Real Estate Acquisition Guide For Local Public Agencies

U.S. Department of Transportation
Federal Highway Administration

Acknowledgements

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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:

> **"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."**

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.

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

- 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

- 23 Part 710
- 49 Part 24

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 should 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, Relocation and Appraisal from our website at:

http://www.fhwa.dot.gov/realestate/index.htm

You must make sure that displaced persons receive all of 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 which follow.

You should work closely with your State Transportation Department (STD) during the entire acquisition process, both to expedite acquisition and to assure that all Federal and State requirements are met. Typically, the STD will have an experienced real estate staff which can serve as a valuable resource to your agency. In addition, STDs 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. Some STDs also have designated a staff member as a local public agency coordinator.

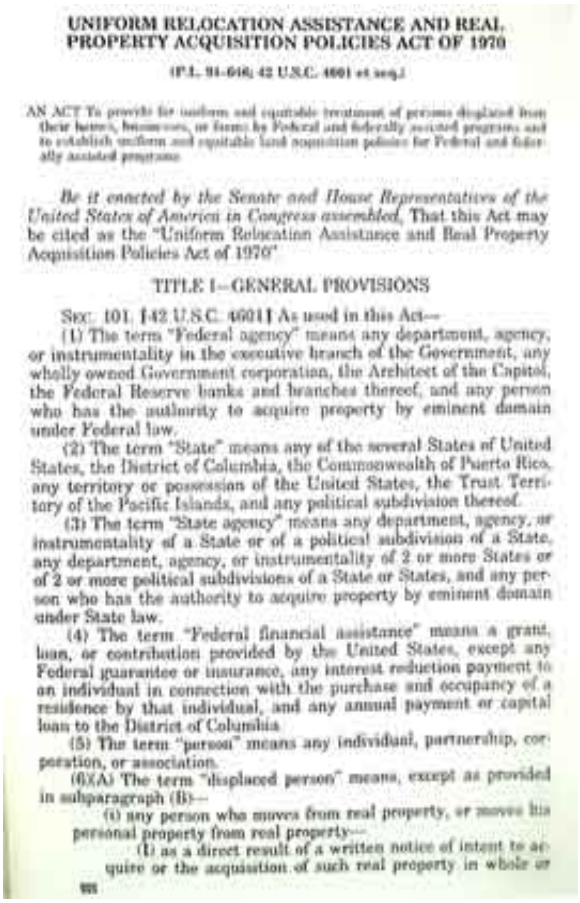
The Uniform Act

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 are 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 STD to insure 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.

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.



UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970

(P.L. 91-646; 42 U.S.C. 4601 et seq.)

AN ACT To provide for uniform and equitable treatment of persons displaced from their homes, businesses, or farms by Federal and federally assisted programs and to establish uniform and equitable land acquisition policies for Federal and federally assisted programs.

Be it enacted by the Senate and House Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970".

TITLE I—GENERAL PROVISIONS

SEC. 101. [42 U.S.C. 4601] As used in this Act—

(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 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

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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 (condemnation) 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. **You should consult with your STD for advice as to what is or is not compensable under your State law.**

49 Code of Federal Regulations (CFR) Part 24 – The Government-Wide Regulation

The basic regulation governing acquisition and relocation activities on all Federal and federally assisted programs and projects is 49 CFR Part 24, the government-wide Uniform Act 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 STD, 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** is in the Appendix.

http://www.fhwa.dot.gov/realestate/index.htm

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 State law and be aware of which expenditures are reimbursable under the Federal-aid program. An overview of the acquisition process is provided in Chapter VI, Acquisition.

In the past, FHWA regulations have limited Federal participation in acquisition payments to what was considered generally compensable under eminent domain. The FHWA changed this standard to allow reimbursement in accordance with the requirements of your State law.

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. 4601), 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.

Determining the feasibility of a project is a complex process. It requires input from the public as well as 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, followed by a group of activities comprising the second component of the project development process - which we will refer to as the "typical project development cycle."

Planning

The transportation planning process is an ongoing, ever-evolving process. Project level planning begins at the conception of a project, continues to its completion, and is an integral part of the project development process. Two major items which require early consideration are the transportation planning process as it pertains to Federally funded projects, and compliance with the National Environmental Policy Act of 1969 (NEPA).

If your agency is planning a project which anticipates the use of Federal-aid highway funds, you will have to meet the requirements of the transportation planning process. The planning process begins with a long-term component, called the STP (Statewide Transportation Plan). The STP provides a broad vision for the State that considers the factors that may impact or be impacted by transportation investments over a time horizon of at least twenty years. The next part of the planning process is the STIP (Statewide Transportation Improvement Program).

This plan lists in order of priority the projects expected to be advanced in the next three years. The STIP may also include a TIP (Transportation Improvement Program). A metropolitan area may use a TIP to list in order of priority the projects expected to be advanced within the next three years.

If your project has been included in the Statewide Transportation Plan and has received a high priority, then it may be included in the STIP which lists the projects to be initiated in the next three years. Identification in the STIP is necessary for the receipt of Federal funds.

Note: If you are not familiar with the STIP, TIP, or Statewide Transportation Plan, you should contact your STD for assistance.

Environmental Planning Process

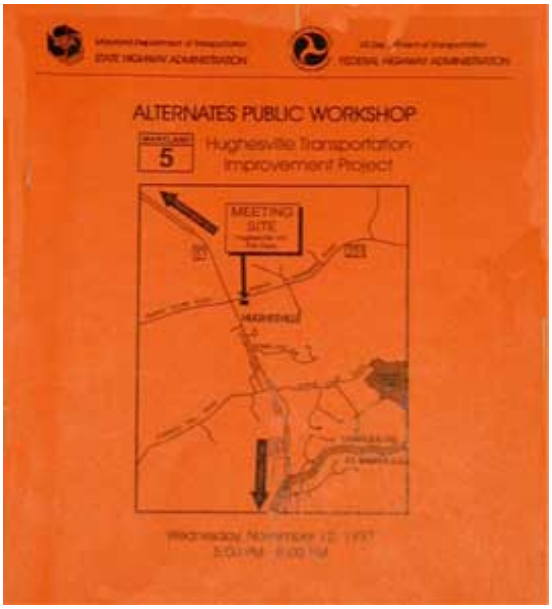
Another planning area which requires early consideration is the management of the environmental review process in accordance with NEPA. The NEPA process is critical to successful project development and, in fact, provides the framework for FHWA's project development process. **Your STD should be contacted for assistance in NEPA process coordination.**

Public Involvement

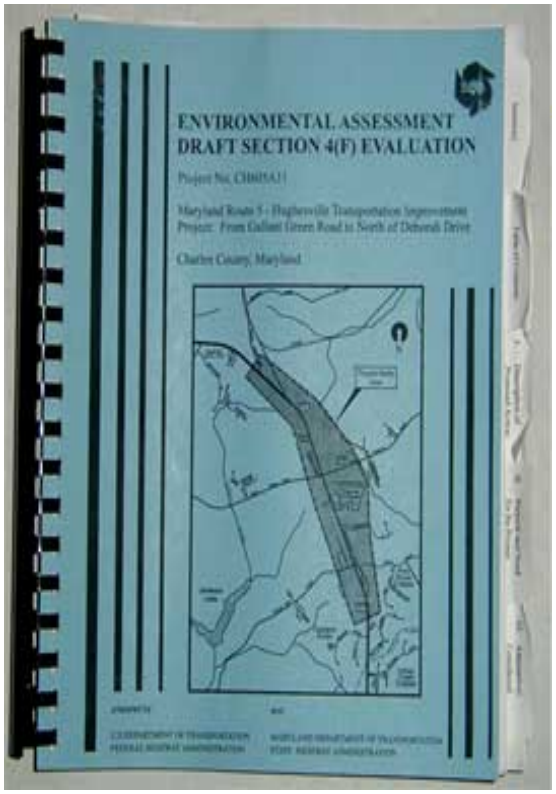
Public involvement is necessary throughout the planning process and in the environmental review process. Public involvement may takeplace through the public's attendance at meetings of the local governing body, newspaper articles and advertisements, letters andnewsletters, and certainly in public meetings held expressly to discuss the project. It is the public's right to know about and commenton proposed 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 beconsidered. 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.



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.



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 STD) 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:

http://www.fhwa.dot.gov/environment/eJ2.htm

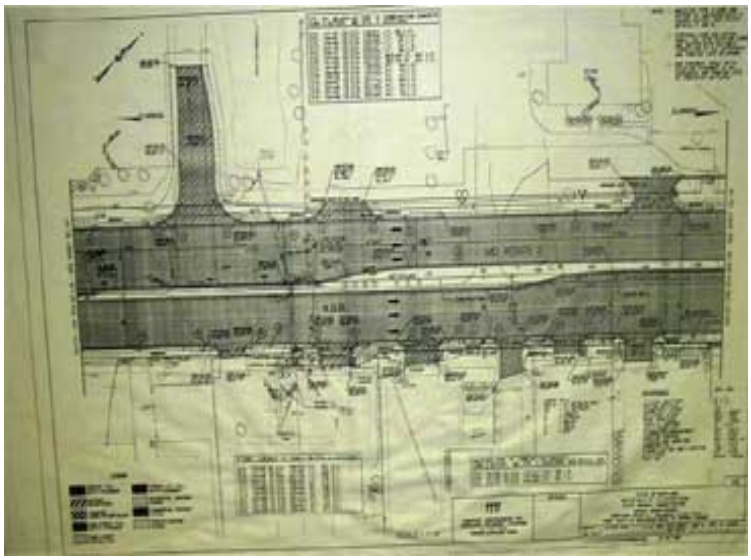
Note: It is important to note again that your STD should be contacted for assistance in NEPA process coordination.

Public Involvement. Public involvement is an essential part of the project development process. The purpose of public involvement 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.

Selection of Alignment. After thorough consideration of the advantages and disadvantages of potential alignments, your agency will decide which approach best serves the needs of the public and will select the preferred alignment.

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.

Design and Right-of-Way Plans. Following selection of the preferred alignment, the next step is designing a detailed plan for the roadway to be constructed. One of the products of the design process is the right-of-way plan. A 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 highwaycenter 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 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.

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 STD to secure authorization to proceed.**

The appraisal of real property needed for the project is the next step in the acquisition process. The appraisal report must be reviewed, corrected (or revised) if necessary, and ultimately approved by the agency review appraiser. The approved appraisal then becomes the basis of the agency's offer of just compensation to the property owner. The offer may not be less than the fair market value established by the approved appraisal. Chapter V, Valuation, provides further explanation of this process.

The next step in the acquisition process is presenting the written offer to the property owner. The acquiring agency presents a written offer of just compensation 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 will 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.

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.

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.

Cost-Sharing/Credits

Federal-aid highway projects, like most Federal assistance, typically require that the agency receiving funding (the assistance recipient) contribute a portion of the cost of the project, known as the non-Federal share. The majority of such funding comes from State or local funds provided by State or local legislatures for this purpose. However, an assistance recipient 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 assistance recipient (your agency) 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, recent changes in Federal highway legislation permit credits for the value of State or local government-owned land which is incorporated into a project. **The determination of credits can be complicated and we encourage you to contact your STD 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, income is generated. The income derived from these activities may be retained (rather than returned to FHWA) if it is used to fund projects eligible under Title 23 U.S.C. Highways. Thus, such income may be spent on eligible activities occurring under a different project from the one which originally provided the funds. **You should contact your STD 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.] **We strongly encourage local government agencies with limited prior experience in contracting for right-of-way services to contact their STD for more detailed information on these requirements.**

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.

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 (**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 low-value, non-complex acquisitions.

Appraisal Waiver

The FHWA has developed appraisal waiver procedures; we want to discuss appraisal waiver first because we believe it will be applicable to many local agency acquisitions.

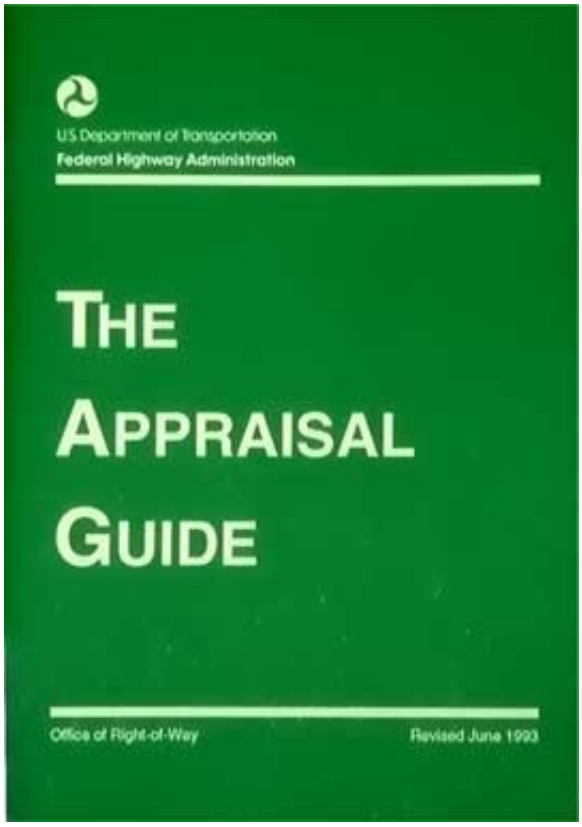
Appraisal waiver provisions are found in 49 CFR 24.102(c). These procedures are available for use by all acquiring agencies; however, not all use them. And, although the regulation specifies a $2,500 limit, FHWA has waived limits up to a maximum of $10,000 for some STDs at their request.

> **Note: You will need to check with your STD to find out, first, if they are using appraisal waiver procedures (and if they are available to you), and second, what the applicable waiver limit is.**

If appraisal waiver is available, you (the acquiring agency) will have to make individual parcel decisions as to whether waiver procedures are appropriate. The Federal requirement is that a waiver be used only if the acquisition is low-value (under the approved waiver threshold limit) and uncomplicated. There may be other considerations as well that may enter into your decision.

The STD will give you detailed procedures for using an appraisal waiver. Keep in mind that appraisal waiver is not a type of appraisal process, so appraisal-related requirements, such as owner accompaniment and appraisal review, are not Federal requirements when waiver procedures are used.

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:

> **"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."**

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.

> **Note: We recommend that you contact your STD regarding any technical questions about the appraisal process.**

A supplemental FHWA publication, The Appraisal Guide, is also a good source for additional technical appraisal information. This publication can be obtained through your local FHWA Division Office and is available on our website at:

http://www.fhwa.dot.gov/realestate/index.htm

Appraisal Techniques

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 an appraisal depend on the complexity of the appraisal problem. That documentation must include valuation data and the appraiser's analysis of the data. In some cases, the appraisal problem will allow that "minimum standards" be used; others may require a "detailed" appraisal. However, any appraisal must contain sufficient documentation to support the appraiser's stated opinion of value.

"Minimum Standards" Appraisals

The Federal regulations require that an acquiring agency develop minimum standards for appraisals of low-value or uncomplicated acquisitions that do not require the in-depth analysis and presentation necessary for a detailed appraisal.

Such minimum standards must take into account the type of appraisal needed and appraisal context, consistent with STD appraisal standards. For example, eminent domain appraisals typically require more thorough data research, more in-depth analysis, and more complete documentation and reporting than appraisals prepared for the mortgage lending industry.

Agencies are encouraged to develop and use appraisal formats that meet their needs as long as they remain within Federal and State requirements. The use of customized formats may provide consistency among appraisals and aid both the review appraiser and the negotiator. The following are examples of customized appraisal formats:

Short Form

This form of appraisal may be utilized for whole residential acquisitions, acquisitions of vacant land, or for partial acquisitions involving easily supported damages to the remainder of the property. In all instances, the highest and best use must be the same both before and after the acquisition. The report must include a description of the property and the acquisition, an analysis of the comparable sales used, photographs of the property, and an analysis of the value conclusions.

Value Finding

A value finding format may be developed for uncomplicated acquisitions up to a specific low value, in which only land or land and minor improvements are involved. This format should include comparable sales data, although this data may be included by reference. It should include photographs of the property and a brief analysis of the value conclusion. If an in-depth before and after analysis is indicated, this format may not be appropriate.

Note: Keep in mind all appraisal formats must comply with the Uniform Act definition of an appraisal. You should contact your STD to verify applicability before utilizing a "value finding" format.

Detailed Appraisals

Detailed appraisals, as described in 49 CFR 24.103, should be used for all complex appraisal problems, 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.

In certain instances, a detailed 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.

A detailed report must contain complete documentation of the data and adequate support of the value conclusion.

A detailed appraisal should reflect STD appraisal requirements and contain the following items:

- The purpose of the appraisal, a definition of the rights or interest being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal.

- 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), 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 (Cost, Income Capitalization and Sales Comparison). When sufficient market sales data is available for the specific appraisal problem, the agency, at its discretion, may require only the market (sales comparison) 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 any damages and benefits to the remaining real property also is required.

- The effective date of valuation, date of appraisal, signature, and the certificate of the appraiser.

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 has the opportunity to 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 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 reinspection.

Appraiser Qualifications and State Certification

Under the Uniform Act regulations, each STD 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 appraisers, whether staff members or contractors, and utilize only those qualified for each assignment under STD requirements.

Note: If you use a contract appraiser to do a detailed appraisal, the appraiser must be State-certified in accordance with Title IX of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

Note: We recommend that you consult your STD concerning the appropriate appraiser qualifications and the content and form for the appraiser certification.

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 approved appraisal. The appraisal becomes "approved" 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 reviewing appraiser:

Examine all appraisals to assure they meet applicable appraisal requirements and,

Prior to acceptance, seek any necessary corrections or revisions to the appraisal.

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 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 similarly.

Deficient Appraisals

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

> **Note: There are 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 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 at a later date.**

If acceptable corrections or revisions to an appraisal report cannot be obtained from the appraiser,

and the reviewing appraiser is unable to approve (or recommend approval of) 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 an approved or recommended value.

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 reviewer 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 makes reference 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.

- 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.

Appraisal Review and Just Compensation

There are times when the fair market value of a property does not constitute just compensation. Those situations may include instances in which the property is unique in nature; the appraisal, although properly prepared, does not estimate fair market value with any certainty; or the market value does not adequately measure just compensation.

When these situations occur, the acquiring agency may establish an amount that, in its opinion, represents just compensation not identical to the approved fair market value. 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 (Certificate of Appraiser) 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.

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.

Appraisal Review Certification and Report


OFFICE OF REAL ESTATE
SHA 63.20-19
REVISED 03/14/91

APPRAISAL REVIEW DIVISION

DETERMINATION OF AMOUNT TO BE OFFERED AND/OR DEPOSITED INTO COURT

STATE HIGHWAY ADMINISTRATION
P.O. BOX 717
707 N. CALVERT ST.
BALTIMORE, MD 21202

FEDERAL PROJECT NUMBER:

PROPERTY OF:
C3

R/W PROJECT NUMBER:

FHWA NUMBER:

NAME OF PROJECT: MD Rte 648-
Stony Harbor RD to MD Rte 255
W/

R/W ITEM NUMBER

TO: , Chief
Right of Way, District #5

SIGN OR JUNKYARD INVENTORY NUMBER:
N/A

Transmitted herewith are copies of the appraisals, which have been approved as indicated below. The appraisal or Determination of Value indicated as selected is to be used as the basis for negotiations. In the event that two or more of the Appraisals are shown as disapproved, both the original and copy of the same have been transmitted to the Baltimore Office parcel file(s).

Date of Value | Name of Appraiser | Staff or Fee | Recommendation

After reviewing the Appraisal, inspecting the property and the comparable sales listed in the appraisal, I (recommend) the FAIR MARKET VALUE of the property to be acquired plus legally compensable damages resulting to the remainder, if any, and/or JUST COMPENSATION to be:
$ 3,100 as of December 7, 2000.
It is my understanding that this determination is to be used in connection with Federal-Aid and/or State Highway Projects that I have no direct, indirect, present or contemplated future personal interest in such property or in any way benefit from the acquisition of such property; that this determination has been reached independently based on appraisals and other factual data without collaboration or direction; and that this value determination does not include any items not compensable under State or Federal laws.

Date: ____, ____ Review Appraiser: ____

(Continued on page 2)

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 the approved appraisal of fair market value and the recommendation or 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 estimate, or 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.

Appraisal Review Contracting

Historically, the STD appraisal review function has been the responsibility of staff reviewers and included the responsibility of estimating just compensation.

More recently, STDs, 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. **Therefore, if an appraisal review is done by a contract review appraiser, the acquiring agency must retain the responsibility for establishing an estimate of just compensation.**

Sample Certification

Federal Project No. _____ Parcel No. _____

Certificate Of Appraiser

I hereby certify:

That I have personally inspected the property herein appraised and that I have also made a personal field inspection of the comparable sales relied upon in making said appraisal. The subject and the comparable sales relied upon in making said appraisal were as represented in said appraisal or in the data book or report which supplements said appraisal.

That to the best of my knowledge and belief, the statements contained in the appraisal herein set forth are true, and the information upon which the opinions expressed therein are based is correct; subject to the limiting conditions therein set forth.

That I understand that such appraisal may be used in connection with the acquisition of right-of-way for a project to be constructed by the _____ of _____ with the assistance of Federal-aid highway funds, or other Federal funds.

That such appraisal has been made in conformity with the appropriate State laws, regulations, and policies and procedures applicable to appraisal of right-of-way for such purposes; and that to the best of my knowledge no portion of the value assigned to such property consists of items which are non-compensable under the established law of said State.

That my analysis, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Act and Government-wide Regulation (49 CFR Part 24).

That any increase or decrease in the fair market value of the real property appraised 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 physical deterioration within the reasonable control of the owner, was disregarded in this appraisal.

That neither my employment nor my compensation for making this appraisal and report are in any way contingent upon the values reported herein.

That I have no direct or indirect present or contemplated future personal interest in such property or in any benefit from the acquisition of such property appraised.

That no one provided significant professional assistance to the person signing this report. (If there are exceptions, the name of each individual providing significant professional assistance must be stated.)

That I have not revealed the findings and results of such appraisal to anyone other than the proper officials of the acquiring agency of said State or officials of the Federal Highway Administration and that my opinion of just compensation as of the ___ day of _____ , 20___, for the acquisition of the subject property is _____ based upon my independent appraisal and the exercise of my professional judgment.

Date _____ Signature _____

VI. Acquisition

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 through the use of condemnation 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 each real property owner or the owner's designated representative in order to explain the acquisition process to the property owner, including the right to accompany the appraiser during inspection of the property.

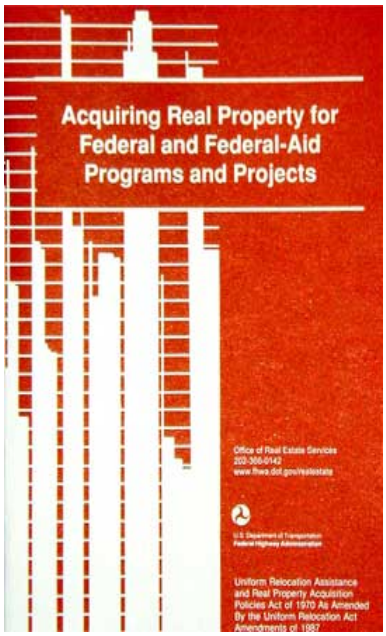
2.Provide the owner with a written offer of the approved estimate of just compensation for the real property to be acquired and a summary statement of the basis for the offer.

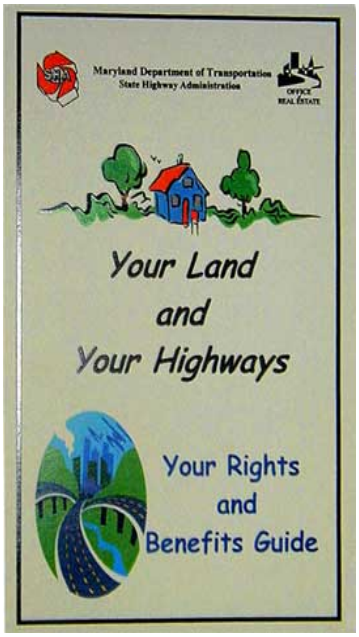
3.Give the property owner an opportunity to consider the offer.

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.





Personal Contact

An 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. Samples of such brochures are available from either our website at:

http://www.fhwa.dot.gov/realestate/index.htm

or from your STD. 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. An alternative procedure, Accelerated Negotiations (see following), may be utilized under certain conditions. Some States may have statutory requirements regarding this process. **Note: FHWA recommends that you contact your STD with any questions.**

Accelerated Negotiations (First Offer by Mail)

This is an alternative approach to contacting property owners in person. Sometimes, constraints on right-of-way manpower and travel funds make it advisable to effect cost savings and to accelerate the acquisition process. This accelerated process allows the initial phase of negotiations to begin with a mailing to the property owner. The mailing 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.

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 accelerated negotiation 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: This accelerated process may not be utilized on parcels where relocation is involved.

Prompt Written Offer


Maryland Department of Transportation
State Highway Administration

Summary of Just Compensation for Real Estate and/or rights to be acquired

Zoning: C-3
Highest and Best Use-current use

1,503 SF fee simple @ $3.50 SF — $5,261
471 SF temporary easement @ 10% — 165
Driveway: 220 SF @ $1.50 — 330
Sign & Base — 500
Total — $6,256
Rounded — $6,300

Once the amount of just compensation has been determined (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. 31)**; and an identification of any separately held ownership interest in the property, e.g., a tenant-owned improvement **(see Tenant-Owned Improvements, p. 31)**; and a statement, if appropriate, that such interest is not covered by the offer.

The agency may include additional information that it deems appropriate.

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.

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 in particular 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.

90-Day Notice

One of the most basic protections of the Uniform Act provides 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. We discuss this requirement as it relates to relocation 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.

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 different acquisition strategies if an agreement with a property owner cannot be reached through the normal negotiation process.

One of these strategies, the administrative settlement, has long been incorporated into FHWA's regulations. An administrative settlement may provide 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.

We discuss these approaches in greater detail below. FHWA recommends that, in appropriate situations, both administrative settlements and ADR be considered prior to an agency initiating a legal settlement or condemnation.

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 considered to be a legitimate project cost.**

Role of Legal Counsel

If negotiations have failed and an administrative settlement or ADR is not appropriate or is not successful, 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 (see following section). 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.

In preparing a case and deciding whether to recommend a legal settlement or trial, the agency trial attorney will discuss the taking with the acquisition team, the appraiser, the agency reviewing appraiser, and other necessary expert and lay witnesses. 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 involve negotiations 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.

Condemnation

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.

During the trial, each side will present arguments in support of its position on the value of the property. Both the acquiring agency and the property owner may call witnesses, agency employees and/or consultants to testify. Finally, the court will set an amount it determines to be just compensation and order the agency to pay that amount.

Payment Before Possession

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. If the owner and the agency cannot reach agreement and the agency does institute condemnation proceedings, the agency then will deposit an amount not less than the approved appraisal with the court or make the money available by other means. This amount may be withdrawn by the owner without jeopardizing his or her rights in the condemnation proceedings.

Under the Uniform Act, no owner may be required to surrender possession of real property before payment is made available. This payment is based on either the agencies approved estimate of just compensation, an amount negotiated after the agency initiates condemnation proceedings, or the amount awarded by the court. 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.

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.

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). 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 STD's approved procedures (for further information see the Appraisal Waiver 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 as part of the environmental review process discussed in Chapter III, Project Development. 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 STD 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. However, any dedication undertaken to circumvent Federal requirements is unacceptable.

Additional Considerations

The following represent a number of additional areas which impact the negotiation/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.**

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 STD, and must be permissible under State law. **FHWA concurrence that functional replacement is a public necessity or in the public interest also is necessary.**

Due to the complexities usually encountered in the construction of a replacement facility, early and frequent consultation among thecommunity, 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.

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 STD 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, this procedure is to be used only in unusual circumstances, and additional requirements must be met for it to be used. Such requests may be submitted and approved only if:

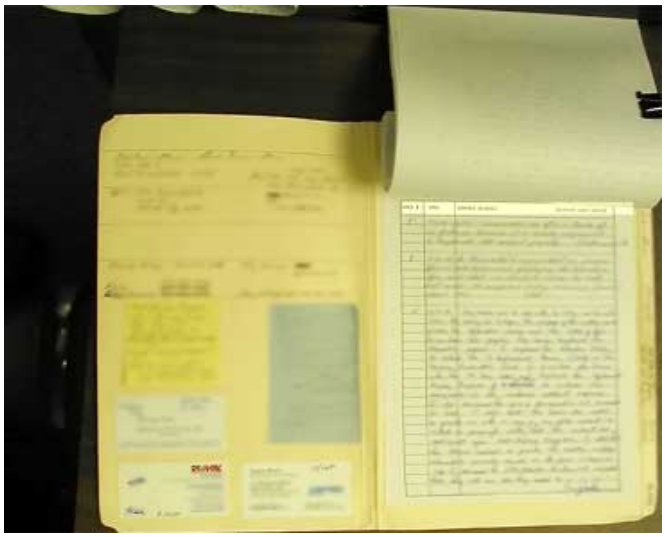
- The agency has given official notice to the public that it has selected a particular location to be the preferred or recommended alignment for a proposed highway, or,

    - an opportunity for public involvement has been provided;

- the project is included in a currently approved STIP; and

- the agency has documented its determination that the acquisition is in the public interest and is necessary.

Note: Hardship acquisition and protective buying procedures may not be used in connection with properties subject to the provisions of 49 U.S.C. 303, commonly referred to as Section 4(f) [parks] or 16 U.S.C. 470(f) [historic properties], until the required Section 4(f) determinations and the procedures of the Advisory Council on Historic Preservation are completed.



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 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.

VII. Relocation Assistance

Sometimes land needed for a public project is occupied. In such instances, it may be necessary to displace the occupants, who may include individuals, families, businesses, farms, or even non-profit organizations. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (the Uniform Act), and U.S. DOT/FHWA regulations 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 this "Declaration of Policy:"

> **"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.

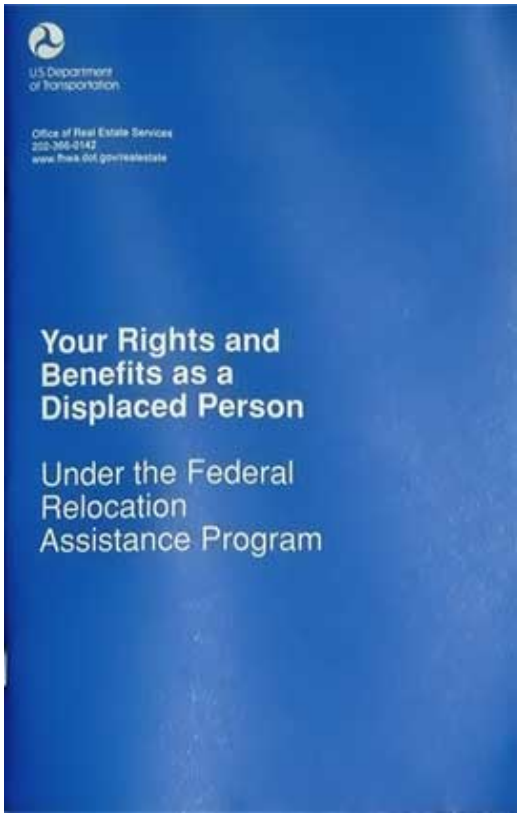
The relocation program consists of four main components: Relocation planning, notices, advisory services, and payments.

Relocation Planning

Successful relocation requires planning. Housing resources must meet the needs of displaced residents in terms of size, price, rental,location, and timely availability. Advisory services and various notices, some with specific timing requirements, must be provided. Businesses must be given relocation assistance with a minimum of disruption to operations. 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 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, a copy of which is included in the Appendix.

2.Notice of Relocation Eligibility. This notice is provided later in the project when it has been determined that particular persons will be displaced. The trigger for providing this notice is the initiation of negotiations, that is, the date of the first written offer to acquire the real property at which the person is an occupant (residential or non-residential). The notice informs the occupant that he or she will be displaced and, therefore, will be eligible for relocation benefits, as applicable.

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.


Dear

The Relocation Assistance staff of the State Highway Administration has completed a study of available housing to replace the property you currently occupy, which is to be acquired for the project.

It has been determined by this replacement housing study that you are due a replacement housing payment in the amount of $12,944.00. Your replacement housing payment is based on the comparable replacement property located at . The computations justifying your replacement housing payment are as follows:

List price of selected comparable	$ 338,944 ($330,000+$8,944)
plus additional depreciated barn value	
Right of Way offer	-325,000.00
Your Replacement Housing Payment	$ 13,944.00

You may be eligible for reimbursement of certain settlement fees as outlined in the brochure "Your Land and Highways" (See the addendum for specific reimbursable fees). However, property taxes and homeowner's insurance are not compensable. You may also be entitled to receive a payment for your moving expense for a distance of up to 50 miles from your present home.

The State Highway Administration assures you that you will have at least 90 days from the date of this notice to remain on your property. After the State has acquired your property, you will receive a 30 day notice specifying the date by which you must vacate.

In the event that you disagree with the eligibility printed above, you have the right to file a written appeal with the Relocation Assistance Division. This appeal must be reviewed within sixty (60) days of denial of any claim. You may contact me for assistance in filing this appeal.

My telephone number is _____

Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2258 Statewide Toll Free

Mailing Address:
Street Address:

Some agencies choose an optional method of delivering a 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: It should be noted that 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 STD 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.

- 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 as a result 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 STD 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. In addition, the property owner has the option to be paid on the basis of a schedule published by FHWA rather than on the basis of actual costs (a copy of the schedule is available on the FHWA website at **http://www.fhwa.dot.gov/realestate/index.htm**). Often this 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, then those found in the government-wide rule at 49 CFR 24.2 (Definitions), ***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

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 STD 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. 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.

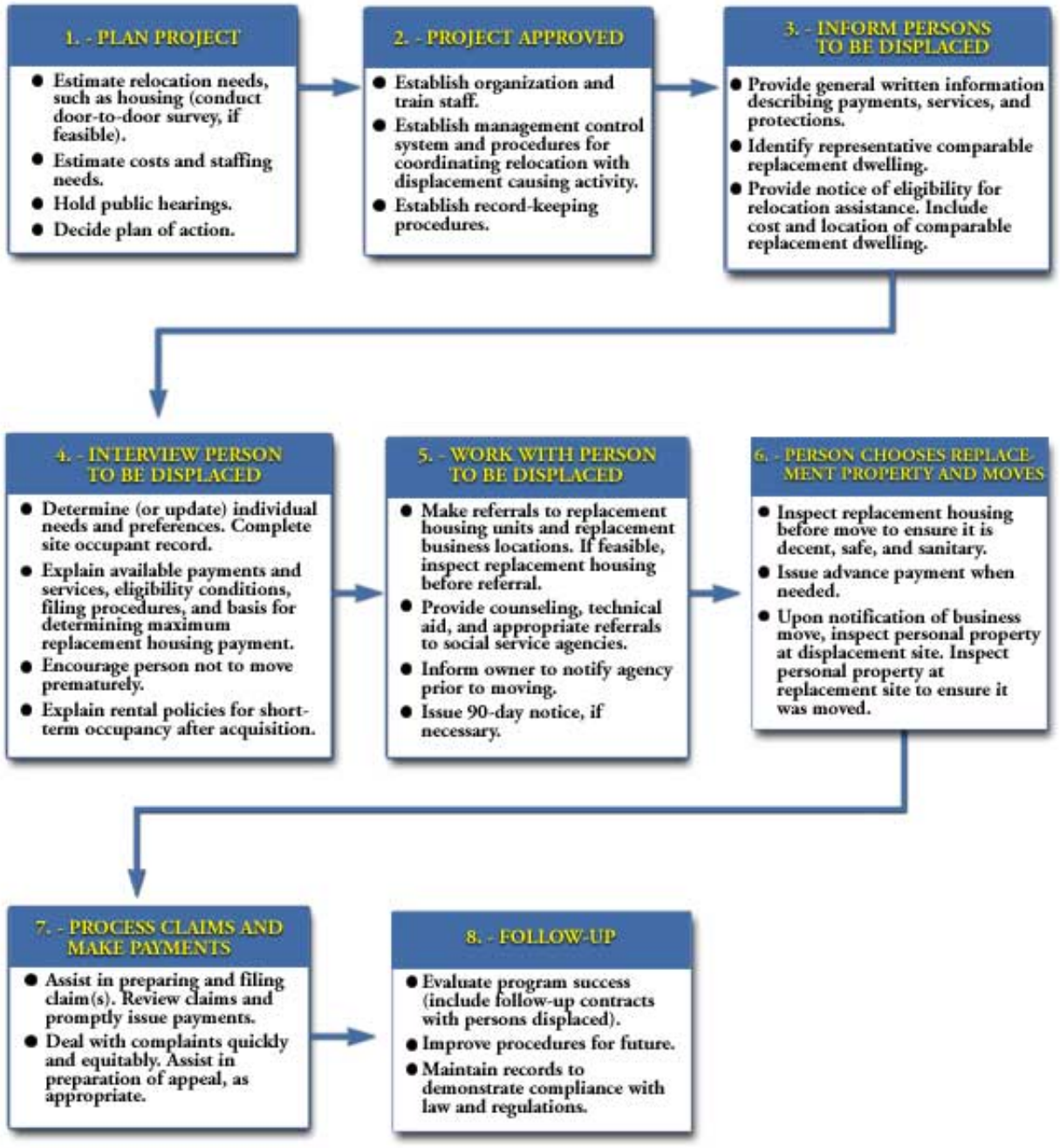
2.Reestablishment expenses. In addition to a payment for moving expenses, the owner of a small business may be eligible for up to $10,000 for reimbursement of eligible expenses associated with the reestablishment of a business at a replacement location.

3.Search costs. A business may be reimbursed for up to $1,000 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 $20,000 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 24.306.**

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 STD for assistance.

Typical Relocation Process Under the Uniform Act*



*URA Rules Effective 4/2/89

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 real estate.

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 Through 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. In order to document what is present, the inventory should be updated when physical possession of the real property occurs, and periodically thereafter until all improvements have been disposed of. Disposals of improvements should be noted as they occur.

In addition, the agency should maintain records which provide a proper accounting of expenses and receipts for property leased or rented as well as the disposal of improvements and the payments received.

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 may 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.

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.

> **Note: Your STD should be contacted for information regarding treatment of revenue.**

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 STD.**

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 federal-aid highway program. Once again, prior FHWA approval is required for the leasing of right-of-way on interstate highways.

The Uniform Act

Note: These Regulations and Statutes were printed in June 2001. You should check our website: http://www.fhwa.dot.gov/legsregs/legislat.html for the most current copy of the regulations and statutes.

[1]Public Law 91-646
91st Congress, S. 1
January 2, 1971

([2]As amended by Public Law 100-17, Apr. 2, 1987, Title IV, Uniform Relocation Act Amendments of 1987.)
([3]As amended by Public Law 102-240, Dec. 18, 1991, Sec. 1055, Relocation Assistance Regulations Relating to the Rural Electrification Administration.)
([4]As amended by Public Law 105-117, Nov 21, 1997, Sec.104; Sec 2, an Alien not lawfully present in the United States.)

Office of Real Estate Services
Federal Highway Administration

AN ACT

To provide for uniform and equitable treatment of persons displaced from their homes, businesses, or farms by Federal and federally assisted programs and to establish uniform and equitable land acquisition policies for Federal and federally assisted programs.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970".

TITLE I-GENERAL PROVISIONS

SEC. 101. As used in this Act-

(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 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.

(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 section 101(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 202(a) and (b) and 205 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 Act;

(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 202 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.

EFFECT UPON PROPERTY ACQUISITION

SEC. 102. (a) The provisions of section 301 of title III of this Act create no rights or liabilities and shall not affect the validity of any property acquisitions by purchase or condemnation.

(b) Nothing in this Act 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 the date of enactment of this Act.

CERTIFICATION

SEC. 103. (a) Notwithstanding sections 210 and 305 of this Act, the head of a Federal agency may discharge any of his responsibilities under this Act 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 Act.

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

(2) 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.

(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 Act.

(c) (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.

DISPLACED PERSONS NOT ELIGIBLE FOR ASSISTANCE

SEC. 104. (a) IN GENERAL- Except as provided in subsection (c), a displaced person shall not be eligible to receive relocation payments or any other assistance under this Act 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 the date of enactment of this section, after providing notice and an opportunity for public comment, the head of the lead agency shall promulgate regulations to carry out subsection (a).

(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).

(c) EXCEPTIONAL AND EXTREMELY UNUSUAL HARD-SHIP - If a displacing agency determines by clear and convincing evidence that a determination of the ineligibility of a displaced person under subsection (a) 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 Act if the displaced person would be eligible for the assistance but for subsection (a).

(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.

TITLE II-UNIFORM RELOCATION ASSISTANCE

DECLARATION OF FINDINGS AND POLICY

SEC. 201. (a) 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 Act 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) 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 the hardship of displacement on such persons.

(c) It is the intent of Congress that-

(1) Federal agencies shall carry out this title in a manner which minimizes waste, fraud, and mismanagement and reduces unnecessary administrative costs born 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 Act;

(3) the improvement of housing conditions of economically disadvantaged persons under this title 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 Act 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 (P.L. 90-284), commonly known as the Civil Rights Act of 1968, and title VI of the Civil Rights Act of 1964.

MOVING AND RELATED EXPENSES

SEC. 202. (a) 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 $10,000.

(b) 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) 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 $20,000. 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) (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.

REPLACEMENT HOUSING FOR HOMEOWNER

SEC. 203. (a) (1) In addition to payments otherwise authorized by this title, the head of the **displacing** agency shall make an additional payment not in excess of **$22,500** to any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for not less than one hundred and eighty days prior to 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.

(a) **(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 one 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 205(c)(3) of this Act 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 one 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.

REPLACEMENT HOUSING FOR TENANTS AND CERTAIN OTHERS

SEC. 204. (a) In addition to amounts otherwise authorized by this title, 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 203 which dwelling was actually and lawfully occupied by such displaced person for not less than ninety 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 $5,250. 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), except that, in the case of a displaced homeowner who has owned and occupied the displacement dwelling for at least 90 days but not more than 180 days immediately prior to the initiation of negotiations for the acquisition of such dwelling, such payment shall not exceed the payment such person would otherwise have received under section 203(a) of this Act had the person owned and occupied the displacement dwelling 180 days immediately prior to the initiation of such negotiations.

RELOCATION PLANNING, ASSISTANCE COORDINATION, AND ADVISORY SERVICES

SEC. 205. (a) 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) 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 advisory services.

(c) 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 102(2) of the Disaster Relief Act of 1974;

(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) 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) 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 title 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 title with respect to such activities. Such related activities shall constitute a single program or project for purposes of this Act.

(f) Notwithstanding section 101(6) of this Act, 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.

HOUSING REPLACEMENT BY FEDERAL AGENCY AS LAST RESORT

SEC. 206. (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 203 and 204 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.

STATE REQUIRED TO FURNISH REAL PROPERTY INCIDENT TO FEDERAL ASSISTANCE (LOCAL COOPERATION)

SEC. 207. 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 210 and 305 of this Act. 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.

STATE ACTING AS AGENT FOR FEDERAL PROGRAM

SEC. 208. 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 Act, be deemed an acquisition by the Federal agency having authority over such program or project.

PUBLIC WORKS PROGRAMS AND PROJECTS OF THE GOVERNMENT OF THE DISTRICT OF COLUMBIA AND OF THE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

SEC. 209. 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 210 and 211 of this title, and such acquisition will result in the displacement of any person on or after the effective date of this Act, the

Commissioner 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 Act. Whenever real property is acquired for such a program or project on or after such effective date, such Commissioner or Authority, as the case may be, shall make all payments and meet all requirements prescribed for a Federal agency by title III of this Act.

REQUIREMENTS FOR RELOCATION PAYMENTS AND ASSISTANCE OF FEDERALLY ASSISTED PROGRAM; ASSURANCES OF AVAILABILITY OF HOUSING

SEC. 210. 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 the effective date of this title, 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 202, 203, and 204 of this title;

(2) relocation assistance programs offering the services described in section 205 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 205(c)(3).

FEDERAL SHARE OF COSTS

SEC. 211. (a) The cost to a displacing agency of providing payments and assistance under this title and title III of this Act 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) No payment or assistance under this title or title III of this Act 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) Any grant to, or contract or agreement with, a State agency executed before the effective date of this Act, shall be amended to include the cost of providing payments and services under sections 210 and 305. 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 206, 210, 215, and 305. [42 U.S.C. 4631]

ADMINISTRATION-RELOCATION ASSISTANCE IN PROGRAMS RECEIVING FEDERAL FINANCIAL ASSISTANCE

SEC. 212. 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 206, 210, and 215 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 title 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 206, 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.

DUTIES OF LEAD AGENCY

SEC. 213. (a) 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 Act;

(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 104;

(3) ensure that displacing agencies impliment section 104 fairly and without discrimination in accordance with section 104(b)(2)(B);

(4) ensure that relocation assistance activities under this Act 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 Act and report to the Congress, as appropriate, on any major issues or problems with respect to any policy or other provision of this Act; and

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

(b) 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 Act 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 title shall be paid promptly after a move or, in hardship cases, be paid in advance; and

(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.

(c) 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 title and title I.**

PLANNING AND OTHER PRELIMINARY EXPENSES FOR ADDITIONAL HOUSING

SEC. 215. 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.

PAYMENTS NOT TO BE CONSIDERED AS INCOME

SEC. 216. No payment received under this title shall be considered as income for the purposes of the Internal Revenue Code of 1954; or for the purposes of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law **(except for any Federal law providing low-income housing assistance).**

TRANSFERS OF SURPLUS PROPERTY

SEC. 218. The Administrator of General Services is authorized to transfer to a State agency for the purpose of providing replacement housing required by this title, 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. 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.

REPEALS

SEC. 220. (a) The following laws and parts of laws are hereby repealed:

(1) The Act entitled "An Act to authorize the Secretary of the Interior to reimburse owners of lands required for development under his jurisdiction for their moving expenses, and for other purposes," approved May 29, 1958 (43 U.S.C. 1231-1234).

(2) Paragraph 14 of section 203(b) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473).

(3) Section 2680 of title 10, United States Code.

(4) Section 7(b) of the Urban Mass Transportation Act of 1965 (49 U.S.C. 1606(b)).

(5) Section 114 of the Housing Act of 1949 (2 U.S.C. 1465).

(6) Paragraphs (7)(b)(iii) and (8) of section 15 of the United States Housing Act of 1937 (42 U.S.C. 1415, 1415(8)), except the first sentence of paragraph (8).

(7) Section 2 of the Act entitled "An Act to authorize the Commissioners of the District of Columbia to pay relocation costs made necessary by actions of the District of Columbia government, and for other purposes", approved October 6, 1964 (78 Stat. 1004; Public Law 88-629; D.C. Code 5-729).

(8) Section 404 of the Housing and Urban Development Act of 1965 (42 U.S.C. 3074).

(9) Sections 107 (b) and (c) of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3307).

(10) Chapter 5 of title 23, United States Code.

(11) Sections 32 and 33 of the Federal-Aid Highway Act of 1968 (Public Law 90-495).

(b) 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.

EFFECTIVE DATE

SEC. 221. (a) Except as provided in subsections (b) and (c) of this section, this Act and the amendments made by this Act shall take effect on the date of its enactment.

(b) Until July 1, 1972, sections 210 and 305 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 shall be completely applicable to all States.

(c) The repeals made by paragraphs (4), (5), (6), (8), (9), (10), (11), and (12) of section 220(a) of this title and section 306 of title III shall not apply to any State so long as sections 210 and 305 are not applicable in such State.

TITLE III--UNIFORM REAL PROPERTY ACQUISITION POLICY

UNIFORM POLICY ON REAL PROPERTY ACQUISITION PRACTICES

SEC. 301. 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 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 therefor 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 1 of the Act of February 26, 1931 (46 Stat. 1421; 40 U.S.C. 258a), 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 title II 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 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 Act, 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 title 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.

BUILDINGS, STRUCTURES, AND IMPROVEMENTS

SEC. 302. (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 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 and 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.

EXPENSES INCIDENTAL TO TRANSFER OF TITLE TO UNITED STATES

SEC. 303. 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.

LITIGATION EXPENSES

SEC. 304. (a) 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) 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) The court rendering a judgment for the plaintiff in a proceeding brought under section 1346(a)(2) or 1491 of title 28, United States Code, 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.

REQUIREMENTS FOR UNIFORM LAND ACQUISITION POLICIES; PAYMENTS OF EXPENSES INCIDENTAL TO TRANSFER OF REAL PROPERTY TO STATE; PAYMENT OF LITIGATION EXPENSES IN CERTAIN CASES

SEC. 305. (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 the effective date of this title, 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 301 and the provisions of section 302, and

(2) property owners will be paid or reimbursed for necessary expenses as specified in sections 303 and 304.

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

(1) a State agency (as defined in section 101(3)) 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.

REPEALS

SEC. 306. Sections 401, 402, and 403 of the Housing and Urban Development Act of 1965 (42 U.S.C. 3071-3073), section 35(a) of the Federal-Aid Highway Act of 1968 (23 U.S.C. 141) and section 301 of the Land Acquisition Policy Act of 1960 (33 U.S.C. 596) are hereby repealed. 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.

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1. Original text appears in regular typeface.
2. Amended text is displayed in boldface.
3. Amended text is in section 213(c) in regular typeface.
4. Amended text section 104 & 213(a)(2)(3) in bold italics.

Note: These Regulations and Statutes were printed in June 2001. You should check our website: http://www.fhwa.dot.gov/realestate/ for the most current copy of the regulations and statutes.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 24

[FHWA Docket No. FHWA–2003–14747]

RIN 2125–AE97

Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is revising the regulation that sets forth governmentwide requirements for implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act). These changes will clarify present requirements, meet modern needs and improve the service to individuals and businesses affected by Federal or federally-assisted projects while at the same time reducing the burdens of government regulations. The regulation has not been fully reviewed or updated since it was issued in 1989. These amendments to the Uniform Act regulation will affect the land acquisition and displacement activities of 18 Federal Agencies including the new Department of Homeland Security.

DATES: *Effective Date:* February 3, 2005.

FOR FURTHER INFORMATION CONTACT: Mamie L. Smith, Office of Real Estate Services, HEPR, (202) 366–2529; Reginald K. Bessmer, Office of Real Estate Services, HEPR, (202) 366–2037; or JoAnne Robinson, Office of the Chief Counsel, HCC–30, (202) 366–1346, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may also reach the **Federal Register**'s home page at: *http://www.archives.gov* and the Government Printing Office's database at: *http://www.gpoaccess.gov/nara/*.

Background

Title 49, CFR, part 24 implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. 4601 *et seq.*, (the Uniform Act). The Uniform Act applies to all acquisitions of real property or displacements of persons resulting from Federal or federally-assisted programs or projects and affects 18 Federal Agencies. This regulation has not been comprehensively revised or updated since its initial publication in 1989.

The FHWA, as the lead Federal Agency, hosted an all-Agency meeting in 2001 to begin discussions about a comprehensive review of this regulation because of numerous requests from various Agencies to update 49 CFR Part 24. The FHWA worked with the 18 other Federal Agencies to form a Federal Interagency Task Force to explore the need to revise this regulation. The FHWA then hosted five nationwide public listening sessions to gather public input into the need for regulatory reform.

After receiving public input, working with the Interagency Task Force and incorporating recommendations from all 18 Federal Agencies, the FHWA published a notice of proposed rulemaking (NPRM) on December 17, 2003 (68 FR 70342). The NPRM proposed revisions to the Uniform Act regulation that would clarify present requirements, meet modern needs and improve the service to the individuals and businesses affected by Federal or federally-assisted projects while at the same time reducing the burdens of government regulations. An extensive history of the Uniform Act's implementation, and a comprehensive narrative outlining the efforts to update this regulation is discussed in the preamble to the NPRM in great detail.

Public Meetings

During the comment period to the NPRM, the FHWA hosted three additional public meetings (in Washington, DC; Atlanta, GA; and Lakewood, CO) to discuss the proposed changes to the regulation as outlined in the NPRM. The meetings were held to assure that every opportunity was offered to encourage additional public and stakeholder comment on the proposed changes. A total of 60 individuals and organizations attended the three public meetings. Also, during the comment period, the FHWA posted on its Web site a pre-addressed comment form for easy access and mailing to the docket.

Discussion of Comments Received to the Notice of Proposed Rulemaking (NPRM)

In response to the NPRM published on December 17, 2003, the FHWA received 775 comments to the docket. The 775 comments were received from 80 individual commenters. The commenters included a variety of groups and organizations, such as local public Agencies, State Highway Administrations, private real estate and environmental consulting firms and interested individuals.

Of the 775 docket comments, 62 were positive and supportive of the proposed changes and 58 were on subjects where no change had been proposed. Thirty comments were programmatic questions and will be answered through a follow-up question and answer memorandum, and 26 comments requested increases in statutory limits that cannot be addressed in the regulations. On March 3, 2004, all 18 Federal Agencies were invited and encouraged to send representatives to an Interagency Federal Task Force (IFTF) meeting to review and respond to the 775 comments. Of the 18 Federal Agencies, 12 responded by sending one or more representatives. Following the initial meeting, four additional IFTF meetings were held and all 775 comments were categorized into subparts discussed individually, and evaluated. The FHWA, as Lead Agency, would like to thank the Department of Housing and Urban Development (HUD) who worked closely with FHWA to organize and share in hosting the work group meetings to assure that all comments were carefully considered.

Section-by-Section Discussion Changes

Subpart A—General

Section 24.1(b)

One commenter indicated that § 24.1(b) should include an anti-discrimination purpose.

A number of Federal statutes (notably the Civil Rights Acts of 1964 and 1968) and Executive Orders apply to Agencies carrying out Federal or federally-assisted programs, and prohibit discrimination on the basis of race, color, sex, age, religion, national origin or disability. These legal authorities are self-executing and do not require specific mention in a rule implementing the Uniform Act to find effect. Any explicit listing of such provisions in this regulation runs the risk of inadvertent omission, creating the implication that any legal authority not referenced is somehow inapplicable.

Section 24.2 Definitions and Acronyms

Two commenters suggested various formatting changes. One suggested that clarity and readability would be improved by stating each defined term only once, rather than entry as a heading, followed by repeating the term

in the definition. Another suggested that we adopt simplified formatting.

We appreciate these comments, however, we will keep the same format in this final rule.

Section 24.2(a) Personal Property

One commenter requested that we add a definition of personal property.

We considered the request, however, after surveying the varying State laws that define personal property, we have determined that it would not be feasible to provide a single definition that would fit within all State laws. Therefore, whether an item is personal property or real property will continue to be left to State law.

Section 24.2(a)(5) Citizen

One commenter requested that we define or clarify the term ''noncitizen national'' used in the definition of ''citizen'' in § 24.2(a)(5).

The term ''noncitizen national'' was added to the definition of citizen in 1999 (64 FR 7130). The term includes persons from certain United States possessions, such as American Samoa, who are considered citizens for purpose of this part. Accordingly, no change in the final rule is necessary.

Section 24.2(a)(6)(ii) Comparable Replacement Dwelling

Ten comments were made on the proposal to remove the phrase ''style of living'' from the definition of comparable replacement dwelling. The majority of the comments were in favor of removing the phrase; however, two commenters were concerned that the displaced person's rights would be diminished if the phrase is deleted.

We carefully considered removing ''style of living'' from the definition of comparability, and we determined that the displaced person would not suffer any erosion of protections provided by existing comparability requirements. The phrase ''style of living'' has sometimes been misused and has proven to be confusing.

Occasionally, the phrase has been used out of context and interpreted to require identical unique features found in acquired dwellings. In such cases, the standard for replacement housing has been raised to a level above ''comparable.'' This interpretation can make it nearly impossible to find appropriate replacement housing and could result in replacement housing payments greater than those intended by the Congress.

A more complete explanation can be found in the preamble to the NPRM (68 FR 70344). The Congress recognized that strict and absolute adherence to an exhaustive, detailed, feature-by-feature comparison can result in rigidities. We believe other criteria currently under the definition of comparability will adequately cover the factors covered by ''style of living'' and, therefore, have not included this phrase in the final rule.

Section 24.2(a)(6)(viii) Deductions from Rent

One commenter objected to the proposed addition of language in § 24.2(a)(6)(viii) that would have allowed rent owed to an Agency to be taken into account when determining whether a comparable replacement dwelling is within a displaced person's financial means. The comment noted that State landlord/tenant laws normally govern disputes over rent, and that § 24.2(a)(6)(viii) should not, in effect, supercede the tenant protections contained in such laws in determining a displaced person's financial means.

We agree with this comment, and accordingly have not adopted the language that would have considered any rent owed the Agency in determining financial means.

Section 24.2(a)(6)(viii) Financial Means

The Uniform Act requires that comparable replacement dwellings must be ''within the financial means'' of a displaced person. This term is defined further within the definition of comparable replacement dwelling. The NPRM proposed simplifying the definition of financial means by consolidating it from three paragraphs to a single paragraph. No change in meaning was intended.

We received 12 comments on this proposed change. The commenters expressed two major concerns. First, several comments indicated that consolidating the separate paragraphs relating to owners and tenants was confusing and might, in some cases, result in changes to replacement housing payments.

After further consideration, we believe these comments are correct, and, accordingly, have not adopted the proposed consolidation. (We have, however, deleted some redundant language relating to welfare assistance programs that designate amounts for shelter and utilities, since this is now addressed in § 24.402(b)(2)(iii).)

Secondly, because of other related changes in the NPRM, several commenters stated that the proposal would no longer adequately address the benefits to be provided to a person who is not eligible to receive replacement-housing payments because of a failure to meet the necessary length of occupancy requirements. Such persons are still entitled to receive comparable replacement housing within their financial means.

Besides proposing to simplify the description of financial means, the NPRM also proposed changing the way the rental replacement housing payment would be computed by revising the description of ''base monthly rent'' in § 24.402(b)(2), and removing the reference to 30 percent of income in § 24.404(c)(3) (which describes the eligibility of persons that fail to meet the length of occupancy requirements). The later two changes have been adopted, as discussed further in this preamble.

We agree that the proposed changes left it unclear as to the benefits that were to be provided to persons who failed to meet length of occupancy requirements. Accordingly, we have retained a paragraph (§ 24.2(a)(6)(viii)(C)), within the description of financial means, that addresses those persons, described in § 24.404(c)(3), who do not meet length of occupancy requirements. It is similar to the current provision, and provides that the payment to such persons shall be the amount, if any, by which the rent at the replacement dwelling exceeds the base monthly rent described in § 24.402(b)(2), over a period of 42 months.

Section 24.2(a)(6)(ix) Subsidized Housing

Several commenters took issue with the proposed change to apply a government housing subsidy program's unit size restrictions when providing comparable replacement housing.

It appears that several of the commenters did not understand how the government subsidy programs work. The choice of a replacement dwelling is always left to a displaced person, but a displaced tenant's eligibility for relocation assistance is premised upon the selection of a decent, safe and sanitary ''comparable'' dwelling. The existing regulations have long provided that a comparable dwelling, in the case of a person displaced from housing receiving certain project-based or voucher based subsidies, is another dwelling unit receiving the same or a similar subsidy.

In such cases the HUD program requirements for subsidized housing, may limit the unit size of available subsidized housing by applying a determination as to a family's current needs, even though the displacement dwelling may have been larger. This final rule acknowledges these requirements, and provides in § 24.2(a)(6)(ix) that the requirements of government housing assistance

programs, relating to the size of the dwelling unit that may be provided, apply when such housing is used as a comparable replacement dwelling.

A person displaced from a subsidized unit may elect to relocate to housing available on the private market without subsidy, but the available relocation payment will be limited by a computation using a comparable subsidized unit. In most cases, the long-term housing subsidy available to someone displaced from a subsidized unit, will be more advantageous than a relocation payment based on the selection of a dwelling available on the private market. The relocation payment for a dwelling on the private market is limited to a rental differential for a 42-month period by the Uniform Act.

Section 24.2(a)(8)(ii) Decent, Safe and Sanitary

Twenty comments were received concerning the inclusion of standards relating to deteriorated paint or lead-based paint in the definition of ''decent, safe, and sanitary dwelling'' in § 24.2(a)(8). While all of these comments were favorable, there is no legal authority for mandating these standards in connection with the referral to comparable private market replacement housing under the Uniform Act. Accordingly, this language has been removed from the list of the mandatory elements of ''decent, safe, and sanitary'' replacement housing appearing in this regulation. Instead, we have included in appendix A a suggestion that such standards may be required by local housing and occupancy codes, and may, in any event be highly desirable in protecting the health and safety of displaced persons and their families.

Section 24.2(a)(8)(iv) Housing and Occupancy Codes

Of the seven comments received on § 24.2(a)(8)(iv) having to do with using local housing and occupancy codes to determine whether the unit is decent, safe and sanitary, most were concerned with determining the number of rooms and living space per individual. One commenter requested that the FHWA set a minimum number of square feet in a bedroom for each occupant as well as set an age standard for bedrooms occupied by siblings of opposite gender.

The protection of the public health, safety and welfare is an essential power of a sovereign government specifically reserved to the States. Accordingly, this regulation references local housing and occupancy codes as the primary source for defining ''standard'' housing. (In the case of certain federally subsidized replacement housing, federally-issued ''housing quality standards'' may be employed where such codes do not exist or are not applied to such housing.)

As was noted in the preamble to the NPRM, the existing regulatory policy on this subject would apply only in the absence of local codes. This has been clarified in § 24.2(a)(8)(iv). Questions of whether contrary or more restrictive housing and occupancy standards than those found in a local code, imposed by State law, must be deemed to override these local standards must be determined as a matter of State law by courts of competent jurisdiction or by the State's Attorney General, and cannot be addressed in these regulations.

Section 24.2(a)(8)(vi) Egress to Safe Open Space

We received three comments concerning the removal of the requirement that replacement housing units have two means of egress when replacement units are on the second story or above and have direct access to a common corridor. One was in favor of the change, a second was uncertain as to the purpose of the requirement and another was against the change for fear of the safety risks to the displaced person.

This is an area best handled through local fire and building codes and does not require Federal guidelines to assure the safety of displaced persons. There was overwhelming support for removing the requirement from our five national Public Listening Sessions that we held leading up to preparations of the NPRM. Therefore, no change was made to the language proposed in the NPRM.

Section 24.2(a)(8)(vii) Disability

Thirteen commenters requested that the definitions of Comparable Replacement Dwelling and Decent Safe and Sanitary Dwelling (and the corresponding provisions of appendix A) go into more detail regarding the needs of persons with disabilities, as well as a variety of disabilities.

Because the needs of persons who are disabled are addressed by other Federal or local statutory and regulatory requirements, which may or may not apply to any individual project which triggers the Uniform Act, we believe it is unnecessary to elaborate further in this rule except as noted in appendix A. The final rule addresses the need to accommodate the displaced person's needs in terms of unit size, location, access to services and amenities, reasonable ingress, egress or use of a replacement unit, and therefore, we do not believe additional detail is necessary.

We agree that there is a need to revise some of the language in appendix A, § 24.2(a)(8)(vii) to address the physical attributes of replacement housing for persons with physical disabilities beyond those dependent on a wheelchair. Therefore, we have broadened the language in the final rule to include persons with a physical impairment that substantially limits one or more of the major life activities of such individual. We have not addressed the needs of other nonphysical disabilities (such as mental impairment) in this rule since it is unclear what unit attributes would need to be addressed for this class of persons and any needs of such persons would be more appropriately addressed by other statutory and regulatory requirements.

Section 24.2(a)(9)(ii)(D) Temporary Relocation

In 1987, the Uniform Act was amended to cover displacement from Federal and federally-assisted programs or projects as a direct result of rehabilitation. To counter the disincentive this might create for a tenant temporarily displaced from a residence while that residence is being rehabilitated, we considered such a person not to be displaced, if, and only if, certain stringent protections are applied. These included covering moving expenses to and from the temporary location, payment of increased housing costs during the period of relocation, the guarantee of a return to the same unit, or to another suitable unit in the same building or complex, and a limitation on a rental increase at the rehabilitated replacement unit.

We believe that this interpretation of the law, to create an exception to its general applicability, must be limited and strictly applied, in order to meet the intent of Congress. Accordingly, the NPRM proposed that displacement for a period exceeding 12 months must ordinarily be considered significant enough to fall within the general rule pertaining to displacement as a direct result of rehabilitation, and not to come within the limited exception to the definition of ''displaced person'' which the law establishes. Therefore, the language proposed in the NPRM will not change.

We received eleven comments on the proposed language further describing temporary relocation in § 24.2(a)(9)(ii)(D) of appendix A. Two comments supported this change. However, we are seriously concerned that several of the commenters appear to believe that a person who is displaced by a project that triggers the Uniform

Act can somehow be exempted from full relocation assistance benefits as a displaced person if the Agency terms his/her relocation ''temporary'', regardless of the required length of time or hardship caused to the displaced person. We are further concerned that some commenters seem to consider the cost to their project more important than the protection provided by the Uniform Act. This may indicate that appropriate project and relocation planning is not taking place. It is for this reason that additional clarity concerning temporary relocation has been added to the rule.

Several commenters referenced the HUD policies on temporary relocation. HUD has indicated for years that it has always restricted ''temporary relocation'' to situations where the Uniform Act trigger was rehabilitation. In such cases, a tenant was guaranteed the right to return to a unit in the project prior to moving from the displacement dwelling. In recent years, HUD has permitted grantees to consider up to one year as acceptable temporary relocation duration, but again, only where the Uniform Act trigger is rehabilitation. However, HUD reports that some HUD grantees may have abused this policy and stretched it to apply in situations which are clearly beyond the scope of ''temporary,'' where an entire building or group of buildings is being demolished and will be replaced with fewer units. In this situation, displaced persons cannot be guaranteed a unit in the new building(s) at the time they are required to move from the displacement unit for reasons including: there may be insufficient units rebuilt; former tenant may not meet newly adopted return criteria, and, return to the project may not be for years simply because of the massive demolition and rebuilding that must take place. While many of these sorts of projects purport to allow displaced tenants to return, the reality is that few can. We do not support advising tenants that they are only being temporarily relocated, and are not displaced, when their actual return to a unit in the project is in doubt, and/or may not be for an extended period of time. Further, permanently displacing a person and providing them with full relocation assistance under the Uniform Act should not automatically negate their ability to apply for or return to the site of the HUD funded project that caused their displacement. Many HUD projects give preference to former tenants who want to return.

The rule, now requires that any residential tenant who has been temporarily relocated for a period beyond one year must be contacted by the Agency and offered all permanent relocation assistance.

One commenter suggested imposing the same one-year requirement upon owner occupants and nonresidential occupants. The final rule adopts language in the proposed rule that provides that ''temporary relocation should not extend beyond one year before the person is returned to his or her previous unit or location.'' We believe this establishes a sound policy that should be followed in most cases. We recognize, however, that in some situations, involving temporary relocations caused by disasters or public health emergencies, Agencies may not be able to provide permanent relocation benefits to such occupants within one year, if ever, because of statutory or programmatic limitations.

We also agree with the commenter who suggested that a temporary move of personal property is not intended to be covered by the one-year limitation on temporary moves.

We expanded the language in appendix A, § 24.2(a)(9)(ii)(D), to cover ''rehabilitation or demolition'' as suggested by one of the commenters. As noted, we are not changing the language relative to ''one year'' as we believe this is a reasonable time for any tenant to be in temporary housing (one year is a fairly common initial lease period across the United States). After the one-year period, the final rule requires that a residential tenant be offered permanent relocation assistance. Such tenants may be given the opportunity to choose to continue to remain temporarily relocated for an agreed to period (based on new information about when they can return to the displacement unit), choose to permanently relocate to the unit which has been their temporary unit, and/or choose to permanently relocate elsewhere with Uniform Act assistance. It is expected that temporary relocations will be rare, and, for HUD funded projects, clearly planned for in the development of the project, and used only where a tenant is guaranteed a replacement unit in the project or unit from which they were displaced.

Section 24.2(a)(9)(ii)(M) American Dream Downpayment Initiative (ADDI)

A new paragraph, § 24.2(a)(9)(ii)(M), has been added to the list of ''persons not displaced'' to reflect a provision, added by Section 102 of the American Dream Downpayment Act (Pub. L. 108–186; codified at 42 U.S.C. 12821) provides that the Uniform Act does not apply to the American Dream Downpayment Initiative (ADDI), a downpayment assistance program administered by the Department of Housing and Urban Development.

Section 24.2(a)(11) Dwelling Site

We received nine comments in response to the proposed definition of dwelling site. Most agreed that it was needed. Six commenters asked that additional information be provided on what constitutes a dwelling site.

We agree and are revising the definition for clarity. We have provided specific examples in appendix A as to when its use is appropriate.

Section 24.2(a)(12) Eviction For Cause

We received nine comments on the proposal to simplify the eviction for cause provisions in § 24.206 by moving some of them to a new definition in § 24.2(a)(12). Several commenters found this proposal to be confusing, and believed that it resulted in substantive changes to the eviction for cause provisions. This was not our intent, and accordingly we have not adopted the changes to § 24.206 and the new definition that were proposed in the NPRM. We have retained the current regulatory language in § 24.206.

One commenter objected to a clarifying sentence proposed in § 24.206 of appendix A, which simply stated that an eviction related to project development does not affect entitlement to relocation benefits. The commenter felt that this conflicted with the current eviction for cause provisions. However, we have retained the language in appendix A to make it clear that evictions related to scheduled project development, to gain possession of property, do not affect relocation eligibility. As noted in § 24.206, a person who is a lawful occupant on the date of initiation of negotiations is presumed to be entitled to relocation benefits, and can only be denied relocation benefits if the person had received an eviction notice prior to the initiation of negotiations, or is evicted thereafter ''for serious or repeated violations of material terms of the lease or occupancy agreement.'' We do not consider an eviction resulting from a failure to move or relocate when asked to do so, or to cooperate in the relocation process for a federally funded project, to be based on a ''serious or repeated violation of material terms'' of a lease or agreement.

If an eviction is ''for the project'' (resulting from a failure to move or relocate when asked to do so, or to cooperate in the relocation process) such an eviction cannot be considered as ''serious or repeated violation of material terms'' of a lease or agreement unless, prior to executing the lease, the

tenant was notified in writing of the proposed project and its possible impact on him/her and that he/she would not be eligible for relocation payments. While public housing leases may have a clause requiring that a tenant move or cooperate in a move, these provisions are included for the purpose of adjusting unit size as necessary for changes in family composition, and do not negate the tenant's eligibility for relocation benefits caused by a federally-assisted project which triggers the Uniform Act.

Section 24.2(a)(13) Financial Assistance/Lease Payments

One commenter objected to the proposed addition of the term ''lease payment'' in the definition of ''Federal financial assistance'' in § 24.2(a)(13). The commenter noted that this term is not included in the statutory definition of ''Federal financial assistance'' and its addition could have major consequences that were not mentioned or considered in the NPRM. We agree and have deleted the term.

Section 24.2(a)(14) Household Income

We received 16 comments concerning the new definition of household income. Most of the comments were positive and in support of the new definition. However, four commenters requested that we go further in our definition of household income by adding additional examples. Several of the same commenters also requested that the examples given in appendix A be moved to the definition in § 24.2(a)(14).

Because the sources of household income constantly change and vary by household, we will not produce a more definitive list of income sources. Based on the experience of other Federal Agencies that use definitions of income, such definitions can never be totally comprehensive or timely, and could render the regulations outdated within a short period of time. Displacing Agencies need to determine income for each individual or family based on whatever financial resources are available (earned, unearned, benefits, etc.). When a question arises as to whether something should be considered as income, the Federal Agency administering the program should be contacted for its assessment. To further assist in the determination of income exclusions, the FHWA has provided a Web site, (*see* appendix A, § 24.2(a)(14)), of income exclusions that are federally mandated. The income exclusions change periodically based on congressional action and the FHWA will update the Web site as necessary.

We are opposed to moving the examples in appendix A to the definition. The examples are to support the definition and should not be a part of the definition. Therefore, they will remain in appendix A.

One commenter suggested that we change the language in the definition to assure that income claimed is actually received. It is our position that the responsibility for verifying income should be left to the acquiring Agency.

One commenter raised the concern that we have not made provisions for changes that may occur in the income stream throughout a 12 month period. We suggest that if the income changes before the relocation offer is made, that an adjustment be made based upon verification of the change in income. Otherwise, we suggest using the income stream in existence at the time of the relocation offer. The amount of a displaced tenant's replacement housing payment should not be adjusted if the tenant's income later changes. The Uniform Act envisions a rental assistance payment that is determined once, and which is not affected by subsequent events. Replacement Housing Payments under the Uniform Act are not to be confused with rental or homeownership subsidy programs. There is no statutory provision for adjusting relocation claims or payments based on changes in income after the eligibility determination has been made.

Section 24.2(a)(15) Initiation of Negotiations

The NPRM proposed adding paragraph (iv) to the definition of Initiation of Negotiations (ION) in § 24.2(a)(15), to address ION for acquisitions that occur amicably, without recourse to the power of eminent domain. The intent was to avoid establishing a tenant's relocation eligibility before there was any certainty that the property would actually be acquired.

We received 21 comments on this change. A major concern was that delaying tenant eligibility in these cases, until the owner accepts an offer to purchase, might have an adverse effect on such tenants by, for example, their being forced to move as part of the pre-acquisition negotiations, as well as otherwise increasing uncertainty in program management.

In response, we have revised paragraph (iv) in the final rule to provide that ION means the actions described in paragraphs (i) and (ii), for routine Agency acquisitions, except that, in the case of amicable acquisitions covered in paragraph (iv), the ION does not become effective for purposes of establishing relocation eligibility until there is a written agreement between the Agency and the owner to purchase the property. This would establish the potential relocation entitlement of tenants at the time negotiations begin, but would not provide relocation benefits in the event no agreement was reached to acquire the property. Such tenants should be fully informed of their potential eligibility.

In response to a comment we also changed the reference to ''acceptance of the Agency's offer to purchase the real property'' to ''written agreement between the Agency and the owner to purchase the real property,'' for greater clarity and specificity.

At the request of the Environmental Protection Agency (EPA), the language in § 24.2(a)(15)(iii), concerning the initiation of negotiations on superfund related projects, has been updated and clarified, primarily to delete references to a ''Federal or federally-coordinated health advisory.'' Such health advisories are general in nature and are rarely related to determinations that relocation is necessary. Rather, the action that triggers relocation is a fact-based determination by the EPA, or the Federal Agency conducting an action under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (Pub. L. 96–510 or Superfund) (CERCLA), that temporary relocation or acquisition is necessary because there is a threat to an individual's health or safety. Typically, on such projects, temporary relocation occurs first, and then, if warranted by the circumstances, it may be followed by permanent relocation. Similar clarifications have also been made in appendix A, § 24.2(a)(15)(iii).

Section 24.2(a)(17) Mobile/ Manufactured Homes

A new definition for the term ''mobile home'' has been added to this section. Six comments were received on this proposed addition. Five commenters agreed that the definition was needed, and three comments proposed changes to the definition to differentiate between mobile homes, manufactured housing and recreational vehicles. The term ''mobile home'' includes both manufactured homes and recreational vehicles used as residences. Appendix A explains that ''mobile homes'' and ''manufactured homes'' are recognized as synonymous by HUD for that Agency's programs, and for purposes of this regulation will be considered the same. Appendix A also includes further requirements that recreational vehicles must meet in order to qualify as replacement housing in appendix A.

(Subpart F continues to include an explanation of the different methods of computing relocation assistance when a mobile home has been determined to be personal property, and when it is determined to be real property.)

Section 24.2(a)(22) Program or Project

One commenter requested a more detailed definition of the term ''project.'' Federal Agency experience over the years has amply demonstrated that it is not feasible to devise a common definition of ''project'' which could apply to all Federal and federally-assisted programs subject to the Uniform Act. Widely varying legislative and administrative histories of the various programs currently covered, as well as (in some cases) decades of practice, have led to the conclusion that the broad definition of ''project'' should remain unchanged. To alter the present definition might prove highly disruptive to the administration of many programs administered by Federal Agencies.

However, Federal Agencies should always interpret the term ''project'' in a way that will ensure that persons who are forced to move as a result of Federal or federally-assisted activities are covered by the Uniform Act.

Section 24.2(a)(30) Utility Costs

Two commenters suggested further clarifying the expenses that are included in the definition of utility costs. In response, we have replaced the reference to heat and light with a reference to electricity, gas, and other heating and cooking fuels.

Section 24.4(a)(3) Assurances

We received two comments opposing the changes proposed in the NPRM to § 24.4(a)(3) of the NPRM. One commenter was concerned that the proposed language would exempt Agencies undertaking arm's length acquisitions from required compliance with the Uniform Act. Similarly, a second commenter brought to our attention that the proposed language may nullify the conditions set forth in CFR 49 Part 24.101(b)(1). We did not intend to undermine the requirements of other sections of the regulations, therefore, after careful review, we agree that the proposed language may be perceived to conflict with the provisions in § 24.101(b)(1), and have not adopted the proposal in the final rule.

Section 24. 8 Compliance with Other Laws and Regulations

Several commenters suggested the inclusion of additional laws and regulations within § 24.8.

The existing regulatory language requires the implementation of this part to be in compliance with other applicable Federal laws and implementing regulations, including, but not limited to the laws and regulations cited. The list is merely a representative sample of some significant laws and regulations and is by no means intended to be a comprehensive listing of all applicable laws and regulations. An applicable law or regulation is not required to be cited in this section to be applicable to this part. Therefore, no change is considered necessary. However, for clarity, we have corrected two existing laws. We have added, ''as amended'' after the reference to the Robert T. Stafford Disaster Relief and Emergency Assistance Act in § 24.8(n); and, we have added a reference to EO 12892, Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing (January 17, 1994), § 24.8(o). EO 12892 replaced EO 12259.

Section 24.9 Records and Reports

We received twelve comments on the proposed revisions to § 24.9(c), which proposed to require each Federal Agency to submit an annual report summarizing its relocation and acquisition activities. One commenter supported this change and one sought further clarification. The remaining ten commenters opposed this change, primarily on the grounds that it would impose significant administrative burdens and would have little apparent value.

It was not our intent to increase administrative burdens. As was noted in the NPRM, our primary interest was in obtaining more accurate information, to more effectively monitor implementation of the Uniform Act. However, due to the negative comments received, we have decided not to adopt the proposed change.

Further, since no comments objected to the proposed simplification of the report form in appendix B, we have adopted the proposed form and the instructions for its use. The simplification of the form may lead to greater use by Agencies.

Outside the context of Part 24, the lead Agency will explore the possibility of obtaining such additional acquisition and displacement information from other Federal Agencies as may result from routine Agency operations and oversight.

Subpart B—Real Property Acquisition

We received a comment that the NPRM proposed change to replace the term ''fair market value'' with ''market value'' throughout Subpart B to better reflect current appraisal terminology was neither minor nor reflected universally accepted eminent domain terminology throughout the country.

Upon further examination, we determined that ''fair market value'' terminology is consistent with Uniform Act language and it appears that Federal courts see no difference in the terms ''fair market value'' and ''market value.'' Accordingly, we have retained the terminology ''fair market value'' throughout the subpart, except for § 24.101(b)(1) through (5), where eminent domain is not applicable. But we have added language to appendix A noting that for Federal eminent domain purposes, the two terms may be synonymous.

Section 24.101(a) Direct Federal Program or Project

Federal Agencies advised us voluntary transaction provisions were being used to a significant extent and suggested that these exceptions should no longer apply to acquisitions by Federal Agencies. Their proposal to eliminate this provision for Federal agencies direct purchases is consistent with section 305(b)(2) (42 U.S.C. 4655(b)(2)) of the Uniform Act, which allows these exceptions for recipients of Federal financial assistance, but provides no such exceptions for Federal Agencies themselves. We included the Agencies' suggested revision in the NPRM.

Formerly, the two major exceptions to real property acquisition requirements in Subpart B were voluntary transactions and acquisitions in which the Agency does not have the power of eminent domain. We restructured this section to clarify the application of the real property acquisition requirements set forth in this subpart, and to revise the exceptions to those requirements.

We have adopted the Agencies' proposed change in the final rule, but the exceptions for federally-assisted projects and programs remains in § 24.101(b).

One commenter objected to excluding direct Federal acquisitions from voluntary transaction procedures because the commenter believed that where an Agency acquired a property that was listed for sale, it would create a windfall for that property owner by allowing the owner to receive Uniform Act benefits.

However, as noted elsewhere in this rule (*See* § 24.2(a)(9)(ii)(E) and (H) and 24.101(a)(2)), if a property owner voluntarily conveys his or her property, without recourse to the power of eminent domain, he or she would

continue to be ineligible for relocation benefits.

Based on a comment we added the word ''direct'' to the title of § 24.101(a) for clarity. We also added language to appendix A to further clarify the applicability of this paragraph.

We updated language in the rule and in appendix A to reflect the Rural Utilities Service, successor Agency to the Rural Electrification Administration.

We added § 24.101(a)(2) to make it clear that, despite the rule change to make all direct Federal acquisitions undertaken without recourse to the power of eminent domain subject to the provisions of Subpart B, the owners of property acquired voluntarily by direct Federal acquisition, continue to be ineligible for relocation assistance benefits.

Section 24.101(c) Less-Than-Full-Fee Interest in Real Property

There was a comment suggesting we move the language from appendix A, discussing Agencies applying these regulations to any less-than-full-fee acquisition, into the body of the rule itself for greater clarity.

We agree, and the final rule reflects this change.

Section 24.102 Basic Acquisition Policies

We received a comment stating that § 24.102 relates only to acquisitions under the threat of eminent domain, and should be retitled to reflect that.

We respectfully disagree with this comment and note the exceptions to the applicability of Subpart B, Real Property Acquisition, are in 49 CFR 24.101.

Section 24.102(c)(2) Appraisal, Waiver thereof, and Invitation to Owner

We received 28 comments on the NPRM appraisal waiver provisions. Twelve support the changes proposed in the NPRM.

Five commenters disagree with the proposed ''two-tier'' waiver threshold, especially the provision that the property owner be given the option to have an appraisal if the Agency wishes to use a waiver threshold between $10,000 and $25,000. These comments expressed the position that this procedure would be confusing and not really accomplish much.

In response to the language proposed in the NPRM, we received comments requesting waiver thresholds far in excess of $10,000. However, the Agencies are not comfortable with a waiver threshold over the proposed $10,000 limit without additional safeguards for the property owner. Part of this caution is based on the regulatory history of the present policy, which links the appraisal waiver threshold to the cost of appraisal, i.e., a concern that appraisal costs were exceeding acquisition costs. The final rule does not change the NPRM proposal. We point out that use of the appraisal waiver provision is optional for an Agency, so if appraisal waiver provisions become burdensome or ineffective, the Agency need not implement them.

Two commenters expressed concern that appraisal waiver provisions risked property owner protection and were inconsistent with OMB Circular 92–06, which states, ''Agencies should prepare real estate appraisal and appraisal review reports in accordance with written and approved agency standards consistent with the Uniform Standards of Professional Appraisal Practice (USPAP), sections (sic) I–III, as developed by the Appraisal Standards Board of the Appraisal Foundation.''

We point out that appraisal waivers for low value acquisitions are specifically authorized by the Uniform Act, Section 301(2). We share the concern that property owners retain protections intended by the Uniform Act. That is one reason why we did not raise the waiver threshold to any higher level. As for the issue of consistency with USPAP, appraisal waiver is not an appraisal performance issue, but an issue about when an appraisal is needed under Federal law.

A question was also raised as to whether the threshold applies to the value of the larger parcel (before value) or the value of the proposed acquisition.

The regulation states that it applies to the ''anticipated value of the proposed acquisition.''

One commenter suggested removing the ''on a case-by-case basis'' language from proposed § 24.102(c)(ii) because it created confusion.

We did remove the ''on a case-by-case-basis'' language from the final rule as it was unclear.

There was one comment expressing concern about situations where a high percentage of an Agency's acquisitions may be through appraisal waiver procedures.

The FHWA shares that concern and is considering initiating research to examine this issue as it applies to our partner State DOTs; however, it is beyond the scope of this rulemaking action.

Two commenters pointed out (and support) that the NPRM proposed adding language that the determination to use an appraisal waiver must be made by a qualified person.

We are pleased to see not only support for this provision, but that it was significant enough to comment on it.

Because of the number of comments indicating confusion in general as to the appraisal waiver provisions, we have added further explanation in appendix A.

Section 24.102(f) Basic Negotiation Procedures

Two commenters suggested that ''reasonable opportunity'' provided to an owner to consider and respond to an offer should be defined with a specific time frame (such as 30 days).

We did not include a required time frame, but appendix A does discuss the issue, stating that, depending on the circumstances, 30 days would seem to be a minimum time frame. We are reluctant to specify a time frame because we believe that circumstances can dramatically impact what is an appropriate reasonable opportunity to consider an offer and present information.

One commenter stated that giving property owners ''a reasonable opportunity to consider the offer'' has the potential to slow down project times.

We recognize this potential, however, we believe this statement reflects the primary purpose of the Uniform Act and this regulation, which is to assist and protect property owners and occupants.

One commenter suggested that Agencies should provide the owner and/or his/her appraiser a copy of the Agency's appraisal requirements and inform them that their appraisal should be based on those requirements.

This is an excellent idea, and we have included language to encourage Agencies to do this in appendix A.

One commenter suggested adding the word ''all'' to ''reasonable efforts to contact the owner.''

We agree and added the word ''all'' to the final rule for greater clarity.

Section 24.102(i) Administrative Settlement

Comments indicated support for this section, but noted that not much was changed. We agree. The revised language focuses more on clearly stating the supporting justification for settlements.

One commenter suggested that § 24.107, certain legal expenses, should be cross-referenced in this section.

Since the topics and issues are different, we did not make that change.

We have revised the language to require more specific information in the written justification (''state'' rather than ''indicate'') and deleted specific suggestions (''appraisals, recent court

awards, estimated trial costs, or valuation problems'') in favor of requesting ''what available information, including trial risks, supports the settlement.''

Section 24.102(n) Conflict of Interest

The NPRM proposed expansion of this section to include all persons making waiver valuations under § 24.102(c)(2). This change would bring equal conflict of interest standards to all individuals valuing real property, whether their work is waiver valuations, appraisal, or appraisal review, and would clarify who is covered.

We received 24 comments on the proposed revision to this section. The majority of comments referenced the proposal that any person functioning as a negotiator shall not supervise or formally evaluate the appraiser, review appraiser or person making waiver valuations.

Comments received focused on the impacts on Agency operations. A major concern was how an Agency could comply with the requirement that an appraiser, review appraiser or anyone making a waiver valuation not be supervised or evaluated by anyone negotiating for the property since currently most, if not all, managers frequently become involved in negotiations.

This is a difficult issue, but we, as well as the other affected Federal Agencies, continue to support the provision providing independence for appraisers from officials negotiating to acquire the property.

One commenter recommended that no Agencies be exempted from appraiser independence provisions and suggested that streamlined appraisals and reports could be used to meet budgetary needs.

The exemption is not based on financial considerations, but rather on recognition that some small Agencies, especially Federal-assistance recipients such as local public Agencies, do not have the staffing levels that are needed to support the separation of functions.

One commenter wondered about the impact on consultants of providing independence for appraisers from officials negotiating to acquire the property, and suggested the ethical controls in the Uniform Standards of Professional Appraisal Practice (USPAP)[1] are sufficient.

[1] 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/html/USPAP2004/toc.htm.*

We note that USPAP controls apply to the appraiser, whose only recourse to inappropriate pressure from a manager or supervisor is refusal to do the assigned task. We believe that this does not adequately address conflict of interest concerns. Policing conflict of interest should not be the appraiser's responsibility. The impact on a consultant will ultimately be up to the funding Agency, which may waive this provision if it believes it appropriate to do so. Again, the responsibility to prevent undue pressure on an appraiser is on the Agency.

One commenter suggested the same (Agency) person should be able to procure contract appraisal services and serve as a negotiator.

This comment was from a local public Agency, which, as such, would be eligible for a waiver if granted by the Federal funding Agency, therefore we did not incorporate such a change.

One commenter expressed a concern that a Federal Agency could give itself a waiver from the requirement that negotiators may not supervise appraisers.

We believe the regulation is clear that the waiver is only for ''a program or project receiving Federal financial assistance.'' This precludes the Federal Agency from granting itself a waiver.

One commenter supported the exception in the last paragraph, which allows the appraiser, the review appraiser and preparer of a waiver valuation to also act as negotiator when the offer to acquire is $10,000 or less. However, another commenter objected to this exception, stating the issue was too important to allow a waiver.

Another commenter suggested the $10,000 threshold be raised to match the appraisal waiver threshold.

One commenter objected to allowing appraisers to act as negotiators in acquisitions under $10,000.

We did not change the threshold amount because the participating Federal Agencies continue to believe that the $10,000 limit provides a reasonable and appropriate exception for low value transactions. The rule adopts the conflict of interest language proposed in the NPRM.

Section 24.103 Criteria for Appraisals

One commenter asked if there is some way we could require that all appraisals prepared for use under the Uniform Act meet appraisal requirements in this rule. The commenter was referring to appraisals made other than for the Agency, such as for property owners.

Many jurisdictions grant broad authority to property owners to express their opinions about their property, and some even compensate them for the costs of an independent appraisal. We see no way we can require appraisal requirements in this rule for property owners' appraisals or other valuation opinions. We suggest Agencies make available their appraisal requirements to property owners so at the least they will know what the requirements are for the Agency's appraisal(s).

The revisions relating to appraisals in §§ 24.103 and 24.104 are the first since The Appraisal Foundation published the USPAP in 1989. Considerable confusion and misunderstanding as to the applicability of the USPAP provisions to Uniform Act real property acquisitions have existed ever since USPAP was first published. The Uniform Act and 49 CFR part 24 set the requirements for appraisal and appraisal review in support of Federal and federally-assisted acquisition of real property for government projects. Many of the revised provisions of §§ 24.103 and 24.104 are intended to assist the appraiser, the Agency and others in understanding the requirements of these subparts in light of the USPAP.

We changed the terminology throughout this section from ''standards'' to ''requirements'' to avoid confusion with USPAP standards rules. We also added the phrase ''Federal and federally-assisted program'' to more accurately identify the type of appraisal practices that are to be referenced, and to differentiate them from private sector, especially mortgage lending, appraisal practice.

One commenter suggested we use USPAP Standards 1, 2 and 3 for several reasons. Certified and licensed appraisers in most States are required to comply with USPAP, and although the Jurisdictional Exception may be used where the USPAP is contrary to law or public policy, that complicates matters unnecessarily. Also, USPAP standards are already in place, and this would assure the Federal government, taxpayers and property owners that appraisals and appraisal reports comply with certain minimum standards.

Uniform Act appraisal requirements have been in place for some time and actually predate USPAP. They were put in place to do what the commenter suggests: provide assurance that when an Agency needs real property, all the parties involved are treated fairly. That is the primary purpose of the Uniform Act. As for the USPAP Jurisdictional Exception, we believe any ''complication'' is mostly based in misunderstanding of how it works. In any case, USPAP Jurisdictional Exceptions are by definition based in law or public policy and the Agency has

very little, if any, flexibility for optional compliance with the Uniform Act.

Section 24.103(a) Appraisal Requirements

In the NPRM we proposed stating that these regulations set forth the requirements for real property acquisition appraisals for Federal and federally-assisted programs to make it clear that other performance standards, such as USPAP and those issued by professional appraisal societies, do not directly govern programs covered by the Uniform Act. Based on the comments we received, this proposed language clarified the relationship between the appraisal requirements in this rule and USPAP and we have included that language in the final rule. Additionally, we have added further explanatory language in appendix A.

The NPRM proposed adding a requirement for a scope of work statement in each appraisal. The scope of work replaces the former appraisal problem statement. It also renders obsolete the former ''minimum standards'' and ''detailed'' appraisals, replacing them with an infinitely variable standard driven by the circumstances of each acquisition. We have included in appendix A a discussion on preparing the scope of work.

We received several comments supporting the adoption of the scope of work. One commenter suggested that the scope of work for Uniform Act purposes needs to be clearly differentiated from the scope of work required by USPAP.

As of the publication of this regulation, the Appraisal Standards Board has not finalized the scope of work in USPAP, so it would be premature to attempt to differentiate. It is our hope that the two concepts will be consistent and that a scope of work written in compliance with this rule will be compatible with any future scope of work requirement in USPAP.

One commenter said that the appraiser should not be able to unilaterally determine the scope of the assignment or what the appraiser will provide the Agency. However, another commenter suggested that the appraiser should decide the scope of work, perhaps in consultation with the client (Agency). This comment was made as part of a discussion about the Agency instructing the appraiser that in certain circumstances, the sales comparison approach would be the only approach to value to be used.

We point out that Agencies have had input to the appraisal process under the old rule. First, the ''sales comparison approach only'' option has been available to Agencies for many years and has, to our knowledge, caused no problems. Second, these requirements are written on the basis that the Agency is a ''knowledgeable user'' of appraisal services. That is, the Agency is familiar with both the appraisal process and its own needs, and is capable of participating in a legitimate statement of work to solve the appraisal problem. Accordingly, we believe that appraisers should not be given final authority over the appraisal process for an Agency. We believe it is appropriate that this option continue to be retained by the Agency.

One commenter said it believes the purpose and/or function of the appraisal, a definition of the estate being appraised, and if it is market value, its applicable definition, and the assumptions and limiting conditions should be stated separately, and not be in the scope of work.

We believe the scope of work, as a vehicle of agreement between the appraiser and the Agency, is the appropriate place to include these items. They should also be included in the appraisal report, as part of the scope of work statement.

One commenter questioned the meaning of ''the extent appropriate'' for application of the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA).[2]

The UASFLA is a publication that summarizes Federal eminent domain appraisal case and statute law. So, to the extent that an Agency either follows Federal eminent domain practices, or voluntarily adopts UASFLA as its appraisal guidelines, it may be applicable.

Another commenter recommended that the appraisal clearly define and list which items are considered as real property and which are considered as personal property.

We agree and the regulation and appendix A have been revised to reflect this suggestion.

Still another commenter suggested the five-year sales history be changed to ten years since the property may not have changed hands in the last five years.

Although we did not change the requirement in the regulation, we point out that its requirements are minimums. If the appraiser or the Agency believes higher levels of performance are necessary, then the appraisal scope of work should reflect that.

Section 24.103(a)(2)(ii) Appraisal Requirements

A commenter suggested that USPAP compliance would require appraisers to invoke the USPAP Departure Provision to use only the sales comparison approach.

We disagree with this evaluation. At the present time, a State certified or licensed appraiser who is requested by an Agency to provide only the sales comparison approach would, in our opinion, be doing so under the USPAP Jurisdictional Exception Rule, since the Agency's request would be pursuant to the authority granted it under its law and public policy, which is the basis for a USPAP Jurisdictional Exception.

Section 24.103(d) Qualifications of Appraisers and Review Appraisers

One commenter suggested the rule should recognize that appraisal professional organizations' designations provide an indication of an appraiser's abilities.

We have added language to § 24.103(d)(1) and corresponding text to appendix A to emphasize the need for appraisers and review appraisers to be qualified and competent, and that State licensing or certification, and professional designations can help provide an indication of an appraiser's abilities.

Section 24.103(d)(1)

While the majority of the comments on the proposed changes to this section were positive, we did receive several comments that recommended that appraisers and review appraisers be required to be State certified.

Although we have not adopted that suggestion, we recognize the need for appraisers and review appraisers to be qualified and competent, and that State licensing or certification, and professional designations can help provide an indication of an appraiser's abilities. Therefore, we have added certification and licensing to the list of items to be considered by an Agency in determining the qualification of an appraiser (or review appraiser). We also note that some States have specifically excluded certain State Agency appraisers from State licensing/certification requirements.

Section 24.104 Review of Appraisals

For consistency, the term review appraiser is used throughout this rule to refer to the person performing appraisal reviews. We also added language that

[2] 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/ecom/publications/default.asp* and select ''Legal/Regulatory'' or call 888–570–4545.

will clarify and specify the responsibilities, authorities and expectations associated with appraisal review.

One commenter stated that the NPRM significantly expands appraisal review responsibilities and requirements.

We believe the final rule more accurately elucidates what was commonly assumed to be appraisal review responsibilities and requirements.

A commenter suggested that the final rule should allow administrative reviews performed by appraisers or non-appraisers where the values are less than $50,000.

We disagree because only a technical review can provide the basis for approving an appraisal for valuation purposes.

There was an objection to the discussion in the first two paragraphs of appendix A as being promotional and self-serving.

This discussion provides information on the concept of appraisal review as it is used by public Agencies and we believe it is necessary.

One commenter said the proposed change to allow the review appraiser to support and approve a different value without any oversight or review is not a good policy. This could result in the review appraiser being pressured to increase or reduce appraised values without oversight.

First, the policy allowing the review appraiser to support and approve a value different from that of the appraisal being reviewed has been part of the preceding rule and is not new. Second, at the Agency's option, the Agency official who establishes the amount believed to be just compensation to be offered to the property owner may be someone other than the review appraiser.

Section 24.104(a) Review Appraisers

Several commenters responded to the three options available for the appraisal review.

One commenter expressed concern for using the term ''rejected.''

We agree and replaced the term ''rejected'' proposed in the NPRM with ''not accepted.'' This more clearly reflects that such appraisals, while they may meet others' standards or requirements, do not meet the requirements of this rule and the Agency.

One commenter suggested that the type and level of review should be left to the discretion of the acquiring client Agency.

We agree that the Agency should have some discretion as to the review, and we believe that is included in the appraisal review provisions. However, we also believe the amount of appraisal review discipline specified in this rule is necessary to assure compliance with the Uniform Act requirement that the offer believed to be just compensation be based on an approved appraisal.

The same commenter also suggested that the rule delete the requirement that all appraisals must be reviewed.

We do not believe we have flexibility under the Uniform Act to make appraisal review optional. The Uniform Act calls for an approved appraisal, which this rule interprets and implements as requiring a technically reviewed appraisal. We note that while the Uniform Act specifically grants authority for waiver of the appraisal, it does not do so for approving an appraisal.

There were two comments saying the appraisal review provisions should be consistent with USPAP. One specifically cited that having the review appraiser approve the appraisal was not consistent with USPAP, and should be changed unless there is a compelling reason to be different.

We believe, first of all, that it is not inconsistent with USPAP for the review appraiser to be requested to approve the appraisal. We believe the requirement for approving the appraisal is within the bounds of USPAP's Standard Rule 3–1(c) where identification of the scope of the (review appraisal) work to be performed is discussed. Second, if there is any question as to consistency, we point out that the requirement for an ''approved appraisal'' is in the Uniform Act and would appear to qualify as a USPAP Jurisdictional Exception, based on being ''law or public policy.''

One commenter suggested that the phrase ''accepted (but not used)'' could raise questions in condemnation litigation as to why a report met ''government standards'' was not used, perhaps implying the Agency shopped for the value it wanted to get.

The appraisal review report should discuss why one of two or more reports was selected as approved for best supporting an offer believed to be just compensation.

Another commenter stated that references to the review appraiser setting just compensation is inaccurate and should be deleted.

The language in § 24.104 was carefully written to follow the Uniform Act. A staff review appraiser may be authorized to ''develop and report the amount believed to be just compensation,'' not ''set'' just compensation, which we acknowledge is the purview of the courts.

One commenter raised a concern that the review appraiser should be required to develop an opinion on whether or not the report complies with Standards 1, 2 and 3 of USPAP as well as an opinion of market value.

As we have noted, while this regulation is intended to be consistent with USPAP, it implements the Uniform Act and its requirements only; it is not a vehicle for implementing USPAP.

A commenter suggested that the owner be offered the opportunity to accompany the review appraiser on the inspection of the property.

An on-site inspection by the review appraiser is not a specific requirement of these regulations, so inviting the property owner would be inappropriate. The necessity of an onsite inspection by the review appraiser depends on the appraisal problem, the appraisal(s), and Agency policy.

One commenter asked what was the background of accepted, approved and rejected.

The three appraisal review results options specified reflect the results that were always needed, but never specifically cited. They are directly related to the needs of the acquisition process specified in the Uniform Act. Additional language has been added to appendix A to further clarify that process.

Section 24.104(b) Review of Appraisals

One commenter expressed the position that it is not good policy to allow the review appraiser, as part of the appraisal review process, to develop independent valuation information if he/she could not approve any submitted appraisal. Concern was expressed that there was potential for undue coercion to be exerted on the review appraiser without oversight.

We believe that newly introduced provisions to enhance appraiser and review appraiser independence will mitigate this risk. We point out that the provisions allowing the review appraiser to develop an independent valuation are carried over from the previous rule.

Section 24.104(c) Written Report

One commenter requested clarification that only a duly authorized Agency staff person can make the approved appraisal decision, because Agencies sometimes mistakenly believe they have no choice but to accept the review appraiser's conclusion.

This is clarified in the final rule.

Another commenter asked if an appraisal report which has had its value conclusion modified in some fashion

during review, maintains its status as approved.

This would come into play primarily when, subsequent to submission by a fee appraiser, the reviewer modifies the recommended (or approved) amount due to a plan revision or other similar reason. For the purposes of the Uniform Act and this regulation, the review appraiser could adjust the recommended or approved amount to reflect changes without voiding the acceptance of the reviewed appraisal report, if those changes are not so substantial as to change the appraisal problem.

Still another commenter asked whether the requirement that any damages or benefits to any remaining property be identified in the review appraiser's report is to be just a simple allocation between damages and benefits or whether discussion is implied.

The requirement is to ''identify'' any damages or benefits. Therefore, if some discussion may be needed to explain an allocation, such discussion should be included, too, but is not explicitly required.

Two commenters objected to authorizing the review appraiser to determine the amount believed to be just compensation, opining that is a management determination.

We agree it is a management determination, but it is also appropriate to give management the option of delegating this responsibility to a staff review appraiser.

Section 24.105 Acquisition of Tenant-Owned Improvements.

One commenter stated that some tenant-owned improvements or modifications made to accommodate a tenant's disability or the disability of a household member, such as ramps, may have no market value or salvage value because they are of limited use to anyone but the tenant who installed them. In such situations, the regulations should require that the household be compensated for the replacement value of the improvements.

We did not change the provision in § 24.105 for such a situation because the residential occupant would be ''made whole'' through relocation assistance provisions of this regulation.

Section 24.106 Expenses Incidental to Transfer of Title to the Agency

One commenter stated that we should add a new paragraph describing ''other related costs incurred'', solely as a result of transfer of real property to the Agency. The regulation can allow only those expenses specified by the Uniform Act, section 303, therefore, this change was not made.

Subpart C—General Relocation Requirements

Section 24.202 Applicability

One commenter suggested we change the word ''benefits'' to ''entitlements.'' We feel that since the word ''assistance'' is used throughout the Uniform Act that we will change the word ''benefits'', when feasible, to ''assistance'' to be more in line with the language used in the Uniform Act. The Uniform Act program is not an entitlement program but rather a reimbursement program to assist in relocating to a new site.

Section 24.203(b) Notice of Relocation Eligibility

One commenter requested that we further define ''promptly'' in § 24.203(b), suggesting that it refers to the prompt notification of all occupants/tenants after the initiations of negotiations and, therefore, should be defined to not exceed 7 calendar days or perhaps up to 10 calendar days at most. We consider promptly meaning ''as soon as practicable'' and do not believe that further elaboration is necessary. Displacing Agencies may wish to further define the term in their operational procedures. (The FHWA has issued guidance in the past to the State Highway Agencies suggesting that, as used in this section, ''promptly'' means 7 to 10 days).

Section 24.203(d) Notice of Intent to Acquire

The NPRM proposed moving the definition of notice of intent to acquire from the ''Definitions'' section to the ''Notices'' section of the regulations. The intent was to group all relocation notices in one place for consistency. A minor revision in wording for clarity was also proposed. No change in the meaning of the term was intended.

We received four comments on this proposed change. One commenter proposed alternative wording for the term that has not been adopted. Three commenters expressed confusion over the intent of this term, therefore, further explanation is warranted here.

The notice of intent to acquire is one of three actions (the other two being initiation of negotiations for acquisition, and actual acquisition) that can establish a person's eligibility for relocation assistance (see § 24.2(a)(9)(i)(A)). Unlike the other notices described in § 24.203, a notice of intent to acquire is not mandatory. As was noted when the 1989 final rule was issued (54 FR 8916), its purpose ''is to clearly establish a displaced person's eligibility for relocation benefits. However, it should be understood that the absence of such a notice does not deprive the person of eligibility for relocation benefits.''

A notice of intent to acquire may be used to establish a person's eligibility for relocation assistance prior to the initiations of negotiations and sometimes prior to commitment of Federal-financial assistance. A notice of intent to acquire is a means by which displacing Agencies may establish a person's relocation eligibility in advance of the typical acquisition and relocation process in order to conduct orderly relocation, minimize adverse impacts on displaced persons and to expedite project advancement and completion.

One commenter suggested that the notice of intent to acquire could be confused with the ''notice to owner'' found in § 24.102(b). A notice to owner is merely an Agency's notice informing the owner of the Agency's interest in acquiring the property; it is not a commitment and does not establish relocation eligibility. Whereas a notice of intent to acquire is an Agency's written notice provided to a person to be displaced; it is a commitment and clearly establishes relocation eligibility in advance of the normal acquisition and relocation process.

One commenter was uncertain as to the relationship between the notice of intent to acquire, and the notice of relocation eligibility, described in § 24.203(b). While the notice of intent to acquire is one of three possible actions that establish eligibility for relocation assistance, the notice of relocation eligibility is a mandatory notice that notifies persons when they become eligible for relocation assistance. For greater clarity and consistency we have added references to the notice of intent to acquire and actual acquisition in § 24.203(b) to make it clear that the notice of relocation eligibility must be provided after whichever Agency action first triggers a person's eligibility for relocation assistance.

Section 24.204(b)(1) Disaster Relief Act and Section 24.204(c) Basic Conditions of Emergency Move

For clarity, we have updated the citation to the Robert Stafford Disaster and Emergency Assistance Relief Act, as amended, (42 U.S.C. 5122) in § 24.204(b)(1). We have also added a reference to ''displacement dwelling'' in § 24.204(c) to emphasize that we are referring to relocations from such dwellings.

Section 24.205 Relocation Planning, Advisory Services, and Coordination

One commenter asked whether changes in § 24.205 were intended to preclude so-called ''global settlements.'' Another comment, focusing primarily on § 24.207(f) (which prohibits Agencies from requesting that displaced persons waive relocation benefits), recommended that the regulation would preclude the use of such settlements. The comment described ''global settlements'' as ''the packaging of relocation entitlements (in some cases moving, mortgage interest, price differential, etc.) with the fair market value to reach an administrative settlement of the acquisition.''

The changes to § 24.205 are not intended to reflect ''global settlements.'' We do not believe that such settlements are consistent with the requirements of the Uniform Act or this part.

The Uniform Act and this part require that relocation payments be determined in accordance with specific fact based criteria. For example, a homeowner's replacement housing payment shall be based on the ''amount, if any'' that must be added to ''the acquisition cost of the dwelling acquired'' to equal the reasonable cost of a comparable dwelling. It is therefore impossible to accurately determine the amount of a displaced homeowner's replacement housing payment until the actual acquisition cost of the acquired dwelling is established. Furthermore, a replacement housing payment can only be made to a displaced homeowner if the homeowner purchases and occupies a decent safe and sanitary replacement dwelling within one year after he or she receives final payment for the acquired dwelling. Accordingly, under the Uniform Act and this part, a homeowner's replacement housing payment cannot be determined until the actual acquisition cost is known.

In addition, actual reasonable moving expenses often cannot be determined until after the move has been completed. Relocation benefits provided under the Uniform Act and this part must be determined in accordance with the applicable requirements contained therein, and any ''settlement'', related to relocation benefits, that does not do so would not be consistent with statutory and regulatory requirements.

Both §§ 24.205 and 24.207(f) are drafted to ensure that displaced persons are fully advised of all relocation assistance benefits that are available to them, and that a displaced person is offered all the assistance and benefits for which he or she is eligible. This applies to both residential and nonresidential displacements.

Section 24.205(c)(2)(i)(A–F) General Planning

We received eleven comments on the proposed requirement for obtaining information from the displaced business owners concerning a business's needs during the relocation process to enable the acquiring Agency to assist the business in successfully relocating to a replacement site. Most were in favor of the new informational requirements. Three commenters expressed concerns, stating that their planning process was undertaken early, during the early environmental studies, and that the information would be obsolete prior to the actual relocation process.

We included this requirement so that the interviews, where the six informational items are to be obtained, are conducted during the advisory assistance process. This process is to be undertaken when relocation can be expected to begin within a short interval of time.

One commenter was concerned that some business owners employed legal counsel that advised the businesses not to provide any information to the displacing Agency. In such cases, acquiring Agencies should explain to business owners that the intent of the interview questions is to obtain data that will enable the Agency to better assist the displaced business, and that the Agency is required to seek such information by a Federal regulation implementing the Uniform Act.

Section 24.205(c)(2)(i)(C)

We received two comments recommending we change the wording in § 24.205(c)(2)(i)(C) concerning the resolution of personalty/realty issues, in order that the provision apply to all businesses not just tenant businesses. We agree with the recommendation and have removed ''tenant'' from § 24.205(c)(2)(i)(C).

We received six comments to the proposed change to § 24.205(c)(2)(i)(C), concerning identification and resolution of realty/personalty items prior to an appraisal of the property.

All commenters agreed that this is a problem area and that a change is needed. However, all commenters shared a common concern, that requiring resolution prior to the appraisal of the property is sometimes not possible.

One commenter suggested ''should'' be used in place of ''must.'' Several commenters reminded us that most Agencies are aware of the problem and make every effort to identify and resolve these issues as early as possible, but that sometimes it is not possible given the reluctance of tenants and owners to cooperate.

We received many comments from the public prior to the NPRM requesting a stronger position be taken on resolving realty/personalty issues early in the process. However, we recognize the valid concerns reflected in the comments and, therefore, have changed § 24.205(c)(2)(i)(C) to provide that ''every effort must be made'' to identify and resolve realty/personalty issues prior to ''or at the time of'' the appraisal.

Section 24.205(c)(2)(i)(E)

We received three comments on § 24.205(c)(2)(i)(E) which proposed that interviews with displaced business owners include an estimate of a business searching expense payment based on the estimated difficulty in locating a replacement site. The comments questioned the purpose of obtaining an estimate of searching expenses and asked whether the acquiring Agency or the business owner should prepare it.

There are two general purposes for this provision. The first is to generate a discussion of the anticipated problems faced by the business to enable the acquiring Agency to determine the time required for the move; and, second, to factor in the time and costs of investigating a replacement site. These costs include those necessary to obtain permits, attend zoning hearings and negotiate the purchase of a replacement site. Our primary intent was to identify problems in locating a replacement site. For clarity, and in response to the comments, we have deleted the requirement that an estimate of the searching expense payment be provided.

Section 24.205(c)(2)(ii)

Several commenters noted the incorrect placement of a sentence concerning business interviews within the residential portion of this section of the regulations, at the end of § 24.205(c)(2)(ii). This sentence was erroneously repeated from the preceding business interview discussion, and has been deleted from the final rule.

One commenter recommended that the regulations provide that reasonable accommodations be made for disabled displaced persons in the interview process and with regard to transportation. The NPRM did not propose any changes in this area and we believe none are necessary. Agencies must make every effort to provide reasonable accommodations for all displaced persons, including the

disabled, in order to minimize any adverse impacts. This is not a new requirement; it is a fundamental principle of relocation advisory services. As such, no additional changes were adopted.

Section 24.205(c)(2)(ii)(D)

We received 12 comments regarding the proposal that an Agency, which has a program objective of providing minority persons with an opportunity to relocate outside of areas of minority concentration, may determine to provide a reasonable and justifiable increase in the payment to facilitate such a move. Every comment disagreed with the addition of this flexibility for various reasons, many because it was perceived as a mandate to provide additional payments rather than an option based on an Agency's program goals. Based on further consideration, and in response to the comments, we removed this language from the final rule.

Section 24.205(c)(2)(ii)(E)

We received six comments on § 24.205(c)(2)(ii)(E), which concerns transportation to inspect replacement housing. One commenter suggested that such transportation should be ''need based'' for only certain individuals, such as those with health limitations or disabilities. Another commenter wanted to add the wording ''as appropriate.'' Still another commenter wanted the decision to provide this transportation to be at the discretion of the Agency.

The requirement to offer transportation to all displaced persons is not new. A minor clarification was proposed to emphasize that all displaced persons are entitled to such transportation. It has been our experience that most people will provide their own transportation, but in fairness to all, transportation shall be offered to all displaced persons equally.

One commenter voiced concern about government liability in transporting non-government persons, and suggested designating other forms of transportation. We purposely did not designate a mode of transportation. It is the responsibility of the Agency to decide how they will transport a displaced person. If liability is a concern, there are other means of transportation available such as a taxicab or rental car.

Section 24.206 Eviction for Cause

See the explanation under Subpart A, definitions, § 24.2(a)(12), in this preamble.

Section 24.207(f) Waiver of Benefits

We received 17 comments on § 24.207(f), which provides that displacing Agencies shall not propose or request that a displaced person waive his or her relocation benefits. This section complements §§ 24.205(c) and 24.203(a), (b) and (c) which describe the information and notices that must be provided to persons prior to displacement.

The comments were virtually unanimous in support of § 24.207(f). However, it appears that a few commenters did not fully understand this provision. As we noted in the preamble to the NPRM (68 FR 70348–70349), because the Uniform Act imposes requirements on displacing Agencies to provide relocation assistance, a person to be displaced cannot relieve an Agency from the Uniform Act's requirements by agreeing to waive his or her relocation assistance and benefits.

Appendix A, § 24.207(f), provides that a person, after they have been fully advised of all relocation payments and assistance to which they are entitled, may, in a written statement, choose not to accept some or all of such benefits. In the unlikely event that a person simply refuses to accept some or all payments and assistance, and refuses to provide any written statement to that affect, the Agency should document such refusal in writing.

We have made two minor changes to § 24.207(f) in response to comments. We have inserted ''No'' as the first word of the section's title, to emphasize that this provision is not intended to encourage any waiver of benefits. We have also changed the phrase ''relocation assistance and payments provided by the Uniform Act,'' to ''relocation assistance and benefits provided by the Uniform Act,'' to avoid any implication that this section would apply to payments for the acquisition of real property, which are addressed in detail in subpart B.

Section 24.207(g) Expenditure of Payments

We received five comments on proposed § 24.207(g). These generally requested minor editorial changes or further clarification. This section expresses longstanding practice and understanding by stating that relocation payments provided to a displaced person are not ''Federal financial assistance'' for purposes of this part, and therefore, their expenditure is not subject to the Uniform Act. In response to the comments received minor changes have been made to improve clarity.

Subpart D—Payments for Moving and Related Expenses

Section 24.301(b) Moves From a Dwelling

We received 13 comments on § 24.301(b), moving from a dwelling. Most of the commenters were unclear on what is meant by the phrase ''but not by the lower of two bids or estimates'' in § 24.301(b). It has long been our position that a residential displaced person cannot be paid for a self-move based on the lower of two bids or estimates. This has always been a moving option reserved for businesses. There are only three types of moving options available for residential moves, that are described in §§ 24.301(b)(1) and (2)(i) and (ii). After careful consideration of the comments we agree that the proposed language in § 24.301(b) could be misunderstood and have made changes to better clarify that a residential self-move cannot be based on the lower of two bids or estimates.

Two commenters questioned why we allow an actual cost move, supported by receipted bills, to equal the hourly rate that a commercial mover would receive. In response to that, the rate a commercial mover would pay is only there as a comparison, to ensure that the rate charged is not excessive. The rate may be less than the prevailing commercial rate.

One commenter suggested that we make it clear that the hourly rate for equipment rental be based on the actual cost of the equipment rental, but not exceed the cost a commercial mover would charge. We agree and have added language to §§ 24.301(b)(2)(ii) and 24.301(d)(2)(ii) to reflect this clarification.

Section 24.301(b)(2)(iii) and (c)(2)(iii) Moving Cost Finding

We received 20 comments on the proposed new method of moving personal property that would allow a qualified Agency staff person to estimate and determine the cost of a small uncomplicated personal property move up to $3,000, with the informed consent of the displaced person (NPRM § 24.301(b)(2)(iii).)

The comments varied from those who supported the proposal to those who opposed it. Others found it confusing and questioned the legality of our actions. Six commenters requested we increase the amount anywhere from $5,000 to $10,000 with one commenter suggesting the amount be set individually by each State. Four

commenters requested additional explanation as to what determines a ''qualified'' staff person and two commenters questioned the legality of such a move indicating that there is no statutory support for creating a different type of move.

One commenter suggested we tie the amount to a meaningful index to be evaluated periodically similar to the Fixed Residential Moving Costs Schedule and one commenter requested an explanation of how we arrived at $3,000.

This proposed change was intended to provide greater flexibility. However, because of the apparent misunderstanding of the purpose of the proposal, and the range of confusion and concern expressed, we have decided not to adopt this proposal.

Section 24.301(d) Moves From a Business, Farm or Nonprofit organization

One commenter brought to our attention that we had inadvertently left out actual cost moves as one of the options for business moves. We agree and thank the commenter for bringing it to our attention. We have added it back in the regulations as part of § 24.301(d)(2)(ii).

Two commenters requested additional information on hourly rates. We feel hourly rates are adequately explained in Actual Cost Self-Move.

Section 24.301(d)(2) Self-Move

One commenter objected to the elimination of ''qualified staff'' to estimate actual, reasonable moving expenses, especially in low-cost uncomplicated moves. While we recognize that it is sometimes difficult to receive an accurate estimate from a professional mover, the use of such an estimate, wherever possible, is valuable in establishing accuracy. We understand that occasionally it is necessary to consult trade associations representing specialty movers on a case-by-case basis. As a result, we did not make any changes to the rule.

Section 24.301(e) Personal Property Only

We received seven comments concerning the new paragraph on personal property, § 24.301(e). All were positive comments, however, four commenters requested additional explanation of what is covered by the new paragraph. The four commenters were concerned that, as proposed, § 24.301(e), personal property, would be limited to eligible expenses as described in § 24.301(g)(1) through (g)(7) and not be eligible for expenses in § 24.301(g)(8) through (g)(18). Thus, in effect eliminating the use of actual direct loss of tangible personal property, substitute personal property, searching expense, and other normally eligible business expenses.

As explained in the preamble to the NPRM, this provision was only intended to be used for moving personal property from property acquired for a Federal or federally-assisted project, where there was no need for a full relocation of a residence, business, farm or nonprofit organization. It was not intended to cover the eligible moving items in § 24.301(g)(8) through (g)(18). However, upon further consideration, eligibility for payment based on § 24.301(g)(18) Low Value/High Bulk is determined to be appropriate for inclusion in a personal property only move. As such, we have revised this section of the regulations to include § 24.301(g)(18) as an eligible actual moving expense as part of a nonresidential personal property only move.

It should also be noted that personal property only moves do not trigger eligibility for reestablishment expense payments, nor are they eligible for actual moving expense payments under § 24.301(g)(8) through (g)(17).

For moving options and examples of the types of personal property only relocations, see appendix A, § 24.301(e).

Section 24.301(g)(3) Eligible Moving Expenses

We received 19 comments regarding compliance with code requirements at the replacement site of a small business, farm or nonprofit organization. The commenters requested that we consider moving more criteria from § 24.304 to either §§ 24.301 or 24.303.

Nine of the commenters urged moving the provision providing payments for ''repairs or improvements to the replacement real property as required by Federal, State or local law, code or ordinance'' from the reestablishment expense § 24.304, which provides a reestablishment payment not to exceed $10,000, to § 24.303, where the reimbursement provision is not limited. Four commenters suggested that we should move additional criteria from § 24.304 to other sections that provide payment for actual, reasonable and necessary expenses.

We do not believe these suggestions are appropriate since we believe actual moving cost expenses for businesses should be limited to personal property items, while expenses for improving business real property should be reimbursed under reestablishment provisions of § 24.304. However, we note that three provisions which were formerly under reestablishment limitations, and which do not fall within the category of realty or personalty, have been moved to revised § 24.303, and can be considered for reimbursement without a defined dollar limitation.

Four commenters requested further clarification of the reference to modifications of personal property in § 24.301(g)(3). To clarify, the provision for displaced businesses, permitting modifications to the personal property within the replacement structure, provides payment for costs necessary to adapt personal property to the replacement site, and includes modifications mandated by Federal, State or local law, code, or ordinance. This includes circumstances when such property and equipment was ''grandfathered'' in the displacement structure, but changes or upgrading of the personalty is required by the Americans with Disabilities Act (ADA), the Occupational Safety and Health Administration (OSHA), other Federal laws, State or local law, code or ordinances at the replacement site. The modifications authorized for reimbursement must be clearly and directly associated with the reinstallation of the personal property and cannot be for general repairs or upgrading of equipment because of the personal choice of the business owner. Finally, the expenditures for authorized modifications must be reasonable and necessary.

Two commenters were concerned that we may have gone too far in moving some items from §§ 24.304 to 24.303, instead suggesting that more attention should be given to the level of service provided to businesses as proposed in § 24.205. Their concern is that it is questionable whether having no cost limits will always improve the percentage of successful business relocations. We considered their concern but have elected to make the proposed changes.

To further clarify § 24.301(g)(3) we have restructured the existing wording to distinguish residential and nonresidential items and added a reference to Federal, State or local law, code or ordinance.

Section 24.301(g)(12)

We received one comment recommending that § 24.301(g)(12) further define the limits of eligible fees for professional services. The commenter recommended that such eligible fees be limited to fees related to actually moving the personal property, and not include fees related to

conceptual building or site layouts intended for construction/reconstruction at the replacement property.

No changes have been made to this section. The professional services described in this section only include those that are directly related to moving personal property. Conceptual building or site layouts intended for construction/reconstruction at the replacement property are not considered eligible expenses under this section. Professional services related to these types of expenses may be considered eligible expenses under § 24.303(b), related nonresidential eligible expenses, if the Agency determines them to be actual, reasonable and necessary.

Section 24.301(g)(14) and (g)(14)(i)

We received 13 comments recommending that we clarify § 24.301(g)(14) relating to the actual direct loss of tangible personal property. In particular commenters expressed confusion about the meaning of the phrase ''value in place as is for continued use,'' with two comments suggesting that the regulation include a definition of an appraisal method to estimate this in-place value. Two comments requested clarification as to whether reconnect charges should be included with the estimated moving cost.

The term ''value in place as is for continued use'' means the depreciated value of the item as it is installed at the displacement site as of the date of the acquisition. We have modified Appendix A, § 24.301(g)(14) to clarify the correct value considerations to estimate in-place value. Generally, an item will be valued based on the current cost of the item as installed on the displacement site, and depreciated to reflect the current condition and estimated remaining useful life. Standard professional personal property appraisal methods would be acceptable. The in-place value at its ''as is'' condition may not include costs that reflect code or other requirements that were not actually 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.

The estimated moving cost for an item is also to be limited to the ''as is'' condition of the item at the displacement site. Therefore, estimated reconnect costs may not include costs to meet code or other requirements that would only be necessary to relocate the item to a replacement site. Since the item is claimed as a loss and is not to be relocated, allowable reconnect costs may only reflect an estimate of the cost that would be incurred to install the item as it currently exists at the displacement site. Also the moving cost estimate may not include reconnect costs for an item that is not operable or installed at the displacement site.

We believe that the provision proposed in the NPRM, as further explained in appendix A, is correct and consistent with this intent of the Uniform Act, to provide moving benefits that are actual, reasonable and necessary. Therefore, we have included this provision in the final rule.

Section 24.301(g)(17)

We received twelve comments concerning § 24.301(g)(17), which proposed raising the searching expense limit from $1,000 to $2,500. One commenter was not in favor of the increase. Other commenters wanted a greater increase on the allowable limit, no limitation, or urged that it be indexed. The remaining commenters expressed agreement with the increase and/or sought clarifications.

Two commenters asked whether the actual fees assessed for permits are payable under § 24.301(g)(17)(v). This provision includes the actual time and effort required to obtain permits and to attend zoning hearings, not the assessed fees for the permits.

Section 24.301(g)(17) also includes the time spent in negotiating the purchase of a replacement business site based on a reasonable salary or earnings rate. We have added paragraph (g)(17)(vi) to provide for these expenses. In addition, fees necessary in obtaining such permits are eligible costs but should be based on a pre-approved hourly rate that is reasonable and necessary.

Section 24.301(g)(18)

We received ten comments on § 24.301(g)(18) concerning low value/high bulk personal property. Most comments concerned basing the moving payments on the lesser of the amount received if sold, and the replacement cost at the new location of the business. Two commenters stated that a determination as to whether items should be moved should be a joint decision between business operator and the displacing Agency.

We have adopted the proposed language providing for payment of the lesser of the described amounts. We believe that the business owner should be permitted to make the decision on whether the material is to be moved to the new business location. However, the amount of the reimbursement in the move cost should be limited to that set forth in the final rule. Also, there was concern that the items listed in the last sentence of § 24.301(g)(18) are the only items that can be moved under this provision. However, that was not the intent. The items listed are only examples and there certainly can be other items that qualify under this provision. We have made a minor clarification to address this concern.

Section 24.301(h)(12)

We received six comments on § 24.301(h)(12). Two commenters objected to listing refundable security and utility deposits as ineligible moving expenses. While a good argument might be made for providing reimbursement for these expenses, the Uniform Act provides no authority for their reimbursement and we therefore cannot include them in the regulatory description of ''actual, reasonable moving expenses,'' without a legislative change. The fact that they are refundable would remove them from eligibility.

Section 24.302 Fixed Payment For Moving Expenses—Residential Moves

We received one comment on the proposed changes to § 24.302, Fixed Residential Moving Cost Schedule (FRMCS). The commenter requested that the amounts be updated annually or biannually. The same commenter requested that the amount be increased to be more in line with what a professional commercial mover would receive.

The purpose of the FRMCS is not to be in competition with professional commercial movers, but rather to offer an option to the commercial move. There are currently three methods to move personal property from a dwelling; a professional commercial mover, the fixed residential moving cost schedule, or an actual cost move based on receipted bills (*See* § 24.301(b).) The Fixed Residential Moving Cost Schedule is updated every three years. The language in the final rule will remain as proposed in the NPRM.

Section 24.303(b) Related Nonresidential Eligible Expenses

We received 7 comments requesting further clarification of eligible professional services mentioned in § 24.303(b). There was confusion as to whether professional services included attorneys' fees and other professional services relating to costs of negotiating to acquire property, closing costs, etc.

Generally, professional services performed prior to the purchase or lease of a replacement site, to determine it's suitability for the displaced person's

business operation, would be eligible for reimbursement; provided the Agency determines that they are actual, reasonable and necessary. Such professional services include, but are not limited to, soil testing, feasibility and marketing studies, and may be based on a pre-approved hourly rate. Fees and commissions directly related to the purchase or lease of the site, such as realtor commissions or finder's fees are ineligible for reimbursement.

Moving expenses for businesses sometimes include the cost of obtaining outside professional services made necessary only by the relocation. For example, attorneys' fees for representation before zoning authorities, or the cost of obtaining a soil analysis necessary in the preparation of a replacement site are directly related to relocation, and may be considered eligible expenses. By contrast, if these services are provided by regular employees of the displaced business, (such as staff engineers,) or professional contractors ordinarily used by the business for its everyday operations (such as legal counsel on retainer), these services are considered ordinary costs of doing business, and cannot be recognized among eligible moving expenses.

One commenter suggested we revise the wording in this section for clarity. We concur and have made some minor modifications.

Section 24.304 Reestablishment Expenses—Nonresidential Moves

Three comments suggested that § 24.303 be expanded to include costs necessary to satisfy requirements of Federal, State or local law, code or ordinance, including the Americans with Disabilities Act (ADA). In the NPRM we considered such costs to be among those listed as reestablishment expenses in § 24.304(a). As mentioned above, reestablishment expenses are, by statute, available to displaced farms, nonprofits, and small businesses, and are limited to $10,000.

In the NPRM we proposed increasing assistance to businesses and farms by changing some of the costs that had been considered to be reestablishment expenses, to actual reasonable moving expenses, which are not subject to the $10,000 cap. However, the proposed changes only included those costs that were unrelated to improvements to the replacement site. Costs related to improving the replacement real property were more clearly considered to be ''reestablishment expenses,'' and accordingly, were retained in § 24.304.

We continue to believe that this approach provides the most reasonable interpretation of the Uniform Act's requirements and, therefore, in the final rule we have left costs of repairs or improvements to the replacement real property, required by Federal, State or local law or codes, in § 24.304, as reestablishment expenses.

Section 24.304(a)(2)

We received one comment pointing out that § 24.304(a)(2), which concerns necessary modifications to the replacement property, seems to apply to existing buildings which are purchased or leased and must be renovated to some extent, and asked if this section applied to new construction.

The cost of constructing a new business building on the vacant replacement property is considered a capital expenditure and, as provided in § 24.304(b)(1), is generally ineligible for reimbursement as a reestablishment expense. In those rare instances when a business cannot relocate without construction of a replacement structure, a displacing Agency may request a waiver from the funding Agency of § 24.304(b)(1) under the provisions of 49 CFR part 24.7.

Subpart E—Replacement Housing Payments

Section 24.401(a) Eligibility

One commenter assumed that appendix A is not regulatory. This is not accurate. Appendix A is an integral part of the regulation, and, while it does not impose mandatory requirements, it does provide important additional guidance and information concerning the purpose and intent of a number of the provisions in part 24.

Section 24.401(e) Incidental Expenses

One commenter suggested that the payment of actual reasonable expenses incidental to the purchase of a replacement dwelling, described in § 24.401(e), would be simplified by providing a single payment for a displaced homeowner's actual closing costs up to a fixed amount, such as $3,000. While this suggestion might simplify the computation of this component of the replacement housing payment, it was not proposed for public comment in the NPRM and, therefore, it is outside the scope of this rulemaking. However, this suggestion could be addressed in a future rulemaking effort to update 49 CFR part 24.

Section 24.401(f) Rental Assistance for 180-day Homeowner

We received nine comments on the change in proposed in § 24.401(f) that would allow a rental assistance payment for a displaced 180-day homeowner (who elects to rent instead of purchase a replacement dwelling) to exceed $5,250 if the difference in the estimated market rent of the acquired dwelling and the rent for a comparable replacement dwelling support a higher figure. The NPRM also proposed that the rental supplemental payment not be allowed to exceed the amount the 180-day homeowner would have received as a housing (purchase) supplemental payment under § 24.401(b).

Three of the nine commenters suggested clarification as to the maximum amount of assistance to which the displaced 180-day homeowner is entitled. In response, we have made several minor changes to this section. The rental assistance payment cannot exceed the amount the 180-day homeowner would have received under § 24.401(b)(1) (see also § 24.401(c)) which describes how that amount is determined. The payment cannot include costs for expenses under §§ 24.401(b)(2) and (3) (also see §§ 24.401(d) and (e)) as it is not possible to calculate what the 180-day homeowner who rents would have received for increased mortgage interest costs and incidental costs if the person does not actually purchase a replacement dwelling.

Section 24.402(b)(2) Base Monthly Rental for Replacement Dwelling

We received 23 comments on the proposed change in § 24.402(b)(2) that reflects more closely the statutory requirement that only a low-income displaced person's income shall be taken into consideration when calculating rental assistance payments for a comparable replacement dwelling (42 U.S.C. 4624(a)). We have adopted this change in the final rule and it is more in line with the intent of the Uniform Act in that it assures consideration of income for low-income persons. The procedures in § 24.402(b)(2)(ii) will continue to use 30 percent of monthly gross household income, but only for displaced persons who qualify as low income under the U.S. Department of Housing and Urban Development's Annual Survey of Income Limits.[3]

Of the 23 comments, thirteen strongly favored the change; five expressed concern about increased administrative burden; three commenters requested that we drop the 30 percent altogether; one expressed concern that the change would deny replacement housing

[3] A link to the applicable URA Low Income Limit is available on FHWA's Web site at the following URL: *http://www.fhwa.dot.gov/realestate/ua/ualic.htm.*

assistance to tenants; and one commenter pointed out that there would be variations of income by county and State.

We have carefully considered each comment and for the following reasons, we have adopted the proposed change in the final rule. Regarding the increased administrative burden, we have requested several of our field offices to use the HUD Annual Survey of Income Limits and find it relatively user friendly. The initial attempt, as in any new procedure, was awkward, but additional tests became increasingly easier. The request to drop the 30 percent requirement completely would not be in compliance with the Uniform Act, as noted above. The concern by one commenter that the change would eliminate those who are most in need of the assistance is incorrect. We believe that we would be reaching out specifically to those who are truly in need of additional assistance. Those tenants that do not fall into the low-income category will be offered a comparable dwelling based on a rent-to-rent comparison.

Section 24.402(c) Downpayment Assistance Payment

We received eight comments on the proposed change in the criteria to receive a downpayment. Four commenters expressed support for the proposed change to the discussion of § 24.402(c) in appendix A. The proposal would remove language that indicated that an Agency should limit the amount of downpayment assistance to an amount ordinarily required for conventional loan financing. The proposed change allows a displaced person to apply the full amount of the rental replacement housing payment as a downpayment towards the purchase price of the replacement dwelling and related incidental expenses, regardless of any limitation on what is ordinarily required for conventional loan financing. No negative responses were received and the change has been adopted.

Two commenters stated that § 24.404(c)(1)(viii), (concerning possible differences between a rental assistance payment and a downpayment when providing housing of last resort) was inconsistent with the proposed change to appendix A, § 24.402(c), described above. We agree and, accordingly, have deleted § 24.404(c)(1)(viii).

Section 24.403(a) Determining Cost of Comparable Replacement Dwelling

The NPRM proposed that the homeowner's replacement housing payment be broadened to include any increase in real property taxes at the replacement dwelling during the first two years of ownership. We received 31 widely varying comments on this proposal. Nine comments opposed the proposed change. Six comments supported the proposal. Eleven comments supported the concept, but either disagreed with the details of the proposal, or also wanted to include any increases in such costs as insurance, utilities and homeowner's association fees. The remaining comments asked for clarification or expressed no opinion.

Comments that opposed the proposal mentioned such factors as; the addition of substantial administrative burdens, with relatively little benefit; the difficulty in factoring in various State or local provisions that grant property tax relief based on age, income, disability or other factors; and the view that an increase in real property taxes is not really part of the ''cost'' of the replacement dwelling for purposes of the Uniform Act.

We have carefully considered the comments and have decided not to adopt this proposed change. Our decision is based primarily on the general administrative burdens mentioned in the comments, as well as on the difficulty, suggested in the comments, of trying to develop a reasonably equitable and manageable system for providing short term compensation for property tax increases. We believe that it would be difficult for such a system to easily take into account the variable and inconsistent nature of such taxes resulting from provisions of State and local law that often provide reduced taxes in certain circumstances or to certain groups. Our decision was also influenced by the lack of any clear indication in the Uniform Act that real property taxes were intended to be included as part of the cost of a comparable dwelling.

Not including this proposal in the final rule does not affect the ability of any displacing Agency to compensate displaced homeowners for increased property taxes and similar costs if otherwise authorized to do so.

Section 24.403(a)(1)

The NPRM proposed removing the requirement that Agencies adjust the asking price of comparable replacement dwellings in computing a homeowner's replacement housing payment. That adjustment was considered burdensome for displacing Agencies, as well as for displaced homeowners by, in effect, forcing the homeowner to negotiate for a price lower than the asking price when purchasing a replacement dwelling.

We received 14 comments on this proposal. Ten supported it, and three asked for some further clarification. One commenter requested the right to continue adjusting the comparable. We have adopted the proposal without change. Accordingly, since the requirement to adjust asking prices has been deleted from the rule, there is no longer any authority or basis for Agencies operating under the Uniform Act to make such adjustments (which would reduce the amount of the homeowner's replacement housing payment). Displacing Agencies must now use the asking price of a comparable dwelling in computing the replacement housing payment.

Section 24.403(a)(6)

In the NPRM, we proposed to include language in § 24.2(a)(6)(viii) that would have allowed rent owed to an Agency to be taken into account when determining whether a comparable replacement dwelling is within a displaced person's financial means. Because we received a comment objecting to similar language in § 24.2(a)(6)(viii), we have decided to remove this language from both 24.403(a)(6) and § 24.2(a)(6)(viii).

Subpart F—Mobile Homes

Sections 24.501 through 24.502

We received seven comments on Subpart F, Mobile Homes, concerning clarifications of §§ 24.501 and 24.502. Four commenters identified incorrect wording in §§ 24.502(a)(1)(iii) and 24.502(b)(2). The error concerned the replacement housing payment eligibility computation for an eligible homeowner that is displaced from his/her mobile home. We agree that the wording did not accurately transpose in formatting the NPRM and the error has been corrected in §§ 24.502(a)(1)(iii) and 24.502(b)(2).

Two commenters suggested a simplification of the terms describing a displaced homeowners application of a rental assistance payment and concerning a homeowner who is not displaced from their mobile home. After reviewing these provisions we have determined that they are clear as proposed in the NPRM; however, to further clarify the comparable replacement home site we have moved the existing §§ 24.502(d) to 24.502(b)(3).

Distributions Tables

For ease of reference, distribution and derivation tables are provided for the current sections and the proposed sections as follows:

DERIVATION TABLE

New section	Old section
24.1	24.1.
24.2(a)(1)	24.2 Agency.
24.2(a)(2)	24.2 Alien not lawfully present in the United States.
24.2(a)(3)	24.2 Appraisal.
24.2(a)(4)	24.2 Business.
24.2(a)(5)	24.2 Citizen.
24.2(a)(6)	24.2 Comparable replacement dwelling.
24.2(a)(6)(i) through (vii).	24.2 Comparable replacement dwelling (1) through (7).
24.2(a)(6)(viii)(A) through (C).	24.2 Comparable replacement dwelling (8)(i) through (iii).
24.2(a)(6)(ix)	None.
24.2(a)(7)	24.2 Contribute materially.
24.2(a)(8)	24.2 Decent, safe, and sanitary dwelling.
24.2(a)(9)	24.2 Displaced person.
24.2(a)(9)(ii)(M)	None.
24.2(a)(10)	24.2 Dwelling.
24.2(a)(11)	None.
24.2(a)(12)	24.2 Farm operation.
24.2(a)(13)	24.2 Federal financial assistance.
24.2(a)(14)	None.
24.2(a)(15)	24.2 Initiation of negotiations.
24.2(a)(15)(iv)	None.
24.2(a)(16)	24.2 Lead Agency.
24.2(a)(17)	None.
24.2(a)(18)	24.2 Mortgage.
24.2(a)(19)	24.2 Nonprofit organization.
24.2(a)(20)	24.2 Owner of a dwelling.
24.2(a)(21)	24.2 Person.
24.2(a)(22)	24.2 Program or project.
24.2(a)(23)	24.2 Salvage value.
24.2(a)(24)	24.2 Small business.
24.2(a)(25)	24.2 State.
24.2(a)(26)	24.2 Tenant.
24.2(a)(27)	24.2 Uneconomical remnant.
24.2(a)(28)	24.2 Uniform Act.
24.2(a)(29)	24.2 Unlawful occupancy.
24.2(a)(30)	24.2 Utility costs.
24.2(a)(31)	24.2 Utility facility.
24.2(a)(32)	24.2 Utility relocation.
24.2(a)(33)	None.
24.2(b)	None.
24.8(m)	None.
24.8(n)	None.
24.8(o)	None.
24.101(a) and (b)	24.101(a).
24.101(b)(1)	24.101(a)(1).
24.101(b)(1)(i)	24.101(a)(1)(i).
24.101(b)(1)(ii)	24.101(a)(1)(ii).
24.101(b)(1)(iii)	24.101(a)(1)(iii).
24.101(b)(1)(iv)	24.101(a)(1)(iv).
24.101(b)(2)	24.101(a)(2).
24.101(b)(2)(i)	24.101(a)(2)(i).
24.101(b)(2)(ii)	24.101(a)(2)(ii).
24.101(b)(3)	24.101(a)(3).
24.101(b)(4)	24.101(a)(4).
24.101(b)(5)	24.101(a)(5).
24.101(c)	24.101(b).
24.101(d)	24.101(c).
24.102(c)(1)	24.102(c).
24.102(n)	24.103(e).
24.103(a)(1)	24.103(a)(2).
24.103(a)(2)	24.103(a)(3).
24.103(a)(3)	24.103(a)(4).
24.103(a)(4)	24.103(a)(5).
24.103(a)(5)	24.103(a)(6).
24.203(a)(2) through (5).	24.203(a)(4).
24.203(d)	24.2 Notice of intent to acquire.
24.205(a)(4)	None.
24.205(a)(5)	24.205(a)(4).
24.205(c)(2)(i)(A) through (F).	None.
24.205(c)(2)(ii)(A)	24.205(c)(2)(ii).
24.205(c)(2)(ii)(B)	24.205(c)(2)(ii)(A).
24.205(c)(2)(ii)(C)	24.205(c)(2)(ii)(B).
24.205(c)(2)(ii)(D)	24.205(c)(2)(ii)(C).
24.205(c)(2)(ii)(E)	24.205(c)(2)(ii)(D).
24.205(c)(2)(ii)(F)	None.
None	24.205(c)(2)(vi).
24.205(e)	24.205(c)(2)(iv).
24.207(e)	24.207(g).
24.207(f) and (g)	None.
24.301(a)	24.303(a) and 24.502(b).
24.301(a)(1) and (2)	24.502(a).
24.301(b)(1) and (2)	24.301 Intro. para.
24.301(b)(1)	24.303(a).
24.301(b)(2)(i)	24.302 First sentence.
24.301(b)(3)	None.
24.301(c)	None.
24.301(d)	24.303(a).
24.301(d)(1) and (2)	24.303 (c).
24.301(f)	24.303(e).
24.301(g)(1)	24.303(a)(1) and 24.301(a).
24.301(g)(2)	24.301(b) and 24.303(a)(2).
24.301(g)(3)	24.303(a)(3).
24.301(g)(4)	24.303(a)(4) and 24.301(d).
24.301(g)(5)	24.303(a)(5) and 24.301(e).
24.301(g)(6)	24.303(a)(7) and 24.301(f).
24.301(g)(7)	24.303(a)(14) and 24.301(g).
24.301(g)(8)	24.502(b)(1).
24.301(g)(9)	24.502(b)(2).
24.301(g)(10)	24.502(b)(3).
24.301(g)(11)	24.303(a)(6).
24.301(g)(12)	24.303(a)(8).
24.301(g)(12)(i) through (iii).	24.303(a)(8)(i) through (iii).
24.301(g)(13) through (17).	24.303(a)(9) through (13)(iv).
24.301(g)(17)(v) and (vi).	None.
24.301(g)(18)	None.
24.301(h)(1) through (11).	24.305(a) through (k).
24.301(i)	24.303(b).
24.301(j)	24.303(d).
24.303 Intro. para.	23.303 Intro. para.
24.303(a)	24.304(a)(4).
24.303(b)	24.304(a)(7) and (a)(9).
24.303(c)	24.304(a)(11).
24.304(a)(4)	24.304(a)(5).
24.304(a)(5)	24.304(a)(8).
24.304(a)(6)	24.304(a)(10).
24.304(a)(7)	24.304(a)(12).
24.305	24.306.
24.305(b)(1) through (4).	24.306 (b)(1) through (4).
24.305(c) through (e)	24.306 (c) through (e).
24.306	24.307.
24.401(c)(2)	24.401(c)(4).
24.403(a)(5)	24.207(e).
24.403(a)(6)	24.207(f).
24.403(a)(7)	24.401(c)(2).
24.403(g)	24.401(c)(3).
None	24.404(c)(1)(viii).
24.501(a)	24.501 Intro. para.
24.501(b)	24.505(e).
24.502 Heading	24.503.
24.502(a)	24.503(a)(1) and 505(c).
24.502(a)(1)	24.503(a)(1) and 505(c).
24.502(a)(2) and (3)	24.503(a)(2) and (3).
24.502(b)	24.503(b).
24.502(b)(1)	None.
24.502(b)(2)	24.503(a)(3) and 503(b).
24.502(c)	24.505(a).
24.502(d)	24.503(a)(3)(iii) and 24.505(b)(1).
24.502(e)	24.505(b)(2).
24.503	24.504.

DISTRIBUTION TABLE

Old section	New section
Subpart A	Subpart A
24.1	24.1 Text unchanged.
24.2 Heading	24.2 Heading revised.
None	24.2(a) Introductory para. added.
Agency	24.2(a)(1) Revised.
(1) Acquiring agency	24.2(a)(1)(i) Redesignated and revised.
(2) Displacing agency	24.2(a)(1)(ii) Redesignated and text unchanged.
(3) Federal agency	24.2(a)(1)(iii) Redesignated and text unchanged.
(4) State agency	24.2(a)(1)(iv) Redesignated and text unchanged.
Alien not lawfully present in the US.	24.2(a)(2) Redesignated.
Appraisal	24.2(a)(2)(i) Redesignated and revised.
	24.2(a)(2)(ii) Redesignated and text unchanged.
	24.2(a)(3) Redesignated and text unchanged.
Business	24.2(a)(4) Redesignated.

DISTRIBUTION TABLE—Continued

Old section	New section
(1) and (2)	24.2(a)(4)(i) and (ii) Redesignated and revised.
(2) and (3)	24.2(a)(4)(iii) and (iv) Redesignated and text unchanged.
Citizen	24.2(a)(5) Redesignated and text unchanged.
Comparable replacement dwelling.	24.2(a)(6) Redesignated and text unchanged.
(1) and (2)	24.2(a)(6)(i) and (ii) Redesignated and revised.
(3) through (6)	24.2(a)(6)(iii) through (vi) Redesignated and text unchanged.
(7) and (8)	24.2(a)(6)(vii) and (viii) Redesignated and revised.
(8)(i) through (iii)	24.2(a)(6)(viii) (A) through (C) Redesignated and text unchanged.
None	24.2(a)(6)(ix) Added.
Contribute materially	24.2(a)(7) Redesignated and text unchanged.
Decent, safe, and sanitary dwelling.	24.2(a)(8) Redesignated and revised.
(1) through (3)	24.2(a)(8)(i) through (iii) Redesignated and text unchanged.
(4) Sentence one	24.2(a)(8)(iv) Redesignated and revised.
(4) Remaining sentences.	24.2(a)(8)(iv) Redesignated and text unchanged.
(5)	24.2(a)(8)(vi) Redesignated and revised.
(6)	24.2(a)(8)(vii) Redesignated and revised.
Displaced Person	24.2(a)(9) Redesignated.
Displaced person (1)	24.2(a)(9)(i) Redesignated and revised.
Displaced person (1)(i).	24.2 (a)(9)(i)(A) Redesignated and revised.
Displaced person (1)(ii).	4.2 (a)(9)(i)(B) Redesignated and text unchanged.
Displaced person (1)(iii).	24.2 (a)(9)(i)(C) Redesignated and text unchanged.
Persons not displaced (2).	24.2 (a)(9)(ii) Redesignated and text unchanged.
Persons not displaced (2)(i) through (iii).	24.2 (a)(9)(ii) (A) through (C) Redesignated and text unchanged.
Persons not displaced (2)(iv) through (viii).	24.2 (a)(9)(ii)(D) through (H) Redesignated and revised.
Displaced person (2)(ix).	24.2(a)(9)(ii)(I) Redesignated and text unchanged.
Displaced person (2)(x) and (xi).	24.2(a)(9)(ii)(J) and (K) Redesignated and revised.
Displaced person (2)(xii).	24.2(a)(9)(ii)(L) Redesignated and revised.
None	24.2(a)(9)(ii)(M) Added.
Dwelling	24.2(a)(10) Redesignated and text unchanged.
None	24.2(a)(11) Added.
Farm operation	24.2(a)(12) Redesignated and text unchanged.
Federal financial assistance.	24.2(a)(13) Redesignated and text unchanged.
None	24.2(a)(14) Added.
Initiation of negotiations Intro. para..	24.2(a)(15) Intro. para. Redesignated and text unchanged.
(1) and (2)	24.2(a)(15)(i) and (ii) Redesignated and text unchanged.
(3)	24.2(a)(15)(iii) Redesignated and revised.
None	24.2(a)(15)(iv) Added.
Lead agency	24.2(a)(16) Redesignated and text unchanged.
None	24.2(a)(17) Added.
Mortgage	24.2(a)(18) Redesignated and text unchanged.
Nonprofit organization	24.2(a)(19) Redesignated and text unchanged.
Notice of intent to acquire or notice. of eligibility for relocation assistance.	24.203(d) Revised.
Owner of a dwelling	24.2(a)(20) Redesignated and revised.
(1), (2) and (4)	24.2(a)(20)(i), (ii) and (iv) Redesignated and text unchanged.
(3)	24.2(a)(20)(iii) Redesignated and revised.
Person	24.2(a)(21) Redesignated.
Program or project	24.2(a)(22) Redesignated.
Salvage value	24.2(a)(23) Revised.
Small business	24.2(a)(24) Redesignated.
State	24.2(a)(25) Redesignated.
Tenant	24.2(a)(26) Redesignated.
Uneconomic remnant	24.2(a)(27) Redesignated.
Uniform Act	24.2(a)(28) Revised.
Unlawful occupancy	24.2(a)(29) Revised.
Utility costs	24.2(a)(30) Redesignated and revised.
Utility facility	24.2(a)(31) Redesignated.
Utility relocation	24.2(a)(32) Redesignated.
None	24.2(a)(33) Added.
None	24.2(b) Added.
24.3	24.3 Text unchanged.
24.4(a)(1) through (3)	24.4(a)(1) through (3) Text unchanged.
24.4(b) and (c)	24.4(b) and (c) Text unchanged.
24.5 through 24.7	24.5 through 24.7 Text unchanged.
24.8(a) through (g)	24.8(a) through (g) Text unchanged.
24.8(h)	24.8(h) Revised.
24.8(i)	24.8(i) Revised.
24.8(j) through (l)	24.8(j) through (l) Text unchanged.
24.8(m)	24.8(m) Removed.
24.8(n)	24.8(m) Redesignated.
None	24.8(n) Added.
None	24.8(o) Added
24.9(a) and (b)	24.9(a) and (b) Text unchanged.
24.9(c)	24.9(c) Revised.
24.10(a) through (f)	24.10(a) through (f) Text unchanged.
24.10(g)	24.10(g) Revised.
24.10(h)	24.10(h) Text unchanged.
Subpart B	Subpart B
24.101 Heading.	24.101 Heading Text unchanged.
24.101(a)	24.101(a) Revised.
24.101(a) Second phrase..	24.101(b) Redesignated and revised.
24.101(a)(1)	24.101(b)(1) Redesignated and revised.
24.101(a)(1)(i)	24.101(b)(1)(i) Redesignated and revised.
24.101(a)(1)(ii) and (iii).	24.101(b)(1)(ii) and (iii) Redesignated and revised.
24.101(a)(1)(iv)	24.101(b)(1)(iv) Redesignated and revised.
24.101(a)(2)	24.101(b)(2) Redesignated and text unchanged.
24.101(a)(2)(i)	24.101(b)(2)(i) Redesignated and revised.
24.101(a)(2)(ii)	24.101(b)(2)(ii) Redesignated and revised.
24.101(a)(3) and (4)	24.101(b)(3) and (4) Redesignated and text unchanged.
24.101(a)(5)	24.101(b)(5) Redesignated and revised.

DISTRIBUTION TABLE—Continued

Old section	New section
24.101(b)	24.101(c) Redesignated and revised.
24.101(c)	24.101(d) Redesignated and text unchanged.
24.102(a)	24.102(a) Text unchanged.
24.102(b)	24.102(b) Revised.
24.102(c) Intro. para.	24.102(c) Intro. para. Text unchanged.
24.102(c)(1)	24.102(c)(1) Revised.
24.102(c)(2)	24.102(c)(2)(i) and (ii) redesignated and revised.
None	24.102(c)(2)(ii)(A)
24.102(d)	24.102(d) Revised.
24.102(e)	24.102(e) Text unchanged.
24.102(f)	24.102(f) Revised.
24.102(g) and (h)	24.102(g) and (h) Text unchanged.
24.102(i) through (k)	24.102(i) through (k) Revised.
24.102 (l)	24.102 (l) Text unchanged.
24.102(m)	24.102(m) Revised.
None	4.102(n) Added.
24.103 Heading	24.103 Heading. Text unchanged.
24.103(a)	24.103(a) Revised.
24.103(a)(1)	Appendix 24.103(a).
24.103(a)(2)	24.103(a)(1) Redesignated and revised.
24.103(a)(3)	24.103(a)(2) Redesignated and revised.
24.103(a)(4) through (6).	24.103(a)(3) through (5) Redesignated. and text unchanged.
24.103(b) and (c)	24.103(b) and (c) Revised.
24.103(d) Heading and (d)(1).	24.103(d) Heading and (d)(1)Revised.
24.103(d)(2)	24.103(d)(2) Revised.
24.103(e)	24.102(n) Redesignated and revised.
24.104 Introductory para..	24.104 Introductory para. Text unchanged.
24.104(a), (b) and (c)	24.104(a), (b) and (c) Revised.
24.105(a) and (b)	24.105(a) and (b) Text unchanged.
24.105(c)	24.105(c) Revised.
24.105(d) Introductory para..	24.105(d) Introductory para. Revised.
24.105(d)(1) through D24.105(e).	24.105(d)(1) through 24.105(e) Text unchanged.
24.106(a) and (b)	24.106(a) and (b) Text unchanged.
24.107 through 24.108.	24.107 through 24.108 Text unchanged.
Subpart C	Subpart C
24.201	24.201 Text unchanged.
24.202	24.202 Revised.
24.203 (a) and (a)(1) and (2).	24.203(a)(1) and (2) Text unchanged.
24.203(a)(3)	24.203(a)(3) Text unchanged.
24.203(a)(4)	24.203(a)(5) Redesignated and revised
24.203(b)	24.203(b) Revised.
24.203(c) and (c)(1)	24.203(c) and (c)(1) Text unchanged.
24.203(c)(2)	24.203(c)(2) Revised.
24.203(c)(3)	24.203(c)(3) Text unchanged.
24.203(c)(4)	Removed.
24.203(c)(5)	24.203(c)(4) Redesignated and text unchanged.
None	24.203(d) Added.
24.204(a)	24.204(a) Revised.
24.204(a)(1) through (b) Intro. para..	24.204(a)(1) through (b) Intro. para. Text unchanged.
24.204(b)(1)	24.204(b)(1) Revised.
24.204(b)(2) and (3)	24.204(b)(2) and (3) Text unchanged.
24.204(c) Intro. para.	24.204(c) Intro. para. Revised.
24.204(c)(1) through (3).	24.204(c)(1) through (3) Text unchanged.
24.205(a)	24.205(a) Revised.
24.205(a)(1) and (2)	24.205(a)(1) and (2) Revised.
24.205(a)(3)	24.205(a)(3) Text unchanged.
None	24.205(a)(4) Added.
24.205(a)(4)	24.205(a)(5) Redesignated and text unchanged.
24.205(b) through 24.205(c)(2).	24.205(b) through 24.205(c)(2) Text unchanged.
24.205(c)(2)(i)	24.205(c)(2)(i) Revised.
None	24.205(c)(2)(i)(A) through (F) Added.
24.205(c)(2)(ii)	24.205(c)(2)(ii) Added 24.205(c)(2)(ii)(A) Redesignated and text unchanged.
24.205(c)(2)(ii)(A) and (B).	24.205(c)(2)(ii)(B) and (C) Redesignated and text unchanged.
24.205(c)(2)(ii)(C) and (D).	24.205(c)(2)(ii)(D) and (E) Redesignated and revised.
None	24.205(c)(2)(ii)(F) Added.
24.205(c)(2)(iii)	24.205(c)(2)(iii) Revised.
24.205(c)(2)(iv) and (v).	24.205(c)(2)(iv) and (v) Text unchanged.
24.205(c)(2)(vi)	24.205(e) Redesignated and text unchanged.
24.205(d)	24.205(d) Text unchanged.
24.206	24.206 Text unchanged.
24.207(a) through (d)(1).	24.207(a) through (d)(1) Text unchanged.
24.207(d)(2)	24.207(d)(2) Revised.
24.207(e)	24.403(a)(5) Redesignated.
24.207(f)	24.403(a)(6) Redesignated
24.207(g)	24.207(e) Redesignated and text unchanged.
None	24.207(f) and (g) Added.
24.208 Heading.	24.208 Heading Text unchanged.
24.208(a) through (f) Intro. para..	24.208(a) through (f) Intro. para. Text unchanged.
24.208(f)(1)	24.208(f)(1) Revised.
24.208(f)(2) through 24.209.	24.208(f)(2) through 24.209 Text unchanged.
Subpart D	Subpart D
24.301 Heading	24.301 Heading Revised.
24.301 Introductory paragraph.	24.301(a) Redesignated and revised.
None	24.301(a) Added.
24.301(a) and (b)	24.301(g)(1) and (g)(2) Redesignated and text unchanged.
None	24.301(b) Added.
24.301(c)	24.301(g)(3) Redesignated.
None	24.301(c) Added.
24.301(d) through (f)	24.301(g)(4) through (g)(6) Redesignated.
None	24.301(d) through (f) Added.
24.301(g)	24.301(g)(7) Revised.
None	24.301(g)(18) Added.
None	24.301(h) through (j) Added.
24.302	24.302 Revised.
24.303	24.303 Revised.
24.303(a) through (a)(14).	24.301(g)(1) through (g)(17) Redesignated and revised.
24.303(b) through (b)(3).	24.301(i)(1) and (2) Redesignated and revised.
24.303(c)	24.301(d) Redesignated and revised.
24.303(d)	24.301(j) Redesignated and text unchanged.
24.303(e) through (e)(2).	24.301(f) through (f)(2) Redesignated and text unchanged.
24.304 Heading	24.304 Heading Text unchanged.
24.304 Introductory para..	24.304 Introductory para. Revised.
24.304(a) through (a)(3).	24.304(a) through (a)(3) Text unchanged.
24.304(a)(4)	24.303(a) Redesignated.
24.304(a)(5)	24.304(a)(4) Redesignated.

DISTRIBUTION TABLE—Continued

Old section	New section
24.304(a)(6)	24.301(g)(11) Redesignated.
24.304(a)(7)	24.303(b) Redesignated and revised.
24.304(a)(8)	24.304(a)(5) Redesignated.
24.304(a)(9)	24.303(b) Redesignated and revised.
24.304(a)(10)	24.304(a)(6) Redesignated.
24.304(a)(11)	24.303(c) Redesignated and revised.
24.304(a)(12)	24.304(a)(7) Redesignated.
24.304(b)(1) through (3).	24.304(b)(1) through (3) Text unchanged.
24.304(b)(4)	24.304(b)(4) Revised.
24.305 section heading.	24.305 Removed.
24.305(a) through (k)	24.301(h)(1) through (h)(11) Redesignated and revised.
None	24.305(h)(12) Added.
24.306 section heading.	24.305 Redesignated.
24.306(a)	24.305(a) Redesignated and revised.
24.306(a)(1) through (a)(5).	24.305(a)(1) through (a)(5) Redesignated and text unchanged.
24.306(a)(6)	24.305(a)(6) Revised.
24.306(b)	24.305(b) Revised.
24.306(c)	24.305(c) Revised.
24.306(c)(1) through (d).	24.305(c)(1) through (d) Redesignated.
24.306(e)	24.305(e) Revised.
24.307 section heading.	24.306 Redesignated.
24.307(a) through (b)	24.306(a) through (b) Redesignated.
24.307(c)	24.306(c) Revised.
Subpart E	Subpart E
24.401 through 24.40l(b).	24.401 through 24.401(b) Text unchanged.
24.401(c)	24.401(c) Text unchanged.
24.401(c)(1)	24.401(c)(1) Revised.
24.401(c)(1)(i) and (ii)	24.401(c)(1)(i) and (ii) Text unchanged.
24.401(c)(2)	24.403(a)(7) Redesignated and revised.
24.401(c)(3)	24.403(g) Redesignated and text unchanged.
24.401(c)(4)	24.401(c)(2) Redesignated and text unchanged.
24.401(c)(4)(i)	24.401(c)(2)(i) Redesignated and text unchanged.
24.401(c)(4)(ii) and (iii).	24.401(c)(2)(ii) and (iii) Redesignated and revised.
24.401(c)(4)(iv)	24.401(c)(2)(iv) Redesignated and text unchanged.

DISTRIBUTION TABLE—Continued

Old section	New section
24.401(d)	24.401(d) Text unchanged.
24.401(d)(1)	24.401(d) Revised.
24.401(d)(2) through 24.401(e)(3).	24.401(d)(2) through 24.401(e)(3) Text unchanged.
24.401(e)(4)	24.401(e)(4) Revised.
24.401(e)(5) through (e)(9).	24.401(e)(5) through (e)(9) Text unchanged.
24.401(f)	24.401(f) Revised.
24.402(a) through (b)(2)(i).	24.402(a) through (b)(2)(i) Text unchanged.
24.402(b)(2)(ii)	24.402(b)(2)(ii) Revised.
24.402(b)(2)(iii) and (b)(3).	24.402(b)(2)(iii) and (b)(3) Text unchanged.
24.402(c)(1)	24.402(c)(1) Revised.
24.402(c)(2)	24.402(c)(2) Text unchanged.
24.403 Heading	24.403 Text unchanged.
24.403(a) and (a)(1)	24.403(a) and (a)(1) Revised.
24.403(a)(2) through (4).	24.403(a)(2) through (4) Text unchanged.
None	24.403(a)(5) through (7) Added.
24.403(b)	24.403(b) Revised.
24.403(c) through (f(1).	24.403(c) through (f)(1) Text unchanged.
24.403(f)(2)	24.403(f)(2) Revised.
24.403(f)(3)	24.403(f)(3) Text unchanged.
None	24.403(g) Added.
24.404(a) through 404(a)(2)(ii).	24.404(a) through 404(a)(2)(ii) Text unchanged.
24.404(a)(2)(iii)	24.404(a)(2)(iii) Revised.
24.404(b) through 404(c)(1)(vi).	24.404(b) through 404(c)(1)(vi) Text unchanged.
24.404(b) through 404(c)(1)(i).	24.404(b) through 404(c)(1)(i) Revised.
24.404(c)(1)(ii) through (vi).	24.404(c)(1)(ii) through (vi) text unchanged.
24.404(c)(1)(vii)	24.404(c)(1)(vii) Revised.
24.404(c)(1)(viii).	Removed.
24.404(c)(2) and (3)	24.404(c)(2) and (3) Revised.
Subpart F	Subpart F
24.501 Heading	24.501 Heading Text unchanged.
24.501 Intro. para.	24.501(a) Redesignated and revised.
None	24.501(b) Added.
24.502(a)	24.301 (a)(1) and (2)
24.502(b) through (b)(3).	24.301(g)(8) through (g)(10) Redesignated and revised.
24.503 section heading.	24.502 Redesignated and revised.

DISTRIBUTION TABLE—Continued

Old section	New section
24.503(a)	24.502(a) Redesignated and revised.
24.503(a)(1)	24.502(a)(1) Redesignated and revised.
None	24.502(a)(1)(i) through (iii) Added.
24.503(a)(2)	24.502(a)(2) Redesignated and text unchanged.
24.503(a)(3)	24.502(a)(3) Redesignated and revised.
24.503(a)(3)(i) through (iv).	24.502(a)(3)(i) through (iv) Redesignated and text unchanged.
None	24.502(b)(1) Added.
24.503(b)	24.502(b)(2) Redesignated and revised.
None	24.502(b)(3) Added.
None	24.502 (c) through (e) Added.
24.504 Heading	24.503 Heading Redesignated and text unchanged.
24.504 Intro. para.	24.503 Intro. para. Redesignated.
24.504(a) and (b)	24.503(a) and (b) Redesignated and text unchanged.
24.504(c)	24.503(c) Redesignated and revised.
24.505(a) through (e)	24.505(a) through (e) Removed.
24.505(e)	24.501(b) Redesignated.
24.601	24.601 Text unchanged.
24.602	24.602 Revised.
24.603	24.603 Text unchanged.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866, nor is it significant within the meaning of Department of Transportation regulatory policies and procedures.

This action updates and streamlines the Uniform Act regulation and does not include any new initiatives. We have made only nominal adjustments to enhance services and payments to persons displaced by Federal and federally-assisted programs and projects. The costs of the increased benefits will continue to be funded through Federal and federally-assisted project funds. These changes will assist the 18 Federal Agencies that acquire real property or displace persons, and several of these Agencies provided input in developing this final rule.

This final rule will not adversely affect, in a material way, any sector of the economy. This action will assist Agencies in developing their programs that acquire real property or displace persons by providing increased assistance, especially for businesses, farms and nonprofit organizations. None of the changes will materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 60l-612) the FHWA has evaluated the effects of this action on small entities and has determined that the final rule will not have a significant economic impact on a substantial number of small entities.

This action updates the government-wide regulation that provides assistance for persons, including small businesses, displaced by Federal and federally-assisted programs or projects. One of the reasons for the update is to increase assistance for displaced small businesses. We anticipate this final rule will have a positive impact on those relatively few small businesses that are affected by such programs or projects. Financial impacts on local governments are mitigated by the fact that any increased costs will accrue only on federally-assisted programs, which will include participation of Federal funds. For these reasons, the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This final rule will not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). The updates are applicable only on Federal and federally-assisted programs. This final rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $120.7 million or more in any one year (2 U.S.C. 1532).

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA has determined that this action will not have a substantial direct effect or sufficient federalism implications on States that will limit the policymaking discretion of the States. The FHWA has also determined that this action will not preempt any State law, or State regulation, or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and has determined that this final rule will not have any effect on the quality of the environment.

Executive Order 12630 (Taking of Private Property)

This action will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Government Actions and Interface with Constitutionally Protected Property Rights.

Executive Order 12988 (Civil Justice Reform)

This final rule meets applicable standards in §§ 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this final rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This action does not involve an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this final rule under Executive Order 13175, dated November 6, 2000, and believes that this action will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

We have analyzed this final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 24

Real property acquisition, Relocation assistance, Reporting and recordkeeping requirements and Transportation.

Issued on: December 27, 2004.

Mary E. Peters,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA amends title 49, Code of Federal Regulations, Part 24, as set forth below:

PART 24—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY-ASSISTED PROGRAMS

Subpart A—General

Sec.

Subpart B—Real Property Acquisition

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

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 33⅓ 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 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 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).)

§ 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).[1] (*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).[2]

(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 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.*).

§ 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

[1] 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.*

[2] 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.

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 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.

§ 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 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.

§ 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 [3] 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.

§ 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:

(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, and actual reasonable reestablishment 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

[3] 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.

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 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 payment for an eligible 180-day homeowner-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 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 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.

§ 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 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 [4]. 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,

(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).)

(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 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 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

[4] 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.*

§ 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.)

§ 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, 400 Seventh St, SW., 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.

§ 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 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 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)(1) through (5) 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 market value for residential use does not mean the Agency must have the property appraised. Any reasonable method for arriving at the 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.

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), Room 3221, 400 7th Street SW., 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).

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[FR Doc. 05–6 Filed 1–3–05; 8:45 am]
BILLING CODE 4910–22–C

FEDERAL FISCAL YEAR ENDING SEPT. 30, 20____
REPORTING AGENCY: _____
STATE: _____
CITY/COUNTY (For Local Government Agencies): _____
FEDERAL FUNDING AGENCY: _____

PART A. REAL PROPERTY ACQUISITION UNDER THE UNIFORM ACT	
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)	
PART B. RESIDENTIAL RELOCATION UNDER THE UNIFORM ACT	
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)	
PART C. NONRESIDENTIAL RELOCATION UNDER THE UNIFORM ACT	
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)	
PART D. RELOCATION APPEALS UNDER THE UNIFORM ACT	
15) Total Number of Relocation Appeals (Residential & NonResidential)	

23 C.F.R. Part 710

Note: These Regulations and Statutes were printed in June 2001. You should check our website: http://www.fhwa.dot.gov/legsregs/legislat.html for the most current copy of the regulations and statutes.

DEPARTMENT OF TRANSPORTATION [4910-22-P]
Federal Highway Administration
23 CFR Parts 130, 480, 620, 630, 635, 645, 710, 712, and 713
[FHWA Docket No. FHWA-98-4315]
RIN 2125-AE44
Right-of-Way Program Administration

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This document amends the right-of-way regulations for federally assisted transportation programs administered under title 23, United States Code. The FHWA clarifies and reduces Federal regulatory requirements and places primary responsibility for a number of approval actions at the State level. Conforming revisions are made to several regulatory parts to remove outdated, redundant, and unnecessary content. Also, the regulations are arranged to follow the same sequence as the development and implementation of a Federal-aid project to assist the public and State transportation departments (STDs) in locating regulations applicable to a specific point of interest.

DATES: The final rule is effective January 20, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. James E. Ware, (202) 366-2019, Office of Real Estate Services, HEPR-20, or Mr. Reid Alsop, Office of the Chief Counsel, HCC-31, (202) 366-1371. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:
Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL-401, by using the universal resource locator (URL): **http://dms.dot.gov.** It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded by using a computer modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the Office of the Federal Register's home page at: **http://www.nara.gov/fedreg** and the Government Printing Office's webpage at: **http://www.access.gpo.gov/nara.**

Background

The FHWA began the process of revising its regulations with an advance notice of proposed rulemaking (ANPRM) published on November 6, 1995 (60 FR 56004). As a first step in the comprehensive revision of the regulations, the FHWA removed obsolete and redundant parts by publishing an interim final rule on April 25, 1996, at 61 FR 18246. This action removed from title 23, CFR, all of parts 720 and 740, and portions of parts 710 and 712. Comments received in response to the ANPRM also identified the need for a comprehensive rewrite of the existing real estate program regulations.

An NPRM, published at 63 FR 71238, on December 24, 1998, proposed to revise the regulations and arrange them to follow the same sequence as the development and implementation of a Federal-aid project and thereby assist the public and State transportation departments in locating regulations applicable to a specific point of interest. The NPRM also proposed to clarify the State-Federal partnership.

The FHWA provides funds to the States and other organizations to reimburse them for the costs they have incurred in constructing highways and other transportation related projects. Regulations dealing with reimbursement and management of right-of-way (ROW) are contained in 23 CFR parts 710 through 713.

Discussion of Comments

ANPRM of November 6, 1995

Twenty comments were received: 2 from individuals, 2 from private groups or organizations, and 16 from STDs.

Based on the responses received, the FHWA concluded that the (ROW) regulations needed a comprehensive revision. During an initial review, the FHWA identified several parts of the regulations that were no longer needed.

NPRM of December 24, 1998

Twenty-eight comments were received in response to the December 24, 1998, NPRM. Comments were received from 25 States, one non-profit organization, a law firm representing five States, one individual, and a subcommittee of a right-of-way organization. The FHWA gratefully acknowledges the effort required to provide comprehensive comments, endorsements, and recommendations relating to the regulation.

Most commenters strongly supported the need to reorganize the regulations. A couple of comments noted that the regulations should not be reorganized and that reorganization could mean additional work for some States which had provided cross references by section number to the FHWA regulations. It was concluded that the advantages of completing a comprehensive rewrite of regulations which are nearly 25 years old outweighed the time and expense of changing cross references. Since the new regulations provide significant revisions, the text of State right-of-way manuals would require some revision in any event.

The NPRM proposed that Federal funds be allowed to participate in all costs necessitated by State law. Most commenters stated that they welcomed the reduction in Federal involvement in State matters and that since State laws varied widely, it made sense to reimburse based on actual State expenditures. Some commenters believed that allowing Federal reimbursement of costs not previously permitted would encourage State legislatures and courts to expand both property damage payments and costs of acquisition, such as, payments of property owners legal fees, court costs, and perhaps loss of business costs. In developing the final rule, the FHWA concluded that neither the FHWA nor STDs may have sufficient resources to monitor a wide variety of State laws and court decisions and that an across-the-board reimbursement of State expenditures required by State law is the most practical and equitable solution.

As the comment of the Vermont STD correctly noted, business loss can partially overlap "damages" and there is great difficulty trying to isolate and separate items in which the FHWA could not previously participate versus items where participation was permitted. Court awards most often do not clearly separate the various elements of damages making it difficult to isolate historically"noncompensable" damages.

Several comments were received suggesting that specific wording should be revised to more closely mirror language used by individual States. In completing the final rule, the FHWA selected language which it believes is best understood and utilized by the majority of the States. Nuances in language can be accommodated in the State procedural manual.

Several comments were received that questioned the procedures for receiving either credit or reimbursement for early acquisitions. These comments typically reflected that the reader believed that the FHWA was too restrictive, and that there should be no impediment to States moving forward to acquire right-of-way and receive reimbursement or credit at a subsequent date. There were also comments that FHWA should advance Federal funds for use in corridor preservation.

At the present time the FHWA believes that TEA-21 offers a great deal of flexibility in considering early acquisition in selected situations. The FHWA was aware of the statutory requirements which must be met in order to obtain either credit or reimbursement at a later date, as well as, lawsuits which have challenged early acquisition approaches and has adopted an approach which it considers prudent, and cautious, while fully implementing the intent of TEA-21. As additional experience is gained in the application of the TEA-21 principles, the FHWA will update the web page for "Questions and Answers" which will be developed continually to facilitate implementation of early acquisition concepts.

A limited number of comments were received questioning the FHWA’s determination under the Unfunded Mandates Reform Act that the proposed regulation would result in estimated annual costs of less than $100 million. The regulation as developed should result in a reduction of costs to State, local, or tribal governments since they will not have to maintain staff to conduct surveillance to identify claims for elements of property damage that are not eligible for Federal reimbursement under the old regulation. The reduction in Federal approval actions should also result in cost savings by eliminating the time requirements for such approval.

The final rule also permits reimbursement to States for property acquisition costs and administrative costs which are not now reimbursed, so it is a benefit to those States.

A comment was received questioning the need for a reversionary clause when property is transferred at no cost by an STD to be used for public purposes under title 23, U.S.C. The FHWA concluded that where property to be used for public purposes is transferred at no cost, good stewardship and recognition of the public trust dictates that the property be placed in the use for which the disposal was approved. The reversionary clause is the most effective method to assure that use.

One comment was received concerning the need to insure that FHWA approval is required for the disposal of property at nominal or no costs in exceptional circumstances. Several comments were received suggesting that no FHWA approval for any disposal should be mandated. The requirement for FHWA approval is based on the requirements of 23 U.S.C. 156(b) and remains in the final rule. The rule's intent is that disposals for less than fair market value are to be the exception, rather than the rule. Language has been added encouraging that the criteria for disposals at less than fair market value be clearly stated in the STD manuals.

It is our intent to maintain current program guidance and information in an electronic format with "Questions and Answers" and policy interpretations. Technical air space guidance will also be maintained in this manner. The URL for up-to-date guidance is: http://www.fhwa.dot.gov/realestate/index.htm. This final rule seeks to further clarify and reduce Federal regulatory requirements and to place primary responsibility for a number of approval actions at the State level. The adoption of these regulatory changes impacts other parts of 23 CFR, and in developing the final rule, attention has been given to conforming revisions as necessary. Such other parts include: 23 CFR 130, Subpart D, Advance right-of-way revolving funds; 23 CFR 480, Use and disposition of property previously acquired by States for withdrawn Interstate segments; 23 CFR 620, Subpart B, Relinquishment of highway facilities; 23 CFR 630; 23 CFR 635; and 23 CFR 645.

This final rule substantially revises the order of regulatory materials and completes the process of removing redundant, outdated, and unnecessary content from the existing rule. A unified purpose and applicability statement along with definitions is included in part 710, subpart A of this final rule.

This consolidates material now found in several locations of the existing regulations.

The following table highlights the reordering of the content and intended revisions and redesignations for each subpart of the existing regulation:

Old Part, Subpart or Section	**New Part, Subpart or Section**
Part 130, subpart D	Removed.
Part 480	Removed.
620.202	620.202 [Revised].
620.203(j)	620.203(j) [Revised].
630.106(c)(3)	630.106(c)(3) [Revised].
635.307(b)(3)	635.307(b)(3) [Revised].
645.103(c),645.111(c) and (d), and 645.113(i)	645.103(c), 645,111(c) and (d), and 645.113(i) [Revised].
710, subpart A [Reserved]	710, subpart A [Added].
710, subpart B (§§ 710.201-710.205)	710.201.
710, subpart C (710.301-710.306)	710.203.
712, subpart A [Reserved]	Removed.
712, subpart B (712.201-712.204)	710, subpart C.
712, subpart C [Reserved]	Removed.
712, subpart D (712.401-712.408)	710.105, 710.203.
712, subpart F (712.601-712.606)	710.509.
712, subpart G (712.701-712.703)	Removed.
713, subpart A (713.101-713.103)	710.101-710.103.
713, subpart B (713.201-713.205)	710.405.
713, subpart C (713.301-713.308)	710.407-710.409.

Part and Section Analysis

Part 130, Subpart D--Advance Right-of-Way Revolving Funds

Part 130, subpart D is removed from title 23, CFR, because section 1211 (e) of the TEA-21 eliminated the right-of-way revolving fund.

Part 480--Use and Disposition of Property Previously Acquired by States for Withdrawn Interstate Segments

Part 480 is removed from title 23, CFR, since section 1303 of the TEA-21 now allows States to retain the proceeds for the lease or sale of real estate on Federal projects as long as the proceeds are used for title 23, U.S.C., type projects. Other provisions of part 480 are obsolete.

Part 620, Subpart B--Relinquishment of Highway Facilities

Part 620 is amended to clarify that it is applicable only to transfers of highway facilities for continued highway use. Approvals for other disposals and modifications of access are governed by 23 CFR part 710.

Section 630.106(c)(3)

In § 630.106(c)(3), the reference to "23 CFR part 712" is revised to read "23 CFR part 710" to provide a current reference.

Section 635.307(b)(3)

In § 635.307(b)(3), the reference to "23 CFR 713, subpart A" is revised to read "23 CFR 710.403" to provide a current citation.

Part 645 Utilities

Sections 645.103(c) and 645.111(c) and (d) are amended to revise the reference "23 CFR chapter I, subchapter H, Right-of-Way and Environment" to read "23 CFR 710.203." Section 645.113(i) is amended to revise the reference "23 CFR part 712, the Acquisition Functions" to read "23 CFR 710.503."

Parts 710- Right-of-Way - General; 712-The Acquisition Function; and 713- Right-of-Way - The Property Management Function

Parts 710, 712, and 713 are removed in their entirety, and replaced by six new subparts under a new part 710. The reorganization includes: subpart A-General; subpart B-Program Administration; subpart C-Project Development; subpart D-Real Property Management; subpart E-Property Acquisition Alternatives; and subpart F-Federal Assistance Programs. These new sections clarify the purpose of the regulation and include a new definition section. Detailed requirements and rules have been replaced by a provision that will allow States to include their acquisition process in a State manual to be approved by the FHWA.

This final rule seeks to further clarify and reduce Federal regulatory requirements and to place primary responsibility for a number of approval actions at the State level. It substantially revises the order of regulatory materials and completes the process of removing redundant, outdated, and unnecessary content from the existing rule.

Part 710, Subpart A-General

A unified purpose and applicability statement along with definitions is included in subpart A of this final rule. This consolidates material now found in several locations of the existing regulations.

Part 710, Subpart B-- Program Administration

Section 710.201 clarifies that the STD has the overall responsibility to assure compliance with State and Federal laws and regulations. The methods and practices of the STDs are to be specified in ROW operations manuals submitted for approval by the FHWA no later than January 1, 2001, and certified as current every five years thereafter.

State ROW manuals are considered to be a sound basis for implementing appropriate procedures at the State and local level. It is a State responsibility to maintain the manual and complete the various right-of-way phases in accordance with Federal law and regulations. The manual provides a documented reference for use by State ROW personnel, local public agencies, affected individuals, and the FHWA. Alternative methods to achieve program objectives have been explored in developing this final rule, specifically, efforts were made to reduce the level of Federal oversight, required recordkeeping, and mandated reporting. The FHWA believes that the need for project level surveillance has diminished since the era of the Interstate program when Federal funding was allocated on the basis of the cost to complete the system. Now States receive a fixed allocation of Federal funds based largely on formula. Hence, it is clearly in the States' best interest to use their Federal-aid funds prudently in all areas, including the acquisition, management, and disposition of real property.

Section 710.203(b)(1) expands Federal reimbursement for right-of-way acquisition costs beyond the current limit of "generally compensable" costs. Under former regulations, the States and the Federal government were required to ascertain which types of acquisition costs were generally compensable across the nation and limit Federal reimbursement to those activities. This limits State flexibility, imposes a "one size fits all" philosophy, and creates administrative burdens for both the States and the FHWA. State and Federal staff time devoted to isolating and extracting these costs does not add value to the overall transportation program accomplishments. Moreover, States should have greater discretion in determining the best use of formula-allocated Federal funds for acquisition purposes, as they now have in virtually every other aspect of projects funded with Federal-aid.

Since 1991, the kinds of activities that are eligible for Federal-aid funds have greatly increased, and States have received greatly expanded discretion in the use of Federal-aid funds. This final rule echoes statutory and policy changes that have occurred throughout the rest of the Federal-aid program for the surface transportation program.

Part 710 Subpart C- Project Development

The sections in this subpart were taken from part 712, subpart B and revised to provide a brief chronology of the sequence and actions which are necessary to qualify for Federal-aid funding. Section 710.305 provides new agency requirements mandating that in areas in which Clean Air Act conformity determination has lapsed, special coordination is necessary prior to initiating new projects or continuing activity on existing projects. Section 710.311 includes a new TEA-21 provision which provides that an oversight agreement between the STD and the FHWA must specify responsibility for the review of projects at the plan, specification, and estimate (PS&E) stage.

Part 710, Subpart D-Real Property Management

The sections in this subpart were taken from part 712, subpart B and revised to provide that the STD will charge fair market value for the use or disposal of real estate acquired with title 23, U.S.C., funding. Exceptions to the requirement to collect fair market value or rent may be approved by the FHWA. The air rights guidelines are to be maintained on the Internet. The STD may retain the Federal share of rental and disposal proceeds if used for projects eligible under title 23, U.S.C.

Section 710.401 provides that property disposals or any other use of right-of-way along the Interstate requires the STD to obtain FHWA concurrence, but this would no longer be required for non-Interstate highways. Instead, the STD ROW manual would specify procedures for the leasing, maintenance and disposal of property rights, including access control.

Section 710.403(e) of the final rule includes a TEA-21 provision that the Federal share of proceeds from the sale or lease of real estate originally acquired as part of a Federal-aid project (not limited to airspace) could be retained by the STD, if used for projects that would be eligible for funding under title 23, U.S.C. Section 710.403(d) of the final rule requires that, with certain exceptions, the STD charge fair market value for the sale or lease of real property if the property was acquired with Federal assistance made available from the highway trust fund. This reflects the provision of 23 U.S.C. 156, as amended by section 1303 of TEA-21. This revision reduces administrative burdens on States and the FHWA and gives States and local governments greater flexibility in use of funds, while also protecting Federal interests by ensuring funds are used on purposes permitted under title 23, U.S.C. This procedure applies to all disposals, including surplus property from withdrawn Interstate projects, processed subsequent to June 9, 1998, the effective date of TEA-21. Under the rule, income from all property uses and dispositions is treated in a uniform manner.

The final rule in § 710.405 continues to specify procedures the States will be required to follow in use of airspace on the Interstate facilities which have received funding under title 23, U.S.C., in any way. However, these airspace requirements will no longer be mandated for non-Interstate highways.

The final rule in § 710.405 relocates a significant amount of detail relating to the management of airspace. The detailed provisions for airspace, particularly the detailed geometric requirements for the use of property over or under a highway, will be developed and updated through an airspace technical guidance document. An advantage of an airspace technical guidance document is that it is easier to update.

Part 710, Subpart E-Property Acquisition Alternatives

The sections in this subpart were taken from part 712, subparts E and F. Subpart G relating to the right-of-way revolving fund is removed since TEA-21 eliminated the revolving fund.

The final rule in § 710.501 also includes a TEA-21 provision (section 1301) that the value of property acquired by State or local governments before project agreement could be credited toward the State share of project cost, as long as certain conditions, including those relating to the environmental process, have been met. Prior to TEA-21, private property donated to a Federal project could be credited to the non-Federal share, but no such credit was permitted for publicly-owned property. The regulation fulfills TEA-21 statutory provisions by allowing a State credit toward the non-Federal share of the cost of a project, and mandating the credit in the case of locally-owned property. The conditions which must be met to allow the credit would include careful observance of the environmental process.

As a basis for protective buying, significant increased cost may be used as a justification under § 710.503(b).

The final rule in §§ 710.505 and 710.507 contains separate sections for property donations by private parties and contributions by State or local governments to clearly distinguish between these distinct actions, both of which can generate credits for the State or local matching share of a project.

The final rule in § 710.513(b) clarifies that where property is to be used for environmental mitigation or environmental banking, the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Public Law 91-645, 84 Stat. 1894, as amended) apply in the acquisition of the property.

In general, FHWA approval actions in § 710.409 and 710.405 for disposal of property and use of air space were revised in the final rule to more closely parallel the assumptions of responsibilities principles, as outlined in section 1305 of TEA-21 to stress FHWA approval actions on the Interstate system.

Part 710, Subpart F-Federal Assistance Programs

Sections 710.601 and 710.603 were taken from part 712, subpart F and revised to provide updated references to new legislation and to conform the regulatory references to this final rule.

Part 712-The Acquisition Function

Part 712 is removed from title 23, CFR. The provisions of current part 712, subpart B, concerning general provisions and project procedures are relocated and revised as new part 710, subpart C, project development.

We are removing current part 712, subparts A and C (empty reserved slots) and G, right-of-way revolving fund. Subpart G was eliminated by section 1211(e) of the TEA-21. The revolving fund was a pool of money that could be used by States to acquire right-of-way in advance of the time that State funding was available.

The information in current part 712, subpart D regarding administrative and legal settlements and court awards is relocated to new §§ 710.105 (Definitions) and 710.203 (Funding and reimbursement).

Federal land transfers and direct Federal acquisition policies and procedures found in current part 712, subpart E are relocated to new part 710, subpart F (Federal assistance programs), §§ 710.601 and 710.603.

Current part 712, subpart F, concerning functional replacement of real property in public ownership is relocated to new part 710, subpart E, specifically § 710.509.

A major objective of the final rule is to reorder the regulation so that it follows the same sequence as the development and implementation of a Federal-aid project. This rearrangement in chronological order should aid the public and State transportation departments (STD) in effectively using the regulation.

The final rule also clarifies the State-Federal partnership, which is not considered a major or significant change.

Part 713-Right-of-Way-The Property Management Function

Part 713 is removed from title 23, CFR. Current subpart A concerning purpose, applicability, policies and procedures of property management are relocated to new part 710, subpart A (§§ 710.101 and 710.103) and included in the general statement for real property.

Current part 713, subpart B regarding management of airspace on Federal-aid highway systems for non-highway purposes is relocated to new part 710 at § 710.405 (air rights on the Interstate). The FHWA approval for the use of airspace is limited to Interstate projects. Disposal of rights-of-way provisions found in current part 713, subpart C are relocated to new part 710, subpart D (real property management) at §§ 710.407 (leasing) and 710.409 (disposals). This section clarifies that income received by the STDs may be retained when used for projects eligible under title 23, U.S.C.

Provisions relating to the real estate issues contained in sections 1301 and 1303 of the TEA-21 have been incorporated into these regulations, notably: (1) Allowing credit to the non-Federal share when a State or local government contributes land to a project; (2) allowing States to retain income from sale or lease of real property, as long as the income is used for projects eligible under title 23, U.S.C.; and (3) eliminating the right-of-way revolving fund and clarifying credit for private property donations.

Rulemaking Analyses and Notices

All comments received before the close of business on March 24, 1999, were considered in developing the final rule and late comments were considered to the extent practicable. The comments are available for examination using docket number FHWA 98-4315 in the docket room at the above address or via the electronic addresses provided above.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866, nor is it a significant regulatory action within the Department of Transportation's regulatory policies and procedures. The economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required. The FHWA does not consider this action to be significant because these regulations simplify, clarify, reorganize, and/or eliminate existing requirements. The procedures would simply implement current law and eliminate constraints on FHWA reimbursement for certain right-of-way expenditures when those expenditures are made under provisions of State law. Neither the individual nor cumulative impact of this action is significant because this rule does not alter the funding levels available to the States for Federal or federally-assisted programs covered by the TEA-21.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the agency has evaluated the effects of this rule on small entities, such as local agencies and businesses. This action would merely update and clarify existing procedures. Also, this rule reduces Federal regulatory requirements and allows State procedures to be utilized. Local entities could also adopt State procedures for advancing Federal-aid projects under the State transportation plan. Accordingly, the FHWA certifies that this action would not have a significant economic impact on a substantial number of small entities.

Environmental Impact

The FHWA has also analyzed this action for the purpose of the National Environmental Policy Act (42 U.S.C. 4321 et seq.), and concludes that this action will not have any effect on the quality of the human and natural environment.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined this action does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Unfunded Mandates Reform Act of 1995

This rule does not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. (2 U.S.C.1531 et seq.).

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), 49 U.S.C. 3501-3520, Federal agencies must determine whether requirements contained in rulemaking are subject to the information collection provisions of the PRA.

The FHWA has determined that this final rule places a requirement on the STDs, for Right-of-Way Manuals, that requires Office of Management and Budget (OMB) approval.

The FHWA is allowing STDs to develop and submit the manuals by January 1, 2001. The FHWA estimates the annual burden of this requirement is approximately 4,000 hours on a national basis.

A request for OMB approval of the manual requirement will be submitted in the near future.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

23 CFR Part 130

Grant programs--transportation, Highways and roads, Real property acquisition, Rights-of-way, Reporting and recordkeeping requirements.

23 CFR Part 480

Grant programs-transportation, Highways and roads, Intergovernmental relations, Mass transportation, Rights-of-way, Reporting and recordkeeping requirements.

23 CFR Part 620

Grant programs - transportation, Highways and roads, Rights-of-way.

23 CFR Part 630

Government contracts, Grant programs - transportation, Highways and roads, Project authorization, Reporting and recordkeeping requirements.

23 CFR Part 635

Grant programs--transportation, Highways and roads, Real property acquisition, Reporting and recordkeeping requirements.

23 CFR Part 645

Grant programs--transportation, Highways and roads, Rights-of-way, Utilities.

23 CFR Parts 710, 712, and 713

Grant programs--transportation, Highways and roads, Real property acquisition, Rights-of-way, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, and under the authority of 23 U.S.C. 107, 108, 111, and 315, the FHWA amends 23 CFR chapter I as set forth below:

PART 130 - [Removed]

1. Remove part 130.

PART 480 - [Removed]

2. Remove part 480.

PART 620 - [Amended]

3. The authority citation for part 620 continues to read as follows:

Authority: 23 U.S.C. 315 and 318; 49 CFR 1.48; and 23 CFR 1.32.

4. Revise § 620.202 to read as follows:

§ 620.202 Applicability.

The provisions of this section apply to highway facilities where Federal-aid funds have participated in either right-of-way or physical construction costs of a project. The provisions of this section apply only to relinquishment of facilities for continued highway purposes. Other real property disposals and modifications or disposal of access rights are governed by the requirements of 23 CFR part 710.

5. Revise § 620.203(j) to read as follows:

§ 620.203 Procedures.

*** * * * ***

(j) If a relinquishment is to a Federal, State, or local government agency for highway purposes, there need not be a charge to the said agency, nor in such event any credit to Federal funds. If for any reason there is a charge, the STD may retain the Federal share of the proceeds if used for projects eligible under title 23, U.S.C.

PART 630 - [Amended]

6. Revise the authority citation for part 630 to read as follows:

Authority: 23 U.S.C. 105, 106, 109, 115, 315, 320, and 402(a); 23 CFR 1.32; 49CFR1.48(b).

§ 630.106 - [Amended]

7. Amend § 630.106(c)(3) by replacing the citation "23 CFR part 712" with "23 CFR part 710".

PART 635 - [Amended]

8. Revise the authority citation for part 635 to read as follows:

Authority: 23 U.S.C. 101(note), 109, 112, 113, 114, 116, 119, 128, and 315; 31 U.S.C. 6505; 42 U.S.C. 3334, 4601 et seq.; sec. 1041(a), Pub. L. 102-240, 105 Stat. 1914; 23 CFR 1.32; 49 CFR 1.48(b)

§ 635.307 - [Amended]

9. Amend § 635.307(b)(3) by replacing the citation "23 CFR part 713, subpart A" with "23 CFR 710.403".

PART 645 - [Amended]

10. The authority citation for part 645 continues to read as follows:

Authority: 23 U.S.C. 101, 109, 111, 116, 123, and 315; 23 CFR 1.23 and 1.27;

49 CFR 1.48(b); and E.O. 11990, 42 FR 26961 (May 24, 1977).

§§ 645.103, 645.111, and 645.113 - [Amended]

11. Amend §§ 645.103(c) and 645.111(c) and (d) by replacing the words "23 CFR chapter 1, subchapter H, Right-of-Way and Environment" with the words "23 CFR 710.203"; and amend § 645.113 (i) by replacing the words "23 CFR part 712, the Acquisition Functions" with the citation "23 CFR 710.503".

PART 712 - [Removed]

12. Remove part 712.

PART 713 - [Removed]

13. Remove part 713.

14. Revise part 710 to read as follows:

PART 710 - RIGHT-OF-WAY AND REAL ESTATE

Subpart A - General

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710.101 Purpose.
710.103 Applicability.
710.105 Definitions.

Subpart B - Program Administration

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710.501 Early acquisition.
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710.509 Functional replacement of real property in public ownership.
710.511 Transportation enhancements.
710.513 Environmental mitigation.

Subpart F - Federal Assistance Programs

Sec.
710.601 Federal land transfer.
710.603 Direct Federal acquisition.

AUTHORITY: 23 U.S.C. 101(a), 107, 108, 111, 114, 133, 142(f), 145, 156, 204, 210, 308, 315, 317, and 323; 42 U.S.C. 2000d et seq., 4633, 4651-4655; 49 CFR 1.48(b) and (cc), 18.31, and parts 21 and 24; 23 CFR 1.32.

Subpart A - General

§ 710.101 Purpose.

The primary purpose of these requirements is to ensure the prudent use of Federal funds under title 23, U.S.C., 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.

This part applies whenever Federal assistance under title 23, U.S.C., is used. The regulation applies to programs administered by the Federal Highway Administration. Where Federal funds are transferred to other Federal agencies to administer, those agencies' procedures may be utilized. Additional guidance is available electronically at the FHWA Real Estate services website: **http://www.fhwa.dot.gov/realestate/index.htm**

§ 710.105 Definitions.

(a) Terms defined in 49 CFR part 24, and 23 CFR part 1 have the same meaning where used in this part, except as modified herein.

(b) The following terms where used in this part have the following meaning:

Access rights means the right of ingress to and egress from a property that abuts a street or highway.

Acquiring agency means a State agency, other entity, or person acquiring real property for title 23, U.S.C., purposes.

Acquisition means activities to obtain an interest in, and possession of, real property.

Air rights means real property interests defined by agreement, and conveyed by deed, lease, or permit for the use of airspace.

Airspace means that space located above and/or below a highway or other transportation facility's established grade line, lying within the horizontal limits of the approved right-of-way or project boundaries.

Damages means the loss in value attributable to remainder property due to severance or consequential damages, as limited by State law, that arise when only part of an owner's property is acquired.

Disposal means the sale of real property or rights therein, including access or air rights, when no longer needed for highway right-of-way or other uses eligible for funding under title 23, U.S.C.

Donation means the voluntary transfer of privately owned real property 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 by State or local govern-ments in advance of Federal authorization or agreement.

Easement means an interest in real property that conveys a right to use a portion of an owner's property or a portion of an owner's rights in the property.

NHS means the National Highway System as defined in 23 U.S.C. 103(b).

Oversight agreement means the project approval and agreement concluded between the State and the FHWA to outline which projects will be monitored at the plans, specifications, and estimate stage by FHWA as required by 23 U.S.C. 106(c)(3).

Real property means land and any improvements thereto, including but not limited to, fee interests, easements, air or access rights, and the rights to control use, leasehold, and leased fee interests.

Relinquishment means the conveyance of a portion of a highway right-of-way or facility by a State highway department to another government agency for continued transportation use. (See 23 CFR part 620, subpart B.)

Right-of-way means real property and rights therein used for the construction, operation, or maintenance of a transportation or related facility funded under title 23, U.S.C.

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 a responsible State legal representative after filing a condemnation proceeding, including 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 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 transportation department (STD) means the State highway department, transportation department, or other State transportation agency or commission to which title 23, U.S.C., funds are apportioned.

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, (Public Law 91-646, 84 Stat. 1894), and the implementing regulations at 49 CFR part 24.

Subpart B - Program Administration

§ 710.201 State responsibilities.

(a) Organization. Each STD shall be adequately staffed, equipped, and organized to discharge its real property-related responsibilities.

(b) Program oversight. The STD shall have overall responsibility for the acquisition, management, and disposal of real property on Federal-aid projects. This responsibility shall include assuring that acquisitions and disposals by a State agency are made in compliance with legal requirements of State and Federal laws and regulations.

(c) Right-of-way (ROW) operations manual. Each STD which receives funding from the highway trust fund shall maintain a manual describing its right-of-way organization, policies, and procedures. The manual shall describe functions and procedures for all phases of the real estate program, including appraisal and appraisal review, negotiation and eminent domain, property management, and relocation assistance. The manual shall also specify procedures to prevent conflict of interest and avoid fraud, waste, and abuse. The manual shall be in sufficient detail and depth to guide State employees and others involved in acquiring and managing real property. The State manuals should be developed and updated, as a minimum, to meet the following schedule:

(1) The STD shall prepare and submit for approval by FHWA an up-to-date Right-of-Way Operations Manual by no later than January 1, 2001.

(2) Every five years thereafter, the chief administrative officer of the STD shall certify to the FHWA that the current ROW operations manual conforms to existing practices and contains necessary procedures to ensure compliance with Federal and State real estate law and regulation.

(3) The STD shall update the manual periodically to reflect changes in operations and submit the updated materials for approval by the FHWA.

(d) Compliance responsibility. The STD is responsible for complying with current FHWA requirements whether or not its manual reflects those requirements.

(e) Adequacy of real property interest. The real property interest acquired for all Federal-aid projects funded pursuant to title 23, U.S.C., shall be adequate for the construction, operation, and maintenance of the resulting facility and for the protection of both the facility and the traveling public.

(f) Recordkeeping. 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 either:

(i) The date the State 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 a credit toward the Federal share of a project is approved based on early acquisition activities of the State.

(2) Property management records shall include inventories of real property considered excess to project needs, all authorized uses of airspace, and other leases or agreements for use of real property managed by the STD.

(g) Procurement. Contracting for all activities required in support of State right-of-way programs through use of private consultants and other services shall conform to 49 CFR 18.36.

(h) Use of other public land acquisition organizations or private consultants. The STD may enter into written agreements with other State, county, municipal, or local public land acquisition organizations or with private consultants to carry out its authorities under paragraph (b) of this section. Such organizations, firms, or individuals must comply with the policies and practices of the STD. The STD shall monitor any such real property acquisition activities to assure compliance with State and Federal law and requirements and is responsible for informing such organizations of all such requirements and for imposing sanctions in cases of material non-compliance.

(i) Approval actions. Except for the Interstate system, the STD and the FHWA will agree on the scope of property related oversight and approval actions that the FHWA will be responsible for under this part. The content of the most recent oversight agreement shall be reflected in the State right-of-way operations manual. The oversight agreement, and thus the manual, will indicate for which non-Interstate Federal-aid project submission of materials for review and approval are required.

(j) Approval of just compensation. The amount determined to be just compensation shall be approved by a responsible official of the acquiring agency.

(k) Description of acquisition process. The STD shall provide persons affected by projects or acquisitions advanced under title 23, U.S.C., with a written description of its real property acquisition process under State law 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.

§ 710.203 Funding and reimbursement.

(a) General conditions. The following conditions are a prerequisite to Federal participation in the costs of acquiring real property except as provided in § 710.501 for early acquisition:

(1) The project for which the real property is acquired is included in an approved Statewide Transportation Improvement Program (STIP);

(2) The State has executed a project agreement;

(3) Preliminary acquisition activities, including a title search and preliminary property map preparation necessary for the completion of the environmental process, can be advanced under preliminary engineering prior to National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.) clearance, while other work involving contact with affected property owners must normally be deferred until after NEPA approval, except as provided in 23 CFR 710.503 for protective buying and hardship acquisition; and in 23 CFR 710.501, early acquisition. Appraisal completion may be authorized as preliminary right-of-way activity prior to completion of the environmental document; and

(4) Costs have been incurred in conformance with State and Federal law requirements.

(b) Direct eligible costs. Federal participation in real property costs is limited to the costs of property incorporated into the final project and the associated direct costs of acquisition, unless provided otherwise. Participation is provided for:

(1) Real property acquisition. Usual costs and disbursements associated with real property acquisition 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) The cost of acquisition activities, such as, appraisal, appraisal review, cost estimates, relocation planning, right-of-way plan preparation, title work, and similar necessary right-of-way related work.

(iii) The cost to acquire real property, including incidental expenses.

(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.

(v) The cost of minimum payments and appraisal waiver amounts included in the State approved manual.

(2) Relocation assistance and payments. Payments made incidental to and associated with the displacement from acquired property under 49 CFR part 24.

(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 applicable 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 and technical guidance. Salary and related expenses of employees of an acquiring agency are eligible costs in accordance with OMB Circular A-87. This includes State costs incurred for managing or providing technical guidance, consultation or oversight on projects where right-of-way services are performed by a political subdivision or others.

(6) Property not incorporated into a project funded under title 23,U.S.C. 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, or for eligible transportation enhancement, sites for disposal of hazardous materials, environmental mitigation, environmental banking activities, or last resort housing.

(ii) Easements not incorporated into the right-of-way. The cost of acquiring easements outside the right-of-way 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 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 STD for a highway project, as provided in 23 CFR part 140, subpart I, Reimbursement for Railroad Work, and 23 CFR 645, Subpart A, Utility Relocations, Adjustments and Reimbursement, and 23 CFR 646, Subpart B, Railroad-Highway Projects.

(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 in 23 CFR 1.36 where the State fails 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 OMB Circular A-87. Indirect costs may be included on Federal-aid billings after the indirect cost rate has been approved by FHWA.

Subpart C - Project Development

§ 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 are provided in this subpart.

§ 710.303 Planning.

State and local governments conduct metropolitan and statewide planning to develop coordinated, financially constrained system plans to meet transportation needs for local and statewide systems, under FHWA's planning regulations contained in 23 CFR part 450. In addition, air quality non-attainment areas must meet the requirements of the U.S. EPA Transportation conformity regulations (40 CFR parts 51 and 93). Projects must be included in an approved State Transportation Improvement Program (STIP) in order to be eligible for Federal-aid funding.

§ 710.305 Environmental analysis.

The National Environmental Policy Act (NEPA) process, as described in FHWA's NEPA regulations in 23 CFR part 771, normally must be conducted and concluded with a record of decision (ROD) or equivalent before Federal funds can be placed under agreement for acquisition of right-of-way. Where applicable, a State also must complete Clean Air Act (42 U.S.C. 7401 et seq.) project level conformity analysis. In areas in which the Clean Air Act conformity determination has lapsed, acquiring agencies must coordinate with Federal Highway Administration for special instructions prior to initiating new projects or continuing activity on existing projects. At the time of processing an environmental document, a State may request reimbursement of costs incurred for early acquisition, provided conditions prescribed in 23 U.S.C. 108(c) and 23 CFR 710.501, are satisfied.

§ 710.307 Project agreement.

As a condition of Federal-aid, the STD shall obtain FHWA authorization in writing or electronically before proceeding with any real property acquisitions, including hardship acquisition and protective buying (see 23 CFR 710.503). The STD must prepare a project agreement in accordance with 23 CFR part 630, subpart C. The agreement shall be based on an acceptable estimate for the cost of acquisition. On projects where the initial project agreement was executed after June 9, 1998, a State may request credit toward the non-Federal share, for early acquisitions, donations, or other contributions applied to the project provided conditions in 23 U.S.C. 323 and 23 CFR 710.501, are satisfied.

§ 710.309 Acquisition.

The process of acquiring real property includes appraisal, appraisal review, establishing just compensation, negotiations, administrative and legal settlements, and condemnation. The State shall conduct acquisition and related relocation activities in accordance with 49 CFR part 24.

§ 710.311 Construction advertising.

The State must manage real property acquired for a project until it is required for construction. 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. On Interstate projects, prior to advertising for construction, the State shall develop ROW availability statements and certifications related to project acquisitions as required by 23 CFR 635.309. For non-Interstate projects, the oversight agreement must specify responsibility for the review and approval of the ROW availability statements and certifications. Generally, for non-NHS projects, the State has full responsibility for determining that right-of-way is available for construction.

Subpart D -Real Property Management

§ 710.401 General.

This subpart describes the acquiring agency's responsibilities to control the use of real property required for a project in which Federal funds participated in any phase of the project. Prior to allowing any change in access control or other use or occupancy of acquired property along the Interstate, the STD shall secure an approval from the FHWA for such change or use. The STD shall specify in the State's ROW operations manual, procedures for the rental, leasing, maintenance, and disposal of real property acquired with title 23, U.S.C., funds. The State shall assure that local agencies follow the State's approved procedures, or the local agencies own procedures if approved for use by the STD.

§ 710.403 Management.

(a) The STD must assure that all real property within the boundaries of a federally-aided facility is devoted exclusively to the purposes of that facility and is preserved free of all other public or private alternative uses, unless such alternative uses are permitted by Federal regulation or the FHWA. An alternative use must be consistent with the continued operation, maintenance, and safety of the facility, and such use shall not result in the exposure of the facility's users or others to hazards.

(b) The STD shall specify procedures in the State manual for determining when a real property interest is no longer needed. These procedures must provide for coordination among relevant STD organizational units, including maintenance, safety, design, planning, right-of-way, environment, access management, and traffic operations.

(c) The STD shall evaluate the environmental effects of disposal and leasing actions requiring FHWA approval as provided in 23 CFR part 771.

(d) Acquiring agencies shall charge current fair market value or rent for the use or disposal of real property interests, including access control, if those real property interests were obtained with title 23, U.S.C., funding, except as provided below. Since property no longer needed for a project was acquired with public funding, the principle guiding disposal would normally be to sell the property at fair market value and use the funds for transportation purposes. 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 general requirement for charging fair market value may be approved in the following situations:

(1) With FHWA approval, when the STD clearly shows that an exception is in the overall public interest for social, environmental, or economic purposes; nonproprietary governmental use; or uses under 23 U.S.C. 142(f), Public Transportation. The STD manual may include criteria for evaluating disposals at less than fair market value. Disposal for public purposes may also be at fair market value. The STD shall submit requests for such exceptions to the FHWA in writing.

(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) Use for transportation projects eligible for assistance under title 23, U.S.C.

(e) The Federal share of net income from the sale or lease of excess real property shall be used by the STD for activities eligible for funding under title 23, U.S.C. Where project income derived from the sale or lease of excess property is used for subsequent title 23 projects, use of the income does not create a Federal-aid project.

(f) No FHWA approval is required for disposal of property which is located outside of the limits of the right-of-way if Federal funds did not participate in the acquisition cost of the property.

(g) Highway facilities in which Federal funds participated in either the right-of-way or construction may be relinquished to another governmental agency for continued highway use under the provisions of 23 CFR 620, subpart B.

§ 710.405 Air rights on the Interstate.

(a) The FHWA policies relating to management of airspace on the Interstate for non-highway purposes are included in this section. Although this section deals specifically with approval actions on the Interstate, any use of airspace contemplated by a STD must assure that such occupancy, use, or reservation is in the public interest and does not impair the highway or interfere with the free and safe flow of traffic as provided in 23 CFR 1.23.

(1) This subpart applies to Interstate facilities which received title 23 of the United States Code assistance in any way.

(2) This subpart does not apply to the following:

(i) Non-Interstate highways.

(ii) Railroads and public utilities which cross or otherwise occupy Federal-aid highway right-of-way.

(iii) Relocations of railroads or utilities for which reimbursement is claimed under 23 CFR part 140, subparts E and H.

(iv) Bikeways and pedestrian walkways as covered in 23 CFR part 652.

(b) A STD may grant rights for temporary or permanent occupancy or use of Interstate system airspace if the STD has acquired sufficient legal right, title, and interest in the right-of-way of a federally assisted highway to permit the use of certain airspace for nonhighway purposes; and where such airspace is not required presently or in the foreseeable future for the safe and proper operation and maintenance of the highway facility. The STD must obtain prior FHWA approval, except for paragraph (c) of this section.

(c) An STD may make lands and rights-of-way 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

(d) An individual, company, organization, or public agency desiring to use airspace shall submit a written request to the STD. If the STD recommends approval, it shall forward an application together with its recommendation and any necessary supplemental information including the proposed airspace agreement to the FHWA. The submission shall affirmatively provide for adherence to all policy requirements contained in this subpart and conform to the provisions in the FHWA's Airspace Guidelines at: **http://www.fhwa.dot.gov/realestate/index.htm**.

§ 710.407 Leasing.

(a) Leasing of real property acquired with title 23 of the United States Code, funds shall be covered by an agreement between the STD and lessee which contains provisions to insure the safety and integrity of the federally funded facility. It shall also include provisions governing lease revocation, removal of improvements at no cost to the FHWA, adequate insurance to hold the State and the FHWA harmless, nondiscrimination, access by the STD and the FHWA for inspection, maintenance, and reconstruction of the facility.

(b) Where a proposed use requires changes in the existing transportation facility, such changes shall be provided without cost to Federal funds unless otherwise specifically agreed to by the STD and the FHWA.

(c) Proposed uses of real property shall conform to the current design standards and safety criteria of the Federal Highway Administration for the functional classification of the highway facility in which the property is located.

§ 710.409 Disposals.

(a) Real property interests determined to be excess to transportation needs may be sold or conveyed to a public entity or to a private party in accordance with § 710.403(c).

(b) Federal, State, and local agencies shall be afforded the opportunity to acquire real property interests 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 STD shall notify the appropriate resource agencies of its intentions to dispose of the real property interests. The notifications can be accomplished by placing the appropriate agencies on the States' disposal notification listing.

(c) Real property interests may be retained by the STD to restore, preserve, or improve the scenic beauty and environmental quality adjacent to the transportation facility.

(d) Where the transfer of properties to other agencies at less than fair market value for continued public use is clearly justified as in the public interest and approved by the FHWA, 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. Disposal actions described in 23 CFR 710.403(d)(1) for less than fair market value require a public interest determination and FHWA approval, consistent with that section.

Subpart E—Property Acquisition Alternatives

§ 710.501 Early acquisition.

(a) Real property acquisition. The State may initiate acquisition of real property at any time it has the legal authority to do so based on program or project considerations. The State may undertake early acquisition for corridor preservation, access management, or other purposes.

(b) Eligible costs. Acquisition costs incurred by a State agency prior to executing a project agreement with the FHWA are not eligible for Federal-aid reimbursement. However, such costs may become eligible for use as a credit towards the State's share of a Federalaid project if the following conditions are met:

(1) The property was lawfully obtained by the State;

(2) The property was not land described in 23 U.S.C. 138;

(3) The property was acquired in accordance with the provisions of 49 CFR part 24;

(4) The State complied with the requirements of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d– 2000d–4);

(5) The State determined and the FHWA concurs that the action taken did not influence the environmental assessment for the project, including:

(i) The decision on need to construct the project;

(ii) The consideration of alternatives; and

(iii) The selection of the design or location; and

(6) The property will be incorporated into a Federal-aid project.

(7) The original project agreement covering the project was executed on or after June 9, 1998.

(c) Reimbursement. In addition to meeting all provisions in paragraph (b) of this section, the FHWA approval for reimbursement for early acquisition costs, including costs associated with displacement of owners or tenants, requires the STD to demonstrate that:

(1) Prior to acquisition, the STD made the certifications and determinations required by 23 U.S.C. 108(c)(2)(C) and (D); and

(2) The STD obtained concurrence from the Environmental Protection Agency in the findings made under paragraph (b)(5) of this section regarding the NEPA process.

§ 710.503 Protective buying and hardship acquisition.

(a) General conditions. Prior to the STD obtaining final environmental approval, the STD 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 project is included in the currently approved STIP;

(2) The STD has complied with applicable public involvement requirements in 23 CFR parts 450 and 771;

(3) A determination has been completed for any property 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 16 U.S.C. 470(f) (historic properties).

(b) Protective buying. The STD 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 STD must accept and concur in a 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 others; 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 shall not influence the environmental assessment of a project, including the decision relative to the need to construct the project or the selection of a specific location.

§ 710.505 Real property donations.

(a) Donations of property being acquired. A non-governmental owner whose real property is required for a Federal-aid project may donate the property to the STD. Prior to accepting the property, the owner must be informed by the agency of his/her right to receive just compensation for the property. The owner shall also be informed of his/her right to an appraisal of the property by a qualified appraiser, unless the STD determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at no more than $2500, or the State appraisal waiver limit approved by the FHWA, whichever is greater. All donations of property received prior to the approval of the NEPA document must meet environmental requirements as 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. 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. Donations may be made at anytime during the development of a project. The STD shall develop sufficient documentation to indicate compliance with paragraph (a) of this section 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) General. Real property owned by State and local governments incorporated within a federally funded project can be used as a credit toward the State matching share of total project cost. A credit cannot exceed the State's matching share required by the project agreement.

(b) Effective date. Credits can be applied to projects where the initial project agreement is executed after June 9, 1998.

(c) Exemptions. Credits are not available for lands acquired with any form of Federal financial assistance, or for lands already incorporated and used for transportation purposes.

(d) State contributions. Real property acquired with State funds and required for federally-assisted projects may support a credit toward the non-Federal share of project costs. The STD must prepare documentation supporting all credits including:

(1) A certification that the acquisition satisfied the conditions in 23 CFR 710.501(b); and

(2) Justification of the value of credit applied. Acquisition costs incurred by the State to acquire title can be used as justification for the value of the real property.

(e) Credit for local government contributions. A contribution by a unit of local government of real property which is offered for credit, in connection with a project eligible for assistance under this title, shall be credited against the State share of the project at fair market value of the real property. Property may also be presented for project use with the understanding that no credit for its use is sought. The STD shall assure that the acquisition satisfied the conditions in 23 CFR 710.501(b), and that documentation justifies the amount of the credit.

§ 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 Federalaid highway project, in lieu of paying the fair market value for the real property, the State may provide compensation by functionally replacing the publicly owned real property with another facility which will provide equivalent utility.

(b) Federal participation. Federal-aid funds may participate in functional replacement costs only if:

(1) Functional replacement is permitted under State law and the STD 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 State has informed the agency 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 STD determination that functional replacement is in the public interest.

(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 are limited to costs

which are actually incurred in the replacement of the acquired land and/or facility and are:

(1) Costs for facilities which 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 State determines that payments providing for functional replacement of public facilities are allowable under State law, the State will incorporate within the State's ROW operating manual full procedures covering review and oversight that will be applied to such cases.

§ 710.511 Transportation enhancements.

(a) General. Section 133(b) (8) of title 23 of the United States Code authorizes the expenditure of surface transportation funds for transportation enhancement activities (TEA). Transportation enhancement activities which 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 Code of Federal Regulations (CFR), except as specified in paragraph

(b)(3) of this section.

(b) Requirements.

(1) Displacements for TEA are subject to the Uniform Act.

(2) Acquisitions for TEA are subject to the Uniform Act except as provided in paragraphs (b)(3), (b)(4), and (b)(5) of this section.

(3) Entities acquiring real property for TEA who lack the power of eminent domain may comply with the Uniform Act by meeting the limited requirements under 49 CFR 24.101(a)(2).

(4) The requirements of the Uniform Act do not apply when real property acquired for a TEA was purchased from a third party by a qualified conservation organization, and—

(i) The conservation organization is not acting on behalf of the agency receiving TEA or other Federal-aid funds, and

(ii) There was no Federal approval of property acquisition prior to the involvement of the conservation organization. [''Federal approval of property acquisition'' means the date of the approval of the environmental document or project authorization/ agreement, whichever is earlier.''Involvement of the conservation organization'' means the date the organization makes a legally binding offer to acquire a real property interest, including an option to purchase, in the property.]

(5) When a qualified conservation organization acquires real property for a project receiving Federal-aid highway funds on behalf of an agency with eminent domain authority, the requirements of the Uniform Act apply as if the agency had acquired the property itself.

(6) When, subsequent to Federal approval of property acquisition, a qualified conservation organization acquires real property for a project receiving Federal-aid highway funds, and there will be no use or recourse to the power of eminent domain, the limited requirements of 49 CFR 24.101(a)(2) apply.

(c) Property management. Real property acquired with TEA funds shall be managed in accordance with the property management requirements provided in subpart D of this part. Any use of the property for purposes other than that for which the TEA funds were provided must be consistent with the continuation of the original use. When the original use of the real property is converted by sale or lease to another use inconsistent with the original use, the STD shall assure that the fair market value or rent is charged and the proceeds reapplied to projects eligible under title 23 of the United States Code.

§ 710.513 Environmental mitigation.

(a) The acquisition and maintenance of land for wetlands mitigation, wetlands banking, natural habitat, or other appropriate environmental mitigation is an eligible cost under the Federal-aid program. FHWA participation in wetland mitigation sites and other mitigation banks is governed by 23 CFR part 777.

(b) Environmental acquisitions or displacements by both public agencies and private parties are covered by the Uniform Act when they are the result of a program or project undertaken by a Federal agency or one that receives Federal financial assistance. This includes real property acquired for a wetland bank, or other environmentally related purpose, if it is to be used to mitigate impacts created by a Federalaid highway project.

Subpart F—Federal Assistance Programs

§ 710.601 Federal land transfer.

(a) The provisions of this subpart apply to any project undertaken with funds for the National Highway System. 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-aid 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 (Public Law 101–510, 104 Stat. 1808, as amended).

(b) Sections 107(d) and 317 of title 23, of the United States Code provide for the transfer of lands or interests in lands owned by the United States to an STD or its nominee for highway purposes.

(c) The STD may file an application with the FHWA, or can make application directly to the land-owning agency if the land-owning 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-aid 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. 4332, et seq.) and any other applicable Federal environmental laws, including the National Historic Preservation Act (16 U.S.C. 470(f)), and 23 U.S.C. 138.

(e) If the FHWA concurs in the need for the transfer, the land-owning agency will be notified and a right-of-entry requested. The land-owning agency shall have a period of four 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 four-month reply period at the timely request of the land-owning agency for good cause.

(f) Deeds for conveyance of lands or interests in lands owned by the United States shall be prepared by the STD and certified by an attorney licensed within the State as being legally sufficient. Such deeds shall contain the clauses required by the FHWA and 49 CFR 21.7(a)(2). After the STD prepares the deed, it will submit the proposed deed with the certification to the FHWA for review and execution.

(g) Following execution, the STD shall record the deed in the appropriate land record office and so advise the FHWA and the concerned agency.

(h) When the need for the interest acquired under this subpart no longer exists, the STD must restore the land to the condition which existed prior to the transfer and must give notice to the FHWA and to the concerned Federal agency that such interest will immediately revert to the control of the Federal agency from which it was appropriated or to its assigns. Alternative arrangements may be made for the sale or reversion or restoration of the lands no longer required as part of a memorandum of understanding or separate agreement.

§ 710.603 Direct Federal acquisition.

(a) The provisions of this section apply to any land and or improvements needed in connection with any project on the Interstate System, defense access roads, public lands highways, park roads, parkways, Indian reservation roads, and projects performed by the FHWA in cooperation with Federal and State agencies. For projects on the Interstate System and defense access roads, the provisions of this part are applicable only where the State is unable to acquire the required right-ofway or is unable to obtain possession with sufficient promptness.

(b) To enable the FHWA to make the necessary finding to proceed with the acquisition of the rights-of-way, the STDs written application for Federal acquisition shall include:

(1) Justification for the Federal acquisition of the lands or interests in lands;

(2) The date the FHWA authorized the STD to commence right-of-way acquisition, the date of the project agreement and a statement that the agreement contains the provisions required by 25 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 STDs 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 part 771 of this chapter;

(7) Adequate legal descriptions, plats, appraisals, and title data;

(8) An outline of the negotiations which have been conducted by the STD with landowners;

(9) An agreement that the STD will pay its pro rata share of costs incurred in the acquisition of, or the attempt to acquire rights-of-way; and

(10) A statement that assures compliance with the applicable provisions of the Uniform Act. (42 U.S.C. 4601, et seq.)

(c) If the landowner tenders a right-ofentry or other right of possession document required by State law any time before the FHWA makes a determination that the STD is unable to acquire the rights-of-way with sufficient promptness, the STD is legally obligated to accept such tender and the FHWA may not proceed with Federal acquisition.

(d) If the STD obtains title to a parcel prior to the filing of the Declaration of Taking, it shall notify the 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.

(e) When the United States obtains a court order granting possession of the real property, the FHWA shall authorize the STD to 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 State, as in the case of right-of-way acquired by the State for Federal-aid projects; and

(8) Instructions that the authority granted to the STD is not intended to preclude the U.S. Attorney from taking action, before the STD has made arrangements for removal, to reach a settlement with the former owner which would include provision for removal.

(f) If the Federal Government initiates condemnation proceedings against the owner of real property in a Federal court and the final judgment is that the Federal agency 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.

(g) 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, the 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.

(h) 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 STD, 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 by the State.

(i) The deed from the United States to the State, or to the appropriate political subdivision thereof, shall include the conditions required by 49 CFR part 21. The deed shall be recorded by the grantee in the appropriate land record office, and the FHWA shall be advised of the recording date.

Issued on:

December 13, 1999.
Kenneth R. Wykle,
Federal Highway Administrator.
[FR Doc. 99–32908 Filed 12–20–99; 8:45 am]

Note: These Regulations and Statutes were printed in June 2001. You should check our website: http://www.fhwa.dot.gov/realestate/ for the most current copy of the regulations and statutes.

Glossary

(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 at: **http://www.fhwa.dot.gov/realestate/index.htm**.

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 STD and/or your local engineering staff when considering a request.

Acquisition The process of obtaining right-of-way 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 at 49 CFR 24.303.

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 24.303(a)(10) 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 - 1st and **2nd Occurrence** 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 24.303(a)(12).

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 24.303(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 - 1st and **2nd Occurrence** 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 Projects 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.

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.

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) - Standards of Appraisal.

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 STD 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 STD). 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 (proposed regulations 23 CFR 1420 will replace 23 CFR 771 if published).

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 council.

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 involves 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 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. In order to conclude the negotiation, the parties present the Judge or presiding authority their agreement to settle (which is called a stipulated settlement).

Website (Environmental Justice) http://www.fhwa.dot.gov/environment/ej2.htm

Website (Office of Real Estate Services) http://www.fhwa.dot.gov/realestate/index.htm

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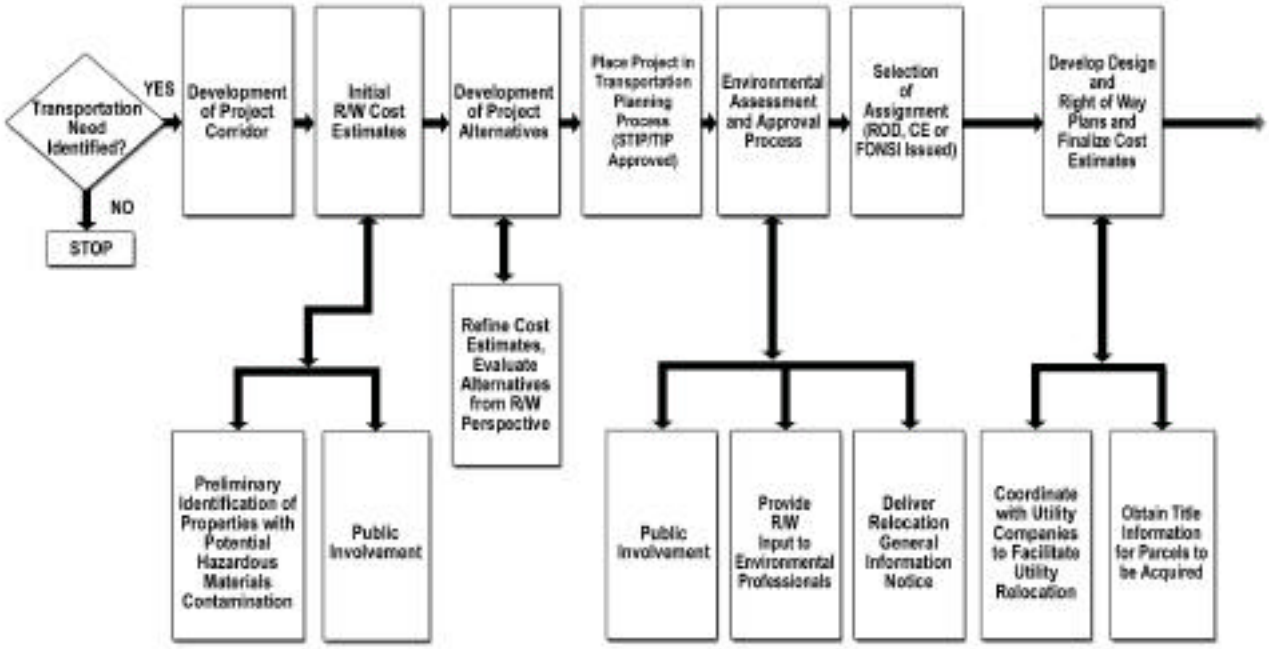
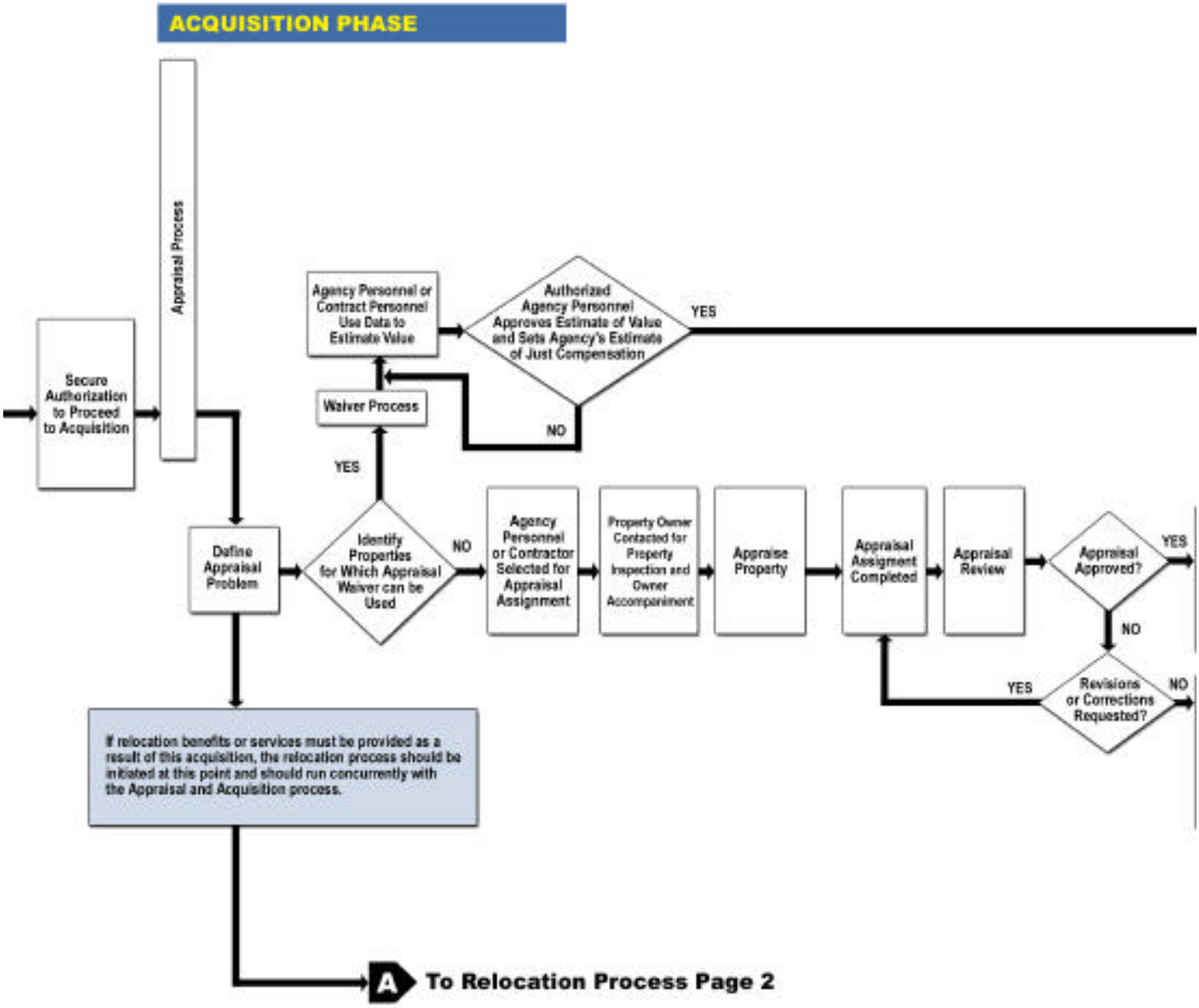
PROJECT DEVELOPMENT PHASE




ACQUISITION PHASE
Secure Authorization to Proceed to Acquisition
Appraisal Process
Define Appraisal Problem
Identify Properties for Which Appraisal Waiver can be Used
YES
NO
Waiver Process
Agency Personnel or Contract Personnel Use Data to Estimate Value
Authorized Agency Personnel Approves Estimate of Value and Sets Agency's Estimate of Just Compensation
YES
NO
Agency Personnel or Contractor Selected for Appraisal Assignment
Property Owner Contacted for Property Inspection and Owner Accompaniment
Appraise Property
Appraisal Assigment Completed
Appraisal Review
Appraisal Approved?
YES
NO
Revisions or Corrections Requested?
YES
NO
If relocation benefits or services must be provided as a result of this acquisition, the relocation process should be initiated at this point and should run concurrently with the Appraisal and Acquisition process.
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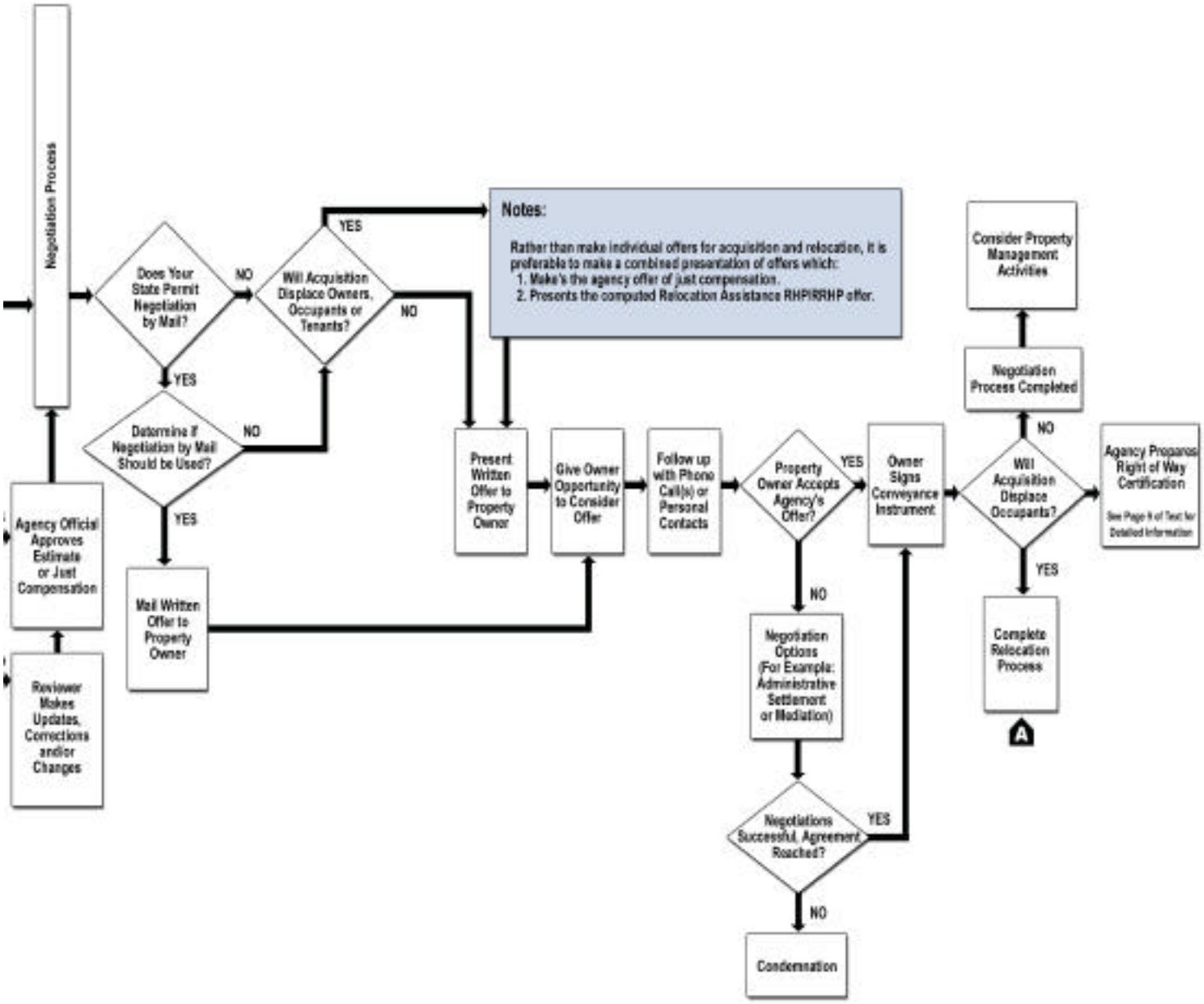
Negotiation Process
Does Your State Permit Negotiation by Mail?
NO
YES
Will Acquisition Displace Owners, Occupants or Tenants?
YES
NO
Notes:
Rather than make individual offers for acquisition and relocation, it is preferable to make a combined presentation of offers which:
1. Make's the agency offer of just compensation.
2. Presents the computed Relocation Assistance RHP/RRHP offer.
Determine if Negotiation by Mail Should be Used?
NO
YES
Agency Official Approves Estimate or Just Compensation
Reviewer Makes Updates, Corrections and/or Changes
Mail Written Offer to Property Owner
Present Written Offer to Property Owner
Give Owner Opportunity to Consider Offer
Follow up with Phone Call(s) or Personal Contacts
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YES
NO
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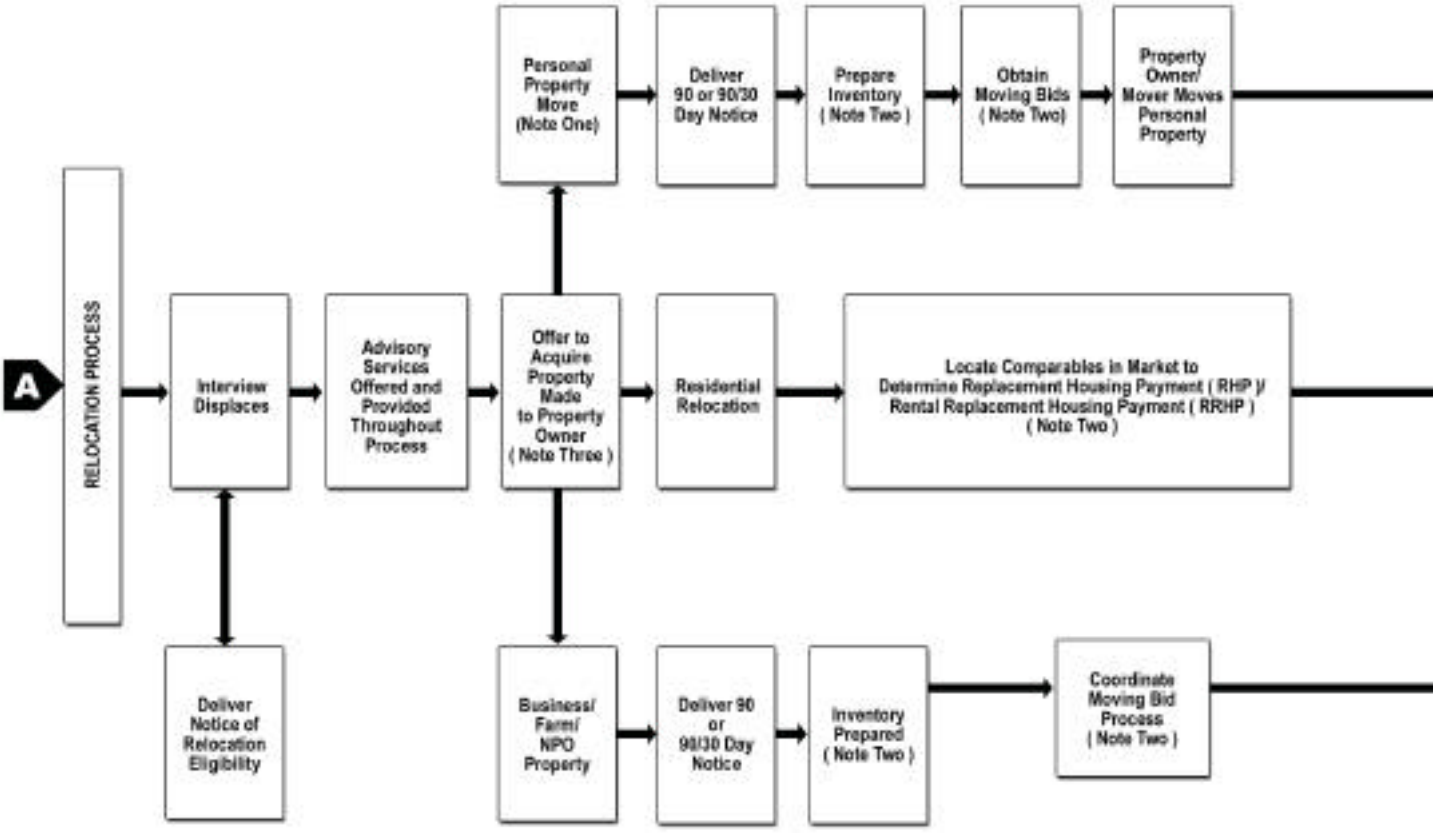
Complete Relocation Process
A
Agency Prepares Right of Way Certification
See Page 9 of Text for Detailed Information



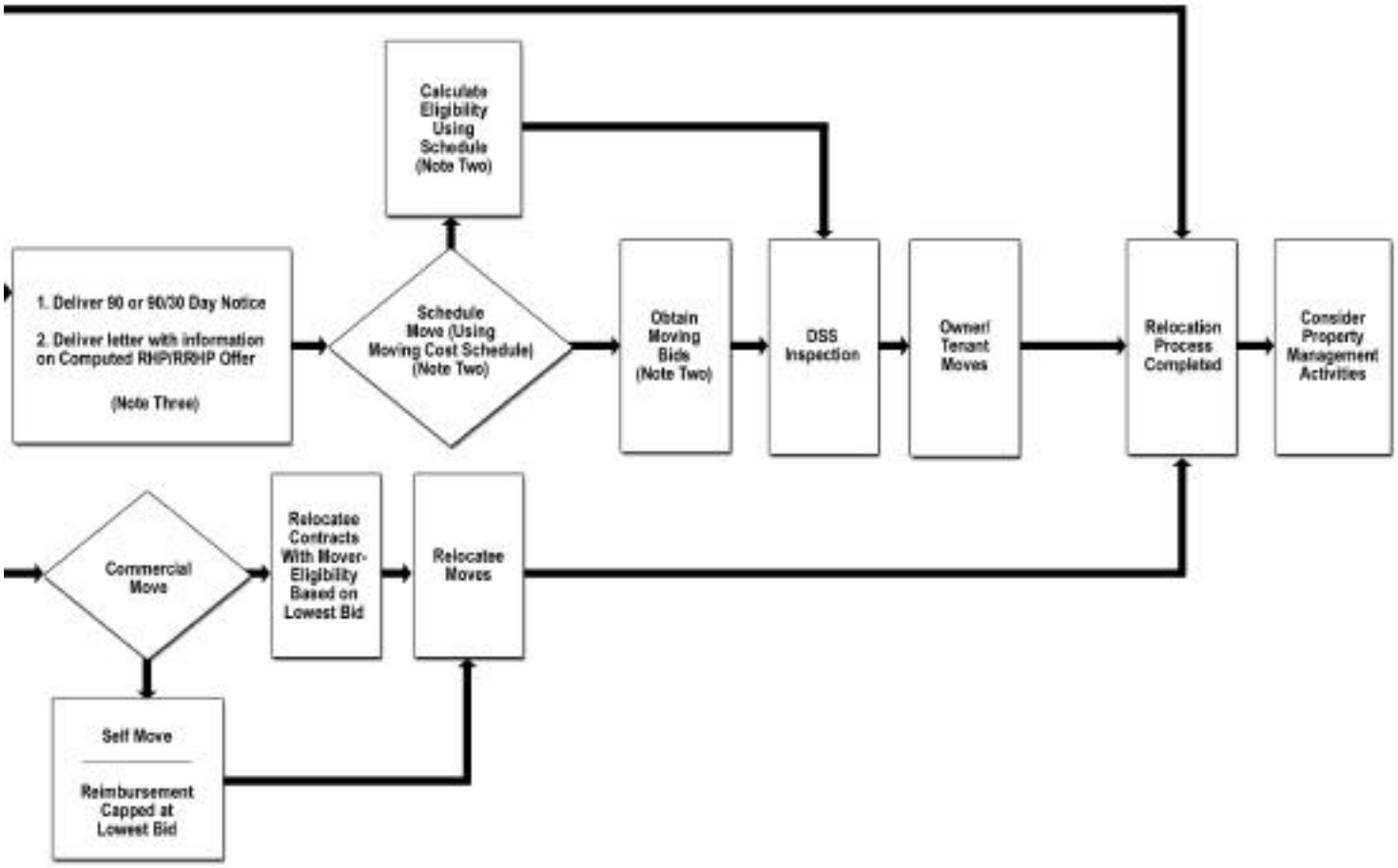
NOTES:

Note One - This type of move involves moving only residdential perscanl property from the area that was acquired (right of way). For example a shed or hay stack is moved from the (right of way) onto the property owner's remainder property.

Note Two - In order to ensure a timely relocation these activities should be started immediately after interviewing displacees.

Note Three - Rather than make individual offers for acquisition and relocation, it is preferable to make a combined presentation of offers which:

1. Makes the agency's offer of just compensation
2. Presents the computed Relocation Assistance RHP\RRHP offer.


Calculate Eligibility Using Schedule (Note Two)
1. Deliver 90 or 90/30 Day Notice
2. Deliver letter with information on Computed RHP/RRHP Offer
(Note Three)
Schedule Move (Using Moving Cost Schedule) (Note Two)
Obtain Moving Bids (Note Two)
DSS Inspection
Owner/ Tenant Moves
Relocation Process Completed
Consider Property Management Activities
Commercial Move
Relocatee Contracts With Mover-Eligibility Based on Lowest Bid
Relocatee Moves
Self Move
Reimbursement Capped at Lowest Bid

We the People

of the United States, in order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article. I

Section. 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section. 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Section. 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section. 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

Section. 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section. 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Section. 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970

(P.L. 91-646; 42 U.S.C. 4601 et seq.)

AN ACT To provide for uniform and equitable treatment of persons displaced from their homes, businesses, or farms by Federal and federally assisted programs and to establish uniform and equitable land acquisition policies for Federal and federally assisted programs

Be it enacted by the Senate and House Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970".

TITLE I—GENERAL PROVISIONS

SEC. 101. [42 U.S.C. 4601] As used in this Act—

(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 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

Code of Federal Regulations

Transportation

49

PARTS 1 TO 99

Revised as of October 1, 1999

gulations

Highways

23

Revised as of April 1, 1999

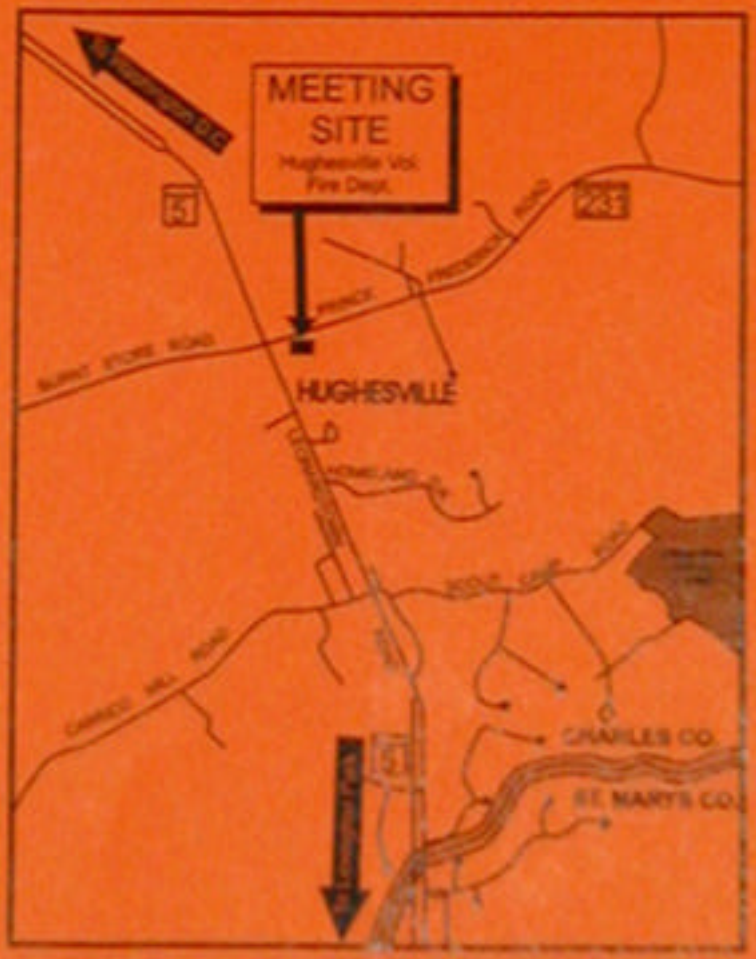
Maryland Department of Transportation
STATE HIGHWAY ADMINISTRATION

US Department of Transportation
FEDERAL HIGHWAY ADMINISTRATION

ALTERNATES PUBLIC WORKSHOP

MARYLAND 5

Hughesville Transportation Improvement Project



Wednesday, November 12, 1997
5:00 PM - 8:00 PM

ENVIRONMENTAL ASSESSMENT
DRAFT SECTION 4(F) EVALUATION

Project No. CH605A11

Maryland Route 5 - Hughesville Transportation Improvement
Project: From Gallant Green Road to North of Deborah Drive

Charles County, Maryland

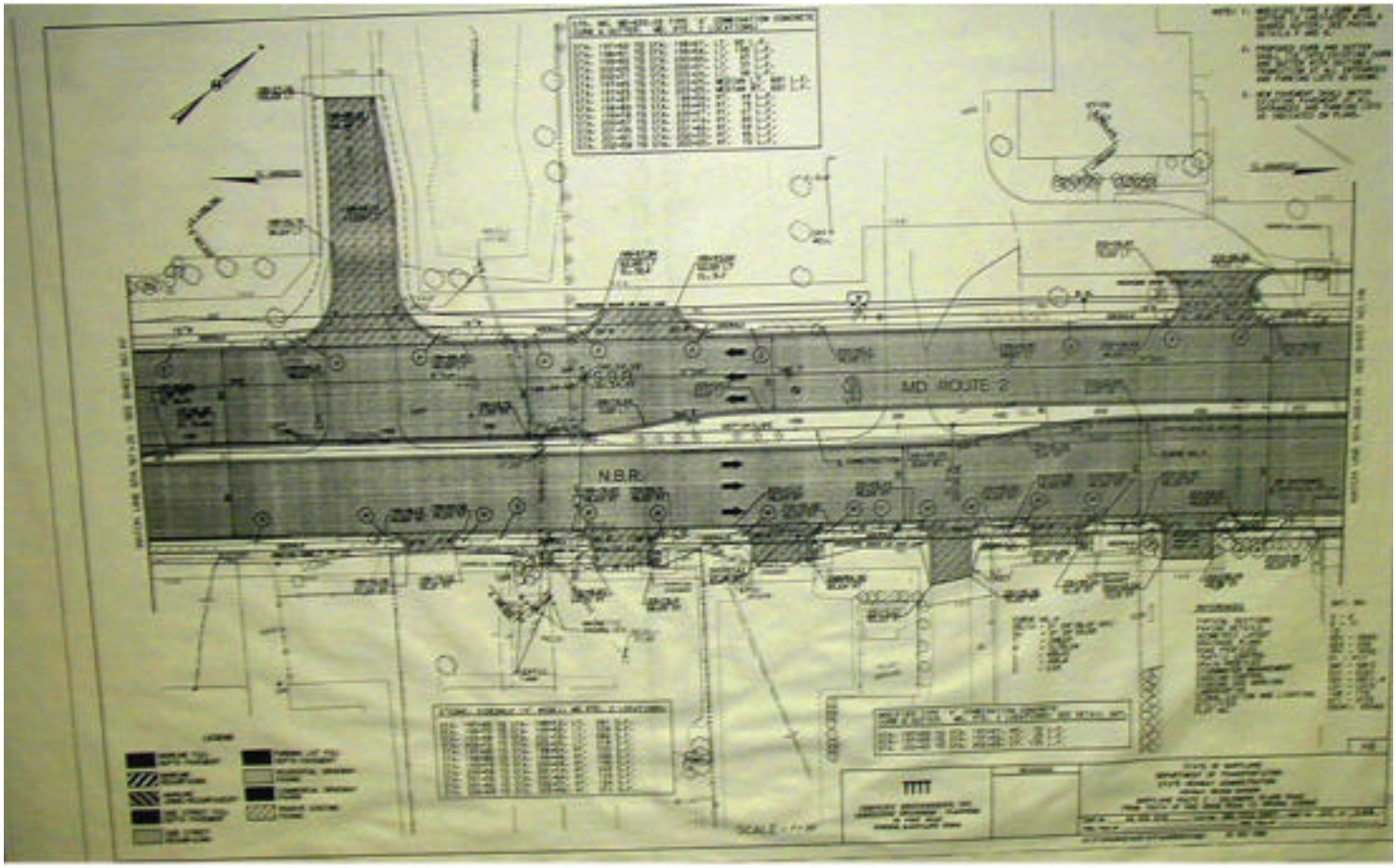
prepared by

U.S.DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

and

MARYLAND DEPARTMENT OF TRANSPORTATION
STATE HIGHWAY ADMINISTRATION

Summary
Table of Contents
I. Description of Proposed Action
II. Purpose and Need for the Project
III. Alternatives Considered


MD ROUTE 2
N.B.R.


US
REHABILITATION OF
7TH ST. BRIDGE
OVER I-395 FROM
E ST. TO G ST. S.W.
FEDERAL HIGHWAY
TRUST FUNDS
$3,932,800
U.S. DEPT. OF TRANSPORTATION
FED. HIGHWAY ADM.
DISTRICT
OF COLUMBIA
FUNDS
$983,201
DEPARTMENT OF
PUBLIC WORKS

U.S. Department of Transportation
Federal Highway Administration

THE APPRAISAL GUIDE

Office of Right-of-Way

Revised June 1993

OFFICE OF REAL ESTATE SHA 63.20-19 REVISED 03/14/91	APPRAISAL REVIEW DIVISION DETERMINATION OF AMOUNT TO BE OFFERED AND/OR DEPOSITED INTO COURT	STATE HIGHWAY ADMINISTRATION P.O. BOX 717 707 N. CALVERT ST. BALTIMORE, MD 21202
FEDERAL PROJECT NUMBER:	PROPERTY OF: Cl	R/W PROJECT NUMBER:
PDMS NUMBER:	NAME OF PROJECT: MD Rte 468- Snug Harbor RD to MD Rte 255 N/	R/W ITEM NUMBER

TO: , Chief
Right of Way, District #5

SIGN OR JUNKYARD INVENTORY NUMBER:
N/A

Transmitted herewith are copies of the appraisals, which have been approved as indicated below. The appraisal or Determination of Value indicated as selected is to be used as the basis for negotiations. In the event that one or more of the Appraisals are shown as disapproved, both the original and copy of the same have been transmitted to the Baltimore Office parcel file(s).

Date of Value	Name of Appraiser	Staff or Fee	Recommendation

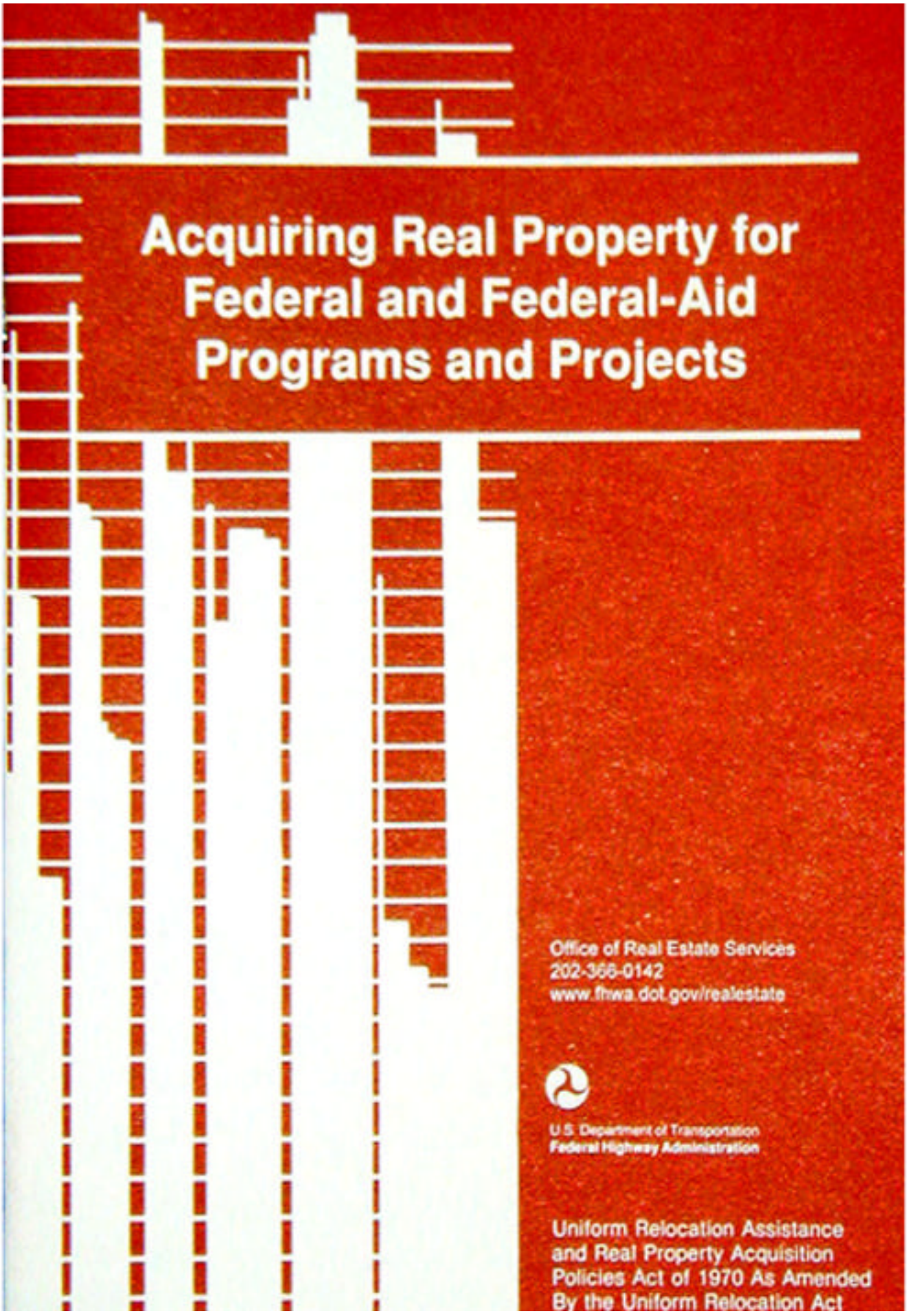
After reviewing the Appraisal, inspecting the property and the comparable sales listed in the appraisal, I **(recommend)** the **FAIR MARKET VALUE** of the property to be acquired plus legally compensable damages resulting to the remainder, if any, **and/or JUST COMPENSATION** to be:

$ 3,100 as of December 7, 2000.

It is my understanding that this determination is to be used in connection with Federal-Aid and/or State Highway Project; that I have no direct, indirect, present or contemplated future personal interest in such property or in any way benefit from the acquisition of such property; that this determination has been reached independently based on appraisals and other factual data without collaboration or direction; and that this value determination does not include any items not compensable under State or Federal laws.

Date: Review Appraiser:

(Continued on page 2)



Acquiring Real Property for Federal and Federal-Aid Programs and Projects

Office of Real Estate Services
202-366-0142
www.fhwa.dot.gov/realestate

U.S. Department of Transportation
Federal Highway Administration

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 As Amended By the Uniform Relocation Act

Maryland Department of Transportation
State Highway Administration

OFFICE OF REAL ESTATE

Your Land and Your Highways

Your Rights and Benefits Guide

Maryland Department of Transportation
State Highway Administration

Parris N. Glendening
Governor
John D. Porcari
Secretary
Parker F. Williams
Administrator

Name of Property:
R/W Item Number:
R/W Project Number:
Federal Aid Project No.:
Name of Project:

Dear Mr. Evans:

The purpose of this letter is to offer, on the behalf of the Maryland State Highway Administration, the sum of Six Thousand, Three Hundred Dollars **($6,300)**, for the purchase of the right-of-way easements and/or other rights necessary in connection with the above-captioned project and as shown and/or indicated on State Highway Administration's Right-of-Way Plat Numbered:

55479 (Rev. 12-13-00)

Listed below is a summary of the items of payment included in the above monetary offer. This offer is based on the State Highway Administration's review and analysis of an appraisal(s) made by a qualified appraiser. The representative of this office, whose signature appears below as "Negotiating Agent", in addition to delivering this written offer, will explain the acquisition, the proposed construction and the effect upon any adjacent property you have remaining.

Very truly yours,

State Highway Administration of
The Department of Transportation

Signature of Negotiating Agent

Chief, Right of Way District No. 5

Summary of Just Compensation for Real Estate and/or rights to be acquired.

Zoning –C-3
Highest and Best Use-current use

1,503 SF fee simple @ $3.50 SF		$5,261
471 SF temporary easement @ 10%		165
Driveway:		
220 SF @ $1.50		330
Sign & Base		500
	Total	$6,256
	Rounded	**$6,300**

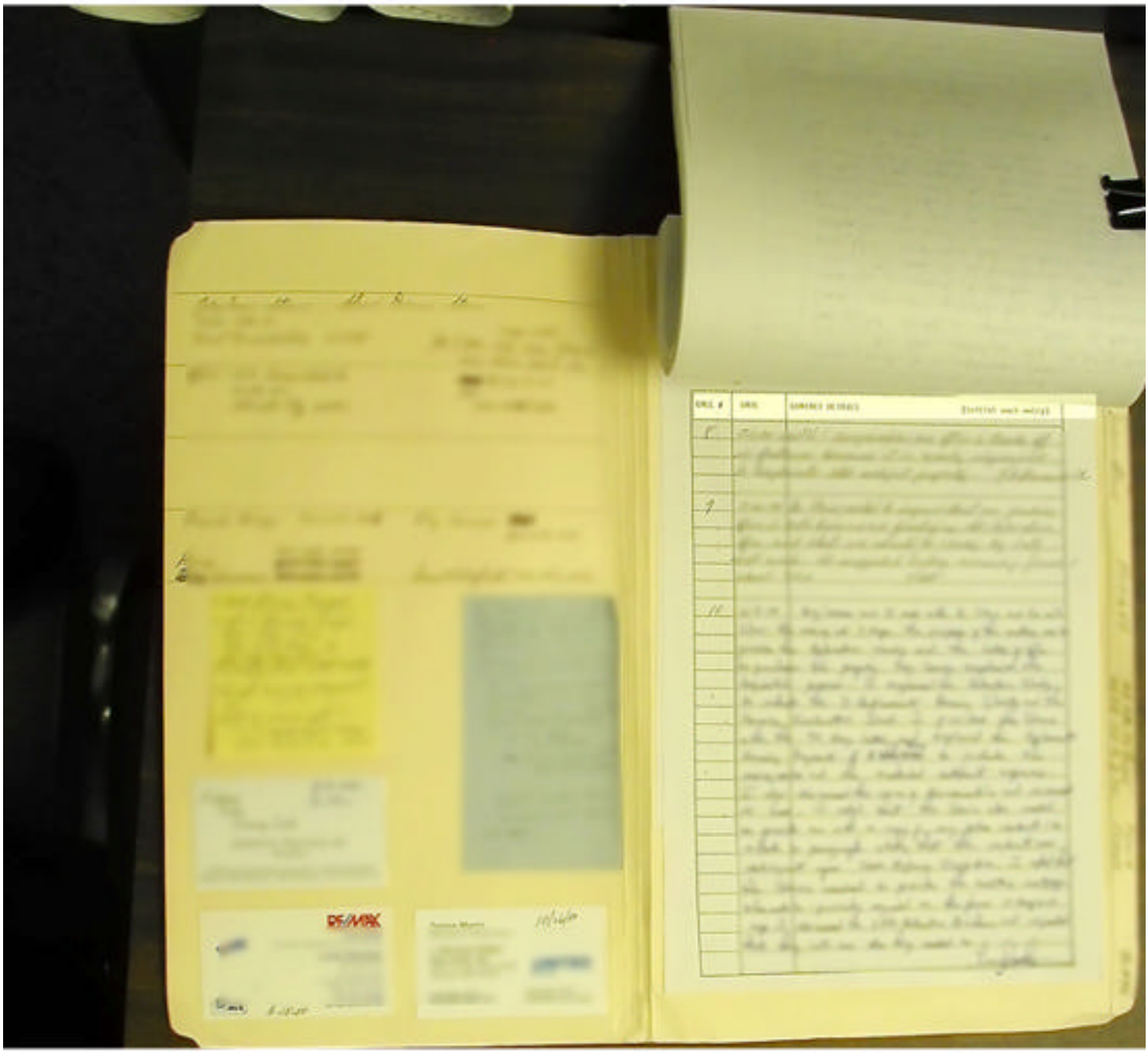
White - Property Owner
Yellow - District File
Pink - Item File
Gold - Relocation Assistance

SHA 63.20-200 (revised 11/5/97)

My telephone number is _____

Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2258 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202


RE/MAX

U.S. Department
of Transportation

Office of Real Estate Services
202-366-0142
www.fhwa.dot.gov/realestate

Your Rights and Benefits as a Displaced Person

Under the Federal Relocation Assistance Program

Dear

The Relocation Assistance staff of the State Highway Administration has completed a study of available housing to replace the property you currently occupy, which is to be acquired for the " project.

It has been determined by this replacement housing study that you are due a replacement housing payment in the amount of $13,944.00. Your replacement housing payment is based on the comparable replacement property located at [redacted] The computations justifying your replacement housing payment are as follows:

List price of selected comparable.	$ 338,944 ($320,000+$18,944)
plus additional depreciated barn value	
Right of Way offer.	-325,000.00
Your Replacement Housing Payment.	$ 13,944.00

You may be eligible for reimbursement of certain settlement fees as outlined in the brochure "Your Land and Highways" (See the addendum for specific reimbursable fees). However, property taxes and homeowner's insurance are not compensable. You may also be entitled to receive a payment for your moving expense for a distance of up to 50 miles from your present home.

The State Highway Administration assures you that you will have at least 90 days from the date of this notice to remain on your property. After the State has acquired your property, you will receive a 30 day notice specifying the date by which you must vacate.

In the event that you disagree with the eligibility printed above, you have the right to file a written appeal with the Relocation Assistance Division. This appeal must be reviewed within sixty (60) days of denial of any claim. You may contact me for assistance in filing this appeal.

My telephone number is [redacted]

Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2258 Statewide Toll Free

Mailing Address: [redacted]
Street Address: [redacted]