

# Real Estate Acquisition Guide For Local Public Agencies



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## I. INTRODUCTION

This guide is intended to serve as a basic reference for local public agencies and others who receive Federal-aid highway funds for projects involving the acquisition of real property. Typically, the Federal Highway Administration (FHWA) provides funds to State governments who carry out highway projects. These funds are used to support activities related to building, improving, and maintaining designated public roads. In some circumstances, the States pass on the funds to local governments or private entities. Eligibility to receive Federal funds depends upon compliance with Federal laws, regulations, and policies. State and local governments often have additional requirements that apply.

One set of project activities eligible for Federal-aid funding involves the acquisition of real property and the relocation of residents, businesses, and others. Concern for fair and equitable treatment in acquiring private property for public purposes goes back to the beginnings of the United States. The founding fathers placed a high value on the protection of private property. The United States Constitution expresses this philosophy in the Fifth Amendment, where ‘due process’ and ‘just compensation’ are required for taking private property for a ‘public use.’

The 14th Amendment to the Constitution extends to States the requirement of following due process when they acquire privately owned property.

There are several reasons that the Federal Government retains a deep interest in the acquisition of real property for federally assisted projects. The most important is ensuring that the Fifth Amendment mandates of due process and just compensation are met when property owners are affected by Federal-aid projects. Another is the goal of acquiring property without delaying the project for which it is needed. Finally, the Federal government is concerned that Federal tax dollars used to fund public improvement projects are spent in an appropriate fashion.

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**From 5<sup>th</sup> Amendment  
U.S. Constitution**

**"No person shall. . . be  
deprived of life,  
liberty, or property,  
without due process of  
law; nor shall private  
property be taken for  
public use without just  
compensation."**

★ ★ ★ ★ ★ ★ ★ ★ ★ ★

## PRIMARY LAW FOR ACQUISITION AND RELOCATION ACTIVITIES

Public Law 91-646, The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, commonly called the Uniform Act, is the primary law for acquisition and relocation activities on Federal or federally assisted projects and programs.

Other Federal, State, and local laws also govern public project and program activities. The requirements of other Federal laws that affect the process of acquiring private property for public purposes are discussed, at least minimally. However, our primary emphasis in this document will be the Uniform Act and its requirements.

Federal real estate acquisition statutes and regulations include:

**United States Code (U.S.C.)**

- Title 23 - Highways
- Title 42, CHAPTER 61 - Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs
- Title 49 - Transportation

**Code of Federal Regulations (CFR)**

- 23 Part 710
- 49 Part 24

**NOTES:**

## II. THE UNIFORM ACT AND THE GOVERNMENT-WIDE REGULATION

### WHAT DOES THE UNIFORM ACT DO?

The Uniform Act applies to all projects receiving Federal funds or Federal financial assistance where real property is acquired or persons are displaced as a result of acquisition, demolition, or rehabilitation. Anyone connected with the process of acquiring real property for federally assisted projects should be familiar with its provisions. A copy of the Uniform Act (and its implementing regulations) may be found in the Appendix of this guide.

The Uniform Act provides benefits and protection for persons whose real property is acquired or who are displaced from acquired property because of a project or program that uses Federal funds or receives Federal financial assistance. The Constitution requires payment of just compensation for real property which is acquired and, when a project results in displacement, the Uniform Act requires services and payments be provided for displaced persons. A **displaced person** may be an individual, family, business, farm, or non-profit organization.

### WHEN DOES THE UNIFORM ACT APPLY?

The Uniform Act applies when Federal dollars are utilized in any phase of a project. The Uniform Act applies even when Federal dollars are not used specifically for property acquisition or relocation activities, but are used elsewhere in the project, such as in planning, environmental assessments, or construction. The Uniform Act also applies to acquisitions by private as well as public entities when the acquisition is for a Federal or federally-assisted project.

You must advise property owners and occupants of their rights under the Uniform Act by means of a written statement or brochure. You may obtain electronic versions of the Federal Highway Administration's brochures on Acquisition and Relocation from our website at:

[Acquiring Real Property for Federal and Federal-aid Programs and Projects - Acquisition - Uniform Act - Real Estate - FHWA](#)

You must make sure that displaced persons receive all the benefits and protections to which they are entitled. A fuller discussion of the Uniform Act's benefits and protections will be found in the sections and chapters that follow.

You should work closely with your State Department of Transportation (SDOT) during the entire acquisition process, both to expedite acquisition and to assure that all Federal and State requirements are met. Typically, the SDOT will have an experienced real estate staff that



can serve as a valuable resource to your agency. Some SDOTs also have designated a staff member as a local public agency coordinator. In addition, SDOTs may have programs to assist local governments in complying with federally assisted project requirements. These programs may include providing technical assistance and training for local acquiring agency personnel as well as samples of informational brochures, form letters, and claim forms.

## THE UNIFORM ACT

The Uniform Act is divided into three major sections or titles.

**Title I, "General Provisions,"** primarily covers definitions.

**Title II, "Uniform Relocation Assistance"** contains provisions relating to the displacement of persons or businesses by Federal or federally assisted programs or projects. An overview of the relocation requirements is provided in Chapter VII, Relocation Assistance. However, relocation under the Uniform Act is a specialized and complex subject. **If you do not have staff qualified to administer a relocation program, you should seek assistance from your SDOT to ensure that displaced persons are provided all appropriate assistance and payments. Qualified relocation consultants also may provide these services.**

**Title III, "Uniform Real Property Acquisition Policy"** pertains to the acquisition of real property for Federal or federally assisted programs or projects. An overview of acquisition requirements is provided in Chapter VI, Acquisition. One of the purposes of Title III is to encourage and

expedite the acquisition of real property through negotiation with property owners, thereby avoiding litigation and relieving congestion in the courts. Other purposes include assuring consistent treatment for property owners in Federal programs and promoting public confidence in Federal land acquisition practices.

### *Acquisition Objectives of the Uniform Act*

- *Treat individuals fairly and consistently.*
- *Encourage acquisition by agreement.*
- *Minimize litigation*

Each State has provided assurances that they can fully comply with the Uniform Act. Local acquiring agencies must certify that they have followed their State's Uniform Act assurances when acquiring real property.

***Note: Failure to comply with the provisions of the Uniform Act will result in denial of Federal participation in project costs.***

## EMINENT DOMAIN AND CONDEMNATION

When amicable agreement cannot be reached through negotiations, the governmental power of eminent domain may be utilized to acquire real property. When eminent domain is utilized, the judicial system becomes the forum for establishing just compensation. The court will determine just compensation in the context of State eminent domain statutes and relevant case law. Consequently, what is compensable varies among the States. A number of States have adopted laws providing property owners compensation for conditions such as loss of business, loss of good will, noise, increased travel distance, and owner litigation costs.

*Note: You should consult with your SDOT for advice as to what is or is not compensable under your State law.*

## THE GOVERNMENT-WIDE REGULATION – 49 CFR PART 24



<http://www.gpoaccess.gov/cfr/index.html>

The basic regulation governing acquisition and relocation activities on all Federal and federally assisted programs and projects is 49 CFR Part 24, the Uniform Act government-wide regulation (a copy of 49 CFR Part 24 is in the Appendix). FHWA is the lead agency for the Uniform Act and is responsible for the promulgation and maintenance of the government-wide regulation.

In addition to the government-wide regulation, Federal agencies adopt program regulations which govern acquisition, relocation, and other matters specific to their programs. For example, agencies receiving funds from the FHWA, directly or through an SDOT, are subject to the regulations found in

23 CFR, which is entitled "Highways." These regulations are found at various locations in 23 CFR, mostly in Part 710. These regulations address highway-related issues not covered by the Uniform Act. A copy of 23 CFR, Part 710, *Right-of-Way and Real Estate* is in the Appendix.

The acquisition of private property for public purposes is a complex matter governed by a number of laws, regulations, and policies. Familiarity with these requirements is essential for a successful acquisition program.

### **FEDERAL-AID PARTICIPATION (FUNDING)**

Because of the variations in eminent domain laws among the States, it is extremely important that agencies and individuals dealing with the acquisition of private property for federally assisted projects be familiar with applicable Federal and State laws and regulations. It is also important to be aware of which expenditures are reimbursable under the applicable laws and regulations. An overview of the acquisition process is provided in Chapter VI, Acquisition.

### **NOTES:**

### III. PROJECT DEVELOPMENT

In the preceding chapters, we discussed the purpose of this guide as well as the Constitutional, statutory (Uniform Act, found at 42 U.S.C. Chapter 61, and regulatory frameworks (23 and 49 CFR) in which the Federal-aid highway program operates. This chapter will provide an overview of the project development process, following which we will examine specific elements of the right-of-way function in more detail.

#### GENERAL

The project development process begins with the identification of a transportation need. The need may result from factors as diverse as planned or anticipated growth, obsolescence of the present roadway, or a change in the land use of the area surrounding a highway. In any case, appropriate authorities determine that addressing the need merits further study.

Figure 1 below indicates the main components of the project development process.



(Figure 1)

Determining the feasibility of a project is a complex process. It requires public input as well as input from many different transportation professionals (planners, engineers, right-of-way specialists, environmental specialists, and others). The process considers the potential environmental impact of the project, examines the agency's ability to financially support the project, and determines the priority which the project should be assigned relative to other planned or potential projects. Due to the many elements in the project development process and because each project is unique, the process may vary somewhat from project to project and from agency to agency.

The first component of the project development process is planning where projects are prioritized based on needs and funding capabilities. The other components in the project development process include a group of activities which we will refer to as the "typical project development cycle."

## PLANNING



*Source: Tawng / 123RF Stock Photo*

The transportation planning process is an ongoing, multi-layered process. It involves both system and project level analysis to determine and evaluate needs and set priorities based on fiscal capabilities within the statewide and metropolitan areas.

Within metropolitan areas larger than 50,000 in population, a Metropolitan Planning Organization (MPO) is

responsible for developing a long-range transportation plan and transportation improvement program (TIP) for the region. The long-range transportation plan addresses all elements of the transportation system within the planning area regardless of jurisdictional boundaries. The TIP identifies how transportation projects both local and regional will be funded to support the implementation of the long-range transportation plan. Transportation projects and programs for which Federal-aid funds are anticipated within the region and any non-federally funded project considered significant to the transportation system within the region must be included in the TIP.

The State is also responsible for developing a long-range transportation plan. Statewide long-range transportation plans can be either a policy oriented or a project specific document that provides a vision for the development and implementation of the intermodal transportation system of the State. The plan should demonstrate transportation needs and address the goals, policies, objectives, and strategies to meet the needs. The State also is responsible for programming funding for transportation projects through the Statewide Transportation Improvement Program (STIP). The STIP includes all projects identified in the MPO TIPs and all federally funded and all non-federally funded regionally significant projects across the state. Projects identified for Federal-aid funds must be included in the STIP to receive the Federal-aid funding anticipated.

Local agencies within an MPO planning area should work with the MPO for all transportation projects for which Federal funding is anticipated to ensure their project is included in the long-range transportation plan and TIP. If a local agency is located outside an MPO area and anticipates the use of Federal-aid Highway funding, the agency should work with the State DOT to ensure the project is consistent with the statewide long-range transportation plan and is included in the STIP.

## ENVIRONMENTAL COORDINATION

Another requirement for funding involves compliance with the National Environmental Policy Act of 1969 (NEPA). NEPA requires Federal agencies to adopt policies, regulations, and laws in such a manner that the agencies programs and projects address protection options for the human and natural environment.

FHWA policies in implementing NEPA are linked to the planning and project development process. The approach integrates the environmental investigations, reviews, and consultations into a coordinated process to achieve the best overall balance between the public interest in a safe and efficient transportation system and protecting the environment. The NEPA process is critical to successful project development and provides the framework for FHWA's project development process.

*Note: Your SDOT should be contacted for any assistance needed in the NEPA process coordination.*

## PUBLIC INVOLVEMENT

Public involvement is necessary throughout the planning process and during the environmental coordination process. Public involvement may take place through the public's attendance at meetings of the local governing body, newspaper articles and advertisements, letters and newsletters, and certainly in public meetings held expressly to discuss the project. It is the public's right to know about and comment on proposed programs and projects and their potential benefits and impacts. However, the level of public participation will be based on the project's size and its impact on the surrounding community and the natural environment.

## TYPICAL PROJECT DEVELOPMENT CYCLE

### DEVELOPMENT OF PROJECT ALTERNATIVES

Once the need for a highway project has been identified, the agency determines a broad, general location (the corridor) where the potential road may be constructed. A number of alternate routes (alignments) within the corridor will be considered. Once the alignments have been identified, a more detailed study of each will be undertaken. From a property acquisition point of view, key elements of the study are the number of people and businesses

which will be displaced, the estimated cost to acquire the real property for the project, and the estimated costs to relocate those eligible and/or to move personal property from the right-of-way.

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## HAZARDOUS MATERIALS AND CONTAMINANTS

One concern that should be addressed early in the project development process is the possible presence of hazardous material, waste, or other contaminants on the sites that you are considering for your project. If you suspect that a site is contaminated, preliminary surveys should be performed. If hazardous materials or waste are detected, you may want to do an in-depth survey to determine the cost of clean-up. If you ultimately decide to use one or more contaminated sites, you should include an estimate of clean-up costs in your overall project cost.

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## ENVIRONMENTAL ASSESSMENT

NEPA requires an environmental analysis for any major Federal action; typically, a Federal-aid highway project requires such an analysis. The analysis is a broad consideration of the social, economic, and environmental impacts which would be caused by construction of the various alternate alignments being considered. The number of people and businesses which would be displaced by potential construction; the effects on community facilities and services; and potential impacts on wetlands, parklands, and wildlife habitat (especially endangered species) are among the many effects examined as part of the analysis. Consideration is given to physical impacts on facilities as well as their ability to continue serving the community effectively after construction. Examples of such facilities include police and fire stations, hospitals, places of worship, community centers, and local shopping centers. Special consideration of potential impacts to public parks, recreation areas, wildlife and waterfowl refuge and historic sites are required by Federal law and by Federal regulations found at 23 CFR 771.135 (commonly referred to as "Section 4f").

At a minimum, the funding agency (typically your SDOT) will provide you the guidelines for performing the environmental analysis. If the project is complex, requires acquisition of many parcels or the displacement of people, or has known impacts on the natural environment, your agency may tell you the level of environmental analysis that must be performed. If the project impacts an area occupied by members of minority and/or low-income groups, the requirements for environmental justice will have to be met. Information on environmental justice is available on FHWA's website at:

[https://www.fhwa.dot.gov/environment/environmental\\_justice/index.cfm](https://www.fhwa.dot.gov/environment/environmental_justice/index.cfm)

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## **PUBLIC INVOLVEMENT**

As indicated previously, public involvement is an essential part of the planning and NEPA coordination processes. The purpose of public involvement during project implementation is to inform the public of the potential impacts of each alignment, gauge opinion and/or support for a project, and allow the public to comment on the project and each alignment. The scope of public involvement is dependent on the type of environmental documents which must be prepared for the project.

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## **SELECTION OF ALIGNMENT**

After thorough consideration of the advantages and disadvantages of potential alignments, your agency will decide which alternative best serves the needs of the public and will select the preferred alignment to advance to project design.

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## **PROJECT DESIGN**

In project design the construction plans, specification, and estimates (PS&E) are developed for use in advertising for and constructing the transportation project. There are many factors that are considered in developing final design plans. The following two components are essential to the real property interests that are affected by the proposed project.

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## **UTILITIES**

Utility relocation is a critical part of the construction of a project. Early and continuing coordination with all of the affected utilities is critical to keeping your project on schedule. Utilities often need extensive lead time in order to reasonably schedule their work and obtain materials necessary for relocation of their facilities. Any affected utility company should be notified as soon as a project is identified that may require utility relocation. Once the utility is made aware (or notified) of the future need for a utility relocation, the utility company may be able to provide information concerning the location of existing utilities and any proposed new utilities for a project corridor. If a utility occupies land outside the right-of-way of a public highway, you will have to pay the utility to relocate its affected facilities in the same manner that you would compensate any other occupant. If a utility occupies land within the right-of-way corridor of a highway, your local and State laws governing the utility's right of occupancy in the right-of-way will govern whether you have to pay for all or part of the cost of relocating its facilities.



## RIGHT-OF-WAY PLANS

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As part of project design, a right-of-way plan indicating the property required to build and maintain the transportation project is required. The right-of-way plan should contain essential data needed for appraisal and negotiation activities. Depending on your agency's requirements, these plans will illustrate the existing and proposed right-of-way lines, the property lines and owner's names for each property adjacent to the highway, the highway center line, design features, width of the new highway, grade changes, and other details of the construction. The plan should provide sufficient information for preparation of legal descriptions of the properties and types of property interests to be acquired.

A right-of-way plan is a valuable visual-aid tool for negotiators, appraisers, and attorneys involved in acquisition transactions. It also helps property owners understand why and how their properties are being acquired.

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## ACQUISITION

Once the above steps have been completed, including the environmental analysis and development of the right-of-way plans, the project is ready to enter the acquisition phase.

*Note: At this time, if Federal-aid funding is planned for your project, you will need to work with your SDOT to secure authorization to proceed.*

Once your agency has received authorization to proceed, the property owners and tenants affected by the project must be notified of the agencies intent to acquire their property. An appraisal or waiver valuation of the real property to be acquired for the project is the initial step in the acquisition process. This step uses either a formal appraisal and review or an administrative procedure to estimate the fair market value of the property acquisition. Chapter V, Valuation, provides further explanation of the property valuation and appraisal process used to support the agencies determination of just compensation using estimates of fair market value.

After just compensation is established, the next step in the acquisition process is to present a written offer to the property owner. The agency, acting principally through an acquisition agent or negotiator, should make every reasonable effort to reach an agreement expeditiously with the property owner. If agreement is not reached, the agency may have to initiate condemnation proceedings. Chapter VI, Acquisition, provides further explanation of this process.

If there are occupants (including the property owner) or personal property on the parcel, relocation assistance is available. Chapter VII, Relocation Assistance, further explains the relocation process, benefits and services.

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## **RIGHT-OF-WAY CERTIFICATION**

Prior to advertising for construction bids for the project, the acquiring agency must prepare a right-of-way certification. A right-of-way certification states that the properties needed for construction of the project have been obtained, they are clear of any utilities and structures which must be moved plus persons or businesses displaced by the project have been relocated. Essentially, the certification must include a statement that the agency has complied with Uniform Act requirements and that the project is ready for construction. Your agency then can advertise for bids to construct the project. In some limited circumstances, the agency may proceed with advertising for construction bids prior to the elements of certification being completed if it will not adversely affect any owners or occupants nor impede the construction contractors' activities.

This chapter has provided an overview of the project development process. In the next chapter, we focus on several specific administrative issues which may provide flexibility in the management of your agency's real estate acquisition program.

## **NOTES:**

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## IV. ADMINISTRATIVE MATTERS

While this Guide is concerned primarily with the programmatic aspects of the Federal-aid highway right-of-way program, it is important also to understand the administrative framework in which the program operates.

### DIRECT FEDERAL ACQUISITION VS. FEDERAL ASSISTANCE

There are two ways in which real property is acquired using Federal funds. The first is direct Federal acquisition. For direct Federal acquisition, an agency of the Federal Government buys the property directly from an owner and the United States of America becomes the title holder. The second method involves what is called Federal-aid or federally assisted acquisition. Under this method, non-Federal units of government (e.g., States, counties, cities, and others) and sometimes private entities, purchase real property as part of a project receiving Federal funds. **This guide is concerned with the second method, Federal-aid.** Under the Federal-aid highway program, FHWA expects the State to be responsible for the proper acquisition of real property even when it passes funds through to agencies at the local government level.

### FEDERAL-AID HIGHWAY PROGRAMS

Federal-aid highway funding comes primarily from the highway trust fund that receives tax revenue from gasoline and diesel fuel sales. States also levy a tax on fuel sales to support their share of road improvement costs.

### AUTHORIZATION, APPORTIONMENT, APPROPRIATION

When an authorization bill is enacted the Federal-aid program operates under contract authority. This means that once the authorized funds are apportioned or allocated to a State, they are a reliable financial commitment on the part of the Federal government on which the TIP and STIP documents can depend.

### PROJECT AUTHORIZATION AND AGREEMENTS

Projects in an approved STIP that have met the NEPA requirements are funded based on State requests for FHWA authorization to proceed with all or select phases of project activity, A project agreement must be executed before project expenses can be reimbursed.

Authorizations and agreements are based on State and local agency assurances to comply with prevailing Federal and State laws. The Uniform Act requirements discussed in the next three Chapters are critical whenever right-of-way is, or will be, required for the project. The Uniform Act applies when Federal funds are used in any phase of the project.

*Note: Remember that FHWA authorization to proceed is required before any project related work can be eligible for Federal reimbursement.*

### COST-SHARING/CREDITS

Federal-aid highway projects, like most Federal assistance, typically require that the agency receiving funding contribute a portion of the cost of the project, known as the non-Federal share. Most of such funding comes from State or local funds provided by State or local legislatures for this purpose. However, the recipient of Federal-aid may be able to reduce the amount of funds it needs to provide by obtaining credits which count toward its required share. Credits may be obtained in several different ways.

### DONATIONS

When a private party wishes to donate all or a portion of his or her property, he or she must be fully informed of the right to receive just compensation for the property. If he or she decides to donate the property to a project, the grantee may receive credit toward its cost share for the fair market value of the donation, determined in accordance with applicable Federal regulations (see Chapter V, Valuation) and its own agency policy. In addition, Federal highway legislation provides a credit for the value of State or local government-owned land which is incorporated into a project.

*Note: The determination of credits can be complicated and we encourage you to contact your SDOT for information and assistance.*

Donations made by a Federal government agency are not eligible for use as matching share credit. In addition, the credit received by a State cannot exceed the State's matching share for the project to which the donation is applied.

A donation may be made at any time during a project's development. However, a donation made prior to the approval of an environmental document under the National Environmental Policy Act of 1969 (NEPA) may not influence the environmental assessment of a project,

including decisions on the need to construct the project or the selection of specific locations. Consequently, all alternatives to a proposed alignment must be studied and considered pursuant to NEPA. Any property acquired by donation shall be re-vested in the grantor if the final alignment does not require the property.

### DISPOSITION OF CERTAIN REVENUES

When States or local governments sell, lease or rent real property previously acquired with Federal funds, revenue is generated. The income derived from these activities may be retained (rather than returned to FHWA) if the Federal share of income is used to fund projects eligible under Title 23 Highways. Thus, such income may be spent on eligible Title 23 activities occurring under a different project from the one which originally provided the funds. **You should contact your SDOT for further information and assistance.** Additional information regarding these issues can be found in Chapter VIII, Property Management.

### FHWA CONTRACTING REQUIREMENTS

Federal financial assistance carries requirements as well as opportunities. Negotiations and relocation contacts with property owners must be conducted by qualified agency personnel; however, if your agency does not have personnel who are knowledgeable or experienced in these requirements, you can utilize consultants. Contracting for such consultants, whether they deal with appraisal, acquisition, or relocation, must follow approved State or local (with State approval) procurement procedures. [These requirements are applicable only when Federal funds are used in the acquisition cost of the right-of-way.]

*Note: We strongly encourage local government agencies with limited prior experience in contracting for right-of-way services to contact their SDOT for more detailed information on these requirements.*

### AGENCY ORGANIZATION & CONFLICT OF INTEREST

The Uniform Act requires that acquiring agencies be organized in such a way that conflict of interest and undue influence over valuation personnel are not present. This means that persons functioning as an appraiser or review appraiser are not subject to supervision or formal evaluation by a project or program negotiator. This organizational limitation is intended to ensure appraisal/valuation independence and prevent inappropriate influence. Project information sharing between appraisers/valuation preparers and other agency personnel is not prohibited and should be encouraged to assist in development of project

information and participating in determining the scope of work for the appraisal or valuation if supervisory authority is not involved. If such a requirement creates a hardship in your agency due to limited staffing you should consult with your SDOT representative to see if a waiver of this requirement can be obtained from the Federal funding Agency.

This chapter has discussed issues which relate to the administration of your agency's real estate acquisition program. In the remaining chapters, we focus on elements relating to the acquisition of real property including valuation, acquisition, relocation assistance and property management.

## **NOTES:**

## V. VALUATION

The first step in the process of acquiring a particular property is valuing the proposed acquisition.

### JUST COMPENSATION

The U.S. Constitution and most State constitutions require that a property owner be paid just compensation when the government acquires private property. The Uniform Act requires that an "approved appraisal" be used to develop an amount the agency believes to be just compensation. The amount offered to the property owner must be at least the amount of the approved appraisal.

### THE APPRAISAL REQUIREMENT

The appraisal, and its review and approval by the acquiring agency, are the cornerstones on which the entire effort to provide property owners just compensation is built. The Uniform Act requires that the property be appraised before an acquiring agency begins negotiations to acquire it and that the amount of the approved appraisal be the basis of the offer of just compensation. In addition, the Uniform Act regulations in 49 CFR, Part 24, Subpart B (see appendix for copy) require that appraisals be reviewed and approved. However, the Uniform Act also gives the Lead Agency (which is FHWA) the authority to develop procedures for waiving the appraisal requirement in cases of non-complex, low-value acquisitions.

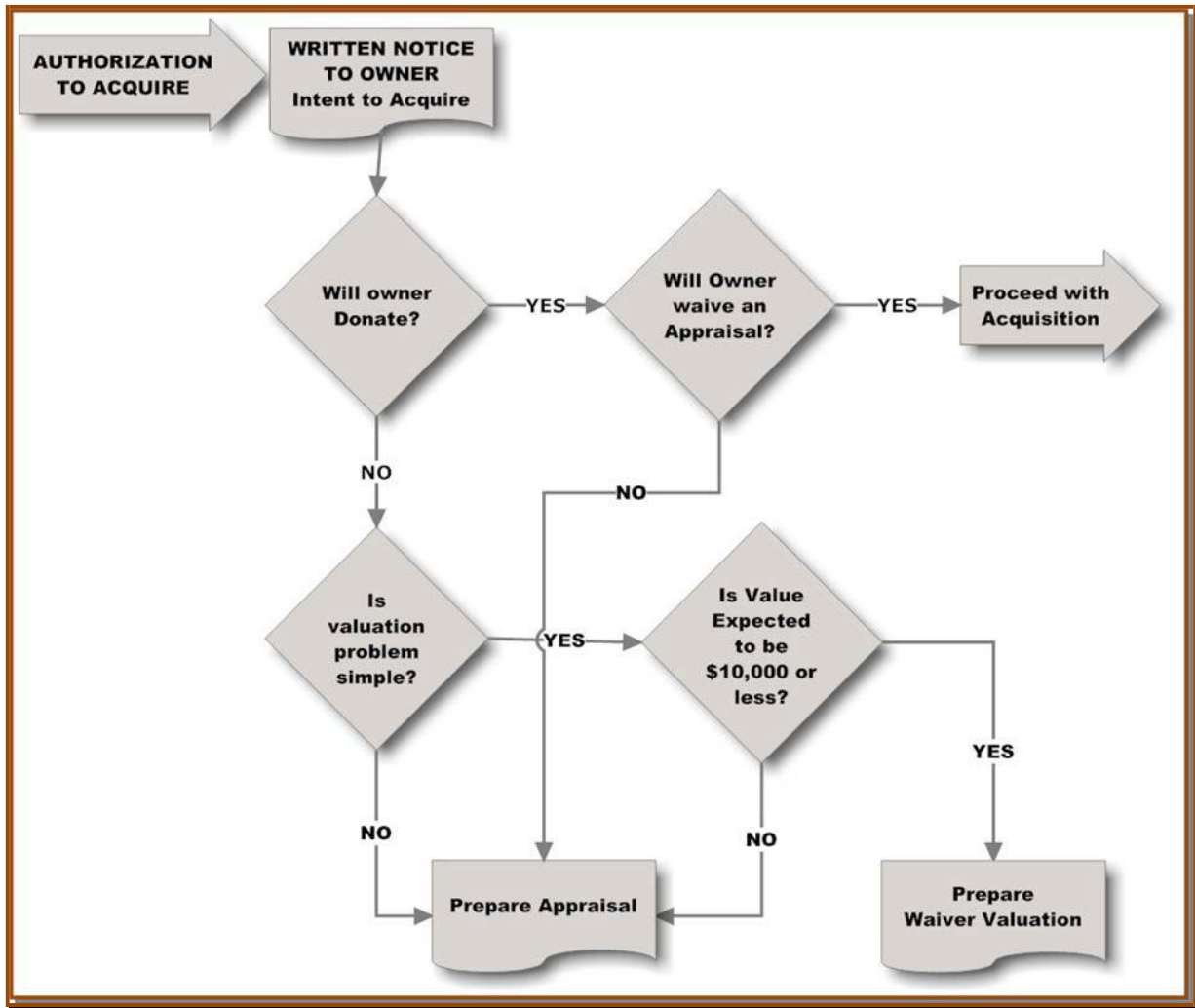
### APPRAISAL WAIVER AND WAIVER VALUATIONS

Appraisal waiver provisions are found in §24.102(c) of 49 CFR. These procedures provide all acquiring agencies the option to waive the appraisal requirement under two circumstances. First, if an owner has indicated he intends to donate his property and if the owner releases the agency from its obligation to appraise the property. See the next chapter for more information on donations. The second circumstance is if the agency determines the property valuation problem is uncomplicated and has an anticipated value of less than \$10,000. In such a case, the agency could waive the appraisal requirement and prepare a waiver valuation instead. The decision process following receipt of authorization to proceed for when an appraisal is necessary is indicated in Figure 2.

The final determination to waive an appraisal may include consideration of other factors, such as the availability of recent sales or negotiation history in the local area, besides the complexity of the valuation problem and the approved low value threshold that might apply. Your SDOT will give you detailed procedures for use of an appraisal waiver and preparation



of a waiver valuation. Keep in mind that a waiver valuation is not an appraisal, so appraisal-related requirements, such as owner accompaniment and appraisal review which are discussed in the Appraisal section below, are not Federal requirements when appraisal waiver procedures are used.



(Figure 2)

*Note: The regulation permits the FHWA to approve setting the low value criteria above \$10,000 if the acquiring agency agrees to offer the owner the option to request an appraisal. You will need to check with your SDOT to find out what waiver limit and procedures apply to your project.*

The person making the decision to waive an appraisal on a parcel must have enough understanding of appraisal principles to determine the complexity of the appraisal problem and enough understanding of the local real estate market to be assured the acquisition will be low value. The person assigned to prepare the waiver valuation is also expected to have sufficient understanding of the local real estate market.

The waiver valuation must be documented and an agency official must establish the amount believed to be just compensation prior to making an offer to the property owner.

## APPRAISAL

What is an appraisal? The 1987 amendments to the Uniform Act provided, for the first time in Federal law, a definition of an appraisal.

The definition contains all of the elements an appraisal must include to support use of Federal funds. Any real property valuation documentation that does not address these elements is not considered an appraisal. Once an appraisal of fair market value is reviewed and approved, it becomes the basis upon which the agency will establish an amount it believes to be just compensation. Having a well-prepared, unbiased and thoroughly documented appraisal report is the most critical step toward the goal of providing the property owner with the required estimate of just compensation.

In addition, each State and (possibly) local agency has developed a unique set of rules, regulations, and policies applicable to its jurisdiction.

### 42 USC 61 § 4601

(13) The term "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.

## APPRAISAL STANDARDS AND REQUIREMENTS

Appraisal practice is guided by The Appraisal Foundation, a non-profit educational organization established in 1987. In 1989 the U.S. Congress gave the Foundation and its two independent Boards specific authority relating to real property appraiser qualifications and appraisal standards. The *Uniform Standards of Professional Appraisal Practice* (USPAP) authored by the Appraisal Standards Board is generally recognized as setting the ethical and performance standards for the appraisal profession.

USPAP is consistent with the appraisal requirements of Federal and most State governmental organizations. The jurisdictional exception rule within USPAP provides flexibility to accommodate laws or regulations applicable to agency appraisal requirements. The requirements for appraisals and appraiser performance contained in the regulations implementing the Uniform Act (See copy of the January 2005 Uniform Act regulation in the Appendix) are consistent with the standards in USPAP.

## APPRAISER QUALIFICATIONS AND STATE CERTIFICATION

To implement appraisal standards, each State has established a State appraiser regulatory agency responsible for certifying and licensing real estate appraisers and supervising their appraisal-related activities. If your appraisal work requires use of contract (fee) appraisers, they must be State licensed or certified, and qualified by experience or training to perform the work assignment competently.

Under the Uniform Act regulations, each SDOT must develop criteria for determining the minimum qualifications of appraisers, consistent with the complexity of the appraisal assignment. You should review the qualifications of your staff appraisers, and utilize only those qualified for each assignment under SDOT requirements.

*Note: We recommend that you contact your SDOT concerning appraiser qualifications, any technical questions about the appraisal process or the documentation formats preferred for appraisal reports.*

## OWNER ACCOMPANIMENT

The Uniform Act requires that the property owner (or the owner's designated representative) be given the opportunity to accompany the appraiser during inspection of the property. The purpose of this requirement is to ensure that the owner can advise the appraiser of features of the property which might impact the valuation of the property, as well as allow the owner to indicate any features of the property that might not be obvious to the appraiser (such as the location of underground structures, i.e., wells, septic systems, storage tanks, utilities).

Either your agency or the appraiser must invite the property owner to accompany the appraiser during the inspection of the property. To assure that this requirement is not overlooked, you should advise your appraiser of this responsibility. Concurrently, you should contact the property owner to supply him or her with the name, address, and phone

number of the appraiser. An invitation to accompany the appraiser should be in writing and allow sufficient lead time for the owner to arrange to be present or to request an alternate time. You should document these steps in your parcel file. If the owner declines the invitation, that fact should be documented in the parcel file.

If it later becomes necessary to update the appraisal, the owner does not have to be given an opportunity to accompany the appraiser on the re-inspection.

## APPRAISAL CRITERIA

Section 24.103 of 49 CFR contains the requirements for real property appraisals for federally-assisted programs. It references USPAP and other supplemental requirements developed by State and local agencies involved in real property acquisition. The acquiring agency is expected to be involved in development of the scope of work and defining the appraisal problem for each property on which an appraisal will be prepared.

The Uniform Act requires the appraiser to disregard any decrease or increase in fair market value to the property caused by the project for which the property is to be acquired. The requirement reflects that owners should not be penalized because of a decrease in value caused by the proposed project nor rewarded by speculation created by knowledge of the proposed project.

Appraisals must be in writing and must be retained in your parcel file. The regulations found in 49 CFR Part 24 provide that the format and level of documentation for each appraisal are relevant to program needs and follow accepted appraisal practice. At a minimum, an appraisal must comply with the above referenced definition of appraisal and include sufficient data and analysis to support the value conclusion.

Based on the scope of work and complexity of the appraisal problem the requirements as described in 49 CFR 24.103, must be used, whether the acquisition is of the whole property or only a part of it. The appraisal report should include an appropriate analysis of such factors as the highest and best use of the property (especially when that use is in transition or a change in the highest and best use will follow the acquisition), severance damages, special benefits, and special purpose properties.

Real and personal property items located on the property are to be clearly identified within the report. In certain instances, an appraisal may include the findings of a specialty report. A specialty report is a study of unique valuation aspects of the property, such as zoning and permit compliance, machinery or equipment on the property, mineral rights or forestation, or items that generally do not fall within the expertise of a real property appraiser.

An appraisal should reflect SDOT appraisal requirements and contain the following items:

- An adequate description of the physical and legal 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 any known or observed encumbrances, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property.
- All relevant and reliable approaches to value (Sales Comparison, Income, and Cost). When sufficient market sales data is available for the specific appraisal problem, the agency, at its discretion, may require only the sales comparison (market data) approach. If more than one approach is used, there must be an analysis and reconciliation of those approaches, including an explanation of the final conclusion of value.
- A description of comparable sales, including a description of 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.
- A statement of the value of the real property to be acquired. For a partial acquisition, a statement of the value of any damages and benefits to the remaining real property if any.
- The effective date of valuation, date of appraisal, signature, and the certification of the appraiser.

## APPRAISAL REVIEW

If you get an appraisal, you must have that appraisal reviewed. The Uniform Act requires that the estimate of just compensation be not less than the agency's estimate of fair market value from the recommended appraisal. An appraisal becomes "recommended" through appraisal review.

Federal requirements for appraisal review are found in 49 CFR 24.104. The regulations require that acquiring agencies have an appraisal review process and that a qualified review appraiser:

- Examine all appraisals to assure they meet applicable appraisal requirements,
- Seek any necessary corrections or revisions to the appraisal, and
- Identify each report reviewed as recommended, accepted, or not accepted for use in establishing just compensation.

The complexity of the appraisal problem will have a bearing on the qualifications needed by the review appraiser and the degree of explanation required to support the review appraiser's recommended value. It is the review appraiser's responsibility to determine if the appraisal

report contains accurate data, adequate documentation, and appropriately supported conclusions.

The appraisal review process and your review appraiser also should ensure that there is consistency among the property valuations on a project wide basis. For example, two residences, which are similar in most respects and from which your agency is making similar acquisitions, should be appraised and valued consistently.

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### DEFICIENT APPRAISALS

If an appraisal is deficient or contains errors, the review appraiser should return the appraisal report to the appraiser for correction, with the deficiencies noted.

There may be instances when the review appraiser discovers minor errors (i.e., insignificant math errors, misspellings, and typographical errors) in an appraisal report. In those cases where only minor changes and corrections are warranted, they can be made by the review appraiser without returning the report to the appraiser. All such changes should be initialed and dated by the review appraiser. It is sound policy to transmit a copy of the changes to the appraiser in the event an update is needed later.

A review appraiser does not have to base his/her recommendation on a particular appraisal, although that is the preferred option. The following situation could occur and still produce acceptable results.

- If* acceptable corrections or revisions to an appraisal report cannot be obtained from the appraiser,
- and* the reviewing appraiser is unable to recommend the appraisal,
- and* your agency determines it is impractical to obtain an additional appraisal,
- then* the reviewing appraiser may develop appraisal documentation, either independently or by reference to acceptable relevant information developed by others, to support a recommended value.

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### REVIEW CONSIDERATIONS

The review appraiser should inspect the appraised property and the comparable sales included in the appraisal report. If a field inspection cannot be made, the review appraiser should document the reason(s) in the review report. The review appraiser should examine the appraisal report to determine that it:

- Follows accepted appraisal principles and techniques in the valuation of real property

in accordance with State and Federal requirements.

- Has been completed in accordance with the agency's appraisal specifications.
- Contains or refers to the information necessary to explain, substantiate, and thereby document the conclusions and estimate of fair market value.
- Contains an identification or listing of the buildings, structures, and improvements on the land as well as the fixtures considered part of the real property and items identified as personal property.
- Includes consideration of compensable items, damages and benefits, if any, and does not include compensation for items non-compensable under State law.
- Contains an estimate of fair market value for the acquisition and, for partial acquisitions, an allocation of the estimate of fair market value for the real property and for damages, if any, to the remaining property.

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### APPRAISAL REVIEW CERTIFICATION AND REPORT

The reviewing appraiser is also required to sign a certification that:

- Sets forth the recommended or approved value of the property,
- Identifies the appraisal report(s) reviewed, and
- States that the reviewer has no interest, present or future, in the property being reviewed.

Upon completion of the appraisal review, the review appraiser should place in the agency's parcel file a signed and dated report setting forth:

- The amount of fair market value in the recommended appraisal and the recommended estimate of just compensation, including an allocation of compensation for the real property acquired and, if applicable, of damages to remaining real property; identification of buildings, structures, and other improvements on the land; and identification of fixtures considered part of the real property being acquired.
- Whether, as part of the appraisal review, there was a field inspection of the parcel to be acquired and of related comparable sales. If no field inspection was made, the reason(s) should be stated.
- That the review appraiser has no direct or indirect present or contemplated future personal interest in the property or in any monetary benefit from its acquisition.
- That the recommended estimate of just compensation has been reached independently, without collaboration or direction, and is based on appraisals and other factual data.

The degree of detail provided in the review appraiser's written review report should reflect the complexity of the appraisal problem and report under review.

*Note: The required certification forms for the appraiser and review appraiser should be available in your SDOT FHWA approved Right-of-Way or Appraisal Manual.*

## APPRAISAL REVIEW CONTRACTING

Historically, the SDOT appraisal review function has been the responsibility of staff review appraisers and included the responsibility of approving the appraisal and estimating just compensation.

More recently, SDOTs, and especially local agencies, have hired contract review appraisers to perform the appraisal review function. The Uniform Act makes it clear that the agency must establish an amount believed to be just compensation.

The designated agency official can consider the recommended and accepted appraisals based on the findings of the contract review appraiser and any other known value indicators in setting the approved estimate of just compensation.

## APPROVED FAIR MARKET VALUE AND JUST COMPENSATION

Following review, the recommended appraisal provides the fair market value of the property needed for the project. This is the minimum amount that must be offered to the owner provided it is approved by an agency official. This may not necessarily constitute just compensation as there are situations where property is so unique in nature; or the appraisal, although properly prepared, does not estimate fair market value with any certainty; or the market value does not adequately measure just compensation. In these instances, an amount above the recommended appraisal amount could be approved using other valuation evidence in order that the initial offer to the owner more accurately reflects just compensation.

*Note: An acquiring agency may not delegate the function of determining the estimate of just compensation to be offered to the property owner to someone outside the agency including a contract review appraiser. This is a critical point that must not be overlooked.*



Typically, it is the review appraiser who initiates the consideration that just compensation be based on considerations other than the approved appraisal. Depending on who is performing the appraisal review and agency policy, the appraisal review may include an estimate of just compensation; and that estimate may be based on more than the approved appraisal. In any case, agency files must contain documentation and justification for any amount of just compensation that is established.

**NOTES:**

## VI. ACQUISITION



*Source: U.S. DOT Volpe Center*

Acquisition is one of the most sensitive aspects of an agency's activities because it involves direct personal contact with the people affected by a project. Yet it is imperative that agencies acquire property interests expeditiously to facilitate public improvement construction projects.

In obtaining needed properties, your primary goal should be to acquire through negotiation rather than using eminent domain authority. Acting as an acquisition agent or negotiator, you play an important role in achieving this goal. Negotiations should be conducted by a qualified member of the agency's staff. In cases where you have insufficient staff to perform negotiations, fee negotiators may be hired by contract (see Chapter IV, Administrative Matters, for information on FHWA contracting requirements).

### BASIC ACQUISITION REQUIREMENTS

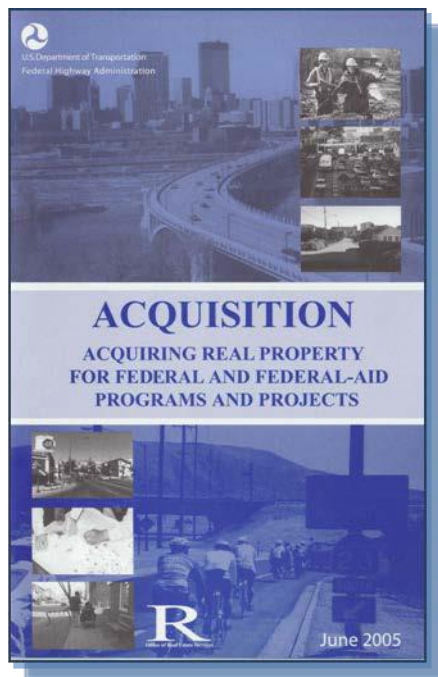
The following is a list of the basic acquisition requirements for agencies receiving Federal financial assistance. These list items, as well as others, are discussed in this chapter.

1. Personally contact, if feasible, each real property owner or the owner's designated representative, if feasible, in order to explain the acquisition process to the property owner, including the right to accompany the appraiser during inspection of the property, and provide the owner with a written notice of the agencies intent to acquire.

2. Provide the owner with a written offer of the approved estimate of just compensation for the real property to be acquired and a summary statement of the basis for the offer.
3. Give the property owner a reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase.
4. Conduct negotiations without any attempt to coerce the property owner into reaching an agreement.
5. Provide at least 90 days written notice of the date by which the move is required.
6. Pay the agreed purchase price before requiring the property owner to surrender possession of the property being acquired.

*Note: FHWA recommends you contact your SDOT with any questions regarding the acquisition process.*

## PERSONAL CONTACT



(Figure 3)

Each owner is to be provided a written notice of the agencies intent to acquire. The acquiring agency should make all reasonable efforts to personally contact each real property owner or the owner's designated representative and schedule an appointment at a convenient time and place. The purpose of this contact is to explain the negotiation process to the property owner as well as the responsibilities of both the acquiring agency and the property owner. One way to accomplish this is to provide the property owner with an acquisition brochure. The FHWA's Acquisition brochure (Figure 3) is available from either your SDOT or our website at:

[Acquiring Real Property for Federal and Federal-aid Programs and Projects - Acquisition - Uniform Act - Real Estate - FHWA](#)

This kind of personal contact can be of great importance as the negotiator strives to attain rapport with the property owner, which can help inspire confidence in the acquisition process and the fairness of the offer being made.

If all reasonable efforts to make personal contact with an owner fail, or if personal contact is impracticable, for example, such as when an owner lives in another State, the owner may be contacted by certified mail or other means appropriate to the situation. These alternative procedures (see following section), may be utilized under certain conditions. Some States may have additional statutory requirements regarding alternative processes.

### **FIRST OFFER BY MAIL**

This is an alternative approach to contacting property owners in person. In this approach, the initial offer to the property owner is made by mail. The mailing package consists of the offer letter, the summary statement of just compensation, a deed or option form, and a property plat or sketch showing the effect of the acquisition.

*Note: If the offer is based on a waiver valuation and exceeds \$10,000, the owner must be advised of his/her right to request the agency prepare an appraisal.*

Within a reasonable period after the mailing, you should follow up by telephone. A telephone conversation provides the property owner with a mechanism to obtain answers to questions or an opportunity to exercise the option of setting up an appointment for personal contact. **All requests for personal contact by property owners should be honored.**

When personal contact does occur, the property owner should be able to discuss substantive issues, having had the offer in hand for several weeks. From this point on negotiations should follow the normal sequence.

Generally, the mail offer approach has resulted in positive experiences. It saves both administrative costs and time on minor claims in which no dispute has arisen over the amount of the offer. The owner signs the deed or deed option form in a timely manner which enables the agency to focus negotiation efforts on other parcels.

*Note: The use of mail offers may not be used on parcels where relocation is involved.*

### **PROMPT WRITTEN OFFER**

Once the amount of just compensation has been established (see Chapter V, Valuation), a

prompt written offer must be made to the property owner. The offer must include a description of the real property or real property interests being acquired and the specific purchase price being offered. Along with the offer, the acquiring agency must provide the property owner a Summary Statement of Just Compensation which explains the basis for the offer and provides information necessary for the owner to make a reasonable judgment concerning the amount of the offer. In addition to the offer amount and the property location, the statement should include an identification of buildings, structures, and other improvements to be acquired, including removable building equipment and trade fixtures (see Owner Retention of Improvements, p. 43) appraised as part of the real property and those considered to be personal property. The statement should identify any separately held ownership interest in the property, e.g., a tenant-owned improvement (see Tenant-Owned Improvements, p. 43), and indicate, if appropriate, that such interest is not covered by the offer.

The agency may include additional information that it deems appropriate.

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### **OWNER OPPORTUNITY TO CONSIDER OFFER**

You must give the property owner a reasonable opportunity to consider the offer. This not only provides the owner a chance to thoroughly review and evaluate the offer (including the opportunity to obtain professional advice or assistance), it eliminates any appearance of coercion (see following paragraph). It also provides a chance for the owner to present material he or she believes is relevant to determining the property's value, and to suggest modifications to the proposed terms and conditions of the purchase. You must consider the owner's presentation.

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### **NO COERCIVE ACTION**

Negotiations must be conducted free of any attempt to coerce the property owner into reaching an agreement. For example, the negotiator should be careful not to imply that the negotiation, and the offer, is a "take it or leave it" proposition. Similarly, the use of condemnation as a threat must be avoided. Other examples of actions the acquiring agency must avoid include advancing the time of condemnation, deferring negotiations, or delaying the deposit of funds with the court to coerce an agreement with the property owner.

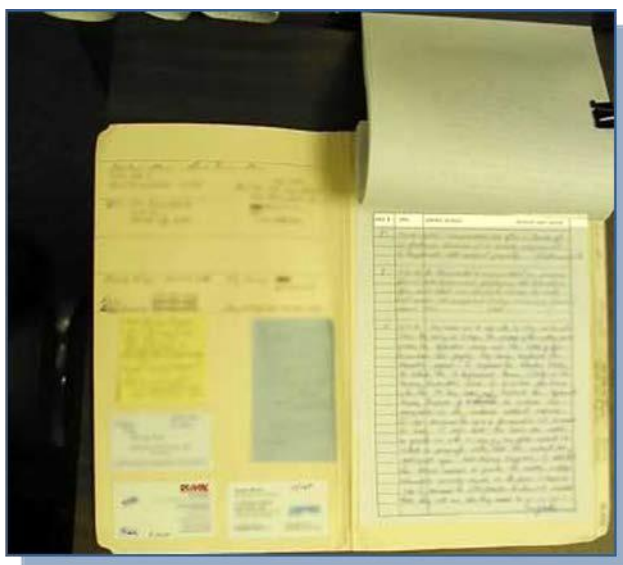
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### **90-DAY NOTICE**

One of the basic protections provided by the Uniform Act is that no displaced person may be required to move without at least 90 days' written notice of the date by which such move is required. This requirement, as it relates to relocation, is discussed in Chapter VII, Relocation Assistance, but it also has an acquisition aspect. Simply put, this statutory requirement places limits on the scheduling of construction. An agency must schedule project construction so that no displaced person will have to move without being afforded the 90 days' notice described above.

## NEGOTIATOR LOG

Experienced negotiators tell us that a log of conversations and other contacts or interactions between themselves and property owners or their representatives is an essential tool and



*Source: USDOT*

resource in acquiring real property. As a minimum, it provides the negotiator with an accurate record of communications, thus helping to avoid misunderstandings, hazy recollections, and unnecessary repetition.

One of the functions of a negotiator's log is to document that negotiations have been conducted in an appropriate manner. Beyond the negotiating arena, acquiring agencies increasingly are being required by courts to demonstrate such compliance. Properly completed, the negotiator's log offers key documentation in these cases.

Sometimes the initial negotiator may not complete the negotiations for a particular parcel. Without a complete record of preceding efforts, subsequent negotiations by a new negotiator will be more difficult and probably more time-consuming. In addition, the record contained in the log may assist in determining the prospects for a successful administrative or legal settlement. This supports the Uniform Act's goals of encouraging and expediting agreements with owners, avoiding litigation, relieving congestion in the courts, assuring consistent treatment for owners in public improvement programs, and promoting public confidence in government's land acquisition practices.

The negotiator should maintain adequate records of negotiations or other contacts for every parcel. The negotiator's log or record should be written in permanent form and completed within a reasonable time after each contact with the property owner. Information for each contact should include the date and place of contact, parties of interest contacted, offers made

(dollar amounts), counteroffers, list of reasons settlement could not be reached, and any other pertinent data. The log or report should be signed and dated by the assigned negotiator. Upon completion of negotiations, the above records become part of the project parcel file.

When negotiations are unsuccessful and further attempts to negotiate are considered futile, the negotiator's record should include documentation of the negotiator's recommendations for appropriate future action.

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## NEGOTIATION OPTIONS

In discussing acquisition, we have stated repeatedly that your agency's prime goal in obtaining real property should be to acquire through negotiations rather than condemnation and litigation. This approach reflects the Uniform Act requirement to "... make every reasonable effort to acquire expeditiously real property by negotiation." The administrative cost and time expended by acquiring property through litigation is significant and places additional burdens on a court system that is already overloaded.

However, it is necessary to recognize the limitations of the appraisal process. This process, while structured and professional, is by nature not scientifically precise. Moreover, in many cases property owners are suspicious of governmental acquisitions and may believe that just compensation offers are biased. Recognizing these factors, it may be both useful and appropriate to consider other negotiation options if an agreement with a property owner cannot be reached based on the amount of the initial offer.

One such option is the administrative settlement. An administrative settlement provides the flexibility needed to resolve differences of opinion as to the amount of compensation. Another approach, Alternate Dispute Resolution (ADR), may be helpful in removing communication or other barriers to agreement. Mediation, one of the many ADR techniques, has often been used to facilitate the acquisition of right-of-way by public agencies. Another option is the Legal Settlement, involving a resolution of the dispute after condemnation has been filed but prior to court award which is discussed later in the Condemnation section.

We discuss the first two options in greater detail below. FHWA recommends that, in appropriate situations, both administrative settlements and ADR be considered prior to an agency initiating condemnation.

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## ADMINISTRATIVE SETTLEMENTS

An administrative settlement is a settlement which occurs prior to the invoking of the agency's condemnation authority. It typically is more than the agency's approved offer of

just compensation but not excessively so, considering the expected cost of litigation and the potential cost of project delays. An administrative settlement should be considered when reasonable efforts to negotiate an agreed acquisition price have failed but there appears to be the potential for agreement.

An administrative settlement goes beyond the appraisal and appraisal review process. Your agency designates an official who has the authority to approve administrative settlements. The designated official should give full consideration to all pertinent information. He or she prepares a written justification which indicates that available information (e.g., appraisals, including the owner's appraisal if one is available, recent court awards, estimated trial costs, and valuation problems) supports such a settlement, and that he or she approves it as being reasonable, prudent, and in the public interest. The extent of the written explanation is a judgmental determination and should be consistent with the circumstances and the amount of money involved. You should maintain appropriate documentation in the parcel file to support this action.

### **ALTERNATE DISPUTE RESOLUTION - MEDIATION**

Often contesting parties, unable to reach an agreement, turn to third parties for resolution of their disagreement. One such possibility, under the broad umbrella of ADR, is mediation. Mediation may not be appropriate in every contested case, yet acquiring agencies should give consideration to its potential use when confronted with an acquisition dispute. A decision to employ mediation should be made on a case-by-case basis. Some of the factors to consider include the property owner's acceptance of mediation, the uniqueness and/or complexity of the acquisition, the specific technical issues in dispute, the agency's historic success in condemnation (or lack thereof), and the potential time and administrative cost savings. For example, because of difficult appraisal and other technical issues involved, mediation may be a particularly worthwhile tool in attaining settlement on parcels encumbered with hazardous waste.

*Note: The expense of employing a professional mediator or other ADR specialist is a legitimate project cost.*

### **PAYMENT BEFORE POSSESSION**

Under the Uniform Act, no owner may be required to surrender possession of real property before payment is made available. If an amicable settlement between the property owner and the acquiring agency is reached prior to the need to initiate condemnation, the agency will pay the owner the agreed-upon purchase price. Only in exceptional circumstances, with the



property owner's voluntary consent, can the agency obtain a right-of-entry for construction purposes before making payment available to the owner.

If the owner and the agency cannot reach agreement with the owner the agency may have to institute condemnation proceedings.

## CONDEMNATION

When all attempts to negotiate an agreement, including the use of administrative settlement or ADR procedures, have failed it may be necessary for your agency to acquire the property by exercising its power of eminent domain. At this point, the acquisition should be turned over to legal counsel to institute condemnation proceedings.

### ROLE OF LEGAL COUNSEL

Successful condemnation is dependent on effective coordination. Careful attention to eminent domain considerations is vital to any acquisition program. Legal counsel should be an integral part of the acquisition team from the beginning of the project. During the planning and design stages, legal personnel may be able to detect complex title or valuation pitfalls which can be avoided or minimized during the appraisal process. They should be called upon for advice on such matters as the law on benefits, before and after appraisals, distinguishing whether an item is personalty or realty, and the compensability of particular items.

Counsel should be given an opportunity to offer advice prior to the determination to condemn. Once a case is referred for condemnation, counsel must have all pertinent information relative to the case, including facts on construction of the project and its effect on the property, information gathered by negotiators, sound appraisals, and competent witnesses. Counsel should know the weak points as well as the strong points of each case. In addition, counsel should be furnished with and kept current on Federal and State requirements concerning documentation to ensure that there is appropriate justification for the actions taken.

### CONDEMNATION PROCEEDINGS

Condemnation proceedings take place in a State or county court and, as we have noted previously, are governed by State law. This means that State law will determine not only the

condemnation process but also the various items for which compensation must (or may not) be paid by the acquiring agency.

In some jurisdictions, the condemner may be required to prove necessity for the acquisition or appropriation of the condemned property. This may only be required if a property owner challenges the proposed acquisition of his or her real property. Necessity is usually proved by offering engineering and/or design plans to substantiate the need to acquire.

In many States, prior to a trial before a judge or jury, the law provides the property owner a hearing before a board of commissioners or "viewers" who have been appointed by the court. Both the property owner and the agency are permitted to present information to the board, which forms the basis of the board's eventual award of just compensation. Once the board makes its determination, the property owner and the acquiring agency each may accept or reject it. If either party rejects the award, the court will schedule a trial.

When filing condemnation in most States the agency requests possession. In these instances, the full amount of the State's offer will be deposited with the court. This amount may be withdrawn by the owner without jeopardizing his or her rights in the condemnation proceedings.

## LEGAL SETTLEMENTS

In preparing a case, the agency trial attorney will discuss the taking with the acquisition team, the appraiser, the review appraiser, and other potential expert and lay witnesses to decide whether to recommend a legal settlement or go to trial. To familiarize themselves with the facts of the case, counsel should carefully analyze the appraisal of the property with the appraiser. This analysis should include an inspection of the property as well as any other comparable properties that may be used during the trial. The appraisal must conform to the date of valuation specified under State and local eminent domain law and be based on a consideration of all compensable elements of damage under applicable law. Counsel should attempt to have the appraisers reconcile any factual or legal differences without influencing their independent exercise of judgment in any way. On the whole, careful attention should be given to any element which counsel concludes is relevant to the case.

As noted above, legal settlements are a negotiation option available following a condemnation. The negotiations are between the acquiring agency's legal staff and the property owner and/or his or her attorney. These types of settlements may result in stipulated settlements approved by the court in which the condemnation action has been filed. The appropriate agency file must be documented whenever a legal settlement is made, and the rationale for the settlement set forth in writing. Legal settlements based on new or revised appraisal data as the principal justification must be coordinated with and approved by the responsible official of the acquiring agency. All pertinent data should be reviewed by the

agency's real estate office to ensure that adequate documentation for Federal-aid funding is provided.

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## COURT AWARDS

If no settlement is reached, a court trial will be required. Each side will present arguments in support of its position on the value of the property. The court will determine just compensation and order the agency to pay that amount.

## ALTERNATIVE MEANS OF PROPERTY ACQUISITION

In previous sections of this chapter we have discussed acquiring property through negotiation or condemnation, each ending with the payment of just compensation. While every property owner is entitled to receive just compensation, there may be instances where property is acquired through donation, donation in exchange for construction features, or dedication. We will discuss each of these topics below.

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## DONATIONS

Most of the time when an agency needs to acquire real property for a Federal or federally assisted project, it will acquire that property through negotiations with the owner or through the exercise of its power of eminent domain (condemnation process). The preceding portions of this chapter have been concerned with those situations. Sometimes, however, and for various reasons, the owner is willing to give all or a portion of the needed property to the acquiring agency for less than what constitutes just compensation. Such an acquisition is referred to as a donation.

When an owner is willing to make a donation, that individual or entity retains specific rights that must be respected. For example, you must provide the owner an explanation of the acquisition process, including the right of having your agency appraise the property and to receive an offer of just compensation. Only after receiving such an explanation may the property owner waive these rights and the agency accept the donation. The explanation should be given in a manner that is non-technical and easily understood.

In most cases appraisal of the real property is advantageous both to the agency and the property owner. For example, on a federally funded project, an agency may need an

appraisal to determine the donation's value as a credit against the agency's matching share of project cost (see Cost-Sharing/Credit section of Chapter IV, Administrative Matters, for more detail on credits). As with all acquisitions, valuation of real property donations should be done in accordance with applicable Federal regulations and approved agency policy. For properties with a low estimated fair market value where the valuation problem is uncomplicated, the acquiring agency may waive the appraisal in accordance with the SDOT's approved procedures (for further information see the Appraisal Waiver and Waiver Valuations section of Chapter V, Valuation).

Similarly, the property owner may need to know the value of the donated property for tax purposes. The Internal Revenue Service requires that an appraisal be prepared by a disinterested, unbiased third party when an owner is claiming a donation on his or her tax forms. While the acquiring agency is not obligated to use appraisers other than its own staff, the agency may find it prudent to advise the property owner to select a fee appraiser and offer to pay the appraisal fee. Paying the cost of the appraisal may help to facilitate the donation.

*Note: Acquiring agencies should be aware that donations of real property must be considered during the environmental coordination process discussed in Chapter III. Additionally, before accepting a donation, acquiring agencies should have a process for determining whether or not the property is contaminated or has hazardous wastes present. Your SDOT should be contacted for assistance and advice.*

## DONATIONS IN EXCHANGE FOR CONSTRUCTION FEATURES

An acquiring agency may accept a property owner's offer to donate a whole or part of a property in exchange for services or facilities that will benefit that owner.

For instance, an agency may require a narrow strip of land for a street-widening project. The property owner and the agency may negotiate an agreement that would require the agency to provide an additional driveway, entrance, or other features in lieu of cash compensation. The agency should compare the donated property's value and the cost of additional construction features to ensure that construction costs do not exceed the value of the donated real property.

## DEDICATIONS

Dedication is the process of reserving a parcel of land for a future public use. A dedication is usually made as part of the subdivision or zoning approval process.

An acquiring agency may accept, as part of a Federal or federally assisted project, a parcel that a developer has dedicated or proposes to dedicate. The agency also may accept land dedicated pursuant to the local planning process or at the request of the property owner for land use concessions that are consistent with applicable local and Federal project and environmental regulations.

Real property obtained through normal zoning or through subdivision procedures requiring dedication of strips of land in the normal exercise of police power, is not considered to be a taking in the constitutional sense and does not call for payment of just compensation or compliance with the Uniform Act. Land acquired in this manner may be incorporated into a federally assisted project without jeopardizing participation in other project costs and may be eligible for obtaining the cost sharing/credit described in Chapter 4.

*Note: Any dedication undertaken to circumvent Federal requirements is not acceptable and could jeopardize project funding.*

## ADDITIONAL CONSIDERATIONS

The following represent a number of additional areas which impact the acquisition process.

### ASSESSMENTS

An assessment is a tax or fee levied on properties that will benefit directly from a public construction project.

When Federal funds participate in a project, an acquiring agency (you) may not levy a special assessment solely against those properties experiencing acquisitions for the public improvement for the primary purpose of recovering the compensation paid for the real property. This recapture of compensation would constitute a form of forced donation, which is coercive and thus not permitted under the Uniform Act.

However, an acquiring agency may levy an assessment to recapture funds expended for a public improvement, provided the assessment is levied against all properties in the taxation

area or in the district being improved and provided it is consistent with applicable local ordinances.

## FUNCTIONAL REPLACEMENT

Sometimes the real property to be acquired for a highway project includes a public facility such as a school or a police or fire station, the loss of which would have an adverse impact on essential public services for the affected community. FHWA recognizes that in such circumstances an alternative method of acquisition, functional replacement, may be needed to serve the public interest. As the term implies, functional replacement provides for the replacement of the public facility in question, and its use is limited to publicly owned, public use facilities.



Source: Acceptphoto / 123RF

In the typical acquisition, the offer to acquire represents an estimate of just compensation determined through the appraisal of fair market value. Under functional replacement, the facility, including land and improvements, may be replaced by another facility with FHWA participating in the cost of a facility of equivalent utility. For example, if a community fire station with two bays will be acquired for a project, FHWA may participate in the cost of a new fire station of equivalent utility. Should the community choose to build a four-bay facility or add functions or services not present at the

acquired site, FHWA participation generally will be limited to the level of function provided by the original facility.

The use of the functional replacement approach is at the option of your agency, with the concurrence of your SDOT, and must be permissible under State law. **FHWA must concur that the functional replacement is in the public interest.**

Due to the complexities usually encountered in the construction of a replacement facility, early and frequent consultation among the community, the State, and FHWA is essential. The parties should develop an agreement setting forth appropriate conditions and respective responsibilities well before FHWA concurrence in the construction award, with appropriate FHWA review and approval of the Project Specifications and Estimates (PS&E).

## INVERSE CONDEMNATION

Inverse Condemnation is the legal process by which a property owner may claim and receive compensation for the acquisition of or damages to his property as the result of

public improvement. This may occur when an agency, either actually or allegedly, acquires a property or property interest without either an offer to acquire through negotiations or the institution of condemnation proceedings. For example, the design and construction of a road inadvertently results in a property owner losing access to his property. The access to the property can be denied in a number of ways including the fencing of property, denial of access across easements, or the denial of access to land caused by regrading of public right-of-way. The property owner in this scenario is not contacted or compensated because the loss of access was not planned or anticipated by your agency. The Uniform Act prohibits an agency from intentionally making it necessary for the property owner to begin legal proceedings to prove an acquisition occurred. Planning and project development activities normally do not constitute acquisition without some other action that substantially deprives the owner of the use of and enjoyment of the property.

Inadvertent action or unreasonable delay in beginning a project may result in making the property owner think an acquisition has occurred, even without physical taking of the property. Timely project planning and communication with property owners should prevent this situation from occurring.

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## UNECONOMIC REMNANTS

An uneconomic remnant is a portion of a larger property determined by an acquiring agency to have little or no utility or value to its owner because of a partial acquisition of the larger portion. If the acquisition of only part of a property would leave the owner with an uneconomic remnant, the head of your agency must offer to acquire the remnant.

An uneconomic remnant may still have some utility or value. The ultimate test is whether it has utility or value to the present owner. The acquiring agency must make this determination. The agency is obligated only to offer to purchase the uneconomic remnant; the owner may decline the offer. The offer to purchase an uneconomic remnant may be included in the formal written offer for the portion of the property needed for the public project or, at the acquiring agency's discretion; it may be made in a separate offer.

For highway projects, Federal funds may be used to acquire uneconomic remnants regardless of whether the remnants are incorporated into the highway right-of-way. Uneconomic remnants incorporated within right-of-way limits lose their separate identity and become part of right-of-way. Should it no longer be needed for highway purposes, the uneconomic remnant would be disposed of in the same manner as other portions of highway right-of-way.

While the preceding describes Uniform Act requirements, State laws on eminent domain vary in their treatment of uneconomic remnants and must be consulted before an acquiring agency makes an offer.

## TENANT-OWNED IMPROVEMENTS

When you acquire a property that is occupied by a tenant, you must consider the tenant's real property interests as well as those of the property owner. This is most often relevant in the displacement of tenant-operated businesses which have erected a structure or installed other real property improvements. The Uniform Act requires that such tenants receive just compensation for those improvements if they will be removed or otherwise adversely affected by the proposed acquisition.

An improvement located on the property to be acquired should be treated as real property regardless of ownership. Acquisition from the tenant should follow the same procedures as those for acquiring real property from the owner.

Just compensation for a tenant-owned improvement should be based on the amount that the improvement contributes to the fair market value of the whole property, or its removal value, whichever is greater. Removal value is considered to be the same as salvage value.

No payment should be made to a tenant-owner for improvements unless:

- The tenant-owner assigns, transfers, and releases to the acquiring agency all of the tenant-owner's right, title, and interest in the improvement;
- the owner of the real property on which the improvement is located disclaims all interest in the improvement; and
- the payment does not result in the duplication of any compensation otherwise authorized by law.

The compensation payable for tenant-owned improvements varies from State to State and may be affected by terms of the tenant's lease. **Once again, we recommend that you consult with your SDOT concerning payment for tenant-owned improvements.**



## OWNER RETENTION OF IMPROVEMENTS

The owner of improvements located on real property being acquired for a public project may be offered the option of retaining those improvements at a value determined by the acquiring agency. The agency's retention value determination should be available at the initiation of negotiations or within a reasonable period of time after the owner expresses an interest in retention.

Retention value should be established by property management personnel through comparative analysis of improvements sold at public sale or another valuation method. Just compensation paid to the owner should be no less than the difference between the amount determined as just compensation for the owner's entire interest and the retention value of the improvement.

The owner is responsible for removing his or her improvement prior to the initiation of construction.

## HARDSHIP AND PROTECTIVE BUYING

Ordinarily, the acquisition of properties for a federally assisted project does not begin before the completion of the environmental review process. However, in extraordinary cases or emergency situations, an acquiring agency may request that FHWA approve Federal participation in acquiring a particular parcel or a limited number of particular parcels within the limits of a proposed highway corridor prior to such completion. The reasons for such requests include the following:

- A request from a property owner alleging an undue hardship caused by the impending project due to his or her inability to sell the property at fair market value within a time period typical for similar properties not affected by the project. Undue hardship, in such cases, means a hardship particular to the owners/parcels in question and not shared in general by all the owners of property to be acquired for the project.
- The acquiring agency's decision to acquire in order to prevent imminent development and the associated increased costs which would tend to limit the choice of highway alternatives.

As noted above, the advance and early acquisition procedures may be used if additional requirements are met. The FHWA's Early and Advance Acquisition Alternatives comparison chart is available from either your SDOT or our website at:

[https://www.fhwa.dot.gov/real\\_estate/legislation\\_regulations/23cfr710501.pdf](https://www.fhwa.dot.gov/real_estate/legislation_regulations/23cfr710501.pdf)

**NOTES:**

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## VII. RELOCATION ASSISTANCE

When land needed for a public project is occupied, it may be necessary to displace the occupants, who may include individuals, families, businesses, farms, or even non-profit organizations. The Uniform Act and the government-wide rule prescribe certain benefits and protections for persons displaced by public projects funded, at least in part, with Federal money.

Among other benefits, the Uniform Act provides relocation payments for persons displaced from their residences, businesses, farms, or even non-profit organizations. These payments include moving expenses and certain supplements for increased costs at a replacement location. In addition, the Act provides protections for displaced persons such as requiring the availability of replacement housing, minimum standards for such housing, and requirements for notices and informational materials. Also, the Act entitles displaced persons to certain "advisory services" to help them move successfully.

The provisions of the Uniform Act concerning relocation are found in Title II which contains the following "Declaration of Policy."

### Uniform Act - Title II

*"This title establishes a uniform policy for the fair and equitable treatment of persons displaced as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance. The primary purpose of this title is to ensure that such persons shall not suffer disproportionate injuries as a result of programs and projects designed for the benefit of the public as a whole and to minimize hardship of displacement on such persons."*

It is important to understand that successful relocation is essential not only to the welfare of those to be displaced but to the progress of the entire highway project.

The relocation program consists of four main components: Relocation planning, notices, advisory services, and payments.

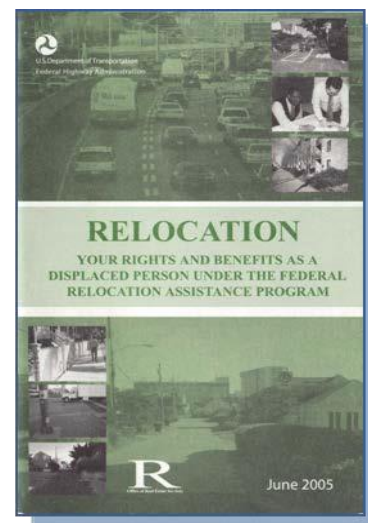
## RELOCATION PLANNING

Successful relocation requires planning. This is especially true for businesses that need replacement sites that will fit their operations and be convenient to their clientele. Businesses must be given relocation assistance as required by the Uniform Act. Housing resources must meet the needs of displaced residents in terms of size, price, location, and timely availability. Advisory services and various notices, some with specific timing requirements, must be provided. Payments must be made to displaced persons at the time they are needed to obtain replacement housing. Often coordination with other displacing programs or agencies is necessary. These things do not happen automatically; they require planning by the agency. Since the relocation of occupants is one of the major potential impacts of any project, the earlier such impacts are considered the easier it will be eventually to deal with any problems encountered. Moreover, early consideration of relocation impacts may influence the alignment eventually chosen for a project. Lastly, if project displacement involves persons with special needs such as the disabled or the elderly, particular attention will have to be given to advisory services.

## NOTICES

The Uniform Act and the regulations recognize the need of displaced persons for information about the relocation process and require that certain information be provided to them. This information is provided through personal contact and through a series of notices for the purposes of minimizing disruption and maximizing the chances of a successful relocation. The following are the primary notices that must be delivered as part of the program:

1. **General Information Notice.** This notice is to be provided to potential displaced persons at an early stage of the project. It is to be written in easily understood language and, if appropriate, in a foreign language. One common approach is to hand out an informational brochure at the public hearings for the project. The FHWA relocation brochure (cover shown in Figure 4) is available from the FHWA website or your SDOT. The purpose of the notice is to provide a general description of the agency's relocation program, including benefits, responsibilities and protection. Detailed information about the content of this notice may be found in the government-wide (Uniform Act) regulations at 49 CFR 24.203.



(Figure 4)

- 2. Notice of Relocation Eligibility.** This notice is provided as soon as it has been determined that particular persons will be displaced by the project. The notice informs the occupant that he or she will be displaced and, therefore, will be eligible for relocation benefits, as applicable. The trigger for providing this notice is based on whichever of the following events occur first.
- The notice of intent to acquire in § 24.203(d),
  - The initiation of negotiations in § 24.2(a)(15), or
  - The date the property is acquired.
- 3. 90-Day Notice.** The 90-day notice is a basic protection of the Uniform Act. As part of the general information notice described above, the displacing agency must inform potential displaced persons that they will not have to move without at least 90 days' written notice. The 90-day notice, itself, will come later, when the agency's plans for requiring occupants to move have become more precise. At this time (and for residential displacements, only after ensuring that at least one comparable replacement dwelling is available), the agency will inform a person to be displaced, at least 90 days in advance, of the earliest date by which he or she may be required to move. This means, for example, that if the agency believes it may require an occupant to move by July 15, it must inform him or her, in writing, at least 90 days in advance, i.e., April 16. In practice, the agency may not actually require the move until after July 15. Conversely, the occupant may choose to move before that date. In either case, the occupant does not have to move before July 15 and the requirement to provide 90 days' notice has been satisfied.

Some agencies choose an optional method of delivering the 90-day notice. They deliver a 90-day notice which not only meets the requirements described above but also states that they will deliver another notice 30 days prior to the day that the occupant will be required to move.

*Note: There can be exceptions to the 90-day notice requirement, but only for emergency situations involving health, safety, or similar reasons which make a delay of 90 days impracticable. Contact your SDOT for further information on notice requirements.*

## ADVISORY SERVICES

Relocation payments alone often are not enough to minimize the hardship of a move necessitated by a public project and ensure a successful move to a replacement location. Another key element is relocation advisory services. These services provide displaced persons with information, counseling, advice, and encouragement and often require repeated and intense personal contact. A displacing agency should become knowledgeable about the nature of the population its project will impact and plan to provide advisory services accordingly.

A typical advisory services program has a group of services as its core. These basic services, which must be made available to all displaced persons, include:

- Explanation that no person can be required to move from a dwelling for a Federal or federally assisted project unless replacement housing is available to such person.
- Explanation of relocation services and appropriate payments.
- Explanation and discussion of eligibility requirements for each relevant type of relocation payment, and, at an appropriate time, determination of eligibility for each displaced person.
- Determination of the needs and preferences of the person to be displaced. Relocation agents must become familiar with the many different and sometimes special needs of the displaced household or business. A personal interview is essential to accomplish these objectives. For businesses that are to be displaced the interview should cover the following six areas at a minimum:
  - Replacement site requirements, plus contractual and financial obligations that may influence their capacity to accomplish the move.
  - Identify need for outside specialists to assist in planning, conducting, and/or reinstalling relocated machinery and/or other personal property.
  - Clearly identify personalty/realty items eligible for relocation. This is coordinated during the appraisal process mentioned previously in Chapter 5.
  - Estimate of the time required to vacate the acquired site.
  - Estimate of the anticipated difficulty in locating a replacement property.
  - Identification of any advance relocation payments required for the move, and the Agency's legal capacity to provide them.

- Making every effort to meet identified needs, while recognizing the importance of the displaced persons' priorities and their desire, or lack of desire, for assistance.
- Provision of the following specific types of services, as appropriate:
  - Current listings, including prices or rents, of replacement properties either comparable to acquired dwellings or appropriate for displaced businesses and farms.
  - Transportation for displaced persons to inspect potential relocation housing if they are unable to do so on their own.
  - Information concerning Federal and State housing, disaster loan assistance (when applicable), and other programs offering relocation or related types of assistance.
  - Assistance in obtaining and completing applications or claim forms for relocation payment or other related assistance.

In addition, it may be necessary to provide unusual types of assistance to persons with unusual or special needs.

*Note: It is important to know that, in accordance with amendments to the Uniform Act passed in 1997, persons who are aliens not lawfully present in the United States are not eligible, with certain limited exceptions, to receive relocation payments or advisory services.*

## RELOCATION ASSISTANCE PAYMENTS

We have often noted that one of the main purposes of the Uniform Act is to prevent affected persons from bearing an unfair share of the burden of public projects. Such a burden could easily be created if a displaced person were forced to pay increased rent for a replacement apartment or a higher price or interest rate for a replacement home. In order to prevent this, the Uniform Act provides for relocation payments to displaced persons.

There are two main categories of payments, residential and non-residential. Within each category there are several types of payments which address expenses incurred because of a required move.



The following provides brief descriptions of the relocation payments available to displaced persons. Each type of payment has its own eligibility criteria and computation requirements, the details of which are beyond the scope of this publication.

*Note: Should your project require the displacement of families, individuals, businesses, farms, or non-profit organizations, we recommend you contact your SDOT or other persons knowledgeable about the limitations and conditions of these payments and the other complex relocation requirements of the Uniform Act.*

## RESIDENTIAL DISPLACEMENTS

- 1. Moving and related expenses.** This includes payment for the actual cost to move personal property. A property owner may have a commercial mover move personal property or may elect to move the personal property himself. If the person displaced elects to move the property themselves, they can be reimbursed for the actual costs incurred based on receipted bills (based on rates comparable to those charged by commercial movers), or be paid on the basis of a move cost schedule. The schedule is published by FHWA and available on their website at [Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended - Relocation - Uniform Act - Real Estate - FHWA](#) or from the local SDOT. Use of the schedule saves administrative costs for the agency and is advantageous to the owner of the personal property.
- 2. Replacement housing payment.** A payment for the difference, if any, between the actual acquisition price or rent of a comparable replacement dwelling and the acquisition price or rent of the dwelling from which the occupant is being displaced. Additionally, increased mortgage interest costs and selected incidental expenses (settlement costs) also may be eligible.

## REPLACEMENT HOUSING STANDARDS

A basic requirement of the Uniform Act is that the replacement housing made available to displaced persons must meet certain standards. These standards are contained in the interrelated concepts of "decent, safe, and sanitary housing" and "comparable replacement housing."

The phrase "**decent, safe, and sanitary (DSS)**" refers to the physical condition of the replacement dwelling. Basically, a dwelling which meets the standards of a typical local housing or occupancy code and the minimum requirements of the Federal regulation will be DSS. If a community has a more stringent set of housing codes than those found in the government-wide rule at §49 CFR 24.2(a)(8), they may be used to determine whether a dwelling is DSS.

The phrase "**comparable replacement dwelling**" means a dwelling which meets the following criteria:

1. Decent, safe, and sanitary, as described previously.
2. Functionally equivalent to the displacement dwelling.
3. Adequate in size to accommodate the displaced person(s).
4. Located in an area that is:
  - not subject to unreasonable adverse environmental conditions;
  - generally not less desirable than the location of the displacement dwelling with regard to public utilities and commercial and public facilities;
  - reasonably accessible to the displaced person's place of employment.
5. Located on a typical residential site.
6. Currently available to the displaced person(s).
7. Within the financial means of the displaced person(s).

*Note: The regulations require that no person may be required to move from a dwelling unless he or she has been offered an available comparable replacement dwelling.*

In carrying out this requirement, the displacing agency must offer every displaced person at least one comparable replacement dwelling and, if possible, three. This is a crucial part of the displacement process, since the comparable replacement dwelling will form the basis of the computation of the replacement housing payment.

Many of the elements of comparable replacement housing deal with the specific needs of displaced persons, e.g., financial means, access to employment, and access to public and commercial facilities. This reemphasizes the critical importance of what was stressed above in the section on Advisory Services - the need for the agency to determine the displaced

person's needs and circumstances. This can be accomplished only by personal contact with each displaced household early in the process.

## MOBILE HOMES

Source: USDOT



Mobile homes present one of the most complex and difficult situations with which displacing agencies must cope. Mobile homes differ from conventional housing in that their status as real or personal property varies from State to State. Also, in a mobile home situation, there is a separation between the dwelling and the site it occupies. For example, one may own a mobile home but rent its site or vice versa.

These differences may present you with two general problems. The first involves a decision you may

not have to make with conventional housing - whether to acquire or move the mobile home. The second is a major increase in the complexity of determining the relocation payments for which the displaced person is eligible.

In addition, mobile homes typically will have a disproportionate number of low-income, elderly, and other occupants who are difficult to move successfully. For all these reasons, dealing with mobile home moves will require the maximum in planning, preparation, patience, and assistance.

*Note: If your project might include the displacement of mobile homes, we recommend that you contact your SDOT for assistance.*

## BUSINESS DISPLACEMENTS

- 1. Actual moving and related expenses.** The cost to move, and, if appropriate, disconnect and reinstall personal property will usually be reimbursable. Costs incurred in hiring commercial and specialized equipment movers plus certain utility

connections, professional services related to the purchase/lease of the replacement property and impact fees and one-time assessments may be reimbursed if found to be actual, reasonable and necessary. A list of eligible and ineligible moving and related expenses is included in the regulations in §24.301(g) and (h) respectively.

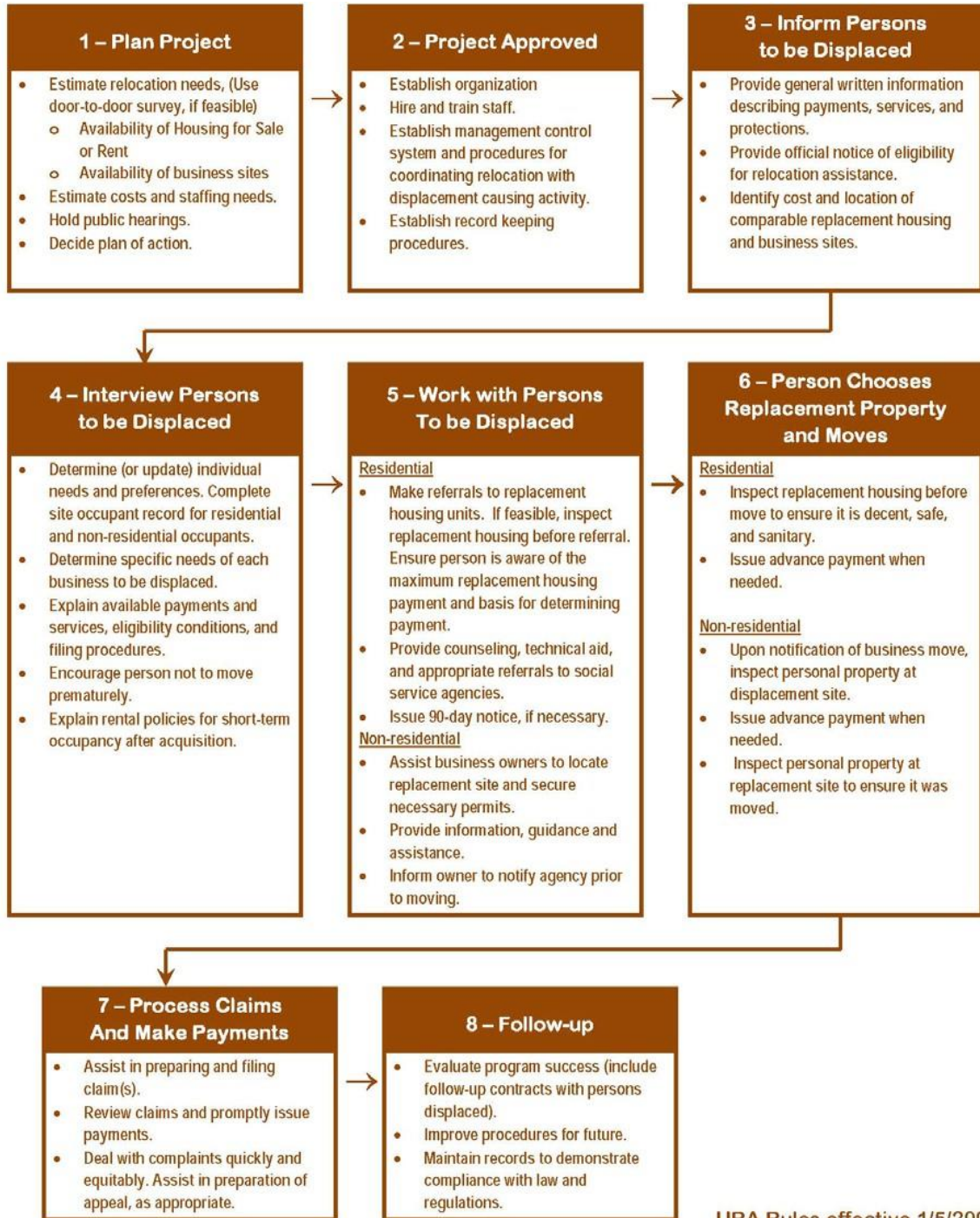
If a business owner decides not to move personal property, as an alternative he or she may elect to be paid on the basis of actual direct loss of tangible personal property or the cost of substitute personal property. Such alternate payments may not exceed the actual cost to move the items.

- 2 Reestablishment expenses.** In addition to a payment for moving expenses, the owner of a small business may be eligible for up to \$25,000 for reimbursement of eligible expenses associated with the reestablishment of a business at a replacement location.
- 3 Search costs.** A business may be reimbursed for up to \$2,500 of expenses incurred in connection with searching for a replacement location.
- 4 Fixed moving expenses payment.** A business may be eligible for a payment of not less than \$1,000 and not more than \$40,000 in place of an actual moving expense payment. This often is referred to as an "in lieu" payment. The payment amount is based on average annual net earnings of the business. **There are additional eligibility requirements for this payment which are described in the regulations at 49 CFR 24.305.**

*Note: We want to reiterate that if you undertake a federally assisted project requiring the displacement of persons, businesses, farms, or non-profit organizations and you do not have the technical expertise to administer the Relocation Assistance Program, we strongly recommend contacting your SDOT for assistance, or referral to training opportunities.*

## NOTES:

**TYPICAL RELOCATION PROCESS UNDER THE UNIFORM ACT**



**NOTES:**



## VIII. PROPERTY MANAGEMENT

Whenever a new highway is built, and often when an existing one is widened or otherwise modified, it is necessary to acquire land for the intended construction. For various reasons, there usually is an interim period between the acquisition of the land and construction. Acquired land and any accompanying improvements are valuable resources which must be protected and often can be productive during this interim. Even after construction is completed, attention must be paid to acquired land to ensure the safe and effective functioning of the highway facility and to protect the public and its investment.

The administration of acquired land and improvements is called property management. It includes activities such as maintenance and protection of the right-of-way, rental or leasing of acquired property, disposal of property no longer needed for the highway, and others discussed later in this chapter. Many of these activities provide opportunities for a State or local government to generate revenue which may be used for highway-related activities.

As a project proceeds from the planning stage through the acquisition of property, the relocation of right-of-way occupants, the construction of the facility, and then to the operation of the completed highway; property management is an ongoing concern. For example, well before negotiations to acquire real property have begun, the acquiring agency should consider and determine whether improvements can be moved so that, if appropriate, it may offer an owner the opportunity to retain and remove them. At the other end of the spectrum, even after construction of the highway is completed, the agency still will have property management responsibilities. Examples include ensuring the safety of the highway by preventing encroachments, protecting access control, disposing of excess land, and renting property excess to current project needs.

In administering acquired land and improvements, you should be guided by the twin goals of serving the public interest and maximizing public benefit. Keeping these goals in mind is helpful when decisions must be made concerning situations in which the rules are not clear-cut or the circumstances are ambiguous.

For discussion purposes, we have divided property management activities into those which occur before the project is closed out (financially) and those which occur thereafter.



## PROPERTY MANAGEMENT FROM ACQUISITION TO PROJECT CLOSEOUT

### ADMINISTRATION

As in any activity, proper administration is a minimum requirement. The administration of acquired property includes a number of procedural activities and the records associated with them. In a very real sense, appropriate records are the backbone of the process.

An essential component of the record-keeping process is the property inventory. It is preferable that the property inventory include a record of all real property and improvements acquired for the project. The agency should prepare a pre-acquisition inventory covering every parcel to be acquired, including all land, structures, machinery, equipment, and fixtures. To document what is present, the inventory should be updated when physical possession of the real property occurs. Property management requires maintaining accounting records of the expenses and receipts relating to the use (by lease or rental agreement), demolition, removal or disposal (by sale) of acquired real property and related improvements.

*Note: Your SDOT should be contacted for information regarding treatment of revenue from property management activities.*

Another important area involves the maintenance and security of acquired property. As noted above, acquired property is a valuable resource requiring protection from vandalism, encroachment, or other misuse. Even more importantly, the agency must take measures to insure public safety between acquisition and the completion of the highway. Therefore, it is necessary for the agency to inspect the property at appropriate intervals. Additional areas of concern include procedures for hiring contractors (including for the management of real property - see the section on FHWA contracting requirements in Chapter IV, Administrative Matters), the preservation and/or disposal of improvements, and rodent control.

## INTERIM LEASING

If real property is not needed immediately for construction, it may be advantageous for the agency to rent or lease it. This provides revenue to the project and, often, an extra measure of security. Interim leasing is permissible only when the construction schedule permits. Typically, it involves renting property back to previous owners/occupants, which may have the added benefit of assisting with the timing of relocation and/or other project activities. Such properties generally are rented for a short term and the rent charged should be appropriate for short-term occupancy. The Federal share of net income from such leases shall be credited to an account and used for Title 23 eligible projects.

Leases should include the following conditions in order to protect the project's/agency's interests in the property:

- Tenant assurances that the rented property will not be transferred, assigned, or conveyed without approval from the acquiring agency.
- Provisions that allow the lease to be revoked if substandard conditions are not corrected within a specified time frame.
- Provisions requiring the tenant to purchase adequate insurance.
- Provisions allowing inspection of the rental property at specific intervals or on an as-needed basis.
- Provisions assuring that the use of the rental property will not interfere with project activities or the eventual intended use of the highway facility.
- Provisions ensuring that those who are not eligible to receive relocation assistance benefits at the initiation of negotiations will not gain eligibility to receive relocation assistance benefits when they are required to move from the rental property.

## RIGHT-OF-WAY CLEARANCE

If structures, utilities, equipment, or other impediments to construction are present on the property to be acquired, they must be cleared before construction may begin. Clearance may be accomplished in a variety of different ways - as part of the construction contract for building the highway, or through a separate demolition/ removal contract, owner retention and removal, negotiated sale, auction, or another method. An important aspect of clearing the property is the relocation of occupants which is discussed in greater detail in Chapter VII, Relocation. As a rule, occupants must be relocated before bids for construction of the highway facility may be advertised.

Depending on the agency that will administer the construction contract and whether Federal funding is utilized there are requirements for the agency acquiring the right-of-way to prepare right-of-way and utility certifications prior to advertising for construction.

Within a short time following the completion of the highway's construction, the project will be financially closed out. When the highway facility is open to traffic, it enters its operational phase.

## PROPERTY MANAGEMENT AFTER PROJECT CLOSEOUT

Even after the project has been closed out financially, the need for property management continues in order to protect the traveling public and its investment in the highway. This includes functions which occurred during the pre-closeout phase (such as leasing) and some new activities, such as excess property disposal and protection of access control.

### POST-CLOSEOUT FUNCTIONS

Once a highway facility is open to traffic, decisions about leasing property and preventing inappropriate uses of the right-of-way take on an added dimension. Each use of the right-of-way for other than highway purposes must be weighed against the maintenance of highway capacity and safety. Uses which were permissible before operations began may no longer be acceptable.

A number of functions typically occur after closeout. One of these is the disposal of excess property. After the highway has begun operations, it may become clear that some of the property acquired for the highway is not needed currently and will not be needed in the foreseeable future. The agency should maintain an inventory of such "excess properties." Excess property may be disposed of but FHWA policy puts some limitations on the disposal.

If the property is sold to a private party, the acquiring agency must charge a minimum of fair market value, although there can be exceptions for social, economic, or environmental purposes. The Federal share of the sale proceeds (see the section on Cost-Sharing/Credits in Chapter IV, Administrative Matters) may be retained but must be used for activities eligible under Title 23 U.S.C. Highways. However, if a disposal is made to a government entity for public purposes, the disposal may be made without charge.

One special type of disposal involves the disposal of access control, i.e., opening access to the highway facility at a point or points where it has been prohibited. This is a matter with very serious potential implications for the safety and capacity of the highway.

*Note: If your agency wishes to dispose of access control, you must seek prior approval from your SDOT.*

Another post-closeout function is the leasing of real property. As in the pre-closeout phase, leasing is a potential source of revenue. The decision to permit leasing is dependent on the agency's determination that it will not interfere with the safety of the traveling public or adversely affect the highway's capacity. You must charge fair market value for leases, but, once again, there can be exceptions for social, economic, or environmental purposes. As with the disposal of excess property, the income from leasing after closeout may be used by your agency for activities eligible under the title 23 federal-aid highway program. Once again, prior FHWA approval is required for the leasing of right-of-way on interstate highways.

## **NOTES:**

**NOTES:**

## GLOSSARY

**(Fixed Residential Moving Cost) Schedule** This schedule is used to calculate the amount of reimbursement that displaced persons may be eligible to receive if they decide to move their own personal property. We (FHWA) periodically update and distribute this schedule. A copy can be found on our web site [Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended - Relocation - Uniform Act - Real Estate - FHWA](#) in the section *Relocation Assistance*.

**30-Day Notice** This is a notice that may be given to a person who will be required to move a residence, business or personal property as a result of your agency's project. It informs the person that he or she must move the residence, business or personal property 30 days from the date of the notice. This notice can only be given after you give a 90-day notice.

**Access Control** Power of Government to restrict/control a property owner's right to create entrances and exits on a public road. After a roadway is designed, built, and in use, there will be instances in which someone will request permission to create a driveway or entrance onto the roadway. These requests require consideration of local access control regulations, potential impacts to the roadway, and safety and capacity (ability of roadway to carry the additional traffic), that a new entrance will create. You should consult with your SDOT and/or your local engineering staff when considering a request.

**Acquisition** The activities to obtain an interest in, and possession of, real property necessary to construct or support your project.

**Actual Moving Expenses** The costs that are paid to disconnect, move and reinstall personal property. These costs are usually associated with the move of a business. A complete list of costs eligible for Federal reimbursement can be found in 49 CFR 24 301 and 303.

**Actual Direct Loss of Tangible Personal Property** Businesses and farms which move as a result of having their real estate acquired sometimes elect not to move some of their personal property. They may be eligible to receive a payment for this personal property. See 49 CFR 24.301(g)(14) for a complete explanation of how an Actual Direct Loss of Tangible Personal Property payment is calculated.

**After Appraisal** Part of the appraisal of a property from which only a portion of that property is acquired for the planned project. This type of acquisition is often referred to as a "partial acquisition." That portion which is valued "after" the acquisition is sometimes referred to as the "remainder" or "remaining parcel." The After Value takes into account the effects of the partial acquisition and any effects (negative or positive) that it may have on the value of the remainder.

**Alternate Dispute Resolution (ADR)** A range of different forums and processes which can be utilized to resolve a dispute. We focus on two forms of ADR in this guide which might be used to negotiate a settlement: administrative settlements and mediation.

**Approaches to Value (Cost, Income Capitalization & Sales Comparison)** Cost, Income Capitalization and Sales Comparison are the three approaches an appraiser can use to estimate the value of a property. The Cost approach estimates the value of a property by adding the value of the land plus estimated cost to construct/replace the improvement and then subtracting the estimated amount of depreciation from the current structure. The Income Capitalization approach estimates a property's capacity to generate income over a period of time and then converts that income into an estimate of the present value of the property. The Sales Comparison approach estimates the value of a property by comparing similar properties which have sold recently (comparables) and then making adjustments to the sale price of the comparables to account for differing characteristics.

**Approved Appraisal** - An appraisal must be approved by an official of your agency before it can be used as the basis for offering a property owner your agency's estimate of just compensation. The approval process involves having the appraisal reviewed by either a knowledgeable agency official who can then approve the appraisal, or a contract review appraiser who cannot approve the appraisal but can recommend approval to an agency official.

**Before Appraisal** Part of the appraisal of an affected property which estimates the value of the property as it is before the acquisition. Law and regulations typically require that this estimate of value cannot include any increase or decrease in the value of the property which results from the planned or anticipated project.

**Cost of Substitute Personal Property (Relocation Assistance)** In some instances a business or farm owner who has to move his or her personal property as a result of your project may decide to replace some items of personal property instead of moving them. The property owner may receive some reimbursement for replacing these items of personal property at the site to which he or she moves. An explanation of how to calculate the reimbursement a property owner is eligible to receive can be found at 49 CFR 24.301(g)(16).

**Cost (appraisal approach)** Cost, Income Capitalization and Sales Comparison are the three approaches an appraiser can use to estimate the value of a property. The Cost approach estimates the value of a property by adding the value of the land plus estimated cost to construct/replace the improvement and then subtracting the estimated amount of depreciation from the current structure.

**Damages** In some instances when your agency acquires a part of a person's property, the acquisition, planned use, or construction may cause a loss in value of the remaining property (damages may also extend to adjoining properties in which the property owner has an interest). Normally, the value of the damage is based on a before and after appraisal or on

the cost to cure. An owner is entitled to payment of damages and receives this payment as a part of the payment of just compensation.

**Disconnect Costs** When a business or farm owner has to move his personal property as a result of your project he may be eligible to receive reimbursement for the cost to disconnect, dismantle and remove his personal property. See 49 CFR 24.301(g)(3) for a list of federally reimbursable disconnect costs.

**Encroachments** A situation which usually occurs when items such as a house, sign or well are discovered to be on your agency's property (right-of-way, etc.) illegally or without permission.

**Fair Market Value** - The price which a willing buyer will pay a willing seller for a piece of real estate. The above definition is only a general definition. You should note that the exact definition of fair market value depends on where (the jurisdiction) the property being bought or sold is located, on state/local case law and on other state/local legal issues.

**Federally Assisted Project** A federally assisted project is one which receives Federal reimbursement or payment of some project expenses such as planning, construction, right-of-way acquisition, and property management. As a local public agency you usually receive Federal financial assistance from your State Department of Transportation and in some instances directly from the Federal government.

**Functionally equivalent** Term used to describe how the replacement dwelling offered to a displaced person is to compare to the displacement dwelling in regard to performing the same function, and providing the same utility. While it need not possess every feature of the displacement dwelling, the principal features must be present.

**Highest and Best Use** The legal use (or development/redevelopment) of a property which makes it most valuable to a buyer or the market.

**Incidental Expenses (settlement expenses)** This is a reimbursement for some settlement expenses that a residential property owner may receive after he or she buys a dwelling to replace the one that your agency acquired. A complete list of eligible expenses can be found at 49 CFR 24.401(e)(1-9).

**Increased Mortgage Interest Costs** This is a payment that a residential property owner may be eligible to receive to offset the increased cost of getting a mortgage on a dwelling to replace the dwelling that your agency acquired. An explanation of how to determine if a property owner is eligible to receive this reimbursement and how to calculate the payment can be found at 49 CFR 24.401(d).

**Just Compensation** The payment (to a property owner) your agency must make in order to acquire property for a federally funded or federally assisted project. The payment includes



the value of the real estate acquired and any damages caused to the remainder of the property by the acquisition and/or construction.

**Lease** A lease is an agreement between a landlord, property owner or property manager and a tenant. The agreement covers issues such as rental amount and length of time the lease is in effect. The rental amount may include or exclude property taxes, garbage pickup fees, utility costs, property maintenance and other expenses.

**Local Public Agency Coordinator** A number of State Departments of Transportation have appointed someone to act as a contact and coordinator for activities carried out by local public agencies in their State. The coordinator is a focal point for information on applicable laws, rules, regulations, policies and procedures which a local public agency must follow when using Federal funds in any part of a project.

**Minimum Qualifications of Appraisers** The criteria that an agency uses to determine which appraisers or review appraisers are qualified based on experience, State licenses or State certifications to perform specific appraisal and review assignments. This list is created by your agency or can be obtained from your State Department of Transportation. Additional information on minimum qualifications of appraisers can be found at 49 CFR 24.103(d) - *Qualifications of appraisers and review appraisers*.

**Minimum Standards** A set of requirements which specifies what information must be included in an appraisal report and the formats which are acceptable to use for preparing the appraisal report. Additional information on minimum standards can be found in 49 CFR 24.103(a) - *Appraisal requirements*.

**Mobile home** The term mobile home includes manufactured homes and recreational vehicles used as residences (See Appendix A, § 24.2(a)(17)).

**Negotiation** This is the primary method for acquiring property for your project. It involves explaining items such as details of construction, your agency's offer of just compensation and what just compensation is. A property owner must have these details in order to consider your agency's offer. The negotiation process involves listening to the property owner and determining the best way (negotiated settlement/administrative settlement) to reach an agreement for the sale of property. You should contact your LPA coordinator or SDOT to determine how the administrative settlement (negotiated settlement) approval process works.

**NEPA - National Environmental Policy Act of 1969 (NEPA)** NEPA applies to all Federal agencies and most of the activities they manage, regulate or fund that affect the environment. It requires all agencies to disclose and consider the environmental implications of their proposed actions. In most instances Federal aid for local public agency projects is given out by the State (or your SDOT). If your project will use any Federal funds you will have to comply with NEPA requirements. Information on NEPA and Federal Aid project requirements can be found in the regulations at 23 CFR 771.

**Personal Property** In general refers to property that can be moved. It is not permanently attached to, or a part of, the real estate. For example, if your agency purchases a strip of property and that strip has a dog house on it, in most cases the dog house would be personal property. An example of business personal property may be desks and chairs. If you need information or assistance in determining what makes up personal property under your State and local laws you should contact your LPA coordinator or legal counsel.

**Personalty** Refers to items which are determined to be personal property.

**Preferred Alignment** As part of the planning process, an agency identifies a number of project possibilities including no-build and several alternate alignments and then determines which of the possibilities appears to be most feasible. This is usually the agency's preferred alignment. If your agency will use any Federal funds in its project, then it must follow NEPA process requirements in order to determine which alternative will be used by your agency.

**Realty** Refers to items which are determined to be real property.

**Reestablishment Expenses** A business, farm or non-profit organization may be eligible to receive reimbursement for some of its expenses related to relocating and reestablishing when it is required to move for a federally-aided project. A list of expenses which are reimbursable can be found at 49 CFR 24.304.

**Regulatory (Federal Aid program)** This refers to the regulations which tell how the Federal aid highway program is administered. The primary regulations for right-of-way real property acquisition, relocation, appraisal, property management, junkyard control, outdoor advertising and property management are 23 CFR 710, 750, 751 and 49 CFR 24.

**Relocation Planning** A process for federally aided projects and programs which involve identifying and considering the potential impact created by displacing residences, farms, businesses and non-profit organizations and planning methods to minimize that impact. Information on relocation planning requirements can be found at 49 CFR 24.205.

**Statutory (Federal Aid program)** This refers to the laws passed by Congress which govern real estate acquisition activities for Federal and federally assisted programs and projects. The primary statute governing Federal and federally assisted real estate acquisition activities is the Uniform Act.

**Stipulated (Legal) Settlement** In instances in which condemnation proceedings have begun, parties can still negotiate, and in some instances, can agree to a settlement before their case is heard. To conclude the negotiation, the parties present the Judge or presiding authority their agreement to settle (which is called a stipulated settlement).

**Uneconomic remnant** The term 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 Agency has determined has little or no value or utility to the owner.

**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.

**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 49 CFR 24.102(c)(2) appraisal waiver provisions.

Website (Environmental Justice)

[https://www.fhwa.dot.gov/environment/environmental\\_justice/index.cfm](https://www.fhwa.dot.gov/environment/environmental_justice/index.cfm)

Website (Office of Real Estate Services) [https://www.fhwa.dot.gov/real\\_estate/index.cfm](https://www.fhwa.dot.gov/real_estate/index.cfm)

## THE UNIFORM ACT

Note: The following statute is from the Office of the Law Revision Counsel of the U.S. House of Representatives as of January 2008. You should check our website at <http://www.fhwa.dot.gov/hep/legreg.htm#1> to access the most current copy of the statute using the link to *Title 42, United States Code, Chapter 61, Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs*

42 USC, CHAPTER 61  
**UNIFORM RELOCATION ASSISTANCE  
 AND REAL PROPERTY ACQUISITION  
 POLICIES FOR FEDERAL AND  
 FEDERALLY ASSISTED PROGRAMS**  
 01/08/2008

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## SUBCHAPTER I - GENERAL PROVISIONS

### § 4601. Definitions

As used in this chapter –

(1) 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.

(2) The term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territory of the Pacific Islands, and any political subdivision thereof.

(3) 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 of 2 or more States or of 2 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.

(4) The term "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance, any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual, and any annual payment or capital loan to the District of Columbia.

(5) The term "person" means any individual, partnership, corporation, or association.

(6)(A) The term "displaced person" means, except as provided in subparagraph (B)

(i) any person who moves from real property, or moves his personal property from real property -

(I) as a direct result of a written notice of intent to acquire or the acquisition of such real property in whole or in part for a program or project undertaken by a Federal agency or with Federal financial assistance; or

(II) on which such person is a residential tenant or conducts a small business, a farm operation, or a business

defined in paragraph (7)(D), as a direct result of rehabilitation, demolition, or such other displacing activity as the lead agency may prescribe, under a program or project undertaken by a Federal agency or with Federal financial assistance in any case in which the head of the displacing agency determines that such displacement is permanent; and

(ii) solely for the purposes of sections 4622(a) and (b) and 4625 of this title, any person who moves from real property, or moves his personal property from real property -

(I) as a direct result of a written notice of intent to acquire or the acquisition of other real property, in whole or in part, on which such person conducts a business or farm operation, for a program or project undertaken by a Federal agency or with Federal financial assistance; or

(II) as a direct result of rehabilitation, demolition, or such other displacing activity as the lead agency may prescribe, of other real property on which such person conducts a business or a farm operation, under a program or project undertaken by a Federal agency or with Federal financial assistance where the head of the displacing agency determines that such displacement is permanent.

(B) The term "displaced person" does not include -

(i) a person who has been determined, according to criteria established by the head of the lead agency, to be either in unlawful occupancy of the displacement dwelling or to have occupied such dwelling for the purpose of obtaining assistance under this chapter;

(ii) in any case in which the displacing agency acquires property for a program or project, any person (other than a person who was an occupant of such property at the time it was acquired) who occupies such property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project.

(7) The term "business" means any lawful activity, excepting a farm operation, conducted primarily -

(A) for the purchase, sale, lease and

rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(B) for the sale of services to the public;  
 (C) by a nonprofit organization; or  
 (D) solely for the purposes of section 4622 of this title, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

(8) The term "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.

(9) The term "mortgage" means 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.

(10) The term "comparable replacement dwelling" means any dwelling that is

(A) decent, safe, and sanitary;  
 (B) adequate in size to accommodate the occupants;  
 (C) within the financial means of the displaced person;  
 (D) functionally equivalent;  
 (E) in an area not subject to unreasonable adverse environmental conditions; and  
 (F) in a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services, and the displaced person's place of employment.

(11) 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 Federal financial assistance, which causes a person to be a displaced person.

(12) The term "lead agency" means the

Department of Transportation.

(13) The term "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.

(Pub. L. 91-646, title I, Sec. 101, Jan. 2, 1971, 84 Stat. 1894; Pub. L. 100-17, title IV, Sec. 402, Apr. 2, 1987, 101 Stat. 246.)

#### REFERENCES IN TEXT

This chapter, referred to in introductory provision and par. (6)(B)(i), was in the original "this Act", meaning Pub. L. 91-646, Jan. 2, 1971, 84 Stat. 1894, known as the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

#### AMENDMENTS

1987 - Par. (1). Pub. L. 100-17, Sec. 402(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "The term 'Federal agency' means any department, agency, or instrumentality in the executive branch of the Government (except the National Capital Housing Authority), any wholly owned Government corporation (except the District of Columbia Redevelopment Land Agency), and the Architect of the Capitol, the Federal Reserve banks and branches thereof." Par. (3). Pub. L. 100-17, Sec. 402(b), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "The term 'State agency' means the National Capital Housing Authority, the District of Columbia Redevelopment Land Agency, and any department, agency, or instrumentality of a State or of a political subdivision of a State, or any department, agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States." Par. (4). Pub. L. 100-17, Sec. 402(c), inserted ", any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual," after "insurance". Par. (6). Pub. L. 100-17, Sec. 402(d), amended par. (6) generally. Prior to amendment, par. (6) read as follows: "The term 'displaced person' means any person who, on or after January 2, 1971, moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal

financial assistance; and solely for the purposes of sections 4622(a) and (b) and 4625 of this title, as a result of the acquisition of or as the result of the written order of the acquiring agency to vacate other real property, on which such person conducts a business or farm operation, for such program or project." Par. (7)(D). Pub. L. 100-17, Sec. 402(f), substituted "section 4622" for "section 4622(a)". Pars. (10) to (13). Pub. L. 100-17, Sec. 402(e), added pars. (10) to (13).

#### EFFECTIVE DATE OF 1987 AMENDMENT

Section 418 of title IV of Pub. L. 100-17 provided that: "The amendment made by section 412 of this title [amending section 4633 of this title] (to the extent such amendment prescribes authority to develop, publish, and issue regulations) shall take effect on the date of the enactment of this title [Apr. 2, 1987]. This title and the amendments made by this title [enacting section 4604 of this title, amending this section and sections 4621 to 4626, 4630, 4631, 4633, 4636, 4638, 4651, and 4655 of this title, repealing sections 4634 and 4637 of this title, and enacting provisions set out as a note under this section] (other than the amendment made by section 412 to such extent) shall take effect on the effective date provided in such regulations but not later than 2 years after such date of enactment."

#### EFFECTIVE DATE

Section 221 of Pub. L. 91-646 provided that: "(a) Except as provided in subsections (b) and (c) of this section, this Act and the amendments made by this Act [see Short Title note below] shall take effect on the date of its enactment [Jan. 2, 1971]. "(b) Until July 1, 1972, sections 210 and 305 [sections 4630 and 4655 of this title] shall be applicable to a State only to the extent that such State is able under its laws to comply with such sections. After July 1, 1972, such sections [sections 4630 and 4655 of this title] shall be completely applicable to all States. "(c) The repeals made by paragraphs (4) [repealing section 1606(b) of former Title 49, Transportation], (5) [repealing section 1465 of this title], (6) [repealing section 1415(7)(b)(iii) and (8) second sentence of this title], (8) [repealing section 3074 of this title], (9) [repealing section 3307(b), (c) of this title], (10) [repealing chapter 5 (sections 501-511) of Title 23, Highways], (11) [repealing provisions set out as notes under sections 501 and 510 of Title 23], and (12) of section 220(a) of this title and section 306 of title III [repealing sections 3071 to 3073 of this title, section 141 of Title 23, and section 596 of Title 33, Navigation and Navigable Waters] shall not apply to any State so long as sections 210 and 305 [sections 4630 and 4655 of this title] are not applicable in such State."

#### SHORT TITLE OF 1987 AMENDMENT

Section 401 of title IV of Pub. L. 100-17 provided that: "This title [enacting section 4604 of this title, amending this section and sections 4621 to 4626, 4630, 4631, 4633, 4636, 4638, 4651, and 4655 of this title, repealing sections 4634 and 4637 of this title, and enacting provisions set out as a note under this section] may be cited as the 'Uniform Relocation Act Amendments of 1987'."

#### SHORT TITLE

Section 1 of Pub. L. 91-646 provided: "That this Act [enacting this chapter, amending sections 1415, 2473, and 3307 of this title and section 1606 of former Title 49, Transportation, repealing sections 1465 and 3071 to 3074 of this title, section 2680 of Title 10, Armed Forces, sections 141 and 501 to 512 of Title 23, Highways, section 596 of Title 33, Navigation and Navigable Waters, sections 1231 to 1234 of Title 43, Public Lands, and enacting provisions set out as notes under this section and sections 4621 and 4651 of this title, and repealing provisions set out as notes under sections 501 and 510 of Title 23] may be cited as the 'Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970'."

#### TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

#### TREATMENT OF REAL PROPERTY BUYOUT PROGRAMS

Pub. L. 103-181, Sec. 4, Dec. 3, 1993, 107 Stat. 2055, provided that: "(a) Inapplicability of URA. - The purchase of any real property under a qualified buyout program shall not constitute the making of Federal financial assistance available to pay all or part of the cost of a program or project resulting in the acquisition of real property or in any owner of real property being a displaced person (within the meaning of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [42 U.S.C. 4601 et seq.]). "(b) Definition of 'Qualified Buyout Program'. - For purposes of this section, the term 'qualified buyout program' means any program that - "(1) provides for the purchase of only property damaged by the major, widespread flooding in the Midwest during 1993; "(2) provides for such purchase solely as a result of such flooding; "(3) provides for such acquisition without the use of the power of eminent domain and notification to the seller that acquisition is without the use of such power; "(4) is carried out by or through a State or unit of general local government; and "(5) is being assisted with amounts made available for - "(A)

disaster relief by the Federal Emergency Management Agency; or "(B) other Federal financial assistance programs." [For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.] [For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

#### § 4602. Effect upon property acquisition

(a) The provisions of section 4651 of this title create no rights or liabilities and shall not affect the validity of any property acquisitions by purchase or condemnation.

(b) Nothing in this chapter shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of value or of damage not in existence immediately prior to January 2, 1971.

(Pub. L. 91-646, title I, Sec. 102, Jan. 2, 1971, 84 Stat. 1895.)

#### § 4603. Additional appropriations for moving costs, relocation benefits and other expenses incurred in acquisition of lands for National Park System; waiver of benefits

(a) In all instances where authorizations of appropriations for the acquisition of lands for the National Park System enacted prior to January 9, 1971, do not include provisions therefor, there are authorized to be appropriated such additional sums as may be necessary to provide for moving costs, relocation benefits, and other expenses incurred pursuant to the applicable provisions of this chapter. There are also authorized to be appropriated not to exceed \$8,400,000 in addition to those authorized in Public Law 92-272 (86 Stat. 120) to provide for such moving costs, relocation benefits, and other related expenses in connection with the acquisition of lands

authorized by Public Law 92-272.

(b) Whenever an owner of property elects to retain a right of use and occupancy pursuant to any statute authorizing the acquisition of property for purposes of a unit of the National Park System, such owner shall be deemed to have waived any benefits under sections 4623, 4624, 4625, and 4626 of this title, and for the purposes of those sections such owner shall not be considered a displaced person as defined in section 4601(6) of this title.

(Pub. L. 93-477, title IV, Sec. 405, Oct. 26, 1974, 88 Stat. 1448.)

#### REFERENCES IN TEXT

Public Law 92-272, referred to in subsec. (a), is Pub. L. 92-272, Apr. 11, 1972, 86 Stat. 120, which to the extent classified to the Code, amended sections 284b, 428m, 459f-10, 460m-1, 460m-7 and 460t- 4 of Title 16, Conservation, and amended a provision set out as a note under section 450ll of Title 16. For complete classification of this Act to the Code, see Tables.

#### CODIFICATION

Section was not enacted as part of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 which comprises this chapter.

#### § 4604. Certification

##### (a) Acceptance of State agency certification

Notwithstanding sections 4630 and 4655 of this title, the head of a Federal agency may discharge any of his responsibilities under this chapter by accepting a certification by a State agency that it will carry out such responsibility, if the head of the lead agency determines that such responsibility will be carried out in accordance with State laws which will accomplish the purpose and effect of this chapter.

##### (b) Promulgation of regulations; notice and comment; consultation with local governments

(1) The head of the lead agency shall issue regulations to carry out this section.

(2) Repealed. Pub. L. 104-66, title I, Sec. 1121(f), Dec. 21, 1995, 109 Stat. 724.

(3) Before making a determination regarding any State law under subsection (a) of this section, the head of the lead agency shall provide interested parties with an opportunity for public review and comment. In particular, the head of the lead agency shall consult with interested local general purpose governments within the State on



the effects of such State law on the ability of local governments to carry out their responsibilities under this chapter.

**(c) Effect of noncompliance with certification or with applicable law**

(1) The head of a Federal agency may withhold his approval of any Federal financial assistance to or contract or cooperative agreement with any displacing agency found by the Federal agency to have failed to comply with the laws described in subsection (a) of this section.

(2) After consultation with the head of the lead agency, the head of a Federal agency may rescind his acceptance of any certification under this section, in whole or in part, if the State agency fails to comply with such certification or with State law.

(Pub. L. 91-646, title I, Sec. 103, as added Pub. L. 100-17, title IV, Sec. 403, Apr. 2, 1987, 101 Stat. 248; amended Pub. L. 104-66, title I, Sec. 1121(f), Dec. 21, 1995, 109 Stat. 724.)

**AMENDMENTS**

1995 - Subsec. (b)(2). Pub. L. 104-66 struck out par. (2) which read as follows: "The head of the lead agency shall, in coordination with other Federal agencies, monitor from time to time, and report biennially to the Congress on, State agency implementation of this section. A State agency shall make available any information required for such purpose."

**EFFECTIVE DATE**

Section effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100-17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100-17, set out as an Effective Date of 1987 Amendment note under section 4601 of this title.

**§ 4605. Displaced persons not eligible for assistance**

**(a) In general**

Except as provided in subsection (c) of this section, a displaced person shall not be eligible to receive relocation payments or any other assistance under this chapter if the displaced person is an alien not lawfully present in the United States.

**(b) Determinations of eligibility**

**(1) Promulgation of regulations**

Not later than 1 year after November 21, 1997, after providing notice and an opportunity for public comment, the head of the lead agency shall promulgate regulations to carry out subsection (a) of this section.

**(2) Contents of regulations**

Regulations promulgated under paragraph

(1) shall -

(A) prescribe the processes, procedures, and information that a displacing agency must use in determining whether a displaced person is an alien not lawfully present in the United States;

(B) prohibit a displacing agency from discriminating against any displaced person;

(C) ensure that each eligibility determination is fair and based on reliable information; and

(D) prescribe standards for a displacing agency to apply in making determinations relating to exceptional and extremely unusual hardship under subsection (c) of this section.

**(c) Exceptional and extremely unusual hardship**

If a displacing agency determines by clear and convincing evidence that a determination of the ineligibility of a displaced person under subsection (a) of this section would result in exceptional and extremely unusual hardship to an individual who is the displaced person's spouse, parent, or child and who is a citizen of the United States or an alien lawfully admitted for permanent residence in the United States, the displacing agency shall provide relocation payments and other assistance to the displaced person under this chapter if the displaced person would be eligible for the assistance but for subsection (a) of this section.

**(d) Limitation on statutory construction**

Nothing in this section affects any right available to a displaced person under any other provision of Federal or State law.

(Pub. L. 91-646, title I, Sec. 104, as added Pub. L. 105-117, Sec. 1, Nov. 21, 1997, 111 Stat. 2384.)

## SUBCHAPTER II - UNIFORM RELOCATION ASSISTANCE

### § 4621. Declaration of findings and policy

#### (a) Findings

The Congress finds and declares that -

(1) displacement as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance is caused by a number of activities, including rehabilitation, demolition, code enforcement, and acquisition;

(2) relocation assistance policies must provide for fair, uniform, and equitable treatment of all affected persons;

(3) the displacement of businesses often results in their closure;

(4) minimizing the adverse impact of displacement is essential to maintaining the economic and social well-being of communities; and

(5) implementation of this chapter has resulted in burdensome, inefficient, and inconsistent compliance requirements and procedures which will be improved by establishing a lead agency and allowing for State certification and implementation.

#### (b) Policy

This subchapter establishes a uniform policy for the fair and equitable treatment of persons displaced as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance. The primary purpose of this subchapter is to ensure that such persons shall not suffer disproportionate injuries as a result of programs and projects designed for the benefit of the public as a whole and to minimize the hardship of displacement on such persons.

#### (c) Congressional intent

It is the intent of Congress that -

(1) Federal agencies shall carry out this subchapter in a manner which minimizes waste, fraud, and mismanagement and reduces unnecessary administrative costs borne by States and State agencies in providing relocation assistance;

(2) uniform procedures for the administration of relocation assistance shall, to the maximum extent feasible, assure that the unique circumstances of any displaced person are taken into account and that persons in

essentially similar circumstances are accorded equal treatment under this chapter;

(3) the improvement of housing conditions of economically disadvantaged persons under this subchapter shall be undertaken, to the maximum extent feasible, in coordination with existing Federal, State, and local governmental programs for accomplishing such goals; and

(4) the policies and procedures of this chapter will be administered in a manner which is consistent with fair housing requirements and which assures all persons their rights under title VIII of the Act of April 11, 1968 (Public Law 90-284), commonly known as the Civil Rights Act of 1968 [42 U.S.C. 3601 et seq.], and title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.].

(Pub. L. 91-646, title II, Sec. 201, Jan. 2, 1971, 84 Stat. 1895; Pub. L. 100-17, title IV, Sec. 404, Apr. 2, 1987, 101 Stat. 248.)

#### REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(5) and (c)(2), (4), was in the original "this Act", meaning Pub. L. 91-646, Jan. 2, 1971, 84 Stat. 1894, known as the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, which enacted this chapter, amended sections 1415, 2473, and 3307 of this title and section 1606 of former Title 49, Transportation, repealed sections 1465 and 3071 to 3074 of this title, section 2680 of Title 10, Armed Forces, sections 141 and 501 to 512 of Title 23, Highways, section 596 of Title 33, Navigation and Navigable Waters, sections 1231 to 1234 of Title 43, Public Lands, and enacted provisions set out as notes under sections 4601, 4621, and 4651 of this title and under section 501 of Title 23. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of this title and Tables.

This subchapter, referred to in subsecs. (b) and (c)(1), (3), was in the original "this title", meaning title II of Pub. L. 91-646, Jan. 2, 1971, 84 Stat. 1895, which enacted this subchapter, amended sections 1415, 2473, and 3307 of this title and section 1606 of former Title 49, repealed sections 1465 and 3074 of this title, section 2680 of Title 10, sections 501 to 512 of Title 23, sections 1231 to 1234 of Title 43, and enacted provisions set out as notes under sections 4601 and 4621 of this title and under sections 501 to 512 of Title 23. For complete classification of title II to the Code, see Tables.

Title VIII of the Act of April 11, 1968 (Public Law 90-284), commonly known as the Civil Rights Act of

1968, referred to in subsec. (c)(4), is title VIII of Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 81, as amended, known as the Fair Housing Act, which is classified principally to subchapter I (Sec. 3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (c)(4), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (Sec. 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

#### AMENDMENTS

1987 - Pub. L. 100-17 substituted "Declaration of findings and policy" for "Declaration of policy" in section catchline and amended text generally. Prior to amendment, text read as follows: "The purpose of this subchapter is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole."

#### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100-17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100-17, set out as a note under section 4601 of this title.

#### SAVINGS PROVISION

Section 220(b) of Pub. L. 91-646 provided that: "Any rights or liabilities now existing under prior Acts or portions thereof shall not be affected by the repeal of such prior Acts or portions thereof under subsection (a) of this section [repealing sections 1415(7)(b)(iii), (8) second sentence, 1465, 2473(b)(14), 3074, and 3307(b), (c) of this title, section 2680 of Title 10, Armed Forces, sections 501 to 512 of Title 23, Highways, sections 1231 to 1234 of Title 43, Public Lands, and section 1606(b) of former Title 49, Transportation, and provisions set out as notes under sections 501 and 511 of Title 23]."

### § 4622. Moving and related expenses

#### (a) General provision

Whenever a program or project to be undertaken by a displacing agency will result in

the displacement of any person, the head of the displacing agency shall provide for the payment to the displaced person of -

(1) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;

(2) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the head of the agency;

(3) actual reasonable expenses in searching for a replacement business or farm; and

(4) actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new site, but not to exceed \$25,000.

#### (b) Displacement from dwelling; election of payments; expense and dislocation allowance

Any displaced person eligible for payments under subsection (a) of this section who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (a) of this section may receive an expense and dislocation allowance, which shall be determined according to a schedule established by the head of the lead agency.

#### (c) Displacement from business or farm operation; election of payments; minimum and maximum amounts; eligibility

Any displaced person eligible for payments under subsection (a) of this section who is displaced from the person's place of business or farm operation and who is eligible under criteria established by the head of the lead agency may elect to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (a) of this section. Such payment shall consist of a fixed payment in an amount to be determined according to criteria established by the head of the lead agency, except that such payment shall not be less than \$1,000 nor more than \$40,000. A person whose sole business at the displacement dwelling is the rental of such property to others shall not qualify for a payment under this subsection

**(d) Certain utility relocation expenses**

(1) Except as otherwise provided by Federal law –

(A) if a program or project (i) which is undertaken by a displacing agency, and (ii) the purpose of which is not to relocate or reconstruct any utility facility, results in the relocation of a utility facility;

(B) if the owner of the utility facility which is being relocated under such program or project has entered into, with the State or local government on whose property, easement, or right-of-way such facility is located, a franchise or similar agreement with respect to the use of such property, easement, or right-of-way; and

(C) if the relocation of such facility results in such owner incurring an extraordinary cost in connection with such relocation;

the displacing agency may, in accordance with such regulations as the head of the lead agency may issue, provide to such owner a relocation payment which may not exceed the amount of such extraordinary cost (less any increase in the value of the new utility facility above the value of the old utility facility and less any salvage value derived from the old utility facility).

(2) For purposes of this subsection, the term -

(A) "extraordinary cost in connection with a relocation" means any cost incurred by the owner of a utility facility in connection with relocation of such facility which is determined by the head of the displacing agency, under such regulations as the head of the lead agency shall issue -

(i) to be a non-routine relocation expense;

(ii) to be a cost such owner ordinarily does not include in its annual budget as an expense of operation; and

(iii) to meet such other requirements as the lead agency may prescribe in such regulations; and

(B) "utility facility" means -

(i) any electric, gas, water, steam power, or materials transmission or distribution system;

(ii) any transportation system;

(iii) any communications system

(including cable television); and

(iv) any fixtures, equipment, or other property associated with the operation, maintenance, or repair of any such system;

located on property which is owned by a State or local government or over which a State or local government has an easement or right-of-way. A utility facility may be publicly, privately, or cooperatively owned.

(Pub. L. 91-646, title II, Sec. 202, Jan. 2, 1971, 84 Stat. 1895; Pub. L. 100-17, title IV, Sec. 405, Apr. 2, 1987, 101 Stat. 249.)

**AMENDMENTS**

1987 - Subsec. (a). Pub. L. 100-17, Sec. 405(a)(1), inserted introductory provisions and struck out former introductory provisions which read as follows: "Whenever the acquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement of any person on or after January 2, 1971, the head of such agency shall make a payment to any displaced person, upon proper application as approved by such agency head, for -".

Subsec. (a)(4). Pub. L. 100-17, Sec. 405(a)(2)-(4), added par. (4)

Subsec. (b). Pub. L. 100-17, Sec. 405(b), substituted "an expense and dislocation allowance, which shall be determined according to a schedule established by the head of the lead agency" for "a moving expense allowance, determined according to a schedule established by the head of the Federal agency, not to exceed \$300; and a dislocation allowance of \$200".

Subsec. (c). Pub. L. 100-17, Sec. 405(c), amended subsec. (c) generally. Prior to amendment, subsec.

(c) read as follows: "Any displaced person eligible for payments under subsection (a) of this section who is displaced from his place of business or from his farm operation and who elects to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (a) of this section, may receive a fixed payment in an amount equal to the average annual net earnings of the business or farm operation, except that such payment shall be not less than \$2,500 nor more than \$10,000. In the case of a business no payment shall be made under this subsection unless the head of the Federal agency is satisfied that the business (1) cannot be relocated without a substantial loss of its existing patronage, and (2) is not a part of a commercial enterprise having at least one other establishment not being acquired by the United States, which is engaged in the same or

similar business. For purposes of this subsection, the term 'average annual net earnings' means one-half of any net earnings of the business or farm operation, before Federal, State, and local income taxes, during the two taxable years immediately preceding the taxable year in which such business or farm operation moves from the real property acquired for such project, or during such other period as the head of such agency determines to be more equitable for establishing such earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such period."

Subsec. (d). Pub. L. 100-17, Sec. 405(d), added subsec. (d).

#### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100-17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100-17, set out as a note under section 4601 of this title.

### § 4623. Replacement housing for homeowner; mortgage insurance

(a)(1) In addition to payments otherwise authorized by this subchapter, the head of the displacing agency shall make an additional payment not in excess of \$31,000 to any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for not less than ninety days before the initiation of negotiations for the acquisition of the property. Such additional payment shall include the following elements:

(A) The amount, if any, which when added to the acquisition cost of the dwelling acquired by the displacing agency, equals the reasonable cost of a comparable replacement dwelling.

(B) The amount, if any, which will compensate such displaced person for any increased interest costs and other debt service costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired by the displacing agency was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than 180 days immediately prior to the initiation of negotiations for the acquisition of such dwelling.

(C) Reasonable expenses incurred by such displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.

(2) The additional payment authorized by this section shall be made only to a displaced person who purchases and occupies a decent, safe, and sanitary replacement dwelling within 1 year after the date on which such person receives final payment from the displacing agency for the acquired dwelling or the date on which the displacing agency's obligation under section 4625(c)(3) of this title is met, whichever is later, except that the displacing agency may extend such period for good cause. If such period is extended, the payment under this section shall be based on the costs of relocating the person to a comparable replacement dwelling within 1 year of such date.

(b) The head of any Federal agency may, upon application by a mortgagee, insure any mortgage (including advances during construction) on a comparable replacement dwelling executed by a displaced person assisted under this section, which mortgage is eligible for insurance under any Federal law administered by such agency notwithstanding any requirements under such law relating to age, physical condition, or other personal characteristics of eligible mortgagors, and may make commitments for the insurance of such mortgage prior to the date of execution of the mortgage.

(Pub. L. 91-646, title II, Sec. 203, Jan. 2, 1971, 84 Stat. 1896; Pub. L. 100-17, title IV, Sec. 406, Apr. 2, 1987, 101 Stat. 251.)

#### AMENDMENTS

1987 - Subsec. (a)(1). Pub. L. 100-17, Sec. 406(1)-(3), substituted "displacing agency" for "Federal agency" and "\$22,500" for "\$15,000" in introductory provisions, and in subpar. (A) "acquired by the displacing agency, equals the reasonable cost of a comparable replacement dwelling" for "acquired by the Federal agency, equals the reasonable cost of a comparable replacement dwelling which is a decent, safe, and sanitary dwelling adequate to accommodate such displaced person, reasonably accessible to public services and places of employment and available on the private market. All determinations required to carry out this subparagraph shall be made in accordance with standards established by the head of the Federal agency making the additional payment".

Subsec. (a)(1)(B). Pub. L. 100-17, Sec. 406(4), added subpar. (B) and struck out former subpar. (B) which read as follows: "The amount, if any, which will compensate such displaced person for any increased interest costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired by the Federal agency was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than one hundred and eighty days prior to the initiation of negotiations for the acquisition of such dwelling. Such amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located."

Subsec. (a)(2). Pub. L. 100-17, Sec. 406(5), added par. (2) and struck out former par. (2) which read as follows: "The additional payment authorized by this subsection shall be made only to such a displaced person who purchases and occupies a replacement dwelling which is decent, safe, and sanitary not later than the end of the one year period beginning on the date on which he receives from the Federal agency final payment of all costs of the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date."

#### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100-17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100-17, set out as a note under section 4601 of this title.

### § 4624. Replacement housing for tenants and certain others

(a) In addition to amounts otherwise authorized by this subchapter, the head of a displacing agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under section 4623 of this title which dwelling was actually and lawfully occupied by such displaced person for not less than 90 days immediately prior to (1) the initiation of negotiations for acquisition of such dwelling, or (2) in any case in which displacement is not a direct result of acquisition, such other event as the head of the

lead agency shall prescribe. Such payment shall consist of the amount necessary to enable such person to lease or rent for a period not to exceed 42 months, a comparable replacement dwelling, but not to exceed \$7,200. At the discretion of the head of the displacing agency, a payment under this subsection may be made in periodic installments. Computation of a payment under this subsection to a low-income displaced person for a comparable replacement dwelling shall take into account such person's income.

(b) Any person eligible for a payment under subsection (a) of this section may elect to apply such payment to a down payment on, and other incidental expenses pursuant to, the purchase of a decent, safe, and sanitary replacement dwelling. Any such person may, at the discretion of the head of the displacing agency, be eligible under this subsection for the maximum payment allowed under subsection (a) of this section.

(Pub. L. 91-646, title II, Sec. 204, Jan. 2, 1971, 84 Stat. 1897; Pub. L. 100-17, title IV, Sec. 407, Apr. 2, 1987, 101 Stat. 251.)

#### AMENDMENTS

1987 - Pub. L. 100-17 amended section generally, revising and restating as subsecs. (a) and (b) provisions formerly contained in introductory provisions and in pars. (1) and (2).

#### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100-17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100-17, set out as a note under section 4601 of this title.

### § 4625. Relocation planning, assistance coordination, and advisory services

#### (a) Planning of programs or projects undertaken by Federal agencies or with Federal financial assistance

Programs or projects undertaken by a Federal agency or with Federal financial assistance shall be planned in a manner that (1) recognizes, at an early stage in the planning of such programs or projects and before the commencement of any actions which will cause displacements, the problems associated with the displacement of individuals, families, businesses, and farm operations, and (2) provides for the resolution of such problems in order to minimize adverse

impacts on displaced persons and to expedite program or project advancement and completion.

**(b) Availability of advisory services**

The head of any displacing agency shall ensure that the relocation assistance advisory services described in subsection (c) of this section are made available to all persons displaced by such agency. If such agency head determines that any person occupying property immediately adjacent to the property where the displacing activity occurs is caused substantial economic injury as a result thereof, the agency head may make available to such person such advisory services.

**(c) Measures, facilities, or services; description**

Each relocation assistance advisory program required by subsection (b) of this section shall include such measures, facilities, or services as may be necessary or appropriate in order to -

(1) determine, and make timely recommendations on, the needs and preferences, if any, of displaced persons for relocation assistance;

(2) provide current and continuing information on the availability, sales prices, and rental charges of comparable replacement dwellings for displaced homeowners and tenants and suitable locations for businesses and farm operations;

(3) assure that a person shall not be required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a comparable replacement dwelling, except in the case of -

(A) a major disaster as defined in section 5122(2) of this title;

(B) a national emergency declared by the President; or

(C) any other emergency which requires the person to move immediately from the dwelling because continued occupancy of such dwelling by such person constitutes a substantial danger to the health or safety of such person;

(4) assist a person displaced from a business or farm operation in obtaining and becoming established in a suitable replacement location;

(5) supply

(A) information concerning other

Federal and State programs which may be of assistance to displaced persons, and

(B) technical assistance to such persons in applying for assistance under such programs; and

(6) provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation.

**(d) Coordination of relocation activities with other Federal, State, or local governmental actions**

The head of a displacing agency shall coordinate the relocation activities performed by such agency with other Federal, State, or local governmental actions in the community which could affect the efficient and effective delivery of relocation assistance and related services.

**(e) Selection of implementation procedures**

Whenever two or more Federal agencies provide financial assistance to a displacing agency other than a Federal agency, to implement functionally or geographically related activities which will result in the displacement of a person, the heads of such Federal agencies may agree that the procedures of one of such agencies shall be utilized to implement this subchapter with respect to such activities. If such agreement cannot be reached, then the head of the lead agency shall designate one of such agencies as the agency whose procedures shall be utilized to implement this subchapter with respect to such activities. Such related activities shall constitute a single program or project for purposes of this chapter.

**(f) Tenants occupying property acquired for programs or projects; eligibility for advisory services**

Notwithstanding section 4601(1) of this title, in any case in which a displacing agency acquires property for a program or project, any person who occupies such property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project shall be eligible for advisory services to the extent determined by the displacing agency.

(Pub. L. 91-646, title II, Sec. 205, Jan. 2, 1971, 84 Stat. 1897; Pub. L. 100-17, title IV, Sec. 408, Apr. 2, 1987, 101 Stat. 252.)

## AMENDMENTS

1987 - Pub. L. 100-17, substituted "Relocation planning, assistance coordination, and advisory services" for "Relocation assistance advisory services" in catch line and amended text generally, revising and restating as subsecs. (a) to (f) provisions formerly contained in subsecs. (a) to (d).

## EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100-17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100-17, set out as a note under section 4601 of this title.

**§ 4626. Housing replacement by Federal agency as last resort**

(a) If a program or project undertaken by a Federal agency or with Federal financial assistance cannot proceed on a timely basis because comparable replacement dwellings are not available, and the head of the displacing agency determines that such dwellings cannot otherwise be made available, the head of the displacing agency may take such action as is necessary or appropriate to provide such dwellings by use of funds authorized for such project. The head of the displacing agency may use this section to exceed the maximum amounts which may be paid under sections 4623 and 4624 of this title on a case-by-case basis for good cause as determined in accordance with such regulations as the head of the lead agency shall issue.

(b) No person shall be required to move from his dwelling on account of any program or project undertaken by a Federal agency or with Federal financial assistance, unless the head of the displacing agency is satisfied that comparable replacement housing is available to such person.

(Pub. L. 91-646, title II, Sec. 206, Jan. 2, 1971, 84 Stat. 1898; Pub. L. 100-17, title IV, Sec. 409, Apr. 2, 1987, 101 Stat. 253.)

## AMENDMENTS

1987 Subsec. (a). Pub. L. 100-17 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "If a Federal project cannot proceed to actual construction because comparable replacement sale or rental housing is not available, and the head of the Federal agency determines that such housing cannot otherwise be made available he may take such action as is necessary or appropriate to provide such housing by use of funds

authorized for such project."

Subsec. (b). Pub. L. 100-17 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "No person shall be required to move from his dwelling on or after January 2, 1971, on account of any Federal project, unless the Federal agency head is satisfied that replacement housing, in accordance with section 4625(c)(3) of this title, is available to such person."

## EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100-17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100-17, set out as a note under section 4601 of this title.

**§ 4627. State required to furnish real property incident to Federal assistance (local cooperation)**

Whenever real property is acquired by a State agency and furnished as a required contribution incident to a Federal program or project, the Federal agency having authority over the program or project may not accept such property unless such State agency has made all payments and provided all assistance and assurances, as are required of a State agency by sections 4630 and 4655 of this title. Such State agency shall pay the cost of such requirements in the same manner and to the same extent as the real property acquired for such project, except that in the case of any real property acquisition or displacement occurring prior to July 1, 1972, such Federal agency shall pay 100 per centum of the first \$25,000 of the cost of providing such payments and assistance.

(Pub. L. 91-646, title II, Sec. 207, Jan. 2, 1971, 84 Stat. 1898.)

**§ 4628. State acting as agent for Federal program**

Whenever real property is acquired by a State agency at the request of a Federal agency for a Federal program or project, such acquisition shall, for the purposes of this chapter, be deemed an acquisition by the Federal agency having authority over such program or project.

(Pub. L. 91-646, title II, Sec. 208, Jan. 2, 1971, 84 Stat. 1899.)

**§ 4629. Public works programs and projects of District of Columbia government and**



### Washington Metropolitan Area Transit Authority

Whenever real property is acquired by the government of the District of Columbia or the Washington Metropolitan Area Transit Authority for a program or project which is not subject to sections 4630 and 4631 of this title, and such acquisition will result in the displacement of any person on or after January 2, 1971, the Mayor of the District of Columbia or the Washington Metropolitan Area Transit Authority, as the case may be, shall make all relocation payments and provide all assistance required of a Federal agency by this chapter. Whenever real property is acquired for such a program or project on or after such effective date, such Mayor or Authority, as the case may be, shall make all payments and meet all requirements prescribed for a Federal agency by subchapter III of this chapter.

(Pub. L. 91-646, title II, Sec. 209, Jan. 2, 1971, 84 Stat. 1899; Pub. L. 93-198, title IV, Sec. 421, Dec. 24, 1973, 87 Stat. 789.)

#### REFERENCES IN TEXT

Subchapter III of this chapter, referred to in text, was in the original "title III of this Act", meaning title III of Pub. L. 91-646, Jan. 2, 1971, 84 Stat. 1904, which enacted subchapter III of this chapter, repealed sections 3071 to 3073 of this title, section 141 of Title 23, Highways, and section 596 of Title 33, Navigation and Navigable Waters, and enacted provisions set out as a note under section 4651 of this title. For complete classification of title III to the Code, see Tables.

#### CODIFICATION

Section is also set out in D.C. Code, Sec. 5-834(a).-TRANS-

#### TRANSFER OF FUNCTIONS

"Mayor" substituted for "Commissioner" pursuant to section 421 of Pub. L. 93-198. Office of Commissioner of District of Columbia, as established by Reorg. Plan No. 3 of 1967, abolished as of noon Jan. 2, 1975, by Pub. L. 93-198, title VII, Sec. 711, Dec. 24, 1973, 87 Stat. 818, and replaced by Office of Mayor of District of Columbia by section 421 of Pub. L. 93-198.

### § 4630. Requirements for relocation payments and assistance of federally assisted program; assurances of availability of housing

Notwithstanding any other law, the head of a

Federal agency shall not approve any grant to, or contract or agreement with, a displacing agency (other than a Federal agency), under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after January 2, 1971, unless he receives satisfactory assurances from such displacing agency that -

(1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under sections 4622, 4623, and 4624 of this title;

(2) relocation assistance programs offering the services described in section 4625 of this title shall be provided to such displaced persons;

(3) within a reasonable period of time prior to displacement, comparable replacement dwellings will be available to displaced persons in accordance with section 4625(c)(3) of this title.

(Pub. L. 91-646, title II, Sec. 210, Jan. 2, 1971, 84 Stat. 1899; Pub. L. 100-17, title IV, Sec. 410, Apr. 2, 1987, 101 Stat. 254.)

#### AMENDMENTS

1987 - Pub. L. 100-17 in introductory provisions substituted "displacing agency (other than a Federal agency)" for "State agency" and "assurances from such displacing agency" for "assurances from such State agency", and in par. (3) substituted "comparable replacement dwellings" for "decent, safe, and sanitary replacement dwellings".

#### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100-17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100-17, set out as a note under section 4601 of this title.

#### EFFECTIVE DATE

Section as completely applicable to all States after July 1, 1972, but until such date applicable to a State to extent the State is able under its laws to comply with this section, see section 221(b) of Pub. L. 91-646, set out as a note under section 4601 of this title.

### § 4631. Federal share of costs

**(a) Cost to displacing agency; eligibility**

The cost to a displacing agency of providing payments and assistance under this subchapter and subchapter III of this chapter shall be included as part of the cost of a program or project undertaken by a Federal agency or with Federal financial assistance. A displacing agency, other than a Federal agency, shall be eligible for Federal financial assistance with respect to such payments and assistance in the same manner and to the same extent as other program or project costs.

**(b) Comparable payments under other laws**

No payment or assistance under this subchapter or subchapter III of this chapter shall be required to be made to any person or included as a program or project cost under this section, if such person receives a payment required by Federal, State, or local law which is determined by the head of the Federal agency to have substantially the same purpose and effect as such payment under this section.

**(c) Agreements prior to January 2, 1971; advancements**

Any grant to, or contract or agreement with, a State agency executed before January 2, 1971, under which Federal financial assistance is available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after January 2, 1971, shall be amended to include the cost of providing payments and services under sections 4630 and 4655 of this title. If the head of a Federal agency determines that it is necessary for the expeditious completion of a program or project he may advance to the State agency the Federal share of the cost of any payments or assistance by such State agency pursuant to sections 4626, 4630, 4635, and 4655 of this title.

(Pub. L. 91-646, title II, Sec. 211, Jan. 2, 1971, 84 Stat. 1900; Pub. L. 100-17, title IV, Sec. 411, Apr. 2, 1987, 101 Stat. 254.)

## REFERENCES IN TEXT

Subchapter III of this chapter, referred to in subsecs. (a) and (b), was in the original "title III of this Act", meaning title III of Pub. L. 91-646, Jan. 2, 1971, 84 Stat. 1904, which enacted subchapter III of this chapter, repealed sections 3071 to 3073 of this title, section 141 of Title 23, Highways, and section 596 of Title 33, Navigation and Navigable Waters, and enacted provisions set out as a note under

section 4651 of this title. For complete classification of title III to the Code, see Tables.

## -AMENDMENTS

1987 - Subsec. (a). Pub. L. 100-17, Sec. 411(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows:

"The cost to a State agency of providing payments and assistance pursuant to sections 4626, 4630, 4635, and 4655 of this title, shall be included as part of the cost of a program or project for which Federal financial assistance is available to such State agency, and such State agency shall be eligible for Federal financial assistance with respect to such payments and assistance in the same manner and to the same extent as other program or project costs, except that, notwithstanding any other law in the case where the Federal financial assistance is by grant or contribution the Federal agency shall pay the full amount of the first \$25,000 of the cost to a State agency of providing payments and assistance for a displaced person under sections 4626, 4630, 4635, and 4655 of this title, on account of any acquisition or displacement occurring prior to July 1, 1972, and in any case where such Federal financial assistance is by loan, the Federal agency shall loan such State agency the full amount of the first \$25,000 of such cost."

Subsec. (b). Pub. L. 100-17, Sec. 411(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "No payment or assistance under section 4630 or 4655 of this title shall be required or included as a program or project cost under this section, if the displaced person receives a payment required by the State law of eminent domain which is determined by such Federal agency head to have substantially the same purpose and effect as such payment under this section, and to be part of the cost of the program or project for which Federal financial assistance is available."

## EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100-17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100-17, set out as a note under section 4601 of this title.

**§ 4632. Administration; relocation assistance in programs receiving Federal financial assistance**

In order to prevent unnecessary expenses and duplications of functions, and to promote uniform and effective administration of relocation assistance programs for displaced persons under

sections 4626, 4630, and 4635 of this title, a State agency may enter into contracts with any individual, firm, association, or corporation for services in connection with such programs, or may carry out its functions under this subchapter through any Federal or State governmental agency or instrumentality having an established organization for conducting relocation assistance programs. Such State agency shall, in carrying out the relocation assistance activities described in section 4626 of this title, whenever practicable, utilize the services of State or local housing agencies, or other agencies having experience in the administration or conduct of similar housing assistance activities.

(Pub. L. 91-646, title II, Sec. 212, Jan. 2, 1971, 84 Stat. 1900.)

### **§ 4633. Duties of lead agency**

#### **(a) General provisions**

The head of the lead agency shall -

(1) develop, publish, and issue, with the active participation of the Secretary of Housing and Urban Development and the heads of other Federal agencies responsible for funding relocation and acquisition actions, and in coordination with State and local governments, such regulations as may be necessary to carry out this chapter;

(2) provide, in consultation with the Attorney General (acting through the Commissioner of the Immigration and Naturalization Service), through training and technical assistance activities for displacing agencies, information developed with the Attorney General (acting through the Commissioner) on proper implementation of section 4605 of this title;

(3) ensure that displacing agencies implement section 4605 of this title fairly and without discrimination in accordance with section 4605(b)(2)(B) of this title;

(4) ensure that relocation assistance activities under this chapter are coordinated with low-income housing assistance programs or projects by a Federal agency or a State or State agency with Federal financial assistance;

(5) monitor, in coordination with other Federal agencies, the implementation and enforcement of this chapter and report to the

Congress, as appropriate, on any major issues or problems with respect to any policy or other provision of this chapter; and

(6) perform such other duties as may be necessary to carry out this chapter.

#### **(b) Regulations and procedures**

The head of the lead agency is authorized to issue such regulations and establish such procedures as he may determine to be necessary to assure -

(1) that the payments and assistance authorized by this chapter shall be administered in a manner which is fair and reasonable and as uniform as practicable;

(2) that a displaced person who makes proper application for a payment authorized for such person by this subchapter shall be paid promptly after a move or, in hardship cases, be paid in advance;

(3) that any aggrieved person may have his application reviewed by the head of the Federal agency having authority over the applicable program or project or, in the case of a program or project receiving Federal financial assistance, by the State agency having authority over such program or project or the Federal agency having authority over such program or project if there is no such State agency; and,

(4) that each Federal agency that has programs or projects requiring the acquisition of real property or causing a displacement from real property subject to the provisions of this Act shall provide to the lead agency an annual summary report that describes the activities conducted by the Federal agency.

#### **(c) Applicability to Tennessee Valley Authority and Rural Electrification Administration**

The regulations and procedures issued pursuant to this section shall apply to the Tennessee Valley Authority and the Rural Electrification Administration only with respect to relocation assistance under this subchapter and subchapter I of this chapter.

#### **(d) Adjustment of Payments**

The head of the lead agency may adjust, by regulation, the amounts of relocation payments provided under sections 202(a)(4), 202(c), 203(a) and 204(a) if the head of the lead agency

determines that cost of living, inflation, or other factors indicate that the payments should be adjusted to meet the policy objectives of this Act.

#### § 214. Agency Coordination

##### (a) Agency Capacity

Each Federal agency responsible for funding or carrying out relocation and acquisition activities shall have adequately trained personnel and such other resources as are necessary to manage and oversee the relocation and acquisition program of the Federal agency in accordance with this Act.

##### (b) Interagency Agreements

Not later than 1 year after the date of enactment of this section, each Federal agency responsible for funding relocation and acquisition activities (other than the agency serving as the lead agency) shall enter into a memorandum of understanding with the lead agency that

- (1) Provides for periodic training of the personnel of the Federal agency that provides Federal financial assistance, may include personnel of any displacing agency that receives financial assistance;
- (2) Addresses ways in which the lead agency may provide assistance and coordination to the Federal agency relating to compliance with the Act on a program or project basis; and
- (3) Addresses the funding of the training; assistance, and coordination activities provided by the lead agency, in accordance with the subsection (c)

##### (c) Interagency Payments

- (1) In General- For the fiscal year that begins 1 year after the date of enactment of this section, and each fiscal year thereafter, each Federal agency responsible for funding relocation and acquisition activities (other than the agency serving as the lead agency) shall transfer to the lead agency for the fiscal year, such funds as are necessary, but not less than \$35,000 to support the training, assistance, and coordination activities of the lead agency described in subsection (b).
- (2) Included Costs- The cost to a Federal agency of providing the funds described in paragraph (1) shall be included as part

of the costs of 1 or more programs or projects undertaken by the Federal agency or with Federal financial assistance that result in the displacement of persons or the acquisition of real property.

(Pub. L. 91-646, title II, Sec. 213, Jan. 2, 1971, 84 Stat. 1900; Pub. L. 100-17, title IV, Sec. 412, Apr. 2, 1987, 101 Stat. 254; Pub. L. 102-240, title I, Sec. 1055, Dec. 18, 1991, 105 Stat. 2002; Pub. L. 105-117, Sec. 2, Nov. 21, 1997, 111 Stat. 2385.)

#### AMENDMENTS

1997 - Subsec. (a)(2) to (6). Pub. L. 105-117 added pars. (2) and (3) and redesignated former pars. (2) to (4) as (4) to (6), respectively.

1991 - Subsec. (c). Pub. L. 102-240 inserted "and the Rural Electrification Administration" after "Tennessee Valley Authority".

1987 - Pub. L. 100-17 in amending section generally, substituted "Duties of lead agency" for "Regulations and procedures" in section catchline.

Subsec. (a). Pub. L. 100-17 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "In order to promote uniform and effective administration of relocation assistance and land acquisition of State or local housing agencies, or other agencies having programs or projects by Federal agencies or programs or projects by State agencies receiving Federal financial assistance, the heads of Federal agencies shall consult together on the establishment of regulations and procedures for the implementation of such programs."

Subsec. (b). Pub. L. 100-17 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "The head of each Federal agency is authorized to establish such regulations and procedures as he may determine to be necessary to assure –

"(1) that the payments and assistance authorized by this chapter shall be administered in a manner which is fair and reasonable, and as uniform as practicable;

"(2) that a displaced person who makes proper application for a payment authorized for such person by this subchapter shall be paid promptly after a move or, in hardship cases, be paid in advance; and

"(3) that any person aggrieved by a determination as to eligibility for a payment authorized by this chapter, or the amount of a payment, may have his application reviewed by the head of the Federal agency having authority over the applicable program or project, or in the case of a program or project receiving Federal financial assistance, by the head of the State agency."

Subsec. (c). Pub. L. 100-17 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "The head of each Federal agency may prescribe such other regulations and procedures, consistent with the provisions of this chapter, as he deems necessary or appropriate to carry out this chapter."

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of Title 23, Highways.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-17 effective Apr. 2, 1987, to the extent such amendment prescribes authority to develop, publish, and issue regulations, and otherwise to take effect on effective date provided in such regulations but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100-17, set out as a note under section 4601 of this title.

#### ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

#### IMPROVEMENT OF ADMINISTRATION AND IMPLEMENTATION OF THIS CHAPTER

Memorandum of the President dated February 27, 1985, 50 F.R. 8953, provided:

The purpose of this Memorandum is to improve administration and implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [42 U.S.C. 4601 et seq.]

Specifically, I hereby direct the following actions:

1. The Presidential Memorandum of September 6, 1973 on this subject is superseded.

2. As with other Administration management improvement initiatives, a lead agency, the Department of Transportation (DOT), is designated to coordinate and monitor implementation of the Act, and consult periodically with State and local governments and other organizations and interest groups affected by administration of the Act.

3. DOT, jointly with the Department of Housing and Urban Development, shall interact with the principal executive departments and agencies affected by the Act in developing Administration policy.

4. Within 90 days of the date of this Memorandum, all affected executive departments and agencies shall propose common regulations under the Act. Within one year of the date of this Memorandum, such departments and agencies shall issue common regulations under the Act. Such regulations shall be consistent with the model policy promulgated by DOT, in consultation and coordination with other affected agencies, and published in final form in the Federal Register simultaneously with this Memorandum.

5. DOT shall report annually to the President's Council on Management Improvement, through the Office of Management and Budget, on implementation of the Act.

#### **§ 4634. Repealed. Pub. L. 100-17, title IV, Sec. 415, Apr. 2, 1987, 100 Stat. 255**

Section, Pub. L. 91-646, title II, Sec. 214, Jan. 2, 1971, 84 Stat. 1901, required head of each Federal agency to submit an annual report to the President respecting programs and policies established or authorized by this chapter, and the President to submit such reports to Congress.

#### EFFECTIVE DATE OF REPEAL

Repeal effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100-17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100-17, set out as an Effective Date of 1987 Amendment note under section 4601 of this title.

#### **§ 4635. Planning and other preliminary expenses for additional housing**

In order to encourage and facilitate the construction or rehabilitation of housing to meet the needs of displaced persons who are displaced from dwellings because of any Federal or Federal financially assisted project, the head of the Federal agency administering such project is authorized to make loans as a part of the cost of

any such project, or to approve loans as a part of the cost of any such project receiving Federal financial assistance, to nonprofit, limited dividend, or cooperative organizations or to public bodies, for necessary and reasonable expenses, prior to construction, for planning and obtaining federally insured mortgage financing for the rehabilitation or construction of housing for such displaced persons. Notwithstanding the preceding sentence, or any other law, such loans shall be available for not to exceed 80 per centum of the reasonable costs expected to be incurred in planning, and in obtaining financing for, such housing, prior to the availability of such financing, including, but not limited to, preliminary surveys and analyses of market needs, preliminary site engineering, preliminary architectural fees, site acquisition, application and mortgage commitment fees, and construction loan fees and discounts. Loans to an organization established for profit shall bear interest at a market rate established by the head of such Federal agency. All other loans shall be without interest. Such Federal agency head shall require repayment of loans made under this section, under such terms and conditions as he may require, upon completion of the project or sooner, and except in the case of a loan to an organization established for profit, may cancel any part or all of a loan if he determines that a permanent loan to finance the rehabilitation or the construction of such housing cannot be obtained in an amount adequate for repayment of such loan. Upon repayment of any such loan, the Federal share of the sum repaid shall be credited to the account from which such loan was made, unless the Secretary of the Treasury determines that such account is no longer in existence, in which case such sum shall be returned to the Treasury and credited to miscellaneous receipts.

(Pub. L. 91-646, title II, Sec. 215, Jan. 2, 1971, 84 Stat. 1901.)

**§ 4636. Payments not to be considered as income for revenue purposes or for eligibility for assistance under Social Security Act or other Federal law**

No payment received under this subchapter shall be considered as income for the purposes of title 26; or for the purposes of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security

Act [42 U.S.C. 301 et seq.] or any other Federal law (except for any Federal law providing low-income housing assistance).

(Pub. L. 91-646, title II, Sec. 216, Jan. 2, 1971, 84 Stat. 1902; Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100-17, title IV, Sec. 413, Apr. 2, 1987, 101 Stat. 255.)

REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (Sec. 301 et seq.) of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1987 Pub. L. 100-17 inserted "(except for any Federal law providing low-income housing assistance)" before period at end.

1986 - Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100-17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100-17, set out as a note under section 4601 of this title.

**§ 4637. Repealed. Pub. L. 100-17, title IV, Sec. 415, Apr. 2, 1987, 101 Stat. 255.**

Section, Pub. L. 91-646, title II, § 217, Jan. 2, 1971, 84 Stat. 1902, related to displacement by code enforcement, rehabilitation, and demolition programs receiving Federal assistance.

EFFECTIVE DATE OF REPEAL

Repeal effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100-17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100-17, set out as an Effective Date of 1987 Amendment note under section 4601 of this title.

**§ 4638. Transfers of surplus property**

The Administrator of General Services is authorized to transfer to a State agency for the purpose of providing replacement housing required by this subchapter, any real property surplus to the needs of the United States within

the meaning of the Federal Property and Administrative Services Act of 1949, as amended.<sup>1</sup> Such transfer shall be subject to such terms and conditions as the Administrator determines necessary to protect the interests of the United States and may be made without monetary consideration, except that such State agency shall pay to the United States all net amounts received by such agency from any sale, lease, or other disposition of such property for such housing.

(Pub. L. 91-646, title II, Sec. 218, Jan. 2, 1971, 84 Stat. 1902; Pub. L. 100-17, title IV, Sec. 414, Apr. 2, 1987, 101 Stat. 255.)

#### REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, as amended, referred to in text, is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Except for title III of the Act, which is classified generally to subchapter IV (Sec. 251 et seq.) of chapter 4 of Title 41, Public Contracts, the Act was repealed and reenacted by Pub. L. 107-217, Secs. 1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304, as chapters 1 to 11 of Title 40, Public Buildings, Property, and Works.

#### AMENDMENTS

1987 - Pub. L. 100-17 inserted "net" after "all".

#### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100-17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100-17, set out as a note under section 4601 of this title.

### SUBCHAPTER III - UNIFORM REAL PROPERTY ACQUISITION POLICY

#### § 4651. Uniform policy on real property acquisition practices

In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners in the many Federal programs, and to promote public confidence in Federal land

<sup>1</sup> See References in Text note below

acquisition practices, heads of Federal agencies shall, to the greatest extent practicable, be guided by the following policies:

(1) The head of a Federal agency shall make every reasonable effort to acquire expeditiously real property by negotiation.

(2) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property, except that the head of the lead agency may prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value.

(3) Before the initiation of negotiations for real property, the head of the Federal agency concerned shall establish an amount which he believes to be just compensation there for and shall make a prompt offer to acquire the property for the full amount so established. In no event shall such amount be less than the agency's approved appraisal of the fair market value of such property. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property. The head of the Federal agency concerned shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount he established as just compensation. Where appropriate the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

(4) No owner shall be required to surrender possession of real property before the head of the Federal agency concerned pays the agreed purchase price, or deposits with the court in accordance with section 3114(a) to (d) of title 40, for the benefit of the owner, an amount not less than the agency's approved appraisal of the fair market value of such property, or the amount of the award of compensation in the condemnation proceeding for such property.

(5) The construction or development of a public improvement shall be so scheduled that, to

the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling as required by subchapter II of this chapter will be available), or to move his business or farm operation, without at least ninety days' written notice from the head of the Federal agency concerned, of the date by which such move is required.

(6) If the head of a Federal agency permits an owner or tenant to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the Government on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

(7) In no event shall the head of a Federal agency either advance the time of condemnation, or defer negotiations or condemnation and the deposit of funds in court for the use of the owner, or take any other action coercive in nature, in order to compel an agreement on the price to be paid for the property.

(8) If any interest in real property is to be acquired by exercise of the power of eminent domain, the head of the Federal agency concerned shall institute formal condemnation proceedings. No Federal agency head shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

(9) If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the head of the Federal agency concerned shall offer to acquire that remnant. For the purposes of this chapter, an uneconomic remnant is 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 head of the Federal agency concerned has determined has little or no value or utility to the owner.

(10) A person whose real property is being acquired in accordance with this subchapter may, after the person has been fully informed of his right to receive just compensation for such property, donate such property, and part thereof, any interest therein, or any compensation paid therefor to a Federal agency, as such person shall determine.

(Pub. L. 91-646, title III, Sec. 301, Jan. 2, 1971, 84 Stat. 1904; Pub. L. 100-17, title IV, Sec. 416,

Apr. 2, 1987, 101 Stat. 255.)

#### REFERENCES IN TEXT

Subchapter II of this chapter, referred to in par. (5), was in the original "title II of this Act", meaning title II of Pub. L. 91-646, Jan. 2, 1971, 84 Stat. 1895, which enacted subchapter II of this chapter, amended sections 1415, 2473, and 3307 of this title and section 1606 of former Title 49, Transportation, repealed sections 1465 and 3074 of this title, section 2680 of Title 10, Armed Forces, sections 501 to 512 of Title 23, Highways, sections 1231 to 1234 of Title 43, Public Lands, and enacted provisions set out as notes under sections 4601 and 4621 of this title and under sections 501 to 512 of Title 23. For complete classification of title II to the Code, see Short Title note set out under section 4601 of this title and Tables.

This chapter, referred to in par. (9), was in the original "this Act", meaning Pub. L. 91-646, Jan. 2, 1971, 84 Stat. 1894, known as the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, which enacted this chapter, amended sections 1415, 2473, and 3307 of this title and section 1606 of former Title 49, repealed sections 1465 and 3071 to 3074 of this title, section 2680 of Title 10, sections 141 and 501 to 512 of Title 23, section 596 of Title 33, Navigation and Navigable Waters, sections 1231 to 1234 of Title 43, and enacted provisions set out as notes under sections 4601, 4621, and 4651 of this title and under section 501 of Title 23. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of this title and Tables.

This subchapter, referred to in par. (10), was in the original "this title", meaning title III of Pub. L. 91-646, Jan. 2, 1971, 84 Stat. 1904, which enacted this subchapter, repealed sections 3071 to 3073 of this title, section 141 of Title 23, and section 596 of Title 33, and enacted provisions set out as a note under section 4651 of this title. For complete classification of title III to the Code, see Tables.

#### CODIFICATION

In par. (4), "section 3114(a) to (d) of title 40" substituted for "section 1 of the Act of February 26, 1931 (46 Stat. 1421; 40 U.S.C. 258a)" on authority of Pub. L. 107-217, Sec. 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

#### AMENDMENTS

1987 - Par. (2). Pub. L. 100-17, Sec. 416(a), inserted provision respecting the waiver of appraisal in cases involving the acquisition of property with a low fair market value.



Par. (9). Pub. L. 100-17, Sec. 416(b), amended par. (9) generally. Prior to amendment, par. (9) read as follows: "If the acquisition of only part of a property would leave its owner with an uneconomic remnant, the head of the Federal agency concerned shall offer to acquire the entire property."

Par. (10). Pub. L. 100-17, Sec. 416(c), added par. (10).

#### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100-17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100-17, set out as a note under section 4601 of this title.

#### SAVINGS PROVISION

Section 306 of Pub. L. 91-646 provided in part that: "Any rights or liabilities now existing under prior Acts or portions thereof shall not be affected by the repeal of such prior Act or portions thereof under this section [repealing sections 3071 to 3073 of this title, section 141 of Title 23, Highways, and section 596 of Title 33, Navigation and Navigable Waters]."

### § 4652. Buildings, structures, and improvements

(a) Notwithstanding any other provision of law, if the head of a Federal agency acquires any interest in real property in any State, he shall acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property so acquired and which he requires to be removed from such real property or which he determines will be adversely affected by the use to which such real property will be put.

(b)(1) For the purpose of determining the just compensation to be paid for any building, structure, or other improvement required to be acquired by subsection (a) of this section, such building, structure, or other improvement shall be deemed to be a part of the real property to be acquired notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove such building, structure, or improvement at the expiration of his term, and the fair market value which such building, structure, or improvement contributes to the fair market value of the real property to be acquired, or the fair market value of such building, structure, or improvement for

removal from the real property, whichever is the greater, shall be paid to the tenant therefor.

(2) Payment under this subsection shall not result in duplication of any payments otherwise authorized by law. No such payment shall be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any such payment, the tenant shall assign, transfer, and release to the United States all his right, title, and interest in and to such improvements. Nothing in this subsection shall be construed to deprive the tenant of any rights to reject payment under this subsection and to obtain payment for such property interests in accordance with applicable law, other than this subsection.

(Pub. L. 91-646, title III, Sec. 302, Jan. 2, 1971, 84 Stat. 1905.)

### § 4653. Expenses incidental to transfer of title to United States

The head of a Federal agency, as soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, shall reimburse the owner, to the extent the head of such agency deems fair and reasonable, for expenses he necessarily incurred for -

(1) recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the United States;

(2) penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and

(3) the pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States, or the effective date of possession of such real property by the United States, whichever is the earlier.

(Pub. L. 91-646, title III, Sec. 303, Jan. 2, 1971, 84 Stat. 1906.)

### § 4654. Litigation expenses

#### (a) Judgment for owner or abandonment of proceedings

The Federal court having jurisdiction of a proceeding instituted by a Federal agency to

acquire real property by condemnation shall award the owner of any right, or title to, or interest in, such real property such sum as will in the opinion of the court reimburse such owner for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings, if -

(1) the final judgment is that the Federal agency cannot acquire the real property by condemnation; or

(2) the proceeding is abandoned by the United States.

**(b) Payment**

Any award made pursuant to subsection (a) of this section shall be paid by the head of the Federal agency for whose benefit the condemnation proceedings was instituted.

**(c) Claims against United States**

The court rendering a judgment for the plaintiff in a proceeding brought under section 1346(a)(2) or 1491 of title 28, awarding compensation for the taking of property by a Federal agency, or the Attorney General effecting a settlement of any such proceeding, shall determine and award or allow to such plaintiff, as a part of such judgment or settlement, such sum as will in the opinion of the court or the Attorney General reimburse such plaintiff for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of such proceeding.

(Pub. L. 91-646, title III, Sec. 304, Jan. 2, 1971, 84 Stat. 1906.)

**§ 4655. Requirements for uniform land acquisition policies; payments of expenses incidental to transfer of real property to State; payment of litigation expenses in certain cases**

(a) Notwithstanding any other law, the head of a Federal agency shall not approve any program or project or any grant to, or contract or agreement with, an acquiring agency under which

Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the acquisition of real property on and after January 2, 1971, unless he receives satisfactory assurances from such acquiring agency that -

(1) in acquiring real property it will be guided, to the greatest extent practicable under State law, by the land acquisition policies in section 4651 of this title and the provisions of section 4652 of this title, and

(2) property owners will be paid or reimbursed for necessary expenses as specified in sections 4653 and 4654 of this title.

(b) For purposes of this section, the term "acquiring agency" means -

(1) a State agency (as defined in section 4601(3) of this title) which has the authority to acquire property by eminent domain under State law, and

(2) a State agency or person which does not have such authority, to the extent provided by the head of the lead agency by regulation.

(Pub. L. 91-646, title III, Sec. 305, Jan. 2, 1971, 84 Stat. 1906; Pub. L. 100-17, title IV, Sec. 417, Apr. 2, 1987, 101 Stat. 256.)

**AMENDMENTS**

1987 - Pub. L. 100-17 designated existing provisions as subsec. (a), substituted "an acquiring agency" for "a State agency" and "such acquiring agency" for "such State agency", and added subsec. (b).

**EFFECTIVE DATE OF 1987 AMENDMENT**

Amendment by Pub. L. 100-17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100-17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100-17, set out as a note under section 4601 of this title.

**NOTES:**

**NOTES:**

**THE UNIFORM ACT –COMMON RULE – 49 CFR PART 24**

From the GPO Access eCFR website as of March 2009 -

<http://www.gpoaccess.gov/cfr/index.html>

**Title 49: Transportation****PART 24—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY-ASSISTED PROGRAMS****Subpart A—General**

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- § 24.2 Definitions and acronyms.
- § 24.3 No duplication of payments.
- § 24.4 Assurances, monitoring and corrective action.
- § 24.5 Manner of notices.
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**Subpart B—Real Property Acquisition**

- § 24.101 Applicability of acquisition requirements.
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- § 24.301 Payment for actual reasonable moving and related expenses.
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- § 24.401 Replacement housing payment for 180-day homeowner-occupants.
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- § 24.403 Additional rules governing replacement housing payments.
- § 24.404 Replacement housing of last resort.

**Subpart F—Mobile Homes**

- § 24.501 Applicability.
- § 24.502 Replacement housing payment for 180-day mobile homeowner displaced from a mobile home, and/or from the acquired mobile home site.
- § 24.503 Replacement housing payment for 90-day mobile home occupants.

**Subpart G—Certification**

§ 24.601 Purpose.

§ 24.602 Certification application.

§ 24.603 Monitoring and corrective action.

Appendix A to Part 24—Additional Information  
Appendix B to Part 24—Statistical Report Form

**Authority:** 42 U.S.C. 4601 *et seq.* ; 49 CFR 1.48(cc).

**Source:** 70 FR 611, Jan. 4, 2005, unless otherwise noted.

**SUBPART A—GENERAL****§ 24.1 PURPOSE.**

The purpose of this part is to promulgate rules to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq.* ) (Uniform Act), in accordance with the following objectives:

- (a) To ensure that owners of real property to be acquired for Federal and federally-assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in Federal and federally-assisted land acquisition programs;
- (b) To ensure that persons displaced as a direct result of Federal or federally-assisted projects are treated fairly, consistently, and equitably so that such displaced persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole; and
- (c) To ensure that Agencies implement these regulations in a manner that is efficient and cost effective.

**§ 24.2 DEFINITIONS AND ACRONYMS.**

(a) *Definitions.* Unless otherwise noted, the following terms used in this part shall be understood as defined in this section:

(1) *Agency.* The term *Agency* means the Federal Agency, State, State Agency, or person that acquires real property or displaces a person.

(i) *Acquiring Agency.* The term *acquiring Agency* means a State Agency, as defined in paragraph (a)(1)(iv) of this section, which has the authority to acquire property by eminent domain under State law, and a State Agency or person which does not have such authority.

(ii) *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 Federal financial assistance, which causes a person to be a displaced person.

(iii) *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.

(iv) *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 of 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 the United States.* The phrase “alien not lawfully present in the United States” means an alien who is not “lawfully present” in the United States as defined in 8 CFR 103.12 and includes:

(i) 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 (8 U.S.C. 1101 *et seq.* ) and whose stay in the United States has not been authorized by the United States Attorney General; and,

(ii) 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*. The term *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*. The term *business* means any lawful activity, except a farm operation, that is conducted:

(i) 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;

(ii) Primarily for the sale of services to the public;

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

(iv) 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*. The term *comparable replacement dwelling* means a dwelling which is:

(i) Decent, safe and sanitary as described in paragraph 24.2(a)(8) of this section;

(ii) 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, 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 dwelling is functionally equivalent to the displacement dwelling, the Agency may consider reasonable trade-offs for specific features when the replacement unit is equal to or better than the displacement dwelling ( See appendix A, §24.2(a)(6));

(iii) Adequate in size to accommodate the occupants;

(iv) In an area not subject to unreasonable adverse environmental conditions;

(v) 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 reasonably accessible to the person's place of employment;

(vi) On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses. (See also §24.403(a)(2));

(vii) Currently available to the displaced person on the private market except as provided in paragraph (a)(6)(ix) of this section (See appendix A, §24.2(a)(6)(vii)); and

(viii) Within the financial means of the displaced person:

(A) A replacement dwelling purchased by a homeowner in occupancy at the displacement dwelling for at least 180 days prior to initiation of negotiations (180-day homeowner) is considered to be within the homeowner's financial means if the homeowner will receive the full price differential as described in §24.401(c), all increased mortgage interest costs as described at §24.401(d) and all incidental expenses as described at §24.401(e), plus any additional amount required to be paid under §24.404, Replacement housing of last resort.

(B) A replacement dwelling rented by an eligible displaced person is considered to be within his or her financial means if, after receiving rental assistance under this part, the person's monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displacement dwelling as described at §24.402(b)(2).

(C) For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if an 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 §24.402(b)(2). Such rental assistance must be paid under §24.404, Replacement housing of last resort.

(ix) 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. (See appendix A, §24.2(a)(6)(ix).)

(7) *Contribute materially.* The term *contribute materially* means that during the 2 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:

- (i) Had average annual gross receipts of at least \$5,000; or
- (ii) Had average annual net earnings of at least \$1,000; or
- (iii) Contributed at least 33 1/3 percent of the owner's or operator's average annual gross income from all sources.
- (iv) 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 dwelling.* The term *decent, safe, and sanitary dwelling* means a dwelling which meets local housing and occupancy codes. However, any of the following standards which are not met by the local code shall apply unless waived for good cause by the Federal Agency funding the project. The dwelling shall:

- (i) Be structurally sound, weather tight, and in good repair;
- (ii) Contain a safe electrical wiring system adequate for lighting and other devices;
- (iii) Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person, except in those areas where local climatic conditions do not require such a system;
- (iv) 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 codes, the policies of such Agencies;

(v) 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;

(vi) Contains unobstructed egress to safe, open space at ground level; and

(vii) For a displaced person with a disability, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person. (See appendix A, §24.2(a)(8)(vii).)

(9) *Displaced person.* (i) *General.* The term *displaced person* means, except as provided in paragraph (a)(9)(ii) of this section, 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 as described at §24.401(a) and §24.402(a):

(A) As a direct result of a written notice of intent to acquire (see §24.203(d)), the initiation of negotiations for, or the acquisition of, such real property in whole or in part for a project;

(B) As a direct result of rehabilitation or demolition for a project; or

(C) As a direct result of a written notice of intent to acquire, or the acquisition, rehabilitation or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation, for a project. However,

eligibility for such person under this paragraph applies only for purposes of obtaining relocation assistance advisory services under §24.205(c), and moving expenses under §24.301, §24.302 or §24.303.

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

(A) A person who moves before the initiation of negotiations (see §24.403(d)), unless the Agency determines that the person was displaced as a direct result of the program or project;

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

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

(D) A person who 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 (See appendix A, §24.2(a)(9)(ii)(D));

(E) An owner-occupant who moves as a result of an acquisition of real property as described in §§24.101(a)(2) or 24.101(b)(1) or (2), 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.);

(F) A person whom the Agency determines is not displaced as a direct result of a partial acquisition;

(G) A person who, after receiving a notice of relocation eligibility (described at §24.203(b)), 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;

(H) An owner-occupant who conveys his or her property, as described in §§24.101(a)(2) or 24.101(b)(1) or (2), after being informed in writing that if a mutually satisfactory agreement

on terms of the conveyance 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;

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

(J) 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 the Interior under Pub. L. 93–477, Appropriations for National Park System, or Pub. L. 93–303, Land and Water Conservation Fund, except that such owner remains a displaced person for purposes of subpart D of this part;

(K) 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 law, as provided for in §24.206. However, advisory assistance may be provided to unlawful occupants at the option of the Agency in order to facilitate the project;

(L) 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 §24.208; or

(M) 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.* The term *dwelling* means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house; a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping 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. (See appendix A, §24.2(a)(11).)

(12) *Farm operation.* The term *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.* The term *Federal financial assistance* means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.

(14) *Household income.* The term *household income* means total gross income received for a 12 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 dependent children and full time students under 18 years of age. (See appendix A, §24.2(a)(14) for examples of exclusions to income.)

(15) *Initiation of negotiations.* Unless a different action is specified in applicable Federal program regulations, the term *initiation of negotiations* means the following:

(i) Whenever the displacement results from the acquisition of the real property by a Federal Agency or State Agency, the *initiation of negotiations* means the delivery of the initial written offer of just compensation by the Agency to the owner or the owner's representative to purchase the real property for the project. However, if the Federal Agency or State 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 actual move of the person from the property.

(ii) Whenever the displacement is caused by rehabilitation, demolition or privately undertaken acquisition of the real property (and there is no related acquisition by a Federal Agency or a State Agency), the *initiation of negotiations* means the notice to the person that he or she will be displaced by the project or, if there is no notice, the actual move of the person from the property.

(iii) 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) (CERCLA) 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.

(iv) In the case of permanent relocation of a tenant as a result of an acquisition of real property described in §24.101(b)(1) through (5), the initiation of negotiations means the actions described in §24.2(a)(15)(i) and (ii), except that such initiation of negotiations does not become effective, for 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. (See appendix A, §24.2(a)(15)(iv)).

(16) *Lead Agency.* The term *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. ( See appendix A, §24.2(a)(17)).

(18) *Mortgage.* The term *mortgage* means 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.* The term *owner of a dwelling* means a person who 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:

(i) Fee title, a life estate, a land contract, a 99 year lease, or a lease including any options for extension with at least 50 years to run from the date of acquisition; or

(ii) An interest in a cooperative housing project which includes the right to occupy a dwelling; or

(iii) A contract to purchase any of the interests or estates described in §24.2(a)(1)(i) or (ii) of this section; or

(iv) Any other interest, including a partial interest, which in the judgment of the Agency warrants consideration as ownership.

(21) *Person*. The term *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 an undertaking in accordance with the Federal funding Agency guidelines.

(23) *Salvage value*. The term *salvage value* means the probable sale price of an item offered for sale to knowledgeable buyers with the requirement that it be removed from the property at a buyer's expense (i.e., not eligible for relocation assistance). This includes items for re-use as well as items with components that can be re-used or recycled when there is no reasonable prospect for sale except on this basis.

(24) *Small business*. A *small business* is a business having not more than 500 employees working at the site being acquired or displaced by a program or project, which site is the location of economic activity. Sites occupied solely by outdoor advertising signs, displays, or devices do not qualify as a business for purposes of §24.304.

(25) *State*. Any of the several States of the United States or the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or a political subdivision of any of these jurisdictions.

(26) *Tenant*. The term *tenant* means a person who has the temporary use and occupancy of real property owned by another.

(27) *Uneconomic remnant*. The term *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 Agency has determined has little or no value or utility to the owner.

(28) *Uniform Act*. The term *Uniform Act* means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646, 84 Stat. 1894; 42 U.S.C. 4601 *et seq.*), 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 of 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) *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 §24.102(c)(2) appraisal waiver provisions.

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

(1) BCIS. Bureau of Citizenship and Immigration Service.

- (2) FEMA. Federal Emergency Management Agency.
- (3) FHA. Federal Housing Administration.
- (4) FHWA. Federal Highway Administration.
- (5) FIRREA. Financial Institutions Reform, Recovery, and Enforcement Act of 1989.
- (6) HLR. Housing of last resort.
- (7) HUD. U.S. Department of Housing and Urban Development.
- (8) MIDP. Mortgage interest differential payment.
- (9) RHP. Replacement housing payment.
- (10) STURAA. Surface Transportation and Uniform Relocation Act Amendments of 1987.
- (11) URA. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.
- (12) USDOT. U.S. Department of Transportation.
- (13) USPAP. Uniform Standards of Professional Appraisal Practice.

#### **§ 24.3 NO DUPLICATION OF PAYMENTS.**

No person shall receive any payment under this part if that person receives a payment under Federal, State, local law, or insurance proceeds which is determined by the Agency to have the same purpose and effect as such payment under this part. (See appendix A, §24.3).

#### **§ 24.4 ASSURANCES, MONITORING AND CORRECTIVE ACTION.**

##### *(a) Assurances.*

(1) Before a Federal Agency may approve any grant to, or contract, or agreement with, a State Agency under which Federal financial assistance will be made available for a project which results in real property acquisition or displacement that is subject to the Uniform Act, the State Agency must provide appropriate assurances that it will comply with the Uniform Act and this part. A displacing Agency's assurances shall be in accordance with section 210 of the Uniform Act. An acquiring Agency's assurances shall be in accordance with section 305 of the Uniform Act and must contain specific reference to any State law which the Agency believes provides an

exception to §§301 or 302 of the Uniform Act. If, in the judgment of the Federal Agency, Uniform Act compliance will be served, a State Agency may provide these assurances at one time to cover all subsequent federally-assisted programs or projects. An Agency, which both acquires real property and displaces persons, may combine its section 210 and section 305 assurances in one document.

(2) If a Federal Agency or State Agency provides Federal financial assistance to a "person" causing displacement, such Federal or State Agency is responsible for ensuring compliance with the requirements of this part, notwithstanding the person's contractual obligation to the grantee to comply.

(3) As an alternative to the assurance requirement described in paragraph (a)(1) of this section, a Federal Agency may provide Federal financial assistance to a State Agency after it has accepted a certification by such State Agency in accordance with the requirements in subpart G of this part.

(b) *Monitoring and corrective action.* The Federal Agency will monitor compliance with this part, and the State Agency shall take whatever corrective action is necessary to comply with the Uniform Act and this part. The Federal Agency may also apply sanctions in accordance with applicable program regulations. (Also see §24.603, of this part).

(c) *Prevention of fraud, waste, and mismanagement.* The Agency shall take appropriate measures to carry out this part in a manner that minimizes fraud, waste, and mismanagement.

#### **§ 24.5 MANNER OF NOTICES.**

Each notice which the Agency is required to provide to a property owner or occupant under this part, except the notice described at §24.102(b), shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in Agency files. Each notice 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

contacted for answers to questions or other needed help.

#### **§ 24.6 ADMINISTRATION OF JOINTLY-FUNDED PROJECTS.**

Whenever two or more Federal Agencies provide financial assistance to an Agency or Agencies, other than a Federal Agency, to carry out functionally or geographically related activities, which will result in the acquisition of property or the displacement of a person, the Federal Agencies may by agreement designate one such Agency as the cognizant Federal Agency. In the unlikely event that agreement among the Agencies cannot be reached as to which Agency shall be the cognizant Federal Agency, then the Lead Agency shall designate one of such Agencies to assume the cognizant role. At a minimum, the agreement shall set forth the federally-assisted activities which are subject to its terms and cite any policies and procedures, in addition to this part, that are applicable to the activities under the agreement. Under the agreement, the cognizant Federal Agency shall assure that the project is in compliance with the provisions of the Uniform Act and this part. All federally-assisted activities under the agreement shall be deemed a project for the purposes of this part.

#### **§ 24.7 FEDERAL AGENCY WAIVER OF REGULATIONS.**

The Federal Agency funding the project may waive any requirement in this part 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 part. Any request for a waiver shall be justified on a case- by-case basis.

#### **§ 24.8 COMPLIANCE WITH OTHER LAWS AND REGULATIONS.**

The implementation of this part must be in compliance with other applicable Federal laws and implementing regulations, including, but not limited to, the following:

- (a) Section I of the Civil Rights Act of 1866 (42 U.S.C. 1982 *et seq.*).
- (b) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*).

(c) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), as amended.

(d) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

(e) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 790 *et seq.*).

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

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

(h) Executive Order 11063—Equal Opportunity and Housing, as amended by Executive Order 12892.

(i) Executive Order 11246—Equal Employment Opportunity, as amended.

(j) Executive Order 11625—Minority Business Enterprise.

(k) Executive Orders 11988—Floodplain Management, and 11990—Protection of Wetlands.

(l) Executive Order 12250—Leadership and Coordination of Non-Discrimination Laws.

(m) Executive Order 12630—Governmental Actions and Interference with Constitutionally Protected Property Rights.

(n) Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121 *et seq.*).

(o) Executive Order 12892—Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing (January 17, 1994).

#### **§ 24.9 RECORDKEEPING AND REPORTS.**

(a) *Records.* The Agency shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this part. These records shall be retained for at least 3 years after each owner of a property and each person displaced from the property receives the final payment to which he or she is entitled under this part, or in accordance with the applicable regulations of the Federal funding Agency, whichever is later.

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

(c) *Reports.* The Agency shall submit a report of its real property acquisition and displacement activities under this part if required by the Federal Agency funding the project. A report will not be required more frequently than every 3 years, or as the Uniform Act provides, unless the Federal funding Agency shows good cause. The report shall be prepared and submitted using the format contained in appendix B of this part.

#### **§ 24.10 APPEALS.**

(a) *General.* The Agency shall promptly review appeals in accordance with the requirements of applicable law and this part.

(b) *Actions which may be appealed.* Any aggrieved person may file a written appeal with the Agency in any case in which the person believes that the Agency has failed to properly consider the person's application for assistance under this part. Such assistance may include, but is not limited to, the person's eligibility for, or the amount of, a payment required under §24.106 or §24.107, or a relocation payment required under this part. The Agency shall consider a written appeal regardless of form.

(c) *Time limit for initiating appeal.* The Agency may set a reasonable time limit for a person to file an appeal. The time limit shall not be less than 60 days after the person receives written notification of the Agency's determination on the person's claim.

(d) *Right to representation.* A person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense.

(e) *Review of files by person making appeal.* The Agency shall permit a person to inspect and copy all materials pertinent to his or her 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.

(f) *Scope of review of appeal.* In deciding an appeal, the Agency shall consider all pertinent justification and other material submitted by the

person, and all other available information that is needed to ensure a fair and full review of the appeal.

(g) *Determination and notification after appeal.* Promptly after receipt of all information submitted by a person in support of an appeal, the Agency shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and furnish the person a copy. If the full relief requested is not granted, the Agency shall advise the person of his or her right to seek judicial review of the Agency decision.

(h) *Agency official to review appeal.* The Agency official conducting the review of the appeal shall be either the head of the Agency or his or her authorized designee. However, the official shall not have been directly involved in the action appealed.

#### **SUBPART B—REAL PROPERTY ACQUISITION**

##### **§ 24.101 APPLICABILITY OF ACQUISITION REQUIREMENTS.**

(a) *Direct Federal program or project.*

(1) The requirements of this subpart apply to any acquisition of real property for a direct Federal program or project, except acquisition for a program or project that is undertaken by the Tennessee Valley Authority or the Rural Utilities Service. (See appendix A, §24.101(a).)

(2) If a Federal Agency (except for the Tennessee Valley Authority or the Rural Utilities Service) will not acquire a property because negotiations fail to result in an agreement, the owner of the property shall be so informed in writing. Owners of such properties are not displaced persons, ( see §24.2(a)(9)(ii)(E) or (H)), and as such, are not entitled to relocation assistance benefits. However, tenants on such properties may be eligible for relocation assistance benefits. (See §24.2(a)(9)).

(b) *Programs and projects receiving Federal financial assistance.* The requirements of this subpart apply to any acquisition of real property for programs and projects where there is Federal financial assistance in any part of project costs except for the acquisitions described in paragraphs (b)(1) through (5) of this section. The

relocation assistance provisions in this part are applicable to any tenants that must move as a result of an acquisition described in paragraphs (b)(1) through (5) of this section. Such tenants are considered displaced persons. (*See* §24.2(a)(9).)

(1) The requirements of Subpart B do not apply to acquisitions that meet all of the following conditions in paragraphs (b)(1)(i) through (iv):

(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. Where an Agency wishes to purchase more than one site within a general geographic area on this basis, all owners are to be treated similarly. (*See* appendix A, §24.101(b)(1)(i).)

(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 to be acquired within specific time limits.

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

(iv) The Agency will inform the owner in writing of what it believes to be the market value of the property. (*See* appendix A, §24.101(b)(1)(iv) and (2)(ii).)

(2) Acquisitions for programs or projects undertaken by an Agency or person that receives Federal financial assistance but does not have authority to acquire property by eminent domain, provided that such Agency or person shall:

(i) Prior to making an offer for the property, clearly advise the owner that it is unable to acquire the property if negotiations fail to result in an agreement; and

(ii) Inform the owner in writing of what it believes to be the market value of the property. (*See* appendix A, §24.101(b)(1)(iv) and (2)(ii).)

(3) The acquisition of real property from a Federal Agency, State, or State Agency, if the Agency desiring to make the purchase does not have authority to acquire the property through condemnation.

(4) The acquisition of real property by a cooperative from a person who, as a condition of membership in the cooperative, has agreed to provide without charge any real property that is needed by the cooperative.

(5) Acquisition for a program or project that receives Federal financial assistance from the Tennessee Valley Authority or the Rural Utilities Service.

(c) *Less-than-full-fee interest in real property.*

(1) The provisions of this subpart apply when acquiring fee title subject to retention of a life estate or a life use; to acquisition by leasing where the lease term, including option(s) for extension, is 50 years or more; and to the acquisition of permanent and/or temporary easements necessary for the project. However, the Agency may apply these regulations to any less-than-full-fee acquisition that, in its judgment, should be covered.

(2) The provisions of this subpart do not apply to temporary easements or permits needed solely to perform work intended exclusively for the benefit of the property owner, which work may not be done if agreement cannot be reached.

(d) *Federally-assisted projects.* For projects receiving Federal financial assistance, the provisions of §§24.102, 24.103, 24.104, and 24.105 apply to the greatest extent practicable under State law. (*See* §24.4(a).)

#### **§ 24.102 BASIC ACQUISITION POLICIES.**

(a) *Expeditious acquisition.* The Agency shall make every reasonable effort to acquire the real property expeditiously by negotiation.

(b) *Notice to owner.* As soon as feasible, the Agency shall notify the owner in writing of the Agency's interest in acquiring the real property and the basic protections provided to the owner by law and this part. (*See* §24.203.)

(c) *Appraisal, waiver thereof, and invitation to owner.*

(1) Before the initiation of negotiations the real property to be acquired shall be appraised, except as provided in §24.102 (c)(2), and the owner, or the owner's designated representative, shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

(2) An appraisal is not required if:

(i) The owner is donating the property and releases the Agency from its obligation to appraise the property; or

(ii) The Agency determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the proposed acquisition is estimated at \$10,000 or less, based on a review of available data.

(A) When an appraisal is determined to be unnecessary, the Agency shall prepare a waiver valuation.

(B) The person performing the waiver valuation must have sufficient understanding of the local real estate market to be qualified to make the waiver valuation.

(C) The Federal Agency funding the project may approve exceeding the \$10,000 threshold, up to a maximum of \$25,000, if the Agency acquiring the real property offers the property owner the option of having the Agency appraise the property. If the property owner elects to have the Agency appraise the property, the Agency shall obtain an appraisal and not use procedures described in this paragraph. (See appendix A, §24.102(c)(2).)

(d) *Establishment and offer of just compensation.* Before the initiation of negotiations, the Agency shall establish an amount which it believes is just compensation for the real property. The amount shall not be less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. An Agency official must establish the amount believed to be just compensation. (See §24.104.) Promptly thereafter, the Agency shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation. (See appendix A, §24.102(d).)

(e) *Summary statement.* Along with the initial written purchase offer, the owner shall be given a written statement of the basis for the offer of just compensation, which shall include:

(1) A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if

any, to the remaining real property shall be separately stated.

(2) A description and location identification of the real property and the interest in the real property to be acquired.

(3) An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are included as part of the offer of just compensation. Where appropriate, the statement shall identify any other separately held ownership interest in the property, *e.g.*, a tenant-owned improvement, and indicate that such interest is not covered by this offer.

(f) *Basic negotiation procedures.* The Agency shall make all reasonable efforts to contact the owner or the owner's representative and discuss its offer to purchase the property, including the basis for the offer of just compensation and explain its acquisition policies and procedures, including its payment of incidental expenses in accordance with §24.106. The owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase. The Agency shall consider the owner's presentation. (See appendix A, §24.102(f).)

(g) *Updating offer of just compensation.* If the information presented by the owner, or a material change in the character or condition of the property, indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal(s) of the property, the Agency shall have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in the purchase offer is warranted, the Agency shall promptly reestablish just compensation and offer that amount to the owner in writing.

(h) *Coercive action.* The Agency shall not advance the time of condemnation, or defer negotiations or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.

(i) *Administrative settlement.* The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to

negotiate an agreement at that amount have failed and an authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. When Federal funds pay for or participate in acquisition costs, a written justification shall be prepared, which states what available information, including trial risks, supports such a settlement. (See appendix A, §24.102(i).)

(j) *Payment before taking possession.* Before requiring the owner to surrender possession of the real property, the Agency shall pay the agreed purchase price to the owner, or in the case of a condemnation, deposit with the court, for the benefit of the owner, an amount not less than the Agency's approved appraisal of the fair market value of such property, or the court award of compensation in the condemnation proceeding for the property. In exceptional circumstances, with the prior approval of the owner, the Agency may obtain a right-of-entry for construction purposes before making payment available to an owner. (See appendix A, §24.102(j).)

(k) *Uneconomic remnant.* If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the Agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. ( See §24.2(a)(27).)

(l) *Inverse condemnation.* If the Agency intends to acquire any interest in real property by exercise of the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of the real property.

(m) *Fair rental.* If the Agency permits a former owner or tenant to occupy the real property after acquisition for a short term, or a period subject to termination by the Agency on short notice, the rent shall not exceed the fair market rent for such occupancy. (See appendix A, §24.102(m).)

(n) *Conflict of interest.* (1) The appraiser, review appraiser or person performing the waiver valuation shall not have any interest, direct or indirect, in the real property being valued for the Agency.

Compensation for making an appraisal or waiver valuation shall not be based on the amount of the valuation estimate.

(2) 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, except that, for a program or project receiving Federal financial assistance, the Federal funding Agency may waive this requirement if it determines it would create a hardship for the Agency.

(3) An appraiser, review appraiser, or waiver valuation preparer making an appraisal, appraisal review or waiver valuation may be authorized by the Agency to act as a negotiator for real property for which that person has made an appraisal, appraisal review or waiver valuation only if the offer to acquire the property is \$10,000, or less. (See appendix A, §24.102(n).)

[70 FR 611, Jan. 4, 2005, as amended at 70 FR 22611, May 2, 2005]

#### **§ 24.103 CRITERIA FOR APPRAISALS.**

(a) *Appraisal requirements.* This section sets forth the requirements for real property acquisition appraisals for Federal and federally- assisted programs. Appraisals are to be prepared according to these requirements, which are intended to be consistent with the Uniform Standards of Professional Appraisal Practice (USPAP).<sup>1</sup> (See appendix A, §24.103(a).) The Agency may have appraisal requirements that supplement these requirements, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA).<sup>2</sup>

<sup>1</sup> Uniform Standards of Professional Appraisal Practice (USPAP). Published by The Appraisal Foundation, a nonprofit educational organization. Copies may be ordered from The Appraisal Foundation at the following URL: <http://www.appraisalfoundation.org/htm/USPAP2004/toc.htm>.

<sup>2</sup> The "Uniform Appraisal Standards for Federal Land Acquisitions" is published by the Interagency Land Acquisition Conference. It is a compendium of Federal eminent domain appraisal law, both case and statute, regulations



and practices. It is available at <http://www.usdoj.gov/enrd/land-ack/toc.htm> or in soft cover format from the Appraisal Institute at <http://www.appraisalinstitute.org/econom/publications/Default.asp> and select “Legal/Regulatory” or call 888–570–4545.

(1) The Agency acquiring real property has a legitimate role in contributing to the appraisal process, especially in developing the scope of work and defining the appraisal problem. The scope of work and development of an appraisal under these requirements depends on the complexity of the appraisal problem.

(2) The Agency has the responsibility to assure that the appraisals it obtains are relevant to its program needs, reflect established and commonly accepted Federal and federally-assisted program appraisal practice, and as a minimum, complies with the definition of appraisal in §24.2(a)(3) and the five following requirements: ( See appendix A, §§24.103 and 24.103(a).)

(i) 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 5-year sales history of the property. (See appendix A, §24.103(a)(1).)

(ii) All relevant and reliable approaches to value consistent with established Federal and federally-assisted program appraisal practices. If the appraiser uses more than one approach, there shall be an analysis and reconciliation of approaches to value used that is sufficient to support the appraiser's opinion of value. (See appendix A, §24.103(a).)

(iii) 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.

(iv) 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, where appropriate.

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

(b) *Influence of the project on just compensation.* The appraiser 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 physical deterioration within the reasonable control of the owner. (See appendix A, §24.103(b).)

(c) *Owner retention of improvements.* If the owner of a real property improvement is permitted to retain it for removal from the project site, the amount to be offered for the interest in the real property to be acquired shall be not less than the difference between the amount determined to be just compensation for the owner's entire interest in the real property and the salvage value (defined at §24.2(a)(24)) of the retained improvement.

(d) *Qualifications of appraisers and review appraisers.*

(1) The Agency shall establish criteria for determining the minimum qualifications and competency of appraisers and review appraisers. Qualifications shall be consistent with the scope of work for the assignment. The Agency shall review the experience, education, training, certification/licensing, designation(s) and other qualifications of appraisers, and review appraisers, and use only those determined by the Agency to be qualified. (See appendix A, §24.103(d)(1).)

(2) If the Agency uses a contract (fee) appraiser to perform the appraisal, such appraiser shall be State licensed or certified in accordance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3331 *et seq.* ).

[70 FR 611, Jan. 4, 2005, as amended at 70 FR 22611, May 2, 2005]

#### **§ 24.104 REVIEW OF APPRAISALS.**

The Agency shall have an appraisal review process and, at a minimum:

(a) A qualified review appraiser (see §24.103(d)(1) and appendix A, §24.104) shall

examine the presentation and analysis of market information in all appraisals to assure that they meet the definition of appraisal found in 49 CFR 24.2(a)(3), appraisal requirements found in 49 CFR 24.103 and other applicable requirements, including, to the extent appropriate, the UASFLA, and support the appraiser's opinion of value. The level of review analysis depends on the complexity of the appraisal problem. As needed, the review appraiser shall, prior to acceptance, seek necessary corrections or revisions. The review appraiser shall identify each appraisal report as recommended (as the basis for the establishment of the amount believed to be just compensation), accepted (meets all requirements, but not selected as recommended or approved), or not accepted. If authorized by the Agency to do so, the staff review appraiser shall also approve the appraisal (as the basis for the establishment of the amount believed to be just compensation), and, if also authorized to do so, develop and report the amount believed to be just compensation. (See appendix A, §24.104(a).)

(b) If the review appraiser is unable to recommend (or approve) an appraisal as an adequate basis for the establishment of the offer of just compensation, and it is determined by the acquiring Agency that it is not practical to obtain an additional appraisal, the review appraiser may, as part of the review, present and analyze market information in conformance with §24.103 to support a recommended (or approved) value. (See appendix A, §24.104(b).)

(c) The review appraiser shall prepare a written report that identifies the appraisal reports reviewed and documents the findings and conclusions arrived at during the review of the appraisal(s). Any damages or benefits to any remaining property shall be identified in the review appraiser's report. The review appraiser shall also prepare a signed certification that states the parameters of the review. The certification shall state the approved value, and, if the review appraiser is authorized to do so, the amount believed to be just compensation for the acquisition. (See appendix A, §24.104(c).)

#### **§ 24.105 ACQUISITION OF TENANT-OWNED IMPROVEMENTS.**

(a) *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, which it requires to be removed or which it 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.

(b) *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 this subpart.

(c) *Appraisal and Establishment of Just Compensation for a Tenant-Owned Improvement.* Just compensation for a tenant-owned 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 at §24.2(a)(23).)

(d) *Special conditions for tenant-owned improvements.* No payment shall be made to a tenant-owner for any real property improvement unless:

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

(2) The owner of the real property on which the improvement is located disclaims all interest in the improvement; and

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

(e) *Alternative compensation.* Nothing in this subpart shall be construed to deprive the tenant-owner of any right to reject payment under this subpart and to obtain payment for such property interests in accordance with other applicable law.

[70 FR 611, Jan. 4, 2005, as amended at 70 FR 22611, May 2, 2005]

### **§ 24.106 EXPENSES INCIDENTAL TO TRANSFER OF TITLE TO THE AGENCY.**

(a) The owner of the real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for:

(1) Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the Agency. However, the Agency is not required to pay costs solely required to perfect the owner's title to the real property;

(2) Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and

(3) The pro rata portion of any prepaid real property taxes which are allocable to the period after the Agency obtains title to the property or effective possession of it, whichever is earlier.

(b) Whenever feasible, the Agency shall pay these costs directly to the billing agent so that the owner will not have to pay such costs and then seek reimbursement from the Agency.

### **§ 24.107 CERTAIN LITIGATION EXPENSES.**

The owner of the real property shall be reimbursed for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees, which the owner actually incurred because of a condemnation proceeding, if:

(a) The final judgment of the court is that the Agency cannot acquire the real property by condemnation;

(b) The condemnation proceeding is abandoned by the Agency other than under an agreed-upon settlement; or

(c) The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the Agency effects a settlement of such proceeding.

### **§ 24.108 DONATIONS.**

An owner whose real property is being acquired may, after being fully informed by the Agency of

the right to receive just compensation for such property, donate such property or any part thereof, any interest therein, or any compensation paid therefore, to the Agency as such owner shall determine. The Agency is responsible for ensuring that an appraisal of the real property is obtained unless the owner releases the Agency from such obligation, except as provided in §24.102(c)(2).

### **SUBPART C—GENERAL RELOCATION REQUIREMENTS**

#### **§ 24.201 PURPOSE.**

This subpart prescribes general requirements governing the provision of relocation payments and other relocation assistance in this part.

#### **§ 24.202 APPLICABILITY.**

These requirements apply to the relocation of any displaced person as defined at §24.2(a)(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 this regulation. (See appendix A, §24.202.)

#### **§ 24.203 RELOCATION NOTICES.**

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

(1) Informs the person that he or she 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);

(2) Informs the displaced person that he or she will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the displaced person successfully relocate;

(3) Informs the displaced person that he or she will not be required to move without at least 90 days advance written notice (see paragraph (c) of this section), and informs any person to be displaced from a dwelling that he or she cannot

be required to move permanently unless at least one comparable replacement dwelling has been made available;

(4) Informs the displaced 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 §24.208(h); and

(5) Describes the displaced person's right to appeal the Agency's determination as to a person's application for assistance for which a person may be eligible under this part.

(b) *Notice of relocation eligibility.* Eligibility for relocation assistance shall begin on the date of a notice of intent to acquire (described in §24.203(d)), the initiation of negotiations (defined in §24.2(a)(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.

(c) *Ninety-day notice* —(1) *General.* No lawful occupant shall be required to move unless he or she has received at least 90 days advance written notice of the earliest date by which he or she may be required to move.

(2) *Timing of notice.* The displacing Agency may issue the notice 90 days or earlier before it expects the person to be displaced.

(3) *Content of notice.* The 90-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 30 days in advance, the specific date by which he or she must move. If the 90-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 90 days after such a dwelling is made available. ( *See* §24.204(a).)

(4) *Urgent need.* In unusual circumstances, an occupant may be required to vacate the property on less than 90 days advance written notice if the displacing Agency determines that a 90-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 copy of the Agency's determination shall be included in the applicable case file.

(d) *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. ( *See* §24.2(a)(9)(i)(A).)

#### **§ 24.204 AVAILABILITY OF COMPARABLE REPLACEMENT DWELLING BEFORE DISPLACEMENT.**

(a) *General.* No person to be displaced shall be required to move from his or her dwelling unless at least one comparable replacement dwelling (defined at §24.2 (a)(6)) has been made available to the person. When possible, three or more comparable replacement dwellings shall be made available. A comparable replacement dwelling will be considered to have been made available to a person, if:

- (1) The person is informed of its location;
- (2) The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and
- (3) 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.

(b) *Circumstances permitting waiver.* The Federal Agency funding the project may grant a waiver of the policy in paragraph (a) of this section in any case where it is demonstrated that a person must move because of:

- (1) A major disaster as defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5122);
- (2) A presidentially declared national emergency; or

(3) 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.

(c) *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 paragraph (b) of this section, the Agency shall:

(1) Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe, and sanitary dwelling;

(2) 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

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

#### **§ 24.205 RELOCATION PLANNING, ADVISORY SERVICES, AND COORDINATION.**

(a) *Relocation planning.* During the early stages of development, an Agency shall plan Federal and federally-assisted programs or projects in such a manner that recognizes the problems associated with the displacement of individuals, families, businesses, farms, and nonprofit organizations and develop solutions to minimize the adverse impacts of displacement. Such planning, where appropriate, shall precede any action by an Agency which will cause displacement, and should be scoped to the complexity and nature of the anticipated displacing activity including an evaluation of program resources available to carry out timely and orderly relocations. Planning may involve a relocation survey or study, which may include the following:

(1) 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.

(2) An estimate of the number of comparable replacement dwellings in the area (including price ranges and rental rates) that are expected to 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.

(3) 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.

(4) 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.

(5) Consideration of any special relocation advisory services that may be necessary from the displacing Agency and other cooperating Agencies.

(b) *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.

(c) *Relocation assistance advisory services* —(1) *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, November 24, 1962), and offer the services described in paragraph (c)(2) 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 advisory services to such person.

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

(i) 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 displaced business owners and operators should include the following items:

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

(B) Determination of the need for outside specialists in accordance with §24.301(g)(12) 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.

(C) 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.

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

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

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

(ii) 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.

(A) 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 §24.204(a).

(B) 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* §24.403 (a) and (b)) and the basis for the determination, so that the person is aware of the maximum replacement housing payment for which he or she may qualify.

(C) Where feasible, housing shall be inspected prior to being made available to assure that it meets applicable standards. ( *See* §24.2(a)(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 decent, safe, and sanitary.

(D) Whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe, and sanitary 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. ( *See* appendix A, §24.205(c)(2)(ii)(D).)

(E) The Agency shall offer all persons transportation to inspect housing to which they are referred.

(F) 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* §24.2(a)(6)(ix)), as well as of the long term nature of such rent subsidy, and the limited (42 month) duration of the relocation rental assistance payment.

(iii) Provide, for nonresidential moves, current and continuing information on the availability, purchase prices, and rental costs of 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.

(iv) 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.

(v) Supply persons to be displaced with appropriate information concerning Federal and State housing programs, disaster loan and other programs administered by the Small Business Administration, and other Federal and State programs offering assistance to displaced persons, and technical help to persons applying for such assistance.

(d) *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. ( See §24.6.)

(e) 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.

#### **§ 24.206 EVICTION FOR CAUSE.**

(a) 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:

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

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

(3) 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.

(b) 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. ( See appendix A, §24.206.)

#### **§ 24.207 GENERAL REQUIREMENTS —CLAIMS FOR RELOCATION PAYMENTS.**

(a) *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. A displaced person must be provided reasonable assistance necessary to complete and file any required claim for payment.

(b) *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.

(c) *Advanced payments.* If a person demonstrates the need for an advanced 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.

(d) *Time for filing.*

(1) All claims for a relocation payment shall be filed with the Agency no later than 18 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.

(2) The Agency shall waive this time period for good cause.

(e) *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.

(f) *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.

(g) *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.

#### **§ 24.208 ALIENS NOT LAWFULLY PRESENT IN THE UNITED STATES.**

(a) Each person seeking relocation payments or relocation advisory assistance shall, as a condition of eligibility, certify:

(1) 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.

(2) 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.

(3) 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.

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

(b) The certification provided pursuant to paragraphs (a)(1), (a)(2), and (a)(3) 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.

(c) 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.

(d) The displacing Agency shall consider the certification provided pursuant to paragraph (a) of this section to be valid, unless the displacing Agency determines in accordance with paragraph (f) 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.

(e) Any review by the displacing Agency of the certifications provided pursuant to paragraph (a) 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.

(f) 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:

(1) 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 Service (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.)

(2) If the 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.

(g) 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 assistance 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.

(h) For purposes of paragraph (g) 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:

- (1) A significant and demonstrable adverse impact on the health or safety of such spouse, parent, or child;
  - (2) 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
  - (3) Any other impact that the displacing Agency determines will have a significant and demonstrable adverse impact on such spouse, parent, or child.
- (i) The certification referred to in paragraph (a) of this section may be included as part of the

claim for relocation payments described in §24.207 of this part.

(Approved by the Office of Management and Budget under control number 2105-0508.)

#### **§ 24.209 RELOCATION PAYMENTS NOT CONSIDERED AS INCOME.**

No relocation payment received by a displaced person under this part shall be considered as income for the purpose of the Internal Revenue Code of 1954, which has been redesignated as the Internal Revenue Code of 1986 (Title 26, U.S. Code), or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act (42 U.S. Code 301 *et seq.*) or any other Federal law, except for any Federal law providing low-income housing assistance.

#### **SUBPART D—PAYMENTS FOR MOVING AND RELATED EXPENSES**

##### **§ 24.301 PAYMENT FOR ACTUAL REASONABLE MOVING AND RELATED EXPENSES.**

(a) *General.*

(1) Any owner-occupant or tenant who qualifies as a displaced person (defined at §24.2(a)(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.

(2) A non-occupant owner of a rented mobile home is eligible for actual cost reimbursement under §24.301 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 at §24.502(a)(3), the home-owner 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.

(b) *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 paragraphs (g)(1) through (g)(7) of this section. Self-moves based on the lower of two bids or estimates are not eligible for reimbursement under this section.)

(1) *Commercial move* —moves performed by a professional mover.

(2) *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 §24.302.)

(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.

(c) *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 following 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 paragraphs (g)(1) through (g)(7) of this section. In addition to the items in paragraph (a) 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 paragraphs (g)(8) through (g)(10) of this section.)

(1) *Commercial move* —moves performed by a professional mover.

(2) *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 §24.302.)

(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.

(d) *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 paragraphs (g)(1) through (g)(7) of this section and paragraphs (g)(11) through (g)(18) of this section and §24.303.)

(1) *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.

(2) *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.

(e) *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 paragraphs (g)(1) through (g)(7) and (g)(18) of this section. (See appendix A, §24.301(e).)

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

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

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

(g) *Eligible actual moving expenses*.

(1) Transportation of the displaced person and personal property. Transportation costs for a

distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

- (2) Packing, crating, unpacking, and uncrating of the personal property.
- (3) 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.
- (4) Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.
- (5) Insurance for the replacement value of the property in connection with the move and necessary storage.
- (6) 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.
- (7) Other moving-related expenses that are not listed as ineligible under §24.301(h), as the Agency determines to be reasonable and necessary.
- (8) 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.
- (9) The reasonable cost of repairs and/or modifications so that a mobile home can be moved and/or made decent, safe, and sanitary.
- (10) 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.

- (11) 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.
- (12) 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.
- (13) Relettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move.
- (14) 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 fair 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. (See appendix A, §24.301(g)(14)(i) and (ii).) If the business or farm operation is discontinued, the estimated cost of moving the item shall be based on a moving distance of 50 miles.
- (15) The reasonable cost incurred in attempting to sell an item that is not to be relocated.
- (16) *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.

(17) Searching for a replacement location. A business or farm operation is entitled to reimbursement for actual expenses, not to exceed \$2,500, 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.

(18) *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.

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

(1) 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 §24.401(c)(2)(iii));

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

(3) Loss of goodwill;

(4) Loss of profits;

(5) Loss of trained employees;

(6) Any additional operating expenses of a business or farm operation incurred because of operating in a new location except as provided in §24.304(a)(6);

(7) Personal injury;

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

(9) Expenses for searching for a replacement dwelling;

(10) Physical changes to the real property at the replacement location of a business or farm operation except as provided in §§24.301(g)(3) and 24.304(a);

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

(12) Refundable security and utility deposits.

(i) *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 §24.203. To be eligible for payments under this section the displaced person must:

(1) 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.

(2) 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.

(j) *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.

[70 FR 611, Jan. 4, 2005, as amended at 70 FR 22611, May 2, 2005]

#### **§ 24.302 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 §24.301. This payment shall be determined according to the Fixed Residential Moving Cost Schedule<sup>3</sup> 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.

<sup>3</sup>The Fixed Residential Moving Cost Schedule is available at the following URL:  
<http://www.fhwa.dot.gov/////realestate/fixsch96.htm>. Agencies are cautioned to ensure they are using the most recent edition.

#### **§ 24.303 RELATED NONRESIDENTIAL ELIGIBLE EXPENSES.**

The following expenses, in addition to those provided by §24.301 for moving personal property, shall be provided if the Agency determines that they are actual, reasonable and necessary:

- (a) Connection to available nearby utilities from the right-of-way to improvements at the replacement site.
- (b) 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 pre-approved hourly rate may be established. (See appendix A, §24.303(b).)

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

#### **§ 24.304 REESTABLISHMENT EXPENSES—NONRESIDENTIAL MOVES.**

In addition to the payments available under §§24.301 and 24.303 of this subpart, a small business, as defined in §24.2(a)(24), farm or nonprofit organization is entitled to receive a payment, not to exceed \$10,000, for expenses actually incurred in relocating and reestablishing such small business, farm or nonprofit organization at a replacement site.

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

- (1) Repairs or improvements to the replacement real property as required by Federal, State or local law, code or ordinance.
- (2) Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.
- (3) Construction and installation costs for exterior signing to advertise the business.
- (4) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting.
- (5) Advertisement of replacement location.
- (6) Estimated increased costs of operation during the first 2 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.
- (7) Other items that the Agency considers essential to the reestablishment of the business.

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

Section 1521 of MAP-21 changed the dollar amount from \$10,000 to \$25,000.

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

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

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

(4) Payment to a part-time business in the home which does not contribute materially (defined at §24.2(a)(7)) to the household income.

### **§ 24.305 FIXED PAYMENT FOR MOVING EXPENSES—NONRESIDENTIAL MOVES.**

(a) *Business.* A displaced business may be eligible to choose a fixed payment in lieu of the payments for actual moving and related expenses, provided by §§24.301, 24.303 and 24.304. 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 paragraph (e) of this section, but not less than \$1,000 nor more than \$20,000. The displaced business is eligible for the payment if the Agency determines that:

(1) 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;

(2) 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;

(3) 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.

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

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

(6) The business contributed materially to the income of the displaced person during the 2 taxable years prior to displacement. (See §24.2(a)(7).)

(b) *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:

(1) The same premises and equipment are shared;

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

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

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

(c) *Farm operation.* A displaced farm operation (defined at §24.2(a)(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 paragraph (e) of this section, but not less than \$1,000 nor more than \$20,000. 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:

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

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

(d) *Nonprofit organization.* A displaced nonprofit organization may choose a fixed payment of \$1,000 to \$20,000, 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 \$1,000 must be supported with financial statements for the two 12-month periods prior to the acquisition. The amount to be

Section 1521 of MAP-21 changed the dollar amount from \$20,000 to \$40,000.

used for the payment is the average of 2 years annual gross revenues less administrative expenses. (See appendix A, §24.305(d).)

(e) *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 2 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 2 taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the 2 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. (See appendix A, §24.305(e).)

#### **§ 24.306 DISCRETIONARY UTILITY RELOCATION PAYMENTS.**

(a) Whenever a program or project undertaken by a displacing Agency causes the relocation of a utility facility (see §24.2(a)(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:

- (1) 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;
- (2) 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;
- (3) 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;

(4) 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

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

(b) 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.

(c) 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. ( See appendix A, §24.306.)

#### **SUBPART E—REPLACEMENT HOUSING PAYMENTS**

##### **§ 24.401 REPLACEMENT HOUSING PAYMENT FOR 180-DAY HOMEOWNER-OCCUPANTS.**

(a) *Eligibility.* A displaced person is eligible for the replacement housing payment for a 180-day homeowner-occupant if the person:

- (1) Has actually owned and occupied the displacement dwelling for not less than 180 days immediately prior to the initiation of negotiations; and
- (2) Purchases and occupies a decent, safe, and sanitary 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):

- (i) The date the displaced person 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 in the court; or
- (ii) The date the displacing Agency's obligation under §24.204 is met.

(b) *Amount of payment.* The replacement housing occupant may not exceed \$22,500. (See also §24.404.) The payment under this subpart 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 a comparable replacement dwelling is made available to such person, whichever is later. The payment shall be the sum of:

- (1) The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, as determined in accordance with paragraph (c) of this section;
- (2) The increased interest costs and other debt service costs which are incurred in connection with the mortgage(s) on the replacement dwelling, as determined in accordance with paragraph (d) of this section; and
- (3) The reasonable expenses incidental to the purchase of the replacement dwelling, as determined in accordance with paragraph (e) of this section.

(c) *Price differential*

(1) *Basic computation.* The price differential to be paid under paragraph (b)(1) of this section is the amount which must be added to the acquisition cost of the displacement dwelling and site ( *see* §24.2(a)(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 §24.403(a); or
- (ii) The purchase price of the decent, safe, and sanitary replacement dwelling actually purchased and occupied by the displaced person.

(2) *Owner retention of displacement dwelling.* If the owner retains ownership of his or her

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;
- (ii) The cost of making the unit a decent, safe, and sanitary replacement dwelling (defined at §24.2(a)(8)); and
- (iii) The current fair market value for residential use of the replacement dwelling site ( *see* appendix A, §24.401(c)(2)(iii)), 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 value of the dwelling, if such retention value is reflected in the “acquisition cost” used when computing the replacement housing payment.

(d) *Increased mortgage interest costs.* The displacing Agency shall determine the factors to be used in computing the amount to be paid to a displaced person under paragraph (b)(2) of this section. The payment for increased mortgage interest cost 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 180 days prior to the initiation of negotiations. Paragraphs (d)(1) through (d)(5) of this section 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.

(1) The payment shall be based on the unpaid mortgage balance(s) on the displacement dwelling; however, in the event the displaced person obtains a smaller mortgage than the mortgage balance(s) computed in the buydown determination, the payment will be prorated and reduced accordingly. (See appendix A, §24.401(d).) In the case of a home equity loan the unpaid balance shall be that balance which

Section 1521 of MAP-21 changed the dollar amount from \$22,500 to \$31,000.



existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.

(2) 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.

(3) 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.

(4) 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 the mortgage balance under this section.

(5) 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.

(e) *Incidental expenses.* The incidental expenses to be paid under paragraph (b)(3) of this section or §24.402(c)(1) 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:

- (1) Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.
- (2) Lender, FHA, or VA application and appraisal fees.

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

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

(5) Credit report.

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

(7) Escrow agent's fee.

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

(9) Such other costs as the Agency determine to be incidental to the purchase.

(f) Rental assistance payment for 180-day homeowner. A 180-day homeowner-occupant, who could be eligible for a replacement housing payment under paragraph (a) 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 §24.402(b)(1), except that the limit of \$5,250 does not apply, and disbursed in accordance with §24.402(b)(3). Under no circumstances would the rental assistance payment exceed the amount that could have been received under §24.401(b)(1) had the 180-day homeowner elected to purchase and occupy a comparable replacement dwelling.

[70 FR 611, Jan. 4, 2005, as amended at 70 FR 22611, May 2, 2005]

#### **§ 24.402 REPLACEMENT HOUSING PAYMENT FOR 90-DAY OCCUPANTS.**

(a) *Eligibility.* A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed \$5,250 for rental assistance, as computed in accordance with paragraph (b) of this section, or downpayment assistance, as computed in accordance with paragraph (c) of this section, if such displaced person:

- (1) Has actually and lawfully occupied the displacement dwelling for at least 90 days

Section 1521 of MAP-21 changed the dollar amount from \$5,250 to \$7,200.

Section 1521 of MAP-21 change the dollar amount from \$5,250 to \$7,200.

immediately prior to the initiation of negotiations; and

(2) Has rented, or purchased, and occupied a decent, safe, and sanitary replacement dwelling within 1 year (unless the Agency extends this period for good cause) after:

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

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

(A) The date he or she 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 he or she moves from the displacement dwelling.

*(b) Rental assistance payment*

(1) *Amount of payment.* An eligible displaced person who rents a replacement dwelling is entitled to a payment not to exceed \$5,250 for rental assistance. (See §24.404.) Such payment shall be 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of:

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

(ii) The monthly rent and estimated average monthly cost of utilities for the decent, safe, and sanitary replacement dwelling actually occupied by the displaced person.

(2) *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);

(ii) Thirty (30) percent of the displaced person's average monthly 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<sup>4</sup>. The base monthly rental shall be established solely on the criteria in paragraph (b)(2)(i) of this section 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,

<sup>4</sup> 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/realestate/ua/ualic.htm>.

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

(3) *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 §24.403(f), 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.

*(c) Downpayment assistance payment*

(1) *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 paragraph (b) of this section if the person rented a comparable replacement dwelling. At the Agency's discretion, a downpayment assistance payment that is less than \$5,250 may be increased to any amount not to exceed \$5,250. However, the payment to a displaced homeowner shall not exceed the amount the owner would receive under §24.401(b) if he or she met the 180-day occupancy requirement. If the Agency elects to provide the maximum payment of

\$5,250 as a downpayment, the Agency shall apply this discretion 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 180-day owner-occupant under §24.401(a) is not eligible for this payment. (See appendix A, §24.402(c).)

Section 1521 of MAP-21 changed the dollar amount from \$5,250 to \$7,200.

Section 1521 of MAP-21 changed the dollar amount from \$5,250 to \$7,200.

(2) *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.

**§ 24.403 ADDITIONAL RULES GOVERNING REPLACEMENT HOUSING PAYMENTS.**

(a) *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 at §24.2(a)(6)).

(1) 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.

(2) 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), the value of such attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment.

(3) 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 buildable residential lot, the Agency may offer to purchase the entire property. If the owner refuses to sell the remainder to the Agency, the fair market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.

(4) To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

(5) 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.

(6) 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.

(7) 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 lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered the acquisition cost when computing the replacement housing payment.

(b) *Inspection of replacement dwelling.* Before making a replacement housing payment or releasing the initial payment from escrow, the Agency or its designated representative shall inspect the replacement dwelling and determine whether it is a decent, safe, and sanitary dwelling as defined at §24.2(a)(8).

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

- (1) Purchases a dwelling;
- (2) Purchases and rehabilitates a substandard dwelling;
- (3) Relocates a dwelling which he or she owns or purchases;
- (4) Constructs a dwelling on a site he or she owns or purchases;
- (5) 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
- (6) Currently owns a previously purchased dwelling and site, valuation of which shall be on the basis of current fair market value.

(d) *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 these regulations for a reason beyond his or her control, including:

(1) A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the Federal Agency funding the project, or the displacing Agency; or

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

(e) *Conversion of payment.* A displaced person who initially rents a replacement dwelling and receives a rental assistance payment under §24.402(b) is eligible to receive a payment under §24.401 or §24.402(c) if he or she meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed 1-year period. Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment computed under §24.401 or §24.402(c).

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

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

(2) Any remaining payment shall be disbursed to the remaining family members of the displaced household in any case in which a member of a displaced family dies.

(3) 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.

(g) *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. (See §24.3.)

[70 FR 611, Jan. 4, 2005, as amended at 70 FR 22611, May 2, 2005]

#### **§ 24.404 REPLACEMENT HOUSING OF LAST RESORT.**

(a) *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 §24.401 or §24.402, 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:

(1) 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

(2) 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.

(b) *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.

(c) *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.

(1) 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 §24.401 or §24.402. 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.

(2) 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 ( *see* appendix A, §24.404(c)), 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 §24.2(a)(6)(ii) of this part.

(3) The Agency shall provide assistance under this subpart to a displaced person who is not eligible to receive a replacement housing payment under §§24.401 and 24.402 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 financial means. ( *See* §24.2(a)(6)(viii)(C).) Such assistance shall cover a period of 42 months.

## **SUBPART F—MOBILE HOMES**

### **§ 24.501 APPLICABILITY.**

(a) *General.* This subpart describes the requirements governing the provision of replacement housing payments to a person displaced from a mobile home and/or mobile home site who meets the basic eligibility requirements of this part. Except as modified by this subpart, such a displaced person is entitled to a moving expense payment in accordance with subpart D of this part and a replacement housing payment in accordance with subpart E of this part 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 §24.301(g)(1) through (g)(10).

(b) *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.

**§ 24.502 REPLACEMENT HOUSING PAYMENT FOR 180-DAY MOBILE HOMEOWNER DISPLACED FROM A MOBILE HOME, AND/OR FROM THE ACQUIRED MOBILE HOME SITE.**

(a) *Eligibility.* An owner-occupant displaced from a mobile home or site is entitled to a replacement housing payment, not to exceed \$22,500, under §24.401 if:

(1) The person occupied the mobile home on the displacement site for at least 180 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 paragraphs (a)(3)(i) through (iv) of this section.

(2) The person meets the other basic eligibility requirements at §24.401(a)(2); and

(3) 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 displaced 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.

(b) *Replacement housing payment computation for a 180-day owner that is displaced from a mobile home.* The replacement housing payment for an eligible displaced 180-day owner is computed as described at §24.401(b) incorporating the following, as applicable:

(1) 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.

(2) 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 paragraph (a)(1)(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.

(3) 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.

(c) *Rental assistance payment for a 180-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 180-day owner-occupant is entitled to a rental assistance payment computed as described in §24.402(b). 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.

(d) *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 at §24.301 and any replacement housing payment for the purchase or rental of a

comparable site as described in this section or §24.503 as applicable.

#### **§ 24.503 REPLACEMENT HOUSING PAYMENT FOR 90-DAY MOBILE HOME OCCUPANTS.**

A displaced tenant or owner-occupant of a mobile home and/or site is eligible for a replacement housing payment, not to exceed \$5,250, under §24.402 if:

- (a) The person actually occupied the displacement mobile home on the displacement site for at least 90 days immediately prior to the initiation of negotiations;
- (b) The person meets the other basic eligibility requirements at §24.402(a); and
- (c) The Agency acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the Agency but the Agency determines that the occupant is displaced from the mobile home because of one of the circumstances described at §24.502(a)(3).

### **SUBPART G—CERTIFICATION**

#### **§ 24.601 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 §24.4 of this part.

#### **§ 24.602 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, 1200 New Jersey Avenue, SE., Washington, DC 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.

[70 FR 611, Jan. 4, 2005, as amended at 73 FR 33329, June 12, 2008]

#### **§ 24.603 MONITORING AND CORRECTIVE ACTION.**

- (a) 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.
- (b) The Lead Agency may require periodic information or data from affected Federal or State Agencies.
- (c) 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 30 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.
- (d) 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.

## APPENDIX A TO PART 24— ADDITIONAL INFORMATION

This appendix provides additional information to explain the intent of certain provisions of this part.

### Subpart A—General

#### *Section 24.2 Definitions and Acronyms*

*Section 24.2(a)(6) Definition of comparable replacement dwelling.* The requirement in §24.2(a)(6)(ii) that a comparable replacement dwelling be “functionally equivalent” to the displacement dwelling means that it must perform the same function, and provide the same utility. While it need not possess every feature of the displacement dwelling, the principal features must be present.

For example, if the displacement dwelling contains a pantry and a similar dwelling is not available, a replacement dwelling with ample kitchen cupboards may be acceptable. Insulated and heated space in a garage might prove an adequate substitute for basement workshop space. A dining area may substitute for a separate dining room. Under some circumstances, attic space could substitute for basement space for storage purposes, and vice versa.

Only in unusual circumstances may a comparable replacement dwelling contain fewer rooms or, consequentially, less living space than the displacement dwelling. Such may be the case when a decent, safe, and sanitary replacement dwelling (which by definition is “adequate to accommodate” the displaced person) may be found to be “functionally equivalent” to a larger but very run-down substandard displacement dwelling. Another example is when a displaced person accepts an offer of government housing assistance and the applicable requirements of such housing assistance program require that the displaced person occupy a dwelling that has fewer rooms or less living space than the displacement dwelling.

*Section 24.2(a)(6)(vii).* The definition of comparable replacement dwelling requires that a comparable replacement dwelling for a person who is not receiving assistance under any government housing program before

displacement must be currently available on the private market without any subsidy under a government housing program.

*Section 24.2(a)(6)(ix).* A public housing unit may qualify as a comparable replacement dwelling only for a person displaced from a public housing unit. A privately owned dwelling with a housing program subsidy tied to the unit may qualify as a comparable replacement dwelling only for a person displaced from a similarly subsidized unit or public housing.

A housing program subsidy that is paid to a person (not tied to the building), such as a HUD Section 8 Housing Voucher Program, may be reflected in an offer of a comparable replacement dwelling to a person receiving a similar subsidy or occupying a privately owned subsidized unit or public housing unit before displacement.

However, nothing in this part prohibits an Agency from offering, or precludes a person from accepting, assistance under a government housing program, even if the person did not receive similar assistance before displacement. However, the Agency is obligated to inform the person of his or her options under this part. (If a person accepts assistance under a government housing assistance program, the rules of that program governing the size of the dwelling apply, and the rental assistance payment under §24.402 would be computed on the basis of the person's actual out-of-pocket cost for the replacement housing.)

*Section 24.2(a)(8)(ii) Decent, Safe and Sanitary.* Many local housing and occupancy codes require the abatement of deteriorating paint, including lead-based paint and lead-based paint dust, in protecting the public health and safety. Where such standards exist, they must be honored. Even where local law does not mandate adherence to such standards, it is strongly recommended that they be considered as a matter of public policy.

*Section 24.2(a)(8)(vii) Persons with a disability.* Reasonable accommodation of a displaced person with a disability at the replacement dwelling means the Agency is required to address persons with a physical impairment that substantially limits one or more of the major life activities. In these situations, reasonable accommodation should include the following at a minimum: Doors of adequate width; ramps or other assistance devices to traverse stairs and access



bathtubs, shower stalls, toilets and sinks; storage cabinets, vanities, sink and mirrors at appropriate heights. Kitchen accommodations will include sinks and storage cabinets built at appropriate heights for access. The Agency shall also consider other items that may be necessary, such as physical modification to a unit, based on the displaced person's needs.

*Section 24.2(a)(9)(ii)(D) Persons not displaced.* Paragraph (a)(9)(ii)(D) of this section recognizes that there are circumstances where the acquisition, rehabilitation or demolition of real property takes place without the intent or necessity that an occupant of the property be permanently displaced. Because such occupants are not considered “displaced persons” under this part, great care must be exercised to ensure that they are treated fairly and equitably. For example, if the tenant-occupant of a dwelling will not be displaced, but is required to relocate temporarily in connection with the project, the temporarily occupied housing must be decent, safe, and sanitary and the tenant must be reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation. These expenses may include moving expenses and increased housing costs during the temporary relocation. Temporary relocation should not extend beyond one year before the person is returned to his or her previous unit or location. The Agency must contact any residential tenant who has been temporarily relocated for a period beyond one year and offer all permanent relocation assistance. This assistance would be in addition to any assistance the person has already received for temporary relocation, and may not be reduced by the amount of any temporary relocation assistance.

Similarly, if a business will be shut-down for any length of time due to rehabilitation of a site, it may be temporarily relocated and reimbursed for all reasonable out of pocket expenses or must be determined to be displaced at the Agency's option.

Any person who disagrees with the Agency's determination that he or she is not a displaced person under this part may file an appeal in accordance with 49 CFR part 24.10 of this regulation.

*Section 24.2(a)(11) Dwelling Site.* This definition ensures that the computation of replacement housing payments are accurate and realistic (a) when the dwelling is located on a larger than normal site, (b) when mixed-use properties are acquired, (c) when more than one dwelling is located on the acquired property, or (d) when the replacement dwelling is retained by an owner and moved to another site.

*Section 24.2(a)(14) Household income (exclusions).* Household income for purposes of this regulation does not include program benefits that are not considered income by Federal law such as food stamps and the Women Infants and Children (WIC) program. For a more detailed list of income exclusions see Federal Highway Administration, Office of Real Estate Services Web site: <http://www.fhwa.dot.gov/realestate/>. (FR 4644-N-16 page 20319 Updated.) If there is a question on whether or not to include income from a specific program contact the Federal Agency administering the program.

*Section 24(a)(15) Initiation of negotiations.* This section provides a special definition for acquisition and displacements under Pub. L. 96-510 or Superfund. The order of activities under Superfund may differ slightly in that temporary relocation may precede acquisition. Superfund is a program designed to clean up hazardous waste sites. When such a site is discovered, it may be necessary, in certain limited circumstances, to alert individual owners and tenants to potential health or safety threats and to offer to temporarily relocate them while additional information is gathered. If a decision is later made to permanently relocate such persons, those who had been temporarily relocated under Superfund authority would no longer be on site when a formal, written offer to acquire the property was made, and thus would lose their eligibility for a replacement housing payment. In order to prevent this unfair outcome, we have provided a definition of initiation of negotiation, which is based on the date the Federal Government offers to temporarily relocate an owner or tenant from the subject property.

*Section 24.2(a)(15)(iv) Initiation of negotiations (Tenants.)* Tenants who occupy property that may be acquired amicably, without recourse to the use of the power of eminent domain, must be fully informed as to their eligibility for relocation assistance. This includes notifying such tenants

of their potential eligibility when negotiations are initiated, notifying them if they become fully eligible, and, in the event the purchase of the property will not occur, notifying them that they are no longer eligible for relocation benefits. If a tenant is not readily accessible, as the result of a disaster or emergency, the Agency must make a good faith effort to provide these notifications and document its efforts in writing.

*Section 24.2(a)(17) Mobile home.* The following examples provide additional guidance on the types of mobile homes and manufactured housing that can be found acceptable as comparable replacement dwellings for persons displaced from mobile homes. A recreational vehicle that is capable of providing living accommodations may be considered a replacement dwelling if the following criteria are met: the recreational vehicle is purchased and occupied as the “primary” place of residence; it is located on a purchased or leased site and connected to or have available all necessary utilities for functioning as a housing unit on the date of the displacing Agency’s inspection; and, the dwelling, as sited, meets all local, State, and Federal requirements for a decent, safe and sanitary dwelling. (The regulations of some local jurisdictions will not permit the consideration of these vehicles as decent, safe and sanitary dwellings. In those cases, the recreational vehicle will not qualify as a replacement dwelling.)

For HUD programs, mobile home is defined as “a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such terms shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of HUD and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act, provided by Congress in the original 1974 Manufactured Housing Act.” In 1979 the term “mobile home”

was changed to “manufactured home.” For purposes of this regulation, the terms mobile home and manufactured home are synonymous.

When assembled, manufactured homes built after 1976 contain no less than 320 square feet. They may be single or multi-sectioned units when installed. Their designation as personalty or realty will be determined by State law. When determined to be realty, most are eligible for conventional mortgage financing.

The 1976 HUD standards distinguish manufactured homes from factory-built “modular homes” as well as conventional or “stick-built” homes. Both of these types of housing are required to meet State and local construction codes.

*Section 24.3 No Duplication of Payments.* This section prohibits an Agency from making a payment to a person under these regulations that would duplicate another payment the person receives under Federal, State, or local law. The Agency is not required to conduct an exhaustive search for such other payments; it is only required to avoid creating a duplication based on the Agency’s knowledge at the time a payment is computed.

## **Subpart B—Real Property Acquisition**

Federal Agencies may find that, for Federal eminent domain purposes, the terms “fair market value” (as used throughout this subpart) and “market value,” which may be the more typical term in private transactions, may be synonymous.

*Section 24.101(a) Direct Federal program or project.* All 49 CFR Part 24 Subpart B (real property acquisition) requirements apply to all direct acquisitions for Federal programs and projects by Federal Agencies, except for acquisitions undertaken by the Tennessee Valley Authority or the Rural Utilities Service. There are no exceptions for “voluntary transactions.”

*Section 24.101(b)(1)(i).* The term “general geographic area” is used to clarify that the “geographic area” is not to be construed to be a small, limited area.

*Sections 24.101(b)(1)(iv) and (2)(ii).* These sections provide that, for programs and projects receiving Federal financial assistance described in §§24.101(b)(1) and (2), Agencies are to inform

the owner(s) in writing of the Agency's estimate of the fair market value for the property to be acquired.

While this part does not require an appraisal for these transactions, Agencies may still decide that an appraisal is necessary to support their determination of the market value of these properties, and, in any event, Agencies must have some reasonable basis for their determination of market value. In addition, some of the concepts inherent in Federal Program appraisal practice are appropriate for these estimates. It would be appropriate for Agencies to adhere to project influence restrictions, as well as guard against discredited "public interest value" valuation concepts.

After an Agency has established an amount it believes to be the market value of the property and has notified the owner of this amount in writing, an Agency may negotiate freely with the owner in order to reach agreement. Since these transactions are voluntary, accomplished by a willing buyer and a willing seller, negotiations may result in agreement for the amount of the original estimate, an amount exceeding it, or for a lesser amount. Although not required by the regulations, it would be entirely appropriate for Agencies to apply the administrative settlement concept and procedures in §24.102(i) to negotiate amounts that exceed the original estimate of market value. Agencies shall not take any coercive action in order to reach agreement on the price to be paid for the property.

*Section 24.101(c) Less-than-full-fee interest in real property.* This provision provides a benchmark beyond which the requirements of the subpart clearly apply to leases.

*Section 24.102(c)(2) Appraisal, waiver thereof, and invitation to owner.* The purpose of the appraisal waiver provision is to provide Agencies a technique to avoid the costs and time delay associated with appraisal requirements for low-value, non-complex acquisitions. The intent is that non-appraisers make the waiver valuations, freeing appraisers to do more sophisticated work.

The Agency employee making the determination to use the appraisal waiver process must have enough understanding of appraisal principles to be able to determine whether or not the proposed acquisition is low value and uncomplicated.

Waiver valuations are not appraisals as defined by the Uniform Act and these regulations; therefore, appraisal performance requirements or standards, regardless of their source, are not required for waiver valuations by this rule. Since waiver valuations are not appraisals, neither is there a requirement for an appraisal review. However, the Agency must have a reasonable basis for the waiver valuation and an Agency official must still establish an amount believed to be just compensation to offer the property owner(s).

The definition of "appraisal" in the Uniform Act and appraisal waiver provisions of the Uniform Act and these regulations are Federal law and public policy and should be considered as such when determining the impact of appraisal requirements levied by others.

*Section 24.102(d) Establishment of offer of just compensation.* The initial offer to the property owner may not be less than the amount of the Agency's approved appraisal, but may exceed that amount if the Agency determines that a greater amount reflects just compensation for the property.

*Section 24.102(f) Basic negotiation procedures.* An offer should be adequately presented to an owner, and the owner should be properly informed. Personal, face-to-face contact should take place, if feasible, but this section does not require such contact in all cases.

This section also provides that the property owner be given a reasonable opportunity to consider the Agency's offer and to present relevant material to the Agency. In order to satisfy this requirement, Agencies must allow owners time for analysis, research and development, and compilation of a response, including perhaps getting an appraisal. The needed time can vary significantly, depending on the circumstances, but thirty (30) days would seem to be the minimum time these actions can be reasonably expected to require. Regardless of project time pressures, property owners must be afforded this opportunity.

In some jurisdictions, there is pressure to initiate formal eminent domain procedures at the earliest opportunity because completing the eminent domain process, including gaining possession of the needed real property, is very time consuming. These provisions are not intended to restrict this

practice, so long as it does not interfere with the reasonable time that must be provided for negotiations, described above, and the Agencies adhere to the Uniform Act ban on coercive action (section 301(7) of the Uniform Act).

If the owner expresses intent to provide an appraisal report, Agencies are encouraged to provide the owner and/or his/her appraiser a copy of Agency appraisal requirements and inform them that their appraisal should be based on those requirements.

*Section 24.102(i) Administrative settlement.* This section provides guidance on administrative settlement as an alternative to judicial resolution of a difference of opinion on the value of a property, in order to avoid unnecessary litigation and congestion in the courts.

All relevant facts and circumstances should be considered by an Agency official delegated this authority. Appraisers, including review appraisers, must not be pressured to adjust their estimate of value for the purpose of justifying such settlements. Such action would invalidate the appraisal process.

*Section 24.102(j) Payment before taking possession.* It is intended that a right-of-entry for construction purposes be obtained only in the exceptional case, such as an emergency project, when there is no time to make an appraisal and purchase offer and the property owner is agreeable to the process.

*Section 24.102(m) Fair rental.* Section 301(6) of the Uniform Act limits what an Agency may charge when a former owner or previous occupant of a property is permitted to rent the property for a short term or when occupancy is subject to termination by the Agency on short notice. Such rent may not exceed “the fair rental value of the property to a short-term occupier.” Generally, the Agency's right to terminate occupancy on short notice (whether or not the renter also has that right) supports the establishment of a lesser rental than might be found in a longer, fixed-term situation.

*Section 24.102(n) Conflict of interest.* The overall objective is to minimize the risk of fraud while allowing Agencies to operate as efficiently as possible. There are three parts to this provision.

The first provision is the prohibition against having any interest in the real property being

valued by the appraiser (for an appraisal), the valuer (for a waiver estimate) or the review appraiser (for an appraisal review.)

The second provision is that no person functioning as a negotiator for a project or program can supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work for that project or program. The intent of this provision is to ensure appraisal/valuation independence and to prevent inappropriate influence. It is not intended to prevent Agencies from providing appraisers/valuers with appropriate project information and participating in determining the scope of work for the appraisal or valuation. For a program or project receiving Federal financial assistance, the Federal funding Agency may waive this requirement if it would create a hardship for the Agency. The intent is to accommodate Federal-aid recipients that have a small staff where this provision would be unworkable.

The third provision is to minimize situations where administrative costs exceed acquisition costs. Section 24.102(n) also provides that the same person may prepare a valuation estimate (including an appraisal) and negotiate that acquisition, if the valuation estimate amount is \$10,000 or less. However, it should be noted that this exception for properties valued at \$10,000 or less is not mandatory, *e.g.*, Agencies are not required to use those who prepare a waiver valuation or appraisal of \$10,000 or less to negotiate the acquisition, and, all appraisals must be reviewed in accordance with §24.104. This includes appraisals of real property valued at \$10,000 or less.

*Section 24.103 Criteria for Appraisals.* The term “requirements” is used throughout this section to avoid confusion with The Appraisal Foundation's Uniform Standards of Professional Appraisal Practice (USPAP) “standards.” Although this section discusses appraisal requirements, the definition of “appraisal” itself at §24.2(a)(3) includes appraisal performance requirements that are an inherent part of this section.

The term “Federal and federally-assisted program or project” is used to better identify the type of appraisal practices that are to be referenced and to differentiate them from the private sector, especially mortgage lending, appraisal practice.

*Section 24.103(a) Appraisal requirements.* The first sentence instructs readers that requirements for appraisals for Federal and federally-assisted programs or projects are located in 49 CFR part 24. These are the basic appraisal requirements for Federal and federally-assisted programs or projects. However, Agencies may enhance and expand on them, and there may be specific project or program legislation that references other appraisal requirements.

These appraisal requirements are necessarily designed to comply with the Uniform Act and other Federal eminent domain based appraisal requirements. They are also considered to be consistent with Standards Rules 1, 2, and 3 of the 2004 edition of the USPAP. Consistency with USPAP has been a feature of these appraisal requirements since the beginning of USPAP. This “consistent” relationship was more formally recognized in OMB Bulletin 92–06. While these requirements are considered consistent with USPAP, neither can supplant the other; their provisions are neither identical, nor interchangeable. Appraisals performed for Federal and federally-assisted real property acquisition must follow the requirements in this regulation. Compliance with any other appraisal requirements is not the purview of this regulation. An appraiser who is committed to working within the bounds of USPAP should recognize that compliance with both USPAP and these requirements may be achieved by using the Supplemental Standards Rule and the Jurisdictional Exception Rule of USPAP, where applicable.

The term “scope of work” defines the general parameters of the appraisal. It reflects the needs of the Agency and the requirements of Federal and federally-assisted program appraisal practice. It should be developed cooperatively by the assigned appraiser and an Agency official who is competent to both represent the Agency’s needs and respect valid appraisal practice. The scope of work statement should include the purpose and/or function of the appraisal, a definition of the estate being appraised, and if it is fair market value, its applicable definition, and the assumptions and limiting conditions affecting the appraisal. It may include parameters for the data search and identification of the technology, including approaches to value, to be used to analyze the data. The scope of work should consider the

specific requirements in 49 CFR 24.103(a)(2)(i) through (v) and address them as appropriate.

*Section 24.103(a)(1).* The appraisal report should identify the items considered in the appraisal to be real property, as well as those identified as personal property.

*Section 24.103(a)(2).* All relevant and reliable approaches to value are to be used. However, where an Agency determines that the sales comparison approach will be adequate by itself and yield credible appraisal results because of the type of property being appraised and the availability of sales data, it may limit the appraisal assignment to the sales comparison approach. This should be reflected in the scope of work.

*Section 24.103(b) Influence of the project on just compensation.* As used in this section, the term “project” means an undertaking which is planned, designed, and intended to operate as a unit.

When the public is aware of the proposed project, project area property values may be affected. Therefore, property owners should not be penalized because of a decrease in value caused by the proposed project nor reap a windfall at public expense because of increased value created by the proposed project.

*Section 24.103(d)(1).* The appraiser and review appraiser must each be qualified and competent to perform the appraisal and appraisal review assignments, respectively. Among other qualifications, State licensing or certification and professional society designations can help provide an indication of an appraiser’s abilities.

*Section 24.104 Review of appraisals.* The term “review appraiser” is used rather than “reviewing appraiser,” to emphasize that “review appraiser” is a separate specialty and not just an appraiser who happens to be reviewing an appraisal. Federal Agencies have long held the perspective that appraisal review is a unique skill that, while it certainly builds on appraisal skills, requires more. The review appraiser should possess both appraisal technical abilities and the ability to be the two-way bridge between the Agency’s real property valuation needs and the appraiser.

Agency review appraisers typically perform a role greater than technical appraisal review. They are often involved in early project development. Later they may be involved in devising the scope

of work statements and participate in making appraisal assignments to fee and/or staff appraisers. They are also mentors and technical advisors, especially on Agency policy and requirements, to appraisers, both staff and fee. Additionally, review appraisers are frequently technical advisors to other Agency officials.

*Section 24.104(a).* This paragraph states that the review appraiser is to review the appraiser's presentation and analysis of market information and that it is to be reviewed against §24.103 and other applicable requirements, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition. The appraisal review is to be a technical review by an appropriately qualified review appraiser. The qualifications of the review appraiser and the level of explanation of the basis for the review appraiser's recommended (or approved) value depend on the complexity of the appraisal problem. If the initial appraisal submitted for review is not acceptable, the review appraiser is to communicate and work with the appraiser to the greatest extent possible to facilitate the appraiser's development of an acceptable appraisal.

In doing this, the review appraiser is to remain in an advisory role, not directing the appraisal, and retaining objectivity and options for the appraisal review itself.

If the Agency intends that the staff review appraiser approve the appraisal (as the basis for the establishment of the amount believed to be just compensation), or establish the amount the Agency believes is just compensation, she/he must be specifically authorized by the Agency to do so. If the review appraiser is not specifically authorized to approve the appraisal (as the basis for the establishment of the amount believed to be just compensation), or establish the amount believed to be just compensation, that authority remains with another Agency official.

*Section 24.104(b).* In developing an independent approved or recommended value, the review appraiser may reference any acceptable resource, including acceptable parts of any appraisal, including an otherwise unacceptable appraisal. When a review appraiser develops an independent value, while retaining the appraisal review, that independent value also becomes the approved appraisal of the fair market value for

Uniform Act Section 301(3) purposes. It is within Agency discretion to decide whether a second review is needed if the first review appraiser establishes a value different from that in the appraisal report or reports on the property.

*Section 24.104(c).* Before acceptance of an appraisal, the review appraiser must determine that the appraiser's documentation, including valuation data and analysis of that data, demonstrates the soundness of the appraiser's opinion of value. For the purposes of this part, an acceptable appraisal is any appraisal that, on its own, meets the requirements of §24.103. An approved appraisal is the one acceptable appraisal that is determined to best fulfill the requirement to be the basis for the amount believed to be just compensation. Recognizing that appraisal is not an exact science, there may be more than one acceptable appraisal of a property, but for the purposes of this part, there can be only one approved appraisal.

At the Agency's discretion, for a low value property requiring only a simple appraisal process, the review appraiser's recommendation (or approval), endorsing the appraiser's report, may be determined to satisfy the requirement for the review appraiser's signed report and certification.

*Section 24.106(b).* *Expenses incidental to transfer of title to the agency.* Generally, the Agency is able to pay such incidental costs directly and, where feasible, is required to do so. In order to prevent the property owner from making unnecessary out-of-pocket expenditures and to avoid duplication of expenses, the property owner should be informed early in the acquisition process of the Agency's intent to make such arrangements. Such expenses must be reasonable and necessary.

### **Subpart C—General Relocation Requirements**

*Section 24.202 Applicability and Section 205(c) Services to be provided.* In extraordinary circumstances, when a displaced person is not readily accessible, the Agency must make a good faith effort to comply with these sections and document its efforts in writing.

*Section 24.204 Availability of comparable replacement dwelling before displacement.*

*Section 24.204(a) General.* This provision requires that no one may be required to move from a dwelling without a comparable replacement dwelling having been made available. In addition, §24.204(a) requires that, “where possible, three or more comparable replacement dwellings shall be made available.” Thus, the basic standard for the number of referrals required under this section is three. Only in situations where three comparable replacement dwellings are not available (e.g., when the local housing market does not contain three comparable dwellings) may the Agency make fewer than three referrals.

*Section 24.205 Relocation assistance advisory services.* Section 24.205(c)(2)(ii)(D) emphasizes that if the comparable replacement dwellings are located in areas of minority concentration, minority persons should, if possible, also be given opportunities to relocate to replacement dwellings not located in such areas.

*Section 24.206 Eviction for cause.* An eviction related to non-compliance with a requirement related to carrying out a project (e.g., failure to move or relocate when instructed, or to cooperate in the relocation process) shall not negate a person's entitlement to relocation payments and other assistance set forth in this part.

*Section 24.207 General Requirements—Claims for relocation payments.* Section 24.207(a) allows an Agency to make a payment for low cost or uncomplicated nonresidential moves without additional documentation, as long as the payment is limited to the amount of the lowest acceptable bid or estimate, as provided for in §24.301(d)(1).

While §24.207(f) prohibits an Agency from proposing or requesting that a displaced person waive his or her rights or entitlements to relocation assistance and payments, an Agency may accept a written statement from the displaced person that states that they have chosen not to accept some or all of the payments or assistance to which they are entitled. Any such written statement must clearly show that the individual knows what they are entitled to receive (a copy of the Notice of Eligibility which was provided may serve as documentation) and their statement must specifically identify which assistance or payments they have chosen not to

accept. The statement must be signed and dated and may not be coerced by the Agency.

## **Subpart D—Payment for Moving and Related Expenses**

*Section 24.301. Payment for Actual Reasonable Moving and Related Expenses.*

*Section 24.301(e) Personal property only.* Examples of personal property only moves might be: personal property that is located on a portion of property that is being acquired, but the business or residence will not be taken and can still operate after the acquisition; personal property that is located in a mini-storage facility that will be acquired or relocated; personal property that is stored on vacant land that is to be acquired.

For a nonresidential personal property only move, the owner of the personal property has the options of moving the personal property by using a commercial mover or a self-move.

If a question arises concerning the reasonableness of an actual cost move, the acquiring Agency may obtain estimates from qualified movers to use as the standard in determining the payment.

*Section 24.301 (g)(14)(i) and (ii).* If the piece of equipment is operational at the acquired site, the estimated cost to reconnect the equipment shall be based on the cost to install the equipment as it currently exists, and shall not include the cost of code-required betterments or upgrades that may apply at the replacement site. As prescribed in the regulation, the allowable in-place value estimate (§24.301(g)(14)(i)) and moving cost estimate (§24.301(g)(14)(ii)) must reflect only the “as is” condition and installation of the item at the displacement site. The in-place value estimate may not include costs that reflect code or other requirements that were not in effect at the displacement site; or include installation costs for machinery or equipment that is not operable or not installed at the displacement site.

*Section 24.301(g)(17) Searching expenses.* In special cases where the displacing Agency determines it to be reasonable and necessary, certain additional categories of searching costs may be considered for reimbursement. These include those costs involved in investigating potential replacement sites and the time of the

business owner, based on salary or earnings, required to apply for licenses or permits, zoning changes, and attendance at zoning hearings. Necessary attorney fees required to obtain such licenses or permits are also reimbursable. Time spent in negotiating the purchase of a replacement business site is also reimbursable based on a reasonable salary or earnings rate. In those instances when such additional costs to investigate and acquire the site exceed \$2,500, the displacing Agency may consider waiver of the cost limitation under the §24.7, waiver provision. Such a waiver should be subject to the approval of the Federal-funding Agency in accordance with existing delegation authority.

*Section 24.303(b) Professional Services.* If a question should arise as to what is a “reasonable hourly rate,” the Agency should compare the rates of other similar professional providers in that area.

*Section 24.305 Fixed Payment for Moving Expenses—Nonresidential Moves.*

*Section 24.305(d) Nonprofit organization.* Gross revenues may include membership fees, class fees, cash donations, tithes, receipts from sales or other forms of fund collection that enables the nonprofit organization to operate. Administrative expenses are those for administrative support such as rent, utilities, salaries, advertising, and other like items as well as fundraising expenses. Operating expenses for carrying out the purposes of the nonprofit organization are not included in administrative expenses. The monetary receipts and expense amounts may be verified with certified financial statements or financial documents required by public Agencies.

*Section 24.305(e) Average annual net earnings of a business or farm operation.* If the average annual net earnings of the displaced business, farm, or nonprofit organization are determined to be less than \$1,000, even \$0 or a negative amount, the minimum payment of \$1,000 shall be provided.

*Section 24.306 Discretionary Utility Relocation Payments.* Section 24.306(c) describes the issues that the Agency and the utility facility owner must agree to in determining the amount of the relocation payment. To facilitate and aid in reaching such agreement, the practices in the Federal Highway Administration regulation, 23 CFR part 645, subpart A, Utility Relocations,

Adjustments and Reimbursement, should be followed.

## Subpart E—Replacement Housing Payments

*Section 24.401 Replacement Housing Payment for 180-day Homeowner-Occupants.*

*Section 24.401(a)(2).* An extension of eligibility may be granted if some event beyond the control of the displaced person such as acute or life threatening illness, bad weather preventing the completion of construction, or physical modifications required for reasonable accommodation of a replacement dwelling, or other like circumstances causes a delay in occupying a decent, safe, and sanitary replacement dwelling.

*Section 24.401(c)(2)(iii) Price differential.* The provision in §24.401(c)(2)(iii) to use the current fair market value for residential use does not mean the Agency must have the property appraised. Any reasonable method for arriving at the fair market value may be used.

*Section 24.401(d) Increased mortgage interest costs.* The provision in §24.401(d) sets forth the factors to be used in computing the payment that will be required to reduce a person's replacement mortgage (added to the downpayment) to an amount which can be amortized at the same monthly payment for principal and interest over the same period of time as the remaining term on the displacement mortgages. This payment is commonly known as the “buydown.”

The Agency must know the remaining principal balance, the interest rate, and monthly principal and interest payments for the old mortgage as well as the interest rate, points and term for the new mortgage to compute the increased mortgage interest costs. If the combination of interest and points for the new mortgage exceeds the current prevailing fixed interest rate and points for conventional mortgages and there is no justification for the excessive rate, then the current prevailing fixed interest rate and points shall be used in the computations. Justification may be the unavailability of the current prevailing rate due to the amount of the new mortgage, credit difficulties, or other similar reasons.



**Sample Computation**

Old Mortgage:	
Remaining Principal Balance	\$50,000
Monthly Payment (principal and interest)	\$458.22
Interest rate (percent)	7
New Mortgage:	
Interest rate (percent)	10
Points	3
Term (years)	15

Remaining term of the old mortgage is determined to be 174 months. Determining, or computing, the actual remaining term is more reliable than using the data supplied by the mortgagee. However, if it is shorter, use the term of the new mortgage and compute the needed monthly payment.

Amount to be financed to maintain monthly payments of \$458.22 at 10% = \$42,010.18.

Calculation:	
Remaining Principal Balance	\$50,000.00
Minus Monthly Payment (principal and interest)	-42,010.18
Increased mortgage interest costs	7,989.82
3 points on \$42,010.18	1,260.31
Total buydown necessary to maintain payments at \$458.22/month	9,250.13

If the new mortgage actually obtained is less than the computed amount for a new mortgage (\$42,010.18), the buydown shall be prorated accordingly. If the actual mortgage obtained in our example were \$35,000, the buydown payment would be \$7,706.57 (\$35,000 divided by \$42,010.18 = .8331; \$9,250.13 multiplied by .83 = \$7,706.57).

The Agency is obligated to inform the displaced person of the approximate amount of this payment and that the displaced person must obtain a mortgage of at least the same amount as the old mortgage and for at least the same term in order to receive the full amount of this payment. The Agency must advise the displaced person of the interest rate and points used to calculate the payment.

*Section 24.402 Replacement Housing Payment for 90-day Occupants*

*Section 24.402(b)(2) Low income calculation example.*

The Uniform Act requires that an eligible displaced person who rents a replacement dwelling is entitled to a rental assistance payment calculated in accordance with §24.402(b). One factor in this calculation is to determine if a displaced person is “low income,” as defined by the U.S. Department of Housing and Urban Development’s annual survey of income limits for the Public Housing and Section 8 Programs. To make such a determination, the Agency must:

- (1) Determine the total number of members in the household (including all adults and children);
- (2) locate the appropriate table for income limits applicable to the Uniform Act for the state in which the displaced residence is located (found at:

<http://www.fhwa.dot.gov/realestate/ua/ualic.htm>

- );
- (3) from the list of local jurisdictions shown, identify the appropriate county, Metropolitan Statistical Area (MSA)\*, or Primary Metropolitan Statistical Area (PMSA)\* in which the displacement property is located; and
- (4) locate the appropriate income limit in that jurisdiction for the size of this displaced person/family. The income limit must then be compared to the household income (§24.2(a)(15)) which is the gross annual income received by the displaced family, excluding income from any dependent children and full-time students under the age of 18. If the household income for the eligible displaced person/family is less than or

equal to the income limit, the family is considered “low income.” For example:

Tom and Mary Smith and their three children are being displaced. The information obtained from the family and verified by the Agency is as follows:

Tom Smith, employed, earns \$21,000/yr.

Mary Smith, receives disability payments of \$6,000/yr.

Tom Smith Jr., 21, employed, earns \$10,000/yr.

Mary Jane Smith, 17, student, has a paper route, earns \$3,000/yr. (Income is not included because she is a dependent child and a full-time student under 18)

Sammie Smith, 10, full-time student, no income.

Total family income for 5 persons is: \$21,000 + \$6,000 + \$10,000 = \$37,000

The displacement residence is located in the State of Maryland, Caroline County. The low income limit for a 5 person household is: \$47,450. (2004 Income Limits)

This household is considered “low income.”

\* A complete list of counties and towns included in the identified MSAs and PMSAs can be found under the bulleted item “Income Limit Area Definition” posted on the FHWA's Web site at: <http://www.fhwa.dot.gov/realestate/ua/ualic.htm>.

*Section 24.402(c) Downpayment assistance.* The downpayment assistance provisions in §24.402(c) limit such assistance to the amount of the computed rental assistance payment for a tenant or an eligible homeowner. It does, however, provide the latitude for Agency discretion in offering downpayment assistance that exceeds the computed rental assistance payment, up to the \$5,250 statutory maximum. This does not mean, however, that such Agency discretion may be exercised in a selective or discriminatory fashion. The displacing Agency should develop a policy that affords equal treatment for displaced persons in like circumstances and this policy should be applied uniformly throughout the Agency's programs or projects.

For the purpose of this section, should the amount of the rental assistance payment exceed the purchase price of the replacement dwelling,

the payment would be limited to the cost of the dwelling.

*Section 24.404 Replacement Housing of Last Resort.*

*Section 24.404(b) Basic rights of persons to be displaced.* This paragraph affirms the right of a 180-day homeowner-occupant, who is eligible for a replacement housing payment under §24.401, to a reasonable opportunity to purchase a comparable replacement dwelling. However, it should be read in conjunction with the definition of “owner of a dwelling” at §24.2(a)(20). The Agency is not required to provide persons owning only a fractional interest in the displacement dwelling a greater level of assistance to purchase a replacement dwelling than the Agency would be required to provide such persons if they owned fee simple title to the displacement dwelling. If such assistance is not sufficient to buy a replacement dwelling, the Agency may provide additional purchase assistance or rental assistance.

*Section 24.404(c) Methods of providing comparable replacement housing.* This Section emphasizes the use of cost effective means of providing comparable replacement housing. The term “reasonable cost” is used to highlight the fact that while innovative means to provide housing are encouraged, they should be cost-effective. Section 24.404(c)(2) permits the use of last resort housing, in special cases, which may involve variations from the usual methods of obtaining comparability. However, such variation should never result in a lowering of housing standards nor should it ever result in a lower quality of living style for the displaced person. The physical characteristics of the comparable replacement dwelling may be dissimilar to those of the displacement dwelling but they may never be inferior.

One example might be the use of a new mobile home to replace a very substandard conventional dwelling in an area where comparable conventional dwellings are not available.

Another example could be the use of a superior, but smaller, decent, safe and sanitary dwelling to replace a large, old substandard dwelling, only a portion of which is being used as living quarters by the occupants and no other large comparable dwellings are available in the area.

[70 FR 611, Jan. 4, 2005, as amended at 70 FR 22611, May 2, 2005]

## **APPENDIX B TO PART 24— STATISTICAL REPORT FORM**

This Appendix sets forth the statistical information collected from Agencies in accordance with §24.9(c).

### *General*

1. *Report coverage.* This report covers all relocation and real property acquisition activities under a Federal or a federally-assisted project or program subject to the provisions of the Uniform Act. If the exact numbers are not easily available, an Agency may provide what it believes to be a reasonable estimate.

2. *Report period.* Activities shall be reported on a Federal fiscal year basis, *i.e.*, October 1 through September 30.

3. *Where and when to submit report.* Submit a copy of this report to the lead Agency as soon as possible after September 30, but NOT LATER THAN NOVEMBER 15. Lead Agency address: Federal Highway Administration, Office of Real Estate Services (HEPR), 1200 New Jersey Avenue, SE., Washington, DC 20590.

4. *How to report relocation payments.* The full amount of a relocation payment shall be reported as if disbursed in the year during which the claim was approved, regardless of whether the payment is to be paid in installments.

5. *How to report dollar amounts.* Round off all money entries in Parts of this section A, B and C to the nearest dollar.

6. *Regulatory references.* The references in Parts A, B, C and D of this section indicate the subpart of the regulations pertaining to the requested information.

### Part A. Real property acquisition under The Uniform Act

*Line 1.* Report all parcels acquired during the report year where title or possession was vested in the Agency during the reporting period. The parcel count reported should relate to ownerships and not to the number of parcels of different property interests (such as fee, perpetual

easement, temporary easement, etc.) that may have been part of an acquisition from one owner. For example, an acquisition from a property that includes a fee simple parcel, a perpetual easement parcel, and a temporary easement parcel should be reported as 1 parcel not 3 parcels. (Include parcels acquired without Federal financial assistance, if there was or will be Federal financial assistance in other phases of the project or program.)

*Line 2.* Report the number of parcels reported on Line 1 that were acquired by condemnation. Include those parcels where compensation for the property was paid, deposited in court, or otherwise made available to a property owner pursuant to applicable law in order to vest title or possession in the Agency through condemnation authority.

*Line 3.* Report the number of parcels in Line 1 acquired through administrative settlement where the purchase price for the property exceeded the amount offered as just compensation and efforts to negotiate an agreement at that amount have failed.

*Line 4.* Report the total of the amounts paid, deposited in court, or otherwise made available to a property owner pursuant to applicable law in order to vest title or possession in the Agency in Line 1.

### Part B. Residential Relocation Under the Uniform Act

*Line 5.* Report the number of households who were permanently displaced during the fiscal year by project or program activities and moved to their replacement dwelling. The term “households” includes all families and individuals. A family shall be reported as “one” household, *not* by the number of people in the family unit.

*Line 6.* Report the total amount paid for residential moving expenses (actual expense and fixed payment).

*Line 7.* Report the total amount paid for residential replacement housing payments including payments for replacement housing of last resort provided pursuant to §24.404 of this part.

*Line 8.* Report the number of households in Line 5 who were permanently displaced during the

fiscal year by project or program activities and moved to their replacement dwelling as part of last resort housing assistance.

*Line 9.* Report the number of tenant households in Line 5 who were permanently displaced during the fiscal year by project or program activities, and who purchased and moved to their replacement dwelling using a downpayment assistance payment under this part.

*Line 10.* Report the total sum costs of residential relocation expenses and payments (excluding Agency administrative expenses) in Lines 6 and 7.

Part C. Nonresidential Relocation Under the Uniform Act

*Line 11.* Report the number of businesses, nonprofit organizations, and farms who were permanently displaced during the fiscal year by project or program activities and moved to their

replacement location. This includes businesses, nonprofit organizations, and farms, that upon displacement, discontinued operations.

*Line 12.* Report the total amount paid for nonresidential moving expenses (actual expense and fixed payment.)

*Line 13.* Report the total amount paid for nonresidential reestablishment expenses.

*Line 14.* Report the total sum costs of nonresidential relocation expenses and payments (excluding Agency administrative expenses) in Lines 12 and 13.

Part D. Relocation Appeals

*Line 15.* Report the total number of relocation appeals filed during the fiscal year by aggrieved persons (residential and nonresidential).

## NOTES:

FEDERAL FISCAL YEAR ENDING SEPT. 30, 20 \_\_\_\_\_  
 REPORTING AGENCY: \_\_\_\_\_  
 STATE: \_\_\_\_\_  
 CITY/COUNTY (For Local Government Agencies): \_\_\_\_\_  
 FEDERAL FUNDING AGENCY: \_\_\_\_\_

<b>PART A. REAL PROPERTY ACQUISITION UNDER THE UNIFORM ACT</b>	
1) Total Number of Parcels Acquired (Ownerships)	
2) Number of Parcels in Line 1 Acquired by Condemnation	
3) Number of Parcels in Line 1 Acquired by Administrative Settlement (Above initial offer -see 24.102(i))	
4) Compensation - Total Costs (Including 24.106; Excluding appraisal costs, negotiator fees and other administrative expenses)	
<b>PART B. RESIDENTIAL RELOCATION UNDER THE UNIFORM ACT</b>	
5) Total Number of Residential Displacements (Households)	
6) Residential Moving Payments - Total Costs	
7) Replacement Housing Payments - Total Costs	
8) Number of Last Resort Housing Displacements in Line 5 (Households)	
9) Number of Tenants converted to Homeowners in Line 5 (Households using 24.402(c))	
10) Total Costs for Residential Relocation Expenses and Payments (Sum of lines 6 and 7; excluding Agency Administrative Costs)	
<b>PART C. NONRESIDENTIAL RELOCATION UNDER THE UNIFORM ACT</b>	
11) Total Number of NonResidential Displacements	
12) NonResidential Moving Payments - Total Costs (Including 24.305)	
13) NonResidential Reestablishment Payments - Total Costs	
14) Total Costs for Nonresidential Relocation Expenses and Payments (Sum of lines 12 and 13; excluding Agency Administrative Costs)	
<b>PART D. RELOCATION APPEALS UNDER THE UNIFORM ACT</b>	
15) Total Number of Relocation Appeals (Residential & NonResidential)	

[70 FR 611, Jan. 4, 2005, as amended at 73 FR 33329, June 12, 2008]

**RIGHT-OF-WAY REGULATIONS – 23 CFR 710**

From the GPO Access eCFR website

<https://www.gpo.gov/fdsys/granule/CFR-1999-title23-vol1/CFR-1999-title23-vol1-part710>

Title 23: Highways

SUBCHAPTER H—RIGHT-OF-WAY AND ENVIRONMENT

**PART 710—RIGHT-OF-WAY AND REAL ESTATE**Subpart A—General[§710.101 Purpose.](#)[§710.103 Applicability.](#)[§710.105 Definitions.](#)Subpart B—Program Administration[§710.201 Grantee and subgrantee responsibilities.](#)[§710.203 Title 23 funding and reimbursement.](#)Subpart C—Project Development[§710.301 General.](#)[§710.303 Project authorization and agreements.](#)[§710.305 Acquisition.](#)[§710.307 Construction advertising.](#)[§710.309 Design-build projects.](#)Subpart D—Real Property Management[§710.401 General.](#)[§710.403 Management.](#)[§710.405 ROW use agreements.](#)[§710.407 \[Reserved\]](#)[§710.409 Disposal of excess real property.](#)Subpart E—Property Acquisition Alternatives[§710.501 Early acquisition.](#)[§710.503 Protective buying and hardship acquisition.](#)[§710.505 Real property donations.](#)[§710.507 State and local contributions.](#)[§710.509 Functional replacement of real property in public ownership.](#)[§710.511 Transportation Alternatives.](#)Subpart F—Federal Assistance Programs[§710.601 Federal land transfers.](#)[§710.603 Direct Federal acquisition.](#)Subpart G—Concession Agreements[§710.701 Purpose.](#)[§710.703 Definitions.](#)[§710.705 Applicability.](#)[§710.707 Fair market value.](#)[§710.709 Determination of fair market value.](#)

Authority: Secs.1302 and 1321, Pub. L. 112-141, 126 Stat. 405. Sec. 1307, Pub. L. 105-178, 112 Stat. 107; 23 U.S.C. 101(a), 107, 108, 111, 114, 133, 142(f), 156, 204, 210, 308, 315, 317, and 323; 42 U.S.C. 2000d *et seq.*, 4633, 4651-4655; 2 CFR 200.311; 49 CFR 1.48(b) and (cc), parts 21 and 24; 23 CFR 1.32.

Source: 64 FR 71290, Dec. 21, 1999, unless otherwise noted.

**Subpart A—General**

Source: 81 FR 57729, Aug. 23, 2016, unless otherwise noted.

**§710.101 Purpose.**

The primary purpose of the requirements in this part is to ensure the prudent use of Federal funds under title 23, United States Code, in the acquisition, management, and disposal of real property. In addition to the requirements of this part, other real property related provisions apply and are found at 49 CFR part 24.

**§710.103 Applicability.**

(a) This part applies whenever title 23, United States Code, grant funding is used, including when grant funds are expended or participate in project costs incurred by the State or other Title 23 grantee. This part applies to programs and projects administered by the Federal Highway Administration (FHWA) and, unless otherwise stated in this part, to all property purchased with title 23 grant funds or incorporated into a project carried out with grant funding provided under title 23, except property for which the title is vested in the United States upon project completion. Grantees are accountable to FHWA for complying with, and are responsible for ensuring their subgrantees, contractors, and other project partners comply with applicable Federal laws, including this part.

(b) The parties responsible for ROW and real estate activities, and for compliance with applicable Federal requirements, can vary by the nature of the responsibility or the underlying activity. Throughout this part, the FHWA identifies the parties subject to a particular provision through the use of terms of reference defined as set forth in §710.105. It is important to refer to those definitions, such as “State Department of Transportation (SDOT),” “grantee,” “subgrantee,” “State agency” and “acquiring agency,” when applying the provisions in this part.

(c) Where title 23 funds are transferred to other Federal agencies to administer, those agencies' ROW and real estate procedures may be utilized. Additional guidance is available electronically at the FHWA Real Estate Services Web site: <http://www.fhwa.dot.gov/realestate/index.htm>.

**§710.105 Definitions.**

(a) Terms defined in 23 U.S.C. 101(a) and 49 CFR part 24 have the same meaning where used in this part, except as modified in this section.

(b) The following terms where used in this part have the following meaning:

*Access rights* mean the right of ingress to and egress from a property to a public way.

*Acquiring agency* means a State agency, other entity, or person acquiring real property for title 23, United States Code, purposes. When an acquiring

agency acquires real property interests that will be incorporated into a project eligible for title 23 grant funds, the acquiring agency must comply with Federal real estate and ROW requirements applicable to the grant.

*Acquisition* means activities to obtain an interest in, and possession of, real property.

*Damages* means the loss in the value attributable to remainder property due to the severance or consequential damages, as limited by State law, that arise when only part of an owner's real property is acquired.

*Disposal* means the transfer by sale or other conveyance of permanent rights in excess real property, when the real property interest is not currently or in the foreseeable future needed for highway ROW or other uses eligible for funding under title 23 of the United States Code. A disposal must meet the requirements contained in §710.403(b) of this part. The term “disposal” includes actions by a grantee, or its subgrantees, in the nature of relinquishment, abandonment, vacation, discontinuance, and disclaimer of real property or any rights therein.

*Donation* means the voluntary transfer of privately owned real property, by a property owner who has been informed in writing by the acquiring agency of rights and benefits available to owners under the Uniform Act and this section, for the benefit of a public transportation project without compensation or with compensation at less than fair market value.

*Early acquisition* means acquisition of real property interests by an acquiring agency prior to completion of the environmental review process for a proposed transportation project, as provided under 23 CFR 710.501 and 23 U.S.C. 108.

*Early Acquisition Project* means a project for the acquisition of real property interests prior to the completion of the environmental review process for the transportation project into which the acquired property will be incorporated, as authorized under 23 U.S.C. 108 and implemented under §710.501 of this part. It may consist of the acquisition of real property interests in a specific parcel, a portion of a transportation corridor, or an entire transportation corridor.

*Easement* means an interest in real property that conveys a right to use or control a portion of an owner's property or a portion of an owner's rights in the property either temporarily or permanently.

*Excess real property* means a real property interest not needed currently or in the foreseeable future for transportation purposes or other uses eligible for funding under title 23, United States Code.

*Federal-aid project* means a project funded in whole or in part under, or requiring an FHWA approval pursuant to provisions in chapter 1 of title 23, United

States Code.

*Federally assisted* means a project or program that receives grant funds under title 23, United States Code.

*Grantee* means the party that is the direct recipient of title 23 funds and is accountable to FHWA for the use of the funds and for compliance with applicable Federal requirements.

*Mitigation property* means real property interests acquired to mitigate for impacts of a project eligible for funding under title 23.

*Option* means the purchase of a right to acquire real property within an agreed-to period of time for an agreed-to amount of compensation or through an agreed-to method by which compensation will be calculated.

*Person* means any individual, family, partnership, corporation, or association.

*Real Estate Acquisition Management Plan (RAMP)* means a written document that details how a non-State department of transportation grantee, subgrantee, or design-build contractor will administer the title 23 ROW and real estate requirements for its project or program of projects. The document must be approved by the SDOT, or by the funding agency in the case of a non-SDOT grantee, before any acquisition work may begin. It must lay out in detail how the acquisition and relocation assistance programs will be accomplished and any anticipated issues that may arise during the process. If relocations are reasonably expected as part of the title 23 projects or program, the Real Estate Acquisition Management Plan (RAMP) must address relocation assistance and related procedures.

*Real property* or *real property interest* means any interest in land and any improvements thereto, including fee and less-than-fee interests such as: temporary and permanent easements, air or access rights, access control, options, and other contractual rights to acquire an interest in land, rights to control use or development, leases, and licenses, and any other similar action to acquire or preserve ROW for a transportation facility. As used in this part, the terms “real property” and “real property interest” are synonymous unless otherwise specified.

*Relinquishment* means the conveyance of a portion of a highway ROW or facility by a grantee under title 23, United States Code, or its subgrantee, to another government agency for continued transportation use. (See part 620, subpart B of this chapter.)

*Right-of-way (ROW)* means real property and rights therein obtained for the construction, operation, maintenance, or mitigation of a transportation or related facility funded under title 23, United States Code.

*ROW manual* means an operations manual that

establishes a grantee's acquisition, valuation, relocation, and property management and disposal requirements and procedures, and has been approved in accordance with §710.201(c).

*ROW use agreement* means real property interests, defined by an agreement, as evidenced by instruments such as a lease, license, or permit, for use of real property interests for non-highway purposes where the use is in the public interest, consistent with the continued operation, maintenance, and safety of the facility, and such use will not impair the highway or interfere with the free and safe flow of traffic (see also 23 CFR 1.23). These rights may be granted only for a specified period of time because the real property interest may be needed in the future for highway purposes or other purposes eligible for funding under title 23.

*Settlement* means the result of negotiations based on fair market value in which the amount of just compensation is agreed upon for the purchase of real property or an interest therein. This term includes the following:

(1) An *administrative settlement* is a settlement reached prior to filing a condemnation proceeding based on value related evidence, administrative consideration, or other factors approved by an authorized agency official.

(2) A *legal settlement* is a settlement reached by an authorized legal representative or a responsible official of the acquiring agency who has the legal power vested in him by State law, after filing a condemnation proceeding, including agreements resulting from mediation and stipulated settlements approved by the court in which the condemnation action had been filed.

(3) A *court settlement* or *court award* is any decision by a court that follows a contested trial or hearing before a jury, commission, judge, or other legal entity having the authority to establish the amount of just compensation for a taking under the laws of eminent domain.

*State agency* means: A department, agency, or instrumentality of a State or of a political subdivision of a State; any department, agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States; or any person who has the authority to acquire property by eminent domain, for public purposes, under State law.

*State department of transportation (SDOT)* means the State highway department, transportation department, or other State transportation agency or commission to which title 23, United States Code, funds are apportioned.

*Stewardship/Oversight Agreement* means the written agreement between the SDOT and FHWA that



defines the respective roles and responsibilities of FHWA and the State for carrying out certain project review, approval, and oversight responsibilities under title 23, including those activities specified by 23 U.S.C. 106(c)(3).

*Subgrantee* means a government agency or legal entity that enters into an agreement with a grantee to carry out part or all of the activity funded by title 23 grant funds. A subgrantee is accountable to the grantee for the use of the funds and for compliance with applicable Federal requirements.

*Temporary development restriction* means the purchase of a right to temporarily control or restrict development or redevelopment of real property. This right is for an agreed to time period, defines specifically what is restricted or controlled, and is for an agreed to amount of compensation.

*Transportation project* means any highway project, public transportation capital project, multimodal project, or other project that requires the approval of the Secretary. As used in this part, the term “transportation project” does not include an Early Acquisition Project as defined in this section.

*Uneconomic remnant* means a remainder property which the acquiring agency has determined has little or no utility or value to the owner.

*Uniform Act* means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Pub. L. 91-646, 84 Stat. 1894; primarily codified in 42 U.S.C. 4601 *et seq.*), and the implementing regulations at 49 CFR part 24.

### Subpart B—Program Administration

Source: 81 FR 57729, Aug. 23, 2016, unless otherwise noted.

#### §710.201 Grantee and subgrantee responsibilities.

(a) *Program oversight.* States administer the Federal-aid highway program, funded under chapter 1 of title 23, United States Code, through their SDOTs. The SDOT shall have overall responsibility for the acquisition, management, and disposal of real property interests on its Federal-aid projects, including when those projects are carried out by the SDOT's subgrantees or contractors. This responsibility shall include ensuring compliance with the requirements of this part and other Federal laws, including regulations. Non-SDOT grantees of funds under title 23 must comply with the requirements under this part, except as otherwise expressly provided in this part, and are responsible for ensuring compliance by their subgrantees and contractors with the requirements of this part and other Federal laws, including regulations.

(b) *Organization.* Each grantee and subgrantee, including any other acquiring agency acting on behalf of a grantee or subgrantee, shall be adequately staffed,

equipped, and organized to discharge its real property related responsibilities.

(c) *ROW manual.* (1) Every grantee must ensure that its title 23-funded projects are carried out using an FHWA-approved and up-to-date ROW manual or RAMP that is consistent with applicable Federal requirements, including the Uniform Act and this part. Each SDOT that receives funding under title 23, United States Code, shall maintain an approved and up-to-date ROW manual describing its ROW organization, policies, and procedures. Non-SDOT grantees may use one of the procedures in paragraph (d) to meet the requirements in this paragraph; however, the ROW manual options can only be used with SDOT approval and permission. The ROW manual shall describe functions and procedures for all phases of the ROW program, including appraisal and appraisal review, waiver valuation, negotiation and eminent domain, property management, relocation assistance, administrative settlements, legal settlements, and oversight of its subgrantees and contractors. The ROW manual shall also specify procedures to prevent conflict of interest and avoid fraud, waste, and abuse. The ROW manual shall be in sufficient detail and depth to guide the grantee, its employees, and others involved in acquiring, managing, and disposing of real property interests. Grantees, subgrantees, and their contractors must comply with current FHWA requirements whether or not the requirements are included in the FHWA-approved ROW manual.

(2) The SDOT's ROW manual must be developed and updated, as a minimum, to meet the following schedule:

(i) The SDOTs shall prepare and submit for approval by FHWA an up-to-date ROW Manual by no later than August 23, 2018.

(ii) Every 5 years thereafter, the chief administrative officer of the SDOT shall certify to the FHWA that the current SDOT ROW manual conforms to existing practices and contains necessary procedures to ensure compliance with Federal and State real estate law and regulation, including this part.

(iii) The SDOT shall update its ROW manual periodically to reflect changes in operations and submit the updated materials for approval by the FHWA.

(d) *ROW manual alternatives.* Non-SDOT grantees, and all subgrantees, design-build contractors, and other acquiring agencies carrying out a project funded by a grant under title 23, United States Code, must demonstrate that they will use FHWA-approved ROW procedures for acquisition and other real estate activities, and that they have the ability to comply with current FHWA requirements, including this part. This can be done through any of the following methods:

(1) Certification in writing that the acquiring

agency will adopt and use the FHWA-approved SDOT ROW manual;

(2) Submission of the acquiring agency's own ROW manual to the grantee for review and determination whether it complies with Federal and State requirements, together with a certification that once the reviewing agency approves the manual, the acquiring agency will use the approved ROW manual; or

(3)(i) Submission of a RAMP setting forth the procedures the acquiring agency or design-build contractor intends to follow for a specified project or group of projects, along with a certification that if the reviewing agency approves the RAMP, the acquiring agency or design-build contractor will follow the approved RAMP for the specified program or project(s). The use of a RAMP is appropriate for a subgrantee, non-SDOT grantee, or design-build contractor if that party infrequently carries out title 23 programs or projects, the program or project is non-controversial, and the project is not complex.

(ii) Subgrantees, design-build contractors, and other acquiring agencies carrying out a project for an SDOT submit the required certification and information to the SDOT, and the SDOT will review and make a determination on behalf of FHWA. Non-SDOT grantees submit the required certification and information directly to FHWA. Non-SDOT grantees are responsible for submitting to FHWA the required certification and information for any subgrantee, contractor, and other acquiring agency carrying out a project for the non-SDOT grantee.

(e) *Record keeping.* The acquiring agency shall maintain adequate records of its acquisition and property management activities.

(1) Acquisition records, including records related to owner or tenant displacements, and property inventories of improvements acquired shall be in sufficient detail to demonstrate compliance with this part and 49 CFR part 24. These records shall be retained at least 3 years from the later of either:

(i) The date the SDOT or other grantee receives Federal reimbursement of the final payment made to each owner of a property and to each person displaced from a property; or

(ii) The date of reimbursement for early acquisitions or credit toward the State share of a project is approved based on early acquisition activities under §710.501.

(2) Property management records shall include inventories of real property interests considered excess to project or program needs, as well as all authorized ROW use agreements for real property acquired with title 23 funds or incorporated into a program or project that received title 23 funding.

(f) *Procurement.* Contracting for all activities required in support of an SDOT's or other grantee's ROW projects or programs through the use of private consultants and other services shall conform to 2 CFR 200.317, except to the extent that the procurement is required to adhere to requirements under 23 U.S.C. 112(b)(2) and 23 CFR part 172 for engineering and design related consultant services.

(g) *Use of other public land acquisition organizations, conservation organizations, or private consultants.* The grantee may enter into written agreements with other State, county, municipal, or local public land acquisition organizations, conservation organizations, private consultants, or other persons to carry out its authorities under this part. Such organizations, firms, or persons must comply with the grantee's ROW manual or RAMP as approved in accordance with paragraphs (c) or (d) of this section. The grantee shall monitor any such real property interest acquisition activities to ensure compliance with State and Federal law, and is responsible for informing such persons of all such requirements and for imposing sanctions in cases of material non-compliance.

(h) *Assignment of FHWA approval actions to an SDOT.* The SDOT and FHWA will agree in their Stewardship/Oversight Agreement on the scope of property-related oversight and approvals under this part that will be performed directly by FHWA and those that FHWA will assign to the SDOT. This assignment provision does not apply to other grantees of title 23 funds. The content of the most recent Stewardship/Oversight Agreement shall be reflected in the FHWA-approved SDOT ROW manual. The agreement, and thus the SDOT ROW manual, will indicate which Federal-aid projects require submission of materials for FHWA review and approval. The FHWA retains responsibility for any approval action not expressly assigned to the SDOT in the Stewardship/Oversight Agreement.

#### **§710.203 Title 23 funding and reimbursement.**

(a) *General conditions.* Except as otherwise provided in §710.501 for early acquisition, a State agency only may acquire real property, including mitigation property, with title 23 grant funds if the following conditions are satisfied:

(1) The project for which the real property is acquired is included in an approved Statewide Transportation Improvement Program (STIP);

(2) The grantee has executed a project agreement or other agreement recognized under title 23 reflecting the Federal funding terms and conditions for the project;

(3) Preliminary acquisition activities, including a title search, appraisal, appraisal review and waiver

valuation preparation, preliminary property map preparation and preliminary relocation planning activities, limited to searching for comparable properties, identifying replacement neighborhoods and identifying available public services, can be advanced under preliminary engineering, as defined in §646.204 of this chapter, prior to completion of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321, *et seq.*) review, while other work involving contact with affected property owners for purposes of negotiation and relocation assistance must normally be deferred until after NEPA approval, except as provided in §710.501, early acquisition; and in §710.503 for protective buying and hardship acquisition; and

(4) Costs have been incurred in conformance with State and Federal requirements.

(b) *Direct eligible costs.* Federal funds may only participate in direct costs that are identified specifically as an authorized acquisition activity such as the costs of acquiring the real property incorporated into the final project and the associated direct costs of acquisition, except in the case of a State that has an approved indirect cost allocation plan as stated in §710.203(d) or specifically provided by statute. Participation is provided for:

(1) *Real property acquisition.* Usual costs and disbursements associated with real property acquisition as required under the laws of the State, including the following:

(i) The cost of contracting for private acquisition services or the cost associated with the use of local public agencies;

(ii) Ordinary and reasonable costs of acquisition activities, such as, appraisal, waiver valuation development, appraisal review, cost estimates, relocation planning, ROW plan preparation, title work, and similar necessary ROW related work;

(iii) The compensation paid for the real property interest and costs normally associated with completing the purchase, such as document fees and document stamps. The costs of acquiring options and other contractual rights to acquire an interest in land, rights to control use or development, leases, ROWs, and any other similar action to acquire or preserve rights-of way for a transportation facility are eligible costs when FHWA determines such costs are actual, reasonable and necessary costs. Costs under this paragraph do not include salary and related expenses for an acquiring agency's employees (see payroll-related expenses in paragraph (b)(5) of this section);

(iv) The cost of administrative settlements in accordance with 49 CFR 24.102(i), legal settlements, court awards, and costs incidental to the condemnation process. This includes reasonable acquiring agency attorney's fees, but excludes attorney's fees for other

parties except where required by State law (including an order of a court of competent jurisdiction) or approved by FHWA;

(v) The cost of minimum payments and waiver valuation amounts included in the approved ROW manual or approved RAMP; and

(vi) Ordinary and reasonable costs associated with closing, and costs of finalizing the acquisition.

(2) *Relocation assistance and payments.* Usual costs and disbursements associated with the following:

(i) Relocation assistance and payments required under 49 CFR part 24; and

(ii) Relocation assistance and payments provided under the laws of the State that may exceed the requirements of 49 CFR part 24, except for relocation assistance and payments provided to aliens not lawfully present in the United States.

(3) *Damages.* The cost of severance and/or consequential damages to remaining real property resulting from a partial acquisition, actual or constructive, of real property for a project based on elements compensable under State law.

(4) *Property management.* The net cost of managing real property prior to and during construction to provide for maintenance, protection, and the clearance and disposal of improvements until final project acceptance.

(5) *Payroll-related expenses.* Salary and related expenses (compensation for personal services) of employees of an acquiring agency for work on a project funded by a title 23 grant are eligible costs in accordance with 2 CFR part 225 (formerly OMB Circular A-87), as are salary and related expenses of a grantee's employees for work with an acquiring agency or a contractor to ensure compliance with Federal requirements on a title 23 project if the work is dedicated to a specific project and documented in accordance with 2 CFR part 225.

(6) *Property not incorporated into a project funded under title 23, United States Code.* The cost of property not incorporated into a project may be eligible for reimbursement in the following circumstances:

(i) *General.* Costs for construction material sites, property acquisitions to a logical boundary, eligible Transportation Alternatives (TA) projects, sites for disposal of hazardous materials, environmental mitigation, environmental banking activities, or last resort housing; and

(ii) *Easements and alternate access not incorporated into the ROW.* The cost of acquiring easements and alternate access points necessary for highway construction and maintenance outside the approved ROW limits for permanent or temporary use.

(7) *Uneconomic remnants.* The cost of uneconomic remnants purchased in connection with

the acquisition of a partial taking for the project as required by the Uniform Act.

(8) *Access rights.* Payment for full or partial control of access on an existing road or highway (*i.e.*, one not on a new location), based on elements compensable under applicable State law. Participation does not depend on another real property interest being acquired or on further construction of the highway facility.

(9) *Utility and railroad property.* (i) The cost to replace operating real property owned by a displaced utility or railroad and conveyed to an acquiring agency for a project, as provided in 23 CFR part 140, subpart I, Reimbursement for Railroad Work, and 23 CFR part 645, subpart A, Utility Relocations, Adjustments and Reimbursement, and 23 CFR part 646, subpart B, Railroad-Highway Projects; and

(ii) Participation in the cost of acquiring non-operating utility or railroad real property shall be in the same manner as that used in the acquisition of other privately owned property.

(c) *Withholding payment.* The FHWA may withhold payment under the conditions described in 23 CFR 1.36 for failure to comply with Federal law or regulation, State law, or under circumstances of waste, fraud, and abuse.

(d) *Indirect costs.* Indirect costs may be claimed under the provisions of 2 CFR part 225 (formerly OMB Circular A-87). Indirect costs may be included on billings after the indirect cost allocation plan has been prepared in accordance with 2 CFR part 225 and approved by FHWA, other cognizant Federal agency, or, in the case of an SDOT subgrantee without a rate approved by a cognizant Federal agency, by the SDOT. Indirect costs for an SDOT may include costs of providing program-level guidance, consultation, and oversight to other acquiring agencies and contractors where ROW activities on title 23-funded projects are performed by non-SDOT personnel.

### Subpart C—Project Development

Source: 81 FR 57729, Aug. 23, 2016, unless otherwise noted.

#### §710.301 General.

The project development process typically follows a sequence of actions and approvals in order to qualify for funding. The key steps in this process typically are planning, environmental review, project agreement/authorization, acquisition, construction advertising, and construction.

#### §710.303 Project authorization and agreements.

As a condition of Federal funding under title 23, the grantee shall obtain FHWA authorization in writing or electronically before proceeding with any real property acquisition using title 23 funds, including

early acquisitions under §710.501(e) and hardship acquisition and protective buying under §710.503. For projects funded under chapter 1, title 23, United States Code, the grantee must prepare a project agreement in accordance with 23 CFR part 630, subpart A. Authorizations and agreements shall be based on an acceptable estimate for the cost of acquisition.

#### §710.305 Acquisition.

(a) *General.* The process of acquiring real property includes appraisal, appraisal review, waiver valuations, establishing estimates of just compensation, negotiations, relocation assistance, administrative and legal settlements, and court settlements and condemnations. Grantees must ensure all acquisition and related relocation assistance activities are performed in accordance with 49 CFR part 24 and this part. If a grantee does not directly own the real property interests used for a title 23 project, the grantee must have an enforceable subgrant agreement or other agreement with the owner of the ROW that permits the grantee to enforce applicable Federal requirements affecting the real property interests, including real property management requirements under subpart D of this part.

(b) *Adequacy of real property interest.* The real property interests acquired for any project funded under title 23 must be adequate to fulfill the purpose of the project. Except in the case of an Early Acquisition Project, this means adequate for the construction, operation, and maintenance of the resulting facility, and for the protection of both the facility and the traveling public.

(c) *Establishment and offer of just compensation.* The amount believed to be just compensation shall be approved by a responsible official of the acquiring agency. This shall be done in accordance with 49 CFR 24.102(d).

(d) *Description of acquisition process.* The acquiring agency shall provide persons affected by projects or acquisitions advanced under title 23 of the United States Code with a written description of its real property acquisition process under State law and this part, and of the owner's rights, privileges, and obligations. The description shall be written in clear, non-technical language and, where appropriate, be available in a language other than English in accordance with 49 CFR 24.5, 24.102(b), and 24.203.

#### §710.307 Construction advertising.

(a) The grantee must manage real property acquired for a project until it is required for construction. Except for properties acquired under the early acquisition provisions of 23 CFR 710.501(e), clearance of improvements can be scheduled during the acquisition phase of the project using sale/removal agreements, separate demolition contracts, or be

included as a work item in the construction contract. The grantee shall develop ROW availability statements and certifications related to project acquisitions as described in 23 CFR 635.309.

(b) The FHWA-SDOT Stewardship/Oversight Agreement will specify SDOT responsibility for the review and approval of the ROW availability statements and certifications in accordance with applicable law. Generally, for non-National Highway System projects, the SDOT has full responsibility for determining that right-of-way is available for construction. For non-SDOT grantees, FHWA will be responsible for the review and approval.

#### **§710.309 Design-build projects.**

(a) In the case of a design-build project, ROW must be acquired and cleared in accordance with the Uniform Act and the FHWA-approved ROW manual or RAMP, as provided in §710.201(c) and (d). The grantee shall submit a ROW certification in accordance with 23 CFR 635.309(p) when requesting FHWA's authorization. The grantee shall ensure that ROW is available prior to the start of physical construction on individual properties.

(b) The decision to advance a ROW segment to the construction stage shall not impair the safety or in any way be coercive in the context of 49 CFR 24.102(h) with respect to unacquired or occupied properties on the same or adjacent segments of project ROW.

(c) The grantee may choose not to allow construction to commence until all property is acquired and relocations have been completed; or, the grantee may permit the construction to be phased or segmented to allow ROW activities to be completed on individual properties or a group of properties, with ROW certifications done in a manner satisfactory to the grantee for each phase or segment.

(d) If the grantee elects to include ROW services within the design-builder's scope of work for the design-build contract, the following provisions must be addressed in the request for proposals document:

(1) The design-builder must submit written certification in its proposal that it will comply with the process and procedures in the FHWA-approved ROW manual or RAMP as provided in §710.201(c) and (d).

(2) When relocation of displaced persons from their dwellings has not been completed, the grantee or design-builder shall establish a hold off zone around all occupied properties to ensure compliance with ROW procedures prior to starting construction activities in affected areas. The limits of this zone should be established by the grantee prior to the design-builder entering onto the property. There should be no construction-related activity within the hold off zone until the property is vacated. The design-builder must have written notification of vacancy from the grantee

prior to entering the hold off zone.

(3) Contractors activities must be limited to those that the grantee determines do not have a material adverse impact on the quality of life of those in occupied properties that have been or will be acquired.

(4) The grantee will provide a ROW project manager who will serve as the first point of contact for all ROW issues.

(e) If the grantee elects to perform all ROW services relating to the design-build contract, the provisions in §710.307 will apply. The grantee will notify potential offerors of the status of all ROW issues in the request for proposal document.

#### **Subpart D—Real Property Management**

Source: 81 FR 57729, Aug. 23, 2016, unless otherwise noted.

##### **§710.401 General.**

This subpart describes the grantee's responsibilities to control the use of real property acquired for a project in which Federal funds participated in any phase of the project. The grantee shall specify in its approved ROW manual or RAMP, the procedures for the maintenance, ROW use agreements, and disposal of real property interests acquired with title 23 funds. The grantee shall ensure that subgrantees, including local agencies, follow Federal requirements and approved ROW procedures as provided in §710.201(c) and (d).

##### **§710.403 Management.**

(a) As provided in §710.201(h), FHWA and SDOT may use their Stewardship/Oversight Agreement to enter into a written agreement establishing which approvals the SDOT may make on behalf of FHWA, provided FHWA may not assign to the SDOT the decision to allow any ROW use agreement or any disposal on or within the approved ROW limits of the Interstate, including any change in access control. The assignment agreement provisions in §710.201(h) and this paragraph do not apply to non-SDOT grantees.

(b) The grantee must ensure that all real property interests within the approved ROW limits or other project limits of a facility that has been funded under title 23 are devoted exclusively to the purposes of that facility and the facility is preserved free of all other public or private alternative uses, unless such non-highway alternative uses are permitted by Federal law (including regulations) or the FHWA. An alternative use, whether temporary under §710.405 or permanent as provided in §710.409, must be in the public interest, consistent with the continued operation, maintenance, and safety of the facility, and such use must not impair the highway or interfere with the free and safe flow of traffic (see also 23 CFR 1.23). Park and Ride lots are

exempted from the provisions of this part. Park and Ride lots requirements are found 23 U.S.C. 137 and 23 CFR 810.106.

(c) Grantees shall specify procedures in their approved ROW manual or RAMP for determining when a real property interest is excess real property and may be disposed of in accordance with this part. These procedures must provide for coordination among relevant State organizational units that may be interested in the proposed use or disposal of the real property. Grantees also shall specify procedures in their ROW manual or RAMP for determining when a real property interest is excess and when a real property interest may be made available under a ROW use agreement for an alternative use that satisfies the requirements described in paragraph (b) of this section.

(d) Disposal actions and ROW use agreements, including leasing actions, are subject to 23 CFR part 771.

(e) Current fair market value must be charged for the use or disposal of all real property interests if those real property interests were obtained with title 23, United States Code, funding except as provided in paragraphs (e)(1) through (6) of this section. The term fair market value as used for acquisition and disposal purposes is as defined by State statute and/or State court decisions. Exceptions to the requirement for charging fair market value must be submitted to FHWA in writing and may be approved by FHWA in the following situations:

(1) When the grantee shows that an exception is in the overall public interest based on social, environmental, or economic benefits, or is for a nonproprietary governmental use. The grantee's ROW manual or RAMP must include criteria for evaluating disposals at less than fair market value, and a method for ensuring the public will receive the benefit used to justify the less than fair market value disposal.

(2) Use by public utilities in accordance with 23 CFR part 645.

(3) Use by railroads in accordance with 23 CFR part 646.

(4) Use for bikeways and pedestrian walkways in accordance with 23 CFR part 652.

(5) Uses under 23 U.S.C. 142(f), Public Transportation. Lands and ROWs of a highway constructed using Federal-aid highway funds may be made available without charge to a publicly owned mass transit authority for public transit purposes whenever the public interest will be served, and where this can be accomplished without impairing automotive safety or future highway improvements.

(6) Use for other transportation projects eligible for assistance under title 23 of the United States Code, provided that a concession agreement, as defined in

§710.703, shall not constitute a transportation project exempt from fair market value requirements.

(f) The Federal share of net income from the use or disposal of real property interests obtained with title 23 funds shall be used by the grantee for activities eligible for funding under title 23. Where project income derived from the use or disposal of real property interests is used for subsequent title 23-eligible projects, the funds are not considered Federal financial assistance and use of the income does not cause title 23 requirements to apply.

**§710.405 ROW use agreements.**

(a) A ROW use agreement for the non-highway use of real property interests may be executed with a public entity or private party in accordance with §710.403 and this section. Any non-highway alternative use of real property interests requires approval by FHWA, including a determination by FHWA that such occupancy, use, or reservation is in the public interest; is consistent with the continued use, operations, maintenance, and safety of the facility; and such use does not impair the highway or interfere with the free and safe flow of traffic as described in §710.403(b). Except for Interstate Highways, where the SDOT controls the real property interest, the FHWA may assign its determination and approval responsibilities to the SDOT in their Stewardship/Oversight Agreement.

(1) This section applies to highways as defined in 23 U.S.C. 101(a) that received title 23, United States Code, financial assistance in any way.

(2) This section does not apply to the following:

(i) Uses by railroads and public utilities which cross or otherwise occupy Federal-aid highway ROW and that are governed by other sections of this title;

(ii) Relocations of railroads or utilities for which reimbursement is claimed under 23 CFR part 140, subparts E and H, 23 CFR part 645, or 23 CFR part 646, subpart B; and

(iii) Bikeways and pedestrian walkways as covered in 23 CFR part 652.

(b) Subject to the requirements in this subpart, ROW use agreements for a time-limited occupancy or use of real property interests may be approved if the grantee has acquired sufficient legal right, title, and interest in the ROW of a federally assisted highway to permit the non-highway use. A ROW use agreement must contain provisions that address the following items:

(1) Ensure the safety and integrity of the federally assisted facility;

(2) Define the term of the agreement;

(3) Identify the design and location of the non-highway use;

(4) Establish terms for revocation of the ROW use

agreement and removal of improvements at no cost to the FHWA;

(5) Provide for adequate insurance to hold the grantee and the FHWA harmless;

(6) Require compliance with nondiscrimination requirements;

(7) Require grantee and FHWA approval, if not assigned to SDOT, and SDOT approval if the agreement affects a Federal-aid highway and the SDOT is not the grantee, for any significant revision in the design, construction, or operation of the non-highway use; and

(8) Grant access to the non-highway use by the grantee and FHWA, and the SDOT if the agreement affects a Federal-aid highway and the SDOT is not the grantee, for inspection, maintenance, and for activities needed for reconstruction of the highway facility.

(9) Additional terms and conditions appropriate for inclusion in ROW use agreements are described in FHWA guidance at

[http://www.fhwa.dot.gov/real\\_estate/right-of-way/corridor\\_management/airspace\\_guidelines.cfm](http://www.fhwa.dot.gov/real_estate/right-of-way/corridor_management/airspace_guidelines.cfm).

The terms and conditions listed in the guidance are not mandatory requirements.

(c) Where a proposed use requires changes in the existing highway, such changes shall be provided without cost to Federal funds unless otherwise specifically agreed to by the grantee and FHWA.

(d) Proposed uses of real property interests shall conform to the current design standards and safety criteria of FHWA for the functional classification of the highway facility in which the property is located.

(e) An individual, company, organization, or public agency desiring to use real property interests shall submit a written request to the grantee, together with an application supporting the proposal. If FHWA is the approving authority, the grantee shall forward the request, application, and the SDOT's recommendation if the proposal affects a Federal-aid highway, and the proposed ROW use agreement, together with its recommendation and any necessary supplemental information, to FHWA. The submission shall affirmatively provide for adherence to all requirements contained in this subpart and must include the following information:

(1) Identification of the party responsible for developing and operating the proposed use;

(2) A general statement of the proposed use;

(3) A description of why the proposed use would be in the public interest;

(4) Information demonstrating the proposed use would not impair the highway or interfere with the free and safe flow of traffic;

(5) The proposed design for the use of the space, including any facilities to be constructed;

(6) Maps, plans, or sketches to adequately demonstrate the relationship of the proposed project to the highway facility;

(7) Provision for vertical and horizontal access for maintenance purposes;

(8) A description of other general provisions such as the term of use, insurance requirements, design limitations, safety mandates, accessibility, and maintenance as outlined further in this section; and

(9) An adequately detailed three-dimensional presentation of the space to be used and the facility to be constructed if required by FHWA or the grantor. Maps and plans may not be required if the available real property interest is to be used for leisure activities (such as walking or biking), beautification, parking of motor vehicles, public mass transit facilities, and similar uses. In such cases, an acceptable metes and bounds description of the surface area, and appropriate plans or cross sections clearly defining the vertical use limits, may be furnished in lieu of a three-dimensional description, at the grantee's discretion.

#### **§710.407 [Reserved]**

#### **§710.409 Disposal of excess real property.**

(a) Excess real property outside or within the approved right-of-way limits or other project limits may be sold or conveyed to a public entity or to a private party in accordance with §710.403(a), (c), (d), (e), (f) and this section. Approval by FHWA is required for disposal of excess real property unless otherwise provided in this section or in the FHWA-SDOT Stewardship/Oversight Agreement.

(b) Federal, State, and local agencies shall be afforded the opportunity to acquire excess real property considered for disposal when such real property interests have potential use for parks, conservation, recreation, or related purposes, and when such a transfer is allowed by State law. When this potential exists, the grantee shall notify the appropriate agencies of its intentions to dispose of the real property interests determined to be excess.

(c) The grantee may decide to retain excess real property to restore, preserve, or improve the scenic beauty and environmental quality adjacent to the transportation facility.

(d) Where the transfer of excess real property to other agencies at less than fair market value for continued public use is clearly justified as in the public interest and approved by FHWA under §710.403(e), the deed shall provide for reversion of the property for failure to continue public ownership and use. Where property is sold at fair market value, no reversion clause is required.

(e) No FHWA approval is required for disposal of excess real property located outside of the approved ROW limits or other project limits if Federal funds did

not participate in the acquisition cost of the real property.

(f) Highway facilities in which Federal funds participated in either the ROW or construction may be relinquished to another governmental agency for continued highway use under the provisions of 23 CFR part 620, subpart B.

(g) A request for approval of a disposal must demonstrate compliance with the requirements of §710.403(a), (c), (d), (e), (f) and this section. An individual, company, organization, or public agency requesting a grantee to approve of a disposal of excess real property within the approved ROW limits or other project limits, or to approve of a disposal of excess real property outside the ROW limits that was acquired with title 23 of the United States Code funding, shall submit a written request to the grantee, together with an application supporting the proposal. If the FHWA is the approving authority, the grantee shall forward the request, the SDOT recommendation if the proposal affects a Federal-aid highway, the application, and proposed terms and conditions, together with its recommendation and any necessary supplemental information, to FHWA. The submission shall affirmatively provide for adherence to requirements contained in this section and must include the information specified in §710.405(e)(1) through (9).

**Subpart E—Property Acquisition Alternatives**

Source: 81 FR 57729, Aug. 23, 2016, unless otherwise noted.

**§710.501 Early acquisition.**

(a) *General.* A State agency may initiate acquisition of real property interests for a proposed transportation project at any time it has the legal authority to do so. The State agency may undertake Early Acquisition Projects before the completion of the environmental review process for the proposed transportation project for corridor preservation, access management, or other purposes. Subject to the requirements in this section, State agencies may fund Early Acquisition Project costs entirely with State funds with no title 23 participation; use State funds initially but seek title 23 credit or reimbursement when the acquired property is incorporated into a transportation project eligible for Federal surface transportation program funds; or use the normal Federal-aid project agreement and reimbursement process to fund an Early Acquisition Project pursuant to paragraph (e) of this section. The early acquisition of a real property interest under this section shall be carried out in compliance with all requirements applicable to the acquisition of real property interests for federally assisted transportation projects.

(b) *State-funded early acquisition without Federal credit or reimbursement.* A State agency may carry out

early acquisition entirely at its expense and later incorporate the acquired real property into a transportation project or program for which the State agency receives Federal financial assistance or other Federal approval under title 23 for other transportation project activities. In order to maintain eligibility for future Federal assistance on the project, early acquisition activities funded entirely without Federal participation must comply with the requirements of §710.501(c)(1) through (5).

(c) *State-funded early acquisition eligible for future credit.* Subject to §710.203(b) (direct eligible costs), §710.505(b), and §710.507 (State and local contributions), Early Acquisition Project costs incurred by a State agency at its own expense prior to completion of the environmental review process for a proposed transportation project are eligible for use as a credit toward the non-Federal share of the total project costs if the project receives surface transportation program funds, and if the following conditions are met:

(1) The property was lawfully obtained by the State agency;

(2) The property was not land described in 23 U.S.C. 138;

(3) The property was acquired, and any relocations were carried out, in accordance with the provisions of the Uniform Act and regulations in 49 CFR part 24;

(4) The State agency complied with the requirements of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4);

(5) The State agency determined, and FHWA concurred, the early acquisition did not influence the environmental review process for the proposed transportation project, including:

(i) The decision on need to construct the proposed transportation project;

(ii) The consideration of any alternatives for the proposed transportation project required by applicable law; and

(iii) The selection of the design or location for the proposed transportation project; and

(6) The property will be incorporated into the project for which surface transportation program funds are received and to which the credit will be applied.

(d) *State-funded early acquisition eligible for future reimbursement.* Early Acquisition Project costs incurred by a State agency prior to completion of the environmental review process for the transportation project are eligible for reimbursement from title 23 funds apportioned to the State once the real property interests are incorporated into a project eligible for surface transportation program funds if the State agency demonstrates, and FHWA concurs, that the terms and conditions specified in the requirements of §710.501(c)(1) through (5), and the requirements of



§710.203(b) (direct eligible costs) have been met. The State agency must demonstrate that it has met the following requirements, as set forth in 23 U.S.C. 108(c)(3):

(1) Any land acquired, and relocation assistance provided, complied with the Uniform Act;

(2) The requirements of title VI of the Civil Rights Act of 1964 have been complied with;

(3) The State has a mandatory comprehensive and coordinated land use, environment, and transportation planning process under State law and the acquisition is certified by the Governor as consistent with the State plans before the acquisition;

(4) The acquisition is determined in advance by the Governor to be consistent with the State transportation planning process pursuant to 23 U.S.C. 135;

(5) The alternative for which the real property interest is acquired is selected by the State pursuant to regulations issued by the Secretary which provide for the consideration of the environmental impacts of various alternatives;

(6) Before the time that the cost incurred by a State is approved for Federal participation, environmental compliance pursuant to the National Environmental Policy Act has been completed for the project for which the real property interest was acquired by the State, and the acquisition has been approved by the Secretary under this Act, and in compliance with section 303 of title 49, section 7 of the Endangered Species Act, and all other applicable environmental laws that shall be identified by the Secretary in regulations; and

(7) Before the time that the cost incurred by a State is approved for Federal participation, the Secretary has determined that the property acquired in advance of Federal approval or authorization did not influence the environmental assessment of the project, the decision relative to the need to construct the project, or the selection of the project design or location.

(e) *Federally funded early acquisition.* The FHWA may authorize the use of funds apportioned to a State under title 23 for an Early Acquisition Project if the State agency certifies, and FHWA concurs, that all of the following conditions have been met:

(1) The State has authority to acquire the real property interest under State law; and

(2) The acquisition of the real property interest—

(i) Is for a transportation project or program eligible for funding under title 23 that will not require FHWA approval under 23 CFR 774.3;

(ii) Will not cause any significant adverse environmental impacts either as a result of the Early Acquisition Project or from cumulative effects of multiple Early Acquisition Projects carried out under

this section in connection with a proposed transportation project;

(iii) Will not limit the choice of reasonable alternatives for a proposed transportation project or otherwise influence the decision of FHWA on any approval required for a proposed transportation project;

(iv) Will not prevent the lead agency from making an impartial decision as to whether to accept an alternative that is being considered in the environmental review process for a proposed transportation project;

(v) Is consistent with the State transportation planning process under 23 U.S.C. 135;

(vi) Complies with other applicable Federal laws (including regulations);

(vii) Will be acquired through negotiation, without the threat of, or use of, condemnation; and

(viii) Will not result in a reduction or elimination of benefits or assistance to a displaced person required by the Uniform Act and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*).

(3) The Early Acquisition Project is included as a project in an applicable transportation improvement program under 23 U.S.C. 134 and 135 and 49 U.S.C. 5303 and 5304.

(4) The environmental review process for the Early Acquisition Project is complete and FHWA has approved the Early Acquisition Project. Pursuant to 23 U.S.C. 108(d)(4)(B), the Early Acquisition Project is deemed to have independent utility for purposes of the environmental review process under NEPA. When the Early Acquisition Project may result in a change to the use or character of the real property interest prior to the completion of the environmental review process for the proposed transportation project, the NEPA evaluation for the Early Acquisition Project must consider whether the change has the potential to cause a significant environmental impact as defined in 40 CFR 1508.27, including a significant adverse impact within the meaning of paragraph (e)(2)(ii) of this section. The Early Acquisition Project must comply with all applicable environmental laws.

(f) *Prohibited activities.* Except as provided in this paragraph, real property interests acquired under paragraph (e) of this section and pursuant to 23 U.S.C. 108(d) cannot be developed in anticipation of a transportation project until all required environmental reviews for the transportation project have been completed. For the purpose of this paragraph, “development in anticipation of a transportation project” means any activity related to demolition, site preparation, or construction that is not necessary to protect public health or safety. With prior FHWA approval, a State agency may carry out limited

activities necessary for securing real property interests acquired as part of an Early Acquisition Project, such as limited clearing and demolition activity, if the activities are necessary to protect the public health or safety and are considered during the environmental review of the Early Acquisition Project.

(g) *Reimbursement.* If Federal-aid reimbursement is made for real property interests acquired early under this section and the real property interests are not subsequently incorporated into a project eligible for surface transportation funds within the time allowed by 23 U.S.C. 108 (a)(2), FHWA must offset the amount reimbursed against funds apportioned to the State.

(h) *Relocation assistance eligibility.* In the case of an Early Acquisition Project, a person is considered to be displaced when required to move from the real property as a direct result of a binding written agreement for the purchase of the real property interest(s) between the acquiring agency and the property owner. Options to purchase and similar agreements used for Early Acquisition Projects that give the acquiring agency a right to prevent new development or to decide in the future whether to acquire the real property interest(s), but do not create an immediate commitment by the acquiring agency to acquire and do not require an owner or tenant to relocate, do not create relocation eligibility until the acquiring agency legally commits itself to acquiring the real property interest(s).

#### **§710.503 Protective buying and hardship acquisition.**

(a) *General conditions.* Prior to final environmental approval of a transportation project, the grantee may request FHWA agreement to provide reimbursement for advance acquisition of a particular parcel or a limited number of parcels, to prevent imminent development and increased costs on the preferred location (Protective Buying), or to alleviate hardship to a property owner or owners on the preferred location (Hardship Acquisition), provided the following conditions are met:

(1) The transportation project is included in the currently approved STIP;

(2) The grantee has complied with applicable public involvement requirements in 23 CFR parts 450 and 771;

(3) A determination has been completed for any property interest subject to the provisions of 23 U.S.C. 138; and

(4) Procedures of the Advisory Council on Historic Preservation are completed for properties subject to (54 U.S.C. 306108), (historic properties).

(b) *Protective buying.* The grantee must clearly demonstrate that development of the property is imminent and such development would limit future

transportation choices. A significant increase in cost may be considered as an element justifying a protective purchase.

(c) *Hardship acquisitions.* The grantee must accept and concur in an owner's request for a hardship acquisition based on a property owner's written submission that—

(1) Supports the hardship acquisition by providing justification, on the basis of health, safety or financial reasons, that remaining in the property poses an undue hardship compared to other property owners; and

(2) Documents an inability to sell the property because of the impending project, at fair market value, within a time period that is typical for properties not impacted by the impending project.

(d) *Environmental decisions.* Acquisition of property under this section is subject to environmental review under part 771 of this chapter. Acquisitions under this section shall not influence the environmental review of a transportation project which would use the property, including decisions about the need to construct the transportation project or the selection of an alternative.

#### **§710.505 Real property donations.**

(a) *Donations of property being acquired.* A non-governmental owner whose real property is required for a title 23 project may donate the property. Donations may be made at any time during the development of a project subject to applicable State laws. Prior to accepting the property, the owner must be informed in writing by the acquiring agency of his/her right to receive just compensation for the property, the right to an appraisal or waiver valuation of the real property, and of all other applicable financial and non-financial assistance provided under 49 CFR part 24 and applicable State law. All donations of property received prior to the approval of the NEPA document for the project must meet the requirements specified in 23 U.S.C. 323(d).

(b) *Credit for donations.* Donations of real property may be credited to the State's matching share of the project in accordance with 23 U.S.C. 323. As required by 23 U.S.C. 323(b)(2), credit to the State's matching share for donated property shall be based on fair market value established on the earlier of the following: Either the date on which the donation becomes effective, or the date on which equitable title to the property vests in the State. The fair market value shall not include increases or decreases in value caused by the project. The grantee shall ensure sufficient documentation is developed to indicate compliance with paragraph (a) of this section and with the provisions of 23 U.S.C. 323, and to support the amount of credit applied. The total credit cannot exceed the State's pro-rata share under the project agreement to

which it is applied.

(c) *Donations and conveyances in exchange for construction features or services.* A property owner may donate property in exchange for construction features or services. The value of the donation is limited to the fair market value of property donated less the cost of the construction features or services. If the value of the donated property exceeds the cost of the construction features or services, the difference may be eligible for a credit to the State's share of project costs.

#### **§710.507 State and local contributions.**

(a) *Credit for State and local government contributions.* If the requirements of 23 U.S.C. 323 are met, real property owned by State and local governments that is incorporated within a project receiving financial assistance from the Highway Trust Fund can be used as a credit toward the grantee or subgrantee's matching share of total project cost. A credit cannot exceed the grantee or subgrantee's matching share required by the project agreement. The grantee must ensure there is documentation supporting all credits, including the following:

(1) A certification that the State or local government acquisition satisfied the conditions in 23 CFR 710.501(c)(1) through (6); and

(2) Justification of the value of credit applied. Acquisition costs incurred by the State or local government to acquire title can be used as justification for the value of the real property.

(b) *Exemptions.* Credits are not available for real property acquired with any form of Federal financial assistance except as provided in 23 U.S.C. 120(j), or for real property already incorporated into existing ROW and used for transportation purposes.

(c) *Contributions without credit.* Property may be presented for project use with the understanding that no credit for its use is sought. In such case, the grantee shall assure that the acquisition satisfied the conditions in 23 CFR 710.501(c)(1) through (6).

#### **§710.509 Functional replacement of real property in public ownership.**

(a) *General.* When publicly owned real property, including land and/or facilities, is to be acquired for a project receiving grant funds under title 23, in lieu of paying the fair market value for the real property, the acquiring agency may provide compensation by functionally replacing the publicly owned real property with another facility that will provide equivalent utility.

(b) *Federal participation.* Federal-aid funds may participate in functional replacement costs only if the following conditions are met:

(1) Functional replacement is permitted under State law and the acquiring agency elects to provide it;

(2) The property in question is in public ownership

and use;

(3) The replacement facility will be in public ownership and will continue the public use function of the acquired facility;

(4) The acquiring agency has informed, in writing, the public entity owning the property of its right to an estimate of just compensation based on an appraisal of fair market value and of the option to choose either just compensation or functional replacement;

(5) The FHWA concurs in the acquiring agency determination that functional replacement is in the public interest; and

(6) The real property is not owned by a utility or railroad.

(c) *Federal land transfers.* Use of this section for functional replacement of real property in Federal ownership shall be in accordance with Federal land transfer provisions in subpart F of this part.

(d) *Limits upon participation.* Federal-aid participation in the costs of functional replacement is limited to costs that are actually incurred in the replacement of the acquired land and/or facility and are—

(1) Costs for facilities that do not represent increases in capacity or betterments, except for those necessary to replace utilities, to meet legal, regulatory, or similar requirements, or to meet reasonable prevailing standards; and

(2) Costs for land to provide a site for the replacement facility.

(e) *Procedures.* When a grantee determines that payments providing for functional replacement of public facilities are allowable under State law, the grantee will incorporate within its approved ROW manual, or approved RAMP, full procedures covering review and oversight that will be applied to such cases.

#### **§710.511 Transportation Alternatives.**

(a) *General.* 23 U.S.C. 133(h) sets aside an amount from each State's Surface Transportation Block Grant apportionment for Transportation Alternatives (TA). The TA projects that involve the acquisition, management, and disposition of real property, and the relocation of families, individuals, and businesses, are governed by the general requirements of the Federal-aid program found in titles 23 and 49 of the CFR, except as specified in paragraph (b)(2) of this section.

(b) *Requirements.* (1) Acquisition and relocation activities for TA projects are subject to the Uniform Act.

(2) When a person or agency acquires real property for a project receiving title 23 grant funds on behalf of an acquiring agency with eminent domain authority, the requirements of the Uniform Act apply as if the acquiring agency had acquired the property itself.

(3) When, subsequent to Federal approval of property acquisition, a person or agency acquires real property for a project receiving title 23 grant funds, and there will be no use or recourse to the power of eminent domain, the limited requirements of 49 CFR 24.101(b)(2) apply.

(c) *Property management and disposal of property acquired for TA projects.* Subpart D of this part applies to the management and disposal of real property interests acquired with TA funds, including alternate uses authorized under ROW use agreements. A TA project involving acquisition of any real property interest must have a real property agreement between FHWA and the grantee that identifies the expected useful life of the TA project and establishes a pro rata formula for repayment of TAP funding by the grantee if—

(1) The acquired real property interest is used in whole or in part for purposes other than the TA project purposes for which it was acquired; or

(2) The actual TA project life is less than the expected useful life specified in the real property agreement.

#### **Subpart F—Federal Assistance Programs**

Source: 81 FR 57729, Aug. 23, 2016, unless otherwise noted.

##### **§710.601 Federal land transfers.**

(a) The provisions of this subpart apply to any project constructed on a Federal-aid highway or under Chapter 2 of title 23, of the United States Code. When the FHWA determines that a strong Federal transportation interest exists, these provisions may also be applied to highway projects that are eligible for Federal funding under Chapters 1 and 2 of title 23, of the United States Code, and to highway-related transfers that are requested by a State in conjunction with a military base closure under the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101-510, 104 Stat. 1808, as amended).

(b) Under certain conditions, real property interests owned by the United States may be transferred to a non-Federal owner for use for highway purposes. Sections 107(d) and 317 of title 23, United States Code, establish the circumstances under which such transfers may occur, and the parties eligible to receive such transfers (SDOTs and their nominees).

(c) An eligible party may file an application with FHWA, or can make application directly to the Federal land management agency if the Federal land management agency has its own authority for granting interests in land.

(d) Applications under this section shall include the following information:

(1) The purpose for which the lands are to be used;

(2) The estate or interest in the land required for the project;

(3) The Federal project number or other appropriate references;

(4) The name of the Federal agency exercising jurisdiction over the land and identity of the installation or activity in possession of the land;

(5) A map showing the survey of the lands to be acquired;

(6) A legal description of the lands desired; and

(7) A statement of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*) and any other applicable Federal environmental laws, including the National Historic Preservation Act (54 U.S.C. 306108), and 23 U.S.C. 138.

(e) If the FHWA concurs in the need for the transfer, the Federal land management agency will be notified and a right-of-entry requested. For projects not on the Interstate System, the Federal land management agency shall have a period of 4 months in which to designate conditions necessary for the adequate protection and utilization of the reserve or to certify that the proposed appropriation is contrary to the public interest or inconsistent with the purposes for which such land or materials have been reserved. The FHWA may extend the reply period at the timely request of the Federal land management agency for good cause.

(f) The FHWA may participate in the payment of fair market value or the functional replacement of impacted facilities under 710.509 and the reimbursement of the ordinary and reasonable direct costs of the Federal land management agency for the transfer when reimbursement is required by the Federal land management agency's governing laws as a condition of the transfer.

(g) Deeds for conveyance of real property interests owned by the United States shall be prepared by the eligible party and must be certified as being legally sufficient by an attorney licensed within the State where the real property is located. Such deeds shall contain the clauses required by FHWA and 49 CFR 21.7(a)(2). After the eligible party prepares the deed, it will submit the proposed deed with the certification to FHWA for review and execution.

(h) Following execution by FHWA, the eligible party shall record the deed in the appropriate land record office and so advise FHWA and the affected Federal land management agency.

(i) When the need for the interest acquired under this subpart no longer exists, the party that received the real property must restore the land to the condition which existed prior to the transfer, or to a condition that is acceptable to the Federal land management agency to which such property would revert, and must give notice to FHWA and to the affected Federal land

management agency that such interest will immediately revert to the control of the Federal land management agency from which it was appropriated or to its assigns. Where authorized by Federal law, the Federal land management agency and such party may enter into a separate agreement to release the reversion clause and make alternative arrangements for the sale, restoration, or other disposition of the lands no longer needed.

#### **§710.603 Direct Federal acquisition.**

(a) The provisions of this paragraph may be applied to any real property that is not owned by the United States and is needed in connection with a project for the construction, reconstruction, or improvement of any section of the Interstate System or for a Defense Access Road project under 23 U.S.C. 210, if the SDOT is unable to acquire the required ROW or is unable to obtain possession with sufficient promptness. If the landowner tenders a right-of-entry or other right of possession document required by State law any time before FHWA makes a determination that the SDOT is unable to acquire the ROW with sufficient promptness, the SDOT is legally obligated to accept such tender and FHWA may not proceed with Federal acquisition. To enable FHWA to make the necessary findings and to proceed with the acquisition of the ROW, the SDOT's written application for Federal acquisition must include the following:

(1) Justification for the Federal acquisition of the lands or interests in lands;

(2) The date FHWA authorized the SDOT to commence ROW acquisition, the date of the project agreement, and a statement that the agreement contains the provisions required by 23 U.S.C. 111;

(3) The necessity for acquisition of the particular lands under request;

(4) A statement of the specific interests in lands to be acquired, including the proposed treatment of control of access;

(5) The SDOT's intentions with respect to the acquisition, subordination, or exclusion of outstanding interests, such as minerals and utility easements, in connection with the proposed acquisition;

(6) A statement on compliance with the provisions of parts 771 and 774 of this chapter, as applicable;

(7) Adequate legal descriptions, plats, appraisals, and title data;

(8) An outline of the negotiations that have been conducted with landowners;

(9) An agreement that the SDOT will pay its pro rata share of costs incurred in the acquisition of, or the attempt to acquire, ROW; and

(10) A statement that assures compliance with the applicable provisions of the Uniform Act.

(b) Except as provided in paragraph (a) of this

section, direct Federal acquisitions from non-Federal owners for projects administered by the FHWA Office of Federal Lands Highway may be carried out in accordance with applicable Federal condemnation laws. The FHWA will proceed with such a direct Federal acquisition only when the public agency responsible for the road is unable to obtain the ROW necessary for the project. The public agency must make a written request to FHWA for the acquisition and, if the public agency is a Federal agency, the request shall include a commitment that any real property obtained will be under that agency's sole jurisdiction and control and FHWA will have no jurisdiction or control over the real property as a result of the acquisition. The FHWA may require the applicant to provide any information FHWA needs to make the required determinations or to carry out the acquisition.

(c) If the applicant for direct Federal acquisition obtains title to a parcel prior to the filing of the Declaration of Taking, it shall notify FHWA and immediately furnish the appropriate U.S. Attorney with a disclaimer together with a request that the action against the landowner be dismissed (ex parte) from the proceeding and the estimated just compensation deposited into the registry of the court for the affected parcel be withdrawn after the appropriate motions are approved by the court.

(d) When the United States obtains a court order granting possession of the real property, FHWA shall authorize the applicant for direct Federal acquisition to immediately take over supervision of the property. The authorization shall include, but need not be limited to, the following:

(1) The right to take possession of unoccupied properties;

(2) The right to give 90 days notice to owners to vacate occupied properties and the right to take possession of such properties when vacated;

(3) The right to permit continued occupancy of a property until it is required for construction and, in those instances where such occupancy is to be for a substantial period of time, the right to enter into rental agreements, as appropriate, to protect the public interest;

(4) The right to request assistance from the U.S. Attorney in obtaining physical possession where an owner declines to comply with the court order of possession;

(5) The right to clear improvements and other obstructions;

(6) Instructions that the U.S. Attorney be notified prior to actual clearing, so as to afford him an opportunity to view the lands and improvements, to obtain appropriate photographs, and to secure appraisals in connection with the preparation of the

case for trial;

(7) The requirement for appropriate credits to the United States for any net salvage or net rentals obtained by the applicant for direct Federal acquisition, as in the case of ROW acquired by an SDOT for Federal-aid projects; and

(8) Instructions that the authority granted to the applicant for direct Federal acquisition is not intended to preclude the U.S. Attorney from taking action, before the applicant has made arrangements for removal, to reach a settlement with the former owner which would include provision for removal.

(e) If the Federal Government initiates condemnation proceedings against the owner of real property in a Federal court and the final judgment is that FHWA cannot acquire the real property by condemnation, or the proceeding is abandoned, the court is required by law to award such a sum to the owner of the real property that in the opinion of the court provides reimbursement for the owner's reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings.

(f) As soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of the compensation in a Federal condemnation, FHWA shall reimburse the owner to the extent deemed fair and reasonable, the following costs:

(1) Recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the United States;

(2) Penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and

(3) The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States or the effective date of possession, whichever is the earlier.

(g) The lands or interests in lands, acquired under this section, will be conveyed to the State or the appropriate political subdivision thereof, upon agreement by the SDOT, or said subdivision to:

(1) Maintain control of access where applicable;

(2) Accept title thereto;

(3) Maintain the project constructed thereon;

(4) Abide by any conditions which may set forth in the deed; and

(5) Notify the FHWA at the appropriate time that all the conditions have been performed.

(h) The deed from the United States to the State, or to the appropriate political subdivision thereof, or in the case of a Federal applicant for a direct Federal acquisition any document designating jurisdiction,

shall include the conditions required by 49 CFR part 21 and shall not include any grant of jurisdiction to FHWA. The deed shall be recorded by the grantee in the appropriate land record office, and the FHWA shall be advised of the recording date.

[81 FR 57729, Aug. 23, 2016, as amended at 83 FR 21710, May 10, 2018]

### **Subpart G—Concession Agreements**

Authority: 23 U.S.C. 156 and 315; 23 CFR 1.32; 49 CFR 1.48.

Source: 73 FR 77503, Dec. 19, 2008, unless otherwise noted.

#### **§710.701 Purpose.**

The purpose of this subpart is to prescribe the standards that ensure fair market value is received by a highway agency under concession agreements involving federally funded highways.

#### **§710.703 Definitions.**

As used in this subpart:

(a) *Best value* means the proposal offering the most overall public benefits as determined through an evaluation of the amount of the concession payment and other appropriate considerations. Such other appropriate considerations may include, but are not limited to, qualifications and experience of the concessionaire, expected quality of services to be provided, the history or track record of the concessionaire in providing the services, timelines for the delivery of services, performance standards, complexity of the services to be rendered, and revenue sharing. Such appropriate considerations may also include, but are not limited to, policy considerations that are important, but not quantifiable, such as retaining the ability to amend the concession agreement if conditions change, having a desired level of oversight over the facility, ensuring a certain level of maintenance and operations for the facility, considerations relative to the structure and amount of the toll rates, economic development impacts and considerations, or social and environmental benefits and impacts.

(b) *Concession agreement* means an agreement between a highway agency and a concessionaire under which the concessionaire is given the right to operate and collect revenues or fees for the use of a federally funded highway in return for compensation to be paid to the highway agency. A concession agreement may include, but not be limited to, obligations concerning the development, design, construction, maintenance, operation, level of service, and/or capital improvements to a facility over the term of the agreement. Concession agreement shall not include agreements between government entities, even when compensation is paid, where the primary purpose of the

transaction is not commercial in nature but for the purpose of determining governmental ownership, control, jurisdiction, or responsibilities with respect to the operation of a federally funded highway. The highway agency's determination as to whether an agreement between government entities constitutes a concession agreement shall be controlling.

(c) *Concessionaire* means any private or public entity that enters into a concession agreement with a highway agency.

(d) *Fair market value* means the price at which a highway agency and concessionaire are ready and willing to enter into a concession agreement for a federally funded highway on, or as if in, the open market for a reasonable period of time and in an arm's length transaction to any willing, knowledgeable, and able buyer. For purposes of this subpart, a concession agreement based on best value shall be deemed fair market value.

(e) *Federally funded highway* means any highway (including highways, bridges, and tunnels) acquired with Federal assistance made available from the Highway Trust Fund (other than the Mass Transit Account). A highway shall be deemed to be acquired with Federal assistance if Federal assistance participated in either the purchase of any real property, or in any capital expenditures in any fixtures located on real property, within the right-of-way, including the highway and any structures located upon the property.

(f) *Highway agency* in this subpart means any SDOT or other public authority with jurisdiction over a federally funded highway.

[73 FR 77503, Dec. 19, 2008, as amended at 81 FR 57741, Aug. 23, 2016]

#### **§710.705 Applicability.**

This subpart applies to all concession agreements involving federally funded highways that are executed after January 18, 2009.

#### **§710.707 Fair market value.**

A highway agency shall receive fair market value for any concession agreement involving a federally

funded highway.

#### **§710.709 Determination of fair market value.**

(a) Fair market value may be determined either on a best value basis, highest net present value of the payments to be received over the life of the agreement, or highest bid received, as may be specified by the highway agency in the request for proposals or other relevant solicitation. If best value is used, the highway agency should identify, in the relevant solicitation, the criteria to be used as well as the weight afforded to the criteria.

(b) In order to be considered fair market value, the terms of the concession agreement must be both legally binding and enforceable.

(c) Any concession agreement awarded pursuant to a competitive process with more than one bidder shall be deemed to be fair market value. Any concession agreement awarded pursuant to a competitive process with only one bidder shall be presumed to be fair market value. Such presumption may be overcome only if the highway agency determines the proposal to not be fair market value based on the highway agency's estimates. Nothing in this subpart shall be construed to require a highway agency to accept any proposal, even if the proposal is deemed fair market value. For purposes of this subsection, a competitive process shall afford all interested proposers an equal opportunity to submit a proposal for the concession agreement and shall comply with applicable State and local law.

(d) If a concession agreement is not awarded pursuant to a competitive process, the highway agency must receive fair market value, as determined by the highway agency in accordance with State law, so long as an independent third party assessment is conducted and made publicly available.

(e) Nothing in this subpart is intended to waive the requirements of part 172, part 635, and part 636 whenever any Federal-aid (including TIFIA assistance) is to be used for a project under the concession agreement.





**NOTES:**