shall be binding upon the participant and any beneficiary thereof. Any participant affected by such a determination may submit written or oral comments to the committee regarding its determination, which comments the committee shall consider.

[Statutory Authority: RCW 41.04.640. 88-11-028 (Resolution No. 88-2), § 154-180-070, filed 5/11/88.]

Chapter 154-190 WAC TERMINATION OR AMENDMENT OF PLAN

WAC

154-190-010	Termination or amendment of plan.
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WAC 154-190-010 Termination or amendment of plan. The employer may terminate the salary reduction plan at the end of the plan year or upon notification of federal action affecting the status of the plan. Upon such termination, a participant's right to reimbursement of dependent care expenses for that plan year will continue to apply to all such expenses incurred prior to the date of termination. The committee may amend the salary reduction plan at any time if the amendment does not affect the rights of the participants to receive eligible reimbursement from the participant's dependent care account.

[Statutory Authority: RCW 41.04.640. 88-11-028 (Resolution No. 88-2), § 154-190-010, filed 5/11/88.]

Chapter 154-200 WAC MISCELLANEOUS

WAC

154-200-010	Communication to employees.
154-200-020	Nonassignability of rights.
154-200-030	No guarantee of tax consequences.
154-200-040	Indemnification of employer by participants.

WAC 154-200-010 Communication to employees. Reasonable notification of the availability and terms of the plan shall be provided to eligible employees.

[Statutory Authority: RCW 41.04.640. 88-11-028 (Resolution No. 88-2), § 154-200-010, filed 5/11/88.]

WAC 154-200-020 Nonassignability of rights. The right of any participant to receive any reimbursement under the plan shall not be alienable by the participant by assignment or any other method, and will not be subject to be taken by his creditors by any process whatsoever, and any attempt to cause such right to be so subjected will not be recognized, except to such extent as may be required by law.

[Statutory Authority: RCW 41.04.640. 88-11-028 (Resolution No. 88-2), § 154-200-020, filed 5/11/88.]

WAC 154-200-030 No guarantee of tax consequences. Neither the employer nor the committee makes any commitment or guarantee that any amount paid to or for the benefit of a participant will be excludable from the participant's gross income for federal or state income tax purposes, or that any other federal or state tax treatment will apply to or be available to any participant. It shall be the obligation of each participant to determine whether and what amount, if any, is excludable from the participant's gross income for federal and state income tax purposes, and to notify the committee if the participant has reason to believe that any amount excluded is not eligible for exclusion.

[Statutory Authority: RCW 41.04.640. 88-11-028 (Resolution No. 88-2), § 154-200-030, filed 5/11/88.]

WAC 154-200-040 Indemnification of employer by participants. If any participant receives one or more payments or reimbursements that are not for dependent care expenses, such participant shall indemnify and reimburse the employer for any liability it may incur for failure to withhold federal income tax or Social Security tax from such payments or reimbursements. However, such indemnification and reimbursement shall not exceed the amount of additional federal income tax that the participant would have owed if the payments or reimbursements had been made to the participants as regular cash compensation, plus the participant's share of any Social Security tax that would have been paid on such compensation, less any such additional income and Social Security tax actually paid by the participant.

[Statutory Authority: RCW 41.04.640. 88-11-028 (Resolution No. 88-2), § 154-200-040, filed 5/11/88.]