



Federal Highway Administration
Office of Real Estate Services

Effectiveness and Impacts of
FHWA's Implementation of the
49 CFR 24.102(c) (2) Appraisal Waiver

Summary of Findings and Recommendations



DTFH 61-05-T-27009

February 2007



DYE MANAGEMENT GROUP, INC.



**Federal Highway Administration
Office of Real Estate Services**

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Executive Summary

This report provides a summary of the research project, findings and recommendations of the study of the effectiveness and impacts of FHWA's Implementation of the 49 CFR 24.102(c) (2) Appraisal Waiver. Dye Management Group, Inc. conducted this research project for FHWA under Task Order DTFH61-05-T-27009.

A. Project Background

The Federal Highway Administration (FHWA) has the delegated responsibility as the lead agency to issue regulations necessary to implement the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended* (Uniform Act). The Uniform Act provides both relocation benefits for persons displaced due to Federally funded land acquisition, and the Federal policy statement on how acquisitions are to be conducted.

To promote credibility in the Federal acquisition program the Uniform Act, first enacted in 1971, required that property would be appraised, the appraisals reviewed, and an amount established that would provide the owner just compensation prior to initiating negotiations. In the *Uniform Relocation Act Amendments of 1987* an amendment was made to the Uniform Act that would permit acquiring agencies to waive appraisals “...**in cases involving the acquisition by sale or donation of property with a low fair market value.**” The 1987 Act also designated FHWA as the lead agency to develop a unified rule to implement the Uniform Act. The rule was issued by the FHWA in 1989 and is located in the *Code of Federal Regulations* at 49 CFR Part 24.

The original appraisal waiver rule adopted by the FHWA defined low-value as \$2,500 or less. The rule required that the individual making the determination to waive an appraisal and estimate the value for low-value acquisitions would be a qualified person, and that, although not a regulatory requirement, the value calculation be in writing and be retained. Under the rule, agencies were allowed to determine when an appraisal was not needed if they first determined that the valuation problem was uncomplicated and had an estimated value less than the low-value defined in the rule.

Beginning in 1995, based on State requests, FHWA has approved increases on a State-by-State basis for increasing the low-value definition up to \$10,000. Beginning in 2002 some States had requested and received approval for use of \$25,000 as the low-value threshold when applying the appraisal waiver provisions of the rule. In January 2005, FHWA issued an updated rule (effective February 3, 2005) that acknowledged the trend toward increasing the low-value definition. The current final rule contained in 49 CFR 24.102(c) (2) (ii) provides agencies the latitude to define low-value up to \$10,000. It also permits an increase in the low-value amount up to \$25,000 provided the Federal funding agency approves, and the acquiring agency agrees, to provide the owner the option to request an appraisal.

B. Project Objectives and Approach

The purpose of this research was to provide FHWA with an assessment of the effects and potential impacts regarding the use of the appraisal waiver provision based on the changes that have been made over the past 20 years to see if the intent for the waiver was being achieved.

Within the latest rule, the purpose and intent behind the waiver provisions were outlined in the appendix to the rule. This objective included the following items.

- Avoid the costs and time delay associated with appraisal requirements for uncomplicated, low-value valuation problems.
- Non-appraisers can be used to make the waiver valuations; thereby freeing appraisers to do work that is more sophisticated.
- Determination to waive appraisals made by an agency employee qualified to understand the proposed acquisition is both uncomplicated and of low value.

The appraisal waiver provisions are an option available for use in conducting an acquisition program subject to the provisions of the Uniform Act. The research sought the extent of use each State, the District of Columbia, and Puerto Rico had made of the waiver option. The following steps were taken to develop and complete the information collection required for this research.

- Developing draft investigative questions and survey instruments.
- Conducting a stakeholder meeting to review the investigative and survey questions and revise based on the input received.
- Obtaining Office of Management and Budget (OMB) approval for the information collection involving 52 non-Federal agencies.
- Conducting web-based survey of the 52 State right-of-way managers following OMB approval of the information collection.
- Analyzing survey responses and recommended 16 States for follow-up interviews.
- Conducting follow-up telephone interviews of select State right-of-way managers to clarify and obtain more detail on appraisal waiver program operations.
- Collecting and analyzing a sample of State statutes, procedures, and forms related to the waiver valuation process.

The major activities under this research began with the stakeholder meeting in July 2005. Following OMB approval of the information collection in June 2006, the team conducted the web-based survey and the follow-up interviews. Ninety percent (90%) of State right-of-way managers responded to the web-based survey.

C. Key Findings

The web-based survey, follow-up interviews, and analysis of State procedures present a clear picture; that all but a few State Departments of Transportation consider the appraisal waiver option valuable enough to develop procedures and apply the waiver provision in at least some situations within their acquisition program. Only two of 47 survey responses indicated that their State did not use the appraisal waiver option. One of these States indicated that it was because of State law, and the other indicated it was due to satisfaction with their existing low-value appraisal process. During the course of this study one other State later indicated

they had recently dropped the waiver provisions from their operating manual as their experience, within the context of their State law, had been unsatisfactory. For the remaining States, the ability to waive appraisals on uncomplicated, low-value parcels is considered advantageous in certain situations and appears to save some time and money.

The survey and follow-up interviews addressed how the States set up their waiver process and applied it during project operations. The survey and interviews also assessed the effectiveness of the waiver program and its impact on a State's organization and the public.

In setting up their program, each State considered their past and anticipated workload in selecting the low-value amount they would use as the threshold for their waiver program. The level selected was determined so that only a percentage of parcels would be covered. Some of the other factors that typically influence States in setting up procedures for their waiver program include:

- The flexibility provided in State law to waive appraisals.
- Property owner rights to value information included in State law.
- Eminent domain appraisal requirements necessitating appraisals.
- Pre-existing appraisal procedures relating to development of pre-appraisal market data analysis reports, sometimes called data brochures, sales books, market studies, etc.
- The size of the State's acquisition program and current staffing levels and experience.
- The interpretation applied to appraisal standards and the exceptions permitted by the State Appraisal Board in implementing USPAP.

Each of the above factors, individually and in combination, accounted for the differences noted between States in their implementing procedures of the appraisal waiver provision.

The procedures, and how States applied them in preparing waiver valuations, resulted in the following findings.

1. The determination of parcels that are uncomplicated and low-value is made by manager level appraiser or review appraisers during a field review of preliminary right-of-way plans. The field review covers potential waiver candidates but also defines the appropriate appraisal format for each parcel on the project.
2. The decision to use waivers on any particular parcel or project is a managerial option. Selection of parcels was reported to involve a risk assessment (the potential delay to prepare an appraisal if condemnation is required) which consider a number of other factors relating to public acceptance of the project, individual owners, and/or availability of good sales information.
3. Sales data support for waiver valuations varied between States and depend on how market documentation is developed under State appraisal procedures. Use of sale brochures is preferable since then both waiver valuations and appraisals will be based on the same market indicators.

4. The waiver valuation form varies considerably from State to State. The range is from a simple spreadsheet presentation covering multiple parcels to multi-page documents that mirror the information required in conventional value finding or short-form appraisals.
5. A high percentage of States use appraisal staff to prepare waiver valuations.
6. Consultants and fee appraisers have been used to prepare waiver valuations. Fees charged are somewhat lower than for short-form or value finding appraisals. State staffing and increased reliance on outsourcing of acquisition activities are factors involved in such practices.
7. Informal review of waiver valuations by appraisal staff prior to State approval of just compensation is included in the procedures of many States in order to achieve valuation consistency.

When waivers were used as the basis for just compensation offers the general findings reflect a high success rate in reaching an amicable settlement with the owners. The findings relating to the negotiation process when offers are based on a waiver valuation included the following items.

1. Forms used to present an offer based on a waiver valuation usually indicated an appraisal was not prepared. Most States advised the owner that an appraisal would be prepared at his option, even in those States with low-value defined at or below \$10,000.
2. Negotiations based on a waiver valuation were typically not conducted differently from those based on an appraisal. Administrative settlements and early decisions were preferred outcomes since many States had to have an appraisal prepared should filing a condemnation action become necessary.
3. Timing of negotiations based on waiver valuations can vary from very early in the project acquisition schedule to very late. The consensus seems to prefer that waiver valuation offers be timed to fall after negotiations based on appraised properties. This provides confirmation that estimated values are generally acceptable and promotes valuation consistency.

Although many States have embraced the waiver valuation provision and included its use in their operations, the following potential impacts were noted:

1. The number of appraisal resources especially within the State agencies are declining. This may be why the waiver process has been so widely accepted.
2. Use of the waiver, especially when assigned to appraisal staff, detracts from the appraisal process.
3. Use of the appraisal waiver reduces training opportunities for appraisers and inhibits them in gaining creditable experience credits for State certification programs.
4. Both USPAP and public perception regarding use of a lesser process to value property is subject to interpretation and recurring questions.

D. Recommendations

Based on the findings, the research team developed a number of recommendations for consideration at both the State and the national levels. These recommendations were principally based on the initial objective of the appraisal waiver provision as an option intended to reduce time, cost, and redistribute workload so that appraisers could do a better job on more complex issues.

1. State-Level Recommendations

There are a number of best practices associated with State implementation of the appraisal waiver provisions. The following comments highlight practices that in the researchers' view, achieve the best result within the context of the Federal rule.

1. States should be selective when determining if a waiver valuation is appropriate. Considering only complexity of the valuation problem and a parcel's estimated value do not assure both time and cost can be saved by using the waiver provisions.
2. Market information used to support unit values in waiver valuations needs to be well supported and current. Use of documented market data reports, data brochures, or sales books is preferred over courthouse or multi-list searches.
3. Use of knowledgeable, non-appraisers to prepare the waiver valuation is preferred to assigning staff or fee appraisers. Appraisers have a role in the determinations regarding the complexity of the appraisal problem and could have a role in compiling and evaluating market sales information and project level analysis, but not in the preparation of waiver valuations.
4. Except in unusual situations, outsourcing the preparation of waiver valuations does not fit the intent behind the provision, especially if appraisal personnel are involved in the preparation of the waiver valuation.
5. Although waivers do not require owner contact, State procedures should provide for early contact with each owner to establish an understanding prior to valuation of the effects of the proposed acquisition and assure that all owners on the project receive equal treatment. Pre-offer contacts can assure that all factors are considered in determining the initial just compensation offer, and provide an early opportunity to assess the owners position relating to the project and how it is affecting his property.
6. Some State waiver valuation procedures produce products that are very similar to the documentation standards for value finding or nominal value appraisals. States should fully review the work process, assure that the waiver provisions fit their needs, and actually save time, cost, and free appraisal staff of some of their responsibilities.
7. Where the procedures implementing the appraisal waiver provision are based on an administrative decision, a State should assess the feasibility of revising their State statutes to permit filing condemnation without having to revise the valuation document to conform to State appraisal standards.

2. National Recommendations

Because the updated final rule granting States greater flexibility in the administration of the waiver provision has only been in effect for two years, it was not possible to measure the full effect of the new provision within the timeline of this research. However, based on the findings of the study, there are several items for consideration by FHWA as the lead agency for the Uniform Act regarding the option to use appraisal waivers. These include:

1. Current State practices resulting in use of appraisers to prepare waiver valuations and the incidence of use of contract personnel needs to be considered in relation to the expressed intent of the waiver provisions. Guidance and promotion of best practices should emphasize the use of non-appraisers to prepare waiver valuations.
2. The current guidance that owner contact is not required based on the position that a waiver valuation is not an appraisal should be reconsidered. All owners should be provided the same deference without regard to the impact the project may have on their property. While owners may not have to be offered the same right to accompany the valuation preparer as is in place for an appraisal, an alternative process needs to be in place to assure communication is achieved prior to completing the valuation process.
3. Documentation standards for waiver valuations should be sufficient to support the value conclusion and maintain consistency in the treatment of owners affected by the project.
4. Action should be considered to assess the cause of the reported decline in the number of in-house appraisers within State agencies and the related problems of recruitment. State support for training and promotion of appraiser certification needs to be encouraged.
5. Continued effort needs to be applied to work with the Appraisal Foundation and the State Appraisal Boards to conform USPAP with the appraisal requirements being applied to projects under the Uniform Act. Use of appraisal staff should be devoted exclusively to assignments that provide creditable service for maintaining or attaining State appraiser certification.

I. Introduction and Project Overview



This section introduces the research project. It provides a definition and description of the current appraisal waiver process, summarizes the purpose for the research study and provides an overview of the research scope and objectives.

A. Overview of Appraisal Waiver Concept

The original Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) did not contain any provision to waive making an appraisal. The ability to waive preparing an appraisal was added by the *Uniform Relocation Act Amendments of 1987* (Title IV, Pub.L. 100-17, 101 Stat. 246) which amended Sec. 4651 of 24 U.S.C. Section 4651 by adding the exception to the law.

Sec. 4651. Uniform policy on real property acquisition practices

(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.**

The theory behind the legislative revision to waive an appraisal was based on an opinion that administrative costs, particularly appraisal costs, should not be a high proportion of, or even exceed, the value of the actual real property to be acquired. In the original unified rule published in 1989 to implement the Uniform Act, the procedure to waive the appraisal was specified in 49 CFR 24.102(c) to allow agencies acquiring real property to “. . . determine that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at \$2,500 or less, based on a review of available data.” The foundation for the value limitation selected was based on the potential cost to obtain an appraisal including the administrative time involved in completing the owner accompaniment provision associated with an appraisal. Other Uniform Act provisions that required a review of appraisals were also taken into account.

The original provision included in the final rule issued March 2, 1989 (54 FR 8928) included comments in the preamble to the rule that comments received on the matter of establishing the dollar threshold at \$2,500, were supportive of the amount although four comments indicated it was too high, and seven indicated it was too low. The original appraisal waiver rule adopted by the FHWA retained the proposed threshold at \$2,500 and indicated that establishing the valuation would be by a qualified person, and that although not a regulatory requirement, the value calculation be in writing and be retained.

The preamble also indicated in response to some comments regarding appraisal review that since the agency is required to make a written offer, and that offer letters are generally signed by someone at the management level, that it would remain general FHWA policy to have not less than two people involved in setting the amount of an offer of just compensation. The signing of the offer letter would constitute a review where no appraisal is made. Precisely how such matters will be handled was left within each agency's discretion.

Over time and in response to State Departments of Transportation (SDOT) requests to raise the appraisal waiver threshold, the Federal Highway Administration (FHWA) expanded the policy through 49 CFR 24.7, Federal agency waiver of regulations. Starting in 1995, FHWA allowed SDOTs, upon their request to FHWA, to raise the appraisal waiver threshold to a maximum of \$10,000, and then in 2002, to a maximum of \$25,000. Each of the approval actions were based on a State application that itemized both the incidence and the application that would be made of the increased appraisal waiver threshold. Often the application included a request to increase the conflict of interest valuation amount to coincide with the increased level of the appraisal waiver threshold. This streamlined the acquisition process by allowing the same person who prepared a valuation to negotiate the acquisition.¹

By the time the latest rule revision was proposed in the Notice of Proposed Rulemaking (NPRM) issued on December 17, 2003, (68 FR 70342) almost three-quarters of the States had raised their waiver threshold. The NPRM preamble indicated that the changes proposed to raise the limit reflected the general increase in property values since the \$2,500 threshold was established. Further, the experience to date, primarily for those States that had worked under the raised limits, gave no indication of administrative abuse or property owner objection. Broad SDOT support was noted for having a higher threshold included within the regulation.

On January 4, 2005, (70 FR 590), FHWA published a final rule increasing the waiver threshold to \$10,000, with provision that up to \$25,000 could be approved under certain conditions. As of the date the final rule was issued, revising 49 CFR Part 24, all but eight States had already requested and received approval to increase their low-value threshold above the \$2,500 limit. Over half (28) of the States were authorized to use \$10,000. Ten other States had received approval to use an amount in excess of \$10,000. The latest rule, therefore, only codified the higher thresholds that had been authorized. The only change was to require States approved to use waiver valuations exceeding \$10,000 to offer the owner a right to have the agency appraise the property being acquired.

The preamble to the latest rule contained a summary of the comments received regarding the increases to the threshold amount and some indication of FHWA's policies. As in the original rule making, the majority of comments received supported the increased waiver

¹ The conflict of interest provisions are in 49 CFR part 24 § 102(n) and are currently, as of January 4, 2005 set at \$10,000. The former provisions in the rule issued in 1989 were in § 103(e) and were set at \$2,500 to match the low-value threshold that rule applied to appraisal waivers.

threshold. Some objected to the two-tier provision whereby threshold approvals in excess of \$10,000 would require the agency to provide the property owner with an option to have an appraisal prepared by the agency. The thought was that this type of approach would be confusing. Some of the other comments received included the following:

- Requests to set the waiver threshold far in excess of \$10,000.
- Concerns that appraisal waiver provisions risked property owner protection and were inconsistent with other governmental policies and with the Uniform Standards of Professional Appraisal Practice (USPAP), as developed by the Appraisal Standards Board of the Appraisal Foundation.
- A concern that with the increased levels a high percentage of an agency's acquisitions may be through appraisal waiver procedures.
- Support for the provisions in the rule that an appraisal waiver must be made by a qualified person.
- Interpretational questions regarding application of the threshold value to the property or the taking.

The appendix to the final rule provided insight into the purpose and intent behind the revisions made to the appraisal waiver process, specifically the introduction of a definition for a waiver valuation in § 24.2(a)(33). The main components of the appraisal waiver process as outlined in the appendix to the rule include the following.

- Appraisal waivers avoid the costs and time delay associated with appraisal requirements for low-value, non-complex acquisitions.
- Non-appraisers can be used to make the waiver valuations; thereby freeing appraisers to do work that is more sophisticated.
- Determination on when to use the appraisal waiver option are made by an agency employee with enough understanding of appraisal principals to determine that the proposed acquisition is both low-value and uncomplicated.
- Since waiver valuations are not appraisals, an appraisal review is not necessary.
- 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 appendix to the rule also clarified that both the definition of “appraisal” in the Uniform Act and the appraisal waiver provisions of the Uniform Act under the regulations are Federal law and public policy and should be considered as such when determining the impact of appraisal requirements levied by others. Therefore, waiver valuations are not appraisals as defined by the Uniform Act and these regulations, and are not subject to appraisal performance requirements or standards, regardless of their source. This was

designed to clarify the issue that had been raised by State Appraisal Boards (USPAP) and that were mentioned during the comment period referenced above.

With the legislative and regulatory foundation, the use of appraisal waivers is left to the Federal and State agencies that operate under the provisions of the Uniform Act. It is not a required practice but an option. When used, it is expected that use will be established and become part of the operational procedures of the organization. During the past two years since the latest final rule was issued, SDOTs have been updating their right-of-way manuals. These manuals reflect how the appraisal waiver process has been included or excluded from the valuation process they employ. Knowledge of the intent behind the appraisal waiver provision, and the various methods employed to implement it, set the foundation for this study.

B. Research Problem

The FHWA Office of Real Estate Services (HEPR) within the United States Department of Transportation (USDOT) has the delegated responsibility to issue regulations and establish procedures determined to be necessary to assure that the payments and assistance authorized by the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended* (Uniform Act) is administered in a manner which is fair and reasonable and as uniform as practicable. In January 2005, the regulations implementing the Uniform Act were updated. One provision included in the revised rule clarified and expanded the capability of an acquiring agency to waive making an appraisal on certain types of property acquisitions. The revised rule adjusted the low-value threshold definition that had been established in the original unified rule issued in 1989 and added clarifications regarding how the appraisal waiver was to be implemented.

An increase in the threshold level had been implemented on a State-by-State basis over a period of years. Almost two-thirds of SDOTs had applied for and received an approval from FHWA to increase their low-value threshold by the time the new rule went into effect.

The purpose of this research study is to provide HEPR with an assessment of the effects and potential impacts from the use of the appraisal waiver provision. This includes identifying both best practices and ways HEPR might improve the appraisal waiver guidance to support the primary objectives of the Uniform Act.

C. Project Scope and Objectives

Dye Management Group, Inc. conducted this research project for FHWA under Task Order DTFH61-05-T-27009. Dye Management Group Inc.'s scope of work for this research effort consisted of a number of tasks that identified best management practices required for effective implementation of the appraisal waiver provision. Based on the recent revision to the rule, this research effort aimed to validate how the use of the appraisal waiver provisions can complement the goals of the Uniform Act to assure consistent treatment of

owners and provide just compensation. The study effort looked at whether the use of appraisal waivers encouraged and expedited the acquisition of real property by agreements with owners, thereby limiting litigation. The study also explored if the use of appraisal waivers is accomplishing the intended goals of minimizing administrative costs and expediting the acquisition of real property without affecting public confidence in Federal land acquisition practices. The tasks completed during this research project also assessed if the use of appraisal waivers are contributing to short or long-term organizational problems for State Departments of Transportation.

This research study was accomplished through:

- Developing an initial set of draft investigative questions and a draft of a web-based survey of State Department of Transportation officials based on the investigative questions.
- Conducting a one-day on-site meeting of FHWA staff and key stakeholders from State Departments of Transportation to review the investigative questions and the survey.
- Obtaining Office of Management and Budget (OMB) approval to conduct the survey of State Departments of Transportation.
- Conducting the web-based survey and analyzing the results.
- Conducting a series of follow-up telephone interviews to explore issues and opportunities raised during the survey.

The goal of this report is to provide a brief overview of our methodology and approach for performing this research study, describe our primary investigative questions, identify the key findings from the web-based survey and follow-up interviews, and outline any recommendations for potential adoption by FHWA and State Departments of Transportation for improving implementation of the appraisal waiver program.

The remainder of this report consists of:

- **Section II. Investigative Questions.** This section outlines Dye Management Group, Inc.'s key research questions for this project. These questions provide the overall framework for the research, and establish the underlying basis for questions included in the survey instruments and interview guides developed during the project.
- **Section III. Research Approach and Methodology.** This section provides an overview of Dye Management Group, Inc.'s project approach and methodology for this research effort including the stakeholder review, web-based survey of the State Department of Transportation right-of-way managers, and follow-up telephone interviews with representatives from selected States.
- **Section IV. Summary of Key Findings.** This section summarizes the key findings from the research study. It includes a discussion of both preferred practices and issues and opportunities with the current appraisal waiver process.
- **Section V. Recommendations.** This section outlines a set of recommendations to address the issues and opportunities identified by the study team. It includes a discussion on how

implementation of Uniform Act appraisal waiver provisions have encouraged and expedited the acquisition of real property by agreement with owners, and avoided litigation, while providing consistent treatment of owners, and promoting public confidence in Federal land acquisition practices.

II. Investigative Questions



As part of reviewing the background material concerning the use of appraisal waivers, a set of investigative questions were developed to guide inquiries. This section contains the investigative questions used for this research project as they evolved from the input provided by our stakeholder team. These questions provide the overall framework for the research and establish the underlying basis for questions included in the survey instruments, and the interview guides utilized throughout the project effort.

The investigative questions addressed two key categories:

- Effectiveness of the Appraisal Waiver.
- Organizational Impacts of Implementing the Appraisal Waiver.

The subsections below describe these groupings of investigative questions in further detail.

A. Effectiveness of the Appraisal Waiver

To be able to evaluate whether or not the appraisal waiver is an effective tool, the research team needed to understand the needs and scope of the State programs. The team needed to understand the decision making process that leads to use of the waiver and then explore how this valuation tool is used in negotiations, and what happens if settlement can not be negotiated. The research team wanted to understand the extent to which settlements are secured using the appraisal waiver. Likewise, the team wanted to assess the incidence of having to re-value property using an appraisal. Both of these measures provide insight to the acceptance of the appraisal waiver procedure, both by State Departments of Transportation and the public. Key questions include:

- Does the State use the waiver provisions in 49 CFR 24.102(c) (2)?
- When an appraisal waiver is used, what criteria were considered in setting up the procedures including selection of the appropriate low-value threshold?
- What percentage of total acquisitions made during the past 12 months were acquired at a price below the low-value threshold?
- What decision making process is used to determine when to use the appraisal waiver?
- Who prepares the waiver valuations and when are they prepared?
- What market evidence is used as a basis for a waiver valuation and who makes the decision on the amount to be offered as just compensation?
- How do negotiations based on an appraisal waiver valuation differ from those based on an appraisal?
- Does an appraisal need to be prepared if a settlement cannot be reached and condemnation becomes necessary to gain possession?

- What form of quality assurance is in place to assure owners receive just compensation when properties are acquired based on a waiver valuation?

B. Organizational Impacts of the Appraisal Waiver

The rule permitting the low-value threshold to be set as high as \$25,000 creates a potential for a high percentage of total acquisitions to be valued using the appraisal waiver provisions. It is possible that reducing the number of non-complex appraisals in an agency's workload will limit a State Department of Transportation's ability to provide assignments to junior staff essential to developing the skills and capabilities of new appraisers. It is also possible that agencies see an advantage in reducing the number of specialized staff and moving towards using contract fee appraisers. This could potentially be for some agencies a more cost effective way to handle the appraisal workload. For the research team, a central question was whether a reduction in the use and development of staff appraisers hinders the development of the review appraisers needed by an agency and how this could affect the ability of an agency to have the qualified personnel necessary to approve or recommend just compensation.

The other organizational issue that could result from extensive use of the appraisal waiver is a perception by the public that there is a lack of expertise within the agency. This could result if the incidence of appraisal waiver based settlements declined and now having less highly trained appraisers on staff, agencies had to utilize contract fee appraisers rather than their own staff to perform most appraisals. Properties had to be appraised using contract fee appraisers rather than the agencies own staff. To gauge the potential impact of this issue, the research team assessed if personnel changes within the agency and in particular, a loss of appraisal expertise can be linked to the increased use of the appraisal waiver.

Key operational questions concerning the organizational impacts of the appraisal waiver include:

- How has your staff appraisal function changed over the past ten years?
- Does the State rely on staff or contract fee appraisers for the bulk of their appraisal workload? Has this changed much over the last ten years? Why?
- What type of training programs for appraisal staff are in use?

III. Research Approach and Methodology



To meet the study objectives and address the investigative questions, the research team utilized a work plan that focused on assessing the scope and effects of implementing the appraisal waiver provision. The approach utilized an initial one-day stakeholder meeting to define the broad issues. The web-based survey of State right-of-way managers then helped to narrow the range of issues for further study and identify a number of individual States for further detailed follow-up through telephone interviews.

The key steps of the research approach were:

- Stakeholder review of the investigative questions and the survey instruments.
- Web-based survey of State Department of Transportation right-of-way managers.
- Detailed telephone interviews with selected State Right-of-Way Managers to follow-up on and clarify information received during the web-based survey.
- Compilation and review of relevant State statutes, procedures, and forms.
- Analysis and synthesis of information received from the web-based survey, detailed interviews and review of statutes, procedures, and forms.

The subsections below describe each of these work plan components in more detail.

A. Stakeholder Review of Survey and Interview Questionnaires

Dye Management Group, Inc., along with FHWA's Office of Real Estate Services, conducted a one-day stakeholder meeting at the Spring Hill Suites at Baltimore Washington International Airport in Baltimore, Maryland on July 26, 2005. This stakeholder group consisted of representatives from seven State Departments of Transportation as well as participants from FHWA's Office of Real Estate Services. These stakeholders have a considerable amount of experience with appraisal waivers. The purpose of this meeting was to evaluate the investigative questions, the web-based survey instrument, and the interview processes proposed for gathering information regarding current practice.

Dye Management Group, Inc. first discussed the project background and overview with the stakeholders. The research team then handed out and walked through the investigative questions and draft survey instruments; getting stakeholder input along the way in regards to clarity and appropriateness. This session also gave the stakeholders the opportunity to suggest additional questions for study if needed.

Based on the input received from the stakeholders, the research team finalized the investigative questions and survey instruments. The team then prepared the Office of Management and Budget (OMB) information collection request to obtain approval to

conduct the survey of the State Departments of Transportation and worked with various USDOT staff to respond to OMB questions.

B. Web-based Survey of the State Right-of-Way Managers

Following approval by OMB of the team's information collection request on June 1, 2006, the research team invited all State Department of Transportation right-of-way managers including the right-of-way managers in the District of Columbia and Puerto Rico to participate in a web-based survey. The research team sent an e-mail invitation to each prospective respondent on June 13, 2006 with a link to the website containing the survey. The survey was open for completion during June and July of 2006. The research team used e-mail reminder messages as appropriate to encourage completion of the survey.

The purpose of this voluntary survey was to assess if the use of waiver valuations under provisions in 49 CFR 24.102(c)(2) contribute to effective practices compatible with the intent of the Uniform Act, and whether the use of the appraisal waiver is complementary to operations of public land acquisition agencies. The analysis of the survey results identified which States are currently using the appraisal waiver provision; how the procedures in these States were developed and are being applied and the experiences of each State to date with the provision based on their reported level of use.

Forty-seven of 52 invited participants completed the survey, for a response rate of 90.38%. Exhibit III-1 provides a list of the States that responded to the survey.

Exhibit III-1: State Departments of Transportation Responding to the Web-based Survey

State DOT Responses				
Alabama	Hawaii	Michigan	North Carolina	Texas
Alaska	Idaho	Minnesota	North Dakota	Vermont
Arizona	Illinois	Mississippi	Ohio	Virginia
Arkansas	Indiana	Missouri	Oklahoma	Washington
California	Iowa	Montana	Oregon	West Virginia
Colorado	Kansas	Nebraska	Pennsylvania	Wisconsin
Connecticut	Louisiana	Nevada	Rhode Island	Wyoming
Delaware	Maine	New Jersey	South Carolina	
Florida	Maryland	New Mexico	South Dakota	
Georgia	Massachusetts	New York	Tennessee	

C. Follow-up Telephone Interviews

Based on a review of the responses to the web-based survey, the team conducted follow-up telephone interviews to clarify and obtain additional details regarding implementation practices with realty personnel in 16 States. These follow-up interviews helped to further explain how State Department of Transportation managers initially selected the low-value threshold amount, as well as how States select the projects and parcels on which waiver valuations are appropriate.

Exhibit III-2 provides a list of the States contacted for follow-up telephone interviews.

Exhibit III-2: States Selected for Follow-up Telephone Interviews

Follow-up Interview States			
Arizona	Illinois	Michigan	Pennsylvania
Delaware	Indiana	Minnesota	South Carolina
Georgia	Louisiana	Ohio	Washington
Idaho	Maine	Oklahoma	Wisconsin

The specific contact interviewed within each State was selected from the list of contacts each State provided during the web-based survey. In a limited number of cases, alternate contacts were required including contacts with the local FHWA Division Realty Officer. The follow-up telephone interviews concentrated on documenting how the appraisal waiver program was established including the selection of the low-value threshold, and the procedures being used in determining, preparing, and negotiating based on waiver valuations. The interviews explored how waiver valuations are being received based on acceptance by negotiators, legal counsel, and property owners.

D. Collection and Study of State Statutes, Procedures, and Forms

Based on information collected during the follow-up interviews and using the input from the web-based survey, the research team compiled excerpts from current State Department of Transportation right-of-way manuals containing the procedures being applied to implement the appraisal waiver process. The team also collected forms used in documenting waiver valuations that may be of interest to other States. The research team also reviewed laws from a number of States specific to the appraisal waiver process.

E. Analysis and Synthesis of Survey Responses

The team then analyzed the information compiled from the web-based survey, follow-up interviews and review of procedures documents. The analysis of survey and interview

responses enabled the research team to better understand the reasons for the variation between State procedures and identified some areas of concern regarding the long-term effects the use of the waiver may have on maintaining or developing staff appraisal capabilities. The remaining sections of the report highlight these findings and observations and some proposed recommendations to address issues identified by the study team.

IV. Summary of Key Findings



This section summarizes the key findings from the research study as identified through the stakeholder meeting, the web-based survey, the follow-up telephone interviews, and the review of a sampling of State laws and procedures related to the appraisal waiver process. This section initially provides an overview of the extent of the use of the appraisal waiver by the States, followed by a review of study findings organized by the investigative questions.

A. Extent of State Use of the Appraisal Waiver

Forty-seven of the 52 acquisition agencies surveyed reported the appraisal waiver process had been included in their operations and that the low-value thresholds currently in use exceeded the original threshold level of \$2,500. Exhibit IV-1 below outlines the extent of the use of the appraisal waiver provision by State Departments of Transportation. The exhibit indicates the low-value threshold that States had been approved to use prior to the January 5, 2005 final rule and the current amount in use as reported by responses to the survey.

Three States indicated they do not currently use the appraisal waiver. Massachusetts indicated their State law prevents them from adopting the process, while New York and Louisiana indicate they have administratively decided not to use the process. Louisiana had used the process at one time, but opted out during the last procedural update according to information provided during the follow-up interview phase of this research. Of the States that responded to the survey, 13 have adjusted their low-value threshold since the final rule of January 2005 gave them more flexibility to set amounts up to \$10,000. Only two States (Ohio and New Mexico) revised their previously approved threshold level downward. Two additional States (Kentucky and Utah) had requested an increased level above the original \$2,500 prior to January 2005 and may still use the appraisal waiver process.

In terms of the low-value threshold adopted by the 47 States using the appraisal waiver, four States define low-value up to \$5,000 and 28 others define low-value up to \$10,000. The remaining 12 use \$20,000, \$25,000 or \$50,000 as their low-value threshold. The two States (Arizona and Delaware) indicating State legislative authority to waive appraisals on property valued up to \$50,000 recognize the Federal limitations included in the final rule that set the upper limit at \$25,000.

As an administrative option, the appraisal waiver process has been adopted by approximately 85% of the State Departments of Transportation. The survey results indicated that 12 States based their use of appraisal waivers on State statutes, whereas the remaining States, 32 in all, responded that their use was based on an administrative determination. A comparison of State statutes to determine how the specific provision is interpreted was not a part of this research. For those States that have adopted the appraisal waiver within their right-of-way acquisition program, the following subsections discuss the implementation practices, effectiveness, issues, and opportunities related to the use of appraisal waivers.

Exhibit IV-1: Past and Present Threshold Limits by State

State	January 2005 Value Threshold Limits	Effective Date	Current Value Threshold Limits
AK	\$10,000	3/18/1996	\$10,000
AL	\$5,000	8/15/2002	\$10,000 ▲
AR	\$10,000	2/16/2000	\$10,000
AZ	\$25,000	7/3/2003	\$50,000 ▲
CA	\$10,000	1/7/1999	\$10,000
CO	\$5,000	9/11/1995	\$5,000
CT	\$2,500	-	\$5,000 ▲
DC	\$2,500	-	
DE	\$2,500	-	\$50,000 ▲
FL	\$10,000	11/29/1995	\$25,000 ▲
GA	\$2,500	-	\$10,000 ▲
HI	\$10,000	2/18/1997	\$10,000
IA	\$10,000	11/14/1995	\$10,000
ID	\$10,000	3/7/2002	\$10,000
IL	\$10,000	7/25/1996	\$10,000
IN	\$10,000	1/29/1999	\$10,000
KS	\$10,000	11/30/1998	\$10,000
KY	\$10,000	3/25/1999	
LA	\$10,000	11/18/1997	
MA	\$2,500	-	
MD	\$2,500	-	\$10,000 ▲
ME	\$5,000	6/10/1999	\$10,000 ▲
MI	\$25,000	3/29/2002	\$25,000
MN	\$10,000	4/30/1999	\$10,000
MO	\$10,000	1/15/1998	\$10,000
MS	\$10,000	8/20/1998	\$10,000
MT	\$10,000	5/13/1999	\$25,000 ▲
NC	\$25,000	12/18/2003	\$25,000
ND	\$25,000	6/25/2004	\$25,000
NE	\$10,000	4/10/2001	\$10,000
NH	\$2,500	-	
NJ	\$25,000	10/7/2004	\$25,000
NM	\$25,000	7/29/2004	\$10,000 ▼
NV	\$10,000	7/12/1996	\$10,000
NY	\$2,500	-	
OH	\$10,000	1/16/1996	\$5,000 ▼
OK	\$10,000	7/30/1996	\$10,000
OR	\$20,000	10/17/2002	\$20,000
PA	\$25,000	1/25/2003	\$25,000
PR	\$2,500	-	
RI	\$10,000	3/25/1999	\$10,000
SC	\$20,000	5/3/2002	\$20,000
SD	\$10,000	11/29/1995	\$10,000
TN	\$10,000	8/20/2001	\$10,000
TX	\$10,000	8/20/2001	\$10,000
UT	\$10,000	6/4/1998	
VA	\$10,000	7/30/2001	\$10,000
VT	\$10,000	3/27/2000	\$10,000
WA	\$25,000	6/1/2004	\$25,000
WI	\$5,000	4/2/1997	\$10,000 ▲
WV	\$10,000	4/3/1998	\$10,000
WY	\$2,500	-	\$5,000 ▲

B. Implementation Practices

This subsection highlights the basic findings from the survey related to the operational procedures that State Departments of Transportation are applying to implement the appraisal waiver provisions. The content is organized to address the investigative questions developed earlier in the research study.

These findings include the practices employed to address those provisions relating to the Federal rule covering the use of the appraisal waiver option. This includes in particular how States make the determination that the valuation problem is “uncomplicated” and then on what available data do they base their finding that the fair market value of the

acquisition is low-value based on the value threshold adopted for use by the SDOT. Likewise, the additional criteria in the January 2005 final rule is also covered. This includes the definition of “waiver valuation” as both a process and the product produced by the agency, and the requirement that the preparer has “...sufficient understanding of the local real estate market to be qualified to ... prepare such a product.”

Other areas of analysis include the effect of the provision in the rule requiring that property owners be offered the option to have the agency prepare an appraisal whenever waiver valuations exceed \$10,000. A review of how reported use of the appraisal waiver contributes to avoiding the cost and time delay associated with appraisal requirements, and how non-appraisers may be utilized to make the waiver valuations.

1. Does the State use the waiver provisions in 49 CFR 24.102(c) (2)?

The appraisal waiver has been widely accepted by State Departments of Transportation. Based on the survey results, less than 15% of the organizations surveyed indicated they have chosen not to include the practice in their operating procedures. Although most States have included the appraisal waiver in their procedures manual, there are varying degrees of use being made of the provision. Considering all States, on average slightly over 33% of all parcels are being valued using a waiver valuation. Based on reported percentages of parcels within certain value ranges, there are on average 60% of parcels that would qualify as low-value based on the State defined thresholds. Some of these low-value parcels may not have qualified for the waiver because the effects of the highway taking involved appraisal issues that were more complex. The survey findings indicate that States have applied discretion to selecting properties appropriate for applying the waiver provisions.

Even in States that have statutory authority, and/or a higher low-value threshold, the use of the waiver provision is not universally applied to all uncomplicated, low-value properties. Exhibit IV-2 indicates the relationship between the average reported percentage of parcels acquired under the low-value threshold and the average percentage of parcel valued using the appraisal waiver provisions.

Exhibit IV-2: Relationship Between Parcels Below State Low-Value Threshold and Properties Actually Being Acquired Using An Appraisal Waiver

Threshold Levels	Percentage of Parcels below the State Threshold	Percentage of Parcels using a waiver valuation
12 State over \$10,000	65	40
28 States at \$10,000	50	33
4 States below \$10,000	65	50

Although on average, the indication is that the waiver is routinely used, individual State reports indicate the process is more restrictively applied regardless of the low-value threshold the State has set. In both the high and mid level threshold categories above, individual State reported use of the waiver ranged from a high of 85% to a low of 5%. Some decentralized States indicated that some offices within their State opt out of using the

provisions even though it is being applied successfully by other offices within the State. Other States indicated they do not extend the use of the waiver provisions to Local Public Agencies involved in acquisition activities for transportation projects.

2. When used what criteria was considered in setting up the procedures including selection of the appropriate low-value threshold?

Prior to the most recent rule revision that increased the low-value threshold, a part of the application process to increase the \$2,500 threshold level included an assessment of the number of parcels that would be subject to the application of a waiver. This continues to be a consideration that States use to determine the low-value amount appropriate to their program. Some States indicated that the level might be different for localities within their State, especially where resort and urban settings are taken into account. As reflected by the general usage levels, all States interviewed indicated that the use of waiver provisions must not become a universally applied solution. Study participants viewed a mixture of valuation products on all projects and throughout the State as the best approach.

In addition to the incidence of potential use the waiver might be given based on past and anticipated workload other factors individual States also considered other factors in setting up their procedures. These factors include:

- **The flexibility provided in State law.** About a quarter of the States received legislative acceptance to permit use of the appraisal waiver provision.
- **Property owner rights provided under State law.** Several States have very open and specific requirements regarding sharing value information, including providing copies of appraisal reports to the property owner. Others are more restrictive in the amount of information they must share. The degree of information that must be provided to the property owner in any given State seems to have a direct relationship to the form of documentation required when preparing a waiver valuation. A number of waiver valuation documentation practices produce reports that are very similar in scope and content from that required for a value finding or nominal value report.
- **The States eminent domain appraisal requirements when filing for possession of property.** The majority of States are required to file based on an offer supported by an appraisal. When negotiations based on a waiver valuation do not result in a settlement in those States, the valuation must be appraised. This generally involves preparation of a value finding, nominal value, or other short-form report depending on the criteria adopted by the State.
- **The appraisal procedures in place to develop pre-appraisal market data analysis reports, sometimes called data brochures, sales books, market studies, etc.** A number of States as part of their valuation process require development of project wide reports containing a compendium of market information and some macro analysis. Where these market analyses are prepared, they become the foundation for waiver valuations and in some instances, the analysis portion indicates the per unit value ranges for the types of property affected by the project. In these situations, the

data is reviewed and approved for use both in support of waiver valuations and for inclusion in parcel appraisals.

- **The size of a State’s acquisition program and its current staffing levels** has an effect on how the State implements the appraisal waiver technique. The survey indicated that a number of States utilize appraisers, including contract appraisers and consultants to prepare waiver valuations. While the intent behind the rule-permitting appraisal waivers may be to save cost and free appraisers time, the reality is the States use the personnel resources that fit their operational standards.
- **The interpretation applied to appraisal standards and the exceptions permitted by the State Appraisal Board in implementing the Uniform Standards of Professional Appraisal Practice (USPAP) as published by The Appraisal Foundation.** A number of States had to work with their State board and a couple even had to have legislative relief to permit development of their waiver valuation procedure. This was particularly important in those States that intended to use appraisers, either staff or fee, to prepare the waiver valuations.

Each of the above factors, individually and in combination, account for the range of procedural differences noted between the States in developing implementing procedures for the appraisal waiver provision.

3. What percentage of total acquisitions made during the past 12 months were acquired at a price below the low-value threshold?

Exhibit IV-3 indicates that 40 States reported that 50% or more of their parcel acquisition activity falls below the \$25,000 threshold level. This indicates the changing nature of the highway program now that the interstate era is over. Highway widening and reconstruction comprises the main acquisition workload rather than new location projects and these generally involve lower valued acquisitions.

Exhibit IV-3: Percentage of Acquisitions by State Under Various Threshold Levels

Percentage Range	Number of States Reporting Parcels Acquired Under		
	\$2,500	\$10,000	\$25,000
0 - 9	6	--	--
10 - 19	8	3	--
20 - 29	11	5	2
30 - 39	7	3	3
40 - 49	5	4	2
50 - 59	3	7	3
60 - 69	6	11	5
70 - 79	1	8	11
80 - 89	--	4	11
90 - 100	--	2	10

4. What decision making process is utilized to determine when to use the appraisal waiver?

Almost all States use a process that begins during an early field review of preliminary right-of-way plans. During this review, usually a supervisory level appraiser or review appraiser evaluates the complexity of the appraisal problem associated with each proposed parcel acquisition. The supervisory appraiser or review appraiser identifies the anticipated value of parcels and designates those that are anticipated to be uncomplicated based on per unit land values and other compensable items, utilizing available market information. For those parcels where this process produces an indication, the value will fall under the State's low-value threshold and initial determination of eligibility for a waiver valuation is noted.

Items that are included in the valuation beyond the value of the land are limited but fencing (42 States), cost-to-cure damages (37 States), minor site improvements (21 States), and minor severance damages (14 States) can be included according to the survey responses.

Many States prepare a spreadsheet type form documenting the cost estimates developed during this field review activity. At least one State uses the cost estimate document to serve as the waiver valuation product and includes an approval box on the estimate form to indicate parcels estimated below the State's low-value threshold are approved for negotiation. The use of the approved estimated amount to initiate negotiations on any particular parcel is not automatic however, and will depend on other factors related to planned project acquisition activity.

In most States, the decision to waive appraising any particular parcel is made based on more factors than the complexity of the appraisal problem and the estimated valuation. Especially for those States that cannot file for condemnation until after an appraisal is prepared there is a level of risk analysis done to determine if negotiation success is probable. This can include an evaluation of general project acceptance based on the public hearing process, or an individual property owner's demeanor gained through project development contacts. Where adversarial situations may be encountered, the use of waiver valuations may be reduced or eliminated.

Since the appraisal waiver is an option, even where State procedures for using the waiver exist, some field office managers choose not to use it at all. While only two States responding to the survey indicated they absolutely did not use the waiver process at all, seven States reported limited utilization, with 10% or less of parcels acquired based on waiver valuations. As one of the States that had chosen not to use the appraisal waiver provisions stated in their reply, their simple appraisal format (Value Finding) works well.

5. Who prepares the waiver valuations and when are they prepared?

While the procedure for determining when a State utilizes an appraisal waiver is relatively uniform nationally, the preparer of waiver, the product of the process and when a waiver valuation is prepared varies considerably. With the stated intent in the Federal rule indicating the waiver provision was to provide a technique to save cost and have non-appraisers make the waiver valuations, it was surprising to the research team to note the

number of States that use only their appraisal staff, including contract appraisers, to prepare them. Of the 47 States reporting use of the appraisal waiver, 18 States use appraisers exclusively to prepare the waiver, while 14 States use only acquisition managers or agents. The other 13 States have procedures that provide maximum flexibility and provide that either acquisition agents or appraisal staff can prepare the valuations.

Twenty-nine States reported that appraisers have been used to prepare waiver valuations, and 24 States indicate they have used right-of-way contractors/consultants. Only four of the 14 States that indicated they use acquisition agents to prepare valuations indicated they have used consultants. It was noted during the interviews that use of consultants to prepare the waiver was usually the result of situations where the consultants had been hired as an acquisition agent for the State or was performing a turn-key right-of-way function.

The use of appraisal staff to handle all valuation activities including waiver valuations was cited as being preferred by some States in order to maintain consistency. State laws also were a consideration especially in those States where appraisal information must be shared with the property owner. Some States even retain the owner contact relating to property inspection as a way to provide similar treatment to all owners affected by the project.

The use of acquisition staff exclusively does not negate providing attention to concerns for valuation and owner treatment consistency. Several States that use acquisition staff to prepare waiver valuations have developed practices that provide for coordination with the project review appraiser before the State finalizes the just compensation offer based on that valuation. While this is not a detailed review function, it is a check to determine if unit values being offered conform to those being reported in appraisals on the project.

Regardless of whom the State has charged with the preparation of the waiver valuation, project management usually selects when they are approved and released for negotiation. The general consensus among the States from the interviews conducted was that negotiating on waiver valuations was more appropriate after some appraisals had been completed and reviewed to confirm value levels in the project area.

6. What market evidence is used as a basis for a waiver valuation and who makes the decision on the amount to be offered as just compensation?

State appraisal documentation practices influence the way some States have implemented the waiver process. While a few States utilize an early cost estimate approval approach, a number prepare formalized data brochures with some degree of market analysis included that receive a review and concurrence for unit values appropriate for use on lands affected by the project. Some of these brochures also include basic cost information to support fencing and other minor land improvement costs.

Such information can then be applied to each parcel designated as eligible for use of the waiver provision using whatever form the State adopted to document the waiver valuation. As indicated previously the documentation used has much variation, ranging from a spreadsheet presentation to a multi-page document complete with photographs and a description of the property.

The norm for the appraisal waiver documentation is a one-page document that itemizes the value items being acquired. Exhibit IV-4 summarizes some of the key items based on the survey responses that are routinely considered when preparing a waiver valuation.

Exhibit IV-4: Survey Responses on Typical Valuation Items Being Utilized by States

Valuation Items	State Responses
Fencing	42
Cost-to-cure damages	37
Minor site improvements	21
Minor severance damages	14

A few States indicated they believe all factors should be included and that the sole determinant is that the final estimate falls below the State’s low-value threshold level. Most States, however, have the view that when items that are more complex are involved, the appraisal problem no longer meets the “uncomplicated” standard in the rule that applies to use of the appraisal waiver provision.

When data brochures are not prepared, the valuations are usually based on a current courthouse or multi-list search of sale information within the local area. Sales information from recently completed or active adjacent projects have also been used to provide support for the basic unit values of land affected by the current project.

Whether the appraisal or acquisition staff or a contractor prepares the documentation required by the State waiver valuation procedure, the approval is almost exclusively assigned to a managerial level supervisor within the State Department of Transportation. Often the approval follows an in house check of the value information and receipt of a recommendation or concurrence from the State’s appraisal review staff.

C. Effectiveness of the Appraisal Waiver

This subsection covers the impact of appraisal waivers on the negotiation process and how offers based on waiver valuations are perceived by the State staff involved in appraising, negotiating, and handling condemnations for right-of-way acquisition.

1. How do negotiations based on an appraisal waiver valuation differ from those based on an appraisal?

States were asked if there was any difference in the way an offer was presented to the owner if the basis for the just compensation was a waiver valuation. Twelve (12) States indicated that there was a difference in how the offer was presented if it is based on an appraisal waiver. The primary difference was to provide notice to the owner that the offer was not based on an appraisal. In some States the offer and settlement form are combined so that if the owner agrees to the amount of the offer, a single document can be used to indicate his/her agreement to waive the appraisal and settle based on the offered amount.

Only four of the 12 States had threshold levels above \$10,000. Above that level, the Federal rule requires advising the owner that the offer was not based on an appraisal. A number of the States interviewed also indicated that even if their forms did not provide a notice regarding the basis for the offer, the agents would routinely go over the fact that the offered amount was not based on an appraisal. This was particularly evident in those States that faced the prospect of having to obtain an appraisal in order to file condemnation if an amicable settlement could not be reached. The rationale for this approach is that it is best to find out as early in the process as possible if an actual appraisal will be required. In one State, the owner is requested to sign a waiver of appraisal form before an offer is made. Once a property owner signs the waiver of appraisal form, the State tenders the offer immediately and negotiations commence.

Only a few States responded to the survey question about whether once an offer was made, how negotiations were pursued any differently than on an offer based on a waiver valuation. Most of the eight replies to this question again addressed the need for the owner to understand he could request an appraisal. One State mentioned the fact that the negotiation could be conducted by the person who prepared the valuation. The general tone was that waiver based negotiations had to determine early in the process if the owner was comfortable with the lack of an appraisal. To maintain acquisition schedules the necessity to prepare an appraisal cannot be deferred too long.

One State indicated that for some projects with a high number of waiver valuations, they have used a “blitz meeting” to conduct negotiations. All property owners are invited to the meeting and a number of agents are available to discuss and present offers. The State reported that these sessions have been extremely successful in securing signed agreements and deeds with some cases having as many as 95% of parcels completed during the meeting.

In general, States reported that settlement rates based on waiver valuations occur in the same or somewhat shorter timeframe than those based on an appraisal. In the survey responses and interviews, States attributed this outcome more to the uncomplicated nature of the taking, making it easier to explain issues to property owners than on the method of valuation the State utilized.

2. Does an appraisal need to be prepared if a settlement cannot be reached and condemnation becomes necessary to gain possession?

As mentioned in a prior section of the report, there are a number of States that have to prepare appraisals prior to requesting condemnation. This fact is one of the reasons some States have included a form of risk analysis in their determination process when selecting appropriate parcels for use of the appraisal waiver provisions. The need to prepare an appraisal if condemnation becomes necessary was also one of the primary concerns about the use of appraisal waivers mentioned by survey respondents and interviewees.

State survey responses indicated that the need to prepare appraisal reports following the use of an appraisal waiver is an infrequent occurrence. When an appraisal was required, condemnation was the primary reason for the need for the appraisal. Other factors were new value evidence and an owners request for the appraisal.

3. What form of quality assurance is in place to assure owners receive just compensation when properties are acquired based on a waiver valuation?

The quality assurance or control issue was cited as a concern about the use of the waiver provision by several survey respondents and interviewees. The use of waivers has the potential to be misused, and lead to owner perceptions of receiving different treatment from the State than others affected by the project.

In evaluating the various approaches that States have taken to implement their waiver programs, it is apparent that a number of steps have been taken to ensure consistency and fairness in the acquisition of parcels based on appraisal waivers. These techniques to ensure consistency and fairness include owner contact, review of all waiver valuations by the appraisal reviewer assigned to the project, and holding offers based on waivers until at least some appraisals required for other parcels on the project have been completed to provide a better basis of comparison. In using these various techniques, some of the recognized time advantages of using appraisal waivers have been tempered.

The general view is that owner contact is encouraged because critical improvements can be missed when using only a quick viewing of the area during plan-in-hand inspections. In addition, such contacts with property owners open the dialogue with the owner, allowing for a better understanding about how the project will affect his property.

State practices of having all prepared valuations evaluated by the appraisal reviewer working the project also provides an opportunity for ensuring consistency in the values being offered for acquisitions related to the project. Initially deferring offers on properties where the offers are based on waiver valuations is another way States have chosen to operate to initially assess how affected owners are reacting to appraised value offers. Several States during the interviews indicated they have used various methods to check and correct valuations during the active acquisition phase of a project. The ability to adapt and respond to owner-raised concerns is fully recognized by States and the willingness to use all administrative settlement options is what keeps the condemnation rate low on parcel acquisitions based on waiver valuations.

D. Organizational Impact of the Appraisal Waiver

This subsection addresses the potential impacts that the use of appraisal waivers may have on a States' appraisal function, and outlines a number of issues that were identified through the web-based survey and the follow-up telephone interviews. This includes how staffing of appraisal and appraisal review functions has transitioned over the past five years and how the use of contract fee appraisers and consultants has or has not changed during the same period. It also includes an evaluation of the recruitment and training options available for developing appraisers, both within the State organization and within the fee appraisal community, and to what extent, if any, this training process has been impacted by the use of the appraisal waiver.

1. How has your staff appraisal function changed over the past five years?

For the majority of States completing the survey, the number of appraisal and appraisal review staff employed by the States either remained stable or declined somewhat over the past five years. However, 11 States indicated their staffing level for appraisers had greatly decreased during that period and a similar decline was noted in five States in their appraisal review function. Four States noted greatly decreased staffing levels for both appraisal and appraisal review staff positions. Of the 11 States that experienced a great decrease in staff appraisal positions, only three of these States reported that they had an active recruitment program in place.

The overall decrease in staffing for the appraisal function, while at the same time the highway program was continuing to grow, contributed to a reported increase in use of contract fee appraisers. The same finding was evident in the replies relating to the appraisal review function where 30 States indicated they used contract fee appraisers to conduct reviews and that the necessity to outsource the review function was increasing. The reported loss of staff positions indicated by many of the States and the increased outsourcing of agency functions mirrors the overall trend in government operations. Factors relating to the age of experienced staff, which has increased the rate of retirement, and noncompetitive pay structures for appraisal positions, contributed to the decreased retention of staff. The low number of active recruitment programs noted by many of the States reflected the general belief by those interviewed that current pay scales were too inadequate to attract entry level and journeyman appraisers. It was also perceived that the agency had become more comfortable with their ability to outsource the appraisal and appraisal review function and still meet program objectives.

Several States in their reply to the survey request for positive and negative aspects of the appraisal waiver provisions indicated that the use of the waiver provided fewer training opportunities for appraisal staff. One reply indicated the waiver provision limits the ability of States to provide adequate training for staff and fee appraisers pertaining to the complexities of eminent domain appraising and contributes to a loss of skill sets by appraisal staff. As one person interviewed put it, the waiver valuation process was “dumbing down” the valuation process.

2. Does the State rely on staff or contract fee appraisers for the bulk of their appraisal workload? Has this changed much over the last five years? Why?

Contract fee appraisers have been used by the majority of States for years. Based on the increases in acquisition activity and the decreases in the number of staff positions, the reported increase in outsourcing shown in the survey was expected. The increased use of turn-key acquisition consultants, and to a lesser degree the use of design-build contracting, has distributed the workload associated with acquiring project right-of-way. The use of appraisal waivers, at least for those States that do not outsource the preparation of waiver valuations, may have decreased the need to contract out the low-value parcels. Overall, the States responding to the survey reported that about 40% of appraisal activity is being

contracted out. For most States, the use of contracts to address appraisal and appraisal review needs has not been a major concern.

3. What types of training programs for appraisal staff are in use?

For those States that retain an active recruitment program, the novice appraiser is provided both on-the-job and classroom opportunities. Many States require their appraisers be certified under the provisions of their State Appraisal Board. There were concerns expressed during the interviews that the work involved in preparing waiver valuations, especially the market research to develop unit cost indicators, was not a creditable activity that could be utilized for appraiser certification. This could have a detrimental effect on staff appraisers that need certain experience credits to meet residential or general certification requirements of their State Appraisal Board. With the high incidence of using appraisal staff to prepare valuations, and a problem in developing appraisal staff reported by some States, a long-term impact of the increased use of the waiver process may be a further loss of in-house appraisal expertise for State Departments of Transportation.

Former State employees are a frequent source of contract fee appraisers familiar with eminent domain issues. Experience with appraisal issues relating to before and after considerations, unit rule, and damages within the context of State law, has often come from initial training opportunities received while being employed by a State organization. In the long run if the number and experience level of State staff are reduced and training opportunities for these staff are reduced because of the use of the appraisal waiver, this could be an impact on the availability of contract employees familiar with the unique skill set needed to handle eminent domain appraisal assignments.

V. Recommendations



This section contains a summary of the main issues identified regarding the implementation of the appraisal waiver provisions based on an analysis of survey information and the follow-up interviews. Recommendations for both State level and National consideration are provided to address these issues and promote adoption of best practices observed during this review.

The main issues are presented within the context of the research covering implementing practices, effectiveness, and organizational consideration surrounding the use of the appraisal waiver provisions. There is broad acceptance by the States to use the option provided by the Federal rule to waive appraisals on uncomplicated, low-value parcels. Within the three focus areas of the study, our recommendations will address each of the following observations:

- **Implementing Practices:**
 - Uncomplicated and low-value criteria are not the only factors considered when applying the appraisal waiver provision.
 - Market data resources used in support of waiver valuations varies from State to State.
 - Appraisers are preparing waiver valuations.
 - Waiver valuations are outsourced to consultants and fee appraisers.
 - Many States have continued to promote owner contact and review of waiver valuations.
 - Documentation requirements vary considerably between States and in some cases approach the level of detail included in value finding or short-form appraisal reports.
- **Effectiveness:**
 - There are both cost and time savings associated with the use of waiver valuations.
 - State practices vary regarding how much value information must be shared.
 - Necessity to obtain appraisals prior to filing condemnation inhibits use of the waiver provision.
 - Using waiver valuations to expedite negotiations is not always successful.
 - Quality assurance when waiver valuations are outsourced is a concern of some stakeholders.
- **Organizational Considerations:**
 - Hiring and development of appraisers is becoming more difficult.

- Work involved in conducting market research and in preparing waiver valuations does not contribute to professional certification.
- USPAP interpretation varies between States.

The appraisal waiver provision is an option available to the States under the Federal rule that had attached to it a limited set of goals and objectives. The stated intent was to reduce time, reduce cost, and redistribute valuation workload. The State recommendations that follow concentrate on identifying those practices that come closest to achieving the Federal goals and objectives associated with the waiver provision. The national recommendations are directed to the Office of Real Estate Services and address the main purpose for this research study, which is to identify the effectiveness of the Federal policy in implementing appraisal waivers.

A. State-Level Recommendations

There are a number of best practices associated with State implementation of the appraisal waiver provisions. For all States who are using appraisal waivers, the adopted waiver valuation procedures were developed and are appropriate to the particular circumstances surrounding State law, available personnel, and pre-existing procedures related to appraisal and negotiation. The following comments highlight practices that in the researchers' view achieve the best result within the context of the Federal rule.

- States should be very selective when determining if a waiver valuation is appropriate. The risk analysis some States use considering area or owner specific concerns is one way to improve chances that a settlement can be achieved. The availability of good market data in the project area also enhances success in selling offers based a waiver valuation. Relying solely on an evaluation of the complexity of the appraisal problem and the low-value criteria can produce too broad of an application of the appraisal waiver provision.
- The type of market information used to support unit values in waiver valuations needs to be well supported and current. The compilation of market data reports, data brochures, or sales books as part of the project appraisal process provides a structured approach to documenting and establishing land values for the types of properties affected by the project. The advantage in assembling sales data as part of the project appraisal process is that there is an opportunity to verify, compare, and analyze the sales information and validate the value indications before being applied to parcel valuations or appraisal. This promotes a higher degree of consistency for the offers made to owners affected by the project. If prepared and analyzed by the appraisal staff, these macro reports provide a documented foundation on which waiver valuations can be based and provide a resource to share with owners if they wish to assess the legitimacy of the State's offer.
- Procedures should provide for the preparation of the waiver valuation by knowledgeable, non-appraisers. The appraisal section should be involved in the initial determination regarding the complexity of the appraisal problem and identifying which parcels are appropriate for use of the waiver provisions. The appraisal section staff should also be responsible for compiling and/or evaluating the local sales information and preparing the project level analysis of the assembled sales. Cost studies could also be developed by the appraisal staff and included with the sales analysis to support some of the cost-to-cure items that may be included as part of a valuation.

- The use of consultants to handle appraisal and acquisition activities is wide spread. However, outsourcing the preparation of waiver valuations does not fit the intent behind the provision. Having waiver valuations prepared by fee appraisers especially seems to run counter to the primary objectives of the waiver provisions. Only in cases where acquisition activities are part of a design-build process or other turn-key contract should non-State staff be used to prepare waiver valuations. In turn-key situations, contractual protections also need to be in place to assure the individuals assigned to prepare the valuations are knowledgeable. Most States that have used acquisition consultants indicate that they require their contractors to be pre-qualified and then use contract specifications to limit the individuals that can be used to prepare waiver valuations.
- State procedures that promote early contact with owners are an advisable step to assure that all impacts of the proposed acquisition becomes known prior to completing the valuation. This does not mean the contact has to be by the valuation preparer but some State contact is advisable to identify all improvements that may be affected by the taking. A number of survey respondents and interviewees, for example, indicated that early contact with owners helped to identify the existence of underground facilities among other issues. The other reason such early contacts with property owners are considered necessary is to provide equal attention to all owners affected by the project.
- With States including owner contact and informal review processes into the procedures for preparing and approving waiver valuations, there is limited difference in the time and effort expended for an appraisal waiver from that required to complete a lower level appraisal format. Documentation standards adopted in a number of States also incorporate completion of multi-page forms and use of photographs of the property being acquired. These documentation standards are so similar to the value finding or nominal value appraisal that the use of the waiver provision may not be an essential element of these States' valuation program. States should fully review the work process for appraisal waivers and assure that the waiver provisions actually fit their needs and actually saves time, cost, and frees appraisal staff of some of their responsibilities.
- Almost all States indicated the waiver provision was an effective practice and provided a benefit in managing their acquisition program. However, the lack of acceptance of offers based on the waiver provisions under State eminent domain laws and requirements to prepare an appraisal before filing a condemnation action to gain possession is an impediment. Some State laws are worded such that just compensation offers are sufficient for filing and obtaining possession of property. Since many of the procedures implementing the appraisal waiver provision within the States are based on an administrative decision, that decision should include an assessment of how State statutes could be updated to permit filing based on all just compensation offers made, without having to delay the process and upgrade the valuation document to conform to State appraisal standards.

B. National Recommendations

Although there are ways individual States could strengthen their procedures used to implement the appraisal waiver provisions, there is recognition that State procedures and practices have just completed an update cycle and the current State practices have been accepted by the FHWA. The updated final rule issued in January 2005 granting States

greater flexibility in the administration of the waiver provision has only been in effect for two years and thus it was not possible to measure the full effect of the new provision within the timeline of this research.

At the national level, the research findings indicating use of appraisers to prepare waiver valuations and the incidence of use of contract personnel to perform waiver valuations should be considered in relation to the expressed intent of the waiver provisions. While it is perhaps too early after revising the rule to take action to curtail such activities, FHWA should closely monitor these practices and attempts should be made to promote revision of State procedures to place responsibilities in the hands of non-appraisers.

Those States that have adopted procedures that promote owner contact prior to valuation are correct in seeking to establish early on in the acquisition process a dialogue with each owner and avoid the potential to miss the owners' insights into how the proposed taking may affect their property. FHWA should reconsider the current guidance that owner contact is not required. Doing so will assure that all owners are provided the same deference without regard to the impact the project may have on their property.

Waiver valuation documentation is quite variable from State to State. These differences in waiver documentation are based mainly on the variation between State laws regarding the rights of owners to be provided with valuation information and the requisites for filing a condemnation action. The higher documentation requirements observed during this review were related to these factors and were an attempt to provide all owners with comparable information. The necessity to maintain consistency in the treatment of owners is an essential component of the Uniform Act.

The decreases in staffing levels for appraisers and review appraisers within the State Department of Transportation organization reported by the survey respondents are a point of concern. The inability to hire staff appraisers will likely reduce the pool of talent available to fill appraisal manager and reviewing appraiser positions in the future. Further action to assess the impact of the decrease in internal State staffing and encourage active recruitment of new appraisers by States needs to be considered. State support for training and promotion of appraiser certification also needs to be encouraged.

Appraisal standards under USPAP and the appraisal requirements being used on Federal projects need to be conformed to avoid conflicts. Implementing the appraisal waiver provision using non-appraisers is the preferred way to avoid a conflict. When States use appraisers to prepare waiver valuation reports, it dilutes the development process of both staff and fee appraisers. Appraisers generally cannot use work activities related to preparing waiver valuations as creditable service for maintaining or attaining certification.